

# **EDMONDS CITY COUNCIL APPROVED MINUTES**

## **October 15, 2002**

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Gary Haakenson in the Council Chambers, 250 5<sup>th</sup> 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  
Richard Marin, Councilmember  
Deanna Dawson, Councilmember

### **ALSO PRESENT**

Brandy Grout, Student Representative

### **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  
Steve Bullock, Senior Planner  
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 ORVIS, TO ADD "AUTHORIZATION FOR THE MAYOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH LANDSMAN TRANSPORTATION PLANNING FOR THE DOWNTOWN PARKING STUDY" AS CONSENT AGENDA ITEM F. MOTION CARRIED UNANIMOUSLY.**

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

### **2. CONSENT AGENDA ITEMS**

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

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT 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 OCTOBER 8, 2002**
- (C) APPROVAL OF CLAIM CHECKS #58424 THROUGH #58549 FOR THE WEEK OF OCTOBER 7, 2002, IN THE AMOUNT OF \$342,823.83.**
- (D) AUTHORIZATION TO CONTRACT WITH JAMES MURPHY AUCTIONEERS TO SELL SURPLUS CITY VEHICLES, UNIT #8, #40 AND #105**

(E) **PRIORITIZATION OF HUD GRANT PROJECTS AND AUTHORIZATION OF RESOLUTION NO. 1029 TO SUBMIT GRANT APPLICATIONS FOR 2003 SNOHOMISH COUNTY CDBG CAPITAL PROGRAM**

**Item F: Authorization for the Mayor to Sign a Professional Services Agreement with Landsman Transportation Planning for the Downtown Parking Study**

Councilmember Petso indicated she would vote against this item, recalling she voted against including the parking study in the 2002 budget. She noted the Parking Study was not needed as one had just been conducted. She expressed concern with the emphasis in the work plan on changing development codes for required parking. She preferred the \$24,000 budget for the parking study be used to fund an employee for half a year.

Councilmember Dawson indicated she too would vote against this item as there was not a need for a parking study. She recalled from the last discussion that there was possibly a perception of a parking problem in the downtown area but not a true parking problem. She agreed there were better uses for the \$24,000 during these difficult economic times.

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF ITEM F. MOTION CARRIED (5-2), COUNCILMEMBERS PETSO AND DAWSON OPPOSED. The agenda item approved is as follows:**

(F) **AUTHORIZATION FOR THE MAYOR TO SIGN A PROFESSIONAL SERVICES AGREEMENT WITH LANDSMAN TRANSPORTATION PLANNING FOR THE DOWNTOWN PARKING STUDY**

3. **CLOSED RECORD REVIEW OF THE HEARING EXAMINER'S RECOMMENDATION TO APPROVE THE APPLICATION FOR A SIX UNIT MULTI-FAMILY PLANNED RESIDENTIAL DEVELOPMENT (PRD) AND SUBDIVISION. THE SITE IS LOCATED AT 614 BELL STREET AND IS ZONED MULTIPLE FAMILY RESIDENTIAL (RM-1.5). (Applicant: Garbe/Weller Construction; File Nos. PRD-02-102 and P-02-103)**

As this was a quasi judicial matter and the Appearance of Fairness Doctrine applied, Mayor Haakenson inquired whether any Councilmembers had any conflicts or ex-parte communication to disclose.

Councilmember Orvis advised he visited the site and encountered Councilmember Petso there but they did not discuss the matter.

Councilmember Petso advised she was there and observed Councilmember Orvis at the site.

Mayor Haakenson inquired whether there were any challenges to the participation of Councilmembers Orvis or Petso. There were no challenges voiced and Mayor Haakenson indicated all Councilmembers would participate.

Not seeing the applicant's representative in the audience, City Attorney Scott Snyder advised as this was a closed record review and the only parties of record were the staff and the applicant, the Council did not need to hear from the applicant to make their determination and could proceed with its review.

Senior Planner Steve Bullock advised the applicant submitted a Design Review application in early 2001 which was reviewed and approved by the Architectural Design Board (ADB). The applicant proceeded to obtain approval of building permits and began construction. The applicant's original plans were to condominiumize the project and sell individual units. He has since decided to sell each unit as fee simple

lots rather than as a condominium. When inquiring of staff regarding how to accomplish that, he was advised the only method was via a Planned Residential Development (PRD) requesting each building footprint be an individual lot and the remainder of the lot be common space in joint ownership and governed via a homeowners association.

Mr. Bullock explained the applicant decided to proceed with a PRD; staff advised he must comply with the PRD criteria. The ADB reviewed the project again as a PRD and made a recommendation to the Hearing Examiner. The Hearing Examiner held a public hearing, reviewed the PRD criteria, and recommended approval to the Council with recommended conditions outlined in Exhibit 1.

Mayor Haakenson recognized the applicant's representative, John Garbe in the audience.

