

# EDMONDS CITY COUNCIL APPROVED MINUTES

## December 18, 2012

The Edmonds City Council meeting was called to order at 6:15 p.m. by Mayor Earling in the Council Chambers, 250 5<sup>th</sup> Avenue North, Edmonds.

### ELECTED OFFICIALS PRESENT

Dave Earling, Mayor  
Strom Peterson, Council President  
Frank Yamamoto, Councilmember  
Joan Bloom, Councilmember  
Kristiana Johnson, Councilmember  
Lora Petso, Councilmember  
Diane Buckshnis, Councilmember  
Adrienne Fraley-Monillas, Councilmember\*  
(\*Arrived 6:35 p.m.)

### STAFF PRESENT

Al Compaan, Police Chief  
Stephen Clifton, Community Services/Economic  
Development Director  
Shawn Hunstock, Finance Director  
Carrie Hite, Parks & Recreation Director  
Rob Chave, Interim Development Services Dir.  
Carl Nelson, CIO  
Rob English, City Engineer  
Kernen Lien, Senior Planner  
Jeff Taraday, City Attorney  
Sandy Chase, City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

### 1. ROLL CALL

City Clerk Sandy Chase called the roll. All Councilmembers were present with the exception of Councilmember Fraley-Monillas.

At 6:18 p.m., Mayor Earling announced that the City Council would meet in executive session regarding a real estate matter per RCW 42.30.110(1)(c) and pending litigation per RCW 42.30.110(1)(i). He stated that the executive session was scheduled to last approximately 30 minutes and would be held in the Jury Meeting Room, located in the Public Safety Complex. No action was anticipated to occur as a result of meeting in executive session. He noted that executive sessions are not open to the public.

Mayor Earling further announced that at approximately 6:45 p.m. the City Council would meet with a candidate for appointment to the Sister City Commission for approximately 15 minutes in the Jury Meeting Room. The meeting with the candidate is open to the public.

### 2. CONVENE IN EXECUTIVE SESSION REGARDING A REAL ESTATE MATTER PER RCW 42.30.110(1)(c) AND PENDING LITIGATION PER RCW 42.30.110(1)(i).

Elected officials present at the executive session were: Mayor Earling, and Councilmembers Yamamoto, Johnson, Buckshnis, Peterson, Petso and Bloom. Councilmember Fraley-Monillas arrived at 6:35 p.m. Others present were City Attorney Jeff Taraday, Community Services/Economic Development Director Stephen Clifton, Senior Planner Kernen Lien and City Clerk Sandy Chase.

At 6:45 p.m., Mayor Earling announced to the public present in the Council Chambers that an additional 10 minutes would be required in executive session. Mr. Clifton and Mr. Lien left the executive session at

6:45 p.m. Councilmember Buckshnis left the executive session at 6:49 p.m. The executive session concluded at 6:52 p.m.

**3. MEET WITH CANDIDATE FOR APPOINTMENT TO THE SISTER CITY COMMISSION**

At 6:53 p.m., the City Council met with Sister City Commission candidate Paul Anderson. The Mayor and all City Councilmembers were present for the meeting.

Mayor Earling reconvened the regular City Council meeting at 7:10 p.m. Following a moment of silence in memory of those killed in the tragedy in Newtown, Connecticut, last week, Mayor Earling led the flag salute.

**4. APPROVAL OF AGENDA**

**COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO APPROVE THE AGENDA IN CONTENT AND ORDER WITH THE ADDITION OF A 2 MINUTE AGENDA ITEM FOLLOWING APPROVAL OF THE CONSENT AGENDA, PRESENTATION BY REPRESENTATIVE OF THE HISTORIC PRESERVATION COMMISSION. MOTION CARRIED UNANIMOUSLY.**

**5. APPROVAL OF CONSENT AGENDA ITEMS**

Councilmember Bloom requested Items D and N be removed from the Consent Agenda.

**COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:**

- A. APPROVAL OF CITY COUNCIL MEETING MINUTES OF DECEMBER 11, 2012.**
- B. APPROVAL OF CLAIM CHECKS #135836 THROUGH #135979 DATED DECEMBER 13, 2012 FOR \$551,570.05 (REISSUED CHECK #135977 \$13.92).**
- C. CONFIRMATION OF SISTER CITY COMMISSION CANDIDATE PAUL ANDERSON.**
- E. OCTOBER 2012 MONTHLY FINANCIAL REPORT.**
- F. IT SUPERVISOR JOB DESCRIPTION APPROVAL.**
- G. PERSONNEL POLICY EDITS.**
- H. SUPPLEMENTAL AGREEMENT NO. 1 TO ANIMAL KENNELING SERVICES AGREEMENT.**
- I. EMPLOYMENT AGREEMENT FOR ADMINISTRATIVE ASSISTANT TO CITY COUNCIL.**
- J. AUTHORIZATION FOR MAYOR TO APPROVE ACCEPTANCE AND RECORDING OF PUBLIC PEDESTRIAN ACCESS EASEMENT FOR KEY BANK.**
- K. AUTHORIZATION TO AWARD CONSTRUCTION SERVICES FOR THE 76TH AVENUE W WATER MAIN REPLACEMENT PROJECT TO SANTANA TRUCKING & EXCAVATING, INC.**
- L. REPORT ON FINAL COST ON THE PERRINVILLE CREEK MITIGATION PROJECT AND ACCEPTANCE OF PROJECT.**

- M. **AUTHORIZATION FOR MAYOR TO SIGN PROPOSED SUPPLEMENTAL AGREEMENT NO. 1 WITH HDR ENGINEERING, INC FOR DESIGN SERVICES ON THE WWTP STANDBY POWER DISTRIBUTION AND SWITCHGEAR IMPROVEMENTS PROJECT.**
- O. **ORDINANCE NO. 3905 – APPROVING A CHANGE IN ZONING FOR PROPERTIES LOCATED AT 8609, 8611, AND 8615 244TH STREET SW FROM SINGLE FAMILY RESIDENTIAL (RS-8) TO MULTIPLE RESIDENTIAL (RM-2.4); AUTHORIZING AN AMENDMENT OF THE CITY'S OFFICIAL ZONING MAP, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**
- P. **ORDINANCE NO. 3906 – ADOPTING AMENDMENTS TO THE CAPITAL FACILITIES PLAN ELEMENT OF THE COMPREHENSIVE PLAN.**
- Q. **APPROVAL OF CHANGE ORDER FOR THE HAINES WHARF PARK AND WALKWAY PROJECT.**
- R. **AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT #1 WITH HAINLINE & ASSOCIATES FOR THE HAINES WHARF PARK PROJECT.**

**ITEM D: REAPPOINTMENT OF 3 MEMBERS TO EDMONDS CITIZENS' TREE BOARD.**

Councilmember Bloom referred to the recommendation in the agenda memo and requested the name Susan Paine be replaced with Anna Marie Heckman.

**COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO APPROVE AGENDA ITEM D AS AMENDED. MOTION CARRIED UNANIMOUSLY.**

**ITEM N: RESOLUTION DECLARING THE CITY'S INTENT TO ESTABLISH A BUSINESS IMPROVEMENT DISTRICT (BID) WITHIN A PORTION OF THE CITY OF EDMONDS.**

Councilmember Bloom explained the resolution establishes a hearing date, January 15, 2013, beginning at approximately 7:00 p.m. The BID Committee will also send out notices to all business owners within the BID.

**COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO APPROVE AGENDA ITEM N, RESOLUTION NO. 1285. MOTION CARRIED UNANIMOUSLY.**

**5A. PRESENTATION BY REPRESENTATIVE OF THE HISTORIC PRESERVATION COMMISSION.**

**Larry Vogel, Chair, Historic Preservation Commission (HPC)**, reported the calendar that the Commission created has been delivered by the printer. Councilmembers Petso and Johnson distributed copies of the calendar as their gift to Councilmembers. This is the second calendar the HPC has created; the response to last year's calendar was overwhelming. Unfortunately the HPC did not have a grant to create the calendar this year and he thanked the Council for approving the set-up of the accounting procedure that allows sponsorships of the calendar and sale of the calendar at City Hall and at local businesses. He and other HPC members plan to invite more businesses to sell the calendars. They also plan to have a table at the Art Walk. He recognized Councilmembers Petso and Johnson, Council representatives on the HPC, for their efforts. He also thanked the Council for their support. He announced there are four vacancies on the HPC in 2013. The HPC is seeking people who are passionate about history and public service and who want to get involved in the community.

6. **DRAFT PROPOSED CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF EDMONDS, WASHINGTON AND COMCAST.**

Community Services/Economic Development Director Stephen Clifton advised he would provide a brief overview of the franchise process and terms. Mike Bradley, special counsel for Lighthouse Law Group, is participating via conference call.

