

# EDMONDS CITY COUNCIL APPROVED MINUTES

## March 19, 2013

The Edmonds City Council meeting was called to order at 7:00 p.m. by Mayor Earling in the Council Chambers, 250 5<sup>th</sup> 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\*  
(\*Arrived 7:05 p.m.)  
Adrienne Fraley-Monillas, Councilmember  
Diane Buckshnis, Councilmember

### ALSO PRESENT

Walker Kasinadhuni, Student Representative

### STAFF PRESENT

Jim Lawless, Assistant Police Chief  
Stephen Clifton, Community Services/Economic  
Development Director  
Phil Williams, Public Works Director  
Carrie Hite, Parks & Recreation Director  
Rob Chave, Acting Development Services Dir.  
Frances Chapin, Cultural Services Manager  
Rob English, City Engineer  
Kernen Lien, Senior Planner  
Jeff Taraday, City Attorney  
Linda Hynd, Deputy City Clerk  
Jana Spellman, Senior Executive Council Asst.  
Jeannie Dines, Recorder

### 1. ROLL CALL

Deputy City Clerk Linda Hynd called the roll. All elected officials were present with the exception of Councilmember Johnson. (*Councilmember Johnson arrived at 7:05 p.m.*)

### 2. APPROVAL OF AGENDA

Council President Petso advised the Council has been informed Agenda Items 11 and 12 are not necessary and can be removed from the agenda.

**COUNCIL PRESIDENT PETSO MOVED, SECONDED BY COUNCILMEMBER YAMAMOTO, TO APPROVE THE AGENDA IN CONTENT AND ORDER, DELETING ITEMS 11 AND 12. MOTION CARRIED (6-0). (Councilmember Johnson was not present for the vote.)**

### 3. APPROVAL OF CONSENT AGENDA ITEMS

Council President Petso requested Item K be removed from the Consent Agenda.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO APPROVE THE REMAINDER OF THE CONSENT AGENDA. MOTION CARRIED (6-0). (Councilmember Johnson was not present for the vote.)The agenda items approved are as follows:**

#### A. APPROVAL OF CITY COUNCIL MEETING MINUTES OF MARCH 12, 2013.

- B. APPROVAL OF CLAIM CHECKS #200977 THROUGH #201107 DATED MARCH 14, 2013 FOR \$387,760.34.
- C. ACKNOWLEDGE RECEIPT OF A CLAIM FOR DAMAGES FROM KATHLEEN FISHER (\$596.69).
- D. ORDINANCE NO. 3915 – CONSENTING TO THE ASSIGNMENT OF THE NON-EXCLUSIVE FRANCHISE GRANTED TO METROMEDIA PURSUANT TO ORDINANCE NO. 3295, TO ZAYO GROUP.
- E. AUTHORIZATION FOR MAYOR TO SIGN CONTRACT WITH SNOHOMISH COUNTY FOR TOURISM PROMOTION GRANT.
- F. AUTHORIZATION TO ADVERTISE CALL FOR ARTISTS RFQ FOR FIVE CORNERS ROUNDABOUT PROJECT.
- G. REPORT ON FINAL CONSTRUCTION COSTS FOR THE 2011 WATERLINE REPLACEMENT PROJECT AND ACCEPTANCE OF PROJECT.
- H. REPORT ON FINAL CONSTRUCTION COSTS FOR THE 2012 WATERLINE REPLACEMENT PROJECT AND ACCEPTANCE OF PROJECT.
- I. AUTHORIZATION TO ADVERTISE A REQUEST FOR BID FOR CONSTRUCTION SERVICES FOR THE 2013 WATERLINE REPLACEMENT PROJECT.
- J. AUTHORIZATION TO ADVERTISE A REQUEST FOR BIDS FOR CONSTRUCTION SERVICES FOR THE WWTP STANDBY POWER DISTRIBUTION AND SWITCHGEAR IMPROVEMENT PROJECT.
- L. TRAFFIC IMPACT FEE ANNUAL REPORT
- M. AMENDMENT TO DOMESTIC VIOLENCE COORDINATOR ILA WITH THE CITY OF MILL CREEK.
- N. JANUARY 2013 MONTHLY FINANCIAL REPORT.

**Item K: PURCHASING POLICY REVISION FOR PUBLIC WORKS PROJECTS.**

For Council President Petso, Public Works Director Phil Williams explained the current policy requires Council approval for any request to go to bid for a project. Under the proposed revision, if the project is already approved by Council in the annual Capital Improvement Program (CIP) and in the City's budget, Council authorization to go to bid would be not required. Following general agreement with this proposal at the Council retreat, the proposed revisions were presented to the Finance Committee and the Parks, Planning and Public Works Committee; both committees recommended approval. The same approach would be extended to Requests for Qualification (RFQ). In both cases, Council approval is required for the construction contract and the contract for consulting services if it they exceed the dollar amounts in the purchasing policy.

Council President Petso referred to page 5 where it appeared the dollar amount for construction contracts in the purchasing policy was being eliminated and any construction contract already included in the CIP would not need to come back to Council before bidding for construction. Mr. Williams answered that was not the intent of the revision to the policy.

Council President Petso asked if a project was included in the CIP without a great deal of prior planning, is the Council's last chance to see the project after design is complete the Friday before awarding

construction bids. Mr. Williams answered large projects often are presented to the Council multiple times as well as holding public meetings. The Public Works Quarterly Report also contains information regarding projects. If a project began with a simple description in the CIP, the schedule, budget and details of the project would continue to be developed over time.

Council President Petso observed it appeared the Council would not see a project after design until it has already gone out for construction bids and staff is ready to award the bid. If a change needs to be made at that point, how much does it cost to go to bid? Mr. Williams responded it is typically a low cost, just advertising.

Council President Petso expressed her appreciation for Mr. Williams' responses, commenting her reading of the policy did not match Mr. Williams' explanation. Mr. Williams explained there is no proposal to change the \$100,000 threshold for Council approval of contract award.

Councilmember Bloom referred to language on page 5, "If the project is not included in the current City Council Approved budget or CIP, the City Council must authorize the call for bids for a project estimated at \$100,000 or more." She asked for an example of a project that is not included in the CIP. Mr. Williams responded it would be a modest project, for example a placeholder in the CIP for citywide improvements to storm systems. The list of miscellaneous, small projects would be refined over the year and under the proposed revisions, Council authorization to go to bid would not necessarily be required.

Councilmember Bloom relayed her understanding of Mr. Williams' explanation that the specific project would not be described in the CIP but the overall project would be such as improvements to storm systems. Mr. Williams answered yes, explaining there are several placeholder amounts in the CIP each year for which the specific project details are not included.

