

## Approved December 11<sup>th</sup> Approval

# CITY OF EDMONDS PLANNING BOARD MINUTES

November 13, 2013

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Chair Reed 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**

Valerie Stewart, Vice Chair  
Kevin Clarke  
Todd Cloutier (arrived at 7:10 p.m.)  
Ian Duncan  
Bill Ellis  
Philip Lovell  
Neil Tibbott

### **STAFF PRESENT**

Rob Chave, Development Services Director  
Kernen Lien, Senior Planner  
Mike Clugston, Senior Planner  
Jerry Shuster, Stormwater Engineer  
Karin Noyes, Recorder

### **OTHERS IN ATTENDANCE**

Council Member Kristiana Johnson

### **BOARD MEMBERS ABSENT**

John Reed, Chair (excused)  
Madeline White, Student Representative  
(excused)

### **READING/APPROVAL OF MINUTES**

**BOARD MEMBER LOVELL MOVED THAT THE MINUTES OF OCTOBER 23, 2013 BE APPROVED AS AMENDED. BOARD MEMBER TIBBOTT SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

### **ANNOUNCEMENT OF AGENDA**

The agenda was accepted as presented.

### **AUDIENCE COMMENTS**

No one in the audience indicated a desire to address the Board during this portion of the meeting.

### **PUBLIC HEARING ON WHETHER TO INCLUDE A DEFINITION OF “REASONABLE ECONOMIC USE” WITHIN THE CITY’S CRITICAL AREA REGULATIONS (FILE NUMBER AMD20130009)**

Mr. Lien said this is a public hearing on proposed amendments to the Edmonds Community Development Code (ECDC) 23.40.210 and 23.40.320, having to do with the definition of “reasonable economic use” within the City’s Critical areas ordinance (CAO). He reminded the Board that the amendments were introduced to the Planning Board on September 25<sup>th</sup>, where the City Attorney presented the issue. He also reminded the Board that the City Council adopted Interim Ordinance 3931, which removed the definition of “reasonable economic use” and the reference to it within the City’s CAO.

Mr. Lien explained that, in some instances, a property could be completely encumbered by a critical area or its buffer, and the site would not be able to meet the requirements of the CAO. To address these situations, the CAO outlines a variance process to allow for a reasonable economic use of the property. He pointed out that prior to the interim ordinance, the City's definition for "reasonable economic use" included a specific reference to "single-family residence" as a reasonable economic use on a property that is zoned for residential development. The City Attorney expressed concern about including this specific reference within the definition of "reasonable economic use," and he is recommending that it be deleted. Instead, he recommended that "reasonable economic use" should be determined on a case-by-case basis.

Mr. Lien summarized that the interim ordinance and the proposed amendments before the Planning Board would delete the definition of "reasonable economic use" (ECDC 23.40.320) and the reference to it (ECDC 23.40.210) from the City's CAO. However, the proposed amendments would not change the variance process. Variance requests would still be reviewed by the Hearing Examiner, but "reasonable economic use" would be determined on a case-by-case basis.

Board Member Lovell asked staff to explain exactly what the proposed amendments are intended to accomplish. He said his understanding is that "reasonable economic use" is protected by the United States Constitution. He asked if the proposed amendment would simply remove a definition that confuses the issue. Mr. Lien said that, if the proposed amendments are adopted, "reasonable economic use" would still be protected constitutionally. The City Attorney's concern is that the City's definition specifically calls out "single-family residence," which may not be a reasonable economic use on all properties. Including the term "single-family residence" in the definition could put the City at risk. The City Attorney has recommended that the definition be deleted and that "reasonable economic use" of the property should be determined on a case-by-case basis via the variance process, which is done before the Hearing Examiner. Mr. Lien reminded the Board that Interim Ordinance 3931, which was approved by the City Council, adopted the City Attorney's recommendation on an interim basis. The interim ordinance expires after six months, and the proposed amendments would make the changes permanent.

**Lynn Hillman, Edmonds**, noted that she spoke before the City Council regarding the interim ordinance. At that time, she provided handout materials that were to be forwarded to the Planning Board. The Planning Board indicated they did not receive a copy of the materials. Ms. Hillman provided an additional copy of her materials for distribution amongst the Planning Board. She explained that the materials provide excerpts from other cities' reasonable use provisions, many of which are more specific than simply showing an example of a single-family residence.

Ms. Hillman suggested that the real problem is that Edmonds' code lacks clarity. Removal of the definition of "reasonable economic use" would further reduce the clarity. She noted that other jurisdictions have clearer regulations, providing specific limitations on development of critical area lots. For example:

- The City of Kirkland says "reasonable use in a residential zone shall be one single-family dwelling" and allows for disturbance of 10% to 50% of the lot, depending on its size; and up to 3,000 square feet of disturbance is approved administratively without a hearing examiner involved.
- King County will allow construction of a single-family residence in a critical area. King County also allows disturbance on a critical area lot to be the greater of 10% of the lot size or 5,000 square feet.
- The City of Mukilteo requires a property owner to leave at least 70% of such a lot undisturbed to protect the critical area.
- The City of Lake Forest Park states that limited single-family use is a reasonable economic use.

Ms. Hillman commented that performance standards are beneficial to both the City and applicants; outlining development limits that designers can work with and City planners can enforce. The absence of specific review criteria, on the other hand, makes it impossible to know whether or not a project should be approved. She suggested that clear standards would be preferable to requiring each project to be examined through application of previous case law, taking the enforcement of codes out of City planners' hands and into the legal system. She questioned if the City really wants all applicants to have attorneys and have the City staff spend its days in court. This would consume taxpayer dollars.

Ms. Hillman expressed her belief that building a house on a lot zoned for single-family development is a reasonable use of that lot, regardless of whether or not the City's code retains the current definition. Denying the owner of a legally-created, single-family lot the right to build a house on it would constitute a taking of that person's property. Lots that are not intended for single-family houses should not be zoned as such. Lots that are intended to remain vacant or to be used for ecological

preserves or parks should be zoned as open space. She noted that the King County Assessor's Land Data Table shows if a given lot has unusable or unbuildable areas. She questioned what good it would do to have the Planning Department work with an applicant for months or years on a project to achieve approval only to have the City Council throw all the work away in a matter of minutes by ignoring the staff's recommendations and denying the project entirely. She voiced concern that the City Council does not have the benefit of all the history and tradeoffs that went into the staff's decision or their code knowledge and training and the Hearing Examiner's experience in land-use law.

Ms. Hillman recommended that if the real goal is to place more restrictions on development with critical areas and their buffers, the City should add development limits and set the minimum lot coverage at 15% rather than the 35% zoning would allow. Another option would be to limit the building's footprint to 2,500 square feet. The City could also specify that a critical area variance may allow building into a buffer, but not into a wetland, itself. She encouraged the City to enact clear restrictions so that the staff, Hearing Examiner, City Attorney and City Council Members understand the rules, and property owners do not have to spin their wheels on redesigns that may or may not ever be approved. She asked the Board to consider adding performance standards to give clarity to the Edmonds code.

**Jordan Shank, Edmonds**, expressed his belief that the City's current definition for "reasonable economic use" is confusing for all parties. He suggested that the quickest solution would be to simply remove the definition from the CAO and rely on case law, which would reduce the City's legal liability. However, it would not present a process for handling critical area variance applications, and it would force all decisions to be made by an attorney. This, in turn, would devalue the Planning Department staff, as their recommendations could be easily overturned by the City Council. He said the second solution would be to further define the "reasonable economic use" language. This approach would help applicants clearly understand the box they are working within, which would limit the number of applicants. The process would become more transparent, and applicants would have a clear understanding of the review process. The approach would also allow the City to set criteria for limiting development only to buffer areas, with certain thresholds. The City could also consider removing the Hearing Examiner and City Council from the review process, altogether, which other jurisdictions have done. Overall, the latter approach would save time and money for the City and taxpayers. However, he acknowledged that it would take a lot more time to draft and implement the new code language.

