

APPROVED JUNE 23rd

**CITY OF EDMONDS
PLANNING BOARD MINUTES**

June 9, 2010

Vice Chair Lovell called the meeting of the Edmonds Planning Board to order at 7:04 p.m. in the Council Chambers, Public Safety Complex, 250 – 5th Avenue North.

BOARD MEMBERS PRESENT

Philip Lovell, Vice Chair
Todd Cloutier
Cary Guenther
Kristiana Johnson
John Reed
Valerie Stewart

STAFF PRESENT

Rob Chave, Planning Division Manager
Noel Miller, Public Works Director
Rob English, City Engineer
Jerry Shuster, Stormwater Manager
Mike Clugston, Planner
Scott Snyder, City Attorney
Karin Noyes, Recorder

BOARD MEMBERS ABSENT

Michael Bowman, Chair (excused)
Kevin Clarke (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER REED MOVED THAT THE MINUTES OF MAY 26, 2010 BE APPROVED AS AMENDED. BOARD MEMBER CLOUTIER SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

No changes were made to the agenda.

AUDIENCE COMMENTS

Joe St. Laurent said he was present to represent James Plute, a majority land owner of a possible rezone in the 220th block. He stated that his client is absolutely opposed to the rezone that has been suggested by architect, Tony Shapiro. He said his client has garnered support from the entire 220th neighborhood, as well as the Esperance neighborhood where flooding problems are possible. Again, he stated that his client is against a rezone of the 220th block within the Medical/Highway 99 Activity Center. He pointed out the location of his client's property and noted that Mr. Shapiro wants to develop property that is located between his client's two parcels.

Al Rutledge, Edmonds, provided a handout announcing a fundraising drive for the upkeep of the Edmonds Log Cabin. He explained that design plans were submitted to the City's Planning Department on May 17th, and the contractor will be inspecting the structure on June 28th. The City has earmarked some money for this project, but anticipated budget cuts may jeopardize the future operation and maintenance of the facility, which is estimated to be about \$10,500 per year. He reminded the Board that he previously spoke to them about a new sign that would be installed on the site, as well.

Mr. Rutledge observed that Board Member Clarke was not in attendance and has missed the last several meetings. He expressed his belief that Board Member Clarke should be present at the meetings to represent the citizens unless he is ill. He

noted that he cannot move forward with his request to place additional signs at Hickman and Haines Wharf Parks until Mr. Clarke returns to provide more information about his discussion with the City Council.

Mr. Rutledge reported that he attended the recent Snohomish County Council meeting. He noted that a recording of the council meetings can be purchased from Snohomish County for \$1 each. If someone has a complaint, they can obtain a copy of the recording for review. He suggested the City consider a similar system.

Roger Hertrich, Edmonds, recalled that at their last meeting, the Architectural Design Board (ADB) considered an item that was advertised as a “minor project.” While no public hearing was required, the Board decided to open the meeting for public comment. He explained that the issue had to do with tree cutting and replacement, which is a subject that is ever present in the City. He recalled that a few years ago, the Point Edwards developer illegally cut down all the trees and denuded the hillside to open the area for views. He received only a minor fine. Just recently, when staff inspected the project to authorize occupancy of Buildings 6 and 7 they discovered that the approved landscaping plan had not been fully implemented. The applicant subsequently requested to change the approved plan to allow the trees to be replaced with shrubs in order to protect the view from Buildings 6 and 7. He expressed his belief that the purpose of trees is to protect wildlife.

Mr. Hertrich said the ADB made a decision to approve the partial planting of trees in a selective area. However, it was his understanding that when the site was inspected earlier, it appeared there were a number of trees grubbed when the blackberry bushes were removed. These trees were never replaced. He asked the Planning Board to pay specific attention to the rules for tree cutting and replacement and keep in mind that they cannot protect everyone’s view. He said he specifically hopes that any future ordinance will include the use of the term “wildlife corridor,” to protect not only steep slopes but areas of natural vegetation that provide for the wildlife in the urban area. He summarized that the project was advertised as a “minor project” and he asked the Board to change the rules so that issues involving trees are no longer considered minor.

Board Member Reed recalled that he was required to miss several Board meetings in 2009 due to work related responsibilities, and his understanding is that Board Member Clarke’s absences have been excused because he has been out of town for work.

Board Member Reed said it was his understanding that the ADB deferred their decision related to the Point Edwards Project to a future meeting. Mr. Chave clarified that the ADB had deferred action at one point, but they issued their final decision on June 2nd.

PUBLIC HEARING ON THE WATER SYSTEM COMPREHENSIVE PLAN UPDATE

Mr. English reminded the Board that staff introduced the Water System and Storm and Surface Water Comprehensive Plan Updates to the Board on May 26th. The plans are now being presented to the public for comment. He noted that a few changes have been made since the Board last reviewed the documents. At the conclusion of their reports, the staff and consultants will be available to answer Board questions. It is anticipated the Board would forward a recommendation on both plans to the City Council.

Tom Lindburg, Project Manager, Murray, Smith and Associates, Inc., was present to review the draft plan. He advised that the Washington State Department of Health requires that every public water system have a comprehensive plan and that it be updated every six years. The City’s plan was last updated in 2002. The purpose of the plan is to analyze the City’s water system, identify projects for the City’s capital improvement program, and review water rates and charges and make recommendations. Key elements of the plan include water demands, policies and design criteria, water source and quality, water system analysis, operation and maintenance, water system improvements and a financial program. He explained that the draft update incorporates a number of new regulatory requirements such as the 2004 and 2009 Drinking Water Regulations, the 2009 Department of Health design guidelines, the 2003 Municipal Water Law, and the 2007 Water Use Efficiency Rule.

Mr. Lindburg provided a summary list of the items contained in the plan. He advised that, once completed, the plan would become one document the City could use internally for planning water improvements and as a resource on the water system.

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The draft plan describes the system and identifies the population numbers that were used as the basis for the demand projections. It addresses both historic and future demands and provides policies and design criteria. He explained that each element of the plan was carefully analyzed to identify the City's current deficiencies and needs, as well as future opportunities for improvement. The Water Systems Improvement chapter will be used by the City to formulate their upcoming Capital Improvement Programs, and the Financial Program chapter addresses the financial aspects of the water utility.

Mr. Lindberg provided pictures to illustrate the City's existing water system. He described the facilities as follows:

- **Alderwood Supply Station (Olympic View Drive and 62nd Avenue).** This is a below-grade, concrete vault that has a set of pipes with control valves and telemetry for remote operation and response to issues. This is the primary supply facility that provides water from the Alderwood system.
- **Yost and Seaview Reservoirs.** These are below-grade, concrete reservoirs. He noted that a tennis court was built on top of the Yost Reservoir, and a grassy area is located on top of the Seaview Reservoir.
- **Five Corners Reservoirs and Pump Station.** Two reservoirs are located at the Five Corners site, with a pump station that was recently upgraded.

Mr. Lindberg reviewed the major work elements associated with the draft plan. He explained that staff did a great job of collecting the data needed for the update, which provided the necessary historic information to identify how much water the City has used in the past and project future water demands. The water system analysis included a review of the existing reservoir supply stations and water mains to identify the current status of each and resulted in a list of water system improvements that were needed to address issues related to capacity and current conditions. Mr. Lindberg emphasized that the financial program is a critical part of the plan. It identifies anticipated costs for each project, which will help the City develop a financial plan that can be funded by the operations and maintenance budget in the future. He noted that all elements of the plan have been reviewed by City staff.

Mr. Lindberg recalled that at their last meeting, the Board requested more information about the City's current and past water system sustainability activities. He noted that this issue is specifically addressed in Appendix F (City of Edmonds Water Use Efficiency Report). He summarized the programs as follows:

- **Leak Detection Surveys:** Each year, the City contracts with a specialty company to survey approximately one-third of the water distribution system. Once leaks are identified, they are repaired immediately.
- **Water Main Replacement Program:** Each year, the City replaces approximately 1.5 miles of the distribution system, which consists of the remaining thin-walled steel pipes.
- **Program for Showing Consumption History:** Customer bills that provide historical water consumption data allow customers to understand how their use varies throughout the year. The program helps customers make informed choices about how they manage their water use, including implementing conservation.
- **Reclaimed Water Opportunities:** The City will complete an evaluation on the feasibility of and opportunities to use reclaimed water, which is an element of the Water Efficiency Rule.
- **Involvement as a Member of the Everett Water Utility Committee:** The goals of the committee are to make conservation kits available to customers, audit the irrigation systems of schools and commercial uses, conduct public outreach and school-based education programs, and offer rebates for water-efficient toilets and clothes washers.

