

EDMONDS CITY COUNCIL APPROVED MINUTES

JULY 2, 2002

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

ELECTED OFFICIALS PRESENT	STAFF PRESENT
Gary Haakenson, Mayor Dave Earling, Council President Jeff Wilson, Councilmember Michael Plunkett, Councilmember Lora Petso, Councilmember Dave Orvis, Councilmember Richard Marin, Councilmember Deanna Dawson, Councilmember	David Stern, Chief of Police Duane Bowman, Development Serv. Director Stephen Clifton, Community Services Director Peggy Hetzler, Administrative Services Director Noel Miller, Public Works Director Rob Chave, Planning Manager Dave Gebert, City Engineer Steve Koho, Treatment Plant Manager Jeannine Graf, Building Official Scott Snyder, City Attorney Sandy Chase, City Clerk Jana Spellman, Senior Executive Council Asst. Jeannie Dines, Recorder

1. **APPROVAL OF AGENDA**

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF THE AGENDA AS PRESENTED. MOTION CARRIED UNANIMOUSLY.

2. **CONSENT AGENDA ITEMS**

Councilmember Marin and Orvis requested Item G be removed from the Consent Agenda and Councilmembers Petso requested Item E be removed.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PETSO, 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 JUNE 25, 2002**

(C) **APPROVAL OF CLAIM CHECKS #56434 THROUGH #56526 FOR THE WEEK OF JUNE 24, 2002, IN THE AMOUNT OF \$74,618.41**

- (D) **ACKNOWLEDGE RECEIPT OF CLAIMS FOR DAMAGES FROM RON VUKONICH (\$67.81) AND GREG McDONALD (Amount Undetermined)**

- (F) **AUTHORIZATION TO CALL FOR BIDS FOR THE CITY WIDE GUARDRAIL REPLACEMENT (BELL STREET, 89th PLACE WEST AND NORTH MEADOWDALE ROAD) PROJECT**

- (H) **REPORT ON THE GENERAL FUND AND OTHER SELECTED FUNDS FINANCIAL POSITION FOR THE MONTH ENDING MAY 2002**

Item E: Authorization to Call for Bids for the 76th Avenue West Rockery Repair Project

Councilmember Petso recalled a few weeks ago the City received a letter from a citizen requesting to be notified when the Council moved ahead with the project so that he could address the Council. Councilmember Petso noted that by having approval on the Consent Agenda, it was not possible for the citizen to address the Council and asked whether the citizen had been notified. City Engineer Dave Gebert advised when it became clear the citizen would not grant the City an easement, a letter was sent to him advising that the City would proceed with the plan previously approved by the Council. Mr. Gebert explained the rockery had been designed so that the portion on this citizen's property would not have soil nails and would have only shotcrete fascia and there were provisions/constraints on the contractor that there be no work beyond the extent of the existing rockery.

Councilmember Petso indicated she would abstain from the vote as she was not comfortable with moving ahead when this person specifically asked to be notified.

Mayor Haakenson advised he encountered this citizen in downtown and invited him to his office to discuss his concerns with staff which the individual refused. Mayor Haakenson assured the individual had been given every opportunity.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCIL PRESIDENT EARLING, FOR APPROVAL OF ITEM E. MOTION CARRIED (6-0-1), COUNCILMEMBER PETSO ABSTAINED. The item approved is as follows:

- (E) **AUTHORIZATION TO CALL FOR BIDS FOR THE 76th AVENUE WEST ROCKERY REPAIR PROJECT**

Item G: Approval of Findings of Fact for a Closed Record Hearing Held on June 4, 2002 on an appeal of the Hearing Examiner's Decision to Deny an Appeal of a Staff Code Interpretation of the Definition of Hedge. The "Hedge" is located at 7529 – 172nd Street SW and is Zoned Single-Family Residential (SR-20). Appellants: John and Patricia Fawcett (Anthony Dadvaragah, Representative) / File Nos. AP-02-95 and AP-02-7.

Councilmember Marin advised he was not present for the deliberations on this matter and would abstain from the vote.

Councilmember Orvis indicated he voted no when this item was discussed previously and planned to vote no on the approval of Findings of Fact.

COUNCIL PRESIDENT EARLING MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, FOR APPROVAL OF ITEM G. MOTION CARRIED (5-1-1), COUNCILMEMBER MARIN ABSTAINING AND COUNCILMEMBER ORVIS OPPOSED. The item approved is as follows:

- (G) **APPROVAL OF FINDINGS OF FACT FOR A CLOSED RECORD HEARING HELD ON JUNE 4, 2002 ON AN APPEAL OF THE HEARING EXAMINER'S DECISION TO DENY AN APPEAL OF A STAFF CODE INTERPRETATION OF THE DEFINITION OF HEDGE. THE "HEDGE" IS LOCATED AT 7529 – 172ND STREET SW AND IS ZONED SINGLE-FAMILY RESIDENTIAL (RS-20). APPELLANTS: JOHN AND PATRICIA FAWCETT (ANTHONY DADVARAGAH, REPRESENTATIVE) / FILE NOS. AP-02-95 AND AP-02-7**

3. PUBLIC HEARING ON THE RECOMMENDATION TO ADOPT A PRETREATMENT ORDINANCE

Wastewater Treatment Plant Manager Stephen Koho explained a Pretreatment Ordinance was locally adopted rules regarding what can be released into the sewer. He displayed a photograph of grease obstructing the inside of a pipe, noting this was the root of the problem. There were three zones in the City where crews currently cut grease from the inside of the pipes to restore minimum pipe size. During this process, the inside of the pipes are also nicked, shortening the life of the pipe. This process takes five days every three months at an estimated cost of \$35,000.

Mr. Koho explained the primary cause of blockage in the sewer was grease which causes backups and overflows. The increased cost is borne by all ratepayers and there is inequity in all ratepayers paying a share of the problem that is caused by only a few. Further, some businesses with appropriate equipment incur these costs while others do not. He explained the proposed solution was adopting a Pretreatment Ordinance which required pretreatment equipment as well as maintenance and holds all businesses to the same standard. The ordinance was modeled after a template developed by the State Department of Ecology and was very similar to ordinances in surrounding areas. Mr. Koho displayed a comparison of pretreatment ordinances in surrounding areas, noting most had updated pretreatment ordinances requiring grease removal.

Mr. Koho described the process that has been followed to date, noting this process has not previously included maintenance. The draft ordinance had been reviewed by two utility consultants and reviewed by the Community Services/Development Services Council Committee. Letters were sent to all food-oriented businesses in the City (106 businesses) inviting them to two public meetings which were held November 27 and December 11, 2001. Of the 106, approximately 11 businesses attended the meetings. A third letter was sent to the 106 businesses informing them of tonight's public hearing.

Mr. Koho described the impact to a restaurant including installation of a properly sized grease removal device, maintenance of the system, maintaining records of maintenance, and expecting City staff to make periodic inspections of their records. The cost impact included purchase/installation and maintenance. He noted the majority of restaurants have appropriately sized equipment and the primary cost would be maintenance. He advised the cost to pump an average sized, underground interceptor unit was approximately \$800 annually. The small, under-sink interceptors could be maintained by restaurant staff and did not represent an additional expense.

Mr. Koho explained purchase costs of equipment vary – under-sink models cost approximately \$300 and the purchase price of a large below ground interceptor averaged \$3,000. Installation costs also vary widely depending on the type of unit. He noted there would be some restaurants that do not currently have an inceptor who will be required to change plumbing within the building as well as an excavation in the parking lot to install an interceptor tank.

Mr. Koho explained that due to the cost impact, the compliance period was established at 18 months for restaurants that are not in an area with a high grease problem and 12 months in areas with high grease problems.

To administer the plan, Mr. Koho proposed filling a vacant position at the treatment plant with a Pretreatment Technician whose focus would be on all types of pretreatment. He noted several other agencies in the area had a pretreatment technician. The agreement between agencies with an interest in the treatment plant indicates the cost of a pretreatment plan would be borne by all participants, assuming all participants received service. He proposed to fund the position from the treatment plant and all agencies would receive services from the pretreatment technician. He explained Edmonds would fund approximately 40% of the employee and receive approximately 40% of the employee's time; the remainder of the employee's time would be working with Olympic View Water and Sewer District, Mountlake Terrace, and Ronald Wastewater District. He estimated 40% of the wage would be \$28,000; however, the proposal was essentially revenue neutral due to the elimination of the \$35,000 cost of grease cutting and as well as the resultant damage to the pipes.

