

EDMONDS CITY COUNCIL APPROVED MINUTES

November 1, 2004

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Haakenson in the Council Chambers, 250 5th Avenue North, Edmonds. The meeting was opened with the flag salute.

ELECTED OFFICIALS PRESENT

Gary Haakenson, Mayor
Michael Plunkett, Council President
Jeff Wilson, Councilmember
Mauri Moore, Councilmember
Peggy Pritchard Olson, Councilmember
Dave Orvis, Councilmember
Richard Marin, Councilmember
Deanna Dawson, Councilmember

STAFF PRESENT

Tom Tomberg, Fire Chief
David Stern, Chief of Police
Duane Bowman, Development Services Director
Stephen Clifton, Community Services Director
Dan Clements, Administrative Services Director
Brian McIntosh, Parks & Recreation Director
Jennifer Gerend, Economic Development Dir.
Noel Miller, Public Works Director
Kathleen Junglov, Asst. Admin. Services Dir.
Scott James, Accountant
Rob Chave, Planning Manager
Dave Gebert, City Engineer
Debi Humann, Human Resources Manager
Debra Sharp, Accounting Assistant
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. APPROVAL OF AGENDA

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER MOORE, FOR APPROVAL OF THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

2. CONSENT AGENDA ITEMS

Council President Plunkett requested Item H be removed from the Consent Agenda and Councilmember Marin requested Item G be removed.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, FOR APPROVAL OF THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- (A) **ROLL CALL**
- (B) **APPROVAL OF CITY COUNCIL MEETING MINUTES OF OCTOBER 25, 2004.**
- (C) **APPROVAL OF CITY COUNCIL MEETING MINUTES OF OCTOBER 26, 2004.**
- (D) **APPROVAL OF CLAIM CHECKS #74921 THROUGH #75078 FOR THE WEEK OF OCTOBER 25, 2004, IN THE AMOUNT OF \$127,800.49**

Approve
10/25/04
Minutes

Approve
10/26/04
Minutes

Approve
Claim Checks

Claim for Damages

(E) ACKNOWLEDGE RECEIPT OF CLAIM FOR DAMAGES FROM JAYNE K. ROSS (AMOUNT UNDETERMINED).

Dissolution of Edmonds Alliance for Econ. Dev.

(F) AUTHORIZATION FOR THE MAYOR TO SIGN THE EDMONDS ALLIANCE FOR ECONOMIC DEVELOPMENT DISSOLUTION OF ENTITY CONTRACT.

Item G: Approval of Findings of Fact regarding a Closed Record Review held on October 19, 2004 – Appeal of the Hearing Examiner’s decision to deny an appeal of a staff Code interpretation that a 6-foot by 6-foot tree house is a structure and therefore subject to the City zoning standards and setback requirements. The tree house is located at 18312 – 81st Place W and is zoned Single-Family Residential (RS-12). (Appellants: Keith Kemper of Ellis, Li & McKinstry, PLLC for Mark and Jana Loewen/File Nos. AP-04-102 and AP-04-67)

Councilmember Marin advised he voted against this matter when the Council originally considered it and would oppose it again.

Councilmember Wilson advised he also voted against this item when it was originally considered. He clarified it was not the substance of the issue but the broader issue created by the Council’s action.

Findings of Fact for Loewen Appeal File Nos. AP-04-102; AP-04-67

COUNCIL PRESIDENT PLUNKETT MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF ITEM G. MOTION CARRIED (5-2), COUNCILMEMBERS MARIN AND WILSON OPPOSED. The item approved is as follows:

(G) APPROVAL OF FINDINGS OF FACT REGARDING A CLOSED RECORD REVIEW HELD ON OCTOBER 19, 2004 – APPEAL OF THE HEARING EXAMINER’S DECISION TO DENY AN APPEAL OF A STAFF CODE INTERPRETATION THAT A 6-FOOT BY 6-FOOT TREE HOUSE IS A STRUCTURE AND THEREFORE SUBJECT TO THE CITY ZONING STANDARDS AND SETBACK REQUIREMENTS. THE TREE HOUSE IS LOCATED AT 18312 – 81ST PLACE W AND IS ZONED SINGLE-FAMILY RESIDENTIAL (RS-12). (APPELLANTS: KEITH KEMPER OF ELLIS, LI & MCKINSTRY, PLLC FOR MARK AND JANA LOEWEN/FILE NOS. AP-04-102 AND AP-04-67)

Interim Zoning Ordinance – Definitions of Setbacks

Item H: Approval of Interim Zoning Ordinance amending the Edmonds Community Development Code definitions of setbacks (setback, side setback, rear setback, street setback) and establishing a date for a Public Hearing.

