



## **City Council Minutes – November 6, 2006**

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At 7:30 p.m., Mayor Maxwell called the regularly scheduled meeting of Monday, November 6, 2006 to order. Roll call found present Loren Hoboy, Nick Petrish, Erica Pickett, Brad Adams, Bill Turner, and Cynthia Richardson. Absent: Brian Geer. Roll call was followed by the Pledge of Allegiance.

### **Minutes of Previous Meeting**

The minutes of October 16<sup>th</sup> and November 6<sup>th</sup> will be available for approval on December 4, 2006.

### **Authorization for Public Opinion Survey (Fred Meyer) Agenda Item # 7g.**

Mayor Maxwell asked Mr. Ian Munce, Planning Director, to address this issue. Mr. Munce explained that random sample survey could be done to address preferences on retail. However, he agreed that a more realistic proposal would be to do a comprehensive survey addressing multiple issues.

### **Citizen Hearings**

Mr. Doug Thurber, Anacortes, suggested that the research and development for retail projects would be best handled through the Chamber of Commerce rather than through local government.

Mr. Bill Mitchell, 807 27<sup>th</sup> St., discussed the Anacortes Mural project. He spoke against the Arts Commission's decision to award the Wilson Hotel mural to an artist; he suggested that the Commission reconsider its decision. The Mayor clarified that on this issue the Arts Commission is an Advisory Board to the Housing Authority.

### **Mayor/Council Communication**

Mayor Maxwell reported that the National Weather Service has issued a flood warning for the Skagit River; the river will crest at 38' at 4:00 p.m. on Tuesday. The Water Treatment Plant continues to meet all water quality standards. The Mayor thanked the NAS Whidbey Island Construction Battalion for its efforts to protect the Water Treatment Plant; the Mayor also expressed appreciation to Willie LaRue and all the plant personnel for their diligence.

#### **Samish Indian Nation Award:**

Mayor Maxwell presented Ms. Dana Matthews with a commemorative certificate dedicating 5-acres of the City Forestlands to the late Ken Hansen, Tsa-wac-ton, Chief of the Samish Tribe.

#### **Certificate of Appreciation – George Mehler**

Mayor Maxwell presented a certificate of appreciation to Mr. George Mehler who has served on the Board of Adjustment since October of 1974.

#### **Pride of the Neighborhood Award: 801 Commercial Avenue**

Mayor Maxwell presented the Pride of Neighborhood Award to Mr. Mike Trafton, Bank of the Pacific, to recognize the beautification project at 801 Commercial

#### **Mayor's Award of Merit – Doug Liddle**

Mayor Maxwell presented the Mayor's Award of Merit to Officer Doug Liddle; Officer Liddle has served the City as of police officer for over 30 years. Mr. Liddle was nominated by his co-workers and has demonstrated his dependability in handling any task assigned. In particular, the Mayor highlighted Officer Liddle's work to assist the Parks Department by patrolling the Anacortes Forestlands. Officer Liddle received the award to a standing ovation.

The Port/City Liaison Committee Meeting has been postponed to November 14<sup>th</sup>.

It was announced that Bill Turner recently became a grandfather.

**Continued Public Hearing: 2005/2006 Comprehensive Plan and Development Regulation Amendments – Anaco Bourn**

*(This hearing is on tape and filed at City Hall.)*

Mayor Maxwell initiated the continued Comprehensive Plan and Development Regulation Public Hearing/Anaco Bourn. Mr. Ian Munce, Planning Director, explained that the City, under GMA, is required to designate and protect critical areas; further, State statutes and guidelines specify that streams of particular interest are to be addressed with regard to protection. In response, the City's environmental consultant, ATSI, inventoried City streams; the list was then incorporated into the City's Critical Areas Ordinance (CAO). With regard to new subdivision a designated stream requires a 50' setback on both sides of the stream; the City is also developing a voluntary stream protection program applicable to existing homes. The matter now before Council is a request from Mr. Rob Seip to amend the Critical Areas Ordinance by removing Anaco Bourn (on Mr. Seip's property); the request is made through the annual Comprehensive Plan and Development Regulation amendment process. The Planning Commission held a Public Hearing on this matter and recommended that Council not delist the stream. Mrs. Richardson disclosed a potential appearance of fairness issue. There were no objections to Mrs. Richardson participating in this matter.

