

# EDMONDS CITY COUNCIL APPROVED MINUTES

## June 5, 2007

Following a Special Meeting at 6:30 p.m. for an Executive Session regarding a legal matter, the Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Haakenson in the Council Chambers, 250 5<sup>th</sup> Avenue North, Edmonds. The meeting was opened with the flag salute.

### ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor  
Peggy Pritchard Olson, Council President  
Michael Plunkett, Councilmember (arrived 7:21 p.m.)  
Richard Marin, Councilmember  
Mauri Moore, Councilmember  
Deanna Dawson, Councilmember  
Dave Orvis, Councilmember  
Ron Wambolt, Councilmember

### ALSO PRESENT

Shaun Callahan, Student Representative

### STAFF PRESENT

Gerry Gannon, Assistant Police Chief  
Tom Tomberg, Fire Chief  
John Westfall, Fire Marshal  
Duane Bowman, Development Services Director  
Stephen Clifton, Community Services Director  
Brian McIntosh, Parks & Recreation Director  
Noel Miller, Public Works Director  
Rob Chave, Planning Manager  
Rich Lindsay, Parks Maintenance Manager  
Dave Gebert, City Engineer  
Jeannine Graf, Building Official  
Bertrand Hauss, Transportation Engineer  
Don Fiene, Assistant City Engineer  
Scott Snyder, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

Approve  
Agenda

### 1. APPROVAL OF AGENDA

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER MOORE, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY. (Councilmember Plunkett was not present for the vote.)**

### 2. CONSENT AGENDA ITEMS

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER MOORE, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. (Councilmember Plunkett was not present for the vote.) The agenda items approved are as follows:**

Roll Call

#### A. ROLL CALL

Approve  
5/22/07  
Minutes

#### B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF MAY 22, 2007.

Approve  
Claim  
Checks

#### C. APPROVAL OF CLAIM CHECKS #96460 THROUGH #96614 FOR MAY 24, 2007 IN THE AMOUNT OF \$440,499.08 AND #96615 THROUGH #96751 FOR MAY 31, 2007 IN THE AMOUNT OF \$234,953.60.

Claims for  
Damages

#### D. ACKNOWLEDGE RECEIPT OF CLAIMS FOR DAMAGES FROM CLIFF SANDERLIN (AMOUNT UNDETERMINED), AND PHILIP LAUE (AMOUNT UNDETERMINED).

Shell Valley Emergency Access

Candidate Forums Guidelines

Ord. #3647 8th Ave N Right of Way

Ord. #3648 Licensed Massage Therapists

Sister City Commission Annual Report

- E. **AUTHORIZATION TO PROCEED WITH SELECTION OF A CONSULTANT TO DESIGN THE SHELL VALLEY EMERGENCY ACCESS AND PRELIMINARY SHORT SUBDIVISION.**
- F. **DRAFT GUIDELINES - CANDIDATE FORUMS AND USE OF CITY FACILITIES.**
- G. **ORDINANCE NO. 3647 – VACATING CERTAIN UNOPENED RIGHT-OF-WAY OF 8TH AVENUE NORTH, NORTH OF SPRAGUE STREET, AND RESERVING AN EASEMENT.**
- H. **ORDINANCE NO. 3648 – AMENDING THE PROVISIONS OF EDMONDS CITY CODE, SECTION 4.50.040 FEES - DISBURSEMENTS, PARAGRAPH (D), RELATING TO THE REGISTRATION OF LICENSED MASSAGE THERAPISTS.**

3. **2006 ANNUAL REPORT FROM THE EDMONDS SISTER CITY COMMISSION.**

Shiva Riddell, Edmonds Sister City Commission Chair, explained each year the twelve member Commission strives to fulfill the Commission’s mission, “to promote international communication and understanding through exchanges of people, ideas, and culture” by providing activities and exchanges that foster understanding and friendship between Edmonds and its Sister City, Hekinan, Japan. She relayed the Commission’s sincere thanks to the many individuals, families, businesses, schools and organizations that have provided time and resources to help make these programs successful. She introduced the Executive members of the Board, Felix de Mello, Vice Chair; Jeanne Mazzoni, Secretary; and Rita Bailey Ikeda, Treasurer. She introduced Commissioners Bryan Bechler, Jim Corbett, Lawrence Cretin, Holly Guentz, Grant Linden, Iyoko Okano, Vera Papageorgiou, and Karen Towey. She noted 2006 saw the departure of Commissioners Consuelo Kinahan and Karen Towey and the addition of Commissioners Grant Linden and Holly Guentz. She extended the Commission’s thanks to Brian McIntosh, Director of Parks and Recreation, for his support and guidance.

Ms. Riddell described community outreach including a visit by the Commission to the Shinto Shrine in eastern Snohomish County, an information booth at the Edmonds Summer Market, presentation to the Senior Kiwanis Meeting, artist John Vanderbrooke working with wax medium with the visiting Japanese students, and a major Japanese calligraphy exhibit at the Seattle Center by Meito Shodokai attended by several Commissioners.

Ms. Riddell reported on the Student Delegation to Hekinan in July where fifteen 4-17 year old students and their chaperones traveled for 15 days and stayed with host families. She reported on the Student Delegation from Hekinan where the Commission arranged home stays for 15 students and two chaperones from Hekinan for two weeks in early August and described activities they enjoyed. She reported on a 12 member adult delegation from Hekinan who visited Edmonds in October and described activities during the delegates stay.

Ms. Riddell recognized Commissioner Jim Corbett for preparing the quarterly Sister City newsletter. Next, she described the Hekinan/Edmonds Cooperative Student Art Project. The theme was an “east meets west” and collages were created using small items and objects representing the northwest and the Hekinan region.

Ms. Riddell explained Mariko Watts and Michael Hopkins were interviewed and selected from a pool of 14 applicants to work as assistant English teachers in junior high schools in Hekinan for a period of two years. Further, she relayed 2008 will mark the 20th Anniversary of the Edmonds-Hekinan Sister City relationship. The Commission is planning an adult delegation to Japan in April 2008.

Ms. Riddell extended the Commission’s appreciation to Mayor Haakenson, the City Council, the Edmonds Arts Commission and all City Departments for the continued support of the Commission’s cultural programs and activities. Councilmember Marin extended the Council’s appreciation to the Sister City Commission.

4. **PRESENTATION REGARDING PROPOSED 76TH AVENUE WEST/75TH PLACE WEST WALKWAY AND 162ND STREET SW PARK.**

Assistant City Engineer Don Fiene introduced the City’s new Transportation Engineer, Bertrand Haus. Mr. Fiene then provided background on the project, explaining it was the highest priority walkway in the current

76th Ave W & 75th Pl W Walkway; 162nd St SW Park

Walkway Comprehensive Plan that has not yet been constructed. The 162<sup>nd</sup> Street Park was identified as a mini-park in the current Park Comprehensive Plan. The 2007-2008 capital budget allocated \$945,000 for 76<sup>th</sup> Avenue West/75<sup>th</sup> Place West walkway and \$325,000 for the 162<sup>nd</sup> Street Park.

Mr. Fiene explained the City contracted with Gray & Osborne and their sub-consultant for the 162<sup>nd</sup> Street Park, SBA Associates, in September 2005; the first phase of the contract was preliminary design and determining a preferred alternative. A public meeting was held in April 2007 to solicit public feedback which will be incorporated into the final design.