Council President Plunkett explained he pulled this item to point out adoption of the interim ordinance would be followed by a review by the Planning Board.

Councilmember Marin clarified although he voted against this item when it was originally considered by the Council, he was in favor of allowing tree houses in Edmonds, pointing out that was part of what made Edmonds a friendly place to live. He requested the comments he added in the minutes of October 19 regarding tree house permitting be provided to the Planning Board.

Councilmember Moore spoke in favor of allowing tree houses in the setback as that was where the trees were usually located.

Councilmember Wilson clarified it was not the concept of tree houses in the setback that concerned him; he wanted the Planning Board to consider the size, mass, height, etc. of structures in the setback. He noted although the City wanted to be kid-friendly and allow for the enjoyment of backyards, they must be respectful of the potential impacts to neighbors. He agreed with Councilmember Marin’s concept of

neighbors working together rather than the City taking regulatory action. He noted during a recent walk through the neighborhood he observed at least 12 homes with structures in the setback such as sheds. He suggested the Planning Board consider temporary structures that already exist in setbacks.

Councilmember Orvis favored residents not being required to obtain a permit to construct a play structure.

Councilmember Olson agreed with Councilmember Orvis, noting it seemed to be a waste of time to require a permit for a tree house.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER MOORE, FOR APPROVAL OF ITEM H. MOTION CARRIED UNANIMOUSLY. The item approved is as follows:

Ord# 3522
Interim
Zoning
Ordinance –
Definition of
Setbacks

(H) ORDINANCE NO. 3522 – ENACTING AN INTERIM ZONING ORDINANCE AMENDING THE DEFINITIONS OF SIDE SETBACK ECDC 21.90.050, STREET SETBACK ECDC 21.90.140, REAR SETBACK ECDC 21.85.020, AND PROVIDING FOR A PUBLIC HEARING.

Mountlake
Terrace's 50th
Birthday

3. PROCLAMATION IN HONOR OF MOUNTLAKE TERRACE'S 50TH BIRTHDAY, SATURDAY, NOVEMBER 6, 2004.

Mayor Haakenson read a proclamation in honor of Mountlake Terrace's 50th birthday on Saturday, November 6.

Veterans' Day
November 11

4. PROCLAMATION IN HONOR OF VETERANS' DAY, NOVEMBER 11, 2004.

Councilmember Marin read a proclamation declaring November 11, 2004 as Veterans' Day, asking all citizens to join in this special observance to recognize the hardships and sacrifices of our veterans and to give them the special recognition they deserve. He presented the proclamation to VFW 8870 Commander Duane Pounds and past-Commander Warren Scheppe.

Mr. Scheppe thanked Councilmember Marin, a member of VFW 8870, for the proclamation and reminded the public they would be selling poppies November 11 – 13.

Public
Hearing on
2005 Budget

5. PUBLIC HEARING ON THE 2005 BUDGET, INCLUDING BUDGET OVERVIEW, GENERAL REVENUES AND PROPERTY TAXES

Council President Plunkett described the process for the public hearing, advising next week the Council would consider the 1% property tax increase and any recapture.

Administrative Services Director Dan Clements recalled Mayor Haakenson presented the preliminary 2005 budget at the October 19 Council meeting, staff provided an overview of the budget at the October 25 Budget Workshop, and preliminary budget ordinances and resolutions were made available to the public on October 26. He advised this public hearing was an opportunity for the public to provide comment on budget proposals to date as well as review and comment on proposed Council amendments.

