



City Council Minutes – October 3, 2011

Special Meeting: From approximately 4:30 p.m. to approximately 4:50 p.m. the City Council conducted a site visit beginning at the intersection of 35th Street and K Avenue regarding Anacortes Memory Care Conditional Use Permit. City Councilmembers Eric Johnson, Nick Petrish, Erica Pickett, Brad Adams, Bill Turner, Cynthia Richardson and Brian Geer were present. No testimony and no action were taken.

At 7:00 p.m. Mayor Dean Maxwell called the regularly scheduled Anacortes City Council meeting of October 3, 2011 to order. Roll call found present: Eric Johnson, 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. Johnson moved, seconded by Mr. Adams, that the minutes of September 19, 2011 be approved as if read. Vote: Ayes – Petrish, Pickett, Adams, Turner, Richardson, Geer and Johnson. Motion carried.

Citizen Hearings

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

Mayor/Council Communication and Committee Reports

Mayor's 2012 Budget Message

Mayor Maxwell read his 2012 budget message into the record, the full text of which is appended hereto. The mayor emphasized that the balanced budget continues the City's commitment to high levels of service for the community and said the proposed 2012 budget of \$41,004,692 is a 4.1% increase over the adopted budget for 2011. The Mayor advised that the full text of the message would be provided to all interested members of the press and City Councilmembers and would be published on the City website.

Appointment to Planning Commission: John Archibald

Mayor Maxwell requested Council's approval of his appointment of Board of Adjustment member John Archibald to the Planning Commission position vacated by the resignation of Larry Nelson. Mr. Johnson moved, seconded by Mr. Petrish, to confirm the appointment of Mr. Archibald to the Planning Commission for a term expiring December 31, 2012. Vote: Ayes – Pickett, Adams, Turner, Richardson, Geer, Johnson and Petrish. Motion carried. The mayor invited those interested in filling Mr. Archibald's seat on the Board of Adjustment to contact him.

Mrs. Richardson congratulated those involved with the North American Town Crier competition held in Anacortes over the weekend. She said Anacortes was well represented and that visitors from all over had a good time. Mayor Maxwell thanked Richard Riddell, Duane Clark and all the other volunteers who arranged the event.

Unfinished Business: Closed Record Appeal and Hearing - Anacortes Memory Care Conditional Use Permit

City Attorney Brad Furlong summarized the history of this matter: On June 6, 2011 City Council held a closed record hearing on the project and ruled on one appeal, that the proposed use is appropriate in the R3 zone. Council also adopted the staff recommendation that the matter be remanded to the Planning Commission: "Mr. Geer amended his motion to remand the application to Planning Commission with the specific direction listed in paragraphs 3 and 4 of the Staff Recommendation on page 4 of the June 2, 2011 staff memo from Libby Grage to Mayor and City Council, and to request a definition of individual living unit." The referenced paragraphs 3 and 4 read:

If it is determined that the use is allowed as a conditional use in the R3 zone, staff recommends that the Council dismiss that specific appeal issue and remand the application back to the Planning Commission with instructions to the Proponent to file a revised site plan based on Planning Commission Condition No. 24, and any additional material related to the remand items below, no later than by July 1, 2011 and for the limited purpose of accepting into the record additional

evidence and testimony specifically relating to the following issues brought up in the appeals of the PC Recommendation:

- Planning Commission recommended conditions #s 22-26.
- The Proponent's traffic study and new site plan as it relates to parking and traffic impacts on pedestrian safety along 34th Street and K Avenue
- Consistency with Chapter 17.70 AMC, relating to critical areas buffers

Staff further recommends that the record be re-opened to allow submittal of material concerning the revised site plan and above-referenced issues through the close of business on July 12, 2011.

Based on Council's vote, the record was reopened to accept evidence within those parameters. The Planning Commission met on July 27, 2011 and August 3, 2011 to accept new evidence. On advice from legal counsel, the Planning Commission did not make any recommendations. Mr. Furlong explained that that the Council remand was for the limited purpose of accepting into the record additional evidence and testimony only, not for new or additional recommendations from the Planning Commission.

Mr. Furlong stated that one appellant, Evergreen Islands, has requested that all councilmembers except Mr. Adams recuse themselves from further decisions on this matter and charged that the Council's decision was arbitrary and capricious and that six councilmembers are prejudiced against the project based on that decision. Mr. Furlong said that as a matter of law the vote to deny the R3 zoning appeal does not disqualify any member from hearing the balance of the case but as always if any member of the Council feels he or she is prejudiced against the project, he or she should so announce and step down. Mr. Furlong did note that if more than three Councilmembers were to step down at least one would have to come back under the Doctrine of Necessity so that Council could have a quorum and reach a decision on the merits of the appeals and the recommendation from the Planning Commission.

Mr. Furlong stated that Olympia Attorney Gerald Steel has claimed that Mr. Furlong's advice to the Planning Commission that it not make a recommendation was wrong and resulted in a procedural error. Mr. Furlong replied that the record is clear on the scope of the remand. Mr. Furlong stressed that what was and remains before City Council are the six appeals filed after the initial Planning Commission recommendation and the initial recommendation itself. Those matters are what is before Council tonight, now with an expanded record.

Mr. Furlong then summarized the order of presentations for the evening, noting that the applicant and each appellant would be given 10 minutes to argue from the record only and that the applicant would then be given time to respond. He said Council should then make a decision on the appeals, then make a decision on the Conditional Use Permit application recommendation itself by accepting it, rejecting it, or accepting it with new or revised conditions. Mr. Furlong said that Planning Commissioner comments made at the conclusion of the remand hearing and any appeals submitted after the remand hearing at Planning Commission were not timely, are not part of the record, and should not be considered. He reminded those present that a closed record hearing is a quasi-judicial proceeding and that outbursts with respect to points of order are not appropriate in a court of law nor at a hearing. He said Councilmembers have the role of judge, to apply the law and the Anacortes Municipal Code to the facts of the case that are in the record. He said that once Council has indicated its intent on each appeal and on the substance of the recommendation, it will not take final action at this meeting. Rather, staff will prepare written Findings of Fact and Conclusions of Law for Council adoption at a subsequent meeting.