**Tani Stafford, Gray & Osborne**, displayed a site map identifying the project on 76<sup>th</sup> Avenue West from Meadowdale Beach Road to 75<sup>th</sup> Place West to Meadowdale County Park. She described limited space between the existing pavement and the east side of the right-of-way north of 162<sup>nd</sup> which limited the location of the walkway to the west side. Because a significant portion of the project was within a landslide prone area, HWA Geosciences was hired to investigate the best techniques for widening a roadway in an area prone to landslide. Their recommendation was to build the walkway on the east side if at all possible as cutting into the embankment and removing existing soil made the slope more stable. Because much of the walkway was limited to the west side, they recommended a pile supported structure on the west.

Ms. Stafford displayed and reviewed Concept 1, identifying sections with curb, gutter and 5-foot asphalt walkway; a pile-supported boardwalk at 162<sup>nd</sup>; and the 5-foot asphalt walkway with a soldier pile wall. She advised the walkway would be on the east side on the south end of the project adjoining the existing sidewalk on the east side and shift to the west side at 162<sup>nd</sup>. She displayed renderings of the existing conditions and proposed improvements for each section.

Ms. Stafford displayed and reviewed Concept 2, explaining the primary difference was the entire walkway was on the west side in Concept 2. She identified areas of asphalt walkway and pile supported walkway. She pointed out the section of the road where there was insufficient right-of-way on the west side for a walkway which would require shifting the road slightly to the east, requiring a soldier pile wall which made Concept 2 more expensive than Concept 1. Because cost estimates for both concepts were over the City's budget, they considered phasing the project.

Ms. Stafford stated they recommended Concept 1, Phase 1, which would end north of the 162<sup>nd</sup> park. She reviewed pros and cons for both concepts:

Concept 1

Pros: Improves slope stability in landslide zone; improves sight distance at horizontal curve at south end of project; better connection to existing walkway at south end; less expensive to construct.

Cons: More right-of-way acquisition required; more crosswalks needed at 162<sup>nd</sup>.

Concept 2

Pros: Less right-of-way acquisition required; fewer crosswalks needed at 162<sup>nd</sup>.

Cons: More expensive to construct; more driveway crossings; not a desirable connection to existing walkway at south end.

**Susan Black, SBA Associates**, described site conditions of the 162<sup>nd</sup> Street Park including the approximate half acre size, west orientation, 4:1 slope, Puget Sound and regional mountain/island views, and location midway on the walkway project. She described views from the site, opportunities for passive recreation, active play, and trail linkages. She highlighted steep slopes on the east and west and more usable space in the center. She displayed the proposed site plan and described play opportunities such as an interpretive overlook, ship galleon slide, hillside slide/climb, and play structure. She described opportunities for interpretive signs of the Olympic Mountains, regional island views and ship stack identification system. She commented on the opportunity for a sailboat fleet structure, swings, walking path, and open lawn. She summarized site amenities could include picnic areas, open lawn for unstructured play, picnic and BBQ areas, restroom, benches, and drinking fountains.

Mr. Fiene relayed staff's recommendation of Concept 1 for the walkway and concurrence with the 162<sup>nd</sup> Street Park concept. He pointed out the walkway on the east provided better slope stability and cost \$292,000 less than Concept 2. Staff recommends proceeding with design for Concept 1 walkway for the Meadowdale Beach Road to 162<sup>nd</sup> section (cost estimate \$671,000) and along the frontage of 162<sup>nd</sup> Street Park (cost estimate \$237,000). Staff recommends a separate schedule for the 162<sup>nd</sup> Street Park to North Meadowdale Beach Road section as it was likely too expensive and provided less benefit (cost estimate \$523,000), and recommends not designing the North Meadowdale Road to County Park section as the \$514,000 cost estimate was well beyond the budget and provides limited benefit. Staff recommends designing low cost safety improvements for the North Meadowdale Road to County Park section.

Councilmember Moore inquired about the feedback from the public meeting and how it was incorporated into the design. Mr. Fiene answered there were comments about amenities at the park; attendees liked the walkway concept and alerted staff to another safety issue near 158<sup>th</sup> Street that staff plans to investigate in final design. Councilmember Moore asked if at the time the meeting was held the public was informed both projects may not be possible. Mr. Fiene answered yes.

Councilmember Marin expressed support for the design, particularly the elevated walkway and the sailboat fleet in the park. He noted his original understanding was there would be an asphalt walkway; he preferred the proposed design, finding it would enhance the area and mimic the beauty of the downtown waterfront.

Responding to Councilmember Moore, Mr. Fiene advised the Council would have an opportunity to approve the bid at a later date. Councilmember Moore asked when the engineer's estimate would be available. Mr. Fiene advised there were engineer's estimates for the concept stage; estimates would improve as design progressed. Councilmember Moore was concerned the project could become prohibitively expensive due to increases in construction materials if the design took too long.

Ms. Stafford acknowledged construction costs continued to increase, although because the City completed all the surveys and the base map models, moving from preliminary design to final design would not take very long and the project could go to construction during next summer. She noted there could be delays if a great deal of right-of-way was needed, however, the concept they proposed only required acquisition of right-of-way from one parcel and could be completed without that right-of-way if necessary. Projects could be delayed by utility locating, however, staff intends to involve the utilities early in the design to allow them to move facilities early in the process. She advised their cost estimates were based on bids received in the past two years plus an additional cushion and a 10% escalation. Councilmember Moore remarked two years was a long time in view of recent increases in construction costs. Ms. Stafford replied the City could also bid the project in segments.

Councilmember Moore expressed her support for the project, noting it was a project the City had wanted to construct for a long time. She wanted the public to be aware that pieces of the project may not be constructed due to budgetary constraints.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, THAT THE CITY COUNCIL CONCUR WITH STAFF'S RECOMMENDATION. MOTION CARRIED UNANIMOUSLY.**

Rezone  
Properties  
on West  
Side of  
Sunset Ave

5. **CLOSED RECORD REVIEW ON THE REZONE FROM SINGLE-FAMILY RESIDENTIAL (RS-6) TO OFFICE RESIDENTIAL (OR) FOR PROPERTIES LOCATED ON THE WEST SIDE OF SUNSET AVE. N. AND SOUTH OF BELL ST. THIS IS AN ADMINISTRATIVE REZONE INITIATED BY THE CITY OF EDMONDS TO BRING THE ZONING OF THESE PROPERTIES INTO CONFORMITY WITH THE COMPREHENSIVE PLAN. (FILE NO. R-07-14)**

As this was a quasi judicial matter, under the Appearance of Fairness Doctrine, Mayor Haakenson asked whether any Councilmember had any ex parte communications or conflicts to disclose.

Councilmember Marin disclosed he was friends with Mr. Huston from the VFW and had received a campaign contribution from Mr. Drew. He advised neither would impact his decision in the matter.

Councilmember Orvis disclosed he received a campaign contribution from Mr. Huston and possibly from another party of record in an amount below \$250.

Councilmember Wambolt disclosed he received a small campaign contribution from Mr. Jacobsen.

Councilmember Dawson advised she received similar campaign contributions which would not impact her ability to participate.

Councilmember Plunkett disclosed he received a \$100 contribution from Mr. Jacobsen and \$100 from Mr. Huston.

Mayor Haakenson asked whether any of the parties of record objected to any Councilmembers' participation. There were no objections voiced and Mayor Haakenson advised all Councilmembers would participate.