Responding to Councilmember Petso, Mr. Bullock indicated that a good representation of the site plan was on the landscaping plan on page 67 which illustrated the building footprints, common landscaped areas, etc. Councilmember Petso recalled the City's ordinance required that for a PRD with five or more units, 10% of the property be devoted to usable open space not including the required PRD buffer. She asked staff to identify the usable open space that was not in the required PRD buffer. Mr. Bullock answered the applicant was using garden spaces and walkways to meet the usable open space requirement. He referred to page 18 of the packet, the staff report to the Hearing Examiner, which stated that criteria was met. He referred to page 25 of the packet, the applicant's declaration, which describes how they met the criteria. Councilmember Petso referred to page 25 of the packet, pointing out it did not indicate the square footage that was outside the required PRD buffer and page 18 simply stated open space needs to be integrated into the design of the project. Mr. Bullock recalled this calculation had been performed by staff.

Councilmember Petso agreed the packet contained a calculation of open space but not open space outside the required PRD buffer. She noted from reviewing the layout of the project, it appeared the only open space, apart from narrow walkways between buildings, was in the perimeter area. She asked whether it was possible that the requirement that the 10% open space not include the PRD buffer had been overlooked, particularly since this was a new ordinance. Mr. Bullock referred to page 24, the applicant's declaration, which outlined the calculation for meeting the open space requirement. Councilmember Petso pointed out the applicant indicated he met 10% but not that the 10% was in addition to the required PRD buffer area as required by the ordinance. Mr. Bullock indicated he would research this.

Councilmember Petso recalled the PRD ordinance required preservation of unique natural features of the site as a requirement for approval of a PRD, however, the documentation indicates there were no unique natural features on this site to preserve. She asked whether this was not satisfied because it could not be satisfied or whether it was not a requirement and thus not a benefit to the public. Mr. Bullock advised if there were no unique features to preserve or enhance, it was not a requirement.

Councilmember Petso referred to the requirement for safer and more efficient site access, noting the project was already under construction and changing it to a PRD did not improve the safety or efficiency of the site access. She questioned how the requirement for safer and more efficient site access was met. Mr. Bullock answered an applicant, via the standard process, was required to submit a design that met the minimum standards but could propose a design that exceeded the City's standards. In this instance, the applicant went to some lengths, before applying for a PRD, to design a good quality project that provided extra benefits not required by the City. He noted those features were highlighted in their PRD application and they should not be penalized because they proposed more than necessary in their standard application process.

Councilmember Dawson noted the required buffers equated to half the site; therefore, there could not be sufficient open space in addition to the required buffer. Mr. Bullock answered there was open space between the buildings but much of it was in the perimeter of the site.

Councilmember Dawson noted the Hearing Examiner referred to multifamily development on this lot. She asked how many single family homes via a traditional subdivision could be sited on the lot. Mr. Bullock answered one. Councilmember Dawson asked why six “little tiny houses” were then allowed on a lot that was zoned for one house. Mr. Bullock answered there was no requirement that multiunits in a multifamily zone be in one building. Mr. Snyder explained the density in multifamily zones was defined by the number of dwelling units per lot. There was no requirement that the units be located in a certain number of buildings. Mr. Bullock explained a single family house would be allowed in a multifamily zone as long as it complied with the requirements of the single family zone. He explained a single family house in a multifamily zone could be within a 5 foot side property line but would be required to maintain a 20 foot street setback. Multifamily development was allowed within 15 feet of the street setback but required to maintain a 10 foot side setback. He noted this property was actually three existing Plat of Edmonds lots, 30 feet wide by 110 feet deep. Because each lot was over the 1500 square foot minimum required by the zoning, each could be considered separate building lots, thus allowing three separate single family houses. He noted the density allowed by the zoning was substantially higher than one single family house per lot.

Mr. Snyder referred to the definition of multiple dwelling units contained in Section 20.60.050, “a building or group of buildings on the same site containing two or more separate dwelling units.”

Councilmember Dawson inquired if the zoning ordinance contained any requirement for the setback between units. Mr. Bullock answered the City relied on the Uniform Building Code (UBC) to determine necessary distances for life safety reasons, which is reviewed by the Building and Fire Departments during the building permit process. Mr. Snyder explained the reason that was deferred to the UBC, was the distance apart depended on the fire rating of the construction materials, number of windows, etc.

Councilmember Dawson asked if there was anything in the record regarding the six feet between the buildings, noting it seemed very close. Mr. Bullock noted the distance between buildings was reviewed and approved by the Building and Fire Departments during the building permit review.

Councilmember Dawson asked if six small houses could be constructed as a part of a multifamily project, why was the applicant pursuing a PRD. Mr. Bullock noted there were significant insurance issues for a builder in maintaining long term liability coverage for a condominium versus fee simple lots with homes. He noted the applicant could provide further detail regarding this issue.

Councilmember Dawson noted the purpose of a PRD ordinance was to accommodate unusual topographic or environmental features. If there were none, why would the project be considered for a PRD? Mr. Bullock noted the current PRD ordinance did not require there be a significant natural feature to be protected. Staff and the Hearing Examiner found the project met the PRD criteria and recommend approval.

