



CITY OF KIRKLAND
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**DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Marilynne Beard, Interim City Manager
From: Eric Shields, AICP, Planning Director
Jon Regala, Senior Planner
Date: May 4, 2010
Subject: RESPONSE TO INQUIRY ON HEDGES

RECOMMENDATION

City Council reviews the information below and provides direction as to whether this issue should be included on the list of this year's code amendments to be considered by the Planning Commission and Houghton Community Council.

BACKGROUND

During the *Items from the Audience* portion of the City Council's March 16, 2010 meeting, a Kirkland resident, voiced concern regarding her neighbor's hedge since the hedge reduces sunlight to her property and blocks her territorial view to the west. The hedge, comprised of Leyland Cypress trees, was planted by the adjoining property owner along their common north/south property line. The hedge also affects her neighbors. The Kirkland resident also stated that the property owners to the west were not interested in limiting the height of the hedge due to a desire to maintain their privacy. The concerned resident has requested that the City intervene and begin regulating hedges, similar to how the City regulates fences, in order to protect her views and property values. The City Council asked staff to prepare a background informational memo regarding regulating hedges.

The Kirkland Zoning Code (KZC) regulates fences (see Attachment 1), but does not regulate hedges. In general, fences are limited to a height of 3.5' if within the front yard setback and 6' within the side and rear yard setbacks. The maximum height limit for the zone dictates the fence height limit elsewhere on a property. The City recently completed an update to its tree and vegetation regulations. The KZC has not and does not regulate the height of vegetation. When issues regarding hedge height limitations for private view purposes arise, the practice has been to advise property owners to resolve the issue between them.

The Comprehensive Plan does have a policy about protecting public and private views:

Policy CC-4.5: Protect public scenic views and view corridors.

Public views of the City, surrounding hillsides, Lake Washington, Seattle, the Cascades and the Olympics are valuable not only for their beauty but also for the sense of orientation and identity that they provide. Almost every area in Kirkland has streets and other public spaces that allow our citizens and visitors to enjoy such views. View corridors along Lake Washington's shoreline are particularly important and should continue to be enhanced as new development occurs. Public views can be easily lost or impaired and it is almost impossible to create new ones. Preservation, therefore, is critical.

Private views are not protected, except where specifically mentioned in some of the neighborhood plan chapters of the Comprehensive Plan and in the City's development regulations.

Deb Powers, the City's Urban Forester has been in contact with the concerned Kirkland resident regarding the hedge height issue several times since spring 2009. Because the KZC does not regulate hedges, Ms. Powers had recommended the City of Bellevue's mediation program as a way to settle the dispute. Ms. Powers had also recommended that the concerned Kirkland resident check her title report for any private view covenants that may have been established between previous owners, obtain legal advice from an attorney, to get involved with the tree regulation amendment process (now complete), and/or to get involved with neighborhood planning as possible solutions.

HOW OTHER CITIES REGULATE HEDGES

Most Washington cities, including Kirkland, regulate the height and location of vegetation to ensure traffic safety at intersections. However, many cities do not regulate hedges in terms of placement and height. These cities include our neighbors Bellevue and Redmond, as well as King and Snohomish Counties and the cities of Auburn, Edmonds, Enumclaw, Maple Valley, Mercer Island, Port Townsend, Seattle, Spokane, Vancouver, Woodway, and Yakima.

The following chart and definitions summarize how some municipalities regulate hedges. The information was gathered from the Municipal Research and Services Center of Washington's website based on the list of municipalities that regulate fences and hedges.

CITY/COUNTY/TOWN	HEDGES – MAXIMUM HEIGHT			
	Front Yard	Side Yard	Rear Yard	General Notes
Anacortes	Sight obscuring - 2.5' Non-sight obscuring - 4.5'	7'	7'	
Bellingham	3.5'* to 4.5' *Maximum height on corner lots	3.5'* to 6'	6'	<ul style="list-style-type: none"> If not in a required yard, maximum structure height applies Hedge may exceed maximum height if abutting property owners consent and City determines it's not detrimental in terms of view, light, air, and traffic safety
Bonney Lake	4'	6'	6'	
Clyde Hill	8'	8'	8'	
Fircrest	4'	6'	6'	
Franklin County	4'-6'	6'	6'	
Longview	3.5'	No Limit	No Limit	
Lynnwood	Vision-obscuring hedge not allowed within 15' of front property line Non-vision obscuring hedge allowed -3'	Non-vision obscuring hedge – 3' Vision- Obscuring 3' to 6'	Non-vision obscuring hedge – 3' Vision-obscuring 3' to 6'	
Monroe	3.5'	6'	6'	6' anywhere else on the lot
Mountlake Terrace	4'	6'	6'	6' anywhere else on the lot
Yarrow Point	6'	6'	6'	

Of the municipalities that regulate hedges, the following municipalities have a definition for a hedge:

Anacortes	Municipal Code 17.06.385. "Hedge" means trees, vines, and/or shrubs which are planted in a substantially uniform configuration, grown and joined together in some definite manner and generally pruned to a uniform shape, creating a substantial barrier to sight. (Ord. 2316 (part), 1994) See also "Fence."
Clyde Hill	Municipal Code 17.04.230. A "fence" shall be any barrier that is naturally grown or constructed for purposes of confinement, means of protection or use as a boundary.
Fircrest	Municipal Code 22.98.338. Hedge means a row of small trees, shrubs, or other vegetation planted as a fence or boundary. (Ord. 1375 § 9, 2005).
Lynnwood	Municipal Code 21.02.390. "Hedge" means a row of closely planted shrubs or trees forming a boundary or barrier. <ul style="list-style-type: none">• "Vision-obscuring fences and hedges" shall mean solid or partially open fences and hedges• "Non-vision-obscuring fences and hedges" shall include solid or partially open fences and hedges
Mountlake Terrace	Municipal Code 19.15.090. "Hedge" means a continuous barrier or screen formed of shrubs, trees or a combination thereof.
Yarrow Point	Municipal Code 17.08. Hedges exist whenever a row of two or more trees, shrubs, or other plants constitute a barrier in excess of six linear feet and establish a boundary, or hinder free passage of humans or animals on the surface of the ground or screen or obscure vision, or baffle sound.