Mr. Koho explained the benefits of the Pretreatment Ordinance included removing the largest single cause of blockages, providing equity between user types and within the same user structure, protecting sewer infrastructure, lower costs, and protecting the public and environment.

Council President Earling inquired about the status of the agreement between treatment plant users. Mr. Koho explained the agreement was in place and agencies met quarterly. An agreement rewrite was currently underway as much of the agreement pertained to building the treatment plant.

Council President Earling asked how many of the 106 businesses had a system in place. Mr. Koho answered his understanding was 100% had something in place, in some cases it may be inadequate. He estimated 25 had systems that would need an interceptor. Council President Earling asked how many currently could meet the standards proposed. Mr. Koho responded approximately 80 had an appropriately sized unit that only needed to be maintained.

Council President Earling asked for a range of the cost of installation. Mr. Koho said the cost could range from \$500 to \$20,000-\$30,000 although the number of business at the top end of the range were few.

At Councilmember Marin's request, Mr. Koho described how grease entered the sewer and coagulated in a pipe, explaining hot water and soap removed grease from dishes putting it into the sewer; as the grease entered the sewer, cooled and water diluted the soap concentration, the grease sets up and hardens. Councilmember Marin asked how far downstream this was typically encountered. Mr. Koho was not certain.

Councilmember Petso reported a restaurant owner who has grease traps in place but was still being asked to attend informational meetings had contacted her. She asked how much of an ongoing time commitment this individual was being asked to make. Mr. Koho answered the proposal was not requesting a time commitment; the intent was to have a public process for affected businesses to voice their concerns. Councilmember Petso noted once a business owner had the appropriate equipment in place, staff would inspect the equipment and records periodically. Mr. Koho answered the goal would be to visit each business twice a year.

Councilmember Petso asked why a full-time employee was necessary to visit 106 businesses twice a year. She suggested this be done with the time currently spent cutting grease and not hiring a new employee. Mr. Koho answered the employee would also spend time in other participating agencies. Further, normal maintenance that is currently being deferred due to the abnormal maintenance of cutting grease could be resumed.

Mayor Haakenson opened the public participation portion of the public hearing. There were no members of the audience who wished to address the council. Mayor Haakenson closed the public participation portion of the hearing and remanded the matter to Council for action.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER DAWSON, FOR APPROVAL OF ORDINANCE NO. 3401. MOTION CARRIED UNANIMOUSLY. The ordinance approved is as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING TITLE 7 OF THE EDMONDS CITY CODE BY ADDING NEW CHAPTERS 7.90, 7.91, 7.92, 7.93, 7.94, 7.95, 7.96, 7.97, 7.98, 7.99, 7.100, 7.101 AND 7.102 THERETO; ESTABLISHING UNIFORM REQUIREMENTS FOR USERS OF THE CITY'S PUBLICLY OWNED TREATMENT WORKS; REPEALING CHAPTER 6.50 OF THE EDMONDS CITY CODE; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

4. CONTINUED PUBLIC HEARING ON THE PLANNING BOARD RECOMMENDATION TO APPROVE A PROPOSED AMENDMENT TO THE EDMONDS COMMUNITY DEVELOPMENT CODE, ADDING A NEW CHAPTER 16.75 TO ESTABLISH A NEW "MP – MASTER PLAN HILLSIDE MIXED USE ZONE" ZONING CLASSIFICATION (MP1 AND MP2) TO IMPLEMENT THE COMPREHENSIVE PLAN. (Applicant: Unocal / File No. CDC-2002-37)

Mayor Haakenson advised Terry McCarthy would be serving as the City Attorney. Pursuant to the Council's previous motion, Mayor Haakenson advised public comment at this hearing would be limited to those who had not spoken previously. He asked whether the emails the City had received would be considered speaking previously. Council President Earling advised the emails would constitute testimony and those individuals would not be permitted to speak again.

Planning Manager Rob Chave advised a memo from staff in the Council packet attempted to address the eight issues identified by Council:

Issue #1: The maximum lot coverage of 75% for the upper yard (MP1 zone) could be too high under certain circumstances. In response to Council's concerns, staff developed the following language, "*Total lot coverage for the entire site covered by an adopted master plan within the MP1 zone cannot exceed 45%. Lot coverage for individual building lots within the area covered by the master plan cannot exceed 75%. Individual lots may not be able to achieve 75% maximum lot coverage due to compliance with master plan and code requirements that address such issues as circulation, open space, topography, buffers, and critical areas.*" He noted the criteria was intended to provide guidance to staff.

Issue #2: The provision for a "Landmark Structure" needs more definition. Mr. Chave explained the intent of the proposed language (in the Council packet) was to describe a landmark structure. A landmark structure would be limited to 48 feet, the height allowed for tanks in the existing zone. He explained there were also significant restrictions in the use, tying it to public uses and not leasable space. He clarified the language in the packet applied only to the MP1 zone; however, the ordinance as written would allow a landmark structure in either MP1 or MP2.

Issue #3: Add a purpose directed at “visual access” and “physical access” from the site to the water. Mr. Chave explained City Attorney Scott Snyder reviewed case law, particularly U.S. Supreme Court decisions, and concluded the City could not require physical access in this instance because there was no direct access from the property to the waterfront with the City’s purchase of the beach property. Mr. Chave proposed the addition of a new purpose in Section 16.75.005 to read, “*E. To encourage visual access to the water for public from public spaces within the development.*”

Issue #4: Additional height for buildings in the lower yard (MP2) zone should be tied to development of the multimodal facility. Mr. Chave said although staff believes there is sufficient reason to allow a higher height limit in that location – bottom of the hill, separation from other uses by the marsh, adjacent to the Port, etc. – if the Council wished to condition the height, staff suggested the following language, “*The maximum height may be increased to 45 feet with the approval of a conditional use permit, if the application is filed in conjunction with or after the approval of a multimodal transportation center within or adjacent to the MP2 zone.*” He explained “adjacent” was included due to the possibility of the multimodal facility being constructed in the right-of-way, it would not be in the MP2 zone.

Issue #5: The examples of building height calculations in Figures A-C of the proposed MP zones reference “story” without providing sufficient definition for the term. Mr. Chave proposed language that a story would be a ten-foot minimum.

Issue #6: Height variances should not be an option for a development on the site. Mr. Chave advised the City Attorney indicated the City could not supercede State law which allows for variances but could add a purpose that clarified the reason the height limit and calculation were established were to provide flexibility and it was assumed variances would not be supportable. This would not preclude a variance but would indicate they likely would not be supportable.

Issue #7: To be consistent with the Downtown Waterfront Plan, the maximum height of structures in both the MP1 and MP2 zone should be 30 feet (plus 5 feet for a modulated roof). Mr. Chave advised staff’s analysis was there should be no change to the ordinance as the Downtown Waterfront Plan addresses 35 foot height limits, and due to the uniqueness of the site. Also, during the Council hearing it was noted that the existing height limit in the Commercial Waterfront (CW) zone allowed tanks up to 48 feet and the proposed 35 feet height limit plus 5 feet for a modulated roof was significantly lower than that. He urged the Council to consider the uniqueness of the site and also that this was a new zoning classification. It would be appropriate to have a 35-foot plus 5-foot height limit as all buildings within the Unocal site would be internally consistent. He assured when any potential development was reviewed, consideration would be given to protecting views off site. Mr. Chave noted views uphill would not be impacted as buildings would be dispersed and set into the hillside.

Issue #8: To be consistent with the Downtown Waterfront Plan, a mix of uses should be required in the upper yard (MP1 zone). Mr. Chave noted this appeared to be a request for a mix of uses on any parcel. He pointed out the proposed zoning was for the Point Edwards site as a whole, not just a portion of the site. The intent was a mixture of uses on the site as a whole. He noted since the Downtown Waterfront Plan was developed, more work had been done on the design of the multimodal center. It was previously believed the multimodal center could be accessed from the uphill side of the site which has proven to be nearly impossible other than as a pedestrian bridge. He explained the ferry holding lanes would be between the uphill development and the terminal, thereby limiting the interaction between the sites. He concluded the likely scenario was that any development related to the multimodal would occur on the lower yard, therefore, requiring a mixture of uses in the upper yard may not be economically viable. He noted residential use on the upper yard could be mixed use such as a mixture of residential and open space. He reiterated the intent was a mixture of uses on the entire site not individual parcels.