Councilmember Dawson questioned the benefit to the public of the proposed PRD. Mr. Bullock answered the current PRD ordinance did not require an applicant to name the public benefits. The decision criteria in the ordinance identify a range of items an application must provide and if the application provided them, it was presumed to be providing a public benefit. Mr. Bullock referred to page 8 of the packet, where the Hearing Examiner listed decision criteria and referenced the applicant’s declaration. Mr. Bullock also referred to page 18, the staff report to the Hearing Examiner, which

described how the project meets the five decision criteria including design criteria by providing at least two results from the list of six and referring to the applicant's declaration on pages 23-24 such as improving circulation patterns, minimizing the use of impervious surfacing materials, and increased open space, and increased landscaping, buffering and screening.

Council President Earling noted this project went through the design/permit process and was well into construction and as the construction was taking place, for insurance or other reasons, the developer requested the change from condominium to fee simple lots. Mr. Bullock agreed.

Councilmember Petso clarified it was her understanding that a PRD must satisfy a criteria of preserving the natural features of the property and that was not an optional item. Mr. Bullock agreed it was one of the six criteria.

**John Garbe** explained this was a change in ownership and was not necessarily driven by insurance reasons. He pointed out most people would prefer to live in their own home where they owned "all the way down to the ground" rather than a condominium where the property owner owned "from the sheetrock in." He concluded it was a pride of ownership issue.

Council President Earling noted staff's understanding was that at least part of what was driving this was substantial insurance costs if the project remained a condominium. He asked what the increased cost was if the project remained a condominium. Mr. Garbe noted what staff was likely referring to was the horrendous liability insurance for building condominiums. He noted his insurance rates were not discussed and were not what drove the decision. The decision was driven by the logic that most people prefer to own their own homes and it was felt that would assist with marketing the units.

Council President Earling clarified whether the project was a condominium or fee simple lots did not matter. Mr. Garbe answered the primary reason was for marketing. He explained this was a new product, a hybrid between single family and multifamily, and asked that it be considered under the PRD ordinance.

Councilmember Dawson questioned why, if the project could be done via a traditional multifamily development, the lots could not be sold as simple lots rather than proposing a PRD. Mr. Bullock answered a standard plat would not work for the project because once lot lines were established, the standard underlying setbacks were required. For an RM-1.5 zone, 10 foot side setback would be required which would equate to 20 feet between buildings. He explained Mr. Garbe pursued a PRD because it provided the flexibility to propose alternate setbacks and in this instance, lot lines that were the footprint of the buildings.

Councilmember Dawson noted this appeared to be a "distinction without a difference" because purchasers would either buy a house and become a member of the homeowner's association or a condominium with a condominium association. Mr. Garbe agreed it was simply a change in the ownership. He felt people would rather live in their own house rather than a condominium where they only owned the space inside.

Councilmember Orvis inquired whether there was sufficient open space to meet the criteria in the PRD ordinance. Mr. Garbe answered that as the declaration stated, they were well beyond the requirement. He pointed out this project could have been constructed as a multifamily box which would have provided no open space, only the setback.

Councilmember Wilson acknowledged the 10% open space requirement was met but inquired whether it had been calculated as to how much of the open space was within the required buffer areas and whether there was sufficient open space on the site if the buffer areas were excluded. Mr. Garbe noted that question was never asked so he did not have the calculation. He noted there was 6.5 feet between buildings and the buildings were 31 feet long. He estimated at least half or more of the required open space was provided between the buildings. Mr. Bullock recalled this calculation was done previously but it was not readily available in the file. He estimated the walkways, space between the buildings, and landscaping totaled approximately 1400 square feet which was 400 square feet over the open space required. Mayor Haakenson inquired whether “not readily available” meant the information was or was not part of the record. Mr. Snyder answered it was not part of the record, but from the scaled drawings in the record, the Council could take notice of the mathematics necessary to calculate the number.

Mayor Haakenson indicated there were no parties of record other than Mr. Garbe and staff.

Councilmember Petso noted the City’s definition of open space required unobstructed space from the ground up. The interior of the development included several overhanging balconies and paved walkways between buildings which she was uncertain met the definition of open space or the intent of the PRD regarding usable open space. She questioned whether there was sufficient information in the record to exclude balconies and walkways and still have 990 square feet of open space. Mr. Bullock answered yes. Councilmember Petso asked where the open space was. Mr. Bullock explained it was the paved walkways with landscaping on both sides between the buildings running north and south the full length of the buildings and a small area between the buildings running east and west. Councilmember Petso asked if the area between buildings was overhung by walkway. Mr. Bullock answered no. Councilmember Petso asked how much was not overhung by walkways. Mr. Bullock answered 7.92 feet.

Councilmember Dawson questioned whether the space between buildings qualified as usable open space. Mr. Bullock referred to page 34 of the packet, noting this would be part of the recording documents for the PRD. He identified the porches between the buildings and the dimensions between the porches and the dimensions between the buildings north and south. When reviewing this project, staff considered these retirement-style homes and the residents would be unlikely to desire swing sets or weight lifting equipment but rather would be interested in something like flower beds. Staff’s perspective when reviewing the criteria was that this was a reasonable application of the open space criteria for the project.

