

EDMONDS CITY COUNCIL APPROVED MINUTES

February 5, 2013

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

ELECTED OFFICIALS PRESENT

Dave Earling, Mayor
Lora Petso, Council President
Strom Peterson, Councilmember
Frank Yamamoto, Councilmember
Joan Bloom, Councilmember
Kristiana Johnson, Councilmember
Adrienne Fraley-Monillas, Councilmember
Diane Buckshnis, Councilmember

STAFF PRESENT

Al Compaan, Police Chief
Stephen Clifton, Community Services/Economic
Development Director
Phil Williams, Public Works Director
Shawn Hunstock, Finance Director
Rob Chave, Acting Development Services Dir.
Jeff Taraday, City Attorney
Sandy Chase, City Clerk
Jana Spellman, Senior Executive Council Asst.
Jeannie Dines, Recorder

1. ROLL CALL

City Clerk Sandy Chase called the roll. All elected officials were present.

2. APPROVAL OF AGENDA

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCIL PRESIDENT PETSO, TO MOVE ITEM 6, AUDIENCE COMMENTS, TO ITEM 5 AND MOVE ITEM 5 TO ITEM 6.

Council President Petso commented typically Audience Comments follow the Consent Agenda, public hearings and any presentations or special announcements. Therefore she would be agreeable to moving Item 4 to Item 6B.

COUNCILMEMBER BLOOM WITHDREW HER MOTION WITH THE AGREEMENT OF THE SECOND.

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO MOVE ITEM 6, AUDIENCE COMMENTS, TO FOLLOW ITEM 3 AND RENUMBER THE REMAINING ITEMS.

Council President Petso preferred to move Item 4 to Item 6B.

For Councilmember Fraley-Monillas, Councilmember Bloom clarified her motion was for Audience Comments to follow the Approval of Consent Agenda Items and prior to Item 4. Councilmember Fraley-Monillas observed the public could not comment on the Harbor Square Master Plan outside the public hearing. City Attorney Jeff Taraday responded that would be his advice if it were a quasi-judicial matter; but in this case, it is not; it is a legislative matter. The Council has fully satisfied the public hearing requirements under GMA for the purposes of taking public comment on the Harbor Square Master Plan but there is no need to shield the Council from public comment because the Council can talk freely to

constituents off the record about the Harbor Square Master Plan. Public comment would not be considered a public hearing as it was not noticed as a public hearing but there is no legal harm in having public comment.

Councilmember Fraley-Monillas referred to the statement on the agenda regarding Audience Comments, *Regarding Matters not listed on the Agenda as Closed Record Review or as Public Hearings*, and relayed her understanding that the public could comment on the Harbor Square Master Plan because Item 4 is not a public hearing.

THE VOTE ON THE MOTION CARRIED UNANIMOUSLY.

3. APPROVAL OF CONSENT AGENDA ITEMS

Councilmember Bloom requested Item A be removed from the Consent Agenda. She referred to a statement on page 19, "It was the consensus of the Council to allow Mayor Earling to provide comment." She requested a verbatim transcript be prepared as she recalled Council President Petso asked for a head nod and she shook her head no.

Council President Petso suggested when the minutes are presented for approval again, they also include the verbatim transcript that was prepared regarding another issue in the minutes.

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCIL PRESIDENT PETSO, TO PULL ITEM A AND HAVE A VERBATIM TRANSCRIPT PREPARED AS REQUESTED. MOTION CARRIED (6-1), COUNCILMEMBER YAMAMOTO VOTING NO.

COUNCILMEMBER PETERSON MOVED, SECONDED BY COUNCIL PRESIDENT PETSO, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- B. APPROVAL OF CLAIM CHECKS #200254 THROUGH #200348 DATED JANUARY 31, 2013 FOR \$519,124.56.**
- C. ACKNOWLEDGE RECEIPT OF A CLAIM FOR DAMAGES FROM CHRISTOPHER QUERUBIN (AMOUNT UNDETERMINED).**

ITEM A: APPROVAL OF CITY COUNCIL MEETING MINUTES OF JANUARY 29, 2013

This item was removed from the Consent Agenda pending the preparation of verbatim transcripts.

4. AUDIENCE COMMENTS (previously Item 6)

Greg Toy, Edmonds, expressed dismay with the Council's process at its last meeting. He pointed out Mayor Earling and Councilmembers Peterson and Yamamoto's comments were directed at the efforts put into the Port's proposed Harbor Square Master Plan rather than the merits of the plan. The process derailed Council President Petso's motion which he felt was an inappropriate way to handle the matter. With regard to the Harbor Square Master Plan, he explained he has a construction/development background and has assisted large organizations such as the Port of Seattle, Port of Tacoma, Boeing, and the University of Washington, in the development of large capital projects. The process the Port of Edmonds is undertaking to marry their proposal with the City's Comprehensive Plan is inappropriate. It is not correct to include the parameters of development as established by the Harbor Square Master Plan in the Comprehensive Plan prior to resolving the issues that have been raised. He feared a developer would base their plans on the parameters established for development, only to have the Council reject their proposal by not allowing 45 or 55 feet. He recommended the issues related to height limits, mitigation of water problems, and wetland issues be resolved before the Master Plan is incorporated into the

Comprehensive Plan. He encouraged the Council to approve Council President Petso's motion and start again.

Donna Breske, Snohomish, reported the subject of extending the 7-year expiration date for short plats is on the agenda for February 11 committee meetings. RCW 58.17.140 states preliminary plats must be submitted to the legislative body of the city, town or county for approval within 7 years of the date of preliminary plat approval. This applies only to preliminary plats; it does not apply to preliminary short plats. In Edmonds, short plats are 4 lots or less and plats, also referred to as formal plats, are 5 lots or more. State law only requires the City to allow 7 years for the expiration of formal plats. The time frame for the expiration of short plats is not regulated by State law; individual jurisdictions are allowed to define the time. At present ECDC 20.75.100 states a short plat will expire 5 years after the date of preliminary approval. Due to the recent economic downturn, meeting the 5 year timeframe is a challenge and sometimes not attainable. Recognizing the State increased the timeframe to 7 years for formal plats, Snohomish County increased their timeframe for short plats. The concept of proactively revising the code because it is allowed is a paradigm shift from the current operating norm of City staff; at present City staff concludes there is nothing in State law that requires any relief be offered to investors whose preliminary short plat applications will expire under the current 5 year time frame. She asked Council to take action to revise the code to allow a 7 year timeframe for the expiration of preliminary short plats.

