

# EDMONDS CITY COUNCIL APPROVED MINUTES

## September 4, 2007

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Pro Tem Olson in the Council Chambers, 250 5<sup>th</sup> Avenue North, Edmonds. The meeting was opened with the flag salute.

### ELECTED OFFICIALS PRESENT

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

### ELECTED OFFICIALS ABSENT

Gary Haakenson, Mayor

### ALSO PRESENT

Hilary Scheibert, Student Representative

### STAFF PRESENT

Al Compaan, Acting Police Chief  
Duane Bowman, Development Services Director  
Brian McIntosh, Parks & Recreation Director  
Noel Miller, Public Works Director  
Rob Chave, Planning Manager  
Dave Gebert, City Engineer  
Stephen Koho, Treatment Plant Manager  
Gina Coccia, Planner  
Zach Lell, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

### 1. APPROVAL OF AGENDA

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

### 2. CONSENT AGENDA ITEMS

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

- A. **ROLL CALL**
- B. **APPROVAL OF CITY COUNCIL MEETING MINUTES OF AUGUST 28, 2007.**
- C. **APPROVAL OF CLAIM CHECKS #98630 THROUGH #98782 FOR AUGUST 30, 2007 IN THE AMOUNT OF \$662,225.46.**
- D. **AUTHORIZATION TO ADVERTISE FOR STATEMENTS OF QUALIFICATIONS FROM CONSULTANTS FOR THE COMPREHENSIVE TRANSPORTATION PLAN UPDATE.**
- E. **AUTHORIZATION FOR MAYOR TO SIGN ADDENDUM NO.1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH GRAY AND OSBORNE, INC. FOR THE 76TH AVENUE WEST/75TH PLACE WEST WALKWAY AND 162ND STREET SW PARK PROJECTS.**

Roll Call

Approve  
8/28/07  
Minutes

Approve Claim  
Checks

Comprehensive  
Transportation  
Plan Update

76th Ave. W/  
75th Pl. W  
Walkway and  
162nd St. SW  
Park

Woodway –  
Vehicle  
Maintenance

F. **AUTHORIZATION FOR THE MAYOR TO SIGN A SECOND ADDENDUM TO THE INTERLOCAL AGREEMENT FOR VEHICLE MAINTENANCE SERVICES BETWEEN THE CITY OF EDMONDS AND THE TOWN OF WOODWAY.**

MCC Feeder  
Installation at  
WWTP

G. **REPORT ON BIDS OPENED ON AUGUST 28, 2007 FOR THE MCC FEEDER INSTALLATION AT THE WWTP AND AWARD TO EWING ELECTRIC, INC. FOR THE AMOUNT OF \$30,582, INCLUDING SALES TAX.**

New Student  
Representative

3. **INTRODUCTION OF STUDENT REPRESENTATIVE HILARY SCHEIBERT FROM EDMONDS WOODWAY HIGH SCHOOL.**

Mayor Pro Tem Olson introduced Student Representative Hilary Scheibert, a senior at Edmonds-Woodway High School and briefly described her interests and activities. Student Representative Scheibert expressed her appreciation for the opportunity to serve as Student Representative.

Councilmember Dawson suggested delaying **Agenda Item 4** until Caldie Rogers, President, Greater Marysville Tulalip Chamber of Commerce, arrived.

Vacate Portion  
of Right-of-  
Way at 17008  
77th Pl. W

5. **RECONSIDERATION: JULY 17, 2007 PUBLIC HEARING REGARDING THE PROPOSED VACATION OF A PORTION OF THE PUBLIC RIGHT-OF-WAY ADJACENT TO 17008 - 77<sup>TH</sup> PLACE WEST, EDMONDS.**

City Attorney Zach Lell explained this was a reconsideration of a matter previously before the Council. The key issue for the Council was acceptance of the appraisal the petitioner previously offered with regard to the proposed right-of-way vacation. He explained the legal standards with regard to the compensation for a street vacation were flexible other than State Statute and the City’s code established a limit on the compensation the City could require: one-half the appraised value of the vacated right-of-way. He advised the Council could direct the staff to obtain its own appraisal or direct the petitioner to obtain a new appraisal. Although not technically a quasi judicial matter, but because it was a contested proceeding, out of an abundance of caution Mr. Lell recommended Councilmembers disclose any ex parte communications with the petitioner or any interested party in this proceeding.

Council President Pro Tem Wambolt read a letter from **Nancy Monson**, the property owner across the street from the subject property, into the record. The letter stated her opposition to the proposed vacation of the right-of-way, citing neighborhood opposition to the project due to the density and elimination of nearly all trees and natural growth in the area. Her letter pointed out the right-of-way preserved some green space and the owners who recently purchased the property did so with full knowledge of the right-of-way and setback requirements and she did not support waiving those requirements. She was in favor of preserving the character of the neighborhood and preserving green space. She also objected to the \$1,680 proposed in compensation to the City for 560 square feet of right-of-way as \$3.00/square foot, was considerably less than the assessed values in the neighborhood. Ms. Monson recommended the proposed right-of-way vacation not be approved.