City Attorney Scott Snyder, appearing on behalf of City staff in an administrative capacity, addressed the submittals by King County and review of those materials by the Council. He explained a brief review of the materials King County submitted indicated: (1) King County was considering but had not selected this as a site for a regional treatment facility, and (2) none of the materials were relevant to the Council's inquiry which was whether any proposed change was consistent with the City's Comprehensive Plan. He explained GMA required that zoning enactments be consistent with and not in conflict with provisions of the Comprehensive Plan. The Comprehensive Plan did not anticipate a third regional treatment facility in the City's waterfront zone and none of the materials submitted by King County made any causal connection or explain the consistency of King County's request with the Comprehensive Plan. Therefore, for the Council to enact that change at this time would be in violation of GMA. Further, ECDC 21.100.020 requires that any amendment of the zoning code be reviewed and considered by the Planning Board and considered by the Council upon recommendation from the Planning Board. The intent of the review was to provide the public and Planning Board adequate opportunity to comment. He noted that while the volumes of materials submitted by King County were weighty and this was an important issue, it was an issue that the citizens have not had an opportunity to respond to nor had the Planning Board had an opportunity to consider whether it was an appropriate amendment to the Comprehensive Plan and whether it was an appropriate amendment to the zoning code. Further, Unocal, as the affected property owner, has not had an opportunity to review or respond to the materials submitted by King County.

Mr. Snyder suggested the Council was obligated to deny King County's request for amendment at this time because it was not consistent with the Comprehensive Plan and had not been subject to the scrutiny the City's ordinances require. Although he did not concur with Mr. Washburn's characterizations of the content of the materials he submitted, Mr. Snyder did not intend to address it in any detail. He cautioned the Council against expressing opinions during its deliberations or prejudging an application that had not yet been made or considering a site for which King County had not completed its own environmental review nor submitted a Comprehensive Plan amendment. He noted expression of an opinion or prejudging an application could be used to prevent a Councilmember from sitting on any permit decision in the future. He recommended the Council refer King County's request to the 2003 Comprehensive Plan amendment process. Mr. McCarthy trusted the Council would take a fair and impartial view of all materials.

With regard to Issue #4, additional height for buildings in the lower yard (MP2 zone) should be tied to development of the multimodal facility, Councilmember Petso said her understanding was that additional height would be allowed in the MP2 zone only if necessary for the multimodal facility. She asked whether additional height would be allowed for other buildings. Mr. Chave answered the additional height would be

in conjunction with the multimodal, not necessarily related to the multimodal. The reason for the additional height was that the multimodal terminal would be 45-50 feet high to get over the tracks and any buildings in the lower yard would be in the shadow of that development, therefore, an additional height limit was deemed appropriate. The additional height would be separated/buffered to the north by the marsh.

Councilmember Petso inquired whether a 45-foot condominium would be allowed because it would be in the shadow of the multimodal facility. Mr. Chave answered not a condominium per se but a building of some type. Councilmember Petso inquired whether it would be allowed even if not required for the multimodal facility. Mr. Chave answered yes.

Councilmember Petso recalled the height limit recommended in the Downtown Waterfront Plan was 35 feet measured from any point on the ground. She noted this would be the maximum whether on the uphill side or the downhill side. She recalled in other areas of the City lot averaging is done and asked how much additional height could be obtained on a site such as the Unocal property via averaging. Mr. Chave answered it would be an average, there would be no additional height.

Councilmember Petso referred to the language in the Downtown Waterfront Plan, noting at any point around a building the height would be a maximum of 35 feet. Mr. Chave answered the average from the existing grade would be 35 feet. Councilmember Petso pointed out under the proposed height averaging method, the downhill side of a building could be much higher than the uphill side of the building. Mr. Chave answered that was possible, depending on the site. Councilmember Petso asked how much the discrepancy could be on a sloped site. Mr. Chave answered it depended on the amount of slope.

Councilmember Petso recalled the Downtown Waterfront Plan allowed additional height for the peak of the roof. Mr. Chave agreed there was additional height for a modulated roof. Councilmember Petso asked if the additional height was allowed for a modulated roof, the result would likely be “castle-like” appearance of the roof. Mr. Chave answered it would depend on the design proposed; the City’s code allowed for modulated roofs. Councilmember Petso asked if there was any way, based on the peak roof diagram, that the result would be the “castle-like” appearance. Mr. Chave answered the illustrations were a suggestion and the intent was not for every building to have that design. He noted there would be Architectural Design Board (ADB) review of any building on the site.

Referring to mixed use, Councilmember Petso noted there was a suggestion to allow a single use such as 100% residential use in the MP1 zone. She questioned why this area would be zoned mixed use rather than multifamily if developing it 100% multifamily residential was the intent. Mr. Chave answered there was an opportunity for mixed use. Mixed use was intended to apply to the entire Unocal site; although a single parcel may not have a mixture of uses, the overall Master Plan would be a mixture of uses.

Councilmember Petso inquired about the height limit in a multifamily residential zone. Mr. Chave responded the maximum height limit for a multifamily zone was 25 feet with a footnote regarding an additional 5 feet

for a pitched roof with a slope of 4 inches and 12. Councilmember Petso noted the height limit for the proposed mixed use zone was 35 feet plus 5 feet. Mr. Chave agreed. Councilmember Petso noted 10 additional feet of building height would be allowed by zoning this mixed use but it would be developed entirely multifamily residential. Mr. Chave explained 10 additional feet was allowed due to the uniqueness of the site and consistency with the Downtown Waterfront Plan.

Councilmember Petso recalled Mr. Chave's comment that this would be mixed use due to open space on the property. She asked whether the open space would be on the cliff where construction was not allowed and the space was not usable. Mr. Chave said there was discussion in the Master Plan regarding public open space within the residential area. He pointed out that it was unknown whether the proposed Master Plan would be approved. Councilmember Petso asked why open space should not be required when creating the zone. Mr. Chave answered the way the zone was crafted, there was a great deal of direction regarding the intent. He felt it unnecessary and potentially restrictive on future development to require a mixture of uses for development in the MP1 zone. He pointed out the need for flexibility to accommodate development that was currently unforeseen.

Councilmember Petso asked how allowing 100% residential use provided flexibility. Mr. Chave answered it did within the context of a Master Plan because the property could be parceled and sold. He noted a developer for one portion could be residential and another developer for another portion commercial. Problems could result if they applied in different phases and if mixed use were required on each parcel. The proposed language states if a Master Plan was proposed, it must have mixed use. He clarified if a Master Plan were proposed for the upper yard separately with 100% residential, it would not be approvable; any single application for a Master Plan must include a mixture of uses. A Master Plan for the entire site would be approvable if there was a single use on the upper yard and another use on the lower yard so that the overall effect was mixed use.

Councilmember Petso questioned why it was advantageous to have a mixed use on the entire site but not to require mixed use on the upper yard. Mr. Chave answered economics; it was unknown who the prospective developer, purchaser, mix of uses, etc. would be. He said via phasing, different portions of the site may be developed at different times. He explained the intent was to provide flexibility and parameters for judging the development but not prescribe the exact arrangement of uses. Councilmember Petso asked if a zone was created that required at least two public uses that took advantage of the access, setting and views afforded by the site (language from the Downtown Waterfront Plan) as well as multifamily dwellings and it was not possible to be developed in that manner, could the zone be changed in the future? Mr. Chave agreed it could but the landowner may have been denied economic value for their property in the meantime. He explained the intent of creating a zoning classification was to apply it somewhere and in this particular case, the location was known as it was implementing the Downtown Waterfront Plan.

Councilmember Petso asked what would occur if the current property owner could not proceed under the zoning. Mr. Chave presumed the landowner would request a different zone if they were unable to develop the property under the proposed zone or develop another zone they could develop under.