Mr. Shank summarized that the City of Edmonds is a progressive city, and it should develop a process for reviewing applications and granting approval with more transparency. This will provide greater efficiency, in general, for the City. He commented that the proposed change to the code would not only cause more confusion, as there are volumes of case law to consider; but it would also bottleneck an already difficult process. He said he supports performance standards and further defining the "reasonable economic use" language as opposed to eliminating it.

**Steve Schroeder, Edmonds**, said he had a hand in the interim ordinance that was adopted by the City Council. He explained that the Hillmans purchased land adjacent to his property and then went through a variance procedure to get permission to construct a house entirely within a wetland and its buffer. The problematic language in the City's ordinance, with the example of a single-family residence being the only reasonable economic use of a lot, caused a lot of mischief. It misled the Hearing Examiner, who felt it tied his hands. It also misled the City staff. As a result, a lot of money was expended on the experience. He and Mr. Brown appealed the staff's variance decision to the City Council, and they unanimously reversed it. In a subsequent letter to the City Council, he suggested that the reference to "single-family residence" be removed from the ordinance because it made Edmonds an outlier instead of being a leader in the preservation of sensitive areas and creating a livable city.

Mr. Schroeder explained that the constitutions of the State of Washington and the United States define "taking," and "reasonable economic use" is a trigger for inquiring as to whether or not restrictions on a piece of land have amounted to a "taking" that requires compensation. He acknowledged that this is a complex area of the law, and somebody in the City tried to simplify it by adding the example "single-family residential" to the definition. In doing so, they drastically amended the code and made it much more difficult for the City to protect sensitive areas and the livability of the town. He suggested that "single-family residence" be removed from the definition, and the City Attorney went even further by suggesting that the entire definition for "reasonable economic use" be deleted. This change would not alter the law; the old language actually changed the law. The proposed change would put the City back on parity with other communities in the State and most of the United States. It would also enhance the City's ability to protect sensitive areas and enact reasonable zoning laws to make the City a better place for everyone. He suggested this would result in higher land values, as well.

Mr. Schroeder summarized that the effort to introduce clarity in the past actually introduced a lot of confusion, tied the hands of the Hearing Examiner, handicapped the staff, and resulted in a decision that the City Council unanimously reversed. He commented that the City Attorney and the City Council agree that the proposed amendment is necessary, and he supports it 100%. He urged the Planning Board to recommend approval and move the amendment forward.

NO ONE ELSE INDICATED A DESIRE TO ADDRESS THE BOARD, AND THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Board Member Lovell asked if the current CAO provides guidelines for development within critical areas and their buffers. Mr. Lien answered that the CAO identifies where development can occur in relation to a critical area and its buffer. However, the proposed amendments apply specifically to the variance process outlined in ECDC 23.40.210. As currently written, when a critical area would deny all reasonable economic use of a subject property, a reasonable use exception may be authorized by variance only if the applicant can demonstrate that the following criteria (ECDC 23.40.210.A.2) can be met:

- a. The application of this title would deny all reasonable economic use of a property or subject parcel. *(Mr. Lien pointed out that the proposed amendment would delete the definition for "reasonable economic use.")*
- b. No other reasonable economic use of the property consistent with the underlying zoning and the city comprehensive plan has less impact on the critical area. *(Again, Mr. Lien pointed out that the proposed amendment would delete the definition for "reasonable economic use.")*
- c. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property. *(Mr. Lien recalled that members of the public suggested the City establish some standards for making determinations regarding reasonable economic use. This approach raises a similar concern as the concern stated by the City Attorney regarding the term "single-family residence." Reasonable economic use could be different, depending on the property. The City Attorney believes reasonable economic use should be determined on a case-by-case basis.)*
- d. The inability of the applicant to derive reasonable economic use of the property is not a result of actions by the applicant.
- e. The proposal does not pose an unreasonable threat to public health, safety or welfare.
- f. The proposal minimizes the net loss of critical area functions and values consistent with the best available science (BAS). *(Mr. Lien noted that this criteria would argue against setting specific standards for how much area could be impacted.)*
- g. The proposal is consistent with other applicable regulations and standards.

Mr. Lien explained that the above criteria is what the Hearing Examiner must consider when reviewing a reasonable use exception variance. He summarized that although there are no specific guidelines for determining "reasonable economic use" in the CAO, an applicant must meet all of the criteria before a variance can be granted. The City Attorney's position is that "reasonable economic use" should be determined on a case-by-case basis.

Board Member Lovell referred to comments from citizens about other cities that have published guidelines and criteria for planning departments to use to ascertain whether or not a proposed development would be allowed on a lot that is classified as a critical area or its buffer. He asked if the City has similar guidelines, and Mr. Lien answered no. Board Member Lovell asked what process the City would use to ascertain whether or not a property that is located within a critical areas or its buffer could be developed. Mr. Lien said the type of critical area on the site would determine the process. He explained that a critical area determination is required for any development proposal submitted to the City. Once the applicant has submitted basic information, staff visits the site to identify potential critical areas. If staff determines there is a potential critical area on or adjacent to the site, additional study would be required as part of the development permit process. For example, in erosion hazard areas (15% to 40% slope), developers would be required to implement erosion control measures consistent with stormwater requirements, etc. If a site has slopes greater than 40%, it would be identified as a potential landslide area with a basic buffer of 50 feet or the height of a slope, plus a 15-foot building setback. Development outside of the buffer area would be allowed without any special report. Building closer to the slope would require a geotechnical report to verify that it is safe to do so.

**APPROVED**

Mr. Lien advised that while steep slopes represent the majority of the City's critical areas, the "reasonable economic use" exception is generally tied to streams and wetlands. The width of the buffer depends on the type of stream or category of wetland. He explained that, in some instances, a buffer width reduction or buffer averaging can be used to identify sufficient space for reasonable development to occur on a site. However, some properties are entirely encumbered by wetlands and buffers. The variance provision is intended to apply to situations where none of the flexibility identified in the CAO allows for development that is consistent with the code requirements.

To give examples of how critical areas can vary by property, Mr. Lien reviewed that Ms. Hillman submitted an application for a critical area variance for a property that is almost entirely covered with wetlands and slopes, and they were proposing to some development in the wetland area. The City also received another application for a variance where the stream cuts through the property and the buffer extends off of the property. He summarized that determining the "reasonable economic use" of a property will depend on the type of critical area and how much of the property is impacted by the critical area. He said that even though a property is zoned for a single-family residence, the courts may decide that the highest and best use of a property is a camp site because of the existing critical area. He expressed his belief that establishing specific standards for determining reasonable economic use would raise the same issue as saying that a single-family residence is the reasonable economic use. Again, he stated that "reasonable economic use" depends on the property, the critical area and its quality, and how much of the property is encumbered by the critical area. That is why the City Attorney would rather that "reasonable economic use" be determined on a case-by-case basis.

Board Member Lovell summarized that it appears the City already has guidelines in place to determine if a site can be developed based on whether or not it falls within a critical area.

Board Member Duncan asked staff to respond to citizen comments that processing variance applications would be a waste of public money. Mr. Lien answered that the application fees established by the City are supposed to cover the cost of permit review, and permits that go before the Hearing Examiner are more costly than administrative decisions.

Board Member Ellis noted that the initial proposal was to simply remove the third sentence, which made specific reference to a single-family residence being a "reasonable economic use." He asked why the proposal was later expanded to eliminate the entire definition. He observed that, while it does not give specific guidance, the first sentence in the definition provides some direction to property owners by telling them that the applicable state and federal constitutional provisions would apply. The second sentence seems to embody a previous decision that the property owners' rights would be liberally construed to allow development. Mr. Lien recalled the City Attorney's previous statement that "reasonable economic use" is basically determined by case law, and federal and state laws would still be applicable. However, rather than having a definition that frames the issue in any way, the City Attorney is suggesting that it be determined on a case-by-case basis.