Councilmember Dawson asked whether there were any plans available that indicated there was a gardening area that was not in the setback area. Mr. Bullock answered the document Councilmember Dawson was requesting was not in the record but had been reviewed prior to making a presentation to the Hearing Examiner. He referred to the landscape plan on page 67 of the packet, pointing out the planting beds were on both sides of the walkway throughout the site. Councilmember Dawson asked how much square footage was included in the planting beds. Mr. Bullock noted the landscape plan would not be recorded; however, the plan on page 34 would be recorded with the PRD and the measurements were required to be accurate.

Councilmember Dawson noted the space between the buildings ranged from 6.92 and 7.92 feet. She asked how much of that was not covered by a porch or overhang. Mr. Bullock referred to the note on page 34 which read 3 x 9 foot deck with 3 foot wide stairs which was already included in the building and fee simple lot. The dimension between the decks/porches ranged from 6.92 and 7.92 feet.

Mayor Haakenson remanded the matter to Council for deliberation.

Councilmember Petso acknowledged this was not an instance where there was a great deal of opposition and as the buildings were already under construction, there would not be a great deal of negative impact

to changing what it was called. However, the negative impact of calling this a PRD was the interpretation of the ordinance. She noted there was not additional buffering on all sides of the project but rather on only two sides, there was not safer and more efficient site access as required, and there was not the preservation of unique or natural features as required by the PRD ordinance, nor was the required usable open space provided. She pointed out that no gardening would occur under a roof overhang in the 3 foot area adjacent to the walkway because sunlight nor rain would reach the ground in that area. Even if it were assumed that was usable garden space, the square footage did not add up; rather than 992 square feet, it was only 780 square feet. She concluded 2 feet to each side of a walkway between buildings did not meet the intent of the ordinance for providing usable open space. She reiterated her concern was not with the project but with the application of the PRD ordinance.

Councilmember Orvis indicated he liked the way the usable open space was designated. He explained this was a site where one may have expected a condominium or townhouse and instead a project was constructed that had a single family character.

**COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCILMEMBER MARIN, TO UPHOLD THE RECOMMENDATION OF THE HEARING EXAMINER TO APPROVE THE PROPOSED PRD PLAT WITH THE CONDITIONS INDICATED IN THE HEARING EXAMINER'S REPORT.**

Councilmember Marin commented that compared to a single, large box, this was an interesting project with more windows. He noted the intent was not gardening but rather growing perennials, etc. that likely would grow in that area.

Councilmember Petso clarified her objection was not that it was not an attractive, interesting-looking project and, as the applicant stated, it was unique. She noted the fact that the project had more or less windows had nothing to do whether it complied with the PRD ordinance. She summarized her objection was to calling this a PRD because it did not meet the requirements of the PRD ordinance.

Councilmember Dawson agreed this was a good project, noting it would be completed one way or another, whether as a PRD or condominium. She understood the preference for fee simple lots and agreed there may be some benefit to that although she reiterated it was a “distinction without a difference.” She expressed concern that if this was approved as a PRD, what wouldn't be approved as a PRD in the future? She stated most of the open space appeared to be in the buffer area and it was unclear whether the open space between buildings complied with the intent of the PRD ordinance. She referred to the requirement for preservation of a unique feature, noting there were no unique features on this property. She concluded she would vote against the motion because although it was a good project, it did not meet the requirements of the PRD ordinance.

Council President Earling indicated he would support the motion but expressed concern with making such a change mid-stream in a project. He indicated this was the wrong way to do things, noting if this was such a great marketing tool, the tool should have been thought of when the application was made.

**MOTION CARRIED (5-2), COUNCILMEMBERS PETSO AND DAWSON OPPOSED.**

**4. PUBLIC HEARING ON A PROPOSED ORDINANCE AMENDING CHAPTER 20.60 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE, ADOPTING A NEW DEFINITION AND REGULATIONS FOR CONSTRUCTION SIGNS**

Planning Manager Rob Chave recalled the Council had recently held a public hearing regarding an interim zoning ordinance. Tonight's public hearing was on the Planning Board's recommendation as a

result of the interim ordinance. He explained the interim ordinance allowed construction signs 32 square feet in size; the Planning Board recommended construction signs in single family areas be smaller, 16 square feet. The Planning Board also recommended that for projects of four houses or more, the construction signs could be combined into one sign 32 square feet in size.

In response to Councilmember Orvis, City Attorney Scott Snyder acknowledged the definition of construction had been inadvertently omitted from the ordinance. He assured a corrected version would be presented to the City Clerk tomorrow.

Councilmember Petso referred to a residential development on Olympic View where building permits were issued for the project in the last year, however, the project was not anywhere near completion. She asked whether passage of this ordinance would allow a 32 square foot sign in that residential neighborhood indefinitely or at least for a period of several years until the homes were completed. Mr. Chave answered the time limit was established by the building permit.

Councilmember Petso asked why the Planning Board did not discuss or include timelines in the ordinance. Mr. Chave answered they apparently felt tying the sign to the existence of a building permit was sufficient.

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

**David Toyor, Master Builders Association, 2155 112<sup>th</sup> Avenue NE, Bellevue**, indicated he did not have any immediate objections to the proposed ordinance.

