

**APPROVED JUNE 13<sup>TH</sup>**

**CITY OF EDMONDS  
PLANNING BOARD MINUTES**

**May 9, 2012**

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Chair Lovell called the meeting of the Edmonds Planning Board to order at 7:00 p.m. in the Council Chambers, Public Safety Complex, 250 – 5<sup>th</sup> Avenue North.

**BOARD MEMBERS PRESENT**

Philip Lovell, Chair  
Valerie Stewart, Vice Chair  
Todd Cloutier  
Bill Ellis  
Kristiana Johnson  
John Reed  
Neil Tibbott

**STAFF PRESENT**

Kernen Lien, Planner  
Karin Noyes, Recorder

**BOARD MEMBERS ABSENT**

Kevin Clarke

**READING/APPROVAL OF MINUTES**

**VICE CHAIR STEWART MOVED THAT THE MINUTES OF APRIL 25, 2012 BE APPROVED AS AMENDED. BOARD MEMBER REED SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**ANNOUNCEMENT OF AGENDA**

The agenda was accepted as presented.

**AUDIENCE COMMENTS**

**Ken Reidy, Edmonds**, said he was present to voice his concerns about Ordinance 3740, which was adopted by the City Council on June 16, 2009. He said he has approached the Mayor and City Council on numerous occasions over the past few years, but has not received a satisfactory response. Therefore, he felt it necessary to bring the issue to the Planning Board's attention, as well. He explained that Ordinance 3740 adopted a new ECDC 19.80.023 to authorize the Hearing Examiner to decide building code appeals whenever the Board of Appeals is unable to convene; repealed duplicate and conflicting provisions relating to the board of appeals in ECDC 10.15; provided for severability; and fixed a time when the same shall be effective. He said the ordinance was originally placed on the City Council's consent agenda for approval, but it was removed for further discussion. At that time, Council Member Bernheim asked whether a public hearing had been held regarding the amendments. Building Official Ann Bullis responded that public hearings were held for the adoption of ECDC 19.80. However, when the code was adopted, these sections were inadvertently omitted, a scrivener's error. City Attorney Snyder further responded that since entire sections had inadvertently been omitted, staff determined the best course of action was to present them to the City Council for approval. After this discussion, Council Member Bernheim moved, seconded by Council Member Wambolt, to approve the proposed amendment.

Mr. Reidy said that, after thorough research of the ordinance, he believes there was no scrivener's error and the ordinance was approved under false pretences. He pointed out that other ordinances he has seen to correct scrivener's errors refer to the scrivener's error in the heading and/or body of the related ordinance (i.e. Ordinances 3433, 3514, 3561, 3652 and 3654), but there is no mention of the word "scrivener's" or the word "error" in the heading and/or body of Ordinance 3740. He said that City staff instructed him to pursue his appeal to a code enforcement decision through the Board of Appeals process. He trusted he was instructed properly, and he spent a great deal of money and time only to find out just prior to the hearing that in a Board of Appeals review, the burden of proof is the responsibility of the appellant and not the City. He questioned what caused the City to review this issue in 2009 and why City staff guided him down the Board of Appeals path just a few months later. He asked that the Board investigate this issue further, and he agreed to provide more information regarding the issue.

**PUBLIC HEARING ON PROPOSED CODE AMENDMENT TO PROVIDE EXPANDED NOTICE REQUIREMENTS FOR STREET VACATIONS (ECDC 20.70.090.A) (FILE NUMBER AMD20120003)**

Mr. Lien advised that code language related to street vacations is contained in Edmonds Community Development Code (ECDC) 20.70. The proposed amendment was forwarded to the Board from the City Council. He explained that street vacations are rare and occur when a property owner adjacent to a right-of-way wants to purchase land from the City. The cost of a street vacation application is \$1,750 plus recording fees, and applicants are required to provide an explanation of why the City should relinquish the property. They must also submit maps, a fair market value appraisal, notice labels for property owners living within 300 feet of the project, etc. Street vacation applications are processed by the Planning Division but analyzed by the Engineering Division. Staff forwards a recommendation to the City Council, and the City Council conducts a public hearing and makes a final decision about whether to sell and/or vacate the property.

Mr. Lien advised that the proposed amendment would amend the notice requirements for street vacations to indicate the nature of any easement that would be retained in connection with the vacation. The exact proposal would add a new Section 6 to ECDC 20.70.090.A to read: "*A description of any easement under consideration to be retained by the City. In the event an easement is desired, but was not included in the notice, the public hearing will be continued to allow time for notice of the easement to be provided.*" He summarized that, as proposed, if further analysis determines that an easement is needed, re-noticing the hearing would be required.

