



## **City Council Minutes – August 16, 2010**

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At 7:30 p.m. Mayor Maxwell called the regularly scheduled Anacortes City Council meeting of August 16, 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 August 2, 2010 and August 9, 2010 be approved as if read. Vote: Ayes – Petrish, Pickett, Adams, Turner, Richardson, Geer (for August 2) and McKeown. Mr. Geer abstained from voting on the August 9 minutes as he was not present at that meeting. Motion carried.

### **Citizen Hearings**

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

### **Mayor/Council Communication**

Mayor Maxell observed that it was another good weekend with a nice concert Friday night at the Port and a lot of people in town. Mr. Turner reported he was swimming at Whistle Lake with the kids and observed the forest is in great shape. Mr. McKeown reported that the Commercial Avenue roundabout art committee reviewed over forty submissions.

### **Unfinished Business**

#### **Findings of Fact: Preliminary Plat and PUD – Hidden Shores**

Planning Director Ryan Larsen introduced Stephanie Croll, legal counsel from Keating Bucklin & McCormack, who was present in place of City Attorney Brad Furlong. Mr. Larsen made one correction to the August 12, 2010 memo in the Council packet, noting the date in the Background section should be July 19, 2010, not July 6, 2010.

Ms. Croll described the Findings of Fact and Conclusions of Law for the Hidden Shores application and appeal. She summarized that on July 19, 2010 Council concluded the closed record hearing and moved to deny both the appeal of the Planning Commission's recommendation and the applicant's PUD, Preliminary Plat and CUP applications. On that evening Council instructed staff and the City Attorney to prepare Findings of Fact and Conclusions of Law; those were included in the Council packet. Ms. Croll asked the Councilors to confirm that they had read through the Findings. All seven Councilors nodded. Ms. Croll reminded Council that the matter at hand was a closed record appeal and that the findings were prepared based on the record and on Council's recommendation.

Mrs. Richardson clarified that denial of this application did not prevent the applicant from developing his property in a way that is consistent with the law, only that this particular application did not meet the requirements of the law. Mr. Petrish agreed. Mrs. Richardson moved, seconded by Mr. McKeown, to accept the Findings of Fact and Conclusions of Law as presented in the packet. Mrs. Pickett commented she was glad to see the question of 10-foot vs. 50-foot creek setbacks explored so completely. She stated that the City seeks to create an incentive for developers to daylight creeks and that wasn't what this development was going to do. Mr. McKeown thanked Mr. Larsen, Ms. Grage and the City Attorney for the thoroughness of the Findings of Fact based on the voluminous record. Vote: Ayes – Pickett, Adams, Turner, Richardson, Geer, McKeown and Petrish. Motion carried.

#### **Island Hospital – 25<sup>th</sup> Street Vacation - Compensation**

Public Works Director Fred Buckenmeyer presented Island Hospital's proposed street vacation compensation package. He briefly reviewed the history of the petition which was first submitted in October 2007. At that time the hospital proposed to provide street improvements instead of cash payment for the vacation. Council was agreeable to the concept and asked staff to work with the hospital on specifics. Mr. Buckenmeyer reviewed the area in question on an overhead, pointing out the portion of 25<sup>th</sup>

Street and the alley between 25<sup>th</sup> Street and 26<sup>th</sup> Street that would be vacated. Mr. Buckenmeyer also pointed out an alley right of way north of 25<sup>th</sup> Street that the hospital would dedicate back to the City and pave to provide traffic passage between 24<sup>th</sup> Street and 26<sup>th</sup> Street; he said this was an addition to the original proposal. Mr. Buckenmeyer said staff was excited about the concept and recommended approval.

Mr. Buckenmeyer introduced Marc Estvold, project architect, who summarized the project and how it fits in with the proposed new Medical Arts Pavilion on 26<sup>th</sup> Street. He said the hospital proposes to build perpendicular parking instead of parallel parking on 26<sup>th</sup> Street which will provide additional parking stalls. The hospital also proposes to improve the alley to 24<sup>th</sup> Street to provide circulation from 26<sup>th</sup> Street to 24<sup>th</sup> Street without having to turn onto Commercial Avenue. Mr. Estvold clarified that all parking required by code for the Medical Arts Pavilion will be provided on hospital property and the 26<sup>th</sup> street parking will be additional. Mr. Estvold then described the pocket park, rain garden and pervious pavement parking that will be constructed at 25<sup>th</sup> Street and Commercial Avenue. Mr. Estvold also stated that the alley right of way north of 25<sup>th</sup> Street will have to go before the Island Hospital board to be declared surplus property. Mr. McKeown asked for clarification on the proposed traffic flow in the alley. Mr. Estvold said it will be two-way except for the last half block at the north that meets 24<sup>th</sup> Street which will be one way northbound. Mr. Petrish asked about the Medical Arts Pavilion. Mr. Vince Oliver, Island Hospital CEO, described the Pavilion and the expanded services it will provide.

