

EDMONDS CITY COUNCIL APPROVED MINUTES

May 10, 2016

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

ELECTED OFFICIALS PRESENT

Kristiana Johnson, Mayor Pro Tem
Thomas Mesaros, Council President Pro Tem
Michael Nelson, Councilmember
Adrienne Fraley-Monillas, Councilmember
Diane Buckshnis, Councilmember
Dave Teitzel, Councilmember
Neil Tibbott, Councilmember

STAFF PRESENT

Phil Williams, Public Works Director
Shane Hope, Development Services Director
Rob English, City Engineer
Renee McRae, Recreation Manager
Jeff Taraday, City Attorney
Scott Passey, City Clerk
Jerrie Bevington, Camera Operator
Jeannie Dines, Recorder

ELECTED OFFICIALS ABSENT

Dave Earling, Mayor

1. ROLL CALL

City Clerk Scott Passey called the roll. All elected officials were present with the exception of Mayor Earling.

2. APPROVAL OF AGENDA

COUNCILMEMBER TEITZEL MOVED, SECONDED BY COUNCIL PRESIDENT PRO TEM MESAROS, TO APPROVE THE AGENDA IN CONTENT AND ORDER. MOTION CARRIED UNANIMOUSLY.

3. APPROVAL OF CONSENT AGENDA ITEMS

Councilmember Nelson requested the minutes of the May 3, 2015 Special Meeting be revised to show Council President Johnson arrived at 5:34 p.m., Councilmember Fraley-Monillas arrived at 5:33 p.m. and he arrived at 5:37 p.m.

COUNCILMEMBER BUCKSHNIS MOVED, SECONDED BY COUNCILMEMBER TEITZEL, TO APPROVE THE CONSENT AGENDA. MOTION CARRIED UNANIMOUSLY. The agenda items approved are as follows:

- 1. APPROVAL OF COUNCIL SPECIAL MEETING MINUTES OF MAY 3, 2016 AS AMENDED**
- 2. APPROVAL OF COUNCIL MEETING MINUTES OF MAY 3, 2016**
- 3. APPROVAL OF CLAIM, PAYROLL AND BENEFIT DIRECT DEPOSIT, CHECKS AND WIRE PAYMENTS**

4. **AUDIENCE COMMENTS**

Michael Reagan, Edmonds, invited everyone to the 2nd annual Edmonds Senior Center auction fundraiser “Anchors Away” on Friday, May 20th beginning at 5:30 p.m. The event will include great food, great auction items and a great auctioneer. Tickets are \$75.

5. **STUDY ITEMS**

1. **REVIEW OF INTERLOCAL AGREEMENT BETWEEN THE CITY OF EDMONDS AND SNOHOMISH COUNTY FIRE DISTRICT NO. 1 REGARDING CLASSES**

Recreation Manager Renee McRae explained the City has had an ILA with Snohomish County Fire District 1 (SCFD 1) since 2013 for SCFD 1 to provide CPR/First Aid classes via the City’s CRAZE recreation guide. The fee in the current ILA was \$50/student. SCFD 1 has reduced the class fee to the public to \$30 and the City’s fee to \$10/student.

Mayor Pro Tem Johnson observed that section of the ILA no longer includes a specified fee. Ms. McRae explained the was removed so that the ILA does not need to be revised annually if the fee changes again. The SCFD 1 Board recommended the fee be decreased to get more people to take the class. She noted this is a great class and the fee is far less than other agencies charge. For example, the American Red Cross charges \$67-100, ABC First Aid CPR (YMCA) charges \$75 and Lynnwood charges \$60 plus a \$27 fee.

Councilmember Nelson asked whether instruction on AEDs (automatic external defibrillators) will be offered as part of class. Ms. McRae said she believed it would be but she would confirm and advise Councilmember Nelson.

Councilmember Teitzel asked whether this was put out to bid. Ms. McRae answered no, if a program is working well, it is retained. If a contractor for a successful class goes away, staff will look for other contractors. The City has done RFQ for sports camps.

Ms. McRae recommended approval of the ILA be forwarded to the Consent Agenda.

It was the consensus of the Council to schedule this for approval on next week’s Consent Agenda.