Mr. Petrish noted that comments made by Planning Commissioners at the remand hearing were in the packet materials he received and asked if they are part of the record. Mr. Furlong said they were part of the transcript of the meeting but not of the official record and should be disregarded.

Mrs. Richardson noted that the local newspaper has covered this matter extensively and it is virtually impossible for any councilmember not to see at least the headlines. She disclosed that she may have seen bits and pieces of publicly circulated newspaper information but that she did not read articles once she determined they related to this matter and that she didn't think she had prejudiced her opinion one way or another. She said she did not need to recuse herself but did disclose it for the record.

Mr. Adams stated he would like to listen to all six appellants before deciding on any of the appeals. Mrs. Richardson agreed. Mr. Geer said he had a question about Exhibit 38. Mr. Furlong suggested he address that question to the appropriate appellant during that appellant's time at the microphone.

Assistant Planning Director Don Measamer then summarized the project proposal for a memory care center in the R3 use zone at 35th Street and K Avenue, displayed the site plan, and described the preliminary short plat for six single family residential lots that was previously approved for the site. He said the proposed 8870 SF building project would include 24 rooms, 18 on site parking spaces, a hammerhead turnaround and fire lane, a cul-de-sac at the end of K Avenue, and restoration of a portion of the 50' required buffer along Ace of Hearts Creek. Mayor Maxwell noted for the record that City Council and many members of the audience attended a visit to the site earlier in the afternoon. Mrs. Richardson asked if the diameter of the new cul-de-sac meets fire department standards. Mr. Measamer said yes, it meets standards, and that it was adopted by Council as a reduced size cul-de-sac a few years back.

Attorney Tom Moser, 1204 Cleveland Avenue in Mount Vernon, representing the appellant [sic] presented highlights from the PowerPoint presentation that is exhibit No. 143 in the record and was presented to the Planning Commission at the remand hearing. He said the site has prior approval as a 6-lot single family subdivision, is zoned R3, is cleared within 25' of the creek, and is paved within the cul-de-sac. He displayed the applicant's proposal to increase the creek buffer to 50'. He referenced the July 29, 2011 letter from Ronald T. Jepson & Associates stating that proposed enhancements to the buffer will increase its habitat value and displayed the revised buffer plan that was submitted to the Planning Commission. Mr. Moser then addressed the question of access for food service delivery trucks. He said a Food Services of America email dated July 22, 2011, indicates the vendor thinks it can navigate within the site just fine. Regarding individual living units, Mr. Moser said this is not a defined term in the Anacortes Municipal Code but is referenced in the definition of "assisted living center/congregate care facility" in AMC 17.06.030: "In contrast with a nursing home, an assisted living center is designed for residents who need care in a controlled setting with individual living units." Mr. Moser said the term "controlled setting" is important. He said the proposed memory care center will be a controlled setting including apartment-like units with bathrooms and bedrooms for one or two people who live together by mutual agreement, with furnishings the residents choose, and a common kitchen, living room, dining room and recreational space. Mr. Moser presented a letter about Home Place, a similar facility in Burlington. Mrs. Richardson said the Burlington facility is not relevant. Mr. Moser said the letter was presented in response to questions about locating the proposed facility in a residential zone. Mr. Moser stated that before making an offer on the property the applicant asked every adjacent neighbor, "What would be acceptable to you?" and 27 neighbors signed in support of the project including seven along K Avenue. Mr. Moser then asked Ed Koltonowski from Gibson Traffic Consultants, Inc. to address traffic safety.

Mr. Koltonowski said all the professional and technical data submitted show that per prior professional studies there will be very little additional traffic. He said this type of facility is one of the lowest type of traffic generators. He said Institute of Traffic Engineering (ITE) data show the facility would generate about the same traffic as eight single family homes and less than 16 apartments which is what the maximum zoning would allow. Regarding parking, Mr. Koltonowski said the 18 proposed parking spaces are more than required by City code, ITE, or American Senior Housing Association (ASHA). Regarding trip generation, Mr. Koltonowski said using national and locally adopted minimum offsite standards both City staff and GTC concluded that the local street system is adequate to handle the slight increase in traffic safely and efficiently. He said the proposed pedestrian walkway on K Avenue will provide additional safety and that there is also an existing pedestrian connection to 35th Street. He said appellants have misinterpreted the City code as saying that no additional traffic can be allowed without reconstructing roadways to full city standards. He said the total trips will be far below City standards for Level of Service C (minor roads). He said traffic calming purposely uses 16' to 18' streets to slow traffic and said cars can pass. Overall, he said, this project will add very little traffic.

Mr. Geer observed that eight residential units would not bring semi trucks down K Avenue and asked how many 41' tractor trailers will come in to the facility and via what route. Mr. Koltonowski replied 2 to 3 per week, maybe less. Mr. Geer asked if tractor trailers will still be able to deliver if the 18 on site parking spaces are full. Mr. Koltonowski said yes and added that professional truck drivers have reviewed the site

plan. Lanny Wixson, proponent, showed on the overhead where trucks would enter, back in, then drive out. Mr. Geer asked Mr. Measamer if roads are paved based on traffic levels. Mr. Measamer deferred to Public Works Director Fred Buckenmeyer. Mr. Buckenmeyer said new streets are not designed with different asphalt depths or surfaces in residential vs. commercial areas. Mrs. Richardson added that the City cannot know where UPS trucks or moving vans or whatever will drive so the standard road thickness has to handle them all. Mr. Johnson responded to Mr. Moser's discussion of Home Place in Burlington by noting that Home Place is on 210 North Skagit Street which is a major arterial with sidewalks and parking on both sides and just around the corner from another major arterial, Fairhaven Avenue. He said the two project sites seem more dissimilar than similar. Mr. Moser said his client was responding to comments about how such facilities can be accommodated in residential neighborhoods. Mr. Adams clarified that maximum zoning would allow 16 units on the site but no apartments are allowed in the R3 zone.