Board Member Cloutier asked why the City has zoned properties single-family residential, when the site constraints do not allow for single-family residential development. Mr. Lien explained that the different zoning and comprehensive plan designations for single-family residential areas are intended to address critical areas and steep slopes and their buffers. For example, the RS-20 zones are located in the area designated as the North Edmonds Landslide Area. He pointed out that the City's critical area maps are intended to identify potential critical areas and are not considered regulatory. Planning staff visits each and every site that comes in with a critical area determination to verify that what is on the map is consistent with what is on the ground. The maps are not so fine as to identify whether or not a property is totally encumbered by critical areas and should be zoned some other use. Board Member Cloutier summarized that the zoning for single-family residential is not taken away from a lot because the City thinks there might be a critical area infringement until an applicant submits an application for a development permit. Mr. Lien emphasized that the City cannot deny all reasonable economic use of a property, and there is a process that allows a property owner to apply for a single-family residence or other development on a site as long as all the criteria can be met.

Mr. Lien said the question before the Board tonight is what minimum reasonable economic use is. The City Attorney's position is that it should be determined on a case-by-case basis. Board Member Cloutier pointed out that a property owner may not learn that the reasonable economic use of his/her property is a camp site until they submit a development permit application. Mr. Lien acknowledged that would be true in some instances.

**APPROVED**

Board Member Ellis pointed out that, in many cases, the zoning determination predates the determination of a site being a designated as a potential critical area. Mr. Lien agreed that is the City of Edmonds was developed long before the CAO was adopted in 1992 as an outgrowth of the Growth Management Act (GMA). Board Member Ellis asked if the City has decided not to change zoning on certain lots to give people advance notice because they do not know exactly where the critical areas are located. Mr. Lien agreed and reiterated that the critical areas map is a rough map, and that is why staff visits each individual site to determine the potential of a critical area on or adjacent to the site.

Board Member Clarke asked why some municipalities' reasonable economic use standards are etched in stone and others are more vague, as the City Attorney is suggesting. He questioned why there is not a industry-recognized approach to solving the problem. Mr. Lien explained that, typically, jurisdictions apply best available science (BAS). In addition to BAS, the values of the communities are encompassed in the codes. Some communities may be more protective of their critical areas than others. He recalled that as the Board has previously struggled with how specific the code should be. Leaving the language more open allows for more flexibility and creativity when meeting requirements. This is a decision that each jurisdiction must make. Board Member Clarke said he was surprised with the examples that were provided in the Staff Report from other jurisdictions. For example, Kirkland and Lake Forest Park are both more environmentally conscious and conservative than jurisdictions that are looking to develop and max out. He was surprised that some cities have specific criteria rather than the vague, qualitative, case-by-case approach.

Board Member Clarke observed that implementing a case-by-case approach would result in an uncertain path for applicants based on the qualitative analysis done by the reviewer. He questioned how an applicant would appeal a decision if no firm criteria has been established. Mr. Lien explained that the criteria may be different for each individual lot. For example, an applicant must meet the criteria of "what is the minimum necessary." Would a 4,000 square foot house on a wetland be considered the minimum necessary, or would the minimum necessary be a 1,000 square foot house? He summarized that there would still be uncertainty, even if the term "single-family residential" is included in the definition of "reasonable economic use." Board Member Clarke asked who would make the decision about the "minimum necessary" if the amendment is approved. Mr. Lien said this decision would be made by the Hearing Examiner, and the Hearing Examiner's decision could be appealed to the City Council.

Mr. Chave advised that, from the City Attorney's point of view, any decision on reasonable economic use would ultimately require balancing. It is very difficult to codify the issue to a level of specificity that tells someone how the balance will come out. The decisions will be done on a case-by-case basis. Board Member Clarke asked if staff believes there are enough safeguards in the code to protect individual property owners and the public and that it would not be onerously expensive to appeal the Hearing Examiner's decision. Once again, Mr. Lien advised that the permit fee is supposed to cover the cost of processing a permit. However, the appeal fees are subsidized.

Vice Chair Stewart asked when the CAO would be reviewed and updated again. Mr. Chave answered that there is money identified in the proposed City Council budget to begin the review at the end of 2014 and complete the work in 2015. Vice Chair Stewart suggested that perhaps the overall review of the CAO would be the appropriate time to consider more specific standards. Mr. Chave said the City intends to hire a consulting team to thoroughly review the City's existing CAO and its consistency with BAS and current State policies. Vice Chair Stewart said that, at this point in time, she would support the amendment to allow the City to make decisions regarding reasonable economic use on a case-by-case basis. She summarized that, given the lack of specificity in the current code, striking the reference to "single-family residential" from the definition of "reasonable economic use" would be the best approach. However, she agreed with Board Member Ellis that at the least the first sentence in the existing definition should be retained. This would help people understand that there are applicable state and federal constitutional provisions. Board Member Cloutier agreed that although he would support the elimination of the example of "single-family residential," the CAO should continue to provide a definition for the term "reasonable economic use." Mr. Lien said he does not believe the City Attorney would object to retaining the first sentence of the current definition.

Board Member Clarke commented that the real estate market works with a lot of uncertainty. It is concerning when someone purchases property and later finds out it cannot be developed. The contingency process that is part of a purchase and sale agreement generally allows for due diligence to be conducted by a perspective buyer. He asked if staff can identify how long the review process would take so that an applicant knows with a level of certainty whether the property could be developed or not. Mr. Lien said the standard review time for a single-family development that is not on a critical on or adjacent to a

critical area is 30 business days. The timeline is longer (three to four months) for variances, conditional use permits and other items that go before the Hearing Examiner. These projects are typically more complicated and require public notice, State Environment Policy Act (SEPA) review, etc. Board Member Clarke asked if the timeline is voiced orally to an applicant at the counter, or if there are written guidelines that identify the anticipated timeline. Mr. Lien said the timeline is not identified in the City's variance handout, but State law requires that permits must be processed within 120 days. Board Member Clarke asked if it would be helpful to have written information pertaining to the anticipated timeline. Mr. Lien cautioned against adding a timeframe on the handout. Board Member Clarke expressed his desire that the process provide transparency to guide people to make decisions and avoid negative economic consequences. Mr. Lien said that when staff discusses the variance process with potential applicants at the counter, they warn them that it is a painful and lengthy process. It is supposed to be more difficult because the applicant is asking for a deviation from the code.

Board Member Lovell asked if a property owner would have reasonable grounds to request Snohomish County lower the appraised value of his/her property to \$1 and tax it accordingly if it is determined that the property cannot be developed as they had planned based on the current CAO and zoning code. Mr. Lien answered that the City receives calls each year asking for additional information to verify a property owner's request to reduce the assessed value of a property that is encumbered for some reason or another. He noted that staff works with property owners every day at the counter, discussing critical areas, setbacks, and various other requirements. They also provide suggestions about adjustments that could be made to meet the requirements. If a property owner cannot do what he/she wants on a property, staff will point out the variance process. If staff does not believe an application will meet the variance criteria, they make this clear to the property owner. They do their best to inform people up front about what the process will be.

Board Member Duncan asked how many properties would be impacted by the proposed change. Mr. Lien said that in the last five years, the City has only processed three critical area variances. The City of Edmonds is largely developed. The properties that remain undeveloped are the more difficult sites. He said he does not have an exact number for how many properties would be impacted; but in general, staff does not anticipate a huge influx of variance requests.

Vice Chair Stewart reminded the Board that some lots may not be developable and perhaps a conservation easement would be in order for these lots. This approach would result in some long-term, sustainable value for the future ecosystem's health. Sometimes the law changes and critical area regulations come into play after people have purchased properties. Sometimes, the way a property owner wants to use his/her property will not be allowed, even with a variance. Given that the City is 96% built out, she suggested there is some value in retaining tree canopy and critical areas.

Board Member Ellis observed that the interim ordinance approved by the City Council removed the entire definition for "reasonable economic use." He expressed his belief that the first sentence in the definition is useful in pointing people in the right direction. The second sentence talks about liberal construction of the term "reasonable economic use." While the sentence is poorly written and does not give much guidance, it reflects a determination that someone made to tilt the scale towards the property rights of the applicant. Removing the second sentence would, in essence, undo this tilting of the scale. That may be the City Council's intent, and it would be consistent with how subsequent sensitive area regulations have developed. The third sentence needs to be removed for the reasons stated by the City Attorney, and the fourth sentence does not really add anything.

