

EDMONDS CITY COUNCIL APPROVED MINUTES

May 7, 2002

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Gary Haakenson in the Council Chambers, 250 5th Avenue North, Edmonds, followed by 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
Deanna Dawson, Councilmember

ELECTED OFFICIALS ABSENT

Richard Marin, Councilmember

STAFF PRESENT

David Stern, Chief of Police
Duane Bowman, Development Serv. Director
Peggy Hetzler, Administrative Services Director
Noel Miller, Public Works Director
Rob Chave, Planning Manager
Stephen Koho, Treatment Plant Manager
Dave Gebert, City Engineer
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

COUNCIL PRESIDENT EARLING MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO ADD "AUTHORIZATION TO CALL FOR BIDS FOR INSTALLATION OF HEAT EXCHANGER AT THE TREATMENT PLANT" AS ITEM K ON THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCILMEMBER WILSON, FOR APPROVAL OF THE AGENDA AS AMENDED. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

Council President Earling requested Item F be removed from the Consent Agenda. Councilmember Petso requested Item G be removed.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER ORVIS, 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 30, 2002

(C) APPROVAL OF CLAIM CHECKS #55224 THROUGH #55399 FOR THE WEEK OF APRIL 29, 2002, IN THE AMOUNT OF \$212,632.37. APPROVAL OF PAYROLL DIRECT DEPOSITS AND CHECKS #32566 THROUGH #32680 FOR THE PERIOD APRIL 16 THROUGH APRIL 30, 2002, IN THE AMOUNT OF \$746,398.20

- (D) **ACKNOWLEDGE RECEIPT OF CLAIM FOR DAMAGES FROM ROGER AND JOAN SIMS (\$1,500.00)**
- (E) **REPORT ON BIDS OPENED APRIL 23, 2002 FOR THE FRANCES ANDERSON CENTER ELECTRICAL RENOVATION PROJECT AND AWARD OF A CONTRACT TO EWING ELECTRIC, INC. (\$440,726.00, Including Sales Tax)**
- (H) **RESOLUTION NO. 1025 AUTHORIZING APPLICATION TO THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION FOR WASHINGTON WILDLIFE AND RECREATION PROGRAM GRANT FUNDS TO DEVELOP INTERURBAN TRAIL**
- (I) **PROCLAMATION IN HONOR OF STAMP OUT HUNGER DAY, SPONSORED BY THE NATIONAL ASSOCIATION OF LETTER CARRIERS, SATURDAY MAY 11, 2002**
- (J) **PROCLAMATION IN HONOR OF NATIONAL POLICE WEEK, MAY 12-18, 2002**
- (K) **AUTHORIZATION TO CALL FOR BIDS FOR INSTALLATION OF HEAT EXCHANGER AT THE TREATMENT PLANT**

Item F: Approval of Findings of Fact for a Closed Record Meeting Held on April 9, 2002, Regarding the Hearing Examiner's Recommendation for Approval of an Application by Talbot Partners, LLC for a Nine-Lot Formal Plat and Planned Residential Development (File No. P-2001-78 and PRD-2001-79)

Council President Earling explained when this item was before the Council previously, he recused himself as he lives in the neighborhood. He recused himself again from consideration of this item, indicating he would leave the room for the discussion but would return to abstain from the vote. Council President Earling left the dais and the Council Chambers.

City Attorney Scott Snyder explained the City Clerk received a communication to the Council from the attorney representing the applicant requesting the Council reconsider their action. The City Clerk also received a response from the attorney representing the citizen group who was opposed to the Council reconsidering their action. Mr. Snyder explained there was no inherent right to reconsideration in State law for a public body. If the Council chose to reconsider, they may do so only under their rules. He explained this was a recommendation that came to the Council under Section 21.100.030, "The City Council shall state its findings and conclusions to support the decision based on the required findings and criteria in this code governing the type of application being reviewed and based on evidence presented at the Council hearing. The City Council action shall be final and shall be put in writing by ordinance, resolution and/or minutes along with any conditions placed on approval." However, Mr. Snyder explained, the Council rules provide for reconsideration and a motion may be made by any Councilmember on the prevailing side to reconsider. If the motion passed, the Council would set a hearing date in the future where all parties of record would be notified under the same formalities and notice given for the initial hearing. The applicant would present the reasons for their request for reconsideration at that hearing, parties of record would be given an opportunity to respond, and the Council would rule.