Mr. Clements stated last week at the Council Budget Workshop, staff was asked to follow-up on three items, the LIDAR mapping and analysis, parking enforcement and Hwy. 99 traffic study. With regard to the Hwy. 99 traffic study, he advised the total cost of the study was \$50,000 rather than \$37,500 but the funding source did not change. Mr. Clements recommended the LIDAR mapping and analysis be funded via Pt. Edwards settlement funds, the parking enforcement be funded from employee parking permits and

parking infractions, and the Hwy. 99 traffic study be funded from the Development Services 2004 budget and \$12,500 from Community Transit.

Mr. Clements reviewed the remaining key 2005 budget adoption dates, advising there would be opportunities for public input and discussion on November 9 when the Council discussed the 2005 property tax levy and again on November 16 when the Council was scheduled to adopt the budget.

Councilmember Dawson recalled the Council did not favor the funding for the parking enforcement person being dependent on infractions. She asked whether there was another source of revenue if the \$30,000 projected for parking infractions was not realized. Mr. Clements answered it was anticipated employee parking permits could fund the entire position. If shortfalls were identified, staff would present an alternate funding source, likely General Funds. He anticipated that with parking enforcement, there would be more funds realized from employee parking permits.

Mayor Haakenson opened the public hearing.

Don Kreiman, 24006 195th Place W, Edmonds, thanked the Council for considering parking enforcement and expressed his support for increased parking enforcement as well as his support for the Council's adoption of the budget.

Rowena Miller, 8711 182nd Place SW, Edmonds, encouraged the Council when they were considering the 1% increase in property tax to also consider the increase in utility taxes. She suggested the consultant fees budgeted by each department be more clear, that the uses of the Council Contingency Fund be clearly defined, and that the Council hold their retreat in Edmonds. She explained holding the retreat in Edmonds would benefit businesses in the City and make the retreat more accessible to the public. With regard to LIDAR, she relayed her understanding that it required continual professional consultants.

Ray Martin, 18704 94th Avenue W, Edmonds, stated he had not received a response to an email he sent to the City Council and the Mayor regarding the walkway on 75th Avenue West in Meadowdale. He quoted from the August 25, 1998 Council minutes, "Mayor Pro Tem Haakenson observed the in-lieu-of funds were held in the 112 Fund and asked how much was in the 112 Fund currently, how much had been contributed and how much had been spent. Mr. Walker answered most of the funds were expended last year on 75th in the Meadowdale area and a walkway near Shorewood Elementary." Mr. Martin pointed out there was no walkway on 75th Avenue W and questioned what had happened to those funds, voicing his suspicion that the funds had been diverted to another project. He encouraged the Council to include funds in the budget for a safe walkway on 75th Avenue W.

Mayor Haakenson pointed out Mr. Martin had not addressed his email to him, only to the Council. In response to Mr. Martin's inquiry, Mayor Haakenson pointed out there was a walkway on 75th from 16000 75th Place West to 16520 75th Place West that cost \$39,000 and was funded in 1997 just as Mr. Walker indicated in the minutes.

Roger Hertrich, 1020 Puget Drive, Edmonds, expressed concern with the manner in which the budget was written, lump sums with no detail which he pointed out make it difficult to identify specific expenditures. He pointed out the City Clerk budget narrative did identify costs for specific items, noting other departments' narratives only contained generalizations. He questioned how the Council could make a critical judgment based on lump sums and suggested the Council request breakdowns on salaries, supplies, etc. With regard to LIDAR, his understanding was that LIDAR required constant updating and did not provide specific information such as elevations. He suggested the Council determine whether LIDAR was a one-time cost or would be an annual cost.

Hearing no further public comment, Mayor Haakenson closed the public hearing.

Development Services Director Duane Bowman answered LIDAR was a one time cost – the flights provide digital information and City staff had the GIS capability to interpret the data. He acknowledged the topographical information could be updated annually; however, the last time the City collected topographical information was 1986. He noted the other portion of the LIDAR was a geotechnical consultant to review the information that was generated specific to the Meadowdale area.

With regard to the format of the budget, Mr. Clements advised staff tried to include as much detail for different users. He advised that anyone who wanted further detail could request it from staff. With regard to salaries, he explained the City was currently in collective bargaining with all unions, therefore, the estimated 2005 salaries schedules were not yet available.