Chair Lovell asked if the proposed language in ECDC 20.70.090.A.6 is sufficient to cover the retention of existing easements, as well as any new easements that are needed. Mr. Lien answered affirmatively and explained that the proposed language would mandate that all easements required by the City must be included in the public hearing notice. If the City determines that an additional easement is needed, which was not identified in the notice of public hearing, the meeting would be re-noticed and a new public hearing would be conducted.

Board Member Ellis asked who is responsible for reviewing street vacation applications to determine what easements the City needs. Mr. Lien answered that the Planning Division processes street vacation applications, but the Engineering Division reviews the applications to identify necessary utility and access easements.

Chair Lovell summarized that ECDC 20.70.090 is intended to address situations where property owners want to purchase public right-of-way from the City. Mr. Lien said that, typically, street vacation applications involve unimproved alleyways in the downtown area. Adjacent property owners can approach the City with a vacation request and, if approved, the property is typically split between the two property owners on either side.

Vice Chair Stewart asked if the proposed amendment would require the City to reschedule a public hearing if it is determined in the days following the public notice that an additional easement needs to be considered. Mr. Lien said the public hearing could go forward as scheduled, but then it would be continued so that further notice related to the easement could be provided.

**Ken Reidy, Edmonds**, said the proposed amendment is directly related to a recent experience he encountered when the City encouraged him to pursue vacation of an alleyway to address a number of issues in his neighborhood. He emphasized that it was the City's idea and he approached the City Council with a street vacation proposal. He explained that street vacation applications can either be initiated by a private property owner or by the City Council. Some street vacation applications are so obviously in the City's best interest that the City Council will initiate the process after receiving a request from a citizen.

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He said he and two of his neighbors met with Mayor Haakenson and Council Members Pritchard-Olsen and Wambolt to discuss the matter, and it was agreed that a street vacation would be appropriate.

Mr. Reidy explained that a 7.5-foot right-of-way was identified to the north of his property in the late 1800's. The intent was that an additional 7.5 feet of right-of-way would be designated once property to the north was annexed. This annexation never occurred, and the City was left with a small strip of land that is not large enough for access. Mayor Haakenson and staff initiated a street vacation, which included no mention of a construction easement. However, at the public hearing, City Attorney Snyder recommended a legislative action to preserve a temporary construction easement on the property to allow an adjacent property owner to construct a retaining wall. The City Council voted to approve the street vacation, but they also approved a temporary construction easement that dramatically changed his life.

Mr. Reidy pointed out that ECDC 20.70.050 makes it clear that street vacations can be initiated by either the City Council or by owners of more than two thirds of property abutting the portion of the street or alley to be vacated. ECDC 20.70.070 also gives the impression that a street vacation can be initiated by either property owners or the City Council. He said that while he supports the proposed amendment to add new language to ECDC 20.70.090, it is not necessary because State Law does not allow surprise easements to be reserved on someone's property without notice. The new language would add a new layer of insurance so other property owners do not have to go through what he experienced. He noted that the language in ECDC 20.70.140.A also supports his contention that it is not possible for the City to do a last minute surprise easement in a street vacation process. It allows the City Council to adopt an ordinance granting the vacation; adopt a motion denying the vacation; or adopt a resolution of intent to vacate stating that the City Council will, by ordinance, grant the vacation if the applicant meets specific conditions within 90 days. The City may also require the applicant to:

1. Provide monetary compensation to the City in exchange for the easement.
2. Grant a substitute public right-of-way.
3. Provide a combination of monetary compensation and a grant of substitute public right of way
4. Grant an easement to the City in exchange for the vacated easement.

To address the issue of easements associated with street vacations in the future, Mr. Reidy suggested that the following additional changes are also needed:

- **ECDC 20.70.030.** Mr. Reidy suggested that a very critical component of State Law (RCW 35.79.030) was omitted from ECDC 20.70.030. To address this omission, he suggested that the words "construction, repair and maintenance of" should be inserted before "public utilities and services." He recalled that at the hearing, City Attorney Snyder argued that the City had the right to preserve a construction easement for a private developer to use while constructing a retaining wall. This was not a City need. He emphasized that State Law only allows the City to reserve easements for construction, repair and maintenance of public utilities and services.
- **ECDC 20.70.140.A.** Mr. Reidy expressed his belief that the word "applicant" is too narrow because street vacations can be initiated by property owners or the City Council. There are no applicants for street vacations that are initiated by the City Council. He suggested this word should be replaced with "fee title owner to the property," which is the term used in RCW 35.79.030.

