

EDMONDS CITY COUNCIL APPROVED MINUTES

March 6, 2007

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Haakenson in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor
Peggy Pritchard Olson, Council President
Michael Plunkett, Councilmember
Richard Marin, Councilmember
Mauri Moore, Councilmember
Deanna Dawson, Councilmember
Dave Orvis, Councilmember
Ron Wambolt, Councilmember

STAFF PRESENT

David Stern, Chief of Police
Duane Bowman, Development Services Director
Noel Miller, Public Works Director
Rob Chave, Planning 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

Mayor Haakenson requested the addition of a 30 minute Executive Session regarding pending litigation as Item 8A, advising that the Council would adjourn at the conclusion of the Executive Session.

Addition to
Agenda –
Executive
Session

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO APPROVE THE AGENDA AS AMENDED. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

A. ROLL CALL

B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF FEBRUARY 27, 2007.

C. APPROVAL OF CLAIM CHECKS #94507 THROUGH #94671 FOR MARCH 1, 2007 IN THE AMOUNT OF \$225,518.00. APPROVAL OF PAYROLL DIRECT DEPOSITS AND CHECKS #44567 THROUGH #44616 FOR THE PERIOD OF FEBRUARY 16 THROUGH FEBRUARY 28, 2007 IN THE AMOUNT OF \$784,837.01.

D. COUNCIL CONFIRMATION OF 2007 MEMBERS OF THE LODGING TAX ADVISORY COMMITTEE.

E. AUTHORIZATION TO CALL FOR BIDS FOR THE 164TH STREET SW WALKWAY AND THE 74TH PLACE WEST DRAINAGE IMPROVEMENTS PROJECTS.

F. AUTHORIZATION TO CONTRACT WITH JAMES MURPHY AUCTIONEERS TO SELL SURPLUS CITY VEHICLES AND EQUIPMENT.

Approve
2/27/07
Minutes

Approve Claim
Checks

Lodging Tax
Advisory
Committee

164th St. SW
Walkway &
74th Pl W.
Drainage

Surplus City
Vehicles

Catch Basin
Cleaner Truck

G. PURCHASE (1) ONE NEW CATCH BASIN CLEANER TRUCK USING WASHINGTON STATE PURCHASING CONTRACT #07005 FOR THE PUBLIC WORKS STORM WATER DIVISION.

Animal
Kenneling
Services

H. CONTRACT FOR ANIMAL KENNELING SERVICES WITH ADIX'S BED & BATH FOR DOGS AND CATS.

Ord# 3630 –
Display of
Employee
Parking Permit

I. ORDINANCE NO. 3630 AMENDING EDMONDS CITY CODE 8.51.030, COMMUTE EXEMPTION FROM THREE-HOUR PARKING LIMITS, RELATING TO THE DISPLAY OF THE EMPLOYEE PARKING PERMIT.

Scout Troop
312

Mayor Haakenson introduced several scouts from Troop 312 who were attending the Council meeting working on their citizenship badge.

Port of
Edmonds Day

3. PROCLAMATION IN HONOR OF PORT OF EDMONDS DAY, MARCH 7, 2007.

Councilmember Wambolt, Council representative to the Port of Edmonds, read a Proclamation declaring March 7 as Port of Edmonds Day in honor of the Port's 2006 Marina of the Year Award. He presented the Proclamation to Commission President Marianne Burkhart, Commissioner Mary Lou Block and Executive Director Chris Keuss.

Ms. Burkhart commented ten years ago the Port had been on the cover of Marina Dockage magazine because the marina had been destroyed by snow. A decade later, they would again be the cover story for being the best marina in the entire country. She noted they had been selected from over 12,000 marinas in the country; this honor was due to the very competent and customer-oriented staff led by Executive Director Chris Keuss.

Councilmember Moore congratulated the Port Commissioners, noting that type of leadership came from the top.

220th St. SW
Improvements

4. PROJECT UPDATE AND AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 6 TO THE PROFESSIONAL SERVICES AGREEMENT WITH PERTEET, INC. FOR DESIGN OF 220TH STREET SW IMPROVEMENTS (9TH AVENUE SOUTH TO 84TH AVENUE WEST) PROJECT.

City Engineer Dave Gebert advised construction of the 220th Street SW project was substantially completed and the road reopened in July 2006. Since July, the contractor completed landscaping, modular rock walls, fencing, property restorations and miscellaneous details. Construction included reconstruction and widening of the road from 84th to 9th, grading to improve visibility and safety, sidewalks and bike lanes on both sides, left turn pockets at selected intersections, new traffic signals at 84th Avenue West and 9th Avenue West, lighted pedestrian crossing at 96th Avenue West. Permanent radar speed signs, landscaping behind the sidewalk at selected locations, and associated relocation and installation of utilities.

Construction funding included \$3.26 million in State and Federal grants, \$400,000 in low-interest Public Works Trust Fund loans, and approximately \$700,000 in reimbursement from funding partners including the Olympic View Water and Sewer District, Edmonds School District, and the City of Edmonds water, sewer and storm utilities. Other partners who participated through in-kind contributions included Snohomish County PUD, Puget Sound Energy, Verizon, Comcast and the U.S. Post Office.

The construction contract for this project was a unit price contract. The contract was bid and awarded based upon estimated quantities for over 140 bid items, and the total final contract amount was based

upon actual final quantities of work installed at the bid unit prices. Although final project closeout actions remain to be completed, it is possible to estimate a final total project construction cost, including construction administration and engineering, right of way acquisition, public art, and miscellaneous other minor costs.

As is typical in construction contracts like the 220th Street SW improvements project, Mr. Gebert explained actual quantities have varied from estimated quantities, and construction change orders have increased the cost as construction progressed. Some of the revenues into the project budget have also increased. He referred to Attachment 1, explaining the total project construction budget, including grants, loans, reimbursable amounts and other funding sources, authorized by Council in June 2005 was \$5,075,650. This budget included construction contract, contingency, construction administration and engineering, public art, right of way acquisition and miscellaneous other minor costs.