Councilmember Plunkett asked why Councilmembers needed to make disclosures if this was a legislative versus a quasi judicial matter. Mr. Lell agreed with the characterization of this matter as legislative rather than quasi judicial, acknowledging the disclosure requirement legally applied only to quasi judicial matters. However, as this was a contested proceeding, he advised Council out of an abundance of caution to make disclosures. He stated that any failure to make a disclosure was unlikely to prejudice the matter.

Councilmember Plunkett advised he received the letter from Ms. Monson as well as had a long discussion with her in which she described why the Council should not approve the right-of-way vacation, similar to the description in her letter.

Council President Pro Tem Wambolt advised he also had a discussion with Ms. Monson.

Councilmember Dawson recalled Council initially voted to approve the vacation and Council President Pro Tem Wambolt later requested reconsideration which the Council agreed to in order to have some additional questions answered. She recalled one of the issues raised previously was the code did not describe the appraisal methodology that should be used. Because the cost of another appraisal would be similar to any additional amount the City would acquire via a higher property value, the Council preferred to add language to the code regarding the appropriate methodology. She asked if that had been done and how discrepancies regarding the appropriate appraisal methodology would be avoided in the future.

Planning Manager Rob Chave advised the code currently specified the type of appraiser who must conduct the appraisal but did not identify a method; it was presumed an acceptable method would be utilized. He responded to an earlier Council question regarding how the method for determining value via an appraisal was added to the code, explaining prior to 1993, the method for determining value was based on assessed value. The code was changed in 1993 to require an appraisal because assessed value was not necessarily related to the property value as assessments were not done on a regular basis and were typically triggered by a sale. Assessments were now done on a regular basis and more accurately reflected the property value. He suggested rather than mandating an appraisal methodology, returning to the assessed value basis for determining property value. He noted a benefit of using assessed value would be that no one would incur the cost of an appraisal. He planned to pursue this suggestion with the Assessor's Office and the Community Services/Development Services Committee.

Councilmember Dawson asked whether staff had any knowledge of the assessed value of this property. Mr. Chave answered he did not. He recalled the appraisal report included assessed values for comparable properties which ranged from \$26 to \$34/square foot. He noted it may be difficult to determine the assessed value of this property as it was recently constructed.

Councilmember Dawson asked the affect on the property owner if the Council did not vacate the property or if the Council determined a higher value for the property. Mr. Chave commented whether the assessed value or appraised value were used, it was only a starting point for determining the value of the vacation. He referred to examples in the packet. In this instance denying or delaying the vacation would have significant impacts on the applicant because something that was approved to be built but changed in the field did not comply with the code and unless resolved, the property owner would be required to remove the portion of the building that did not meet the code. He commented a delay in anticipation of a change in the code language was not advisable as any change would require review by the Planning Board, which was potentially a lengthy proceeding.

Councilmember Dawson asked if staff had conversation with the property owner regarding whether they would be willing to pay a higher amount. Mr. Chave answered no. Councilmember Dawson recommended the Council determine whether they planned to vacate the property and if they wanted to require a higher amount, offer the property owners an option such as the assessed value of comparable properties of \$26/square foot. Mr. Chave agreed that was a possible option. He did not recommend seeking another appraisal as the Council knew enough about the property's potential value to establish a value.

Councilmember Dawson observed there was sufficient basis in the record to utilize half of the low end of the reasonable value of the property. Mr. Chave agreed.

Council President Pro Tem Wambolt noted the current Snohomish County assessed value of the land was \$300,000 for 4,792 square feet or \$62.60/square foot. Half of that would be \$31.30/square foot or \$16,000. He recalled one of the reasons the applicants wanted the vacation was to build a deck. Mr. Chave was uncertain, recalling there was a problem with a chimney that was later converted to usable space.

Councilmember Moore recalled City Attorney Scott Snyder informed Council they first must make a finding that the vacation was in the public's interest. Mr. Lell agreed that was inherent in any street vacation procedure; the Council was prohibited from vacating any publicly owned right-of-way unless there was a public purpose underlying the decision. Councilmember Moore asked whether it must be beneficial to the general public. Mr. Lell answered the Council had significant discretion; the definition of public interest or public purpose was broad enough to include whatever compensation the Council required, returning the property to the tax rolls, or eliminating any future City maintenance responsibility. He summarized it did not require that every member of the public necessarily benefited; only that the Council determined there was a public benefit.

