



City Council Minutes – March 1, 2010

At 7:30 p.m. Mayor Maxwell called the regularly scheduled meeting of March 1, 2010 to order. Roll call found present: Kevin McKeown, Nick Petrish, Erica Pickett, Brad Adams, Bill Turner, Cynthia Richardson and Brian Geer. Roll call was followed by the Pledge of Allegiance.

Minutes of Previous Meeting

Mr. Petrish moved, seconded by Mr. McKeown, that the minutes of February 16, 2010 and February 22, 2010 be approved as if read. Vote: Ayes – Petrish, Pickett, Adams, Turner, Richardson, Geer and McKeown. Motion carried.

Citizen Hearings

Greg Springs, 204 V Avenue, voiced concerns about shipping prilled sulfur through Anacortes. He expressed concern about shipping a toxic chemical, about safety issues, about the eventual scope of the project, and that Anacortes may become the dump site for prilled sulfur from outside the region. Mr. Springs encouraged diligence on the part of the City.

Carol Springs, 204 V Avenue, spoke about the scale of prilled sulfur shipments. She said the original presentation by the Port of Anacortes mentioned 120K tons but that when questioned Port Executive Director Bob Hyde indicated the quantity could be greater. Mrs. Springs expressed concern about the smell of prilled sulfur. She also objected to sulfur being shipped from sources other than the two local refineries. Mrs. Springs urged Council to look into this. Mayor Maxwell noted that the City has posed questions to the Port as well. Mrs. Pickett reported she attended the Port open house about prilled sulfur.

Bill Langjahr, 1004 Commercial Avenue, #1024, asked to what level the City will require the prilled sulfur operation to be mitigated. He said the Canadian company that has been shipping Shell's prilled sulfur won't accept it because the hydrogen sulfide content is too high. Mr. Langjahr called prilled sulfur an odorous substance and asked what level of hydrogen sulfide will be accepted in Anacortes, how it will be measured, what happens if the sulfur dust escapes from the trucks, and what is the evacuation plan and responsible entity in case of a catastrophic event. Mr. Geer noted that the Council Public Safety Committee is looking at this issue.

Patti Pattee, 1302 6th Street, thanked Councilors for quick response regarding parking on 6th Street. Regarding funding for the Anacortes Futures Project, Ms. Pattee asked if it is appropriate for taxpayer money to be commingled with donations from a vested property owner and developer. She suggested the Futures Project could go forward with \$62,500 of funding rather than \$75,000.

Mayor/Council Communication

Mayor Maxwell announced that last Monday he testified in Olympia before the Senate Ways and Means Committee regarding the proposed increase in the MoTCA tax that would affect local refineries. The Mayor noted that other local jurisdictions have passed resolutions opposing the measure as Anacortes did on February 22, 2010. The Mayor stated that they are all supportive of finding ways to fund stormwater issues but that this proposal is not the right way.

Mr. Geer reported that Saturday night's Havana Nights fundraiser for the Tommy Thompson trestle repair was very well attended and reminded that the next fundraiser, Trestlemania, takes place March 13. He thanked the community for pulling together to support this project.

Unfinished Business

Shoreline Master Program – Review of Final Draft and Consideration of Resolution

Planning Director Ryan Larsen presented the final draft of the SMP and a suggested resolution to move the document forward to Dept. of Ecology for review and approval. Mr. Larsen highlighted the significant changes from the July 2008 draft SMP. Mr. Larsen concluded that staff did not expect Council action at this meeting but suggested the resolution could be adopted at the March 15, 2010 meeting. He requested

that Councilors email him any final suggested minor changes and address any more substantive issues during the present discussion.

Mr. Petrish noted the SMP must dovetail with all other City and State regulations and asked City Attorney Brad Furlong which regulations prevail in the event of a conflict. Mr. Furlong said the SMP becomes part of the City's Comprehensive Plan and prevails in event of conflict with the zoning code but recognized there are overlapping jurisdictions along shorelines. He said the more restrictive regulation usually applies. Mr. Furlong observed that staff and the consultant have carefully reviewed the SMP for consistency with State regulations and said Dept. of Ecology will do the same during its final review. Mr. Furlong described the review to date as very thorough.

Mr. Adams asked which State departments will review the SMP. Mr. Larsen explained that the Dept. of Commerce had a 60-day review and comment period and next Dept. of Ecology will open and notify all other State departments of a 60-day review and comment period; various departments may choose to review and comment or may not.

Mrs. Pickett referenced page 146, DR-9.5.13, which prohibits ell and tee shaped piers in single family residential areas. She said those shapes are easier to share than linear piers and noted the SMP encourages sharing dock facilities so asked to delete DR-9.5.13.c which prohibits them. Mrs. Richardson and Mr. Turner agreed.

