

# **EDMONDS CITY COUNCIL APPROVED MINUTES**

**April 9, 2002**

Following Council Committee meetings from 6:30 p.m. – 7:30 p.m. , the Edmonds City Council meeting was called to order at 7:30 p.m. by Mayor Haakenson in the Council Chambers, 250 5<sup>th</sup> Avenue North , Edmonds . The meeting was opened with the flag salute.

## **ELECTED OFFICIALS PRESENT**

Gary Haakenson, Mayor  
Dave Earling, Council President  
Jeff Wilson, Councilmember  
Michael Plunkett, Councilmember  
Lora Petso, Councilmember  
Dave Orvis, Councilmember  
Richard Marin, Councilmember  
Deanna Dawson, Councilmember

## **STAFF PRESENT**

David Stern, Chief of Police  
Duane Bowman, Development Serv. Director  
Dave Gebert, City Engineer  
Lyle Chrisman, Engineering Specialist  
Steve Bullock, Senior Planner  
Phil Olbrechts, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

Mayor Haakenson asked members of the audience to indicate by a show of hands how many were familiar with the King County Brightwater treatment plant and how many were opposed to the proposed treatment plant. Numerous hands were raised in response to both questions. Mayor Haakenson urged those who lived in Edmonds and were not familiar with King County 's proposal to familiarize themselves with the proposed treatment plant.

1. **APPROVAL OF AGENDA**

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT EARLING, FOR APPROVAL OF THE AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY.**

2. **CONSENT AGENDA ITEMS**

Councilmember Petso requested Item E be removed from the Consent Agenda.

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCIL PRESIDENT EARLING, FOR APPROVAL OF THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:**

(A) **ROLL CALL**

(B) **APPROVAL OF CITY COUNCIL MEETING MINUTES OF APRIL 2, 2002**

(C) **APPROVAL OF CLAIM CHECKS #54683 THROUGH #54810 FOR THE WEEK OF APRIL 1, 2002 , IN THE AMOUNT OF \$766,241.98. APPROVAL OF PAYROLL DIRECT DEPOSITS AND CHECKS #32348 THROUGH #32453 FOR THE PERIOD MARCH 16 THROUGH MARCH 31, 2002, IN THE AMOUNT OF \$751,094.76**

(D) **AUTHORIZATION FOR USE OF EDMONDS ARTS COMMISSION FUNDS FOR ARTS COMMISSIONER TO ATTEND THE WASHINGTON CULTURAL CONGRESS, APRIL 28-30, 2002**

**Item E: Proposed Resolution Authorizing Negotiation of a Transfer of Certain Property Used for Right-of-Way and Access Control and Approving a Revocable License to Maintain an Equipment Service Cabinet**

Councilmember Petso inquired about the potential need to use the property in the future such as for installation and maintenance of a gate at Pine Street. She noted another possible future use of the property may be a welcome to Edmonds mini-park/gateway. She asked how the City maintained the ability to use the property in the future if the property were transferred to Washington State Department of Transportation (WSDOT). Mr. Gebert responded that when negotiating a transfer agreement, staff would attempt to identify any future need and include easements or use rights via that agreement. If the City did not foresee a requirement, they would need to seek an easement or use permit from WSDOT in the future. He noted the resolution did not stipulate that all property must be considered for transfer; the transfer agreement could address only portions of the property.

Councilmember Petso inquired whether it would be possible with this resolution to keep a portion of the property, transfer some property to WSDOT for the equipment cabinet, and transfer some property to Syd Locke due to the location in front of his property. Mr. Gebert answered the intent and wording of the resolution addressed a negotiated agreement with WSDOT for the re-transfer to WSDOT of the property WSDOT transferred to the City. Councilmember Petso pointed out the resolution did not indicate that, only the cover letter.

Councilmember Petso asked City Attorney Phil Olbrechts whether he was aware of this situation. Mr. Olbrechts answered he did not know the specifics of the resolution. Councilmember Petso expressed a preference to delay action on this item until she had an opportunity to discuss the legal impact of the ordinance with City Attorney Scott Snyder.

Councilmember Plunkett asked Mr. Gebert if he was aware there was a property owner who had a dispute with the City regarding this matter. Mr. Gebert answered yes. Councilmember Plunkett asked if he was aware of the additional information Councilmember Orvis provided that demonstrated the City approved the western driveway. Mr. Gebert answered he was not aware of the additional information Councilmember Orvis provided although he was aware the drawings on file showed the driveway. Councilmember Plunkett commented the City had documents that recognized the driveway, not necessarily approved it, but recognized it was there. Mr. Gebert agreed.

**COUNCIL PRESIDENT EARLING MOVED, SECONDED BY COUNCILMEMBER MARIN, FOR APPROVAL OF ITEM E.**

Councilmember Plunkett explained this was a transfer of property from the City to the State. A citizen has a driveway on the property and was in possession of documents that the City recognized there was a driveway that the property owner has had for any number of years. Councilmember Plunkett noted by proceeding with the transfer of the property from the City to the State, the property owner would be expected to take his grievance from the City to the State. He commented the property owner believed he was permitted by the City to have the driveway. He suggested the City solve the easement dispute before transferring the property to the State.

Council President Earling pointed out the resolution only authorized staff to negotiate with the State for a period of six months; a conclusion has not yet been determined. He clarified authorizing staff to negotiate with the State did not preclude the property owner from taking action against the City if he desired. He pointed out the resolution indicated the Council had the final determination regarding whether negotiations were successful.

Councilmember Orvis indicated he was opposed to the motion, preferring that the City negotiate with all parties associated with this property. He noted there were a number of issues associated with this property and it should be viewed in a more comprehensive manner. He questioned how proceeding with negotiations with the State assisted the City with any liability issues.

Councilmember Petso agreed with Councilmember Orvis, noting the City would need the property in the future for some purpose. If the ordinance passed, she requested that Mr. Gebert consider retaining the portions of the property that were of obvious value to citizens. She did not support the resolution as it authorized staff to negotiate only with WSDOT and would “hang the citizen out to dry.” She preferred pursuing an option that benefited all citizens.

**UPON ROLL CALL, MOTION CARRIED (4-3), COUNCIL PRESIDENT EARLING, AND COUNCILMEMBERS MARIN, WILSON, DAWSON IN FAVOR, AND COUNCILMEMBERS ORVIS, PETSO, AND PLUNKETT OPPOSED. The item approved is as follows:**

**(E) RESOLUTION NO. 1021 AUTHORIZING NEGOTIATION OF A TRANSFER OF CERTAIN PROPERTY USED FOR RIGHT-OF-WAY AND ACCESS CONTROL AND APPROVING A REVOCABLE LICENSE TO MAINTAIN AN EQUIPMENT SERVICE CABINET**

**3. CLOSED RECORD MEETING REGARDING THE HEARING EXAMINER’S RECOMMENDATION FOR APPROVAL OF AN APPLICATION BY THE TALBOT PARTNERS, LCC. FOR A NINE-LOT FORMAL PLAT AND PLANNED RESIDENTIAL DEVELOPMENT (File No. P-2001-78 and PRD-2001-79)**

City Attorney Phil Olbrechts explained the definition of a Closed Record Meeting. Mr. Olbrechts explained this was a State law mandated by the State Legislature, not something the City Council adopted. He explained in 1995, the State Legislature determined the permit review process was inefficient, took too much staff time and took too long due to numerous public hearings. The Legislature then allowed only one public hearing per development application. He noted the public hearing was the opportunity for citizen input. The Hearing Examiner holds the public hearing, and in this instance, made a recommendation to the Council. The Council could now consider only the evidence presented to the Hearing Examiner and was not allowed to consider any new evidence, hence the name Closed Record review. He summarized no one testifying would be allowed to submit new information.

Gerald Steel inquired whether this was a hearing. Mayor Haakenson responded this was a Closed Record meeting. Mr. Steel again inquired whether it was a hearing. Mr. Olbrechts explained it was a Closed Record review and was defined by the fact that parties of record would be provided an opportunity to speak.

Mayor Haakenson advised there were a number of procedural rules that must be followed. He explained that because this was a Closed Record meeting, no new evidence could be entered into the record and only parties of record would be allowed to testify. He explained members of the Talbot Group, represented by Mr. Steel, would not be allowed to speak this evening. Parties represented by the applicant, Mr. Bissell, would also not be allowed to speak. Mayor Haakenson referred to a list of 46 parties of record, and read the names of those who were represented by Mr. Steel and would not be allowed to speak this evening: Diane & Najib Azar; Del and Dorothy Barton; Karen & Lothar Biermanski, Jeffery Donchez, Allan & Pam Estrella, Jo Ellen Gregor, Nick & Laura Hall, Mike Hamby, Janine Hauser, Cheryl McDonald, Rosemary & Ben McKenny, Donna & Walt Moss, Jon Nelson, Patricia O'Handley, Charlie & Chris Schuetz, Anthony Stigall, and Ruby Sutter.

Mayor Haakenson advised the parties of record who were not represented by Mr. Steel and would be allowed to speak were Cheryl & Gary Arford, Dale & Janet Chin, Patrick Coleman, David & Joyce Dearden, Llyn Doremus, Jeanne Drake, Bill Harold, Roger Hert rich , Anita Lee, Craig Mitchell, Don Norman, Jeff & Sharon Remington, Beverly & Dennis Stettler, Darryl Thompson, and Jan van Niel.

Mr. Steel referred to a letter that listed the parties he represented who would not be speaking tonight, pointing out that list was not consistent with the list read by Mayor Haakenson. Mayor Haakenson referenced another letter dated March 26, 2002 regarding procedural and evidentiary rulings, application of Talbot Partners, which was sent after Mr. Steel's March 14 letter. He stated the March 26 letter included terms that were agreed to by Mr. Steel and Mr. Bissell. Therefore, that record would be used this evening. Mr. Steel pointed out the March 26 letter did not contain a list. Mayor Haakenson read from the letter which indicated the amount of time Mr. Steel would be provided to make his presentation on behalf of the Talbot Group, and advised only parties of record not represented by Mr. Steel as the attorney for the Talbot Group or the applicant's representative would be permitted to speak. Mr. Steel advised he provided, as requested, a list of people who would not be speaking. He clarified the Talbot Group, as a corporation, did not represent the views precisely of any member.