**COUNCILMEMBER PETERSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO APPROVE ITEM K. MOTION CARRIED (6-1), COUNCIL PRESIDENT PETSO VOTING NO.**

#### **4. AUDIENCE COMMENTS**

**Mike Schindler, Edmonds**, spoke regarding the Harbor Square Master Plan. He thanked Councilmember Bloom for being the catalyst to initiate public debate although he disagreed with her us/them approach. As an Edmonds resident and business owner, he encouraged the Council to be opened mind enough to focus on the goal of building a better Edmonds. Such a goal requires leadership, status quo is unacceptable and ways to improve should be sought. The Council has an opportunity with the Port decision to display the type of leaders they are; whether they viewed the Port as a client, someone who has shown commitment to process, has contributed to the community financially and personally or simply that the Port needs to submit to the Council's will and if the Council does not like what they do, they need to start over. He summarized leaders find a way to win; in this instance the team is Edmonds and that includes the Port. He encouraged the Council to find a way for everyone to win. The financials for the Port project indicate it will help insulate citizens from higher taxes. If the Master Plan fails, the Council is condemning citizens to higher taxes.

**Dave Page, Edmonds**, explained he missed Mayor Earling's State of the City Address to attend his mother's 95<sup>th</sup> birthday. He relayed feedback from those who had attended, that Mayor Earling hit it out of the park. He commented Edmonds is about to define itself as a city. The upcoming November election and the subsequent election will have much to do with the way the cookie crumbles in Edmonds. He assured higher taxes will be required because the City cannot survive in the future on the revenue it generates today. If the intent is to curtail economic development as some people seem to want to do, even

higher taxes will be required. He noted citizens should be glad to pay higher taxes to help the City provide services. He encouraged citizens to back candidates and/or encourage citizens to run for office.

**Roger Hertrich, Edmonds**, referred to the Harbor Square Master Plan, relaying his understanding that there was no longer a Port proposal and the City was now playing a game of design and redesign. He noted a great deal of information was included for this meeting that the public has not seen before. He expressed concern with this meeting being called a continued Harbor Square hearing and suggested it could only qualify as a continued hearing if the Council denied the Port's proposal. As the materials created by staff and Council comments were new information, he recommended holding a new hearing to give citizens an opportunity to explore the new ideas. If the intent was a City-initiated plan for Harbor Square, he recommended it begin with review by the Planning Board. Mayor Earling advised Agenda Item 7 is not a continued hearing but rather a continued discussion.

**Phil Lovell, Edmonds**, expressed support for the Port of Edmonds' request to modify the applicable sections within the City's Comprehensive Plan incorporating their submitted master plan. Approval of the Master Plan represents only the first step toward further detailed approval processes by the Port, City, and public should the Port engage a developer/builder(s) and any specific project(s) proposal. He recognized the Port's originally submitted plan is subject to modification by the Council, and recommended the tenor and scope of such revisions preserve as closely as possible the original concepts within the Port's plan. He offered the following:

- The concept plan submitted by the Port meets the requirements and design guidelines set forth within the City's Comprehensive Plan. The Comprehensive Plan for the Harbor Square area already supports mixed use including residential and taller buildings while also respecting and supporting other desirable land use aspects for this property. Concurrence with these aspect are also well spelled and supported within the Port's Plan
- There is a great deal of public support for the Port's Master Plan for Harbor Square. This is supported by Action Plan Number 1b.3 in the City's recently completed Strategic Plan which ranks Harbor Square redevelopment "Very High" in priority. The final draft of the City's new Strategic Plan states: "Review and approve a long term master plan and agreement for the Port of Edmonds Harbor Square property that enhances the waterfront environment, public access, and promotes mixed use development."
- Regardless of the format and content of a finally approved plan, the result should reflect the following:
  - Adherence to current provisions within the City of Edmonds Comprehensive Plan
  - Support by the Port for continuing efforts by their organization to pursue redevelopment potential and activity in accordance with the approved master plan, and
  - Flexibility in content and tenor necessary to attract a high quality development proposal leading to a development agreement to achieve the reality of the plan and fulfillment of the City's Strategic Plan goal referenced above.

5. **PUBLIC HEARING: PROPOSED ORDINANCE AUTHORIZING THE ACQUISITION BY NEGOTIATION OR CONDEMNATION OF REAL PROPERTY INTERESTS NEEDED FOR THE FIVE CORNERS ROUNDABOUT PROJECT.**

Public Works Director Phi Williams explained as has been discussed in executive session before placing this on the Council agenda, the Five Corners Roundabout project requires the City to purchase five small pieces of property to facilitate construction of the improvements as well as acquire temporary construction easements. Negotiations are underway with all five property owners; one property owner has agreed to an offer made by the City. This is a parallel track, requesting the authorization from the Council to use the power of eminent domain should it be needed; it does not obligate its use and staff would not want or choose to use it as long as discussions are moving forward productively and progress is being made. Authorization gives staff the tool but does not oblige that it be used.

Councilmember Buckshnis advised the Planning, Parks and Public Works Committee reviewed this topic and recommend approval to keep the project on track.

Councilmember Bloom observed the materials provided state that negotiations are underway and they are proceeding well. Mr. Williams agreed so far there have been very good discussions with all property owners, some are more engaged than others. One property owner has agreed and there are indications another property owners is ready to sign documents. Conversations with the other three are proceeding well.

Councilmember Bloom asked why it was appropriate to have a condemnation process available if negotiations are going well. Mr. Williams answered it is a timing issue; the project has a schedule and staff is doing their best to stay on the schedule. There have been some challenges identified recently with regard to the schedule. It would take at least 1 – 1½ months to ask Council for this authorization if it were requested after negotiations break down. He explained municipal government can utilize condemnation as long as there is necessity for a public project but there is a process to obtain Council authorization to use it. He assured condemnation would not be used as long as negotiations are moving forward.

Councilmember Bloom asked how the price for each property is determined. Mr. Williams answered there is a budget for right-of-way acquisition, most of those funds were provided via a federal grant. Offers have been made to all five property owners; there has not been any indication that the offers are completely inadequate. Councilmember Bloom relayed her understanding the amount was fair market value established by someone other than City staff. Mr. Williams explained both sides can have their own appraiser. The City has a contract with Universal for the right-of-way acquisitions; Universal has done the majority of the contact and discussions with property owners. Staff has been involved peripherally to ensure the consultant is aware of the City's limitations in the process. If the property take is less than \$25,000 an appraisal is not required. The owner has the right to have an appraisal at no cost to them. A second appraiser checks the first appraisal to ensure it is reasonable. The federal guidelines are strict with regard to paying fair market value.

Mayor Earling referred to written testimony submitted by an audience member and requested she provide her name to the Deputy City Clerk. He advised the information she submitted would be copied and distributed to Councilmembers.

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

**Al Gosiack, Edmonds**, representing Northlake Investment Corporation, the owner of the property on the northeast corner of the Five Corners intersection including the Edmonds Veterinarian Hospital and other buildings, explained he contacted Mr. Williams in December 2011 to discuss the concept of the roundabout. After hearing the proposed concept and assurances that the City planned a collaborative process, he offered a letter of support at that time. On February 14, 2013, fourteen months later, he first learned the impact to their property when he received an appraisal from Universal, the City's property acquisition contractor. He was surprised to learn the significant and material impact on their redevelopment plans without any opportunity earlier in the process to discuss potential issues with staff as he was originally led to believe. Before he had an opportunity to completely understand the impact of the project on their property or resolve questions with City staff, he asked by Universal today to provide a counteroffer. He requested the City give them the time to discuss their concerns without immediate and pressing deadlines and to work collaboratively to find sensible solutions that meet their needs and collective desire for community improvement. He requested this hearing be continued to allow staff adequate time to understand and respond to the issues they have tried to raise.