On November 21, 2006, the Council approved the 2006 Final Budget Amendment, including an increase in 2006 capital project expenditures in Fund 112 for this project, which increased the overall project construction budget for the 220th Street SW Improvements project to \$5,689,510. Included in the revised budget were increased revenues from reimbursable partners in the project (Olympic View Water & Sewer District and Edmonds School District) to pay for change orders for requested scope increases for their elements of the project. Increased revenues include \$277,011 in Traffic Impact Fees and \$5,442 in sidewalk "in-lieu" payments from private development projects not included in the construction budget authorized by Council in June 2005, for a total increased revenue of \$282,453.

Also shown in Attachment 1, the estimated final total project construction cost is approximately \$5,405,000, including construction, construction administration and engineering, right of way acquisition, public art, and miscellaneous other minor costs.

Mr. Gebert reviewed the following significant items that caused the overall project construction cost to increase over the original construction budget authorized by Council in June 2005:

- a. Scope increase requested by reimbursable project partners. Olympic View Water and Sewer District requested a change order for the addition of a Pressure Reducing Valve Vault at the cost of \$30,198, and the Edmonds School District requested paving and other playground improvements at Westgate Elementary School at a cost of \$67,724. The City has been reimbursed for these costs.
- b. A change order was required at a cost of \$29,913 to provide a left turn pocket on 9th Ave S. for vehicles turning left onto 220th Street SW. The City has been reimbursed for this cost by the design engineering consultant.
- c. A change order was required for additional storm drainage improvements at a cost of \$41,641 to address drainage issues on abutting private properties caused by changes in the grade of 220th Street SW and which could not be identified during the design.
- d. The quantity of modular block walls required was underestimated by 1,902 square feet. This resulted in a cost increase of \$34,227 from the bid amount of \$163,260 to an actual total of \$197,487. There were a number of locations where the design did not anticipate modular block walls would be required, but they were determined to be needed when grading was completed and the new road and sidewalk were constructed.
- e. The contract included time-and-materials bid items for property restoration, erosion control, and unforeseen site conditions with an estimated amount of \$75,000 provided in the bid documents. This amount proved to be underestimated and actual cost (\$169,540) exceeded the estimated amount by \$94,540. Examples of work in this item included regrading of private property to

blend into new street and driveways, special driveway treatments to match existing, fence restorations, resolving underground utility conflicts, and removal of obstructions and debris not shown on plans.

- f. The most significant single item of cost increase (\$330,695) was in traffic control. Traffic control is paid on a unit price per hour, as required by WSDOT on projects with Federal grant funds. The estimated number of traffic control hours for the contract bid amount was based upon totally closing the road to all but residents, as was our original plan. However, this proved to be impractical due to the number of drivers who continually disregarded traffic barricades, which necessitated implementation of increased and continuous traffic control to ensure safety of workers and the public. In addition, the project duration was extended by delays in Verizon relocating their lines and other excusable delays, which also necessitated increased traffic control hours. This cost increase is partly reimbursed by the project funding partners on a prorated basis.
- g. In January 2006, the City's Traffic Engineer, who had been the project manager for this project for the prior 4 1/2 years, resigned to take a position with the project's design engineering consultant. To maintain continuity on this major project, it was determined to be in the best interest of the City to increase the consultant's scope of services for the remainder of the project. This resulted in an unanticipated additional project management cost of approximately \$140,000. This cost increase was also partly reimbursed by the project funding partners on a prorated basis.

Mr. Gebert explained the project was designed by Perteet, Inc. In March 2005, Council approved Supplemental Agreement No. 3 for Perteet to provide construction administration and construction engineering support services. Subsequently, the Council approved two Supplemental Agreements. A significant portion of the additional construction administration and construction engineering support services was to increase the scope of services provided by Perteet for the remainder of the project to include the majority of the duties previously performed by the City Traffic Engineer.

Mr. Gebert explained the scope of services and budget for the original contract and supplemental agreements executed to date were based on an average of 20 hours per week being spent on City project administration through August 2006, and a total of an additional 60 hours through December 2006 for project closeout. The actual amount required has been significantly more to ensure completion of all construction requirements, negotiate final quantities with the contractor, complete project documentation for the WSDOT audit, and other project closeout requirements. It is now anticipated that the remaining project closeout actions will require continued support from Perteet through approximately June 2007.

Supplemental Agreement No 6 is to compensate Perteet for additional costs over that anticipated in the previous supplemental agreements as well as the estimated additional effort required through project closeout. Sufficient funds are available in the approved project budget to award this supplemental agreement. Mr. Gebert requested Council authorize the Mayor to sign Supplemental Agreement No. 6.

Councilmember Moore commented because the work had been done the Council had little choice. Mr. Gebert explained the Council already approved the budget increase in November, this request was for approval of the Supplemental Agreement.

Councilmember Dawson did not recall the Council being advised that the Traffic Engineer had been hired as a consultant on this project. She expressed concern with an employee leaving the City and then the City paying more for their services via a consulting firm. She requested this be a future Council discussion item. Mr. Gebert recalled it was presented to and approved by the Council. He explained City Attorney Scott Snyder and he discussed the situation as he shared her concerns. After evaluation, they were comfortable it was legal. Once it was determined to be legal, from a practical standpoint, there was little choice due to Traffic Engineer Darrell Smith's extensive involvement in the project, making it

impractical at that stage to have someone else manage the project. Councilmember Dawson referred to the additional \$140,000 that would be paid to Pertee Engineering, expressing concern with a firm the City contracted with hiring one of the city's employees and then charging more. She acknowledged it was legal but did not seem quite right. Mr. Gebert commented this illustrated the value of in-house staff.