Mayor Haakenson explained on March 18 City Attorney Scott Snyder forwarded a letter indicating it was his understanding Mr. Steel was pursuing signed waivers pursuant to the Mayor's letter and the conversation that indicated the City's willingness to provide a block of time based on his (Mr. Steel's) status as a legal representative of the Talbot Group. The letter referred to the conference call on March 14 where Mr. Steel indicated he was not pursuing waivers, but in Mr. Steel's letter of March 14, he listed 14 individuals whose time had been waived to Mr. Steel in order to make a presentation on behalf of the Group. Mayor Haakenson concluded the March 26 letter was what would be followed this evening, noting the status of the corporation was immaterial to this hearing.

Mr. Steel commented there was nothing in the March 26 letter that indicated his list of people would not be used. Mayor Haakenson read from the March 26 letter, "You have been provided 20 minutes in which to

make your presentation on behalf of the Talbot Group. A similar amount of time was allotted to the applicant. In addition, only parties of record who are not represented by either you as the attorney for the Talbot Group or the applicant's representative will be permitted to speak." Mr. Steel argued he indicated which parties he represented and the City never notified him they would not accept his list. Mr. Steel said if individuals were not allowed to speak, that issue would be raised on appeal if they did not prevail tonight.

Mayor Haakenson requested Councilmembers disclose any potential grounds for impartiality, impropriety, conflict of interest, pre-judgment or any ex-parte contacts they may have had in regard to this matter.

Council President Earling advised he has lived on Talbot Park Road for 15 years and that the proposed project was within ½ mile of his home. After reviewing the record, he was uncertain he could reach an unbiased decision and therefore recused himself from the review. He noted he would leave the dais and the building.

Councilmember Dawson advised she received a number of letters from residents of the Talbot Road area in opposition to the Talbot Commons, including letters from Diane and Najib Azar, Will & Brad Sarvis, Dean & Andrea Kessler, Gordon Boils, Anita Lee, Ben & Nancy Brodie, Bill Neville, Beth Reis, Laurie Niven, Karen Biermanski, Bill & Dorothy Barton, and Jan Nofziger. Councilmember Dawson advised she also received a telephone call from Diane Azar on April 7. When she realized the purpose of her call, Councilmember Dawson advised Ms. Azar she could not discuss the Talbot Commons proposal and explained the nature of the quasi judicial procedure and the impropriety of ex-parte contacts. Ms. Azar indicated she did not want to sway her vote but wanted to ensure she would consider the issues fully and fairly for the good of the community. Councilmember Dawson assured her that she and the Council would review the record and make their decision based on the facts therein. Ms. Azar also mentioned a summary of arguments that the attorney wanted the Council to have which she (Councilmember Dawson) had now received. Councilmember Dawson noted she and Ms. Azar also had an unrelated conversation regarding where she went to college. Councilmember Dawson concluded that although she received a number of letters in opposition to the project, they did not compromise her ability to participate in the hearing.

Councilmember Orvis indicated he also received numerous letters including letters from Laurie Niven, Anita Lee, Bill Neville, David & Marlene Johnson, Charles Schuetz, Christine Schuetz, and Ben & Nancy Brodie. He also received and returned a call from Diane Azar. He advised her this was a quasi judicial hearing, that he could not make any commitments regarding the outcome, and that he would need to consider the record. Councilmember Orvis concluded this had not compromised his ability to participate.

Mr. Olbrechts asked if Ms. Azar provided any information in her telephone call. Councilmember Orvis explained she stated she was opposed to the Talbot project. Mr. Olbrechts inquired whether the letters Councilmembers Orvis and Dawson received were form letters already in the record. Councilmember Dawson answered some were form letters and some were not. Councilmember Orvis agreed. Mayor Haakenson suggested some of the names Councilmember Orvis read were not parties of record. Councilmember Dawson noted the information contained in the letters was all contained in the record; there was no new information.

Mr. Olbrechts requested he be allowed to review the letters to ensure there was no new information contained in the letters. He advised if any of the parties wished to review the letters, they would have that opportunity. He noted if a party failed to object to the letters, they waived their right to object. Mayor Haakenson suggested Mr. Olbrechts as well as Mr. Bissell and Mr. Steel review the letters.

Councilmember Marin indicated he also received letters, most were form letters or contained the same information that was contained in the record. He received a telephone call from Ms. Azar and Mr. Sullivan, neither of which swayed his opinion or caused him to believe he could not participate.

Councilmember Plunkett indicated he received the same letters and when he saw the addresses, he threw them away, realizing they were not material he could read because it was received outside the record. He received a telephone call from Ms. Azar based on the premise that he served on the Historical Preservation Advisory Committee. When he realized that was not her intent, he did not discuss the Talbot Road issue with her.

Councilmember Plunkett explained he works for Windermere Real Estate and approximately two months ago, he began a conversation with a family who border the subject property or live across the street regarding selling their home. This family knows he is on the City Council. There have been no verbal or written agreements for him to list or sell their home thereby receiving a commission. He spoke with the family today who indicated they would like to continue discussions with him regarding the sale of their home and he plans to meet with them in approximately ten days. He asked the parties of record to indicate whether this impinged on the Appearance of Fairness Doctrine.

Councilmember Wilson indicated he also received numerous letters and attempted to determine which were parties of record. He explained he placed the letters from individuals who were not parties of record in an envelope and did not review them. He received a letter from Ms. Azar as well as a telephone call. He spoke with Ms. Azar briefly and she explained the Council would be receiving additional material from Mr. Steel, which was delivered to the Council yesterday. Councilmember Wilson indicated he did not discuss the substance of the project other than Ms. Azar stated she was opposed to the project. Councilmember Wilson advised he received letters from Dell and Dorothy Barton, Karen Biermanski, Anita Lee, Charles & Christine Schuetz, and Mr. & Mrs. McKenny. Councilmember Wilson indicated he returned a telephone call to Roger Hert rich last evening but was unable to reach him. Councilmember Wilson advised the letters he filed in the envelope were from Jack & Elaine Reis, Laurie Niven, Jan Nofziger, Ben & Nancy Brodie, Dean & Andrea Kessler, the Boyles, Lil & Brad Sarvis, and Bill Neville.

Councilmember Wilson advised prior to election on the Council, he was employed by the City of Edmonds from 1991 through 2000. During that time he worked with Mr. Bissell in the Planning Division. Councilmember Wilson indicated he has not seen Mr. Bissell in three years and their relationship had been purely professional. Councilmember Wilson concluded he could provide a fair and impartial decision. Councilmember Wilson advised his wife grew up in Edmonds and spent time with the Bride family. He and

his wife have been married for nearly 18 years and during that time, neither he nor his wife had had any contact with the Brides. He summarized this would have no impact on his ability to make an impartial decision regarding this matter.

Councilmember Petso stated she likely had not received any letters different from those addressed to other Councilmembers. She did not maintain a list, noting most were form letters. In reading the letters, she did not encounter any information that was not already in the record. She also attempted to return a telephone call from Diane Azar but upon realizing what the topic was likely to be, she opted not to return a subsequent telephone call from Ms. Azar. She also had a brief telephone conversation with Roger Hert rich ; the content of the conversation was nothing more than “that big appeal is coming.” Councilmember Petso concluded she had not had any contacts that she believed would affect her ability to participate.

Mayor Haakenson explained normally the Mayor did not vote; however, if the Council remained with six members and there was a tie vote, he would cast the deciding vote. Mayor Haakenson explained he was a former resident of this neighborhood, living there for nearly six years, close to the subject property. He received as least as many telephone calls and letters as the Council had and likely more. He had many conversations with Mr. Bissell and Mr. Steel and has exchanged correspondence with both. Mayor Haakenson advised he also had copies of 46 form letters submitted by non-parties of record, noting the form letter was the same as was submitted by many parties of record and did not contain any new information. He concluded he had not gleaned any new information from any of the conversations or letters and nothing that would prevent him from making a rational decision regarding this matter.

Mayor Haakenson asked Mr. Bissell whether they had any objection to any Councilmember or his participation. Mayor Haakenson reiterated if there was any failure to object to any of the subject matter disclosed by the Council or him, the individual waived their right to further objection. Mr. Bissell indicated he had scanned the letters, noting the record was fairly extensive and it would be difficult to submit something that was not already in the record. He did not object to any of the letters. Mr. Olbrechts indicated the Council would not consider any of the letters sent to Councilmembers as they had been submitted in an ex-parte manner.

Mr. Bissell asked Councilmember Plunkett how extensive his negotiations with the neighbor had been. Councilmember Plunkett answered he has made every effort over the past few months to ingratiate himself with the family but there had been no verbal or written commitment by either party.

Mr. Bissell asked if the party was a party of record in this proceeding. Councilmember Plunkett answered no. Mr. Bissell asked if the party had stated any preference regarding this project. Councilmember Plunkett answered no, it had not even been discussed until today when he called to cancel an appointment he had with them tomorrow. That discussion was the first time the property owner acknowledged that he knew Councilmember Plunkett was on the Council. Councilmember Plunkett asked the party if he knew of the subject matter and the party indicated he did. It was then decided the most appropriate action would be to delay any discussion regarding his property for 7-10 days. Councilmember Plunkett clarified they did not discuss the subject, they only acknowledged they were in this situation.

Mr. Bissell asked if Councilmember Plunkett had been able to infer the potential client's view regarding this project. Councilmember Plunkett answered no, the party only acknowledged he was familiar with the project and the area.

Mr. Bissell asked whether Councilmember Plunkett felt he could hear this matter in an unbiased manner in a situation where he was attempting to court a potential client who is a neighbor of the project. Councilmember Plunkett answered yes, explaining he has had a pretty good year and did not have to have this gentleman's business although he would like to have it. He noted interest rates were low and there were many buyers and sellers. After conferring with his client, Mr. Bissell advised he would take Councilmember Plunkett's word that he could hear this in an unbiased manner and not request he recuse himself. Mr. Bissell advised they did not object to the participation of any other Councilmember.