Utilizing hybrid fiber coax cable, Comcast seeks to continue providing cable television service to City residents, businesses and institutions in competition with the existing cable television operator serving the City, Frontier Communications. To do so, Comcast and the City must execute a new cable franchise agreement. The agenda packet includes a staff report, ordinance granting a non-exclusive franchise to Comcast and a cable franchise agreement between the City and Comcast. Because the franchise agreement is lengthy, he provided the initial draft to the City Council on November 7 to provide the Council time to review the agreement.

Using the model used to negotiate the Frontier franchise agreement, a consortium was created consisting of Snohomish County and nine other cities including Edmonds for the purpose of negotiating a Comcast agreement template that could be used as a base document for all consortium participants. There are many benefits of forming a multi-jurisdictional consortium such as ensuring the public receives the maximum rights and benefits from their respective franchise agreement, assuring citizens of each jurisdiction that their franchise is competitive locally and nationally, and creating a common template and negotiation strategy to maximize leverage and negotiations.

Mr. Clifton explained Mike Bradley and he negotiated the proposed franchise agreement based on Edmonds' cable-related need and interests of Edmonds residents, businesses and institutions. The staff report contains highlights of major provisions of the proposed franchise agreement including:

- Section 2.9: a seven year term of franchise
- Section 4.2: Comcast voluntarily provides one cable outlet of basic and expanded basic service to most publicly owned buildings within Edmonds including fire stations, City Hall, senior center, Edmonds Center for the Arts, library, and elementary, junior high and high school buildings
- Section 7.1: Comcast will pay the City a 5% franchise fee based on gross annual revenue
- Section 11.1 and 11.3: potential for the City to add/request a maximum of three additional channels
- Sections 11.7.1 and 11.7.3: Education or government (EG) fee of \$0.35/per subscriber/month. Funds can be used for capital-related expenditures such as recording machines, cameras, annotation devices, etc. The 2013 budget includes \$42,000 to purchase new equipment. Under the franchise agreement, those funds can be reimbursed.
- Section 15.4: \$10,000 application fee paid to the City. This fee may be used for any lawful purpose. Staff recommends setting those funds aside for maintenance of technology-related equipment.

Mr. Clifton explained other terms of the agreement include extensive customer service requirements, audit requirements, liability insurance, indemnification requirements, and a performance bond of \$250,000. The franchise agreement is in the public interest and is reasonably comparable to the Frontier Communications franchise. Staff recommends approval of the ordinance, adopting the proposed cable franchise between the City and Comcast and authorizing the Mayor to execute the proposed franchise agreement on behalf of the City.

For Councilmember Buckshnis, Mr. Clifton explained the franchise fee is deposited into the General Fund. A separate fund will be established for the EG fee to ensure expenditures are used for technology related equipment.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO ADOPT ORDINANCE NO. 3907, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON GRANTING A NONEXCLUSIVE FRANCHISE TO COMCAST OF WASHINGTON LLC AND COMCAST OF CALIFORNIA/COLORADO/WASHINGTON I, INC. TO CONSTRUCT, MAINTAIN, OPERATE AND REPAIR A CABLE SYSTEM TO PROVIDE CABLE SERVICES IN, ACROSS, OVER, ALONG, UNDER, UPON, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDMONDS. MOTION CARRIED UNANIMOUSLY.

Mayor Earling thanked Mr. Clifton and Mr. Bradley for their work.

7. **CONTINUED PUBLIC HEARING AND POTENTIAL ACTION ON THE PLANNING BOARD RECOMMENDATION TO APPROVE THE PORT OF EDMONDS REQUEST TO INCORPORATE THE PORT'S HARBOR SQUARE MASTER PLAN INTO THE CITY'S COMPREHENSIVE PLAN. THE HARBOR SQUARE MASTER PLAN ENVISIONS A MIXED-USE TRANSIT-ORIENTED DEVELOPMENT. THE MIXED-USE NATURE OF THE MASTER PLAN WILL ALLOW FOR RETAIL, COMMERCIAL, OFFICE AND PUBLIC USES, AND RESIDENTIAL HOUSING. THE MASTER PLAN COULD PROVIDE 340 TO 358 RESIDENTIAL UNITS, 50,400 SQUARE FEET OF RETAIL, 9,784 SQUARE FEET OF OFFICE, 123,410 SQUARE FEET OF RECREATIONAL HEALTH CLUB USES (INCLUDING TENNIS COURTS), 3.8 ACRES OF PUBLIC OPEN SPACE, AND 1,091 SPACES OF OFF-STREET PARKING. THE MASTER PLAN ENVISIONS BUILDINGS OF VARYING HEIGHTS, UP TO A MAXIMUM OF 55 FEET CONCEPTUALLY, BUILDINGS UP TO 35 FEET ARE PROPOSED FOR THE SR-104/DAYTON STREET INTERSECTION WHILE BUILDINGS OF 45 FEET ARE PROPOSED ALONG DAYTON STREET (WITH STEP-BACK PROVISIONS FOR PORTIONS ABOVE 35 FEET). FIVE STORY BUILDINGS (UP TO 55 FEET IN HEIGHT) COULD BE LOCATED TOWARD THE FAR SOUTHERN EDGE OF THE SITE.**

Senior Planner Kernen Lien explained the Port of Edmonds has submitted a request to the City of Edmonds to incorporate the Port's Harbor Square Master Plan into the City's Comprehensive Plan. The Port envisions a mixed use, transit-oriented development that includes retail, commercial, office, public uses, and residential development. He emphasized this is a non-project level plan review. The Port has not applied for a development permit or a rezone.

Mr. Lien reviewed steps in a timeline of the Comprehensive Plan/development review process for Harbor Square, identifying points where the City Council will be involved:

- City reviews and adopts Harbor Square Master Plan as a Comprehensive Plan amendment
- City and Port enact conceptual development agreement/MOU
- Developer applies to City for final development agreement, City reviews and approves with conditions

Pursuant to ECDC 20.00.050, an amendment to the Comprehensive Plan may be adopted only if the following findings are made:

- The proposed amendment is consistent with the provisions of the Edmonds Comprehensive Plan and is in the public interest.
- The proposed amendment would not be detrimental to the public interest, health, safety or welfare of the City.
- The proposed amendment would maintain the appropriate balance of land uses within the City.
- In the case of an amendment to the Comprehensive Plan map, the subject parcels are physically suitable for the requested land use designation(s) and the anticipated land use development(s), including, but not limited to, access, provisions of utilities, compatibility with adjoining land uses and absence of physical constraints

Mr. Lien explained Harbor Square is located within the Downtown/Waterfront Activity Center and the site itself is within the Downtown Master Plan District which includes Harbor Square, the Antique Mall site, the former Skippers site and the WSDOT parking area. The Downtown Master Plan district is described as:

*Downtown Master Plan. This area is appropriate for design-driven master planned development which provides for a mix of uses and takes advantage of its strategic location between the waterfront and downtown. The location of existing taller buildings on the waterfront, and the site's situation at the bottom of "the Bowl," could enable a design that provides for higher buildings outside current view corridors. Any redevelopment in this area should be oriented to the street fronts, and provide pedestrian-friendly walking areas, especially along Dayton and Main Streets. Development design should also not ignore the railroad side of the properties, since this is an area that provides a "first impression" of the city from railroad passengers and visitors to the waterfront. Art work, landscaping, and modulated building design should be used throughout any redevelopment project (pg. 55).*

Mr. Lien explained the Planning Board reviewed the Harbor Square Master Plan during eight meetings and forwarded a recommendation to the Council to incorporate the Harbor Square Master Plan into the City's Comprehensive Plan (attachment 3 in the packet). The Planning Board also made 14 specific recommendations for Council consideration. This is the second of two public hearings; the first was held on December 4. The Port and staff have provided written responses to questions submitted by Councilmembers Bloom and Buckshnis (included in the agenda packet). The packet also contains copies of correspondence the Council received at the December 4 public hearing and following the December 4 public hearing as well as comments received since the agenda memo was prepared.

Councilmember Bloom asked staff to explain the Port's Mitigated Determination of Non-Significance. Mr. Lien explained certain proposals require State Environmental Policy Act (SEPA) review. Threshold determinations as a result of a SEPA review include:

- Determination of Significance – requires an Environmental Impact Statement (EIS)
- Determination of Non-Significance – proposal does not have any significant impacts and an EIS is not required
- Mitigated Determination of Non-Significance – mitigation brings the threshold to a Determination of Non-significance

The Harbor Square Master Plan has undergone two SEPA reviews: 1) for the Port Commission's adoption of the Harbor Square Master Plan, and 2) for the City to consider incorporation into the Comprehensive Plan. The City also issued a Mitigated Determination of Non-Significance and added a few more mitigation measures: 1) transportation impact analysis, 2) consider future global warming impacts such as rising sea level, and 3) average height of all building not to be above 45 feet.

