

# EDMONDS CITY COUNCIL APPROVED MINUTES

## August 28, 2007

Following a Special Meeting at 6:15 p.m. for an Executive Session regarding pending litigation, 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  
Richard Marin, Councilmember  
Mauri Moore, Councilmember  
Deanna Dawson, Councilmember  
Dave Orvis, Councilmember  
Ron Wambolt, Councilmember

### STAFF PRESENT

Al Compaan, Acting Police Chief  
Duane Bowman, Development Services Director  
Brian McIntosh, Parks & Recreation Director  
Rob Chave, Planning Manager  
Scott Snyder, City Attorney  
Bio Park, Ogden Murphy Wallace  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

### 1. APPROVAL OF AGENDA

Change to  
Agenda

Mayor Haakenson advised Agenda Item 3 (Presentation regarding the Military Family Friendly Employer Program, and Proposed Resolution Declaring Edmonds to be Military Family Friendly and Encouraging Area Businesses to Become a Military Family Friendly Employment Partner) and Consent Agenda Item E (Authorization for the Mayor to Sign a Second Amendment to the Interlocal Agreement for Vehicle Maintenance Services between the City of Edmonds and the Town of Woodway, Decreasing the Vehicle Shop Rate) would be removed from tonight's agenda and rescheduled for a future meeting.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO APPROVE THE AGENDA IN CONTENT AND ORDER AS AMENDED. MOTION CARRIED UNANIMOUSLY.**

### 2. CONSENT AGENDA ITEMS

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

Roll Call

**A. ROLL CALL**

Approve  
8/20/07  
Minutes

**B. APPROVAL OF CITY COUNCIL MEETING MINUTES OF AUGUST 20, 2007.**

Approve Claim  
Checks

**C. APPROVAL OF CLAIM CHECKS #98471 THROUGH #98629 FOR AUGUST 23, 2007 IN THE AMOUNT OF \$500,868.04. APPROVAL OF PAYROLL DIRECT DEPOSITS AND CHECKS #45390 THROUGH #45489 FOR THE PERIOD OF AUGUST 1 THROUGH AUGUST 15, 2007 IN THE AMOUNT OF \$828,834.25.**

Claims for Damages

D. **ACKNOWLEDGE RECEIPT OF CLAIMS FOR DAMAGES FROM PATRICIA TULLER (AMOUNT UNDETERMINED) AND PATRICIA DZEIMA (AMOUNT UNDETERMINED).**

Military Family Friendly Employer Program

3. **PRESENTATION REGARDING THE MILITARY FAMILY FRIENDLY EMPLOYER PROGRAM, AND PROPOSED RESOLUTION DECLARING EDMONDS TO BE MILITARY FAMILY FRIENDLY AND ENCOURAGING AREA BUSINESSES TO BECOME A MILITARY FAMILY FRIENDLY EMPLOYMENT PARTNER**

This item was removed from the agenda and will be rescheduled for a later date.

Puget Sound Regional Council Update

4. **PRESENTATION BY PUGET SOUND REGIONAL COUNCIL (PSRC) ON THE UPDATED GROWTH STRATEGY AND POLICIES.**

**Norman Abbott, PSRC Director of Growth Management Planning**, recalled approximately one year ago four growth alternatives were presented; a preferred alternative has been selected and the Draft Vision 2040 document prepared. He enumerated the documents provided to the Council including the draft Vision 2040, EIS and Supplemental EIS, and the Regional View that serves as an Executive Summary.

He provided a video narrated by Mike Lonergan, Chair of the PSRC Growth Management Policy Board (GMPB), describing Vision 2040 which updates the long range vision for the Central Puget Sound area. Mr. Lonergan described the membership of PSRC including King, Pierce, Snohomish, and Kitsap Counties, 71 cities and towns, and four port districts, transit agencies and tribes. He explained the PSRC worked on issues related to transportation, land use and economic development. PSRC distributes approximately \$160 million per year in federal funds throughout the region for transportation improvements.

He explained Vision 2040 was the over-arching, long range growth management, economic and transportation strategy for the region. Vision 2040 is supported by PSRC’s functional plans including Destination 2030 for transportation and the Regional Economic Strategy. The primary purpose of Vision 2040 is to help local jurisdictions identify and accomplish regional objectives by providing broad direction for the future. Vision 2040 consists of four parts, an environmental framework, a regional growth strategy, multi-county planning policies, and actions and measures to implement the vision.

He explained the primary reason for updating the vision was anticipated population and employment growth, estimated to be 1.7 million more people and 1.2 million more jobs in the region by 2040, bringing the population in the region to nearly 5 million by 2020. He reviewed the update process including the development of several possible growth scenarios which were reduced to four alternative growth patterns that were analyzed in a draft EIS. Following an extensive public comment period, the GMPB selected a preferred growth alternative which was analyzed in a supplement to the draft EIS. Both the supplement and Vision 2040 will now undergo another widespread review process and written public comment period.

He described elements of the current vision carried forward in Vision 2040 including urban growth boundaries, rural areas remain and natural resource lands. Vision 2040 focuses growth in urban areas, particularly compact centers, where services exist and calls for designated industrial and manufacturing centers where intensive land uses accommodate present and future employment growth. The current vision also includes an efficient transportation system that connects the centers. He described the environmental framework of Vision 2040 and displayed a chart illustrating how the regional growth strategy distributed each county’s share of the population growth by regional geography, noting the goal

was to concentrate much of the growth into metropolitan and core cities. He summarized on analysis, the regional growth strategy performed better than current local plans.

He explained the multi-county planning policies provided direction for implementing the regional growth strategy, embody the policy framework for Destination 2030 and Regional Economic Strategy and establish a common framework for all levels of government. The policies cover five topics - environment, development patterns, economy, transportation and public services. He commented on the new environmental section that addresses the possible impacts of climate change and calls for coordinated regional environmental planning. He explained Vision 2040 benefited local government by providing decision-makers with a regional context for making local decisions, helps local government work together to bend growth trends, addresses issues that are difficult to resolve at the individual jurisdiction level.

He described the outreach effort regarding Vision 2040 to solicit public comment. He provided PSRC's website, psrc.org that contained links to the document. He reviewed the timeline for review of Vision 2040: PSRC Boards review public comments and make final edits and PSRC prepare final draft Vision 2040 and final EIS this fall, GMPB conducts a public hearing and recommend the final Vision 2040 to the Executive Board this winter, and in April 2008 the Executive Board will take the recommended Vision 2040 to the general assembly for action. He encouraged jurisdictions and the public to provide comment through September 7, 2007 via letter, a comment form is available on the PSRC website or via email.

Councilmember Moore asked what PSRC was seeking from local jurisdictions to add to Vision 2040. Mr. Abbott answered they were seeking in a comment letter about the vision in the draft Vision 2040 and how it fits with the city's vision.

Proposed  
Ordinance re:  
Graffiti

5. **PUBLIC HEARING REGARDING A PROPOSED ORDINANCE ADDING A NEW CHAPTER 5.60, GRAFFITI; DECLARING GRAFFITI A PUBLIC NUISANCE; PROHIBITING DEFACEMENT OF PROPERTY WITH GRAFFITI AND POSSESSION OF GRAFFITI IMPLEMENTS; IMPOSING CRIMINAL PENALTIES; REQUIRING THE REMOVAL OF GRAFFITI; AND ESTABLISHING AN APPEALS PROCESS.**

Bio Park, Ogden Murphy Wallace, was present to advise the Council during this item.

Councilmember Dawson explained the Public Safety Committee has discussed graffiti numerous times and agreed to present a very broad ordinance to provide the public a range of what other jurisdictions have done to combat graffiti. She noted studies have shown the most effective way to combat graffiti in a community is prompt removal and if it was removed within 24 hours three times, the chances of it reoccurring were virtually nil. Therefore, one of the objectives of the ordinance was to assist with the prompt removal of graffiti. She acknowledged it could be difficult and expensive to remove graffiti. She pointed out the Committee did not support the requirement in the ordinance for businesses to keep graffiti implements behind the counter, check identification and not sell graffiti implements to minors. She noted the current code contained a provision declaring graffiti a nuisance; however, an improved definition of graffiti was necessary to assist with abatement.

Councilmember Plunkett explained another goal of the ordinance was to prevent graffiti. The code currently required that an officer observe a person in the act of graffiti; the proposed ordinance would allow an officer to stop a person possessing graffiti implements with the intent to commit graffiti.

Councilmember Dawson pointed out the ordinance was only part of the battle against graffiti but would not be enough to combat graffiti; community involvement and vigilance was also required.

