

APPROVED MAY 13TH

**CITY OF EDMONDS
PLANNING BOARD MINUTES**

April 22, 2015

Chair Tibbott 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

Neil Tibbott, Chair
Philip Lovell, Vice Chair
Todd Cloutier
Carreen Rubenkönig
Daniel Robles
Valerie Stewart
Matthew Cheung

STAFF PRESENT

Rob Chave, Planning Division Manager
Kernen Lien, Planner
Jeanie McConnell, Engineering Program Manager
Karin Noyes, Recorder

BOARD MEMBERS ABSENT

Evan Zhao, Student Representative
(excused)

READING/APPROVAL OF MINUTES

BOARD MEMBER CLOUTIER MOVED THAT THE MINUTES OF APRIL 8, 2015 BE APPROVED AS AMENDED. BOARD MEMBER RUBENKONIG SECONDED THE MOTION, WHICH CARRIED UNANIMOUSLY.

ANNOUNCEMENT OF AGENDA

The agenda was rearranged to place the discussion of 2015-2020 Capital Facilities Element (Item 8a) after audience comments (Item 4), followed by a continued discussion of the draft Tree Code (Item 7b), review of draft code for the Critical Area Ordinance Update (Item 7a), and the Development Services Director Report to the Planning Board (Item 5)

AUDIENCE COMMENTS

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

DISCUSSION ON 2015 – 2020 CAPITAL FACILITIES ELEMENT

Mr. Chave referred the Board to the clean and marked-up versions of the recommended updates to the Capital Facilities Element of the Comprehensive Plan. He noted that the update is relative to the narrative section of the element, which contains the overall goals and policies. Later in the year, the Engineering Division will present proposed updates to the Capital Facilities Plan. He explained that, rather than significant changes in policy direction, the intent of the proposed amendments is to clean up the verbiage to make sure the intent is clearly stated.

Vice Chair Lovell requested an explanation for why the term “level of service” was changed to “service” throughout the entire element. Mr. Chave explained that Level of Service (LOS) is a technical term in the Growth Management Act that is tied specifically to transportation facilities. The City has various service standards associated with parks, sewer, water, etc, but no LOS has been defined in the Growth Management Act relative to these facilities. Staff felt it would be clearer to differentiate between the two terms so the public does not become confused. Vice Chair Lovell suggested that Goal A on Page 199 uses the word “service” too many times. Mr. Chave agreed and suggested that the first reference to “service” could be eliminated.

Vice Chair Lovell asked for clarification about why Goal B.2 on Page 200 was highlighted. Mr. Chave said this section was highlighted so it could be pointed out that the language came directly from the Growth Management Act. Vice Chair Lovell noted that Goal B.2 would require the City to reexamine the Comprehensive Plan if funding sources fall short of meeting the identified needs to consider how additional funding would be raised or how land-use assumptions would be reassessed to ensure that established service standards would be met. Mr. Chave clarified that the language in B.2 exists in the current Comprehensive Plan. The highlight was intended to simply highlight the source of the language.

Vice Chair Lovell asked if the goals and policies outlined in the draft Capital Facilities Element are congruent with the action items called out in the City’s Strategic Action Plan (SAP). Mr. Chave answered that they are tied together. He explained that the budget has a lot to do with maintaining service and the SAP links budgeting with the long-range Comprehensive Plan. Vice Chair Lovell summarized that the SAP would be the action plan that backs up the Comprehensive Plan. Mr. Chave agreed that the SAP, plus the capital items identified in the Capital Facilities Plan will be considered during the budgeting process. This reinforces the importance of updating the Capital Facilities Plan on a yearly basis.

Vice Chair Lovell said that his interpretation of Goal B.2 is that the Capital Facilities Plan is supposed to cover six years of projects that need to get done to meet service standards. It would seem that at some point in that time period someone will start asking questions about funding so the projects can move forward. Mr. Chave clarified that the six-year time period applies to the shorter-term capital items, but the Capital Facilities Plan also includes longer term items, as well. The Growth Management Act only requires a funding plan for the projects in the six-year period.

Vice Chair Lovell asked if the language in the “Concurrency Management” section (Pages 201 and 202) would produce or create any restrictions as to what the City can and cannot do with respect to projects (i.e. pedestrian crossings, improving the marsh). Mr. Chave answered that, in general, projects related to capital facilities are intended to maintain service levels over time and to respond to growth pressures. Concurrency is the mechanism by which the City can track the needs verses the facilities and try to mesh the two so that facilities can be provided as close as possible to when they are needed. The Concurrency Management requirement is specific to transportation facilities and is defined as the process that cities use to ensure that no development or permit is approved by the City unless the necessary capital facilities are in place or that funding is adequate to complete the required improvements within six years. Parks are mentioned in the Concurrency Management section because the City currently has a park impact fee program, which is an important funding mechanism even though it is not necessarily a requirement of State Law.

Vice Chair Lovell said his interpretation of the proposed language is that the City could not undertake any of the projects identified in the Capital Facilities Plan until they know what the funding stream will be. Mr. Chave explained that there is an inner tie between policy standards, capital projects and the budget. The Capital Facilities Plan identifies the projects that will be needed to accommodate projected traffic levels and growth that will happen over a period of time. The intent is to identify deficiencies and come up with a funding plan for moving the projects forward when needed. Impact fees are part of the equation, but concurrency means that before the City can plan for projected growth to occur in a targeted area, it must make sure the facilities are at least planned and there is a funding mechanism in place for providing the facilities when needed. Again, he emphasized that Concurrency Management is specific to transportation facilities, which are tied to growth driven change. The funding mechanisms for other services, such as water and sewer facilities, are different because they are covered by utility programs that charge customers for maintaining the system.

CONTINUED DISCUSSION OF DRAFT TREE CODE

Mr. Lien reviewed that the Planning Board heard an introduction of the draft Tree Code on February 25th; and on March 25th, staff described a number of tree cutting scenarios to detail how the draft would be implemented. Since that time, Planning

Board Members have submitted written comments and questions to staff relative to the draft Tree Code. Rather than responding to each individual comment, staff grouped the comments into categories. During tonight's presentation, he would respond to the broader issues raised by the Board and review the proposed penalty system for unauthorized tree cutting. In addition, Jeanie McConnell, Engineering Program Manager, was invited to the meeting to address the Board's questions and concerns relative to right-of-way trees.

