

PLANNING BOARD MINUTES October 6, 2004

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

BOARD MEMBERS PRESENT

James Young, Chair
Janice Freeman, Vice Chair
Jim Crim
Virginia Cassutt

BOARD MEMBERS ABSENT

John Dewhirst

STAFF PRESENT

Duane Bowman, Development Services Director
Rob Chave, Planning Division Manager
Steve Bullock, Senior Planner
Jennifer Gerend, Economic Development
Director
Karin Noyes, Recorder

Cary Guenther
Judith Works
Don Henderson

READING/APPROVAL OF MINUTES

BOARD MEMBER WORKS MOVED THAT THE MINUTES OF SEPTEMBER 22, 2004 BE APPROVED AS CORRECTED. BOARD MEMBER FREEMAN SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

No changes were made to the proposed agenda.

REQUESTS FROM THE AUDIENCE

Norma Bruns, 960 Fifth Avenue South, reported that on Monday she and Betty Mueller presented a group of petitions to City staff containing 1036 signatures of people who were against a change in the maximum height limit of the buildings in the downtown area. Chair Young indicated that the Board members each received a copy of the petition documents. Ms. Bruns explained that it was very easy for them to obtain the signatures because people were eager to show their desire to keep the building heights at a reasonable level in the downtown business district. She said she hopes the Board would agree with the petitioners. Ms. Bruns said it appears that the recent trend for cities is to view planning in a commercial sense, in terms of what type of planning would make the most money. She said she regrets seeing this happen in Edmonds.

PUBLIC HEARING ON CITY OF EDMONDS CRITICAL AREAS UPDATE

Mr. Chave referred the Board to the four letters that were received by City staff after the Board packets had already been sent out. The following were entered into the record:

- A letter from the Pilchuck Audubon Society dated September 28, 2004.

- A letter from Thousand Friends of Washington dated September 29, 2004.
- A letter from Stephen Waite dated October 6, 2004.
- A letter from Lynn Kolloen dated October 1, 2004.

Mr. Chave referred the Board to the current draft of the critical areas regulations that was provided in their packets along with a summary matrix showing changes from the initial August 2004 draft. He explained that the proposed regulations were drafted in response to the State requirement that the City update their critical areas regulations to meet the test of “best available science” and fulfill the requirements of the Growth Management Act (GMA). However, he noted that the two goals are not always congruent. The draft document attempts to provide protection for critical areas while meeting the GMA requirement that urban areas try to maximize development to prevent urban sprawl and inefficiencies of providing service, etc. He further explained that the City of Edmonds is approximately 96 percent developed, so no matter what the City does with the critical areas regulations, they must also undertake a balancing act in order to meet the GMA goals that a unique situation like Edmonds presents. He said that since Edmonds is nearly built out, there will not be a great deal of new development that would impact critical areas. Therefore, it is important to enhance the existing critical areas within the City. The focus of the proposed regulations is to encourage enhancement in exchange for allowing people to develop or improve their properties. He pointed out that since most of the property has already been developed, a plan for addressing the already disturbed critical areas is critical.

Mr. Chave introduced Jim Keany from the consulting firm of EDAAW, who was present to provide a brief review of the draft critical areas regulations. He reminded the Board that, ultimately, they would be charged with making a recommendation to the full City Council on the set of regulations and the Best Available Science Report. The City Council would also hold a public hearing on the proposed regulations prior to final adoption.

Mr. Keany explained that the Growth Management Act and the critical areas regulations have two main goals: protection of the public’s health, safety and welfare and protection of natural features in the City. He noted that recent changes in GMA require cities to update their Critical Areas Ordinances every seven years. GMA also mandates that “best available science” be incorporated into every jurisdiction’s Critical Areas Ordinance. He explained that there are numerous guidelines from the State on what constitutes “best available science,” and in the initiation of the GMA and Snohomish County’s Critical Areas Ordinance, “best available science” was addressed in a hodgepodge manner. The new requirement is designed to ensure a more standard process while still tailoring critical areas regulations to the local jurisdictions’ individual situations. Lastly, Mr. Keany advised that State requirements have also increased the emphasis on anadromous fish because a number of new species have been listed as endangered or threatened.

Mr. Keany advised that the Commission on Trade and Economic Development (CTED) is coordinating the critical areas update effort. All proposed Critical Areas Ordinance update must be submitted to CTED for review and approval.

Mr. Keany explained that the GMA identifies five different critical areas categories: wetlands, critical aquifer recharge areas, frequently flooded areas, geologically hazardous areas, and fish and wildlife habitat conservation areas. He noted that there are no aquifer recharge areas in Edmonds. He also noted that the habitat conservation areas category also includes streams as per CTED guidelines. Mr. Keany reviewed the following major changes that are being proposed:

- There is a fair amount of minutia in the existing code, and it is hard to use because it required a person to flip back and forth between sections. The new draft ordinance would be reformatted, and the sections would be divided into the categories listed by CTED.
- The updated document would adhere to the “best available science” principles and an extensive report would be provided to cover all areas. This report would identify how the City is attempting to meet the best available science principles and apply them to the specific circumstances that exist in the City.
- The proposed draft would increase the size of buffers over what the City’s current ordinance requires. However, the ordinance would also provide more flexibility for the City staff to implement the regulations. With the current ordinance, if a developer or property owner could not meet the standard requirements for buffer width, the issue would often be pushed into a variance situation, which is a cumbersome process. The proposed ordinance would allow staff

more flexibility when dealing with these situations, but any staff decision would have to be backed by science. Edmonds does not have large open spaces for development to occur, so most of the future construction would be infill and redevelopment of sites. The proposed changes should minimize the use of the variance process and allow more flexibility for a landowner. In addition, the new regulations would be easier for staff to apply.