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

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MARIN, FOR ADOPTION OF ORDINANCE NO. 3423 SUBJECT TO CITY ATTORNEY SCOTT SNYDER ADDING THE DEFINITION.**

**COUNCILMEMBER PETSO MOVED TO AMEND THE MOTION TO LIMIT CONSTRUCTION SIGNS IN RESIDENTIAL NEIGHBORHOOD TO NO MORE THAN ONE YEAR UNLESS AN EXTENSION IS OBTAINED FROM STAFF. MOTION TO AMEND DIED FOR LACK OF A SECOND.**

**VOTE ON ORIGINAL MOTION CARRIED (6-1), COUNCILMEMBER PETSO OPPOSED.**

**The ordinance approved reads as follows:**

**AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING SECTION 20.60.005 RELATING TO THE DEFINITION OF CONSTRUCTION SIGN, AND SECTION 20.60.010A PERMIT REQUIRED, OF THE EDMONDS COMMUNITY DEVELOPMENT CODE, ADDING A NEW SECTION 20.60.070, CONSTRUCTION SIGNS, ALL IN ORDER TO ADOPT A NEW DEFINITION AND REGULATION FOR CONSTRUCTION SIGNS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

## **5. AUDIENCE COMMENTS**

**Al Rutledge, 7101 Lake Ballinger Way, Edmonds**, encouraged the public to attend the Friends of the Library annual book sale on October 26 at the Frances Anderson Center beginning at 9:00 a.m.

**Ron Wambolt, 11701 Bella Coola Road, Woodway**, referred to a letter to the editor in the *Edmonds Beacon* that invited readers to count the number of condominium projects undergoing exterior repairs. Mr. Wambolt reported he found seven condominium projects in the city that were currently undergoing exterior repairs. He found this alarming, noting this appeared to be exclusively a condominium problem as it was not occurring in similarly constructed single family homes. He noted condominium builders must undergo a long and laborious process before beginning a project. He found it unacceptable that this process and the construction and inspection phases resulted in a high percentage of flawed buildings, which appeared to indicate the process was flawed. He commented much effort was spent on ensuring buildings were aesthetically pleasing but a proliferation of buildings undergoing repairs was not a pretty sight. He recommended the City create an ad hoc group of staff members and key condominium builders to determine how the process needed to be altered to reduce the need for premature repairs.

**David Toyor, Master Builders Association (MBA), 2155 112<sup>th</sup> Avenue NE, Bellevue**, in response to the condominium insurance and construction defect issues, explained that Washington State was undergoing a condominium crisis. Because of issues associated with the State's Condominium Act and the State Statute, there have been an influx of appeals on condominium projects and sites which has caused insurance companies to flee the market and the remaining companies to increase their rates considerably. This has resulted in significantly increased costs for condominium projects. He explained MBA has been working with the legislature to identify a solution. During the last legislative session, the "Right to Cure" bill was passed. Under the old State Statute, there was no right for the homeowners association to notify the builder of a defect but could proceed immediately to court and settle with the insurance company. Under the "Right to Cure" bill, the condominium association must notify the builder and allow him/her an opportunity to cure the defect. He noted that because there were still considerable problems with the State's Condominium Act, a taskforce has been formed to address this issue and propose additional legislation this session. He offered to provide the City a packet of information regarding those issues.

Mayor Haakenson asked Mr. Toyor whether he was familiar with a product, "dryvet." Mr. Toyor answered he was not. Mayor Haakenson asked staff whether that was the material on the building at 3<sup>rd</sup> & Dayton. Development Services Director Duane Bowman answered it was. Mayor Haakenson asked whether it was a legal construction material when the building was constructed several years ago. Mr. Bowman answered it was. Mayor Haakenson explained defects were identified with the product subsequent to its installation, similar to LP siding. Mr. Toyor noted there were a number of changes in the recent past that caused problems – the State's Energy Code was increased, requiring thicker, tighter walls but when walls don't breathe, opportunities for mold problems increase. He noted in addition to the LP siding, there have been roofing products that have failed. He noted design features that open opportunities for edges create more opportunities for water penetration and the resulting issues and defects. He noted this was causing significant problems in the condominium market which under GMA was one way of providing affordable housing.

Mayor Haakenson requested staff obtain the list of seven buildings undergoing repairs and provide the Council a report.

Council President Earling expressed his appreciation for the work done by the MBA. He requested as part of the report, staff provide the methodology used to test materials before they were used. He noted the product used on the project at 3<sup>rd</sup> & Dayton had been successful in other parts of the country.

Mr. Snyder explained the City enforced the State Building Code which did not specify materials but had general standards and it was left to the buyer and seller to determine what was appropriate. He explained

the reason cities did not get involved with these sorts of issues was the Public Duty Doctrine. The City was not liable for even the negligence of the Building Official in inspecting and applying the State Building Code. However, if the City intervened, got involved in a consumer advocacy role, the City could be one of the parties listed in a lawsuit as a defendant. He cautioned there were significant liability concerns if the City entered the consumer protection arena.