Acting Police Chief Al Compaan explained Seattle was one of the first cities in the Puget Sound area to adopt a graffiti ordinance in 1996. He recalled a high level of tagging/graffiti was experienced in the Puget Sound area during that era; graffiti had waned for awhile and was now reoccurring. He noted the ordinance was intended to provide options for a multi-pronged approach - education to inform the public regarding the importance of removing graffiti on their property, criminal enforcement, and civil sanctions imposed via an abatement process for property owners unwilling to remove graffiti. He referred to the provision in the ordinance regarding possession of graffiti implements with intent to commit a crime, citing possession of burglary tools or drug paraphernalia as similar possession with intent to commit a crime offense. He acknowledged vandalism was difficult for the Police Department to address; the proposed multi-prong approach would provide some assistance.

Councilmember Plunkett inquired about statistics regarding increase in graffiti. Chief Compaan answered to date this year there had been 120 reported incidents of graffiti, although he noted many other incidents were unreported. As graffiti was reported under vandalism and malicious mischief, it was difficult to extract statistics for prior years. Anecdotally he acknowledged there was an increase in graffiti on buildings, parks and signs.

Councilmember Marin asked how the trust fund in the ordinance would be funded. Chief Compaan responded it would be funded via civil penalties assessed through the abatement process. He clarified the Police Department would address criminal enforcement; Development Services would address abatement and any civil penalties.

Councilmember Marin observed each department's budget was currently used to address the cost of graffiti removal; the trust fund proposed in the ordinance would provide a mechanism for funding removal. Chief Compaan advised the ordinance allowed Council discretion regarding the use of those funds.

Councilmember Dawson acknowledged it was very expensive to remove graffiti. She asked Chief Compaan to comment on graffiti related to gang activity. Chief Compaan answered the majority of graffiti/tagging in the City was non-gang related. He acknowledged some may view graffiti as art, others view it as defacement. Councilmember Dawson commented the difference between art and graffiti was permission.

Councilmember Dawson asked whether the Police Department had seen an increase in gang activity in Edmonds in the past year. Chief Compaan acknowledged there had been some gang activity; the Police Department worked closely with the schools and other Police Departments. Councilmember Dawson noted her discussions with Edmonds School District indicated they are also concerned with graffiti on district property.

Development Services Director Duane Bowman explained Development Services currently reacted to graffiti by complaint or Police report and Code Enforcement Officer Mike Thies began an enforcement action. He explained this typically begins with a letter to the property owner informing them of the situation and requesting a schedule for removing graffiti. If the property owner ignores the letter, an Order to Correct is issued. If the Order to Correct is ignored, a Notice of Violation is issued which includes fines of \$100/day, each day a separate offense. He could not recall an incident that reached that level. The ordinance as currently structured followed that same process although the timeframes were much shorter - five business days. He suggested that timeframe may be too short.

Mr. Bowman suggested language from the Seattle ordinance be incorporated that allowed for no monetary penalties to be assessed and listed factors that could be considered such as whether the responsible party cooperated with efforts to abate the graffiti nuisance, whether the responsible party

failed to appear at the hearing, whether the responsible party made substantial progress in abating the graffiti nuisance and any other relative factors. Councilmember Dawson agreed with Mr. Bowman's suggestion. She suggested including language to address the time period such as unless waived by the Director for good cause. Mr. Bowman agreed language that allowed staff to work with the property owner would be appropriate.

Councilmember Dawson noted Snohomish County had a Voluntary Correction Agreement that allowed property owners to enter into an agreement to avoid delays in removing graffiti. She asked whether the code currently contained language regarding a Voluntary Correction Agreement language. Mr. Bowman advised it did not, explaining once staff sent a letter and the property owner responded with a proposal for removal, staff considered whether it was reasonable and if so, that became an informal agreement. If the property owner failed to act, staff proceeded with an Order to Correct and Notice of Violation.

Councilmember Dawson noted there currently were two levels of civil violation for nuisances in the code, \$100/day and \$250/day; the ordinance proposes \$250/day. She asked whether the \$100/day fine would be more appropriate. Mr. Bowman acknowledged the \$100/day fine was sufficient to get people's attention.

Councilmember Moore asked for a copy of the Seattle code. She sympathized with businesses that were victimized by graffiti and then must undergo a process of being fined. She asked whether there had been businesses/property owners who did not react promptly. Mr. Bowman answered no, there had been relatively good response to graffiti removal. He noted the most common issue was the timeframe for removal. He agreed with Councilmember Dawson's statement that prompt removal was key.

Councilmember Moore asked whether five days for removal was too restrictive. Mr. Bowman answered that timeline could be reflected in the ordinance along with language allowing development of a schedule as approved by the Director.

Councilmember Marin commented on graffiti experienced by the church he attends and the difficulty they had removing it. He noted one of the messages the second time the church was hit with graffiti was more graffiti if it was removed. He supported Mr. Bowman's suggestion to provide staff some leeway to work with the property owner on the timeline for removal rather than further victimizing the property owner via the timetable for removal.

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

**Swan Seaburg, Edmonds**, expressed concern with placing the responsibility for graffiti removal on the property owner victimized by graffiti. He suggested working with the schools to change youths' attitude regarding graffiti. Remarking Edmonds was a retirement community, he questioned how seniors could be expected to remove graffiti. He was offended by the approach proposed in the ordinance that penalized the property owner, preferring the focus be on prevention and/or apprehending the offenders.

**Mike Mestres, Edmonds**, posed several questions including who did the graffiti/tagging, what they were hoping to accomplish, why did they do it, when they did it, and where they did it. He recalled living in a higher crime neighborhood in St. Louis where generally the offenders lived in the neighborhood. He anticipated the youth doing graffiti lived in Edmonds.

**Steve Waite, Edmonds**, suggested providing information to graffiti victims regarding methods for removal such as via a handout at Development Services. He explained repairs generally were made via covering the graffiti or removing it, although covering the graffiti was often unsightly such as on the SR104 overpass. He noted it was possible to remove graffiti particularly if done within three days. He

commented on the importance of analysis prior to removal on historic structures or buildings with delicate surfaces. He asked whether a citizen could apprehend a person in the act of graffiti.

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

Councilmember Plunkett read a letter from **Karen Wiggins**, the owner of a commercial building in downtown Edmonds, expressing her objection to punishing the victim with fines for failure to removing graffiti in a timely manner. Although she had been able to remove graffiti on her building quickly, she noted circumstances could prevent a property owner from prompt removal.

Chief Compaan emphasized the ordinance contained a range of options and was intended as a plan of action and to provide tools to address graffiti the most important of which were public education and the ability for an officer to apprehend someone in possession of graffiti implements with the intent to commit a crime. With regard to who was doing graffiti, he anticipated the majority were juveniles from the age of 13- 16 years of age. With regard to when, he anticipated most of it occurred in the evening hours when businesses were closed and parks were empty. He agreed most of the offenders lived in the area. With regard to why, he envisioned it was “just because,” noting graffiti was gaining popularity again. He agreed neither an ordinance or police enforcement would solve the problem, it required parental and school involvement.

With regard to Mr. Waite’s question about apprehending some in the act of graffiti, Chief Compaan cautioned against apprehending someone committing a misdemeanor/gross misdemeanor crime. He noted there were specific statutes that allowed a retailer to retain a shoplifter and citizens could make a citizen’s arrest of a person committing a felony. He preferred a citizen to be a witness and allow the Police Department to make the arrest.

Councilmember Moore asked whether anyone painting graffiti had been apprehended. Chief Compaan answered a few had been apprehended. If it was a first offense, it would be referred to Juvenile Court and the offender would be entitled to diversion, probationary type adjudication versus jail time. Councilmember Moore asked whether he had the opportunity to talk to an offender or their parents. Chief Compaan answered in nuisance and problematic juvenile crime in general, the youth was usually unable to give a logical reason why they committed the offense, not understanding the impact of their crime to the community. The parental reaction differed, sometimes very supportive of the Police Department and other times not supportive.

Councilmember Moore expressed concern with a property owner who was victimized by graffiti receiving a notice that they would be required to pay fines if it was not removed, essentially victimizing them again. She used an analogy of a property owner cleaning up after a fire. Mr. Bowman answered in that instance, staff worked with the property owner who was typically also working with their insurance company. The situation was usually resolved quickly; however, if it was not and became an unsafe situation, an abatement process would begin. He could not recall an instance that reached the level where fines were imposed.