- A lot of work has been done by consultants and the building code staff to revise the building code as it relates to steep slopes and landslide issues. The current code identifies four different geologically hazard areas. Because “steep slope hazard areas” was an anomaly, this section was moved to the landslide hazard area section.
- In the proposed regulations for the geologically hazardous areas section, some minor language changes are being proposed to allow the reduction of buffer area up to 50 percent, or the height of the slope, whichever is greater. The Critical Areas Ordinance refers to the new changes that have been made to the City’s building code. In addition, some standard reporting requirements for steep slopes are identified, as well as what kind of specialist must do the work, depending on the issues involved.
- The ordinance for the Meadowdale Landslide Area has been restructured.
- City staff has indicated that people have experienced difficulty interpreting the old code on how to delineate the degree of a slope. The proposed ordinance includes very specific figures to help applicants and geotechnical specialists decide how to measure the slope of a property.
- The City has a unique situation in regard to their streams because the majority of the City was developed without any Critical Areas Ordinance in place. People cleared land and built residential structures in and around streams. Now they have streams with no native vegetation with structures as close as five feet away. The City must deal with these situations in their Critical Areas Ordinance, and changes have been proposed to address this issue.
- The Washington State Department of Ecology has created a new four-tiered rating system for wetlands, and Edmonds’ current ordinance only has three types. The proposed ordinance would incorporate this four-tiered system for wetlands and for streams. In addition, the Department of Natural Resources uses a new four-tiered system for streams, and the proposed ordinance would do the same. However, the City’s proposed ordinance would divide Category F into streams that provide habitat for anadromous fish and those that provide habitat for resident fish only.
- The proposed ordinance would increase wetland buffers. The City’s current buffer range is between 25 and 100 feet, and the new buffer range would be between 35 and 200 feet. The stream buffer range would change to between 25 to 150 feet. However, because there are no Type 5 Streams within the City, the buffer range for streams would actually be 25 to 100 feet.
- The existing ordinance does not allow for buffer reduction using the buffer enhancement concept. Because GMA requires the City to accommodate infill development, they must have regulations to govern redevelopment of a lot that encroaches into a buffer area. The consultants are suggesting it would be reasonable from both a scientific and public standpoint to allow flexibility to address these situations. The proposed ordinance identifies an enhancement plan concept that would allow staff to approve a reduction in a buffer width as long as the property owner can provide an enhancement plan for protecting the stream. In addition, the proposed ordinance would allow buffer averaging for staff to approve a reduction in the buffer width for a small area while increasing the square footage in other parts of the buffer. The variance process would be used as a last resort if a property owner could still not meet the buffer requirements using the buffer averaging or buffer enhancement concepts.

Mr. Keany explained that a buffer could be defined as a path of native vegetation around a wetland or stream. He noted that in the City of Edmonds there are areas with good buffers on public lands and streams where other issues relating to steep slopes have prevented the area from being built out. But there are also numerous situations where residential homes have been built right next to a stream with lawn coming right to the stream edge. It is important for the City to identify a plan that addresses these situations. He referred to the flow chart that was prepared to illustrate the critical areas review process. He said the first step in the process is for a property owner to determine whether or not a critical

area exists on their property. If there is no wetland within 200 feet of the proposed development, no further critical areas review would be required. However, if recognition shows that a critical area exists within 200 feet, the property owner would have to show how he/she could mitigate the buffer situation. If a development would encroach on a wetland or stream buffer, the review process would start, and the property owner would be required to work with City staff to consider options for buffer averaging or buffer enhancement.

Mr. Keany provided a diagram to illustrate an example of how the new Critical Areas Ordinance and the new buffer requirements would be applied to a development proposal. He explained that if a proposed structure would encroach into the buffer area, the property owner could either move the building somewhere else on the site or propose some type of buffer averaging or buffer enhancement program. If an existing structure's footprint is within the buffer area of a stream or wetland, some type of buffer enhancement plan would be required. The proposed ordinance would grant City staff the flexibility to work with an applicant to apply this concept. He advised that while applying the buffer enhancement concept to just one property would not make a significant impact on water quality, the goal of the Critical Areas Ordinance is to protect the resources that exist in the City and make a serious attempt to improve the degraded resources, as well. The buffer enhancement program would allow the City to move forward in this direction.