- **Urban Forest Management Plan (UFMP)**

Mr. Lien reviewed that a number of Board Members have questioned the appropriateness of adopting the draft Tree Code prior to completing an Urban Forest Management Plan (UFMP). He explained that one of the main objectives of the tree code is to consolidate the Tree Code into code language that is more understandable for citizens and more efficient for staff to implement. The original intent was to develop the Tree Code under the Comprehensive Plan's existing policy framework. However, as the process moved forward, it became apparent that there were insufficient goals and policies in place to support all of the proposed regulations. To address this issue, the Tree Board created a Findings Section (Page 1), which outlines additional goals and policies to support the proposed regulations. If the City Council adopts the ordinance, they should also adopt the findings to provide policy background.

Mr. Lien pointed out that the Findings still do not adequately support all of the regulations contained in the draft Tree Code. For example, one of the Tree Board's overall goals is to maintain the existing tree canopy, but this is not clearly spelled out in the Findings Section or in the goals and policies contained in the Comprehensive Plan. In addition to addressing tree canopy inventory and goals and tree protection and regulation on private and public properties, the UFMP could also address issues relative to view protection and solar access. He recalled that the current Comprehensive Plan update recommends that an UFMP be completed by the end of 2017. Staff anticipates that the plan would take a significant amount of work, particularly to inventory the existing tree canopy and complete the public process.

Board Member Robles said he did not submit comments to the staff relative to the draft language because he strongly believes that the City should complete an UFMP before adopting the draft Tree Code. If that is not the case, he voiced concern that the draft Tree Code seems like a people plan where trees happen to grow rather than a tree plan. He expressed his belief that tree diameter is a poor metric for the value of a tree, in general. All the reason cited for why we like trees are more a function of the vertical area of the tree, the volume of the tree, and the density of the tree. These are the things that hold the ground in place, provide shade, and create the coveted tree canopy.

Board Member Robles noted that the City's Street Tree Plan identifies specific tree species for the downtown area, which leads him to believe there is a different standard for the City versus the public. The approach could be considered a form of the "district" concept, where the downtown district would have a different way of interpreting trees than perhaps the north end of the City. He noted that this approach is used by other jurisdictions, but the concept has not been considered by the City's Tree Board. He was hoping to address this issue as part of an UFMP, as there are a number of ways to measure forest area on a very large scale. For example, Washington State will be conducting a survey of potential landslide areas using Lydar technology. He suggested the City could discover a better basis for measuring the tree inventory so they have a clear understanding of how much is being created every year through growth and how much is being lost through tree removal. This information would allow the City to develop a quota system based on real numbers. Again, he expressed his belief that a UFMP could provide the basis for all of the City's decisions relative to the Tree Code.

Mr. Lien agreed that all of Mr. Robles concerns could be addressed via a UFMP. He also agreed that other methods, such as Lydar, could be used to measure the City's existing tree canopy and that the City could establish different canopy cover standards for various areas of the City. However, the boundaries would have to be spelled out clearly in a UFMP.

- **Application Fees**

Mr. Lien recalled that the fees he presented as part of his scenario presentation on March 25th were based on the City's current fee schedule (Resolution 1308) for illustrative purposes. He explained that fees are generally established to cover the cost of processing and issuing permits. However, there may be additional fees if a permit requires an arborist review. The City could either hire an arborist on staff to handle these permits, or they could require applicants to obtain the services of a licensed arborist at their own cost. He reviewed that there are a number of options for establishing a fee schedule for tree

removal. They could continue with the City's current approach, which is to establish fees commensurate with the amount of work necessary to process various tree cutting permit types and no additional policies would be needed. Other options include establishing a lower application fee to reward good stewardship and/or establishing increased fees to discourage removal of large trees. He noted that subsidizing tree cutting permits to reward good stewardship or charging a higher fee to discourage tree cutting would need to be supported by additional goals and policies that could be identified via an UFMP.

Vice Chair Lovell asked if staff plans to complete a financial analysis of associated implementation costs before the Tree Code is adopted. He felt it would be crucial for the Planning Board and City Council to have a clear understanding of the costs associated with the Tree Code's implementation. For example, he has heard that it may be necessary to hire three additional staff to handle tree cutting permits. Mr. Lien explained that, if tree cutting permits are required for the removal of any significant tree, the City should at least have an arborist on staff to handle the required permits and deal with all other tree issues in the City. If the City establishes permit fees that cover all staff costs, there should not be any additional cost to the City. However, he acknowledged that it may be more costly for applicants if an arborist report is required.

Vice Chair Lovell expressed his belief that questions relative to the cost of implementing the draft Tree Code will likely come up during the public hearing. The City is faced each year with insufficient funds for staffing and police and fire protection, and adopting a code that requires additional staff time will be a significant concern to citizens. Mr. Chave advised that the Development Services Director anticipates that three areas of cost will need to be considered: arborist review, permit processing, and enforcement. She anticipates that two or three additional staff will be needed to address all three aspects of code language as currently proposed.

- **Tree Cutting Applications**

Mr. Lien reviewed that many Board Members have expressed a desire to simplify the permit process. Some have also suggested that the diameter of what is considered a "significant tree" be increased from 6 inches to 12 inches. However, if the City's goal is to increase or maintain the existing tree canopy, increasing the diameter of a "significant tree" would have a negative impact on tree canopy.

Mr. Lien advised that Board Members have also requested that staff revisit the exemptions, particularly those that pertain to single-family properties that are flat, are not sub dividable and have no critical areas. When deciding whether or not these properties should be exempt from the tree cutting permit requirement, it is important to understand that a lot of the City's existing tree canopy would fall under this category.

Mr. Lien said Board Members also raised issues about tree size and tree species. For example, some jurisdictions do not regulate alder. He pointed out that there are numerous alder trees in the City, and they are primarily located within critical areas and provide slope stability.

- **Right-of-Way (ROW) Trees**

Ms. McConnell explained that the existing code does not include language specific to ROW trees. In order to regulate tree trimming and removal of trees within public ROWs, the City relies on a policy that was put in place by the Public Works Director and recently revised by the City Council. The draft Tree Code would include a section relative to ROW trees, which would be consistent with the recently updated policy. The proposed language is intended to provide efficiency and consistency in the administration and clarify the use of definitions.