Mr. Lindberg reviewed that the City's existing water system sustainability activities have resulted in a decline in the overall amount of water supplied to the system from 3.65 million gallons/day (MGD) in 2003 to 3.07 MGD in 2008. In addition, per capita water usage declined from 111 gallons per day in 2003 to 104 gallons per day in 2008. He explained that the plan is to continue the program with the goal of reducing present capacity and per capita water usage by 1% per year. He noted that the City's current water system leakage complies with the Department of Health's requirement of not more than 10%. He reviewed the following key findings of the plan:

- The City provides water service to more than 10,050 customer accounts.

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- Future water supply will come from the Alderwood Water District (AWD), with Seattle Public Utility (SPU) as a backup supply in the case of emergency.
- It is projected that overall supply will increase between approximately 12% and 21% at the end of the 20-year planning period.
- Much of the City's current water system consists of undersized water mains that are reaching the end of their useful service life and need to be replaced.

Mr. Lindberg provided photographs to illustrate the condition of the existing 8 and 12-inch cast iron water mains, which are common in the downtown area. Most were installed in approximately 1928 and need to be replaced. He reviewed the future water system needs and noted that the plan identifies a 2010-2016 Capital Improvement Program (CIP) that totals \$20.1 million per year and water main replacement will account for 87% of the 20-year CIP. Pipe replacement projects are planned for 1% of the system per year. This assumes a 100-year economic life span for cast or ductile iron water lines. He noted that rate adjustments would be needed to fund maintenance of the water utility and the CIP. He said the plan recommends an additional full-time employee (FTE) for GIS support and 1/3 FTE for the water utility.

Mr. Lindberg explained that the next step is the State Environmental Protection Act (SEPA) process, and a Determination of Non-Significance was issued on June 3rd. The appeal period will end on June 17th. Upon acceptance by the Planning Board, the draft plan will be introduced to the City Council on June 22nd. It is anticipated the City Council will hold a public hearing on July 6th, and then the plan will be submitted to the Department of Health and adjacent water purveyors. Once the Department of Health has completed their review (approximately October), the plan will be brought back to the City Council for final adoption (approximately November).

Board Member Cloutier said the proposed plan treats the water supply from the AWD and SPU as assumed resources. He asked if any analysis has been completed regarding the long-term viability of these resources (i.e. the potential impacts of climate change and the changing needs of other communities such as Everett). Mr. Lindberg answered that the AWD recently completed a study and indicated they are comfortable they will have sufficient water supply to meet the future needs of Everett, as well as the other communities they supply water to. He explained that Edmonds' situation is unique in that they have the ability to obtain water from two different regional systems. Most jurisdictions do not have this opportunity. Board Member Cloutier pointed out that if the AWD were to experience difficulty supplying the City of Everett with sufficient water due to the changing climate, etc., other providers in the area would likely be experiencing the same problems.

City Attorney Snyder advised that he and Mr. Miller are currently part of a five-city water district negotiation for a 30-year water contract that will come before the City Council for approval in October. The new contract will provide for equal sharing of water. The analysis will include City build out as per the Growth Management Act growth pattern. If there is a significant shortfall or climate problem, everyone would feel the pain equally.

Board Member Cloutier said he recently reviewed the City's current plan for drought and low-reservoir situations (Ordinance 2474). He expressed his belief that the current plan is fully responsive as opposed to proactive. It would be helpful to have some proactive indicators to enable the City to take early action. Mr. Miller said City staff is working with the Everett Coordination group that obtains updates on a monthly basis about the current water supply. He agreed to take it under advisement to recommend the plan be updated in the near future.

Vice Chair Lovell observed that the budget for replacement of existing pipe is more than the City has spent in the past years because funding has not been available. He asked Mr. Lindberg to provide more information about the anticipated sources of funding to support the proposed maintenance and replacement programs. Mr. Lindberg explained that a consultant from FSC Group reviewed the City's current financial resources and projected future operation and maintenance costs and the planned improvements. This effort resulted in a program for funding the improvements identified in the plan, including rate adjustments. Vice Chair Lovell recalled that at their retreat, the Board discussed the possibility of forwarding the plan to the City Council with specific recommendations to address sustainability issues.

Board Member Reed referred to Table 9-6, which identifies water main improvement projects and Table 10-2, which outlines the 2010 through 2016 annual capital fund cash flow. He asked if there is any way to correlate the projects that are being

done each year with the underlying categories identified in Table 10-2. Mr. Lindberg referred to Table 9-7, which summarizes the improvements that would be done year by year.

Board Member Reed referred to Table 10-6, which projects an 8.5% yearly increase. The report notes that this increase would fall below a 1.5% threshold. He requested more information about the threshold. Mr. Lindberg explained that the typical threshold used by the Department of Health to assess relative affordability is 1.5% of the median household income. Table 10-6 represents the City's rates with the projected rate increases annually for the forecast period tested against the 1.5% threshold. Board Member Reed summarized that, based on Table 10-6, the City can raise their rates as proposed and still fall below the state's threshold.

Board Member Stewart recalled Mr. Lindberg's earlier comment about recent reductions in water consumption in the City. However, she noted that the actual reduction was only 1.75% per capita over that time period, which is not a lot. In the spirit of sustainability, she suggested the City's water consumption should decline even in periods of increased growth. She suggested the City look ahead to increase their conservation measures to be consistent with the City's recently adopted Community Sustainability Element.

Board Member Stewart noted that the proposed update talks about how to dispose of excavated materials when pipes are replaced. She said she hopes the City would do whatever they can to recycle the materials to the maximum extent possible, including the pipes. She suggested the language in the document should reflect the sustainability element whenever possible. She specifically referred to Page 4 of the Community Sustainability Element, which talks about sustainable maintenance. Placing the word "sustainable" before "maintenance" implies that the City will be looking for durable projects. It will also help the citizens be aware of the deferred maintenance costs associated with postponing necessary replacement projects. She expressed her belief that replacing the pipes at a rate of 1% per year does not appear to be adequate. She suggested the City be a leader and think about how to fund a higher per year pipe replacement ratio.

Board Member Stewart inquired about the City's current contract with SPU for a backup water supply. Mr. Miller answered that the existing 30-year contract expires in two years, and staff is in the process of negotiating a new supply contract. Board Member Stewart asked about the costs associated with maintaining the contract with SPU. Mr. Miller said the costs are associated with staff time and legal fees. Board Member Stewart observed that if the City's goal is to reduce their water consumption, they may not need a backup water supply in the future because their demand would be less than it is today. However, public education will be required to apply sustainability principles in the future.

Regarding concerns expressed at previous meetings about climate change, Board Member Stewart observed that Sustainable Edmonds is working to educate the public about the University of Washington's focused study on anticipated seasonable precipitation levels over the next several years within the immediate region. They predict there will be less snow fall and earlier runoff, and the water supply could be seriously impacted. These concerns should drive the conservation effort forward. She asked staff to review the University of Washington's study and give more consideration to sustainability.

Board Member Johnson said the plan makes note that the anticipated life span of the new pipes is about 100 years, but it also indicates that there is a lot of old pipe in the City, especially in the downtown. If the City only replaces the pipes at a rate of 1% per year, they would only accomplish replacement of 20% of their existing pipes over the course of the plan. She suggested this would be insufficient given that many pipes in the City are about 80 years old. She asked if the City has accomplished the goal identified in the 2002 Water System Comprehensive Plan, which identifies a 1% replacement rate. Mr. English answered that only about 60% of the improvements identified in the 2002 plan were accomplished. However, he noted there were some challenges during the time period. Several emergency projects were necessary as a result of the 2006 and 2007 storms, which required the City to divert staff effort to storm drainage projects. In addition, one engineering staff position has been vacant for the last two years due to the City's current budget problems. He summarized that, going forward, their goal is to stick with a 1% replacement rate.

Board Member Cloutier observed that the proposed plan does not identify any action to prevent the City from experiencing the same inability to execute the projects identified in the new plan. He noted that emergencies will continue to come up each year. He questioned if the City has a mitigation plan to make sure they meet their replacement goal, which is already quite low. If the City cannot reach this goal now, how do they plan to meet it in the future? Mr. English agreed that based

on the current staffing levels, the City would not be able to reach their 1% replacement goal if emergency projects come up. Mr. Miller suggested the Board could express this specific concern to the City Council.

Lora Petso, Edmonds, explained that the proposed Water System Comprehensive Plan would not impact her since she obtains her water from the Olympic View Water District. However, she does have some experience with water issues. She referenced Table 7-6, which indicates that fire flow for Seaview Elementary is only 390 gallons per minute. She said she has been in the industry for 15 years, and she has always been led to believe that you cannot put out a fire with less than 500 gallons per minute, which is what current codes and statutes require. For single-family residential homes, insurance companies are looking for 1,000 gallons per minute and the City's own target policy for schools is 3,000 gallons per minute. That means the current fire flow for Seaview Elementary is only 13% of the City's desired rate. She noted there are other schools and neighborhoods on this list, as well, including Stevens Hospital. She observed that some of the problem is related to topography but other problems are a result of the City allowing additional development where there is already insufficient water capacity. Regardless of the reason, she urged the City to address the problem with Seaview Elementary immediately.