**BOARD MEMBER ELLIS MOVED THAT THE BOARD FORWARD FILE NUMBER AMD20130009 TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL, WITH THE RECOMMENDATION THAT THE FIRST SENTENCE IN THE DEFINITION OF "REASONABLE ECONOMIC USE" (ECDC 23.40.320) BE RETAINED AND THE REMAINDER OF THE DEFINITION BE DELETED, AND THAT THE REFERENCE TO THE DEFINITION OF "REASONABLE ECONOMIC USE" IN ECDC 23.40.210" BE RETAINED. BOARD MEMBER LOVELL SECONDED THE MOTION.**

Board Member Lovell asked if Interim Ordinance 3931 was adopted by the City Council to address an emergency situation. He also asked when the interim ordinance would expire. Board Member Ellis recalled that, while the City Council entertained a motion to adopt an emergency ordinance, the motion failed. The City Council later adopted Interim Ordinance 3931 on July 12, 2013. The interim ordinance was effective immediately and expires in 180 days.

**THE MOTION CARRIED UNANIMOUSLY.**

**APPROVED**

**WORK SESSION ON PROPOSED AMENDMENTS TO TITLE 23 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) TO BRING THE CRITICAL AREA REGULATIONS INTO CONSISTENCY WITH BEST AVAILABLE SCIENCE. IN EXCHANGE FOR BUFFER ENHANCEMENT, THE PROPOSAL WOULD ALLOW FOR DEVELOPMENT WITHIN THE ALREADY FOOTPRINT OF DEVELOPMENT AND WITHIN AREAS PHYSICALLY SEPARATED AND FUNCTIONALLY ISOLATED FROM THE CRITICAL AREA (FILE NUMBER AMD20130009)**

Mr. Lien advised that the Board has discussed the proposed amendments to ECDC 23 on numerous occasions. He reminded them that the purpose of the proposed amendments is to bring the Critical Areas Ordinance (CAO) into consistency with Best Available Science (BAS). In exchange for buffer enhancement, the proposal would allow for development within the already footprint of development (ECDC 23.40) and within areas physically separated and functionally isolated from the critical area (ECDC 23.50). He recalled that the Board held a public hearing on August 14<sup>th</sup>, and continued their on August 28<sup>th</sup> and September 25<sup>th</sup>.

Mr. Lien referred the Board to Attachment 3 of the Staff Report, which identifies the changes that have been made since the Board's last discussion. He recalled that, at their last meeting, the Board discussed different thresholds of when enhancement may be required. They asked staff to provide some options for what enhancement might include. The Board also discussed the two options for "footprint of development," which are outlined on Page 5 of Attachment 3 as follows:

- Option 1 – "Footprint of development" means the area of a site that contains legally established impervious surfaces.
- Option 2 – "Footprint of development" means the area of a site that contains legally established rooftops and surfaces paved with concrete, asphalt, brick, tile and similar materials, but not including gravel, packed earthen material, or any pervious surface.

Mr. Lien recalled that some City Council Members raised concern that the definition for "impervious surface" includes surfaces such as gravel, packed-earthen materials, etc. It was suggested that these surfaces should not be considered part of the "footprint of development." He advised that the interim ordinance passed previously by the City Council included a definition for impervious surface (see Page 6 of Staff Report), which was taken from the City's stormwater code. He explained that if the Board recommends approval of Option 2, then the definition of "impervious surface" should be deleted. If the Board recommends approval of Option 1, then the definition of "impervious surface" should be retained. He noted that because much of the Board's discussion has focused on stormwater requirements, he invited Jerry Shuster, the City's Stormwater Engineer, to attend the meeting and address the Board's specific questions.

Board Member Ellis asked why the City Council is concerned about excluding gravel and packed earthen material from the definition of "impervious surface." Mr. Lien said one concern is that they don't want to have a definition of impervious within the CAO that is different than the definition of impervious surface that is tied to stormwater. Rather than change the definition for "impervious surface," they are proposing to change the definition for "footprint of development" to exclude surfaces such as gravel and packed earthen materials.

Board Member Clarke asked what the burden of proof is for identifying "legally established impervious surfaces." He recalled that the City annexed a considerable number of properties in the 1990's. The records from the county have literally vaporized, and it is almost impossible to research original permits to see how projects were approved while under County jurisdiction. Mr. Shuster agreed this is a difficult issue. The City has the necessary information for larger plats and developments, but not for others. The City can measure a property and look at the stormwater facilities that serve a lot to figure it out. Mr. Lien said a reasonable way to identify the "footprint of development" is to review permit information that was available when the stormwater code was adopted in 1997 or when property was annexed into the City. There are aerial photographs, and they can seek background information from the County Assessor. The City can also ask the applicant to demonstrate when development occurred on his/her property. Mr. Shuster noted that Snohomish County tax records generally identify when a house was built, which is helpful.

Vice Chair Stewart expressed her belief that the definition for "footprint of development" should not be altered, as it came directly from the State's Stormwater Code. In talking to engineers from other jurisdictions, she learned that they are using the definition for "footprint of development" as contained in the State Stormwater Code. She commented that anything that

disturbs the land and takes away from what it was before development should be considered the “footprint of development.” Mr. Shuster added that the State Stormwater Code includes a definition for “land disturbing activities,” which is defined as development, redevelopment, or construction that changes from a pervious to impervious surface or changes from a forest to a lawn or garden. The amount of impervious surface on a site will dictate what stormwater regulations apply. Vice Chair Stewart commented that, once developed, the natural hydrology of a site is taken away. It will be difficult to mimic the historic hydrology and forested conditions that predated the development. Again, she questioned the need to change the definition for “footprint of development” to exclude gravel and packed earthen materials.

Mr. Lien said the issue before the Board is what should be considered the “footprint of development,” as it pertains to allowing activities in the previously footprint of development. He explained that the “footprint of development” could include just impervious surface (including gravel and packed earthen material), or it could include all land disturbed area (including lawns and landscaped areas). Vice Chair Stewart pointed out that if native vegetation is retained, it should not be considered part of the “footprint of development.” But anything else, whether it be grass, gravel, structure, driveway, etc. will change the function of the land.

Board Member Cloutier said the question related to the two options is whether or not the City wants to allow a property owner to count gravel and packed earthen material surfaces such as driveways and roads as part of the footprint of development. Because the land has already been disturbed, should the City allow other activities to occur on these surfaces, or should they exclude gravel and packed earthen surfaces from being considered part of the footprint of development? Option 2 would be the more restrictive approach and provide more protection.

Vice Chair Stewart said she would not be in favor of any development that encroaches further into a buffer, regardless of whether or not it has been previously developed. She expressed her belief that allowing a property owner to increase the amount of impervious surface would just make matters worse; and enhancement, particularly on a small lot, would not mitigate the loss. The enhancement would be much more powerful for development on larger lots because there is more land to offset further encroachment into the buffer area. She said she favors a very conservative approach, particularly with small lots.

Mr. Lien reminded the Board that there are two aspects of the proposed code amendments. One aspect relates to development within the previously footprint of development, and the other relates to development within the physically separated and functionally isolated buffer areas. He advised that the City’s BAS Report points out that the City is primarily built out, and improving the critical areas can be done by allowing development to occur in previously developed areas in exchange for buffer enhancement elsewhere. The old code limited redevelopment to previously developed structures, which was inconsistent with BAS. He explained that, as currently proposed, development proposals in the previously footprint of development of a critical area and/or buffer may be allowed as long as it does not increase the footprint of development, does not increase the impact to the critical area and/or buffer, does not increase the total impervious surface area of the site, and does not increase risk to life or property. He advised that, at the request of the Board, he also provided some potential thresholds for when a development proposal would require enhancement. He summarized that the definition for “footprint of development” is tied to the amendment related to allowed activity within the already footprint of development as opposed to the amendment related to areas that are physically separated and functionally isolated from the critical area.