Councilmember Bloom asked whether with the Port's issuance of a Mitigated Determination of Non-Significance meant the Port did not have to study the soils. Mr. Lien answered it is a non-project action at this time; the location of buildings, appearance of buildings, etc. is unknown. The Port did a higher level traffic impact analysis for SEPA review; at the time of a development agreement or planned action SEPA, more detail will be provided.

Councilmember Bloom noted the soils were not studied. She recalled Mr. Lien stating at a Planning Board meeting that the soils on this property are consistent with the soils across the street, which she assumed meant the current Echelbarger property. Mr. Lien answered that was most likely; explaining portions of the marsh have been filled over time; fill on top of the historic marsh.

Councilmember Bloom referred to the ESC Associates property, recalling when they were doing a contract rezone, the file contains a statement it is on an earthquake liquefaction zone. She assumed the

soil on the Port property is the same as the ESC Associates property. Mr. Lien agreed. Councilmember Bloom commented there is no information at this point regarding how deep piling would need to be to reach the bearing soil. Mr. Lien answered there is no information specific to Harbor Square; he recalled it was 25 feet on the Antique Mall site.

Councilmember Bloom relayed her understanding that the study done to determine feasibility at 55 feet was done on the bulk of buildings only. **Bob McChesney, Executive Director, Port of Edmonds**, responded the initial study, a bulk analysis, done by LMN and Berk Associates in 2009, was to determine what could be developed on the site in an economically feasible way. That bulk had nothing to do with soil conditions. Councilmember Bloom relayed her understanding that it is very expensive to put piling to reach the bearing soil. The Port's analysis of feasibility was only based on the bulk of buildings and not the cost to reach the bearing soil. Mr. McChesney answered generally speaking that was a true statement.

Councilmember Buckshnis commented on the 100-200 foot buffer in the Shoreline Master Plan and Mr. Lien's indication that the existing Harbor Square footprint was grandfathered and the Planning Board added another 25-feet to 50 feet. She asked whether any case history had been found regarding deviating from the buffer. City Attorney Jeff Taraday answered he had not had an opportunity to research that and possibly could do so during public comment.

Councilmember Yamamoto referred to page 2 of the ordinance which states the Master Plan could be considered a subarea plan, which would allow it to be adopted independently of the regular Comprehensive Plan amendment cycle. He asked the ramifications of considering the Master Plan as a subarea plan. Mr. Taraday explained the Council can adopt the Harbor Square Master Plan two ways, 1) as a subarea plan of the Comprehensive Plan, or 2) as a regular Comprehensive Plan amendment. If the Council adopts the Master Plan as a subarea plan, there is more flexibility with regard to the timing of adoption as it does not have to be done in conjunction with all other Comprehensive Plan amendments docketed for the year.

Councilmember Fraley-Monillas referred to the comments by Bill Angle at the December 4 public hearing regarding the \$35 million cost of a 1,000 car garage. Mr. McChesney recommended using numbers very advisably at this stage. The number of cars, cost of structured parking, etc. are things that cannot be precisely identified/defined at this stage. One of the reasons for five stories on part of the development is to allow structured parking. He was unsure where the figure of \$35 million came from as it did not come from any of the Port's study materials. He acknowledged structured parking was more expensive than surface parking. Mr. Angle's comments are worth noting but cannot be relied on at this stage to guide the process.

Mayor Earling opened the public participation portion of the public hearing.

**Chuck Loomis, Edmonds**, an instructor at Edmonds Community College, spoke in support of the Harbor Square Master Plan. He pointed out the Master Plan would likely be unrecognizable in 1-2 years due to changes that will be made. He commented on the current disconnect between downtown and the waterfront, which does not allow downtown shoppers to make their way to the waterfront. Development at Harbor Square would tie the waterfront to downtown. The Harbor Square Master Plan addresses a number of environmental issues that would not be addressed otherwise. Development at Harbor Square is not likely to impact most of the people here tonight; it is for the next generation, people moving into the area, the Y generation and millennials who will need to be enticed to live in Edmonds.

Councilmember Bloom read a letter from **Barbara Tipton, Edmonds**, who referred to her parent's home, on Barnegat Bay in Tom's River that was destroyed by Hurricane Sandy. Although a residential community with views of the Edmonds Marsh would attract new residents, the lessons of Hurricane Sandy should be heeded. Harbor Square is built on sediment dredged from Puget Sound that was dumped

into the Marsh. Fill is comprised of decomposed sedges, reeds and rushes and is easily saturated and poorly drained. The land is within the 100 year flood plain and has a very high water table. The site is located within a geological critical area; in an earthquake the mud transforms from a solid state to liquid. A significant portion of the Harbor Square site is rated as highly prone to liquefaction and therefore not well suited for large scale urban development. The City's 2004 Best Available Science report discusses fish and wildlife habitat consideration areas; a guiding principle is the need to evaluate potential negative impacts near critical areas and recommends establishment of buffer zones around environmentally sensitive areas. The State Shoreline Management Act calls for buffers along shorelines of significance; the Edmonds Marsh is designated as a significant shoreline. She recommended reconsidering the Port's vision in the Master Plan approved by the Port Commission on 06-12-05 that calls for the construction of a cultural interpretive center highlighting the marsh and marine environment, suggests a partnership with Edmonds Community College and other educational intuitions, expanding the trail along the marsh to the fish hatchery, and installing interpretive displays and signs. The State GMA asks municipals to focus population growth in designated urban areas to reduce sprawl. She preferred mixed use development in areas throughout the City such as Westgate, Five Corners, Perrinville, Firdale and along Hwy 99. The GMA also asks jurisdictions to protect wetlands, frequently flooded areas and lands within geologically hazardous areas. Land use policies should consider the inherent characteristics of the land, its soils, water table and topography, setting and surroundings as well as the inevitable sea rise from climate change.

**Steve Bernheim, Edmonds**, provided a visual presentation that included a statement made by Mayor Earling in the 07-08-11 *Edmonds Beacon* during his campaign (read by Mr. Bernheim), "I solidly support and will lead as mayor a real economic development plan that maintains the status quo on building heights to create jobs and vibrant neighborhoods that keep Edmonds a special place to live." He provided several photographs along with commentary asking if Harbor Square would solve the City's problems, what would a Plan look like. Noting the Port makes many promises and asking whether the real costs of the plan had been considered, and whether alternatives had been considered such as small buildings, fewer buildings, protection of community standards, residences, low level offices, or retirement community with some publicly assisted units.

Mayor Earling clarified because all the commentary was in Mr. Bernheim's voice including the quote from the *Edmonds Beacon*, he did not want the public to think he had made the comments in the remainder of Mr. Bernheim's presentation.

**Katherine Gold, Edmonds**, recalled a distinction made at the 12-04-12 public hearing between public and private views. She agreed the City was not responsible for homeowners' private views; however, the public's views will be affected because taller buildings around the waterfront will have a confined spatial feeling. She relayed concern with the impact of taller buildings on the sense of open space while walking or driving and the additional congestion and population density created by a five story building. Maintaining the building height at the current 35-feet will lessen the impact of density on the public and wildlife. Although an opportunity for economic development, she hoped the development would include open spaces for gathering, sculpture and other art to enhance the waterfront, and to attract interest and appreciation of the Edmonds Marsh. Although an opportunity for tourism, new property owners and increased tax base and commerce, she urged the Council to maintain the quiet setting while structuring a thriving new part of the town attractive to all. If the Harbor Square Master Plan is incorporated into the Comprehensive Plan, she suggested a compromise, maintaining the 35-foot height restriction as well as incorporating enhanced open spaces. She urged Council not to let developers Ballardize Edmonds.

**Rowena Miller, Edmonds**, recalled hearing "high rise and density," in the 70s, 80s, 90s, 2000s and now 2012. She reminded Council they are not obligated to follow the Planning Board's recommendations and hoped the Council does not in this case. She recognized the City needed revenue but felt the proposed Master Plan did not fit Edmonds' citizens' vision. She urged Council to consider the long term costs including sewer, stormwater, water, traffic, road maintenance, possible legal costs, construction

congestion, fire and police. Although benefits have been cited, they are unknown and there are other ways to save the marsh such as environmental grants and citizen efforts. She preferred the Port repair existing buildings and property and not use the Edmonds community to rescue the Port and in the process destroy Edmonds' character. She relayed comments from **Norma Bruns, Edmonds**, that the waterfront is precious and hopes that the Council has a vision for the future. Ms. Bruns hoped the Council has the guts to stand fast to preserve Edmonds' small town feel and quality of life. Ms. Miller urged the Council to vote no on the proposed Comprehensive Plan amendment.

**Ernie Collins, Edmonds**, a 12 year resident of Edmonds who has lived in 21 places over 44 years of marriage, commented they have experienced similar situations with strong emotions on extreme sides of the issue. He referred to perceptions, misconceptions, miscommunication and listening to opposing viewpoints. The Port has presented a plan for development; although the pros and cons can be argued endlessly, the responsible reaction is not to complain or resist but to offer another solution. The City has a process in place to allow the Master Plan to proceed with caution. He urged the Council to seriously consider the Port's proposal and work together to find a way to resolve it.