Appellant Terry Christensen, 3302 K Avenue, cited AMC 17.34.010 regarding the purpose of the R3 zone: "The R3 district is designed to accommodate a mix of single-family homes and duplexes, with multifamily residences up to four units by conditional use permit." He said the code allows assisted living and congregate care facilities as conditional uses. He said AMC 17.34.070 states that the maximum allowable density for any project applied for in the R3 zone is 9 units per gross acre, which would be 16 or 17 units on this 1.8 acre project site. Mr. Christensen then cited the unit density in the R4, R4A, R4B, R2, R1 and CM zones. He noted that all zones with density limits use the word "units" and that though unit is not defined in the code it should be interpreted per common usage. He said the code doesn't provide any mechanism for City Council to grant relief from the density limit in the R3 zone other than an outright change in the code. Mr. Christensen then quoted the applicant's site plan as stating under zoning code information: "24 units, 32-48 residents." He said the project clearly violates the density maximum. Mr. Christensen then listed a number of zoning issues over which City Council can exercise discretionary authority but said maximum density is not one of them, it is fixed and absolute unless Council changes the municipal code via established procedures. He said the R3 zone is not intended to have facilities of the scale of this project. He noted that apartment complexes are not allowed conditional uses in that zone. He reiterated that the maximum density in the R3 zone is 9 units per acre and this project would violate that density. He said in residential zones Council's first consideration must be to protect the people who have invested in their zones and are raising their families there, protect their safety, their right to quiet enjoyment of their property, their property values and their peace of mind. He said that the applicant doesn't own the project site so his rights are subordinate to the rights of existing property owners in the neighborhood. He said any memory care facility conditionally permitted in the R3 zone should have no more than four units. Mr. Christensen concluded that project opponents don't object to the proposed project, only to building it in the R3 zone. Mr. Christensen said his approach to conditional use permits was always to seek reasons to deny them and if he couldn't find any, he felt obligated to vote in favor of them. He said Council has many reasons to deny this permit and the one he has given is it violates the maximum density of the R3 zone.

Appellant Evergreen Islands was represented by Tom Glade, 210 Mansfield Court. Mr. Glade asked to raise a point of order. Mayor Maxwell told Mr. Glade he was out of order and to limit his comments to the appeal testimony on record. Mr. Glade stated that municipal code provisions cannot be read in isolation and must be considered in the context of the entire code. He said AMC Chapter 17 is designed to assist in orderly development, conserve the value of property and safeguard public welfare by, among other things, protecting the general public health, safety and welfare, encouraging the most appropriate and compatible uses of land, and providing for efficient and safe traffic flow. He said any interpretation of the code should be consistent with those goals. Mr. Glade reviewed how terms are to be interpreted and regulations construed per Chapters 16 and 17 of the AMC. Mr. Glade said the comprehensive plan says multifamily dwellings in the R3 zone shall not exceed a fourplex unit by conditional use. He said that density in the R3 zone shall not exceed 9 units per gross acre. He said boarding homes are an allowed conditional use but may not have more than 9 sleeping rooms or 9 boarders. He argued that "congregate care" must be interpreted in the context of the R3 zone with its limits on number of units and density. Mr. Glade said the code defines "assisted living center/congregate care facility" in contrast to "nursing home" and contrasted the two. He said the WAC categorizes mental care facilities as either nursing homes or boarding homes, not assisted living facilities. Mr. Glade reviewed the eight tests a conditional use must meet to be permitted under AMC Chapter 17 and argued that the proposed memory care facility does not

meet those tests. Mr. Glade asked the City to respect and honor the Planning Commission's concluding remarks at the end of the remand hearing. He said Evergreen Islands recommends that Council deny the conditional use permit without prejudice so the applicant can start over with a clean slate. He said the proposed memory care facility is not "clearly" an assisted living facility so the administrator's opinion is in error and should be reversed.

Mr. Geer asked Mr. Glade about Exhibit 38, the original appeal from Evergreen Islands, which asked Council to remand the application back to the Planning Commission. Mr. Geer said that's exactly what Council did at its June 6, 2011 meeting but during the remand hearings Evergreen Islands chastised the Council for remanding. Mr. Geer questioned the inconsistency. Mr. Glade replied that Evergreen Islands requested that Council remand the application to Planning Commission for a new decision, not strictly to accept new evidence.

Appellant Phyllis Dolph, 2320 26th Street, was represented by Arlene French, 1411 8th Street, who read aloud Mrs. Dolph's prepared statement which is Exhibit 136 in the record.

Appellant Sherri Muntean, 3306 K Avenue, first addressed "individual living units." She said that term is not specifically defined in the AMC but quoted AMC 15.12.010 which does define various units and said each bedroom in the proposed facility would be considered a unit. She quoted AMC 17.34.070 which states the maximum density in the R3 zone is 9 units per gross acre with a maximum of four units. She said the applicant has stated the State will license the facility as a boarding home. She said this means it won't be considered an assisted living facility and WACs applying to assisted living won't apply to it but any requirements for boarding homes would. She quoted AMC 17.06.100 to say that boarding or rooming houses may have only up to nine boarders. She concluded that the project is in clear violation of R3 density and boarding home limits. Regarding the traffic study, Ms. Muntean said AMC 17.10.100(2)(f) requires that vehicular traffic associated with the conditional use won't be hazardous or conflict with existing and anticipated traffic in the neighborhood and that adequate pedestrian and vehicular connections to arterials and adjacent areas as well as appropriate circulation within the project are provided consistent with city policies and standards for circulation patterns in the area. She said ASHTO data is not appropriate. She said AMC 16.32.010 defines the load count that identifies an arterial and both 32nd Street and Commercial Avenue are arterials so the developer must provide connections on both 34th Street and K Avenue. She continued that city policies for vehicular connections to the arterials are defined in AMC 16.32.010 and that since the traffic study says this roadway has fewer than 500 trips per day, it must have right of way length of 50' and minimum pavement width of 32' with two driving lanes, curb and gutter and parking on both sides. She said K Avenue and 34th Street both fail this test so the proposal would have to be rejected. She noted that similar facilities such as Cap Sante Court and Chandler's Square have always before been approved on roads that are consistent with the AMC. Regarding pedestrian safety, Ms. Muntean quoted AMC 17.10.100(2)(f) and AMC 16.32.020 as requiring sidewalks on both sides of the street with a planted median but said the City doesn't own most of the west side of K Avenue from 34th Street so it is impossible to do what the law requires. Regarding traffic, Ms. Muntean argued that testimony at the July 2011 Planning Commission meeting said the traffic study relied on biased data and that even that biased data will conflict with existing and anticipated traffic in the neighborhood so the project must be denied. Ms. Muntean urged Council to deny the conditional use permit based on allowed density, vehicular traffic that conflicts with existing and anticipated traffic in the neighborhood, and lack of adequate pedestrian and vehicular connections to the arterials.