Planning Manager Rob Chave recalled the Council's extensive process to change the Comprehensive Plan designation for these properties on the west side of Sunset Avenue south of Bell Street. Following the Comprehensive Plan amendment, the Council amended the Development Code to add a new OR (Office Residential) zone. Staff has proposed an administrative rezone due to the Comprehensive Plan designation and creation of the OR zone. The Planning Board held a public hearing and received no comment opposed to the proposed action. The Planning Board recommends the Council approve the rezone.

Mayor Haakenson invited parties of record to provide comment. There were no parties of record present who wished to comment and Mayor Haakenson closed the opportunity for comment by parties of record.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER MOORE, TO APPROVE THE REZONE REQUEST AND DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE FOR COUNCIL ADOPTION.**

Councilmember Dawson expressed her pleasure at the work done by the Planning Board on this matter. She recalled instances in the past when there was little opposition and the record was somewhat incomplete. She appreciated Planning Board Member Freeman in particular for the record created supporting the Planning Board's recommendation. She urged the Planning Board to create a similar record for future matters.

**MOTION CARRIED UNANIMOUSLY.**

Adoption of  
2006  
International  
Building, Fire  
and  
Supplemental  
Code

**6. PUBLIC HEARING ON THE ADOPTION OF THE 2006 INTERNATIONAL BUILDING, FIRE AND SUPPLEMENTAL CODE**

Building Official Jeannine Graf explained every three years the revised International Building, Fire, Plumbing, Mechanical and Supplemental Code was presented to the Council for adoption. She referred to Exhibit 2, a redlined version of Title 19 of the Edmonds Community Development Code, and relayed staff's recommendation that the City Council direct the City Attorney to prepare an ordinance adopting the 2006 International Building, Fire, and Supplemental Code.

Fire Marshal John Westfall was also present to answer questions.

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

**Al Rutledge, Edmonds**, expressed support for adoption of the International Building, Fire and Supplemental Code.

Hearing no further public comment, Mayor Haakenson closed the public hearing and remanded the matter to Council for action.

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MOORE, THAT THE CITY COUNCIL DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE ADOPTING THE 2006 INTERNATIONAL FIRE, BUILDING AND SUPPLEMENTAL CODES. MOTION CARRIED UNANIMOUSLY.**

Development Agreement - 201 5th Ave S (Old Milltown)

7. **PUBLIC HEARING - CONSIDERATION OF A DEVELOPMENT AGREEMENT UNDER RCW 36.70B.170 TO PROVIDE VESTING TO CERTAIN REAL PROPERTY LOCATED AT 201 5TH AVENUE SOUTH, EDMONDS, WASHINGTON (OLD MILLTOWN). THE AGREEMENT COVERS LOTS 1, 2, 3, 4, 5, 6, 37, 38, 39 AND 40, INCLUDING BOTH OLD MILLTOWN AND THE ADJACENT SITE.**

City Attorney Scott Snyder advised the development agreement was proposed by Gregg Development Associates as part of a comprehensive settlement of a Land Use Petition Action and damage suit brought by Gregg Productions Associates. Although the matter had been discussed by the Council in Executive Session, the Council could not reach a decision in Executive Session and because the primary considerations for the settlement agreement was the development agreement, the Council could not make a commitment until there had been a public hearing. This was the public hearing and opportunity for discussion.

Mr. Snyder explained a development agreement was a tool created by the Growth Management Act (GMA) to establish development requirements for particular property. While development agreements could cover a wide variety of subjects, all that was proposed in this agreement was that the property described in the agreement, Old Milltown and adjacent properties, be vested under the City Codes in effect on April 15, 2007, the date of their proposal. The date takes into account newly enacted BD zone requirements as well as changes to the City's Architectural Design Board process. While this was a contractual obligation, a development agreement was appealable under LUPA if it related to development approval. The Council must find the development agreement was consistent with the City's development regulations. The proposed development agreement requests no variations or changes in the development requirements established by City ordinance, only that the current provisions not be amended until January 15, 2008.

Mr. Snyder explained the development agreement had been subject to negotiation between Mr. Gregg's legal counsel and him to insert the language that reserves the City's right to amend its codes if required by public health and safety, a requirement under GMA, and limit the period of vesting to January 15, 2008. He explained January 15, 2008 was the first Council meeting at which a new City Council could take action as new Councilmembers would be sworn in on January 8, 2008. Further, it was practically the soonest the current discussions with the Historic Preservation Commission (HPC), Planning Board and Architectural Design Board (ADB) regarding new design standards for the BD1 zone/Heritage Center could be implemented. He explained the public benefit was determined by the City Council following public input. From his perspective, the proposal was a reasonable solution to the existing situation.

Councilmember Moore asked Mr. Snyder to expand on the existing situation. He responded the rightness/wrongness and public benefit was for the Council to decide. From a cost/benefit point-of-view, the amounts proposed in the settlement agreement were equivalent to what the City would spend on a successful, quick defense. The development agreement has only one condition - assurance that the development rules with regard to Mr. Gregg's property would not change for a period of time, a period of time that was consistent with the length of time for the Council to receive a recommendation and hold public hearings on the changes under consideration. Councilmember Moore summarized the Council would be agreeing in the development agreement not to change the rules even though it was unlikely they would be changed before January 2008 and in exchange Mr. Gregg would drop his lawsuit. Mr. Snyder agreed.

Mr. Snyder suggested Mr. Gregg and his attorney be provided an opportunity to make comment prior to the public hearing. Mr. Gregg advised he would answer questions at the conclusion if necessary.

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

**Joan Bloom, Edmonds**, referred to Mr. Gregg's building at 5<sup>th</sup> & Walnut, the Gregory, calling it a "greedy building" because it occupied nearly the entire lot, partially or totally blocked many residents' views, provided no open space in spite of Mr. Gregg's promises to provide open space, was unwelcoming and uninviting and did not reflect the character and small town feel of Edmonds that citizens want preserved. She was concerned with the City giving Mr. Gregg carte blanche to do whatever he wanted with Old Milltown based on the current design guidelines, particularly the boardwalk. She recalled a quote of Mr. Gregg in the *Edmonds Beacon* that he would withdraw his lawsuit if the Council reached agreement on design guidelines, yet now he did not want to be subjected to the design guidelines. The design of the Gregory demonstrated Mr. Gregg did not understand or care what citizens wanted. She cited the importance of the boardwalk as a gathering place, commenting if Mr. Gregg were allowed to build under the current design guidelines, the building could extend to the sidewalk, eliminating the boardwalk. She encouraged Council not to approve the agreement. She referred to Mayor Haakenson's editorial regarding a citizen who filed a lawsuit against the City at a cost of \$20,000 and asking citizens if they wanted their taxes spent in that manner and stating no good deed goes unpunished. She summarized if Council approved the development agreement, no bad deed would go unrewarded. She was concerned with the City paying Mr. Gregg \$30,000 to drop the lawsuit in addition to legal costs.

**Elisabeth Larman, Edmonds**, expressed her thanks to Mr. Snyder and the Building & Planning Department for answering her questions regarding the proposed development agreement for Old Milltown. She was disheartened by Mr. Gregg's lawsuit, recalling his stated desire to work with the City. She noted Mr. Hertrich and her families' lives and the entire city had been disturbed by Mr. Gregg's lawsuit against all of them. She understood the desire to settle the dispute with Mr. Gregg but did not want it to be at the expense of the City's patrimony. She viewed Old Milltown as a quintessential part of Edmonds, citing the importance of preservation and restoration to many residents including over 1,000 who signed a petition to save the building and have Mr. Gregg adhere to the City's codes and ordinances. She questioned why Old Milltown was included in the proposed development agreement when it was already vested and recommended the Council require Mr. Gregg provide additional information and plans for the proposed buildings on the adjacent lots to the east and south. She summarized only then could the Council make a proper decision regarding settling the lawsuit and ensuring Old Milltown would be refurbished as approved.

