

**CITY OF EDMONDS
PLANNING BOARD MINUTES**

October 24, 2012

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

BOARD MEMBERS PRESENT

Valerie Stewart, Vice Chair
Todd Cloutier
Bill Ellis
John Reed
Neil Tibbott

STAFF PRESENT

Rob Chave, Development Services Director
Kernen Lien, Senior Planner
Rob English, Senior Engineer
Bertrand Hauss, Traffic Engineer
Stephen Clifton, Community Services/Economic Development Director
Jeff Taraday, City Attorney
Karin Noyes, Recorder

BOARD MEMBERS ABSENT

Philip Lovell, Chair (excused)
Kevin Clarke (excused)
Ian Duncan (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER REED MOVED THAT THE MINUTES OF OCTOBER 10, 2012 BE APPROVED AS AMENDED. BOARD MEMBER ELLIS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

The agenda was accepted as presented.

AUDIENCE COMMENTS

Roger Hertrich, Edmonds, pointed out that he was the only member of the public to speak to the Board at the October 10th public hearing regarding the Capital Improvement and Capital Facilities Plans. Most of his comments are reflected in the minutes. However, the minutes do not reflect that the Board's Vice Chair actually cut him off even though there was no one else in the audience to participate in the hearing. He pointed out that, at past hearings, the Board has been liberal in the amount of time they allow members of the public to speak. He felt it was inappropriate to cut off his positive and informational remarks. He observed that none of the Board Members responded to the concerns he raised, and he was disappointed in the short amount of time the Board spent discussing transportation issues. He recalled that, in previous years, the Board specifically discussed that there was insufficient budget to accomplish all of the items identified in the plan. He suggested that the Board should have taken more time to review the transportation plan, as exhibited by the City Council's response to delete the proposed emergency access to the waterfront under the railroad tracks. He recalled that the City was required to study alternate locations for the ferry terminal as part of the multi-modal study, and the underpass was one option. He expressed frustration that the money was not spent to complete the project in the right place rather than studying other potential locations. He urged the Board to look deeper at the Transportation Plan, which affects everyone in the City.

Vice Chair Stewart said Mr. Hertrich's points are well taken, and his comments are always valued.

PUBLIC MEETINGS ACT PRESENTATION BY CITY ATTORNEY

City Attorney Taraday said he was present to review the Open Public Meetings Act, the Appearance of Fairness Doctrine, and the Public Records Act. He explained that the Open Public Meetings Act, codified in Revised Code of Washington (RCW) 42.30, requires that all meetings of a governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body or public agency except as otherwise provided in the chapter (i.e. executive sessions). Any action that takes place at the meeting at which a violation of the Open Public Meetings Act occurs would be null and void. If a Board Member violates the act, he/she would be subject to a \$100 fine. A public agency, as defined in the RCW, includes sub-agencies like the Planning Board. The Planning Board is a governing body of the public agency. A governing body is defined as multi-member board, committee, commission or council or any counseling or rule-making body of the public agency.

City Attorney Taraday explained that meetings of Planning Board subcommittees are also required to be open to the public if a quorum of Board members will be present. Subcommittees that consist of fewer members than a quorum may not be required to meet in public unless the subcommittee is acting on behalf of the governing body, conducting a hearing or taking public comment. Because the City Council subcommittees allow an opportunity for public comment, their meetings are subject to the Open Public Meetings Act. Any transaction of the official business of a public agency by a governing body would also be subject to the act. This include not only City Council meetings where final decisions are made, but Planning Board meetings where matters are discussed and recommendations are made to the City Council.

Mr. Taraday advised that a governing body can conduct a special meeting as long as they follow the specific procedures for noticing special meetings as outlined in the RCW. He also advised that a meeting does not automatically occur when a majority of Board members meet together. It depends on whether or not the group will be transacting the official business of the Board. For example, the Board Members can meet together for a holiday party if they attend on a strictly social basis and do not talk about Planning Board business.

Mr. Taraday cautioned the Board that the Open Public Meetings Act can also apply to email communications. He encouraged extreme caution when using email to transact the business of the Board. Whenever a Board Member emails more than one other Board Member they should put the email addresses in the Bcc field of the email rather than the address or Cc field. This eliminates the opportunity for a Board Member's response to be forwarded to all Board Members at the same time. He summarized that responding back and forth amongst all Board Members via email is considered the same as having private conversations and constitutes a violation of the Open Public Meetings Act.

