

Approved August 28th

**CITY OF EDMONDS
PLANNING BOARD MINUTES**

August 14, 2013

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

BOARD MEMBERS PRESENT

Valerie Stewart, Vice Chair
Kevin Clarke
Todd Cloutier
Ian Duncan
Bill Ellis
Philip Lovell
Neil Tibbott

STAFF PRESENT

Rob Chave, Development Services Director
Kernen Lein, Senior Planner
Karin Noyes, Recorder

BOARD MEMBERS ABSENT

John Reed, Chair (excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER CLARKE MOVED THAT THE MINUTES OF JULY 10, 2013 BE APPROVED AS SUBMITTED. BOARD MEMBER ELLIS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

Vice Chair Stewart reviewed the proposed agenda, and asked that Item 7.a (continued work on Westgate/Five Corners) be placed after Item 8.a (application by AT&T and the Busch Law Firm to amend the code related to wireless facilities). The Board accepted the agenda as revised.

AUDIENCE COMMENTS

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

PUBLIC HEARING ON UPDATES TO THE COMMUNITY BUSINESS-EDMONDS WAY (BC-EW) AND MULTIPLE RESIDENTIAL-EDMONDS WAY (RM-EW) ZONING CODE IN ECDC 16.50 AND 16.30 (FILE NUMBER AMD20130003)

Mr. Chave reminded the Board that they discussed the proposed amendments to the BC-EW and RM-EW zoning code at their February 27th, April 24th and May 22nd meetings, and conducted a public hearing on July 10th. The public hearing was continued to July 24th to allow staff additional time for revisions and to notify the affected landowners. Because a quorum of the Planning Board was not available for July 24th, a new hearing was advertised for August 14th. He advised that affected landowners were notified of the hearing, and no comments regarding the proposed amendments were received since the Board's last hearing.

Mr. Chave explained that the current BC-EW and RM-EW code language was adopted by the City Council several years ago, and applicable properties were rezoned to the two new zoning designations. In response to concerns raised regarding a recent development (Compass), the City Council directed the Planning Board to revisit the two zoning classifications and make appropriate adjustments. He referred the Board to the latest draft of the amendments (Attachment 1), and emphasized that no building height is being proposed over what is currently allowed in the two zones. The proposed amendments are intended to provide more specificity and require an applicant to provide more substantial public benefits in exchange for the additional height.

Vice Chair Stewart referred to an email from Council Member Petso regarding the proposed amendments. Because some Board Members did not receive the email, she read Ms. Petso's comments regarding the application into the record as follows:

- *A 5-foot setback on Edmonds Way is not enough, even with a 25-foot building height. Edmonds Way is still a State Highway, regardless of the height of the building. Even the Westgate proposal went at least 10 feet, and that is arguably insufficient.*
- *The incentive zoning remains disproportionate to the benefits to the property owner and continues to lack the necessary specificity.*
- *The 15-foot setback is good, except it should be required, not optional. Modulation adjacent to SFR is also good, except it should be required, not optional. The new "no cement walls rule" is good, except it should also be required, not optional.*
- *Item c is mostly a disaster in terms of balancing benefit to the property owner from the extra 15 feet of height with benefit to the public. Even LEED Gold is not respected by some, and many in Edmonds do not want to see affordable housing (see Strategic Plan survey with more low and very low ratings than high or very high ratings). A 15-foot public area along Edmonds Way is far less valuable than in a BD zone since people rarely sit and chat within 15-feet of fast and busy traffic.*
- *Perhaps most disappointing is the failure to provide minimum standards for low-impact development (LID) and allowing 40 feet without it if the other requirements are met. Does one inch of good soil get 15 more feet in building height?*
- *Here is one minimum option a developer could propose in exchange for 15 feet of extra building height: 15% small units, benches along Edmonds Way amount to 25% of frontage, and a single downspout control. The total value to the citizens would be nothing unless they are walking along Edmonds Way and want to sit down and count cars on a noisy and dangerous bench or are in the minority of citizens who want to pay for low-income housing. Small units are allowed anyway, need they be in exchange for height?*

The public hearing was opened. As no one in the audience indicated a desire to address the Board, the public portion of the hearing was closed.

Board Member Cloutier referred to ECDC 16.50.020.A.c.4, which outlines four techniques an applicant can incorporate into the building and/or site design in order to obtain the additional height. He recalled that, at the previous hearing, the Board agreed to eliminate the words "where feasible," since low-impact development (LID) would be required of all projects. Board Member Ellis concurred that the Board previously agreed that LID should be required for all projects in the BC-EW zone. However, they did not make a final decision about what the actual language should be. As currently written, it appears that LID is one of four techniques an applicant can implement in order to obtain additional height. Including the LID requirement in ECDC 16.50.020.A.c.4 gives the impression that it is an option rather than a requirement.

Mr. Chave recalled the City Engineering Department's input that the State's new Phase 2 National Pollutant Discharge Elimination System (NPDES) Permit will mandate that LID techniques be utilized for all projects unless an applicant can show, via a technical analysis, that it would be infeasible to do so.

Vice Chair Stewart observed that there are a number of LID techniques, and certainly at least some of them should be feasible for a project. She said she hesitates to use the words "where feasible" because it could allow developers to avoid LID techniques altogether. Mr. Chave commented that whether the City uses the term "where feasible" or not is irrelevant because the Phase 2 NPDES Permit would make LID a mandatory requirement.

The Board had a lengthy discussion about whether or not the LID requirement should be included in ECDC 16.50.020.A.c.4 since it would not really be an optional choice. Board Member Ellis suggested that this section be changed to incorporate the language from the Phase 2 NPDES Permit, which would make it clear that the burden is on the applicant to demonstrate that LID is infeasible. Although that seems to be the direction the State is going, Mr. Chave reminded the Board that the Phase 2 NPDES Permit is still in process and has not actually been adopted yet. He agreed that if the City truly wants to encourage LID, they should require applicants to show that it is not feasible.

Board Member Ellis expressed concern about including the LID requirement as one of options an applicant can choose in order to obtain the additional height if State law will eventually require LID techniques for all projects. As currently proposed, an applicant would have to meet three of the four requirements in order to obtain additional height. If LID is eventually required by State Law, an applicant would also have to fulfill all three of the remaining options to qualify for the additional height.

Board Member Lovell suggested that the first sentence in ECDC 16.50.020.A.c.4 be changed to read, "Low impact development (LID) techniques are employed." The Board concurred, but added that reference to the various LID Best Management Practices (second sentence) should be retained. It was noted that if LID techniques are required by State Law, then the language would have to be amended to delete Item c.4 as an incentive option.

Vice Chair Stewart asked when staff anticipates the Phase 2 NPDES Permit will be in place to make LID techniques mandatory for all projects. Mr. Chave said he does not know a specific time frame, but it should occur within the next year and perhaps sometime this fall.

Board Member Cloutier referred to ECDC 16.50.020.A.c.2 (affordable housing), which is one of the options an applicant can choose to obtain the greater height. He disagreed with City Council Member Petso's comment that low-income housing should not be considered an incentive because it was not identified as a high priority in the Strategic Plan Survey. He expressed his belief that affordable housing is a worthwhile goal and is not an issue to be handled by popular opinion. Encouraging low-income housing in all development where applicable is something the City should do.