Ms. McConnell emphasized that street trees are different than ROW trees. ROW Trees are located in undeveloped portions of the ROW, between the road pavement/sidewalk and private property, unopened alleys, etc. Street trees are located in the downtown core and key gateways, typically between the sidewalk and street. She noted that street trees are addressed in the City's Street Tree Plan and not in the draft Tree Code. She advised that City crews do regular maintenance of ROW trees to address public safety concerns. For example, they remove limbs that are hanging over a street and/or sidewalk, remove trees and/or branches that have fallen down as a result of a storm, and address trees that are damaging City facilities. She noted that the public utility district also has a tree trimming and maintenance program, which identifies trimming as the first approach to addressing a problem. However, sometimes the amount of trimming needed would damage the tree beyond what makes sense to keep the tree. Tree replacement would be required for any trees that are removed from the public ROWs.

Ms. McConnell said the City does not currently allow ROW trees to be trimmed or removed based on view issues. However, the updated policy allows the Public Works Director to authorize the removal ROW trees that are damaging infrastructure such as driveways, sidewalks, and sewer lines. In these cases, City staff would work with homeowners to assess the situation and discuss potential alternatives to protect the tree instead of just removing it. This is all done via a ROW Construction Permit from the City. Again, she reminded the Board that ROW trees are currently regulated via a policy, which would go away if and when language relative to ROW trees is incorporated into the Tree Code.

Ms. McConnell reviewed that Board Members questioned why a homeowner would be required to obtain a ROW Construction Permit to remove or trim trees within the City's ROW. She explained that, as per Edmonds City Code (ECC) 9.20, abutting property owners have the responsibility and duty to maintain, repair and reconstruct transition strips (areas between property line and curb or road). Pruning within City ROWs can be done without a ROW Construction Permit with the use of hand tools, as long as branches do not fall onto the travel lane/sidewalk. More extensive trimming and/or tree removal would require a ROW Construction Permit.

Ms. McConnell said questions were also raised about why the City would require a homeowner to seek out an arborist to make a determination with regard to a ROW tree. She explained that the City does not currently have an arborist on staff. However, they do have a team of staff members from the Parks, Planning, Engineering and Public Works Departments who can conduct a tree assessment and determine the best approach for each situation. While these individuals are experienced with maintaining trees and have first-hand knowledge in the field, it may be necessary for the City to require the applicant (abutting property owner) to hire an arborist to complete a report on the condition of the tree and whether or not alternatives could be used to save it.

Chair Tibbott asked how often the City requires an applicant to obtain an arborist report as part of an application to remove a ROW tree. Ms. McConnell answered that prior to the ROW Tree Policy being revised in late 2014, the City did not allow abutting property owners to remove ROW trees even if they were causing damage to private infrastructure. Therefore, there is very little data available as to how often an applicant would be required to obtain an arborist report. Chair Tibbott asked how much time would be involved with completing an arborist report. Ms. McConnell said she does not have a good estimate of what that would be, but she could review the permits that have been issued and determine how many required an arborist report. Chair Tibbott asked who would be responsible for deciding whether an arborist report would be required or not. Ms. McConnell answered that the Parks Maintenance Manager and the Public Works Operations Manager are the key staff who review applications and identify the best approach. Chair Tibbott asked if an abutting property owner would be required to submit an application and pay a fee in order for City staff to visit the site, assess the situation and make a determination as to whether or not an arborist report would be required. Ms. McConnell responded that an abutting property owner would simply need to request that the City inspect the situation. The inspection could take place prior to an application being submitted.

Chair Tibbott asked the difference between the fee for a ROW Construction Permit and the fees associated with the draft Tree Code. Ms. McConnell recalled that comparisons were provided at the Board's March 25th meeting to illustrate the current fees and the fees going forward. The policy that was revised last December is the City's current mechanism for regulating tree removal in the ROWs, and the draft Tree Code does not propose a change as to when a ROW Construction Permit would be required. However, the earlier policy required a standard ROW Construction Permit only, and the City recently adopted a minor ROW Construction Permit, as well. Depending on the level of work to be done, there is potential for staff to determine that a minor ROW Construction Permit (\$115) would be sufficient as opposed to a standard ROW Construction Permit (\$270). The permit fees would be based on how much staff time is involved in processing the applications. Again, she emphasized that if trimming can be done with hand tools and no limbs will be dropped within the travelway, no ROW Construction Permit would be required.

Board Member Cheung asked if it would be possible for an abutting property owner to submit pictures of a tree so that a City arborist could make an assessment. Ms. McConnell said the City does not have an arborist on staff right now. Rather than accepting pictures of the tree, staff visits the site as the first step. If it is very apparent that the tree is diseased, damaged or dead, the City would not require an arborist report as part of the application. The City would not charge the applicant a fee for this initial inspection.

Chair Tibbott asked if the same provisions would apply to pruning trees that are located on private property. Mr. Lien answered that a tree cutting permit would be required for the removal of significant trees located on private properties, but the pruning provisions would only apply to ROW trees. He explained that “tree removal” is defined as the “*direct or indirect removal of a tree(s) or vegetation through actions including, but not limited to, clearing, girdling, topping, or causing irreversible damage to roots or stems; destroying the structural integrity of trees through improper pruning, unless pruning back to the point where the tree has been previously topped; poisoning; filling, excavating, grading or trenching within the drip line that results in the loss of more than 20 percent of the tree’s root system; or removal through any of these processes of greater than 50 percent of the live crown of the tree.*” He emphasized that while a property owner would be allowed to prune a tree to the point where the tree had been previously topped, topping trees is not considered a good arborist practice. To further clarify, Mr. Lien advised that “pruning” is defined as “*the proper removal of roots or branches of a tree according to the ANSI A300 pruning standards.*” He explained that no permit would be required for a property owner to trim a tree as per best practices. Topping a tree would be considered the same as removing a tree, and a permit would be required.

Chair Tibbott voiced concern that the tree cutting regulations are confusing to a typical property owner, and it is difficult for them to clearly understand when a tree permit is required. Mr. Lien agreed that the tree regulations are complicated, and that is why the Tree Board is recommending that a permit be required for the removal of any significant tree. In the past, there have been significant problems when people did not clearly understand that a tree cutting permit was required. The proposed language makes the permit requirement clear since all tree removal would require a permit. Requiring a permit for all tree removal would also allow the City to track tree canopy in the future.