- The proposed ordinance would specifically call out the new requirements for the fish and wildlife conservation areas. This section includes not only streams, but also fish and wildlife vegetation areas. It also provides provisions for specific habitat that is listed on the Department of Wildlife's species and habitat program. This section now includes specific information on what happens if a development encroaches on a fish and wildlife habitat area.
- Whenever a permit is issued for a property that has an identified critical area located on it, the new ordinance would require this information to be placed on the title of the property so that future owners would be made aware of the situation.
- The proposed ordinance would require the retention of 30 percent of native vegetation on RS-12 and RS-20 lots that can be subdivided.
- With the new ordinance, a wetland enhancement plan would have to be submitted for any proposal that would expand the footprint of a development within the wetland buffer area.

Mr. Keany reported that the Best Available Science Report is in the draft stage, but would be completed soon. The revised ordinance would be updated based on Planning Board and public comments and then forwarded to the City Council for review. He reminded the Board that the City is also in the process of updating their Comprehensive Plan as required by GMA. A SEPA analysis has to be done as part of this update to identify the impacts associated with the new Comprehensive Plan and Critical Areas Ordinance. He recalled that in 1996 a SEPA Environmental Impact Statement was completed by the City, so they now must do an addendum to identify what would be changed as a result of the new documents. CTED approval is also required, and the City can apply for CTED approval in draft stage, as long as CTED is kept apprised of any changes that are made. They require a 60-day review process. He advised that an early draft of the Critical Areas Ordinance was submitted to CTED a few months ago for review, and this was also sent to other agencies, as well. They have received comments back from the Department of Fish and Wildlife saying that the document looks fine. In addition, CTED provided some minor comments, but said they would review the document in more detail during their 60-day review process. He stated that any changes made as a result of the Planning Board and City Council reviews would be forwarded to CTED.

Mr. Keany referred to the letters that were submitted on behalf of the Pilchuck Audubon Society and Thousand Friends of Washington, and noted that many of their comments were similar in nature. One of their primary issues was that they would like to see larger buffers on streams and wetlands within the City. Mr. Keany explained that from a scientific standpoint, they are both correct that larger buffers offer more protection. However, the City must also consider buffers in the context of how they can be applied in some of the densely populated residential areas. He noted that all of the wetland and stream buffers have been nearly doubled in the proposed new ordinance. He suggested that to extend beyond this amount would not be practical for the City. He admonished that the Board must make a recommendation on what is best for the City based on the GMA mandates to increase density in urban areas and protect the natural resources.

Mr. Keany said another issue raised by the Pilchuck Audubon Society and Thousand Friends of Washington was related to the proposed threshold for wetland size. He noted that the new ordinance would lower the threshold for wetlands. The existing ordinance exempts any wetlands that are less than 2,500 square feet in size, and the proposed ordinance would lower this threshold to 1,000 square feet. The letters from both groups alluded to the idea that there shouldn't be any minimum threshold. However, Mr. Keany pointed out that most jurisdictions have a minimum threshold for wetlands, and it is usually smaller in non-urban areas and larger in urban areas. Best available science indicates that there is no reason for having a threshold, meaning that even tiny wetlands perform some minor function. However, this is a matter of public policy and how the City wants to deal with the issue within their own jurisdiction.

Mr. Keany advised that neither group particular liked the flexibility that has been built into the proposed ordinance regarding buffer averaging and buffer enhancement. In addition, they would like to see a specific tree retention ordinance. He noted that some municipalities are considering a requirement that trees larger than a certain diameter must be retained. However, in the City of Edmonds' case, it appeared that the Planning Department staff was struggling with the small size of lots that exist in the City. There is just not a lot of room for redevelopment to occur. The flexibility was pushed into the larger lots, with a stipulation that they retain at least 30 percent of the native vegetation.

Mr. Keany reported that the Audubon Society and Thousand Friends of Washington also suggested that the ordinance provide for increased enforcement fines. He explained that the proposed ordinance refers to the fines that were recently put in place by the City Council. He said the two groups also suggested that some kind of code language be included to prohibit the use of pesticides and fertilizers in critical areas. He referred the Board to the City of Seattle's proposed Critical Areas Ordinance, which requires them to come up with a plan to manage their own use of pesticides and fertilizers in city-owned areas. He said he would discuss this issue with the staff to determine whether this type of language would also be appropriate for Edmonds' ordinance.

Lastly, Mr. Keany advised that the two groups indicated that they would like the ordinance to include a wider range of species in their wildlife habitat conservation area section. He explained that the proposed ordinance is based on CTED's model ordinance.

Lynn Kolloen, 24025 – 74th Avenue West, said she is concerned that the new buffer requirements could end up precluding her from future redevelopment of her site. She explained that the house that currently exists on the site is very small, and she hopes to be able to replace it with a new home in the future.

John Mauro, Pilchuck Audubon Society, 1803 Hewitt Avenue, Suite 108, Everett, thanked the Planning Board for taking the time to consider this issue carefully. He voiced his opinion that the public outreach program has been conducted in a very professional manner that will guarantee a strong protection area for Edmonds. He emphasized that the City of Edmonds has an opportunity to set a very high bar for critical areas ordinances in the region. He pointed out that many members from the Pilchuck Audubon Society were present in the audience to show support for the comments he would provide, and he referred the Board to the letter that he already submitted on behalf of the Audubon Society regarding this issue.