Councilmember Orvis clarified as proposed, the height limit did not exceed 48 feet, the height of the tanks. Mr. Chave advised the only structure that could be 48 feet in height was the landmark structure. Councilmember Orvis clarified the height limit on the MP1 zone was 35 feet plus 5 feet for a modulated roof and the new method of measuring heights. Mr. Chave answered this method modified lot averaging to allow stepping of buildings. Mr. Chave explained the intent of Figures A-C was to describe how a single building could step up the hillside to eliminate the possibility of a large building with an extremely tall face on the downhill side. For Councilmember Orvis, Mr. Chave confirmed the height limit on MP2 was 45 feet if the multimodal facility was constructed and 35 feet if it was not.

Councilmember Dawson indicated her remaining concern was that the existing zoning, Commercial Waterfront, allowed a height limit of 48 feet only for the oil tank, a zoning designation created after the tanks were in place. Mr. Chave agreed the zone was created in 1980 after the tanks were in place, noting the height limit was not limited only to existing tanks, new tanks could also be 48 feet. Councilmember Dawson noted other than the tanks, the height limit on the site was currently 30 feet. She asked why the unique characteristics of the site required 35 feet, five feet higher than it was currently and ten feet higher than any other multifamily area in the City. She noted the unique characteristics of the site would be taken into consideration via the lot averaging and stepping ability. Mr. Chave answered this was a very unique site, unlike any other multifamily zone in the City and tying it to a height limit elsewhere in a multifamily zone may not be appropriate. He noted this property was a hillside not a flat property; the Downtown Waterfront Plan indicates 35 feet as a reasonable height. He noted there were numerous reasons for maximizing development in this area including: meeting GMA population targets, this is one of the last large parcels in the City where there is an opportunity for additional density, and additional height maximizes views by providing flexibility to cluster buildings into smaller areas.

Councilmember Dawson concluded the reason for the proposed 35 foot height limit appeared to be to allow more view condominiums to be built. Mr. Chave responded it would allow development to take advantage of views, maximize development on the property consistent with a Master Plan which in addition to meeting GMA targets, provided additional revenue for the City, and provided the property owner a reasonable rate of return. He noted the cost of cleaning up the site was significant. Due to the unique nature of the slope, the property on the top likely would not be impacted by development occurring down the slope. Councilmember Dawson provided an example of a 35-foot condominium at Five Corners that would not be allowed although it would not block views. Mr. Chave answered that was a different issue due to scale and location. The height limit in a small commercial area must also consider the scale of development in close proximity.

Councilmember Wilson inquired about height limits in other mixed use zones. Mr. Chave advised the zoning in downtown was 25 feet plus 5 feet for a total of 30 feet, the Neighborhood Business Zone had a maximum height of 25 feet, and the General Commercial (CG) zone, which allowed a mixture of uses including residential development, allowed 45 feet and in some circumstances where there was a high-rise node, the height was unlimited with a conditional use permit. He noted CG zones, particularly along Hwy 99, were potentially mixed use although that has not been developed in the past.

Councilmember Wilson asked whether there were areas along the SR104 corridor that had height variations. Mr. Chave answered if there were, they were in unincorporated Snohomish County as the City's zoning in the Westgate area was BC with a 25 feet plus 5 feet height limit.

Councilmember Wilson asked whether the height limit in the MP1 zone could be structured to allow 35 feet height limits if incorporated with larger public view corridors, basically tie the increase in height to an increase in public views. Mr. Chave answered that may be possible if there was sufficient justification in the Downtown Waterfront Plan. He noted it may be difficult to craft that without numbers which would constrain development.

Councilmember Wilson said that allowing increased height could be a tradeoff for allowing wider/larger public vistas. Mr. Chave preferred to defer this discussion to the Master Plan rather than including language in the zoning classification. He said the Master Plan, with the guidance of this zone, would provide the ability to consider such a tradeoff. Councilmember Wilson asked whether there needed to be a foundation in the zoning designation to support this. Mr. Chave answered there was enough.

Councilmember Wilson asked whether the location of the MP1 and MP2 zones was restricted. Mr. Chave answered only by the purpose and intent of the zones. The MP1 zone appears to be targeted for the upper yard and the MP2 appears to be targeted for the lower yard. Councilmember Wilson asked whether one designation could be applied to the entire site. Mr. Chave answered to be consistent with the Comprehensive Plan, the MP2 zone was the only zone that addressed uses such as the multimodal, therefore, its appropriate location was the lower yard. Due to the uses proposed for the MP1 zone, its logical location was the upper yard. He assured there were adequate protections to ensure the lower yard would be MP2 and the upper yard MP1. He noted the Council would need to make those findings as part of the rezone approval.

Councilmember Wilson noted the current location of the ferry holding lanes created a division between what occurs to the west and east of the lanes, resulting in two distinct areas. He questioned whether that same scenario would be created on the Unocal site with the multimodal facility, would there be two distinct areas and should mixed use be an overall concept when there were really two distinct areas. Mr. Chave answered mixed use did not necessarily require the two areas to interact directly. He noted development of the site likely would be phased because the upper yard was much cleaner than the lower yard and would develop in advance of other development. One of the challenges was making the multimodal facility functional and fitting it into the hillside and with other development on the site.

Councilmember Wilson referred to Issue #3 and the proposed language, suggesting the language be strengthened to ensure visual access was considered during design review process. Mr. Chave answered that could be addressed as part of design review.

Councilmember Wilson referred to Issue #6, noting although staff did not see any reason that a height variance would be necessary, variances were still possible. He questioned whether “the door was open enough” so that if a height variance for the multimodal facility could be considered, for example to get over the railroad tracks. Mr. Snyder answered a provision already existed in the variance criteria that indicates a variance cannot be granted to allow more economic use of the property. Secondly, none of the criteria would

apply to structures in the public right-of-way such as a bridge for example. Third, the height averaging, stepping process left the door open to address a true topographical constraint.

Councilmember Orvis inquired about the rules governing a rezone and whether the uses in an existing zone affected the ability of a property owner to rezone the site. Mr. Snyder explained any application for a rezone must be consistent with the City's vision for the area as defined by the Comprehensive Plan. The standard rezone criteria refer to whether the property has lain economically fallow, has not developed under the zoning in accordance with the Comprehensive Plan. Therefore, one reason for a rezone may be to achieve a higher economic use as identified in the Comprehensive Plan.

Councilmember Orvis noted if the existing zoning prohibited any economic use, it was susceptible to rezone. Mr. Snyder answered an ordinance that prohibited any reasonable economic use of the property would be a taking.

COUNCILMEMBER WILSON MOVED, SECONDED BY COUNCILMEMBER ORVIS, TO EXTEND DISCUSSION OF THIS ITEM FOR 45 MINUTES. MOTION CARRIED UNANIMOUSLY.

Councilmember Dawson clarified there were two zones, MP1 and MP2. Mr. Chave agreed. To ensure MP1 was consistent with the Comprehensive Plan, Councilmember Dawson asked whether mixed use should be required. Mr. Chave answered the MP zone would have two subzones, MP1 and MP2. The Comprehensive Plan designates this area for master plan development. He noted the difficulty with zoning the entire site one zone was the differences in development that would occur on the lower yard versus development on the upper yard. Councilmember Dawson questioned if one use was allowed on MP1, why wouldn't it be zoned multifamily residential. Mr. Chave said it was unknown what specific development would occur on the site. A future developer may propose multifamily residential for the entire area with a mixture of open space but another may propose hotel.

Councilmember Dawson asked if the MP1 zone was allowed to be one use, which she did not feel was consistent with the Comprehensive Plan as it referred to multiple uses, would that be a basis for denying a request to develop the land with one use? Mr. Chave noted the language in the MP1 zone required a Master Plan that included a mixture of uses. He clarified regardless of whether the Master Plan covered only the MP1 or MP1 and MP2 zones, it must include a mixture of uses. For example, if an application were submitted with a Master Plan on the MP1 zone with a 20 acre daycare, it would be denied because it did not contain a mixture of uses. Councilmember Dawson asked if a zone could be required to have two uses. Mr. Snyder explained the Master Plan would determine the overall mixture of uses on the two zones designations on one site. He summarized a Master Plan that did not adequately address a supportive mixture of uses in compliance with the Comprehensive Plan could be denied.