**Alan MacFarlane, Edmonds**, voiced his concern with the area of Old Milltown in the southwest corner bordered by 5<sup>th</sup> Avenue South on the west and Maple Street on the south, the boardwalk area. He noted this wonderful, open space area was a symbol of historic Edmonds and needed to be retained as it currently exists. He cited the importance of the boardwalk area because it drew people to the downtown area, people drawn downtown spend money in downtown stores, and removing the boardwalk area would result in lost revenue and other negative impacts. Pointing out the City did not have a City Square, he urged the Council to retain "this little park" to draw people to downtown Edmonds.

**Roger Hertrich, Edmonds**, provided copies of plan review documents for the present Old Milltown project, pointing out the Engineering Department had 34 questions and the Building Department had 44 questions. He referred to the Building Official's statement that the project was considered a redesign, noting what originally was presented to the Council was being changed. He cited several questions/requests for information posed by staff including information on demolition phases 2 and 3, site plan difficult to read, prints difficult to read, alternate design for glulam beams and the need for height calculations, parking requirements, floor plan of the basement, and details of the east wall and rooftop mechanical equipment. He noted the number of questions, changes and issues raised question with how Mr. Gregg operated. He recommended omitting Old Milltown from the agreement as it was already vested and requiring Mr. Gregg submit a concept of his plans for the

remainder of the site. He referred to an Engineering Department comment that it appeared the building was set up for a third floor of residential. In his view the City was giving away more than it got with the agreement. He recommended holding another public hearing after Mr. Gregg submitted a concept of his plans for the site. He was concerned Council was doing planning in Executive Session, noting the development agreement was scheduled for a public hearing long before any information was available to the public.

**Al Rutledge, Edmonds**, agreed discussions should have been held in open meeting. He commented the City's concern was cost but another consideration was the character of downtown. He referred to higher building heights and increasing retail activity on Hwy. 99.

**Finis Tupper, Edmonds**, questioned whether this was a quasi judicial hearing, remarking if it was, Mayor Haakenson had not asked for Council disclosures. He found the use of a development agreement in this circumstance inappropriate, pointing out the number of criteria provided in the RCW, yet the development agreement was only used for one - to allow Mr. Gregg to vest the property. He expressed concern with the City Attorney allowing the State legislature to usurp local land use rules; questioning the opportunity for public participation to adopt this land use tool in Edmonds. He noted there were numerous land use tools in the RCW that the City had not adopted, for example the City adopted the Hearing Examiner method but had eliminated the Board of Adjustment. He found it inappropriate not to include the public in the process and for the Council to make decisions in Executive Session that changed land use laws.

Hearing no further public comment, Mayor Haakenson closed the public participation portion of the public hearing. Mr. Gregg was again provided an opportunity to speak which he declined.

In response to Ms. Bloom's and Mr. Hertrich's assertions that the development agreement gave Mr. Gregg carte blanche to do whatever he wanted, Mr. Snyder assured the only thing the development agreement provided was that Mr. Gregg had until January 15, 2008 to submit plans under the codes that exist in the City. He was receiving no waivers, no variances, and must follow the same process to develop the property. In regard to Mr. Hertrich's suggestion that Mr. Gregg be required to present plans, Mr. Snyder advised if Mr. Gregg could present plans, he could vest under the code and did not need the development agreement. He reiterated January 15, 2008 was approximately the same period of time it would take to adopt new development regulations.

In response to Ms. Bloom's comment that the City was paying Mr. Gregg \$30,000 in addition to legal costs, Mr. Snyder explained the amount proposed to be paid was approximately the amount to win the lawsuit. With regard to Ms. Larman's desire to preserve patrimony, he explained settling the lawsuit would ensure Mr. Gregg's design as approved and underway, that Ms. Larman fought for, would be built. With regard to Mr. MacFarlane's desire to preserve the open space, Mr. Snyder explained under current City ordinance, development in the downtown area was lot line to lot line. If the City attempted to regulate and prohibit development lot line to lot line, it must purchase the property via a direct purchase or inverse condemnation.

With regard to Mr. Hertrich's comments about questions raised by Engineering and Building Departments regarding the design under construction, Mr. Snyder advised to his knowledge there had been no revisions to the design approved by the ADB. He noted Old Milltown was a very old building and things were discovered as construction got underway. He suggested the Council direct questions with regard to the building permit to Development Services Director Duane Bowman.

With regard to the allegation that something occurred in Executive Session, Mr. Snyder advised once the process was concluded, all Executive Session minutes would be available to the public. As the minutes would reveal, he was very clear to the Council when this was discussed that a settlement proposal had been presented to the Council; the settlement proposal depended upon passage of the development agreement. He assured he had not polled the Council and only sought reactions and feedback regarding negotiating the terms. He had advised the Council they could not make a decision in Executive Session and that they should not give direction

regarding the development agreement. The Council was not asked their opinion regarding the development agreement in Executive Session as that could only be done in open session after a public hearing.

Mr. Snyder referred to Mr. Hertrich's assertion that the Council was taking action in Executive Session, explaining as soon as the Executive Session was complete the City Clerk showed a development agreement and settlement agreement on the extended agenda and notice of the public hearing was provided to property owners, published and posted on the City's website. The development agreement and settlement agreement terms were being negotiated between Mr. Gregg's attorney and him; as soon he received a final development agreement, within ten minutes it was provided electronically to Mr. Hertrich's attorney, Ms. Larman, the City Clerk, the Enterprise, and was posted on the City's website. Within an hour it was available for public review.

With regard to amending by statute, Mr. Snyder explained the Hearing Examiner statute specifically provides that if the City Council adopts a Hearing Examiner system, it is done via ordinance. The GMA provides for a development agreement which is a legislative decision unless the agreement addresses a development approval. He acknowledged the development agreement contained only one of the 8-9 issues that could be addressed by a development agreement. He reiterated Mr. Gregg received no waivers, variances, fee reductions, etc. via the agreement, only assurance that the rules related to his development of the property would not change.

Development Services Director Duane Bowman advised the comments the Council was provided were plan review comments for a building permit which was not a quasi judicial matter but a matter between the Building and Planning Department with a permit applicant as they proposed a project. The City's review comments drew from the permit submittal; the applicant was required to respond to ensure when the permit was finalized they were compliant with adopted codes. The comments had nothing to do with the development agreement. The developer was required to comply with all City Codes and the ADB's review.

Councilmember Wambolt asked Mr. Snyder to clarify that this was not a quasi judicial hearing. Mr. Snyder advised a development agreement could fix specific requirements and address specific approvals. When that occurred, it was subject to LUPA review. In this instance, a permit would follow the development agreement which would be quasi judicial. The proposed development agreement was a legislative decision on a proposed contractual element.

Councilmember Wambolt referred to Mr. Hertrich's suggestion that the development agreement only cover the portion of the property to the south and not the portion for which a permit was being sought. He asked whether that would be advantageous to the City. Mr. Snyder responded Mr. Gregg could apply for a new approval but would do so under the new code provisions which were more restrictive than the old code provisions. He noted one of the advantages of settling the lawsuit was citizens would be assured the second plan which Ms. Larman and Mr. Hertrich fought for would be constructed. He acknowledged Mr. Gregg could stop at any time and file a new application but did not view that as a good business practice.