With regard to utility rates, Mr. Clements advised the preference would have been to have the utility rates available for the 2005 budget. The problem was the City of Everett, the City's wholesale water supplier, was currently undergoing a substantial rate increase and had not provided the City with the new rates. He noted staff needed the new rates prior to establishing 2005 water/sewer/storm rates. As soon as that information was available, the rate study would be presented to the Council.

Council President Plunkett asked whether information regarding consultants could be made available. Mr. Clements answered staff provided Ms. Miller a copy of the vendor master file of consultants used in 2004.

Council President Plunkett inquired about the statutory limitation on the use of the Council Contingency Fund. Mr. Clements answered the Council Contingency was closed as a separate fund last year and established as a reserve in the General Fund. He noted the restrictions were the same as expenditures from the General Fund, any allowable municipal expenditure.

Council President Plunkett recalled questions regarding the use of Council Contingency funds has arisen previously; the last time the question was raised, when the public saw how the funds were expended, they were satisfied that the Council expenditures were appropriate and reasonable. He suggested anyone with questions regarding Council expenditures review how the funds were spent in the past.

Councilmember Marin expressed his pleasure with the budget overall and staff's funding recommendations for the LIDAR, parking enforcement and Hwy. 99 traffic study. He noted the City had been informed that Community Transit would provide \$12,500 to participate in the Hwy. 99 traffic study.

Councilmember Dawson explained the Council's policy with regard to the Council Contingency was that it be used to fund items that if the Council had known about the expenditure, it would have been included in the budget. She encouraged the Council to continue its policy of using the Council Contingency Fund sparingly throughout the year for expenditures that could not be postponed and for items that would have been budgeted had the Council known about them.

Councilmember Moore reported she had been participating on a Chamber of Commerce Joint Marketing Campaign Committee. They will be providing a presentation to the Port of Edmonds this week and were planning to make a presentation to the Council to request a \$30,000 contribution to their marketing campaign.

Council President Plunkett asked what funding source Councilmember Moore proposed to use. Councilmember Moore suggested recapture. Mr. Clements suggested staff return with 2 to 3 alternatives for funding, recalling the Council's reluctance regarding the use of recapture.

Councilmember Dawson suggested the Chamber of Commerce's presentation be made to the Council next week prior to the public hearing. She expressed her discomfort with using recapture and preferred the City not exceed the statutory 1% increase.

Council President Plunkett pointed out if the Council intended to pursue recapture, that decision must be made by November 9 when the Council adopted the property tax levy. Mr. Clements advised the Council's Friday packet would include a list of potential modifications and alternatives for funding.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT PLUNKETT, TO ADD PARKING ENFORCEMENT AND HWY. 99 TRAFFIC STUDY AS PRESENTED TO THE 2005 BUDGET.

Councilmember Dawson reiterated her desire for further information about the Hwy. 99 traffic study before including it in the budget.

COUNCILMEMBER MARIN WITHDREW HIS MOTION WITH THE AGREEMENT OF THE SECOND.

Councilmember Wilson recalled at the retreat, the Council discussed moving toward a paperless packet to reduce the cost associated with producing weekly packets. He suggested the Council consider adding it to the budget and that staff suggest a funding source. He acknowledged it would not generate new revenue for the City but would potentially reduce expenses.

Councilmember Orvis expressed his support for including parking enforcement and the Hwy. 99 traffic study in the budget.

COUNCILMEMBER ORVIS MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO ADD PARKING ENFORCEMENT TO THE 2005 BUDGET. MOTION CARRIED UNANIMOUSLY.

COUNCILMEMBER MARIN MOVED TO ADD THE HWY. 99 TRAFFIC STUDY TO THE 2005 BUDGET. MOTION DIED FOR LACK OF A SECOND.

Council President Plunkett summarized the Council added parking enforcement to the budget with the proposed revenue sources. Next Tuesday, the Council would consider paperless packet, the Hwy. 99 traffic study and Team Edmonds' proposal.

Councilmember Dawson explained her concern with the Hwy. 99 traffic study was whether there would be funds available in the next few years to implement the study recommendations and if not, perhaps now was not the time to conduct the study.

Council President Plunkett clarified the additional modifications to the budget did not need to be adopted next week but if recapture was contemplated as a funding source, then the Council would need to make that decision next week.