Mr. Turner praised the plan but asked Mr. Oliver to outline who the proposed improvements will benefit. Mr. Oliver replied that the project will provide added public parking for the dive shop and adjacent businesses as well as Fidalgo Care Center and will beautify Commercial Avenue at 25<sup>th</sup> Street. Mr. McKeown asked if the pocket park will be maintained by the hospital. Mr. Oliver said yes. Mr. Adams asked if the Medical Arts Pavilion would need a conditional use permit. Mr. Estvold said the project meets existing codes. Mr. Adams summarized the financial calculations presented in the package and asked who estimated the construction costs. Mr. Estvold said they were prepared by the hospital's civil engineer, Leonard Boudinot & Skodje. Mr. Adams asked if the estimate is fair and reasonable and noted that especially in the current economic climate the bids may come in lower than estimated. He asked who would reap the savings if that should happen. Mr. Oliver said if the hospital can bring the costs down it would be fair for the hospital to pay the difference to the City but would be responsible for funding any overage. Mr. Adams asked to make that part of the agreement. Mr. McKeown asked if City staff had reviewed the estimate. Mr. Buckenmeyer said yes. Mrs. Richardson asked if the two sections of alley had been valued at the same square foot cost. Mr. Estvold said they were very close. Mrs. Richardson observed that the City could collect a cash payment and spend the money itself but said it made sense for the funds to be spent in the neighborhood where the vacation occurred so she supported the proposal. Mr. McKeown noted that the proposal creates about 30 additional public parking spaces and moved, seconded by Mr. Turner, to approve the compensation proposal and direct staff to prepare the necessary ordinance. Mrs. Pickett said she supported Mr. Adams's suggestion to require any savings in the actual cost of construction vs. the estimated costs presented in the proposal to be returned to the City. Mr. McKeown agreed and amended his motion accordingly. Mr. Turner seconded the amendment. Mr. Turner said he was pleased to see enhancements to that section of Commercial Avenue. Mr. Adams said he was excited about the pocket park and praised the hospital/City collaboration on this proposal. Mr. McKeown suggested that the Arts Commission might be able to work with the hospital on art for the area. Mr. Geer asked if pervious asphalt has been used in roadways. Mayor Maxwell said yes, very successfully. Vote: Ayes – Adams, Turner, Richardson, Geer, McKeown, Petrish and Pickett. Motion carried.

#### **Consent Agenda**

Mr. Turner moved, seconded by Mrs. Richardson, to approve the following Consent Agenda items. Vote: Ayes – Turner, Richardson, Geer, McKeown, Petrish, Pickett and Adams. 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 August 5, 2010 and August 12, 2010 are approved for payment as of this date August 16, 2010.

Claims Warrants

August 2010: Warrant Numbers 56810 through 57005 in the total amount of \$436,855.49

EFT

August 2010: Warrant Numbers 56797 through 56809 in the total amount of \$4,190.69

Payroll for August 5, 2010 in the total amount of \$786,620.48

Warrant Numbers 35053 through 35113 in the total amount of \$60,265.54

Direct Deposit Numbers from 36217 through 36417 in the total amount of \$543,033.20

EFT Numbers from 1161 through 1166 in the total amount of \$183,321.74

In the same motion Council:

Confirmed the reappointment of Jim Young to the Historic Preservation Board for a term to expire June, 2014; and

Accepted as complete the Depot Site Plaza - Phase I project by R. J. Lampers Construction Company (Contract 09-039-IDS-001).

**Ordinance: Municipal Code Amendment – Utility Tax**

Finance Director Steve Hogle presented an ordinance to repeal a section of City code put into place in 1993 that exempts governmental utility customers from utility taxes. He said the current Department of Revenue audit found that the exemption was not allowable under state law and that the City is responsible for four years of retroactive taxes. He said the City's legal counsel has confirmed that interpretation. Mr. Hogle reported that the City has some unused credits with the Department of Revenue that can offset the retroactive taxes but the final balance has not been determined. He added that fourteen customers with 49 different accounts will be affected, most of them not very large; only four customers will be affected by more than a couple hundred dollars per month. Mayor Maxwell pointed out that when the City was audited by the Department of Revenue 19 years ago this exemption was not questioned and he believes it was allowable when first put into place. The Mayor also noted that collecting the tax going forward will improve the City's General Fund balance. Mr. McKeown asked if the City will seek reimbursement from the affected customers. Mr. Hogle replied that decision is pending determination of the final amount of net liability to the State. Mayor Maxwell explained that the municipal code needs to be amended now and the retroactive steps can be determined later, pointing out that the proposed ordinance doesn't address retroactive collection or payment of taxes. Mr. McKeown moved, seconded by Mr. Geer, to adopt **Ordinance 2834** amending Ordinance 2301, Section 5A.36.140, Part C and repealing City Code 5.36.140, Part C. Mr. Turner asked when the new code will go into effect. Mr. Hogle said the ordinance is effective 5 days after adoption and will be in place for the September water bills. Vote: Ayes – Richardson, Geer, McKeown, Petrish, Pickett, Adams and Turner. Motion carried.

**Public Hearing: Latecomer Agreement – H Avenue – Schorr (Continued)**

Mayor Maxwell announced that this agenda item would be continued but that anyone present wishing to testify would be allowed to do so since the evening had been advertised as a public hearing. Mr. Buckenmeyer noted that late on the prior Thursday staff had received new information about the application and recommended continuing the hearing until further notice to allow the application materials to be corrected. He advised that all parties who were originally notified about the public hearing had been contacted to notify them of the change. Mayor Maxwell opened the public hearing. No one present wishing to testify, the Mayor continued the public hearing to a later date.

At approximately 8:15 p.m. the Mayor announced that City Council, the Mayor and legal counsel would convene in Executive Session to discuss pending and threatened litigation for approximately fifteen minutes. At approximately 8:30 p.m., the Council reconvened and without taking any further action, the regularly scheduled meeting of August 16, 2010 was adjourned.