Councilmember Orvis asked whether the development agreement would preclude the Council from purchasing any section of these properties to preserve open space. Mr. Snyder answered no, commenting if the City wanted to preserve open space on a lot line to lot line project or create a public meeting place/square, the City's obligation would be to condemn or purchase it via negotiation; anything else would be an unconstitutional taking of property.

Councilmember Dawson commented the development agreement provided some degree of assurance that the second plan that the citizens fought for would be built. She noted the current plan was still somewhat in play legally speaking due to the lawsuit; if Mr. Gregg were to prevail in that lawsuit, presumably he could proceed with the first plan. She asked what assurance the development agreement provided that the second plan would be built? She inquired whether there was anything in the agreement that precluded Mr. Gregg from taking the money in the settlement and reapplying for the first plan again or if that was precluded due to the dismissal with

prejudice provision? Mr. Snyder stated the lawsuit and damage claims relating to the first process would be at an end. Mr. Gregg, like any other applicant, could stop work on the project although that would be questionable from a business point of view as the new process would take at least 120 days during which time the building would need to be preserved or demolished. He advised there was no legal reason why Mr. Gregg could not abandon the design and start over although there were many practical reasons.

Councilmember Dawson asked Mr. Gregg why the portion of the property that was already vested and in the process of construction was included in the development agreement. **Bob Gregg** stated that question was not raised by any of the attorneys during negotiation and he objected to revising the development agreement at this point due to concern with unintended consequences of making last minute revisions. He assured he had not asked for anything in the development agreement that was not already provided on April 15. The City, via a very public process, took several years including 2-3 years of building moratoriums to develop the code. His request was that the code not be changed for a period of time to allow him sufficient time to develop plans under stable, unchanging rules. He noted they originally requested 12-18 months and Mr. Snyder asked for seven months. He commented that he was unaware that the appeal of an appeal was litigation; therefore, although he was being accused of suing, he was only exercising his right to an appeal of an appeal. He commented the settlement agreement was a windfall to the City. He concluded he was not interested in reopening/renegotiating the development agreement due to concern with unintended consequences. Mr. Gregg stated if he wanted to withdraw and resubmit Plan 1, he would have every right to do so, subject to appeal. He assured they had absolutely no intention of doing so.

If the answer was it was unintentional that the portion of the property that was already vested was included in the development agreement and he had no intension of resubmitting plans for Old Milltown, Councilmember Dawson was unclear why Mr. Gregg would not agree to strike that portion of the agreement, particularly as he had every right to resubmit notwithstanding a development agreement. She asked Mr. Gregg why he would not agree to strike that portion of the development agreement if it would make everyone more comfortable and if the Council's purpose was to ensure the second building plan was built rather than another version the public may not approve of. Mr. Gregg asked why the Council did not assure him the rules would not change for six or ten months.

Councilmember Dawson answered assuming the Council could assure him the development rules would not change for six months which she noted was unlikely anyway, would he then agree to strike that portion of the agreement. Mr. Gregg answered no, not during an election year. Councilmember Dawson clarified Mr. Gregg would not assure he would not submit a different plan than the one that had been approved. Mr. Gregg answered he would give the same assurance if the City would not change the rules in the meantime. Councilmember Dawson clarified the Council was agreeing to one thing but he was not agreeing to the other by not agreeing to strike it from the development agreement.

Councilmember Plunkett did not understand the applicant's concern about the rules changing, commenting the point of vesting was once an application was made, the Council could change the rules and the applicant continued to build under the code that was in place when the project vested. He asked whether the applicant was vested regardless of changes that may be made to the code. Mr. Snyder explained under State law an applicant was vested when a fully completed building permit application was submitted. The City Code also provides for vesting of the design via the ADB process and in this case a design had been vested. Mr. Gregg could file an ADB or building permit application to vest the other portions of the project at any time.

Councilmember Moore asked Mayor Haakenson his recommendation with regard to the development agreement. Mayor Haakenson read staff and his recommendation from the Agenda Memo, "This development agreement is associated with the proposed settlement agreement. If the City Council, after taking public testimony, is inclined to approve the agreement then the Mayor should be authorized to sign the development agreement," summarizing it was a policy decision for the Council to make. He noted it appeared based on this

Council's history of legislative deliberation, the Council would not approve any new codes between now and January 2008 and it appeared Mr. Gregg was concerned about the rules changing before January 2008. He referred to Mr. Snyder's indication that this was a fair settlement, it protected Mr. Hertrich and Ms. Larman's desire for the building to be built as they fought for, it was a win for the City from a financial standpoint and the City did not give up anything to Mr. Gregg that he did not already have.

Councilmember Plunkett referred to Mayor Haakenson's statement that the building would be constructed based on the second plan, yet although Mr. Gregg stated that was his intent, he would not commit to that in the development agreement. Mr. Gregg advised the building permit application was subject to design review that was approved, Plan 2 was what they were currently proceeding with. He noted any time an applicant submitted an application, various City departments conducted due diligence over an approximately 28 day review period. In his experience in Edmonds and other jurisdictions, the result was not a permit but a list of questions about the application that was submitted, in this instance a list of 117 questions. He noted the HPC, ADB and Planning Board when proposing code revisions needed to consult with staff as there were numerous items that those groups wanted that could not be done.

Councilmember Plunkett stated Mr. Gregg's intent was to build the second plan but in his discussion with Councilmember Dawson he was unwilling to commit to that in the development agreement. Mr. Gregg agreed, commenting he was not happy with Plan 1, feeling it was rushed. He noted Plan 2 resulted in an extreme conflict - the ADB and the approved process did not allow the storefronts to be extended to the sidewalk. His intent was to leave it because they could not remodel it to make it functional and practical. He noted many of the 117 questions were in regard to the unused portion to the east which he noted could not be left alone and needed to be brought up to code. He expressed frustration that despite the fact they could not remodel it, it had to be brought up to code. The reason he did not want to commit was because they did not have Plan 2 flushed out yet and needed time to do so. He noted the voluntary pre-conference with the ADB had been replaced by a two-stage process. If they came with their plans "on the back of an envelope" in an effort to get a great deal of public input and then have more specific plans developed, he envisioned emergency Council meetings to amend the code. He concluded they were moving forward with the plan that was approved under the old code; if he were to withdraw it and change it and return to Plan 1, it would be under the new code. He commented if he resubmitted Plan 1, it would likely be approved as it was approved by staff twice, approved by the ADB twice, remanded by Council once and rejected by Council once in a decision that he felt was in error. Without the graciousness of the settlement agreement, Plan 1 would be approved and the City would be paying \$250,000.

Mr. Snyder summarized the appeal of the rejection of Plan 1 would be dropped under the settlement agreement. Mr. Gregg agreed "Plan 1 is dead;" if he wanted to reactivate Plan 1 he would have to go back through the entire process and under the current code. Mr. Snyder summarized Plan 2 would remain vested and Mr. Gregg was reserving the right to stop construction and reapply and go through the entire process again.