Board Member Reed expressed concern that emailing Board Members by placing the addresses in the Bcc Field seems somewhat deceptive. He noted that most of the Board's email relates to scheduling issues. They typically form subcommittees of one or two Board Members to explore an issue and report back to the Board. He expressed his belief that this would not be subject to the Open Public Meetings Act because the subcommittee would not constitute a quorum and would report findings back to the Planning Board at an open meeting.

City Attorney Taraday agreed that a subcommittee meeting would only be subject to the Open Public Meetings Act if a quorum of Board Members is present. However, disseminating email to the entire Board and allowing Board Members to respond in a way that the entire Board can see each other's responses is a violation of the Open Public Meetings Act. Even if the email is simply discussing a scheduling issue, it is still considered a private conversation and would not be allowed. He expressed his belief that using the Bcc Field would be no more outside the spirit of the Open Public Meetings Act than two Board Members meeting for coffee to talk about Planning Board business. Board Members are allowed to meet one on one, but they are not allowed to meet together as a quorum to discuss Planning Board business outside of a public meeting.

City Attorney Taraday advised that the Appearance of Fairness Doctrine applies to quasi-judicial decision making. That means the doctrine would apply each and every time the Board sits as judge on a quasi-judicial matter. The only time the Appearance of Fairness Doctrine would come into play for the Planning Board is when they conduct open record public hearings on site-specific rezone applications. Quasi-judicial proceedings must not only be fair, they must appear fair. Fairness is not based only on the Board Members' subjective view of whether they are being fair; it is how the public

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perceives their fairness. He emphasized that the Appearance of Fairness Doctrine does not apply when the Board is acting in a legislative capacity, but they must exercise much more discretion when acting in a quasi-judicial capacity. When sitting in a quasi-judicial role, the Board will be required to apply certain standards to their decisions.

City Attorney Taraday said it is important to distinguish between site-specific rezones and Comprehensive Plan amendments. It is possible that the Board will be required to conduct a public hearing and make a recommendation on a Comprehensive Plan amendment and a site-specific rezone application for the same property. The Comprehensive Plan amendment would not be subject to the Appearance of Fairness Doctrine, and Board Members could be lobbied outside of public meetings without violating the doctrine. However, they would not be allowed to have conversations regarding a site-specific rezone application outside of a public meeting.

City Attorney Taraday advised that the Appearance of Fairness Doctrine does not allow Board Members to have ex parte communications, which are communications regarding a quasi-judicial matter outside of a public hearing. Because the Board will sit as judge on site-specific rezone applications, they cannot talk with either opponents or proponents of the application except during a public meeting. He explained that a public record is created of an open public hearing for a site-specific rezone application. Everything that the Board Members hear regarding the application should become part of the public record. Conversations that take place outside of a public meeting would not be included in the record that is forwarded to the City Council as part of the Board's recommendation unless they are disclosed as an ex parte communication. He acknowledged that ex parte communications happen from time to time, and sometimes they are difficult to avoid. If a Board Member experiences this type of situation, they should disclose the circumstances of the communication at the beginning of the open public hearing. The other side would then have an opportunity to rebut the substance of that ex parte communications.

Board Member Ellis asked how the Appearance of Fairness Doctrine and ex parte communications would work when the Board considers both a Comprehensive Plan amendment and a site specific rezone for the same parcels but at different times. He specifically referred to the Port of Edmonds' request to amend the Comprehensive Plan to incorporate the Harbor Square Master Plan. The Board conducted a public hearing and made a recommendation to the City Council on this legislative action. If the Port follows the Comprehensive Plan amendment with a site-specific rezone application or a development agreement proposal, the Board would conduct a quasi-judicial public hearing and make a recommendation to the City Council. Mr. Taraday explained that if the Port's application for a Comprehensive Plan amendment had been accompanied by a binding, site-specific rezone application, the Board would have had to be very careful to avoid and disclose ex parte communications as they discussed both applications. That is a good reason to complete the Comprehensive Plan amendment process first and then follow with a site-specific rezone application. He summarized that if there is no site-specific rezone application pending at the time of the communication, there is no ex parte communication. Whether or not it is required by law, he recommended Board Members disclose any ex parte communications for the record to make the process appear as fair as possible. This would allow the other side to rebut the substance of the comment.