Ms. Petso referred to Table 9-3, which outlines the criteria used for ranking water main improvements. It includes existing water main fire flow capability, occurrence of leaks or breaks, year of installation, and existing materials. She noted that none of the criteria should matter if an elementary school is at risk. She suggested they skip the criteria and place the Seaview Elementary project and similar projects at the top of the priority list. Putting out fires must have a higher weight when determining priorities.

Next, Ms. Petso referred to the "capital contingency reserve paragraph on Page 10-7. She said that as a commissioner for a special purpose district, they are required to be prepared in the event that one of their major facilities fails to get water to the citizens. Maybe the City is not concerned about this because they can borrow money from another fund. She suggested the Board ask staff for clarification about this issue because it appears imprudent to not have a capital contingency reserve.

Ms. Petso referred to the proposed rate increase and suggested that this, alone, would encourage people to conserve water without any other action on the part of the City. She asked if implementing a rate increase requires a procedure that is separate from adoption of the comprehensive plan update. If not, then perhaps the Board should conduct an additional public hearing that specifically advertises the proposed rate increase. She said it is odd to see the proposed rate increase included as part of the plan, and she questioned if this would bind or restrict the City in any way.

Ms. Petso said she is used to seeing more specific information about each project to explain why the improvement is necessary, how the improvement would be funded, when the improvement would occur, and how it would address a specific problem. This type of information would allow the City staff to answer many interesting questions. The current configuration of the plan makes it difficult for the public to find out important information. For example, it would be helpful to have more information about how an improvement at Seaview Elementary would actually help the situation. She questioned whether installing a larger pipe would address the problem and suggested it would be like trying to attach a fire hose on the end of a garden hose.

Roger Hertrich, Edmonds, reported that he attended the City Council Finance Committee meeting where they discussed utility rates. While it was presented to the Finance Committee that the average rate increase would be about 5%, it is important to note that the water rates would go up 26% and the stormwater rates would go up 22%. He suggested that a 26% increase is an extreme amount given the current economy. He shared an experience where he discovered a broken water main and called 911 to report the situation. He said it took quite a while for the City staff to respond. He asked if a drawing of the existing pipes is available to point out how severe the current problem is.

Mr. Hertrich referred to information in the plan that indicates that AWD's rates would go up substantially. However, there was no mention in the plan that the SPU rates would also increase. Since the City has the ability to obtain water from either source, he suggested they purchase the water from the source that can provide the best rate. Currently, water rates vary significantly, but this will likely come to an end in a few years when the state law will likely change to have one general contract for everyone. This would make the costs more comparable. He suggested that if AWD's rates go up right away, the City should consider purchasing their water from SPU until such time as a new state law is adopted.

Mr. Hertrich cautioned that this is a bad time to talk about additional employees, and there is speculation as to whether the City Council will even approve the extra person. He suggested the City operate with the idea that they will not increase staff for the time being. Mr. Hertrich observed that washing machines that reduce water consumption considerably are being sold at a high cost, and toilets that use substantially less water are also being sold. However, it does not appear that the City is participating in any rebate program to support these changes. The only way the City is proposing to contribute is to charge a higher rate to encourage people to take steps to reduce their water consumption.

Al Rutledge, Edmonds, said he does not see any figures to identify how much the City refunds to customers for leaking problems. This figure should be presented before the City considers a rate increase. It is important to let the public know that they are trying to work on this issue. He reminded the Board that the Richmond Beach outlet is no longer available to provide water to the City in the case of an emergency. In order to obtain water from SPU, the City would have to go through a facility located in Shoreline. He asked if there are figures to show how much this would cost.

Mr. Rutledge said the Snohomish County Council has recently discussed problems at Lake Ballinger, which is located within District 1. It was noted that since 2000, the population at Lake Ballinger has increased by 28,400, and the area experienced the 4th highest population growth in the region. However, the population growth for the remainder of the City was actually quite low. He pointed out that the City of Mountlake Terrace recently received a \$2.1 million loan from Snohomish County to construct low-income housing. This same type of funding is also available to Edmonds.

Finis Tupper, Edmonds, referred to Table 9-1, which outlines water system improvements the City has completed since 2002 when the Water System Comprehensive Plan was last updated. He suggested the Board compare this list with the projects that were supposed to be accomplished during the six year period. He noted that the City is two years behind with their update of the plan, and they did not accomplish much within the eight years following 2002. He said he did not have a great deal of time to study the Financial Plan because it was not included as part of the Board's May 26th packet. It was presented to the City Council Finance Committee last evening. He summarized his belief that there is a definite problem in the City related to leakage. In 2002 the leakage was 17%, and he questioned what would happen with the rates if the City were able to significantly reduce this amount. He noted that staff provided a broad comparison of rates amongst various jurisdictions in the region, but the information did not make it clear that the City is also charging an 18.9% tax on top of the water rate. He expressed his belief that the updated plan should specifically identify how the projects and improvements would be implemented. If it does not, then it is meaningless and a waste of \$150,000.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Mr. Miller said staff spoke to the consultant about the fire flow issue raised earlier by Ms. Petso. They will certainly take her recommendation under advisement as they work further to prioritize the projects and improvements. He suggested staff further meet with representatives from the Fire Department to assess the seriousness of the situation. However, it is also important to keep in mind that while the measurement was taken from the hydrant closest to the school, there are other hydrants that also serve the site.

Mr. Miller advised that staff is doing the best they can with existing resources to execute the plan and balance all the other needs associated with running the City. If some of the projects are not being done then money is not being spent, and this is taken into consideration when discussing future rate adjustments. He emphasized that the City is not trying to build a significant cash balance other than what is needed to finance their legal and financial obligations. Staff will incorporate the concerns expressed by the public and the Board regarding water loss, but he noted that the City has improved the situation significantly since 2002, and they are now below the state limit of 10%.

Mr. Miller pointed out that SPU's water rate is significantly higher than AWD's rate. Even if the price of water from the AWD increases at a rate of 10% per year, it would take a number of years before it reaches the rate level charged by SPU. At the same time, the cost of water from SPU would likely increase, as well.

Board Member Cloutier asked what the City does to encourage water conservation. He specifically asked if the AWD offers incentives for energy-efficient appliances. Mr. Miller said there are rebates available through the Snohomish County PUD

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and the AWD. Board Member Cloutier noted that the State of Washington is currently offering a “cash for appliances” program, as well.

City Attorney Snyder explained that the agreement between the City of Edmonds and SPU does not include a guarantee of supply or service, so it is not as reliable a source as the AWD. He explained that, constitutionally, the City could have its own rebate program, and the Board could make that recommendation. However, the program must be tied to an additional rate increase to provide funding.

Board Member Reed asked if the rates identified in the plan reflect just the water rate, or are taxes also included in the numbers. Mr. Miller said the numbers identify base rates without the additional City tax of 18.7%. Board Member Reed asked if the City would still be able to meet the 1.5% threshold discussed earlier if taxes are included as part of the rate charge. Mr. Miller answered affirmatively.

City Attorney Snyder said it was determined that fire hydrants are a general fund cost and not a utility fund cost. Every fund in the state is required to pay its own way, and each city has the obligation to continue to fund this program. The amount the utility fund charges must be based on the actual cost to the City for fire flow. If the rate changes, the tax would need to be adjusted and re-justified.

Board Member Stewart asked if the City Council Finance Committee had any discussion about imposing a higher rate on customers who exceed a certain level of usage. Mr. Miller answered that staff has had discussions with the City Council about this option, and it was decided that because the City is meeting and exceeding its conservation goals on a per capital basis, they would continue with what they are doing now. However, they also indicated that the City should continue to make progress on water conservation. Board Member Stewart observed that if the City were to charge a higher rate to customers who use more water, there would be more money available to complete upgrade projects. Mr. Miller clarified that this money would not be marked for anything in particular, but it would be used to pay for the different components of the water utility. Board Member Stewart expressed her belief that now is an opportune time for the City to consider this option further.

Vice Chair Lovell reminded the Board of their retreat discussion about sending each of the plans to the City Council with specific recommendations, strategies and goals associated with sustainability. For the Water System Comprehensive Plan, he suggested the Board’s recommendation include the following goals:

- Reduce the amount of leakage by an even greater percentage over the next two years.
- Undertake an effort to ascertain the reliability and viability of the current water source from a long-term sustainable standpoint.
- Execute a capital plan to spell out what is to be done in 2011 and 2012. If what is projected for 2011 is viable and realistic, they should specifically recommend that sufficient funding be provided to implement the plan.

