



City Council Minutes – June 7, 2010

At 7:30 p.m. Mayor Maxwell called the regularly scheduled Anacortes City Council meeting of June 7, 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 Mrs. Pickett, that the minutes of May 17, 2010 be approved as if read. Vote: Ayes – Petrish, Pickett, Adams, Turner, Richardson, Geer and McKeown. Motion carried.

Citizen Hearings

No one present wished to speak on any items not on the regular agenda.

Mayor/Council Communication

Recreation Coordinator Nicole Johnston reported on the busy and successful recreation events of Saturday, June 5. In the morning the 18th Annual Kids Fishing Derby took place at Heart Lake with 178 kids participating and 279 fish weighed in. Ms. Johnston thanked Department of Fish and Wildlife for stocking the lake and protecting those fish until the derby and also the Fidalgo Chapter of Puget Sound Anglers for their support of the event. In the afternoon the 12th annual Skatefest competition took place at Ben Root Skate Park in cooperation with Youth Dynamics and Hidden Wave. Ms. Johnston introduced the overall winner, Safaree Sultan, an 18-year-old senior at AHS, and Tara Augustoni, a 13-year-old seventh grader who took fourth place in the intermediate division and was the only female to enter the competition. Ms. Johnston also thanked the American Red Cross for its help at Skatefest.

Mayor Maxwell presented the Mayor's Award of Merit to Carla Bray, commending her achievements in cost savings in the accounts payable department, her courtesy and helpfulness, and her high standards of public service.

Mrs. Richardson wished Mayor Maxwell happy birthday to a rousing rendition of the birthday song from the audience.

Unfinished Business

Closed Record Hearing and Appeal: Preliminary Plat and PUD – Hidden Shores

Planning Director Ryan Larsen reminded that at the last meeting this issue was tabled until City Attorney Brad Furlong could be present. Council had wondered about a possible third party consultant review, a site visit, whether or not the ATSI reports are part of the record for this matter, and applicability of AMC Section 17.70.540(A)7(a). Mr. Larsen said that staff and the City Attorney suggest that Council remand the project back to the Planning Commission to consider the May 2007 ATSI report prepared for the City regarding Anaco Bourn, reconsider its prior recommendation in light of this pre-existing report, and articulate for Council all the Commission's reasons for its recommendation of denial without prejudice. In the meantime Council could conduct a site visit, potentially on Tuesday, July 6 before its regular meeting.

Mr. McKeown asked what the ATSI report concluded. Mr. Larsen said that information cannot be introduced into the current closed record hearing but that he feels the report does address the conditions on the Hidden Shores property. Mr. Furlong clarified that based on his reading the ATSI report is germane and should have been considered by the Planning Commission and will shed additional light on the questions raised by Council. Mr. Furlong said once the Commission considers the report it becomes part of the record and will come back to Council for review. Mr. Furlong also recommended that if the Planning Commission reconsiders the matter in light of the ATSI report that the current parties of record be allowed to present evidence germane to that report but no new information on other issues. Mr. Turner asked how the ATSI report can be considered without completely reopening the discussion. Mr. Furlong recommended that Council specifically direct the Planning Commission to reopen its hearing, receive the ATSI report in its entirety, review the matter in light of that report, accept additional evidence from parties of record germane to the report only, then reconsider its decision. The matter would then come back to Council on appeal unless withdrawn by the parties.

Mr. McKeown asked about Mr. Larsen's suggestion that Planning Commission be asked to provide additional rationale for its findings. Mr. Furlong clarified that the Commission would not be asked to change its recommendation, only to articulate in more detail the reasons for its conclusions. He pointed out that if the issue is remanded, Planning Commission could change its recommendation with respect to the Anaco Bourn since there would be new evidence on that topic but couldn't change its recommendation on other parts of the project as there would be no new evidence on those.

Mr. Petrish asked how the ATSI report was generated and who asked for it. The Mayor explained that the City commissioned the report as part of the critical areas discussion. Mr. McKeown asked why the report was not previously made part of the record for Hidden Shores. Assistant Planning Director Don Measamer advised that the report was not commissioned specifically for the Hidden Shores project but for a different project at that time. Mr. Larsen reminded that the applicant is responsible for supplying all relevant information, that duty does not fall to City staff. Mr. Adams asked whether the public will be able to testify before the Planning Commission regarding the new evidence. Mr. Larsen said only the current parties of record will be allowed to do so. Mrs. Richardson asked if the document will be provided to the parties of record in advance of the meeting. Mr. Larsen said yes. Mrs. Pickett asked Mr. Furlong what would happen to the appeals currently before Council. Mr. Furlong said they would be held in abeyance until the matter comes back to Council from Planning Commission.