**John Reed, Edmonds**, relayed the Alliance of Citizens for Edmonds' (ACE) position: ACE does not support the incorporation of the Harbor Square Master Plan into the Comprehensive Plan even if all Planning Board recommendations are incorporated. Specific reasons are detailed in ACE's 12-03-12 letter to the Council; as currently conceived the Harbor Square Master Plan is not in the public interest, which is one of the criteria it must meet for incorporation into the Comprehensive Plan. ACE supports responsible development and redevelopment that respects and compliments the character of Edmonds, its small town atmosphere and its general low level architecture. ACE does not oppose change and recognizes change is inevitable, but strongly believes change should be carefully evaluated in light of what exists in Edmonds and the effect of change on the community and residents. He referred to the Group of 33 effort in 2007 related to all properties along the tracks from Harbor Square to Main Street. The proposed alternatives from that process were all multi-family residential mixed use projects ranging from 4-10 stories. Citizens were opposed to the substantial building heights and were concerned with the absence of destination alternatives. He referred to two special public meetings ACE held in March 2008 to discuss potential uses for the properties. The results were summarized in a presentation to Council on April 1, 2008. He summarized the Port, City and the public should work together to develop a beneficial alternative vision for the Harbor Square site, taking advantage of the prime location near the waterfront. ACE supports a process from the bottom up rather than the top down, sponsored and facilitated by the City. Including citizens, property owners, and organizations is a logical next step in the process.

**Eric Livingston, Edmonds**, urged Council not to support the Port's request. The documents he has read do not contain any meaningful discussion regarding Chapter 16.10(B), the general purpose of residential zones, which includes any growth or development, should strive to preserve for itself and its neighbors the following values: #4 states freedom from air, water, noise, and visual pollution. 16.10(E) states protects residential uses from hazards, nuisances such as fire, explosion, noxious fumes and noise, odor, dust, dirt, smoke, vibration, heat, glare, heavy traffic which may result from more intensive land uses. The Port's application to incorporate the Master Plan into the Comprehensive Plan states their intent to have Harbor Square rezoned to allow up to 350 residential units. He pointed out the intent of Chapter 16.10 was to protect residential uses from the hazards listed in the ordinance. Given the location of Harbor Square, he questioned how residential uses would be protected from train noise, fumes, vibration, etc. He questioned how much of Chapter 16.10 was needed to approve the request. He questioned the process whereby environmental issues are resolved at the time of rezone, finding that approval of the Port's request was in conflict with Title 16.10. He recommended the Council return the Port's application and ask the Port to return with a plan that does not have a residential focus.

**Keeley O'Connell, Edmonds**, speaking on behalf of Friends of Edmonds Marsh (FEM), reiterated their focus during this process was on the health of the Edmonds Marsh now and into the future. She noted

there were many valid concerns regarding how redevelopment at Harbor Square could affect the Marsh such as density, amount of impervious surface now and with redevelopment, protection and enhancement of existing and potential future vegetated buffers, and stormwater impacts. She noted there are a lot of assumptions and little data to determine the impacts and/or how redevelopment will address the existing impacts including unfiltered stormwater entering the marsh from and through the site and existing minimal buffers. FEM feels redevelopment is an opportunity to address some of the current impacts and look at how the site may function in the future to protect the marsh. FEM feels this is an opportunity to initiate a process to study and understand impacts. FEM supports adoption of the Harbor Square Master Plan into the Comprehensive Plan as an opportunity to move forward to study impacts using real data, not assumptions.

**Mike Echelbarger, Edmonds**, agreed with the Planning Board's recommendation, pointing out the view corridor study that contemplates 65 foot heights from 43 locations indicates there are minimal impacts to views. The action before the Council is not a specific proposal but rather a broad-brush concept Comprehensive Plan amendment. Questions about soil conditions, etc. will be resolved in the next process. He pointed out the stadiums in Seattle are all build on the same type of material that is under the current Harbor Square. He did not agree with all concepts such as the L building on Dayton and along SR 104, recommending it be on one or the other, not both. He also did not agree with the amount of commercial development proposed in the Master Plan, approximately 50,000 square feet. There is already too much commercial development downtown as evidenced by vacancies over the past 10 years. He counted approximately 15 vacancies recently in the area of 5<sup>th</sup> & Main. The City needs more residential development in the core which results in more people walking, more services, fewer vacancies and a more vibrant downtown.

**James Claussen, Edmonds**, commercial real estate managing broker, certified investment manager, said people cannot invest in commercial properties in Edmonds under the present restrictions as there is no return on investment under the current height restrictions. The economic study conducted by Heartland in 2004 found 2-story buildings were not economically feasible; at least 3 story buildings were needed for development to be economically feasible. As a result, there has been very little growth in Edmonds from 2000 to 2010 compared to other cities. If these height restrictions existed in the past, the City would not have allowed the library, Chantrelle's, the Edmonds Theater or the Edmonds City Hall. He sold Old Milltown a few years ago for \$3.2 million; a developer added \$3 million in improvements. The bank took over the property and it was resold last year for \$2.535 million, a huge devaluation. After expenses, the bank received 33% on their money from the sale of Old Mill Town. As a result of building height restrictions, the value of commercial properties is decreasing but residential properties remain very high. He pointed out the City's economic challenges have resulted in four police officers not being replaced when they retire December 31 which affects the livability of Edmonds. He expressed concern with Councilmember Bloom's statement on the blog regarding why she opposes the Harbor Square Master Plan when the public hearing had not yet been completed.

**Drake Bradley, Edmonds**, Bella Coola Condominium on 5<sup>th</sup> Avenue, referred to the statement that the City has no responsibility to protect private views, only public views. However, the study regarding view impacts includes statements about assessing the impact of increasing development height limits above 35 feet on the views currently enjoyed by neighboring property owners which indicates there was interest in private property owners' views. However, the methodology of the study did not address those concerns. The study addressed public view corridors only; all observation points were in the middle of streets or intersections and in most cases the view was blocked by adjacent building lining the street. He noted most of the observation sites did not represent a test of whether the height will interfere with views from residences and restaurants with some elevation. He suggested tethering a balloon to a 55-foot height on the northeast corner of Harbor Square and allowing residents to view it.

**Charles Gold, Edmonds**, commented his private view is not affected and he has no direct or indirect personal or financial interest in the project. He thanked the Council for passing a balanced 2013 budget. He commented the way Council deals with this issue will affect Edmonds as a getaway recreational destination as well as residents' quality of life. He expressed concern with the use of the word conceptual, finding it is disingenuous as it allows people to be lulled into the idea that the plan is conceptual when it will in fact happen if the Port is not required to conform to the 35 foot height limit. He was concerned the unique public view of Edmonds would be lost, walled off by massive buildings from the ferry to the marsh, obscuring sunsets and views. Citizens should not have to lose the lovely, low-key, laid back, beachside presence that is attractive to retirees and young families that support good schools. Edmonds does not need a large influx of young singles with their late night clubs, noise and other police problems. He feared older citizens may move out to gain a restful and attractive atmosphere. He referred to a statement in the Port's strategic plan that some development issues could be put to a vote of the District residents, particularly projects involving significant tax funds and/or major community impacts.

**Bob Rinehart, Edmonds**, commented due process and due diligence is messy. In this case, the Council is presented with a choice, halt or move forward with a process, not make a final decision. The Council is bombarded with emotion, speculation, strong opinions and even a few facts. Although he did not agree with many of the points made at the 12-04-12 public hearing, he admired and respected the passion and conviction. He urged Council to avoid the Iowa straw poll syndrome where the ardent who voted did not represent everyone. He commended the Council on their efforts to gather public opinion but urged them to determine broad public opinion, not just the opinion of people who come to Council meetings or submit letters to the editor. He also asked Council to use their own judgment. He spoke in favor of moving the project forward, seeing the potential of bringing a new and exciting dimension to Edmonds. He urged the public to read the questions submitted by Councilmembers Buckshnis and Bloom and the responses provided by staff and the Port. He referred to a response to a question submitted by Councilmember Buckshnis, that this is a non-project action, not an action to approve a development proposal that will result in a physical development of the site. He noted this is only one of many steps.

**Don Kleuenu, Edmonds**, resident of a view condominium, recognized views are subject to change on the whim of the legislative body. He urged Council, should they choose to approve incorporating the Harbor Square Master Plan into the Comprehensive Plan, to limit the height of the development. Although many have said this is only the beginning of the process and there will be environmental reviews, he feared once the 55-foot height limit was set, the developer would demand it be retained. If he was on Council, he would want some of the questions provided via a full SEPA review before a decision was made.