Al Rutledge, Edmonds, suggested Councilmembers meet with Ms. Breske prior to a Council meeting. Next, he reported a new house is being built next to his home on Lake Ballinger Way. He urged caution when driving in the area because trucks often park on the roadway. Mail delivery has also been interrupted twice because trucks blocked the mailbox. He relayed the people building the house told him they had two meetings scheduled with City staff and staff was late both times.

Maggie Fimia, Edmonds, explained new to this issue, she is not new to regional and local governments' struggle to wisely implement the GMA and Comprehensive Plans, having served 14 years on regional and local government councils. The Harbor Square Master Plan Exhibit A which describes the proposal is mixed with existing Edmonds City Council goals, policies and strategies making it difficult to see what is in the plan, what is in existing land use and what could happen should the Port attract a developer to develop Harbor Square. She offered the following analysis:

1. The language in the proposed Harbor Square Master Plan overlay is not inconsistent with the current Comprehensive Plan and GMA. If the Council does not adopt the Master Plan in some form, she suggested amendments be proposed to the Comprehensive Plan.
2. In order to implement many of the Comprehensive Plan goals related to the marsh, keeping Edmonds affordable, providing transit oriented development, social and economic sustainability, it is necessary to compromise on height limits and density by a small amount and only in a small area on the site. That seems like a reasonable tradeoff.
3. Slippery slopes; Council can include language that seismic studies will be done to determine suitability of any specific development proposals. Ten to twenty extra feet in this area does not mean it applies to any other area in the Downtown Activity Center.
4. Trust goes both ways; if requirements are too onerous, too unpredictable with too many loops back to the beginning with looming unpredictability, no reputable developer will be interested.
5. Be careful what you wish for; she has been involved in land use battles where reasonable and responsible development was proposed but opposed by a few adamant neighbors and the end result was worse development than originally proposed.

Ms. Fimia urged the City and Port to continue to work together, determine where the problems are, resolve the problems, adopt an ordinance and move forward.

Richard Stuart, Edmonds, encouraged Council to approve Council President Petso's motion to go back to the drawing board. There are good elements in the proposal but he was unsure it was the best use of an absolutely irreplaceable resource. If the ordinance is adopted, height limits extended and the code revised

to conform, he questioned whether the height limits could be restricted to this site. He feared an argument could be made that if height limits were extended on the Port property, it should be allowed in other areas of the City. He corrected a misstatement he made on My Edmonds News, that the Fire Department would not have the equipment to deal with high rise buildings; he just learned they do have the equipment. He asked for reassurance that if the Comprehensive Plan is changed and the code changed to raise height limits, can it be contained to a single area.

Darlene Stern, Edmonds, thanked Mayor Earling for his objectivity in conducting the Council meeting last week. She also thanked City Attorney Jeff Taraday who tried to help the Council understand they are voting on a vision; a vision that is not inflexible but adaptable. She requested Council continue the process of discussion and review of the Harbor Square Master Plan as an amendment to the Comprehensive Plan. Many who cannot be here tonight believe this is a good plan for the City's future and that it would be in the best interest of the community's long term economic health for the Council to take the time to review the new information that has been provided. The City needs a forward-looking vision to prepare for the future. The prevailing indicators of how and where people work is proving that the ability to live close to transportation as well as cultural and waterfront amenities is the direction the next generation is headed. For example, the apartment complex on SR 104 was filled immediately, demonstrating the need is obvious and now. This is an opportunity to move forward with a healthy vision for future generations. This plan takes a step in that direction.

Katherine Gold, Edmonds, commented it would be a significant compromise to allow the Port to build a high density Harbor Square plan within the preexisting 35 foot height limit. The Port knew the height limit was 35 feet in Edmonds and should be required to work within the restrictions that all others are required to abide by. If the Harbor Square Master Plan does not work economically at 35 feet, it is not a plan for Edmonds, as anyone else proposing that plan would be informed. It is especially unfortunate that the Port, who is supposed to protect and beautify the waterfront of Edmonds, is trying to force through a plan to destroy the low level architectural limits.

Jim England, Edmonds, said he is an average Edmonds citizen, not affiliated with any developer or builder, attorney or lobbyist. He asked that the Council protect what makes Edmonds a special place to visit and live and maintain the downtown characteristics as they are. Building these monoliths will allow concepts that will raise the height limit which he found unacceptable. Changes to zoning and height limits in Harbor Square should not be permitted. Buildings would destroy the view and charm of the City, especially the downtown corridor. The Council needs to send a message to developers that they want to maintain the charm and characteristics of the City as they currently exist. He suggested high-rises could be constructed at Westgate and open spaces maintained on the waterfront.

Jenny Antilla, Edmonds, referred to the lack of Robert's Rules last week. Councilmembers were tired and the matter was getting confusing and no one knew what was happening when the Mayor asked to speak. She was uncertain whether the Mayor was supposed to speak or not but it did not seem like he should have. When Mayor Earling spoke he sounded like he supported the Port, expressing frustration with the way the Council was dealing with the issue. She suggested in the future the Council determine whether under Robert's Rules the Mayor is allowed to speak.

Roger Hertrich, Edmonds, asserted the Port's proposal was the most presumptuous or arrogant he has seen; for the Port to think the City is ready for 55 feet. The Council had the opportunity to go down in history as canceling the biggest threat in years to the small town, low rise character of Edmonds. He noted Councilmember Yamamoto apparently had not lived in Edmonds long enough because he did not think the heights were a significant issue. He recalled during their presentation the Port indicated they were not interested in any changes or negotiations. He suggested discussing at a Port meeting what to do next. With regard to the 4th finding for approval of a Comprehensive Plan amendment that was not discussed at the Planning Board, he suggested the Council vote individually on the findings and providing their

reasoning, anticipating the Council could not provide any reasons for the 4th finding. He agreed with previous comments regarding the Mayor's behavior at last week's meeting.