Board Member Reed pointed out that the plan identifies a certain amount to be spent on improvements each year (\$2.8 million), as well as a prioritized list of projects. He asked if the projects would be funded by going down the list each year until the earmarked amount has been spent. Mr. Lindberg answered that the prioritized list of improvements was developed based on the established criteria. The criteria are intended to help the City determine which projects have a higher priority. It is not a perfect situation because the City does not know if certain water mains will fail in the near future. However, the criteria are based on the best known information available at this time. When the City updates their Capital Improvement Program (CIP) each year, they will rank the projects in the plan based on the best information available. This gives the City the discretion to identify each year what improvements need to be done first. The City can then adjust the projects accordingly to address the most immediate needs. Establishing a strict list of priorities for the next six years would tie the City’s hands and there would be no flexibility to address emergencies and changing circumstances. Mr. Lindberg summarized that the City would identify the project priorities based on the amount of available funding for the year, regardless of the number assigned to the project. The CIP number identifies the project as it relates to the text, and is not intended to indicate any priority. Board Member Cloutier noted that Table 9-5 actually ranks the projects and assigns point values based on what must be done each year since this would tie the City’s hands in the future if the needs change. Mr.

Chave explained that Table 9-5 is intended to be a budget tool. The ranking gives a long-term framework to translate projects into the specific CIP each year.

Vice Chair Lovell asked Mr. Lindberg to share his ideas for City goals in 2011. Mr. Lindberg said water line replacement should be continued at a higher rate than what has been done in the past, and that is why rate adjustments are necessary and something the City should support. Board Member Cloutier said it is also important to have a monitoring system to determine whether or not the plan is being implemented.

Board Member Johnson said she would support a more aggressive approach for reducing leakage. While the City is currently below the 10% goal, they could perhaps do better. Mr. Lindberg said all systems throughout the region are in the same boat. Much of the improvement is a result of regional conservation programs that are currently in place. Beyond that, the City has a lot of older homes where residents can do a better job of reducing their water consumption by replacing their toilets, etc. He agreed there is room for further reduction, and the Water Use Efficiency Rule requires the City to evaluate their past year's performance in this regard.

Board Member Stewart asked if any thought has been given to encouraging rain water harvesting for irrigation, etc. Mr. Miller acknowledged that more could be done to encourage this activity.

Board Member Johnson referred to a September 11, 2009 memorandum from Mr. Miller to Mr. Lindberg (Appendix F), which shares staff's thoughts on reclaimed water. Board Member Stewart observed that the memorandum contains a statement that there is insignificant demand and that the nature of most businesses in the City core does not require a significant need for large volumes of non-potable water. She summarized that this statement suggests there is no need to worry about the City's potable water consumption when they should, in fact, be thinking about reducing their use by using other non-potable means.

City Attorney Snyder reminded the Board of a recent decision in which it was determined that rainwater harvesting was not, in fact legal. He noted that the State Legislature is in the process of addressing this issue. The ability to use gray water systems would be a great enhancement by changing the City's water and sewer costs. This should be a long-range issue to bring to the City Council's attention as appropriate for the City's lobbyist to address.

BOARD MEMBER CLOUTIER MOVED THAT THE BOARD FORWARD THE PLAN, RECOMMENDING APPROVAL, WITH THE FOLLOWING ADDITIONAL RECOMMENDATIONS:

- 1. STAFF THE PUBLIC WORKS DEPARTMENT SUFFICIENTLY TO EXECUTE THE CAPITAL IMPROVEMENT PLAN AT 1% PER YEAR WATER MAIN REPLACEMENT, OR MORE.**
- 2. FINANCE THE CAPITAL IMPROVEMENT PROGRAM FOR THE 1% PER YEAR WATER MAIN REPLACEMENT, AT A MINIMUM.**
- 3. SET WATER RATES TO PAY FOR THE CAPITAL IMPROVEMENT PLAN AS PLANNED.**
- 4. PROVIDE FOR PERIODIC REPORTS TO ENSURE TIMELY EXECUTION OF THE CAPITAL IMPROVEMENT PLAN.**

BOARD MEMBER REED SECONDED THE MOTION.

Board Member Cloutier observed that conservation efforts are currently on track, and there are additional plans in place to address the issue further. The water supply issue will be negotiated over the next several months, as well. The motion is intended to focus on the CIP. They are currently experiencing water main breaks and leakage because the pipes are old and replacement has not been executed at the level identified in the previous plan.

THE MOTION CARRIED UNANIMOUSLY.

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PUBLIC HEARING ON THE STORM AND SURFACE WATER COMPREHENSIVE PLAN UPDATE

Mr. Shuster recalled that he previously presented the update to the Board on May 26th. He noted that sign up sheets were provided near the back door for people who want to be added to the mailing list to receive updates and changes. He noted the most current copy of the plan is always available on the website.

Mr. Shuster explained that the Storm and Surface Water Comprehensive Plan is an element of the City's overall Comprehensive Plan and guides the operation of the City's storm and surface water utility by identifying and proposing solutions to known flooding, water quality, and habitat problems. It details the actions necessary to ensure compliance with applicable Federal, state and local requirements, especially the Department of Ecology's Western Washington NPDES Phase II Municipal Stormwater Permit. It also presents an operation and maintenance plan and capital improvement plan, as well as a financial plan for addressing maintenance and capital improvement needs.

Mr. Shuster explained that because Edmonds is primarily a built-out City, most of the identified issues are a result of uncontrolled runoff from past development, aging infrastructure, regulatory mandates, and a sub-standard stormwater infrastructure that was acquired in areas annexed from Snohomish County over a number of years. He explained that prior to the first stormwater code in 1977, all stormwater was piped into the nearest stream or creek, and the City is still suffering the consequences of this action. Mr. Shuster reviewed that the plan was last updated in 2003 prior to the effective date of the NPDES Phase II Permit that was adopted in 2007, and the plan must be updated to incorporate the new permit requirements. It is also necessary to re-prioritize capital projects. In addition, the City's current Storm and Surface Water Comprehensive Plan contains policies on water resources and drainage management that were written in 1985 and are now outdated. Mr. Shuster advised that the programs identified in the plan are largely driven by the NPDES Phase II Permit. They include:

- Inspecting and tracking maintenance of privately-owned and operated detention and water quality systems. Property owners are responsible for paying for the maintenance of these facilities, and the City is responsible for making sure they are maintained properly because these systems discharge into the City's stormwater system.
- Inspecting and tracking maintenance of publicly-owned and operated detention and water quality systems.
- A pro-active illicit discharge detection and elimination program. This is a requirement of the NPDES Phase II Permit and the program must report situations and provide evidence of people putting stuff in the catch basins that should not go there, as well as illegal connections.
- A public education and outreach program. It is important to teach people that they can have an impact on water quality.

To give the Board an idea of the scope of the City's Storm and Surface Water Utility, Mr. Shuster pointed out that the City has 6,600 catch basins, which are situated in the roadways to take water off the streets. These catch basins must all be maintained on a regular basis. They also have 138 miles of stormwater pipe, and the Public Works crews must sweep about 2,000 miles of roadway each year to pick up and dispose of materials that can clog the storm drains. He advised that the plan provides an analysis of the projected staffing needs to implement the NPDES Phase II Permit programs. It is anticipated the City will need to hire one additional full-time employee in both the Engineering Department and the Public Works Department.

Mr. Shuster explained that the proposed plan identifies two levels of capital projects:

- **Tier 1 Projects** provide a basic or essential level of service from the stormwater utility and would be funded 100% by the utility rates and bonds. The list includes projects and programs that keep the City in compliance with local, state and Federal regulations, especially those related to the NPDES Phase II Permit. It also includes projects that address long-standing, recurring flooding issues such as in southwest Edmonds and around lower Perrinville Creek. City-wide drainage replacement projects are also considered Tier 1 Projects.
- **Tier 2 Projects** are those projects that are largely beneficial to aquatic habitat and provide an enhanced utility level of service. These projects would be funded 25% by utility rates, with the remaining 75% coming from outside sources. Projects include the restoration of the Edmonds Marsh, daylighting Willow Creek, channel restoration on Shell Creek, and high-flow bypass and bank stabilization and restoration on Perrinville Creek.

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Mr. Shuster reported that fees collected for the Storm and Surface Water Utility have been used for an increasing number of items and has been driven by increased population growth and accompanying development, annexing areas from Snohomish County with inadequate drainage systems, and increasing regulatory mandates for improving water quality and aquatic habitat in the surface waters that receive the City's stormwater runoff. He noted that the rate study has now been posted on the City's website, and a rate adjustment would require City Council approval.