Mr. Lien explained that the CAO requires that any alteration of a property must be consistent with the CAO. He referred to the definition for “alteration” on Page 4 of Attachment 3, which is somewhat similar to the definition found in the stormwater code. “Alteration” is defined as any human-induced action which changes the existing condition of a critical area or its buffer.” It lists a number of different types of alterations. He summarized that any activity in a critical area is considered an alteration, and the project must comply with the CAO. The “footprint of development” definition is tied to the question of what is an already developed area where it would be okay to allow some development that does not increase the impact to the critical area.

Board Member Ellis recalled Mr. Lien’s earlier statement that most of the critical areas in Edmonds are critical areas because of slopes. He asked if an entire property would be considered a critical area if it has a slope that qualifies as a critical area. Mr. Lien answered that the various types of critical areas are defined in the CAO, and the buffer requirements vary depending on the type of critical area. Steeper slopes require greater buffers and setbacks. Board Member Ellis summarized that a property owner with a house outside the buffer area would not be restricted by the CAO.

Mr. Lien referred to the American Brewing Company's project at Harbor Square and explained that the CAO requires a 200-foot buffer from Category 1 wetlands, which includes the Edmonds Marsh. Measuring 200 feet from the marsh goes well into Harbor Square where there is currently parking lot and buildings. The question is whether or not it would be appropriate to allow some development within buffer areas in exchange for enhancement to improve the buffer or critical area, as long as the activity would not further impact the critical area. He further explained the Board's recommendation for either Option 1 or Option 2 for the definition of "footprint of development" would have an impact on the Harbor Square property where there is some gravel instead of pavement. Board Member Cloutier pointed out that the American Brewing Company's proposal is for a silo where there is currently asphalt, so neither option would have an impact on the project. Board Member Cloutier summarized that if the Board recommends Option 2 and gravel and packed earthen materials are not included as part of the "footprint of development," the regulations would be even more conservative. Option 2 would actually reduce the available area to redevelop.

Board Member Duncan said he is in favor of Option 2, but he questioned how the City can define gravel surfaces two different ways. When talking about gravel areas, Mr. Shuster cautioned that it is important to keep in mind what is under the gravel. If the gravel is on top of sand, it would mostly likely be pervious. If the gravel is on top of hard pan, it would most likely be impervious. Board Member Duncan pointed out that, as per the stormwater code, a gravel roadway would be considered impervious. Mr. Shuster said that is generally the case. When vehicles are driven over a gravel roadway, the surface is compacted and the air space is displaced so that the rainwater cannot percolate through. Instead, the rainwater will hit the gravel surface and runoff. Board Member Duncan cautioned that, from a stormwater code standpoint, gravel roadways have been established as impervious surfaces. Therefore, he questioned how the City could consider gravel roadways to be pervious in just this one case. Mr. Shuster said that, as per the stormwater code, gravel surfaces that are driven on are always considered impervious surfaces for stormwater purposes.

Mr. Lien explained that, initially, it was recommended that the City change the definition of "impervious surface" to take out gravel and packed earthen materials. However, staff did not want to create a definition in the CAO that was different than the stormwater code. Option 2 for the "footprint of development" definition would address this concern. He emphasized that the definition is not intended to define "impervious surface." It simply clarifies that "footprint of development" means rooftop surfaces and surfaces paved with concrete, asphalt, brick, tile and similar materials. It does not include gravel, packed earthen material or other pervious surfaces.

Board Member Clarke asked if woodchips and bark would be considered pervious. Mr. Shuster said it depends on how they are applied. If woodchips and bark are placed on top of concrete, they would be considered impervious. If it placed on soil or sand, it would be considered pervious. Board Member Clarke asked if putting woodchips and/or bark on black plastic would be considered impervious or pervious surface. Mr. Shuster said the surface would not be considered 100% impervious because it would allow water to be stored within the space between the pieces of bark. However, when that space is full, it would act as impervious surface. Board Member Clarke noted that bark and/or woodchips, along with black plastic are common landscaping materials. Mr. Shuster said the City generally considers all landscaped areas of this type to be pervious in terms of stormwater requirements. Board Member Lovell pointed out that the material used under the bark is usually a filter fabric that allows water to pass through, but blocks light and keeps weeds from growing.

Board Member Stewart said she would support Option 2, which excludes gravel and packed earthen materials from being considered part of the "footprint of development." The majority of the Board concurred. However, Board Member Lovell indicated his preference for Option 1, which would retain the definition for "impervious surface" that is consistent with the stormwater code. Mr. Lien emphasized that selecting Option 2 would establish a new definition for "footprint of development," so a definition for "impervious surface" would no longer be necessary in the CAO. However, selecting Option 2 would not alter the definition of "impervious surface" that is found in the stormwater code.

Mr. Lien recalled that some Board Members questioned why enhancement should be required in exchange for allowing activity within the footprint of development if the activity would not increase the impact to the critical area or its buffer. He reminded the Board that the City's critical areas are largely developed, and the goal is to enhance the critical areas and their buffers if possible when a certain amount of development occurs within previously developed areas.

Mr. Lien referenced Page 2 of Attachment 3, which identifies some potential thresholds that would trigger the buffer enhancement requirement. They are intended as options for the Planning Board to consider. Development proposals that exceed the threshold(s) would be required to enhance the critical area and/or buffer in a way that improves its function and value. Potential options include 500 to 4,000 square feet of new structures or a 10% to 25% increase in structural coverage. He noted that the second option on the list (2,000 square feet of new paved surfaces) should be deleted from the draft language as a potential option. It would result in new impervious surface, which would not be allowed. He summarized that it was difficult to come up with recommended threshold options related to development within the previously footprint of development. The 500 to 4,000 square foot option is within the range set by other jurisdictions, and the 10% to 25% option is what some jurisdictions allow for structures within the previously developed footprint. He noted that with other jurisdictions, the thresholds were intended to be limits rather than thresholds of when the City would require enhancement.

Mr. Lien said he provided similar threshold options (Page 13 of Attachment 3) in the proposed amendment related to buffers that are physically separated and functionally isolated. These thresholds are tied more to new impervious surface as it pertains to development within physically separated and functional isolated buffer areas. The options include 600 square feet of new impervious surface on single-family lots or 10% new impervious surface over existing impervious surfaces or 2,000 square feet of new impervious surface (whichever is less) on multi-family and commercial sites. Staff's thinking is that thresholds for smaller lots should be different than thresholds for larger lots. Perhaps multi-family and commercial sites should have different thresholds than single-family sites, as well. He noted that, currently, the City requires an applicant to meet the stormwater requirements when there is 2,000 square feet or more of impervious surface since 1977 or when the property was annexed into the City. A 600 square foot threshold is about the size of a typical garage, but would be a lower threshold than required by the current stormwater code.

Board Member Tibbott suggested that the threshold be based on a percentage rather than square footage. Mr. Lien agreed that is one option the Board could consider. A straight percentage option would address the issue of larger sites versus smaller sites. However, 10% of a structure on the Harbor Square site is a lot more than 10% percent of a structure on a single-family property. He suggested that the threshold could be based on a combination of the two options, such as 2,000 square feet of new structures or 10% to 25%, whichever is more or less. He noted that the 10% to 25% option was intended to suggest a potential range. Board Member Cloutier clarified that the percentage is not intended to suggest a limit, but any development beyond the threshold would require buffer enhancement. He questioned if the City should also establish a limit for the maximum amount of development that could occur within the developed footprint or within areas that are physically separated and functionally isolated from a critical area. Mr. Lien said no specific maximum limit has been proposed, but the criteria on Page 1 of Attachment 3 would serve to limit the amount of development that could occur on a site.

Board Member Cloutier questioned how the criteria of not increasing the development footprint beyond the legally established footprint would be consistent with a threshold that would allow a property owner to increase the structural coverage. Mr. Lien explained that increasing the structural coverage would involve putting a new building on an existing asphalt parking lot and would not increase the amount of impervious surface. Board Member Cloutier said he does not understand the risk of allowing additional structural coverage if the impervious surface would not be increased. Mr. Lien explained that the stormwater code has definitions for "development" and "redevelopment." The City Council agreed that the addition of a few structures on a site would be okay, but they do not want to allow complete redevelopment of the site. They may want to establish some upper limits to address this concern.