Councilmember Moore asked whether there was vandalism insurance. Mr. Bowman was uncertain, noting the City repaired the vandalism they experienced themselves. He explained under the current process, fines were not immediately imposed. Staff requested a schedule of when the graffiti would be addressed; it was only if the property owner ignored staff’s contact that the process proceeded. He noted the Notice to Correct did not assess fines; it notified the property owner of the situation. If the Notice to Correct was ignored, the Notice of Violation imposed a \$100/day fine.

Councilmember Moore asked whether there was a specific timetable now. Mr. Bowman answered staff worked with the property owner who provided an estimate of when they planned to remove the graffiti. Staff typically agreed if their proposed timeline was reasonable. He summarized that process was currently workable.

With regard to the timetable, Bio Park, Ogden Murphy Wallace, advised the Public Safety Committee asked for a timeline that would be acceptable to the court for abating the nuisance; the minimum time was five days, the Council had the option to extend that time period. He referred to the provision in the ordinance for parental liability for fines, noting parents could not be held liable for criminal activity, but could be held liable for fines.

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MARIN, TO EXTEND THIS ITEM FOR 20 MINUTES. MOTION CARRIED UNANIMOUSLY.**

Mayor Haakenson reiterated the ordinance was very broad and the Council could narrow the focus.

Council President Olson inquired about the incidents on public versus public property. Mr. Bowman answered graffiti on public property was addressed by the appropriate City department; Development Services only responded to private property complaints. Council President Olson asked whether most incidents were on residential property or commercial property. Mr. Bowman answered both although the majority occurred on businesses. Mayor Haakenson advised most occurred on City park property, then commercial and residential property such as fences, mailboxes, etc. Mr. Bowman offered to provide the Council a copy of the graffiti handout Mr. Thies developed that he provides to victims of graffiti.

Councilmember Dawson commented the initial contact proposed by the ordinance was not a letter imposing fines, but a letter describing why it was important to remove graffiti promptly and provided information and resources regarding removal. Mr. Bowman answered it was similar to what staff did now although staff currently asked for a schedule for removal. Councilmember Dawson referred to an effort at the Snohomish County level to coordinate a team of experts to develop best practices for graffiti removal as well as a brochure and graffiti removal kits. She advised there was a countywide planning meeting on graffiti removal tomorrow. Councilmember Dawson asked on what other issues the City pursued code enforcement. Mr. Bowman answered junk vehicles, trash/debris in a yard, etc.

Councilmember Wambolt referred to citizens expressing concern with penalizing property owners who had been victimized, questioning who else could be accountable for cleanup. Mr. Bowman acknowledged unfortunately the property owner was responsible for removal. He pointed out the suggestions to allow a property owner to work with staff on a schedule for removal and giving consideration to the property owner's effort in the assessment of fines. Councilmember Wambolt noted the five days began after the property owner received a letter, not five days after the graffiti occurred.

Councilmember Moore referred to the process staff currently followed and asked if the only difference in the proposed ordinance was the imposition of a fine. Councilmember Dawson answered the code currently identified graffiti as a nuisance and assessed a \$100/day fine; the difference was the ordinance defined graffiti and suggested a minimum timeline for removal due to the importance of prompt removal. She agreed with the suggestion to allow the Director the ability to work with a property owner on the timeline for removal. She noted the proposed ordinance also contained criminal penalties for the possession of graffiti implements with intent to commit graffiti as well as a provision for parental responsibility for restitution. She noted a homeowner's policy would typically cover graffiti removal depending on the cost of removal.

Councilmember Dawson suggested seeking feedback from local businesses and the Chamber of Commerce and returning the ordinance with the suggestions that have been made for further discussion by the Council. Although he was not opposed to seeking further input, Councilmember Plunkett assured the merchants had been notified repeatedly of tonight's presentation.

Councilmember Marin expressed support for the concept of removing graffiti. He suggested the trust fund identified in the ordinance be allowed to be used to provide money to a property owner that was financially unable to remove the graffiti. He also agreed with allowing the Director the ability to work with a property owner on a schedule for removal.

Councilmember Moore agreed with the suggestion to provide the property owner recommendations on graffiti removal and allowing the flexibility to negotiate a reasonable schedule for removal.

Councilmember Plunkett asked whether Councilmember Marin's suggestion regarding providing funds to assist with removal would be a gift of public funds. Mr. Park answered the only method would be to loan the funds with a recovery of the funds.

Councilmember Plunkett suggested removing Section 5.60.040, Display and Storage of Graffiti Implements, that required a merchant not display graffiti implements, prohibited the sale of graffiti implements to minors, and required the display of signage regarding these prohibitions.

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO REMOVE PARAGRAPHS A, B AND C FROM SECTION 5.60.040.**

Councilmember Dawson advised the Public Safety Committee and staff recommended eliminating Section 5.60.040 and 5.60.030(C), Furnishing to Minors, recognizing those provisions were not necessary in Edmonds at this time.

**MOTION CARRIED UNANIMOUSLY.**

Councilmember Plunkett recommended a property owner who was tagged receive a strong letter from the City that provided information and encouraged them to remove the graffiti within 5-10 days. He recommended removing the fines from the ordinance, recognizing the current process Mr. Bowman described had been sufficient and fines had not been required. He agreed the fines appeared to victimize the victim.

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MOORE, TO REMOVE THE FINES AND REPLACE THEM WITH A STRONG LETTER OF ENCOURAGEMENT**

Councilmember Dawson commented the reason no one had been fined was staff worked with property owners but there was the threat of a fine if they did not comply. She pointed out the City's code currently provided for a fine for all nuisances if not abated after action was sought including graffiti. She did not support the motion, finding it important for staff to retain the existing tools to ensure abatement including the existing fine. She envisioned the removal of fines would weaken the effort against graffiti.

Recognizing the trust fund identified in the ordinance would contain revenue from the payment of fines, Councilmember Marin asked whether the funds could be used to assist with removal. He also asked whether the trust fund could include contributions from community or service organizations. He noted without fines, there would be no revenue for the fund to assist with removal. Mr. Park answered fines were a revenue source for the City which constituted public funds and by constitutional prohibition could

not be used to improve private property without something in return. A separate fund could be established for contributions managed by another organization. Councilmember Dawson commented if graffiti was a public nuisance, abatement of the public nuisance was in the public's interest and using the funds for cleanup of a public nuisance was a public interest and may not be a gift of public funds. She suggested further analysis be done on that issue, explaining the intent of declaring graffiti a public nuisance was to allow the trust fund to be used to assist in cleanup efforts. She noted Snohomish County allowed leftover paint to be used by the public for cleanup.

Mayor Haakenson noted the trust fund language allowed the Council to direct the expenditure of the funds for removal of graffiti as well as payment of rewards for information leading to the conviction of violation, cost of administering the ordinance, etc.

Councilmember Plunkett pointed out even if the fines were removed the ordinance allowed criminal enforcement based on intent which provided the Police Department the ability to prevent graffiti.

**MOTION FAILED (3-4), COUNCILMEMBERS PLUNKETT, MOORE AND ORVIS IN FAVOR; AND COUNCIL PRESIDENT OLSON AND COUNCILMEMBERS WAMBOLT, MARIN AND DAWSON OPPOSED.**

Councilmember Dawson advised tomorrow there would be a continuation of the Snohomish County graffiti summit that would include discussion regarding the graffiti paint-out event planned for October 6 as well as efforts to combat graffiti countywide.

**COUNCILMEMBER MOORE MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO INCLUDE IN SECTION 5.60.060, NOTICE OF GRAFFITI, THAT WHEN THE CITY NOTIFIES THE PARTIES RESPONSIBLE FOR THE PROPERTY AND SENDS THE PARTIES AN INFORMATIONAL LETTER DESCRIBING THE NATURE AND LOCATION OF GRAFFITI AND REQUESTING THE GRAFFITI BE REMOVED PROMPTLY, INFORMATION BE INCLUDED REGARDING THE PROPER WAYS TO REMOVE GRAFFITI FROM SURFACES.**

Councilmember Dawson explained the intent was to include a brochure regarding methods for proper removal, referring to language in the section that the letter would describe resources available to aid in graffiti removal, identify any graffiti removal assistance programs available through the City or any private graffiti removal contractors.

**MOTION CARRIED UNANIMOUSLY.**

Mayor Haakenson advised the ordinance would be returned to the Council in a revised draft form. He declared a brief recess.