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

Councilmember Fraley-Monillas asked whether the hearing could be continued to allow staff to speak with the property owners in the northeast corner of the Five Corners intersection. Mr. Williams answered there have been discussions with Mr. Gosiak regarding the approach he would like to take with regard to the valuation for the property and his potential future development plans and he intends to continue meeting with Mr. Gosiak. That was independent of the action being requested tonight. He anticipated discussions with Mr. Gosiak would continue and be productive at the end. The request is to have a tool available if negotiations break down. He assured no deadlines have been established to resolve the issues. A meeting is scheduled with Mr. Gosiak tomorrow at 3:00 p.m. to continue discussions.

Councilmember Fraley-Monillas asked if there was a need to approve this tonight. Mr. Williams answered it is a timing issue. Councilmember Fraley-Monillas asked if a month would be enough time. Mr. Williams did not anticipate the parties were so far apart that resolution could not be reached. As long as Mr. Gosiak was available for discussions, he anticipated the process would go well.

Council President Petso asked whether it could be wrapped up in a week or two. Mr. Williams was not certain. He stressed how discussions take place and ensuring the property owners is aware of all their rights under federal law is a heavily procedural part of federal law; the consultant is an expert in that area. He anticipated the negotiation process would continue. He relayed Mr. Gosiak has described his future hopes for the property; it has been a family-owned asset for a long time and there are no plans to sell it. The take on this property is 1,753 square feet.

With regard to Mr. Gosiak's concerns regarding how long the process took, Mr. Williams explained there could not be any productive discussions with property owners until the design was completed and the necessary right-of-way acquisition was identified. Once the amount of the take was known, it was appraised and the property owners were contacted.

Councilmember Buckshnis commented the time delay was to allow staff to get "all your ducks in a row" before the appraisals could be done and the property owners contacted. She asked whether this was the largest acquisition. Mr. Williams answered it is the largest, 1,753 square feet; the total parcel is 41,200 square feet. The other acquisitions are approximately 1,183, 140, and 800 square feet.

Councilmember Buckshnis asked if there has been any opposition from the other property owners. Mr. Williams answered there primarily have been questions, not only financial but the location of trees, the design, etc.

Councilmember Buckshnis observed this is a tool; Council approval does not mean staff would immediately initiate eminent domain but would still work with property owners. If there were continued disputes and the project had to move forward, the tool could be utilized. Mr. Williams agreed, assuring he preferred to work with property owners. If negotiations break down in a way that is apparent to both parties, the use of this tool would be indicated. There are no immediate indications this tool will be necessary. Councilmember Buckshnis observed it is part of the process. Mr. Williams responded it is a timing issue if authorization is not sought until negotiations break down; it is better to have the tool in place in case it is needed.

Councilmember Johnson asked about a potential change in the construction schedule. Mr. Williams answered there is a lot of pre-work on this project such as on underground utilities and undergrounding overhead utilities, in addition to the surface construction of the roundabout. It will be difficult to do all

that this year. If all the work cannot be done this year, further discussions will be necessary to determine the schedule such as delaying until next year or splitting the project into two.

Councilmember Bloom asked whether this item could be delayed as requested by the property owner to allow more time for negotiations. Mr. Williams answered that can be done but it is not his recommendation. This is simply granting the use of a tool if it is needed. He hoped it would not be needed. As long as conversations are proceeding and progress is being made, he saw no need to use it.

**COUNCILMEMBER PETERSON MOVED, SECONDED BY COUNCILMEMBER BUCKSHNIS, TO APPROVE ORDINANCE NO. 3916, AN ORDINANCE OF THE CITY OF EDMONDS, WASHINGTON, AUTHORIZING THE ACQUISITION BY NEGOTIATION OR CONDEMNATION OF REAL PROPERTY INTERESTS NEEDED FOR THE FIVE CORNERS ROUNDABOUT PROJECT.**

Councilmember Bloom relayed she would vote against the motion. She was uncomfortable with doing a preparation for property acquisition in advance of the negotiations.

Councilmember Buckshnis asked if a 1-2 week delay would be problematic. Mr. Williams answered it would not make a big difference. Councilmember Buckshnis observed from Mr. Gosiak's testimony, it appeared negotiations were just beginning. She preferred to wait 1-2 weeks to work through any issues. Mr. Williams assured staff does not want to use condemnation because it feels like an unfriendly process. From a property owners' perspective, there are some advantages when condemnation is available. Staff's goal is to be very reasonable and the consultant has been instructed to be reasonable and fair, look for fair market value and reach a negotiated settlement. He promised condemnation would only be used if it became necessary.

Councilmember Peterson relayed the ordinance states authorizing the acquisition by negotiation or condemnation. This is part of the process and is not authorizing condemnation. As Mr. Williams stated, there are two separate issues. He asked Mr. Taraday to comment on the advantages of condemnation. Mr. Taraday referred to WAC 458-61A-206(3) Excise Tax Exemption; explaining REET excise tax is not paid by a property owner transferring property under threat of condemnation. Property is not under threat of condemnation unless the Council adopts this ordinance. There also may be federal tax advantages.

Council President Petso commented it was short notice having only heard from the property owner for three minutes and then authorizing staff to perform condemnation if needed. She suggested delaying this until the April 16 meeting which would provide the property owner 30 days to work with staff and/or contact Councilmembers.

Councilmember Fraley-Monillas expressed her support for the process. She expected a rigorous, quick negotiation process between all parties. She invited property owners to contact Councilmembers to get meetings scheduled. Mr. Williams responded it is not a good idea for Councilmembers to have contact with property owners because the federal rules regarding property acquisition are very rigid. Councilmember Fraley-Monillas agreed the negotiations were not the Council's business; she wanted to know from property owners if the City is not moving quickly. Mr. Williams clarified the intent was not to put pressure on property owners to make a quick decision and he apologize if this property owner felt that way.

Councilmember Johnson spoke in favor of the motion, commenting it is a very standard procedure and authorizes negotiation and condemnation.

Councilmember Bloom reiterated her preference to delay for a few weeks.

**UPON ROLL CALL, MOTION CARRIED (5-2), COUNCILMEMBERS YAMAMOTO, FRALEY-MONILLAS, BUCKSHNIS, PETERSON AND JOHNSON VOTING YES; AND COUNCIL PRESIDENT PETSO AND COUNCILMEMBER BLOOM VOTING NO.**

**6. PARKS STAFFING AND BUDGET AMENDMENT REQUEST**

Parks & Recreation Commission Carrie Hite explained the Parks Department made significant cuts over the past two years, including 1.5 FTE and all seasonal in 2013. After two months, the pressure is being felt by office staff and following a job analysis, it was determined another 0.5 FTE is needed. She requested reinstatement of the 0.5 FTE that was cut from Parks office staff. The one-time April 1 – December 31, 2013 cost is \$24,000. She will identify how to fund it in the 2014 budget. Due to under-spending and generating more revenue than anticipated, the Parks Department left approximately \$200,000 in the budget in 2012. She requested authorization for a budget amendment for \$24,000 funded from the carryover from 2012.