Board Member Clarke pointed out that using terms such as "low-income housing" and "affordable housing" may require the City to provide specific definitions to make the intent clear. He cautioned that requiring that a specific number of units must be affordable to a certain income level can impact the economic viability of a project, as well as a developer's ability to obtain financing. He explained that affordable units might have a different layout and finishes that can cause an issue for functional utility for the remaining economic life of the improvements. He asked if any other zones in the City require affordable housing. Mr. Chave answered no, but pointed out that the proposed language would not mandate affordable housing. It would be offered as one option for obtaining additional height. Board Member Clarke expressed concern that an applicant's choices would be so limited. Mr. Chave said that, as written, an applicant would be required to fulfill three of the four options. Board Member Clarke reminded the Board that if the 4th option (LID) becomes an actual State mandate, it would no longer be an option and the code would have to be revised to either provide more options or reduce the requirement to two of the three options.

Board Member Cloutier pointed out that the term "affordable units" is defined in Snohomish County Tomorrow's guidelines, which are referenced in the proposed language and available on their website. Board Member Lovell noted that the Strategic Action Plan refers to "affordable units" as "moderate-income workforce housing." He suggested that units can be made more affordable by making them smaller. Board Member Clarke disagreed. He said "feasibility" has two components: physical feasibility and economic feasibility. While a requirement may be physically feasible, it may not be economically feasible. It is important to understand that the cost per square foot for smaller units is significantly greater than the cost per square foot for larger units. He noted that there are very few studio apartments in suburban environments like Edmonds because they are not financially feasible in relationship to building larger units that have a lower per square foot cost and a larger market. In urban environments, studio apartments are more attractive and people have the incomes to pay for the smaller units. Again, he cautioned against using language that is not well defined.

Mr. Chave explained that the intent of the proposed language is to point to how Snohomish County Tomorrow has defined low and moderate-income housing in Snohomish County. The definition is tied to a percentage of average income and how

much of a person's income is spent on housing costs. He summarized that the definition has been formally defined in County planning documents, but particular numbers will be specific to the individual jurisdictions. Board Member Clarke asked how the definition would be administered on a project-by-project basis. Mr. Chave noted that the City does not have the resources to administer an affordable housing program at the local level, but they are working with other jurisdictions in the County on an Interlocal Agreement that would make the Snohomish County Housing Authority the contracted administrator of the programs in the participating jurisdictions.

Board Member Clarke asked how the City would determine the number of affordable units a developer must provide. Mr. Chave noted that the proposed language for ECDC 16.50.020A.c.2 would require that at least 15% of the gross number of units be affordable. Board Member Clarke asked if staff knows of any other City that actually requires a developer to devote 15% of their living units in a specific project to affordable housing. Mr. Chave said he does not know of other jurisdictions that have affordable housing as a requirement, but the concept is used as an incentive. Again, he reminded the Board that the proposed language would not make "affordable housing" a requirement of any development in the BC-EW zone. Instead, it would be one choice a developer would have in order to obtain the additional height. Vice Chair Stewart pointed out that Bainbridge Island's code requires a percentage of affordable housing in all new multi-family complexes.

Board Member Clarke expressed concern that if the City requires an applicant to incorporate three of the four options into a project in order to obtain the additional height, an applicant's choices would become very limited if Option 4 becomes a mandate at some point in the future. Mr. Chave explained that if LID eventually becomes a requirement, the applicant would be required to meet two of the three remaining options. Again, Board Member Clarke questioned if the proposed language provides enough options, or if the intent is to create fewer options to make them mandatory. Mr. Chave acknowledged that, from a practical standpoint and in terms of difficulty and cost, it is likely that applicants will choose between providing low-income housing and achieving LEED Gold certification. Most likely, applicants will be predisposed to go one way or the other.

Board Member Tibbott questioned if it would be appropriate for the Board to identify additional options that would be worthy for inclusion in ECDC 16.50.020 to expand the possibilities. For example, a transit-oriented option might include places to store bicycles, additional pedestrian options for accessing mass transit, etc. He noted that low and moderate-income housing could be very justifiable in parts of the City that are less desirable because there is no view corridor but very desirable because they are oriented to regional transit. Vice Chair Stewart questioned how much control a developer would have to implement this type of option given that the BC-EW zoned properties are located along a State highway. Board Member Cloutier also noted that options for facilitating transit-oriented behavior, sustainability, and other desirable elements is already identified in the LEED Standards. He summarized that the City could either "cherry pick" the specific things they want to encourage or choose an overarching goal of LEED Gold or similar standard and let developers choose the most appropriate options.

Board Member Tibbott again asked if it would be appropriate for the Board to brainstorm some options to add to the list that would be beneficial to the community. Perhaps a transit-oriented development would be particularly desirable in addition to or alongside LEED requirements.

Board Member Ellis reminded the Board that the BC-EW and RM-EW zoning classifications only apply to a very limited number of properties along Edmonds Way. The issue is before the Planning Board because there was some dissatisfaction expressed regarding the Compass Development. The City Council asked the Board to revamp the requirements for these few properties on Edmonds Way to give the City a little more sway in determining what a project will look like. While more choices could be provided, he encouraged the Board to keep in mind that they are only dealing with a very limited problem and a very small segment of properties. He expressed his belief that the Board can accomplish the City Council's charge by providing additional language that allows the City more control and some clearer incentives to make development on these few properties look better than the Compass Development. Mr. Chave pointed out that the proposed language also provides substantially more criteria related to project design.

Board Member Clarke commented that if the City really wants to provide developers the opportunity to have additional height and not have affordable housing units be an issue, they need to make sure there is a clear and fair path that allows that to occur. He referred to the Horizontal Property Regimes Act, which allows for the creation of individual condominium ownerships and questioned how the low-income units would impact the marketability of the rest of the project.

Board Member Cloutier asked Board Member Clarke if he is concerned that the language contained in ECDC 16.50.020 makes some of the options infeasible, thus forcing an applicant to provide affordable housing. Board Member Clarke responded that the appraisal profession is struggling right now with sustainable construction standards in relationship to economic feasibility. He pointed out that while the Bullitt Foundation built an innovative building in Seattle, it is not a financially viable option unless you simply want to throw money at the concept. Adding these additional sustainable requirements can equate to 15 to 20% higher construction costs, yet the market has not appreciated these unique features sufficiently to provide an adequate return. Board Member Cloutier pointed out that, as per the proposed language, a developer would have three options: LEED Gold, affordable housing, or limiting development to the base height. Affordable housing or LEED Gold would only be required if a developer wants to achieve additional height. Board Member Clarke summarized that, as proposed, the City would only allow extra height based on what it has determined to be an adequate reward. While some people may support this type of social engineering, others would like the City to allow the free market to work by providing more choices for developers to qualify for the additional height. Board Member Cloutier asked if Board Member Clarke has suggested language to address his concern. Board Member Clarke answered that he did not.

Vice Chair Stewart recalled that one goal of the Comprehensive Plan is to encourage a diverse housing mix, and the proposed language in ECDC 16.50.020.A.c.2 would help to meet that goal. Although there may be implementation challenges, affordable housing is something the City should encourage if economically feasible. She said she supports the language, as written. Board Member Cloutier recalled Board Member Ellis' earlier comment that the BC-EW zoning code would only apply to a very limited number of properties on Edmonds Way. In fact, there are only two BC-EW zoned properties that remain undeveloped. They are not talking about a broad, comprehensive policy change for all of Edmonds. Board Member Clarke said he appreciates this comment, but felt it was also very insensitive to the people who own property zoned BC-EW.

Vice Chair Stewart referred to ECDC 16.50.020.A.c.3, related to public amenities within an area comprising 25% of the length of any required street setback. She recalled Council Member Petso's comment that it is unlikely individuals will sit alongside a highway. Providing benches is an easy, low-cost option, but she questioned if it would provide enough public benefit to warrant the additional building height. Mr. Chave explained that, as currently proposed, it is highly likely that developers will choose this option because it is easy. If the option is eliminated, developers will probably not provide this type of public amenity space.