Instead of looking at the proposed Critical Areas Ordinance as a set of restrictions for what can and cannot be done on property, Mr. Mauro challenged the Board and the citizens to look at the document as something for the citizens to protect the existing habitat, improve water quality and improve the public's overall health, safety and welfare. All of these things have a lot to do with the future quality of life in Edmonds.

Mr. Mauro pointed out that since he forwarded his comment letter to the City, the proposed ordinance was changed to address the issue of pesticides and fertilizers and retaining native vegetation in RS-12 and RS-20 zones. He asked that as the Board moves forward with their review of the document they consider strengthening wetland protection. He said the Audubon Society members feel that wetlands that are less than 1,000 square feet in size need protection, too. He pointed out that the Department of Ecology has stated that there is no scientific basis for exempting wetlands of any particular size. In addition, best available science indicates that there is no justification for exempting wetlands under any situation. He suggested that according to best available science practices, buffer widths around all wetlands should be protected. While the Society recognizes the City's need for a balance, he suggested that it is possible to protect the quality of life and critical areas in Edmonds and still allow for appropriate development to occur.

Mr. Mauro said the Society has some concerns about the proposed flexibility for staff to authorize buffer averaging and buffer enhancement plans. He also expressed the Society's concern that identifying stormwater management facilities as Category 3 and 4 Wetlands is a bad idea, and best available science would agree. The Society recommends that any mitigation sequencing should be carefully monitored for at least five years, similar to the method used by the State. This would ensure that the proposed mitigation is successful. In addition, language regarding mitigation timing should be included in the ordinance to mandate that projects be completed before impacts occur so that net loss can be prevented.

Mr. Mauro said the Society recommends that the section regarding wetland riparian area protection be strengthened. They believe the recommended buffers are too small and buffer averaging needs further limitations. While they believe that buffer averaging is a good concept, the ordinance should provide more strict standards and limitations. The Society also recommends that the City consider options for low impact design as a way to protect critical areas and improve wildlife habitat. He said the proposed ordinance does a good job of including a comprehensive list of the fish and wildlife species that must be protected, and only a few tweaks are necessary to bring this in line with best available science.

Mr. Mauro said the Society was pleased to see that penalties have been strengthened in the new proposed ordinance. But they believe the ordinance must provide language related to the protection and research of aquifer areas. Regarding tree retention, Mr. Mauro said the Society is not suggesting that the City limit the types of trees that can be planted, but the ordinance should recognize the value of trees in protecting and improving water quality. He asked that the Board Members consider the proposed suggestions in his letter related to this issue.

Mr. Mauro summarized that the Board has an opportunity to make the City of Edmonds a fine example of good critical areas protection in an urban area. They have an opportunity to raise the bar for other jurisdictions.

Tony Shapiro, 18105 Sunset Avenue, said it appears the critical area protection standpoint has been well represented. However, the Board must consider the issue from the standpoint of economic development, also. He questioned if the Chamber of Commerce has been involved in the ordinance review process yet. He said that in his brief exposure to the proposed ordinance, he has not heard the economic development side of the issue being discussed at all. He suggested that the proposed limitations on growth would have direct ramifications on the economic stability of the region, which has one of the highest unemployment rates in the nation and the cost of doing business is one of the highest, as well. The proposed new ordinance would have significant ramifications for small businesses, in particular. He said he knows of one particular business owner who was required to build a large storm retention tank in order to construct a 12,000 square foot building on his property. These costs may result in the project no longer being feasible.

Mr. Shapiro said he is in favor of protecting critical areas, but he questioned what is wrong with removing trees and bringing in landscaping that is designed by a professional and more conducive to residential and business uses. He said he feels the concept of suddenly imposing a limit on large lots for vegetation retention seems arbitrary. In addition, he expressed his concern that expanding the buffers for streams would have a direct impact to property owners. The uses that exist in these locations would become non-conforming, and this would likely result in a significant financial impact in the future.

Mr. Shapiro summarized that the decisions the Board makes regarding the Critical Areas Ordinance would have ramifications to developers and property owners who have already been forced to live with the decisions that have been made over the past 20 years. They live in a beautiful region, and he is asking that there be a balance in how environmental impacts are imposed upon future development.

Suzie Schaeffer, 1055 Edmonds Street, said she attended the City Council meeting last spring where the City's tree cutting ordinance was discussed. She said she has been a member of the Pilchuck Audubon Society for a long time. Many members of the Society live in Edmonds and are present to show their support of the comments provided by Mr. Mauro. Some of the members of the Society are concerned about the density that is moving into parts of the City. If this density is required, then it is important that it be done right by retaining and protecting the existing critical areas, wildlife and other natural aspects of the community, especially on larger lots. This would help mitigate the number of condominiums that are being constructed in Edmonds. She said she supports the protection of small wetlands and the creation of larger buffers, which will be needed even more to protect the quality of life as more and more people move into the City. She encouraged the Board to pay

attention to the points raised by Mr. Mauro on behalf of the Audubon Society. She said that, hopefully, a good ordinance would prevent this type of situation that occurred last spring on Unocal Hill and improve the quality of life for both people and wildlife. Lastly, she asked that the Board consider the inclusion of other species that are identified on the State Wildlife Threatened List and the International Migratory Bird Treaty.