2. **PRESENTATION OF A RIGHT OF WAY DEDICATION DEED ON 218TH ST. FOR SELECT HOMES, INC.**

City Engineer Rob English explained this is 2-lot short plat applied for by Select Homes in 2015 and is now ready for approval. As part of the short plat, a 10-foot dedication is required along 218th according to the Official Street Map which will provide right-of-way on the north side along the frontage. He recommended approval on the Consent Agenda.

It was the consensus of the Council to schedule this for approval on next week’s Consent Agenda.

3. **PRESENTATION OF A SUPPLEMENTAL AGREEMENT WITH REID MIDDLETON, INC. FOR THE NORTHSTREAM PIPE ABANDONMENT AND CULVERT REHABILITATION PROJECT**

City Engineer Rob English explained this project has been in the CIP for a couple years. Early this year the City hired Reid Middleton to perform a more comprehensive evaluation of the Northstream system. The creek runs along SR 524/196th Street, primarily on the south side. At 12th Avenue the creek goes into a pipe. Prior to 2006 the alignment of the pipe was not necessarily adjacent to the roadway. He displayed

an aerial photograph illustrating the alignment (depicted on the map in orange and green) and where it enters a culvert under SR 524 (depicted in blue). In 2006 the City performed an emergency project to fix a section of the line and put the stream into a new alignment on north side beginning at 12th Avenue (depicted in red) and tying into the culvert under SR 524. That line is active today and carries flow from Northstream.

When that project was completed, the orange and green sections were abandoned but left in place due to concerns about groundwater flows. The City hired Reid Middleton to assess those sections of pipe as well as the culvert. After video inspection and assessment on the culvert, a series of recommendations were developed to move forward with repair and rehabilitation of the culvert. Reid Middleton recommended maintaining the green and orange portions which collect groundwater flow. Because the green section is in poor condition, Reid Middleton recommended slip lining that section and filling the void space with CDF. The orange section is in good condition and does not warrant any maintenance from the green section to 12th Avenue. At 12th Avenue a 60-foot section of the culvert pipe is in poor condition and failing, and Reid Middleton recommends completely filling it with CDF. Everything to the west would remain open and active and continue to collect groundwater flows.

With regard to the culvert crossing at SR 524, Reid Middleton recommends a cured in place liner similar to what has been used on sewer pipeline projects to restore the condition of the pipe. With those recommendations the work in the supplemental is design of those improvements. That work will continue through 2016 and the intent is to make the improvements in 2017. An adjustment was made to the fee in the scope of work after the Council packet was prepared; the fee is the same but the management reserve was reduced from \$15,000 to \$7,000 and \$8,000 moved to the base design fee for additional design work added to the scope. He recommended approval on the Consent Agenda.

Mayor Pro Tem Johnson confirmed the revised cost would be in next week's packet.

Councilmember Buckshnis asked whether this went out for bid. Mr. English explained architectural and engineering services are not put out to bid; only construction contracts are put out bid. Using the on-call roster, staff selects firms based on their qualifications. Councilmember Buckshnis noted the City has used Reid Middleton quite a lot. Mr. English said this is the first time the City has used Reid Middleton in several years. State law does not allow cities to bid professional services; they must be selected based on qualifications and experience. Councilmember Buckshnis asked if Reid Middleton was used for Sunset Avenue. Mr. English answered no.

Councilmember Teitzel relayed his understanding the east end of the pipe at 12th Avenue would be capped. Mr. English agreed. Councilmember Teitzel asked how the orange and green sections collect groundwater. Mr. English answered there are several pipes that enter the system and video inspection found water in the pipe.

It was the consensus of the Council to schedule this for approval on next week's Consent Agenda.

4. INTERLOCAL AGREEMENT WITH CITY OF LYNNWOOD FOR SPECIALIZED EQUIPMENT

Public Works Director Phil Williams Edmonds explained Edmonds is one of five waste water treatment plants in Washington and 100-150 in the U.S. that incinerates the wastewater solids the plant produces. That is done in Edmonds due to the limited space; the technology of choice is typically digesters and agricultural applications. Sanitary Sewage Incinerators (SSI) were the subject of an EPA ruling several years ago; staff worked with the industry to help shape those regulations and are working hard to be in compliance. The standards include mercury which enters wastewater through dental offices where old mercury amalgam is removed. There are best practices and pretreatment to ensure those facilities keep as

much mercury out of the wastewater as possible but some inevitably enters wastewater. In incineration, mercury is vaporized. Due to mercury's toxicity, there are very stringent standards regarding the amount of mercury in discharge, .0037 micrograms per cubic meter of air which is comparable to 3 seconds of time in the last 100,000 years.