Mr. Reidy said he has researched every street vacation that has been approved by the City since 2000, and he found that all were done in violation of City code for a variety of reasons. He asked the Board to not underestimate the importance of getting the language in ECDC 20.70 right. This one section had a profound impact on his family's life. He asked the Board to give attention to the items he brought forward for change.

Board Member Reed asked if Mr. Reidy has presented his proposed changes to the appropriate City Council committee for consideration. Mr. Reidy answered that he has not. Board Member Reed pointed out that the Board cannot make a recommendation on the proposed amendments unless directed to do so by the City Council. Chair Lovell added that while he understands Mr. Reidy's concerns, the issues needs further investigation by the staff and City Attorney and are outside the scope of the public hearing. The Board must limit their discussion to the proposed amendment that was advertised for public hearing.

Mr. Reidy inquired regarding the process for getting his proposed amendments on the Planning Board's agenda for consideration. Mr. Lien answered that any citizen can propose an amendment to the ECDC, but there is an associated fee (\$1,000 to \$2,000). The other option is for citizens to approach the City Council with a request for them to direct the staff and Planning Board to pursue a code amendment. He noted that Mr. Reidy's comments would be included in the Board's minutes, which are forwarded to the City Council.

Chair Lovell suggested it would be appropriate for the Board to forward a recommendation to the City Council regarding the proposed amendment that was advertised for public hearing. The issues raised by Mr. Reidy could be addressed as a separate item. Board Member Johnson asked if Mr. Reidy is in support of the proposed amendment. Mr. Reidy answered affirmatively. He added that he intends to approach City Council with a request to sponsor his proposed amendments.

Board Member Cloutier suggested that, as per RCW 35.79.030, the correct term to use in ECDC 20.70.140.A.3 is "owners of property abutting upon the street or alleyway or part thereof so vacated." Mr. Reidy explained that, typically, the underlying fee titles for rights-of-way are owned by adjacent property owners. However, this ownership is subordinate to the public's right for ingress and egress over the property. When streets and alleys are vacated, they go back to the owner of the underlying fee title. He agreed that the term used in RCW 35.79.030 would be more appropriate than "applicant."

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Board Member Cloutier suggested the Board forward a recommendation to the City Council regarding the proposed amendment that was advertised for public hearing, as well as the two amendments brought forward by Mr. Reidy. Chair Lovell questioned the Board's ability to amend the language above and beyond what was outlined in the public notice. Mr. Lien read the public notice, which was specifically related to the proposed amendment. Chair Lovell noted that the City Council's memorandum was also specific to just the proposed amendment.

**CHAIR LOVELL MOVED THAT THE BOARD FORWARD THE PROPOSED AMENDMENT (ECDC 20.70.090.A) TO PROVIDE EXPANDED NOTICE REQUIREMENTS FOR STREET VACATIONS (FILE NUMBER AMD20120003) TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL AS PRESENTED BY STAFF. BOARD MEMBER REED SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

After discussing the best approach for moving the amendments proposed by Mr. Reidy forward, the Board agreed to recommend that the City Council task the Board to hold a public hearing on the following two changes, which are consistent with RCW 35.79.030:

1. In **ECDC 20.70.030** add "construction, repair and maintenance of" prior to "public utilities and services."
2. In **ECDC 20.70.140.A.3** change "applicant" to "owners of property abutting upon the street or alley or part thereof so vacated."

**PUBLIC HEARING ON UPDATING THE CITY OF EDMONDS CITY CODE (ECC) 4.12 AND PORTIONS OF EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) TITLE 16 TO ALLOW MOTORIZED MOBILE VENDORS (FILE NUMBER AMD20100012)**

Mr. Lien recalled that the Board previously reviewed the proposed amendments (Attachments 1 and 2) on February 8<sup>th</sup> and March 28<sup>th</sup>. He explained that, at this time, there is conflicting and confusing language with the Edmonds City Code (ECC) and the Edmonds Community Development Code (ECDC) as to whether motorized mobile vending (MMV) units are an allowed activity in Edmonds. He explained that ECC 4.12 allows peddlers, but the language was directed more towards non-motorized mobile vending (NMMV) units. There were also conflicts in ECDC 16, which restricts uses to those that are carried on entirely within a completely enclosed building. As directed by the City Council, the intent of the proposed amendments is to make it clear that MMV units are permitted within the City of Edmonds. He reviewed the changes that were made to ECC 4.12 and ECDC 16 as directed by the Board on March 28<sup>th</sup>:

- Separate definitions were provided for MMV and NMMV units. The definition for MMV unit was broadened to allow MMV units to sell other items besides food and beverages. He referred to a memorandum from Board Member Johnson

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expressing the concern of some downtown merchants about the proposal to allow MMV units to sell a variety of merchandise that could end up competing against existing businesses. He said he forwarded the proposed changes to both the Downtown Edmonds Merchant's Association (DEMA) and the Edmonds Chamber of Commerce, but he has not received a response for either group.