Janet Chalupnik, President of the Snohomish County League of Women's Voters, 540 Dayton Street, said the League has had a very strong position in support of the Growth Management Act since its inception. They are attempting to follow the City and County's planning processes that are going on now to revise the Comprehensive Plan and Critical Areas Ordinance. She said Mr. Mauro did a good job of representing their concerns, too. She asked that provisions for strong enforcement and citizen education be part of the proposed ordinance. She suggested that people are more willing to follow an ordinance if they understand what it is about and why it is necessary, and a code is only as good as it is enforced.

Carmen Crispino, 24029 – 74th Avenue West, said that while he is in favor of protecting wetlands, he is also concerned about the impact the proposed ordinance would have on him, as a property owner on Lake Ballinger. He explained that, currently, his home sets within the 100-foot setback, and if the buffer were increased to 200 feet, it would consume his entire lot. He said he is very concerned that this new ordinance could totally wipe out his property. He emphasized that any decision that is made related to critical areas is important to both him and the community.

Tony Bollen, 538 Homeland Drive, said he also supports the protection of critical areas, but he has concerns that the proposed buffers would significantly impact his property. The Board must make it clear to the City Council that for homeowners who want to comply, it should be easy for them to find out the impacts of the ordinance and how they can apply. The assumption should be that the citizens want to cooperate, but they need the City experts to tell them what they can and cannot do. They want to be good citizens, but the ordinance could have an impact on their future plans. These impacts should be clearly identifiable.

Mr. Chave suggested that it would be helpful for Mr. Keany to point out the differences between the existing and proposed Critical Areas Ordinances, particularly how the new ordinance would impact the properties in the Lake Ballinger area. Mr. Keany explained that just because a property is located on Lake Ballinger does not mean it is next to a critical area. He said the code includes a reference to guidelines that the Department of Ecology has published for identifying and delineating wetlands in Washington State. This document provides particular criteria to determine if a wetland exists or not. It identifies three requirements that must be met in order to be classified as a wetland. It has to have wetland hydrology, hydroponic plants that survive in wetland conditions, and certain soil conditions. With a lake the size of Ballinger, if shallow water areas of the shoreline are not vegetated, it would not be considered a wetland under the guidelines from the Department of Ecology. If soil, vegetation and hydraulic conditions exist, then the area up land of the high water mark could be identified as wetland area.

Mr. Chave further explained that in the existing ordinance, Lake Ballinger was automatically assumed to be a Class 1 Wetland. However, best available science revisions do not assume the properties around the lake to be wetlands. He emphasized that the City does not know what the exact buffers for a specific property would be, since this would depend on the existing condition of the site. However, he said it is important for the citizens to remember that the ordinance still provides for the reasonable use of a property. No one would be prevented from building a home on a residential lot. However, they may be required to provide a buffer enhancement plan, use the concept of buffer averaging, etc.

Mr. Keany reminded the Board that one significant purpose of the proposed ordinance is to provide the City a method of improving the relatively degraded situations that exist in the City around streams and wetlands. The ordinance would provide a mechanism for the City to work with property owners to accomplish this goal. Mr. Chave added that while the City staff agrees that buffers should be increased, they also agree that the process must be simpler so that a variance is no longer necessary in the majority of the cases. He pointed out that, in Edmonds, the impact to critical areas has largely already happened. The City's goal is to improve the areas that have already been disturbed and make it easier for people who want to do the right thing.

Board Member Works inquired if any thought was given to holding community meetings on the proposed ordinance in various locations throughout the City. Mr. Chave said it is difficult for the City to conduct too many separate meetings on

the issue because of the expense and timeline constraints. However, staff intends to provide much more public information regarding the issue in the future. He said he does not believe the proposed ordinance is unreasonable, and a lot of people want to do the right thing. But right now, the task of complying with the existing Critical Areas Ordinance is daunting. Once the new ordinance is approved, the next step will be to conduct a series of outreach programs to educate the public regarding the new requirements. Perhaps the City can obtain grant funding to help enhance some of the public areas. In addition, the City has an ongoing public education program that will try to incorporate the new requirements.

Board Member Freeman inquired if it would be possible to include a preamble to the ordinance to emphasize that the purpose of the proposed ordinance is to accomplish the City's goal of improving critical areas and wildlife habitat areas. It should also be emphasized that the proposed ordinance would not prohibit someone from building a home on his or her property. Mr. Chave suggested that the first step in getting this message out to the public would be to revise the information materials that are provided by the staff to better explain the overall purpose of the Critical Areas Ordinance.

Board Member Works referred to Section 23.40.260 of the proposed ordinance, which would require notice on the title of any properties with associated wetlands. Mr. Chave answered that anything that is done within the footprint of a building would be exempt from this requirement. Board Member Works suggested that this section is confusing since the definition of "development proposal" includes any project that requires a permit from the City. Mr. Chave explained that any development proposal that is exempt from a critical areas review would also be exempt from this requirement. He suggested that this could be made clearer in the explanatory document.