Councilmember Moore asked whether the City did any maintenance on this property. Mr. Chave answered he did not believe so, noting it was not paved or in any active use. Councilmember Moore referred to two on-street parking spaces in the right-of-way and staff's indication they were not needed. Mr. Chave commented that referred to the street end, not the area to be vacated.

**COUNCILMEMBER WAMBOLT MOVED, SECONDED BY COUNCILMEMBER MOORE, TO DENY THE REQUEST TO VACATE A PORTION OF THE RIGHT-OF-WAY.**

Council President Pro Tem Wambolt recalled when the Council last discussed this vacation, he was not satisfied with the value that had been determined. After reviewing the letter from Ms. Monson, he realized he had not examined closely enough whether the right-of-way should be vacated. He looked at the property over the weekend and observed there were two parking spaces that were being used on a Sunday afternoon. He commented there was no other space in this area for parking; one driveway did not appear to be able to accommodate the resident's vehicle due to the steepness of the grade. He noted there was also very little open space and the vacation of the right-of-way would eliminate a large percentage of the remaining open space. He found it was not in the public best interest to vacate this property.

Councilmember Plunkett noted he raised the issue of reconsideration. He pointed out the area proposed to be vacated was not open space; the PRD already had open space and this land was owned by the City and was not part of their open space. The \$62/square foot value was for improved land; this right-of-way was unimproved. For unimproved land, the assessed value was \$29.76/square foot. He noted the assessed value of land on property on Talbot Road was \$44.82/square foot. Staff believes the value is \$26 - \$32/square foot. He explained the assessed value of unimproved land of approximately \$30/square foot equates to a market value for the vacation square footage of approximately \$16,000. As the property is an economic remainder, its value was less than unimproved land, bringing the value down to \$8,000. Thus the Council could determine a value of \$1,500 to \$3,000 appropriate and had in the past accepted \$1,400 - \$1,600 as payment for vacations of property worth \$2,000 - \$4,000. Based on his review, he found \$1,400 acceptable and comparable to Council precedent in past vacations.

Councilmember Marin advised he would vote against the motion. When the Council last deliberated, he voted against the motion as a protest vote, finding the property owner acted in good faith to seek an appraisal. He recommended proceeding with the value determined via the appraisal.

Councilmember Dawson agreed with Councilmember Marin and expressed her appreciation for Councilmember Plunkett's comments that established a basis for the property's value. She supported adopting the ordinance as previously drafted with compensation of \$1400.

**COUNCILMEMBER MOORE WITHDREW HER SECOND AND THE MOTION DIED FOR LACK OF A SECOND.**

Councilmember Moore noted Councilmember Plunkett's comments clarified the public benefit and the Council precedent.

**COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER MARIN, FOR APPROVAL OF ORDINANCE NO. 3662. MOTION CARRIED (6-1), COUNCIL PRESIDENT PRO TEM WAMBOLT OPPOSED. The ordinance approved is as follows:**

**AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, VACATING CERTAIN UNOPENED STREET RIGHT OF WAY OF 77TH PLACE WEST LOCATED ADJACENT TO 17008 - 77TH PLACE WEST AS DESCRIBED HEREIN; ESTABLISHING THE TERMS OF VACATION, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

Ord# 3662  
Vacate Portion  
of Right-of-  
Way of 17008  
77th Pl. W

**6. CLOSED RECORD APPEAL OF THE HEARING EXAMINER'S DENIAL OF A SIDE YARD SETBACK VARIANCE AT 18600 SOUND VIEW PL. APPELLANT AND APPLICANT: DR. RAYMOND BOGAERT (FILE NOS. V-2006-102 & AP-2007-4)**

Closed Record  
Appeal –  
Setback  
Variance at  
18600 Sound  
View Pl.  
(Bogaert)

City Attorney Zach Lell recommended establishing an oral argument schedule that includes an order of presentation for speakers and time limits. He recommended based on past practice the order of presentation be staff, a 10-minute presentation by the appellant who is also the applicant, and three minutes for each party of record, followed by rebuttal by the appellant if they reserved any time. As this was a quasi judicial matter and the Council was governed by the Appearance of Fairness Doctrine, he recommended the Council disclose any ex parte communications as well as state for the record they had not prejudged the issue or were otherwise biased.

Mayor Pro Tem Olson, Councilmembers Marin, Moore, Orvis, and Dawson and Council President Pro Tem Wambolt stated they had no ex parte communication and were not biased in any way.

Councilmember Plunkett advised he had many communications with Vicki Haynes and Paul Lippert but not in regard to this matter.

Mr. Lell advised as this was a closed record proceeding, the information provided to the Council must be limited to facts in the record contained in the Council packet. To the extent any party may attempt to interject new, factual testimony, he recommended the Council establish a rule under which any party wishing to object to information must do so by the end of the proceeding or the objection would be waived. Mayor Pro Tem Olson agreed.