Mr. Steel advised he had been told by a citizen that in a telephone conversation with Mayor Haakenson that he did not disclose, Mayor Haakenson indicated he had made up his mind about this project and intended to vote for it. Mr. Steel indicated he could not have a fair hearing of his client's interest with Mayor Haakenson having made that statement. Mayor Haakenson replied it was categorically not true. Mr. Steel invited the individual to make a statement.

After discussion with the citizen, Mr. Steel apologized, and stated it was Councilmember Marin who had made the statement. Councilmember Marin responded his recollection was that he may have said something to the effect that he was leaning that direction but not that he would categorically vote that way. Mr. Steel offered to have the person who had the conversation with Councilmember Marin make a statement; noting that, based on the reported conversation, he did not feel there could be a fair hearing with Councilmember Marin voting on the issue. Councilmember Marin recused himself and left the dais. Mr. Steel indicated that was his only objection.

Mayor Haakenson inquired whether the audience had any objection to the participation of any Councilmember or him.

**Pam Estrella, 8112 Talbot Road, Edmonds**, indicated she owned a clinic where a Councilmember was a patient and although due to patient confidentiality she did not wish to name the Councilmember, she questioned whether that would be considered a conflict. She indicated she had not personally provided service to the Councilmember. Mayor Haakenson concluded if the Councilmember viewed it as a conflict, he/she would have disclosed it.

Mayor Haakenson advised the order of presentation would be a 20-minute staff presentation by Mr. Bullock, a 20-minute presentation by Mr. Bissell, and a 20-minute presentation by Mr. Steel followed by other parties

of record who wish to comment. Mayor Haakenson reminded Mr. Bissell that as the applicant, he had the burden of proof and may wish to reserve time for rebuttal.

### Staff Presentation

Senior Planner Steve Bullock explained this was a 9-lot Planned Residential Development (PRD). The application was submitted under the previous PRD code; therefore, the proposal would be reviewed under the code prior to the recent repeal and adoption of the new code provisions. He explained the process under the old ordinance included review by the Architectural Design Board (ADB) who made a recommendation to the Hearing Examiner. The Hearing Examiner held the public hearing and made a recommendation to the City Council. After reviewing the record, the City Council issued a decision.

Mr. Bullock displayed an aerial photograph (page 86 of the hearing record) that illustrated the subject site and surrounding area. He identified the property under review, primarily the large meadow surrounding a colonial house and the stream ravine on the south side indicated by the mature trees in that area. He displayed a vicinity map of the area (page 95), identifying Talbot Road to the north and west and Cyrus Place to the east, noting the subject property gained its access entirely from Cyrus Place. He pointed out a number of properties in the vicinity of the property were zoned RS-20 and some were zoned RS-12, noting properties in both zoning classifications are accessed from Talbot Road or Cyrus Place.

Mr. Bullock explained the property had a large meadow on the northern two-thirds of the property and a stream ravine on the southern one-third. He explained the forested ravine with its mature vegetation as well as the meadow were a significant feature of the site and lent much to the character of this area of Talbot Road with regard to openness, expansive lawns, and other natural features.

Mr. Bullock displayed a site plan, pointing out the “hole” on the eastern edge of the site was the lot created for the existing colonial home. The project proposed for the remainder of the property included the stream ravine and the meadow area. The proposal by the applicant was for a small lane road in the northwest corner of the site to access eight of the nine lots. He noted this was the lowest portion of the site, other than the ravine. Part of the applicant’s intent, as stated in their application as well as during the hearing, was to place a majority of the homes as low on the site as possible to avoid a major visual impact to the community as well as to minimize any view impacts to existing homes. Mr. Bullock explained the ninth home was in the northeast corner of the site and would gain its access from the existing driveway road that served the existing colonial style house. He noted the ninth house was on a higher portion of the site and would be seen to be as adjacent or neighboring the large colonial style house. Therefore, the ninth lot was larger and there have been plans stated to have a larger home to be consistent with that part of the neighborhood.

Mr. Bullock explained the southern side of the property was preserved as a Native Growth Protection Area (NGPA), including the ravine with a stream in the bottom. The stream is a Class 2 stream under the City’s Critical Areas Ordinance (CAO). Because the steep slope area was so large, it included the stream buffer and a significant amount more land. He pointed out the proposed protection for the steep slope area (buffers and setbacks) were twice the protection that would be required for the stream under the City’s CAO. He noted a

portion of the meadow area high on the slope was identified as usable open space and would be preserved as open space, provide the visual perception of an open area and continue the feel of the Talbot Park neighborhood of large open expanses of meadow or other landscape features.

Mr. Bullock referred to the Hearing Examiner's report (page 6 in the record), where the Hearing Examiner addressed the criteria in the PRD code that must be met for a PRD to be approved. First, there needs to be compatibility between the existing and proposed land uses. The Hearing Examiner's response was PRDs allow clustering to preserve significant features and assist in maintaining a neighborhood. The Hearing Examiner acknowledged that PRDs allow smaller lots but that was allowed by the PRD and underlying zoning. Mr. Bullock noted there were numerous examples of approved PRDs in the City with very small size lots. He noted the size of lots was not a criteria for measuring compatibility or consistency with existing and proposed land uses as the number of lots the PRD was allowed to have was established by the PRD and underlying zoning.

With regard to the next criteria, there must be unusual circumstances related to the physical characteristics of the property, the Hearing Examiner found there were a number of unusual circumstances in this case including the stream ravine which is a major environmental feature, and the change in the elevation on the remainder of property. Mr. Bullock explained the remainder of the property was not extremely steep but the slope was constant and resulted in a large elevation gain. The Hearing Examiner concluded this PRD application had unusual circumstances.

With regard to the perimeter treatment criteria, the Hearing Examiner agreed with the ADB that a solid wood fence needed to be included along the northwest property line adjacent to Lot 86 on the site plan. Except for setback issues on Lots 8 and 9, the Hearing Examiner found the perimeter treatment was consistent with the PRD criteria.

Another PRD criteria was that a clear public benefit needs to be provided and could be any of the following: creation of open space, preservation of natural features, inclusion of substantive public use facilities, or reduced density. Mr. Bullock noted in this case, the Hearing Examiner found the project met two of the four criteria, creation of open space and preservation of natural features.

Mr. Bullock referred to pages 10-14 in the Hearing Examiner's Recommendation where he reports his findings regarding the PRD criteria, noting in every case, the Hearing Examiner found the project complied with the PRD criteria with the addition of several conditions. The Hearing Examiner found the project met the criteria for approval of a formal plat with some conditions.

Mr. Bullock advised the Hearing Examiner's recommendations and conditions were provided on pages 17 and 18 of the record. Noting most conditions were fairly standard, Mr. Bullock highlighted conditions unique to this project:

- Condition 2 – the applicant needs to comply with the environmental determination dated October 1, 2001
- Condition 3 – the applicant shall comply with the conditions and recommendations of the ADB (related to a fence on the northwest property line, landscaping, and building materials)
- Condition 4 – setback for lots 8 and 9 should be 25 feet. The Hearing Examiner did not feel the applicant met the burden of proof (variance criteria) to reduce the setbacks. The applicant stated their willingness to provide a 25-foot setback for Lot 9 but wanted to reduce the setback for Lot 8 to 15 feet. The Hearing Examiner did not find in the applicant's favor.
- Condition 5C – a fence shall be installed at the upper edge of the Native Growth Protection Easement (NGPE) and permanent signs mounted on the fence to protect the NGPE

Mr. Bullock addressed major points made by the opposition, noting these were primarily regarding compatibility and consistency with neighborhood characteristics. He displayed a map (page 166) illustrating lots with less than 2500 square foot homes and lots less than 3000 square foot homes (using information from the Snohomish County Assessor's office). Acknowledging that compatibility can be a subjective measure, staff's intent was to develop a more measurable way of determining compatibility. The applicant stated as part of the hearing record (page 12 of the December 12 transcript) that the homes would range from 2200 – 2500 square feet. Mr. Bullock noted a fair number of existing lots had homes with less than 2500 square feet and a number had homes less than 3000 square feet.

Mr. Bullock referred to page 167 of the hearing record, a map of lots with an assessed structure valued at \$300,000 or less. He noted this figure was selected as the applicant indicated structures would have a value of \$300,000 - \$400,000. He explained this was an attempt to illustrate whether the proposed structures would be compatible with the existing structures. He referred to the map, noting there were a number of lots with structures valued at \$300,000 or less. He concluded new structures in this area with a value of \$300,000 - \$400,000 would be compatible with existing structures.

Mr. Bullock referred to Mr. Steel's April 5, 2002 letter. The letter claims that because there were not 11 parking stalls on each lot, because lot shapes may be odd, because lot sizes may not be what is required by the underlying zoning, and because the age of homes show some variety and construction done individually was somehow better than construction done at one time, could not be supported by facts and could not be used to determine whether a project was compatible or consistent with the neighborhood. Mr. Bullock explained the applicant was providing more parking than was required for a single family zone. The PRD ordinance specifically allowed lot shape to be modified. Regarding lot size, a PRD, by its nature, would look different than a standard subdivision. In response to the argument by opponents that the PRD must look like a standard subdivision, if the City wanted everything to look like a standard subdivision, they should not have provisions that allow a PRD and the only option would be a standard subdivision. The PRD allows an applicant and the City to work together on a project that preserves significant features of the site that might be put under pressure to be developed under a standard subdivision process. Via a PRD, the applicant can achieve the number of lots allowed by the size of the property, but avoid critical areas that might be under pressure for development under a standard subdivision as well as provide additional benefit

via the creation of open space that the City may enjoy from perception perspective as well as use perspective.

Mr. Bullock referred to the inference that homes built at the same time were not high quality, pointing out this was not supported in the record and should not be used to determine whether the project was compatible.

Councilmember Orvis referred to the site plan and inquired why there were two lines for each lot. Mr. Bullock identified the line that represented the usable area of each lot and the interior line that represented the setback for the lot.