Appellant Kathy Lindberg, 1515 34th Street, requested that Council deny the conditional use permit. Referencing AMC 17.10.100.B.2.a, Ms. Lindberg said the project is not compatible with the character and appearance of the existing development. She said when her family moved in five years ago the site was slated for six new homes so they expected new neighbors and a little more residential traffic, not a huge facility with an enormous invasion of business traffic. Referencing AMC 17.10.100.B.2.e, Ms. Lindberg said the proposed use is also in conflict with the health and safety of the community. She said ASD 103 told her husband that K Avenue and 34th Street were too narrow and unsafe for a school bus route. She questioned how such roads can possibly accommodate the increased traffic from the proposed facility including huge delivery trucks and many service providers. She said there's only one way in and one way out of this 24/7 business in a residential neighborhood. She argued that the proposed project is not an

assisted care facility and contrasted it with an assisted living facility in Ritzville. She noted the narrow 21' street has no sidewalks and asked Council to consider pedestrian safety. Referencing AMC 17.10.100.B.2.f, Ms. Lindberg argued that the increased traffic will be hazardous or conflict with existing and anticipated traffic in the neighborhood. She argued the applicant hasn't done a traffic study, they have only manipulated existing statistics. She estimated the facility will create a 300% to 700% increase in traffic. She concluded that the applicant has not met the burden of proof that the project meets all the conditional use permit requirements. Additionally, she said the project would be devastating to the surrounding neighborhood and would set a precedent. She questioned whether an additional memory care facility is needed in Anacortes and said all other senior care facilities in town are in the R4 zone. She told Council they have to uphold the law and urged denial of the proposed conditional use permit.

Appellant Sally Davis, 3312 K Avenue, said this development does not belong in this residential neighborhood. She said the proposal and conditions don't adequately provide for the safety of the community and place and break City code and the comprehensive plan. Ms. Davis said her family purchased their home thinking there would be residences built on the project site. She said even if this process had been perfect, the facility's proposed location violates City code in respect to density, safe pedestrian access and changing the purpose of a code. Ms. Davis referenced the April 2011 staff report section on Project Consistency with Applicable Zoning Regulations and said the report didn't address density. Ms. Davis said the R3 density is 9 units per acre and R4 is 28 units per acre so at under 2 acres the proposed facility should have fewer than 18 units. She questioned why the staff report not explain the facility's violation of the density restrictions. She said nothing in the code allows bending a zone's density. Ms. Davis noted that the conditional use permit process requires an applicant to meet all eight requirements and argued that this applicant has not demonstrated that the project meets the purpose of the zone and will not overburden existing public services and facilities. Ms. Davis said approving the permit would change the purpose of the R3 zone and set a precedent that the code can be changed without going through the appropriate channels. She said the project also fails to provide adequate pedestrian connections to arterials, specifically that 34th Street has no facilities to connect to Commercial Avenue. She emphasized the lack of sidewalk on 34th Street which children must use to get to their bus stop and said they will have to compete with commercial traffic there. She added that the proposed pedestrian access on K Avenue isn't even defined. She said this conflicts with conditional use requirement (e) because it conflicts with the health and safety of the community. She disagreed with the trip increases projected in the traffic safety report. She said this facility won't bring residential traffic but business traffic. She said the question before Council is whether the applicant has met all eight requirements for a conditional use permit and whether the project is consistent with the applicable zoning regulations of the R3 zone. She said the appellants have demonstrated the many ways it does not. She encouraged the City to help the applicant to find a better suited legal location in the best zone. She concluded that denying the permit is the only legal vote.

At approximately 9:10 p.m. Mayor Maxwell called 10 minute break. At approximately 9:20 p.m. Mayor Maxwell called the meeting back to order. He invited the applicant to respond to the appellants.

Mr. Moser responded to the density issue raised in five of the appeals. He said there are three ways to get a permit to develop in an R3 zone: an outright permitted use, an accessory use, or a conditional use which has a different set of criteria. Mr. Moser said one of the conditional uses in the R3 zone is churches and asked, how many units are in a church? He said that's a bad question because you don't look at units in conditional use permits. He said that's why the original staff report did not address the number of units per gross acre in the application. Mr. Moser then asked Mr. Koltonowski to respond to other issues.

Mr. Koltonowski said he heard nothing from the appellants to change his mind or any of the data in the packet. He said the ITE data is not biased, it's what most jurisdictions require. He clarified that traffic studies count each one way trip in or out as a trip. He said the AMC defines traffic thresholds and said the proposed project doesn't exceed any thresholds. He said there were no other issues he needed to address because everything is already documented in the record.

Proponent Lanny Wixson clarified that an apartment is a complete dwelling unit with living room, dining room, kitchen, bedroom, bathroom, everything needed to live autonomously. He contrasted this with the

memory care facility which has a bathroom and essentially a bedroom for each person, but just like in a private home residents share a common kitchen, living room and dining room. He said the AMC limited apartments and set a maximum number of units because it recognized the traffic apartments were generating. He said the code allowed assisted living facilities as a conditional use and didn't limit the number of units in them because their residents don't drive and have no impact on neighborhood traffic.

Mr. Koltonowski returned to the microphone to confirm that K Avenue will be improved with a walkway and said there is a cut through [to 35th] that has sidewalks to Commercial Avenue.

Planning Director Ryan Larsen then summarized Mr. Christensen's appeal, Exhibit 40, which addresses concurrency, parking, and density.