Mayor Earling explained an already reduced staff was reduced by 9 this year. In a comparison of staff to population in other cities in the Puget Sound region, Edmonds has one of the lowest staff per capita ratios. Although there were good intentions to spread the workload, this is becoming a problem in other departments.

Councilmember Fraley-Monillas expressed her support for reinstating the 0.5 FTE, relaying Ms. Hite presented this to the Finance Committee. Although there were good intentions, the cuts are have made too much impact and work is not being done. She expressed her appreciation for the cuts Ms. Hite made, recalling she made more cuts than required.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER BLOOM, TO APPROVE A BUDGETARY REQUEST TO REINSTATE .5 FTE PARKS SR. OFFICE SPECIALIST.**

Councilmember Johnson relayed her understanding a part time staff would be restored to full-time. Ms. Hite answered a full-time office staff was given a 0.5 layoff notice due to budget cuts. According to SEIU and union labor rules, that person must be recalled first.

Councilmember Peterson expressed his support, recalling the agenda packet mentioned the possibility of decreased revenues without the restoration, impacts on staff morale and potential future staff departures.

**MOTION CARRIED UNANIMOUSLY.**

Mayor Earling declared a brief recess.

**7. CONTINUED DISCUSSION ON THE PORT OF EDMONDS REQUEST TO INCORPORATE THE HARBOR SQUARE MASTER PLAN INTO THE CITY'S COMPREHENSIVE PLAN.**

To the question why the Port's Master Plan was an attachment to the packet, Mayor Earling explained staff attached it as a point of reference, not as the plan the Council was currently, necessarily working on. He relayed he had been contacted by Councilmembers Buckshnis and Councilmember Johnson who wanted to make motions prior to tonight's discussion. As he heard from Councilmember Buckshnis first, she will speak first.

Councilmember Buckshnis offered to clarify the intent of the Council's deliberation tonight. Many emails and telephone calls she has received indicate there is confusion with the upcoming deliberation process. She explained it is clear the citizens of Edmonds assign great value to downtown building height

limitations. In her opinion, it was with great arrogance the Port put forward a development plan requiring a Comprehensive Plan amendment that would significantly change the height limits with no guarantee to citizens regarding what they would receive in return for this non-monetary capital. The downtown height limits provide inherent value to many citizens and they deserve to know the return they will receive for the lost value. Promises draped around fluffy language regarding environmental sensitivity and open space is not enough, the only specifics in the Port's plan were heights and setbacks.

Councilmember Buckshnis stated tonight is an opportunity to discuss parameters for the Harbor Square Development Plan based on a staff prepared draft utilizing information obtained from each Councilmember. She hoped to move the discussion within the community away from the emotion, speculation and fear of opposing sides and begin to address the non-monetary capital. The community deserves to understand what has and can be achieved with private-public partnerships that work through the use of incentives. Incentive zoning may be a valuable approach to building consensus and ensuring the development that occurs is desirable and moves the community forward and non-monetary items are exchanged and discussed. For example, she would be willing to listen to 5-10 foot height increase in exchange for a significant amount of money for restoring the marsh. Even though she was a strict height person, she was also a strict environmentalist.

**COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER PETERSON, TO WORK WITH THE STAFF-PROVIDED DRAFT OF THE SUBAREA PLAN KNOWN AS HARBOR SQUARE AS A BASIS TO DEVELOP A NEW PLAN.**

Council President Petso commented she was not prepared to move any draft ahead without discussion. The agenda item was noticed without an action, but rather a discussion with the intent of working toward a final draft. The draft in the packet is labeled discussion draft. She will oppose the motion in hopes of hearing the staff presentation and having an open discussion.

Councilmember Fraley-Monillas commented although she has been reviewed this, she was not ready to take a vote on it. She noted four Councilmembers have provided input into the Harbor Square plan, input that was only provided to Council in the last day or two. The Councilmembers' input is incorporated into the issue table but neither she nor the citizens have had an opportunity to review the Councilmembers input. She preferred to continue the discussion.

Councilmember Buckshnis explained her intent was to clarify that the Council was no longer working off the Port's Master Plan. The motion simply states the Council is no longer looking at the Port plan.

Mayor Earling clarified the motion is to focus on the staff-provided draft.

Councilmember Yamamoto explained the staff-provided draft was developed using Council and citizen comments. He liked many of the options but was unsure the Port would. He expressed his support for the motion.

Councilmember Fraley-Monillas advised neither the Council nor citizens have had an opportunity to review the proposal from four Councilmembers as they were just provided yesterday and today and many of the comments were new. She was not comfortable with proceeding as much of the material had not yet been discussed.

Councilmember Peterson clarified the motion is not to approve the document; it is simply to use the staff-provided plan as a starting point and the basis for further discussion. This seems a very reasonable way to show the process was working, that compromises have been identified, language has been changed, etc.

To Councilmember Fraley-Monillas's comment that only four Councilmembers have had input, Mayor Earling explained staff has tried to incorporate any/all suggestions into Exhibit 3. That document was provided in the Council packet Friday. He suggested starting the discussion with Exhibit 3.

Councilmember Buckshnis clarified the issue she was trying to address was that many citizens still think the Council is working off the Port's Harbor Square Master Plan. Via her motion, she wanted to make it clear that the Council was no longer considering the Port's original plan.

Council President Petso agreed a good place to start would be Exhibit 3. She preferred to see staff's presentation and begin discussion.

Councilmember Bloom did not see the point of making a motion prior to discussion. The only thing that seems to have been excluded is Exhibit 4, Council President Petso's revised downtown master plan. Other than a clarification that the Council was not working off the Port's Master Plan in Exhibit 1, she was uncertain a motion was needed.

Councilmember Fraley-Monillas preferred to hear the staff presentation before taking a vote.

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

Councilmember Johnson commented staff has done an outstanding job of summarizing the issues. As she was interested in listening to Councilmembers' discussion of the issues, to facilitate an efficient discussion she suggested after the staff presentation, the Council work through each issue in a round-robin format and only after discussions have been completed, begin making motions on individual parts.

**COUNCILMEMBER JOHNSON MOVED, SECONDED BY COUNCILMEMBER FRALEY-MONILLAS, TO POSTPONE ANY MOTIONS ABOUT HARBOR SQUARE PLAN ADOPTION UNTIL THE CITY COUNCIL COMPLETES DISCUSSION OF ALL THE ISSUES. MOTION CARRIED UNANIMOUSLY.**

Senior Planner Kernen Lien reviewed the process thus far:

- Port of Edmonds' process
- Planning Board review
- City Council review
  - Public Hearings
  - Continued deliberations

At the last Council meeting regarding the Harbor Square Master Plan, Council directed staff to revise the Harbor Square Master Plan to reflect public comments and Council discussion during the public hearings and deliberation and Councilmembers have also submitted ideas to staff for consideration in a revised Master Plan.