Councilmember Plunkett referred to the criteria regarding a clear public benefit and the Hearing Examiner's finding on page 11 that there was a clear public benefit because of open space and preservation of significant natural features. Councilmember Plunkett noted some of the open space, possibly the vast majority, was in an area located at the southern portion of the site and contained steep slopes and a portion of Perrinville Creek. He asked whether those areas would be preserved regardless of what was built on the property. Mr. Bullock responded the ravine area was very wide and included a great deal of horizontal distance, from the center of the stream to the top of the slope was 120+ feet. The stream was a Class 2 stream; the widest buffer was 50 feet. Therefore, the steep slope provides more protection than the stream buffer would provide. He noted there were a number of provisions in the code that allowed encroachment into steep slope hazard areas. With this project, encroachment to the steep slope buffer had not even been introduced as the applicant proposed to preserve it. Therefore, from the City's perspective, a large portion of the site was being protected that might not be protected under a standard subdivision.

Councilmember Wilson asked staff to provide an overall density calculation for the project in the RS-20 zone. Mr. Bullock advised the total site area of the property was slightly over 184,000 feet or approximately 4.25 acres. The underlying zoning was RS-20, or approximately ½ acre lots. He explained the PRD ordinance required density be calculated by subtracting road areas (access road, the loop, and the easement on the eastern portion of the site) from the gross site area for a net lot area of 172,414. Dividing 172,414 by the underlying zone (RS-20 or 20,000 square foot lots) results in 8.62 lots and the PRD allows rounding to the nearest whole number. In this instance nine lots are permitted and nine lots are proposed.

Councilmember Wilson recalled that Mr. Bullock stated in his presentation that additional parking would be provided and inquired whether that would be on each lot or in a designated parking area or strip. Mr. Bullock explained there was not a designated parking area or strip; the code requires two stalls per lot in single family zones. In this instance, each home has a 2-car garage which provide their two required stalls. Each lot also has a parking apron in front of their garage that is at minimum the length of a car stall, effectively providing a total of four stalls per lot.

Councilmember Wilson recalled there was testimony regarding the need for additional parking such as for events, parties, etc. He asked the surface width of the driving lane serving lots 1-8, noting it appeared to be

designed as one-way circulation. Mr. Bullock agreed the loop was one-way circulation and advised the surface width in the 2-way portion was 24-feet wide, which would not allow for on-street parking. He noted this met the City's street standards but did not provide any space for parking.

Councilmember Wilson asked whether the circulation tract would be identified as a fire lane and restrict parking. Mr. Bullock answered yes.

Councilmember Wilson asked whether most typical plats provided on-street parking in addition to parking on individual lots. Mr. Bullock agreed there were a number of plats that provided on-street parking but it may be proposed by the applicant or not. Councilmember Wilson noted any additional parking for a large gathering would spill onto Cyrus or Talbot Road. Mr. Bullock agreed.

Councilmember Wilson asked whether the setbacks for lots 1-8 were consistent with the RS-20 zone. Mr. Bullock answered they were consistent with the RS-20 requirements for the perimeter setback where the development was adjacent to existing development; however, internally they are proposed by the PRD with 5-foot setback and 5-foot street setbacks. As the buildings are proposed, some elements of the house would be 16 feet from the street property line and other elements within 5-feet of the property line. Councilmember Wilson asked whether there would be a stipulation that the garages must be 20-feet from the street property line to allow additional parking in front of the garage. Mr. Bullock answered that could be added to the proposal.

Councilmember Wilson asked how this compared to the side and street setbacks in the RS-20 zone. Mr. Bullock answered the street setback in the RS-20 zone was 25 feet and the side setback in the RS-20 zone was a 10-foot minimum with a total of 35-feet. Mr. Bullock noted there was other space in the project that provided the space between the buildings but was not provided between the buildings in the proposed development.

Councilmember Wilson asked the slope on the usable open space. Mr. Bullock did not have that information readily available.

For Councilmember Petso, Mr. Bullock identified Lot 6 and advised it was 5,688 feet. Councilmember Petso inquired how the plat map compared to the map in the packet that showed "funny" lot sizes. Mr. Bullock displayed a map he identified as the "effective PRD," identifying the usable area of each lot and the line and the building setbacks for each lot. He noted this would be achieved via numerous easements and covenants on the land.

Councilmember Petso inquired whether the Council, when determining if the proposal met the criteria, should consider entire lot size or usable lot size. Mr. Bullock explained staff has used the effective PRD as that establishes how the entire property can be used.

Councilmember Petso recalled a few months ago the Council considered a rezone application where a property owner with a 12,000 square foot property proposed RS-12 zoning where there was RS-8 zoning across the road and the Council determined it was not compatible. She inquired whether the Council was bound by that decision. Mr. Bullock explained in the instance Councilmember Petso referred to, the property was zoned RS-20 and the request was a rezone to RS-12. The lot area was 22,000 square feet and the intent was to achieve a lot with 10,000 square feet, which could not be accomplished via the standard subdivision process. Councilmember Petso recalled the Council's finding that it was not compatible with large lot residential, asking whether that bound the Council in any way. Mr. Bullock explained the proposal tonight was consistent with large lot residential as the density of the entire lot was consistent with the RS-20 zone, and no change in zoning was proposed. He clarified that regardless of the lot sizes, the density for the entire property was determined using the underlying zoning.

Councilmember Plunkett asked whether staff had identified any other public benefits. Mr. Bullock referred to the Staff Report (page 91 – Item D4) and staff's determination that there were a number of things that might be considered to be a clear benefit to the public like the preservation of the stream and the ravine; another might be the open space created.

Councilmember Wilson asked whether the usable open space was intended for general public use or restricted to residents in the PRD. Mr. Bullock answered it was limited to the residents in the PRD.

Councilmember Wilson asked how the maximum lot coverage would be determined and how it would be applied to each lot. Mr. Bullock answered there would need to be a calculation in place during the review of each building permit to ensure the maximum 35% lot coverage for the entire site was not exceeded. He noted based on the size of the entire lot, the portions of the lot encumbered by critical areas and NGPE, he did not anticipate it being a significant issue.

Given the significant portion of the property encumbered by the NGPE, Councilmember Wilson inquired whether it was likely or achievable that each lot could be fully built out to the setback lines and not exceed 35% of the total site. Staff agreed to calculate this.

Councilmember Orvis noted the packet included drawings of two sets of houses. Mr. Bullock explained when the project was reviewed by the ADB early in the process, the plans submitted were the computer-drafted elevations. One of the comments from the ADB was that they wanted to see elevations with more of a neighborhood feel. The applicant subsequently submitted, prior to the Hearing Examiner review, the second set of elevations (page 107 & 108), the hand-drawn elevations that indicate a Craftsman-style with shingles, stone, etc. He noted these elevations were used by the Hearing Examiner to determine the design of the homes was consistent with the neighborhood in building style and materials.

Councilmember Orvis asked whether the 20% open space was met via the usable open space or also included the NGPA. Mr. Bullock identified the 20% as the island and a portion by the street and did not include the NGPA.

Councilmember Dawson asked why Mr. Bullock indicated parking, lot size, and whether or not they are custom homes, etc. were not criteria for consideration. Mr. Bullock answered they were not specific criteria in the PRD chapter. Councilmember Dawson asked whether the Council could consider those factors when determining whether the proposed project was consistent with the neighborhood. Mr. Bullock answered if the Council tried to use number of parking space to determine whether it was compatible, many different factors must be considered such as the applicant was providing more than required by code and GMA policies referenced reduction in impervious surfaces, etc.

### Applicant Presentation

John Bissell asked to reserve 10 minutes for rebuttal. Mr. Olbrechts clarified the applicant's rebuttal was limited to evidence raised during the review and could not address new arguments.

Mr. Bissell explained there were a number of topographic issues including the steep, well-forested ravine to Perrinville Creek on the south end of the site and the approximately 20% slope that bisected the property. He noted this was substantially less than what was a critical area but enough to be difficult to work with. He noted the site lost approximately 40 feet of elevation from the drive loop at the colonial house to the area with the barn. Another issue was that if they built onto the hillside, they would obstruct views for properties to the east of the site. As a result, they chose to place the buildings lower on the site, which required a PRD to cluster the buildings, to avoid obstructing views in the neighborhood.

Mr. Bissell noted there was a huge record regarding this proposal but it was actually not complex. They must show compliance with ECDC 20.35 and compliance with the subdivision code. He referred to his statements of compliance with the criteria (pages 36-39 of the record), first, whether there were special circumstances on the site. He indicated there were special circumstances, explaining there was a large, steep ravine forested with trees that the neighborhood, City and developer would like to preserve, and a creek at the bottom of the ravine. Additionally, the terraced nature of the site, with a lower and higher portion was clearly a special circumstance.

Next, is there a landscaping buffer proposed to the adjacent properties? He pointed out the record included a detailed landscaping plan which the Hearing Examiner and ADB found complied with that requirement. Regarding public benefit, he noted the criteria was worded so that the applicant must provide at least one of the public benefits. They created beneficial open space in three ways – open space adjacent to Cyrus on the northwestern corner of the site, in the center of the site, and on the hillside. Although the hillside was not for public use, it was an area open to view currently and if houses were constructed on the hillside it would change the character of the neighborhood. The ravine area was not necessarily a critical area they were required to protect as the steep slope ordinance provided options for using steep slopes. Regarding whether

the project provided preservation of significant natural features, he indicated there was preservation of significant natural features by protection of the ravine, trees, wildlife in the ravine, and the stream although they were not necessarily obligated to protect that.

Mr. Bissell indicated the question raised most often by opponents was whether this PRD was consistent with neighborhood characteristics. He noted the code did not define what neighborhood characteristics were – house style, density, clustered vs. not clustered, etc. He noted opponents have indicated the density would be substantially smaller because their calculation of density in the neighborhood was 30,000 square feet. He pointed out neighborhood could be defined in many ways. He explained density and character had been defined by the opponents in a manner that provided them numbers that made it look like something it was not.

Regarding what was character, Mr. Bissell said character was leaving open space on the hillside rather than monster houses; character was designing houses that had compatibility with houses in the surrounding area, houses focused on more earth-type features. Compatibility could mean a lot of things.