Mr. Petrish asked what we are calling this facility. Mr. Larsen said an assisted living facility.

Mrs. Richardson asked to address two points raised by Mr. Christensen. She asked does the limit of 4 units per building apply to this facility? She said no, under conditional uses each type of conditional use has its own unit count and (j) assisted care living facilities, congregate care facilities and group home facilities, places no limit on the number of units. She said since other uses do have specific unit limits and this one doesn't but could have, one has to assume the code did not intend to limit the number of units or rooms for assisted care living facilities. She said that in the code the limit of four dwelling units applies specifically to complete apartments.

Mr. Adams said that whenever there is a conditional use in an existing zone, it is important to consider density because a density higher than the surrounding neighborhood can have an adverse impact on that neighborhood.

Mr. Geer asked if the state is licensing this facility as a care facility. Mr. Wixson responded that the state licenses this facility as a boarding home which is the same license given to assisted living facilities like Rosario and Chandler's Square. He said this is a specialized assisted living facility but it gets the same license. Mr. Johnson referenced WAC 388.110.140, Assisted living services facility physical requirements, noted they require separate kitchen facilities, and said the proposed project sounds like some sort of hybrid. Mrs. Richardson said that Council has to consider all state and local law and said she had a copy of the WAC addressing enhanced adult residential care service standards. She said in some cases dementia care is a subset of the services offered in nursing homes but the WAC says dementia care can also be a subset of the license for a boarding home, which can be 2 units or hundreds of units. She said those don't require a full kitchen and that there are different requirements for dementia care. Mr. Wixson agreed and said you simply cannot provide dementia patients with stoves.

Mr. Petrish said he was sympathetic to elder care needs but said he is also concerned about building things that don't fit existing neighborhoods. He said it is important to maintain neighborhoods and that the proposed facility does not maintain the neighborhood, it's an adverse impact.

Mrs. Richardson continued her response to Mr. Christensen's appeal by addressing his objection to the project density. She said it was critical before moving forward to answer the question of whether the density portion of the code applies to this facility. She said her reading of the code is that density does apply. She explained that density is a threshold determination that sets the character of the neighborhood. She underscored that in the code the clause on density is a separate section in each zone regardless of the use and the maximum density in the R3 zone is 9 units per acre. The next question to ask, she continued, is does this facility contain units to which the density applies? She said she disagrees with the proponent that the facility is a single unit like a church. She said the code says assisted living facilities have individual living *units*. She said she believes the limit of 9 units per gross acre applies to this facility. She said under her interpretation, this facility would be allowed in this location at more than four dwelling units but would have to be reduced in size to meet the density limitations in the R3 zone, so no more than 9 units per gross acre.

Mrs. Pickett replied that the code doesn't limit how many people can occupy a dwelling unit and what the rule is trying to get at is the impacts on neighborhoods. She said there's nothing in the record that shows the project will have a terrible impact on the neighborhood. She said the professional traffic study is consistent with those used in at least the last twenty years of planning. Mr. Larsen clarified that the site is currently approved for six residential lots one of which could be a duplex. Mrs. Pickett said if extended families lived in those homes there would be impacts but the code doesn't try to control for that. She questioned that anything in the record shows provable untoward impacts and said she did not support Mr. Christensen's appeal.

Mr. Turner said he previously voted that the proposed project was an assisted living facility and an allowed conditional use. He said the code doesn't define the size or occupancy of a unit. He said the question is how dense will we make this piece of property? He said people in a locked down facility can have no impact on the neighborhood except traffic for the workers. He said Council does need to consider the density because it affects the neighborhood but he had a tough time excluding this project for density because he didn't see that it would have a negative impact on traffic or safety or anything else. He argued that the density for this project wasn't exactly specified and disagreed with Mr. Christensen's appeal that there was a specific density defined.

Mr. Adams reminded that R3 is intended to be a residential zone and any proposed conditional use there has to make sense for the neighborhood. He said the currently proposed density was too much for this neighborhood.

Mr. Turner moved, seconded by Mrs. Pickett, to deny Mr. Christensen's appeal. Mr. Petrish said Mr. Christensen's appeal is the key to this whole conditional use permit. He said the project should only be allowed if doesn't adversely impact the neighborhood and this will seriously impact this neighborhood regardless of what the density is. He did not want this extended to other R3 zones in the city and said the facility belongs in an R4 zone. Mr. Johnson asked Mrs. Richardson to confirm that 17 should be the maximum number of units. Mrs. Richardson said that is the case if Council agrees with her that a living unit is a unit and the 9 unit maximum density limit applies. Mr. Larsen reminded that there was a motion on the floor to deny Mr. Christensen's appeal but that the appeal raised issues of concurrency, parking and conditional use criteria as well as density so Council might want to address those items before deciding. Mrs. Richardson asked Mr. Furlong if Council can deny portions of an appeal and uphold other portions. Mr. Furlong explained that Mr. Christensen's appeal requests the relief of denying the conditional use permit so upholding his appeal on any basis would deny the conditional use permit. Mr. Furlong suggested that Council should probably look at all of the issues raised in the appeal. Mr. Turner withdrew his motion and Mrs. Pickett withdrew her second.

Mr. Geer said he had concerns about 48 potential residents and staff parking and visitors and delivery traffic and the impact of that type of density would have on the surrounding roadways, especially commercial truck traffic. He agreed the residents won't be driving but said the density of the facility will impact the traffic in the neighborhood. He said the roads aren't up to the traffic that may be generated.

Mr. Petrish said based on the record and the testimony tonight, this project doesn't fit. He asked Mr. Furlong, rather than review item by item, can Council consider a motion to reject the application outright? Mayor Maxwell said Council needs to go through the record and then decide.

Mr. Turner said the record shows there are enough parking stalls for this facility.

Mrs. Pickett said the record is filled with flamboyant speculation. She said Cap Sante Court was permitted years ago with too much parking because people had similar concerns. She said the most concrete comparison was the proponent's note that there is no employee parking at Chandler's Square though she observed that there is on street parking available there. Mrs. Pickett said she had been involved with a lot of decisions that were characterized as disasters on the horizon at the time that have turned out fine. She said the first goal of the comprehensive plan is to create and maintain a high quality of life and environment for all Anacortes citizens, including dementia patients. She concluded that traffic and parking are not problems in the proposal. Mr. Petrish countered that Chandler's Square parking is inadequate.