There is a readily available but very expensive technology that uses carbon absorption towers to capture mercury; the cost to convert the Edmonds treatment plant would be approximately \$2 million. A different technology that costs approximately \$100,000 has been identified that is being tested and is awaiting approval by EPA. He expected it will be approved by EPA and as soon as it is, staff would like to execute this ILA with Lynnwood to purchase test equipment in the amount of \$46,000 that Edmonds and Lynnwood would share. The current requirement is annual testing; if results are good enough, testing can be extended to every other year. He recommended forwarding the ILA to the Consent Agenda. Upon approval, both cities will execute the ILA, the equipment will be purchased, and the purchase and maintenance costs will be shared with Lynnwood.

Councilmember Tibbott asked whether other cities could share the equipment in addition to Edmonds and Lynnwood since it will be used only one a year or once every other year. Mr. Williams answered possibly, testing begins on a quarterly basis, the other city that uses this technology is Anacortes. Five cities in Washington use incineration but two, Vancouver and Bellingham, have multiple hearth furnaces which have different standards. He agreed staff could research whether it would be possible to include another city which could result in a three-way cost split.

Councilmember Tibbott inquired about the equipment's portability. Mr. Williams answered it could be transported in a pickup truck.

It was the consensus of the Council to schedule this for approval on next week's Consent Agenda.

5. **AUTHORIZATION TO PURCHASE (1) NEW CATERPILLAR 420F2 HRC BACKHOE LOADER FROM NC MACHINERY. WASHINGTON STATE CONTRACT #00410 AND AUTHORIZATION TO SURPLUS THEIR EXISTING BACKHOE, UNIT #18, AT AUCTION**

Public Works Director Phil Williams explained the maintenance costs of the Parks Department's existing 1995 backhoe are increasing due to its age. The proposal is to surplus the existing backhoe at Murphy Auction, anticipating more could be obtained at auction than was offered as a trade in. The purchase price of the new backhoe is \$102,000. He recommended authorization to purchase be forwarded to the Consent Agenda.

Councilmember Buckshnis asked why staff was seeking authorization when this purchase was already approved in the budget. Mr. Williams answered the purchase price is over \$100,000 and according to the purchasing policy, requires Council approval. Past practice has been to bring to purchases or studies over \$100,000 to Council for approval even if they were included in budget. Councilmember Buckshnis commented a piece of equipment is much different than services. Mr. Williams said he would be happy not to bring equipment purchases to Council that were included in the budget if it was within the budgeted amount.

It was the consensus of the Council to schedule this for approval on next week's Consent Agenda.

6. **DISCUSSION OF WHETHER TO CONTINUE CITY'S PRACTICE OF TAKING NOTES IN EXECUTIVE SESSION**

City Attorney Jeff Taraday explained adoption of Resolution 853 began the practice of the City Clerk attending executive sessions to take notes and that has occurred since the Council adopted the resolution some years ago. Due to issues that have arisen with that resolution and practice, staff decided to bring this issue to Council to determine whether to continue that practice or make a change. He reviewed issues associated with that practice. First, Resolution 853 directs that “minutes” be taken of executive session but he suggested that is not a correct description of what is actual done. Minutes are notes taken during a meeting and become minutes when the meeting body reviews and approves them. That is not done with the notes taken in executive session; there is no opportunity for Council to review or make corrections. He suggested it was incorrect to call them minutes and he refers to them as notes.