Mrs. Pickett noted the Council wanted to allow small scale aquaculture (such as a Puget Sound Anglers fish pen) in Urban Maritime environments but the current Use Matrix (Table 5.1) prohibits it. She asked to make aquaculture an allowable use in Urban Maritime areas.

Mrs. Pickett observed that the environmental designations as drawn on the map show Urban Maritime near the old plywood mill, then Urban at 29th Street even though that area is zoned Industrial. She noted a conflict because Urban allows residential development as a conditional use but the Industrial zone does not. She suggested the entire Industrial zone should be designated Urban Maritime, not Urban, for consistency with the zoning code. Mrs. Richardson noted that the more restrictive regulation applies so the zoning code would control even if the SMP allowed residential development. Mr. Furlong concurred with Mrs. Richardson. Mrs. Pickett said it would be more consistent to change the SMP environmental designation. Mr. Larsen said the designation can be changed to Urban Maritime but agreed that the zoning code would apply if more restrictive. Council agreed with Mrs. Pickett's suggestion that the Urban Maritime designation mirror the Industrial zoning in that area. Mrs. Richardson summarized that Table 5.1 needs to have non-commercial aquaculture changed to a permitted use and all other aquaculture changed to a conditional use in the Urban Maritime environments and the same change needs to be made to Policy 8.4.2 on page 108.

Council agreed typographical corrections would be addressed off line with Mr. Larsen during the week.

Mrs. Richardson referred to page 29, Policy 4.3.8: "Give priority to new shoreline commercial and industrial development that is water-dependent or water-related or which provides a significant public benefit in the form of restoration of ecological functions, and enhancement of public access. Revitalization of historic resources shall only be considered through the shoreline substantial development process." She said someone with a historic structure may want to make a modest change and the SMP should not make them go through the substantial development process. She suggested instead: "...in the form of restoration of ecological functions, ~~and~~ enhancement of public access *and* revitalization of historic resources." Council agreed.

Mrs. Richardson referred to page 56, item b, 5th line from the bottom, and noted Council had wanted to allow modifications of setbacks but *not* height increases. She asked to delete "an increase in height or". All agreed.

Mrs. Richardson referred to page 80, DR-6.4.18, noting its wording is not consistent with RCW 90.58.320 which was the basis of a past lawsuit. She suggested she and Mr. Larsen reword the passage to be

consistent with the RCW. Mayor Maxwell said the law allows height increases over 35 feet if an overriding public benefit is demonstrated and agreed the wording needs revision. All agreed to replace the last half of the paragraph beginning with, "Any proposal over 35 feet ..." with the actual RCW language.

Mrs. Richardson said four locations in the SMP reference shelters for wooden boats and asked for them to be consistent. She urged against specifying "one floating shelter" because there may be a need for more than one in the future. She also suggested specifying "wooden boats" because they are the ones that need shelters. Mr. Geer objected that the Parks Department boating program doesn't use wooden boats so they would be excluded by that language. Mrs. Pickett agreed with Mr. Geer. Mr. Turner and Mr. Geer agreed to strike "one" as long as it is clear the purpose is community boating. Mrs. Richardson also said "public agency" is her preferred term rather than "government service" because the former would include the school district. Mrs. Pickett observed that limiting to one shelter might be more acceptable to Dept. of Ecology. Mr. Geer disagreed.

Mrs. Richardson referenced page 147, DR-9.5.15, regarding joint docks and piers and asked to strike "...which do not already have similar structures" because the joint use Council wants to encourage might involve existing structures.

Mrs. Richardson referenced the definition of Accessory Use on page 170 and said the correct phrasing should be "incidental to a *primary* use" rather than "incidental to a water-oriented use."

Mrs. Richardson referenced the definition of a Mooring Buoy Field on page 184 and suggested using the phrase "in a contiguous area" instead of "on a single parcel." Mr. Larsen agreed.

Mr. Geer thanked the consultant for getting the latest draft SMP document ready for this meeting. Mr. Adams asked if the draft will come back to Council for more discussion after Dept. of Ecology's review before adopting the Program by ordinance. Mr. Larsen said if Dept. of Ecology suggests only minor revisions, Council will not need to review it again; if substantial changes are suggested by Dept. of Ecology Mr. Larsen will bring the document back to Council or to the Planning Committee. Mr. Turner noted that any large issues have already been cleared with Bob Fritzen at Dept. of Ecology. Mr. Larsen agreed and said he does not expect any more significant changes.