Board Member Tibbott suggested that perhaps one option should focus on reducing the footprint of the building in exchange for additional height. If the footprint is smaller, perhaps more green space would be provided around the project or a greater buffer between the building and the highway. Board Member Cloutier pointed out that the option outlined in ECDC 20.50.020A.a would require a street setback of 15 feet, which is 10 feet more than is currently required. The public amenity option would require even more space to provide outdoor seating, plazas, walkways, etc.

Board Member Clarke said he does not believe people will sit on park benches that are located along a State highway where cars travel by at 40 miles per hour. This option would not result in a pedestrian-friendly environment. Mr. Chave pointed out there are tables and chairs located outside of Starbucks, which is at one of the busier corners in Edmonds. He said it is possible to create landscaped areas where there is some separation from traffic. He said the Board should not assume that the bench would be located against the sidewalk. It is possible to develop a plaza area with landscaping between the plaza and the highway to create a gathering place that is buffered from the highway. He suggested that applicants will design the outdoor seating in such a way that will compliment the business. Board Member Clarke said he would like staff to provide examples where developers have created these spaces on busy arterials. Mr. Chave agreed to provide the examples as requested.

Mr. Chave summarized that if the Board wants to encourage developers to create public amenity spaces, they should leave the option in. If they don't care, it could be eliminated. Board Member Tibbott asked if it would be helpful to provide more specificity about the type of public amenities the City is looking for. Mr. Chave said the current language specifies that the public amenity area must comprise 25% of the street setback area. The language also lists various types of potential amenities. He questioned if being more specific would be beneficial unless the Board is anticipating a particular type of layout. He suggested the Board could eliminate "outdoor seating" from the list of potential public amenities. Vice Chair Stewart commented that landscaping could be situated in such a way to allow customers or visitors to sit facing away from the street to provide a buffer from the busy highway.

Board Member Duncan asked how much power the Architectural Design Board (ADB) has. He expressed his belief that the ADB should have stopped the Compass Development, just based on roof modulation. He noted that the ADB would have the ability to review the project design, including the design of the public amenity areas. Mr. Chave agreed that the ADB would review the configuration of the public amenity areas. Board Member Duncan commented that the more specific the code, the less creative a designer can be. He emphasized that Edmonds Way is a gateway corridor to Edmonds, and landscaping is more critical than activity. Connectivity is important for pedestrians, but more important is how the City is presented as people exit Interstate 5.

The majority of the Board agreed to leave the language in ECDC 16.50.020.A.c as written, with the exception of changing the first sentence of Item c.4 to read, "Low-impact development (LID) techniques are employed."

Board Member Lovell referred to the table in ECDC 16.50.020.A, which outlines the site development standards for the BC and BC-EW zones. He recalled Councilmember Petso's comment that a 5-foot street setback is not enough. He asked what street setback is currently proposed in the Westgate Plan. Mr. Chave said discussions related to the Westgate Plan have centered on having a 10-foot street setback. Board Member Lovell suggested that it would be appropriate to increase the street setback for the BC-EW zone to 10 feet to be consistent.

Board Member Cloutier pointed out that the current 5-foot setback for the BC-EW zone (and what is currently provided in front of the Compass Development) is better than 90% of the remainder of SR-104. There are no setbacks on the majority of the highway. If a 5-foot setback is deemed to be unsafe, the City is being irresponsible by letting people walk in areas where there is zero setback. He expressed his belief that a 5-foot setback is the best there is right now. Board Member Clarke cautioned against using the best of the existing situation as the standard for how they want the future to look. He recalled that the City of Edmonds evolved via annexations over time, and SR-104 was previously part of unincorporated Snohomish County, which did not require sidewalks. He expressed his belief that it would be better to have wider sidewalks.

Board Member Clarke commented that although the sidewalk in front of the Compass Development is better, it is still not a comfortable place to walk. He said that a wider sidewalk would have been a better option. Mr. Chave reminded the Board that sidewalks are actually located in public rights-of-way and not setbacks. Table 16.50.020.A identifies the building setback requirement, and an increased building setback would not automatically result in wider sidewalks. He noted that there is a standard for sidewalks along SR-104, which all developers in the BC-EW zone would be required to meet. Mr. Lien advised that the sidewalk standard for SR-104 calls for a 5-foot sidewalk, but there must also be a 3-foot planter strip between the sidewalk and the street to provide pedestrian safety. Mr. Chave suggested that what is between the sidewalk and right-of-way is more important for pedestrian safety than the actual sidewalk width.

Board Member Clarke pointed out that requiring a greater setback would provide space for more options to address pedestrian safety. Once again, Mr. Chave commented that the limiting factor is the width of the right-of-way. However, he acknowledged that the setback can provide additional options for what happens outside of the right-of-way.

Vice Chair Stewart invited the Board Members to share their thoughts on increasing the street setback beyond 5 feet to allow features that increase pedestrian safety. Mr. Chave reminded the Board that the current street setback in the BC-EW zone is zero. Board Member Ellis pointed out that increasing the setback to 10 feet would not make the sidewalks wider or further away from the highway. The sidewalks would still be located in the right-of-way. Board Member Stewart agreed but pointed out that a greater setback would allow more room for landscaping on the other side of the sidewalk to improve pedestrian safety.

Board Member Duncan suggested it would be desirable to have a uniform right-of-way, with a standardized planting palate along the entire highway. For example, two rows of trees would go a long way in creating a boulevard experience for people traveling down the highway. Mr. Chave agreed that a row of trees along the edge of the highway, with the sidewalk behind would be ideal. However, the right-of-way is constrained and trees would have to be planted at the edge of the travel way, which creates other problems. The Westgate Plan offers the City an opportunity to change that configuration. He explained that the BC zone was originally drafted to apply to properties in downtown Edmonds and was never intended for properties along SR-104. It was later applied to small areas throughout Edmonds as a type of transition zone. However, the setback requirement of zero was inconsistent with surrounding zones. Since the BC-EW zone is unique to Edmonds Way, the Board

has an opportunity to discuss what the appropriate setback should be. Since the Board is considering a 10-foot street setback for properties at Westgate, it would make sense to have a 10-foot setback for the BC-EW zones, too.

Board Member Cloutier asked if there is a reason to have a 15-foot street setback in the RM-EW zone. Mr. Chave pointed out that other multi-family residential zones require a 15-foot street setback, and the thought was that the RM-EW zone should be consistent.

The Board agreed that the minimum street setback in the BC-EW zone should be increased from five to 10 feet.

Board Member Clarke questioned the rationale for requiring a 15-foot street setback in the RM-EW zone when the street setback in the BC-EW zone would only be 10 feet. Mr. Chave noted that there is no uniform street setback requirement for properties along the SR-104. He explained that it is generally more desirable for residential uses to be set back further from the street to provide safe pedestrian access and more privacy, and that is why staff is recommending a 15-foot setback for the RM-EW zone.

The Board agreed that the first sentence in ECDC 16.30.020.A.a.3 should be changed to read, "Low-impact development (LID) techniques are employed." This would be consistent with the change that was made to ECDC 16.50.020.A.c.4.

Board Member Ellis pointed out that Table ECDC 16.30.020.A (Site Development Standards) no longer includes a minimum parking requirement for the multi-family zones. Mr. Chave responded that the parking requirements are addressed in the parking chapter of the zoning code, which uses a sliding scale. The number of required parking spaces is determined by the number of bedrooms per unit. The parking requirements are greater for units with more bedrooms. The proposed change to eliminate the minimum parking requirement from the table is consistent with the overall parking standards found elsewhere in the code.