**Andrea Bonnicksen, Edmonds**, explained she moved to Edmonds 6 months ago from Illinois due to the view, the marina, the beachfront, the vibrant downtown, compact buildings and manageable traffic. A couple she spoke to who are planning to move to Edmonds said they were attracted by the view and the downtown personality. She appreciated the efforts of the Port to develop the Master Plan but did not believe it would enhance Edmonds' uniqueness and appeal. If approved, the Master Plan will result in densely situated structures that overwhelm the waterfront, create traffic, interfere with the view and look unappealing. Her questions included: Why not make investments to existing buildings in the area; some offices are vacant? Will people move to the apartments/condominiums when there is noise from the trains, particularly if coal trains become a reality? What will the impact be to the marsh and wildlife? What will the impact be on downtown? Is this mega plan necessary? Ms. Bonnicksen preferred Edmonds continue its current vision for the waterfront; one that does not involve tall buildings, and to make changes that will attract people, draw praise, preserve natural assets and showcase them as a long term investment.

**Ron Clyborne, Edmonds**, representing himself and a group of ardent people who are unable to be involved, the age group of 25-40 who are busy raising families, building careers and have limited time. One individual requested he read her email to the Council: she encouraged the City Council to incorporate

the Harbor Square Master Plan into the Comprehensive Plan. An Edmonds resident for over 20 years, attending Edmonds schools and living in multiple Edmonds neighborhoods, she chose Edmonds to raise her family and built a successful career with a professional services firm based in downtown Edmonds. She is involved in the community, has a child in the School District and helps with community events. She considers herself part of the generation XYZ. She recognizes that decisions made today will set the community tone for years to come, affecting her lifestyle and her child's future. The Harbor Square Master Plan is appealing to her and her generation because it will include items they find imperative such as affordable housing, recreation and entertainment choices, convenient transportation and expanded services. Development will draw new people and businesses to the Edmonds area which is attractive to people who want to avoid a commute to Seattle. This is an opportunity to provide a variety of new choices and attract new people and money, resulting in an overall positive increase to the tax base. Disallowing the development means losing young couples and families to other cities that provide amenities that appeal to them. Mr. Clyborne, father of 4 and grandfather of 5, urged Council to take the process to the next step and allow the process to continue.

**David Jones, Bothell**, explained he works in Edmonds and is in the process of purchasing a home in Edmonds. He commented on the challenges someone from his demographic faces moving to Edmonds, recognizing the charm of Edmonds comes at a substantial price tag. He understands the concept of legacy, the process of developing maturely and not losing the charm. He was not for or against increased building heights but encouraged the Council to do their due diligence on the Harbor Square Master Plan, consider the facts and allow the process to continue. He commented on the difficulty of creating a young professional network due to the limited number of young professionals in Edmonds.

**Sharon Powell, Edmonds**, resident of a condominium four blocks from the railroad crossing, explained in the summer when doors are open, conversations have to be stopped until the train passes. She recalled 102 Sunset did not sell well; it is located by another railroad crossing. She questioned the advisability of having residents at Harbor Square when the trains blow their horns through both crossings. She envisioned the 55-foot height limit would be as high as hills across the sound, eliminating their view completely. She explained they pay as much in taxes for 1200 square feet as they did in Shoreline for 2800 square feet.

**Jim England, Edmonds**, explained he likes the character, views and personality of Edmonds. The Harbor Square Master Plan is a concept for 55 feet; he recommended consideration be given to another concept because it does not work at 35 feet and it destroys the personality of the downtown area. He feared the Council was selling out for increased taxes; the increased height does not work in that area. He suggested if people wanted to have all kinds of shops and high rises, they should move to Bellevue.

**Darrol Haug, Edmonds**, a 38-year resident who has served on the Economic Development Commission (EDC), CTAC and the levy committee, speaking as a private citizen tonight, explained one of the EDC's seven recommendations to the City Council was to develop and support a process for redevelopment of Harbor Square. The Council approved those recommendations and now that process is moving forward. He referred to Mr. Rinehart's suggestion that the Council listen to everyone, not just those who speak to and write to the Council. He referred to citizens' support (72% in favor) for a statement in the strategic plan survey to review and approve a long term master plan and agreement for Port of Edmonds Harbor Square property. He encouraged Council to gather as many facts as possible. He displayed information provided to the Port on December 13 regarding revenue estimates. Mr. Haug urged Council to allow the process to continue in order to gather data to help with making a decision on the best use of the Harbor Square property.

**Jamie Reece, Edmonds**, purchased a home in Edmonds in his early 20s. The culture of Edmonds brought him here; the schools and community have kept them here. He commented responsible growth and renewal is key to Edmonds' economic and cultural future. The waterfront deserves the same innovative

renewal seen over the past decade in the downtown core. To those who support delay or believe that incorporating the Harbor Square Master Plan into the Comprehensive Plan is an over-reaction to the current economic downturn, he shared advice given to him early in his career by a business mentor, don't wait to build an ark until it's raining, by then it's too late. If the City wants to be stronger and weather future storms it is the City's responsibility to ethically grow and develop the City, to provide the best resources to current citizens while attracting people and businesses to the community. Even passing the Plan today, it will be years before renewal occurs. If the Plan is tabled, he feared it would be decades before the waterfront was renewed. He shared the concerns with height limits and the desire to protect views and property rights but urged the community not to be ruled by fears of hypotheticals or impractical zero tolerance policies. After five years of development and open consideration, the Plan is a great example of a proposal that should be supported and approved. He encouraged Council to approve the Plan and take the next step in strengthening Edmonds and providing the next great community center for family, friends and neighbors.

**Greg Urban, Edmonds**, Chamber Ambassador and Chamber Board Member, commented people visiting Edmonds are struck by the community's character and environment; the downtown core and the waterfront are always the main attractions. When accompanying visitors to Edmonds, no comments are ever made about Harbor Square or the Antique Mall property as there is nothing to attract visitors and the sites are not very inviting. The Port's proposal is an idea with a five year window. Many Councilmembers' terms will be up before action is taken on future plans. The Plan is a process, a step toward development, a step toward increasing residential and economic capacity of downtown. This is an idea that needs to be considered and there are two future opportunities for the Council to be involved.

**Kim Dirkson, Edmonds**, stated the City needs to find a solution that generates revenue quickly and for the long term that is demographically correct. With the graying of America, it makes sense to build a transit-based community closer to link light rail and current bus routes to connect Edmonds with major medical and healthcare facilities in Seattle as well as arts, sports and cultural venues. A longtime member of the Harbor Square Athletic Club, she questioned how redevelopment of Harbor Square would impact the Club. The owners signed a 30 year lease and spent a substantial amount to make improvements. She questioned if the Club would need to be moved in the future and how it could retain its full service status. The Club has been an important member of the community for two decades and there is no other health club in South Snohomish County or King County that offers these amenities. She questioned how the density of the proposed development would impact the marsh and traffic. She acknowledged the City needed to do something with Harbor Square but it should be done intelligently, without emotion and looking at facts and the environmental concerns for the marsh. She urged Council to think about these things while developing a great solution for the City.

**Elliott Shaw, Edmonds**, explained his family took over a project at 155 3<sup>rd</sup> Avenue two years ago and was told by the Planning Department to cut the building down 1½ inches because the City was strict about building heights and would not approve a variance. He was not opposed to redevelopment of Harbor Square but was opposed to the 55-foot height as he wanted his view protected. He referred to realtors' advertisements of property in Edmonds; a vacant view lot listed for \$1.199 million and another listed for \$999,000. He noted a commercial tenant on the second floor of their building pays \$2500/month for less than 1500 square feet with a view of the Olympics; the project along Dayton Street will block that view. He did not have time to understand the due diligence process as he often works 12-14/hours day. He spoke in favor of preserving the 35-foot height limit, noting a 3-story building is profitable for his family. They purchased the building for \$450,000, put \$200,000+ into it and it brings in over \$11,000/month, a 4 ½ year return on investment.

**Kevin Clarke, Edmonds**, provided a copy of an Interlocal Agreement between the City and the Port regarding the Edmonds Marsh Park, located in the north end of Edmonds Marsh, a 25-year agreement that ends in 5 years. There is an opportunity to extend the agreement into perpetuity and continue to maintain

the walkway, the view vistas and the boardwalk. He relayed a comment made to him expressing surprise that he voted in favor of incorporating the Harbor Square Master Plan into the Comprehensive Plan. Mr. Clarke explained he asked a lot of questions during the Planning Board process, and voted yes because he wanted it to come to the City Council for a decision. He did not believe the non-elected officials on the Planning Board should make that decision. Few people attended the Planning Board public hearing; he was glad to see the number of people participating at the Council level. He recognized the importance of the process and for the public to provide input. He encouraged Councilmembers to walk the south end of Lake Union including the boardwalk and experience the height limit that was placed on the buildings compared to Carillon Point. He noted both have a place, both are urban environments. The Council's decision is what kind of development should be allowed at Harbor Square. He hoped to preserve the Edmonds Marsh Park.