- 6. CLOSED RECORD REVIEW ON AN APPEAL OF THE HEARING EXAMINER'S APPROVAL OF A 27-LOT PRELIMINARY PLAT (WOODWAY PLAT) LOCATED AT 23700 104TH AVENUE WEST. (APPELLANT: LORA PETSO / APPLICANT: BURNSTEAD CONSTRUCTION / FILE NO. P-07-17 AND PRD-07-18)**

Mayor Haakenson relayed staff and his recommendation to take oral argument from the appellant and the applicant and continue the matter to a date certain to allow the City Council to fully review the extensive record. Council President Olson advised the matter would be continued to September 18. City Attorney Scott Snyder asked whether the date was within the statutory period. Mr. Bowman answered it was outside the statutory period but the applicant was agreeable to continuing the matter to September 18. Mayor Haakenson confirmed with the applicant and the appellant that September 18 was acceptable.

Closed Record  
Review re:  
Woodway Plat  
(Petso Appeal)

Mayor Haakenson explained on June 21, 2007, the Hearing Examiner conducted an open record hearing on the application of Burnstead Construction for a 27 lot Planned Residential Development (PRD)/Preliminary Subdivision, along with hearings on the State Environmental Policy Act (SEPA) appeals of Lora Petso and Heather Marks/Cliff Sanderlin. The Hearing Examiner issued a decision on the PRD/Preliminary Plat and SEPA appeals on July 20, 2007. Requests for reconsideration were filed by Lora Petso and Heather Marks on August 2, 2007 and August 3, 2007. The Hearing Examiner issued decisions on August 8, 2007 reaffirming the July 20, 2007 decision and denying the reconsideration request.

The Mayor explained the record on this matter was extensive. The City Council was only able to consider the Hearing Examiner's decision on the preliminary plat and had no authority to review the matters relating to the SEPA appeals or the PRD decision. Those matters were subject to appeal to superior court.

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

Councilmember Plunkett advised he had worked closely with Mr. Sanderlin and Ms. Marks on political matters in the past and had also worked with Ms. Petso in the past. Mayor Haakenson asked whether he could make a fair decision in this matter. Councilmember Plunkett advised he could.

Councilmember Orvis reported Mr. Sanderlin and Ms. Marks have contributed to his current campaign and assisted with a recent fundraiser and he had worked with Ms. Petso in the past. Mayor Haakenson asked whether he could make a fair decision in this matter. Councilmember Orvis answered he could.

Councilmember Moore advised she had spoke with Mr. Sanderlin and Ms. Marks in regard to political matters and the Burnstead property development. Mayor Haakenson asked whether she could make a fair decision in this matter. Councilmember Moore answered she could.

Councilmember Dawson advised one of the parties of record, Finis Tupper, had contributed to her political campaign as had Ms. Petso. She advised their contributions would not affect her ability to make a fair decision in this matter.

Mayor Haakenson asked if there were any objections to any Councilmembers' participation. There were no objections voiced and he advised all Councilmembers were approved for participation.

Mayor Haakenson advised the applicant raised the issue of who may participate in the closed record review. The City Attorney recommends the Council consider his objection, the response of the appellant and at least one party of record and enter a ruling prior to arguments. City Attorney Scott Snyder explained the applicant's representative, Mr. Lutz, provided a brief that cites the City's appeal procedures which refer to participation at this review proceeding of parties to the appeal, a term that is not defined. He referred to the memo he provided to the parties and the Council which indicates there are logical arguments for that position in the RCW 36.70.B and 36.70C.

The memo also explains that while not defined, that provision has been uniformly applied by the City to permit parties of record to participate. Parties of record under RCW 36.70B.130, is a person who may participate is someone who presents at the open record hearing in oral or written testimony or requests in writing notice of further proceedings. He advised the sign-in sheet at the Hearing Examiner indicates the person wishes to speak or request further notice. As a result anyone who presented testimony or requested notice of the proceeding was a party of record under the definition the City has uniformly applied in these proceedings. He noted a logical conundrum was if only the appellant can speak and the

applicant was the appellant, only the applicant could speak at a review proceeding before the Council. He suggested the Council address this procedural issue before proceeding.

Councilmember Orvis advised Mr. Hertrich, a party of record, had also contributed to his current campaign. Councilmember Dawson advised Mr. Hertrich had also contributed to her campaign. Councilmember Wambolt advised Mr. Hertrich also contributed to his campaign. Mayor Haakenson asked whether there were any objections to Councilmembers Orvis, Wambolt, or Dawson's participation. There were no objections voiced.

**Jerry Lutz, representing applicant Burnstead Construction**, advised the procedural issue they raised was an attempt to bring as much structure as possible to this process. The City's appeal process for the Burnstead application which includes a preliminary plat applicant and a preliminary PRD and SEPA review with different appeal procedures that applied to each process was complex enough that it would be helpful to the process if the code language were fairly construed that the parties to the appeal meant Ms. Petso, the applicant and the City and limit discussion to those parties. He was sympathetic to the arguments against this position articulated by Mr. Snyder, primarily past precedent, as well as the concept of allowing parties an opportunity to speak, however, the parties who spoke at the hearing primarily addressed PRD and SEPA issues. The preliminary plat issues were very minor and although there was extensive discussion before the Hearing Examiner hearing regarding preexisting neighborhood drainage issues, that was a SEPA and PRD issue, not a subdivision issue. He summarized for the protection of this process and from a practical perspective because most of the issues parties of record would address were irrelevant, it was preferable to limit discussion before the Council to Ms. Petso, the applicant and the City.

**Appellant Lora Petso, Edmonds**, recommended the City continue with its past practice of allowing all parties to speak which allows for better decision-making. She noted the ordinance language was permissive, not exclusive, and did not state only parties to the appeal were allowed to participate. The language states the parties to the appeal may submit timely written statements or arguments. She noted when she submitted her original appeal on a quick deadline, she was grateful for that language as it allowed her to submit additional written information later. She agreed with Mr. Snyder's logical conundrum if the language were construed too strictly, she would not be allowed to speak.

With regard to the statement that this proceeding was limited to issues that were SEPA or otherwise unrelated, she pointed out the subdivision law required compliance with the Comprehensive Plan, the Zoning Ordinance, public interest, etc. She expressed concern with the potential for interruptions when those issues were raised in her presentation. Mayor Haakenson assured there would be a process for parties to voice objections. Ms. Petso concluded the Council had a great deal of discretion in balancing the goals and policies of the Comprehensive Plan and other issues.

**Roger Hertrich, Edmonds**, advised he was a party of record and a number of the comments made by Ms. Petso reflected his comments/ideas. Thus eliminating him as a party of record would eliminate a portion of the record. He recommended the Council continue to follow its tradition of allowing parties of record to participate. He agreed many of the plat issues were intertwined with the PRD.

**Heather Marks, Edmonds**, recommended parties of record be allowed to participate. She pointed out the notice the City issued stated the public was invited to attend although it was not a public hearing. The notice stated it was a closed record review and State law required that no public testimony be permitted except from parties of record. She had postponed her vacation to be able to attend tonight. She suggested if parties of record were not allowed to participate, the closed record review be postponed and a new notice provided. She noted both the SEPA and preliminary plat were considered by the Hearing Examiner.

**COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MARIN, THAT ALL PARTIES OF RECORD BE ALLOWED TO PARTICIPATE. MOTION CARRIED UNANIMOUSLY.**

Mr. Snyder explained information provided to the Council tonight was argument based on the record and no new testimony was allowed. Mayor Haakenson would describe a process whereby parties could voice objections to information at the conclusion of presentations and provide an opportunity to provide citations of the record. With regard to the evidentiary issue Ms. Petso raised, he concurred that to the extent that evidence in the record applied to subdivision criteria, it could be provided.

Mr. Snyder explained Regulatory Reform was intended to eliminate multiple appeals of the same issue. RCW 36.70B.160 requires cities to utilize consolidated permit application processes. He noted due to procedural reasons contained in the record, a remand and a re-notice, issues related to the PRD were out of sync with these issues. He recommended to the Council that to the extent evidence in the record related to subdivision criteria it was appropriate and relevant. To the extent argument was made that the Council lacked authority to rule on a subdivision plat because an issue related to another decision-making process remained, that should be rejected and considered not relevant to tonight's decision. Otherwise the Council risked being seen in a review process as having held multiple hearings on the same subject. For example, the Council did not have jurisdiction over the PRD or SEPA issues and denying a plat based on concerns over which the Council did not have jurisdiction would be problematic.

Mayor Haakenson established a 15 minute time limit for the appellant and applicant, advising the applicant, Ms. Petso, may wish to reserve time for rebuttal. A 3-minute time limit was established for comments by parties of record.