City Attorney Taraday advised that at the outset of each quasi-judicial hearing, including each additional day that a hearing is extended, the Planning Board Chair should perform an Appearance of Fairness inquiry, asking the Board Members whether there has been any violation that needs to be disclosed. Each Board Member would have an opportunity to disclose anything they feel is necessary. After each Board Member has answered the question, the Planning Board Chair should ask whether any member has a conflict of interest or believes they cannot consider the application in a fair and objective manner. Once all disclosures have been made and proponents and/or opponents have been allowed to rebut as necessary, the Planning Board Chair should ask if anyone in the audience objects to a Board Member's participation as a decision maker in the hearing. This process forces anyone who wants to object to the process to do so as soon as the basis for the objection is known.

City Attorney Taraday suggested that to determine whether or not it is necessary to recuse oneself, Board Members should ask, "would a disinterested person with knowledge of the totality of my personal interest be reasonably justified in thinking my involvement might affect my judgment?" He noted that even if no ex parte communication concerns are raised, Board Members could still be challenged or asked to recuse themselves based on the following bias issues:

- Board Members should recuse themselves if they have a prejudgment concerning issues of fact about parties in a particular case. If Board Members feel they cannot be open minded, they should probably recuse themselves.

However, it is important to distinguish between a general policy leaning a Board Member might have and an actual prejudgment about the facts of a specific case. For example, a Board Member may have a policy leaning that development is good and he/she wants to see more development in Edmonds. However, that leaning would not require a Board Member to step down from a site-specific rezone application that comes before the Board as long as he/she is confident they won't prejudge the application.

- Board Members must avoid showing partiality or a personal bias or prejudgment signifying an attitude for or against a party. They should ask themselves if a fair-minded person observing the proceedings could conclude that everyone was able to be heard. For example, allowing a proponent to speak to the Board longer than an opponent might suggest there is some partiality. The Board should also ask themselves if they gave reasonable consideration to all creditable information that was presented to them.
- There could be a conflict of interest if a Board Member stands to gain or lose something as a result of the Board's decision. These situations are usually clear and obvious circumstances such as a financial gain if a rezone is approved or a Board Member owns the property that is the subject of a rezone application. Less obvious conflict of interest situations include a Board Member being offered a job by the applicant who is seeking a rezone. Board Members should contact the City Attorney if they have a question as to whether their participation in a public hearing would be considered a conflict of interest.

City Attorney Taraday pointed out that the remedy for an Appearance of Fairness Doctrine violation is the same as for violation of the Open Public Meetings Act; the Board's action would be invalidated and a new public hearing would be required. He emphasized the importance of identifying conflict of interest and appearance of fairness issues at the outset of the public hearing process. He cautioned the Board that when conducting open record hearings, in general, it is important to create a complete verbatim record. Every person who speaks during the hearing should use the microphone so the comments are captured in the audio recording.

City Attorney Taraday explained that, as per the Public Records Act, any email that relates to Planning Board business is considered part of the public record. While the City does not receive a lot of public record requests for Planning Board Member emails, it could happen and Board Members would be required to produce all emails that are subject to the request from their personal email accounts. He suggested that, at some point, it would be appropriate for the City to move official emails from board and commission members to a City server so that board members and commissioners are not burdened with having to search for and produce emails from their personal computers. Emails on the City server can be searched by the City Clerk to fulfill public record requests. Until the City makes this change, he suggested the Board Members may want to limit their email activity.

WORK SESSION ON WESTGATE PLAN AND FORM-BASED ZONING

Mr. Hauss introduced the City's consultant, Jennifer Barnes, Heffron Transportation, Inc., who was present to provide a summary of the transportation analysis that was recently completed based on the land use policy changes proposed in the Westgate and Five Corners Plans. He also noted that Ms. Barnes worked with City staff to complete the 2009 Transportation Master Plan (TMP) update.

Jennifer Barnes, Consultant, Heffron Transportation, Inc., explained that the purpose of the transportation analysis was to determine how the proposed land use policy changes in the Westgate and Five Corners areas would affect the City's current adopted TMP. Because it serves as the Transportation Element in the City's Comprehensive Plan, it is important to identify the potential impacts to the TMP if the proposed changes are adopted. She explained that because the proposed action is a policy change and not a specific development proposal, the analysis is still programmatic and intended to answer the question of whether or not the TMP would still address transportation impacts resulting from future land use growth if the proposed changes are adopted. She emphasized that whether or not the proposed land use policy changes are adopted, subsequent development proposals would still be subject to project-level State Environmental Policy Act (SEPA) review, including a required traffic impact and access management analysis.