Mr. Bissell summarized they believed, and the Hearing Examiner and ADB concurred, that they met the criteria found on pages 36-39 in the record. He noted the elevations were approved prior to the ADB review and the ADB concurred they were better than the original elevations that were submitted (reference page 74 of the record).

(Mr. Bissell had nine minutes remaining for rebuttal.)

Councilmember Wilson referred to the building materials and styles depicted in the elevations presented to the ADB and Hearing Examiner, and asked if there was a stipulation that those styles and materials would be used or were the elevations only representative of a style. Mr. Bissell acknowledged there was not a recommendation from the ADB or condition from the Hearing Examiner; but they would not be adverse to such a condition. Councilmember Wilson requested clarification regarding whether the elevations were required or discretionary. Mr. Bissell recalled the ADB made that recommendation but it was not included in their motion. He advised that was their intent. Mr. Olbrechts advised that could be added as a condition.

Councilmember Dawson inquired whether there would be only three styles for the nine homes. Mr. Bissell answered yes, but that the ninth house was not represented as one of the styles as it is aesthetically separated from the eight-house cluster. He explained the houses would have different facades and would vary using the three styles. He commented that it was felt that if the style of house varied significantly such as craftsman, saltbox, northwest contemporary, etc., clustered close together, that would not be a consistent design theme. He noted that by using a few different styles with varied floor plans, the appearance of the house would be different for each but the materials would be consistent with the three styles.

Councilmember Dawson asked if the intent was for the eight houses to look similar. Mr. Bissell answered the intent was to have them look similar enough to not fight with each other aesthetically but be different enough to not be a group of tract houses. He clarified each house would be different, each style, each footprint was different but the aesthetic treatment would vary in three ways.

Councilmember Dawson asked if he was aware of any other areas in the vicinity where there were eight houses with the same general appearance clustered in that fashion. Mr. Olbrechts cautioned that information may not be in the record. Mr. Bissell advised this question had not been asked and was not in the record. Councilmember Dawson clarified that because it was not part of the record, there was no evidence that anything in the area is consistent with this. Mr. Bissell answered it may not be fair to say that; there has been a lot of discussion in the record regarding tract houses and testimony from opponents that because the existing houses were all built separately as custom houses, building a group of houses was not reasonable. He recalled that was rebutted by him during the Hearing Examiner review as not germane to the criteria and such a statement would not matter whether it was a PRD or a plat.

Councilmember Dawson noted if it were a plat versus a PRD, approval of the house design would not be required and it would not need to be consistent with the remainder of the neighborhood. Mr. Bissell pointed out that statement reflected the benefits of the PRD; a formal plat would not allow the City to have any design controls. In this instance, design controls were part of the criteria for a PRD. Their submitting elevations gave the City the ability to have design control over the houses, and design control was one of the benefits of a PRD.

Regarding compatibility, Councilmember Orvis inquired how the Talbot Park covenants were addressed in the plat. Mr. Bissell advised they were not in the record because they were not germane to the criteria. Mayor Haakenson identified the covenants on page 2 of a memo from Steve Bullock as part of the SEPA appeal. Mayor Haakenson provided the letter to Mr. Bissell. Mr. Bissell explained there were covenants that prevented any lot from being less than 12,000 sq. ft. but it did not specify dimensions of lots. They have designed a plat with lots of 12,000. He pointed out the issue was whether they met the criteria of the PRD not the criteria of the covenant. They feel they met the criteria of the covenant and it was up to the residents of the Talbot Park neighborhood to decide whether they did. He noted there was nothing in the subdivision code or PRD that indicated they could not achieve their open space or NGPA via easements, which they chose to do. He noted there were many instances in the City where required lot area was extended into NGPAs via an easement.

Councilmember Wilson referred to the aerial photograph and the topography maps and inquired whether the property continued to rise east of the existing residence. Mr. Bissell identified the area where the topography rose and then sloped downward as it approached Cyrus. Councilmember Wilson asked if the homes to the left of the existing colonial were at the same elevation as the colonial. Mr. Bissell answered their finished first floor may be slightly higher than the colonial's finished first floor.

Councilmember Wilson inquired about the predominant view corridor from the east end of the property. He recalled Mr. Bissell's testimony indicated one of the reasons the usable open space tract was placed in that location was to limit view blockage. With the maximum height of 25 feet and the approximate 20% slope,

Councilmember Wilson asked which properties' views would be blocked. Mr. Bissell explained there was approximately a 40-foot elevation change from the colonial to the barn. By locating houses at the bottom, there would be no view blockage. He noted the location of the existing barnyard fence was higher than the ground elevation of the barn and the elevation continued to slope downward toward the hedges. He noted placing the homes below the colonial's drive loop would definitely block the view of the colonial house as well as several other homes.

Councilmember Wilson asked if the NGPA was part of the 20% open space calculation. Mr. Bissell explained the code did not indicate whether the 20% needed to be usable. They have 2½ acres or 65% retained as open space.

Councilmember Wilson asked whether they would still meet the open space requirements for the project if usable open space were incorporated into the lot area as developable area. Mr. Bissell answered yes. He explained the NGPA open space area was 86,112 square feet of a total gross site area of 184,000 square feet. Deducting the NGPA area would leave approximately 90,000 square feet. If the entire area shown as usable open space were built upon, the project would still have approximately 50% of the site in open space.

Mayor Haakenson referred to the March 26 letter to Mr. Steel and Mr. Bissell identifying who could speak tonight and recalled Mr. Bullock called both to ensure they received the letter and understood it. He referred to Mr. Steel's reference to an appeal if they did not prevail and assumed Mr. Bissell would have a similar view. Mayor Haakenson asked whether Mr. Bissell and his client would be willing to allow all parties of record to testify, noting no new information could be entered but could possibly eliminate an appeal in the future. This was acceptable to Mr. Bissell, Mr. Steel and the Council.

Noting there were 46 parties of record and the total time it could take for each to speak, Mayor Haakenson urged parties of record to keep their comments brief. Mayor Haakenson declared a brief recess and requested audience members not talk to Councilmembers regarding this matter.

**Gerald Steel, 2545 NE 95<sup>th</sup>, Seattle, representing the Talbot Group**, (a non-profit corporation with a mission to preserve and protect the character of the Talbot Park residential neighborhood) explained the Talbot Group requested that the Council deny this PRD or reduce it to five units because they would demonstrate it was not consistent with the existing neighborhood as is required by the PRD code. Mr. Steel noted Edmonds was a special place in Washington State, and each Councilmember served with the purpose of protecting the City and the features of the City that made it special. He requested the Council stay in touch with that high purpose as they participated in this hearing and reached their decision.

Mr. Steel displayed a map of the original subdivision that created the Talbot Park neighborhood in 1948 (page 57 of the record), identifying the subject property on the east side of the neighborhood. He noted this neighborhood was particularly special due to its location – to the north above the neighborhood was Puget Sound and to the south below the neighborhood was Southwest County Park. Most neighborhoods under

GMA were four units per acre or higher, however, this neighborhood was ½ acre zoning or two units per acre. He noted it was zoned in that manner to preserve the qualities of the neighborhood.

**COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO EXTEND DISCUSSION OF THIS ITEM FOR 90 MINUTES. MOTION CARRIED UNANIMOUSLY.**

Mr. Steel requested the Council hold the record open so that each Councilmember could visit the neighborhood. He noted the code required the Hearing Examiner make a site visit prior to making a recommendation and, in order for the Council to have the same evidence as the Hearing Examiner, they also needed to make a site visit. He noted by making a site visit, the Council could appreciate the special qualities of the neighborhood.

Mr. Steel noted there were numerous PRD requirements but the fundamental requirement was that every PRD in this zone shall be consistent with the neighborhood characteristics. He referred to his April 5 letter where he discussed the definition of consistent and characteristics, noting when words were not defined in the code, one looked to the dictionary definition. He noted that to satisfy the requirement for the PRD to be consistent with neighborhood characteristics, the special characteristics of the neighborhood must be determined and the applicant had the burden of proving that the proposed project adhered to those special peculiar neighborhood characteristics. If the Council did not find the proposed project adhered to the existing special features of the neighborhood, the PRD ordinance required the Council to deny the application, even if it complied with every other subdivision and PRD rule. Mr. Steel noted if a neighborhood was not developed at the maximum density, a PRD could not be constructed at the maximum density.

Mr. Steel reviewed a chart of special neighborhood characteristics and how the proposed PRD was inconsistent with these qualities, noting the neighborhood characteristics were addressed in his April 5 letter. The first characteristic was parking; the evidence indicates this area has 11 parking spaces per house, which he noted was a special existing neighborhood characteristic. Although the proposed project met and exceeded the code, it did not adhere to the neighborhood characteristic.

The second special characteristic Mr. Steel identified was lot shape. He displayed a map of the eastern half of the Talbot Park subdivision, which they considered to be the neighborhood of the project. He explained when the Talbot Park subdivision was created, it included Lots 83, 84, and 85. Approximately one year ago, the developer of this project worked with the adjacent property owner to break out Lot B, the colonial house, and the remaining Lot A and Lot 85 represented the project area. He displayed a map of the actual nine lots (page 45), noting these lots did not look like any lots in the neighborhood because they were smaller than the lots in the neighborhood. He commented the average width to the length was 18:1 for the proposed lots whereas the typical average width to the length for existing lots in the subdivision was 3:1 or less.

The next special characteristic Mr. Steel identified was lot size. He noted there was only one lot in the Talbot Park neighborhood less than 14,285 square feet. However, in the proposed project, six of the lots were

proposed to be smaller than 14,285 square feet. He summarized the lots were not typical of lots in the neighborhood. He noted lot size was a key characteristic of this neighborhood, a neighborhood referred to as large lot residential. He stated Lot 9 in the proposed project looks somewhat like the neighborhood but the remainder, Lots 1-8, did not.