- Staff recommended and the Board agreed that the design review requirement for MMV units (ECC 4.12.055.A) should be eliminated because no design standards are in place for which to base design review. However, in order to ensure that MMV units are of a certain quality and appearance, staff proposed additional language (ECC 4.12.055.B) that required all MMV units to be commercially manufactured vehicles. A definition for "commercially manufactured vehicle" was also added to ECC 4.12.010.E. However, staff is now recommending that this requirement be eliminated because it would be very difficult to enforce and may end up discouraging the use.

Mr. Lien explained that the goal of the proposed language was to prevent old recreational vehicles from being converted into food trucks, since some conversions can be unattractive. He provided pictures of several different MMV units to illustrate the wide variety of vehicles the City can anticipate; some were commercially manufactured and others were conversions. He requested feedback from the Board as to whether the code should include some language to prohibit old recreational vehicles that are converted into MMV units.

Board Member Tibbott suggested that one option would be to require that MMVs be street legal. He suggested this could help prohibit ill constructed and/or poorly designed vehicles. Mr. Lien pointed out that all MMVs must be street legal in order to use public streets to relocate from place to place. Vice Chair Stewart asked how the City could ensure that an MMV unit is safe if it is not required to be commercially manufactured. Board Member Johnson suggested that one approach to address the issue would be to add a separate definition (ECC 4.12.010.F) for "converted or retrofitted MMV units." Mr. Lien cautioned that the Board should first determine whether or not it is appropriate to allow converted or retrofitted MMV units to operate in the City.

Board Member Cloutier said it is more important to ensure that MMV units are street safe and meet Snohomish County health standards. The appearance of the vehicle is the owner's responsibility, and the City should not be in the business of regulating what vehicles look like. He noted that the City does not regulate the appearance of any other type of vehicle or even single-family homes. The Board agreed to delete ECC 4.12.010.E and ECC 4.12.055.B.

- Mr. Lien said he spoke to the City Clerk about the Board's recommendation to change the language contained in ECC 4.12.050 related to "investigation of applicants." She indicated that the term "investigation" has been used without issue for numerous years and should not be changed. She also recommended that language protecting vendors who are invited to park next to the fireworks display should also be maintained.
- Mr. Lien said the Board had a lot of discussion about the different zones where MMV and NMMV units should be allowed. The Board agreed they wanted to allow them in most commercial zones, so all BD zones were added to ECC 4.12.055.A.1 and ECC 4.12.055.A.2. The Board also previously agreed that MMV units should not be allowed to locate in spaces identified for public parking. He said he forwarded the proposed language to both DEMA and the Edmonds Chamber of Commerce, but he did not receive a response.
- Mr. Lien said that, as per the Board's direction, the language in ECC 4.12.055.J was softened. As proposed, street vendors would be allowed to operate in parks if they have a concession agreement with the City of Edmonds.
- Mr. Lien advised that ECC 4.12.055.P was amended at the Board's request to prohibit MMV units from operating within one-quarter mile of a special event where food providers are required to pay a fee to participate (i.e. Taste of Edmonds, Edmonds Arts Festival). Board Member Ellis asked if there are defined boundaries for each of the special events. Mr. Lien said the special event permits specify the boundaries for each event.
- Mr. Lien said that ECC 4.12.065.D was added to identify hours of operation for MMV and NMMV units. As proposed MMV and NMMV units that are located directly adjacent to residentially-zoned property may not operate between the hours of 9 p.m. and 8 a.m. NMMV and MMV units that are not located directly adjacent to residentially-zoned property

may not operate between the hours of 11 p.m. and 6 a.m. He noted that, as recommended by the Board, this language is consistent with the hours of operation for outdoor dining.

Board Member Reed requested clarification about the intent of ECC 4.12.055.K. Mr. Lien said this provision prohibits street vendors in residentially-zoned areas or unzoned properties or rights-of-way adjacent to or abutting residentially-zoned areas. He explained that there are commercially-zoned properties directly adjacent to residentially-zoned properties, and MMV units would have to be located on commercially-zoned properties and not within the right-of-way.