Mayor Haakenson opened the public participation portion of the public hearing for those who had not previously spoken or sent emails or letters. He advised emails in support of Unocal's rezone request were

received from **Keith Dibble, 1116 Daley Place; Susan McMurray, 20830 88th Place W; Kathleen Junglov, 751 Walnut Street; and Robert Freeman, 622 7th Avenue S.**

Carla Nichols, Mayor of Woodway, 22400 Dogwood Lane, Woodway, urged the City to include a project related environmental review as part of the Master Plan. She explained that type of review would identify and consider any type of potentially adverse environmental impacts that any development may cause. The permitting process was not a substitute for project related environmental review which occurs prior to permit submittal. She noted there was a neighborhood of 61 homes across the street from the Unocal property. She recalled Woodway was criticized several years ago by surrounding communities for not being responsive when reviewing a significant development proposal in Woodway. She explained Woodway did not have sufficient regulations in place at that time to allow the Town to review the application as extensively as they would have liked, not for Woodway citizens or neighboring communities. She recalled that as a result of comments from Woodway Meadows residents (within Edmonds), the Town Council did not approve a proposed bike trail. She reiterated the request for Edmonds to include a project related environmental review as part of the requirements for a Master Plan.

Jim Wassal, 342 Sunset Avenue N, Edmonds, advised he was generally supportive of the proposed amendment but recommended the City take action to control the land use. Without this, anyone may attempt to develop a hillside site with little regard for residents of Edmonds or the community. His primary concern was with the potential and probable increased building heights on the site. He thanked the Planning Board and Council for their efforts with regard to this proposal.

Michael Davolio, Senior Planner, David Evans and Associates, Tacoma, advised he had been developing the Master Plan for over a year and the property owners had been actively involved in developing ideas for development of the property since before the Downtown Waterfront Plan was developed. He commended staff who have done a good job working with them to ensure the proposal met the letter and spirit of the Comprehensive Plan. Mr. Davolio indicated they had no objections to Issues 1-6, but felt Issues 7 and 8 would not be consistent with the Downtown Waterfront Plan. He referred to the Downtown Waterfront Plan which addressed the 35 foot maximum height limit, thus the 35 foot height limit was proposed for the upper yard. He noted given the constraints of the site, the method of measuring heights would not have a significant adverse negative impact. He pointed out the Downtown Waterfront Plan called for a mixed use on the Point Edwards site, not any individual zone in that area. He commented several specific issues were considered when creating separate zones such as, 1) the upper yard is steep and the lower yard is relatively flat, 2) the upper yard is more isolated than the lower yard, 3) the upper yard has more design constraints based on the topography, and 4) due to clean up, the lower yard would not be able to accommodate residential development on the first floor. He noted the proposed Master Plan included a map identifying the boundaries of the MP1 and MP2 zones. He reiterated staff's recommendation regarding Issues 1-6 were acceptable but expected Issues 7 and 8, if accepted, would be "deal breakers for us."

Mayor Haakenson closed the public participation portion of the public hearing.

Councilmember Orvis asked whether staff recommended the changes in Issues 7 and 8 or if they were options for Council's consideration. Mr. Chave answered staff recommended no change for Issue 7. Staff determined a change was not necessary for Issue 8 but if the Council wanted to make a change, staff provided language. He suggested the Council clarify under Issue 2 whether the landmark structure would be allowed on both the MP1 and MP2 zones or only the MP1 zone.

Councilmember Wilson noted the Point Edwards Site redevelopment chapter in the Downtown Waterfront Plan encouraged a mix of compatible uses but did not require mixed use throughout the site. Mr. Chave agreed, noting this chapter addressed the Point Edward's site as a whole rather than distinguishing between the upper and lower yards.

Councilmember Wilson referred to page 44 of the Downtown Waterfront Plan which indicates a 35 foot maximum height limit is recommended as an interim guideline but using the Master Plan process for determining the final height. Mr. Chave agreed. Councilmember Wilson referred to page 44 of the Downtown Waterfront Plan that addressed 35 feet height limit and allowing the buildings to step down the slope but gave carte blanche to the ADB to approve a structure of any height if it was classified as the signature structure. He noted this proposal was not that drastic in terms of providing a limitless height but established some height restrictions and more protection than the guidelines provided. Mr. Chave noted more definition was also provided regarding restricting uses in that signature structure.

Councilmember Plunkett asked how the project related environmental review requested by Woodway Mayor Nichols differed from the City's current process. Mr. Chave answered environmental review was always required for developments that exceeded thresholds established in the City's code. Developments of this nature would undergo environmental review. Councilmember Plunkett asked if the suggested process was already included in the process. Mr. Chave answered yes, noting there was a very strenuous review process which also included design review. Mr. Snyder clarified the City had a provision for environmental review of this project. He noted the materials submitted by Woodway representatives seem to be asking for a legislative determination that there be an Environmental Impact Statement (EIS) prepared for a project on the site. He expressed concern with any legislative enactment that would appear to make a legislative predetermination that an EIS would be performed versus the project being reviewed through the normal SEPA review process.

Mr. Snyder made a correction to Section 16.75.005, changing "The MP2 and MP2 zones..." to "The MP1 and MP2 zones..." and requested a motion to approve the ordinance include that change. Mr. Chave requested reference to Exhibit B in the ordinance be deleted, noting Figures A-C were in Exhibit A.

Mayor Haakenson remanded the matter to Council for action.

COUNCIL PRESIDENT EARLING MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO APPROVE THE RECOMMENDATION OF THE PLANNING BOARD AND APPROVE ORDINANCE NO. 3402 AS AMENDED BY MR. SNYDER AND MR. CHAVE.

Issue #1

COUNCIL PRESIDENT EARLING MOVED, SECONDED BY COUNCILMEMBER ORVIS, TO AMEND THE MOTION TO APPROVE ISSUE #1.

Mr. Snyder clarified Issues 1-6 were included in the draft ordinance, Issues 7 and 8 were not included.

COUNCIL PRESIDENT EARLING WITHDREW HIS MOTION WITH THE APPROVAL OF THE SECOND.

Issue #2

Councilmember Wilson asked whether the draft ordinance allowed a landmark structure in both MP1 and MP2 or only MP2. Mr. Chave referred to page 4 of the ordinance, Item D – Uses Requiring a Conditional Use Permit – and explained Paragraph 1 allowed no more than one landmark structure in each zone. Councilmember Wilson indicated he was satisfied with the language in Paragraph 2 in the draft ordinance.

Issue #3

Councilmember Wilson requested the language suggested by staff be strengthened to do more than only encourage visual access but ensure that it was incorporated into the design of a project and was a key element of the design review process. Councilmember Petso and Dawson agreed visual access for the public toward the water should be provided. It was the consensus of the Council (Council President Earling, and Councilmembers Marin, Orvis, and Plunkett) to proceed with the proposed language.

Issue #1

Councilmember Wilson advised there were adequate protections to allow for a landmark structure on both the MP1 and MP2 zones. It was the consensus of the Council that Item D (2) on page 4 to change “MP1” to “MP1 and MP2.”

Issue #4

Councilmember Petso noted the proposed change was to tie the additional height to development of the multimodal facility. She noted the purpose of height limits was view protection, preserving the small town character of the City and protecting the overall scale. There were ample indications in the Downtown Waterfront Plan that a height limit was the intent. She read from the Downtown Waterfront Plan “*preserve the small town character,*” “*opportunities for new development and redevelopment which reinforce Edmonds attractive, small town pedestrian character,*” “*existing height limits are an important part of this quality of life and remain in effect,*” “*heights should be restricted to prohibit tower or massive block like development.*” She pointed out there was no need to allow 45 foot buildings in the shadow of the multimodal and was concerned that if approved, the Port may request the same in the future. She suggested reducing the height limit in Issue #4 to the height limit adopted in Issue #7.

Councilmember Dawson agreed, noting a conditional use could be permitted for a structure that was integrated with the multimodal facility. She shared Councilmember Petso’s concern that the Port would also request a 45 foot height limit. She supported a height limit for MP2 the same as MP1 with the possible exception of a conditional use permit for a structure tied to the multimodal facility. Councilmember Wilson noted the conditional use permit process allowed an opportunity to review on a case-by-case basis to ensure there were adequate protections. With regard to the suggestion that the Port would seek the same height limit, Councilmember Wilson noted the Port was under separate guidelines issued by the Shoreline Management Act which included guidelines regarding height.