Councilmember Wambolt shared Councilmember Dawson's frustration, noting it was common in private industry. Mr. Snyder commented it was legal because there were no State Statutes that prohibited civil servants from contracting with another agency for a period of time after leaving the City's employ. He noted the Council could consider such a provision.

Councilmember Moore requested this topic be placed on a future agenda.

Council President Olson asked whether not utilizing Mr. Smith as a consultant would have slowed the project and increased costs. Mr. Gebert remarked he would hate to think how the project would have been managed without Mr. Smith due to his 4½ years of background and knowledge of the project. He noted it would not have been realistic for the new Traffic Engineer to take over the project management. He concluded although it was more expensive, it was the right thing to do.

Councilmember Plunkett acknowledged Mr. Smith's assistance at community meetings and his institutional knowledge of the project; however, he would like to have this concept reviewed. As four Councilmembers questioned the concept, he requested it was added to the retreat agenda.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT OLSON, TO AUTHORIZE THE MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 6. MOTION CARRIED UNANIMOUSLY.

Design Guidelines

5. **PUBLIC HEARING ON THE PLANNING BOARD RECOMMENDATION TO UPDATE THE EDMONDS COMMUNITY DEVELOPMENT CODE WITH NEW DESIGN GUIDELINES AND A NEW "UP-FRONT" DESIGN REVIEW PROCESS APPLICABLE TO SPECIFIC DISTRICTS (INITIALLY LIMITED TO DOWNTOWN AND HIGHWAY 99).**

Planning Manager Rob Chave provided a history of this issue, explaining in 1993 the court case *Anderson v. Issaquah* highlighted the need for predictable design standards and a process to be followed. As the City's ordinance was similar to the ordinance addressed in that case, some revision to the City's ordinance was felt to be necessary.

In 1999 the City Council commissioned a study by Cedar River Associates who addressed the general design guidelines and design process. Their conclusions emphasized the need for design guidelines that were specific enough that developers knew what was expected and for the design review to occur at the beginning. In 2000 the City hired Cascade Design to develop design guidelines. The Planning Board completed an extensive review process as well as public hearings and forwarded a recommendation with specific guidelines to the City Council. In 2002-2003, the Council reviewed the design guidelines, concluding the proposed design guidelines were too specific and referred the design guidelines to committee. The committee removed a portion related to signs and that portion was adopted in 2003.

In 2004-2005, the City embarked on an extensive update of the Comprehensive Plan. During that process, design objectives were adopted. At the conclusion of the Comprehensive Plan process in 2005, the Council also had a series of discussions with urban design expert Mark Hinshaw that focused on downtown. Mr. Hinshaw provided several ideas for enhancing the City's guidelines specific to downtown. Following additional meetings with the Council, Planning Board and Architectural Design Board (ADB) in 2006, the ADB agreed an upfront design review process was appropriate. The Council

agreed and forwarded the process to the Planning Board. The Planning Board has completed its review and forwarded a recommendation to the Council for this new process.

Mr. Chave displayed a diagram of the current design review process in which design review occurs late in the process. The problem with the existing process was by the time design review at the ADB occurs, the applicant has a detailed design on which they have expended a great deal of time, money and effort, making it difficult for the ADB to convince them to modify their design to any significant degree.

He displayed a diagram of the proposed new design review process where design review occurs at the beginning. The new process would use a two-phased public hearing for major projects. At Phase 1 of the public hearing, the ADB reviews a checklist with the applicant to determine what aspects of the design criteria checklist needed to be addressed by the design of the project. Public input would also occur at this time. The next meeting with the ADB to review the project concept for compliance with the ADB guidelines is considered to be a continuation of the public hearing or “Phase 2” of the public hearing. Any appeal would also occur at this stage. At the completion of Phase 2, the applicant using the conceptual design proceeds with detailed design work to obtain a building permit. Staff then reviews the plans against the design review conditions established by the ADB as well as the City’s codes. He anticipated this would streamline the process as the design parameters would be established upfront.

The Planning Board recommendation contains the current process as the default. The same design review applies; however, the new process would be applied to districts or sections of the City as specific design code requirements, standards, etc. were adopted such as had been done for Hwy. 99 and downtown. He summarized this new process would apply initially to those two areas. He noted the new process also incorporates the new landscaping standards taken from the 2001 draft design guidelines.

Mr. Chave reviewed a comparison of the current process and the proposed new process:

Current process	New Process
General design review (Section 20.11)	District Based (Section. 20.12)
ADB and public input at the end of the process	ADB and public input at the beginning of the process
Guidance from criteria in 20.11.030, tweak recommended by the Planning Board to address long, monotonous walls paragraph	Guidance from the ADB design guidelines and the checklist
Zoning bulk standards	Zoning bulk standards and applicable adopted district-based design standards
Comprehensive Plan design objectives	Applicable Comprehensive Plan design objective

Mr. Chave summarized the existing process was retained as the default; the new process would be applied in areas where specific design standards had been developed. He pointed out the Historic Preservation Commission was in the process of developing standards that could be applied to one or more areas of the downtown, focusing on the retail core. As those were a separate process and it was uncertain when they would be complete, he recommended not delaying the establishment of the upfront process until they were completed. Those standards would supplement the existing downtown design standards. He noted ACE had also submitted some suggested design recommendations related to downtown. He suggested they be combined with the standards being developed by the Historic Preservation Commission.

Councilmember Plunkett asked whether ADB review occurred at the beginning and the end of the new process. Mr. Chave referred to the diagram of the new process, identifying the ADB review at the beginning of the process where they would address the general parameters of design, making decisions

regarding what criteria were important and how they should be applied in the project. He noted the ADB's input would occur early in the design before building plans were developed. Currently much of the detail was developed before the ADB review.