Board Member Ellis expressed concern that a 10% limit would not allow a property owner to expand an existing small home to any great degree. A 500-foot threshold would better address the smaller properties. Board Member Cloutier pointed out that the 10% threshold would not limit the amount of development that could occur on the site, but any development over 10% would require buffer enhancement. Development below 10% would not require enhancement because the critical area would not be significantly impacted. In addition to establishing a threshold for when enhancement would be required, Mr. Lien suggested that this same section could also place a limit on the amount of development that could occur.

Board Member Ellis observed that the majority of the Board's discussion has focused on streams and wetlands, but the amendments would apply to steep slopes, as well. He pointed out that most of the critical areas in Edmonds involve steep slopes and asked how a property owner would enhance a steep slope or its buffer. He suggested that there be different requirements for slopes as opposed to streams and wetlands. Mr. Chave agreed it would make more sense to target this

section of the code towards streams and wetlands as opposed to slopes. Requirements for slopes are targeted at stability and any development within slope areas must be substantiated by geotechnical work.

Board Member Clarke asked if the Board or City Council has determined that enhancement would be required for all development that occurs within previously developed wetlands or their buffers. Mr. Lien said the interim ordinance would require enhancement in every circumstance. Board Member Clarke recalled the Board's previous discussion that the enhancement requirement could be considered a type of tax to specific property owners to help enhance critical areas. Mr. Lien said the alternative would be to prohibit redevelopment in buffers and critical areas that have been previously developed. Again, he reminded the Board that Edmonds was largely built out before any critical area regulations were in place. Most of the critical areas and their buffers have been developed. While BAS has identified wide buffers, it must be recognized that BAS was largely established in rural areas where the buffers exist. The City's BAS Report indicated that one option for improving the City's critical areas is to allow limited development in certain areas in exchange for enhancement of the buffers that exist. Another option would be to prohibit development and require all property owners to go through the critical area variance process to demonstrate a reasonable economic use. The proposed provision would allow some flexibility for property owners to develop properties in a reasonable fashion while enhancing some of the City's critical areas and buffers.

Board Member Clarke asked if there are any provisions that would allow a property owner to redevelop in the event of a natural disaster without having to provide buffer enhancement. Mr. Chave added that, in the event of a natural disaster, fire, etc., the nonconformance provisions in the ECDC would allow a structure to be reconstructed within the same footprint without triggering the enhancement requirement. Mr. Lien agreed to review the nonconformance chapter to clarify the provisions. He clarified that the enhancement requirement would apply to proposals that would add development to what already exists on the site.

Vice Chair Stewart expressed her belief that the City should not allow any development to occur that would expand the footprint of development within a critical area or its buffer. Mr. Lien pointed out that, as currently proposed in ECDC 23.40, the expansion of the developed footprint within a critical area or its buffer would not be allowed. Board Member Cloutier explained that the provision would require buffer enhancement even if the proposed development would not encroach further into the critical area or buffer.

Vice Chair Stewart suggested that enhancement standards should be based on lot size. Because there is much more land to work with on larger lots, a higher enhancement percentage should be required. Board Member Cloutier said lot size should not be a factor. Mr. Lien, once again, emphasized that this provision (ECDC 23.40) would not allow for additional encroachment into a critical area. Board Member Duncan voiced his opinion that adding a new structure on top of an existing asphalt surface would have impacts such as more occupants, gasoline, chemicals, etc.

Vice Chair Stewart asked if it is true that the City does not require permits for small structures such as sheds. Mr. Lien answered that the City requires a building permit for structures greater than 200 square feet. However, just because a building permit is not required does not mean a property owner would not have to comply with the rest of the City's codes. For example, the setback requirements would still apply, and the structure could not be placed within a critical area or its buffer.

Vice Chair Stewart suggested that the Board consider lowering the threshold enough to entice people to do some type of enhancement. She expressed concern that having a threshold of 500 square feet would not result in any significant improvement. Mr. Lien reminded the Board that the City does not need to have a threshold at all. They could require enhancement for any activity in previously developed critical areas and buffers. Board Member Ellis expressed his belief that there should be some threshold that would allow owners to do minor activities on their properties without triggering the need for enhancement. Mr. Lien said one option would be to have different thresholds for single-family residential properties as opposed to multi-family residential and commercial properties. For example, the threshold for single-family residential properties could be 600 square feet of new structural coverage. Another option would be 600 square feet or 10%, whichever is less. The thresholds for multi-family residential and commercial properties could be 2,000 square feet or 20%, whichever is less.

Board Member Tibbott asked staff to explain the rationale for having a different threshold for single-family residential as opposed to multi-family residential and commercial properties. Mr. Lien explained that, generally, single-family lots are smaller and have less footprint of development. If the threshold is set at 600 feet for commercial properties, almost any development would trigger the enhancement requirement. He noted that the lot coverage allowance is greater for multi-family residential zones, and there is no lot coverage limit for many commercial zones. Board Member Cloutier proposed that the threshold that would trigger enhancement should be 600 square feet, regardless of how the property is zoned. Mr. Lien suggested it could be set at 600 square feet or 10%, whichever is more.

Board Member Duncan asked staff to explain the tradeoffs associated with the enhancement requirement. Mr. Lien said that, as currently proposed on Page 2 of Attachment 3 (ECDC 23.40), development proposals that exceed the threshold(s) must include measures to enhance the critical area and/or buffer in a way that improves its function and value. No specific examples were provided for what the enhancement should be. However, he provided some options for enhancement in ECDC 23.50 on Pages 13 and 14 of Attachment 3. These options include planting of native vegetation; removal and control of nonnative, invasive weed species; updating stormwater facilities to meet current stormwater requirements; employing low-impact development techniques to manage stormwater; and limiting or reducing the types or densities of particular uses.

Board Member Duncan asked if any of the enhancement options have been quantified. Mr. Lien said no, other than a qualified professional would have to demonstrate that a proposal would enhance the critical area and improve its function and value. He recalled that the Board briefly discussed the idea of establishing an enhancement ratio. However, the ratio requirement would not apply to the options relative to stormwater facilities and low-impact development techniques. He said he reviewed BAS, as well as regulations from other jurisdictions, and found nothing that talked about enhancement or mitigation ratios for buffer impacts. Board Member Duncan suggested that the enhancement requirement should somehow be tied to the magnitude of the development. He also suggested there should be a limit on the amount of increased development allowed. He reminded the Board that the purpose of the provision is to enhance the critical areas. Board Member Clarke questioned why the City would want to limit the amount of development if it would result in enhanced critical areas and buffers.

Mr. Lien reminded the Board that they previously discussed that stormwater improvements and low-impact development techniques were the most desirable enhancement options. Establishing a ratio for these two options would not fit, but ratios could be applied to vegetation enhancement. Mr. Shuster said it is important to keep in mind that the City's current stormwater regulations, as well as the stormwater regulations they must adopt by 2016, have a threshold of 2,000 square feet for impervious surface. If the City establishes an enhancement threshold of 600 square feet, requiring a property owner to comply with stormwater regulations would not net any improvement because the stormwater regulations would not kick in until 2,000 square feet. Vice Chair Stewart asked if the City could require a property owner to comply with the Western Washington Rain Garden Handbook. Mr. Shuster agreed that could be one option for enhancement, but he cautioned them not to tie the requirement to the stormwater regulations. Board Member Duncan pointed out that stormwater enhancement would be costly to implement, and it is unlikely anyone would choose the option unless they are forced to. Property owners would more likely choose the option of planting vegetation in the buffer areas.

Vice Chair Stewart recommended that the enhancement ratio should be greater for larger lots. Mr. Chave cautioned that the enhancement ratio must be proportionate to the impact. A property owner should not be required to meet a greater enhancement requirement just because the lot is larger. In addition, it would be difficult to show that the impact would be greater just because the lot is larger. Vice Chair Stewart pointed out that there would be more opportunity for enhancement on larger lots. Mr. Chave clarified that the enhancement requirement must address the impact and not opportunity.

Mr. Chave said another way to approach enhancement is to give more credit for the enhancement options that are more costly and provide a greater impact. In other words, a property owner would get less credit for vegetation and more credit for stormwater or low-impact development options. This would be one way to encourage property owners to use the more costly mitigation options that have more value.