Chair Tibbott asked if it would be possible for the code language to incorporate the use of technology to make decisions relative to permit requirements. He suggested that technology might allow the City to reduce the amount of staff time required to review permits, thus decreasing the permit fees. Mr. Lien cautioned against codifying references to technology, since this would require that the code be amended each time technology changes. He explained that, as a general practice, staff uses available technology to aid in the review process; and staff’s role is to assist applicants through the process.

Board Member Rubenkönig referred to ECC 9.20, which states that it is the abutting property owner’s responsibility and duty to maintain, repair and reconstruct transition strips. However, this provision does not require abutting property owners to plant new trees. She questioned how the City could mandate that abutting property owners must plant trees on property that does not belong to them. She did not believe the City has the authority to require replacement trees within ROWs. She particularly expressed concern about abutting property owners being held responsible for ROW trees they did not plant. Ms. McConnell explained that if a seed is dropped within the ROW and a new tree grows, the abutting homeowner has the ability to remove the tree before it reaches the size that it is regulated by the City. If the City’s goal is to maintain the existing tree canopy, ROW trees should not be ignored in the process. The current code requires replacement if a tree is removed from the ROW, and the draft Tree Code would not alter this requirement.

Board Member Rubenkönig suggested that staff seek feedback from the City Attorney as to whether or not the City can require a homeowner to replace a tree that is not on his/her property. As per the code, it is the abutting property owner’s duty to maintain, repair and reconstruct transition strips, but there is no tree replacement requirement. To clarify the issue, Mr. Chave shared an example of a property owner who wants to cut down a tree on a neighboring property. Removal of the tree would require approval from the neighboring property owner, and the neighboring property owner could require that a replacement tree be planted as a condition of his/her approval. Board Member Rubenkönig agreed that this situation would be handled between the two property owners. Mr. Chave said the same would be true for the City, who owns the ROW. If someone requests that a tree be taken down in the City’s ROW, the City’s policy is to require replacement as a condition of approval.

- **Tree Cutting Penalties.**

Mr. Lien explained that the current code (ECDC 18.45.070) identifies a \$1,000 penalty per tree for unauthorized tree cutting of trees up to three inches and a \$3,000 penalty per tree for trees three inches or greater in size. Fines are tripled for unauthorized cutting in critical areas or rights-of-way. The draft Tree Code (ECDC 23.20.130) would apply two methods. There would be a \$1,500 penalty per tree for unauthorized cutting of trees less than 12 inches in diameter. For trees greater than 12 inches in diameter, a tree trunk method would be used to appraise the value of the tree and assess the fine

accordingly. The tree trunk method takes a number of things into consideration such as the size, location, and species of the tree. It is not possible to replace a 24-inch tree with a like tree.

Mr. Lien further explained that, under the current code, fines associated with unauthorized tree cutting are paid into the City's general fund. As per the draft Tree Code, these finds would be paid into a Tree Fund to be used to maintain and plant trees throughout the City. The draft Tree Code does not add an additional fine for unauthorized tree removal in critical areas. The provision for this fine was moved to the Critical Area Ordinance.

Mr. Lien summarized that the Planning Board has discussed the draft Tree Code at three separate meetings, and he has not made any changes to the Tree Board's recommended draft. At this point in time, staff believes it would be appropriate to take the draft Tree Code to a public hearing. He will write an article for publication in the City's newsletter to raise more public awareness; and hopefully, citizens will attend and provide comments. After the public hearing, the Planning Board can reassess and identify their next steps. He reminded the Board that the Tree Board's open house was well attended, but the draft Tree Code was not yet available for public review. Because a lot of public awareness has been raised relative to the topic of trees, he anticipates there will be a good turnout at the Board's hearing, as well.

Vice Chair Lovell asked if staff is anticipating that the Board would forward a recommendation to the City Council following the public hearing. Mr. Lien said the Board could forward the draft Tree Code to the City Council with a recommendation of approval as written or as modified. Another option would be to forward a recommendation to the City Council that an UFMP be completed prior to adoption of the draft Tree Code. However, staff believes it would be appropriate for the Board to hear from the public before making that determination.

Chair Tibbott asked if it would be possible to stipulate that the cost of staff time and attorney fees associated with a particular removal be subtracted from the amount of the penalty fee that is deposited into the tree fund. Mr. Lien agreed that could be part of the discussion. Mr. Chave pointed out that this is a budgetary and policy decision the City Council must make. The general policy is to recover permitting costs through permit fees, but funds above and beyond the permit fees, such as fines, could be used to fund a UFMP, plant trees, etc. Chair Tibbott said he would be in favor of having the fines go into the general fund rather than establishing a separate tree fund as part of the Tree Code. Maintaining the current policy would allow the City Council to decide whether or not to establish a tree fund at a later date.

Board Member Cloutier recalled that when the Board first started discussions related to the draft Tree Code, the intent was to consolidate the existing code provisions into one location. They also discussed adding an additional layer of requirements and ideas. Now they are being asked to take that entire bundle to a public hearing. He suggested the Board consider a third option, which is to forward a recommendation on draft language that would consolidate and clean up the existing code and include some portions of the draft tree code, but postpone a recommendation on the remaining elements of the draft Tree Code until the UFMP has been completed. Mr. Chave reminded the Board that the City Council asked them to provide a recommendation on the draft Tree Code. While the Board is not required to have a public hearing before forwarding a recommendation that adoption of the draft Tree Code be postponed until after a UFMP has been completed, it would be beneficial for the Board to at least give the public an opportunity to voice their thoughts. After the public hearing, the Board will have all the information needed to decide whether to pursue adoption of the draft Tree Code or take a different approach.

Board Member Robles suggested that perhaps the regulations for street trees, ROW trees and other trees should all be located in one code section that incorporates a "district" approach.

Board Member Stewart agreed with Board Member Cloutier. She suggested that, as part of the code rewrite, all of the existing provisions relative to trees could be consolidated into one section. The Board could forward a recommendation on the proposed amendments to the City Council with a request that the City Council support, fund and initiate the UFMP process prior to further consideration of the draft Tree Code.