**Roger Hertrich, Edmonds**, a 40 year resident who served on the City Council 20 years ago, explained he has participated in many land use processes in the City. He did not support making a change to the Comprehensive Plan, fearing if a change was made for one site the City would be required to make changes for all properties in the area. He expressed concern with the Port's proposal for 55-foot height limits, commenting the Port apparently does not understand that citizens value building heights. He recalled when he ran for City Council 20 years ago, building heights were an issue and they continue to be an issue during every election. He referred to issues raised regarding the Port's application including height, the Marsh, setback, grandfathering existing development, transit use, soil conditions, liquefaction, etc. He did not support having residential uses in that area. He concluded if the Council delays a decision until after the first of the year, a decision can be made at the end of 2013.

**Victor Eskenazi, Edmonds**, a new resident in the Esperance area, said the presentation regarding revenues and jobs should have included costs and identified what type of jobs would be created. He suggested delaying a decision on the 55-foot height limit and considering it when development is proposed.

**Ron Wambolt, Edmonds**, commented his purpose was to serve as a fact-checker. Many citizens, including him, oppose higher heights in the core downtown area, but it is not valid to extrapolate that belief into saying citizens do not want higher heights in the remainder of the City. The 55-foot height limit is included because the Port is trying to attract a developer and analysis reveals developers will not be interested with 35-foot height limits. Although the mayor has a great deal of authority, he does not decide heights for the City as a former Councilmember suggested. He noted citizen comments are much of the same doom and gloom that was stated regarding the Pt. Edwards project, which has been a good development for the City; Edmonds' population was shrinking, Pt. Edwards added 500-600 people and property tax revenue. He pointed out Harbor Square Athletic Club is not part of this proposal; their lease will be honored. If the Club relocates, it will be via mutual agreement. Regarding the cost of a parking structure, he pointed out that will not be a cost to taxpayers; it will be paid by whoever redevelops the property. He summarized Harbor Square is already developed; it is proposed to be redeveloped.

**Bill Trimm, Snohomish**, planning consultant working with the Port and Harbor Square Steering Committee on the preparation of the Harbor Square Master Plan, relayed the Port believes this is an important first step, having the opportunity to create a unique and sustainable development that if done properly and consistent with the planning principles in the Harbor Square Master Plan, can be an asset to Edmonds. He offered several facts as the Council prepares to deliberate on the conformance of the Plan with the City's code:

1. The Harbor Square Master Plan is a vision, a strategy and a conceptual representation of an idea, a thought and a process developed by the Harbor Square Steering Committee of what can take place on the 11 acre Harbor Square property. It is not a development project.

2. The Master Plan will be used as a starting point in a process of working with the City and the community to eventually attract a responsible developer to propose a development that adheres to the planning principles in the Master Plan and the existing Comprehensive Plan policies.
3. Incorporating the Master Plan in the Comprehensive Plan serves to add additional public policies regarding how the Port believes the property should be developed. In regard to whether action on the Harbor Square property would set a precedent for the other properties on the waterfront, he referred to a 09-26-12 memo prepared by the City Attorney that states the City has discretion about implementing the Comprehensive Plan and different zoning districts that can implement the same Comprehensive Plan designation. The Plan is only for Harbor Square; it does not affect or set a standard for other properties in the waterfront area.
4. The view shed analysis conducted by the University of Washington focused on view impacts from public places if a hypothetical building were constructed at 65 feet. There are no buildings proposed at 65 feet, the proposal is 55-foot building heights.

The tool to evaluate specificity of future development at Harbor Square will be SEPA. Planning staff and the Planning Board have both found the proposed amendment conforms to the approval criteria in the City's code and the Port urges Council to approve the Master Plan to keep the options open regarding what can happen at Harbor Square.

**Bruce Witenberg, Edmonds**, explained he has served as a member of the EDC since 2009 and currently as the Vice Chair, was two term chair of the Planning Board, member of the Highway 99 Task Force and also the Harbor Square Steering Committee. He supports the Master Plan and urged Council to adopt it. The Port and City have undertaken an open/transparent process developing the Plan. He has not seen another issue that provided as much information to the public or opportunities for public input. The Steering Committee was comprised of a diverse group of citizens and all meetings were public. The Port held open houses, presentations and updates were provided to the Port Commission, Planning Board and EDC. The Council has a liaison to the Port Commission who communicates Council concerns to the Port and vice versa. Presentations were made to civic groups. The Port mailed brochures to the Edmonds community and provided notice of its public hearing to 1100+ residents, in excess of the requirement. The Planning Board spent at least 6 meetings discussing the issue and held a public hearing. The Port and City responded orally and in writing to extensive questions from the Planning Board, Council and community. Articles have been written in local media and documentation is available on the Port and City websites. Citizens had opportunities to comment at Port, Planning Board, EDC and Council meetings during the development of the Plan. The Port and City outlined subsequent opportunities for Council and public input when a specific project is proposed. To those who suggest environmental and geotechnical studies are needed before the amendment can be considered, he stated it is more appropriate for a developer to pay for that due diligence rather than taxpayers. He was concerned with Councilmembers who advocated for public input including two public hearings but have made up their minds regarding how they plan to vote before all public input has been received. He summarized there has been a 3 year open and transparent process. It is time for citizens to have a yes or no decision from elected officials this year.

Mayor Earling declared a brief recess.

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

**Bob McChesney, Executive Director, Port of Edmonds**, thanked the audience members who spoke for their ideas and input, both pro and con. The Port believes there has been an open, respectful, and transparent process over the course of three years. The process validates the plan; it is a good plan, a reasonable compromise that gives the community what it needs without jeopardizing what it values. If further deliberation by Council is necessary, the Port is amenable to a continuance. The Master Plan is not a perfect plan but this is about a process. This is a way to move forward and there are many opportunities as the process continues for details and issues to be resolved. He thanked the Mayor, staff and Council, remarking this is an important milestone in the process. On behalf of the Port, he thanked the public who

have taken the time to express themselves. He summarized it is time to move forward, but up to the Council to determine the proper course of action.

Council President Peterson thanked the Port Commissioners who were in the audience for attending tonight's meeting. He expressed appreciation for the amount of time the Port has put into the process. The City Council has looked at the Master Plan over six weeks but pointed out during that time the Council also passed a budget. There have been some questions asked by the Council and the public and answers provided including by the Friends of the Marsh regarding their support for moving the process forward. He suggested continuing the public hearing into 2013, suggesting the fifth Tuesday, January 29.

Councilmember Buckshnis pointed out there are differences between development codes, zoning, the Comprehensive Plan, the Harbor Square Master Plan, and the Shoreline Master Plan, and why the Master Plan includes 55-foot heights but not a 100-foot buffer. She suggested discussing development codes including form-based codes before making a decision on the Harbor Square Master Plan.

Councilmember Petso relayed her understanding that if the Council delayed a decision until 2013, it can be adopted any time as a subarea plan or as a Comprehensive Plan amendment with the other 2013 docket items. Mr. Taraday answered yes, explaining the Council would have more flexibility if it was treated as a subarea plan; it can be adopted whenever the Council wishes.

Councilmember Petso asked who chose whether it is adopted as a subarea plan or a Comprehensive Plan amendment and whether it made any difference other than schedule, such as whether the standards were less or greater for a subarea plan. Mr. Taraday answered either way it is a Comprehensive Plan amendment and all Comprehensive Plan amendments go through the same process. In this case, where the Harbor Square Master Plan is a standalone document, the Council can easily justify treating it as a subarea plan. He clarified the Council could not treat any Comprehensive Plan amendment as a subarea plan; because of the way the Harbor Square Master Plan is formatted and the analysis and work done to create the document, the Council can treat it as a subarea plan and adopt it on whatever schedule works for the Council.

Councilmember Petso asked if any precedent was set in adopting the Harbor Square Master Plan as a subarea plan; could another property owner request their amendment be adopted as a subarea plan. Mr. Taraday explained treating something as a subarea plan does not require the Council to act within a particular timeframe. Property owners who seek a Comprehensive Plan amendment may want the certainty that the Council will act on it by the end of the year with all the other docketed Comprehensive Plan amendments. It is easy to make a distinction regarding the Harbor Square Master Plan because it has been through a three year process; most property owners will not do that before beginning the City's process. That could be used as a distinguishing characteristic if there was concern with treating other Comprehensive Plan amendments as subarea plans.

Councilmember Fraley-Monillas pointed out there have been 57 testimonies and 2 public hearings and many citizens have now spoken twice. She recognized the value of public input however noted many of the same comments are being made. She was unsure another public hearing would be beneficial to the process and whether any new information would be provided at another public hearing.