The City of Edmonds repealed its hedge regulations in March 2004 because the regulations were not effective. It appears that the previous hedge regulations were subject to varying interpretations, making enforcement difficult. Copies of City of Edmond's Planning Board and City Council minutes have been attached to provide the Council insight into their discussion on this matter (see Attachments 2 and 3). Inadequate city resources, property rights issues, and difficulty in regulating vegetation were mentioned as reasons for the repeal of the Edmonds regulations.

ISSUES

The Merriam-Webster online dictionary defines a hedge as "1) a fence or boundary formed by a dense row of shrubs or low trees, or 2) a barrier, limit." Unlike fences, shrubs or trees are living things that grow and change over time. Because hedges are not static and because they have not previously been regulated within the City, staff has identified the following potential issues.

Objectives

The first issue is to clarify the intended objectives of regulating hedges. Since hedges may have similar impacts as fences, should hedges be regulated similarly? The City's fence regulations protect neighbors and the public from the impacts, such as reduced light and air, caused by structures close to property lines by limiting fence height within required yards. However, outside of required yards, fences may be built up to the same height limit allowed for other structures. On a side note, shrubs and trees, which the City encourages to be retained, may also have the same impacts as fences but are not regulated.

Another potential purpose for regulating hedges is to minimize view obstruction. This has been an area of regulation that the City has seldom pursued. If hedge regulations are intended to protect views, regulating them as fences may be overly restrictive, since development regulations already allow potentially view obstructing structures outside required yards up to the height limits established by the underlying zoning. Also, the height of trees and other vegetation are not regulated.

Regulations

The first step in regulating hedges would be to create a definition of a 'hedge' that achieves the intended objectives, is clear, and not subject to interpretation. The following points would need to be clarified with a 'hedge' definition:

- Clearly state what constitutes a hedge. Is a hedge a straight row of tightly planted vegetation of uniform species, as some of the definitions above suggest? Or is a hedge defined more broadly to include any dense grouping of vegetation?
- Clarify how a hedge, if made up of significant trees, relates to the City's tree regulations (tree topping, tree removal allowances, etc.)
- Differentiate between sight-obscuring vs. non sight-obscuring hedges
- Determine the minimum dimensional makeup of a hedge. What is the minimum length of a row of vegetation to be considered a hedge? What are the number and/or overall size of shrubs or trees? What is the spacing in between the individual shrubs or trees?

The second step would be to create regulations that determine where on the property hedges would be regulated (required yards or entire property) and the maximum height of hedges depending on their location on the property. As seen from the research on cities regulating hedges, the hedge height limit is typically shorter within the required front yard than in the required side and/or rear yards, and is not regulated outside of required yards.

Lastly, any potential new regulations will need to address how the City will review hedges for compliance. Key issues include:

- Will a permit be required for planting a hedge?
- Should property owners be required to sign maintenance agreements that limit the size of a hedge?
- How will the City ensure code compliance?

- Will inspections be necessary? On what reoccurring basis?

Non-Conformances

If Kirkland were to adopt hedge regulations, the following questions will need to be resolved when dealing with existing non-conforming hedges:

- How will the City track and regulate hedges planted before or after the effective date of a new hedge ordinance?
- How will the City treat existing hedges that become non-conforming as a result of the new regulations? Should all existing hedges be subject to the new regulations or at what threshold will existing hedges be required to conform? There are some legal issues that would need to be considered if the Council wanted to give the regulations retroactive effect, which include vesting and property rights.
- Hedges that are required to be reduced in height and that were not previously maintained may become eyesores. Should there be regulations that address this issue?

Code Enforcement

The City's current code enforcement process includes issuing a Notice of Violation and then a Notice of Civil Infraction if violations have not been rectified within a given time frame. At the point that a Notice of Infraction is issued, fines are assessed. Processing code enforcement violations can be a lengthy and involved process.

Due to the large number of 'over grown' hedges that exist throughout the City and the annexation area, retroactive application of new hedge regulations would subject many property owners to code enforcement.

RECOMMENDATION

Staff recommends that due to the complexity of issues that would need to be addressed, the City not take up the issue at this time and consider it during a future update to the City's landscape regulations.

ATTACHMENTS

1. Fence Regulations
2. City of Edmonds Planning Board Minutes December 10, 2003
3. City of Edmonds City Council meeting minutes March 2, 2004

115.40 Fences

1. General

a. Fences not over six feet in height may be anywhere on the subject property except:

1) A fence may not be within 15 feet of any street curb, or the edge of the street pavement, if no curb exists; or

2) If the applicant can show with a survey, or other reasonable means, the location of his/her property line, the fence can be placed on the property line regardless of the distance from a street curb or the edge of the pavement.

3) A fence may not violate the provisions of KZC 115.135.

Sight Distance Regs.

4) A detached dwelling unit abutting a neighborhood access or collector street may not have a fence over 3.5 feet in height within the required front yard.

On corner lots with two required front yards, this restriction shall apply only within the front yard adjacent to the front facade of the structure.

5) No fence may be placed within a high waterline setback yard or within any portion of a north or south property line yard which is coincident with the high waterline setback yard.

b. Fences over six feet in height may not be located in a required setback yard. See KZC 115.115, Required Yards, for regulations relating to fences on retaining walls.

c. The Planning Official may approve a modification to the fence height requirements, if:

1) The modification is necessary because of the size, configuration, topography or location of the subject property; and

2) The modification will not have any substantial detrimental effect on abutting properties or the City as a whole.