Mr. Lien explained that the draft Tree Code is being considered concurrently with the overall code update. Consolidating the existing tree provisions was not considered to be part of the larger code update, as the City Council directed the Tree Board to work on a Tree Code. Mr. Chave said that if the Planning Board decides later in the process to pursue the UFMP before doing a complete overhaul of the Tree Code, staff could attempt to pull the existing tree regulations together and consolidate them without changing the policy direction. This could be done as part of the overall code update. While this approach

would make it easier to find the tree regulations, it would not get the City where it ultimately wants to be relative to tree preservation and tree canopy.

Vice Chair Lovell asked if it would hold up the code rewrite process if the Board were to recommend to the City Council that they clean up the tree code provisions in conjunction with the overall code update but hold off on implementation of the entire new tree code until a UFMP has been established. Mr. Chave answered no, but emphasized that what the City could do under the code rewrite process would be fairly limited.

Board Member Robles commented that additional education is needed on the current tree cutting provisions before the Board can make a recommendation on the draft Tree Code. For example, he was unaware of the current penalties for unauthorized tree cutting. Mr. Chave agreed that the proposed changes would involve not only educating the public, but also the businesses that do tree cutting in the City.

Mr. Chave announced that a public hearing on the draft Tree Code is scheduled for May 27th.

Vice Chair Lovell thanked the staff for their hard work on preparing and presenting the draft Tree Code. Board Member Stewart thanked the Tree Board, as well.

Board Member Rubenkönig said her understanding of the public hearing is that the public would be invited to come forward and express their issues and concerns about what they understand the tree code would be or could be, but it would not be the appropriate time for the Board to ask the public for feedback on specific issues. Mr. Lien said the public would be invited to share their thoughts on the draft Tree Code, which includes a number of issues. Chair Tibbott said staff would provide an overview of the draft Tree Code, and the public would have an opportunity to respond. The Planning Board would then have an opportunity to ask questions of staff and respond to public comments. Mr. Chave suggested that staff could highlight some of the specific issues discussed by the Board as part of their presentation.

THE BOARD TOOK A SHORT BREAK AT 8:30 P.M. THE MEETING RECONVENED AT 8:38 P.M.

REVIEW OF DRAFT CODE FOR THE CRITICAL AREA ORDINANCE (CAO) UPDATE

Mr. Lien reviewed that the Planning Board received an introduction of the Critical Area Ordinance (CAO) update on March 25th and were provided copies of the 2015 Best Available Science Report (Attachment 2) and Gap Analysis Matrix (Attachment 2). He reminded the Board that counties and cities are required to include Best Available Science (BAS) in developing policies and development regulations to protect the functions and values of critical areas. Jurisdictions are required to evaluate and revise their CAOs accordingly on a regular basis, and the City's update is due in 2015. He reported that the City selected environmental consultants ESA to assist in updating the City's 2004 BAS Report (Attachment 1) and to evaluate the City's critical area regulations given the changes in science.

Mr. Lien advised that the City's existing critical area regulations are largely compliant with BAS, but there are a few areas where ESA has suggested changes to the CAO. He referred to Attachment 3, which is the working draft of a red-line/strike-out version of the City's critical area regulations and reviewed the proposed changes as follows:

- **Critical Area Determination (ECDC 23.40.080.D) and Critical Area Reports (ECDC 23.40.090.F).** The City has some critical area determinations and critical area reports dating back to the early 1990's. This is a concern because science and regulations relative to critical areas change frequently. These proposed amendments would make critical area determination and critical area reports valid for a period of five years.
- **Innovative Mitigation (ECDC 23.40.140).** This section would be amended to incorporate in-lieu-fee programs, off-site mitigation, and payments towards an identified City project as alternative mitigation approaches.
- **Allowed Activities (ECDC 23.40.220.C.6.d).** The code currently allows trails in critical area buffers, and the consultant has recommended that this provision be revised to allow trails only in the outer 25% of critical area buffers. Where existing, legally-established development has reduced the width of the critical areas buffer, trails can be placed in the

outer 25% of the remaining critical area buffer. Allowance for trails within the inner 75% of a critical area buffer are provided for within applicable sections of ECDC 23.50 through ECDC 23.90.

- **Allowed Activities (ECDC 23.40.220.C.7).** The current code allows for the removal of invasive and noxious plant species without a critical areas report. However, removal of vegetation would be restricted to hand removal and the area of work must be less than 1,500 square feet as calculated cumulatively over three years. All removed plant material must be taken away from the site and appropriately disposed of, and plants that appear on the Washington State Noxious Weed Control Board's list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate for the species.
- **Unauthorized Critical Area Alterations and Enforcement (ECDC 23.40.240.E).** The current code references the tree cutting section of the code for applicable penalties for unauthorized tree cutting in critical areas, but it does not address violations that do not involve tree cutting. This makes it difficult for the City to assess a fine. As per the proposed amendment, violations would be subject to penalties equal to the cost of the permit, plus any applicable penalties, plus a square footage cost of \$3.00 per square foot of impacted critical area and critical area buffer. A per tree fine would still be imposed and would likely be triple the fine imposed in the Tree Code.
- **Wetlands (ECDC 23.50.010).** The consultant has recommended a number of changes in this section to bring it up to standard with BAS. For example, the manuals used for delineating wetlands would be updated (ECDC 23.50.010.A) and the wetland categories (ECDC 23.50.010.B) would be revised to be consistent with the latest criteria.
- **Wetland Buffers (ECDC 23.50.040.F).** The buffer widths would be revised consistent with the Department of Ecology's (DOEs) guidance for small jurisdictions. The current code establishes a standard buffer width for Category I, II, III and IV Wetlands. The draft code uses a different approach that allow the buffer width to change depending on habitat score (See Table in ECDC 23.50.040.F.1.d). One of the functions of a wetland is to provide habitat, which is why the consultant is recommending that the buffer be tied to the habitat score. The habitat score would be determined by a wetland scientist as part of wetland delineation. Most wetlands in Edmonds are Category III and Category IV, and the current code identifies a buffer of between 35 and 50 feet. The proposed amendment identifies a buffer of between 60 and 225 feet for a Category III Wetland, depending on its habitat score. The buffer requirement for Category IV Wetlands would be a standard 40 feet and would not be based on habitat score. Category I Wetlands, which includes the Edmonds Marsh, would require a buffer of between 75 to 225 feet, depending on the habitat score.