Ron Wambolt, Edmonds, stated he was particularly disappointed in Council President Petso agreeing to change the order of the agenda because it was inconsistent with her insistence at the Council retreat that audience comments occur precisely at the time indicated on the agenda. He summarized changing the time of audience comments is a disservice to people who may want to speak on other topics who arrive at the meeting later. To Mr. Toy's comment that a developer will develop his plans on unrealistic assumptions if the Master Plan is incorporated into the Comprehensive Plan, he pointed out any rational developer would wait until the property was rezoned. To those that say this is not the best use for the property and ask why the Port has not submitted other options such as a market, he pointed out the Port is not a benevolent organization; they have to meet rational financial objectives. Although a market might be a good application there, it would require the City to buy the property for \$10-15 million and develop it. He doubted many citizens would support a tax increase to make that possible. He expressed support for the Council taking action to approve the ordinance to amend the Comprehensive Plan.

Victor Eskenazi, Edmonds, (Esperance), expressed his sympathies to everyone that had been suffering through the Port's efforts the past few years. He also sympathized with the Port representatives who have put time and effort into developing and submitting a Master Plan they felt was the best possible plan and now encounter opposition. He was not pro-development, citing Los Angeles and Seattle in the mid-80s, and South Lake Union as examples of what development does. Regardless of what development occurs at Harbor Square, he pointed out additional people and cars would impact the infrastructure, traffic, air quality, etc. He summarized if the property is that nice, exceptions should not need to be made to the rules; developers could develop it under the current rules. He suggested expanding the marsh.

Mike Schindler, Edmonds, CEO, Operation Military Families, encouraged the Council to consider the Harbor Square Master Plan. In order for any project or city to remain solvent, it needs to create demand. There is low demand and a declining budget in Edmonds. He proposed the Council present the financial data to support/justify a 35 foot building. It was his understanding a 35-foot building height did not make sense to a developer because of the spread. He encouraged Council to amend the current plan and move forward, otherwise talent would not be attracted to the city which will result in an insolvent city. The average age in Edmonds is 46; companies like his need to attract young 20-somethings to remain relevant. He encouraged the Council to consider the Master Plan before them.

Dave Page, Edmonds, observed a preponderance of people do not want 55-foot building heights. The Port was very presumptuous in proposing this plan. He supports development but feels the proposed Harbor Square Master Plan was a disaster. He explained citizens have a choice, to stop growing and keep low rise buildings in Edmonds requires funding the City with their tax dollars. If citizens want that, they need to vote the City enough money to operate. There are 18,500 residences in Edmonds; increasing everyone's taxes \$200/year via a special levy would generate \$3.8 million for the City. With that money, the City could remain the way residents want it, low rise buildings. If residents do not support buildings at Harbor Square or other places that will support the City, they need to support a special levy. He summarized all the Mayor, Council and Port want is enough money to run the City.

5. **CONTINUED DELIBERATION AND POTENTIAL ACTION ON THE PLANNING BOARD RECOMMENDATION TO APPROVE THE PORT OF EDMONDS REQUEST TO INCORPORATE THE PORT'S HARBOR SQUARE MASTER PLAN INTO THE CITY'S COMPREHENSIVE PLAN (previously Item 4).**

At Mayor Earling's request, City Attorney Jeff Taraday described the procedures. He explained the motion on the floor is Council President Petso's motion to deny the Harbor Square Master Plan Comprehensive Plan amendment. There was some confusion last week; many Councilmembers believed

they were voting to deny it last week, but they were actually voting on Council President Petso's motion to call the question. A motion to call the question must be seconded and voted on and requires a majority plus one to pass. The purpose of that motion is to end debate. By defeating the motion to call the question, the Council voted not to end debate on the motion on the floor (to deny the Harbor Square Master Plan Comprehensive Plan amendment). The Council can now continue speaking to the motion.

Councilmember Buckshnis commented Councilmembers have received many calls and comments during the past week. After reading three other cities' Comprehensive Plans, she concluded the Harbor Square Master Plan is too specific and she would not support it in its current form. She asked the next steps if the Council voted down the motion. Mr. Taraday explained an affirmative vote on the motion is to deny the Comprehensive Plan amendment. In this instance, yes means no. If the City Council denies the Comprehensive Plan amendment, that is a final action on the application for a Comprehensive Plan amendment and the process in Chapter 20.00 comes to an end. The process can start again in two ways, 1) by someone, like the Port, submitting an application, or 2) upon direction of the Council. In either scenario, it goes through the entire process again, including public hearings before the Planning Board and City Council. He clarified there is no way to skip the Planning Board process if the Council denies the Comprehensive Plan amendment and that will take more time than amending the proposed Master Plan.

Councilmember Buckshnis commented if she wanted to amend the plan (such as not allow residential, 35-foot base height, Shoreline Master Plan buffers) the Port was no longer in the driver's seat, the City Council was. Mr. Taraday answered yes; any amendments the Council wants to make to the Master Plan are not negotiated with the Port. The Council's direction would be incorporated into the Master Plan by staff and him and a modified Master Plan would be presented to the Council. If the Council was still not satisfied with the Plan, further direction could be provided to staff.

Councilmember Buckshnis asked whether a public hearing would be required if the Council proposed amendments to the Harbor Square Master Plan. Mr. Taraday answered if the amendments are significant, it would be appropriate to have another public hearing at the time it is presented to the City Council. Councilmember Buckshnis observed the Council could propose amendments but the Council did not need to vote on them tonight. Mr. Taraday agreed.

Councilmember Johnson spoke against the motion to deny the Harbor Square Master Plan because, 1) voting for the motion will end the process, 2) this is the beginning of the process, and 3) this is the time to make changes to the Comprehensive Plan. The Council can take a very minimal approach; at the very least change the land use designation to allow open space expansion and to allow for multi-family housing. She has attended all the Planning Board meetings and public hearings and the City Council has had three public hearings and Councilmembers have received numerous emails, telephone calls and conversations regarding the proposal, yet have only discussed it for a short time. She suggested the Council direct the Mayor to ask staff to summarize all the issues, analyze the data, and work with the Council to continue the discussion regarding the Harbor Square Master Plan. At the very least, she wanted each Councilmember to have the opportunity to have their say, identify concerns and express opinions. She urged Councilmembers to vote against the motion to deny the Harbor Square Master Plan outright.