Chair Young said it is important that the Board point out to the City Council that this is a very sensitive issue for some property owners. While there could be an impact to these property owners, the realistic implication of the regulation is to get people to think about what they are doing. The Board should emphasize to the City Council that this is not something that will take away a property owner's right or unreasonably restrict a person's ability to develop a property. It should be made clear that the ordinance is designed to protect the public's health, safety and welfare as much as to preserve critical areas. The proposed ordinance is well put together, but they still need to work on its practical application before it is sent to the City Council for review.

Board Member Freeman noted that the ordinance was changed to incorporate language related to the use of herbicides in critical areas, but it does not address the use of fertilizers and pesticides. She asked that staff continue to work with the consultant to provide more direction as to what types of products can and cannot be used in critical areas.

Board Member Works recommended that the preamble of the proposed ordinance should make it clear that the proposed regulations are the minimum requirements for critical area protection, but that additional things could be done to further protect the City's critical areas. She summarized that it is important for the City to encourage an even greater effort.

Mr. Keany recalled that one public comment was raised regarding the need for mitigation monitoring. He referred to Section 23.40.120, which requires a monitoring program for a minimum of three years and is applicable to the other sections, including wetlands and streams. This time period could be increased if deemed appropriate.

BOARD MEMBER CRIM MOVED THAT THE BOARD FORWARD FILE NUMBER CDC-04-47 (UPDATE TO THE CRITICAL AREAS ORDINANCE), INCLUDING THE EXPLANATORY STATEMENTS THAT ARE TO BE ADDED TO THE OPENING PARAGRAPH, TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL. BOARD MEMBER CASSUTT SECONDED THE MOTION.

Board Member Crim reminded the Board that the proposed Critical Areas Ordinance would continue to be a work in progress until the City has received all of the information and feedback from the various agencies. The proposed document is a good piece of work and will get better as the staff, the consultant and the City Council continue to work on it. However, he felt that because of time constraints, it is important to send the document to the City Council for review in its current form.

THE MOTION CARRIED UNANIMOUSLY.

APPROVED

THE BOARD TOOK A 10-MINUTE BREAK AT 8:37 P.M. THEY RECONVENED AT 8:47 P.M.

FOLLOW-UP DISCUSSION ON ECONOMIC ANALYSIS OF DOWNTOWN WATERFRONT PLAN AND ALTERNATIVES TO BE INCLUDED IN THE DOWNTOWN WATERFRONT PLAN UPDATE

Mr. Chave referred the Board to the consultant's final report on the economic development analysis of the downtown options. He noted that staff is in the process of reviewing and digesting all of the information. He referred the Board to the petition that was received from citizens regarding the option of increasing the height limit in the downtown area. He said staff also provided a memorandum that attempts to identify districts in the downtown and what uses should be allowed in each. He reminded the Board that the draft Downtown/Waterfront Plan is scheduled for a public hearing on October 27th. It is important for the Board to agree upon a draft document by the October 13th meeting or the hearing would have to be postponed.

Mr. Chave provided a synopsis of the map and briefly reviewed each of the proposed districts as follows:

- **Fountain Square:** The area immediately surrounding the fountain at 5th and Main. This area would require that all floors above the first floor be set back from the sidewalk a total of 10 feet. Building heights could be as high as 35 feet, with the first floor required to be a minimum of 12 feet in height. Uses would be required to be retail compatible, and the first floor of the buildings must provide pedestrian weather protection along public sidewalks.
- **Retail Core:** Generally located along the principle pedestrian streets (5th and Main). This area would require retail compatible uses on the first floor, with a 12-foot minimum height requirement for the first floor, as well. Buildings could be built to the property line, but any building higher than 30 feet in height, up to a maximum of 35 feet in height, must be set back from the street front one foot horizontally for each additional foot of building height. The first floor of the buildings must provide pedestrian weather protection along public sidewalks.
- **Arts Center Corridor:** The corridor along 4th Avenue North between the retail core and the Edmonds Center for the Performing Arts. This area would allow retail compatible uses that cater to arts patrons on the first floor. The first floor would be required to be a minimum of 12 feet in height to accommodate commercial uses. Buildings would be required to be set back at least three feet from the street front and at least five feet from side and rear property lines. Any building higher than 30 feet in height, up to a maximum height of 33 feet, must be set back from the street front at least one foot horizontally for each additional foot of building height. The first floor of buildings must provide pedestrian weather protection along public sidewalks.
- **Downtown Mixed Commercial:** The requirements for this district would be the same as for the retail core, except that the first floor would not be restricted to retail commercial uses. Weather protection would still be required, but to a lesser degree than the retail core.
- **Downtown Mixed Residential:** In this area, commercial uses would be allowed but not required. The one-foot-of-height-for-one-foot-of-setback tradeoff would still apply, as would the more limited weather protection standards called for in the downtown mixed-use area.
- **Downtown Master Plan:** These properties are located between SR-104 and the railroad, including Harbor Square, the antique mall area, and extending past the commuter rail parking area up to Main Street. This area is appropriate for 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 an average height of development which locates higher buildings outside current view corridors. Any development in this area should be oriented towards the street fronts and provide pedestrian-friendly walking areas, especially along Dayton and Main Streets.