Vice Chair Stewart said her understanding is that stormwater techniques are not generally employed within the buffer, itself. Mr. Shuster said it depends on the technique that is used, but the City prefers that they not be located within the buffer. Vice Chair Stewart suggested that instead of a planting ratio as an enhancement option, the City could require the developer to increase the buffer width by a certain percentage. Mr. Lien reminded the Board that the provision would apply in areas

where the buffer is non-existent. However, he agreed that one enhancement option would be to reestablish some of the buffer. Again, he said that while using a ratio is the best way to address the quantitative aspect of some of the enhancement options, it would not be applicable for the stormwater and low-impact development options. He said he is not sure how to quantify the difference between a vegetative enhancement and stormwater improvements. He said perhaps the enhancement ratio could be higher if the City wants to encourage stormwater improvements as opposed to enhancing the buffer of the critical area.

Board Member Ellis questioned if it would be possible for the enhancement requirement to be some percentage of the cost of the project. This would be similar to the requirement of 1% for the Arts. Mr. Lien cautioned that this type of approach would make the enhancement requirement more of a tax.

Board Member Duncan asked if it would be possible to lower the threshold and require that all development greater than 600 square feet to meet the stormwater requirements.

Given the lateness of the hour, Mr. Chave suggested the Board conclude their discussion for now and direct staff to research options and report back to the Board at a future meeting.

Board Member Clarke stressed that the economic aspect of the enhancement requirement must be considered. A property owner must be able to recognize the cost benefit of performing the enhancement, and stormwater enhancement would be cost prohibitive for smaller projects. Mr. Shuster said economics is one reason the State sets its stormwater requirement threshold at 2,000 feet. It is generally agreed that it would be economical to build a stormwater control system for projects that are 2,000 square feet or larger. Mr. Chave added that, in the City's experience, most property owners choose to do vegetative enhancement because it is fairly typical that plantings do not currently exist in the buffer areas.

Mr. Shuster said another enhancement option the Board could consider is compost amending the soil in pervious areas such as lawns and landscaping to reduce and filter the runoff from pervious areas.

Mr. Lien summarized that the Board would like staff to provide more information about the following enhancement options: planting and vegetation; removing and/or controlling of non-native species; updating the stormwater system; employing low-impact development techniques; limiting or reducing the types of densities; and amending the soil in pervious areas. He said it appears the Board would like to encourage stormwater and low-impact development over planting and/or removal of vegetation. Vice Chair Stewart cautioned that all of the enhancement options are equally important. For example, restoring wildlife habitat is very important for a critical area buffer. Mr. Lien agreed to consider how the language could be crafted to put all of the options on equal footing.

THE BOARD TOOK A BREAK AT 9:27 P.M. THEY RECONVENED THE MEETING AT 9:35 P.M.

#### **DISCUSSION ON MINOR CLARIFICATIONS TO WIRELESS REGULATIONS (FILE NUMBER AMD20130016)**

Mr. Clugston recalled that AT&T recently proposed a change to the City's Wireless Communication Facilities (WCF) Regulations, and the amendment will come before the Board for public hearing in December. Separate from AT&T's proposed amendment, Mr. Clugston advised that staff has identified several sections of the WCF code that need to be clarified to improve internal consistency and resolve confusion. Recent changes at the federal and state level benefitting the wireless industry must also be addressed. In addition, the City Attorney has recommended that some language be moved from the WCF code to the nonconforming code. He referred to Exhibit 1, which contains updated language for several sections of ECDC 20.50 (Wireless Communication Facilities) and for ECDC 17.40.020 (Nonconforming Building and/or Structures). He said a definition leftover from before the 2011 rewrite of the WCF code would also be eliminated from ECDC 21.05.005.

Mr. Clugston referred to ECDC 20.50.030.G, which is an exemption that talks about repair and maintenance of WCF. The language is poorly written because maintenance should not be an exemption. The intent is to clarify the language and move it to the nonconforming section (ECDC 17.40.020.J). He noted that the exemption would only apply to nonconforming facilities, and there are only two that he is aware of (the AT&T and Harbor Building sites).

**APPROVED**

Board Member Lovell referred to the City Attorney's recommended new language for ECDC 17.40.020.J and asked if it is a given that technology advancements will constantly make the equipment smaller. He suggested that the proposed language could create a problem if the equipment increases rather than decreases in size in the future. Mr. Clugston said that equipment is generally getting smaller. However, providers now want to stack their technologies on top of each other. The proposed change was the City Attorney's attempt to create a theoretical box where the facilities could be located. He pointed out that the State and Federal Government, through the Federal Communications Commission (FCC), came out with additional guidance in early 2013 that indicated that the box described in the City's code, which would go around an existing antenna and support structure, would be on top of an entire roof of a building and not just be where the antennas are located. Mr. Clugston said he forwarded the proposed new language to the WCF providers, and they expressed their belief that it was too restrictive.

Mr. Clugston said staff's intent is to bring these additional amendments to a public hearing on December 11<sup>th</sup>, parallel with the amendments proposed by AT&T. He advised that the City Attorney has contacted his counterpart, who is a specialist in WCF's, to seek additional language that would meet the City's intent of shrinking the facilities to be visually less intrusive and also be consistent with the FCC's guidelines. He said he anticipates that the proposed language in ECDC 17.40.020.J may be different at the hearing. However, the point is to allow antennas to be replaced on existing nonconforming sites.

Board Member Lovell observed that the Planning Board and staff spent a significant amount of time rewriting the WCF code language in 2011, yet it seems they have to continually amend it to address changing technology. Mr. Clugston noted that in addition to changes in technology, the FCC continually changes the requirements, which necessitates amendments to the City's code. He said he anticipates that the City will have to continually update the chapter.

Vice Chair Stewart asked what happened to the concept of making monopoles look like trees. Mr. Clugston said the Board discussed this idea, but decided not to go that route. In his 6.5 years with the City, there have not been any requests for monopoles. He does not believe they will see a lot of applications for this type of facility. Instead, providers are more interested in co-locating on existing structures and utility poles.

Board Member Tibbott asked if the WCF codes contain language related to painting or coloring the poles. Mr. Clugston said the proposed amendment to ECDC 20.50.050.G would provide additional clarification regarding finish of a monopole. As proposed it can be laminated wood, fiberglass, steel, or similar material, and it must be a neutral color so as to reduce its visual obtrusiveness. He noted that utility pole replacements must be wood and similar in size and scale to what previously existed. Board Member Tibbott said there is a monopole in his neighborhood around 84<sup>th</sup> and 182<sup>nd</sup>. Although it was a neutral color (silver) it really stood out against the surrounding trees. It was eventually painted brown to blend in better. Mr. Clugston pointed out that this pole led to the initial code change in 2009 that prohibited providers from replacing wooden utility poles with large, metal objects.

Mr. Clugston summarized that the proposed changes are small, and the intent is to bring them forward for public hearing on December 11<sup>th</sup> in conjunction with the amendments proposed by AT&T.

#### **WORK SESSION ON WESTGATE PLAN AND FORM-BASED CODE**

Mr. Chave said that in the Staff Report for this item, he suggested that rather than having a public hearing on the Westgate Plan and form-based code on December 11<sup>th</sup>, the Board could have a detailed work session. He referred to the three sets of plan and code changes that were attached to the Staff Report:

- **Comprehensive Plan Changes.** This document outlines the current Comprehensive Plan language related to Westgate, goals contained in the University of Washington Plan, and how they could potentially be combined to reflect the intent of the Westgate Study.
- **Code Changes to Implement the Westgate Study.** The language in this document is all new and has two components. The first component (ECDC 16.110) is a new Westgate Mixed Use (WMU) zone that would apply to Westgate. While it looks like a standard zoning classification, it is pared down. It uses a table, similar to the one used in the Downtown Business (BD) zones to simplify and easily reference what is and is not allowed. The second component (16.110.020) would be site development standards. The bulk of this component would refer to the Design Standards for the WMU zone (ECDC 22.110).