The table in ECDC 23.50.040.F.1.d.2 outlines required measures to minimize impacts to wetlands, and the standard wetland buffer widths identified in the Table in ECDC 23.50.040.F.1.d assumes implementation of the measures where applicable to a specific project. The listed measures include directing light away from wetland, locating activities that generate noise away from wetlands, routing all new, untreated runoff away from wetlands, and retrofitting stormwater detention and treatment for roads and existing adjacent development. It was noted that mitigation ratios would be updated per guidance from the DOE.

- **Wetland Buffer Modifications and Uses (ECDC 23.50.040.G).** The current code allows for both buffer averaging and buffer reduction, but the amendment would not allow both of them at the same time. An applicant could do either buffer averaging or buffer reduction. The existing code allows buffer width reduction and/or buffer averaging up to 50% of the buffer, and the proposed amendment would not allow reduction or averaging to reduce the buffer to less than 75% of the standard buffer. The City is primarily developed and most of the buffers are not present. The City's goal is to enhance these critical area buffers over time. The current code requires that a property owner meet the functions and values of a standard buffer if a modification is allowed. Because there is no buffer in many situations, requiring buffer averaging or reduction to meet the standard buffer would be impossible. Consistent with the BAS Report, staff is proposing that language be added that would require all buffer modifications to provide a buffer that is equal to a standard buffer or improve upon the buffer that is present. This would result in an increased buffer in situations where no buffer is currently present, and it would meet the City's goal of increasing the function and value over existing conditions. In other words, buffer averaging or width reduction would require enhancement of the buffer area to improve the overall quality of the wetland. The City would be achieving more than no net loss by requiring enhancement in these situations.

- **Small, Hydrologically Isolated Wetlands (ECDC 23.50.040.J).** The intent of the current code is that these wetlands would be exempt, but that is not really clear in the existing language. The existing code required that it be a low-quality Category III or VI Wetland that is less than 500 square feet. Wetlands were only exempt if they did not provide significant habitat value for wildlife, and filling of the wetland must maintain equivalent or greater habitat functions and values over existing site conditions. The last requirement is nearly impossible to meet. Rather than identifying these wetlands as exempt, the Guidance for Small Jurisdictions calls them small, hydrologically isolated wetlands. These are small wetlands (less than 1,000 square feet) with a low habitat value that are not connected to riparian or hydrological corridors. They would not be exempt in the sense that they could be filled without mitigation, but they would be exempt from a few of the criteria in the CAO. For example, they could be filled and still be exempt from the buffer requirement. However, mitigation would be required as per the sequencing outlined in ECDC 23.50.050 in order to replace the lost function and values.

Board Member Stewart asked what the buffer requirement would be for these small wetlands. Mr. Lien answered that, as currently proposed, no buffer would be required for a wetland that is less than 1,000 square feet and has a low habitat score. He noted that this language came directly from the DOE's Guidance for Small Jurisdictions, which was last updated in 2012.

Board Member Stewart expressed her opinion that a rain garden and most other mitigation would not sufficiently duplicate the ecosystem that was present in the small wetland. Even though it is small, it still supports a web of life that cannot be easily replaced. She would rather it not be filled at all. She noted that there are a number of small wetlands throughout the City and they have value in terms of the wildlife they support. Mr. Lien emphasized that the exemption provision would only apply to small wetlands that have very low habitat scores. Board Member Stewart said there are wetlands in forested areas that used to be larger but have now been partially filled. Because they have become smaller, they no longer have the higher value. She asked who would be responsible for making this assessment. Mr. Lien said the assessment would be done by a qualified professional. Board Member Stewart asked if the assessment would consider whether there had been any tampering with the land previously. Mr. Lien answered that the qualified professional would consider previous conditions and altered wetlands to some degree, but they primarily look at what is there now and whether it meets the criteria to be identified as a wetland. The habitat score will be based on the quality of the wetland and the existing vegetation. Board Member Stewart said she is glad that the draft language recognizes that even small wetlands have some value.

Chair Tibbott asked how the Edmonds Marsh would be classified. Mr. Lien answered that no delineation has been done for the Edmonds Marsh, but the 2004 BAS Report identified it as a Category I Wetland. The required buffer would be between 75 and 225 feet, depending on the habitat score it receives based on delineation. Board Member Stewart said she hopes that the qualified professional will consider what has been done in the past to bring the score down. She expressed her belief that the City's goal should be to make up for some of the damage that has been previously done. Mr. Lien explained that habitat scores and delineation are largely driven by the Corps of Engineers' recommendations. Wetland scientists take certification classes in order to qualify to conduct the delineation and identify a habitat score. He does not believe that the habitat score for the Edmonds Marsh can be based on what the wetland used to be. Board Member Stewart asked if jurisdictions have the authority to have stronger delineation and habitat score criteria than what the Corps of Engineers recommends. Mr. Lien cautioned against having greater requirements than the Corps of Engineers recommends relative to habitat values and scores. However, the City has the flexibility to establish greater buffers based on the habitat scores.

Chair Tibbott asked where a human footpath could be located at the Edmonds Marsh if a 165-foot buffer is required. Mr. Lien said he has had discussions with the Parks, Recreation and Cultural Services staff regarding this issue in light of the plan to connect the existing trail all the way around the marsh. He reminded the Board that walkways and trails are allowed activities in the outer 25% of a buffer area and no critical areas report would be required. A trail located within the inner 75% of the buffer area would be permitted, but a critical areas report would be required and the standard would be higher. He noted that the Director may allow a trail to be located in the inner 25% of a buffer area when required to access viewing structures, fish access or connections to other trail facilities.

- **Designation of Specific Hazard Areas (ECDC 23.80.020.B.4).** The proposed language changes how landslide hazard areas are defined. Under the existing code, you have to look at the entire slope and it can be difficult to identify the top

and top of the slope and where it breaks. The proposed amendment would make the process more straightforward. As proposed, any slope of 40% or greater that exceeds a vertical height of 10 feet over a 25-foot horizontal run would be considered a landslide hazard area. Seismic hazard areas will be designated as having a “high” and “moderate to high” risk of liquefaction as mapped on the Liquefaction Susceptibility Map of Snohomish County or areas located within landslide hazard areas.