He commented on tonight's meeting materials:

- Staff has provided a modified draft plan, responding to Council's request for a version that reflects public comments and Council discussion
- Modified plan is contained in Exhibit 2
  - Rob Chave is the principal author of the revised plan
- Harbor Square Master Plan Issue Table in Exhibit 3
  - Summarizes the ideas and comments heard by staff and where these are addressed in the revised Master Plan

- Addresses the 14 specific recommendations forwarded by the Planning Board and how they have been addressed in the revised Master Plan
- The Port's original proposal is provided for reference and comparison in Exhibit 1
- Two Councilmembers specifically requested their comments be included in the agenda item for tonight which are Exhibits 4 and 5

Mr. Lien commented on the revised Subarea Plan:

- "Subarea" plan reflects unique status and location, consistent with Planning Board recommendation
- A more conceptual plan, emphasizing a variety of concepts available for future development. These concepts are highlighted on page 2 of the subarea included ideas such as:
  - Multi-use public space that offers opportunities for community gatherings and events
  - Focus on planning for and attracting employers and businesses who could provide a stimulus to the local economy and that take advantage of the site location.
  - Emphasize a mix of uses that contribute to an active subarea, which should focus on its location and potential for connections between the marsh, waterfront and downtown.
- Does not lock in a single development scheme, but rather leaves the door open for a number of possible development opportunities
- Reflects as many comments as possible
  - Many of the comments and ideas submitted by Councilmembers and heard during the public hearing process are conflicting. Exhibit 3 from tonight's agenda memo summarizes the issues raised during the public process and how they are addressed in the revised subarea plan

The revised Master Plan/Subarea plan is a first effort by staff to incorporate as many comments as possible. He recognized the Council just received this at the end of last week and has not had much time to digest this draft. The intent tonight is that Council begin discussions on the revised subarea plan and provide feedback to staff to move forward with potential revisions to the plan for Harbor Square.

Mayor Earling requested Councilmember Johnson clarify her suggestion. Councilmember Johnson explained her intent was to encourage an open and frank discussion without the need to make motions. She suggested thoroughly discussing each of the issues in Exhibit 3 before proceeding to the next issue. The Council was agreeable to this process.

#### Residential Uses

Councilmember Buckshnis was impressed and pleased with what staff prepared. She did not see where residential would fit with Dayton and the new marsh setbacks. However, she was very supportive of affordable housing which includes dense, small units. She recognized it is a balance and compromise. She was open minded about residential uses particularly affordable housing, pointing out access to the train, ferry, etc. would be very advantageous to young families.

Councilmember Peterson also recognized staff for developing this plan and the Port for starting the process. He was in favor of limited residential uses. Early in the process he thought this could be a residential-driven area but via discussions, he recognized the other side and that there is a compromise to be made. He supports affordable housing, noting Edmonds is prime for that type of development, smaller units for people who are downsizing from single family homes and its proximity to transportation provides a great opportunity for young professionals. He noted much of the residential in the Port's original plan had a view of the marsh which provides a built-in support network. The marsh is a financial investment for those who have purchased homes that have a view of the marsh as well as an emotion connection. That is one of the reasons Edmonds is a leader in environmental issues because residents' see Puget Sound every day. He encouraged residential uses that take advantage of the view of the marsh, anticipating many new residents would be interested in joining Friends of the Edmonds Marsh. He agreed

there was a balance between environmental issues and residential uses. He also supported allowing some of the existing businesses to shift to other parts of the development while still flourishing. He summarized there is space for residential uses and he was hopeful a developer would be interested in that concept.

Council President Petso commented one of the difficulties she had was the desire to create a destination on this site as stated in the Comprehensive Plan; however, residential was not a destination for anyone other than the residents. She questioned how affordable housing other than subsidized housing could be constructed on this site. If residential uses are allowed, she suggested it be on the northern end due to the geologic hazards on the site. She also suggested limiting the square footage that would be devoted to housing. She suggested 20% but recognized it could be anything.

Councilmember Bloom relayed her strong belief that residential was incompatible with a destination. The goals in the City's 2005 Downtown Waterfront Plan for the Downtown Waterfront Activity Center include promoting downtown Edmonds as a setting for retail, office, entertainment, and associated businesses supported by nearby residents and the larger Edmonds community and as a destination for visitors throughout the region. The 2012 Comprehensive Plan contains the same wording. She referred to page 55 of the Comprehensive Plan that states this area is appropriate for design driven master plan development which provides for a mix of uses and takes advantage of its strategic location between the waterfront and downtown. Situated in the bottom of the bowl can enable a design that provides for higher buildings outside current view corridors. She stressed there was nothing in the Comprehensive Plan about residential.

Councilmember Bloom advised the proposed plan includes residential which creates an urban village. There is nothing in the Comprehensive Plan about an urban village. The zoning of Harbor Square is General Commercial, does not include residential and the code states no residential, no places of employment and no places of public assembly can be constructed without appropriate geotechnical studies. She did not feel there was consistency between an urban village in any form and a destination, pointing out no one goes to an urban village as a destination.

Councilmember Bloom agreed with Council President Petso's concern about the ability to provide any affordable housing on the property. The Port's original feasibility study did not take into account the cost to make the building earthquake safe. She summarized the idea that any housing on the site could be affordable was unrealistic.

Councilmember Buckshnis commented the intent was to identify parameters; they may or may not work. She referred to units above Trader Joes and Target stores that work and those are destinations. There is also the potential for live-work units. She summarized many things can be done creatively but that comes after a decision regarding mixed use that may include residential.

Councilmember Fraley-Monillas expressed interest in a destination such as a hotel zone where there would be a variety of boutique hotels. She had concerns with this process, fearing the result would simply be argument back and forth.

Councilmember Johnson commented when she first saw the plan proposed by the Port, the majority, approximately 60%, was residential with the assumption of vacant land. However, the existing and future development needs to be considered. With regard to residential uses, she noted there is not a big difference between people who stay in a hotel or in their own residence. She relayed some people are ready to move to a condominium on this site; the views of the water and marsh make it ideal for residential at a higher level. She agreed with Councilmember Peterson's comment that ownership would provide eyes for the marsh. A business park with 9-5 residents does not provide a complete community; the intent is to enhance the community. With regard to parking, residential can complement and use less

parking than other land uses. She questioned how the Council could control the percentage of residential that would be allowed in a proposed development.

Council President Petso commented if the Council could not control the percentage of housing, she would be satisfied with no housing. She disagreed a hotel use was similar to a residential use; people staying in a hotel are much more likely to spend money in the community, particularly at restaurants, than people living in residential units. A hotel use may provide advantages for area merchants. She asked how affordable housing could be provided and if it could not, she would support no housing.

Councilmember Peterson commented there are a number of ways the City can create affordable housing such as limiting the square footage of a unit as a smaller unit is less expensive. The City can, via a development agreement or incentive zoning, require a percentage of the housing to be available for under market value. City Attorney Jeff Taraday agreed there are ways to do that. Councilmember Peterson commented it is done to provide diversity in many communities including very expensive neighborhoods in Seattle. He recalled Councilmembers who stated they were interested in creating more diversity.