Due to the extensive record, Mayor Haakenson explained it was impossible for the Council to determine whether argument provided was contained in the record. Therefore if either party had objections to the argument of the other based on the argument being outside the record or any other reason, objections would be voiced at the close of the other party's presentation. The party whose argument was objected to would be given an opportunity to cite where that information appeared in the record and the Council would determine whether the information should be excluded from consideration as outside the record.

Mr. Lutz questioned the order of presentation, requesting he be allowed to speak after the parties of record. Mayor Haakenson advised typically the order of presentation was the appellant, applicant and parties of record but the order could be modified if the Council wished. Mr. Lutz asked if that order was retained he be allowed to briefly address issues raised by parties of record. Mr. Snyder explained the rationale for the order of presentation was issues were limited to the record and issues raised by Ms. Petso in her appeal; no other issues were relevant. Therefore, he should not be surprised by any comments and because the appellant had the burden of persuasion, she was given an opportunity for rebuttal. He noted the applicant and/or appellant could also object to argument outside the record provided by parties of record.

Appellant

Ms. Petso reserved two minutes for rebuttal. Ms. Petso advised she purchased a copy of the tapes of the Hearing Examiner hearing and would submit corrections to the transcript. She displayed an aerial map identifying the existing ballfields where the subdivision would be located, an existing drainage ditch, and a fish and wildlife conservation habitat conservation area. She advised only two of the lots were close to the size of the existing lots; the small lot size combined with the reduced side setbacks produced a gutter-to-gutter or continuous wall effect that she asserted would be more appropriate in the BC zone than this south Edmonds neighborhood. She pointed out the large backyards of the existing subdivision to the west

which contrast sharply with the proposal. She noted all citizens would be direct neighbors to this project as it was adjacent to City park land.

Ms. Petso explained under subdivision laws, the proposal must be consistent with purposes of the subdivision chapter, all subdivision requirements, the Comprehensive Plan, be in the public interest and meet all requirements of the zoning ordinance. Under the court cases where the plat contains clear zoning violations, the subdivision could not be approved. In this instance the plat did not comply with the 35% lot coverage requirement; therefore, it could not be approved. The drainage report shows the roof area alone equates to 35% of the lot area; after subtracting required driveways and walkways, the subdivision would not comply with the 35% requirement.

Ms. Petso pointed out the plat was based on four home designs and the project narrative states an intent to avoid rows of identical homes; however, there was only one lot that could accommodate the largest home under the 35% requirement and only if buffers, walkways and driveways were ignored. The Hearing Examiner has indicated the applicant would not be permitted to ignore walkways, buffers and driveways. Nineteen of the lots could only accommodate the smallest of the four home designs, assuming required buffers, walkways and driveways are ignored. She summarized 19 of the 27 homes would be identical under this proposal.

Ms. Petso reiterated the subdivision law states if there were clear zoning violations, the subdivision could not be approved. In this instance, the plat is required to have 8,000 square foot lots, but did not. She assumed there would be argument made that the 8,000 square foot requirement was waived due to the PRD. Because the Hearing Examiner found the plat did not comply with the PRD ordinance, Ms. Petso argued the subdivision could not be approved because the lots were not 8,000 square feet and did not have an approved PRD. She displayed a plat map, pointing out the Hearing Examiner found no perimeter buffer had been provided. The Hearing Examiner is requesting a buffer along the west and south sides of the proposal; if such buffer is provided, it would not buffer the park property. The city's ordinance requires a greater buffer along a public way and the Comprehensive Plan identifies a park as a public way. She acknowledged the Council could not decide the buffer issue; however, it was important information because if the plat as conditioned could not meet the requirements of the zoning ordinance, the subdivision could not be approved.

Ms. Petso explained adequate storm drainage was required under subdivision law. She identified the wetland/drainage ditch that presently holds, infiltrates and naturally disposes of a portion of the stormwater on the site and from an offsite tributary north of the site. The applicant proposes to fill this facility although there is already flooding of the homes to the west at whose request the ditch was installed approximately 25 years ago and to the south as drainage runs in that direction.

Ms. Petso referred to comments by ADB Member Schaefer who identified other drainage issues related to the subdivision and urged the Councilmembers to read the ADB minutes. She noted Mr. Schaefer appeared to have personal knowledge of the drainage system, observed that infiltration capacity would be reduced over time, suggested heightened maintenance to prevent the reduction, and expressed concern when informed the homeowners association would be charged with maintenance. He was also concerned that Tract C in the plat was too small for the necessary drainage facility and wanted to avoid a situation where it was later determined a larger facility was needed.

Ms. Petso concluded the burden was on the applicant to illustrate that the drainage would work which he had not done. Of the six drainage test pits dug, none were on Tract C where the drainage facility was proposed to be located; vault testing occurred offsite and produced a recommended infiltration rate of only 3 inches per hour. It was subsequently stated that rate could be increased with point drains but there

was no onsite testing done. She pointed out nothing in the record identified the infiltration testing results from test site EP2, the site closest to Tract C.

Ms. Petso referred to the subdivision law that states where environmental resources exist, the proposal must minimize impacts. She noted this proposal fills the drainage ditch and cuts 46% of the trees in the wooded portion of the site which did not represent minimizing the impacts.

She referred to the aerial view, pointing out the fish and wildlife habitat conservation area extended beyond the wildlife corridor and provided an ideal perch for birds of prey adjacent to the park. She noted bald eagles had recently been observed perched in the trees. She explained habitat in the trees including downed logs and a varied understory made it an exceptionally valuable habitat. She displayed a photograph of the area where the applicant planned to cut trees and construct the retaining wall to accommodate Lot 17. She displayed a photograph from the vantage of the City's park property, commenting even if only the four trees on the end were cut to accommodate Lot 18, the backdrop to the City's park was reduced considerably.

Ms. Petso pointed out the subdivision ordinance also required minimizing grading. The site is already 95% level and the only grading that would be required would be to fill the drainage ditch or grade the wooded area. She concluded neither filling the drainage ditch nor cutting the trees and building a retaining wall minimized grading.

Ms. Petso explained the Comprehensive Plan provides that subdivision layouts, buildings and roads should be designed so that the existing trees were preserved as well as contains other stronger language. She urged the Council to refer to the Comprehensive Plan references in the written materials. She explained Comprehensive Plans were generally policy documents; however, the courts have held that where development regulations require compliance with the Comprehensive Plan as the City's does, then both the regulations and the Comprehensive Plan must be complied with. She pointed out the City's Comprehensive Plan covered drainage; critical area; parks, open space, and playfields; natural vegetation and topography and compatibility of subdivisions; this proposal fails to meet any of the established levels of service for drainage or playfields and makes no effort to protect critical areas, eliminating one and seriously damaging another.

The Hearing Examiner noted Edmonds had chosen a policy of infill in preference to rezone, but Ms. Petso found this proposal was more rezone than infill. She commented isolated problems in a subdivision could generally be addressed via conditions, such as eliminating Lot 17 or 18 to protecting the trees and requiring the undergrounding of utilities. She requested the Council reject the subdivision as there were massive compliance failures that could not be conditioned - houses would not fit on lots, existing neighborhoods would be flooded, and the lots must be 8,000 square feet or comply with the PRD ordinance and this proposal does neither.

Mr. Lutz raised no objection to Ms. Petso's presentation.

#### Applicant

Mr. Lutz explained there was a proceeding for the SEPA review for the preliminary plat application and PRD. The purpose of the PRD was to modify for public benefit development terms that might otherwise apply because of a strict application of the subdivision code in a manner that would make the development more attractive. He explained there were aspects of Burnstead's proposal that differed in modest ways from the strict application of the code with the intent and Burnstead believes has met the intent, of providing a better overall product. He acknowledged it was difficult in that context to have a discussion of the closed record subdivision appeal when the majority of issues pertained to the PRD.

With regard to drainage, he explained drainage engineering for the plat was not complete as preliminary engineering that supports the concept of the plat was done as part of preliminary plat approval. If the preliminary plat and PRD were approved, final engineering would be done and staff would impose conditions and approve the final engineering. He concluded what Ms. Petso was contesting was a failure to have a final drainage design for the plat and PRD when it was not expected by the code.