Second, when the resolution was adopted it appears from the language that the intent was to allow future disclosure of what took place during the executive session. For certain types of executive session that works, such as the purchase of real estate, those could be releasable assuming no attorney-client privilege discussion occurred or legal advice was given during the executive session. However, a lot of executive sessions involve litigation or potential litigation and that attorney-client privilege never expires. His concern and what has been noticed in practice is due to the language in the resolution, citizens expect someday they will be able to read executive session notes. Because the attorney-client privilege never expires, the notes would never be releasable under the Public Records Act (PRA); it would require an affirmative action of the City Council to waive the attorney-client privilege, something he did not think had ever happened in the 5+ years he has been City Attorney and may not have ever occurred before that. It would be highly unusual for the Council to waive the attorney-client privilege. If the Council wanted to continue having notes taken in executive session, he suggested the Council clarify the purpose; the primary purpose may not be to provide records pursuant to a public records request.

Third, the Open Public Meetings Act (OPMA) provides certain reasons for an executive session, they are identified in statute and purpose of the executive session is announced before the Council convenes in executive session. Topics include litigation, purchase or sale of real property, hearing a complaint about an employee, discussing the qualifications of an applicant for elected office, etc. While those are legitimate reasons for convening in executive session, not all enjoy a corresponding exemption from the PRA. He provided an example of the Council convening in executive session to discuss the qualification of candidates for a vacant City Council seat; the Council discusses the candidates and their qualifications and the City Clerk takes notes of that discussion. Even though the City Council is legitimately having a confidential discussion in executive session, the notes are not protected from disclosure under the PRA, creating a false sense of confidentiality for Councilmembers in the executive session. He said the City has had to release public record under that exact scenario. A fourth issue is it generates a great deal of work for the City Clerk’s office as well as the City Attorney.

Mr. Taraday relayed this morning he sent an email poll to City Attorneys in Washington’s list serve asking how many cities took notes in executive session. The only affirmative response he received was the Port of Seattle who also video records their executive session. While the Port has the same PRA concerns, with the video there is not the issue of whether the notes are accurate. He summarized he did not know of other cities that take the type of notes Edmonds takes in executive session. One or two cities responded they take notes of who is present and the topic that was discussed.

City Clerk Scott Passey explained he raised this issue due to the impact on workload and resources in the Clerk’s office. There has been an increase in the number of executive session recently and because the minutes are public records, it takes a tremendous amount of time for the Clerk’s Office and the City Attorney to review the minutes when a request is received. In most cases the exemptions are not clear cut and often the minutes are intermixed with portions that are releasable and portions that are not, requiring someone read the minutes, redact portions, and create a redaction log to cite the applicable State law for that exemption. He provided one example where staff in the Clerk’s Office spent 50 hours reviewing

minutes related to a minor request and the City Attorney spent at least that much or more time. The City has a pending request for all City Council executive session minutes since 1996, 20 years' worth of minutes that need to be reviewed which likely will take months to complete. He recommended the Council consider the cost-benefit of taking minutes of executive sessions.

In response to an email from Councilmember Buckshnis today regarding what other cities take executive session minutes, Mr. Passey said he polled other City Clerks in the State and received responses from 47 large and small cities stating none of them take executive session minutes. In fact, the response from many was, "are you crazy?" Some cities said the most they do is note who attended the executive session, the topic, and the applicable RCW.

Council President Pro Tem Mesaros supported refraining from taking minutes in executive session and just noting who was in attendance, the topic, and the date and time. He noted any action taken as a result of discussion in executive session must be taken during a public meeting. Mr. Taraday agreed, no action can be taken in executive session; any action that is the result of discussion in executive session would be made during open session.

Councilmember Teitzel commented the process as currently established is a half-measure where notes rather than minutes are taken, the Council never reviews the notes to determine their accuracy, and it is difficult if not possible for citizens to get a copy of the notes pursuant to a public records request. He was uncertain that practice was creating more transparency, it may an illusion of transparency that is not real. He expressed concern that the current practice of taking notes of executive session was not helping anyone, neither the City nor citizens. For that reason, he agreed with discontinuing the practice of taking notes and just noting who was present and the topic discussed.

Councilmember Fraley-Monillas recalled in the time she has been on the Council, 6½ years, there has been occasion to reference the notes for internal use. She had mixed feelings about taking notes in executive session. In reading the resolution, it appears the Council has exceeded the intent of taking minutes. However, she would like citizens to have an opportunity to provide input on this policy that has been in effect for 20 years. She did not necessarily want a public hearing but for citizens to have opportunity to provide input during Audience Comments. In reality what has been provided via public record requests is not what citizens were seeking due to attorney-client confidentiality. She was not convinced taking notes or minutes during executive session has been beneficial to anyone requesting them.