Planner Gina Coccia displayed a vicinity map and identified the property at 18600 Sound View Place. She relayed staff's recommendation that the Council uphold the Hearing Examiner's decision to deny the variance. She summarized the applicant, Dr. Bogaert, applied for a variance to reduce the required 10-foot side setback on the north and south property lines to 5 or 8 feet. She clarified the original request was for a 5-foot setback on the north and south property lines and the revised request was for an 8-foot setback on the south property line for the house, 8-foot setback on the north for the house and a 5-foot setback on the north property line for the new, detached 3-car garage. She advised eaves were permitted in the setback area; the applicant requested the eaves be allowed to project into the setback.

Ms. Coccia referred to the staff report dated September 15, 2006 that contained staff's recommendation to deny the original variance application for the 5-foot setback. At the applicant's request, the hearing was continued to allow them to work with the neighbors on a solution that would adequately address their concerns. The applicant revised their application as described above and the Hearing Examiner's decision to deny the variance was based on the revised proposal.

Councilmember Orvis asked the width of the lot. Ms. Coccia answered it was 50 feet wide with a 10-foot setback on each side, leaving a buildable width of 30 feet. Councilmember Orvis asked the buildable square footage of the lot without the variance. Ms. Coccia displayed a drawing provided as an attachment to the July 2007 staff report that identified maximum lot coverage and a building footprint. She advised the lot was over 15,000 square feet and over 300 feet deep but only 50 feet wide. She acknowledged the property owner could construct a narrow, long house without a variance. She noted the buildable footprint identified on the drawing was to illustrate their ability to build a long, narrow house. Councilmember Orvis noted the drawing identified the buildable footprint as 5,191 square feet.

#### Applicant/Appellant

**Chris Thayer, counsel for the applicant, Raymond Bogaert**, asked to reserve 3 minutes for rebuttal. He explained this was a non-conforming lot with dimensions of 50 x 300 feet, zoned RS-12 which required 10-foot side setbacks, resulting in a 30-foot wide buildable lot. As the drawing illustrated, the buildable footprint would accommodate a long, skinny, tall house. He explained the existing structure encroached on the setback as the structure predates incorporation into Edmonds. The proposed structure seeks a 2-foot setback variance on the north and south boundaries and 5-foot setback variance for the area of the garage. He pointed out the structures on the north and south and the existing structure on the Bogaert property currently encroach into the setbacks; the amount of the encroachments were described in his application. He summarized the net linear feet of variance sought for the new construction was substantially similar to the current encroachment by the existing structure although the depth of the encroachment into the setback was less.

He recalled the majority of the objections voiced at the Hearing Examiner Meeting were that the proposed house would be located substantially west of the existing structure. He explained the existing structure was located far east on the narrow property and the current view from the house is a long narrow tract of land before the water; the neighbors' houses to the north and south were located closer to the water which the Bogaerts also wished to do as well as minimize the impact to the neighbors. He noted the neighbors' objections state the house proposed by the Bogaerts would impact their views and natural light entering their property. He referred to documentation and photographs they submitted disputing those assertions. He summarized the neighbors on the north and south would prefer the Bogaerts not build a new house closer to the water as it would result in a house between them versus the vacant portion of the Bogaerts property that exists between them now. He concluded whether the Bogaerts built their house further to the west should did not affect their variance request.

Mr. Thayer acknowledged it was physically possible to build a 30-foot wide long, narrow and tall house within the 10-foot setbacks; however, that was not the type of structure envisioned by the Edmonds code. The structure the Bogaerts propose would address the neighbor's concerns as much as possible and would be aesthetically pleasing. He noted a 30-foot wide, 3-story townhouse type structure, a house the Bogaerts could construct without seeking a variance, would have more massing and look more imposing when viewed from the side. Instead the Bogaerts have proposed a structure with a minimal variance that would have no impact on the neighbors.

Councilmember Plunkett interjected Ms. Haynes wrote him a letter that was included in the packet. Her letter was written as a Commissioner on the Historic Preservation Commission regarding historic overlays but did not make reference to this action. Mr. Lell advised if the letter did not have a direct bearing on

this application/proceeding, it was beyond the scope of the Appearance of Fairness Doctrine. Out of an abundance of caution, he invited any parties of record and the appellant to rebut the substance of the letter. Councilmember Plunkett clarified the letter referred to the character of the neighborhood in general and did not reference a specific lot. He advised the letter would not bias him in any way. Mr. Lell advised it would not have a direct bearing on this proceeding and recommended the Council proceed. Mr. Thayer had no objection.