Mr. Snyder summarized the Council could pass the findings tonight or move to reconsider and set the matter over to a future date. He clarified that because the record had been closed, a motion to reconsider would be necessary to reopen the process and allow the Council to see the reasons the applicant's attorney was requesting reconsideration.

Councilmember Dawson noted in the court system, a decision whether to make a motion for reconsideration would be done on the basis of the request. Mr. Snyder explained the record was closed

and the Council's rules on recommendations from the Hearing Examiner provide that the Council's decision is final and confirmed by an ordinance. However, the Council under its rules, reserves the right to reconsideration and Washington courts have held there is no general right of reconsideration other than what arises from the Council's rules. If the Council wished to set this matter over, the first motion to reconsider was simply a procedural motion to set the matter to a later date for discussion and a vote on reconsideration.

Councilmember Dawson noted the rules did not allow the Council to be advised of the basis for the reconsideration. Mr. Snyder explained if the Council were advised of the basis, the Council would be considering the argument of one party without having heard from the other parties of record. If the Council wished to hear the reasons for the request, the Council should make a motion to reconsider and set the matter to a later date. Councilmember Dawson asked whether the Council rules provided any guidance regarding reasons for reconsideration. Mr. Snyder answered there was no guidance provided in the rules; if the Council approved reconsideration, he could cite court cases that provided some guidance.

In the interest of ensuring all information was considered, Councilmember Dawson supported the Council reconsidering the matter.

COUNCILMEMBER DAWSON MOVED TO RECONSIDER. MOTION DIED FOR LACK OF A SECOND.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF THE FINDINGS OF FACT FOR THE CLOSED RECORD MEETING HELD ON APRIL 9, 2002.

Councilmember Wilson noted that although he voted against the Council's motion on April 9, he would vote in favor of this action as the record was an accurate reflection of the Council's April 9 decision.

Council President Earling returned to the Council dais.

MOTION CARRIED (5-0-1), COUNCIL PRESIDENT EARLING ABSTAINED. The item approved is as follows:

(F) APPROVAL OF FINDINGS OF FACT FOR A CLOSED RECORD MEETING HELD ON APRIL 9, 2002, REGARDING THE HEARING EXAMINER'S RECOMMENDATION FOR APPROVAL OF AN APPLICATION BY TALBOT PARTNERS, LLC FOR A NINE-LOT FORMAL PLAT AND PLANNED RESIDENTIAL DEVELOPMENT (FILE NO. P-2001-78 AND PRD 2001-79)

Item G: Authorization for Mayor to Sign Subsurface Easements with Abutting Property Owners for the 76th Avenue Rockery Repair Project

Councilmember Petso asked what affect approval of Item G would have on the property owner who wrote the letter indicating there were still issues regarding the rockery on his property. City Engineer Dave Gebert answered it should have no affect because the action was authorization for the Mayor to sign easements when they had been signed by property owners. That property owner indicated in his letter that he will not sign the easement and therefore it will not be presented to the Mayor. Councilmember Petso asked whether approval of Item G in any way prevented or limited staff from working with that property owner. Mr. Gebert answered no.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF ITEM G. MOTION CARRIED UNANIMOUSLY. The item approved is as follows:

(G) **AUTHORIZATION FOR MAYOR TO SIGN SUBSURFACE EASEMENTS WITH ABUTTING PROPERTY OWNERS FOR THE 76TH AVENUE ROCKERY REPAIR PROJECT**

3. **PUBLIC HEARING ON THE PLANNING BOARD RECOMMENDATION TO APPROVE AMENDMENTS TO TITLE 20 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) ADDING A NEW CHAPTER 20.45, ESTABLISHING THE EDMONDS REGISTER OF HISTORIC PLACES (FILE NO. CDC-02-52)**