Councilmember Tibbott observed there are approximately eight specific reasons for holding an executive session. As long as the Council is following those guidelines and with the understanding that executive sessions occur as an exception rather than the rule, the Council deserves to meet in confidentiality. It is helpful for the public to know when topics arise that the Council has previously discussed it in executive session. For example, if the Council discussed real estate and it ultimately comes to the Council, there could mention that it was discussed in executive session prior to deliberating on it publicly. He express support for replacing the requirement for minutes with the format mentioned above.

Councilmember Buckshnis said she would have liked to have seen the reasoning behind taking minutes in executive sessions. She recalled making a motion in 2012 to rescind Resolution 853 but that action was deemed inappropriate because the item was scheduled for discussion and it was never scheduled on a subsequent agenda. She asked the original purpose in 1996 for requiring minutes be taken and why rescinding Resolution 853 was never scheduled for action. She has seen redacted minutes and they often do not say much. She agreed with Councilmember Fraley-Monillas it may not be helpful for citizens to obtain those minutes and she questioned the purpose of taking minutes if they cannot be understood due to redactions. She also questioned whether minutes are necessary when the purpose of an executive

session is for the Council to have confidential discussions. Taking minutes or notes may make a Councilmember uncomfortable speaking during an executive session.

Councilmember Nelson questioned whether Resolution 853 was good policy. Although the City has been taking minutes of executive session for 20 years, he found it enlightening that a poll of 46 cities revealed none of them took minutes or notes. If one of the purposes was to be able to disclose minutes in the future, yet the nature of the topics will never be disclosed due to attorney-client privilege, it creates a false/misleading purpose. He summarized it does not make a lot of sense to be taking minutes in executive session.

Mayor Pro Tem Johnson asked the next step if the Council chose to rescind the resolution. Mr. Taraday said he would prepare a resolution repealing Resolution 853 for Council consideration. Mayor Pro Tem Johnson suggested if that resolution was scheduled for Council consideration on May 24, the public would have an opportunity to provide input at the May 17 and 24 Council meetings. Councilmember Fraley-Monillas said two weeks would give the public an ample opportunity to speak to the Council with regard to Resolution 853.

Councilmember Teitzel said he not oppose the notion of the public providing comment but he wanted to ensure the public understood that the rules as they currently exist under Resolution 853 create an illusion of openness.

Councilmember Nelson referred to Mr. Passey's comment that the number of executive session has increased and asked whether the majority were attorney-client privilege topics. Mr. Passey answered it was a mixture of topics; there have been a lot of real estate matters, potential and pending litigation, a few related to discussing the qualifications of a candidate for public office, and collective bargaining.

Mayor Pro Tem Johnson requested the City Attorney draft a resolution for further discussion on May 24 and action the following week, which will provide three weeks for public testimony before any action is taken.

7. **DISCUSSION OF WHETHER TO CONTINUE CITY'S PRACTICE OF CONDUCTING QUASI-JUDICIAL LAND USE HEARINGS**

City Attorney Jeff Taraday recalled the Council briefly discussed this during their retreat. He explained quasi-judicial hearings are where the City Council sits in a judicial capacity, acting like judges. Most of time the Council acts as legislators; as legislators the Council has a great deal of discretion and are not bound by strict criteria or standards in making legislative decisions. The public looks to the Council as legislators; when the public appeals to the Council, they are looking to the Council as people they vote for that they want to represent them and reflect their values which is what a good legislator does. When the Council sits in a quasi-judicial capacity, the Council is forced to play a completely different role, acting like a judge.

When the public comes to a courtroom, they expect a fair and impartial hearing. When Councilmembers sit in a quasi-judicial hearing, they are expected to act in a fair and impartial manner regardless of who may be in the audience asking for something. Sitting in a quasi-judicial capacity puts the Council in a very difficult position, giving the illusion the Council can make whatever decision is being requested. That is in fact an illusion because Councilmembers do not have the same discretion in a quasi-judicial matter that they have as legislators. Councilmembers have much less discretion in a quasi-judicial hearing because the decision must be made in a manner that is consistent with the previously adopted decision criteria and standards in the zoning code. If those codes do not directly address the issue before the Council or in a manner that allows the Council to grant the relief being requested, the Council may not be able to grant that relief.