Councilmember Peterson referred to Mr. Taraday's statement that yes means no, pointing out that no does not automatically mean yes. Voting no on the motion does not mean a Councilmember supports everything in the proposed Master Plan but provides the opportunity to consider the comment provided and work with staff and add Councilmembers' own ideas to the plan. Once the Master Plan was presented to the City, the Port was no longer in the driver's seat. The Port has their opinions and has argued for what they believe. Public comment has indicated there are aspects of the plan that people like. He clarified his voting against the motion to deny the Master Plan did not mean he supported everything the Port included in the Master Plan. He supported the Port's process and the City's process. There has been a

great deal of comment from some very smart people who raised issues well worth looking into. He agreed with Councilmembers Buckshnis and Johnson that the Council could have City staff consider the input from the public and feedback from Councilmembers and return with a Plan B.

Council President Petso explained if the motion fails, she will assist with making changes to the proposed Master Plan. She was hopeful the motion would be approved. One of her biggest concerns was the short-circuiting of the Planning Board and what she perceived as possibly a deliberate effort not to send this back to the Planning Board. It was her understanding that if the Council approved her motion, whatever came next would go through the Planning Board.

Council President Petso explained the Planning Board was not permitted to make a critical finding that the Council has been asked to make; the finding that the parcel is physically suitable for the requested land use, including the provision of utilities and that there is an absence of physical constraints. She observed some of those issues were raised at the Planning Board such as drainage, the marsh, whether residential was appropriate on the site, and the explanation given, correctly, was that the Planning Board was not being asked to make that finding. Now that the Master Plan is before the Council, the Council is being asked to make that finding. If the process begins again, there will have been several more work sessions on the Shoreline Master Program and public input on proposed amendments. She summarized it was easier and clearer for everyone, regardless of what side they are on, to start over. She found it difficult to allocate staff time to an effort to raise building heights on the site, fearing that would be the perception if the Port is no longer in control of the Master Plan.

Councilmember Bloom voiced strong opposition to the Port's proposal. She explained the Port's proposal did not begin three years ago; it began over six years ago, initiated via meetings of the property owners, the Port, ESC Associates at the time and the former Skippers property; the then-Mayor; and Mr. Wambolt who met privately to discuss how to develop the property. When the Alliance of Citizens for Edmonds (ACE) learned of the meetings and challenged them, the Port formed the Citizen Group of 33; she was one of the members. The Citizen Group of 33 met 3-4 times in the summer of 2007 to discuss options; a lot of creative ideas were developed during that process. Five consultants were hired and the result was proposals for 4-6 stories, 6-8 stories and 8-10 stories. The Port held meetings for citizens to view the drawings; according to reports in the *Edmonds Beacon*, nearly every citizen said "do not change the code." The opinion of Edmonds citizens continues today; they do not want the code changed.

Councilmember Bloom pointed out heights are not the only issue; adding residential uses is also a concern. With regard to the seismic hazard zone, she relayed the City's code states that in geologically hazardous areas, a seismic hazard area, the following activities are allowed within the seismic hazard area without a geotech study: construction of new buildings with less than 2500 square feet of floor area or roof area whichever is greater and which are not residential structures or used as places of employment or public assembly, additions to existing single story residences that are 250 square feet or less and installation of fences. She summarized without a critical areas study, the City's code states residences cannot be allowed on a seismic hazard zone.

Councilmember Bloom explained two weeks ago Councilmember Buckshnis, Port Executive Director Bob McChesney, Senior Planner Kernen Lien, Port Commissioner Jim Orvis and she met to discuss issues related to residences on a seismic hazard zone. At that time she asked if the Port was aware the property was on a seismic hazard zone and that it limited the uses to 2500 square feet and not to include employment or places of public assembly or residences. She recalled Mr. McChesney's response was he had read her post in My Edmonds News. She asked whether that was how the Port learned of that restriction. **Port Executive Director Bob McChesney** answered that was when he was first made aware of that specific site condition, when he read Councilmember Bloom's post on My Edmonds News in response to Chris Keuss's posting.

Councilmember Bloom asked Mr. Lien his response during that meeting to her question why the Planning Board was not informed of this restriction, that a geo tech study had to be done in advance of approving residences on the property. Mr. Lien recalled he said liquefaction hazard areas can be built on; they exist throughout Washington State and have been developed on. Councilmember Bloom recalled Mr. Lien said he did not present it to the Planning Board. Mr. Lien agreed he said that but has since reviewed the Planning Board minutes; the August 22, 2012 minutes include drainage, flooding issues at Harbor Square and Dayton, soil conditions and liquefaction hazard. There were no details regarding liquefaction but it was brought to the Planning Board. Councilmember Bloom relayed a Planning Board Member told her they did not recall that an issue related to residences was raised. She summarized this was not presented to the Planning Board and it was not fully explained to them that a geotech study was required.

Councilmember Yamamoto raised a point of order, suggesting Councilmembers stick to the facts rather than be accusatory. He suggested Councilmembers' comments be to the point. Councilmember Bloom responded this was definitely to the point.

Mayor Earling sought advice from Mr. Taraday regarding the process, observing it had appeared Councilmembers were making final statements in preparation for a vote. Mr. Taraday advised the chair rules on all points of order; the chair's ruling is subject to appeal by the Council. The Council's procedural rules do not specifically address when a speaker is speaking out of order. It is up to the chair to determine whether the speaker is speaking to the motion. Mayor Earling relayed it was his impression Councilmembers were in the process of stating closing arguments. He ruled to sustain Councilmember Yamamoto's objection.

Councilmember Fraley-Monillas asked what part of Councilmember Bloom's statement was being ruled out of order. Mayor Earling answered he had not heard a closing argument in Councilmember Bloom's statements; it had become a question and answer period. Councilmember Fraley-Monillas asked if Councilmember Bloom could continue without asking questions of staff. Mayor Earling answered yes.

Councilmember Bloom explained this is important because the ordinance states there is no danger to public safety and it is only likely that a geotech study will be requested, yet the code states that a geotech study is required. Stating there is no danger to public safety means there is no safety issues related to seismic hazards, flooding, etc. The discussion seems to have gotten stuck on heights; however, the Port has asked to incorporate residential uses on the site in the Comprehensive Plan. The site is currently zoned General Commercial and it does not include residential uses. The contract rezone requested by the Port in 1980 specifically states no residences. If the Comprehensive Plan is changed to incorporate residential use, the zoning will also have to be changed.