Mr. Lutz explained the PRD would address drainage, open space and recreation, and the incorrectly identified fish and wildlife habitat on a corner of the property. He noted the record reflected that issue was considered and rejected by staff. He recalled the City had a map indicating there was a fish and wildlife habitat area on the property that was later determined to be incorrect. He noted that was an issue on remand from the Hearing Examiner as she wanted to ensure that issue was properly documented in the file. He noted there was a hearing on Friday where there would be limited testimony on two remand issues before the final PRD decision was issued. He summarized these were PRD, not subdivision issues. He noted the Council could only consider subdivision issues and could not make a ruling based on issues that were to be determined by the Hearing Examiner and appealed to Superior Court. He urged the Council to respect the distinction between the processes.

Mr. Lutz referred to assertions made by Ms. Petso that were not supported by facts such as that there was a wetland on the site. The report and testimony in the record states there was a drainage ditch on the site and that there was no wetland that would be disturbed or destroyed by this development. There was also testimony in the record that there was no fish and wildlife habitat corridor on the property although that was an issue on remand. With regard to drainage, it has been addressed professionally at a preliminary stage and further engineering would occur before the plat was built. He assured the drainage had been professionally designed and the record reflected that the drainage designed for the site specific conditions would be adequate to protect the surrounding area from any impacts from this development. He acknowledged Burnstead was not designing a system that would fix preexisting offsite drainage issues. As the engineers testified in the record, the proposed system would provide better drainage control than currently exists. The proposed system would fully control and meet City requirements to prevent offsite drainage impacts from the development. Mr. Lutz advised traffic impacts would not be a problem.

Mr. Lutz provided supplemental information which was distributed to the Council. Mr. Snyder advised Ms. Petso could review the materials and raise any objections to material that was outside the record. Mr. Lutz indicated he had tried to explain in the materials and the Hearing Examiner had also made a point of it in her response to the request for reconsideration, that Ms. Petso's argument regarding lot coverage was a misunderstanding of how lot coverage was calculated. He explained lot coverage was determined via the amount of roof area on a lot; the buffer area and setbacks were not subtracted. He referred to page 7 of 9 of the Hearing Examiner's order on reconsideration, advising the Hearing Examiner conditioned lot coverage to be met at building permit approval as lot coverage was determined in the building permit application process. Burnstead would know the size of each lot after final plat approval as it was conceivable that the lot sizes could be altered between now and final approval. He noted Ms. Petso's argument was based on subdivision requirements of an 8,000 square foot lot rather than the proposed PRD. He concluded compliance with lot coverage was determined at the time of building permit application and approval; therefore, arguing about lot coverage at this point was premature.

Mr. Lutz explained they presented the housing types to the ADB; however, those were schematic street view representations of the houses Burnstead typically builds, not proposed buildings for each lot. Specific designs would be proposed during the building permit process and approved as part of the building permit application. He encouraged the Council to read the Hearing Examiner's decision, finding it incredibly thorough and addressing the issues Ms. Petso raised. Mr. Lutz pointed out Ms. Petso had arguments in her conclusions but were not arguments based on the facts, but a characterization of facts in

a manner that she believed supported an argument but the Hearing Examiner's response indicated her arguments mischaracterized facts and reached to suggest there was a legal problem that did not exist.

With regard to a procedural issue Ms. Petso raised, her assertion that the Hearing Examiner not viewing the property before she held the hearing and viewing the property after the hearing was a fatal flaw that justified the Council rejecting the plat. He explained the Hearing Examiner made the point that she believed she better understood the arguments and issues having heard the testimony first and then viewing the property before writing her report. He acknowledged it could be argued that was not what City code required - City code requires the Hearing Examiner view the property prior to the hearing. He noted City code also states any issue that was a procedural defect that did not prejudice anyone should not penalize the parties. He asserted the Hearing Examiner looked at the property, listened to testimony and any error in the order was harmless error that did not justify rejection of the plat. He encouraged the Council to study the record, particularly the Hearing Examiner's report which outlined why the plat should be approved.

Mayor Haakenson asked for objections to Mr. Lutz's presentation. Ms. Petso commented that while she felt she was prohibited to arguing PRD issues such as whether the monument sign area was usable open space, Mr. Lutz identified several issues that were addressed in the PRD; if she was unable to address PRD issues that did not meet the requirements, Mr. Lutz also should not be able to address PRD issues he felt met the requirements. Mr. Snyder suggested this could be addressed by the Council in its decision-making process. Ms. Petso argues that the PRD plat does not comply due to several factors; Mr. Lutz correctly notes those factors were development regulation alterations made via the PRD process.

With regard to Mr. Lutz's argument, Mr. Snyder noted there was nothing in the record about a hearing on Friday. Although the remand was referenced in the Hearing Examiner's decision, the date was not relevant to the Council's decision.

#### Parties of Record

**Roger Hertrich, Edmonds**, identified the factors to be considered, character, compliance and compatibility, which address how the project and the neighborhood relate. With regard to compatibility, he pointed out the lots were close together and the ADB had reduced the front yard setback from 25 feet to 15 feet which he asserted was not compatible with the neighborhood. He concluded the goals and objectives of the Comprehensive Plan were not satisfied. With regard to whether there was a fish and wildlife habitat area on the site, he noted if there was, it was a critical area and was not allowed to be used as open space. This would require additional open space areas, changing the configuration of the project and reducing the buildable area. He referred to testimony by a biologist Mr. Enenhisa (page 60 and 61 of the transcript) who associated fish and wildlife habitat with streams and disputed there was a habitat area on the site. The applicant later had a biologist visit the site who found some habitat and some wildlife and there was testimony by local citizens regarding wildlife in the wildlife habitat area. He noted the biologist only spent 40 minutes looking at the area and Mr. Enenhisa did not take any soil samples. He also asserted the City's critical area reconnaissance report was deficient.

**Heather Marks, Edmonds**, urged the Council to read her earlier testimony regarding traffic, drainage and that the plat that indicates there would be an offsite pond/vault, yet at the hearing the applicant denied that was planned, acknowledging it could happen if worked out with the City. She pointed out there were no credentials listed for any of the consultants. With regard to the fish and wildlife habitat she advised it met the fish and wildlife definition in the Edmonds Municipal Code Section 23.90.010.A.1.10. She recalled two years ago mentioning at a Council meeting the presence of pileated woodpeckers on the site, commenting there were a pair of pileated woodpeckers on the site now. She commented the Hearing Examiner was wrong about Tract E where the trees and open space were located. She noted under Section 21.75.090, the City could require the applicant during the plat process to provide park land or pay

a fee. She questioned why that had not been required and whether it could be required as part of this hearing. She pointed out open space on Tract E would only be available to residents of the plat.

**Finis Tupper, Edmonds**, found it appropriate for the Council to hold this hearing as plats and subdivisions were a legislative rather than an administrative decision. He envisioned when the plat was built, the average person would find it more appropriate in the RS-6 zone than the RS-8 zone. He referred to turnover in the Planning Department, commenting the proposed plat was an example of a ministerial mistake. He objected to the applicant's representative's reference to the Friday meeting and the revised plat which was not a part of this record. He displayed the plat map, pointing out the absence of a 15-foot perimeter buffer. He referred to the variance granted at the ADB, questioning whether the ADB had that legislative power and whether the Council was willing to give up that power. He urged the Council to consider the development on the adjacent lots constructed in the 1980s, pointing out the importance of considering the character and compatibility of neighborhoods. He pointed out the fish and wildlife habitat area exists on the City's critical area map; however, the applicant indicated it was in error. He questioned how and when that was determined to be in error. He recommended the Council review the map and consider why that critical area was included as usable open space when the code prohibited it.

**Colin Southcote-Want, Edmonds**, recommended the Council deny the proposed subdivision, requesting the Council apply the City's rules and regulations. He displayed the plat map, advising a 15-foot buffer was required around the development. A bigger issue was the 25-foot buffer adjacent to the park land which was not reflected on the plat map. He concluded there were only two ways the Council could approve the subdivision, 1) if all the lots sizes were 8,000 square feet or greater, or 2) it met the PRD requirements. Because the plat did not include the 15-foot perimeter buffer, nor the 25-foot buffer adjacent to the park, it failed the PRD test.

Mayor Haakenson asked for objections to the comments by parties of record. Ms. Petso had no objections. **Tiffany Brown, Burnstead Construction**, acknowledged it was difficult to keep the issues separate. With regard to Mr. Hertrich's comments about wildlife, drainage, wetland and lot coverage, she noted this was a preliminary plat for which preliminary engineering was done; full engineering was not required nor was a code citation made where it was required for the preliminary plat. Mr. Snyder advised the applicant was not permitted rebuttal, only objection to information provided that was outside the record.