Vice Chair Stewart referred to ECC 4.12.065.C, which identifies hours of operation for peddlers and solicitors. She asked if MMV and NMMV units would also be considered peddlers. If so, the hours of operation identified in ECC 4.12.065.C are inconsistent with the hours of operation identified in ECC 4.12.065.D. Board Member Ellis pointed out that the definition for peddler and solicitor requires them to go from place to place to sell items, and this is different than MMV and NMMV units.

Board Member Johnson pointed out that the word “downtown” is misspelled in ECC 4.12.055.A.1.

Vice Chair Stewart suggested that ECC 4.12.055.E should be further amended by adding “and/or recycle” before the word “container.” Board Member Cloutier questioned if the City can require an MMV unit to provide a recycling container. He also expressed concern that using the word “or” could imply that an MMV unit can provide either a recycling or a refuse container. The Board asked staff to further amend the language to “encourage recycle containers.”

**Ronnie Morgan, Sumner**, said he owns a 1976 GMC that runs on propane, as does the refrigerator and the generator. He explained that the vehicle was not originally designed to be an MMV unit, but it has been modified by a professional company that is certified by the state. He said he is thinking about doing business in Edmonds, and he supports the proposed changes. He said he particularly supports the Board’s decision to eliminate language that would require all MMV units to be commercially manufactured.

Mr. Morgan referred to ECC 4.12.055.M, which requires a vendor to obtain approval from abutting property owners in order to locate an MMV or an NMMV. He questioned what would happen if a MMV operator obtains a permit to operate on a private commercial property, but then an adjacent property owner decides he doesn’t want the unit located next to his/her property. Would the license be revoked by the City; and if so, would the City refund the permit fee? Board Member Cloutier pointed out that this language is intended to apply to street vendors and NMMV units only. MMV operators would be required to obtain permission from the owner of property where the unit is located but would not have to obtain approval from adjacent property owners. Mr. Lien agreed and said he would rework the language to make it clearer.

Mr. Morgan noted that the proposed language requires a fee for a one-year permit. He asked if there is a different and less costly permit for MMV operators who want to locate in Edmonds for just a few days per year. Mr. Lien said that only one-year permits would be available.

**Ken Reidy, Edmonds**, said he recently visited Portland, Oregon, where they have identified an area for MMV units to all locate in one place. Because the units are clustered together, there is a lot of activity. He suggested the City also consider opportunities to cluster the units together into one area or one zone.

**Don Hall, Edmonds**, reported that at the last DEMA meeting, concern was expressed about allowing MMV units to sell items that are not food related. Allowing these types of units could compete directly with existing businesses such as dress shops, jewelry stores, etc. They are concerned that an existing retailer could close shop and set up an MMV unit to avoid having to pay overhead costs such as rent and utilities. He said his garden store already has competition from vendors who participate in the local Saturday Farmer’s Market because they are allowed to sell other items in addition to produce. He said he does not want the City to encourage more competition than what already exists. He agreed to ask DEMA to provide an official response to the proposed amendments.

Mr. Hall said he is not opposed to allowing MMV units that sell food to locate on City streets in visible locations since this will encourage more people to come to Edmonds and make the BD zones more vibrant and exciting. Downtown Edmonds needs to provide more reasons for people to come out of their homes and visit the various businesses. He said he has operated a business in Edmonds for the past 13 years; and at certain times each year, he loses nearly all his parking.

However, his customers do not complain. He suggested that customers are willing to walk to a business that provides good customer service and the right prices. Again, he said he would support allowing MMV units to locate on City streets rather than limiting them to private parking areas.

Mr. Lien recalled that, at their last meeting, the Commission discussed allowing MMV units to sell more than just food and beverages. As a result, the definition of MMV was expanded to include other items. Chair Lovell agreed that the Board expanded the language to include the possibility for vending other than food, but they left it open for the City Council to decide if they want to restrict certain types of MMV and NMMV units based upon zoning. For example, MMV units that sell items other than food could be restricted from certain zones to avoid competition with existing retailers.

Board Member Reed noted that the “e” should be removed from the word “therefore” in ECC 4.12.040.A. He also noted that the word “on” should be deleted from ECC 4.12.055.A. Lastly, he suggested that ECC 4.12.055.A.1 and ECC 4.12.055.A.2 could be combined since NMMV and MMV units are allowed in the same zones. The Board concurred.

Mr. Lien summarized that the Board is requesting that the document be updated for further review with the following changes:

- Eliminate ECC 4.12.010.E and ECC 4.12.055.B.
- Remove “e” from “therefore” in ECC 4.12.040.A.
- Eliminate the word “on” from ECC 4.12.055.A.
- Combine ECC 4.12.055.A.1 and ECC 4.12.055.A.2.
- Change “design” to “designed” in ECC 4.12.010.C.
- Add language to “encourage recycling” in ECC 4.12.055.E.
- Correct the spelling of “Downtown” in ECC 4.12.055.A.1.
- Modify ECC 4.12.055.M to make it clear that MMV operators do not need to obtain permission from adjacent property owners.