Mr. Geer said his comments were based on what the proponent provided in the record for number of trips and said he wasn't overwhelmed by the traffic study. Mr. Turner said the traffic study shows the increased traffic will not reach the threshold to have an impact.

Mr. Johnson noted that Mr. Christensen's appeal says the R2 and R3 zones require 5' sidewalks on both sides of the street. Mr. Johnson asked if that is for new development only. Mayor Maxwell said if you build a single family home at the end of an unimproved street you aren't required to improve the street. Mr. Johnson said during the site visit one of the vehicles traveling the 21' road did touch lips with the two mirrors so it is pretty narrow.

Mrs. Richardson quoted AMC 17.10.100.B.2.g: "The conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities." She said the Planning Commission conditioned the permit with a pedestrian walkway on K Avenue to mitigate pedestrian safety concerns. She agreed the code can't require a developer make up for past deficiencies but it can require mitigation for impacts, for instance adding a pedestrian walkway on 34th Street as well or requiring future traffic counts. She underscored that a conditional use may have adverse impacts as long as they are mitigated. Regarding thresholds for neighborhoods for traffic, she observed that fewer than 500 trips per day is considered low and this neighborhood has super low traffic now.

Mr. Turner moved, seconded by Mrs. Pickett, to deny Mr. Christensen's appeal based on the three subjects he brought up. Vote: Ayes – Turner, Geer and Pickett. Nays - Adams, Richardson, Johnson and Petrish. Motion failed.

Mr. Furlong observed that Council had voted down denying the appeal but would need to affirmatively vote to grant the appeal if that is its intention. Mrs. Richardson observed that the appellant asked Council to deny the project and asked if Council were to uphold his appeal, would it effectively be denying the project or would that require a separate action. Mr. Furlong said that if Council grants the appeal outright, it would deny the project. He said if Council wants to condition the project, it would have to deny any appeals that request the relief of denying the project. Mr. Furlong recommended hearing each appeal and ruling on it and then ruling on the Conditional Use Permit. Mrs. Richardson asked if Council could continue the hearing to another evening. Mayor Maxwell said yes. Mr. Johnson asked that staff summarize the points to consider in each appeal. Council discussed available dates. Mrs. Richardson moved, seconded by Mr. Geer, to continue the closed record appeal and hearing to Monday, October 10, 2011, following the regularly scheduled study session. Vote: Ayes – Turner, Richardson, Geer, Johnson, Petrish, Pickett and Adams. Motion carried.

Consent Agenda

Mr. Adams moved, seconded by Mr. Turner, to approve the following Consent Agenda items. Vote: Ayes – Richardson, Geer, Johnson, Petrish, Pickett, Adams and Turner. Motion carried.

Approval of Vouchers/Cancellation of Checks

Council voted unanimously that the following checks audited and certified by the City's Auditing Officer (Finance Director) and subsequently reviewed and approved by the Council Finance Committee on September 22, 2011 and September 29, 2011 are approved for payment as of this date October 3, 2011.

Claim Checks: September 2011: Check Nos. 61929 through 62100 in the total amount of \$1,220,883.80

EFT: September 2011: EFT Nos. 61926 through 61928 in the total amount of \$172.00

Payroll for September 20, 2011 in the total amount of \$801,581.80

Check Numbers 36479 through 36516 in the total amount of \$32,198.79

Direct Deposit Numbers from 41375 through 41558 in the total amount of \$577,306.67

EFT Numbers from 1330 through 1334 in the total amount of \$192,076.34

In the same motion Council:

Accepted as complete the project to install diesel exhaust extraction systems in Fire Stations 1 and 2 (Contract dated 2/14/11 with MagneGrip/Weidner Fire);

Accepted as complete the project to install a building sprinkler system at Fire Station 1 (Contract 11-016-IDS-001 with Commercial Fire Protection, Inc.); and

Authorized payment to G.C. Systems in the amount of \$31,902.77 for Cla-Valve maintenance work.

There being no further business, at approximately 10:30 p.m. the regular Anacortes City Council meeting of October 3, 2011 was continued to Monday, October 10, 2011 immediately following the regularly scheduled City Council study session for that evening for the purpose of continuing the Closed Record Appeal and Hearing on the Anacortes Memory Care Center Conditional Use Permit.

MAYOR'S BUDGET MESSAGE

October 3, 2011

Honorable City Council Members and the Community of Anacortes:

I am pleased to submit the proposed 2012 budget for the City of Anacortes for your review, comment, and action. As in all previous years of my administration, we are presenting a balanced budget that continues our commitment of providing high levels of service for our community. The proposed 2012 budget totals \$41,004,692, and represents a 4.1% increase over the adopted 2011 budget of \$39,339,415.

Under this administration the City is committed to maintaining and improving our substantial infrastructure. In the water utility this budget contains obligations for ongoing construction on the new water treatment plant (WTP). Engineering started on this project in late 2008, and construction is scheduled to complete in mid 2013. In addition to funding the WTP project, our water utility has additional capital responsibilities in 2012, including \$656,000 for replacing aging cement water lines, and \$435,000 for water intake structure maintenance. Other infrastructure projects in the 2012 budget include funds budgeted for sidewalk reconstruction, overlay of existing roads, and continuing work on the Guemes Channel Trail out of the arterial street construction fund.

The 2012 budget also reflects an elimination of double budgeting of interfund payments for employee health insurance in the general fund, through a change in accounting procedures for these payments. This allows the City to more accurately present the actual insurance costs; in the past this expense was shown twice.

The Growth Management Act sets aside specific fees and taxes to enhance communities responding to growth. The City receives revenue in the form of utility hookup fees and impact fees for streets and parks when new building permits are issued, and Real Estate Excise Tax (REET) on the sale of homes in our city limits, all of which are used to fund public works projects. Since the economic downturn started in 2008, the housing and real estate industry have slowed significantly, which has greatly reduced these revenue streams. These funding sources are not expected to increase in a significant manner by 2012, and this expectation is reflected in the smaller number of projects and funding for next year although the legislature gave cities additional flexibility with the 2nd source of REET taxes until 2016.