Mr. Thayer continued, explaining the Hearing Examiner based her conclusion on, 1) the application was inconsistent with the existing RS-12 zoning regulations to phase out non-conforming uses and stated if the Bogaert's house were destroyed entirely in a natural disaster and they were required to rebuild, they would be required to comply with the existing zoning regulations. He commented the 10-foot sideyards envisioned for the RS-12 zone were not designed for a non-conforming, narrow lot as a RS-12 lot was intended to be 80 feet wide with 10-foot wide setbacks on each side. He disagreed with the Hearing Examiner's finding that non-conforming uses were to be uniformly phased out, noting the variance process was intended to recognize unique circumstances. As his allotted time had expired, Mr. Thayer urged the Council to review the materials in the record.

#### Parties of Record

**Ron Nations, Edmonds**, property owner to the south of the Bogaert property, explained his primary concern was maintaining an overall aesthetic sense in the community. He expressed concern with a reduction in their home's value, their sense of privacy, and sense of a small home in a quiet neighborhood by a large structure located closer to their home than regulations allow. He commented on the negative trend over the past 15 years of "wedging" large structures onto small lots after removing trees and shrubbery and wanted to avoid that trend in their neighborhood. He compared Edmonds to Woodway and Lynnwood, concluding large structures on small lots resulted in a more urban feel that was less livable and destroyed privacy, natural features, open space, and wildlife habitat. He pointed out these issues applied to lot setback as in accordance with physics, a reduction in the distance from a source of sound increased the sound. He was also concerned with visual impacts.

**Vicki Haynes, Edmonds**, property owner to the south of the Bogaert property, expressed concern with the "saming" of Edmonds and the loss of its character. She pointed out one of the tests for granting a variance was whether it was detrimental. She found the proposed variance detrimental, pointing out the impact of reducing the setback with regard to available light, and sense of space, air and privacy. She reiterated Mr. Nations' comment about "wedging" houses on small properties. She acknowledged the properties were very deep and narrow and not well suited to large homes. She commented University Colony where these properties were located had a very special character extending back to the turn of the century. She requested the Council deny the variance request.

**Charles Greenberg**, counsel representing the Wilsons, property owners to the north of the Bogaert property, began his comment.

Mr. Thayer objected to the brief the Wilson's counsel faxed him at approximately noon today, questioning whether the City's code allowed for the filing of a brief by another party in a closed record appeal. Assuming the Council allowed the filing of the brief, he requested the brief not be admitted into the record as he had not had an adequate opportunity to review and/or rebut issues raised in the brief. Mr. Lell recommended procedural issues be addressed at the conclusion of argument. City Clerk Sandy Chase advised a copy of the brief was provided at Councilmembers places on the dais this evening.

Councilmember Plunkett expressed concern the information was not provided in a timely manner. Mr. Lell explained the City's code allowed parties to an appeal to submit timely written argument but did not define timely submitted. He relayed Mr. Snyder's indication this has historically meant the Council has

received briefing up to and during closed record appeals. As that had been the Council's past practice, he recommended the Council continue that practice tonight. The appellant could raise an objection to any attempt in the briefing to interject factual assertions not contained in the closed record.

Councilmember Dawson commented Mr. Lell's recommendation was that anything submitted up to and during the closed record proceeding was timely, and unless one of the parties requested a continuance, it was unlikely the Council would have an opportunity to review the information prior to their decision. Mr. Lell agreed, commenting the Council had the discretion to continue the matter to a future meeting to allow the Council an opportunity to review material that was submitted.

Mr. Greenberg advised he consulted with Mr. Snyder and was advised information could be submitted as late as today knowing it may not be thoroughly reviewed under the circumstances. He preferred the materials be considered and if required continue the proceeding. Mr. Lell asked Mr. Thayer whether he was objecting to the substance of assertions made in the brief or the timeliness. Mr. Thayer answered there were no new facts raised in the brief but he had not had an opportunity to review it thoroughly. He relayed his client's preference not to continue this matter unless absolutely necessary.

Mr. Greenberg continued with his comments and advised on appeal, the Council must consider whether the Hearing Examiner made an error in analyzing the issues. He noted the Hearing Examiner confirmed staff's recommendation that a variance was not appropriate. He pointed out the six requirements of the variance statute, asserting none of the requirements had been met with the exception of perhaps one. He referred to a similar situation outlined in the record where a 30 foot wide house was constructed within the required setbacks on a 50-foot lot on Sound View Place. He noted one of the requirements of the variance statute was special circumstances which the Hearing Examiner found was not met. He contended granting the variance would provide the Bogaerts a special privilege. He supported the Hearing Examiner's decision to deny the variance application.

**William Wilson, Edmonds**, property owner immediately adjacent to the north of the Bogaert property, commented there was little time for their counsel to submit materials sooner. He referred to a letter his wife submitted today. He explained the houses in the area were currently staggered with one higher on the slope and back on the bluff, the next home forward and the next back, etc. He advised their original structure was constructed in 1919 and was located 4 feet from the north property line of the Bogaert property and a walkway is along the property line. The Haynes structure is also very close to the Bogaert's south property line. He disagreed with Mr. Thayer's statement that their only issue to the Hearing Examiner was the western placement of the Bogaert structure, explaining their primary concern was the reduction in the side setback because their home was located close to the property line. He noted the Bogaerts' existing home, located up the slope was less intrusive to neighbors.