Board Member Cloutier expressed his belief that the four goals identified in Executive Summary 1-3 are right on target, but he voiced concern that the plan does not identify a process for monitoring future implementation. He suggested the plan provide a feedback loop to identify the benefits of each of the goals. Mr. Shuster said the current NPDES Phase II Permit expires in February of 2012, and the next permit will require the City to submit a plan for monitoring best management practices to the Department of Ecology. The new permit is supposed to help local jurisdictions implement monitoring plans by providing an adaptive management approach.

Board Member Cloutier suggested that if the Storm and Surface Water Comprehensive Plan Update is presented to the public in a format that is easy to read, it will help them understand why rate changes are necessary. He pointed out that it is more difficult to treat water at the outlet. He recalled that Oregon State recently outlawed or strictly regulated 118 chemicals to reduce pollution in their waterways. He asked if there is a similar effort in Washington State. Mr. Shuster said he does not have an answer for this question. However, he noted that the education component of the plan will be important for addressing this issue at the City level. Board Member Cloutier suggested the Board recommend the City Council direct the City lobbyist to pursue a similar program for Washington State.

Board Member Cloutier expressed his belief that pervious asphalt for roadways is not much of a solution for addressing storm water issues. Mr. Shuster said one component of the permit is to require the local stormwater codes to allow the use of low-impact development techniques. He announced that the City Council approved the new stormwater code on April 20th, and the new code is fully compliant with the permit requirements and allows the use of porous asphalt and concrete. Board Member Stewart referred to a King 5 News report on June 1st about a recent project in Bremerton that used porous asphalt that allowed water to drain into the underlying soils. She suggested the City should take advantage of any opportunity to use impervious pavement.

Board Member Stewart noted that the NPDES Phase II Permit requires the City to aggressively track and locate the source of illicit discharges. She knows the City is working to address this problem, and she asked if penalties are imposed when issues are discovered. Mr. Shuster said that the illicit discharge code was updated in October of 2009, and it identifies a penalty of \$500 per day.

Board Member Stewart asked if the City has considered the option of providing incentives for people to consider rain gardens, which would allow private residents to mitigate stormwater by treating it on site. This would take some of the onus off of the City's stormwater system. Mr. Shuster agreed that would be a good idea, but he questioned the legal aspects of using public funds for improvements on private properties.

Board Member Reed referred to Executive Summary 1-5 that outlines the City's recent accomplishments, which were not very good. He questioned what happened to keep the City from accomplishing the goals set forth in the 2003 plan. Mr. Shuster answered that staff shortages and emergency projects are the main reason why many of the projects from the 2003 plan have not been completed. He reminded the Board that Tier 2 projects require the City to obtain 75% of the funding from outside sources. He noted that the new plan indicates these projects would take place in about four years, which gives the City time to secure outside funding. Board Member Reed said it would be helpful to have a table to identify the various revenue sources, the anticipated operating expenses, and the general expenses.

Board Member Reed observed that, as proposed, there would be an 8.5% increase to the water rates and an 8% increase to the stormwater rates, in addition to increased taxes. The funding needs identified in the plan would require an approximately 20% increase each year for these two utilities. He suggested that the rate increases would be carefully scrutinized by the City Council so that the people have a clear understanding of why they are necessary, but the proposed plan does not clearly identify this need. He asked staff to summarize why a rate increase is necessary. Mr. Miller answered that, in general, the NPDES Phase II Permit places new mandates on the City which require them to add more staff, increase

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operating costs, and fund additional capital projects in order to comply. Mr. Shuster said the City has compared their rates with those of other jurisdictions and found they are about average. Even with an 8% increase next year, the rates would remain in the middle. Vice Chair Lovell suggested that staff present this information to the City Council.

Al Rutledge, Edmonds, pointed out that Lake Ballinger was left out of the project list. He asked the Board to consider the significant increase of population that has occurred in the Lake Ballinger area. He noted that 25 new homes have been proposed to be built at Halls Lake, which is next to Ballinger Lake. This new development will require new roads and filling in swamp land. The additional stormwater will likely be allowed to flow into Lake Ballinger, which will further increase the existing problems. He suggested the City consider options for putting this additional water into the stormwater system rather than into the lake. He noted that a meeting of the Lake Ballinger Forum has been scheduled for June 22nd to discuss this issue. He also expressed concern that the plan only identifies \$42,000 for stormwater maintenance at Lake Ballinger, which is not enough to adequately address the issues. He asked that the Board double this amount.

Roger Hertrich, Edmonds, agreed with Mr. Rutledge regarding stormwater issues at Lake Ballinger. Lake Ballinger should be a priority, and the Board should make this emphasis in their recommendation to the City Council. Mr. Hertrich expressed his belief that the draft plan is easy to read. He recalled that he was a member of the City Council in 1991 when there was a lot of discussion about stormwater. The City Council and the Engineering Department recognized there were problems, and they pushed to get bypasses around creeks in Edmonds. They were able to accomplish this goal without the help of the Department of Ecology. This was an excellent attempt to save the condition of the individual creeks.

Mr. Hertrich said it appears that Edmonds has been determined to be somewhat chemical free because the types of industry that typically contributes to pollution are not present in Edmonds. He said he was particularly interested in the references to “aquatic wildlife” and assumes they are talking about fish. He suggested that projects dealing with fish would be eligible for grant funding. The City will need help to improve the creeks, and grant funding is the way to accomplish this work.

Mr. Hertrich pointed out that Ms. Petso lives near Hickman Park, and she has repeatedly expressed concern about drainage in this area. He suggested the Board keep this concern in mind. He also expressed concern about using pervious concrete or asphalt as the way to address stormwater runoff. He questioned how porous these materials really are and if they are really a practical alternative.

Mr. Hertrich recalled that stormwater improvements in Perrinville have been discussed by the City on a number of occasions, and it has been noted that properties and development in the City of Lynnwood significantly contribute to the flooding problems that exist in Perrinville. He noted that it will cost a significant amount of money to address the problems adequately, and he asked if the City of Lynnwood has been asked to help fund the project. He summarized by saying how he loves that the State and Federal governments create rules without providing funding to local jurisdictions to implement the new requirements. He questioned at what point the new rules are no longer practical and economically feasible. He also questioned if the residents of Edmonds could afford a 25% utility rate increase. Unless the City can find some other way to fund the new programs, he questioned how much they must comply with the new permit requirements.

City Attorney Snyder suggested that not complying with State law is a false economy. The City will end up doing the same thing down the road with several thousands of dollars of legal costs.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

Vice Chair Lovell said he lives in the Perrinville Area, and he received a formal notice from the City of Lynnwood regarding a major stormwater pipe replacement project that calls for installing a 54-inch pipe to correct the existing problem. He agreed to forward the information to staff.

Board Member Cloutier asked staff to respond to the issues raised by citizens regarding Lake Ballinger. Mr. Shuster advised that the City participates in the Lake Ballinger/McAlear Creek Watershed Forum, which meets monthly with the five other jurisdictions within the watershed. Regarding the new development referenced by Mr. Rutledge, he said the City of Lynnwood recently updated their stormwater code per the NPDES Phase II Permit requirements, and he believes the new development will be required to comply with the new standards. The \$42,000 that is budgeted yearly for projects associated

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with Lake Ballinger is a placeholder. The City staff is actively working with the forum members to decide what projects they want to pursue. The amount may change depending on the proposed projects and how they will benefit the residents of Edmonds. In addition, he and Mr. Miller met with staff from Mountlake Terrace to discuss issues related to Lake Ballinger.

Board Member Cloutier said it was previously mentioned that the City does not have industrial businesses that produce chemical waste. However, he noted that there are still chemicals getting into the City's wastewater. Mr. Shuster said the majority of pollutants come from vehicles, but they also result from lawn chemicals, car washing, etc.

Board Member Cloutier recalled that Hickman Park was identified by a citizen as a priority. Mr. Shuster pointed out that Projects 1A, 1B, 1C and 1D all pertain to projects in this area. They are scheduled to start next year.

Board Member Reed asked if the funding identified for improvements in the Perrinville area identify just the City's share of the work. Mr. Shuster answered that it identifies the entire cost of the project. However, staff has had some preliminary discussions with Lynnwood, which will continue in the future.

Board Member Johnson asked if the monitoring plan that would be required in 2012 would be created in house or if it would be an item on the CIP. Mr. Shuster answered that staff anticipates doing much of the work in house. He noted that the Puget Sound Partnership has put together a consortium of consultants who have prepared a document on monitoring protocol, and the group will meet in Edmonds on June 15th to finalize the document. The City will use this information as a starting point for creating its own monitoring plan.