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- **Shoreline Commercial:** The waterfront, west of the railroad tracks between the public beaches and the Port. Consistent with the City's Shoreline Master Program, this area should allow a mix of public uses supporting commercial uses and water-oriented and water-dependent uses.
- **Mixed Use Commercial:** This area is the south end of 5th Avenue, south of Walnut. Commissioner uses would be required on the first floor, but auto-oriented uses would be permitted in addition to general retail and service uses. The first floor would have a required 12-foot minimum ceiling height.

Mr. Chave referred to the three residentially zoned properties located west of Sunset Avenue and south of Bell Street that are adjacent to the BC zone. He recalled that the Board discussed these properties a year ago and indicated some support for a mixed-use type of zone that would be strictly limited to office and residential, with setback and height limitations that are potentially stricter than for those for the BC zone.

Mr. Chave referred to the triangle that is located by the Edmonds Center for the Performing Arts, which has been identified on previous maps as a question mark. He noted that the Board has not provided feedback to the staff regarding the appropriate designation for this property. If the Board feels this area should be included in the Art Center Corridor District, staff could make this change. Another option would be to leave the property as it is for now and see how well the corridor zone functions over the next few years. If a change is appropriate in the future, the Board could do so. Board Member Cassutt agreed that the best approach would be to leave the properties within the triangle as they currently exist. If the arts corridor actually starts to develop as the plan anticipates, perhaps a change to this area would be appropriate in the future. However, at this point, she felt it might be premature to make this change now.

Board Member Freeman suggested that the area designated as the Fountain Square District is too small. She recalled that the Board talked about trying to protect the historic feeling of Edmonds on the streets leading to the fountain. She suggested that this area be expanded. Board Member Cassutt agreed, and added that she does not believe buildings with a height greater than two stories should be allowed in the downtown retail core area. Board Member Guenther noted that a height limit of 35 feet would accommodate a building of up to three stories. Board Member Cassutt agreed, and said she would like the height limit to stay the way it is so that buildings in the downtown retail core are limited to two stories. She said no one has proven that a 35-foot height limit is necessary in the downtown retail core in order for development to be viable. She said she has been in business in Edmonds for 25 years, and she agreed with Natalie Shippen's comment that businesses in the downtown area do not fail because they don't have a high first floor ceiling or three stories. They fail because the owners are not good business people or they don't have a product that people in Edmonds want to buy. She concluded by stating that she is in favor of allowing taller buildings along Highway 99, but not in the downtown area.

Mr. Chave recalled that the Economic Analysis indicates that if the height limit stays the same, but a 12-foot minimum first floor ceiling height requirement is implemented, the City could end up with a lot of sunken building designs. If the height limit remains at a 30-foot maximum and residential units on the upper two floors continue to be the economic driver for redevelopment, developers will continue to make sure they get the two floors of residential space and basically ignore the first floor. The commercial space does not drive development at this time. If the City were to leave the height limits as they currently exist, but require a minimum first floor ceiling height of 12 feet, they would be gambling that the area would stay healthy and not redevelop.

Board Member Freeman said she is in favor of maintaining a viable commercial area by setting a minimum first floor ceiling height. However, the height limits in the Fountain Square District should remain at 25 feet so that the character of downtown Edmonds could be preserved. Board Member Works and Cassutt agreed. Mr. Chave noted that the buildings that are located at the four corners of the Fountain Square District are all one story now. The Board discussed allowing a second story on these buildings, but only if it is stepped back. This would be different from what is being considered for the rest of the downtown retail core area. They agreed that while the Fountain Square District is different, it is still part of the downtown retail core area and should also have a 12-foot minimum first floor ceiling height requirement. This would limit any new development to two stories.

Board Member Guenther clarified that having a minimum first-floor ceiling height requirement would eliminate the possibility of developing two stories of residential space above the first floor, especially if there is a 25-foot height limitation,

too. He said he agrees with the ten-foot step back requirement for the Fountain Square District, but he would not support a requirement that every building in the entire downtown core area be stepped back ten feet. The step back requirement should be for the Fountain Square District only.

The Board agreed that the boundaries for the Fountain Square District should be extended on the west side of 5th Avenue to the alley and to the east two more lots along the south side of Main Street.

Mr. Chave said it appears that the Board would be in favor of creating a subsection of the Retail Core District that is more restrictive. In this area there could be a minimum first floor height requirement and overall building heights could be limited to 25 or 30 feet. This would result in two-story buildings in most situations.

Board Member Freeman said she would hate to ruin the viability of the downtown by not allowing enough height to build three stories where appropriate. Mr. Chave said a height limit of 33 feet could potentially allow two stories of residential development above first floor commercial space. He reminded the Board that the economic analysis consultant indicated that regardless of whether or not three stories would be allowed in the heart of the Retail Core District, this area is not likely to redevelop in the near future. However, applying a first floor building height requirement while allowing no additional height could end up stifling future development, and the area might not remain economically healthy. He summarized that for now, it would be okay to have a first floor height requirement without increasing the height limit in the heart of the retail core area, but the area would be in danger of deteriorating in the future if the height limit is not increased, as well.