Council President Earling clarified he was only asking for information regarding how products were tested. Mr. Bowman explained the City did not test building materials. The City used the Uniform Building Code to do basic life safety review, but did not get involved in quality control inspections. Council President Earling asked the MBA to advise of any methodology used to approve construction materials.

**Janice Noe, 9015 242<sup>nd</sup> Street SW, Edmonds**, clarified her comments at the October 8 meeting, indicating her support for the interim ordinance that the Council instead of the Hearing Examiner shall make the final decisions on PRD applications. Although the Hearing Examiner was very helpful, she preferred the Council make the final decision on PRD applications.

**Ray Martin, 18704 94<sup>th</sup> Avenue W, Edmonds**, commented in the early days of the PRD ordinance, he was told Steve Bullock was the author of the ordinance. He commented it did not appear Mr. Bullock was very familiar with the ordinance, particularly with regard to open space. He recalled years ago profit and cost was not a determining factor in land use decisions. However, now it appeared one of the reasons for approving the PRD was profit and cost and marketing tools which he concluded was not proper. He noted the ordinance clearly stated the PRD reviewed by the Council tonight did not qualify, however, the Council approved it anyway.

**Bill Kasper, 657 9<sup>th</sup> Avenue North, Edmonds**, inquired about traffic on 9<sup>th</sup> Avenue North. He recalled they were originally told traffic was using that route temporarily to accommodate Mukilteo ferry traffic in Edmonds. He noted that project had been concluded, yet the traffic continued to increase. He explained that street was narrow, entirely residential and could not accommodate that volume of traffic. He also expressed concern with the speeds of the traffic.

**Roger Hertrich, 1020 Puget Drive, Edmonds**, commented tonight's discussion indicated conditions for a PRD in a multifamily zone were entirely different than in a residential zone, yet the code did not address those differences. He pointed out this illustrated that the ordinance needed more work than had been realized. He recommended the project discussed tonight be considered by the Planning Board when reviewing the PRD ordinance. Next, Mr. Hertrich recalled the repercussions of a proposed closure of the gate at Pine Street and the use of 9<sup>th</sup> Avenue to reach the ferry. He explained the Transportation Plan, that was presented at a recent Planning Board meeting, proposed to change the rating of Hwy. 524 (Puget Drive, 9<sup>th</sup> Avenue and Casper Street, and 3<sup>rd</sup> Avenue) from a major arterial to a minor arterial along with a signal at 9<sup>th</sup> and Casper, although there was no accident history to support the signal. He noted there were fictitious predictions for the level of service showing it at a LOS F in the future, predicted he believed on the use of 9<sup>th</sup> Avenue for the major route to the ferry. He urged the Council to ask questions when the Transportation Plan was presented.

6. **REPORT FROM THE PLANNING BOARD ON POTENTIAL AMENDMENTS TO THE EDMONDS COMMUNITY DEVELOPMENT CODE RELATED TO PLANNED RESIDENTIAL DEVELOPMENTS**

Planning Manager Rob Chave advised this was a report from the Planning Board who held one session to solicit public input and two work sessions, one of which where they also took public input, a total of

three meetings to consider issues related to Planned Residential Developments (PRD). He noted the testimony from the public input was included in the Council packet. The Planning Board also reviewed input provided in writing. As a result, the Planning Board summarized issues they would like to pursue and were seeking feedback from the Council regarding whether the list was appropriate as well as the Council's timeframe for amendments to the PRD ordinance. Mr. Chave clarified the Planning Board would like feedback from the Council in the form of consensus rather than individual comments. Mr. Chave recalled that following the public hearing on the interim ordinance, a suggestion was made regarding a joint meeting with the Planning Board. He noted the Planning Board would be very willing to meet with the Council.

Council President Earling suggested a joint meeting with the Planning Board could be scheduled on November 12. Councilmember Orvis agreed a joint meeting would be beneficial and indicated he would defer any questions until the joint meeting.

Mayor Haakenson asked whether the City Attorney needed to be present that evening, explaining in the past the City Attorney only attended the first and third Tuesday meetings each month and not on the second and fourth Tuesdays in an attempt to conserve the City Attorney budget. Council President Earling pointed out upcoming budget discussions would make it difficult to add the joint meeting to another meeting.

Councilmember Petso referred to the observations on page 1 of the Planning Board's report, a need to balance requirements of the GMA, recalling Mr. Snyder indicated last week that the Growth Management Act (GMA) did not require the City to have a PRD ordinance. Mr. Chave explained GMA addressed a number of issues such as critical areas, natural environment as well as focusing development in urban areas, somewhat competing goals. He pointed out the need for infill development in communities that were largely developed and how to best fit that development into the existing community. Therefore PRDs were seen as a potentially better way of fitting development into a neighborhood because they provided more flexibility. PRDs also provide flexibility for alternate housing styles as many cities' codes were created 20 years ago and many changes in the housing industry have occurred that were not addressed by current zoning standards.