Board Member Johnson asked staff to share the timeline for the 100-year flood plain study that is proposed for the downtown/waterfront area. Mr. Miller answered that it is scheduled to occur in 2012. He explained that staff is trying to be practical as far as what can be accomplished each year. Mr. Shuster added that staff would begin preliminary work in the near future to determine the scope of the project and to secure outside funding. Board Member Johnson suggested that staff coordinate this effort with the Port of Edmonds, as they pursue their master plan for Harbor Square.

Board Member Johnson noted that the plan provides a CIP description for the Tier 2 Marsh project. She asked if this project only involves the city-owned portion of the marsh. Mr. Shuster answered that it covers just the city-owned portion of the marsh. He advised that he would be meeting with Friends of the Edmonds Marsh and others to get this project moving forward in the near future.

Board Member Johnson observed that the City inherited a lot of roadway from Snohomish County. Instead of curbs, gutters and sidewalks for drainage, the County used a ditch and culvert system. Since they are not bringing all of the local streets up to standards in the near future, she questioned if the ditch and culvert system is effective for water quality and drainage. Mr. Shuster answered that a properly functioning ditch and culvert system is actually better for water quality than a piped system. Some of the water will infiltrate into the ground and result in lower flows, and infiltration also provides some treatment of water. The areas that are scheduled for improvements are those that have no drainage at all, or people have filled the ditches to provide space for parking.

To address Mr. Rutledge's concern about proposed development near Lake Ballinger, Board Member Stewart referenced Flood Protection Policy FP-2 (Page 1-5), which states that the City will "preserve and protect natural surface water sites, such as wetlands, aquifers, streams and water bodies that help regulate surface flows and recharge groundwater." From the City's standpoint, they will charge developers with this mandate, and there are regulations in place for this to happen.

Vice Chair Lovell reminded the Board of their retreat discussion about forwarding a set of recommendations to the City Council relative to the Storm and Surface Water Comprehensive Plan. He expressed his belief that the City must resolve the issues on Dayton Street before any major redevelopment can occur. If they do not address the problems now or at least get started in a meaningful way, it will prolong economic development in this area of the City. He suggested the Board recommend that some sort of prioritization be placed on this aspect of the plan. Mr. Shuster said the Board could emphasize the need for the flood plain study as soon as possible. He agreed the study would be the key to future redevelopment in the area. The current flood plain map for the area was done in 1982 and flood plains change based on upstream development, changes in the storm intensities over the years, etc. This project is the major first step in deciding what is going to happen in

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the area. He noted that project 2A is anticipated to cost \$244,000. He explained that the purpose of the study is to re-delineate the federally-recognized 100-year flood plain that the Planning Department uses to regulate building in the area. Vice Chair Lovell summarized that the money earmarked in the plan is to determine the scope of the problem, but not fix the situation. Mr. Chave said the study would delineate the extent of the flood plain and trigger building standards and codes to address the issues. Mr. Miller reminded the Board that there are many stakeholders associated with the Dayton Street situation, including the Washington State Department of Transportation. They have had an initial discussion with them, but it will take more to bring them to the table to really solve the issues.

Board Member Cloutier asked if it would be feasible for the Board to recommend that the study move forward as soon as possible. Mr. Shuster said it would be possible to push the project forward, but it would require that other projects be moved further out. He noted that Project 13 would restore the Edmonds Marsh, which has been filled in over the years because creeks have discharged sediment, effectively reducing the Marsh's water holding capacity. He explained that one way to prevent the marsh from over topping is to remove the sediment; but from a practical and environmental standpoint, this would be difficult to do. Staff agreed to research the issue further and determine the feasibility of moving the Dayton Street project to 2011.

BOARD MEMBER CLOUTIER MOVED THAT THE BOARD FORWARD THE STORM AND SURFACE WATER COMPREHENSIVE PLAN TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL, WITH THE FOLLOWING STIPULATIONS:

- **FUND ALL OF THE PROJECTS LISTED IN TIER 1 OF THE CAPITAL IMPROVEMENT PLAN.**
- **INCREASE FUNDING AS PER THE PROPOSED RATE INCREASE.**
- **PURSUE ALL TIER 2 PROJECTS WITH THE GOAL OF PROVIDING 25% FUNDING FROM THE CITY VIA INCREASED USER FEES.**
- **MOVE PROJECT 2A (SHELLABARGER CREEK/WILLOW CREEK/EDMONDS MARSH 100-YEAR FLOOD PLAIN DELINIATION) FORWARD AS SOON AS POSSIBLE TO FACILITATE REDEVELOPMENT ALONG THE WATERFRONT.**

Board Member Stewart recalled that at the last meeting, the Board discussed that Project 2B (Willow Creek Pipe Rehabilitation) would not be necessary if Project 13 (Daylight Willow Creek in Marina Beach Park) is completed in the near future. The Board agreed that staff should point out to the City Council that the City could save money if they obtain grant funding to accomplish Project 13 so that Project 2B is no longer necessary.

BOARD MEMBER REED SECONDED THE MOTION.

Vice Chair Lovell said he has been led to understand that Burlington Northern Santa Fe (BNSF) intends to put in a full overpass for the tracks as part of the second track project. Mr. Shuster clarified that BNSF would put in a trestle for the double track. The trestle would be buried in anticipation of the creek daylighting project. It would be uncovered when the creek project begins.

Board Member Reed observed that the proposed plan is extremely dependent of outside funding sources such as grants. He reminded the Board that they have been informed on previous occasions that grant funding is not easy to get at this time. He suggested that the City Council discuss what could be done to improve the City's grant success. Mr. Shuster said that is one reason the projects are scheduled to start in 2014. Staff is optimistic that the economy will rebound by that time. Mr. Miller added that if the City does not put a project in the capital program, the project cannot be eligible for grant funding. Board Member Stewart asked if fundraising dollars could be used for capital improvement projects. Mr. Shuster answered affirmatively.

THE MOTION CARRIED UNANIMOUSLY.

THE BOARD TOOK A BREAK FROM 9:45 TO 9:55 P.M.

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PUBLIC HEARING ON PROPOSED UPDATES TO LAND USE PROCEEDURS (CHAPTERS 20.01 THROUGH 20.08, EXCLUDING 20.05)

Mr. Clugston reviewed that since Title 20 was adopted by the City Council in June 2009, staff identified several areas that needed further refinement. These include staff reassuming the public notice requirements for project applications, reorganizing and clarifying portions of the text, and updating the permit type matrix in ECDC 20.01.003.A. Board Member Lovell recalled the Board's previous discussions regarding the proposed changes. He noted that the Board generally agreed with the changes proposed by staff. However, the majority of the Board disagreed with the decision made by the City Council to change the permits that were identified at Type III-A decisions to Type III-B decisions, allowing appeals to come before the City Council for closed record review. He referred to the Planning Board Minutes of April 14, 2010 (Attachment 5), which reflects the majority of the Board's position on this matter.

Board Member Reed noted that some Type IV decisions go before the Planning Board, so perhaps Section 20.01.001.B should be updated to include language similar to Section 10.01.001.C.1. The Board concurred that it is important to clarify the role of each of the hearing bodies. City Attorney Snyder pointed out that there is an entire section on quasi-judicial hearings elsewhere in the code. Mr. Chave agreed to review the language to determine if the Planning Board's role in quasi-judicial decisions is covered adequately elsewhere in the code or if new language should be added to address the concern. Board Member Reed requested clarification about why "home occupation permits" were eliminated from the matrix as a Type II decision. Mr. Clugston answered that home occupations are handled administratively or through a conditional use process if a certain threshold is exceeded.

Al Rutledge, Edmonds, referred to Section 20.07.004.B, which requires that appeals be filed in person or by mail. He suggested this be changed to allow an appellant to submit an appeal via fax or Western Union. He also recommended that the fee be eliminated for closed record appeals because it is the second time around.

THE PUBLIC PORTION OF THE HEARING WAS CLOSED.

City Attorney Snyder explained that fees are not established by the proposed ordinance. They are established separately via a City Council resolution. He advised that the City Council has established that fees should be set at a level consistent to recover costs. Mr. Chave added that appeal fees are actually set at a level to recover some costs, but not the full cost. In addition, it is not possible for appellants to submit appeals via fax because they are required to also pay a fee at the time an appeal is filed. There is no way for them to submit their payment via fax.

Board Member Reed recalled that when the previous amendments to Title 20 were forwarded to the City Council for adoption a few years ago, he was the only Board Member who voted in opposition. As a group, the Board voted to take the City Council out of the appeal process, and the City Council adopted the change. However, in early 2010, the City Council reversed their decision. He said his position remains the same for the reasons he previously stated.

Board Member Stewart pointed out that even if an appeal is mailed to the City in a timely manner, there can still be issues if the mail is slow and the appeal doesn't arrive on time. She expressed concern for people who are housebound and do not have the ability to submit documents to the City in person. Mr. Chave said he has never heard of an instance where someone was unable to file a timely appeal. If the City receives a communication that indicates someone is having a problem, they will find a way to accommodate their needs.