Ms. Barnes advised that for the analysis, she evaluated conditions for the Comprehensive Plan long-range plan through 2025, compared the assumed future land use in study areas with the proposal, calculated additional trips resulting from build out under the proposal, evaluated the effect of additional trips on the City's adopted long-range transportation plan, and evaluated consistency with the City's transportation policies. The analysis identified the following conclusions:

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- Build out of land use with the proposed policy changes would add some intersection delay, but the Level of Service (LOS) would remain the same (LOS D).
- With the adopted Transportation Improvement Plan in place, all intersections are expected to continue to operate within the City's LOS D standard.
- Additional transit and non-motorized trips resulting from an increase in land-use density would not affect the TMP improvements and recommendations, and no changes would be needed.

Ms. Barnes explained that the proposed design concept for the Westgate area also includes the potential narrowing of 100th Avenue West from five vehicular traffic lanes to three. This would provide additional right-of-way to accommodate a bicycle lane, parking, and sidewalks. The analysis considered the potential impacts of this change and determined that, with the projected 2025 build-out volumes, such a roadway cross section would degrade operations at the Edmonds Way intersection from LOS D to LOS F. She said she would not recommend adopting the proposed change at this time. If the City chooses to pursue the option at some point in the future as part of an actual development proposal, a more detailed project-level analysis would be needed to identify strategies for reducing vehicle demand through the intersection and/or configuring the right-of-way to maintain a wider cross section at the intersection. However, she emphasized that the proposed land use policy changes could still be adopted without adopting the proposed change to the roadway cross sections.

Ms. Barnes advised that because the proposal is a non-project action rather than a site specific development proposal, site-specific characteristics such as driveway access, internal circulation, parking and safety are more detailed than is appropriate at the Comprehensive Plan level. Subsequent development proposals would be required to evaluate site-specific elements for consistency with the City's adopted Traffic Impact Analysis guidelines. She summarized that, based on the conclusions of the transportation assessment, the proposed land use policy changes would be consistent with the TMP policies, particularly those that encourage alternative modes and transportation system efficiency.

Vice Chair Stewart raised a concern that the proposal to narrow 100th Avenue West from five to three vehicular lines would not provide adequate space for safe bicycle lanes. Ms. Barnes explained that, currently, there are two lanes for vehicular traffic in each direction and a center turn lane. As per the proposal, the street would be narrowed to one lane in each direction, with a turn lane in the middle. The additional right-of-way width could be used for bicycle lanes, parking, sidewalks, etc. The City must determine if providing access for non-motorized vehicles is an adequate tradeoff for reducing the capacity for vehicular traffic. The traffic assessment has determined that without some additional analysis to identify strategies to reduce vehicular demand through the intersection and/or reconfigure the intersection to maintain a wider cross section, the LOS at the intersection would reach a level that would be unacceptable to both the City and the Washington State Department of Transportation (WSDOT).

Mr. Chave explained that there may be opportunities to change the street configuration while avoiding significant changes at the intersection. For example, it may be possible to provide bicycle and pedestrian opportunities on 100th Avenue West near the cemetery. He summarized that the traffic assessment concluded that more study is needed regarding the proposal to narrow 100th Avenue West. If the concept is eliminated from the plan for the time being, the proposed land use policy changes would still be consistent with the City's adopted TMP. Ms. Barnes agreed that the concept could be pursued further as part of a future development proposal.

Mr. Chave reported that City Council Member Johnson suggested that the City look holistically at the public improvements on the SR 104 Corridor. It may be possible to apply some of the concepts discussed in the Westgate Plan to the entire corridor.

Board Member Reed referred to Table 4 on Page 8 of the Transportation Assessment, which identifies the current and projected number of primary and pass-by trips. He noted that "pass-by" trips refer to people heading home from work who stop at businesses along the corridor. He observed that the recommendation focuses on the primary trips and suggested that perhaps more weight should be given to the pass-by trips. Ms. Barnes explained that the general effect of both primary and pass-by trips on the transportation system is accounted for in the analysis. A more specific analysis that distinguishes between primary and pass-by trips would be required as part of a future development proposal. This more detailed analysis would consider specific impacts to the transportation system as a result of additional driveways, driveway reconfiguration, etc.