Councilmember Peterson reiterated the Council has the ability to create affordable house and can do it in any multi-family zone. One of the keys to being an environmentally sustainable community is giving people options for transit. The train station, bus routes, and the ferry, provide multiple transportation options and he supported residential uses that could take advantage of those options. He looked forward to a creative compromise that did not hamstring development. For example, flexibility that would allow a developer to build a hotel if that was feasible. He noted one of the new waves in hotels is a combination of hotels and residences. He agreed a boutique hotel would be fantastic addition but residential does not preclude a hotel.

Councilmember Buckshnis suggested Snohomish County Tomorrow provide a presentation to the Council on affordable housing. Affordable housing can be smaller units geared toward youth.

Councilmember Yamamoto spoke in favor of residential uses including affordable housing. The Downtown Master Plan calls for mixed use and the Shoreline Master Plan allows for residential. Residential uses will provide revenue and mixed use will bring people to the area. Until a developer creates a plan, this is all speculation.

Councilmember Fraley-Monillas pointed out the downtown near waterfront area is not the only area for affordable housing. She suggested Highway 99 would be a more suitable place for affordable, transit oriented housing.

Councilmember Bloom commented an urban village, which is what housing would create, is not consistent with a destination. Since at least 2005 Edmonds citizens have envisioned a destination for that area. There is already a mix of uses including restaurants and commercial. Adding residential uses goes in a different direction from destination, requiring uses to cater to the needs of the residents. She questioned someone wanting to live in a residence with a rooftop restaurant above or a retail store below. Residential will also require parking, limiting the amount of parking for visitors who will spend money in the City. The Port is asking to change the Comprehensive Plan as well as the zoning and to allow residents even though the code says nothing greater than 2500 square feet can be approved without a geotechnical study. If the Council insists on pursuing residences, she will insist the Planning Department present all the information to the Planning Board so they can determine what that means and what the real cost of building will be in terms of infrastructure, seismic hazards, the floodplain, shading of the marsh, etc.

Councilmember Bloom pointed out there is a link between housing and height. The Port has said they need a certain number of residences and height; the retail, paths and bikeways are only an afterthought. If

the Council agrees to residential uses, the Council is agreeing to increased heights and making this an urban village rather than a destination. A destination could be created under the current code.

Councilmember Johnson referred to places that she considers destinations such as Granville Island in Vancouver, a place that has hotels, jobs, and live-work artist spaces so that visitors can see the artists at work. Another example is a workspace project in Everett, adaptive reuse of an old industrial building for artists to live and work. She agreed this could be a destination with many public amenities that draw on the environmental resources of the marsh, the arts and culture and historical aspects of Edmonds. She supported continued discussion regarding residential uses.

Council President Petso commented one of the criteria for a Comprehensive Plan amendment is it maintain the appropriate balance of land uses in the City. Duplicating existing residential stock probably does not meet that criteria; live-work options may, smaller units may not.

Mayor Earling relayed in conferring with Council President Petso, it was determined a 1½ hour discussion regarding the Harbor Square plan can be scheduled on next week's agenda.

#### Height and Bulk

Council President Petso relayed her first concern is bulk provisions because neither the Port's plan nor this plan include any bulk limitations. Bulk limitations would be valuable for preserving the small town character and quality that people think of in downtown Edmonds. Although there is some effort to make large bulk buildings look smaller by modulating the façade but there does not seem to be anything to prevent a building stretching the entire length of Dayton Avenue. She suggested limiting the bulk of specific buildings.

With regard to heights, Council President Petso observed citizens were not interested in 55-foot heights but anticipated citizens would find 35 feet acceptable as that is the current height limit. She commented the current 35 foot height limit was bought via a contract rezone. She suggested using incentive zoning between 25 and 35 feet rather which she expected would cause less public outrage than the Port's initial proposal.

Councilmember Buckshnis questioned why Councilmembers continue to refer to the Port's proposal. The staff-provided plan is what is currently being discussed. She referred to non-monetary assets, pointing out the marsh would not clean or restore itself. The only way to restore the marsh is via a private-public partnership which requires incentives such as height, affordable housing or residential. She spoke in favor of a collection of incentives options so citizens can see why things are being given away. She noted if a developer provided \$1 million to restore the marsh, she might consider an additional 10 feet in building height. The current Harbor Square façade is 40 feet. She did not want to close the door and be stuck at 35 feet forever and she did not want to be the Councilmember that turned away from the marsh.

Councilmember Bloom supported Council President Petso's suggestion that the maximum height be 35 and possibly allow incentive zoning from 25 to 35 feet. Citizens have been clear regarding where they stand on height and she did not feel the Council should ignore years of comments, input and elections. When the plans were presented to the Citizen Group of 33, nearly every resident who commented said do not change the code, meaning do not add residences or increase the height. She felt the Council needed to honor what citizens have wanted for many, many years. With creativity, a destination can be developed without residences at the current height.

Councilmember Peterson commented he also served on the Group of 33 but the difference in recall made it seem like he and Councilmember Bloom were at different meetings. He did not recall the Group of 33 was adamant about not making changes. Councilmember Bloom clarified it was the citizens who

responded to the consultants' proposals, not the Group of 33 themselves. Councilmember Peterson pointed out the Group of 33 were 33 citizens.

Councilmember Peterson agreed it was time to get creative and some of that creativity comes at a price. The marsh is an incredible resource; it will take a lot of money and a lot of creativity to determine how to restore it. That can be achieved by encouraging responsible development where the Council and community dictate how things are done. That may be accomplished with a limited number of buildings at 45 feet in locations where views will not be affected. The current Harbor Square façade is 40 feet and citizens are not protesting. There are many reasonable voices that understand giving a little is required to get something. Edmonds is on the forefront of many environmental issues, from coal trains to plastic bags and protecting the marsh. Edmonds is willing to take a stand but it comes at a cost. Utilizing the marsh's environmental beauty and educational opportunity for a destination via some concessions would be a great opportunity.

Councilmember Fraley-Monillas commented she was fortunate to get some education from a citizen well versed in incentive zoning and she learned it can bring great things to the City. She was willing to consider incentive zoning for bulk. During her extensive travels over the past 1½ year to four foreign counties and all over the United States she has looked at what makes cities prosperous and look good. She found it was not the tall buildings that create a warm environment, it was the street façade. She anticipated great incentive zoning for bulk could be developed for Harbor Square.

Councilmember Yamamoto commented a lot can be done to get green buildings and open space and to restore the marsh and streams. It may be necessary to give up a few feet of height to achieve those. Incentive zoning requires a tradeoff. Whether building heights are 40 or 45 feet, a developer's plans will show what it looks like.

Council President Petso reiterated her desire for incentive zoning between the former height limit of 25 feet and 35 feet, the height limit under the contract rezone. She requested the Council exhibit some restraint with regard to incentive zoning as the City does not have a strong record of success with incentive zoning. She referred to a building on SR 104, constructed under incentive zoning, that called for an LID feature if feasible which does not appear to have been provided. It also called for parking enclosed within the building but cars stick out of the building a couple feet. As Mr. Taraday pointed out, there needs to be an appropriately valuable incentive in order to compensate the public for what they give up. If done in a careless, laundry list type fashion, she feared it will come back to bite the Council. She preferred not to do incentive zoning but if incentive zoning was adopted, she suggested using the distance between the prior base height and the contract rezone height as an incentive.