Planning Manager Rob Chave explained this was the culmination of a process begun over a year ago with the formation of the Historic Preservation Advisory Committee. He explained in January/February 2002, the Council approved establishment of a permanent Historic Preservation Commission. The action before the Council completes the process by amending the ECDC and establishing rules, procedures and a historic register. This would allow the Commission to nominate properties for inclusion on the register, affording them the benefits of the register such as tax credits. He noted the city would also benefit from increased visibility of historic structures/buildings. One of the Commission's first tasks would be to obtain State grants in order to do a complete survey. The intent of historic preservation was not only identifying structures but also improving those structures over time. He advised the Planning Board held a public hearing where the testimony was generally in favor of the ordinance. The Planning Board unanimously recommends approval of the ordinance.

Mayor Haakenson opened the public testimony portion of the public hearing.

Roger Hertrich, 1020 Puget Drive, Edmonds, former member of the Historic Preservation Advisory Committee, endorsed the ordinance. Recalling the publicity Everett received, he suggested the City provide notice to the newspaper so that Edmonds could also be recognized for establishing a Historic Preservation Commission. He noted changes would be necessary to non-confirming use provisions in the City's Code.

Hearing no further comment, Mayor Haakenson closed the public testimony portion of the public hearing.

In response to Mr. Hertrich's comments, City Attorney Scott Snyder explained there were a number of provisions in the Code, enacted in the 1970's when the Code was last extensively revised, that reflect a very different philosophy than historic preservation. The premise of the non-confirming use provisions were that over time, non-confirming buildings, structures and lots would be phased out via not allowing damaged buildings to be rebuilt or the degree of nonconformity expanded. If the non-confirming use provisions in the Code were strictly enforced, certain properties could not be preserved, for example the Sunset Avenue area. If the intent was to preserve historic structures and/or neighborhoods or preserve certain type of housing stock, the City should, via the Planning Board, consider nonconforming use provisions in the Code that are a disincentive to preserving older structures.

Councilmember Wilson referred to Section 20.45.010, and the criteria that a building, structure, site object or district be at least 50 years old or lesser age if it has exceptional importance. He requested the Commission develop a definition or guidelines for "exceptional importance." Mr. Chave commented the dictionary definition mentions "rare" and "superior" which would provide some interim guidance. He stated there would be few situations where this would apply, noting the Wade James Theater may be a possibility due to its cultural significance. He agreed with Councilmember Wilson's suggestion that the Commission consider establishing a definition.

Mayor Haakenson remanded the matter to Council for action.

COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCILMEMBER DAWSON, FOR APPROVAL OF ORDINANCE NO. 3397, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING TITLE 20 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE BY THE ADDITION OF A NEW CHAPTER 20.45, EDMONDS REGISTER OF HISTORIC PLACES AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

Councilmember Orvis indicated he would support the ordinance. With regard to why someone of his generation should be interested in preserving history, he noted reasons included economics, preserving the small town feel, but most importantly because it was this generation's way of saying thanks to previous generations for creating a town that he could feel proud to live in and raise his son in.

Council President Earling reiterated his concern with Section 20.45.020(D) of the ordinance regarding establishment of historic districts. When historic districts were created, he wanted to ensure private property rights were not disrupted. Councilmember Plunkett referred to section 20.45.020(C), pointing out there was no definition of a district in the section, specifically so that the Historic Preservation Commission could take time to understand the public concern with historic districts and provide information to the public regarding the benefits of historic districts. He noted Council approval would be required to establish any historic district. He summarized the community and Council would have ample opportunity to discuss, review, and define historic districts prior to their formation.

MOTION CARRIED UNANIMOUSLY.

State Representative Marilyn Chase, 32nd District

Representative Marilyn Chase reported Kenmore, Shoreline, and Lake Forest Park received backfill funds but Edmonds did not because the City took only an 8% hit. She also pointed out the Edmonds School District lost \$87 per student, Northshore School District lost \$79 per student, Shoreline lost \$82 per student, and Seattle Schools lost \$135 per student.