Councilmember Bloom stated there is a close link between residences and height. The Port has stated it is only feasible to build 55 feet as it will only be financially viable to a developer if there is that much space for residences. There is no modification possible to the proposed Master Plan without allowing increased height. Edmonds citizens have stated they do not want increased height on the property. The Port's feasibility study left out serious issues; it is based on the bulk of the building and not the cost to make them earthquake safe, and it does not include the cost of parking or infrastructure. She did not see any way to make the proposal work and would vote to deny the Harbor Square Master Plan. She urged Councilmembers to deny the Master Plan, observing no compromise is possible because the Port wants residences which requires increased height.

Councilmember Buckshnis observed if the Council made amendments to the proposed Master Plan, the City Council was in the driver's seat. For example, she could make amendments that allow mixed use but no residential, 35 foot base height, incentive zoning for things like outdoor dining and less parking, current buffers respected, SMP, etc. She noted the process had nothing to do with code or zoning; it was simply moving it forward to staff to amend the Master Plan in accordance with input over the past 1½

months. Mr. Taraday advised the motion before the Council is to deny the amendment. All the concepts Councilmember Buckshnis mentioned could be accomplished via amendments to the Master Plan.

Councilmember Buckshnis advised the Planning Board could be asked to investigate certain items during the process. Mr. Taraday answered the Council could also ask City staff to investigate. Councilmember Buckshnis summarized she did not support the Harbor Square Master Plan in its current form but was willing to move forward with amendments such as no residential, 35 foot base height, even something like a warehouse district with restaurants on top of warehouses. Tonight's discussion was about process not the code. Mr. Taraday answered the Council was talking about what they wanted the Comprehensive Plan to say about the Harbor Square property. If the Council did not like the proposal, it could be amended to incorporate Councilmember Buckshnis' suggestions.

Councilmember Johnson pointed out the Planning Board is advisory to the City Council. If something was overlooked in their review of the proposal as Council President Petso has suggested, the Planning Board can be asked to review it again. She felt that would be an appropriate step versus denying the entire Harbor Square Master Plan.

If the Council denied the Harbor Square Master Plan, Councilmember Fraley-Monillas asked whether the City could use the Port's proposed Harbor Square Master Plan as a roadmap for an alternate proposal. Mr. Taraday answered using the subarea plan as a starting point and the City making changes to incorporate language the Council wants or removing language the Council does not support could be done via either an amendment process or denying the Master Plan and starting over. The difference between those two processes is denying the Master Plan and starting over would take substantially longer to reach the point where the Master Plan is presented to the City Council again. Via the amendment process, the Master Plan would be presented to the Council again more quickly.

Mr. Taraday summarized if it is the Council's intent to see something come back, even those who plan to deny the Harbor Square Master Plan, the real difference between denial and amendment is the amount of time it takes to bring it back to the Council. The process in Chapter 20.00 identifies how to amend the Comprehensive Plan. The Council is at a stage in that process now; several steps have already been taken. Via amendment, the Master Plan can remain at the Council level and the Council can interact with staff to reach a point where the Council is ready to adopt the amendment. Via denying the Master Plan, the process starts over which will require either an application from the Port or direction from the Council to begin work on a subarea plan.

Councilmember Fraley-Monillas commented the question in her mind is whose plan is this. Currently the documents are the Port's plan, what the Port would like the Council to approve. As Mr. Taraday said last week, it should be the City Council's vision, not the Port's vision, and the Council represents the citizens. The Port said last week that they are not interested in changes to the plan and she understood why they would feel that way due to the amount of effort they have put into it. It was her understanding the Port indicated today they may be agreeable to some changes. If the Council attempts to amend the Port's plan, the Council becomes disingenuous to the Port and the citizens. She questioned what happened after the Council made amendments to the Master Plan if the Port did not want the amendments.

Councilmember Fraley-Monillas explained she had analyzed the public's input at the three public hearings, people with and without a vested interest, citizens who do not live in the area but are concerned with the view corridor, business owners, environmental advocates, etc. She questioned whether the Council was listening to Edmonds citizens and whether they knew the citizens' vision. After three lengthy public hearings, she has not heard any discussion of what the public has said. She questioned why the Council had public hearings if they did not listen to the input the public provided. She recognized citizens had an opportunity to speak to the Port and that some citizens chose not to speak to the Port. Due to the testimony from the public, she will support the motion to deny the Harbor Square Master Plan but wanted

to move forward with another vision for the waterfront. She is not opposed to development, progress is good but the Council needs to listen to the citizens.

Council President Petso commented if the Council proceeded by handling this as the Council's Comprehensive Plan amendment, it would preempt some other business this spring because it will consume staff, attorney, and Council time. She asked whether the Port, the original applicant, could ask the Council to stop making revisions to their proposed amendment if they preferred the existing Comprehensive Plan to whatever the Council develops. Mr. Taraday answered the Port initiated a legislative process by applying for a Comprehensive Plan amendment. There is no guarantee the result will be anything remotely like what they started with. The City's procedures related to Comprehensive Plan amendments state the Council can approve, approve with modifications, or disapprove and there is no boundary to modifications. The Council could modify it in a manner that it is unrecognizable. Council President Petso asked whether the property owner had any way to return to the existing Comprehensive Plan language other than apply for another Comprehensive Plan amendment. Mr. Taraday answered it is no different than any other Comprehensive Plan amendment the City would process.

Council President Petso commented the difference is the Council usually says yes or no; she was not familiar with the Council making major modifications to a Comprehensive Plan amendment without going through the Planning Board or checking with the property owner. She summarized the amendment was totally in the Council's control. Mr. Taraday agreed.