Councilmember Johnson asked whether the City could change the parameters of the contract rezone to allow for incentive zoning between 25 and 35 feet. Mr. Taraday answered yes; the Council could zone the property however it wanted. He referred to Council President Petso's comment that the 35 foot height was "bought" via a contract rezone. In a typical contract rezones, it is not incentive zoning such as the City allows 35 feet in exchange for an amenity. The property owner is allowed zoning in exchange for a promise not to develop certain uses that are otherwise allowed in the zone. For example, if the zoning is CG and there are 20 permitted uses in the zone, the contract rezone may limit the property owner to only 10 of the uses. In this instance, the City is starting from scratch at the Comprehensive Plan level and the current zoning on the property is irrelevant. The future zoning must be consistent with the ultimately adopted Comprehensive Plan.

Councilmember Buckshnis asked staff to respond to Council President Petso's comments regarding incentive zoning used in a development on SR 104. She was aware there had been some contract rezones but was not aware there had been any incentive zoning. She asked how a contract rezone differed from

incentive zoning. Acting Development Services Director Rob Chave answered a contract rezone typically places limitations which is not incentive zoning. The incentive zoning Council President Petso alluded to was a privately sponsored rezone that occurred on SR 104. Technically they did do an LID feature on the property and they did provide parking under the building at the standard City parking dimensions. Whether the entire vehicle fits under the building is beyond the scope of the dimensions. It technically met the requirements of the zone and the zone was configured like an incentive zone. At Council President Petso's suggestion and with the Council's agreement, the Planning Board is considering the specific provisions in that zone.

Councilmember Buckshnis asked if that project came to the Council. Mr. Chave answered it did, it was a standard zone with incentive provisions. The incentive zoning that is being considered is part of the form based code for Westgate and Five Corners.

For Councilmember Fraley-Monillas, Mr. Taraday explained once changes are made to the Comprehensive Plan, the Council can adopt any zoning that is consistent with the Comprehensive Plan. The current zoning or the contract zone does not limit what the Council can do. The only requirement is that future zoning be consistent with whatever changes are made to the Comprehensive Plan.

For Councilmember Fraley-Monillas, Mr. Taraday said he personally felt incentive zoning worked very well as long as the City had a good lawyer, like him, to assist them. There are instances in the City's code where there is sloppily drafted language that does not function well. Incentive zoning requires more careful drafting than regular zoning and there can be unintended consequences if not carefully drafted. He was confident in his ability to get the Council what they wanted.

Councilmember Fraley-Monillas commented people typically think of height as an incentive but it actually can be many things such as expedited permitting in exchange for LEED development. Mr. Taraday commented the longer the list of "goodies" a developer can provide, the more complex it becomes. Having fewer things on the wish list makes it easier to draft bulletproof language.

#### Buffers, Setbacks and Other Environmental Issues

Councilmember Buckshnis commented she had no problems with this. She plans to recommend changes to the Shoreline Master Program (SMP) regarding the setback for the marsh buffer related to industry standards. The Comprehensive Plan references the SMP.

Council President Petso noted one of the criteria for a Comprehensive Plan amendment is related to adequate public services. She pointed out the Harbor Square area routinely floods and therefore the public services are not adequate to support the Comprehensive Plan amendment under consideration. She did not have details regarding which buildings and/or parking lots routinely flood but assumed if flooding could not be curtailed, residential was not a good plan for this site.

Councilmember Peterson referred to the column entitled "How Addressed in revised HSMP," that states geological hazard and flooding issues are items that will be dealt with during project level SEPA review. He pointed out a project proposal would not move forward if it could not address flooding. Similarly, if a building cannot be constructed safely, the project will not move forward. He relayed he was required to hire a geotech before having a deck constructed in his backyard.

Council President Petso reiterated it is in the criteria for review of a Comprehensive Plan amendment.

Councilmember Johnson commented the fourth criteria is triggered if there is a change to the Comprehensive Plan policy map, if the subject parcels are physically suitable for the requested land use designation and the anticipated land use development including but not limited to access, provision of

utilities, compatibility of adjoining land uses and absence of physical constraints. She asked whether there was potential to change the map to designate open space or a change in land use that would trigger this criterion. Mr. Taraday assumed a map amendment would be required if the Harbor Square plan moved forward as a subarea plan and the findings in 20.00.050(d) would need to be made by the Council. He questioned what data the Council needed to make that finding. This is comprehensive planning and he did not anticipate that the code intended there would be extremely detailed studies performed but rather a high level look at physical suitability. Mr. Chave agreed with Mr. Taraday, explaining that language is from the GMA and speaks to general plan levels of service. It is not intended to provide a project-specific review of every location. Those are typically resolved during the development process. During the initial phase, the question is whether the appropriate public facilities are adequate and then during project level approval specific impacts are identified, how they are mitigated, etc.

Councilmember Johnson commented the staff report indicated there were no planned Comprehensive Plan map changes and therefore this would not be addressed. However, if the Council pursues a subarea plan, it can and should be addressed.

Councilmember Bloom relayed her understanding that the City, as the lead agency, issued a Determination of Non-Significance for everything but traffic. She asked whether Council could prescribe that the geological hazard zone be considered and require a geotechnical study be done to determine whether housing could be developed and that it was affordable to develop housing. The Port did not do that and that was one of her major concerns with regard to the revenues the Port indicated would be generated. Mr. Taraday referred to the criteria, including but not limited to access, provision of utilities, compatibility with adjoining land uses and absence of physical constraints, advising the SEPA analysis already done by is probably sufficient to allow the Council to make the findings in 20.00.050(d). Just because staff issued a SEPA determination that satisfies 20.00.050(d) does not preclude the Council from asking that additional information be provided if the Council needs that information to make a decision.

Councilmember Bloom said she needed that information to make a decision. She felt the Council would be irresponsible not to be sure that earthquake safe housing can be constructed. When the code says not more than 2500 square feet of residential, place of public assembly or employment in a geologically hazardous area such as a seismic hazardous zone, she did not understand how the Council could approve housing without appropriate study.

Councilmember Bloom expressed concern that there was reference to the SMP but not the Critical Areas Ordinance (CAO) which includes the marsh and setbacks. She requested the remainder of the CAO be honored as well as the SMP.

Councilmember Buckshnis advised the SMP impacts the marsh because the marsh is now considered a shoreline. When the SMP is updated, she will request Section 20.40.090 include 150 feet. She reiterated the intent was to identify parameters to include in the Comprehensive Plan; residential could be included as an option. The Comprehensive Plan already allows mixed use in this area. She questioned why the City would spend money on a geotechnical study; if a developer chose to construct residential, a geotechnical study would be required at that time.