Councilmember Petso clarified the City was not out of compliance with GMA if the City did not have a PRD ordinance. Mr. Chave answered no, explaining PRDs were a tool that was commonly used but it was not a required tool. Mr. Snyder indicated his observations were contained in a memo regarding application of design criteria under current land use law. He indicated the public could obtain a copy of the memo by contacting the City Clerk. One of his observations was the GMA and the densities established by the City via its Comprehensive Plan provide a far greater density than citizens saw in their neighborhoods. He pointed out the need to educate the community to what the future of Edmonds will look like. The densities anticipated in many residential neighborhood would double or triple the current density, whether via current property owners who subdivided their property or infill development. He suggested the public's energies be harnessed to develop standards regarding the type of neighborhood features they wish to preserve versus focusing on the end of the process. He noted a number of citizens who testified to the Planning Board indicated they were at a severe disadvantage in a public hearing context; the developers have been working on applications for a year or more and a record developed primarily by a developer and his/her experts would contain significant and competent evidence favoring development. Therefore, citizens with only 2-3 weeks to develop a position were at a disadvantage. He summarized that using the legislative process to define the standards that should be applied was a more appropriate means of harnessing the neighborhood's energies. Councilmember Petso indicated she had not received the memo and was assured she would be provided a copy.

Councilmember Petso questioned why, if the City was not required to have a PRD ordinance, was the PRD ordinance used to double or triple density. Mr. Snyder reiterated the City was not required to have a PRD ordinance. However, if the City had a PRD ordinance, using a vague, general standard such as compatibility with the neighborhood to deny developments which meet the City's Comprehensive Plan density, because they did not fit into a neighborhood where the developed neighborhood was itself not in compliance with the GMA density, would be problematic. He recalled Woodway had twice lost the case against urban density at the Growth Management Hearings Board.

Councilmember Petso asked whether a PRD ordinance was necessary to allow infill development or whether infill development could occur via subdivision. Mr. Snyder agreed that it could occur via subdivision.

Councilmember Petso referred to another observation in the Planning Board's memo, a PRD ordinance must apply equally to all areas and zoning districts in the City. She recalled PRDs were not allowed in the BC zone currently. Mr. Chave answered this was a question best posed to the Planning Board.

Councilmember Petso inquired about the statement in the Planning Board's observations, it is important to note that a standard subdivision could have been proposed in both cases with, in all probability, the same number of lots proposed. She recalled neither of the PRDs reviewed by the Council recently would have been allowed to develop as a standard subdivision with the same number of lots due in the first instance because 80 foot lot circles could not be achieved without entering the critical area and in the second PRD in the south end of the City, there was not enough road to develop five lots. Mr. Chave recalled there had not been a regulatory review to determine the number of lots that would be allowed; however, it appeared from the configuration of the properties that it was likely they could get the same number of lots. Councilmember Petso asked whether staff could conduct a review of the two PRDs and provide the results to the Planning Board and Council at the joint meeting. Mr. Chave indicated staff would attempt to do so.

Councilmember Plunkett pointed out the premise was that a standard subdivision would have no more or less homes than a PRD. Mr. Chave explained the underlying density dictated the number of homes that could be constructed. Although the exact calculation of density was slightly different for a PRD than a standard subdivision, it would essentially result in an equivalent number of units.

Councilmember Petso asked why, if the allowable number of homes was the same under the PRD ordinance or a standard subdivision, did the PRD ordinance exclude the road from the calculation of buildable area. Mr. Chave recalled when the PRD ordinance was developed, one of the reasons for doing a PRD was innovative design. The intent was to avoid oddly designed roads that were proposed to maximize the number of lots and achieve a more logical design of the road system and properties. He noted when a developer considered a standard subdivision, part of the process was to maximize the number of lots that could be obtained. Over the years, there have been road contortions proposed to ensure the space for the road was at a minimum so that the maximum number of lots could be obtained. The logic behind the PRD ordinance was to avoid that.

Councilmember Petso questioned whether more lots could always be achieved by including the road in the buildable lot area. Mr. Chave answered in the most recent PRD, the developer submitted a preliminary drawing of a standard subdivision that showed the same number of lots as the PRD. Mr. Snyder indicated staff spent an extensive amount of time today discussing Councilmember Petso's concerns. He recalled a majority of the Council indicated a preference to have hearings conducted by the Hearing Examiner. One of the issues if the Hearing Examiner was to have the final decision-making authority was that there not be the capability under the PRD ordinance to approve a development which

would not otherwise be available within that zoning district because that constituted a rezone. He noted there were two ways to address the issue, the Planning Board's recommendation indicated that the rounding up and density types would be eliminated, making a PRD equivalent to a subdivision. Another way would be to look at each zone and provide for a different method of calculation for different types of development such as PRD and standard subdivision, in order to achieve a desired design result. He summarized that although different methods of calculation would be provided, the density for either project would not exceed the density allowed in the zone by the Comprehensive Plan. He clarified the City could have different development regulations for different types of development as long as by using the different methods, the resulting density was not above what was allowed in the zone.

Councilmember Petso recalled in one of the PRDs, an additional lot was obtained by not having to deduct the road area from the calculation. Mr. Snyder disagreed, noting a conceptual drawing for a standard subdivision for the Viking property had since been submitted. Councilmember Petso referred to the south end PRD where there was barely room for five lots and if the road area were excluded, there would not be sufficient lot area for five lots. Mr. Snyder suggested the Council could require that a PRD be developed like a subdivision but then there was no point in having a PRD ordinance if the two were identical. The Council and Planning Board may determine there were public policy reasons for allowing different methods of calculation. He noted this could be achieved by approving both types of development within each zone rather than requiring a "cookie cutter approach" to road design.