Mr. Taraday explained under the City's code a clock begins to run once the public hearing has been concluded. He referred to 20.00.040, Council action on amendments, which states within 60 days of receipt of the Planning Board's recommendation and the completion of the public hearing, the City Council shall consider the recommendation and may at that time or subsequently approve with modifications or disapprove the proposed amendment based on the findings. He noted it was not entirely clear based on the wording of the section but out of an abundance of caution, he suggested continuing the public hearing to avoid the Council being forced to act within 60 days. He suggested if there was a

concern about duplicative comments, the Council could continue the public hearing for those who have not yet testified.

Councilmember Yamamoto expressed his thanks to the members of the public who spoke during the Council public hearing as well as participated during the process. He was a member of the Harbor Square Steering Committee. Although he preferred the Council take action tonight, he acknowledged there were some questions the Council still needed to have answered. He asked whether any action was necessary to designate the Harbor Square Master Plan as a subarea plan. Mr. Taraday answered it was not inherently a subarea plan but the Council had every right to treat it as a subarea plan but was not required to.

Councilmember Yamamoto asked whether adjoining property owners outside the Harbor Square property could seek the same height limits. Mr. Taraday answered anyone could ask for it but this is a completely legislative process. There may be good reasons for distinguishing this property from other properties, even property across the street. Treating this as its own subarea provides a basis for identifying development regulations that apply in the subarea that do not necessarily apply anywhere else in the City.

For Councilmember Buckshnis, Mr. Taraday explained a subarea plan is an overlay within the Comprehensive Plan. Within the Comprehensive Plan there are various land use designations. If the Harbor Square Master Plan is treated as a subarea plan, it retains the Comprehensive Plan land use designation and overlays it with a subarea; adding another set of Comprehensive Plan policies to the policies that already apply to the property. Neither of those are zoning; zoning will occur later. Zoning must be consistent with the Comprehensive Plan designation; whatever the Council decides to do with the Harbor Square property, the development regulations and zoning must be consistent with the Comprehensive Plan decision.

Councilmember Buckshnis inquired about the 60 day timeframe. Mr. Taraday explained once the Council completed the public hearing, there is an argument to be made that based on the language in the code a decision is needed within 60 days of the date the public hearing is completed. If out of an abundance of caution the Council wanted to preserve schedule flexibility and not be forced to act within 60 days, he recommended not completing the public hearing tonight. Whether it is adopted as a subarea is a totally different issue and has nothing to do with the 60 day timeframe.

**COUNCILMEMBER JOHNSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO CONTINUE THE PUBLIC HEARING UNTIL THE FIFTH TUESDAY, JANUARY 29, 2013, AS PROPOSED BY COUNCIL PRESIDENT PETERSON.**

Mayor Earling asked whether that would be an open public hearing for anyone to speak or limited to those who have not spoken previously. Councilmember Johnson answered she had no preference.

Councilmember Petso suggested the fastest way to move ahead may be to turn around and take another road. There is potentially a fatal flaw in the process; it started with minimal consideration of alternatives and common ground. She recalled a citizen asking her what she wanted on the Pt. Edwards site, and her response that she envisioned a conference center, hotel, public space and a coffee shop. That option was never considered. At the time she recalled there was only one proposal; she felt in that same position now. She invited citizens to evaluate what everyone agreed on which suggests not starting with building heights but rather protecting the marsh or what constitutes a pedestrian focus, destination, or a connection between downtown and the waterfront. By considering alternatives she could determine whether the way forward was actually to turn around and take another road.

**THE VOTE ON THE MOTION CARRIED UNANIMOUSLY.**

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO EXTEND THE MEETING FOR 30 MINUTES. MOTION CARRIED (6-1), COUNCILMEMBER FRALEY-MONILLAS VOTING NO.**

Council President Peterson pointed out the Port is a public entity. The Port deserves a great deal of respect for the open process, inviting citizens to participate and seeking compromise over the past three years. The Port of Edmonds' elected officials are bringing this proposal forward; they answer to the citizens in the Port District the same as the Council answers to citizens. The Port Commissioners deserve citizens' appreciation and respect for the work they do.

Councilmember Yamamoto commented options were considered; the public participated in choosing the option they preferred and the majority agreed on the proposal in the Harbor Square Master Plan.

Councilmember Fraley-Monillas encouraged the public to contact Port Commissioners, not just the City Council.

**8. AUDIENCE COMMENTS**

**Darrol Haug, Edmonds**, speaking as a private citizen, congratulated the Council on the budget, commenting it was done early, harmoniously and the budget was balanced. He referred to the budget as the "flower and fiber budget," flowers because the flower program was preserved and fiber because the Council supported all the fiber optic initiatives. Speaking as Chair of the CTAC, he thanked the Council for their support of the fiber project, assuring everything will be done to enhance revenues from fiber and to secure reliable service for the City. Speaking as a private citizen, he pointed out the Budgeting by Priorities process will be a wonderful exercise and he urged the Council to move forward with it as fast as possible. When the EDC was restructured, the Council removed its ability to consider all revenue sources. He has communicated with Councilmembers regarding revenue sources that would generate up to \$1.6 million. He encouraged the Council to incorporate revenue growth in the Budgeting by Priorities process prior to deliberations on the 2014 budget.

**Donna Breske, Snohomish**, Edmonds property owner, relayed Mitch Sorros purchased two partially constructed buildings located on 84<sup>th</sup> Avenue West behind the TJ Maxx store. When it was discovered the roof exceeded the 30-foot height limit of the R-1.5 zone, in accordance with direction from the building inspector, the roof framing was removed and reconstructed to be in compliance. The buildings then passed the height inspection and Mr. Sorros completed the project. During final inspection to obtain an occupancy permit, the Planning Department discovered the building inspector was not aware of the City's code requirement, 16.20.030(1) that in addition to the 30-foot height limit a minimum roof slope of 4:12 was required. Mr. Sorros was directed by the Planning Department to request a variance. The staff recommendation to the Hearing Examiner, prepared by Gina Coccia, stated the area is a mix of commercial and residential. The buildings at 30 feet are an excellent transition between the 60-foot height limit of the General Commercial zone to the east and the 25-foot height limit of the RS-8 zone to the west. There are no views at stake so the development protects residential qualities. The staff recommended denial of the variance request, stating staff was unclear if the situation on the property constitutes a special circumstance. The Hearing Examiner concurred with staff's recommendation and the variance was denied. Mr. Sorros lost the building in foreclosure as he was unable to obtain an occupancy permit. Ms. Breske urged the Council and Mayor to get involved in changing the culture in the City that allows staff to wreak havoc on the lives of citizens. Staff needs training on reading and interpreting the code to help people who invest money to be successful.

**Natalie Shippen, Edmonds**, commented the premise of democracy was keeping things simple enough so the public listening can understand. She questioned what was meant by subareas, viewing it as a delaying

tactic. She did not believe Councilmembers did not have enough information at this point to make up their minds. She urged the Council to take a vote and not waste time discussing subareas.

**Valerie Stewart, Edmonds**, referred to a letter she and her husband wrote to the City in May. They designed a green home, a demonstration project for the City and for them, and it was approved after 9 months. However, they were unable to build the home due to the economy, design dollars spent on changes, increase in connection fees and the amount of the permit fees. She explained green building is an integrated design approach; all the systems designers are involved. She relayed suggestions from the green team they hired to improve the process:

- Make the code easier to navigate and incentivize green building
- Train and develop a green team that can move a project forward in a systems-integrated design approach rather than piecemeal
- Have all departments involved be in close proximity to each other
- Assign a point person to be available for questions at all times on green projects
- Expedite the permitting process for green building
- Reduce fees to reflect reduced loads on City systems
- Make it easier and cost effective to integrate green stormwater infrastructure

She recognized the challenges developers experience developing in the City such as unpredictability in the timeline and cost and confusion in the code, particularly stormwater. She urged the City to fix this in order to help forward-thinking developers and citizens be successful in building projects that are more sustainably designed. Sustainability is responsible stewardship of natural human and financial resources through a practical and balanced approach.

**Ron Wambolt, Edmonds**, agreed with Ms. Shippen. He also agreed with a statement made by a CNBC staff member that the difference between the private sector and government is the sense of urgency; government bodies lack any sense of urgency. The Council tonight proved that observation. He questioned why the Council needed a third public hearing, noting there is not one Councilmember who does not know how they plan to vote. The Council has had enough time to study the issue and is just wasting everyone's time.