Councilmember Wambolt asked whether a project was vested when the building permit was applied for or when it was approved. Mr. Snyder described how projects could vest including when a fully completed building permit application with a fee was filed with the City, via multiple approval processes, via an alternative vesting provision for ADB applications and via a development agreement under GMA. He noted Old Milltown Plan 2 design was vested by application.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT OLSON, TO AUTHORIZE THE MAYOR TO SIGN THE DEVELOPMENT AGREEMENT.**

Councilmember Marin relayed his experience as a general contractor building new homes in 13 jurisdictions and his frustration with inspections that differed in each jurisdiction. The development agreement was an opportunity to provide certainty that the rules would remain the same, an opportunity for Mr. Gregg to withdraw

gracefully from the lawsuit and an opportunity to conclude the lawsuit in a manner that was equitable to the City. He expressed his support for the development agreement.

Council President Olson expressed her support for the development agreement, commenting in a negotiation both parties need to feel they are getting something. She liked that Plan 1 would be dead and the building would be built in accordance with Plan 2. Further, the City was not giving anything away and the matter would not go to court with both sides spending a great deal of money. She viewed the development agreement as a good compromise.

Councilmember Wambolt agreed with Ms. Bloom's aversion to giving away \$30,000, noting the alternative as described by Mr. Snyder was worse, possibly losing the lawsuit which would cost the City a great deal more than legal fees. Although there were pros and cons, in view of the recommendation from the City Attorney, he would support approval of the development agreement.

Councilmember Dawson agreed it was unlikely the development rules would be changed between now and the time period referenced in the development agreement. She acknowledged even if the Council agreed now, it would be difficult to adopt them by January 2008 based on past practice, the Planning Board's schedule, etc. She commented when she first reviewed this matter she felt the City was not giving up anything because there were no plans to change the rules and she could appreciate Mr. Gregg's desire for certainty with regard to the portion of the building that was not currently in process. Although she originally planned to vote in favor of the development agreement, Mr. Gregg had convinced her otherwise tonight. She was no longer persuaded the City was getting anything from the development agreement because she was no longer convinced based on Mr. Gregg's comments that the second plan would be built. She was concerned that if the Council approved the development agreement and the settlement agreement, this particular lawsuit could be dropped, the City would pay \$30,000 and Mr. Gregg could institute another plan and the City could not preclude it. She acknowledged Mr. Gregg could do that regardless of whether the Council approved the development agreement. She was concerned with Mr. Gregg's unwillingness to exempt Old Milltown from the development agreement. She was willing to refer the matter for further negotiations and could agree to the development agreement if the portion of the site that was already vested were removed but could not approve the development agreement as proposed.

Councilmember Moore commented she did not attend the Executive Session where this was discussed and noted apparently during the Executive Session there was some direction from the Council to the City Attorney to craft the development agreement. As she did not attend the Executive Session and did not know what had transpired, she planned to abstain from the vote.

Councilmember Dawson assured there was no decision made by the Council in Executive Session. There was direction given to the City Attorney to negotiate a development agreement and return for a public hearing. Once this matter was concluded, the minutes would clearly indicate that that was all the Council, as appropriate under the law, had done. Councilmember Moore responded she did not intend to imply a decision was made but that some direction was given to the City Attorney. Mr. Snyder cautioned the Council against discussing what had occurred in Executive Session. He explained he had an ethical obligation to present a settlement agreement made to him to the Council as his client. The proposal was made by Mr. Gregg and his attorney and discussed with the Council in Executive Session. He assured no member of the Council indicated a position on the development agreement because from the first Executive Session, the Council was informed they could not do so in Executive Session. He urged Councilmember Moore to consider voting, advising that she, like all Councilmembers, must make a decision based on the public hearing and the documents provided. He assured no member of the Council had any information that Councilmember Moore did not.

Councilmember Dawson noted it was a Councilmember's prerogative to vote yes, no or abstain. She supported Councilmember Moore obtaining additional legal advice from Mr. Snyder if necessary prior to the vote. Councilmember Moore answered that was unnecessary.

Councilmember Plunkett commented the only way a Councilmember could abstain was if he/she did not have sufficient information. He asked whether Mayor Haakenson could vote if Ms. Moore did not. Mr. Snyder answered Mayor Haakenson could vote on the development agreement; he could not vote on the passage of an ordinance, letting of a franchise or appropriation of funds. He clarified Mayor Haakenson could not vote on the settlement agreement.

**UPON ROLL CALL, MOTION CARRIED (5-2), COUNCIL PRESIDENT OLSON AND COUNCILMEMBERS MOORE, PLUNKETT, MARIN, AND WAMBOLT IN FAVOR; AND COUNCILMEMBERS ORVIS AND DAWSON OPPOSED.**

Gregg v.  
Edmonds  
Settlement  
Agreement

**8. APPROVAL OF SETTLEMENT AGREEMENT - GREGG PRODUCTIONS, INC. V. CITY OF EDMONDS; CONTINGENT ON APPROVAL OF AGENDA ITEM 7.**

City Attorney Scott Snyder advised the terms of the settlement agreement were in the record. The settlement agreement was presented with his and Washington Cities Insurance Authority's recommendation. The \$30,000 payment was approximately equivalent to the cost of winning a LUPA and avoided damage claims on summary judgment in a best case scenario. In his view it was a wash with regard to cost. He noted the third item in the settlement agreement was the City would treat Mr. Gregg fairly in the permit process as was the City's obligation with respect to every applicant.

**COUNCILMEMBER MOORE MOVED, SECONDED BY COUNCILMEMBER MARIN, TO APPROVE THE SETTLEMENT AGREEMENT**

Councilmember Plunkett advised the reason he voted in favor of the development agreement was the money and the code. He noted the code was vague and he was not confident it would stand up to a challenge. He explained the reason historic design standards for downtown were being created was to be able to require future projects to meet historic design standards.

**MOTION CARRIED (5-2), COUNCIL PRESIDENT OLSON AND COUNCILMEMBERS MOORE, PLUNKETT, MARIN, AND WAMBOLT IN FAVOR; AND COUNCILMEMBERS ORVIS AND DAWSON OPPOSED.**

**9. AUDIENCE COMMENTS**

Sidewalk  
on 164th St

**Jesse Scott, Edmonds**, urged the Council to favorably consider the next agenda item, award of the contract for the sidewalk on 164<sup>th</sup> Street. He explained the project was actually a rework of the roadway in an attempt to resolve a safety issue. He pointed out recently an Edmonds fire engine was unable to negotiate the turn, the only access to an area of 150 homes, wedging itself on the hill. A Lynnwood fire truck approached from the opposite direction and responded. His major concern was children walking on the street on their way to school, commenting it was only a matter of time before a child was injured. He recalled engineering work for the project was approved three years ago but a contract was not approved. Last year he appeared before the Council with a petition from homeowners urging the Council to take action. At that time the Council approved it but no contract was approved. He noted the Council's inaction had cost citizens approximately \$300,000 as the cost of the project was now \$525,000. He was unconcerned about the funding as it was from the same source for a \$945,000 sidewalk that led to the North Meadowdale County Park. He expressed concern with the \$345,000 the Council approved for the 162<sup>nd</sup> Street park, only four blocks from the County Park. He urged the Council to use common sense and favorably consider the 164<sup>th</sup> Street sidewalk project.

Appreciate  
Council  
Hard Work

**David Page, Edmonds**, expressed concern with members of the public who complained about the Council in the press where the Council had little ability to respond. Although he disagreed with the Council on occasion and acknowledged the Council sometimes made mistakes, he appreciated their hard work and dedication.