Council President Earling noted that although he appreciated Councilmember Petso’s comments regarding small town character, consideration must also be given to economic reality. He noted at some time in the future, property would not continue to be developed if all buildings were kept low rise. This was an excellent opportunity to consider the 45-foot height limit for buildings that would be in the shadow of the multimodal facility. It was the consensus of the Council (Council President Earling, Councilmembers Marin, Plunkett and Councilmember Wilson) to proceed with the language suggested by staff.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER PLUNKETT, TO EXTEND DISCUSSION OF THIS ITEM FOR 15 MINUTES. MOTION CARRIED UNANIMOUSLY.

Issue #7

Councilmember Petso commented the existing height limit was 30 feet which she could be satisfied with. The recommended height in the Downtown Waterfront Plan was 35 feet plus a few more feet for a pitched roof and measured from every point on the foundation of the building. She noted this would provide for more roof variety than the 5-foot roof modulation that tended to result in flat roofs with a castle-like effect in downtown Edmonds. She noted the proposed height increase was inconsistent with the Downtown Waterfront Plan which specifically recommended 35 feet. If the Downtown Waterfront Plan was not followed, she recommended using the 25 foot height limit due to the potential for 100% multifamily use and the height limit in a multifamily zone was 25 feet. She found it unacceptable to “call it mixed use” to get it into a height category to go up to 35 feet. She agreed with the suggestion to trade additional height for additional public space on the property. She summarized she did not want 35 feet plus 5 feet with slope average because it would result in 45-50 foot buildings on the site. She referred to staff and the applicant’s indication that the Downtown Waterfront Plan did not apply to this site or did not apply to the upland portion

of the site. She referred to a chapter in the Downtown Waterfront Plan that addressed the multimodal facility and a chapter that addressed the Point Edwards bluffs. She noted one of the declarations on height specifically addressed the bluff area, *“height should be restricted to prohibit tower or massive block-like development”*.

Mayor Haakenson asked staff to address Councilmember Petso’s assertion that the buildings would be 45-50 feet. Mr. Chave answered the proposed height limit was 35 feet plus 5 feet for a modulated roof. As calculated from average grade, the height would be 35 feet plus 5 feet.

Councilmember Orvis indicated he was comfortable with the proposed language in the ordinance. The existing zone had two height limits, 30 feet for structures and 48 feet for petroleum tanks. If 48 feet was used as a baseline, the ordinance actually lowered heights. He acknowledged if the existing 30-foot height limit was used as a baseline, the proposal could be seen as an increase in heights. He was comfortable using 48 feet as the baseline because the tanks were the most significant feature on the site and if the zone was approved, the 48-foot rusty storage tanks would be replaced with something shorter.

Councilmember Marin agreed with staff’s recommendation to make no change in the proposed heights.

Councilmember Dawson disagreed that the proposed height could be characterized as a reduction in height. The existing buildings have a 30-foot height limit and 35 feet is taller than that. She noted the only reason the 48 foot height limit was in place for the tanks was because the tanks were in place before the height limit was established. She acknowledged there were constraints on the property but felt the ability to do lot averaging and separate buildings to step up the hillside were sufficient to address the restrictions of the site. She noted under normal circumstances there would be a 25-foot height limit because the intent was to construct condominiums on the upper yard and elsewhere condominiums were limited to a 25-foot height limit. She noted the reason often mentioned that the City’s height restrictions were too low and limited the ability to put retail on the ground floor did not apply in this instance as retail would not be required on the ground floor. The only reason to allow a 35-foot height restriction was to allow more condominiums on the site. She concluded it was not necessary to raise the height limit to 35 feet and found 30 feet more than sufficient.

Councilmember Petso advised she would find any of the following acceptable: a 30-foot height limit acceptable, zoning the property multifamily with a 25-foot plus 5 foot height limit, or the recommendation in the Downtown Waterfront Plan, but she was not satisfied with staff’s recommendation.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO CHANGE THE ORDINANCE TO A 30 FOOT HEIGHT LIMIT.

COUNCIL PRESIDENT EARLING MOVED, SECONDED BY COUNCILMEMBER WILSON, TO REOPEN THE PUBLIC HEARING SO THAT HE COULD HAVE A QUESTION ANSWERED BY UNOCAL. MOTION CARRIED UNANIMOUSLY.

Council President Earling recalled the David Evans and Associates representative indicated Issues 7 and 8 would be deal breakers. **Brent Carson representing Unocal** explained the issue of height was carefully reviewed by Unocal prior to making a proposal to the City, looking at the 35 feet plus 5 feet language in the Downtown Waterfront Plan. Due to the enormous cost of cleanup and development of this site, it was clear the 35 feet plus 5 feet language from the Downtown Waterfront Plan was necessary to achieve the type of development that would support the economic return as well as the objectives the City was seeking in open space. He noted the Master Plan showed and included language regarding significant amounts of open space, not only in the undevelopable hillside but also within the development. Therefore, in order to achieve the open space the City desires and to achieve the visual access purposes, greater height would be necessary to achieve the density necessary to support development costs and to provide open space. He noted that as a result of negotiations with a potential purchaser, he knew this was a very significant issue to them.

Council President Earling asked the number of stories the 35 feet plus 5 feet height limit would create. Mr. Carson answered if the typical residential story was 10+ feet, he envisioned some units being three stories on one side of the building and others 2-2½ stories. Council President Earling asked how a parking garage would be provided. Mr. Carson answered if the parking garage was below grade, the top of the parking structure would be where the building height would be measured from. Council President Earling commented that was similar to zoning in the downtown core – two stories with garage underneath. Mr. Carson commented what could be achieved on a flat downtown site differed from what could be achieved on the hillside due to the significant topographical constraints coupled with the City’s desire for significant open space.

Mayor Haakenson again closed the public hearing.

UPON ROLL CALL, MOTION FAILED (3-4) COUNCIL PRESIDENT EARLING, COUNCILMEMBERS DAWSON AND PETSO IN FAVOR, AND COUNCILMEMBERS PLUNKETT, WILSON, ORVIS, AND MARIN OPPOSED.

Issue #8

Councilmember Petso explained this issue was her proposal to require a mix of uses on the upper yard portion of the property. She noted both staff and the applicant appeared to believe that the chapter describing how the upper yard was to be developed applied to the entire property; she disagreed, noting there was a separate chapter for the multimodal facility. The chapter that described how the upper yard should be developed included comments such as “*encourage a mix of compatible uses*” (page 43), “*example of site plan shown on the following page illustrates one option consisting of a conference center, multifamily housing, conference center includes a 500-100 bed inn, meeting room, banquet room, recreation facilities, and a restaurant*” (page 45), and “*encourage a mix of compatible uses and encourage public or service oriented uses.*” Councilmember Petso noted it was clear from reading the Downtown Waterfront Plan that the intent

was to make the property something special for the people of Edmonds. Although she fully understood that expensive condominiums would make a nice contribution to the City, the plan called for a mix of uses. She proposed the following language, “a mix of uses including a minimum of at least two public uses taking advantage of the access, setting, and views afforded by the site.” She noted the mixture of uses could include condominiums, a Starbucks with a patio, restaurant, viewpoint, park, etc.

COUNCILMEMBER DAWSON MOVED, SECONDED BY COUNCIL PRESIDENT EARLING, TO EXTEND DISCUSSION OF THIS ITEM FOR FIVE MINUTES. MOTION CARRIED UNANIMOUSLY.

Councilmember Marin commented he was hesitant to require public views and would not support the proposed change.

Councilmember Wilson referred to the language proposed by Councilmember Petso and asked how “public use” would be defined. Councilmember Petso answered her intent was a park, restaurant, open space, etc.; something open to the public versus leased or owned property.

Councilmember Dawson wanted to ensure that whatever was developed on the site, there would be open space and the public would be allowed to have access to the site. Without a requirement for that in the ordinance, she noted it may not be provided.

COUNCILMEMBER PETSO MOVED, SECONDED BY COUNCILMEMBER DAWSON, TO REQUEST STAFF DRAFT A MIXED USE REQUIREMENT FOR THE MP1 AND MP2 ZONES.

UPON ROLL CALL, MOTION FAILED (3-4), COUNCILMEMBERS PETSO AND DAWSON AND COUNCIL PRESIDENT EARLING IN FAVOR, AND COUNCILMEMBERS ORVIS, WILSON, MARIN, AND PLUNKETT OPPOSED.