Mr. Petrish said four areas weren't addressed by Planning Commission (buffering averages, parking, traffic, and tree cutting) and asked if the Planning Commission will be asked to address those. Mr. Furlong said that is not staff's recommendation but that if Council feels the Planning Commission review was deficient with respect to certain aspects of the code it can direct the Commission to address those issues as well. Mr. McKeown asked which of the Commission's findings will be addressed in more detail. Mr. Larsen clarified that the Planning Commission report gives some findings of fact but the Commission would be asked to elucidate all the items it addressed but that weren't written up in the findings including those raised by Mr. Petrish.

Mr. Turner agreed that the additional rationale from the Commission would be helpful but asked who initiated introducing the ATSI report at this time. Mr. Furlong said it is incumbent upon staff to provide relevant information to the Planning Commission and that in this case there appears to be a germane report which predates Mr. Larsen and Mr. Furlong's tenure with the City but now that they are aware of it he feels it addresses questions raised by Council at its last meeting. Mr. McKeown asked who made staff aware of the ATSI report now. Mr. Larsen replied that staff discovered the document while looking for River Clyde information on the City website.

Mr. McKeown moved, seconded by Mr. Geer, to remand the matter back to Planning Commission specifically to look at the ATSI report and supplemental evidence from the parties of record related to that report, and to clarify and amplify its prior findings. Mrs. Richardson asked Mr. Furlong to confirm that all the City's codes and regulations are part of the record even if not specifically introduced. Mr. Furlong said all applicable regulations of the City and State and applicable constitutional provisions form the background against which the record is to be reviewed. They are not part of the record but are within the ambit of Commission and Council consideration if they are within the scope of the permit being considered. Mrs. Richardson noted that the Critical Areas Ordinance references riparian habitat areas and that isn't addressed in the record for this matter and asked that the Planning Commission to look at this part of the code. Mr. Furlong noted that was not part of the motion on the floor. Mr. McKeown amended his motion to include Mrs. Richardson's suggestion and Mr. Geer seconded the amendment. On a question from Mrs. Richardson, Mr. Furlong said Mr. Larsen can set up and advertise a City Council site visit once the record is reopened. Vote: Ayes – Pickett, Adams, Richardson, Geer, McKeown and Petrish. Nays – Turner. Motion carried.

Consent Agenda

Mr. Geer moved, seconded by Mr. Adams, 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 May 20, 2010, May 27, 2010 and June 3, 2010 are approved for payment as of this date June 7, 2010.

<p><u>Claims Warrants</u> May 2010: Warrant Numbers 55792 through 56043 in the total amount of \$1,301,707.66</p>
<p><u>EFT Claims</u> May 2010: EFT Numbers 55790 through 55791 in the total amount of \$539.00</p>
<p><u>Prewritten Claims</u> June 2010: Warrant Number 55789 in the total amount of \$1,296.74</p>
<p><u>Payroll for May 20, 2010 in the total amount of \$538,838.20</u> Warrant Numbers 34788 through 34833 in the total amount of \$41,159.37 Direct Deposit Numbers from 35284 through 35460 in the total amount of \$319,450.29 EFT Numbers from 1129 through 1134 in the total amount of \$178,228.54</p>
<p><u>Payroll for June 4, 2010 in the total amount of \$768,319.46</u> Warrant Numbers 34834 through 34888 in the total amount of \$55,206.12 Direct Deposit Numbers from 35461 through 35659 in the total amount of \$534,467.74 EFT Numbers from 1135 through 1140 in the total amount of \$178,645.60</p>

Public Hearing: Ordinance - Keeping of Hens

Assistant Planning Director Don Measamer reviewed staff's experience with calls from the public inquiring about keeping chickens in the City. He reported that the AMC has not addressed chickens specifically since Ordinance 543 was repealed in 1977. He said staff worked with the Council Planning Committee to prepare proposed regulations which received public hearing before Planning Commission on April 28, 2010. Staff incorporated changes suggested by the Planning Commission and the resulting document is before Council at this meeting. Mr. Measamer addressed some commonly asked questions about chickens and provided an overview of the proposed amendments to Title 6 of the AMC which address how many hens can be kept in various zones, exclusion of roosters, required setbacks, enclosure requirements, and applicability of nuisance provisions. In response to earlier questions about existing roosters, Mr. Measamer noted that existing nonconforming uses occur in relation to many aspects of the code and that existing roosters would be allowed subject to the nuisance provisions.