2. Barbed Wire – Barbed wire is permitted only atop a fence or a wall at least six feet in height.

3. Electrified Fences – Electrified fences are not permitted in Kirkland, except to contain large domestic animals (see KZC 115.20(2)(c)). All electric

fences and appliances, equipment, and materials used in connection therewith shall be listed or labeled by a qualified testing agency and shall be installed in accordance with manufacturer's specifications and in compliance with the latest edition of the National Electrical Code. Furthermore, electrified fences must be located at least 18 inches on the inside of wood fences when located along any property line. In addition, all electric fences shall be posted with permanent signs which are a minimum of 36 square inches in area at intervals of 15 feet along the fence stating that the fence is electrified.

**HEDGE ISSUE DISCUSSION
BEGINS HERE**

These Minutes Approved
January 14th

PLANNING BOARD MINUTES December 10, 2003

Chair Crim called the regular meeting of the Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

BOARD MEMBERS PRESENT

Jim Crim, Chair
James Young, Vice Chair
Virginia Cassutt
Janice Freeman
John Dewhirst
Ronald Hopkins
Judith Works

BOARD MEMBERS ABSENT

Cary Guenther

STAFF PRESENT

Rob Chave, Planning Division Manager
Duane Bowman, Community Services Director
Karin Noyes, Recorder

READING/APPROVAL OF MINUTES

BOARD MEMBER DEWHIRST MOVED TO APPROVE THE MINUTES OF NOVEMBER 12, 2003 AS CORRECTED. BOARD MEMBER HOPKINS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

BOARD MEMBER FREEMAN MOVED TO APPROVE THE MINUTES OF NOVEMBER 19, 2003 AS CORRECTED. BOARD MEMBER WORKS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY, WITH BOARD MEMBER DEWHIRST ABSTAINING.

ANNOUNCEMENT OF AGENDA

No changes were made to the proposed agenda.

REQUESTS FROM THE AUDIENCE

There was no one in the audience who expressed a desire to speak before the Board during this portion of the meeting.

PUBLIC HEARING ON FILE NUMBER CDC-03-1

Mr. Bowman explained that the proposed draft ordinance would effectively move the City into a position of deregulating hedges. He briefly reviewed the history of this issue. He said that, currently, ECDC 21.40.020 defines hedges as “a fence or boundary formed by low growing trees.” This definition is vague and subject to interpretation. In 1989 there was a landmark ruling by the Hearing Examiner that defined the term “low growing.” His decision indicated that unless a specific species of tree was “low growing” they could not constitute a hedge. Even so, staff is still often caught between neighbors arguing over height and the composition of vegetation planted between properties.

Mr. Bowman advised that two appeals of Hearing Examiner decisions regarding hedges were heard by the City Council in 2002. In both cases, the decision of the Hearing Examiner was upheld, but the City Council referred the matter to the Planning Board for review on December 17, 2002.

Mr. Bowman explained that the Board has been considering two options to address the situation. They could either redefine the definition for hedges to make it more enforceable or they could discontinue regulating hedges. A public hearing was held and the Board has accepted written testimony on the issue, as well. Staff attempted to summarize the major topics that were raised by citizens. It appears that protection of views was the most important issue, and many felt the City should be involved in the process of resolving these disputes. The citizens who provided input also expressed concern about the impact hedges can have to property values. They also felt the City should pay to regulate situations where neighbors act spitefully.

Mr. Bowman provided pictures of vegetation growing within the City and identified those that could be considered a hedge according to the current definition. He advised that after receiving testimony and correspondence from residents, the Planning Board concluded that the best alternative was to not regulate hedges, except where they could create sight distance problems at driveway entrances or street intersections. He explained that some of the reasons for the selection of this alternative was that trying to regulate vegetation on private property could expose the City to potential lawsuits and increased attorney costs. In addition, any effort to adequately define and regulate hedges would require expensive enforcement procedures and an extensive inventory to create proper documentation of existing conditions.

Board Member Young arrived to the meeting at 7:20 p.m.

Mr. Bowman said the proposed amendments to ECDC 21.30.020 and ECDC 17.30 would eliminate all reference to hedges. He pointed out that existing language in ECDC 21.12.025 would address situations related to visibility from driveways and vehicle access points. He advised that while ECDC 17.30 deals with fences that are located at intersections, vegetation at intersections is regulated in ECDC 18.85.060. This section would require that a property owner prune vegetation that impacts sidewalks and streets for visibility purposes. In addition, Mr. Bowman advised that the traffic engineer is working on amendments to better define the site distance triangle.

Mr. Bowman referred the Board to a letter from Mr. Richard Passey regarding the hedge issue. This letter was entered into the record as an exhibit. A copy was provided to each of the Board members. He explained that the purpose of this hearing is to allow the Board an opportunity to accept public testimony and then forward a recommendation to the City Council.

Board Member Works pointed out that fences within the front setback areas are limited to three feet in height, yet there are no height limitations for vegetation that is located within the front setbacks. She suggested that perhaps there should be similar requirements for vegetation to ensure that view blockage to the streets does not occur. Mr. Bowman emphasized that a property owner would be required to prune or remove anything that obstructs the view of traffic. In addition, the City staff is working on further modifications of the code to provide better measurements for site distance.

Board Member Young recalled previous Board discussion that the City's jurisdiction to regulate the height of any kind of vegetation is limited to the first five feet within the property line. Mr. Bowman clarified that the Board did discuss at what point the City should stop regulating vegetation on private property. For example, should the City's regulatory authority apply only to vegetation within the setback areas. If this were the case, a property owner could plant a hedge or row of trees in the center of his/her property that could have the same impact as if they had been planted along the property line. In fact, someone could plant just a few tall trees that could have the same impact as if they had been planted as a hedge.