Mr. Steel identified age of adjacent homes as a special characteristic, explaining custom homes was a significant feature of this neighborhood. He commented the difference between a neighborhood of tract houses and a neighborhood of custom homes was immediately apparent and it was not appropriate to site a tract in a custom home neighborhood. He displayed a map illustrating the distribution of construction age, noting there was not a cluster of eight houses in the neighborhood of the same age. He summarized Talbot Park was not a tract neighborhood but a custom home neighborhood.

Mr. Steel referred to the proposed house designs, noting although his copies were made before the two alternatives were presented, his points were the same. All the houses are gable roof and all gable ends had shakes, and all had the same siding material, rock, garage doors, style of windows, and vent design. Although the shape of the house was slightly different, the treatment of the houses were tract houses.

Mr. Steel referred to density as a special characteristic, noting the maximum allowable density allowed by the PRD ordinance represented the maximum but there were other measures such as consistency with the neighborhood density. He referred to an exhibit in the record that calculated neighborhood density, a map of lot sizes taken from the city's GIS that indicated the average lot size in the western half of the Talbot Park neighborhood was over 30,000 square feet. The average of the lots in the proposed project was less than 19,000 square feet. He noted in a large lot neighborhood, density was an important characteristic. He acknowledged the PRD allowed variations but not unlimited variations as it must be consistent with the neighborhood characteristics. He concluded one of the Talbot Park's special, particular, peculiar characteristics was the large lots.

Mr. Steel pointed out that using the 30,000 square foot average for the proposed project would result in 5½ lots. He noted this was the same as could be constructed in a standard subdivision on this property without a variance. He commented a variance would not be granted because there was no hardship.

Mr. Steel referred to his letter, which inquired whether it was the purpose of the PRD to allow increased density and staff's answer that that was not a purpose of the PRD ordinance. He noted the standard subdivision would allow five lots which would be compatible to the density of the neighborhood, however, the developer was using the maximum which was not compatible with the neighborhood.

Mr. Steel referred to the pattern of homes as a special characteristic, pointing to a map that illustrated there were no clusters of eight houses in the existing neighborhood. He stated a cluster of eight houses was not consistent with the pattern of houses in the neighborhood. The setback in the proposed project was 10 feet, and there is not eight buildings that are 10 feet apart in the existing neighborhood.

Mr. Steel referred to the access road as a special characteristic, noting every other lot in the neighborhood had direct access to a public street. The proposed project had a private driveway for eight lots. The roads in the existing neighborhood are two-way roads; the proposed project has eight lots served by a one-way road. On every street in the existing neighborhood, on-street parking was allowed; in the proposed project, there was no-street parking.

Regarding steep slopes, Mr. Steel assured a building would not be constructed in the ravine. He recalled Mr. Bissell incorrectly stated steep slopes were 20%, however, the slopes range from 30-100% in the ravine and the Critical Areas Ordinance only allowed buildings on 40% or steeper slopes with a variance. He disagreed with Mr. Bissell's comment that avoiding the slope was a feature of the project, noting the slope would also be protected in a standard subdivision.

Mr. Steel displayed the map that illustrated houses under 2500 and 3000 square feet, remarking that few in the neighborhood around the proposed project had houses with less than 2500 square feet. He noted the houses in the proposed project were less than 2200 square feet. He disagreed the map illustrated the proposed project was consistent with the existing neighborhood.

Mr. Steel requested the Council adhere to the code that states the project must be consistent with the neighborhood characteristics, find that the proposed project did not meet the requirement, and modify the Hearing Examiner findings on consistency and compatibility and deny the project or reduce it to five units as well as address the other inconsistencies presented.

Councilmember Wilson asked Mr. Steel's definition of neighborhood. Mr. Steel answered neighborhood was an area that had similar characteristics. He used the example of a commercial center adjacent to a residential neighborhood, noting one wouldn't want the commercial to encroach on the residential lots as that would not be consistent with that neighborhood. He noted when there were two adjacent zones that were substantially different as in this instance, the neighborhood was within a single zone. Councilmember Wilson asked if this was a Webster's definition, a planning definition, or a subjective definition. Mr. Steel answered it was based on his experience and to him it was obvious that the Talbot Park subdivision was the neighborhood.

Councilmember Wilson referred to the Talbot Park original plat map (page 257) and asked Mr. Steel to identify the subject property. Mr. Steel identified the property on the eastern edge explaining Lots 83 and 84 were reconfigured into Lots A and B; Lot A and Lot 85 were the subject property and Lot B was the existing colonial. He noted the area to the south of Lot B was the creek and that instead of including the creek with the colonial, it was included with the subject property in an effort to get a PRD to cluster density on the flat portion.

Councilmember Wilson asked whether there were any lots in Talbot Park that were not rectangular. Mr. Steel acknowledged there were lots with irregular boundaries but said there was no comparison between the irregularities of those lots and the irregularity of the subject lots. He reiterated the subject lots had 18:1 length to average width ratios. He identified irregular lots in the existing neighborhood. Councilmember Wilson referred to one lot with irregular boundaries and inquired about the street presence and whether the house would be visible from the road. Mr. Steel pointed out the lot touched the public road. He reiterated his request that the Council hold the hearing open to allow the Council to look at the neighborhood and determine whether the proposed project, with its tract-like design, was consistent with the existing neighborhood.

Councilmember Wilson asked Mr. Steel's definition of custom home. Mr. Steel answered a custom home was a house built as a single project. If the proposed project were a custom PRD or subdivision, the developer would do only the subdivision and sell the lots and houses would be constructed on individual lots. He noted in custom subdivisions, the houses typically all looked different and were not built at the same time resulting in a variation in the age of the houses. Councilmember Wilson asked if the definition of custom home was that the houses were built for a specific end user and not built in advance without a specific purchaser in mind. Mr. Steel acknowledged a contractor could build a custom home as a spec house. Mr. Steel indicated the difference was one builder building eight houses, which he felt was a tract. Councilmember Wilson asked if this would be true if eight different homes were constructed. Mr. Steel said if this were a PRD with each lot sold individually and eight different houses constructed, it would be closer to the custom nature of the neighborhood. He commented the reason the house styles in the proposed project were the same was because the developer felt that provided some harmony when the houses were this close together although the harmony was not characteristic of the Talbot Park neighborhood. The second and perhaps more important reason the house styles were the same was because the builder got deals on construction materials in larger quantity and, as a result, could build the houses less expensively. Councilmember Wilson inquired if this meant the Council should deny the project because the builder was interested in maximizing their construction costs by building the same houses. Mr. Steel disagreed, commenting he never considered that issue, only that this was a custom home neighborhood with different age houses and the proposed project did not fit that pattern.

Councilmember Wilson inquired whether eight different builders who built the same house design would meet the definition. Mr. Steel doubted that ever occurred. He reiterated this was a custom home neighborhood and by his definition, that was houses built one house to a project so that the same builder did not build the house next door. He acknowledged in some custom neighborhoods there may be two houses built by the same contractor but never eight.

Councilmember Wilson asked whether a plat in eastern King County by Buchan Homes and built by the same builder were tract homes or custom homes. Mr. Steel responded there was no evidence in the record regarding that issue. He urged the Council to visit the neighborhood, see what a custom home neighborhood looked like and decide whether the proposed project was consistent and adhered to the same principles of form.

Councilmember Wilson inquired about Mr. Steel's choice of neighborhood characteristics and whether there were any others. Mr. Steel acknowledged it was challenging to determine what were the peculiar

characteristics of the neighborhood. He recalled the Hearing Examiner indicated the proposal was single family home and therefore was consistent with the neighborhood. Mr. Steel disagreed that made it consistent with the neighborhood. He noted one of the special characteristics was parking, commenting he has never seen anyone park on the street in this neighborhood because there was so much parking on each lot. Mr. Olbrechts inquired whether Mr. Steel's observations about no one parking on the street were part of the record. Mr. Steel noted a neighborhood where each house could accommodate 11 parking spaces was a special feature.

Councilmember Wilson referred to 20.30.60(A)(1) regarding consistency with neighborhood characteristics, and asked whether the words Mr. Steel used such as special, peculiar, and unique were definitions of neighborhood characteristics. Mr. Steel answered when the words "consistent" and "characteristics" were not defined in the code, the dictionary definition was used.

Councilmember Wilson asked whether any other properties in Talbot Park were restricted from subdividing or lot line adjustments to aggregate parcels to subdivide, change boundaries, create private roads, or change existing characteristics. Mr. Steel answered if it was done via a PRD, there were restrictions but not if it was done via a standard subdivision.

Councilmember Wilson inquired about Mr. Steel's definition of consistent, whether that meant the homes could not be constructed at the same time. Mr. Steel referred to the definition on page 1 of his April 5 letter which stated, the words consistent and characteristic are not defined in the Edmonds Community Development Code. When a statutory term is undefined dictionaries may be consulted to determine its meaning. The Webster's Encyclopedic Unabridged Dictionary of the English Language defined consistent as agreeing or accordant or constantly adhering to the same principles, course and form, etc. The dictionary defines characteristic as pertaining to, constituting, or indicating the character or peculiar quality of a person or thing, typical, distinctive. In applying those definitions, he concluded the proposed project was not consistent with the existing neighborhood. He noted the existing neighborhood had uneven age homes which was a peculiar characteristic.

Councilmember Wilson asked how the age issue could be resolved in this instance. Mr. Steel answered he would resolve the age issue via the five unit standard subdivision because the creation and sale of five lots would likely result in an uneven age distribution. He noted this was what had occurred in Talbot Park; the subdivision was created in 1948 and homes have been constructed up to the present.

For Councilmember Wilson, Mr. Steel explained if the project were five lots, arranged like a standard subdivision, the houses would not be immediately adjacent to each other and there would not be a design reason to make them the same. He noted five lots could be accomplished via a standard subdivision; the reason the developer was pursuing a PRD was because he believed he did not have to comply with neighborhood characteristics and could achieve nine lots via the maximum density.

Mayor Haakenson reviewed the rules for providing testimony. He read from the list of 46 parties of record and the following individuals provided testimony.