Vice Chair Stewart expressed concern that the LOS at the intersection of Edmonds Way and 100th Avenue West would drop from Level D to Level F by 2025 (See Pages 11 and 13 of the report). Ms. Barnes said the comments about the significant reduction in the LOS level are based on the reduced capacity that would result from an intersection reconfiguration. The analysis shows that the LOS level would remain relatively the same if no significant changes are made to the intersection. That is why the analysis recommends that more study is needed before the City makes a decision to reconfigure the intersection.

Mr. Chave provided a map that was prepared by the University of Washington team to illustrate the topography of the hillsides that surrounds the Westgate area. The map compares the elevation of the Westgate properties with the elevation of the existing development on top of the slope and illustrates that five-story development makes more sense in some areas than others. He noted that the elevation difference in the southwest quadrant is between 55 and 70 feet, and buildings of up to five stories that sit below that level would not create a problem for the residential properties above. In the northwest quadrant, the cemetery provides a significant buffer between the Westgate area and surrounding residential properties, so taller buildings would not have a significant impact. In the northeast quadrant, the elevation change is about 50 feet so four-story and potentially five-story development would work in this location, as well. However, elevation change in the southeast quadrant is only 30 to 40 feet and four and five-story buildings may not be appropriate in this location because they could rise above the surrounding residential areas. He noted that the depth of properties is less in the southeast quadrant, as well, which is another reason why larger buildings may not be the best solution for that location.

Board Member Reed pointed out that Page 6 of the draft Westgate Plan and Form-Based Code indicates that all parcels would be eligible for height bonuses up to four or five stories, including the southeast quadrant. A height bonus score sheet is provided on Page 53 of the document and outlines what would be required for a developer to obtain the additional height. Mr. Chave advised that the language could be changed to make it clear that the height bonus would only apply to certain areas. Height in some areas, such as the southeast quadrant, could be restricted to three or four stories. The Board agreed it would be appropriate to limit height in the southeast quadrant to no more than four stories.

Mr. Chave indicated that staff would incorporate the additional changes and prepare an updated draft that clearly distinguishes between the Development Code and Comprehensive Plan elements. The updated draft would be presented to the Board for additional review. It was noted that the extended agenda identifies a public hearing on the draft Westgate Plan and Form-Based Code on November 14th, but this meeting would actually be a work session with a tentative public hearing scheduled for December 12th. Mr. Chave invited Board Members to forward additional comments to staff. Staff would compile a list of the comments for the Board's consideration on November 14th. While it is possible for the University of Washington Team to attend the Board's work session on November 14th, Mr. Chave suggested it would not be necessary. He emphasized that the proposal is now a City document to work through and make the appropriate changes.

FINALIZE PLANNING BOARD RECOMMENDATION TO CITY COUNCIL REGARDING THE PORT OF EDMONDS REQUEST TO INCORPORATE THE HARBOR SQUARE MASTER PLAN (HSMP) INTO THE CITY OF EDMONDS COMPREHENSIVE PLAN (FILE AMD20110009)

Mr. Lien reviewed that on October 10th, the Planning Board conducted a public hearing regarding the Port of Edmonds' request to incorporate the Harbor Square Master Plan (HSMP) into the City's Comprehensive Plan. At the conclusion of the meeting, the Board voted 6-1 (Board Member Reed voted in opposition) to forward the HSMP to the City Council for approval based on specific recommendations. Following the Board's action, they agreed it would be appropriate to review the recommendation one last time, in writing, before forwarding it to the City Council for final review and approval. He referred to the Findings, Conclusions and Recommendations (Attachment 1), which captures all of the motions made at the last meeting. He noted that the recommendations were reorganized so that all those relating to height were placed first.