Mr. Bowman reminded the Board of their previous request that staff survey other cities to find out how they deal with hedges. Besides Clyde Hill, staff only found one other City, Mountlake Terrace, that regulates hedges. They only regulate hedges if they are blocking a view or on a complaint basis. Cities like Kirkland, Mukilteo, Bellevue, and Everett do not regulate hedges.

Bruce Fowler, 7471 – 174th Street Southwest, said he attended a Planning Board meeting a few months ago at which the issue of hedges was discussed. Since that time, he said he took photographs of different situations in his area where

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vegetation or hedges are out of control. The first photograph was of a row of vegetation over 12 feet tall that is growing into the telephone wires. This vegetation has to be trimmed by the power company. It currently overhangs the City's right of way and paved road. Mr. Fowler suggested that where there are public roads or private access roads, property owners should be required to keep their vegetation out of the public right-of-way to allow for emergency access.

Mr. Fowler provided another photograph that showed utility trucks working in an area to maintain a utility line. This picture illustrates how the work crews ended up blocking off the emergency access. He cautioned that the Board should be careful about removing the hedge ordinance as it applies to vegetation in the front yard City right-of-way, or in the side yard when a corner lot is involved. The fire department and police department like to have a view of the front yards, and the City needs to be able to regulate vegetation in these situations. If the City decides to no longer regulate hedges, they need to make sure that regulations still exist for hedges within the City rights-of-way. Mr. Fowler said he does not believe that hedges and vegetation on rear lots should be regulated by the City. The City should not spend public dollars to resolve these situations.

Roger Hertrich, 1020 Puget Drive, said he addressed the Board regarding the issue of hedges in 1990, but the task was never completed. The task, at that time, was to redefine what hedges are. He said he has a copy of the Clyde Hill ordinance, and they use a different type of description that he found interesting. Most of their hedge regulations are found in combination of fence regulations. Clyde Hill's regulation states that, "fences shall be any barrier which is either naturally grown or constructed for purposes of confinement, protection or for use as a boundary."

Mr. Hertrich said that because the City has had a hedge regulation on the books for quite some time, there must be a reason for providing the limits and protection. A hedge could be considered to be a naturally growing fence since it ends up performing the same purposes as a fence (to act as a barrier or a boundary). Therefore, he felt it would be inappropriate for the City to separate the two and regulate fences but not hedges. People who live in Edmonds have enjoyed some level of protection and at least there are rules on the books giving an opportunity for compliance on a reasonable basis without involving the City. While most people follow these rules, some do not, and the City has to step in and get involved.

Mr. Hertrich said he believes that most citizens of Edmonds feel that the City needs to have rules and regulations for fences, and they also believe that hedges should be regulated as naturally growing fences, providing the same type of problems and protections. He said he believes the City should have regulations for hedges and fences, but they should only apply to the areas within the setbacks. The City already has rules and regulations to govern fences and buildings that are constructed within the setback area, and they should create rules for hedges, as well.

Mr. Hertrich said that while he agrees that a single tree can end up blocking a person's view, the issue before the Board is more related to naturally grown fences which are used as barriers and do not allow light or air to pass through them. When these natural fences get too high, the height limit regulations can resolve the situation. He suggested that the City should continue to regulate hedges, but they should be defined as naturally grown fences. The same regulations that apply to fences should also apply to naturally grown fences.

Mr. Hertrich said the efforts that have been made by the City to regulate hedges have had problems, mostly because by the time the City recognizes a problem, it is too late to trim the trees. These trees should be grandfathered rather than cut down at this point. But when new developments are constructed, the City's rules and regulations should prevent property owners from intentionally planting trees that grow to significant heights. He noted that Clyde Hill's ordinance states that, "When trees are intentionally planted as site obscuring barriers that cause problems, the intent must be taken into consideration."

Mr. Hertrich cautioned that he has a problem with the description that was provided in the sample ordinance prepared by staff, which states that hedge regulations have the potential of wasting public resources. He suggested that this is not a good reason for eliminating the hedge ordinance. The Planning Board should examine the reason for having a height limit on fences, and then apply this same philosophy to hedges since there is really no difference.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Board Member Dewhirst said he understands that a lot of people have testified about this issue over the past year, and he also understands the frustration that is contained in the letters the Board has received from the public. But he is troubled with this

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issue because he does not see this as a situation where an ordinance can do much good. If the Board were to pass a new ordinance or clarify the existing ordinance, every situation that exists now would be grandfathered in as a non-conforming use. Therefore, changing the regulations would not really achieve the result expressed by the citizens. He said it is really hard to correct things over time when the problem keeps growing. Fences are built to certain heights, and they do not continue to grow taller. While he can understand issues related to view blockage and property values, he is more concerned about sunlight being blocked from neighboring properties. However, the proposed amendments would not address this issue, and he said he does not believe that changing the zoning code is the right approach.

Board Member Dewhirst asked staff how many cases they have adjudicated over the past year. He also asked staff to provide information related to expenses and outcome. He said he is in support of getting hedge regulations out of the code. He suggested that, in the future, the City should consider some type of arbitration for property owners to go through if the City's financial situation improves.

Mr. Dewhirst referred to Mr. Fowler's concern about trees and other vegetation being allowed to overhang onto the public rights-of-way. This concern can be resolved easily with a phone call to the City staff or to the Mayor's office. He said he is not concerned about this issue, but he is concerned that no matter how the City changes its hedge regulation, it will not work. Therefore, he suggested that the City should conserve their resources to fight those battles in which they have a chance to make a difference or change the outcome. He said he would support the ordinance that gets the City out of the business of regulating hedges.

Mr. Chave clarified that fences are limited to six feet in height and slightly higher with a trellis. They can be located anywhere on a property. If a property owner wants to build a fence that exceeds this height, a variance would be required.