Councilmember Yamamoto commented although there has been a lot of public input, there are 21,000 voters in the City, and the Council has not heard from all of them. It is a process; the Council listens to the public, everyone has ideas, including Councilmembers. Many people would like to see the process go forward, but not because they like everything in the Master Plan. The Council has the ability to make modifications to the proposal, to develop a Plan B or C. That option cannot be developed if the motion to deny the Harbor Square Master Plan is approved. He felt starting over would be a disservice; if the Port's ideas are quashed, there is no opportunity for progress. He summarized it is not necessarily the Council's plan; it is the citizen's plan, the City's plan, the Harbor Square plan. He acknowledged not everyone likes a 55-foot height limit or allowing residential uses on the site, but those things can be addressed via the process. He did not support the motion to deny the Harbor Square Master Plan.

Mayor Earling observed by closing the public hearing last week, that sets in motion a clock whereby action must be taken within 60 days. Mr. Taraday agreed ECDC 20.00.040 refers to a 60-day time period and that 60-day time period began a week ago when the public hearing was closed. However, the only thing that needs to happen within 60 days is that the Council considers the recommendation. He read the language in 20.00.040, within 60 days of receipt of the Planning Board's recommendation and the completion of the public hearing required by ECDC 20.00.020, the City Council shall consider the recommendation and may at that time or subsequently approve, approve with modifications, or disapprove the proposed amendment.

Councilmember Bloom disagreed with Mr. Taraday's statements about the Comprehensive Plan being the Council's vision, pointing out the Comprehensive Plan is the citizens' vision and has been developed over many years. The Comprehensive Plan reflects creating a destination, drawing visitors from around the area, a year-round market, etc.; it does not say citizens want an urban village on the waterfront. For the 28 years she has lived in the City, citizens have supported low heights, voting for elected officials who maintain the low heights in the downtown area. She emphasized the importance of not allowing residential uses on the Harbor Square site, because allowing that use will force the Council to increase heights because it will not be feasible for the developer to develop at 35 feet. In order to reflect the citizens' vision, modifications would have to prohibit residences and have a 35 feet building height the same as the contract rezone, the 150-200 feet setbacks in the SMP, and the 150 foot setback from the marsh. She concluded those modifications would reflect the citizens' vision, the Comprehensive Plan and

how citizens have voted for at least the past 28 years, but would make the proposed Master Plan unrecognizable. She did not feel it made sense to amend the proposed Master Plan.

Councilmember Buckshnis advised she has read five different Comprehensive Plans, they are all very non-specific. She recognized citizens did not want 55-foot heights. She suggested amendments to the Harbor Square Master Plan such as including current buffers respected for current footprint and mixed use – no residential. She supported moving the process forward similar to Westgate, Firdale Village, and Five Corners. Even if the Master Plan was unrecognizable to the Port, it would reflect the citizens' vision.

Councilmember Fraley-Monillas asked if the Port could withdraw their Comprehensive Plan amendment. Mr. Taraday responded the code does not speak to that; he did not know what the point would be to have the Port withdraw their application at this point; it is before the Council for legislative action. Councilmember Fraley-Monillas suggested the Port may want to withdraw if they believe what the Council is interested in may be counter to their interests. Mr. Taraday answered ultimately no, because the Council could commence its own Comprehensive Plan amendment to reflect their vision for the property. Councilmember Fraley-Monillas concluded, beware of what you ask for because you may get it.

At Mayor Earling's request, City Clerk Sandy Chase reread the motion:

COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER BLOOM, THAT THE COUNCIL DENY THE HARBOR SQUARE MASTER PLAN.

Mayor Earling clarified a yes vote denied the Master Plan and a no vote was to defeat the motion.

UPON ROLL CALL, MOTION FAILED (3-4), COUNCIL PRESIDENT PETSO AND COUNCILMEMBERS BLOOM AND FRALEY-MONILLAS VOTING YES; AND COUNCILMEMBERS JOHNSON, YAMAMOTO, PETERSON AND BUCKSHNIS VOTING NO.

Council President Petso reviewed upcoming meeting dates and Councilmember absences:

- February 12 – Committee night
- February 19 – Councilmember Buckshnis and possibly another Councilmember absent
- February 26 – Councilmember Peterson absent
- March 5 – Councilmember Peterson absent
- March 12 – Committee night

Council President Petso explained there did not appear to be a way to schedule this without at least one Councilmember absent; the next work session is February 26. Mayor Earling pointed out an absent Councilmember had the option of participating by phone. Councilmember Fraley-Monillas recalled it would be inconvenient for Councilmember Buckshnis and Councilmember Peterson to call in. Councilmember Peterson advised perhaps impossible for him as he will be out of the country. Council President Petso suggested scheduling it on March 19.

Councilmember Peterson advised March 19 would give Councilmembers an opportunity to talk with staff and for staff to develop a document with the Council's ideas and ideas from the public hearing. Scheduling it sooner than March 19 would be a fast turnaround for both staff and the Council.

Mayor Earling asked if that would fit within the 60 day timeframe. Acting Development Services Director Rob Chave answered March 19 would be a reasonable timeframe for staff. He expected Councilmembers would submit their suggestions/recommendations. Staff would present those on March 19 and if the Council agreed to a draft, a public hearing could then be scheduled. Mayor Earling encouraged Councilmembers to submit their ideas to staff and/or have meetings to discuss certain points. Mr. Chave recognized it may take more than one work session to develop a draft.

Mayor Earling declared a brief recess.

6. **PUBLIC HEARING AND POTENTIAL ACTION ON PROPOSED CODE AMENDMENTS TO THE CITY OF EDMONDS STREET VACATION PROCEDURES OUTLINED IN ECDC 20.70 WHICH CLARIFY THE TYPES OF EASEMENTS THAT MAY BE RETAINED DURING A STREET VACATION AND CLARIFYING LANGUAGE WITH REGARD TO THE APPLICANT OF A STREET VACATION PROCESS (previously item 5).**

Senior Planner Kernan Lien explained last year the City Council reviewed and made a minor amendment to the street vacation ordinance in ECDC 20.70 for expanded notice. During review of that code amendment, two additional items were identified for update, 1) adding language regarding what types of easements may be retained during a street vacation, and 2) clarifying the language with regard to who the applicant of a street vacation process was. The City Council referred these additional amendments to the Planning Board for review. The Planning Board held a workshop and a public hearing on November 14, 2013 and recommended the City Council adopt the proposed amendments to ECDC 20.70. The proposed amendments contained in the draft ordinance for street vacation would make changes that are consistent with RCW 35.79.030, the State law regarding street vacations.