Board Member Clarke requested a zoning map to help him distinguish between the properties zoned RM-EW and RM-2.4. Mr. Chave pointed out that only one property in the City is zoned RM-EW, and it was recently developed.

Board Member Lovell expressed concern that the ADB did not do its job properly when reviewing the Compass Development, and they did not demand enough from the developer in terms of façade and building articulation in exchange for the greater height. The proposed language puts more arrows in the ADB's quiver to deal with projects with more specificity. While he understands Board Member Clarke's comments about economic feasibility, the Board should keep in mind that LID techniques would be more economically feasible if developers reduced their rates of return. They are in a new economic age where a 20% return no longer works.

BOARD MEMBER CLOUTIER MOVED THAT THE BOARD FORWARD THE PROPOSED AMENDMENTS TO THE BC-EW AND RM-EW ZONING CODES (ECDC 16.50 AND ECDC 16.30) TO THE CITY COUNCIL WITH A RECOMMENDATION OF APPROVAL AS PRESENTED BY STAFF AND AMENDED BY THE BOARD. VICE CHAIR STEWART SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

PUBLIC HEARING ON PROPOSED AMENDMENTS TO TITLE 23 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE (ECDC) TO BRING THE CRITICAL AREAS REGULATIONS (CAO) INTO CONSISTENCY WITH BEST AVAILABLE SCIENCE (BAS).

Mr. Lien advised that the purpose of the proposed amendments is to bring the Critical Areas Regulations (CAO) into consistency with the Best Available Science (BAS) Report, which was developed as part of the 2004 CAO Update. He explained that "allowed activities" are those activities that can occur within a critical area or its buffer. Allowed activities can be conditioned, must use BAS and cannot degrade the associated critical area. Examples of allowed activities include utility maintenance or replacement, activities within improved rights-of-way, and alterations to existing structures that do not increase the footprint of development.

Mr. Lien advised that the concept of allowing development or redevelopment within the developed footprint was discussed in the BAS Report, which noted that the vast majority of the City (96%) has been developed, and that future growth would be concentrated in the redevelopment of existing parcels. The BAS Report also noted that the challenge for the CAO would be

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to provide opportunities to improve conditions around critical areas in the long term, while allowing reasonable development. The BAS Report concluded that the main route to improving critical areas and their buffers is to require buffer enhancement in exchange for allowing development and redevelopment within existing developed footprints. This approach was intended to be reflected in the City's adopted CAO. However, when the language was transferred to the CAO, it referred to "additions to existing structures" rather than "within the existing footprint of development." This is in conflict with tying activity to the "footprint of existing development."

Mr. Lien explained that another way that the CAO is inconsistent with the BAS Report is related to wetland buffer areas that are physically separated and functionally isolated from a wetland. As per the BAS Report, development should be allowed to occur in these areas in exchange for enhancement elsewhere. He pointed out that, as per the CAO's definition, a buffer is a designated area immediately next to and part of a stream and/or wetland where it is an integral part of the stream and/or wetland's ecosystem. He pointed out that there are situations in the City where a property or development within a wetland buffer is physically separated and functionally isolated from the wetland by a road, etc. The BAS indicates that development and/or redevelopment should be allowed in these areas in exchange for enhancement within the portion of the buffer that is connected to the wetland.

Mr. Lien reviewed two proposals that are impacted by the strict interpretation of the allowed use provisions in the CAO as follows:

- **American Brewery Company Project.** The American Brewing Company has requested approval to place a silo on their property, which is located within a developed area of Harbor Square. The subject site is completely paved, so the added structure would have no impact on the critical area or its buffer. He used a map to identify the boundaries of the wetland and the 200-foot buffer area. The proposal would be considered "development within the previously developed footprint," and the proposed amendments would allow the development to move forward in exchange for some enhancement of the buffer closer to the wetland to help improve its function.

Board Member Ellis asked if the American Brewing Company site is located outside of the Shoreline Jurisdiction identified in the Shoreline Master Program (SMP). Mr. Lien reminded the Board that the SMP update has not been approved, so the CAO buffer is currently being applied to the subject property. He explained that, once approved, development regulations within the SMP would apply to all properties within the Shoreline Jurisdiction, and the CAO would govern all critical areas outside of the Shoreline Jurisdiction. He recalled that large portions of the CAO have been proposed for adoption into the SMP Update, and certain sections were excepted out. "Allowed activities" is one of the provisions that would remain in the CAO under the updated SMP. While the buffers may be different in shoreline areas when the SMP is adopted, the allowed activities provisions would still apply.

- **City Park Spray Area Project.** The City is proposing to expand the play area at City Park, which is located within a Class II Wetland buffer (a remnant of the Edmonds Marsh east of SR-104). Although the project site is located within a buffer that was not previously developed, it is physically separated from the associated wetland by a parking lot and access road. As such, the project is located in an area that could be described as "physically separated and functionally isolated" from the wetland. According to the BAS, this type of development should be allowed in exchange for buffer enhancement in areas closer to the wetland.

Mr. Lien reported that the City Council adopted an interim ordinance (Attachment 5) on August 6th, which amended the code to allow development within legally established impervious areas and within buffer areas that are physically separated and functionally isolated from an associated critical area. He specifically reviewed the amendments that were approved as part of the interim ordinance as follows:

- ECDC 23.40.220.C.3 was changed by replacing "permitted alteration to a legally constructed structure within" to "development proposals within the footprint of development."
- Definitions were added in ECDC 23.40.320 (Definitions Pertaining to Critical Areas) for "impervious surface" and "footprint of development" was also added.
- Language was added to ECDC 23.50.040.J to outline the enhancement required when development is allowed within the wetland buffer.

- Language was added to ECDC 23.90.040.C.4.3 (Items i, ii, and iii) related to the “physically separated and functional isolated” concept. This language was based off of existing language related to enhancement within stream areas.

Mr. Lien highlighted two other potential amendments related to “enhancement standards” that were not included in the interim ordinance. If the City is going to require enhancement in exchange for allowing development within the previously developed footprint or in a physically separated or functionally isolated buffer area, enhancement standards must be incorporated into the code language. He explained that the two existing enhancement sections (streams and wetlands) call for a buffer enhancement plan as part of a critical areas report, indicating that the project site conditions would provide equivalent or greater protection of stream functions and fish habitat over a stream or wetland standard buffer and existing site conditions. He expressed his concern about how this language would be applied to properties such as Harbor Square, where it is not possible for enhancement to provide greater function over the standard buffer because there is not an existing 200-foot undeveloped buffer. He explained that the purpose of the BAS Report and the proposed code changes is to improve the critical areas and buffers over existing conditions. He recommended that the language be changed to read, “A buffer enhancement plan would be required as part of the critical areas report, indicating that the post-project site conditions would provide greater protection of the stream functions and fish habitat over existing site conditions.”

Mr. Lien said another suggested change is to incorporate the same language that was added via the interim ordinance to ECDC 23.40.220.C.3 into ECDC 20.50.020.E related to “physically separated and functional isolated” properties, as well. The term “permitted alteration to a legally constructed structure within” would be changed to “development proposals in the footprint of development.”

Board Member Ellis asked how the American Brewing Company would provide greater wetland protection as a tradeoff for developing the silo. Mr. Lien said there is no way to provide greater protection over the standard buffer. However, the goal is to obtain some enhancement over the current conditions. He noted that ECDC 20.50.040.J lists options that can be used by developers for wetland enhancement, including planting of native vegetation; removal and control of nonnative, invasive species; requiring additional building setbacks or modified buffers; and limiting or reducing the types of densities of particular uses. He said that, in the American Brewing Company’s particular situation, a professional wetland report would be required. One option would be to offer enhancement within the wetland area that is equivalent to the amount of impervious surface occupied by the proposed silo. He suggested that perhaps a 1:1 or 1:1.5 enhancement ratio within the buffer area in another location could be required for development within a previously developed footprint. A qualified professional would have to demonstrate that the proposed enhancement would meet the requirement.