Note: The list of the draft recommendations were included in the agenda packet but were not read at the meeting. Upon the direction of the Board, the list of recommendations was included in the minutes for additional clarity:

1. *Building heights shall be limited to 45 feet and consideration may be given for heights up to 55 feet if the development proposal includes significant public amenities and/or sustainable design certification such as LEED Platinum.*
2. *Development proposals should place the tallest buildings towards the south and west boundaries of the property.*

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3. *Buildings along Dayton Street should be limited to 35 feet in height.*
4. *Development plans shall ensure that the Public View Corridor down Dayton Street is preserved and enhanced.*
5. *On page 5 of the Harbor Square Master Plan under "Circulation, Traffic and Parking", an additional sentence should be added to read: "The absence of available off-site parking requires that adequate parking allowance be made to accommodate all customer, employee and resident vehicles during peak use times."*
6. *At the bottom of page 9 of the Harbor Square Master Plan, the exception to the 55 foot height limit for special architectural features such as a tower, sculpture, etc. should be deleted.*
7. *In the graphic "Schematic Section through Harbor Square Looking West" on page 10, the annotation as to "setback" above 35 feet along Dayton Street should be revised to "building step back".*
8. *An additional sentence should be added to the "Dayton Street Frontage" section on page 11 of the Harbor Square Master Plan to read: "Consideration should be given to enhance street-side parking to support separating human activity from the traffic along Dayton Street."*
9. *On page 11 of the Harbor Square Master Plan under "SR 104 Frontage", "If WSDOT is amendable" should be stricken from the beginning of the third sentence.*
10. *The Edmonds City Attorney shall develop language consistent with the memorandum dated September 6, 2012 to be incorporated into the City's adoption of the Comprehensive Plan addressing height limits, precedent, and views.*
11. *Clarifying language should be added to the Harbor Square Master Plan that residential uses must be multi-family and not single-family residential.*
12. *If and when the Harbor Square Master Plan is adopted by the City Council, it should be physically incorporated into the Comprehensive Plan rather than incorporated by reference.*
13. *Any future development proposal shall clearly demark and provide protection for the Edmonds Marsh by establishing an area of open space not less than 25 feet landward from the edge of the Edmonds Marsh and ensure any development preserves or improves the Edmonds Marsh Park/Walkway.*
14. *The approved Master Plan shall be modified as necessary to maintain consistency with the Shoreline Master Program update to be determined following submittal by the City and approved by the State in accordance with process deadlines existent between the State and the City.*

Board Member Reed referred to the first sentence of the third paragraph on Page 5 of Attachment 1, which calls for locating the taller buildings at the far southern edge of the site and outside of recognized public view corridors. He noted that this statement is inconsistent with Recommendation 2 on Page 8 of Attachment 1, which calls for taller buildings towards the south and west. The Board agreed that the language contained in Recommendation 2 should be incorporated into the narrative on Page 5.

The Board discussed whether it would be necessary to make another motion to approve the recommendation as drafted. They agreed that the Findings, Conclusions and Recommendations contained in Attachment 1 reflect the action taken by the Board at the October 10th meeting. Because no substantive changes were made, the Board concluded that the previous action would stand and no additional action would be required.

CITY OF EDMONDS SHORELINE MASTER PROGRAM (SMP) UPDATE

Mr. Lien reminded the Board that a few months ago they decided to put their review of the Shoreline Master Program (SMP) on hold to allow time for them to complete their review of the Port of Edmonds Harbor Square Master Plan. He referred the Board to the most recent version of the SMP regulations (Attachment 1) and noted that minor changes were made related to aquaculture. In addition, the Board indicated they would like to review the setbacks established in the Shoreline Bulk and Dimensional Standards Table (ECDC 24.40.090).

Mr. Lien referred the Board to ECDC 24.60.010 (Page 88), which relates to aquaculture. He reminded the Board that in their initial discussions they talked about prohibiting aquaculture within the shoreline area. Since that time, another jurisdiction in Washington attempted to prohibit the use, and the Department of Ecology (DOE) determined that was not allowable. However, the DOE advised that the City of Edmonds' situation is different and they would allow them to place tidal restrictions on aquaculture uses. He noted that net pens associated with the Willow Creek Fish Hatchery already exist, and the proposed regulation would allow the use to continue but prohibit all other types of aquaculture uses. He noted that the Shoreline Bulk and Dimensional Standard Table on Page 53 was also updated to eliminate the setback requirement for permitted aquaculture uses in the residential zones.