6. AUDIENCE COMMENTS

Building
Heights

Ron Wambolt, 530 Dayton, Edmonds, recalled his comments in late August that higher building heights in downtown Edmonds would not be a financial panacea for the City. He noted his cursory analysis concluded it would take full build-out of the BC zone with higher heights to achieve \$300,000 in additional property taxes. He noted further analysis by Administrative Services Director Dan Clements

determined that total build-out of the BC zone with 33-foot buildings would generate \$197,800 in additional property tax and \$270,000 in sales tax generated by the new businesses. Mr. Wambolt concluded only \$468,100 or less than 1% would be added to the City's total revenues in exchange for a "walled city." He questioned whether that amount of commercial space could be utilized. He referred to the doom and gloom preached by some if higher heights were not approved, noting all the doomsayers who spoke at the Planning Board would personally benefit from such a change. He recalled that Heartland LLC who conducted the downtown plan assessment reported the economic viability of Edmonds under the current building code was stronger than most places and that builders achieve an acceptable rate of return on 30-foot buildings with 2-floors of condominiums above a first floor of commercial. He concluded doom and gloom was being preached to achieve higher building heights.

75th Pl. W
Walkway

Ray Martin, 18704 94th Avenue W, Edmonds, asked the appropriate email address for the Mayor and City Council. Mayor Haakenson advised the City Council was Spellman@ci.edmonds.wa.us and his was Haakenson@ci.edmonds.wa.us. Mayor Haakenson offered to provide Mr. Martin further information regarding the 75th Place West walkway.

10/27
Planning
Board
Meeting

Don Kreiman, 24006 195th Place W, Edmonds, reported last Wednesday's Planning Board meeting was one of the best meetings he has attended; there was no 3-minute limit and everyone was allowed to talk as long as they wanted. He pointed out the need for increased retail in the City.

Building
Heights

Natalie Shippen, 1022 Euclid Avenue, Edmonds, stated the first scenario provided by Heartland LLC at the last Council meeting reflected existing conditions, a 30-foot building with two floors of condominiums and one floor of retail with less than a 12-foot ceiling height, and provided a 38% rate of return to the developer. She noted the scenario with 12-foot ceiling heights for the first floor and an overall building height of 33-feet would provide a 41% rate of return to the developer, the highest possible in the downtown area. She recalled a Planning Board Member asked which scenario would provide the greatest tax revenue to the City to which the consultant replied that was not part of their analysis but suggested the City encourage non-residential uses on the upper floors for the greatest return to the City. She recalled another Planning Board Member's inquiry regarding how a developer could redevelop a one-story building to which the consultant replied the commercial units that could be constructed on the upper levels would provide a rate of return that would allow construction costs to be recovered. She noted the HyattPalma made the same recommendation – two stories of retail. She concluded the City had had two consultants within five years provide the same advice – not increasing heights but two floors of retail.

Building
Heights

Norma Bruns, 960 5th Avenue S, Edmonds, agreed doom and gloom was expressed at the Planning Board meeting and was delighted to see via the Mayor's proposed 2005 budget that the City was not in such bad shape. She recalled some of the comments at the Planning Board meeting indicated not increasing downtown building heights would have significant impacts on the City's budget, requiring reductions in police and fire and increases in taxes.

Building
Heights

Roger Hertrich, 1020 Puget Drive, Edmonds, recalled belonging to PRIDE, a group interested in retaining lower building heights. He referred to the 1,000 signatures that had been gathered and anticipated those numbers would increase. He recalled an initiative process was considered and rejected in favor of citizens expressing their views. He noted the effort to promote Edmonds via the Economic Development Director, Team Edmonds and the Chamber of Commerce was based on how the City looked today – an historic, slowly remodeling Edmonds with different building types and a character that would not be changed unless building heights were increased. He noted increasing building heights to 33-35 feet would result in it no longer being beneficial to remodeling buildings and making it more economically viable to sell the property for redevelopment. He pointed out the importance of retaining

the unique character of Edmonds that people come to Edmonds to see. He commented the consultant who analyzed the downtown plan was great for the land owner but did not consider the character of Edmonds.