Mr. Lien reviewed the proposed changes:

- Insert “construction repairs and maintenance of” prior to “public utility services” in ECDC 20.70.030. This would clarify the type of easement that the City may retain in street vacations.
- Change “applicant” to “owners of property abutting upon the street or alley or part thereof so vacated” in ECDC 20.70.140.A.3. This language is contained in the RCW referenced above.
- New section added to 20.70.050 that describes who the applicant is, if it is not the City.

Mr. Lien pointed out the City Attorney added two words (shown underlined) to 20.70.050.B, Initiation of Proceedings: A vacation may be initiated by: A. City Council, or B. Petition of the owners of more than two-thirds...

Councilmember Bloom asked how a petition of the owners would be initiated. City Attorney Jeff Taraday answered State law governs what constitutes a satisfactory petition. He was uncertain whether the City code contained that same requirement. The language was added because it did not seem clear to state a vacation may be initiated by “the owners” without explaining what the owners are supposed to do. Inserting “petition of” informs the owners they need to file a petition. Mr. Lien advised 20.70.60 explains the application to the City for a street vacation. Councilmember Bloom asked if an application would be the same as a petition. Mr. Lien answered yes.

Mayor Earling opened the public participation portion of the public hearing.

Ken Reidy, Edmonds, strongly requested the City Council approve these code amendments.

Hearing no further comment, Mayor Earling closed the public participation portion of the public hearing.

COUNCILMEMBER BLOOM MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE ORDINANCE NO. 3910, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AMENDING THE PORTIONS OF CHAPTER 20.70 OF THE EDMONDS COMMUNITY DEVELOPMENT CODE WHICH CLARIFY THE TYPES OF EASEMENTS THAT MAY BE RETAINED DURING A STREET VACATION AND ADDS CLARIFYING LANGUAGE WITH REGARD TO THE APPLICANT OF A STREET VACATION PROCESS. MOTION CARRIED UNANIMOUSLY.

7. **DISCUSSION AND POTENTIAL ACTION REGARDING PARTICIPATION IN A REGIONAL FIRE AUTHORITY**

Finance Director Shawn Hunstock referred to his presentation at last week’s meeting regarding the Regional Fire Authority (RFA) planning process and the City’s efforts in that process to date. He noted the numbers are based on information available at this time and are a moving target. However, the recommendation would not change based on updated information.

Mr. Hunstock reviewed the impact on the City’s finances if the City were to form or later join an RFA (using 2013 amounts):

Expenses removed from City budget:	
Fire District 1 contract	\$6,347,235
Less: Fire prevention and fire investigation (est) would stay with City	(245,400)
Pension, health benefits and other costs	385,000
Total expenditure savings in General Fund	\$6,486,835
Revenue removed from City budget:	
EMS levy	\$2,707,308
Transport fees	814,318
Total revenue reduction in General Fund	\$3,521,626
Net Savings in General Fund	\$2,965,209

If the City were to form or later join an RFA, there would be a savings of approximately \$3 million in the General Fund. If the City were to hypothetically pass that savings along to taxpayers, it would equate to about a \$0.55 decrease in the City’s property tax levy rate. Doing so would still be beneficial as it would open up levy capacity for future years.

Mr. Hunstock reviewed the impact on taxpayers if the City were to form or later join an RFA (using 2013 amounts):

Incremental changes to taxes and fees:	
Fire levy (property tax levy)	\$1.00
EMS levy	.00*
Transport fees	.00*
Decrease (hypothetical) in City’s levy rate	(0.55)
Fire benefit charge (expressed similar to property taxes)	0.20
Net increase in taxes/fees	\$0.65
Overall increase in taxes/fees that property owners pay	\$3,500,000

*The EMS levy and transport fees would be paid to either the City or RFA regardless, so these are not incremental costs for forming or joining an RFA

Due to the significant cost increase for citizens and businesses, Mr. Hunstock recommended the Council adopt the resolution formally ending the City’s participation in the RFA planning process. The City can continue to participate in the meetings. Should circumstances change later, the City will benefit from continuing to attend the meetings. The City’s removal from the process means that Woodway will not be able to continue either because they would then not be contiguous with any other entity in the RFA planning process.

Councilmember Peterson reported it was with some regret that he reached the same conclusion. At the outset of the process he was positive about the idea of regional fire. Although still positive about the concept, it does not work for Edmonds at this time. He supported the City continuing to be somewhat engaged in the process, noting participation may make sense in the future as assessed values improve. He commented participation in the planning effort was a learning experience; he participated on the Level of Service Committee. During discussions, it was revealed that it would be difficult to guarantee Edmonds would have the same level of service it has today. The City has a good contract with FD1 with solid guarantees regarding staffing levels in the Fire Department which is important to maintain. He summarized regionalization was the way to look at some services but now is not the right time for Edmonds.

Council President Petso reported when she began participating in the process, on the Finance Committee, Edmonds did not have a Finance Director. Mr. Tarte and later Mr. Hunstock joined the process. She thanked Mr. Hunstock for attending Finance Committee meetings, finding his participation a tremendous help. She agreed there was tremendous value in the process and it was not a wasted effort. She was happy the recommended resolution includes continuing to send a representative to the committee meetings. A tremendous amount of knowledge has been gained regarding possible options and how to provide emergency services, and the opportunity to work with other elected officials in the area has been valuable. She summarized the opportunity will come in the future to utilize what was learned in the process.

Mayor Earling agreed with Councilmember Peterson and Council President Petso's comments. He pointed out FD1 did much of the background work for the process and did a remarkably good job. He went into the process uncertain but in the end the decision was based on the impact to Edmonds taxpayers. He expressed support for Mr. Hunstock's recommendation.

Mayor Earling read the language in the resolution the Council was considering:

The City hereby withdraws itself as an active voting participant of the Planning Committee. The City continues to have an interest in the RFPSA and supports regionalizing fire service. The City plans to continue to attend meetings of the Planning Committee and will continue to evaluate future involvement of the City.

Councilmember Buckshnis thanked everyone who has attended the RFA planning meetings. She observed if Edmonds joined the RFA, once an RFA was formed and the monies assessed, taxpayers no longer have any control. Mr. Hunstock responded control would depend on the composition of the governing board and the representation on the governing board. Some RFAs have elected officials represented on the governing board. The City would have a voice but lose individual control.