- **Special Study and Report Requirements (ECDC 23.80.050.A).** Some changes were made to the special study and report requirements.
- **Minimum Building Setbacks (ECDC 23.80.070A.1).** Currently, the standard setback for geologically hazardous areas is 50 feet or the height of the slope from the top of the slope. As proposed, a geotech report would determine the setback and buffer. In practice, that is basically what the City does now. There is a standard 50-foot buffer with a 15-foot building setback. A geotech report would be required to do anything within the setback and buffer. With a geotech report, the buffer could be reduced to a minimum of 10 feet. Staff is still struggling with when a geotechnical report should be required. If there is no standard buffer, what distance would be used to establish when a report would be required? The consultant has suggested that the City update its Landslide Hazard Areas Map. Currently, the City has a good Landslide Hazard Areas Map, and any development within 50 or 100 feet of a designated landslide hazard area would require a geotechnical report.
- **Biodiversity Areas and Corridors (ECDC 23.90.040.C).** The proposed amendment would replace language that currently exists in the CAO that requires 30% vegetation on RS-12 and RS-20 zoned properties. The current language is similar to King County’s provision, which the Courts struck down because it requires something that is not based on habitat but is applied across the board. This provision is currently being applied on a 7-lot plat at the corner of 9th Avenue and Caspers. The applicant is being required to establish 30% native vegetation as part of the project even though there is no habitat present. Staff believes this part of the code needs to be revised, and they are proposing that the requirement be tied to habitat. He referred to a map that identifies the biodiversity areas and corridors in the City where the provision could apply, and briefly described each of the areas. The goal of the provision outlined in ECDC 23.90.040.C is to maintain continuity of the existing biodiversity areas and corridors throughout the City. Specifically, ECDC 23.90.040.C.2.b would require an applicant to maintain the continuity of the existing biodiversity area/corridor by not narrowing the width of the existing corridor by more than 10% or 20 feet, whichever is less, and not impacting more than 10% or 2,000 square feet, whichever is less, of the existing biodiversity area/corridor occurring on the site. For existing residential lots that are highly encumbered by existing biodiversity areas, a 3,000 square foot development footprint may be allowed. Further work is needed on this provision to make sure it is workable and feasible.

Chair Tibbott asked if the City has identified any liquefaction areas. If so, do these areas correlate with the biodiversity areas and corridors? Mr. Lien answered that he could provide an updated map of the liquefaction areas, which are typically located by the waterfront and in the portions of the Edmonds Marsh that were filled in. He does not believe there are any liquefaction areas uphill from the sound. Board Member Stewart asked if all of the biodiversity areas/corridors are on public property. Mr. Lien answered that they are located on both private and public properties.

Board Member Rubenkönig pointed out that it is possible to engineer to build on soils where there is potential for liquefaction. Mr. Lien concurred and noted that these standards are addressed in the Building Code. Mr. Chave added that there are very substantial Building Code provisions that would come into play.

Board Member Stewart asked if there are restrictions for single-family residential development within liquefaction areas. Mr. Lien explained that, as per ECDC 23.80.040.B, the following would be allowed to occur without a geotech report: construction of new buildings with less than 2,500 square feet of floor or roof area, whichever is greater, and which are not residential uses or places of employment; additions to existing single-story residents that are 250 square feet or less; and installation of fences. All other activity in a liquefaction hazard area would require a geotech report. It would also be required to meet all of the Building Code requirements. Mr. Chave added that, generally, liquefaction hazard areas are also flood prone areas, for which another set of standards would apply.

- **Frequently Flooded Areas (ECDC 19).** Mr. Lien advised that there is some flood plain around Lake Ballinger and near the mouth of Shell Creek, but the majority of the City’s flood areas are waterfront. Currently, the only proposed change

is to include new flood zones (Zones V and VE) for flood areas along the shoreline. However, the consultants have also suggested the City consider requiring development within flood plains to be 1 to 2 feet above the base flood elevation. Although the City currently only requires development to be at flood elevation, the consultant's recommendation is common practice in many jurisdictions. It is important to keep in mind that implementing the additional requirement could have a significant impact on development along the waterfront because it would take one or two feet off of the allowed building height. While he does not disagree with the recommendation, the City might also want to consider allowing some flexibility in the height standards if buildings are required to be elevated above the base flood elevation. Mr. Chave suggested that it is more a matter of where building height is measured from.

Board Member Stewart referred to Page 9 of the addendum to the BAS, which states that FEMA recommends, and many communities have adopted, higher standards of either 1 or 2 feet above base flood elevation. If the City's goal is to have a longer life of buildings, they should consider taking a conservative approach and implement a requirement of 2 feet rather than 1. Mr. Lien pointed out that while sea level rise is an issue relative to the waterfront, it is not applicable to Lake Ballinger. Some jurisdictions have different requirements for building above the base flood elevation depending on location and whether the buildings are commercial or residential. However, he suggested the change would be more appropriate in ECDC 19 (Building Code) rather than in the CAO. The Board could discuss this issue further at a future meeting, and it would be appropriate to invite the Building Official to participate in the discussion.

Mr. Lien said the consultant is also proposing that the City consider requiring compensatory storage mitigation for development around Lake Ballinger. He explained that when compensatory storage mitigation is done, the floodway is expanded out a little bit. The existing soil and topography around Lake Ballinger would make this approach difficult. In addition, the level of the lake is controlled by the outlet of the stream. Again, he said this approach might not be a good fit for Edmonds.

- **Physically Separated and Functionally Isolated.** Mr. Lien provided photographs to illustrate a stream in the City of Edmonds that runs between two houses. He explained that because the area on either side of the stream is developed, it may not be appropriate to apply a standard buffer requirement where there is no opportunity to create a buffer. In this situation, a property owner indicated a desire to do a small addition to extend the house out. However, because the lots in the bowl area are typically 60-feet wide and the buffer for a stream is 75 feet, the house is technically located within the stream buffer.

Mr. Lien recalled that a year and a half ago, the City Council adopted an interim ordinance that dealt with physically separated and functional isolated buffers and development within a previously developed footprint. It was decided to shelf the discussion until the CAO update. He explained that, by definition, a buffer is identified as physically separated and functionally isolated if it does not provide any value to the critical area (streams and wetlands). To make this clear, the proposed update would change the definition of buffer (ECDC 23.40.320) by adding the following language: *“Areas that are functionally separated from a stream or wetland due to existing, legally established roadways, paved trails eight (8) feet or more in width, or other legally established structures or paved areas eighth (8) feet or more in width that occur between the area in question and the adjacent critical area shall be considered as functionally separated buffer.”* Again, he referred to the picture and explained how the proposed addition would be physically separated from the stream. Activities within a physically separated and functionally isolated buffer would not require enhancement and/or mitigation.