7. **WORK SESSION ON THE PLANNING BOARD'S RECOMMENDATIONS REGARDING THE DRAFT CRITICAL AREAS REGULATIONS**

Planning Manager Rob Chave advised this work session was an opportunity for the Council to ask questions or highlight issues to be addressed at the public hearing scheduled for November 16. He advised the Planning Board completed their public hearings; some changes were made since the Planning Board's review in response to public comment but it was essentially the same as the Planning Board recommended.

Council President Plunkett asked whether the Meadowdale Landslide Hazard Area regulations were part of the Critical Area regulations. Mr. Chave answered the Critical Area Code refers to the Meadowdale regulations in Title 19 and did not replace or change the Meadowdale regulations in any way. Council President Plunkett clarified if one wanted to confront an aspect of the Meadowdale Landslide Hazard Area, it would not be done in this process. Mr. Chave agreed, noting the Meadowdale Landslide Hazard Area was on a separate track and would be revisited by the City Council after the first of the year once the LIDAR information was available.

Council President Plunkett observed critical areas would be identified on titles and asked whether it would be done when a property owner sought a permit. Mr. Chave advised critical areas would be identified when a critical areas evaluation was done, typically during the permit process. Council President Plunkett noted that was the same policy that had been utilized in the Meadowdale Landslide Hazard Area for the past 20 years. He noted property owners were concerned that a critical areas designation would be placed on everyone's title. Mr. Chave answered there would be no recognition on a title until a property owner applied for a permit. He clarified the critical areas recognition was intended simply as notice to future property owners of any limitations on the property.

Council President Plunkett referred to the requirement in the proposed ordinance that 30% of the native vegetation on RS-12 and RS-20 lots be retained and asked whether that could be landscaping. Mr. Chave answered it could be landscaping but would have to be native vegetation, not grass or ornamental plantings.

Council President Plunkett asked whether the 30% retention was a result of the Pilchuck Audubon Society's letter. Mr. Chave answered the 30% predated Philchuck's letter. He noted 30% was approximately the difference in lot size between a RS-8 zoned lot and a RS-12 zoned lot.

Council President Plunkett asked whether native vegetation could be landscaped native vegetation or had to be indigenous vegetation. Mr. Chave answered often indigenous vegetation was not native. There would be plant lists available to address any questions regarding native plants.

Councilmember Wilson asked how adoption of the new Critical Areas Ordinance would change the process of addressing critical area determinations. He asked when the determination would be made, what the trigger mechanism would be and whether the new Critical Areas Ordinance would make it simpler or not change the process. Mr. Chave answered all the instances in which the City currently required critical areas review would still require a critical areas review. The biggest difference was currently when a critical areas evaluation was completed, it was done and was not required to be revisited. The new regulations do not allow a property owner to ever be done with a critical areas review because the nature of critical areas was that they changed over time and there was no certainty that what was evaluated today would remain the same in the future. He noted more properties would be required to do

critical areas review than in the past due to larger buffers. The benefits will be more enhancements of critical area buffers. He noted in the past the approach has been to keep people away and not allowing any development or change in the critical area, but not allowing change also did not allow enhancement. The new regulations have more flexibility with regard to buffers but would require more enhancements over time to improve the critical area.

Councilmember Wilson recalled the current trigger mechanism was a permit and asked the fee for the critical area process. Mr. Chave answered it was approximately \$135. Councilmember Wilson relayed a question why a resident who has never had a critical area determination on their property would be required to pay the \$135 critical area review when the cost of the permit they were seeking, such as for a fence, was less than that and the impact of digging holes for fence posts was no different than digging holes for shrubs. Councilmember Wilson explained he was able to provide the technical answer regarding the trigger mechanism but not a logical answer. Mr. Chave answered it provided certainty or notice to a property owner of what critical areas may exist before they embarked on any larger projects. He noted this had always been the logic behind having a critical area evaluation done at the earliest point in time.

Councilmember Wilson noted that had been his answer as well but did not appear logical to the resident because if the cost for the critical area evaluation exceeded the cost of the permit, it may dissuade people from seeking a permit. Councilmember Wilson suggested consideration be given to simplifying the process administratively. Mr. Chave noted staff could consider the fee schedule and possibly include the critical area review in the permit fee rather than having a separate fee. In the instance Councilmember Wilson cited, Mr. Chave suggested possibly the fee for a critical area evaluation could be less for a fence permit. He noted the current one-size-fits-all critical area review fee was predicated in part on the fact that critical area reviews were often conducted independent of a permit. It was anticipated with the new Critical Areas Ordinance, the critical area review would be done at the time of a permit.