Ms. Brown objected to Mr. Hertrich's comment about the 40 minutes their wildlife biologist was on site. She advised that occurred at the Hearing Examiner's request for the PRD hearing that was not part of this proceeding. If the PRD hearing could not be mentioned, she did not believe the extensive wildlife study done after the Hearing Examiner's decision should be cited as it was not part of the record. She also did not find in the record Ms. Marks' comments regarding pileated woodpeckers on the site. She also objected to issues raised that were not part of Ms. Petso's appeal such as the argument regarding payment of park fees in lieu of park land dedicated in the plat. She did not find any reference in the record to the 25-foot buffer adjacent to park land.

With regard to the reference regarding the Friday meeting, Mr. Snyder suggested the Council not consider that comment in their deliberations. Mayor Haakenson asked how Ms. Brown's objections would be addressed. Mr. Snyder suggested establishing a period of time the parties could provide written citation to the portion of the record where these items appear.

#### Rebuttal

Ms. Petso advised lot coverage was not an issue to be addressed later; the subdivision ordinance stated lots should contain a usable building area, if the building area would be difficult to develop, the lot should be redesigned or eliminated. She urged the Council not to approve a subdivision that could not be built or

the result would be tiny lots rather than ADB approved glorious houses. She pointed out drainage was also not an issue to be addressed later. As Mr. Schaefer pointed out at the ADB meeting, if Tract C were available for a drainage facility and it was not large enough and the overflow was channeled into the Woodway Meadows system that floods Mr. Park's house regularly and likely others with the overflow, that was not an issue to be decided later. She argued there would be no room if it was determined later the drainage was not engineered well enough now.

Ms. Petso explained the site visit was prejudicial because, 1) the demolition fencing was installed the day of the hearing so the Hearing Examiner could not access the property after she missed the pre-hearing site visit, and 2) the Hearing Examiner stated the reason for missing the pre-hearing site visit was she had decided, based on information she told Ms. Petso she would not use to prejudice the proceeding, not to do the visit before the hearing. She had knowledge from the Growth Management Hearings Board that convinced her not to do the site visit when she was supposed to. Ms. Petso argued she was prejudiced by this in two ways, 1) the Hearing Examiner was unable to access the site and 2) the reason she did not attend the pre-hearing site visit was she was improperly using information she was not supposed to have and that she told Ms. Petso would not bias her decision.

With regard to the fish and wildlife habitat conservation area, Ms. Petso pointed out the critical areas map was Exhibit 2 and the area was defined in the Critical Areas Ordinance as urban open space. With regard to wetlands, she noted because the biologist did not find a stream did not mean it was not a wetland. The Critical Areas Ordinance defined a wetland as an area with wetland vegetation and was frequently saturated which the drainage ditch was. She referred to photographs she and others provided of wetland vegetation. Ms. Petso pointed out the Hearing Examiner found the PRD did not have a buffer and therefore she did not approve it. Ms. Petso concluded without a PRD approval, there could not be a subdivision approval.

Mayor Haakenson asked for objections to Ms. Petso's rebuttal. Mr. Lutz objected to Ms. Petso alleging the Hearing Examiner spoke to her outside the record and did something inappropriate due to work she had done with the Growth Management Hearings Board. He observed there was discussion on the record where the Hearing Examiner acknowledged she had worked for the Growth Management Hearings Board and heard an appeal brought by Ms. Petso but felt she could be objective. He concluded there was nothing in the record to suggest the Hearing Examiner acted improperly.

**COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO EXTEND THE MEETING FOR 40 MINUTES. MOTION CARRIED UNANIMOUSLY.**

Mr. Snyder suggested parties be allowed until the close of business on September 13 to provide written citations for items that were objected to. He identified the objections to be 1) the 40 minute remark, 2) pileated woodpeckers, 3) appeals items outside the record, 4) paying park fees or dedicating park land, 5) 25-foot buffer, and 6) Ms. Petso's allegations regarding the Hearing Examiner's comments. Ms. Petso requested the list be provided in writing. Mr. Snyder suggested the Council include that requirement in the motion to continue the proceeding.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO CONTINUE THE CLOSED RECORD PROCEEDING TO SEPTEMBER 18, 2007, AND ALLOW PARTIES UNTIL 5:00 P.M. ON SEPTEMBER 13 TO PROVIDE WRITTEN CITATIONS FOR ITEMS THAT WERE OBJECTED TO.**

**COUNCILMEMBER MARIN WITHDREW HIS MOTION WITH THE AGREEMENT OF THE SECOND.**

Councilmember Plunkett asked how the Council would consider whether or not the Hearing Examiner was prejudice as that issue was not one of the tests under the review of subdivisions. Mr. Snyder suggested consulting Ms. Petso's appeal to determine whether that was an issue raised on appeal. He recalled it was not, therefore, an issue outside the appeal was not relevant to this proceeding. Assuming that it was not outside the appeal, Councilmember Plunkett pointed out a prejudice Hearing Examiner was not one of the tests of the subdivision code. Mr. Snyder requested an opportunity to research that issue and respond to the Council and parties by September 13.

For Councilmember Plunkett, Mr. Snyder explained the appellant had the burden of persuasion and must persuade the Council by a preponderance of the evidence in the record. Councilmember Plunkett commented the Council could take into account a layperson's testimony regarding what they observed and determine whether it was persuasive. Mr. Snyder agreed, noting the testimony would also need to be balanced against other evidence in the record.

Mr. Snyder encouraged Councilmembers to ask any questions now; once the Council entered its deliberative phase, there would not be opportunity to ask questions. He cautioned the Council not to ask for new testimony and only to ask for clarification of a point in the argument.

Councilmember Plunkett commented the record contains questions Ms. Petso asked of the Hearing Examiner and reference was made to an additional conversation Ms. Petso had with the Hearing Examiner. He asked Ms. Petso whether that was contained in the record. Ms. Petso advised the second comment was in the Hearing Examiner's decision. She read in the Hearing Examiner's decision information that caused her to believe it was offered as an explanation for not making the site visit.

Councilmember Plunkett asked if a point was addressed in the record but not addressed by the parties was he free to consider it in his decision. Mr. Snyder answered yes as far as evidence. He cautioned the statements of decision-makers were not evidence. Councilmember Plunkett asked whether comments by the Hearing Examiner that did not pertain to either party was something he could rely upon and draw a conclusion. Mr. Snyder answered typically not unless the Hearing Examiner was taking official notice of a City document. A hearing body could take official notice of documents but could not add or inject evidence into a proceeding.

Councilmember Plunkett asked what would happen if Mr. Snyder concluded the Hearing Examiner being prejudice could be considered and if the Council questioned whether comments of the Hearing Examiner were prejudice. Mr. Snyder reiterated that was not an issue he had encountered before and requested an opportunity to research it and provide the parties an opinion. Councilmember Plunkett clarified he wanted to know whether he could rely on the Hearing Examiner's comments with regard to whether she was prejudice.

Clarifying that she was asking for details of why the project did/did not comply with the PRD ordinance or how that would ultimately be resolved, Councilmember Dawson stated her understanding was Mr. Lutz's argument was it need not strictly comply with the subdivision ordinance because it was either PRD or subdivision. She asked Mr. Lutz's opinion regarding the ramifications of the Council upholding the approval of the subdivision of the plat if the PRD were not approved. Mr. Lutz clarified the question was if the applicant had an approved plat supported by a PRD application and the PRD application was denied. He answered if the PRD application was denied they would be unable to develop the subdivision without the PRD approval because without the PRD approval some of the things they asked for would not be consistent with the code.

Councilmember Moore asked for a copy of Ms. Petso's PowerPoint. Councilmember Dawson pointed out all the information was contained in the record.

**COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER WAMBOLT, TO CONTINUE THE CLOSED RECORD PROCEEDING TO SEPTEMBER 18, 2007, AND MR. SNYDER TO PROVIDE FROM THE MINUTES A COPY OF THE OBJECTIONS NOTED AND THE PARTIES WOULD BE ALLOWED UNTIL 5:00 P.M. ON SEPTEMBER 13 TO PROVIDE WRITTEN CITATIONS FOR ITEMS THAT WERE OBJECTED TO.**

Ms. Petso pointed out the record provided to the Council was not the entire record. Mayor Haakenson advised the remainder of the records were available for review in the City Council office. The volume of records was the reason two additional weeks were provided for the Council to conduct their review.

A requirement for parties to provide the materials they presented tonight including Ms. Petso's PowerPoint was added to the motion.

**MOTION CARRIED UNANIMOUSLY.**

Mr. Snyder advised the Council could not discuss this matter nor could it be discussed at the podium pending the Council's decision. When the Council again considered this matter, they would be asked to disclose any ex parte comments.