Mr. Taraday provided a recent example, the crumb rubber issue, where some very concerned citizens asked the Council to deny a project based on their concerns about the infill material used on those fields. The infill was not one of the decisions before Council and ultimately a majority of the Council approved the project but many did so reluctantly because it did not feel right. Councilmembers knew they were doing the right thing as a judge to approve the project because it met the standards but many were unsure about the infill material and some spoke to that from the dais. Several months later as legislators the Council was able to adopt a temporary ban on crumb rubber.

In considering whether the Council wants to continue in a quasi-judicial capacity, Mr. Taraday suggested they ask themselves if so, why? If it because they feel the Council can make better decisions than the Hearing Examiner, that they have more expertise than the Hearing Examiner, that is a valid reason to continue this practice so that the Council can correct the Hearing Examiner's errors. He explained there was another way to accomplish that, appealing the Hearing Examiner's decision under LUPA. For example, when the Hearing Examiner makes an unpopular decision or the City Council has concerns with the decision, the Council can vote to appeal the decision and direct the City Attorney to file a LUPA appeal in Superior Court. As a result, the City Attorney would argue on the Council's behalf to convince the court that the Hearing Examiner's decision wrong.

Mr. Taraday explained there are benefits to that process from a risk management standpoint. If he goes to court and argues the Hearing Examiner's decision was wrong and the judge upholds the Hearing Examiner's decision, no damage claim will be filed against the City. Conversely if an appeal comes before the Council acting as the decision maker and constituents are clamoring to overturn a Hearing Examiner decision and the Council does so when it shouldn't, the City could face a significant damage claim as a result of that action. He summarized from a risk management standpoint, much of the same thing can be accomplished by directing him to appeal Hearing Examiner decisions versus having the Council in the position of decision-maker.

Councilmember Tibbott observed if the Council relinquishes the role of judicial reviews, the Council could be participants in a Hearing Examiner's review process and advocates for citizens. He found that a powerful position and a good role for Councilmembers. He asked if it would be possible for the Hearing Examiner to do quasi-judicial reviews on a City Council night. Mr. Taraday said the Hearing Examiner's regular meeting time is Thursday. If an issue was important enough, Councilmember Tibbott suggested holding the hearing on a City Council night when citizens are more attuned to participating. Another option would be to televise Hearing Examiner's meeting for important topics like crumb rubber. Mr. Taraday said Hearing Examiner meetings currently are not televised. They are held in Council Chambers and could be televised although there would be some additional cost. Scheduling Hearing Examiner meetings on Council nights could affect the time available for Council business meetings, which is another reason for not having Councilmembers participate in quasi-judicial hearings. When quasi-judicial hearings arise, they consume a significant amount of time.

Mr. Taraday explained when there is a quasi-judicial before the Council, Councilmembers are not allowed to have any contact with proponents or opponents of that matter except for what is said at the microphone. Councilmembers are cut off from their constituents when sitting in a quasi-judicial capacity. If the City Council allowed the Hearing Examiner to hear quasi-judicial matters, Councilmembers could participate at the Hearing Examiner meeting as a member of the public but could also have unlimited contact with constituents on that issue and play a very different role than when sitting in a quasi-judicial capacity.

Councilmember Fraley-Monillas was unsure she wanted Hearing Examiner hearings on Council nights; it is already difficult to consider all the items on the agenda. She was unsure how sitting through each other's meetings would benefit the Council or the Hearing Examiner. Her understanding the reason this

was done initially was to save appellant's money; there is no cost to appeal a Hearing Examiner decision to the City Council. Mr. Taraday clarified there is a \$500 fee to appeal a Type IIIB Hearing Examiner decision to the City Council. He agreed there could be a cost savings for the appellant; for example, the Hearing Examiner makes a decision, several citizens contact the Council expressing their concern with the decision and the Council decides to appeal. That decision saves the citizens \$500 because they do not pay the appeal fee to the Council and the Council directs the City Attorney to appeal the Hearing Examiner's decision on the City's behalf.