## **9. ANNUAL REPORT - CITY ATTORNEY**

City Attorney Jeff Taraday reported Lighthouse represents the Council in six pending cases, three are cases they inherited, Precision Earthworks, Locke v. Edmonds, and Myers v. Edmonds; two are cases where the facts arose while they were City Attorney; and one, the New Cingular case, nearly every city in Washington was sued for the same relief. He provided an update on each case:

- Precision Earthworks v. City of Edmonds – this is a dispute over a construction contract for Haines Wharf Park. A recent mediation was partially successful; tonight the Council approved a change order for \$139,100 which settled a claim from a subcontractor, Kulchin, in the amount of \$253,000 plus interest. The remainder of the case is still pending.
- Locke v. City of Edmonds – this is a case that has been going on since 2005. Lighthouse hopes to resolve it in 2013. It is a dispute primarily over a driveway that connects the Locke property to Pine Street but there are other tangential issues related to stormwater and building permit. Lighthouse has been working cooperatively with Mr. Locke to resolve some of the issues and is optimistic some can be amicably resolved.
- Olson v. City of Edmonds – this is a LUPA matter involving a final plat approved by the City. The case has been on hold for a period of time to allow for negotiation. The Olsons and Thuesens are trying to resolve the matter in an amicable way.
- Humann v. City of Edmonds – this is now two matters, first a whistle blower complaint pending before the Administrative Law Judge regarding whether Mayor Cooper's termination of Ms. Humann was in retaliation for a protected whistleblower activity. A hearing is scheduled in

March. The second is a Superior Court proceeding to determine whether the City should be required to submit the City Council's legislative budgetary action, to eliminate the Human Resources Director, to the ALJ for review as a second act of retaliation. In the absence of a settlement, this matter could continue for some time.

- New Cingular Wireless v. City of Bothell – this is a lawsuit seeking a refund of taxes that were mistakenly paid by AT&T. New Cingular Wireless sued nearly every city in Washington to get the taxes refunded. The City joined in a motion to dismiss that will be heard on Friday.
- Myers v. City of Edmonds – this case is in regard to mountain beavers. A settlement has not yet been reached.

Mr. Taraday reviewed litigation that was resolved during the past year:

- Cole v. City of Edmonds – a partial settlement was reached in a late payment of wages claim in the amount of \$1,900. The remaining contract claims were dismissed on a motion for summary judgment. No appeal was filed. The EEOC investigation is still ongoing.
- Browns Bay v. City of Edmonds – this was a LUPA case that challenged the City's award of a contract to make stormwater drainage improvements. The case was dismissed with prejudice this fall. No money was paid to obtain the dismissal.

Mr. Taraday advised they also do a great deal of advisory and transactional work using a team approach. He identified the members of the Lighthouse team:

- Patricia Taraday – Public Records Act (PRA) compliance, works closely with City Clerk's Office and Police Department regarding PRA requests as well as code enforcement and other miscellaneous work.
- Sharon Cates – handling the Myers and Precision Earthworks cases, labor and employment matters along with Rosa and Kathy. Also does contract review.
- Mike Bradley – lives and works in Minnesota. Has very specialized expertise in cable franchise. The Council approved a franchise that Mr. Bradley and Mr. Clifton negotiated. Also works on fiber optics contracts.
- Susan Drummond – participated in advising the Planning Board regarding the Harbor Square Master Plan. She drafted the memo in the Council packet.
- Chuck Wolfe – advised the Planning Board regarding form-based code matters

Mr. Taraday explained his role is providing advice to the City Council and Mayor, land use matters and point guard for nearly everything. The firm as a whole has worked 3,369 hours year-to-date, 482 hours or 14% were billed to City Council. They recently began tracking litigation hours separate from transactional hours; 2012 figures will not be as accurate as 2013. They have spent at least 1,150 hours on litigation this year, 34% of their total hours. He anticipated it was likely closer to 50% of the total work the firm has done this year for the City. As litigation cases are settled or resolved through other means, they will spend time on other issues such as policy matters.

Mr. Taraday explained they work on a flat fee. Their average hourly rate calculated using the fee earned to date and the number of hours worked to date is slightly under \$110.

**COUNCIL PRESIDENT PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO EXTEND THE MEETING FOR 15 MINUTES. MOTION CARRIED (6-1), COUNCILMEMBER FRALEY-MONILLAS VOTING NO.**

## **10. 2012 BUDGET AMENDMENT**

Finance Director Shawn Hunstock referred to the ordinance (page 567 of packet), and requested the title of the ordinance be corrected to remove the words, "creating a new contingency reserve fund." He referred to page 572 of the packet, Exhibit C, where items were added related to the Precision Earthworks

subcontractor settlement, specifically payment of the claim out of the Risk Management Reserve Fund and \$30,000 for expert witness fees paid from the REET fund with a transfer in from the General Fund to cover it.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCIL PRESIDENT PETERSON, TO APPROVE ORDINANCE NO. 3908, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING ORDINANCE NO. 3898 AS A RESULT OF UNANTICIPATED TRANSFERS AND EXPENDITURES OF VARIOUS FUNDS, DELETING THE WORDS, "CREATING A NEW CONTINGENCY RESERVE FUND" IN THE TITLE OF THE ORDINANCE." MOTION CARRIED UNANIMOUSLY.**

**11. AUTHORIZATION FOR MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 1 WITH AECOM TECHNICAL SERVICES, INC. FOR THE MAIN ST. DECORATIVE LIGHTING AND SIDEWALK ENHANCEMENTS PROJECT (5TH AVE TO 6TH AVE).**

City Engineer Rob English reported the project is nearing completion. This is a supplemental agreement to AECOM's professional services contract for the Main Street project. The City hired AECOM to provide inspection services and contract administration support during the project. The project extended beyond the original completion date due to weather and removal of concrete found beneath the asphalt pavement. The additional services total \$13,053.

**COUNCILMEMBER FRALEY-MONILLAS MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO AUTHORIZE THE MAYOR TO SIGN SUPPLEMENTAL AGREEMENT NO. 1 WITH AECOM TECHNICAL SERVICES, INC. FOR THE MAIN ST. DECORATIVE LIGHTING AND SIDEWALK ENHANCEMENT PROJECT. MOTION CARRIED UNANIMOUSLY.**

**12. REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF DECEMBER 11, 2012.**

Finance Committee

Councilmember Buckshnis reported the committee reviewed the draft proposed Franchise Agreement between the City and Comcast which was approved on tonight's agenda. The committee also discussed the budget amendment and the addition of the settlement with Kulchin which was approved on tonight's agenda. The committee discussed the October 2012 Monthly Financial Report; the General Fund working cash balance is slightly under \$3 million.

Parks, Planning & Public Works Committee

Councilmember Fraley-Monillas reported most items were approved on the Consent Agenda. Mr. Schuster will provide the Council a briefing on the Dayton Street and SR 104 drainage study in January. The committee had a lengthy discussion regarding McDonald's plans to construct a new building; Councilmember Petso, staff and she met with the owners to discuss an alternative design for the new building. Councilmember Petso reported the follow-up with the McDonalds' owners avoided having the Council consider an emergency ordinance.

Public Safety & Personnel Committee

Councilmember Bloom reported the three items the committee discussed were approved on the Consent Agenda, Supplemental Agreement No. 1 to Animal Kenneling Services Agreement, IT Supervisor job description approval and personnel policy edits.

**13. MAYOR'S COMMENTS**

Mayor Earling wished everyone a happy holiday and encouraged them to take time to pause and reflect.

**14. COUNCIL COMMENTS**

Councilmember Fraley-Monillas reported she attended the coal train hearing in Seattle representing the City Council and presented the Council's resolution. There were approximately 1000 people at the

hearing including a number of Edmonds residents. She testified regarding the problems the coal trains will create, from health to commerce.

Councilmember Fraley-Monillas commented on the public process regarding the Harbor Square Master Plan. She recognized the Port for holding numerous meetings to take public input. She was hopeful there would not be repetitive comments at the third public hearing from citizens who have spoken before. She looked forward to hearing from citizens who had not yet had an opportunity to speak. She invited citizens to email and call Councilmembers.

Councilmember Yamamoto wished everyone happy holidays.

Councilmember Johnson wished everyone happy holidays.

Council President Peterson thanked Harry Gatjens for the article he wrote in MyEdmondsNews about a woman he befriended and for befriending the woman.

Council President Peterson relayed his intent to amend the City's Legislative Agenda to encourage the state legislature to address issues of gun safety which could include a ban on assault weapons, ban on large capacity magazines, and universal background checks including gun shows. Seattle City Council just added this to their legislative agenda.

Council President Peterson wished everyone a Merry Christmas and a Happy New Year, expressing his appreciation for family and friends.

Councilmember Buckshnis wished everyone happy holidays. She relayed a comment from former Councilmember Plunkett that this Council took time to deliberate and did not just vote on principle. She envisioned there may have been a different decision if the Council had voted on the Harbor Square Master Plan tonight. She has serious concerns about zoning, development agreements, form based code, and which ones take precedent.

Councilmember Buckshnis reporting tonight is CIO Carl Nelson's last Council meeting; he is retiring at the end of the year. She thanked him for his service.

Councilmember Bloom wished everyone a relaxing holiday season.

Councilmember Petso thanked Councilmembers Fraley-Monillas and Johnson for the gifts they gave Councilmembers. She also thanked Larry Vogle, Historic Preservation Commission, for his presentation regarding the calendars. She invited anyone unable to find a calendar to email her.

**15. ADJOURN**

With no further business, the Council meeting was adjourned at 10:43 p.m.