Councilmember Wilson noted in the past a property could count on a critical area determination but now with Best Available Science (BAS) there was no certainty to that process. **Jim Kenny, EDAW**, commented some of the techniques for implementation techniques may be progressing. He noted techniques for stream restoration or wetland enhancement may change, buffer widths, buffer width averaging, etc would pretty much stay the same.

Councilmember Wilson commented on the experience of one of his clients as a result of the listing of an endangered species. He questioned whether certainty could be provided to property owners. Mr. Kenny answered there was always potential for a species to be raised to the level of endangered or threatened although he found that unlikely within Edmonds' relatively small jurisdiction. He noted it was more likely that species would be delisted, for example the Bald Eagle which is currently protected by the Endangered Species Act was being considered for delisting. He noted depending on the outcome of the election, there may be changes in federal policy with regard to how endangered salmon are addressed.

Mr. Chave commented the critical area determination in the existing regulations could be considered finished when it was completed because nothing was allowed to occur in the buffer. The new regulations would establish the buffer and successive projects would require revisiting the buffer to do successive enhancements. He clarified a property owner would not have to redo the entire critical area evaluation but rather consider the buffer area and do a second phase of enhancements.

Councilmember Wilson asked whether a buffer could be required to be increased if at the time a second phase was undertaken something had occurred within the critical area or a species or habitat that was not previously listed was identified. Mr. Chave advised the definitions in the code were fairly firm and he did not anticipate they would change. He noted the one thing that could change was the location of eagles'

nest but that issue was also encountered today. Mr. Kenny noted another manmade action that could impact buffer width was removal of a blockage on a stream that allowed salmon to travel further upstream.

Councilmember Wilson referred to the Department of Ecology's four-tiered rating system for wetlands and streams and the statement that the City's ordinance would divide Category F into two classifications. Mr. Kenny answered the DOE stream rating system was felt to be too "cookie cutter" for Edmonds, therefore, one of the stream categories was divided into streams that provide habitat for resident fish and providing habitat for anadromous fish.

Councilmember Wilson asked whether the DOE's four-tier rating system for wetlands differentiated between naturally occurring wetlands and manmade wetlands. Mr. Kenny answered there was a new State manual for identifying and delineating wetland and in some instances it did differentiate between naturally occurring and manmade wetlands. Councilmember Wilson asked whether manmade wetland would be regulated. Mr. Kenny answered it depended on a number of indicators.

Councilmember Wilson asked how the increased buffers affected the City's buildable lands inventory. Mr. Chave answered the combination of flexible buffers in exchange for enhancement with the ability of new development to cluster away from the buffers should assure there were adequate buildable lands in the City. In the areas where critical area existed, it was recommended the large lot zoning remain intact, therefore, it did not reduce capacity in the areas where critical areas exist. In areas where critical areas do not exist, changes were being recommended to the zoning. He concluded there was no significant impact on the capacity.

Councilmember Orvis asked how much of the shifting standards were due to regulations outside the City's control. Mr. Chave answered it was primarily a result of regulations outside the City's control such as definitions or listing of species that was not controlled locally.

Councilmember Orvis asked whether uses could become nonconforming if the standards shifted. Mr. Chave answered the nonconforming rules provided protection. He noted the intent of the buffer flexibility was that urban development may already exist in those areas and the enhancement would improve the already disturbed buffers.

Councilmember Dawson referred to the exemption for Category 3 and 4 wetlands, noting the ordinance appeared to provide an exemption for Category 3 and 4 wetlands under 1,000 square feet. Mr. Chave answered the exemption was for wetlands under 500 feet.