Ms. Rosemary Larson, attorney with Ensley Best, 777 108<sup>th</sup> Avenue NE, Bellevue, represents Mr. Rob Seip who is requesting that the City amend its critical areas ordinance to remove the water feature known as Anaco Bourn from the list of streams that are protected as fish and wildlife habitat. Ms. Merth Walker, lead professional wetland scientist; Jim Schemmer, Schemmer Engineering; J.B. Scott; and W.D. Purnell were available for questions on the existing and historical characteristics of Anaco Bourn. Ms. Larson added that a key component to this matter is what is the appropriate definition of stream to be protected. She referred to stream definition contained in WAC 222-16-030. Ms. Walker, a wetland and water scientist for over 16 years, was asked by Mr. Seip to investigate the existence of Anaco Bourn; she applied scientific methods and considered weather conditions and any disturbance factors that might affect the hydrogeology, soils, or vegetation as the basis for her conclusions. She also reviewed supplemental reports including the City's ATSI report, and assessments by J.B. Scott and W.D. Purnell and incorporated those conclusions into her work. Based on this review, Ms. Walker concluded that the Anaco Bourn is not a stream; but rather a short dry gully eroded by the original stormwater discharge from Marine Heights prior to 2004; plant data independently verified the soil data conclusions. Runoff from Marine Heights created the drainage channels now visible. She also discovered 2 channels newly eroded, but no old continuous stream channels present on the site. Her recent on-site work is consistent with prior onsite and uphill environmental investigations and reports; Anaco Bourn did not exist before Marine Heights construction. WAC 222 stream definition was used to analyze findings. Ms. Merth said that the opposition's argument does not represent best available science nor has the information risen to the level of expert.

Mr. Ross O. Barnes, 1004 7<sup>th</sup> St., on behalf on himself and Evergreen Islands, read from a November 6, 2006 letter (1) entitled "Anaco Bourn at Anacortes City Council – Part VI: The A,B,C's of Anaco Bourn." The letter states that Mr. Barnes has "...the longest and most extensive professional relationship on the record, to the whole watershed from the headwaters beaver pond, Merritt's Marsh, to the confluence with River Clyde." Additional exhibits include (2) a November 6, 2006 letter entitled "Anaco Bourn at Anacortes City Council – Part V". The letter requests, in part, that Mr. Seip's petition of October 9, 2006 be returned to the Planning Commission for review and recommendation prior to City Council consideration; and (3) a November 6, 2006 letter entitled "Anaco Bourn at Anacortes City Council – Part VII: Rebuttal" Mr. Barnes concluded that "...a well-defined above ground channel system in Marine Heights conveys the type 5 portions of a natural water Anaco Bourn directly into the downstream type 4 perennial portion of the stream, wherever that may begin' and it begins by the time it gets to the Seip property." He also discussed protection standards for state waters; Anaco Bourn is a type 5 water body. He also suggested that in the absence of a WAC 222 topographic definition of a channel, an appropriate working definition would be "...a topographic profile that confines surface flow to a defined area with a defined OHWM and this defined area can be identified on the ground topographically." Mr. Barnes concluded that the Wiggins April 1, 2004 report definition of a natural stream supported this; he then used photos to illustrate the water flows in the Marine Heights area and to recap Council field trip routes.

In response, Ms. Walker offered that a ravine is not a natural or a defined stream channel. Flagging streams requires identification of a defined bed and bank; further, a topographic impression does not necessarily mean the existence of an intermittent stream. Further surface flow to ..."a type 4 water does

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not a type 5 water make; it has to be in a defined above ground channel.” Ms. Larson stated that the findings and opinions based on these presentations and all the information on record suggested that the evidence supports the conclusion that the Anaco Bourn is not a stream as defined by WAC 222; that the action to remove the stream is consistent with the disclaimers on the City’s Critical Areas Map. The evidence submitted by this individual property owner offers overwhelming evidence to support removing Anaco Bourn from the CAO listed streams.

Questions followed from the Council regarding water quality that comes from a drainage ditch as opposed to a stream. Ms. Walker described the environmental testing necessary to make such a determination. Mr. Barnes answered questions regarding ground water infiltration from Marine Heights and highlighted field characteristics of the Council’s site visit. In answer to a question from Council, Ms. Walker said she did not conduct a historic aerial photo analysis. On a 1994 site visit, during a drought, Mr. Barnes saw stream channels but no water; he said he saw evidence of the three channels that exist today. Mr. J.B. Scott, Geotechnical Engineer, first visited the site in 1992 or 1993 and photographed the site; he reported that no channel or wetland existed in March of 1994. Mr. Purnell, President of a geotechnical geology and civil engineering firm, first visited the site in 1994 and continuously observed the property for 2 years. He explained that the water flow is from a glacial channel with intermittent flow for excess surface water. There is a ground water recharge in back of Marine Heights; it collects water and excess flows through Marine Heights.