Board Member Freeman said the concern raised by Mr. Fowler is a safety issue that can be addressed with the existing code requirements as explained by Mr. Bowman. She suggested that later on, the Board might want to look at health issues related to light, etc. But right now, with the present fiscal difficulties of the City, she felt it would be inappropriate to pass an ordinance that would cost \$100,000 plus to administer. She questioned where the City would get the money to implement the ordinance. It would likely have to come from another City program. She suggested that perhaps the Board could revisit the issue later when the financial situation is different.

Mr. Bowman clarified that the estimated cost for implementing a new hedge ordinance would pay for documentation of all of the existing vegetation in Edmonds. The best alternative for documenting the existing vegetation would be to conduct an inventory at a cost of about \$100,000. This would give the City staff a solid baseline to administer the ordinance. Another less costly option would be to hire an outside expert to study the vegetation, but this type of information would be more clouded if the City were to get into a legal dispute.

Board Member Freeman clarified that existing situations would all be grandfathered in, so a new hedge regulation would only apply to new developments, which they do not have a lot of in the City right now. Mr. Bowman said all of the area in the south of Edmonds was developed as part of Snohomish County, and Snohomish County did not have hedge regulations.

Board Member Cassutt recalled that the Board discussed issues related to sunlight and basically concluded that there was really nothing the Board could do to address this issue now. Mr. Bowman said that, unless the City were to create separate regulations that deal with solar access issues, they would not be able to do anything about these situations. But all of the existing situations would be grandfathered in, even if a new solar access ordinance were approved. The new ordinance would only apply to new development. Board Member Freeman pointed out that if a hedge or other vegetation becomes a public safety issue, the City has the ability to handle these situations by using the existing regulations.

Board Member Young said that regardless of which direction the Board chooses to go, he would not be in favor of sending the ordinance, as written, to the City Council with a recommendation of approval. He said he feels the ordinance is too "whiney," and gives the impression that the Board is proposing the ordinance in order for the City to save money. In addition, protection of property values should not be portrayed as a waste of money and time since that is what most of the public testimony focused on.

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Board Member Young agreed with Board Member Dewhirst that the City should get out of the business of regulating hedges. However, he is not convinced that the proposed ordinance is the way to accomplish this. He recalled that when the Board first started their review of this issue, Board Member Dewhirst pointed out that while the City has an enforcement officer, there is a backlog of enforcement complaints. Board Member Young asked staff to elaborate as to what type of complaints the City generally receives. Mr. Bowman answered that the City receives complaints on a large range of issues related to property nuisances, building code violations, etc. Board Member Young inquired if the complaints fall into the general category of health and safety issues. Mr. Bowman replied that the complaints are a mixture of health and safety issues, setback violations, land use problems, etc.

Board Member Young commented that there is just so far the Planning Board can go philosophically in terms of regulating something like hedges. He said he feels that any regulations for vegetation should only apply to areas within the setback. He said he would not want the City to be able to tell him what he can and cannot do on his property, with the exception of height, etc. If the goal is to protect property values, it would be necessary for the City to regulate the height of anything placed anywhere on private property that ends up blocking the view from a neighboring property. Regulating hedges within the setback area would not really accomplish the goal of protecting property values. Therefore, he said he would be in favor of the City getting out of the business of regulating hedges.

Board Member Young said he shares Board Member Freeman's concern about safety issues and staff has assured the Board that the City has codes already in place to deal with this concern. He concluded by stating that until the City can find a wholesale way to regulate hedges, they should get out of the business of doing so.

Mr. Bowman said that if the Board is concerned about the language in the proposed ordinance, it would be appropriate for them to identify those area that need to be revised. He said it is important for the Board to give clear direction to staff as to ordinance language that would support their position and clearly identify why they believe the ordinance should be adopted.

Board Member Young suggested that if the Board decides to recommend that the City no longer regulate hedges, they should clearly state that the reason is because they do not really think that hedge regulations accomplish that goal.

Board Member Crim suggested that the emphasis that is made in the WHEREAS statements regarding the waste of public resources is probably missing the mark a little bit. He said Board Member Dewhirst is right in the sense that a hedge regulation would not be able to accomplish the real regulation for hedges, height and encroachment on neighbors. He suggested that the ordinance be changed to reflect that intent.

Board Member Works referred to the regulations that deal with vegetation that is used to screen parking lot perimeters, and noted that these regulations reference the term "hedges." Mr. Bowman explained that the City Attorney has indicated that some type of definition for "hedge" must remain in the City codes because it used in other locations.

Board Member Crim referred to Section 20.12.025 and suggested that the word "vegetation" should be substituted for the word "hedge." Then they could take the definition for "hedge" out of this section. He also suggested that the City's code be more aggressive in enforcing the visual site distance regulations. Mr. Bowman said he would work with the traffic engineer to consider additional language in Section 17.13 to better clarify this issue.

Board Member Crim suggested that since the pressure to make a recommendation to the City Council on this issue is not overwhelming, perhaps the Board should take time to review the changes that staff will make to the ordinance before sending the document to the City Council with a recommendation for approval. Mr. Bowman said he would rather make the changes as directed by the Board and then bring the ordinance back to the Board for final approval before sending it forward to the City Council.

BOARD MEMBER DEWHIRST MOVED THAT THE BOARD DIRECT STAFF TO CLEAN UP THE SECOND AND THIRD WHEREAS STATEMENTS TO ELIMINATE REFERENCE TO THE POTENTIAL WASTE OF PUBLIC RESOURCES AND ADD LANGUAGE TO THE EFFECT THAT THE ZONING ORDINANCE CANNOT REALLY SOLVE THE PROBLEMS RELATED TO HEDGES. ONCE THE CHANGES ARE MADE, THE DRAFT ORDINANCE

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FOR CDC-03-1 SHOULD BE FORWARDED TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. BOARD MEMBER CASSUTT SECONDED THE MOTION.