SW  
Edmonds  
Neighbor-  
hood

**Al Rutledge, Edmonds**, thanked Councilmember Marin for attending the Kiwanis Club meeting. He provided an update regarding the Snohomish County Superior Court decision on the SW Edmonds Neighborhood Park

and the 21 day appeal process. Next, he inquired about the fence around the old Woodway Elementary School playfields and recommended it be removed immediately. He also referred to a Hearing Examiner meeting regarding a new 27-home development.

Old Milltown

**Elisabeth Larman, Edmonds**, thanked Councilmember Dawson and Councilmember Orvis for their courage with regard to their vote on the development agreement and settlement agreement. Next, she pointed out the proposed park in front of the boardwalk was not City property and was concerned the City could lose that property. She challenged Councilmember Moore to spearhead the effort to preserve that park.

Old Woodway Elementary

**Gary Humiston, Edmonds**, commented on the fence around the fields at the old Woodway Elementary School playfields. As it appeared people continued to use the fields, he and others should be allowed access. He inquired about the location of the gate to access the field and whether the Interlocal Agreement for the fields remained in effect.

Appreciate Council Work

**Kevin Clarke, Edmonds**, recalled the opportunity to serve on a Commission with a great deal of controversy, the Citizens Commission on Salaries for Elected Officials, commenting much could be learned from the Pirates Council in *Pirates of the Caribbean III*. He noted the Council addressed many difficult issues, yet were often crucified in the press for those decisions. He commented on his experience driving behind the procession for Police Chief Stern and his pride at being a resident of Edmonds. He expressed his thanks to the Council for all they do.

Old Woodway Elementary

**Steve Bernheim, Edmonds**, stated no one impugned the motives of the Council but they were not excused from making gross errors. He recalled being the victim of the erroneous application of a law for the construction of a building illegally approved contrary to the unambiguous words of the code. He asserted the City attempted to create a sense of ambiguity to allow construction of 3-story buildings. Next, he recalled hearing that the cost of the old Woodway Elementary school property was \$16 million when in reality the cost for the entire site was \$8 million and only \$4 million for the property the City did not purchase. He then commented on the fence at the old Woodway Elementary school, pointing out that area was still listed as a park in the Chamber of Commerce publication. He summarized additional density and elimination of open space was a formula that did not increase the residents' well being. He concluded not purchasing the entire parcel was a mistake.

Gregg v. Edmonds Settlement Agreement

**Roger Hertrich, Edmonds**, thanked Councilmember Dawson for her reaction to Mr. Gregg's comments. He expressed concern with Mr. Gregg's unwillingness to negotiate and the Council's decision not to try to get more from Mr. Gregg. He referred to the current empty condition of Old Milltown, asserting it was awaiting more changes by Mr. Gregg. He noted Mr. Gregg never described his plans for the south end and he anticipated the current parking would be third story condominiums in the future with excavation below for parking. He anticipated the project would continue to grow and change.

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

**10. REPORT OF BIDS OPENED ON MAY 8, 2007 FOR THE 164TH STREET SW WALKWAY AND THE 74TH PLACE WEST DRAINAGE IMPROVEMENTS PROJECTS AND AWARD OF CONTRACT TO TRIMAXX CONSTRUCTION, INC. (\$545,565.00)**

City Engineer Dave Gebert explained due to the proximity of these projects in the Meadowdale area and similarities in the work, they were combined into one project. Bids were opened on May 8; three bids were submitted, all above estimates. The low bid was \$545,646; the engineer's estimate was \$318,878. The invitation for bids included two projects: Schedule A - 164<sup>th</sup> Street SW walkway and Scheduled B - 74<sup>th</sup> Place West drainage improvements.

164<sup>th</sup> Street SW Walkway

Mr. Gebert explained this had become a more expensive project than originally anticipated 12-18 months ago and in 2002-2003 when the project was designed. The low bid for Schedule A, the walkway portion of the bid,

was \$412,686, the engineer's estimate was \$255,135 and the budget in Fund 125 Parks Improvement was \$270,000. The reason the project had become so expensive was the current bidding climate as well as project scope. With regard to the current construction industry bidding climate, he explained the construction industry was experiencing rapidly escalating bids, especially on public projects. He recalled a recent Sound Transit station that received one bid for \$90 million and the engineer's estimate was \$50 million. He noted before advertising for bids the engineer's estimate was reviewed and updated, however, it appeared the amount did not accurately account for the market conditions and degree of difficulty anticipated by bidders.

With regard to project scope, Mr. Gebert explained the site of this project has very challenging topography; 164<sup>th</sup> Street SW is a steep, narrow, curving road, with steep slopes on both sides and there is insufficient space to install a sidewalk that would meet current safety standards. He displayed several photographs that illustrated the topography on the site. He summarized that although this was a walkway project, installation of the sidewalk required major road reconstruction including significant excavation, reconstruction, widening of the road, relocation of a water main, and installation of a retaining wall. In addition, construction of sidewalks requires compliance with current Federal standards for ADA curb ramps, which requires additional reconstruction at the intersection of 164<sup>th</sup> Street SW and North Meadowdale Road, where the current configuration is a very sharp and steep turn.

Because 164<sup>th</sup> Street SW is the only public road providing access to this neighborhood of approximately 150 homes, traffic flow must be maintained during construction. This results in significant traffic control costs. He concluded this walkway project in essence had become a road reconstruction project. He displayed a drawing illustrating the sidewalk, retaining wall, excavation and reconstruction, guardrail, and ADA curb ramps.

Mr. Gebert reviewed options considered by staff:

- Adjustments to the scope or design to reduce the cost by change order - staff was not able to identify any significant cost reductions within the current design
- Reevaluate other design alternatives previously rejected - any significant redesign would require deferring the construction a year (due to the steep slopes and the need to perform construction in this location during dry summer months) and rebidding the project, and would involve additional design costs, with no assurance at this point of a less expensive project.
- Defer the project and advertise for bids again next year - no basis for expecting a better bidding climate next year.
- Install the sidewalk only - staff concluded a safe sidewalk could not be constructed without all the roadway reconstruction

After careful review by staff, Mr. Gebert advised the following practical options were identified:

1. Appropriate additional funds and award the contract
2. Cancel the project for this year, review redesign alternatives, redesign as appropriate, and advertise for bids again next year
3. Cancel the project completely

He explained to award a contract to the low bidder for Schedule A (164<sup>th</sup> Street SW Walkway) would require approximately \$495,500 which includes the bid amount and contingency, engineering, material testing, public art, etc. The budget for the walkway portion was \$270,000; an additional \$225,500 was necessary to award the project. He described funding sources considered and staff's conclusion that the road was seriously deteriorated and needed to be repaved soon, whether or not a sidewalk was constructed. He displayed several photographs illustrating the poor condition of the roadway. For that reason and because the project included a number of road reconstruction items, if Council wants to proceed with the 164<sup>th</sup> Street SW Walkway project, staff recommends moving forward \$225,500 of the \$550,000 budgeted in 2008 in Fund 125 (REET2 Transportation Projects) to 2007 to fund the 164<sup>th</sup> Street SW Walkway project instead of citywide street overlays.

### 74th Place West Drainage Improvements

Mr. Gebert explained this was an emergent drainage problem identified subsequent to preparation of the 2007-2008 capital budget. The funds required to award the contract are \$158,000 which includes the contract bid amount as well as contingency, construction engineering, etc. There is \$70,000 included in the 2007 capital budget for general Meadowdale drainage projects. An additional \$88,000 is required to award Schedule B for the 74<sup>th</sup> Place West Drainage Improvements project. There is sufficient cash balance in Fund 412 for utilities capital projects.