Councilmember Fraley-Monillas asked the cost to appeal to court if the Council decided not to direct the City Attorney to appeal the Hearing Examiner's decision. Mr. Taraday answered the filing fee in court is less than \$500 but the total cost depends on whether the appellant hires attorney or does it pro se. Councilmember Fraley-Monillas recalled prior to this decision, the average cost for bringing an appeal where the appellant was not representing themselves was \$5,000 which is expensive for citizens. She recognized the current process does not take into consideration the cost of staff time, Council time, etc. She summarized the reason for having the Council hear quasi-judicial appeals was the result of citizens' requests because it was more economical. She agreed having the Council in a quasi-judicial role shuts the Council out of the process. She questioned why background regarding the change was not included in the agenda packet, recalling the change was made in 2010. She suggested having more information about why and when the change was made.

Councilmember Teitzel said his concern was the quality of the decision. Only one Councilmember is an attorney and although he had full confidence in the intellect of Councilmembers, in some cases acting in a quasi-judicial role requires an understanding of the relationship between the local code and state law. Rather than having a citizen request the Council make the decision, it would be better and higher quality to have a judge make that decision. If the Council believes an error has been made, the Council has the ability to direct the City Attorney to file an appeal as well as provide testimony. He supported moving away from having Council involved in quasi-judicial appeals.

Councilmember Nelson referred to the dictionary definition of quasi-judicial, "seemingly, apparently but not really." He said that is fitting for the role the Council is asked to play, playing the role of a judge when Councilmembers are actually legislators. He recalled the one quasi-judicial hearing he was involved in was a very frustrating experience because he was unable to be a legislator and could not talk to anybody or consider all the information he wanted to review and was limited to a narrow focus. When this was first put in place, the intent was right, but in practice the result is not what was intended. He found it such a frustrating experience that he recommended the Council avoid being in a quasi-judicial role.

Mayor Pro Tem Johnson asked how many of the quasi-judicial decisions the Council has made have been appealed. Mr. Taraday recalled the appeal of the decision on Building 10 was dismissed and the City prevailed in an appeal of the crumb rubber decision. Councilmember Buckshnis recalled a proposal to construct a house in critical area. Mr. Taraday said that did not go to court. Councilmember Buckshnis recalled in 2010 citizens wanted an opportunity to come to City Council. Mr. Taraday suggested it may be interesting to research how many times the Council has reversed the Hearing Examiner's decision in the last 5-6 years, suspecting it was a very rare if ever occurrence. If the point of this process in 2010 was to provide a low cost means of reversing the Hearing Examiner and in practice that has almost never happened because the Hearing Examiner generally does a good job, then that would be useful information to have.

Mayor Pro Tem Johnson recalled in the case Councilmember Buckshnis mentioned, a 3rd party entered into a negotiation and purchased the property from the people who wanted to build in the critical area.

Councilmember Fraley-Monillas expressed interest in researching whether the Council has reversed any of the Hearing Examiner's decision. She recalled the Council has upheld nearly every Hearing Examiner decision; in one the Council may have upheld only part of his decision.

Councilmember Buckshnis recalled another instance where a fence was lowered, perhaps that was the one the Council only supported a portion of the Hearing Examiner's decision. She noted the Council has only had 7-8 quasi-judicial in the past 6 years. She recalled when the Council was first taken out of the quasi-judicial role, citizens objected and the process was reversed. She recalled the reason was the monetary aspect.

Mayor Pro Tem Johnson pointed out the Burnstead issue as another example. She referred to a Directors Report to the Planning Board from Development Services Director Shane Hope that described a Hearing Examiner decision. The Hearing Examiner considered a proposed critical area reasonable use variance on March 24; the Hearing Examiner's decision was made on April 7; the City filed a motion for reconsideration on April 12 but the Council was just learning about it this week. She asked when the LUPA appeal process expired and how would the Council know about it. Mr. Taraday agreed the current process is not set up to do what has been discussed tonight. If the City changed to a system where the City Council was no longer in a quasi-judicial capacity but wanted to be ready to file a LUPA appeal, a mechanism would need to be set up whereby the Council was informed of decisions in a timely manner. There are only 21 days to file a LUPA appeal.