Mr. Lell asked Mr. Thayer if he had received the letter written by Ms. Wilson. Mr. Thayer answered no and was provided a copy.

**Nicole Wilson, Edmonds**, property owner to the north of the Bogaert property, pointed out all property had restrictions and potential purchasers bore the burden of determining whether the property would meet current and future needs and if not, change one's vision or needs to suit the property rather than seeking to make the property conform. She commented a reasonable person could assume the City's codes would be enforced with variances granted only under extreme circumstances that constituted an undue hardship and not simply to accommodate a preference when an alternative was available.

**Walter Yeager, Edmonds**, property owner to the north of the Wilsons, commented when these homes were built 80 years ago, most were summer homes with few regulations on setbacks, etc. He commented

the former owner of the Wilson property dealt with the setback issue when they sought to expand their house by purchasing a 50-foot lot between their house and his house.

**Al Rutledge, Edmonds**, commented large homes had been constructed on small lots in this area.

#### Rebuttal

Mr. Thayer referred to site plans contained in Exhibit B of the Bogaert application. The first, existing buildings and vegetation, illustrated the existing house, carport and vegetation. The next drawing illustrated the proposed residence, highlighting the areas where the variance was sought on the northern and southern boundaries of the most western portion of the residence and the northern boundary of the garage. He noted the Bogaerts were open to discussing whether the existing carport was retained. The next drawing was the buildable footprint that identified sight lines for the properties to the south and north. He pointed out this drawing illustrated even without a variance the Bogaerts could construct a long, narrow house that extended west on the property. He concluded these drawings showed the lengths to which the Bogaerts have gone to propose a structure that would have the least impact on their neighbors. He summarized the variance was consistent with the goals and purposes of the zoning ordinances and was reasonably necessary given the non-conforming nature of the lot that was too narrow for an RS-12 lot.

Mr. Lell asked if there were any parties of record or the appellant/applicant had any objections that information provided was outside the record or any Appearance of Fairness challenges. No objections or challenges were voiced.

Councilmember Moore explained the Council was restricted to the information contained in the record and could not ask questions if the answer was not contained in the documentation. The Council could not take into account emotional argument and must rule according to the regulations in place.

#### **COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM WAMBOLT, TO UPHOLD THE HEARING EXAMINER'S DECISION AND STAFF'S RECOMMENDATION TO DENY THE VARIANCE.**

Councilmember Dawson found the Hearing Examiner made the correct decision and staff's recommendation was appropriate because under the City's code the request did not meet the variance criteria. With regard to whether this was the minimum variance necessary to achieve a buildable structure, she pointed out no variance would be required to build a structure. She noted although there had been emotional pleas made to the Hearing Examiner and Council, the Council must base their decision on whether the variance request met the provisions in the code. She noted none of the property owners, although their current structures encroached into the setback, would not be allowed to rebuild in the setback. She acknowledged the lot was narrow; however, a structure could be constructed that adhered to the setback requirements. Although the property owner might find a wider footprint more aesthetically pleasing, it was not required to construct a home on this lot and the code did not require property owners be allowed to construct the house of their choice.

Councilmember Marin spoke in favor of the motion, commenting the Bogaerts made a reasonable request via exploring the possibility of a variance. He referred to Conclusion #2 of the Hearing Examiner's findings as the basis for his decision, agreeing the property owner was not denied the opportunity to build a new, more modern structure or move the structure closer to the water. He was confident a structure would be proposed in the future that would accomplish those objectives.

Councilmember Moore expressed support for the motion, agreeing with the Hearing Examiner's conclusions. She noted the appellant's most compelling argument was the nonconforming lot; however,

the nonconforming lot did not restrict them from building a house on the lot within the allowable footprint. She advised citizens' emotional arguments about removing trees did not affect her decision as residents did not have a right to retain trees unless they owned them nor did they have a right to staggered development as part of the character of the community. She supported the appellant's right to build their house as close to the water as regulations allowed, an action that denying the variance would not prohibit.

**MOTION CARRIED UNANIMOUSLY.**

Mr. Lell advised he would return with draft findings and conclusions for consideration at a future Council meeting. He asked whether the Council preferred to adopt the findings and conclusions by the Hearing Examiner rather than drafting additional findings and conclusions of the Council. Councilmember Dawson answered the Council's conclusions were consistent with the Hearing Examiner's decision.

Military Family  
Friendly  
Employer  
Program

**4. 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.**

Councilmember Dawson advised Caldie Rogers, President, Greater Marysville Tulalip Chamber of Commerce, was unable to attend last week's meeting and apparently was not able to attend tonight. She anticipated Ms. Rogers would prefer the Council take action rather than delaying action for two weeks.