Vice Chair Lovell suggested the Board revert back to the original matrix and take the City Council out of the appeal process. He referred to materials provided in the staff report from the City Attorney about the pros and cons of having the City Council hear appeals. He specifically referred to Attachment 2, which identifies an average cost \$57,000 per claim for lawsuits associated with land use decisions. He suggested the Board recommend the City Council reverse their earlier decision and move a number of appeals to the Hearing Examiner or Superior Court rather than to the City Council. He observed that the current City Council is primarily new and inexperienced, and he would like to place the appeal process in the hands of a professional Hearing Examiner. In addition, it is important to keep in mind that the City Council will have their hands full with other matters such as economic development and the budget situation.

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VICE CHAIR LOVELL MOVED TO FORWARD THE PROPOSED UPDATES TO THE LAND USE PROCEDURES IN ECDC CHAPTER 20 AS PRESENTED WITH THE EXCEPTION THAT THE MATRIX IN SECTION 20.01.003.A BE CHANGED BACK TO THE WAY IT WAS PRIOR TO THE INTERIM ORDINANCE THAT WAS RECENTLY ADOPTED BY THE CITY COUNCIL. THIS WOULD RESULT IN ALL APPEALS TO TYPE III-B DECISIONS GOING TO THE HEARING EXAMINER RATHER THAN THE CITY COUNCIL.

Mr. Chave suggested that, rather than forwarding a recommendation to the City Council at this time, the Board could direct staff to update the matrix in Section 20.01.003.A as per the Board's direction. The updated matrix could be presented to the Board at their next meeting for additional review prior to their recommendation.

THE MOTION DIED FOR LACK OF A SECOND.

Board Member Cloutier expressed his belief that it is not appropriate for the City Council to hold closed-record appeals. Instead, they should be interacting with the citizens regarding land use issues and waterfront redevelopment. He cautioned that there could be appearance of fairness issues if the City Council Members were to get deeply involved in waterfront redevelopment issues. They would not have the ability to then serve as THE hearing body for quasi-judicial appeals related to redevelopment proposals. Mr. Chave referred the Board to Attachment 1, which was prepared by staff to outline the pros and cons of having the City Council involved in quasi-judicial decision making. Board Member Cloutier said that while he likes the venue, he does not like the risk. If the City Council is trying to do everything right, they will end up getting hamstrung and not be able to execute a quasi-judicial review.

Board Member Reed expressed concern about placing citizens in the position of having to take an appeal to Superior Court. Many citizens cannot afford this expense, but they feel strongly about an issue. However, he emphasized that when appeals go before the City Council for review, the closed-record review process must be well managed. This requires that appeals be submitted in writing. He expressed his belief that having the City Council hear quasi-judicial appeals on behalf of the citizens is the best approach. He noted that developers have the advantage of being able to afford costly legal fees, and statistics show that the City Council has overturned decisions both ways. He said he always wants the City to err on the side of giving the citizens an appeal route that is more practical than hiring an attorney or representing themselves at a Superior Court hearing. He suggested the Planning Board invite the public to provide their feedback about the issue, but unless someone can provide him with a clear reason to change his mind, he intends to vote against the recommendation. Board Member Cloutier said he supports the idea of giving the citizens another place to go that does not require Superior Court, but he is concerned that the City Council could end up in a difficult spot.

Vice Chair Lovell said he would vote in favor of recommending the City Council be taken out of the quasi-judicial decision making process based on the information provided by staff and the City Attorney.

Board Member Guenther agreed with the recommendation of the City Attorney, the insurance agency and staff that the City is at risk when the City Council is in the position of making land use decisions. Having the Hearing Examiner make these decisions involves less risk. He expressed concern that, in the past, it has been difficult for the City Council to conduct closed-record reviews because people try to submit new information into the record.

Board Member Stewart said that while she appreciates Board Member Reed's concerns about citizens not having sufficient funds to pursue appeals against a developer, she would like to think that the Hearing Examiner will be fair and that both sides can be represented well. She said she still believes that the City has a huge liability when the City Council involves themselves in quasi-judicial decisions and they no longer have the ability to discuss land use issues with citizens. She said she is still leaning towards her original position that the City Council should not be involved in quasi-judicial decisions. They already have plenty on their plate, and they do not have the time to get into the details associated with closed-record appeals.

Mr. Chave clarified that none of the proposed changes would replace the role of the Hearing Examiner. The Hearing Examiner would remain part of the process. The only question is what comes after the Hearing Examiner decision. On one hand, a decision could go straight to court. On the other hand, there is a potential intermediate stop, which is consistent with

the City Council's interim ordinance. He emphasized, however, that even when the City Council hears an appeal, the issue could still end up in Superior Court. Either route, the main record is established by the Hearing Examiner.

Board Member Johnson said that if the Board is going to revisit the issue of whether or not the City Council should be part of quasi-judicial decisions, she would like to research the previous discussions that have taken place at the Planning Board and City Council levels. Mr. Chave said this information could be obtained by searching minutes starting in October of 2008.

BOARD MEMBER CLOUTIER MOVED THAT THE BOARD CONTINUE THE PUBLIC HEARING TO THE NEXT MEETING TO CONSIDER REVISED LANGUAGE RELATED TO QUASI-JUDICIAL APPEALS. THE MOTION DIED FOR LACK OF A SECOND.

City Attorney Snyder reminded the Board that they closed the public hearing and members of the audience have left the meeting. Therefore, it would be necessary to re-advertise if the Board desires to allow additional public comment. He suggested the Board advertise and conduct an additional hearing, which does not require a formal action. The Board concurred.

REVIEW OF CIVIL ENFORCEMENT REGULATIONS

City Attorney Snyder advised that late last year, the Washington Supreme Court in *Post v. Tacoma* determined that code enforcement procedures that apply continuing penalties must afford an opportunity for appeal before continuing penalties are levied. Section 1 of the ordinance is intended to correct the problem by providing for notice and an opportunity to appeal each and every penalty assessment. Section 2 of the ordinance specifically addresses the code enforcement procedures. The current code references a 10-day appeal to Superior Court. However, the subsequently adopted Land Use Petition Act, which outlines the appeal procedure process, identifies a longer appeal period of 21 days. He recommended the language be amended to acknowledge the longer appeal period and to provide direction to appellants as to the appropriate statutory procedure.

Mr. Snyder explained that, as currently proposed, staff would be required to provide additional notice every time a penalty is assessed. In most cases, the Hearing Examiner will render a decision that covers a certain number of days. If the individual for which the enforcement action is aimed at does not comply with the Hearing Examiner's decision, they will receive another notice and have another opportunity for a hearing. The Supreme Court noted in its decision that code violators may have corrected the situations and levying fines without given them an opportunity to provide that information is a violation of their due process rights. Individuals should be afforded an opportunity to come forward with information that they have fixed the violation.

Board Member Reed asked if the \$100 fee would apply regardless of the type of violation. Mr. Snyder answered that Chapter 18 lists a number of violations that carry a higher per day fine, such as critical areas violations, tree cutting, etc., but \$100 is the default fine if there is no other reference in the code.

Vice Chair Lovell summarized that, as proposed, when a person is cited for a specific violation and a \$100 fine is instituted, it takes two weeks for the process to get to the Hearing Examiner where a decision is made that the action must be corrected or the penalty would stand. At that point, the person would owe the City \$1,400. If the Hearing Examiner finds that the person has still not corrected the violation, the City must send out a new notice and the process starts again. City Attorney Snyder noted that at the hearing, the person would have an opportunity to appeal to the Hearing Examiner and another inspection would be conducted. If it is found that the violation has not been corrected, another notice would be sent out and the process would start again.

Vice Chair Lovell asked if there are consequences for people who do not pay their assessed fines. City Attorney Snyder answered that the City has injunctive relief for certain violations such as those related to critical areas. They can also turn the situation over to collections, but unfortunately, this is not typically very successful. Another option is to take the person to court.

Board Member Guenther asked when the proposed changes would become permanent. City Attorney Snyder answered that the City Council would take action on the proposed changes once they receive the Board's recommendation. Mr. Chave said the next step in the process is to conduct a public hearing on the proposed permanent ordinance and forward a recommendation to the City Council.

Board Member Johnson referred to ECDC Section 18, which identifies various fees that can be assessed based on the type of violation. She noted that some of the fines are as much as \$200 per day. She asked if the proposed ordinance would be applicable to these other fines, as well. City Attorney Snyder answered that the proposed ordinance would be applicable to dozens of infractions and fine assessments. The default fine is \$100 if there is not a higher fine noted elsewhere in the code. Board Member Johnson pointed out that ECDC 18 does not contain any language that makes it clear that the City must provide a notice each time a fine is assessed. City Attorney Snyder agreed and said that is why they are proposing a change to the process, itself. The rules related to enforcement are found in Chapter 20 and do not have to be repeated in Chapter 18.