**7. AUDIENCE COMMENTS**

National  
Financial  
System

**Stephen Andrews**, LaRouche Political Campaign, referred to the current collapse of the financial system nationally as well as on a worldwide level. He explained this took the form of foreclosure rates doubling from 2006 to 2007 and the collapse of the sub-prime mortgage market. This led to inflation and was a systemic problem; the real estate market was a symptom of the functioning policies. He noted this began with the deregulation in the 1970s and Greenspan's decision and policies. He provided legislation based on a solution President Franklin Roosevelt passed when he was in office.

Waterfront  
Redevelopment

**Roger Hertrich, Edmonds**, asked whether Mayor Haakenson was still bound by the non-disclosure agreement with regard to the Waterfront Redevelopment. Mayor Haakenson answered there was no longer a non-disclosure agreement. Mr. Hertrich questioned how the City tracked staff's comp time and learned no list was maintained, each Department Head was on the honor system including the Mayor. He recommended the City establish a system for tracking comp time.

Department  
Head Comp  
Time

**Shirley Wambolt, Edmonds**, commented her husband, Councilmember Wambolt, spent every day except Sunday as a Councilmember, reading, and reading. She announced she would become a U.S. Citizen on September 6, 2007.

**8. DISCUSSION REGARDING THE SEASHORE TRANSPORTATION FORUM AGREEMENT**

SeaShore  
Transportation  
Forum

Council President Olson advised Councilmember Marin and she were members of the SeaShore Forum. Over the past year they had been working on a new agreement. Cities in King County wanted Snohomish County cities to participate in the Forum but because they voted on projects in Snohomish County, they did not feel they should not vote on projects at the SeaShore forum. She read language Councilmember Marin developed that states no jurisdiction shall cast a vote for funding recommendations of federal funding allocated by the Puget Sound Regional Council in more than one forum or recommending body. Snohomish County cities shall not have voting rights at SeaShore for voting rights for allocations in King County.

Councilmember Marin agreed funding recommendations had been a thorny issue for some time; there was a great opportunity for many cities to participate in the SeaShore Forum and provide input on transportation issues. The proposed language would address the conflict regarding funding recommendations.

**SNOTRAC** Councilmember Dawson advised she was in Washington DC last week with a team from Snohomish County on coordinated transportation planning, SNOTRAC, Snohomish County Special Needs Transportation Coalition, who serves a purpose similar to SeaShore by voting on projects that receive federal funding. One of the things they worked on in Washington DC was how to make SNOTRAC more relevant as well as updating the statement of executive sponsorship that had not been updated since 2003. She noted Edmonds as well as other Snohomish County cities could benefit from participating in SNOTRAC as the group has been underutilized and under-recognized in Snohomish County. She offered to provide further information on coordinated transportation planning in Snohomish County. She noted one of the focuses of the Washington DC trip was unmet transportation needs for veterans.

Council President Olson commented she was excited to learn about SNOTRAC as it had appeared Snohomish County did not have an organization comparable to SeaShore that provided education to cities.

Councilmember Moore was also excited about SNOTRAC as a way to increase Snohomish County's advocacy with regard to transportation.

The proposed agreement was acceptable to the Council.

## **9. COUNCIL REPORTS ON OUTSIDE COMMITTEE/BOARD MEETINGS**

**SnoCom** Mayor Haakenson reported he attended the SnoCom Board meeting in Councilmember Dawson's absence and voted in favor of the annual budget which included a 4% increase.

**CTAC** Council President Olson reported she attended two Community Technology Advisory Committee meetings; they were making a lot of great progress and were working with Edmonds and Everett Community Colleges. She emphasized this was a potential revenue source for the City.

**Port Commission** Councilmember Wambolt advised most of the items discussed at the August 13 Port meeting had been reported in the press. At the August 27 Port meeting, Commissioners received a report by Bob Drewel from PSRC regarding accomplishment of 16 of the 18 objectives for 2006. Another interesting statistic Mr. Drewel provided was the four-county area used the most engineers per capita of any place in the United States but was 34<sup>th</sup> in producing engineers, revealing the need for more educational institutions in this area. The Port also reviewed their second quarter performance and gross profits which were up 19% from 2006.

**Sound Transit** Councilmember Marin reported he MC'd the groundbreaking of the Mukilteo Sounder station today. Edmonds has been fortunate to have a stop in Edmonds since 2003 and it was unfortunate it had taken this long for Mukilteo to have a stop. He noted once the interim Mukilteo station was completed next spring, the Edmonds project could proceed.

**Edmonds Community College** Councilmember Moore reported the Edmonds Community College annual Board retreat included discussion regarding the importance of recruitment and retention of students, issues they would be focusing on over the coming year.

SnoCom and  
SnoPak

Councilmember Dawson commented SnoCom had been seeking funding for an interconnect between SnoCom and SnoPak. Although it was originally believed funding they applied for would not be realized, they had received \$300,000 for the interconnect.

SnoCom

Mayor Haakenson advised the concept of forming a Public Safety Technology Committee was also discussed at the SnoCom meeting. Councilmember Dawson explained the intent of the committee was to form a group of technical people throughout the cities and agencies in Snohomish County. Discussion has been ongoing regarding the role of the committee such as who they would answer to, who the members would be and whether they would be appointed by the cities or communication centers, what the technology needs of public safety personnel are, etc. and ensuring decision-makers are able to participate in decisions regarding technology before projects are underway. Mayor Haakenson commented although the idea of that committee was good, he suggested consideration be given to consolidating some of the committees rather than creating more committees. Councilmember Dawson summarized the cities could not work in isolation with regard to public safety issues and a great deal of work was occurring at SERS, SnoPac, SnoCom, etc.

#### 10. MAYOR'S COMMENTS

Mayor Haakenson had no report.

#### 11. COUNCIL COMMENTS

City's Financial  
Situation

Councilmember Wambolt read a guest column that would appear in this week's *Edmonds Beacon* regarding misleading and incomplete campaign rhetoric during the past several weeks about the City's financial situation. Councilmember Moore objected; Mr. Snyder advised the column did not name names and addressed the City's financial situation. Councilmember Wambolt continued that as a member of the City Council's Finance Committee, he felt obligated to communicate the real financial outlook for the City. He highlighted initiatives that have eliminated significant amounts of the City's revenue, pointing out that because the City did not have a mall or gambling, it was critical to identify new sources of revenue. He described several revenue sources being pursued including, 1) the Hwy. 99 Task Force's report that in 1-2 years a \$90 million Walgreens development will begin at 220<sup>th</sup> and Hwy. 99, 2) the Harbor Square and Antique Mall redevelopment effort, 3) the Community Technology Advisory Committee was optimistic about the revenue broadband would provide, 4) progress will soon resume on neighborhood commercial centers, and 5) as a result of sales tax sourcing sales tax would be paid at the point of destination versus the current point of sale which will benefit Edmonds. He summarized it was too soon to estimate how much revenue would be realized from these sources. His point was that Councilmembers, the Mayor, City staff and volunteer citizens continued to work on these initiatives to increase revenue so that City services could be retained.

Harbor Square  
Redevelopment

Councilmember Marin advised last week each Councilmember received a 3-ring binder containing information about the work being done on the Harbor Square/Antique Mall redevelopment. He commented it was exciting that the group had not given up and was still pursuing redevelopment that would be an amenity for the community. He expressed his appreciation for the deliberative process that was occurring.

164th St.  
Walkway  
Project

Councilmember Marin recognized the wonderful job that was done on the 164<sup>th</sup> Street walkway project. Mayor Haakenson explained the contractor did a great job and was very conscientious, even sleeping in his truck on site to ensure his work was not disturbed. Neighbors brought the contractor food and a birthday cake on his birthday.

Sno-King  
Youth Club  
Event

Councilmember Moore announced the Running of the Balls on Saturday, September 8, a non-profit event that supported the Sno-King Youth Club. She encouraged the public to attend the event that would move 5,000 balls down Main Street and include activities, celebrities, and entertainment.

Harbor Square

As it appeared a contract rezone would be requested for Harbor Square, Councilmember Plunkett asked when the Council should discontinue talking about it. Mr. Snyder answered when the application was submitted. He cited the difference between the Appearance of Fairness Doctrine regarding things outside the record and pre-judgmental bias. He cautioned a Councilmembers could lose their right to vote by statements indicating their mind was so firmly made up it could not be changed.

**12. ADJOURN**

With no further business, the Council meeting was adjourned at 10:47 p.m.