AFTER BRIEF BOARD DISCUSSION, BOARD MEMBERS DEWHIRST AND CASSUTT WITHDREW THEIR MOTION.

Mr. Bowman agreed with Board Member Crim that if the Board were to use the term “vegetation” instead of “hedge,” they could remove the definition for hedge.

BOARD MEMBER DEWHIRST MOVED THAT THE PLANNING BOARD RECOMMEND APPROVAL OF THE PROPOSED ORDINANCE AMENDING THE EDMONDS COMMUNITY DEVELOPMENT CODE CHAPTERS 21.40.020 AND 17.30.000 (FILE NUMBER CDC-03-1), WHICH WOULD CAUSE THE CITY TO CEASE TO REGULATE HEDGES. HE FURTHER MOVED THAT THE PROPOSED ORDINANCE BE AMENDED AS FOLLOWS:

- CHANGE THE SECOND WHEREAS STATEMENT TO READ, “WHEREAS THE CITY COUNCIL FINDS THAT ENFORCEMENT OF THE CITY’S CURRENT HEDGE ORDINANCE CANNOT BE DONE THROUGH THE ZONING AND DEVELOPMENT REGULATIONS.”
- CHANGE THE THIRD WHEREAS STATEMENT TO READ, “WHEREAS THE CITY COUNCIL DESIRES TO AVOID POTENTIALLY EXPENSIVE EXPENDITURES BY REPEALING THE CITY’S CURRENT HEDGE REGULATIONS.”
- ADD A NEW WHEREAS STATEMENT TO READ, “WHEREAS THE CITY COUNCIL DESIRES TO SOLVE SUCH LAND OWNER DISPUTES THROUGH OTHER METHODS TO BE LOOKED AT IN THE FUTURE.”
- REPLACE THE TERM “HEDGES ADJOIN” WITH “VEGETATION ADJOINS” IN SECTION 20.12.025.A.5.
- REMOVE THE DEFINITION OF HEDGES FROM THE DEFINITION SECTION OF THE ORDINANCE.

BOARD MEMBER CASSUTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

BOARD MEMBER YOUNG MOVED THAT THE ORDINANCE, AS AMENDED BY STAFF, BE BROUGHT BACK TO THE PLANNING BOARD AT THEIR NEXT MEETING FOR FINAL REVIEW PRIOR TO FORWARDING IT TO THE CITY COUNCIL.

Board Member Dewhirst suggested that the Board should allow staff to make the changes, provide a copy to the Board Chair for review and approval, and then forward the Planning Board’s recommendation to the City Council without further review by the Board as a whole. He recalled that this is the method the Board has used in the past when considering proposed amendments. He felt the Board provided clear direction to the staff to make the necessary changes.

BOARD MEMBER FREEMAN SECONDED THE MOTION. THE MOTION FAILED 4-3 WITH BOARD MEMBERS CRIM, CASSUTT, HOPKINS AND DEWHIRST VOTING AGAINST THE MOTION AND BOARD MEMBERS YOUNG, FREEMAN AND WORKS VOTING IN FAVOR.

The Board agreed that staff would provide the final draft ordinance to the Chair, and he would e-mail a copy to each of the Board Members before sending it on to the City Council.

WORK PROGRAM FOR 2004 – COMPREHENSIVE PLAN AND CRITICAL AREAS ORDINANCE

Mr. Chave explained that there are a few State mandates in 2004 that the City must address. First are the amendments to the Comprehensive Plan, which must be comprehensive and include updates of population projections, capacity, etc. The City is also required to update their critical areas ordinance, which must be based upon “best available science.” He said the combination of these two projects will mean a full year of work, using supporting consultants and studies—particularly in regard to the critical areas review since there are no staff members who have expertise in this area. Mr. Chave referred to the general outline of what these two processes might look like. He also provided an overview of the funding plan for the

APPROVED

**PUBLIC HEARING ON HEDGES BEGINS
ON NEXT PAGE**

EDMONDS CITY COUNCIL APPROVED MINUTES March 2, 2004

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

ELECTED OFFICIALS PRESENT

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

ALSO PRESENT

David Dwyer, Student Representative

STAFF PRESENT

David Stern, Chief of Police
Duane Bowman, Development Services Director
Stephen Clifton, Community Services Director
Noel Miller, Public Works Director
Rob Chave, Planning Manager
Dave Gebert, City Engineer
Scott Snyder, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

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

2. CONSENT AGENDA ITEMS

COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER DAWSON, FOR APPROVAL OF THE CONSENT AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- (A) ROLL CALL**
- (B) APPROVAL OF CITY COUNCIL MEETING MINUTES OF FEBRUARY 24, 2004.**
- (C) APPROVAL OF CLAIM CHECKS #69165 THROUGH #69373 FOR THE WEEK OF FEBRUARY 23, 2004, IN THE AMOUNT OF \$368,226.41.**
- (D) REPORT ON FINAL CONSTRUCTION COSTS FOR FIRE STATION 16 LOCATED AT 8429 – 196TH STREET SW AND COUNCIL ACCEPTANCE OF PROJECT.**
- (E) REPORT ON FINAL CONSTRUCTION COSTS FOR THE 200 DAYTON STREET BUILDING ROOF REPLACEMENT PROJECT AND COUNCIL ACCEPTANCE OF PROJECT.**
- (F) REPORT ON FINAL CONSTRUCTION COSTS FOR THE ANDERSON CENTER WINDOW REPLACEMENT – PHASE II PROJECT AND COUNCIL ACCEPTANCE OF PROJECT.**

**HEDGE DISCUSSION
BEGINS HERE**

update their amateur radio antenna regulations and bring them to state-of-the-art. He urged the Council to consider the information he provided when revising the amateur radio antenna regulations.