Mr. Morgan referred to previous language that would limit the amount of advertising an MMV unit would be allowed to have. Mr. Lien pointed out that ECC 4.12.055.D limits the amount of advertising that NMMV units are allowed to have, but there would be no specific restriction for signage on MMV units.

Mr. Morgan said one of the advantages of having an MMV business is he is not tied to one location. He can locate in a busy area of town for the morning, and then move to another location or perhaps deliver coffee to businesses. However, he expressed concern that the City’s current code would not allow him to deliver coffee to offices throughout Edmonds. He suggested the Board take into consideration that MMV units move around to provide a service to people. For example, they could consider allowing a lunch truck to go into a residential neighborhood to serve construction worker during the lunch hour.

Board Member Ellis asked how the City regulates ice cream trucks. Chair Lovell recalled that this issue was raised at a previous meeting, and Mr. Chave responded that ice cream trucks would not be regulated by the subject ordinance. Mr. Lien agreed to research the issue further and report back to the Board.

Board Member Johnson said she subscribes to the Seattle Met Newsletter, which contains articles each week about food trucks. She also provided pictures of food trucks she has collected for informational purposes. She announced that the May 2012 edition of the Seattle Met Magazine features the food truck industry. She agreed to share the magazine with interested Board Members. She said she has researched the food truck industry and found there are four different types:

- Food trucks located in parking lots.
- Food trucks that pay for the privilege of occupying parking space on the street.
- Food trucks that are clustered together in a designated area.
- Food trucks that are operated during special events that are intended just for food trucks.

Board Member Johnson reported that she sent an email to former members of the CEDC regarding this issue, but she has not received a response yet. She agreed it would be appropriate to continue the hearing to allow for additional discussion.

**BOARD MEMBER CLOUTIER MOVED THAT THE PUBLIC HEARING BE CONTINUED TO JUNE 13, 2012. BOARD MEMBER JOHNSON SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

THE BOARD TOOK A BREAK FROM 8:50 TO 9:02 PM.

**CITY OF EDMONDS SHORELINE MASTER PROGRAM (SMP) UPDATE**

Mr. Lien referred the Board to the most current draft of the Shoreline Master Program (SMP) dated April, 2012 (Attachment 1). He specifically referred to the definition section and advised that a definition was added for “shore setback,” and the definition for buffer was modified. He explained that the old definition for “buffer” was taken from the City’s Critical Area Ordinance (CAO), and the new definition is more appropriate in the shoreline context and draws the distinction between “buffer” and “setback.” He reminded the Board that they also suggested that a definition be added for “high-intensity.” He said he electronically searched the draft SMP and found that the term is only used once to differentiate between the Aquatic I and Aquatic II Environments. Because it is not used elsewhere in the SMP, staff did not feel it was necessary to add a definition. He said he also electronically searched the draft SMP for the term “buffer” and found there was only once instance where “buffer” was used incorrectly. He explained that the term “buffer” is used in two different ways in the SMP: when referring to landscape requirements to “buffer” a use from an adjacent property and when referring to the more visual critical area buffer. The term is used correctly throughout the document.

Mr. Lien provided visuals depicting proposed shoreline jurisdictions, shore setbacks and buffers conceptually and actual locations within the City’s shoreline areas. Chair Lovell said it would be helpful for staff to provide a legend for the drawings so that each of various buffer requirements can be easily identified. Mr. Lien reviewed each of the drawings, explaining how the SMP and CAO requirements would be applied in each situation as follows:

1. Shoreline area near Water Street. Within this 200-foot shoreline jurisdiction, a 50-foot setback from the top of the bluff would be required. An additional 15-foot building setback would also be required. While the current SMP allows development to occur within the buffer, a geotechnical report would be required. The proposed SMP would also allow development to occur closer than 50 feet, but a shoreline variance would be required. He explained that, initially, the DOE wanted to prohibit development closer than 50 feet from the top of the bluff, but they later added a variance process.

Board Member Tibbott questioned what the proposed SMP would accomplish because the shoreline is already developed to a great extent. Mr. Lien explained that the Department of Ecology (DOE) envisions an environment that is natural. Along the City’s shoreline there are railroad tracks, a bluff and houses built right on top of the bluff. Because the environment along the shoreline has already been altered, the ideal situation is to limit future development/redevelopment so there is “no net loss.”