CONTINUED DISCUSSION ON WIRELESS FACILITIES REGULATIONS

Mr. Clugston reminded the Board that they discussed possible updates to the wireless facilities regulations (ECDC 18.05 and 20.50) on April 28th. At that time, they directed staff to do additional work in the following areas:

- Reword ECDC 20.50 to include specific reference to co-location, prioritization of sites, and the like. The Board asked that these changes be made using the University Place regulations (Attachment 2) as a template.
- Clarify the plate references in ECDC 20.50.
- Clarify the types of facilities allowed in ECDC 20.50.010 through 20.50.060. The matrix provided by staff (Attachment 4) was created to help clarify the issue and could be included in the code language if the Board desires.
- Revise ECDC 18.05 to ensure adequate criteria is established from PUD pole retrofits.

Mr. Clugston referred the Board to Attachment 3 (updated version of Chapter 20.50) and Attachment 5 (updated version of Chapter 18.05). He advised that several new sections were added to Chapter 20.50 related to site selection criteria. He reviewed each of the changes as follows:

- **Section 20.50.002 – Site Selection Criteria.** Site selection criteria was added to require that an applicant evaluate different sites to determine which one would have the least impact and still provide the required service.
- **Section 20.50.004 – Priority of Location.** As currently proposed, an applicant would be required to consider the items listed in Section 20.50.004 (priority of locations) in order to identify the best possible location for the wireless facility. The goal of the priority list is to keep the facilities in the more populated and developed areas of the City, and only allow them to locate in single-family neighborhoods if there are no other options. He reviewed the seven listed items in the draft language and noted that the City Attorney also recommended an additional item, that would be a blanket provision allowing wireless facilities to locate in single-family residential areas only if no other sites are available and the applicant can show engineering proof that it is the only option.
- **Section 20.50.006 – Siting Priority on Public Property.** This section provides an additional process for identifying priorities on public properties. The intent is to focus on the public properties and keep the facilities away from single-family neighborhoods as much as possible.
- **Section 20.50.008 – Co-Location.** This language provides standards that encourage co-location to minimize adverse visual impacts associated with the proliferation of towers.

City Attorney Snyder recalled that at their last discussion, Board Member Stewart suggested the City require or encourage environmental compliance. He noted that Chapter 18.05 already has a provision that utilities must comply with all State and Federal laws, which should address her concern. He reminded the Board that siting wireless facilities to provide adequate coverage in Edmonds is particularly difficult because of topography, and the City cannot prohibit a carrier from putting in a new facility if it is necessary to provide the service. That is why he recommended an additional item in Section 20.50.004 to allow the facilities to be located in single-family neighborhoods if all other options fail.

City Attorney Snyder recalled the Board previously discussed the idea of not allowing a provider to file a building permit application until a neighborhood meeting has been held. He reminded the Board that under the State's current vesting

requirements, an applicant vests their land use requirements on the date a fully complete building permit application has been filed. He suggested a better option would be to require proof of a neighborhood meeting prior to identifying the building permit application as complete. This would require that a neighborhood meeting be included in the application process, but not prior to an application.

City Attorney Snyder said he also spoke with Mr. Clugston about the idea of encouraging wireless facilities that are greater than 30 feet in height in multi-family zones. These would likely be considered non-conforming based on the current code language. He suggested staff provide a list of zoning categories and identify what is permitted for roof top equipment. At this time, roof top equipment is limited to certain things. Suggesting that large antennas be allowed on top of a building in multi-family zones may not be appropriate, but directional panels that are commonly used for cell phone service may be. He agreed this is definitely an option the City should consider in order to get “more bang for their buck” from existing buildings and discourage the construction of more towers.

Board Member Johnson asked if the matrix (Attachment 4) was intended for the Board’s information or for inclusion in the code language. Mr. Clugston said it was prepared to provide the Board with a visual picture of what the allowed wireless facilities would look like, but it could be included in Section 20.50, as well. Board Member Reed expressed concern that including Attachment 4 may conflict with other areas of the code.

Board Member Johnson pointed out that staff provided plates for everything except the mini and macro types of wireless facilities, which are basically the same as the micro but with different dimensions. She questioned if plates need to be provided for mini and micro facilities, as well. Mr. Clugston suggested that Plate 2 would describe the mini and macro types well enough, but staff could provide an additional graphic if the Board desires. He expressed his belief that the wireless providers will understand the code language, so the drawings will not be all that necessary.

Board Member Stewart thanked City Attorney Snyder for pointing out that State law requires wireless providers to consider environmental impacts. However, because the City is pushing the issue of sustainability, perhaps it would be appropriate to add language at the end of the purpose statement (Section 20.50.000) to read, “and minimize environmental and wildlife impacts.” City Attorney Snyder agreed that would be appropriate, but suggested that they also add “to the extent provided by Federal law.” This Board agreed this would be an appropriate change.

Vice Chair Lovell asked if Item G in Section 20.50.004 implies that antennas could be located in any residential zone. Mr. Clugston explained that there are a number of churches, schools and public facilities located in single-family residential zones, and antennas would be allowed to locate on these buildings. City Attorney Snyder noted that proposed new Item H in Section 20.50.004 would allow wireless facilities to locate in single-family residential zones, but only if there are no alternative locations. He reminded the Board that the City must allow providers to establish adequate coverage. It was noted that in Item G, “residential (R)” should be changed to “single-family residential (RS)” and “multifamily (MF)” should be changed to “multi-family residential (RM).” Board Member Stewart questioned if wireless facilities should be allowed to locate near schools. City Attorney Snyder reminded the Board that Federal government has determined there are no health risks associated with cell tower radiation, so the City would have no grounds for prohibiting them near schools.

Board Member Johnson inquired if the applicant would be responsible for notifying all property owners within 300 feet of the proposed wireless facility. She also inquired if the Board wanted to discuss the idea of changing the notification area. Mr. Clugston answered that, as currently proposed, the applicant would be required to provide the notice. He also noted that general noticing requirements throughout the code reference 300 feet. City Attorney Snyder pointed out that the City will not have received an application prior to a pre-application hearing, so it will be necessary for the applicant to send out the notices.

Mr. Clugston advised that he would revise the language as per the Board’s comments and present it to the Board for additional review at their next meeting. He noted that a public hearing has been tentatively scheduled for July 28th. Board Member Reed questioned if the changes are significant enough to warrant an additional Board review prior to the public hearing. Mr. Clugston agreed to communicate the changes to the Board so they can determine whether an additional review will be necessary.

REVIEW OF EXTENDED AGENDA

Vice Chair Lovell reviewed that three items are scheduled on the June 23rd agenda:

- A public hearing on the SEPA Chapter
- A public hearing on sign code amendments (ECDC 20.60)
- A public hearing on Comprehensive Plan purpose, effect and context amendments and hearing Examiner Comprehensive Plan review requirements.

PLANNING BOARD CHAIR COMMENTS

Vice Chair Lovell said he received a written request from the Parks, Recreation and Cultural Services Department, asking for Planning Board volunteers to judge the sand castle competition on August 10th. He invited interested Board Members to respond.

PLANNING BOARD MEMBER COMMENTS

Board Member Guenther reported that during the break, he spoke with Mr. Miller about Ms. Petso's request that the City make the Seaview Elementary water main improvement a priority because the fire flow is so low in this area. They discussed that schools rarely catch on fire when students are present because there is so much supervision. They tend to catch on fire when there is no one around. He said he worked for an architect who specialized in school construction, and he learned that State law requires that all schools provide sprinklers because a fire fighter died in a school fire, not a student. He suggested that staff solicit feedback from the Fire Department about what they need for fire flow. He noted there may be other uses that require an even greater fire flow than a school.

Board Member Reed said he recently learned that Sound Transit is planning to raise the level of their parking lot by 15 inches. He suggested this change could have an impact on the Dayton Street flooding situation.

Board Member Johnson reported that she attended a workshop regarding the regional Transfer of Development Rights (TDR). The event was sponsored by the Washington State Department of Commerce on June 3rd. She said she was excited to learn that there are several cities in the state, including Seattle, Issaquah, Redmond and Spokane, which have utilized this concept to protect things such as stream corridors, historic sites, etc. She concluded that this is an interesting subject the Board should consider at some point in the future.

Board Member Johnson reminded the Board that the City of Mountlake Terrace is sponsoring a training opportunity on June 14th at 7 p.m. to talk about planning law. Vice Chair Lovell said he attended a similar training session a few years ago and found it to be quite useful.

ADJOURNMENT

The Board meeting was adjourned at 11:17 p.m.

APPROVED