Board Member Ellis asked if, as proposed, the American Brewing Company would contribute dollars for the City to perform the wetland enhancement elsewhere within the buffer. Mr. Lien answered that the City does not have a fee-in-lieu-of program for wetland enhancement. But the applicant would be required to enhance the buffer in other areas around the marsh. Mr. Chave said another option for wetland enhancement would be improvements to the stormwater system. Board Member Ellis asked if the buffer enhancement requirement would impact the American Brewing Company’s ability to improve the site, given that the Port owns the property. Mr. Chave agreed that any buffer enhancement would have to be negotiated between the tenant and the Port. The City does not care who does the buffer enhancement, just that it is done. While he supports the concept of buffer enhancement, Board Member Ellis cautioned against creating rules that will make it impossible for a tenant to make improvements.

Board Member Ellis asked if the proposed language would also require the Parks Department to provide some buffer enhancement to mitigate development of the spray area on property that is currently developed. Mr. Lien answered that the City would fund the buffer enhancement from the project budget.

Board Member Ellis asked if the proposed changes to the CAO would trump the more stringent requirements under the SMP. Mr. Lien answered that the SMP would rule for properties located within the Shoreline Jurisdiction.

Board Member Duncan asked if the property owner (applicant) would be responsible for repairing and/or enhancing the wetland buffer. He noted that, unless the work is done by a qualified person, the enhancement could actually do more harm than good. Mr. Lien explained that the code requires that a report be prepared by a qualified professional, and the qualified professional would typically oversee the actual work, as well. However, there is no code requirement to spell out who can actually do the work.

Board Member Clarke asked if it would be possible to provide a process that permits this activity as long as the activity does not encroach or reduce what is existing in the buffer area or wetland. He pointed out that the silo proposed by the American Brewing Company would have no environmental impact on the marsh. Therefore, it seems counterintuitive. It is simply placing a silo on a piece of property that is already improved in an existing parking lot where it will not impact anything that is environmentally sensitive. The property where the spray area is proposed at City Park is zoned for public use. As proposed, in order to enhance the park to provide a public benefit, the City must spend extra dollars to provide buffer enhancement elsewhere. He expressed his belief that the current buffer in this location is and will continue to be adequate protection for the wetland. He agreed that mitigation should be required if the function of the wetland buffer would be reduced by a development proposal.

Mr. Lien explained that most BAS is done primarily with rural areas in mind where undeveloped buffers actually exist. It assumes there is actually a vegetative buffer and does not necessarily fit within urban areas such as Edmonds that were primarily developed before any environmental regulations were in place. The intent of BAS and the proposed amendment is to identify what can be done in the long run to enhance the critical areas and their buffers. The critical areas in Edmonds and their buffers have been degraded and requiring enhancement for development in what would normally be a functioning buffer is a way to improve the situation over the long run. He explained that approval of activities in the buffer areas is currently an administrative process. Another option for addressing the issue is through the a variance. However, requiring a variance for an activity within the buffer may be overkill when arguably it would have no impact to the critical area. As proposed, in order for an activity to be allowed, an applicant must demonstrate that the proposal would not increase the footprint beyond what has been legally established, increase the impact to the critical area, increase the total impervious of the site, or increase the risk to life or property. He summarized that 75 to 100-foot wetland buffers for streams run throughout the bowl area and include a substantial amount of developed property. The gist of the proposed change is to improve the buffer areas in the long run, while recognizing that many of them have already been developed.

Board Member Clarke expressed concern about how much it would cost a property owner to provide the required buffer enhancement. He noted that the enhancement would be funded by taxpayers in the two examples provided by staff. He also asked who would determine what the required enhancement would be and where it would be located. Mr. Lien reminded the Board that the proposed amendments would apply to critical areas and buffers located throughout the City. The projects at Harbor Square and City Park were provided as examples, only.

Vice Chair Stewart said she recently spoke with the Parks, Recreation and Cultural Services Director regarding potential options for enhancing the wetland buffer to mitigate the park spray area project. She advised that the spray area would be a pervious pad, and the water would flow beneath the pad to a cistern so it could be used for irrigation and toilets in the park. This type of approach would provide an enormous benefit by decreasing the amount of stormwater runoff and recycling the water for other uses. The approach would also play a role in allowing the wetland to function as it should.

Vice Chair Stewart cautioned the Board not to focus their discussion on just the two examples provided by staff. The proposed amendments would apply to all critical areas and buffers throughout the City.

Joan Bloom, Edmonds City Councilmember, said she was present because she voted in favor of the interim ordinance and now believes she voted in error. Had she voted against the interim ordinance, as Councilmembers Johnson, Petso and Fraley-Monillas, the change to the critical areas ordinance would have been before the Board to review and develop recommendations for full Council consideration as recommended by the City Council's Parks, Planning and Public Works Committee. The item is now before the Board as an interim ordinance because of the two projects. She expressed concern that discussing the proposed amendments in relation to the two projects does not take into account the potential unintended consequences of making this kind of a change to the CAO. She apologized for having voted in favor of the interim ordinance. She said she made an error and did not review it as carefully as she should have.

Councilmember Bloom said she is not opposed to the language proposed for ECDC 23.40.220.C.3 regarding structures as opposed to development footprint. This language would address the issue of the proposed silo. However, she said she has difficulty with the language related to buffer areas that are physically separated and functionally isolated (ECDC 23.50.040.H.5). She read that, as currently proposed, activities would be allowed within buffer areas that:

- a) *Are physically separated from the associated wetland due to public roads, legally established structures, or similar circumstances;*
- b) *are functionally isolated from the associated wetland; and*
- c) *as a result of a and b, above, do not serve to protect the wetland from adverse impacts of development. A critical area report prepared by a qualified professional is required to determine whether subsections a and b are satisfied.*

Councilmember Bloom expressed her belief that the term “similar circumstances” (Item a) is too vague. She questioned if the City can legally require enhancements if the City code states that because an area is physically separated and functionally isolated, it does not serve to protect the wetland from adverse impacts of development. If it is not providing an impact, can the City require enhancements at all? She also expressed concern that the interim ordinance does not provide clarity about what enhancements would be required. For example, there is no enhancement ratio similar to the replacement ratio that is required when trees on a steep slope are cut down. She noted the ordinance does not include any discussion about enhancements related to streams, either.

Councilmember Bloom said she is concerned about the interim ordinance’s use of the term “director.” She noted that elsewhere in the CAO, the term “director” is defined as “the Development Services Director or his or her designee.” She noted that the City was without a Development Services Director for three years, and decisions were made by someone else during that time. She expressed her belief that decisions this important should not be relegated to a staff member who does not have the expertise. They should not be relegated at all; they should be the decision of the director.

Councilmember Bloom summarized that rushing to develop an ordinance in response to a city-initiated project, such as the spray park, will very likely result in unintended consequences. It has not been clearly defined how many other areas of the City could be subject to this same ordinance. Thus, the ordinance could result in additional or more impervious surfaces in the wetland buffers. For example, in a recent meeting, Mr. Lien showed her and Councilmember Petso areas where people have homes within a buffer but separated by a road. These property owners might decide to expand their homes, add another structure, etc. The ordinance may allow this to occur. They haven’t clarified what other areas could be impacted by the proposed amendments. She cautioned that they really need to be very careful when making changes to the CAO. She reminded the Board that the state has recently come down with more stringent stormwater requirements, which means that every single critical area is valuable because it cleans the water before it reaches the Sound. The City is being required to clean the water better before it gets to the Sound and will be fined if it does not meet the requirement. She emphasized her belief that the entire ordinance has the potential of a lot of unintended consequences. She urged them to look at it very carefully.