Council President Earling indicated he would support the main motion. Although there could be some argument to vote against the motion because he did not get his way about two issues, he said, “perfect is the enemy of good.” He explained the proposed project would enhance the community and the City needed to move forward with making the proposed changes. He clarified that after hearing the discussion at the last hearing, King County did not have any standing in this issue.

Councilmember Petso noted if the action the Council took was not consistent with the Comprehensive Plan, the City opened itself to challenges. In her opinion, the proposal was not consistent with the Comprehensive Plan in heights or mix of uses. She planned to vote against the ordinance.

Councilmember Wilson noted after reviewing the volumes of material provided by King County at the last public hearing, he found there was no relationship between the information King County submitted and the proposal the Council was considering tonight. Regarding consistency with the Comprehensive Plan, he noted there was considerable basis to support the proposed action. He noted the Comprehensive Plan was intended to provide direction and not specify a course of action. The Comprehensive Plan provided a wide range of heights including no limitation whatsoever for a landmark structure. He summarized the proposed language provided more definition and narrowed the focus to be consistent with the intent and purpose of the Comprehensive Plan.

Councilmember Dawson pointed out a great deal of thought had gone into this issue, belying King County's contention that the Council would rubber stamp something to preclude Brightwater. She noted this was an issue of what was best for the City. She planned to vote against the ordinance due to the importance of protecting public access to the site and appropriate height restrictions.

Councilmember Orvis indicated he would support the ordinance.

MAIN MOTION CARRIED (5-2), COUNCILMEMBERS PETSO AND DAWSON OPPOSED.

Mayor Haakenson declared a brief recess.

5. **CONTINUED CLOSED RECORD REVIEW OF THE PLANNING BOARD RECOMMENDATION TO APPROVE A PROPOSED CONTRACT REZONE OF PROPERTY LOCATED AT POINT EDWARDS (11720 UNOCO ROAD) TO MP1 AND MP2 TOGETHER WITH APPROVAL OF A MASTER PLAN TO GOVERN FUTURE DEVELOPMENT OF THE SITE. (Applicant: Unocal / File No. R-2002-38)**

Mr. Snyder advised he previously filed a motion requesting materials submitted by King County not be included as part of the record because they were submitted after the public hearing was closed on May 8. He noted the record contained copies of the Planning Board meeting minutes of May 8 and May 22, 2002, as well as an affidavit from Mr. Chave. He suggested the Chair make a procedural ruling regarding who were parties of record and who may submit materials. He also suggested Mr. Washburn be allowed to speak prior to the ruling.

Mr. Snyder noted materials were also submitted by Woodway that appeared to address both applications. However, Woodway did not appear or provide written comments prior to the closure of the public hearing on May 8, 2002.

Tayloe Washburn, King County, 1111 – 3rd Avenue, Seattle, indicated he would reiterate the comments he made previously.

City Attorney Terry McCarthy advised he reviewed Mr. Snyder's letter and agreed only evidence submitted and parties of record as of May 8, 2002, were before the Council tonight.

Mayor Haakenson determined King County was not a party of record and he recommended the Council not consider the materials submitted by King County or anyone else subsequent to May 8, 2002, in the closed record meeting. Mayor Haakenson explained this was a quasi judicial hearing and invited Councilmembers to disclose any conflicts of interest of ex-parte communication. There were no disclosures made. Mayor Haakenson asked whether any parties of record in the audience objected to the participation of any Councilmember. There were no objections voiced and Mayor Haakenson advised all Councilmembers would participate in the deliberation.

Planning Manager Rob Chave advised this item was a contract rezone that would apply the MP1 and MP2 zones to the Unocal property, to the upper and lower yards respectively. He explained the contract was a Master Plan governing development in the MP1 and MP2 zones. As a contract rezone, any proposed amendments/changes to the contract must be voluntarily given by the applicant. He advised the site was located at 11720 Unoco Road, the Point Edwards site. The Planning Board recommendation was for approval. Verbatim minutes from the Planning Board were included in the Council packet.

Michael Davolio, Senior Planner, David Evans and Associates, Tacoma, advised they had prepared a Master Plan they believed was consistent with the City's Comprehensive Plan and the Downtown Waterfront Plan. Their proposal presented two alternative development strategies for the site. The preferred strategy included the multimodal center that had been anticipated for the site. He referred to a map on page 10 of the Master Plan that identified the specific boundaries of the MP1 and MP2 zone. He noted these areas were currently zoned Waterfront Commercial; however, because Waterfront Commercial required water-related/water-dependent uses and this site no longer has water access, there was little that could be done on the site under the current zoning.

Mr. Davolio referred to page 11 of the Master Plan, a visual representation of potential uses of the site. He noted the realignment of SR104 covered a portion of each zone. The primary use for the upper yard, MP1 zone, would be multifamily residential and a second use for that area was open space. Uses in the lower yard include the multimodal facility, mixed use development, and a significant amount of open space to protect the marsh. He anticipated significant opportunities to provide public access to the marsh possibly including trails. Some changes would be necessary due to the height restrictions voted on earlier and they were amenable to voluntarily making those specific changes. He noted the contract rezone also addresses phasing. He summarized they had carefully considered the City's requirements for a Master Plan, acknowledging this was the first Master Plan in the City that was tied specifically to private property. He concluded everything

in the Master Plan was taken from the Comprehensive Plan, Downtown Waterfront Plan, or discussions with staff regarding interpretation of those documents.

Councilmember Petso referred to page 39 of the packet, noting one of the requirements of Master Plan development was the special purpose and need for the facility. She questioned whether Edmonds had a need for more multifamily, view housing. Mr. Davolio answered the Master Plan as presented should be looked at in its entirety rather than in terms of any specific use or the documented need for a specific use. Regarding the need for housing in the community, he noted there could be arguments in favor of more housing. Specifically, there was a need to provide a reasonable use for the property which does not currently exist. Councilmember Petso pointed out the Commercial Waterfront zone allowed pedestrian oriented retail, office, local public facilities, and parks.

Councilmember Petso referred to page 14, noting there were five acres devoted to mixed use and questioned the size of the total site. Mr. Davolio answered the entire site was approximately 40 acres. He pointed out the multimodal facility, multifamily housing, and open space were part of the mix of uses.

Councilmember Petso referred to page 14 and the statement, “given the size of the area set aside for mixed use development (less than five acres)” she questioned how the multifamily and multimodal were included in the mix of uses. Mr. Davolio answered that comment taken in the context was correct for that portion of the site.

Councilmember Petso asked whether there was any open space in the Master Plan that was not already required by ordinance for the protection of steep slopes or wetland. Mr. Davolio answered yes, primarily in the MP2 zone (page 17). He referred to page 12 of the Master Plan that states, “*in addition to the designated open space in the upper yard, smaller pockets of open space would be integrated into the site design. Where feasible, public open spaces would be connected with pedestrian pathways and may incorporate sidewalks on Pine Street.*” He stated the map illustrated specific areas devoted to open space, noting consideration was being given to other open space areas within the multifamily residential area that would be integrated into the site plan. Those spaces were not shown on the plan in order to provide flexibility for design.

Councilmember Petso questioned the size of a “pocket” of open space. Mr. Davolio answered it would depend on the design.

Councilmember Petso referred to page 11, noting the only level open space that was not wetland was labeled SR 104 realignment/ferry access. Mr. Davolio pointed out the amount of open space would depend on the development of the multimodal facility. If the multimodal facility were constructed, Councilmember Petso asked whether there was any open space that was not required for steep slopes or wetlands other than the pockets. Mr. Davolio pointed out the open space on the west side was relatively flat. Councilmember Petso asked the approximate size of that area. Mr. Davolio estimated it to be ½ acre. He noted although there was only ½ acre on the upper yard, the lower yard had an abundance of open space.

Councilmember Petso questioned whether the public was allowed in wetland protection areas. Mr. Davolio answered yes.

Councilmember Orvis asked whether the flat area was accessible to the public. Mr. Davolio was not aware how it would be accessed. He assumed there would be access to that area and, if not, there would be access to a variety of other open spaces on the site.