For Councilmember Plunkett, City Attorney Scott Snyder advised at the second phase of the public hearing the ADB would establish specific design criteria and approve the checklist. He clarified the biggest risk in the ADB review was subjective/ad hoc decisions to deny or grant projects based on someone's feeling about an applicant or the way a building looked. The decision must be based on specific design criteria. The problem with the existing process was the public often did not have an opportunity to comment until the design was "cast in stone" and their objections are often with aesthetic elements upon which specific design guidance is not provided. The intent was to allow public input to influence the design process before the building was designed. Staff approval at the end of the process was similar to a building review process; specific conditions were developed, generalized design criteria were specified and staff would have a list of 30-40 elements as well as code requirements with which to review the proposed design. The intent was to eliminate the implication/reality that decisions were made based on subjective or generalized feelings rather than criteria.

Councilmember Plunkett observed the preliminary ADB hearing was for discussion and the second was the formal ADB hearing. Mr. Chave explained Phase 1 was to discuss the criteria and look generally at the site and identify what was important to address such as adjacent buildings, slopes, etc. and developing the checklist. Based on that discussion, the applicant would refine their ideas and return to the ADB at Phase 2 with one or more concepts and obtain a decision regarding the general design of the project. Any appeal would also occur at this point.

Councilmember Plunkett asked whether Phase 2 was quasi judicial. Mr. Snyder answered the entire process was quasi judicial with appeal to the City Council. Councilmember Plunkett asked whether there was a firewall between the phases. Mr. Snyder explained the ADB holds a two-part hearing that is entirely quasi judicial. They would not hear an appeal of the decision as they were involved in the decision. There was still opportunity for a LUPA appeal at the end of the process to Superior Court.

Councilmember Orvis asked whether the standard for commercial transparency that currently existed had been removed. Mr. Chave answered there were no standards in the code, there were only guidelines that were vague and not well defined. Guidelines provide flexibility; as long as the applicant met the intent, it was approvable. Mr. Snyder commented as design standards for the neighborhood districts were developed, there was the potential for neighborhoods to establish criteria that must be met. He used the example of where entrances were located; although of great importance on Hwy. 99 and downtown, it may be less important in a neighborhood business area.

Mr. Chave recalled there was a requirement for window transparency in the BD1 zone. Councilmember Orvis asked how that could be expanded to the Arts Corridor. Mr. Chave answered that would need to be addressed via a separate process, either by amending the BD zones or possibly via incorporating it into the standards being developed by the Historic Preservation Commission.

Councilmember Marin commented the upfront design review process was not a new model; it was being used successfully by other cities. Mr. Chave agreed it was used by Seattle and the Cedar River study identified several cities utilizing the upfront process.

Councilmember Moore supported developing standards by neighborhood/district as it allowed neighborhoods more control. With regard to the appeal to the Council, as the project at that point would not have detailed drawings, she asked what the Council would be reviewing. Mr. Chave answered the Council would be provided building massing, site plan, elevations, etc. but not be to the degree of detail

necessary for a building permit, they would be more conceptual. He acknowledged there was a balance – enough to know what a project looked like without requiring so much time and effort that the design was locked in. The intent was to consider major issues that people cared about such as the location of the building on the site, rooflines, entries, etc.

Councilmember Moore asked if a LUPA appeal would be filed at that point. Mr. Snyder advised once the conditions were established by the ADB, the appeal would be to the Council. The preamble described how the process worked. He pointed out each property and its surroundings were unique; the design review process provided an opportunity to develop the checklist and prioritize the guidelines with regard to the building and its surroundings. The detailed design of the building would be left to the developer, thus the importance of developing specific conditions that could be applied in the second phase.

Councilmember Wambolt commented the criteria still seemed very subjective; for example the criteria to address long, massive unbroken, monotonous buildings was multiple rooflines or forms, architectural detailed entries, appropriate landscaping, and windows with architectural fenestration. He asked whether the applicant could be provided input at Phase 1 regarding how to address a long, unbroken or monotonous building. Mr. Chave pointed out the statement regarding long, massive, unbroken or monotonous in Section 20.11 was in the existing process; that wording did not appear in the new upfront process. Mr. Snyder explained the applicant would present information regarding the neighborhood, lot, etc. and a general description of their design and the ADB, based on the guidelines developed by the neighborhood, would specify techniques in the conditions and the applicant would return with a more specific design for staff review.

Mr. Snyder commented *Anderson v. Issaquah* was in regard to unconstitutional vagueness. An ordinance could be unconstitutional on its face or as applied. The City has created guidelines to provide techniques for a developer to use to address the generalized criteria. Even with that protection, an ordinance could be unconstitutionally vague as applied if the hearing body ignored detail in the guidelines and for example identified a building as monotonous without considering whether the guidelines were applied.

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

Roger Hertrich, Edmonds, commented under the existing process, an early review was available although it was optional. He noted a developer who had built in the City for a long time may not need the early review versus a developer new to the City who may need the early review. Because the new process had more meetings and the ADB only met once a month, he anticipated the process would be slower than the existing process for a developer who was familiar with the City. He inquired whether the public had an opportunity to provide input at the Phase 1 hearing. Similar to the optional review in the existing process, he suggested holding an informal meeting with the applicant, a couple of ADB members and a member of the Historic Preservation Commission that was advertised to the public. He used the renovation of Old Milltown as an example and the question regarding the square footage of new building that determined whether SEPA was required. He asked what opportunity the public had for input once the detailed plans were submitted. He objected to staff making more decisions in the proposed process, opining that staff needed to be supervised by the public. He preferred the quasi judicial portion of the hearing remain where it was in the existing process to allow the public to analyze project details.