Board Member Henderson said it is his understanding that the only difference between what is proposed for the Fountain Square District and the Retail Core District is that the second story must be stepped back in the Fountain Square District.

Board Member Guenther summarized that the Board appears to be in favor of maintaining the two-story character of the downtown core area around the fountain. Board Member Cassutt agreed and added that she does not want any changes in the height limit of the downtown core area at all. Board Member Works inquired if any of the buildings in this area are historical. Mr. Chave answered that the building in the southeast corner of the fountain area is on the National Register of Historic Places. Board Member Works inquired if Main Street could become a historic district. Mr. Chave said this could only be done if all of the property owners volunteered to participate. The City's historic preservation codes are all voluntary. While it would be possible for the Board to identify properties that are historical or contribute to the character of the district, they could not require property owners to place their properties on the register. He said the Historic Preservation Commission and staff is currently working with a consultant to conduct a survey of historic properties in the City.

Mr. Chave suggested that perhaps the Retail Core District could be divided into two subcategories. The heart of the retail core area could be restricted to a height of 25 feet, but the rest of the retail core area could allow a greater height limit up to 33 feet to accommodate three stories. The Board agreed this approach would be appropriate. It was noted that because these properties are located on a slope, the increased height limit would not likely create a problem with view from upland properties. They agreed that the downtown retail core area should be divided into the following three districts:

- **The Fountain Square District:** The Board identified the boundaries for this district earlier. This area should maintain a 25-foot height limit.
- **Inner Retail Core District:** The boundaries of this district would be Dayton, 4th Avenue, and halfway up 6th Avenue. The height limit in this district should remain at 25 feet, with a minimum first floor ceiling height of 12 feet.
- **Outer Retail Core District:** This area would have a potential height limit of 33 feet, but would require a one-foot step back for every foot of additional height over 25 feet. This would provide for more pedestrian sidewalk area and would make the retail activities more viable by accommodating up to two stories of residential space, too. A first floor ceiling height of at least 12 feet would be required.

Board Member Freeman inquired if bed and breakfast businesses would be allowed in the Arts Center Corridor District. Mr. Chave answered that they would be an allowed use. Board Member Freeman suggested that this use be mentioned specifically.

Board Member Cassutt suggested that the triangle area on Third Avenue should remain as it is currently identified until after the arts center is completed to see what kind of interest there is for a change. The remainder of the Board agreed.

Mr. Chave pointed out that the Arts Center Corridor would require different setbacks than those required in the other districts. The Board agreed that setbacks should be different for the corridor. Mr. Chave explained that the notion is that one additional foot of setback in the front and two feet on the sides should be required for each additional foot of height that is allowed over 25 feet. In addition, the City could require a minimum setback of five feet. He suggested that the exact setback requirements could be worked out later when the development code is reviewed and updated, but if the Board wants to allow additional height and require additional side setback requirement in this area, they should make it clear in the Downtown/Waterfront Plan. The Board agreed this would be appropriate.

Mr. Chave advised that updated maps would be available to the Board by Friday in preparation for the October 13th meeting. He suggested that the Board Members review the map again at the next meeting, and make any changes they feel are necessary before the public hearing that is scheduled for October 27th. The Board agreed that they would be ready to move forward to a public hearing on October 27th.

CONTINUED REVIEW OF HIGHWAY 99 ENHANCEMENT TASK FORCE RECOMMENDATIONS FOR INCLUSION IN COMPREHENSIVE PLAN UPDATE

Mr. Chave reported that he reworked some of the Highway 99 materials recently. The idea was to make the documents more clear than the last draft. He advised that staff has scheduled a public hearing on the Highway 99 Enhancement Task Force recommendations for October 13th.

Board Member Freeman referred to Page 30, which lists four types of nodes. She suggested that this section be reorganized to be consistent with the way the nodes are listed on Page 28. She also suggested that a map of the Highway 99 medical activity center be included in the document. She pointed out typographical changes on Pages 28, 29 and 31.

REVIEW OF EXTENDED AGENDA

Mr. Chave reviewed that a public hearing on the proposals for the SR-104 Corridor between Westgate and 95th Avenue is scheduled for October 13th. The City also received an additional request for consideration of the property that is located on the south side of the corridor next to the substation. In addition, a public hearing has been scheduled for October 13th for the lots that are potentially being changed from RS-12 to something else. The Highway 99 Enhancement Task Force recommendations are also scheduled for a public hearing on October 13th.

PLANNING BOARD CHAIR COMMENTS

Chair Young reported that he attended the City Council Meeting at which the 546 Paradise Lane Application was discussed. He advised that the City Council upheld the Board's recommendation of denial.

PLANNING BOARD MEMBER COMMENTS

Board Member Freeman referred to a *SEATTLE TIMES* article titled, *Staying Livable*, and suggested that all of the Board members would find it interesting.

Board Member Works reported that she attended the American Planning Association Cascadia Conference, at which a short course on public planning was held. She reported that the meeting was very informative.

APPROVED

ADJOURNMENT

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

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