Mr. Gebert relayed staff's recommendation that the Council appropriate the additional \$225,500 from Fund 125 (REET 2 Transportation Projects) for the walkway and appropriate an additional \$88,000 in Fund 412 200 and award the contract to Trimaxx Construction, Inc. in the amount of \$545,565.

Councilmember Wambolt asked whether it would be impractical to award the two contracts to two different contractors. Mr. Gebert answered that would not be ethical; the City's procedure was the lower bid was based on the total of the schedules. Councilmember Wambolt questioned why the projects were bid separately if they could not be awarded separately. City Attorney Scott Snyder explained the schedules were bid as one project and the project would need to be rebid to separate the schedules.

Councilmember Wambolt reiterated this was two different projects. Mr. Gebert explained it was bid as one contract and one bid invitation. Councilmember Wambolt noted Trimaxx was the lowest in total but not the lowest on either schedule. Mr. Gebert explained the projects were bid together as they were in close proximity and due to the need to coordinate the traffic control between projects. Councilmember Wambolt asked whether the bidders' understanding was they would be awarded the entire project or nothing. Mr. Gebert answered yes, noting another option would be to award only one schedule.

Councilmember Moore stated although she understood the construction industry climate, staff knew the difficulty with regard to the scope of the project. She asked why the engineer's estimate was far below the bids. Mr. Gebert stated staff considered the scope in the estimate but underestimated the unit prices for the quantities. Councilmember Moore pointed out the difference between the bid and the engineer's estimate for traffic control, recalling the traffic control was under-estimated in another project. Mr. Gebert advised the engineer's estimate of \$20,000 for traffic control would typically be a very large amount; the bid was \$38,000. Because this was an isolated location and trucking costs were expensive, the bidders viewed it as a more difficult and complex project. He noted the Council would soon be provided a bid for the 100<sup>th</sup> Avenue slope stabilization where the low bids again were considerably higher than the engineer's estimate. He noted some of the engineer's estimates were developed by staff and others were developed by consultants. Staff met today with the low bidder on the 100<sup>th</sup> Avenue slope stabilization project to determine if there were ways to reduce the cost. The contractor informed him they no longer take into account the engineer's estimates when bidding a project.

Councilmember Moore asked what would be sacrificed by reallocating these funds. Mr. Gebert answered overlays in other areas. The rationale for the funding source was much of the project was road repair and road reconstruction. Councilmember Moore asked what other roads would not receive an overlay if this project were financed from that funding source. Mr. Gebert answered that had not yet been determined.

Councilmember Plunkett asked why staff did not recommend review of design alternatives. Mr. Gebert answered redesign would result in a one year delay as the work must be done during summer months, there was no assurance the project costs would be less, and there would be additional costs to redesign the project. He explained during the design process in 2002-2003 several design alternatives were considered and rejected. Councilmember Plunkett asked if there were other design alternatives that could be reviewed. Mr. Gebert explained factors considered in rejecting the other alternatives included geotechnical issues due to unstable soils, degree of difficulty transitioning a sidewalk to North Meadowdale Road, safety issues and cost factors. He

summarized the result of reviewing design alternatives was additional cost for redesign and advertising, a one-year delay, and only possibly a less expensive project.

Councilmember Wambolt recalled REET 2 collections in excess of \$750,000 were allocated to Fund 125 and those funds had generally been stronger than projected. Therefore other overlays may not need to be delayed.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, THAT THE COUNCIL APPROPRIATE AN ADDITIONAL \$225,000 IN FUND 125 (REET 2 TRANSPORTATION) AND AN ADDITIONAL \$88,000 IN FUND 412-200 (DRAINAGE PROJECTS), AND AWARD A CONTRACT TO TRIMAXX CONSTRUCTION., INC. IN THE AMOUNT OF \$545,565.00 FOR THE 164<sup>TH</sup> STREET SW WALKWAY AND THE 74<sup>TH</sup> PLACE WEST DRAINAGE IMPROVEMENT PROJECTS.**

Councilmember Orvis expressed support for the motion, commenting although it was a difficult decision, this roadway served an entire neighborhood and he did not envision the project getting less expensive.

Council President Olson acknowledged these were expensive projects but she supported them. She noted it was the Council's responsibility to ensure neighborhoods were accessible.

Councilmember Moore agreed this was a necessary improvement and was a high priority. She was concerned the engineer's estimates would need to be doubled or tripled in the future, an issue that needed to be considered during preparation of the budget. She pointed out the importance of developing a strategic plan to identify the source of funds in the future.

Councilmember Marin commented it was difficult for the engineer to estimate staging and sequencing. He anticipated the contractor would have difficulty identifying a staging area nearby to store materials and equipment as well as have difficulty sequencing the project.

Councilmember Wambolt commented the estimate for demolition of the old Woodway Elementary was a fraction of the estimate, and the City was saving several hundred thousand dollars.

**MOTION CARRIED UNANIMOUSLY.**

**11. MAYOR'S COMMENTS**

Mayor Haakenson commented that although the Council would always be asked to do due diligence to reduce costs, it was apparent costs would continue to increase and the Council must consider the source of funds to cover these increasing costs.

**12. COUNCIL COMMENTS**

Council President Olson wished Councilmember Wambolt a belated Happy Birthday on June 1. She also commended the Noon Rotary for the Waterfront Festival, remarking events such as the Festival are a great way to promote Edmonds.

Waterfront  
Festival

Councilmember Wambolt referred to Mr. Bernheim's comments regarding the elimination of open space, explaining the City was eliminating buildings, not open space. With regard to Mr. Hertrich's assertion that the Council did not gain anything from settling the lawsuit with Mr. Gregg, he pointed out the benefit to the City was the lawsuit was dropped. Although he had some of the same reservations about Mr. Gregg due to his past performance, he believed the development agreement and settlement agreement made the best of the situation.

Develop-  
ment and  
Settlement  
Agreement

Councilmember Dawson relayed that her husband and she played tennis at Seaview Park and took a walk on the Edmonds beach this weekend which made her feel like she was on vacation in her own town. She remarked on what a wonderful place Edmonds was and felt blessed to live here.

Health  
District

Councilmember Marin reported flu season was winding down and the West Nile Virus season was beginning. He described the Health District's program that included the collection of dead birds that were inspected for West Nile Virus infection as well as the trapping of mosquitoes to determine whether they were the variety that carried West Nile Virus. He explained only the female of one variety carried the virus. He advised when the Health District identified a location that was a vector for the virus, the city was contacted and informed where larvaeside may need to be placed.

Old  
Woodway  
Elementary

Councilmember Moore inquired about the fence on the old Woodway Elementary School site. Mr. Clarke advised it was on the developer's property.

Special  
Olympics

Student Representative Callahan reported Special Olympics Washington concluded this weekend. He volunteered for the Edmonds School District Special Olympics team and urged the public to volunteer. Next, he remarked much of high school literature was intended to teach students that doing the right thing was always right in the long run. He commented people visited Edmonds because of its uniqueness - a small, friendly town with a true downtown with buildings from a bygone era. He feared that faced with a difficult decision tonight, the majority of the Council disregarded the opportunity to do the right thing. He urged the Council not to lose sight of what Edmonds meant to the region.

### 13. ADJOURN

With no further business, the Council meeting was adjourned at 10:11 p.m.