**Diane Azar, 8202 Talbot Road, Edmonds**, agreed the characteristics of the proposed project were inconsistent with their neighborhood, noting the code specifically required every PRD in this zone to be consistent with neighborhood characteristics. She explained the Talbot Road neighborhood had boundaries; at the north and south there used to be wooden signs stating Talbot Park. She requested the Council exercise their rights as elected Council representatives to make a decision that reflected what was valued in the community, to preserve community assets as stated in the PRD provisions and preserve the neighborhood. She agreed with Mr. Steel's testimony and supported the Talbot Group. She pointed out there was a substantial difference between the existing neighborhood with its variety of custom homes built over a greater than 50 year period and the tract type housing built at the same time by the same developer. She pointed out the proposed project would cluster homes around a common, one-way street, however, homes in the existing neighborhood were scattered along a public two-way street. She pointed out the PRD had no parking allowed on its private access road and the existing neighborhood had an abundance of private off-street and public parking. She summarized they did not want this project because it was not consistent or compatible with the existing neighborhood. She invited the Council to visit the neighborhood and requested they deny the PRD because it was not consistent with the neighborhood characteristics. She welcomed a project that was designed to adhere to the existing 5-lot density in the neighborhood, noting homes that were consistent, compatible and in harmony would be a benefit to the neighborhood.

**Najib Azar, 8202 Talbot Road, Edmonds**, quoted from William Faulkner's, The Bear, "The land does not belong to the people but the people belong to the land and the earth would permit them to live on it and to use it only as long as they behave. If they don't behave correctly, the land will shake them off." He summarized they have a beautiful neighborhood and they would like to preserve it.

**Del Barton, 8125 Talbot, Edmonds**, agreed with what had been said. He commented they would like to retain the continuity of what they have enjoyed over the past 50 years. He agreed with the suggestion that the Council visit the area.

**Karen Biermanski, 8129 Fredrick Place, Edmonds**, supported the comments made by Mr. Steel and wanted the current proposal denied as nine lots were too many. She referred to the land immediately south of the PRD, the Perrinville Creek corridor, noting this was one of the most rare and unique natural corridors left on Puget Sound. She noted two bird species on the state watch list were present in the corridor. She noted increased density would threaten the corridor, acknowledging five houses would threaten the corridor but nine would threaten it more. She urged the Council to consider this and to vote to deny the project as currently proposed.

**Dale Chin, 7929 Cyrus Place, Edmonds**, expressed concern with the density of the development. He counted the parking stalls in the neighborhood, commenting that feature reflected the lifestyle in the neighborhood. He said no one was against some construction but were concerned with the density and the impact on the neighborhood. He encouraged the Council to visit the neighborhood and weigh their concerns.

**Jeanne Drake, 8707 Talbot Road, Edmonds**, commented she was a newer resident, who moved to this area because it was so beautiful. She liked the area the way it was and did not approve of any PRD, not even five houses.

**Pam Estrella, 8112 Talbot Road, Edmonds**, advised her property was downhill and west of the proposed PRD. She pointed out 1) there were not two homes designed alike in the entire neighborhood, 2) noise filtered downhill to their property, 3) there are no curbs or sidewalks on Talbot Way, therefore, people park on their grass, and 4) the hedge Mr. Bissell referred to was actually a row of trees that would prevent any of the houses having any type of view.

**Roger Hert rich , 1020 Puget Drive, Edmonds**, remarked that as a non-resident, he appreciated Talbot Park, an area with definite boundaries and special characteristics and was a good definition of a neighborhood. He estimated a 3200 square foot house constructed on a 20,000 foot lot would leave approximately 15,000 square feet of open space on each lot. He pointed out that three of the approximately 5400 square foot PRD lots could fit on the remaining open space in the preceding example. He noted the Hearing Examiner mentioned that the change of elevation on the property was not extremely steep but was constant and the applicant could put more houses on the higher portion of the lot. He clarified there was more room to do the development if it were spread around on the property rather than condensed. Mr. Hert rich referred to the odd shape of the lots in the PRD and questioned whether anyone would buy such a lot.

**Van McKenny, 8025 Cyrus Place, Edmonds**, agreed with everything that had been said. He noted they look directly across the property and the proposed project was a cluster of eight houses he did not want to see there. He urged the Council to deny the project as proposed.

**Jan van Niel, Pilchuck Audubon Society**, Co-Chair of Conservation, described his background and commented this development was ridiculous as planned. He explained Perrinville Creek was a Class 2 salmon stream and although he was uncertain whether it had salmon access, it was a stream that would support salmon species spawning unless culverts blocked access. He reiterated there were a number of bird species on the watch list (sufficiently declining in numbers to be of concern). He pointed out the possibility of children entering the creek area, noting a 3-foot fence would not stop children from entering the area. He also pointed out the possibility of residents dumping yard waste over the fence. He questioned how long the 3-foot fence would remain when it was located on private property. He pointed out the proposal was for ten lots in an area originally platted with three lots. He noted the original owners had lots large enough that the ravine area was left alone and had generally exhibited excellent husbandry. He noted the silts in the creek are primarily from development at Perrinville. He referred to a proposal for a trail down to the creek on the old logging road, noting there was little of the old logging road recognizable in the area. He questioned what a trail would do to the beautiful, well-maintained creek.

Mayor Haakenson advised that concluded the testimony from the parties of record.

In response to Councilmember Wilson's question regarding what the result of 35% lot coverage would be, Mr. Bullock, advised the net developable land on the site was 172,000 square feet and 35% was 60,000 square feet. The actual usable lot area of each lot totals 45% so conceivably the 35% lot coverage was an unattainable limit. He noted this may provide some rationale for the applicant or the Council to consider alternate lot coverage for the individual lots. He noted his calculation did not include the usable area of Lot 9, the addition of Lot 9 would put lot coverage at 35% not taking into account the setbacks.

Mr. Bullock advised the Engineering Department confirmed the access road to the PRD would be required to be a public road based on Council policy requiring access to a subdivision of five or more lots to be public.

In response to statements made by Mr. Steel that the City's Critical Areas Ordinance states steep slope areas require a reasonable use exception or a variance to build on, Mr. Bullock noted that was not the case. Mr. Bullock recalled a recent amendment to the Critical Areas Ordinance that allowed for a steep slope exemption if it could be demonstrated that the steep slopes had certain soil types, did not have water present, and did not have a history of unstable slopes even if the slope was over 40%. He clarified this exemption would potentially allow encroachment into the steep slope area without a variance. He noted that has not been considered as part of the proposed application.

Councilmember Petso asked if the record included staff's findings regarding the compatibility requirement. Mr. Bullock referred to the staff report for the plat and PRD (beginning on page 84 of the record) which contained staff's responses regarding how staff felt the project met the PRD criteria. He indicated staff's response regarding compliance with the compatibility criteria was on page 90, Item #2. He noted in Exhibit 3 and 4, staff expanded on how the proposed project met the criteria.

Regarding the steep slope, Councilmember Plunkett asked whether an applicant could propose to build on the slope and may or may not be allowed to build on the slope. Mr. Bullock agreed. Councilmember Plunkett observed if an applicant could build on the slope but didn't, they would be conveying a public benefit. Mr. Bullock agreed. If an applicant could not build on the slope, they would not possess a public benefit to convey. Mr. Bullock advised they would be conveying a public benefit that they were already required to convey.

Councilmember Plunkett asked Mr. Bullock to comment on Mr. Steel's chart regarding special characteristics of the neighborhood. He asked if ECDC 20.35.060A1 carried the weight Mr. Steel suggested. Mr. Bullock agreed it did but his conclusion of whether the subject project was compatible or consistent with the characteristics of the neighborhood was much different. Regarding parking, Mr. Bullock acknowledged what was provided by the existing properties was a very substantial amount but he did not consider that to be a significant enough characteristic of the neighborhood to require that any other development done via a PRD needed to meet that same standards. Regarding shape, size, adjacent homes, and construction material, Councilmember Plunkett asked whether although they may not be the exact same characteristics, they were not so devoid of reason that they would not meet the characteristic standards. Mr. Bullock agreed.

Mayor Haakenson declared a brief recess.

### Rebuttal

Mr. Bissell referred to Mr. Steel's chart regarding special characteristics, recalling during his rebuttal at the Hearing Examiner, he pointed out a neighborhood was never constituted by zone. He used the example of the bowl neighborhood as a neighborhood that had numerous zones. He recalled Mr. Steel indicated the neighborhood was the Talbot Park subdivision, yet the overhead used to calculate the density was only a small portion of the Talbot Park subdivision and did not include the RS-12 portion of Cyrus or on the north and south ends of Talbot Park. He clarified only a portion of Talbot Park neighborhood was used to calculate the number Mr. Steel wanted to achieve to show 5½ dwelling units was compatible with the neighborhood. Mr. Bissell noted on the map used to calculate density, some of the smaller lots were not included in the calculation. Mr. Bissell concluded the number used to calculate the existing density of average lot square footage of 30,000 was based on an area that was not defined by Mr. Steel's definition of a neighborhood or by what the community's thinks of as a neighborhood. He noted if all the lots were included, including 12,000 square foot lots (RS-12), the average would be closer to 18,000 square feet. He emphasized that even if the concept of using density in this sense was reasonable, what was presented was erroneous.

Regarding patterns of homes and that there are no clusters or PRDs in the neighborhood, Mr. Bissell said this appears to indicate a PRD could not be done in this neighborhood because there wasn't one already. He noted the City had a PRD ordinance which appears to mean the City intends for it to be used.

Regarding Mr. Steel's reference to access and the fact that all existing homes have access from a public street, Mr. Bissell noted this was in violation of Chapter 18 of the City's streets and driveways ordinance (Title 18 of ECDC) which gives preference to combined accesses.

Mr. Bissell concurred with Mr. Bullock's statement regarding parking, noting by providing four spaces when the code required only two, it was unlikely there would be overflow unless everyone in the neighborhood had a party at the same time. He noted the fact that homes in the neighborhood had a lot of parking did not make the proposed project incompatible, only that it didn't have quite as much parking.

Regarding the tract house issue, Mr. Bissell noted Mr. Steel presented an overhead of page 137 in the record. However, they previously testified this was not an elevation that would be used. He noted the house Mr. Steel presented was one that, when presented to the client, was rejected because it was not compatible with the neighborhood. He noted the drawing on page 107 of the record was the elevation that was proposed in the ADB record and the Hearing Examiner record.