Bob Preston, 809 Carey Road, Edmonds, questioned why if a property owner could have a 12-foot antenna on a 25-foot structure, why could they not have a 37-foot free-standing tower. He also questioned why only a crank-up tower was allowed above 37 feet. He recognized in certain areas of the City where there were views it may be helpful to have a crank-up tower, however, in many areas where there are no views, a 65-foot fixed tower would not have an impact on the neighborhood. He acknowledged some fee was justified but preferred the fees be kept low.

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

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF ORDINANCE NO. 3490. MOTION CARRIED UNANIMOUSLY. The ordinance approved is as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PROVISIONS OF ECDC 16.20.050 SITE DEVELOPMENT STANDARDS – ACCESSORY BUILDINGS IN ORDER TO AMEND ITS REGULATIONS RELATING TO AMATEUR RADIO ANTENNAS AND TO ADOPT AN INTERACTIVE PROCESS IN CONFORMANCE WITH FCC REGULATIONS, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, TO DIRECT THE CITY ATTORNEY TO PREPARE A FEE RESOLUTION FOR COUNCIL CONSIDERATION ON MARCH 16.

Councilmember Wilson inquired about the amount of the recommended fee. Mr. Chave explained the basic administration cost for advertising, posting and mailing was estimated at \$97; staff's recommendation was a \$100 fee. He noted the \$15 surcharge would also be applied.

Councilmember Marin clarified his intent was the \$97 fee plus the \$15 surcharge for a total of \$112.

MOTION CARRIED UNANIMOUSLY.

4. PUBLIC HEARING ON PROPOSED AMENDMENTS TO ECDC CHAPTER 21.40.020 AND 17.30.000 REPEALING THE CITY'S CURRENT HEDGE REGULATIONS. THE PROPOSED AMENDMENTS WOULD CAUSE THE CITY TO CEASE TO REGULATE HEDGES EXCEPT WHEN RELATED TO STREET OR ACCESS SAFETY (FILE NO. CDC-03-1)

Development Services Director Duane Bowman explained this ordinance was scheduled for a public hearing based on the Planning Board's recommendation which would cause the City to cease regulating hedges except when related to street or access safety.

Mr. Bowman recalled in 1989, the Hearing Examiner issued a landmark ruling in regard to an interpretation of ECDC 21.40.020, the definition of hedges. His decision indicated that unless a specific kind of tree was low growing, it did not constitute a hedge; however, staff was still often caught between neighbors arguing over height and composition of vegetation between properties. He recalled the Council referred the matter to the Planning Board in December 2002 after considering cases that illustrated the difficulty with regulating hedges.

Mr. Bowman read the current definition of hedge, "Hedge means a fence or boundary formed by a row of shrubs or low trees," commenting this definition was very vague and non-specific. The Planning Board reviewed the issue, took public testimony and considered two options, 1) redefine the definition of hedges

to make it more enforceable, or 2) discontinue regulating hedges. After receiving testimony and correspondence from residents, the Planning Board concluded the best alternative was not to regulate hedges except where they created sight distance problems at street intersections, driveways, etc. The Planning Board concluded the current regulations were difficult to interpret and basically unenforceable. He recalled the Planning Board considered several different hedge definitions, however, none were deemed workable. The Planning Board concluded there were more appropriate methods of resolving disputes between neighbors such as view easements, vegetation maintenance agreements, or mediation.

Mr. Bowman explained the Planning Board again considered the ordinance at their February 11 meeting, following the Council work session, and made some slight changes to the ordinance but basically forwarded the same recommendation to repeal the City's regulations governing hedges. He noted the Council packet included the complete Planning Board record regarding this topic as well as the Council minutes from the work session.

Councilmember Moore inquired what would happen in the future when neighbors had a dispute if this ordinance were passed. Mr. Bowman answered residents would be informed the City did not regulate vegetation and inform them of options for resolving issues such as view easement, maintenance agreement, or mediation. He referred to a handout that would be distributed by Code Enforcement, "How to Deal with Neighborhood Issues."

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

Darrell Marmion, 750 Edmonds Street, Edmonds, supported regulating fences and hedges similarly as they usually served the same function. He noted most of the letters in the Council packet had the same opinion. He expressed concern with staff's comment that the ordinance was unenforceable and difficult to interpret and the solution that was reached to eliminate the regulation. He preferred consideration be given to potential solutions used by other cities. He referred to several other instances in the code where reference was made to hedges, specifically Title 14, 16 and 23.

Roger Hertrich, 1020 Puget Drive, Edmonds, agreed with eliminating regulation of hedges. He referred to the Clyde Hill regulation that stated a fence shall be any barrier which is naturally grown or constructed for the purposes of confining, a means of protection or use as a boundary. He suggested eliminating the concept of a hedge and only regulate barriers, whether naturally grown or constructed.

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

Councilmember Moore asked staff to respond to Mr. Hertrich's suggestion regarding a naturally growing fence and Mr. Marmion's reference to the word hedge in other areas of the code. Mr. Bowman noted the fundamental question was whether an ordinance would be enforceable. He pointed out the possibility of a resident planting a natural barrier in the center of their backyard which could create as much of a problem as on the property line. If the Council chose to regulate things that grow, the Council needed to develop a definition. He agreed staff could redefine the definition to include natural barrier but regulating things that grow was problematic. He noted someone could also plant a single tree which would have the same impact as a row of 3-4 trees but single trees were not regulated.

Councilmember Moore asked how other cities addressed this issue. Mr. Bowman noted most cities did not regulate vegetation due to the difficulty.

Councilmember Moore asked staff to respond to Mr. Marmion's claim that hedge appeared in other sections of the ordinance, specifically Title 14, 16 and 23. Mr. Snyder recommended doing a word search to identify the word "hedge" in the ordinance.