At 8:04 p.m. Mayor Maxwell opened the public hearing. Brian Bray, 4220 H Avenue, said his property size is larger than envisioned in Mr. Measamer's examples, that he has had chickens since 1975, that he is currently zoned residential agriculture, and asked how the proposed ordinance would affect him. The Mayor invited Mr. Bray to work directly with Mr. Measamer on the specifics. No one else wishing to testify, at 8:07 p.m. the Mayor closed the public hearing. He reported that he had received a few questions about hens attracting rodents and noted that the ordinance requires hens to be in a secure enclosure. Mrs. Pickett pointed out that the proposed ordinance does not address homes in the non-residential zones. Mr. Measamer agreed and suggested that could be handled with an administrative modification. Mr. Adams asked if hens were to be raised cruelly or inhumanely, can the City intervene? Mr. Measamer said that both City Animal Control and the Humane Society could intervene. Mr. Adams asked to have language added to the ordinance addressing humane treatment. Mr. Geer noted the City has code preventing cruelty to animals. Mr. Measamer agreed but said staff can modify the Title 6 language also. Mrs. Richardson suggested modifying Section 6.16.015.A to read, "... zoning districts *and single family and duplex residences in non-residential zones* under the following conditions...." Mr. Measamer agreed. Mr. Turner expressed support for the ordinance. Mr. Petrish suggested referring to chickens as fowls, not animals. Mrs. Richardson moved, seconded by Mr. Turner, to approve the **Ordinance 2823** amending Title 6 of the AMC to provide standards for the keeping of hens including the changes discussed. Vote: Ayes – Turner, Richardson, Geer, McKeown, Petrish, Pickett and Adams. Motion carried.

Public Hearing: Petition to Vacate Alley Adjacent to Lots 6, 7 and Half of 8, Block 14, Bowman's Addition (Way)

Mr. Measamer reviewed a map of the area of the proposed alley vacation at 319 5th Street. He then explained that George and Clarice Way applied for the vacation but did not realize they needed to be present at the Board of Adjustment hearing on April 1, 2010. Board of Adjustment recommended denial based on applicant absence. Staff recommended to Board of Adjustment to approve the application. Mr. Measamer reported that there are no utilities in the easement area now nor plans for any and that the vacation would provide an additional lot east of the existing home with compliant setbacks. He said no comments were received on the application and the public hearing before the Board of Adjustment received no comments. Mr. Measamer stated that the right-of-way is about 560 SF and compensation is as noted in the staff report. At 8:17 p.m. Mayor Maxwell opened the public hearing. No one wishing to testify, the Mayor then closed the public hearing. Mrs. Richardson observed that the remaining distance of the alley to the east has already been vacated. Mr. Measamer agreed and pointed out that much of the surrounding area has also been vacated which he indicated on the map. Mr. Turner said the proposed use is an appropriate use of the vacation and moved, seconded by Mr. McKeown, to approve the vacation. Vote: Ayes – Richardson, Geer, McKeown, Petrish, Pickett, Adams and Turner. Motion carried.

Ordinance: Vacation of a Portion of 11th Street West of B Avenue (Ortman)

Mr. Measamer recapped that Mr. Ortman and Mr. Winn had petitioned for a vacation for a portion of 11th Street. The petition was heard by the Board of Adjustment on November 5, 2009, which recommended approval with the provision that trail easements be provided along the Guemes Channel. Mr. Measamer reported that Mr. Winn has not moved ahead at same rate as Mr. Ortman but Mr. Ortman is ready to proceed. He said that per Council direction, staff has worked with Mr. Ortman and his attorney to develop easement language which was finished just prior to this meeting and provided to Council. Mr. Measamer thanked Mr. Furlong, Parks Director Gary Robinson and Mr. Ortman's team for their work on the easement. Mr. Measamer said Mr. Ortman has offered to have a survey performed and have the legal description added to the easement before recording. The distance of the split rail fence from the paved trail area will be agreed upon soon. Mr. Measamer added that Mr. Winn is still in discussions with staff and would like to see the Ortman easement language before proceeding. Mr. Measamer concluded that staff recommends moving ahead with the Ortman proposal.