- **Design Standards for the Westgate Mixed Use District.** This document takes all the form-based design discussion from the University of Washington’s plan and puts it into the code as a “design standards” chapter. Basically, the “form-based” elements of the code would be called “design standards.” He noted that usually design standards talk about façade design, etc. But the proposed design standards would go further to talk about overall form of the buildings, relationship of the buildings, etc.

Mr. Chave explained that the combination of these three documents is staff’s attempt to illustrate the changes needed to implement the Westgate Plan and form-based code. He summarized that most of the form-based elements are in the design standards chapter, while the basic zoning provisions are in the new Westgate Mixed Use District. He said that while the proposed approach is not a pure version of form-based code, it enables the form-based elements to fit within the City’s overall regulatory scheme so people are not confused. The approach would be similar to the approach used for the BD zones (a use section in the zoning chapter and design standards that govern how buildings are designed and relate to each other).

Mr. Chave said the purpose of this work session is for the Board to review the overall approach proposed by staff and provide feedback about whether or not it makes sense. Before the Board moves forward with a more detailed discussion, staff would like assurance that the general approach is sound.

Board Member Lovell said he likes the idea of incorporating graphics and pictures. He referred to the Table in ECDC 16.110.010 that lists the different building types allowed in the WMU zone. The subsequent pages provide a more accurate description of each of the building types. He suggested that on the chart, the building types should also identify the types of uses allowed.

Board Member Lovell referred to the graphic showing a sample street cross section for the internal circulation drive. He recalled that the University of Washington Study provided street cross sections for SR-104, 100<sup>th</sup> Avenue, etc. Mr. Chave said that, to avoid potential conflict, the additional street sections would not be included. Board Member Lovell pointed out that there has been significant discussion at the City Council level about the concept of making SR-104 pedestrian friendly and moving the buildings closer to the sidewalk. Mr. Chave said the recommendation from the traffic study was that these ideas may have some merit, but they would require more detailed study. He said the SR-104 study, which was brought forward by Council Member Johnson, would provide an opportunity to look at what could be done in these public rights-of-way to enhance what happens at Westgate proper.

Board Member Lovell noted that guidelines for amenity space, paved areas, parking, etc. are provided in each section and identify percentages for each. He suggested that staff run some test cases to see if there would be any room left for development once all of the requirements have been met. He noted that properties at Westgate have multiple owners, and applying all the design guidelines may leave no room on the site to construct a building. Mr. Chave said the University of Washington team was mindful of this concern. Rather than using “lot” area it might be more beneficial to define “site” area.

Board Member Lovell suggested that the plan should contain a graphic of the entire Westgate area. Mr. Chave said there are graphics of the entire area in the University of Washington Study. Although intended to be illustrative, including a graphic of the entire Westgate area may cause people to attach too much specificity to it. Board Member Lovell referred to an illustration that Board Member Reed provided, which categorizes the four quadrants into mixed use, buffer and residential, without any further definitions. Mr. Chave noted that the draft document provides a graphic to illustrate how the arrangement of building types would work within the various quadrants. In addition, the first page of the design guidelines document provides a diagram showing where the steep slopes are located. This could be paired with the diagram staff prepared to illustrate the heights of the surrounding slopes.

Mr. Chave explained that the way the draft WMU language is currently written, it would only allow development up to four stories. He recalled that the Board has had some discussion about potentially allowing up to five stories in at least one area. He said this will be an important point for the Board to discuss in more detail at their next meeting. He said that if the Board agrees with the overall approach proposed by staff, he would continue to modify the language in preparation for a more detailed discussion on December 11<sup>th</sup>.

Board Member Tibbott said he likes the terminology of design standards, which is more helpful than introducing a form-based code on top of everything else. He said it makes sense to have a WMU district, and he imagines there will eventually

be multiple districts throughout the City where more specific design standards would be applied. Mr. Chave agreed that is the direction the City is headed.

Vice Chair Stewart suggested it would be helpful to ask the Architectural Design Board to review the draft design guidelines, particularly the building types and how they would be oriented. She noted that a form-based code requires more of a design approach. Mr. Chave agreed to invite the Architectural Design Board to provide feedback.

Vice Chair Stewart said she likes the overall approach proposed by staff and the draft documents that have been organized. Mr. Chave said he is hoping that the draft language will not look so odd that people will misunderstand it, given that they are more familiar with the traditional code language. Vice Chair Stewart suggested that Board Members forward additional comments and suggestions to staff electronically. Mr. Chave advised that the Board would have a more detailed discussion about the Westgate Plan and form-based code on December 11<sup>th</sup>.

Board Member Clarke asked how the boundaries for the Westgate Study Area were established. Mr. Chave answered that the Comprehensive Plan identifies specific boundaries for the Westgate commercial area. It is basically the extent of the Neighborhood Business (BN) zone, with one or two exceptions. He further explained that the area of SR-104 from Westgate Center to where the road drops down towards the ferry and downtown Edmonds is identified in the Comprehensive Plan as the Westgate Corridor. A specific study of the corridor was done in the 1990's to identify the current zoning, which is largely Planned Business (BP). The intent was that these properties would be developed as low-level commercial that is geared towards fewer traffic movements.

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

Vice Chair Stewart announced that the last meeting in November and the last meeting in December have been cancelled. She reviewed that the December 11<sup>th</sup> meeting agenda will include a work session on the Westgate Plan and form-based code, a public hearing on the telecommunication code, and election of 2014 Planning Board officers. The January 8<sup>th</sup> agenda will include a discussion of the Parks, Recreation and Open Space (PROS) Plan, a public hearing on code amendments to implement Initiative 502 (cannabis), and a review of Planning Board procedures, guidelines and codes. The January 22<sup>nd</sup> agenda will include a tentative public hearing on the PROS Plan, and the February 12<sup>th</sup> agenda is tentatively scheduled as a public hearing on the Westgate Plan and form-based code.

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

Vice Chair Stewart announced that she attended a Built Green Conference last week and was specifically interested in the session titled, "Do Incentivized Green Building Programs Work?" The session proved to be very inspiring. Representatives from the Cities of Redmond, Seattle and Kirkland described the challenges and successes of their programs. She learned that the most important step is to offer priority permitting for green building. The second most important step is training for staff, and the third most important step is having codes that enable green building. She agreed to share her notes with the Board Members and City Council Members.

Vice Chair Stewart announced that the next Planning Board Report will be presented to the City Council on January 7, 2014.

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

Board Member Clarke thanked the Planning Board for their hard work over the last few months while he was unavailable. He said it was a pleasure to read the recorder's comprehensive record of the meeting.

Board Member Tibbott reported that he attended a portion of the November 12<sup>th</sup> City Council Meeting and was disappointed that the City had to engage in the massive conversation about Building 10 at Point Edwards. He expressed concern about the heartache that was caused for the residents and the number of lawyers that were involved. He hopes the City can be clear enough about codes to avoid these situations in the future. He expressed his belief that an approach like the one proposed for Westgate is a possible way forward so that developers have a clear understanding of the guidelines and people purchasing property will understand the scope of the development.

Board Member Tibbott announced that he attended the City Council's Parks Committee, where representatives from the Veterans of Foreign Wars (VFW) made a presentation. Mr. Clyborn, VFW, indicated that they had discussed amongst their membership what they would like to name a future plaza. Instead of Veteran's Memorial Park, as had been discussed, they would prefer simply Veteran's Plaza. The discussions regarding this project are moving forward, and Ms. Hite anticipates that a proposal can be presented to the City Council for approval by the end of the year.

Board Member Lovell asked if it is too soon to schedule a date for the next Planning Board retreat. Aside from John Reed, he asked if any members of the Board are planning to resign their position at the end of 2013. Mr. Chave said he has only heard from John Reed. Board Member Lovell noted that the Board should start discussions with Mayor Earling as soon as possible about soliciting candidates to fill the vacant position.

Board Member Duncan thanked Mr. Chave for the work he has done preparing documents for the Westgate Plan and form-based code. He said it was good to see concrete examples, and he looks forward to working on the plan at the next meeting.

### **ADJOURNMENT**

The Board meeting was adjourned at 10:12 p.m.

**APPROVED**