Mr. Tom Glade, representing Evergreen Islands, submitted 31 articles regarding measures necessary to protect the vital waterways of Puget Sound. Mr. Gene Derig, 1302 K Avenue, spoke in support of Mr. Glade’s and Mr. Barnes’ comments. Mr. Brian Wetcher, 814 26<sup>th</sup> St., questioned the procedure; emphasized the City’s commitment to protect streams; and asked Council to consider the potential to open up challenges to the existing CAO. Mr. Michael Sternberg, 2208 31<sup>st</sup> St., said that four scientists have testified that there was not a stream in 1994. Ms. Julie White, 3708 W. 12<sup>th</sup> St., submitted a November 6<sup>th</sup> letter asking the Council not to remove Anaco Bourn as a protected stream. She encouraged innovative planning through the Planned Unit Development process to protect both the environment and to allow for development. There were no further comments and the Mayor declared the Public Hearing closed. Mr. Munce reported that the Council will review this and all proposed 2005/2006 Comprehensive Plan and Development Regulation changes on Monday, November 13<sup>th</sup>.

### **Consent Agenda**

Mr. Petrish moved, seconded by Mr. Adams, to approve the following Consent Agenda items. Vote: Ayes – Petrish, Picket, Adams, Turner, Richardson, and Hoboy. (Mrs. Richardson abstained from voting on Agenda Item 6 d.) Motion carried.

### **Approval of Vouchers/Cancellation of Warrants**

Council voted unanimously that the following vouchers/warrants audited and certified by the City’s Auditing Officer (Finance Director) and subsequently reviewed and approved by the Council Finance Committee on October 18, 2006, October 25, 2006 and November 1, 2006 are approved for payment as of this date November 6, 2006.

### **Claims Warrants**

October, 2006: Warrant Numbers 38583 through 38806 in the total amount of \$661,920.83

### **EFT**

October, 2006: EFT Numbers 38578 through 38582 in the total amount of \$1,324.00

### **Prewritten Claims**

October, 2006: Warrant Number 38577 in the total amount of \$3,923.70

### **Payroll # 1 for October 18, 2006 in the total amount of \$445,380.38**

Warrant Numbers 29879 through 29937 in the total amount of \$57,250.11

Direct Deposit Numbers 20035 through 20189 in the total amount of \$243,161.54

EFT Numbers 616 through 623 in the total amount of \$144,968.73

### **Payroll # 2 for October 31, 2006 in the total amount of \$628,660.17**

Warrant Numbers 29939 through 30008 in the total amount of \$228,759.75

Direct Deposit Numbers 20190 through 20293 in the total amount of \$248,844.52

EFT Numbers 624 through 629 in the total amount of \$151,055.90

In the same motion Council:

Adopted **Resolution No. 1730** entitled “Resolution Authorizing Execution of Tourism Promotion Fund Contracts by and between the City of Anacortes and Twelve Agencies for Fifteen Projects”;

Adopted **Ordinance No. 2750** entitled “An Ordinance Vacating a Portion of Oakes Avenue Contained in The Baring Addition to the City of Anacortes, Skagit County, Washington”;

Adopted **Ordinance No. 2751** entitled “An Ordinance Vacating a Portion of V Avenue Adjacent to Lot 1 of Block 286 Located in the Anacortes Original Addition to the City of Anacortes, Skagit County, Washington”;

Accepted the 2006 CBD Sidewalk Replacement Project as complete (PW#05-084-DEV);

Accepted the 36” Waterline Backfill Reinforcement project as complete (PW#05-068-WTR-002); and

Awarded the 2006 Sidewalk Project (12<sup>th</sup> Street from “L” Avenue to “N” Avenue) to MP Construction in the amount of \$37,746.20.

**Ordinance: Adopt 2007 Budget and Salary Schedule and Resolution: Setting 2007 Levy**

Ms. Wanda Phillips, Finance Director, presented an Ordinance to the Mayor and Council for review and adoption. The 2007 Budget was reviewed by Council in Study Sessions and a Public Hearing was held. The Ordinance summarizes, by fund, the expenditures that have been set for the 2007 Budget; the total budget is \$49,471,855. In addition, Ms. Phillips presented a Resolution authorizing the 1% limited levy which will yield approximately \$35,800.94. With that, Mr. Turner moved, seconded by Mr. Petrish, to adopt **Ordinance No. 2752** entitled “An Ordinance Adopting the Budget and Salary Schedule for all Municipal Purposes and Uses for the Year 2007”, and adopted **Resolution No. 1729** entitled “A Resolution of the City Council of the city of Anacortes Setting the City’s Year 2007 Property Tax Regular Levy Increase”. Vote: Ayes – Pickett, Adams, Turner, Richardson, Hoboy, and Petrish. Motion carried.