Councilmember Dawson asked the rationale for exempting any size wetland. Mr. Kenny recalled there were comments from Pilchuck Audubon Society and Thousand Friends of Washington that BAS did not support exemption of wetlands of any size. He noted the exemption established a threshold and if an area that had the characteristics of a wetland was smaller than the specified size, the critical area regulations did not apply. He agreed BAS did not support thresholds and small wetlands were valuable to some species but jurisdictions must balance science and policy implementation. He noted staff considered what thresholds cities of similar size were establishing, noting they ranged from 500 square feet to 3500 square feet. He explained the current code established the minimum wetland threshold at 2500 square feet which seemed too large. He noted the planning staff did not want to regulate very small wetland areas that were anomalies in a low lying area of someone's back yard. He noted as a result of that discussion, 500 square feet was determined to be a reasonable compromise. Mr. Chave pointed out the balance between BAS and the GMA requirement for infill development as well as the practical issue of identifying a 10 square foot wetland. He concluded 500 square feet appeared to be the low end of the range of thresholds established by other cities and staff had not encountered wetland below that level.

Councilmember Dawson asked staff to provide a comparison of what other cities were doing such as exempting smaller wetland or having minimal requirements. Mr. Chave pointed out the need to balance practicality within an urban environment. He offered to provide examples at the public hearing of what other jurisdictions were doing.

Councilmember Dawson asked why the restrictions on the use of pesticides were not included in the Critical Areas Ordinance. Mr. Kenny recalled the Pilchuck Audubon Society referred to Seattle's which had a separate ordinance regarding the use of pesticides. He advised the City could incorporate that issue in the Critical Areas Ordinance and some municipalities include their own practices. He noted there was a trigger mechanism in the Critical Areas Ordinance regarding when someone was required to get a permit, it was difficult to envision what the trigger mechanism would be for the use of pesticides or fertilizers.

Councilmember Dawson inquired about plans for public education regarding the new ordinance and the use of pesticides and fertilizers. Mr. Chave suggested that be addressed at the public hearing. He noted methods may include information in utility billings and on the City's website. He commented there were grant funds available for public information. Councilmember Dawson commented other cities were including information on their public access channels.

Mr. Bowman noted that issue was also addressed in the Illicit Discharge Ordinance that was adopted earlier this year.

Mr. Chave advised the November 16 public hearing would include a presentation by the consultant.

8. MAYOR'S COMMENTS

Mayor Haakenson had no report.

9. COUNCIL COMMENTS

Council President Plunkett provided a reminder that the November 9 Council Committee meetings would meet prior to the City Council meeting. The Council will consider amendments to the budget and the property tax levy. He wished Councilmember Dawson a Happy Birthday on November 5.

Councilmember Olson thanked the merchants, the Chamber of Commerce and City staff who assisted with the Halloween event in downtown Edmonds.

Councilmember Dawson advised the Public Safety Committee would be meeting at 6:30 p.m. In addition, she reported that she would be leaving her position as a staff attorney for the Division 1 Court of Appeals as she had accepted a position effective in January with an organization, Team Child, doing advocacy for at-risk youth.

Councilmember Moore wished Councilmember Dawson a Happy Birthday and congratulations on her opportunity. Councilmember Moore also expressed her appreciation to Councilmember Dawson for her work on domestic violence issues.

Councilmember Wilson reported on the discussion regarding affordable housing allocation at the Snohomish County Tomorrow meeting and unanimity among jurisdictions that were present regarding the wording of the resolution. He indicated his plans to work with Mr. Bowman and Mr. Chave on different

language to offer to Snohomish County Tomorrow to indicate this was not a target to be met but only an indicator until such time as the methodology could be analyzed.

Councilmember Wilson wished Councilmember Dawson a Happy Birthday and suggested the Community Services/Development Services Committee also meet at 6:30 p.m. on November 9.

Port of Edmonds

 Councilmember Orvis reported the Port of Edmonds approved their budget which does not include a property tax increase. He also wished Councilmember Dawson a Happy Birthday and congratulations.

Councilmember Marin referred to an Association of Washington Cities Benefit Trust newsletter that cited ways to reduce stress and a suggestion that regularly sprinkling less than ½ teaspoon of cinnamon on applesauce, oatmeal or a baked apple could help prevent heart disease and diabetes. He noted the article stressed the benefit was from cinnamon and not cinnamon rolls.

With no further business, the Council meeting was adjourned at 8:56 p.m.