Responding to further questions, Mr. Snyder explained his law firm also represented Clyde Hill which was a completely developed community that for years had governed itself via strong subdivision homeowners covenants. He stated the City could adopt a Clyde Hill-approach; however, the cost may be prohibitive. Mr. Bowman pointed out once such a change was made in the code, a base line for enforcement must be established. Options for establishing a baseline include an inventory which is very expensive or hiring an arborist to testify on individual cases.

Councilmember Wilson inquired about the cost of inventorying existing vegetation if the Council adopted a Clyde Hill-type ordinance. Mr. Bowman answered his initial estimate of a parcel-by-parcel inventory was \$100,000+. Due to the cost of the inventory, he commented that another alternative would be the use of an expert.

Responding to Council President Plunkett's question, Mr. Snyder stated if everything were grandfathered, an inventory of the existing hedges would need to be done or an arborist could be used to testify regarding the height of the hedge on the date it was grandfathered. He noted grandfathering did not eliminate the City's enforcement burden.

Councilmember Dawson noted if vegetation were grandfathered, the age of the hedge would be unknown without an inventory. Mr. Snyder noted one key principle was that one could not establish legal nonconforming rights unless the use was legally established. With buildings, structures, and manmade things, that was easy due to the need for a building permit. In this instance, to regulate something for which no permit has been required in the past, it would be the City's burden to show the use was not legally established. Mr. Bowman pointed out a large portion of the City was annexed from Snohomish County where there were no regulations regarding hedges.

Mr. Snyder noted when the ownership of a property changed, etc. it would become more difficult over time to establish the height of vegetation at the time it became nonconforming. Councilmember Dawson inquired whether hiring an arborist to testify on a case-by-case basis was a workable solution. Mr. Snyder answered an arborist would rely on information such as standard growth patterns and weather data to establish normal annual growth. He stated although it was possible to obtain that testimony, it required a great deal of preparation and expense.

Councilmember Dawson questioned whether the arborist's testimony would provide assistance if an inventory were not done first. Mr. Snyder agreed in many situations it would be difficult without an inventory.

Councilmember Dawson noted if the Council chose the arborist option, it was likely the City would lose the majority of enforcement actions. She inquired about the associated costs. Mr. Bowman answered the amount of time and the cost would vary by case. There was also the issue of who paid the cost of the arborist. Councilmember Dawson inquired about the number of cases this would impact. Mr. Bowman answered staff currently had seven active cases in a three year period. He emphasized the need to provide regulations that were enforceable.

Councilmember Orvis noted the law could be enforced now for certain trees and shrubs and the issue was whether to include more plants in the definition. He suggested codifying the current interpretation the way it was being enforced now. Mr. Bowman answered the Hearing Examiner stated in his decision that the City should do something to clarify the definition.

Councilmember Orvis recalled a complainant who was required to cut some of his shrubs because they fell within the current definition. Mr. Bowman answered that decision could potentially be challenged. He explained in that instance, the hedge-like material was pyramidalis which can reach 25-30 feet. Mr.

Snyder explained another problem with codifying the low growing principle was some of the bitterest neighborhood problems were spite situations and the City may not want to encourage residents to grow vegetation that was not low growing. He noted absent hedge regulations, the common law definition would apply and those who wanted to preserve a view could buy that right.

If the Council chose the arborist testimony route, Council President Plunkett inquired whether the City could shift some of the burden to the applicant. Mr. Snyder agreed, noting that may be an instance when full cost should be required for an appeal. Mayor Haakenson raised the issue of how the arborist and applicant could enter a neighbor's yard to evaluate their shrubs.

Councilmember Wilson inquired about the current fee structure, recalling it had been the Council's policy to minimize costs to appellants. He asked whether the City was likely to receive many appeals if the appellant was asked to pay the costs. Mr. Bowman answered probably not. He noted another potential issue may be when an appellant's appeal was successful, should they get a refund of their fee?

Councilmember Moore commented that in her experience, each arborist could have a different opinion.

Councilmember Dawson asked whether Council President Plunkett wanted the appellant to bear the cost. Council President Plunkett answered he would not support the proposed ordinance and preferred the matter be referred to the Community Services/Development Services Committee to identify a better solution. Councilmember Dawson acknowledged she was uncertain whether there was a more workable solution but the issue has been discussed for many years and no good solution has been identified.

COUNCILMEMBER MOORE MOVED, SECONDED BY COUNCILMEMBER OLSON, FOR APPROVAL OF ORDINANCE NO. 3491.

Councilmember Marin, a member of the Community Services/Development Services Committee last year, advised it was he who recommended the Planning Board's recommendation be forwarded to the full Council for deliberation but with reservations. Although he would prefer there was a way to regulate hedges, views and privacy must be balanced. The only reasonable answer was to exercise the golden rule and before taking rash action, consider your neighbor. He indicated he would support the motion.

Councilmember Dawson pointed out this issue had been considered for a long time and government must balance what it would like to do with what it needed to do as well as balance costs. She concluded the City did not have adequate funds to conduct an inventory and without an inventory, a hedge ordinance was not workable. Although she was willing to consider another option if the Council could provide specific direction, absent an inventory, the City had no choice but to cease regulating hedges.

Councilmember Olson agreed no other workable solutions had been identified. She planned to support the ordinance.

Councilmember Wilson expressed his support for the ordinance, noting if there had been a way to effectively regulate hedges, it would have been identified by now. He recalled there had not been a solution to the problem in the 14 years he had been with the City or in his 20 year career working with public agencies in the Puget Sound area.

Councilmember Moore agreed with Mr. Hertrich's comment that citizens of Edmonds were mostly law abiding, pointing out citizens of Edmonds were also mostly neighborly. She noted the instances when this would be a problem were few and it would be better not to regulate hedges.

MOTION CARRIED (5-2) COUNCIL PRESIDENT PLUNKETT AND COUNCILMEMBER ORVIS OPPOSED.