2010 Community Development Block Grant (CDBG) – Closing Application

Mr. Larsen described the 2010-2014 CDBG Consolidated Plan which is an overall strategy for housing and community development and a pre-requisite for obtaining federal funding. Between December 1, 2009 through February 28, 2010 the City sought public input for the Consolidated Plan and project applications for the 2010-2011 funding cycle. The public comment period on the Consolidated Plan is now open and closes March 30, 2010. Council will consider any input at its meeting on April 4, 2010, then the Consolidated Plan and First Year Action Plan will be forwarded to HUD by May 15, 2010. Mrs. Pickett noted the \$106,000 in the plan for 2010-2011 and asked if that is an annual amount received. Mr. Larsen said yes, approximately. Mrs. Pickett asked if the amounts awarded to projects are also the same each year. Mayor Maxwell reported that 15% each year goes to Skagit County Community Action Agency by longstanding agreement. Mr. Larsen said the remainder is awarded based on applications received each year. Mr. Petrish asked how projects are chosen. Mr. Larsen explained that applications have typically come in for no more than the amount of funding available so no applicants have been rejected yet. Mrs. Richardson and Mayor Maxwell noted a number of important projects the CDBG grants have funded in the recent past.

Anacortes Futures Project – Funding

Mr. Larsen reported that the Anacortes Futures Project (AFP) has asked the City to participate in funding the Project's next study. Staff recommends City funding of \$12,500 for the remainder of 2010 with a possible allocation of additional funding in the 2011 budget. Mr. Geer praised the AFP and applauded the City for helping to fund this collaborative planning effort. Mrs. Richardson noted there is \$25,000 in the City budget for possible allocation and asked why staff recommends only half that amount. Mr. Larsen replied that the year will be half over by the time the process starts. Mr. Petrish addressed Ms. Pattee's concern expressed earlier in the evening. He said AFP contacted MJB for funding, not the reverse, and

noted that MJB needs to be involved because it owns a large portion of downtown property. Mr. Petrish said he saw no problem with MJB funds being used to move the project forward. Mr. Geer called the AFP a paradigm shift to include both government and business in economic development planning and said all major players need to be involved. Mrs. Pickett asked Mr. Furlong if the commingling of funds allegation is valid. Mr. Furlong said he'd be happy to look at the proposal but hasn't seen it yet. He offered to discuss it with Mr. Larsen and report back to the mayor. Mr. Petrish asked how this is any different from any other private property owner wanting to donate funding for the AFP. Mayor Maxwell clarified that it is a question of following the State Auditor's requirements. Mrs. Richardson said MJB is contributing funds through the Chamber of Commerce so the Chamber will be actually contributing the \$25,000 total, all of which comes from business owners including the \$12,500 from MJB. Mrs. Richardson acknowledged that if any one person or entity gives a substantial sum they might feel they can direct the outcome of the study but she didn't feel that was possible here. Mayor Maxwell said there will be a great deal of public oversight and pointed out MJB donated to the Fidalgo Bay Plan but repeated that the City does have to follow State Auditor protocol and state law. Mr. Turner said MJB has not asked for any special consideration and will exert no special control. Mr. Turner said he is very curious to see what the general public wants the City to look like in 20 years and he thinks it is worth investing some amount of money to help Council make good decisions to achieve that vision. Mr. Geer moved to allocate the funds, seconded by Mr. Petrish. Mrs. Pickett stated she would rather hear back from Mr. Furlong first and moved to table Mr. Geer's motion until the next regular City Council meeting, seconded by Mr. Adams. Vote: Ayes – Pickett, Adams, Richardson and McKeown. Opposed: Turner, Geer, and Petrish. Motion to table carried.

Consent Agenda

Mr. McKeown moved, seconded by Mrs. Richardson, to approve the following Consent Agenda items. Vote: Ayes – Adams, Turner, Richardson, Geer, McKeown, Petrish and Pickett. 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 February 18, 2010 and February 25, 2010 are approved for payment as of this date March 1, 2010.

Claims Warrants:

February 2010: Warrant Numbers 54562 through 54728 in the total amount of \$228,793.99

EFT Claims

February 2010: EFT Number 54561 in the total amount of \$112.00

Payroll for February 19, 2010 in the total amount of \$528,390.63

Warrant Numbers 34504 through 34544 in the total amount of \$41,256.24

Direct Deposit Numbers from 34167 through 34340 in the total amount of \$312,905.77

EFT Numbers from 1091 through 1096 in the total amount of \$174,228.62

Cancelled Warrants:

Claim Number 54015 in the amount of \$222.61

Claim Number 54453 in the amount of \$415.03

Claim Number 54193 in the amount of \$24,166.74

Claim Number 54194 in the amount of \$8,924.34

In the same motion Council:

Approved the Street Fair Application for the Anacortes Antique Machinery show on September 11, 2010 from 9:00 a.m. to 5:00 p.m.;

Approved the Street Fair Application for the Oyster Run on September 26, 2010 from 6:00 a.m. to 7:00 p.m.; and

Accepted as complete the Pennsylvania Avenue Traffic Calming project (06-054-STRM-001) by Scimitar Construction.

There being no further business, at approximately 8:39 p.m. Mayor Maxwell adjourned the regularly scheduled meeting of March 1, 2010.