Mayor Pro Tem Johnson asked whether the Council's current quasi-judicial role precludes taking action to file a LUPA on the City's behalf. Mr. Taraday said it depends on whether there was an administrative appeal to the Council. Mayor Pro Tem Johnson observed in this instance there was not but she was unclear when the final decision was made and feared it may be too late to file an appeal. Mr. Taraday said if administrative appeals have been exhausted and the only remaining appeal is judicial, the only question is whether there is standing. He suggested if the Council was interested in discontinuing the current practice, the administrative appeal process would need to be revised to clearly articulate the possibility of the Council bringing appeals and how that process works. With regard to the decision Mayor Pro Tem Johnson was referencing, he was uncertain when a LUPA appeal would need to be filed and if the Council wanted to discuss it as potential litigation, he recommended that be done in executive session.

Councilmember Fraley-Monillas raised a point of information, relaying she received an email that Councilmembers other than Mayor Pro Tem Johnson could not be heard on the television broadcast.

Following a brief recess to address a technical issue, Mayor Pro Tem Johnson advised apparently not all Councilmembers could be heard on the television broadcast but minutes of the meeting will be available. As the online streaming was operational, the issue was likely with the cable channel.

Development Services Director Shane Hope suggested following up with additional information such as the history regarding the Council assuming this role, the reversal rate of Hearing Examiner decisions, what other jurisdictions do with regard to quasi-judicial appeals, and if the Council chose not to be the decision maker, how to ensure the Council received information in timely manner to make a decision regarding an appeal. Mayor Pro Tem Johnson observed the Council is scheduled to discuss this again at the May 24 meeting.

Mr. Taraday invited the Council to inform if there was any other information staff could provide to assist the Council in making an informed decision.

6. MAYOR'S COMMENTS

Mayor Pro Tem Johnson relayed to Mayor Earling, everyone wishes they were in Hawaii with him.

7. COUNCIL COMMENTS

Councilmember Tibbott expressed appreciation for the emails he received in a timely manner over the past week, providing him time to consider them in his review of tonight's agenda items. He spoke with former Mayor Fahey this week regarding the circumstances surrounding Resolution 853, noting sometimes Councilmembers' preparation for meeting topics go off the page.

Council President Pro Tem Mesaros encouraged Councilmembers to attend the Senior Center auction and fundraiser on Friday, May 20th. He planned to attend and looked forward to a delightful evening.

Councilmember Teitzel recalled a few weeks ago the Council approved the historic designation of the North Sound Church. Pastor Crane has requested the plaque be presented on Sunday, June 5 during the second service which begins at 9:00 a.m. Mayor Earling and members of the Historic Preservation Commission will be in attendance and Councilmembers and the public are welcome to attend.

Councilmember Fraley-Monillas commented Mayor Earling no doubt did not wish the Council with him. She invited the Council to the 228th/Hwy 99/76th ribbon cutting tomorrow. The signal on Hwy 99 has been installed, allowing a safe turn onto 76th Avenue.

Councilmember Nelson reminded of the Edmonds Waterfront Access Study public meeting on Thursday, May 12 at 6:00 at the Edmond Library Plaza Room. The open house will include information regarding the narrowed list of alternatives, evaluation process, etc. For those unable to attend the open house, further information regarding the alternatives is available at www.Edmondswaterfrontaccess.org.

Councilmember Buckshnis reported the Tree Board's presentation of Cass Turnbull's Six Ways to Kill a Tree was fabulous; she is a very dynamic, entertaining, educational speaker. The Tree Board hopes to schedule her to speak again.

Mayor Pro Tem Johnson announced the Hwy 99 Study meeting on Thursday, May 19 at Swedish-Edmonds Hospital from 7:00 to 9:30 p.m.

8. CONVENE IN EXECUTIVE SESSION REGARDING PENDING OR POTENTIAL LITIGATION PER RCW 42.30.110(1)(i)

This item was not needed.

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

This item was not needed.

10. ADJOURN

With no further business, the Council meeting was adjourned at 8:36 p.m.