Mr. Chave clarified that the Planning Board’s hearing is not regarding the interim ordinance. They are working on a permanent change to the code. The interim ordinance provides the context and language the City Council was looking at, but it is not the Board’s intent to deal solely with the interim ordinance. He announced that the City Council will conduct a public hearing on the interim ordinance on September 3rd.

The public portion of the hearing was closed.

In response to Board Member Lovell’s comment, Mr. Lien explained that Attachment 2 is a memorandum that was prepared by the staff to outline the issue for the City Council’s Parks, Planning and Public Works Committee. The committee expressed concern that the memorandum was too technical, and staff subsequently prepared Attachment 1 to outline the issue in less technical terms.

Board Member Lovell referred to the proposed amendments to ECDC 23.50.040.J.c and asked how the City could require an additional building setback or modified buffers to accommodate an existing condition. Mr. Lien advised that this section is modeled off of existing code language, and he agreed that requiring additional building setback would not be appropriate. He also noted that requiring an enhancement that provides greater protection over the existing buffer is inappropriate. Board Member Lovell observed that it appears the interim ordinance was formulated to accommodate the two situations explained earlier by staff. He asked if there are other areas in the City where future development could be impacted by the proposed amendments. Mr. Lien answered that the proposed amendments to the CAO would have large implications for development throughout the City, not just two examples discussed earlier. This is particularly true for properties within the bowl where there are several creeks and streams. Many of the 75 to 100-foot buffers along these waterways were previously developed.

Board Member Lovell summarized that it would make sense for the Board to take more time to review the proposed amendments to ensure they do not create worse situations and actually improve the existing conditions.

Mr. Chave commented that the City's CAO must go beyond ensuring that the existing situations are not made worse. The City must actually find a way to improve critical area functions in developed areas. Critical area functions have been significantly eroded over time through the act of developing in urban areas. Until very recently, there were no environmental regulations to protect these areas. The principle behind the CAO and BAS is to allow property owners to continue to develop where impingements have occurred, but in exchange a property owner would be required to enhance areas that still can be improved. He noted that the BAS report focuses on this, but it did not get translated properly into the code provisions.

Board Member Lovell summarized that the Board is not responsible for reviewing the interim ordinance. Their charge is to update the CAO in accordance with BAS. Mr. Chave agreed that the Board's task is to recommend a permanent fix, taking into consideration the approach outlined in the interim ordinance. The issue involves both existing impervious surfaces, and properties within the buffer that are physically separated and functionally isolated from the wetland. It does not make sense to prohibit activities in these locations. However, developers should be required to enhance the buffer elsewhere. If the City does not require enhancement, when possible, it will not likely be offered voluntarily. He said staff has discussed the concept at length with the City Attorney, and he is confident that the City can require enhancement in exchange for allowing activity to occur in developed buffer areas. Mr. Lien said he has had similar discussions with the Department of Ecology (DOE) as part of the SMP update, and they are also supportive of the approach.

Board Member Ellis asked what the various colors mean in the interim ordinance (Attachment 5). Mr. Lien answered that the colors represent changes. The City Attorney's changes are identified in purple and staff's changes are in blue. Board Member Ellis asked if the interim ordinance adopted by the City Council is as written in Attachment 5, with all the changes. Mr. Lien answered affirmatively. Again, Mr. Lien advised that the interim ordinance was provided as a starting point for the Planning Board.

Board Member Tibbott commented that the water collection system the City is considering under the spray park sounds like a great enhancement and would likely accommodate additional runoff. It would actually be an improvement over existing development. However, he questioned who would determine if the collection system provides sufficient enhancement to mitigate the proposed new spray park. Board Member Ellis pointed out that, as currently written, this decision would be made by the director or the director's representative. Board Member Cloutier added that the proposed language would require an applicant to submit a buffer enhancement plan to "demonstrate that post-project site conditions would provide equivalent or greater protection of wetland functions and wildlife habitat when compared to a standard wetland buffer and existing site conditions." He cautioned that it would not appropriate to compare the proposed enhancement with the standard buffer. Mr. Lien agreed and recalled his previously suggested change that the standard be changed to require an applicant to provide greater protection of wetland functions compared to existing site conditions. He briefly described how a wetland scientist would evaluate a buffer and identify potential enhancements.

Board Member Cloutier observed that the proposed language does not provide a standard to determine if the degree of development is being compensated by the degree of improvement. Mr. Lien noted that this concern was also raised in an email to the Board from Councilmember Petso. Again, he suggested the City could establish an enhancement ratio. Mr. Chave said that, currently, the required enhancement would be identified on a case-by-case basis via a wetland report. The professional's job is to balance the level of proposed development with the enhancement that is appropriate. He advised that stream and wetland assessments tend to be objectively done because they cover the entire reach of the wetland and/or stream. Buffers, on the other hand, are much more difficult because their existing conditions change dramatically at different points. Rather than trying to figure out how much enhancement needs to be done in a particular location, perhaps it is more important to do the enhancement in another location where it will have "more bang for the buck."

Because some Board members did not receive Councilmember Petso's email, Vice Chair Stewart read it into the record as follows:

"Increasing impervious surfaces in critical area buffers in exchange for enhancement is not supported by or consistent with the Best Available Science report. Redevelopment within the existing footprint may be supported, but not the creation of new impervious surfaces under the physically separated and functionally isolated provisions.

Because consistency is apparently required, the physically separated and functionally isolated provisions should be eliminated.

The comments above are in addition to my concerns raised yesterday that the ordinance cannot be expected to work. There is no requirement that the enhancement be proportionate to the new impervious surfaces created, so one could pave over a large area of buffer and provide 20 minutes of enhancement by planting a couple of bushes. Also, if an area is truly physically separated and functionally isolated, the City may have no right to demand enhancement at all.”

Board Member Duncan emphasized that integration of the entire hydrological system is critical, and the issue must be addressed in a holistic approach. In addition, a performance review should also be a code requirement to ensure that the enhancement remains effective in the future.

Board Member Clarke recalled that, typically, the Board holds at least one study session on proposed amendments before they are scheduled for public hearing. However, in this instance, the public hearing is being held prior to the Board having an opportunity to review the proposed changes.

Board Member Clarke referred to Vice Chair Stewart’s earlier description of the enhancement mitigation the Parks Department would have to do to mitigate development allowed elsewhere in the buffer. Vice Chair Stewart clarified that the enhancement portion of the Park Department’s Plan for improvements at City Park has not yet been formally presented as part of the plan. She cautioned that while the two proposed projects at City Park and Harbor Square expedited the interim ordinance, the Board must make sure the permanent code language is appropriate for other potential projects in the City.

Vice Chair Stewart asked why it is necessary to add language such as “physically separated and functionally isolated” if the City will only allow redevelopment in the previously developed footprint. She suggested this language could be eliminated and an additional option for enhancement could be added to encourage the removal of impervious surfaces. Mr. Lien The advised that the concept of removing impervious surface is currently addressed in the code as an enhancement option for allowing development elsewhere in an impervious surface area. The current code language also allows additions to structures existing within wetlands and/or wetland buffers according the process outlined in ECDC 23.50.040.H.1 through H.4. An additional item (H.5) was added to include buffer areas that are physically separated and/or functionally isolated, which is consistent with the BAS Report. He explained that in the City Park project and many other places throughout the City, previously developed properties within buffer areas are separated from critical areas by a road, parking lot, etc. He noted that if the amount of impervious surface is expanded, other code requirements, such as stormwater infrastructure, would also apply.