Councilmember Dawson explained the Marysville Tulalip Chamber of Commerce developed this program to support military families. She explained in many regions, dependants of military families found themselves discriminated against in employment. Although Snohomish County has a positive relationship with military families, through the development of this program, the Chamber learned dependants of military families would apply for jobs and not get callbacks due to the base address on their resume. When they changed their address to a PO Box, they received a much greater response. She explained employers may be hesitant to hire a person who would only be stationed at a base for three years; however, three years was the average length of employment in today's workforce. The intent of this program was to educate the community and employers about the untapped resource in military family members who tend to be better educated, hardworking, understand concepts such as a drug free workplace, etc.

Councilmember Dawson explained the program developed by Marysville Tulalip Chamber of Commerce encouraged area businesses to become a military family friendly employment partner. Cities would be asked to provide businesses information about the Military Family Friendly program when they apply for a business license and decals would be distributed to businesses that identified them as a military Family Friendly Employer. She read the proposed resolution expressing the City's support for the Military Family Friendly concept:

WHEREAS, the city of Edmonds hosts a vast number of military families who are either permanently or temporarily stationed in the area; and

WHEREAS, military spouses and family members are often faced with employer bias because of stereotypes such as availability and potential length of employment; and

WHEREAS, the city of Edmonds has and wishes to continue to experience economic development and the creation of family wage jobs; and

WHEREAS, the city of Edmonds supports strongly a diverse and inclusive qualified workforce; and

WHEREAS, the city of Edmonds supports fully our troops and their families; and

WHEREAS, the city of Edmonds is an equal opportunity employer; and

WHEREAS, the city of Edmonds hereby makes the following finding of fact:

- A. Today's employers are faced with an unprecedented challenge of meeting their staffing needs in today's high-technology, service-oriented economy. The demand for motivated, qualified personnel has outstripped supply in many industries. Without new sources of talent, growth, productivity and profits will be constrained by shortages in the labor market.
- B. Military family members provide an advantage to employers searching for high levels of talent, training, and unique skills cultivated by the rigors of military family life.
- C. Military family members are highly educated and trained in a variety of disciplines. More than one-fifth of spouses have earned a baccalaureate degree and one in twenty holds one or more graduate or professional degrees. Many more are licensed or certified in skilled trades or professional fields.
- D. The U.S. Department of Labor, Bureau of Labor Statistics reports that the average job tenure of employees has been on a steady decline over the past decade. Across all industries, the average tenure is between three and four years. The median tour of duty for military personnel is 3 years, suggesting that their accompanying spouses are likely to be employed for an "average" period, if they find employment shortly upon arrival.
- E. Approximately 6500 sailors and civil service persons are assigned to Naval Station Everett with an estimated 10,000 family members. Of this number there are about 5% per month that rotates in and out. This means about 825 sailors plus family members, per month, are coming into and out of Naval Station Everett.

NOW THEREFORE, BE IT RESOLVED:

THE CITY OF EDMONDS IS A MILITARY FAMILY FRIENDLY PARTNER AND ENCOURAGES AREA BUSINESSES TO JOIN THE MILITARY FAMILY FRIENDLY PARTNERSHIP INITIATIVE.

Councilmember Dawson expressed her appreciation to City Clerk Sandy Chase for her support of this concept. She noted this idea had already received recognition and awards although the official rollout had not yet occurred.

Res# 1152  
Military Family  
Friendly  
Employment  
Program

**COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCILMEMBER MARIN, FOR APPROVAL OF RESOLUTION NO. 1152 DECLARING EDMONDS TO BE MILITARY FAMILY FRIENDLY AND ENCOURAGING AREA BUSINESSES TO BECOME A MILITARY FAMILY FRIENDLY EMPLOYMENT PARTNER.**

Councilmember Moore declared this a brilliant idea, noting this may be a resource for Snohomish County PUD who was desperately searching for linemen, a job that paid \$50,000/year. She asked if this was modeled after another program or was a new idea. Councilmember Dawson stated the Marysville Tulalip Chamber of Commerce created this program with the hope it would be replicated across the country.

Councilmember Marin planned to attend the kickoff event. Raised as a military dependant and serving in the Navy Reserves, he was keenly aware of this problem. He expressed his thanks to the Marysville Tulalip Chamber of Commerce for taking the lead on addressing this issue.

**MOTION CARRIED UNANIMOUSLY.**

## 7. AUDIENCE COMMENTS

**Al Rutledge, Edmonds**, suggested having a representative from Snohomish County Council speak to the City Council about smaller homes that were being permitted in Snohomish County. Next, he reported the Taste of Edmonds was a great event with assistance provided by a lot of volunteers. He recalled 20 years ago the Council met twice a month and staff was seated at a table on one side of the room. He suggested

Staff Seating at  
Council  
Meetings

the Council consider having configuration again rather than having staff sit in the audience. He also suggested everyone attending Council meetings sign in to provide a record of who attends meetings and for safety reasons.