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Mr. Lien referred to the Shoreline Bulk and Dimensional Standards Table, starting on Page 53 of the draft SMP and recalled that the Board was particularly interested in reviewing the standards that would apply to the new Urban Mixed Use III Environment. The current draft proposes a 15-foot setback for recreational uses, a 25-foot setback for buildings, and a 25-foot setback for parking. The Board has discussed their desire to increase the setback requirement for buildings and parking to at least 35 feet and as much as 50 feet. He invited the Board to provide additional direction regarding this issue now that they have completed their review of the Harbor Square Master Plan.

Board Member Tibbott asked if there is additional scientific information that would support a setback requirement greater than 25 feet. Mr. Lien reminded the Board that the scientific data supports a 200-foot setback for pristine shorelines that are undeveloped. While the Port has indicated their desire to improve the buffers along the marsh, it is important to recognize that the property is already developed to within 25 feet of the shoreline. Both the adopted Critical Areas Ordinance (CAO) and the proposed SMP would allow development to occur within the footprint of existing development, but the footprint could not be expanded further into the setback area. He recalled the pictures he provided previously to illustrate the types of development that exists along the marsh.

Mr. Lien explained that the Critical Areas Ordinance is a requirement of GMA and applies to properties outside of the shoreline jurisdiction. The SMP applies to properties within the shoreline jurisdiction, and the goal is “no net loss.” The DOE has reviewed the City’s current CAO that was adopted in 2005 and applied it to their shoreline guidelines. They determined that the buffers identified in the CAO were inconsistent, and the City was required to adopt buffers from the DOE’s small jurisdiction best available science for wetlands (See the chart on Page 38). The Edmonds Marsh would be classified as a Category I Estuarine Wetland, which requires a standard 150 foot buffer.

Vice Chair Stewart pointed out that they have learned a lot about wetlands and wetland buffers since the Harbor Square property was originally developed. The Port has proposed a 50-foot setback in their conceptual plan. While she would like the setback to be even greater, she would support a 50-foot setback given that the Port has proposed an increase in the buffers and setbacks. She expressed her belief that the marsh must be given more room and restoring the buffers would be appropriate.

Board Member Reed asked if the 50-foot setback proposed by Vice Chair Stewart would apply to all development within the shoreline jurisdiction of the Urban Mixed Use III Environment. The Board agreed that recreational uses such as an interpretive trail could have a lower setback requirement.

Board Member Cloutier left the meeting at 8:50 p.m.

Mr. Lien reviewed the difference between a setback, buffer and shoreline jurisdiction. He reminded the Board that a buffer is meant to provide an ecological function, and a setback is how far a structure must be setback from the shoreline. The shoreline jurisdiction is measured 200 feet of the shoreline. He provided an image to illustrate the proposed buffer, setback and shoreline jurisdiction for the Harbor Square property, which is located in the proposed new Urban Mixed Use III Environment. He also noted the location of the Open Space (OS) zone, which is identified in the current contract rezoned as all property within 25 feet of the shoreline. All development is prohibited within the OS zone. Board Member Tibbott pointed out that no buildings are located within 50 feet of the marsh currently. Vice Chair Stewart observed that the tennis courts are located less than 50 feet from the marsh.

Board Member Tibbott asked if the City anticipates the marsh boundaries will expand if Willow Creek is daylighted at some point in the future. Mr. Lien recalled that Keeley O’Connell, Friends of the Edmonds Marsh, previously explained that if Willow Creek is daylighted, the marsh boundaries would likely expand towards SR 104. However, the marsh would not expand in other directions because of the fill that has occurred. He provided a map that was done as part of a survey associated with the Edmonds Crossing Project. The map delineates the current boundaries of the salt water marsh and identifies the anticipated marsh expansion if Willow Creek is daylighted at some future time.

Board Member Reed clarified that all existing development would be grandfathered in irrespective of the changes to the SMP. Mr. Lien said that existing development located within the setbacks established in the SMP would become legal, non-conforming uses. The new standards would only apply to new development.

Once again, Vice Chair Stewart expressed her belief that the setback requirement for all new buildings and parking in the Urban Mixed Use III Environment should be 50 feet regardless of the location of existing buildings. Recreational uses could have a lesser setback requirement. She expressed concern that the closer a building and/or parking is placed to the marsh, the more the marsh and its wildlife will be disturbed. She said she believes a 50-foot setback would be a good compromise, particularly given the impacts of potential redevelopment at Harbor Square. Board Member Reed asked if Vice Chair Stewart is recommending a 50-foot setback for both ground and structured parking. Board Member Stewart answered affirmatively and pointed out that the lights and oil from cars is not good for the marsh environment.