2. Lake Ballinger. The shore setback from Lake Ballinger is 35 feet, and it is also fringed with Category III Wetlands that require a 50-foot buffer. Although shore setback requirements allow development to occur closer to 50 feet, the CAO does not allow development to occur within a wetland buffer. The CAO also requires a 15-foot building setback.
3. Edmonds Marsh and Harbor Square. While the CAO is associated with the Growth Management Act (GMA) and the SMP, they do not always mix. The State has made it clear that GMA rules apply to wetlands outside of the shoreline jurisdictions, and the CAO requires a 200-foot buffer for a Type I Wetland. The SMP’s wetland buffer for the marsh is based on best available science for small jurisdictions, which identifies a 150-foot buffer for estuarine wetlands. He explained that, previously, the marsh was identified as an associated wetland, but the proposed SMP now identifies a portion of the marsh as shoreline. That means the SMP would prevail to create different buffers for the areas within the shoreline jurisdiction. Currently, the SMP identifies a 25-foot shore setback. Activities are allowed within the developed portion of the buffer as long as the footprint does not expand. No structures would be allowed within the undeveloped buffer areas.

Board Member Tibbott asked if existing buildings located within the buffer area would be allowed to redevelop in the future. Mr. Lien answered that the structures could be redeveloped, as long as the footprint is not expanded.

Mr. Lien also provided pictures of the current parking situation near the Edmonds Marsh (taken from various locations along the boardwalk) to aid the Board's further discussion on what the parking setback should be for the Urban Mixed Use III Environment.

Board Member Tibbott asked if the current parking configuration at Harbor Square would meet the proposed new requirements in the SMP. Mr. Lien noted that there is some parking located as close as 25 feet from the wetland, which would meet the proposed building setback requirement of 25 feet.

Board Member Reed asked where definitions for the various wetland categories could be found. Mr. Lien answered that wetland categories are defined in Section 23.50.040, which is the current CAO. The Edmonds Marsh is identified as a Category I Wetland, which requires a 200-foot setback. Shore setback requirements can be found in the table in Section 24.40.020.F. He advised that the information found in the table is consistent with best available science for small jurisdictions, and it cannot be altered by the City.

Mr. Lien advised that the current draft of the SMP identifies a 25-foot building (and parking) setback at Harbor Square, but the Board has discussed increasing this setback distance. Chair Lovell reminded the Board that the Port of Edmonds is scheduled to present their proposed master plan for Harbor Square on June 27<sup>th</sup>. Mr. Lien added that Mr. McChesney, Port Executive Director, has participated in discussions with the Board related to Harbor Square and has indicated the Port's support for the proposed Urban Mixed Use III Environment as it is currently written. The City has also received letters from Friends of the Edmonds Marsh and the Department of Ecology in support of the proposed new Urban Mixed Use III Environment as drafted.

Mr. Lien explained that the Port's Harbor Square Master Plan is conceptual at this time. It does not show where buildings would be located. Once the Harbor Square Master Plan has been adopted into the City's Comprehensive Plan, the Port would likely pursue the necessary rezone or development agreement to address the setback requirements contained in the SMP.

Board Member Johnson said she understands the concept of "no net loss," but she would like more detail from staff on how it relates to all the buffers. Mr. Lien referred the Board to the Cumulative Impact Analysis, which is a supporting and required document for the SMP update. The analysis includes a table that talks about the potential cumulative impacts of shoreline alterations. The analysis also provides information to show how the proposed SMP would meet the "no net loss" requirement. Based on information in the analysis, the Department of Ecology has indicated that the proposed SMP, as currently drafted, would meet the "no net loss" requirement.

Vice Chair Stewart expressed her belief that just because buildings were developed near the shoreline many years ago does not mean that is the proper place for them to be rebuilt. The marsh has been reduced in size, and this has reduced its ability to perform the important functions of treating stormwater runoff and pollution. She reminded the Board that when Willow Creek is daylighted, the marsh will have more saltwater influence. She said she is of the opinion that the shore setback should be increased to 35 feet in the Urban Mixed Use III Environment. At the very least, the City should require that any parking located in the setback area be constructed of pervious pavement. Mr. Lien noted that other policies in the draft SMP would require low-impact development elements where feasible. He questioned if it would even be possible to use pervious pavement within the shore setback of the Urban Mixed Use III Environment given the water table.