Vice Chair Stewart said she does not believe it is appropriate to allow more impervious surface within buffer areas. Mr. Lien pointed out that it is already allowed per the code. Vice Chair Stewart said she could provide several examples of other jurisdictions, such as the Port of Tacoma, that have reduced impervious surfaces and development footprint. They have also accomplished wetland and buffer enhancements by treating rainwater appropriately and implementing other low-impact development techniques. Again, she recommended that the language related to “physically separated and functionally isolated” should be eliminated.

Board Member Clarke asked if the recently adopted interim ordinance would allow the two projects at City Park and Harbor Square to be completed. Mr. Chave said it depends on project timing. The project permits must be obtained while the interim ordinance is still in place. He emphasized that the two projects should not control the timing of the Board’s review of the draft amendments. Board Member Clarke summarized that the Board does not need to fast track their review to accommodate the two projects. Mr. Lien recalled that the City Council’s Parks, Planning and Public Works Committee also expressed concern that the City Council and Planning Board would focus too much on the examples as opposed to bringing the code into consistency with BAS. He summarized that the two recent projects simply illustrate the proposed code changes.

Board Member Clarke recommended the Board schedule the proposed amendments for further discussion and study. The remainder of the Board concurred. Mr. Lien agreed to update the draft language based on the Board’s discussion. Board Member Clarke said he found the two examples to be helpful to visualize the problems they are trying to address. He

suggested it would be helpful for staff to provide additional examples, as well. Mr. Chave cautioned against focusing the discussion on individual properties. However, staff could provide generic examples without identifying specific properties.

Board Member Ellis requested a map of the critical areas in the City. Mr. Chave agreed to provide a map, but noted that it simply identifies likely critical areas and is not a regulatory map. The City relies on site-specific studies and surveys to determine the exact location of critical areas on a site-by-site basis.

Board Member Tibbott said he would be interested in learning more about the philosophy behind enhancements in exchange for building on previously-developed properties. For example, building a silo on an existing parking lot would have no impact to the wetland, so why should the City require enhancement elsewhere. He said he would like information about where the enhancement concept has been utilized in other jurisdictions and if there is any legal case study to support the approach. Vice Chair Stewart also felt it would be helpful for staff to provide the Board Members with copies of the BAS Report.

APPLICATION BY AT&T MOBILE AND THE BUSCH LAW FIRM TO AMEND THE EDMONDS COMMUNITY DEVELOPMENT CODE TO ADDRESS THE LEGAL STATUS OF EXISTING WIRELESS COMMUNICATION FACILITIES THAT WERE BUILT PRIOR TO AND JUST AFTER ADOPTION OF THE CITY'S ORIGINAL WIRELESS ORDINANCE (FILE NUMBER AMD20130005)

Ken Lyons, Busch Law Firm, Issaquah, explained that he was present on behalf of AT&T to propose a code amendment that would provide legal, non-conforming status to existing wireless sites that were built prior to and just after the City adopted its original wireless ordinance. He reviewed that the City's ordinance was adopted in 1996, shortly after the Telecom Act was adopted by the Federal Communications Commission (FCC). Prior to that time, the City did not require building or land-use permits for WCF's, so some facilities that were built prior to 1996 may not be included in the City's records. He noted that carriers tend to change hands frequently, making it difficult to determine whether or not the sites were legally established. This creates an issue when carriers want to upgrade the facilities for the benefit of the citizens of the customers and citizens of the City of Edmonds.

Mr. Lyons noted that 35% of the City's residents do not have home phones; they've gone completely wireless. Just five years ago that number was 15%, and it is estimated that it will jump to 70% within the next five years. When the Telecom Act and the City's original ordinance was adopted in 1996, the view of wireless and the role of cell phones in the City may have been geared more towards emergency situations. Wireless has now become the communication backbone of the City, both for residents and businesses. It is important to recognize these changes and allow new technologies to be implemented. During the past year, AT&T upgraded all of its sites (except for Edmonds) to the latest 4G technology known as Long-Term Evolution (LTE). Because they were unable to upgrade the facility in Edmonds, it caused significant reliability and service problems because the calls could not be properly handed off. He summarized that there is a huge hole in downtown Edmonds.

Mr. Lyons advised that a new federal law was recently passed that was meant to speak to the permitting process and to make it easier for carriers to upgrade established facilities, and the proposed amendment would make it easier for the sites that were built around the time the ordinance was originally adopted in 1996 to be upgraded. He explained that, at this time, AT&T has a long-standing enforcement issue with the City of Edmonds that it has been trying to resolve for four or five years. The proposed ordinance is the result of a series of conversations with the City Attorney and staff. The proposed amendment represent the least disruptive approach of the many options that could be used to resolve the situation.

Mr. Lyons reviewed that AT&T's facility is located on the Commodore Condominiums and was built in September of 1996. The City's ordinance was adopted on July 12, 1996, but the site was actually planned at least nine months previously. The WCF is a single canister of antennas that extends ten feet above the roofline. There are no records of permits on file with the City or with the original carrier (GTE). Sprint and Nextel also have facilities on the same structure that were apparently built just before the 1996 ordinance. Although no permits are on file for these two facilities, either, the sites are not currently subject to an enforcement issue; most likely because they haven't tried to upgrade the facilities yet. Mr. Lyon advised that when AT&T applied for permits to upgrade their facility several years ago, an enforcement action was issued against them. At that time, the City Council and the Planning Commission was just getting ready to update the WCF Ordinance, which was

adopted in 2011. It was thought that the new code would have taken care of the issue; but unfortunately, it did not, and they are still looking for a resolution.

Mr. Lyon said AT&T's installation on the Commodore Condominiums would actually be allowed in other parts of the City. However, the condominiums are located within the Downtown/Waterfront Activity Center, which has additional zoning restrictions. He said AT&T tried to work with the building owners to bring the WCF into compliance in early 2012. They redesigned the entire facility to meet the new code requirements, but they experienced a number of problems when residents expressed concern about flush mounting the antennas to the side of the building as required by code. He noted that the previous code did not allow flush-mounted facilities next to residential areas.

Mr. Lyons pointed out that the updated WCF code does not allow for variances where deviation from the regulations is necessary. Given that the variance option was not available, he met with the City Attorney and staff to discuss a number of ways to look at the code interpretations that would perhaps resolve the issue. However, it was determined that a code amendment would be the most appropriate approach. Several code amendment options were considered; but given that the ordinance was just recently updated, it was suggested they move forward with the least disruptive option. There is already precedent in the code for other types of developments that have been granted legal, non-conforming status even though there are no records of permits on file. These examples were used to create the very limited exception outlined in the proposed amendment. He noted that the proposed vesting date of August 5, 1998 is tied to an agreement that was reached between the FCC's Local and State Government Advisory Committee and various industry groups to provide an informal dispute resolution process. He summarized that the proposed amendments would only apply to WCF's that were constructed between July 12, 1996 when the city adopted its first ordinance and August 5, 1998.

Mr. Lyons emphasized that the AT&T site is very important. It covers a significant portion of the downtown, as well as the bowl. It is located on what is clearly the tallest building in Edmonds, not necessarily because of building height but because the topography places the building higher. Relocating the facility to another site would not be feasible. When a number of people use the network, they simply cannot take sites off the air. They have to find options to upgrade the site, and that is the reason they are asking for a very limited exception. He commented that the issue was not raised via citizen complaint. The issue came up when AT&T applied for permits to upgrade the site.