The following is a departmental overview of the 2012 preliminary budget:

Administration/General

Departments once again worked closely with our finance department and my office to prepare a budget that provides a high level of service to our community within the parameters of a 1% property tax increase and in a continuing environment of reduced sales tax and other general revenues. Under this administration the City has always used a fiscally conservative philosophy to maintain cash reserves when at all possible, particularly in the general fund, our most critical fund. Anacortes remains one of the lowest taxing cities in Skagit County with a 2011 millage of \$1.60/\$1000 of assessed value. Property tax revenues largely fund operations of the City's general government departments, including police, fire, ambulance service, museum, human resources, parks and recreation, legal, courts, the library, and street maintenance; essentially all departments excluding our utilities.

Anacortes continues support of the region's social services needs with the following budget allocations:

- \$29,928 Skagit County Senior Services for staffing needs at the Anacortes Center;
- \$5,000 for the local food bank emergency fund;
- \$5,000 Skagit County Community Action Agency, and
- \$10,000 Anacortes Chapter of the Skagit County Boys and Girls Club to support children with demonstrated financial needs.
- \$1,500 Anacortes Community Health Council

Public Safety

Police: The police department continues to ensure the safety of our community and works hard to keep the public's trust. In 2012 the department will focus on streamlining programs in order to allocate personnel most effectively. The department will temporarily remove the half time position dedicated to the Second Step program in the schools and reassign that officer back to patrol. The investigative division will take over responsibility for our crime prevention function.

Collectively we have been working on further efficiencies to help reduce costs in this year's budget through a new offender work program which allows some low level misdemeanor offenders the opportunity to perform work for the city parks department in lieu of serving expensive jail time. The records department will begin charging a copying fee for any records request over five pages, and the department has started collecting a BAC processing fee from individuals arrested for impaired driving. In 2012 the department will be keeping vehicles in service longer to help reduce replacement costs, and will add an additional hybrid vehicle to the existing fleet to take advantage of fuel efficiencies.

Fire/Medic: The fire/medic department continues to provide a high level of service in delivering fire protection and advanced emergency medical services. The department continues to look for solutions for improving communications, with funds in 2012 budgeted for three mobile data terminals which will enhance our inter-agency communication and logistical planning.

The restoration project for our 1924 American LaFrance fire engine is almost finished. We expect the vehicle to be driven in the holiday parade in December 2011 and we will be looking at locations for public display of this wonderful and historic piece of city equipment.

Public Works

The City will continue to take advantage of grant opportunities and other available resources for projects that will enhance our city streets, sidewalks, and utility infrastructure in 2012. One example is the construction of South Fidalgo Bay Road which we are currently building with significant help from the Transportation Improvement Board (TIB). For the 2012 budget year, the City received \$199,000 from Skagit County through the Economic Distressed County funds. Also in 2012, we are planning to construct two intersection safety projects and one large sidewalk project with Safe Routes To Schools Grant monies. Other pending grant opportunities are the 2012 TIB call for projects, the WSDOT City Safety Grant (\$250,000 max.) and the TIGER III Grant, a federal highway department call for projects in late 2011.

Streets/Trails: This portion of the 2012 budget is smaller than historical levels due to reduced revenues; however, the 2012 street maintenance budget contains \$35,000 for new sidewalk construction, \$25,000 for pre-engineering on the Guemes Channel Trail, and \$100,000 for road maintenance overlays. Roughly half of this will go towards the rebuild of I- Avenue and the other half towards other areas in need of overlay.

Water Treatment, Transmission, and Distribution: The 2012 budget includes continued funding for our water treatment plant expansion project. The project is well under way and is expected to be complete in mid 2013. A new sedimentation process will reduce turbidity loading on filters and expand our water treatment capability, quality and reliability. This project will allow the City to further utilize the water rights negotiated as part of the 1996 Memorandum of Agreement and will posture the City of Anacortes to be able to meet water quality and quantity requirements for the next 50 years and beyond. In 2011, the City was awarded a \$10 million, 0.5 % interest Public Works Trust Fund Loan that will aid in funding construction of the project; we expect to meet criteria that will further reduce the interest rate to 0.25%. In 2012, additional funding a bond issue will likely be used to complete funding for the project. Also in 2012, funds have been budgeted for internal maintenance of one of our 3MG reservoirs to prolong the life of the 30 year old structure. We have also included funding to replace critical equipment for the coagulation process at the water plant. This equipment, Streaming Current Monitors (SCM), will function in the new plant as well. The final item included in this budget plan is funding for the intake eductor system to remove solids from the river side of the intake structure.

Wastewater Treatment, Collection, and Conveyance: The wastewater budget includes projects funded by a portion of sewer connection fees to improve our wastewater infrastructure.. The 2012 budget provides \$300,000 to complete work on the L Basin inflow and infiltration reduction project and \$145,000 to continue work on the programmable logic controller upgrade. Included in the budget is \$650,000 to replace the incinerator heat exchanger. The heat exchanger is designed to reduce fuel used in the incinerator. Also notable in the 2012 budget; in spite of an 8% requested increase in electricity rates, both the wastewater plant and pumping station electricity budgets have decreased as a direct result of energy saving projects that were completed in 2010 and 2011.

Storm Drainage: The storm drain fund accumulates capital cash reserves from general facility charges collected from building permit sales. These reserves are restricted for capital projects, and will fund a number of projects for the upcoming year that include: \$18,000 for improvements at 24th and J Avenue, \$50,000 for storm sewer upgrades, and \$25,000 for storm outfall reconstructions.

Sanitation: The operating budget includes \$20,000 in capital funding to purchase replacement dumpsters, and \$138,000 for reconstruction and paving to the maintenance and parking area for the solid waste trucks.

Equipment Rental and Replacement (ERR): The ERR fund continues to monitor and serve the City's equipment requirements to replace aging equipment in 2012. Equipment scheduled to be purchased includes a garbage truck, two police cars, and a pickup truck for the water treatment plant, a backhoe and paint machine for the street department, and a utility trailer for the parks department.