Representative Chase explained May 9 was Tax Freedom Day, commenting Washington was number two in working the longest number of days to reach Tax Freedom Day; only Connecticut had to work longer – until May 14. For the overall United States, April 27 was Tax Freedom Day.

Representative Chase announced Edmonds received \$124 million for the multimodal facility in most transportation proposals. She explained she spent her first session in the Legislature learning. She learned the State is undergoing a major restructuring and felt it important that the City participate in the restructuring. She distributed information regarding a Competitive Council, stressing the importance of local cities becoming involved in this process. She noted further information was available on the Governor's website.

Councilmember Dawson asked why Shoreline received backfill funds when Edmonds did not. Representative Chase answered a formula was used to determine which cities received backfill; cities that took less than a 10% cut in the original amount they received were not included in the formula. She noted Shoreline lost \$3 million and Edmonds lost \$1.4 million. Representative Chase offered to research the formula and provide Councilmember Dawson with further information.

For the audience, Council President Earling requested Representative Chase explain backfill. Representative Chase explained the backfill was to replace funds lost by the repeal of the Motor Vehicle Excise Tax (MVET) via passage of I-695. She noted that although many believed the MVET benefited the State, it actually funded city items such as parks, police, fire, etc. Councilmember Dawson added that

the funds from MVET were allocated to cities via sales tax equalization. These funds were allocated to cities without as much sales tax base and cities with malls or a larger retail base did not receive these funds. Following the passage of I-695, those funds were no longer available although backfill was provided for a couple of years. She summarized it seemed odd that Shoreline received backfill when they appeared to have a larger retail base than Edmonds.

Mayor Haakenson requested Representative Chase comment on the redistricting that occurred. Representative Chase answered she now represents Shoreline, Lake Forest Park, 23 precincts in Edmonds, and 14 precincts in Kenmore.

Mayor Haakenson asked Representative Chase to describe her position on Brightwater. Representative Chase answered it was a constitutional issue. Although she understood the Snohomish County Executive participated in the decision to recommend the Unocal site, the residents of Edmonds did not have that opportunity. It was not right that another jurisdiction could site a facility in Edmonds who would not even use the facility and that this was taxation without representation. She noted the bill would be considered again at the next legislative session because this was a broader issue than only Brightwater.

Representative Chase advised she planned to hold an economic development summit in the 32nd District this summer and encouraged the Council and educational institutions to participate.

4. AUDIENCE COMMENTS

Robert Freeman, 622 7th Avenue S, Edmonds, Trustee of the Sno-Isle Regional Library System, recalled Councilmember Dawson raised several questions regarding Sno-Isle during discussion of the capital budget at a previous Council meeting. He referred to Councilmember Dawson's comment that taxpayers in Edmonds were now paying twice as much for library services compared to last year. He displayed an overhead illustrating the amount paid by Edmonds under the former contract with Sno-Isle (1999-2001) and the amount collected via annexation, slightly over \$1.5 million. He acknowledged this was an increase over what was paid in previous years but certainly not twice as much. He pointed out under the agreement between Edmonds and Sno-Isle, Sno-Isle paid over \$500,000 this year into a reserve fund. The reserve fund will be managed jointly by Sno-Isle and Edmonds for the benefit of the Edmonds library. He noted Edmonds was the only city within the Sno-Isle District that had such a reserve fund. Taking the reserve fund into account, Edmonds was not paying twice as much but was paying approximately the amount paid in 1999. He explained the payment made to the reserve fund this year includes \$300,000 for repair/replacement of the library roof and the remainder was for maintenance of the library. Sno-Isle will continue paying into the reserve fund so that in 2004 the total will be over \$1.4 million. He summarized if the funds were carefully managed by Edmonds and Sno-Isle, it could be a permanent revolving fund for maintenance of the library. Mr. Freeman referred to the comment that the purchase of the furnace was to prop up Sno-Isle. He assured Sno-Isle was well managed, in sound financial condition, and not in need of propping up.