Councilmember Petso referred to the Bothell PRD ordinance that did not allow more units to be developed on the property. Mr. Chave commented it may require the addition of a maximum density for each zoning classification.

In preparation for the joint meeting with the Planning Board, Council President Earling suggested Councilmembers define the issues they wanted addressed.

Councilmember Plunkett commented the Planning Board had done a good job identifying the issues. He noted many of the other issues were policy; policy had been established to rather than rezone neighborhoods, allow density to occur via infill development. He was hopeful the Council would not spend a great deal of time at the meeting with the Planning Board debating established policy. He noted there were not four Councilmembers interested in changing that policy and urged the Council to focus on the substantive aspects of the PRD ordinance.

Council President Earling suggested consensus be reached at the joint meeting with the Planning Board regarding each issue.

Mayor Haakenson explained the Council would meet in a joint meeting with the Planning Board on November 12 for the sole purpose of discussing the PRD ordinance and there would be no opportunity for public input that evening.

## **7. REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF OCTOBER 8, 2002**

### Community Services/Development Services Committee Meeting

Councilmember Marin reported the committee discussed the definition of fence/hedge and the difficulties with interpreting and enforcing the code. The committee requested staff bring a recommendation with reservations to the full Council to consider eliminating the regulation of hedges. Next the committee discussed disabled parking improvements and selected an alternative that would provide four additional disability parking stalls and improving three existing disability parking stalls. This alternative was supported by the Parking Committee and the Chamber of Commerce. The committee then was provided

a progress report on the Downtown Parking Study Consultant Contract which was approved on tonight's Consent Agenda. Next staff provided an update regarding the concept of a regional Appeals Board. As Lynnwood's Building Official has been unable to work on the project, the committee asked that staff proceed with the formation of the Appeals Board. With regard to the formation of a Hwy. 99 Taskforce, the committee was asked that the establishment of the Taskforce be postponed until the Alliance's work plan and contract is reviewed by the Council at the end of October. The last item on the Committee's agenda was a request that staff forward a list of the committee's questions to the Alliance as a result of their presentation on September 3 and request a written response.

#### Finance Committee Meeting

Councilmember Dawson reported the committee reviewed a request from the Chamber of Commerce for tourism funds from the Lodging Tax Advisory Fund. A presentation was given on the "Chamber Marketing for Tourism" which was also given to the Lodging Tax Advisory Committee. The Chamber requested \$43,500 from the Lodging Tax Advisory Committee; the Lodging Tax Advisory Committee recommended that \$30,000 be included in the 2003 budget for the Chamber. Next, the committee reviewed a financial request from Team Edmonds of \$25,000 in 2003 to fund a marketing plan to promote a regional awareness of Edmonds. The committee informed Team Edmonds of shortfalls in the 2003 budget. The committee was advised by staff that the budget included \$20,000 for the Alliance; committee members expressed interest in allocating at least some of those funds to Team Edmonds. Councilmember Dawson noted Team Edmonds would make a presentation to the full Council in two weeks. The last item discussed was a report on upcoming library projects, including the replacement of the library entry doors. There was \$23,000 in the budget for replacing the library entry doors; Sno-Isle expressed willingness to split the cost. Staff pointed out the need to establish a policy regarding who is responsible for paying for repairs and maintenance to the library building. It was recommended a committee consisting of a Sno-Isle representative, Mayor Haakenson, and a Councilmember discuss a change to the annexation agreement to determine who pays for what. Councilmember Dawson requested Council President Earling appoint a Councilmember to this committee.

#### **8. MAYOR'S COMMENTS**

Mayor Haakenson had no report.

#### **9. COUNCIL COMMENTS**

Council President Earling pointed out the "Audience Comment" item on the agenda was designated as regarding matters not listed as Closed Record Review or Public Hearings. He noted Mayor Haakenson and he would continue to raise this issue over the next 2-3 meetings and at the first meeting in December would attempt to adhere to that principle.

Councilmember Marin commented the dryvet material referred to earlier looked like stucco and was installed over a Styrofoam-like product that provided insulation value. He noted fewer contractors were approved to apply this product than were years ago due to the importance of the application process, particularly around windows. He noted in the housing industries, changes are often made in products and installation techniques.

Councilmember Plunkett asked when the Council would be provided more information regarding the Hwy. 99 proposals. Councilmember Wilson answered the Community Services/Development Services Committee asked Mr. Bowman to initiate contact with parties interested in serving on a Hwy. 99 Taskforce. He clarified the intent was not to wait until after the Alliance's presentation to initiate a process to identify parties interested in participating on a task force. He explained the intent was to

present the concept of a Hwy. 99 Taskforce and a work program to the Council to determine whether the Council was interested in undertaking this process.

With no further business, the Council meeting was adjourned at 9:05 p.m.