Mr. Adams asked the size of the easement. Mr. Measamer said the survey will determine precise dimensions but that it is between 22-24 feet wide by about 200 feet long. Mr. McKeown noted the split rail fence mentioned in the proposal and requested confirmation that there will be no chain link fence. Mr. Robinson said a split rail-type fence will be installed as a signal to the public of the property boundary and added that Mr. Ortman may choose to install his own fence later. The Mayor clarified that the fence will be installed at the same time that the trail is built. Mr. McKeown asked why staff is recommending adopting the ordinance before the easement language is complete. Mr. Measamer replied that the timing is up to Council but that staff is comfortable with adding the legal description from the surveyor before recording. Mayor Maxwell expressed appreciation to Mr. Ortman for cooperating to achieve the trail easement and encouraged timely Council action. Mr. Turner moved, seconded by Mrs. Richardson, to authorize the Mayor to sign the legal documents after the easement is finalized and to adopt **Ordinance 2824** vacating a right-of-way of certain portions of 11th Street, Block 243, Map of Anacortes. Mrs. Pickett thanked Mr. Ortman for working with the City on the trail and asked the order in which the documents will be recorded. Mr. Furlong said the easement gets recorded first, then the vacation ordinance by its own terms goes into effect. Mrs. Richardson seconded Mrs. Pickett's enthusiasm for achieving another segment of the Guemes Channel trail and thanked everyone involved for the effort to develop this easement which can be used in other locations. Mr. McKeown expressed support for the motion and approval of the fencing described. He noted that in other waterfront towns achieving continuous shoreline trails has taken years but has been well worth the effort. Mr. Adams expressed enthusiasm for obtaining this relatively large easement and praised the cooperative effort to make it happen. Mr. Petrish left the Council chambers. Vote: Ayes – Geer, McKeown, Pickett, Adams, Turner and Richardson. Motion carried. Mr. Petrish returned to the Council chambers.

Authorizing Resolution: ACFL Trails Grant

Parks and Forestlands Manager Jonn Lunsford announced that the City would like to apply for a 2011-2012 RCO grant which will be matched by staff labor to obtain \$23,000 for trail maintenance in the ACFL. He said Anacortes has been successful in applying for this grant multiple times in the past but that the grant requires an authorizing resolution from Council. Mr. Adams observed that grants for maintenance are rare and moved, seconded by Mr. Geer, to approve the **Resolution 1800** authorizing applications for funding assistance for a recreational trails program project to the RCO. Vote: Ayes – McKeown, Petrish, Pickett, Adams, Turner, Richardson and Geer. Motion carried.

Acceptance of Easement for Cutter Drive, Woolworth Short Plat, Right of Way

Mr. Measamer explained that in 2005 Mr. Woolworth and Mr. Prutzman each began 9-lot short plat processes in the vicinity of San Juan Passage and that preliminary plat approval was achieved for both short plats by 2007. Mr. Measamer demonstrated the relevant parcels and their intended access on overhead images. Mr. Measamer noted that references to Navigator Lane in his June 2, 2010 memo to Council on this matter should rather refer to Cutter Drive. He reported that the Woolworth project improvements have moved ahead more quickly than the Prutzman project which is currently on hold. Mr. Measamer said Mr. Woolworth has worked with the Prutzman group to acquire an easement for the right of way which fronts his developed lots to provide street frontage, utilities and right of way so he can proceed. Mr. Furlong has advised that the proposed easement is an acceptable means of accomplishing this. Mr. Measamer added that if the Prutzman short plat moves ahead, that portion which is now by easement would then be dedicated by the final plat.

Mrs. Richardson observed that last year's zoning review changed provisions regarding street frontage which are now 20 feet rather than 30 feet and can be achieved by easement rather than outright ownership so the proposed easement would fit the new zoning requirements. Mr. Turner asked if the Prutzman/Channel Landing group had any objections to the proposal. Mr. Measamer replied that dealing with a bank is an unknown but that staff has worked with both owners during all the discussions to date. Mrs. Richardson asked if the easement is across property that is part of the Prutzman short plat. Mr. Measamer said yes, the easement would be granted to the public, for utilities and access, to the City and as part of that to the Vintage Investments group. The Mayor reminded that at the time of short plat approval Council didn't want any more access off Oakes Avenue. Mr. Turner said it was only fair to allow the Woolworth project to proceed. Mrs. Pickett agreed but asked why the proposal was for an easement rather than a right of way. Mr. Measamer said that because the Prutzman final plat has not been recorded it can't dedicate right of way. Mr. Geer moved, seconded by Mrs. Richardson, to accept the recorded easement for Cutter Drive as presented by staff. Mrs. Richardson agreed with Mr. Turner that this should move forward promptly as access was promised to Mr. Woolworth in the past. Vote: Ayes – Petrish, Pickett, Adams, Turner, Richardson, Geer and McKeown. Motion carried.

Executive Session – Fifteen (15) Minutes

At approximately 8:45 p.m. the Mayor and Council convened in Executive Session to discuss labor negotiations for approximately fifteen minutes. At approximately 9:00 p.m., the Council reconvened and without taking any further action, the regularly scheduled Anacortes City Council meeting of June 7, 2010 was adjourned.