Councilmember Orvis noted the overall site had a 45% lot coverage requirement and asked the lot coverage on the upper yard. Mr. Davolio answered the 45% lot coverage would apply separately to the upper yard and lower yard.

Councilmember Wilson referred to Figure 4 on page 11, asking whether the proposal included dedication of the SR104 right-of-way. Mr. Davolio answered space was retained for that alignment. Mr. Carson advised the alignment was shown to be consistent with the Comprehensive Plan and Downtown Waterfront Plan but there was no intent at this time to dedicate the right-of-way. Councilmember Wilson noted that because the property was shown as the right-of-way alignment it could not be used for other land uses. Mr. Carson agreed.

Councilmember Wilson asked how much land was set aside of the multimodal facility including the proposed right-of-way alignment. Mr. Davolio answered the right-of-way alignment was approximately 6.3 acres and the multimodal facility would occupy an additional 3.6 acres. Councilmember Wilson noted approximately 10 acres of the site was set aside for public use for potential future use as a multimodal facility.

Councilmember Wilson referred to the Deer Creek Hatchery property located at the southeast corner of the property and asked whether that property was located in a required buffer area or public open space. Mr. Davolio answered it was not part of the required buffer area at this time. The property is under lease by Unocal and he was not able to address the future of that property.

Councilmember Wilson asked whether open space was required to be flat. Mr. Davolio was not certain.

City Clerk Sandy Chase advised Mr. Davolio had 15 minutes remaining for rebuttal.

Mayor Haakenson opened the meeting to public testimony from parties of record. There were no parties of record present who wished to address the Council. Mayor Haakenson closed the public participation portion of the meeting.

In response to Councilmember Wilson's question regarding whether open space must be flat, Mr. Chave answered there was no discussion whether open space must be flat. He clarified the Master Plan was not a site specific development plan; that would come later as part of the Master Plan and development process. He noted that even if the Master Plan were approved, there would be design review, potentially a PRD, SEPA review, etc. He pointed out the difference between mixed use buildings and mixed use land use. He said the development scheme in the Master Plan included a mixture of uses throughout the project and the mixed use buildings were sited on the lower yard due to its proximity to the multimodal facility. The focus on the upper yard was a mixture of usable open space within the residential development as well as buffers on the outside edges. He noted the Master Plan identified exterior buffer areas but it was more difficult to illustrate at this level in the project the integrated open space that would occur with residential development.

Mr. Davolio extended his appreciation to staff who were very professional throughout the process and creative in assisting them in developing language that met the spirit and letter of the Comprehensive Plan.

Mayor Haakenson remanded the matter to Council for action.

Councilmember Plunkett noted the code established seven tests that must be met by an applicant to obtain a rezone, 1) consistency with the Comprehensive Plan, 2) consistency with the proposed zoning, 3) relationship of the proposed rezone to the existing land, 4) sufficient change in the character of the immediate area to justify the rezone, 5) the property must be economically and physically suitable, 6) the relative gain to public health and safety must be considered, and 7) the applicant must submit declarations regarding how their proposal meets the rezone criteria. After reading the documentation, he found the applicant met all these tests.

COUNCILMEMBER PLUNKETT MOVED, SECONDED BY COUNCILMEMBER MARIN, TO APPROVE THE RECOMMENDATION OF THE PLANNING BOARD AND DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE FOR APPROVAL ON THE NEXT AVAILABLE COUNCIL CONSENT AGENDA.

Using the criteria identified by Councilmember Plunkett, Councilmember Petso noted this proposal failed to meet several of the criteria as it was not consistent with the Comprehensive Plan with regard to height limits, mix of uses, considering special park opportunities at the Point Edwards site, creating a community gathering place, preserving small town character, preserving visual resources, utilize to best community potential, or investigate potential development. She noted no other potential development had been developed; this was the first proposal. Regarding whether the proposal was consistent with the purpose of the zoning ordinance, she noted the Council had just adopted a zoning ordinance that encouraged visual access to the water for the public from public spaces within the development. However, the plan showed no visual access and it was unknown whether open space areas shown or the pockets of open space would have any view. She summarized there was nothing in the plan that met Purpose E, "encourage visual access to the water for the public from public spaces within the development."

Regarding whether there had been sufficient change in the character of the immediate area or in City policy to justify the rezone, Councilmember Petso acknowledged this was met only if this property constituted the immediate area. With regard to relative gain to the public health, safety and welfare compared to the potential increase or decrease in the value to the property, Councilmember Petso noted the relative gain was the developer received million dollar condominiums, the public received no right-of-way, no open space not already required, and no view of the water. She concluded there was no gain in public safety, health or welfare from the proposals. She indicated she would vote against the motion because the proposal failed to meet at least three of the rezone criteria.

MOTION CARRIED (6-1), COUNCILMEMBER PETSO OPPOSED.

6. CABLE FRANCHISE TRANSFER FROM AT&T TO COMCAST CORPORATION

Community Services Director Stephen Clifton advised on March 4, 2002, the City received notification that AT&T Corporation planned to merge with Comcast Corporation, specifically merge the cable system into one corporation, AT&T Comcast. On March 12, 2002, staff advised the Finance Committee meeting of the intended merger and that the City Attorney would be working with AT&T and Comcast representatives with regard to the merger.

Mr. Clifton noted the proposed ordinance contained provisions that protected the City's interests such as:

- AT&T must comply with the existing City/Chambers Cable franchise
- The City is not waiving any rights to address past problems
- When it comes time for renewal, AT&T Comcast Corporation will have to come back to the City to negotiate a new agreement
- If the AT&T Comcast deal changes, they must come back to the City to negotiate a new agreement.

Mr. Clifton highlighted a correction to the ordinance: delete "(duplicates f)" and change "h." to "g." Mr. Clifton then introduced **Kathy Nelson, liaison between AT&T and City staff**, who was present to answer questions.

Councilmember Petso asked the effect this action would have on a customer's channel lineup. Ms. Nelson advised there would be no change.

City Attorney Scott Snyder explained when the application was received pursuant to FCC regulations, on behalf of Edmonds and a number of other clients, staff participated in a number of forums sponsored by the

City of Seattle regarding this transfer. He noted the list of reservation of rights was developed in conjunction with the City of Seattle and a variety of other municipalities to address inadvertent errors. He noted the original paragraph "g" in the ordinance was deleted following AT&T's provision of additional information at their request regarding the effect of the transfer. He noted this was basically an assumption of the terms of the franchise and should be transparent at the consumer level.

Mr. Clifton commended Ms. Nelson for her extreme helpfulness. He explained the Community Services Department fields complaints regarding AT&T cable operations which have decreased dramatically as compared to Chambers Cable who held the franchise agreement prior to AT&T. He noted having one liaison has proven very effective as Ms. Nelson personally follows up on any complaints. Mayor Haakenson noted AT&T accepted the obligation from Chambers Cable to provide video equipment included in the original franchise agreement with Chambers Cable and the City received \$57,000 to fund video equipment. He noted staff would be researching how to upgrade the video system.

Mayor Haakenson opened the public participation portion of this item. There were no members of the audience who wished to address the Council and Mayor Haakenson closed the public participation portion.

COUNCILMEMBER MARIN MOVED, SECONDED BY COUNCILMEMBER ORVIS, FOR APPROVAL OF ORDINANCE NO. 3403, APPROVING THE TRANSFER OF THE FRANCHISE FROM AT&T CORPORATION CABLE SYSTEM TO A NEWLY FORMED CORPORATION TO BE NAMED AT&T COMCAST CORPORATION. MOTION CARRIED UNANIMOUSLY. The ordinance approved is as follows:

AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, APPROVING THE CHANGE OF CONTROL OF TCI EDMONDS, LLC, (THE "FRANCHISEE") FROM AT&T CORP. TO AT&T COMCAST CORPORATION WITH CONDITIONS AND ESTABLISHING AN EFFECTIVE DATE.

7. **AUDIENCE COMMENTS**

There were no members of the public who wished to address the Council.

8. **MAYOR'S COMMENTS**

Mayor Haakenson had no report.

9. **COUNCIL COMMENTS**

Councilmember Plunkett expressed his pleasure with most of the Council's discussion, noting the Council's ability to have a robust, articulate and productive discussion on emotional issues.

With no further business, the Council meeting was adjourned at 10:40 p.m.