Mr. Lien advised that the SMP update also requires the City to complete a restoration plan to further implement the concept of "no net loss." Willow Creek is identified in the Restoration Plan as an area of shoreline that could be restored. Vice Chair Stewart commented that the concept of restoration provides even more reason to increase shore setbacks from 25 feet to 35 feet in the Urban Mixed Use III Environment. While "no net loss" is the minimum the City should strive for, she expressed her belief that they should do even better.

Board Member Tibbott asked if the City has information about how the water table in the Urban Mixed Use III Environment could change if Willow Creek is daylighted. He also asked if the marsh would expand as a result of daylighting Willow Creek, and if so, how much. Mr. Lien reported that studies of the marsh and Willow Creek are underway, and much more

information will be available the next time the SMP is updated. He said they do not have any specific information at this time about the water table on the Harbor Square site. However, a geotechnical report has been completed for the Antique Mall site, showing the water table at just five feet below the surface. Mr. Lien also advised that Keely O'Connell, Friends of the Edmonds Marsh has pointed out that because the marsh is confined on the Harbor Square boundary, it could not expand in that direction. She also pointed out that the marsh would not expand as a result of the daylighting project, but the portion of the marsh with salt water influence would expand. Mr. Lien said the Washington State Department of Transportation completed a study in 2008 as part of the ferry relocation proposal. The study indicates how the salt water influence at the marsh is expected to expand if Willow Creek is daylighted.

Board Member Tibbott asked how daylighting Willow Creek would impact stormwater runoff. Mr. Lien said he does not have the answer to this question. However, the city is currently working with Friends of the Edmonds Marsh to complete a study of the Marsh, as well as options for daylighting Willow Creek. The Federal Emergency Management Agency (FEMA) is also doing a study of the Snohomish County shoreline. However, neither of these studies will address what could happen during a significant rain event. The City's Public Works Division is working to address this issue.

Board Member Johnson reported that she attended the Edmonds Watershed Fun Fair on May 5<sup>th</sup>, where Keely O'Connell with People for Puget Sound and Friends of the Edmonds Marsh, provided a wonderful presentation about the marsh. The presentation was about 20 minutes long, with a 10-minute question and answer period. Ms. O'Connell indicated that she provided a similar presentation to the City Council in 2009, and she would be willing to present to the Board, as well. The Board discussed that it would be appropriate to schedule this presentation in conjunction with their review of the Port's Harbor Square Master Plan. Chair Lovell agreed to contact Ms. O'Connell to schedule the presentation.

Mr. Lien said that the only other item remaining for the Board to discuss related to the SMP is aquaculture. Board Member Johnson advised that she has researched the concept of aquaculture and learned that the Snohomish County Health Department has banned aquaculture in Snohomish County.

#### **REVIEW OF EXTENDED AGENDA**

The Board did not discuss the extended agenda.

#### **PLANNING BOARD CHAIR COMMENTS**

Chair Lovell did not provide any comments during this portion of the meeting.

#### **PLANNING BOARD MEMBER COMMENTS**

Vice Chair Stewart recalled that, at their last meeting, Roger Hertrich suggested that more detailed Planning Board agendas should be published on Channel 21. She suggested the Board pursue this option. Mr. Lien cautioned that there are legal requirements associated with public notices, and they need to make sure it is done appropriately. Chair Lovell agreed to discuss the issue with Mayor Earling and his assistant and report back to the Board. Mr. Lien agreed to discuss the idea with Mr. Chave, as well.

Board Member Johnson reported on her attendance at the first meeting of the Metropolitan Park District Exploratory Committee on May 7<sup>th</sup>. The next meeting is scheduled for May 23<sup>rd</sup> from 6 to 8 p.m. in the Plaza Room of the Edmonds Library. Two additional meetings would also be held in June. She noted that the extended agenda indicates that the Parks, Recreation and Cultural Services Director would provide a quarterly report on parks to the Board on June 27<sup>th</sup>, which will be timely given the schedule of the committee. Board Member Reed pointed out that the quarterly report was rescheduled to July 11<sup>th</sup>.

Board Member Johnson announced that the City of Anacortes is hosting a "Short Course on Local Planning" on May 17<sup>th</sup> from 6:30 to 9:30 p.m. She advised that there is a 300-page reference book published by the Department of Commerce to describe all the associated rules and regulations for planning board members. She said she previously attended a "short course" that was hosted by the City of Mountlake Terrace, which she found very helpful.

**APPROVED**

Board Member Johnson also announced that a free workshop regarding natural yard care has been scheduled for May 12<sup>th</sup> and May 19<sup>th</sup> in the Plaza Room of the Edmonds Library.

**ADJOURNMENT**

The Board meeting was adjourned at 9:55 p.m.

**APPROVED**