**Roger Hertrich, Edmonds**, stated he has been an attender at several hearings lately and attended one recently that he needed to relay a problem that he found with the actions and demeanor of the person in charge of that meeting.

Responding to questions of City Attorney Lell, Mr. Hertrich stated the hearing he attended had nothing to do with a Council Meeting; it has to do with a different action that the City Council has nothing to do with.

Concerns re:  
Hearing  
Examiner

Mr. Hertrich stated that he objected to testimony made by the person that was in charge of the meeting, the Hearing Examiner. The hearing was regarding a remand which goes to Superior Court on appeal (if appealed). The person in charge indicated by their demeanor that they were a bit opposed to some of the people that were there and some of the things that they were saying. Mr. Hertrich stated he specifically objected at the meeting to the Hearing Examiner giving personal testimony. Mr. Hertrich stated the Hearing Examiner needs to be adjusted in their behavior. The previous Hearing Examiner would sit quietly, let everyone say what they wanted, take notes and maintain order but did not create an antagonistic atmosphere. Mr. Hertrich further explained that the hearing was regarding buffering and the wildlife area, it was separate from what the Council is dealing with and had to do with the PRD and SEPA. He added that the Hearing Examiner's attitude makes it difficult for a person who is not used to giving testimony. He suggested this issue be discussed when the Hearing Examiner makes a report to the City Council.

Mayor's  
Vacation and  
Comp Time

Next, Mr. Hertrich pointed out the previous minutes did not capture all his remarks. With regard to comp time, he requested an accounting of the time the Mayor spends away from the City on vacation or comp time.

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

Don Kreiman

Mayor Pro Tem Olson announced Don Kreiman passed away over the weekend. She commented he would be greatly missed for his comments to the Council and involvement in various City committees including the Transportation and Parking Committee and because he was an all-around great guy.

Hot Autumn  
Nites Car Show

Mayor Pro Tem Olson encouraged the public to attend the Hot Autumn Nites car show on Saturday, September 8.

## **9. COUNCIL COMMENTS**

State Auditor  
Exit  
Conference

Council President Pro Tem Wambolt reported on the exit conference held with the State Auditor. The results of the audit were that the City complied with State laws and regulations and its own policies and procedures in the areas they examined and internal controls were adequate to safeguard public assets.

Oct. 6 Graffiti  
Paint-Out Event

Councilmember Dawson reported a number of cities were partnering for the October 6 Paint-Out event sponsored by the Snohomish County Executive. Edmonds and Mountlake Terrace plan to paint a wall on the trail behind Funtasia that is continually painted with graffiti. She explained the event would include instruction on how to clean graffiti and information on paint products for various surfaces as well as opportunities to paint out graffiti in the community. She urged anyone interested in participating to sign-up in advance on Snohomish County's website. She noted the Realtors Association was also one of the partners/sponsors.

Councilmember Plunkett welcomed City Attorney Zach Lell and new Student Representative Scheibert.

Don Kreiman

Councilmember Orvis commented although he and Mr. Kreiman often disagreed on issues, he was a sincere person who was true to his beliefs and he would miss him.

Don Kreiman

Councilmember Moore expressed her condolences to Don Kreiman's family. She noted Mr. Kreiman gave a lot to the community as a member of the Edmonds Daybreakers Rotary and an active member of the Chamber. He was a good friend and she would miss him terribly.

Graffiti  
Brochure

Councilmember Moore complimented staff on the graffiti brochure distributed to the Council, commenting the brochure provided more information than she was aware the City provided. Next, she pointed out the Mayor's salary had nearly doubled from \$60,000 over the past eight years, yet the Mayor's job description was only two paragraphs long and there were few details regarding time required to be spent on the job, vacation time, requirements to provide an annual report to the Council or set annual goals, etc. She suggested in 2008 the Council consider expanding the job description, noting the Directors' job descriptions were pages long and there were specifics with regard to the amount of vacation time earned, etc. She concluded a better description and requirements would assist in making the Mayor's job more transparent to the citizens.

Mayor's Job  
Description

Don Kreiman

Councilmember Marin commented four years ago he ran against Don Kreiman for the Council and they became good friends through that process. They worked together on several committees since then and discovered they had many beliefs in common. He commented he was a great guy who would be missed.

Student Representative Scheibert thanked the Council for the opportunity to serve as Student Representative.

Mayor Pro Tem Olson thanked Mr. Lell for his assistance during the meeting.

## 10. ADJOURN

With no further business, the Council meeting was adjourned at 8:56 p.m.