Mayor Haakenson advised the Finance Committee would be considering the agreement at their meeting on May 14 and encouraged Mr. Freeman to attend the meeting to answer any questions they may have.

Jonalyn Woolf-Ivory, Sno-Isle Executive Director, offered greetings from the library staff and library board. She looked forward to working with Edmonds in managing the reserve fund as well as considering additional services that could be provided in Edmonds. She explained over the next 12 months, she and boardmembers would be updating the long-range plan, which establishes services for the next five years. During that time, they will seek input from the Edmonds Library Board as well as residents. She noted a survey was currently being conducted at the library in an effort to gather

information from the public. The library is also holding focus groups with library users who have not used the library for the past 18-24 months to determine why they were no longer using the library. The library plans to conduct a telephone survey of residents in Snohomish and Island counties who do not currently use the library to determine the type of services the library could provide to meet their needs.

Paul Rootvik, 19109 Dellwood Drive, Edmonds, referred to a letter he wrote to the Council. He explained at the conclusion of the Council discussion in January, staff was directed to continue negotiations. Staff looked at his property and he described his concerns but all that occurred was another letter requesting he sign the easement or the rockery on his property would not be repaired. He indicated Mr. Gebert continued to discuss the easement and ignored any other options. He referred to geotechnical data that recommends installation of a soldier pile wall, noting that option was dismissed because of the cost to the City. He noted the wall was originally engineered with incorrect materials and in an inappropriate manner. He objected to property owners donating their land at no cost to the City. He noted the easement would reduce property values. He was opposed to the easement for these reasons and the reasons he has described previously. He has offered to sell the property to the City but has had no response. He hoped to avoid a condemnation process.

Roger Hertrich, 1020 Puget Drive, Edmonds, explained the City previously funded the library from the General Fund and when the budget was tight, costs needed to be cut in order to have funds available for the library. He pointed out the Council endorsed the concept of creating a taxing district although he acknowledged the Council did not create the district, the voters did. He noted the taxing district created an extra cost for all property owners in Edmonds by over \$1 million in higher taxes. The creation of the taxing district left the City with \$1 million in extra funds which unfortunately allowed staff to receive 20% increases in some instances, money to be spent where it would not have been otherwise, and did not provide for cost cutting and prudent spending. He summarized the City did not fund the library anymore, the voters did with their higher taxes, thus in a sense, the Council helped raise taxes in Edmonds.

5. **MAYOR'S COMMENTS**

Mayor Haakenson had no report.

6. **COUNCIL COMMENTS**

COUNCIL PRESIDENT EARLING MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO EXCUSE COUNCILMEMBER DAWSON FROM THE APRIL 30 COUNCIL MEETING. MOTION CARRIED (5-0-1), COUNCILMEMBER DAWSON ABSTAINED.

In response to Mr. Hertrich's comments, Councilmember Dawson pointed out neither she nor Councilmember Wilson were on the Council at the time the library annexation issue was before the Council. With regard to the additional money spent for the library, she clarified the figures Mr. Freeman displayed indicated the City paid Sno-Isle approximately \$1.1 million per year for library services from the General Fund which was in addition to funding upkeep of the library. She noted these funds were not from a special library fund but from the General Fund. Following annexation, the General Fund did not decrease \$1.1 million and residents now paid property taxes in the amount of \$1.5 million for library services. She noted it could be argued that residents were paying almost twice as much, but they were certainly paying over \$400,000 more per year for library services. She acknowledged Sno-Isle had discussed raising the contract rate had annexation not passed. The funds residents paid for the library were in addition to funds in the General Fund such as \$300,000 for a new library roof as well as the furnace that was discussed during the CIP review.

Councilmember Petso recalled she did not vote in favor of placing the library annexation issue on the ballot; she opposed the misleading ballot title and did not vote in favor of the Council resolution in support of annexation.

With no further business, the Council meeting was adjourned at 8:00 p.m.