Board Member Ellis suggested the Board should wait until a larger group of Board Members are present to make a final decision related to setbacks. While he is not necessarily opposed to a 50-foot setback requirement, he is not convinced it is appropriate, either. He would like to highlight this issue and discuss it further after the public hearing. He said that if the Harbor Square Property was currently undeveloped, he would support a 150-foot setback requirement. But he is concerned about the impact a 50-foot setback would have on the Port's ability to implement the HSMP.

Board Member Reed recalled that at a previous meeting he asked Ms. O'Connell, Friends of the Edmonds Marsh, to provide a recommendation related to setback, and she declined to do so. He reminded the Board that the Harbor Square Master Plan contemplates a 50-foot setback for the developed portion of the property and a 200-foot setback for the property that is currently undeveloped.

Bob McChesney, Executive Director, Port of Edmonds, said he would like to take the setback issue under advisement and have further discussion with City staff. Generally speaking, the Port can live with a 50-foot setback requirement, but he would like to review the proposal with his team to ensure it makes sense as per the HSMP. The Board agreed that would be appropriate. They agreed to discuss the issue further at their next meeting. Mr. Lien announced that a public hearing on the draft SMP has been scheduled for November 14th, at which time he will provide a more detailed presentation to refresh the Board's memory and highlight specific aspects of the proposal. His presentation can make specific note of the outstanding issue related to setbacks in the Urban Mixed Use III Environment.

REVIEW OF EXTENDED AGENDA

Vice Chair Stewart noted there are only two Planning Board meetings remaining in 2012. The second meetings in November and December are near the holidays and have been cancelled. The November 14th meeting is scheduled as a study session for the Westgate Plan and form-based code and a public hearing for the Shoreline Master Program. A public hearing on proposed amendments to the street vacation regulations is scheduled for November 14th, as well. The Parks, Recreation and Cultural Services director will present the quarterly Parks, Recreation and Cultural Services Report on December 12th.

Board Member Tibbott agreed to prepare an article for publication in the local newspaper to advertise the upcoming public hearings on the Westgate Plan and formed based code and the Shoreline Master Program. Board Member Reed agreed to review the article before it is submitted for publication.

Vice Chair Stewart noted that the Board was supposed to have a joint meeting with the Economic Development Commission (EDC) on October 17th, to discuss potential changes to the Downtown Business (BD1) zone. Board Member Reed said that he and Board Member Clarke attended the EDC's October 17th meeting where the BD1 zone was the topic of discussion. He reminded the EDC that the Planning Board had an extensive discussion regarding this topic in 2011. Board Member Reed agreed to contact Mr. Clifton to discuss whether the joint meeting should be rescheduled or if there would be a better way for the Board to provide input to the EDC.

PLANNING BOARD CHAIR COMMENTS

Vice Chair Stewart thanked the City staff and Port team for their hard work and multiple meetings to get through the Harbor Square Master Plan process. She said she envisions good things ahead and she is hopeful.

PLANNING BOARD MEMBER COMMENTS

APPROVED

Board Member Reed noted that the Board's recommendation to the City Council regarding the Harbor Square Master Plan requires a signature from a member of the Board. He questioned if Vice Chair Stewart should sign the document or if they should wait for Chair Lovell to return.

Vice Chair Stewart reminded the Board that several amendments were made to the original motion to recommend approval of the Harbor Square Master Plan. The October 10th minutes indicate that the final vote on the original motion, as amended, was 6-1, with Board Member Reed voting in opposition. She clarified that she had intended to vote against the final motion, as well, because she was not in favor of the language that was approved for Recommendation 1: *"Building heights shall be limited to 45 feet and consideration may be given for heights up to 55 feet if the development proposal includes significant public amenities and/or sustainable design certification such as LEED Platinum."* As she expressed on October 10th, she felt the word "or" should be deleted. She asked that her concern be noted for the record.

Board Member Reed suggested that when the Planning Board recommendation was presented to the City Council, it would be appropriate to mention that Recommendation 1 and 3 to the Harbor Square Master Plan passed with two opposed. It was also suggested that the presentation could state that the full master plan, with all recommendations made by the Planning Board, was approved by a vote of 6-1.

ADJOURNMENT

The Board meeting was adjourned at 9:20 p.m.

APPROVED