Mr. Lyons pointed out that all of the other buildings in the immediate area surrounding the subject property are residential, and flush-mounted antennas on the sides of buildings will likely raise further objections from citizens. He said the site is unique given the large evergreen trees located directly to the east that naturally screen the site from view. He provided pictures to illustrate the location and design of the existing AT&T facility. He invited the Board to share their thoughts on the proposed amendment, as well as other options for resolving the issue.

Board Member Duncan asked the size difference of the new equipment compared to the existing equipment. Mr. Lyons answered that they plan to replace three antennas with larger antennas, but they cannot even touch the facility because there is no record of a permit. In the City's view, it must be brought to current code, which cannot happen. If the facility is granted legal, non-conforming status, the upgrade and some limited expansion would be allowed, as long as they do not increase the size of the non-conformity.

Mr. Chave explained that, as far as the City is concerned, the facility was never permitted, so it cannot be grandfathered in. If it can't be grandfathered in, it must comply with the current rules, which do not allow antennas to be mounted on the tops of buildings in the downtown. AT&T feels their only option, because of the facility's location and how it fits into the network, is to change the non-conforming/grandfathering rule so it can be considered a facility that can stay. Mr. Lyons added that AT&T applied for a permit to move the antennas off the roof and place them on the side of the building. However, the property owner withdrew his consent based on complaints from residents living on the top floor of the condominium. Mr. Chave summarized that AT&T does not believe they can pursue what the code envisions in terms of moving the facility to the side of the building, and they are seeking another way to resolve the problem.

Board Member Ellis asked why the WCF cannot be treated as non-conforming. Mr. Chave explained that, in order to consider a structure non-conforming, you must be able to show that it was legal at the time of construction. AT&T's facility was constructed just after the WCF Ordinance was adopted, and the City has no record that it was ever permitted. Mr. Lyon added that prior to adoption of the original ordinance on July 12, 1996, Edmonds did not require permits for WCFs. AT&T

can show that the facility was planned before the original ordinance was adopted, but they believe the site was actually built in September of 1996, two months after the adoption of the Edmonds ordinance that would have required permits.

Board Member Ellis observed that the proposed amendments would only apply to a limited number of facilities that were constructed during a short time period. Mr. Lyon said it would cover facilities that were constructed between July 12, 1996 to August 5, 1998.

Board Member Clarke asked for more clarity about the applicant's proposed fix. Mr. Lyon referred the Board to the proposed language provided in their packets. He explained that the amendment to ECDC 17.40.023 addresses the issue similar to the way the City handled what were previously illegal accessory dwelling units (ECDC 17.40.025). The proposed language would grant WCF's legal, non-conforming status as long as it can be proven that they were built within the time period outlined in the ordinance.

Mr. Lyon said he is not aware of any other facility in Edmonds where the proposed amendment would be applicable because carriers upgrade their sites so frequently and there is a paper trail for most other sites in the City of Edmonds. While the amendment is being proposed as a citywide regulation, it is designed to deal with this one site.

It was noted that the proposed amendments would come back before the Board for a public hearing at some point in the future.

CONTINUED WORK ON THE WESTGATE AND FIVE CORNERS PLANS

Vice Chair Stewart noted the lateness of the hour and pointed out that the Westgate Plan is scheduled to come before the Board for further discussion on September 11th. She suggested the Board offer general comments to staff, and then spend time over the next few weeks reviewing the details of the proposed plan in preparation for their continued discussion. She particularly asked the Board Members to review the Green Card Score Sheet and identify appropriate changes to adapt it specifically to the Westgate Plan. She also encouraged them to consider the proposed height bonus and determine if the points required to obtain additional height are sufficient.

Mr. Chave advised that staff would like the Board's next discussion regarding the plan to focus on the Green Card Score Sheet. He specifically asked the Board to consider whether or not the items that are more heavily weighted are the elements the City wants to emphasize. He noted that much of the score sheet was geared towards Seattle, which is a different environment than Edmonds. Staff would also like feedback on the number of points that should be required in order to obtain the additional height.

Board Member Clarke asked if staff foresees developers in the Westgate area having to incur unusual development costs to shore up the hillside. If so, he asked if it is possible to recognize this challenge by providing a bonus to offset the initial infrastructure costs. Mr. Chave explained that although they could provide a bonus that allows developers of the topographically-challenged properties to maximize their developable footprint, the City may not want to encourage development into the slope. The slope provides a buffer between the commercial development along SR-104 and the residential development located above. If you cut back into the slope too much, the treed nature of the site will disappear. There are tradeoffs both ways. Focusing development in the more readily developed areas will require that less earth be moved, and the treed areas can be protected. This approach would be consistent with the concept of moving development towards the street, as well.

REVIEW OF EXTENDED AGENDA

Vice Chair Stewart reviewed that the August 28th meeting will include a discussion on low-impact development and green development standards, and a review of the reasonable use exceptions in the Critical Areas Regulations (Interim Ordinance recently adopted by the City Council). The Board could also continue their discussion on proposed amendments to Title 23 to bring the CAO into consistency with best available science. In addition, they could continue their discussion about the Westgate Plan, if time permits.

Vice Chair Stewart advised that the September 11th agenda will include continued review of the Westgate Plan and code amendments, as well as a discussion about proposed changes to the BD1 zone as recommended by the Economic Development Commission.

Mr. Chave advised that the Parks, Recreation and Cultural Services Director has indicated that the park items that were originally scheduled for the Board's September 25th meeting would be postponed the October 9th meeting. Also on October 9th is a tentative public hearing on the Westgate Plan and form-based code and further review of proposed amendments to the WCF ordinance.

PLANNING BOARD CHAIR COMMENTS

Vice Chair Stewart thanked Mr. Lien for his tedious work collecting and providing all the details the Board needed to understand the proposed changes to the Critical Areas Ordinance.

Vice Chair Stewart announced that the City's volunteer picnic is scheduled for August 25th from 1:30 to 3:00 p.m. Planning Board Members should have received their invitations.

PLANNING BOARD MEMBER COMMENTS

Board Member Ellis asked if all emails to the Board are circulated via the Board's email account. Mr. Chave answered affirmatively.

Board Member Clarke asked how many Board Members' terms expire at the end of the year. Mr. Chave noted that the Board is currently full with seven regular members and one alternate. He agreed to check and report back to the Board on when terms expire. Board Member Clarke suggested the Board ask the Mayor to start thinking about the appointment process now so they can maintain a full Board.

Board Member Clarke pointed out that the Board Members all have lives that require travel and business commitments. If there are eight Board Members, then only four must be present to conduct business. He expressed concern that Chair Reed recently made the decision to cancel the July 24th Board meeting, and he was not informed about the change until the night before while attending a City Council meeting. He cautioned that, in the future, they need to be very careful about moving meetings around. If they have enough alternates, they should be able to have sufficient members present to constitute a quorum at all meetings. Mr. Chave recalled that Chair Reed made the decision after several people indicated they would not be present at the July 24th meeting. The Board needed to continue the hearing on the proposed amendments to the BC-EW and RM-EW zones to a date certain, and Chair Reed did not know if Board Member Clarke would be available on July 24th. It was decided that there might not be a quorum for the last meeting in July. Vice Chair Stewart pointed out that the decision was actually made after the meeting was concluded so it was not included in the minutes. She suggested that, in the future, these types of decisions should be made as part of the regular meeting.

ADJOURNMENT

The Board meeting was adjourned at 10:07 p.m.

APPROVED