Tony Shapiro, Edmonds, commented on the inability for government to flow with the natural sequence of the design process. He anticipated the sequence as proposed would make it very challenging to keep the natural momentum of a project under design. He stated a conceptual design to a developer may be simplistic bubble diagrams, not elevations. He found it counterproductive to have a long review sequence at the beginning of process, anticipating the end result would be mediocre architecture. He anticipated elevations would not be provided at the initial hearing. He suggested an applicant be allowed to submit

materials, meet with the ADB the following week, the ADB provide their input and the applicant incorporate the design guidelines and ADB recommendations and return with more detailed drawings at a hearing that would be advertised to the public. He was concerned with the amount of time this design review process would consume.

Bob Gregg, Edmonds, expressed support for the proposed process. He referred to the letter he submitted from Dennis Reynolds, the attorney who tried the *Anderson v. Issaquah* case who they invited to assist them in reviewing the proposed process. He highlighted several suggested changes including eliminating the statement “long, massive, unbroken or monotonous” from Section 20.11 and addressing a conflict in wording on pages 9 and 12 – page 9 states “to comply with the input of the public and ADB” and page 12 states “adequately address the input of the ADB,” stating his preference for the latter wording. On page 7 of the design guidelines, he pointed out the box and convex awning should be allowed and awnings should be allowed above or below the transom depending on the grade. On page 11 he recommended changing the sentence, “Design Review should not result in any significant reduction in actual bulk and scale.” He advised the materials he submitted contained additional revisions. He summarized the two step process that invited input early in the process and using that to create the final design would serve the public well by allowing them to have input before a developer had designed a building in detail. He urged the Council to adopt the proposed new process.

Don Kreiman, Edmonds, commented as a community activist, he was proud of his neighborhood; however, his neighborhood was deteriorating including an unoccupied and obsolete strip mall. He supported the proposed process because it allowed him to be part of the process at the beginning. Using a custom designed product as an example, he explained only after the specifications had been agreed to was the product designed. The proposed process would involve the architect, staff and the public at the beginning and if the public was part of the process of creating the design guidelines and reviewing proposals, they would be happy to tell developers what aspects they felt were most important. He suggested increasing the notification to more than just property owners with a 300 foot radius.

Scott Schlumberger, Edmonds, agreed with the design review process upfront although he had concerns with the process as outlined. He recommended SEPA occur earlier in the process. He suggested the design guidelines provided flexibility and streamlining, noting design departures were an important part of design guidelines. He questioned the time to prepare the staff report between Phases 1 and 2, anticipating four months could elapse between the phases. He suggested consideration be given to a method to accomplish the steps more quickly such as staff making a threshold determination at the counter. He concluded longer lead times led to higher costs which affected the ability to provide affordable housing as well as developers’ interest in building in Edmonds.

Councilmember Moore inquired about a threshold determination. Mr. Schlumberger suggested a threshold determination could be made at the counter, noting it currently took months. He pointed out a completeness letter was required to be provided in 29 days; they submitted an application on December 7 and received a completeness letter last week. He viewed the design guidelines as a new attitude of collaboration between the building community and planning/permitting department.

Rob Michel, Edmonds, suggested staff work with the development community who would be using the proposed process to ensure it worked for them and for the public. He pointed out the diagram of the proposed process did not match the text in the code and there were no timelines associated with each step. He noted there was the potential for a long time between Phase 1 and 2 as the applicant was required to submit their response to input provided at the first meeting and then staff prepared a report to the applicant and ADB. He suggested that report also be provided to the public. He suggested very tight timelines be established. He pointed out a SEPA appeal would require another hearing as could an appeal to the City Council, a total of four hearings in the proposed process. He recommended staff prepare

examples of what they expected developers to provide at each hearing, noting conceptual drawings meant different things to different people. He referred to the arduous requirement to provide a site plan that includes every significant building within a 200-foot radius, suggesting an aerial photo would be sufficient due to the difficulty in determining what was considered a significant building. He preferred the public have opportunity to review final drawings because final drawings may be different than conceptual drawings. He noted the text in the code also did not state what the developer did after the Phase 2 hearing.

Finis Tupper, Edmonds, commented when the ADB was originally formed in the late 70s, it was an aesthetics board whose goal was high quality development in Edmonds. He expressed concern with the proposed process, pointing out the detailed plans were never presented to the public. He referred to a recent contract rezone for a single family lot in the BC zone that included specific requirements, commenting none of the specific conditions of the contract rezone were met in the final development. He acknowledged the public's ability to file a LUPA appeal, yet once the hole was dug and the building extended 15 feet into the single family zone, the public had no recourse. He acknowledged this may be an issue for the State Legislature. He provided another example of a contract rezone for a PRD that reduced lot sizes from 12,000 square feet to 8,000 square feet. Although the materials repeatedly stated 24 houses would be built, 4 additional houses were allowed. He expressed concern about the public not seeing the details.

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

In response to Mr. Hertrich's comment regarding the optional preliminary review, Mr. Chave explained it was extremely rare for a developer to request a preliminary review. That preliminary review tends to occur with major projects that have the most architects and engineers involved because they realized it was to their advantage to get as much input as possible before beginning their design. Staff tends not to get requests for preliminary review for projects done by smaller developers who may feel they cannot afford the time for that review. With regard to the comment about SEPA thresholds, Mr. Chave explained the SEPA determination must be made before the ADB's decision so that the developer and public knew early on whether SEPA applied. If a project were to be reviewed by the ADB based on false information that SEPA did not apply, the applicant would risk starting over when he learned SEPA was required.

With regard to Mr. Shapiro's comments regarding design sequence and flow, Mr. Chave explained the intent was for the design review to occur very early in the process at the conceptual stage. Although the proposed process required the developer to get involved with the City much earlier than they had before, the intent was to fit into the design process versus having it back loaded. With regard to comments about elevations, Mr. Chave referred to packet page 13 which contained a short list of what an applicant needed to do for Phase 1. Although an elevation was mentioned as one of the items, it only needed to depict the volume of the proposed structure in relation to the surrounding buildings and improvements – it was not a detailed elevation. He compared this to the language on the next page, the elevations for Phase 2 portion of the hearing which required elevations for all building faces illustrating building massing and openings, materials and colors, and roof forms. The more detailed elevations were provided in the second phase.