Mr. Bissell clarified he had not intended to state a critical area was a 20% slope, he intended to say that the slope, dividing the upper portion and the lower portion of the site, was 20%. He observed a critical area was

a 40% slope, noting ECDC 20.15.110B allowed for exemptions to construct into the 40% slope under certain conditions.

Regarding discussion about the value of the stream corridor, Mr. Bissell pointed out their design intentionally protected the corridor, possibly at a greater extent than would be required.

With regard to Mr. Hert rich 's comment regarding open space and lot sizes, Mr. Bissell said Mr. Hert rich was addressing how little open space the lot sizes would leave. Mr. Bissell pointed out that would assume the open space was built up; however, the proposal did not include building on the open space.

In summary, Mr. Bissell stated Mr. Steel's presentation in essence indicates that to be compatible with the neighborhood, they could not do a PRD. The solution to each problem Mr. Steel raised was that a PRD could not be done. However, the code allows PRDs and they have shown the special circumstance, the public benefit, and how they met the criteria. Mr. Bissell pointed out staff, the ADB, and the Hearing Examiner agreed and the solution offered by Mr. Steel that no PRD was possible was not reasonable under the code.

Mayor Haakenson remanded the matter to Council for action.

Councilmember Plunkett commented this was one of the most difficult quasi judicial matters he had been associated with. As with all, he must look to the standards and determine whether they have been met. Regarding special circumstances, he found the nature of the subject property created unusual circumstances. Regarding density, he found the PRD density to be appropriate. Regarding consistency and compatibility, although he found Mr. Steel's exercise interesting and somewhat informative, but it was a subjective exercise with no criteria that could be relied upon. He noted the proposed development may not be exact but it was close enough.

Regarding clear public benefit, Councilmember Plunkett noted that according to the Hearing Examiner, the open space presented as a clear public benefit consisted of a small buffer around Cyrus Place and a common landscape area in the center of the cluster. He questioned whether this was a clear public benefit. Regarding preservation of natural features, the area described as a natural feature may or may not be buildable. He questioned whether the applicant was providing a clear public benefit when it was unknown whether they could convey it. He concluded the small buffer and the center circle and the natural featured slope which the applicant may or not be able to convey, did not constitute a clear public benefit.

Councilmember Petso shared some of Councilmember Plunkett's concerns regarding whether there was a clear public benefit but focused her attention on issues of greater legal concern, first, the requirement on page 10 that the PRD must be compatible with existing and planned land use in the nearby area. She expressed concern that staff may have made an error in applying this criteria because page 98 indicates staff's finding that the PRD is characterized by building types typical in design characteristics with the rest of the

surrounding neighborhood. She noted this was a repetition of staff's response to the neighborhood characteristics criteria. She noted these were two separate criteria – 1) compatibility with existing and planned land use and 2) neighborhood characteristics. By combining them, staff effectively eliminated one of the criteria which she indicated was inappropriate because there was no independent evaluation by staff regarding compatibility.

Although the Hearing Examiner considered the criteria separately, there appeared to be errors in his findings. Councilmember Petso read his finding that indicated the sizes of the proposed lots are acknowledged to be smaller than surrounding lots, however, the proposed density complies with the City's Comprehensive Plan zoning and therefore is consistent with existing neighborhood characteristics. She noted that saying the provision in the ordinance was met because it complied with Comprehensive Plan and zoning code, made that portion of the ordinance irrelevant because no matter what development was proposed, it must comply with the Comprehensive Plan and Zoning Code. She noted both staff and the Hearing Examiner wrote the compatibility issue out of the statute. There has been adequate testimony provided that there are issues with compatibility, particularly regarding density. The Hearing Examiner found the density of the proposed development was consistent with the density of all existing and planned land uses. However, the testimony indicated the neighboring land uses are all developed beyond minimum requirements. Therefore, a finding of meeting the minimum requirements did not equate to consistency. She found error with the Hearing Examiner's evaluation of the criteria in 20.35.040C.

Councilmember Petso pointed out another error in the evaluation of neighborhood characteristics, noting staff and Hearing Examiner limited their evaluation of neighborhood characteristics to design characteristics. She referred to the Hearing Examiner findings regarding building styles and materials. She noted many more neighborhood characteristics than building style and materials have been described. She noted the statute did not limit the evaluation to only building style and materials. She noted the defining characteristic of the Talbot Park neighborhood was not building style and materials, it was lot large residential development. She acknowledged the difficulty of siting PRDs in large lot residential development when the large lots were one of the neighborhood characteristics. She noted existing PRDs in large lot residential developments were on high hills and access only to arterials. However, in this instance, the proposal was a clustered housing PRD behind a hedge and fence off a minor cul-de-sac in an existing neighborhood. She disagreed with basing neighborhood characteristics on only building style and materials.

Regarding the applicant's comment that if the Council denied the PRD, it meant one could not be done because there was not already one there, Councilmember Petso said the proposed PRD did not comply with the requirements of the code and every PRD in a large lot residential neighborhood must achieve something more than clustering homes behind a fence.

Councilmember Orvis indicated he would vote against the proposed PRD. Regarding public benefit, he referred to the comments regarding the trail which he felt may interfere with the creek and destabilize the hillside. Regarding compatibility, he questioned what better criteria there was than the covenants of the subdivision. He pointed out everyone in the neighborhood lived by those covenants which include a minimum lot size. He noted the applicant was attempting to achieve the minimum lot size via two property lines. He acknowledged the Council must be careful in citing the covenants, but they appeared to be relevant in this instance.

Councilmember Wilson requested clarification regarding covenants, citing his understanding that the City was not responsible for enforcing private covenants and that it was the responsibility of the homeowners' association to enforce the covenants. Mr. Olbrechts agreed, noting it was appropriate to consider the covenants as evidence of what the neighborhood was like.

Councilmember Wilson observed the City's PRD ordinance was a valuable tool that was intended to address properties such as this. He pointed out the significant benefit was preserving the unique natural feature, Perrinville Creek, which was adjacent to Southwest County Park. An applicant choosing to take a more difficult route to preserve that area was a significant benefit. He noted the testimony provided by Mr. Steel regarding neighborhood characteristics was very subjective and would allow a number of scenarios and conclusions.

Councilmember Wilson acknowledged he had some concern with the issue of compatibility, noting clustering units as closely as proposed in a neighborhood with large lots was not compatible with the area. He suggested some of the usable open space be incorporated into the lots to provide greater lot area and more separation between buildings. He noted that since up to 35% lot coverage was allowed, virtually all the lot could be covered with the residence with the exception of the setback areas and still not achieve 35%. He noted the intent of the PRD ordinance was to develop creative solutions that fit the neighborhood and protected unique, natural feature. He summarized his greatest concern was how tightly the units were clustered and preferred some of the usable open space be incorporated into the lots. He was also concerned with the way the lots were configured into the NGPE which would make any enforcement action regarding degrading or infringing on the NGPE more difficult. He preferred the NGPE be defined as a single tract rather than divided between individual lots.

Regarding building material and style, Councilmember Wilson noted this was a subjective test. He recalled Mr. Bissell pointed out the final elevations reviewed by the ADB were more in keeping with the style of the neighborhood although he acknowledged they would not match homes 50 years old. He noted neighborhood characteristics were not a static environment illustrated by the transition already occurring on Talbot Road. However, he supported incorporation of conditions that set the style and materials to ensure what was built on the lots was what everyone expected as a result of the process. He summarized the concept of a PRD to deal with that property was the appropriate approach and provide benefits and opportunities; however, he was not satisfied with the clustering of the units as proposed and it may have a domino effect on density.

Councilmember Dawson pointed out it was the applicant's burden to demonstrate compliance with the PRD which she felt they failed to do in at least two areas; first they have not demonstrated the project would provide a clear benefit to the public. She questioned how the public open space provided a clear benefit to the public, noting not even the neighbors felt it was beneficial and it was not an open space available to the public. Regarding the preservation of a significant natural feature, the applicant has not shown they would be providing any greater protection than would otherwise be required by law. She recalled Mr. Bissell indicated they may be protecting the stream to an extent greater than required, noting this did not meet the burden of proving they were preserving a nature feature. If it was not a greater preservation than would be required, it was not a clear benefit to the public.

Councilmember Dawson commented the applicant also failed to demonstrate consistency with the existing neighborhood other than possibly materials and style; however, she noted it was not consistent if there were eight houses that looked the same. She pointed out there was a big difference between showing compliance with the lowest common denominator, maximum allowable density and minimum parking spaces, and demonstrating consistency with the existing neighborhood. She noted this may be a neighborhood where a PRD was not possible. She supported denying the PRD application.

**COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO OVERTURN THE HEARING EXAMINER'S DECISION AND DENY THE PRD APPLICATION.**

Councilmember Wilson explained he would vote against the motion due to a fundamental difficulty in dealing with this property. Although he agreed with virtually all the comments other Councilmembers have made, he felt a PRD was the appropriate way to deal with this site but was not convinced this was the best product under that PRD. He preferred the applicant return with a proposal that addressed the concerns that have been raised.

**MOTION CARRIED (4-1), COUNCILMEMBER WILSON OPPOSED.**

Mayor Haakenson commented most of the people in the audience did not attend Council meetings. He pointed out the Council did a terrific job tonight, they studied very hard, did their homework, did not just accept the Hearing Examiner's decision, and had not made their minds up ahead of time. He referred to a letter that indicated by the time any public meetings were scheduled, decisions were already made and it was useless to protest. Mayor Haakenson pointed out it did matter what the public thought.

Mayor Haakenson advised Findings of Fact and Conclusions would be scheduled on a future Consent Agenda. Mr. Olbrechts advised the Council's decision was not final until the Findings of Fact and Conclusions were approved.

**4. MAYOR'S COMMENTS**

Due to the late hour, the Council agreed to suspend this item.

**5. COUNCIL COMMENTS**

Due to the late hour, the Council agreed to suspend this item.

With no further business, the Council meeting was adjourned at 11:50 p.m.