**Closed Record Meeting: Conditional Use Application – Private Drive as Access**

Mayor Maxwell initiated the Closed Record Meeting on a Conditional Use application submitted by Ms. Sara White to use a private drive as access to Lot 1 of Short Plat # ANA 86-003 (41<sup>st</sup> Street and “O” Avenue.) Mr. Ian Munce, Planning Director, explained that at this time, the applicant intends to build one house only on the entire 1986 4-lot short plat. Without permission to use a private drive as access, the applicant would be required to develop the access to full City standards. If approved, the authorization would apply to this one residence. If any further development occurs, the access would have to be fully developed. The Planning Commission held a Public Hearing on this matter and recommended approval subject to 12 conditions. No appeals were filed. With that, Mr. Turner moved, seconded by Mrs. Richardson, to approve the Conditional Use Application subject to the Findings of Fact and Conclusions of Law. Vote: Ayes – Adams, Turner, Richardson, Hoboy, Petrish, and Pickett. Motion carried.

**Closed Record Meeting: Preliminary Plat and Conditional Use: Marine Crest Preliminary Plat and Private Drive as Access:**

Mayor Maxwell initiated the Closed Record Meeting on Todd Kirkpatrick’s Preliminary Plat and Conditional Use applications to further subdivide Lots 7 and 8 of Short Plat # ANA 04-003, generally at 4305 Marine Drive. The Marine Crest Plat will have 6 lots with a cul-de-sac and a private drive as access to Lot 8A only. The Planning Commission held Public Hearings on this matter and all transcripts and exhibits have been forwarded to Council; the Commission voted to recommend approval subject to 21 conditions. Staff also recommends acceptance of this project and conditions.

Mrs. Richardson discussed clearing and drainage improvements. In that regard, she proposed Condition # 22: “No lot shall be cleared until a Building Permit is secured for that lot; and Condition # 23: “Final Plat approval will not be granted until all necessary drainage improvements are either installed or bonded.” Mrs. Richardson moved, seconded by Mr. Hoboy, to approve the Marine Crest Preliminary Plat and Conditional Use permits subject to the Findings of Fact and Conclusions of Law as amended by the addition of Conditions 22 and 23. Vote: Ayes – Turner, Richardson, Hoboy, Petrish, Pickett, and Adams. Motion carried.

**Proposed Relinquishment of Easement/Paulson**

Mr. Fred Buckenmeyer, Deputy Public Works Director, presented a request to Council to relinquish 15' of a utility easement adjoining 2320/2322 11<sup>th</sup> Street, property owned by Mr. Bradley R. Paulson. The applicant and staff have held discussions on this matter and finding no adverse impacts recommends moving forward with the request. The subject 80' right-of-way was vacated a number of years ago; Mr. Paulson owns 40' of that vacated right-of-way subject to a City utility easement. Mr. Paulson has requested that the City relinquish 15' of that easement; negotiations regarding compensation were successful. Questions followed from the Council regarding use of the remaining easement for public access to the water as part of the Council's long range planning. Mrs. Pickett suggested that this access could provide a link from the Guemes trail back to the neighborhood. Mr. Ian Munce, Planning Director, said he would research the original easement language.

**Public Hearing: Revisions to Stream Management Rules Interim Ord. # 2748)**

Mayor Maxwell opened the Public Hearing to take comments on amendments to Ordinance No. 2748 adopting Interim Adaptive Management for Streams. Mr. Ian Munce, Planning Director, explained that the Ordinance establishes a regulatory approach to streams in relationship to new development; there shall be a 50' protective corridor on both sides of the stream. Conversely, the City has not taken a regulatory approach to existing streams on developed property. In that regard the City has adopted an adaptive management approach; i.e., community monitoring coupled with a net loss/ecological function value if corrective action becomes necessary. An appeal of the Ordinance was filed; the Growth Hearings Board determined that the City shall adopt detailed language on implementation.

Mr. Ross O. Barnes, 1004 7<sup>th</sup> St., did not object to the proposed language proposed but expressed concerns about implementation. He raised two issues: (1) who will pay for the studies? (2) Who will bear the burden of corrective action, if necessary? Mr. Tom Glade, Evergreen Islands, emphasized that actions affecting streams do ultimately affect the waters of Puget Sound. Mr. Gene Derig, 1302 "K" Avenue, supported the comments of Mr. Barnes and Mr. Glade; he asked if the hearing procedure was appropriate. Mr. Ian Munce, City Attorney, said that the City is in compliance mode. Mr. Brian Wetcher, 814 26<sup>th</sup> St., asked that the standards set by this Ordinance be successfully implemented, and suggested developing a process to address past damage to waterways.

There being no further business, at approximately 10:45 p.m. the Mayor adjourned the regularly scheduled meeting of November 6, 2006