With regard to Mr. Gregg's suggestions, Mr. Chave commented they could be reviewed along with the language to be developed by the City Attorney.

With regard to Mr. Kreiman's suggestion to increase the 300-foot notice, Mr. Chave pointed out in addition to the 300-foot notice, notice was published in the newspaper as well as posted in several locations. Residents could also inform others in their neighborhood who were beyond the 300-foot radius. Extending the notice requirement would have a significant impact on the City's budget as the City bore the cost of mailings.

Mr. Chave agreed with Mr. Schlumberger's comment about providing more flexibility via the ADB design guidelines. He agreed the SEPA determination needed to be done early but disagreed it could be done at the counter as there were mailing requirements based on the determination, etc. With regard to Mr. Schlumberger's suggestion about design departures, Mr. Chave recalled the Cedar River study suggested the City consider design departures which had been successfully used in Seattle. He noted design departures could work with an upfront design guidelines process but would be more problematic with standards. He suggested after the City had some experience with this process, consideration be given to design departures.

With regard to Mr. Michel's comments about the diagram versus the text, he explained the intent was to have the two be consistent. He agreed with Mr. Michel's suggestion to mail the report to the public, noting although the code did not currently require it, that was staff's practice. With regard to Mr. Michel's concern with it being an open-ended process, Mr. Chave explained Regulatory Reform dictated a 120 day timeline within which the City was required to reach a decision. The biggest determinant of the amount of time between the Phase 1 and Phase 2 hearing was how long the applicant took to develop a design for ADB consideration.

In response to Mr. Tupper's comment on the need for detail, Mr. Chave remarked on the conundrum of how much detail to require versus how much influence the ADB and public could have on the design before the details were developed. The only way detail worked was with the ADB at the end of the process such as in the current process which was counter to the intent of the proposed new process.

COUNCILMEMBER MOORE MOVED, SECONDED BY COUNCILMEMBER MARIN, TO EXTEND DISCUSSION OF THIS ITEM FOR 20 MINUTES. MOTION CARRIED UNANIMOUSLY.

Mayor Haakenson referred to the comment that the ADB met only once a month but had previously met twice a month and the suggestion that a smaller group of ADB members conduct the first review. Mr. Chave stated historically the ADB met twice a month and that could be considered again. The risk with a subcommittee of the ADB was there were different perspectives and different fields of expertise among ADB members. He offered to inquire about the ADB's availability for two meetings a month.

Mr. Snyder agreed with providing written notice of final plans to the public. He urged caution regarding expectations, explaining the reason the upfront design process was proposed was to allow developers to get specific direction before developing final designs. Therefore the conceptual drawings may differ from the final design if all the specific conditions of approval are met. He clarified it was not design by committee or the public designing a building, it was about the developer meeting specific conditions established from existing guidelines and codes with the input of the public and ADB. It was also not whether someone liked or did not like a building; marketability was the developer's right/risk. With regard to Mr. Tupper's comment about how design review was conducted in the 70s and 80s, that process was no longer available.

Councilmember Marin commented there did not seem to be much debate about the design guidelines themselves, the concerns were with the upfront process. If the Council approved the Planning Board's recommendation and directed the City Attorney to prepare an ordinance, it could be scheduled as a discussion item on the Council agenda in two weeks. He suggested in the meantime, if there were funds available, hiring a consultant to update the Cedar River study particularly what cities were successfully utilizing the upfront process. He suggested staff could then contact those cities with regard to specifics on how the process was working. He was also concerned with the amount of time that would elapse between the first meeting and the second meeting. He asked if these efforts could be accomplished in the next two weeks. Mr. Chave answered not by hiring a consultant due to the time that required; staff could attempt

to contact some of the cities. He pointed out another city's process would not exactly mirror the proposed process.

Councilmember Marin wanted assurance the proposed process would not extend into four months and that the two-step process could occur fairly quickly. Mr. Chave reiterated it would depend primarily on the applicant. He pointed out the current ADB process was also governed by the 120 day requirement. He acknowledged the design review would be earlier but did not anticipate the new process would take more time than the current process and actually should be shorter. Councilmember Marin commented although he liked the proposed process, he wanted assurance regarding how it worked in other cities. Mr. Chave agreed staff could do some investigation.

Councilmember Plunkett asked how design departures would be integrated. Mr. Chave suggested gaining some experience with the process as proposed to determine whether it provided enough flexibility and revisit it after a year. He commented design departures were not easy to craft as parameters were required with regard to when they were appropriate, on which aspect of the design would they be allowed, etc.

Councilmember Plunkett referred to Mr. Chave's comment that the issues outlined in Mr. Gregg's email could be addressed by Mr. Snyder, observing most appeared to be policy issues. Mr. Chave advised he did not have Mr. Gregg's written comments; his response was to Mr. Gregg's verbal comments. He offered to have staff address in writing at the time an ordinance was presented the other issues Mr. Gregg raised. With regard to box awnings, he recalled discussions with Mark Hinshaw related to downtown commercial that indicated the ends of box awnings obstructed the view of hanging signs.

Councilmember Plunkett asked staff to comment on the 4-page letter from Davis Wright Tremaine. Mr. Snyder answered much of it was chapter and verse of what had been said before. There were some comments regarding the ACE comments that may require Council consideration. He clarified the adopted design guidelines were intended to be a way of explicating the generalized code requirements. David Wright Tremaine was suggesting they be specifically referenced.

With regard to design departures, Mr. Snyder explained there were two kinds of design departures – variances and incentives. The intent was very specific design guidelines and requirements; if a design departure was not to do something that was required, that would constitute a variance. If the departure was to substitute something for another requirement or an incentive, the best place to develop those was via the neighborhood process.