- **Footprint of Existing Development (ECDC 23.90.040.D.5 and ECDC 23.40.320).** Mr. Lien advised that a new definition has been proposed for “footprint of existing development” or “footprint of development.” As proposed in ECDC 23.40.320, footprint of existing development *“means the area of a site that contains legally established buildings; concrete, asphalt or gravel paved roads; parking lots; storage areas or other paved areas; driveways; walkways; outdoor swimming pools; and patios.”* While activity within a previously developed footprint would be permitted, a critical area report and enhancement would be required. He noted that the provisions would only apply to streams and wetlands.

Mr. Lien referred to new language in ECDC 23.90.040.D.5, which states that:

“New development shall be allowed within the footprint of existing development occurring within a stream buffer, provided that the following conditions are met:

- a. The footprint of existing development was legally established, and is consistent with the definition provided in ECDC 23.40.320;*
- b. The proposed development within the footprint of the existing development is sited as far away from the stream edge as is feasible;*
- c. As part of the development proposal, opportunities to reduce the footprint of existing development are implemented where such reduction would increase the buffer width adjacent to the stream and not represent an undue burden given the scale of the proposed development.*
- d. The proposed development includes enhancement to the adjacent remaining stream buffer in order to improve functions degraded by previous development;*
- e. Enhancement is provided as buffer enhancement for an equivalent area of the footprint of the newly proposed development within the footprint of existing development occurring in stream buffer, or through an alternative approach approved by the director that restores degraded functions of the wetland and remaining buffer; and*
- f. Impacts from temporary disturbances within the stream buffer shall be addressed through use of best management plans and buffer enhancement plantings during and following construction of the allowed alteration.”*

Mr. Lien summarized that the intent of the proposed language is to improve and enhance existing situations. Board Member Rubenkönig pointed out that the provision would only apply to new development and would not be retroactive.

Board Member Rubenkönig pointed out that critical areas become an issue when a property owner wants to develop a new structure or remodel an existing structure. She said she was surprised to learn that the City does not record critical area tracts or easements on the title when new lots are created. This would make it easier for a property owner to understand the limitations of his/her property. Mr. Lien explained that the City does record critical area tracts or easements related to subdivisions, and they are considering expanding this requirement to other activities as part of the update.

Mr. Lien summarized that development within a previously developed footprint would be allowed, but enhancement would be required at a ratio of 1:1. While the enhancement requirement is heading in the right direction, Board Member Stewart suggested a greater enhancement ratio such as 1:1.5. Mr. Lien agreed the Board could discuss the appropriate ratio, recognizing that the goal is to improve the existing conditions. Mr. Chave referred to the pictures provided by Mr. Lien of a stream that runs between residential properties. He explained that, as written, a 500 square foot addition to one of the homes would require a 500 square foot buffer enhancement where none currently exists. Rather than compensating for lost buffer area, the property owner would actually be adding something that is not there now.

Vice Chair Lovell pointed out that, in the pictures provided, there would not be sufficient area to provide the required buffer enhancement. Mr. Chave reminded the Board that, as proposed, the applicant would have the option to contribute to a fund that could be used to enhance a buffer elsewhere in the City if it is not possible to do the buffer enhancement on the subject property.

Board Member Stewart suggested that a greater enhancement ratio should be required when an additional structure would encroach into the required buffer area. Mr. Lien advised that the existing language in ECDC 23.90.040.D.4 allows additions to legally construct structures existing within stream buffers that increase the footprint of development. The proposed amendment would also allow a structure to expand the footprint of development within a buffer area, but enhancement and mitigation would be required. The proposed language will actually result in an improved situation. As proposed

“Provisions for standard stream buffers, stream buffer averaging with enhancement, and buffer reductions through enhancements require applicants to locate such additions in accordance with the following sequencing:

- a. Outside of the standard stream buffer;*
- b. Outside of a stream buffer averaged (with enhancement);*

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- c. *Outside of stream buffer reduced (with enhancement);*
- d. *Outside of the inner 25% of the standard stream buffer with no more than 300 square feet of structure addition footprint within the inner 50% of the standard wetland buffer width provided that enhancement is provided at a minimum 3:1 ratio;*
- e. *Outside of the inner 25% of the standard stream buffer width with no more than 50% of the standard wetland buffer width, provided that enhancement is provided at a minimum 5:1 ratio and that stormwater low-impact development techniques or other measures that enhance existing buffer conditions are included as part of the stream buffer enhancement plan.”*

DEVELOPMENT SERVICES DIRECTOR REPORT TO PLANNING BOARD

Chair Tibbott referred the Board to the written report prepared by the Development Services Director. Board Member Cloutier said he particularly appreciated that the number of public meetings and work sessions that took place as part of the Westgate planning process were noted. Chair Tibbott said he also appreciated the summary of the various public meetings that have occurred and will occur throughout the City. Vice Chair Lovell referred to an email the Board received from staff indicating that, in addition to the changes outlined in the Development Services Director’s Report, the City Council’s adoption of the Westgate Plan also included an amendment to the height limit in the QFC quadrant , which limits development to three stories.

REVIEW OF EXTENDED AGENDA

Chair Tibbott advised that the public hearing on the draft Tree Code was moved to May 27th. This change will allow the Board an opportunity to get the word out and invite members of the public to participate in the hearing.

PLANNING BOARD CHAIR COMMENTS

Chair Tibbott announced that he would attend the Puget Sound Regional Council meeting on April 30th. He noted that he is very interested in the transportation plan and other regional planning activities.

PLANNING BOARD MEMBER COMMENTS

Board Member Rubenkönig said that, given the comments she provided concerning the Critical Area Ordinance, one of her particular interests is related to the expert testimony. She requested that the Board Members read the part that refers to hearsay and how it connects to scientific evidence when it comes to looking at these areas. She said she reacted to this language and she wanted to see if other Board Members had similar concerns.

ADJOURNMENT

The Board meeting was adjourned at 9:45 p.m.

APPROVED