Councilmember Buckshnis asked what other cities have withdrawn. Mr. Hunstock advised Fire District 7, Mukilteo, Lynnwood, and Mill Creek. Councilmember Peterson advised the Town of Woodway voted last night to withdraw.

Councilmember Buckshnis asked what the other cities plan to do. Mr. Hunstock advised a lot of the changes have happened recently. Mill Creek withdrew some time ago but continues to participate in the meetings.

Councilmember Yamamoto asked what happens to Woodway if Edmonds withdrew. Mayor Earling stated Woodway is unable to participate if Edmonds does not participate. Councilmember Yamamoto suggested consideration be given to Edmonds creating a mini-RFA with Woodway. Mr. Hunstock noted that could be done or Edmonds could join this RFA later if it was advantageous to the City and taxpayers.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO ADOPT RESOLUTION NO. 1289.

Councilmember Peterson clarified the resolution withdraws the City as an active voting participant of the Planning Committee.

MOTION CARRIED UNANIMOUSLY.

Mr. Hunstock commented as the Council knew, his time left with the City is brief. He thanked the Council for the opportunity given him to serve them, the mayor and citizens during the past 1½ years. It has been a wonderful experience and although there were bumps along the way, that was because everyone is passionate about the community, including himself. He loves living in Edmonds and working for the City; it was a difficult decision to leave but he knew it was the right decision.

To ensure there were no rumors, Mayor Earling explained Mr. Hunstock wants to live closer to family. It has been challenging for him to see his daughter as often as he wants. The City hates to lose him but he has his priorities straight.

8. MAYOR'S COMMENTS

Mayor Earling thanked Councilmember Peterson, Council President Petso and Mr. Hunstock for the time they gave related to the RFA and the work on their assigned committees. The reason they were able to reach this decision was due to the work all the parties have done.

9. COUNCIL COMMENTS

Councilmember Buckshnis reported she will be gone for two weeks, visiting Charlotte, North Carolina. She thanked Mr. Hunstock for the great time.

Councilmember Johnson thanked Mr. Hunstock, relaying she especially enjoyed his professional manner and helpfulness to her as a new Councilmember.

Councilmember Johnson thanked everyone who has contributed to the public discussion regarding the Harbor Square Master Plan. She also thanked the Planning Board and staff for their hard work. She looked forward to continuing the discussion.

Councilmember Yamamoto told Mr. Hunstock he did a great job and will be missed and wished him the best in his future.

Councilmember Fraley-Monillas thanked Mr. Hunstock for everything he has done, recalling he was hired when the City was in flux. He has done a great job and is a wonderful person. As a person with a family and child in the junior high/high school range who used to drive 145 miles/day roundtrip, she knew how hard that was. She understood his priorities and agreed they were the right priorities.

Councilmember Peterson echoed the comments regarding Mr. Hunstock. He recognized the outstanding accomplishments of Mr. Hunstock, along with members of the Finance Committee, that have made over the past 1½ years. The City has had several Finance Directors in the past five years; for him to be able to step in, especially with the recent budgets, was an incredible feat. He wished him the best, recognizing that family came first.

10. CONVENE IN EXECUTIVE SESSION REGARDING POTENTIAL LITIGATION PER RCW 42.30.110(1)(i).

At 9:26 p.m., Mayor Earling announced that the City Council would meet in executive session regarding potential litigation per RCW 42.30.110(1)(i). He stated that the executive session was scheduled to last

approximately 15 minutes and would be held in the Jury Meeting Room, located in the Public Safety Complex. Action may occur as a result of meeting in executive session. Elected officials present at the executive session were: Mayor Earling, and Councilmembers Yamamoto, Johnson, Fraley-Monillas, Buckshnis, Peterson, Petso and Bloom. Others present were City Attorney Jeff Taraday and City Clerk Sandy Chase. The executive session concluded at 9:43 p.m.

11. **RECONVENE IN OPEN SESSION. POTENTIAL ACTION AS A RESULT OF MEETING IN EXECUTIVE SESSION**

Mayor Earling reconvened the regular City Council meeting at 9:44 p.m.

COUNCILMEMBER PETERSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO AUTHORIZE THE CITY ATTORNEY TO MAKE AN OFFER, PURSUANT TO CR 68, TO ALLOW JUDGMENT TO BE TAKEN AGAINST THE CITY IN FAVOR OF DEBI HUMANN ON HER OCTOBER 12, 2011 WHISTLEBLOWER COMPLAINT IN THE AMOUNT OF THIRTY-THREE THOUSAND DOLLARS (\$33,000.00), PLUS TAXABLE COSTS INCURRED TO THE DATE OF THE OFFER. BY ACCEPTING THIS OFFER, IN ADDITION TO THE \$33,000.00 AND THE COSTS REFERENCED ABOVE, MS. HUMANN WOULD BE ENTITLED TO PETITION ALJ SMITH FOR AN AWARD OF REASONABLE ATTORNEYS FEES INCURRED IN THE PROSECUTION OF THE OCTOBER 12, 2011 COMPLAINT AND FOR ANY PRE-JUDGMENT INTEREST THAT WOULD BE ALLOWED BY LAW. THE CITY, HOWEVER, DOES NOT WAIVE ITS RIGHT TO CONTEST ANY FEE PETITION OR ANY REQUEST FOR PRE-JUDGMENT INTEREST. THIS OFFER OF JUDGMENT IS BEING MADE TO ATTEMPT TO RESOLVE THIS MATTER WITHOUT DEVOTING THE RESOURCES THAT WOULD BE NECESSARY TO CONTEST THIS MATTER ON THE MERITS. THIS OFFER OF JUDGMENT SHALL NOT BE CONSTRUED AS AN ADMISSION OF WRONGDOING OR LIABILITY OF ANY KIND BY THE CITY OF EDMONDS FOR THE PURPOSES OF THIS OR ANY OTHER PENDING OR FUTURE LEGAL PROCEEDINGS. MOTION CARRIED UNANIMOUSLY.

12. **ADJOURN**

With no further business, the Council meeting was adjourned at 9:46 p.m.