Councilmember Dawson agreed with Councilmember Marin's suggestion with regard to additional information regarding the timeline. She asked if staff believed the proposed process would take the same amount of time as the existing process. Mr. Chave answered the proposed process should be quicker, due in part to the checklist the ADB developed. Another thing that would speed up the process was it dealt with conceptual issues rather than specific drawings. Councilmember Dawson anticipated concern by developers with a project that would sail through the old process but now must contend with the new process. Mr. Chave stated the maximum time under the existing process and new process was 120 days.

Councilmember Dawson was concerned with the two-phase process taking longer and suggested establishing a reasonable amount of time for staff's review. Mr. Chave offered to provide a more detailed diagram comparing the existing process versus the new process. Councilmember Dawson referred to the comment about what materials they would provide at each phase, suggesting staff develop examples.

Councilmember Dawson asked if providing the final report to all parties of record was required by the code. Mr. Chave answered that was staff's current practice but it was not required. Councilmember Dawson commented it would be appropriate to include it in the code. Mr. Snyder suggested notice be in

the form of an offer to view the plans at City Hall as copying drawings for a large project may be quite burdensome. Councilmember Dawson agreed, asking whether there was an opportunity for the public to provide comment. Mr. Chave advised the public could always make comments; he was hesitant to codify that to avoid the impression it was a formal comment period. Councilmember Dawson asked whether there was the ability to have a formal comment period. Mr. Snyder cautioned against anything that looked like multiple hearings on the same project. Development Services Director Duane Bowman explained typically a building permit application went through multiple reviews – an initial review, review of comments and final review. He suggested if information was to be provided to the public, applicants could be required to submit electronic drawings of the building exterior elevations at the time of building permit that could be viewed online. He advised the public could also view the plans at City Hall; however, they may not always be readily available as they were being reviewed by staff. He cautioned against another de facto public hearing.

Councilmember Wambolt echoed the concern that the public would not see the detailed design at the public hearing. This was a concern to citizens because under the existing process, the public hearing was held after the detailed design was created, yet many buildings when constructed did not look like the plans. The public wanted to know that what they saw was really what was built. Mr. Chave responded the most practical solution was the additional notice when final plans were available. He commented if the Council increased the notice requirement, staff would return with a request to increase the fee. Mr. Snyder commented the electronic drawings should include a link to the ADB's decision so that the public could identify which of the ADB's conditions were not met.

COUNCILMEMBER MOORE MOVED, SECONDED BY COUNCILMEMBER MARIN, TO EXTEND DISCUSSION OF THIS ITEM FOR 20 MINUTES. MOTION CARRIED UNANIMOUSLY.

Councilmember Moore expressed interest in considering design departures in 6-12 months. Mr. Chave suggested 12 months. Councilmember Moore agreed with the suggestion to research other cities' experience with the upfront process.

Councilmember Marin stated the proposed recommended action was to approve the Planning Board recommendation and direct the City Attorney to prepare an ordinance for Council adoption. He was interested in moving the process forward, acknowledging there were some questions remaining. He asked if the Council could provisionally approve the Planning Board recommendation and direct the City Attorney to prepare an ordinance for further Council discussion and adoption. Mr. Snyder advised allowing two weeks for him to prepare the ordinance would also allow staff the time needed to respond to Council questions/requests. The ordinance could then be scheduled on the agenda for further discussion.

Councilmember Plunkett suggested keeping the public hearing open to allow the public another opportunity to comment once the additional information was provided.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER MOORE, TO PROVISIONALLY APPROVE THE PLANNING BOARD RECOMMENDATION AND DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE FOR FURTHER COUNCIL DISCUSSION AND ADOPTION AND CONTINUE THE PUBLIC HEARING.

Councilmember Moore asked whether members of the public who spoke during the public hearing could be invited to provide further comment. Mr. Snyder advised the public hearing had been closed. The public hearing could be reopened or a new public hearing scheduled.

Councilmember Dawson suggested scheduling another public hearing which would allow the public to comment on the information that would be provided by staff. She expressed her support for the motion inasmuch as it required staff provide further information.

Council President Olson suggested scheduling the ordinance on the April 3 agenda as the March 20 agenda was already full and the animal control ordinance was scheduled on the March 27 agenda.

Councilmember Moore requested Mr. Snyder also address the inconsistency in the wording.

Councilmember Plunkett expressed concern with the provisional approval as he was uncertain whether he would ultimately support the ordinance. His intent was to move it forward for further discussion.

MOTION CARRIED UNANIMOUSLY.

6. AUDIENCE COMMENTS

Sound Transit
Open House

Don Kreiman, Edmonds, Chair of the Citizen Transportation Advisory Committee, explained the mission of the Committee was to educate their neighbors about transportation issues. He invited the public to take the bus to the Sound Transit open house at the Lynnwood Convention Center on March 15 from 4:30 – 7:30 p.m. As he began to describe Sound Transit’s proposal, Mr. Snyder advised the Council adopted a procedure that prevented comment on a ballot measure. Mr. Kreiman advised buses to the open house would leave the Edmonds library at 3:56 (accompanied by Councilmember Marin, who also serves as Sound Transit and Community Transit Boardmember) and 4:26 p.m. (accompanied by Hank Moravec, Citizen Transportation Committee Member) Parking was available at the City’s municipal lot, the library, or near City Hall. The bus fare is \$1.25 for adults and \$0.50 for seniors and riders must have exact change. For further information, he invited the public to contact Mr. Moravec at 425-771-2751.