Councilmember Bloom commented once residential is included in the Comprehensive Plan, it is no longer optional, it has to be allowed. Councilmember Buckshnis pointed out the Comprehensive Plan allows mixed use. Councilmember Bloom commented mixed use is not the same as allowing residential. The current zoning, General Commercial, does not include residential and the contract rezone specifically states no residential.

Councilmember Bloom summarized once the Comprehensive Plan is changed to allow a use, that use has to be allowed and the zoning has to be changed to allow that use.

Councilmember Peterson asked whether the City has to allow a use that is included in the Comprehensive Plan but cannot be built to code. Mr. Taraday answered no. Councilmember Peterson provided the example, would the City have to allow a developer to build residential if a geotechnical survey found residential could not be constructed. Mr. Taraday responded with an example, if a builder said it would only be affordable to build condominiums out of balsa wood, the City does not have to approve the condominium project. A developer must meet all the City's development codes. He clarified while it is true adoption of a Comprehensive Plan requires adoption of consistent zoning, it is not necessarily true that everything that could possibly be built under the consistent zoning has to be approved if a developer cannot meet the underlying development regulations. He summarized a developer would not get a free pass on development regulations just because the Comprehensive Plan allows residential.

Councilmember Peterson asked whether language could be included in the subarea plan that any residential building is subject to feasibility via geotechnical analysis. Mr. Taraday answered it could be done but he did not believe it was legally necessary. The seismic code will apply to any development proposed for a seismic hazardous area.

#### Incorporation into City's Comprehensive Plan

Councilmember Buckshtnis preferred to incorporate the subarea plan by reference versus incorporating it into the Comprehensive Plan as has been done for plans such as the hospital master plan.

Councilmember Peterson recalled the Planning Board recommended that the Harbor Square Master Plan be incorporated in the City's Comprehensive Plan rather than just be incorporated by reference. He asked for pros and cons. Mr. Taraday answered one of the disadvantages is elements adopted by reference could be overlooked. For example, in a recent email to the Council, he referred to the six Comprehensive Plan elements reflected in the Comprehensive Plan table of contents but not the elements adopted by reference. Mr. Lien answered the Planning Board felt this was an important enough issue that it should be included in the Comprehensive Plan rather than referenced. He noted the language in the subarea plan has the same effect whether adopted by reference or incorporated in the Comprehensive Plan. Mr. Chave agreed there are pros and cons and there is no set way jurisdictions adopt subarea plans. He noted if all the plans incorporated by reference were incorporated into the Comprehensive Plan, the Comprehensive Plan would be very voluminous. Subarea plans are frequently adopted separately so that it can be distributed separately to a developer interested in that area, rather than providing the entire Comprehensive Plan. The Planning Board thought it was significant enough that it should be incorporated into the Comprehensive Plan.

Council President Petso referred to the height and bulk section and reference to transfer of development rights. She questioned who had suggested that as it seemed contradictory to the direction the Council is headed. She requested staff provide an explanation regarding where the concept of transfer of development rights came from and the impact it would have.

Mayor Earling advised discussion of the next three pages of Council comments/suggestions communicated to staff (Exhibit 3) would be continued next week.

## **8. REPORT ON CITY COUNCIL COMMITTEE MEETINGS OF MARCH 12, 2013.**

### Finance Committee

Councilmember Yamamoto reported on items discussed by the committee:

- Purchasing policy revision for Public Works projects – approved by the Council tonight.

- Addition of a Project to the 2013 CIP, CFP, and TIP (Capital Improvement Program, Transportation Improvement Program, and Capital Facilities Plan) Titled "Edmonds Gateway/SR 99 Revitalization – Phase 1" For \$10,000,000 – scheduled for full Council
- Presentation by Ms. Hite and Mr. Williams regarding use of REET funds
- Ordinance Consenting to the Assignment of the Non-Exclusive Franchise Granted to Metromedia Pursuant to Ordinance No. 3295, to ZAYO Group – approved on Consent Agenda
- January 2013 Monthly Financial Report – approved on Consent Agenda
- Parks staffing – approved by Council tonight

#### Public Safety & Personnel Committee

Councilmember Peterson reported on items discussed by the committee:

- Amendment to Domestic Violence Coordinator ILA with the City of Mill Creek – approved on Consent Agenda
- Animal licensing and associated fees – scheduled for full Council for further discussion
- Discussion and potential action regarding possible amendment of City Code 8.48, Parking, Paragraph 8.48.215 B.2 that allows citizens who receive a parking ticket to pay a reduced fine if the individual pays the fine with 24 hours – City attorney will create an ordinance eliminating the reduced fine and place it on a future Consent Agenda
- Student and senior volunteers
- Ethics Board and Code of Ethics – further discussion will be scheduled on April committee agenda
- Taking minutes during Council Committee Meetings – agreed a staff person will take action minutes. If a controversial item is scheduled, arrangements will be made for more detailed minutes

#### Parks, Planning & Public Works Committee

Councilmember Buckshtnis reported on the following items considered by the committee:

- Authorization for Mayor to sign contract with Snohomish County for Tourism Promotion grant – approved on Consent Agenda
- Authorization to send out Call for Artist RFQ for Five Corners Roundabout Project – approved on Consent Agenda
- Traffic Impact Fee Annual Report – approved on Consent Agenda
- Report on final construction costs for the 2011 Waterline Replacement Project and acceptance of project – approved on Consent Agenda
- Report on final construction cost for the 2012 Waterline Replacement Project and acceptance of project – approved on Consent Agenda
- Authorization to advertise a Request for Bid for construction services for the 2013 Waterline Replacement Project – approved on Consent Agenda
- Authorization to advertise a Request for Bid for construction services for the WWTP Standby Power Distribution and Switchgear Improvement Project – approved on Consent Agenda
- Authorization for Mayor to approve acceptance and recording of easements for the Five Corners Roundabout project – schedule for approval on future Consent Agenda
- Purchasing Policy Revision for Public Works projects – approved on tonight's agenda
- Proposed Ordinance authorizing the acquisition by negotiation or condemnation of real property interests needed for Five Corners Roundabout Project – approved on tonight's agenda
- Authorization for Mayor to sign a Professional Services Agreement with a Consultant to provide services for the Perrinville Creek Stormwater Flow Reduction Retrofit Study – schedule on future agenda after contract negotiated
- Energy Savings Contracting (ESCO) III – schedule for full Council

9. **MAYOR'S COMMENTS**

Mayor Earling had no report.

10. **COUNCIL COMMENTS**

Councilmember Peterson referred to emails, calls and letters Councilmembers are receiving regarding the Pt. Edward project. He explained the Council is not allowed to read, answer, address or discuss any of the issues with the public because the matter may come before the Council in a quasi-judicial setting.

Councilmember Buckshnis announced there are only 14 flower baskets left to adopt. She encouraged anyone interested in adopting a basket for \$100 to contact the Parks & Recreation Department.

11. **CONVENE IN EXECUTIVE SESSION REGARDING PENDING LITIGATION PER RCW 42.30.110(1)(i).**

This item was deleted from the agenda via Council action under Agenda Item 2.

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

This item was deleted from the agenda via Council action under Agenda Item 2.

13. **ADJOURN**

With no further business, the Council meeting was adjourned at 10:09 p.m.