Animal Control
Issues

Ray Martin, Edmonds, commented overlapping responsibilities between departments resulted in poor organization and poor results. He explained animals were addressed in Chapter 17 - Code Enforcement as well as in Chapter 5 - Public Safety. He recommended combining the responsibility in one department, preferably a separate animal department under the Police Chief. He described a complaint he filed with code enforcement regarding 25 quail being raised in a residential neighborhood. The Code Enforcement Officer referred his complaint to Police Chief Stern who referred it to the Animal Control Officer. His most recent request was answered by Chief Stern stating there was no violation of Chapter 5.05 as quail were not poultry or domestic animals and the correct definition would seem to be wild animals, technically upland game birds. The limit of five animals referred to domestic animals but his complaint would be referred to Code Enforcement as they enforced Chapter 17. Chief Stern advised should there be a violation of Chapter 5.05 staff would take appropriate action. Mr. Martin responded if quail were wild birds, then Chapter 5.05.131, which prevented a person from owning a wild animal, had been violated and he requested the City take appropriate action.

220th St. SW
Improvements
Project

Roger Hertrich, Edmonds, referred to Supplemental Agreement No. 6 with regard to the 220th Street SW improvements project, suggesting the Council review the numbers again. He found the numbers astounding as well as the practice of paying an employee who left the City’s employ more via a consultant contract. The overruns on the project were due to the Traffic Engineer as well as inflation due to the delay in Verizon moving their poles. He suggested many of the cost increases could have been anticipated, particularly with the delay. He also questioned the amount of City engineering time that had been expended on this project in addition to the outside engineering. He summarized the significant increases warranted further discussion as well as criticism regarding how the contract was handled.

7. MAYOR'S COMMENTS

Acceptance of
Check from Co.
for Park in
South Edmonds

Mayor Haakenson reported Parks & Recreation Director Brian McIntosh, Councilmember Dawson and he accepted a check from Snohomish County Executive Aaron Reardon today for \$1.2 million for the park in South Edmonds.

Mayor's
Neighborhood
Meeting

Mayor Haakenson invited the public to his neighborhood meeting at Meadowdale Elementary School Library on Thursday, March 8.

8. COUNCIL COMMENTS

Sound Transit

Councilmember Moore pointed out Councilmember Marin was in a photograph in the *Seattle Times* today regarding a Sound Transit ribbon cutting.

220th St. SW
Improvements
Project

Councilmember Moore recalled she was shocked when the Council was asked to approve the cost overruns on the 220th Street SW project. She remarked there appeared to be shockingly bad estimates. She noted the cost overruns were due to administration's lack of management on the project. However, the budget had been approved and the lesson learned was assuming someone was irreplaceable.

Park in South
Edmonds

Councilmember Moore urged Mayor Haakenson and Mr. McIntosh to get the citizens in south Edmonds involved in providing input early in the process of developing the park. She noted this park was very important to the citizens in that area and they likely had done a great deal of visioning and would like to be involved in the planning at the beginning.

Term Limits for
Mayor

Councilmember Moore noted Council Comments was the only forum for the Council to present new ideas. She suggested consideration be given to term limits for the Mayor. Her discussions with previous Councilmembers and historians indicated term limits had been in place in the past but have been removed. She suggested consideration be given to term limits for the following reasons: Mayor Haakenson has said there is no one who can run the City except him which she found humorous as well as dangerous. She noted the Traffic Engineer was an example of what happened when only one person could do a job. If there was only one person qualified to be Mayor, she recommended developing leadership by getting more people on the Council and Boards/Commissions. She noted term limits leveled the playing field as most Mayors were former City Councilmembers. In the case of most cities in Washington, four of the seven Councilmembers could not run for Mayor without giving up their Council seats as they were on the same cycle as the Mayor. The playing field was leveled if there was not an incumbent. She relayed the advice of City Attorney Scott Snyder that term limits were illegal. She cited information provided by Municipal Research via a 2001 memo that term limits were legal, referenced term limits in other Washington cities, and an Attorney General ruling. She requested some research be done on the issue of term limits for the Mayor.

City Manager
Form of
Government

Councilmember Moore also suggested citizens consider a City Manager form of government, noting she was not certain she was in favor of this. She noted most younger cities had a City Manager form of government. She explained with a City Manager form of government, there was a better chance of a hiring a professional administrator versus an elected Mayor who may lack management skills and a City Manager was answerable to a board who could terminate his/her employment. Under a City Manager form of government, the Council would elect a Mayor from the Councilmembers. She noted Mountlake Terrace had a City Manager form of government that appeared to work well. She recognized a change in the City's form of government would require a public vote.

Change to
Minutes

Councilmember Moore invited any citizen who wanted a change made to the minutes to contact a Councilmember rather than staff.

Sound Transit
Open House

Councilmember Marin complimented the Citizens Transportation Advisory Committee on the initiative to invite the public to take the bus to the Sound Transit open house on March 15 at the Lynnwood Convention Center. He noted he may be on the second bus.

Sound Transit
Light Rail

Councilmember Marin reported he attended the dedication of the new light rail operations and maintenance facility on Monday west of the former Rainier Brewery. He explained the 8-foot R on the

old brewery had been refurbished and a neon company built the letters AIL and the letters RAIL were mounted on the side of the maintenance and operations building. He noted one of the advantages of being the last large regional area without light rail was the ability to take advantage of lessons learned in systems built over the last 30 years. He noted the maintenance and operation facility was miles ahead of any facility built in the last 30 years.

Term Limits for Mayor

Councilmember Wambolt agreed with Councilmember Moore's suggestion regarding term limits for the Mayor, finding 8 years to be adequate for anyone to serve. He acknowledged there may not be anyone willing to challenge the current Mayor but if he did not run, there likely would be other candidates. He did not know enough about the City Manager form of government but the rationale described by Councilmember Moore sounded logical, having a professional person run the City. He agreed this may be something the citizens wanted to consider.

City Manager Form of Government

8A. EXECUTIVE SESSION

Executive Session

At 9:51 p.m., Mayor Haakenson recessed the Council to a 30 minute Executive Session regarding pending litigation.

9. ADJOURN

The Council meeting was adjourned at the conclusion of the Executive Session (10:10 p.m.)