Facilities: Facilities continues to work to reduce electricity, natural gas, and water consumption at our 14 city-owned buildings. In November 2011, we will enter into a Resource Conservation Management program with Puget Sound Energy to find ways to further reduce our electrical usage. The library, public safety building, and city hall have each substantially lowered their energy usage. City of Anacortes employees continue to receive educational materials on conservation in the workplace as well as at home. Collectively we are all working hard to share and implement energy savings ideas citywide.

Included in the 2012 budget is funding for an In Loop system for the City Hall Council Chambers. This is a wireless hearing induction system that works with the T coils in hearing aids to magnify the sound coming through the hearing aids.

Library

The library continues to look for ways to increase efficiencies and contain costs while continuing to give the best possible service to our community. We have reduced our energy consumption by closing some long holiday weekends, and have consolidated hardware and reduced the number of computers to save on equipment costs, but at the same time have added wireless access points to better serve patrons who use their own laptop computers.

We are seeing increasing usage of the meeting room, study rooms, the Internet computers and our exam proctoring service help to fulfill our mission while working within budget parameters. We are particularly proud of the variety of adult programming which provides education and entertainment to our citizens at no cost, including much-needed beginning computer classes using our new laptop computer lab. In 2010, the last full year we have data for, we gave a total of 111 programs with a combined attendance of 5007. Already to date in 2011 we have checked out more material than in 2010. In 2012, we will be expanding our collection of eBooks, as these downloadable versions are becoming more popular.

The library will make a significant change in our integrated computer system next fall by joining a consortium of Skagit public libraries and migrating to an Open Source Software. This change will result in cost savings to the City over the next several years. The library has received grants from local service clubs and other groups to help expand children's services. We have established partnerships with other County libraries for reciprocal borrowing, and the School District for programs that allow us to provide more services to the community.

In fiscal year 2012 we have budgeted \$42,704 in books and periodicals, and our collection is growing even more through the many gift books donated to the library.

Legal/Courts

The 2012 legal budget includes a contract city attorney, contract public defender, and contract prosecuting attorney. In late 2011, the City will advertise for qualifications for both the public defender and the prosecuting attorney. In 2012 the court may also add another half day to the court calendar for to allow for the increase in case load since 2009. A fourth court date is set aside for jury trials, if the need arises. Two jury trials were held to date in 2011.

The City complies with state law regarding public records requests. In 2010 the City responded to 70 requests for information that totaled 74 hours of staff time; through August of 2011 we have responded to 66 requests that required over 350 hours of staff time to fulfill. Some of these requests for information in my opinion are designed to be punitive and disruptive and ultimately cost this community around \$30,000 dollars. I would much rather see this money spent on books for the children's library.

Planning/Economic Development & Building

The planning and economic development department has several projects scheduled to begin in 2012. The department has budgeted \$15,000 for economic development for the purpose of retaining Buxton to complete a retail and industrial marketing plan working with the Port, the Chamber, and the Hospital. Thirteen wayfinding signs were installed in 2011 and we have budgeted \$6,000 to install additional signs in 2012. The 2012 budget also continues administration and funding out of the Community Development Block Grant program.

The building department's budget is relatively unchanged from last year. We expect building permit activity to be relatively the same as 2011. The department will continue to scan and archive old building files to reduce physical filing space and preserve records.

Human Resources

The human resources department focuses on prevention and training as a risk management strategy and a way to reduce liability. Our director is involved with the Association of WA Cities (AWC) Employee Benefits Advisory Board and WA Cities Insurance Authority's Loss Control Committee as a means of managing these risks.

The City is cognizant of the large expense associated with health insurance premiums. The City was recognized as a Well City by AWC in 2011. This designation as a Well City provides the City with a 2% discount on medical premiums in 2012 resulting in significant savings. The City is pursuing the Well City award in 2012 to further contain medical insurance premiums costs in future years.

The City is committed to providing a safe work environment. The safety committee is actively engaged in reducing workplace injuries. Over the past year the City has realized a 11.94% decrease in our experience rating. Focusing on safety and prevention provides cost savings to the City and employees in premiums, and more importantly reduces injuries.

In 2012, the civil service commission will establish eligibility lists for promotion opportunities in the police and fire departments. This process involves extensive preparation on for the departments and the candidates and involves the use of an outside consultant.

The City has multiple-year bargaining agreements in place. In 2011, the City and Teamster's negotiated a reduced wage package for 2012 with Teamsters Local 231. The 2011-2012-2013 bargaining agreement with the Commissioned Police Guild was ratified in 2011. The Noncommissioned Police Guild bargaining agreement is in place for the same years. Negotiations are underway with the International Association of Firefighters Local 1531.

Museum

The museum continues to upgrade its permanent core exhibit at the museum's Carnegie site to provide an overview of Fidalgo and Guemes Island history. New exhibits in the Maritime Heritage Center will be developed and the WT Preston will continue to be maintained in the manner befitting a National Historic Vessel. The museum's research library is heavily used by residents and visitors alike, and staff will focus on fine-tuning that service as well as continuing to produce books and other materials about local history. Staff will continue an inventory of the museum's collections and their efforts on preserving and digitalizing the collections.

Parks and Recreation

The parks department continues to provide a high level of service to our community, through recreational programs for community members of all ages, maintenance of 19 parks the City cemetery, and 2800 acres of City forestlands. The 2012 budget maintains the same level of service as prior years.

In 2012, \$25,000 has been budgeted for phase two of the Guemes Channel Trail which will be funded with parks impact fees.

Conclusion

Once again this budget is fiscally conservative while working to maintain and enhance the high levels of service we consistently provide to our citizens. The proposed projects in the 2012 budget are carefully considered and help to strengthen our infrastructure and enhance our future.

Our success and our strengths to date are reflective of our ongoing commitment to quality infrastructure and our diverse community and business makeup. We are fortunate to have an engaged and collaborative city council, professional staff and involved citizens who are also committed volunteers. You, our citizens, have helped us to provide services to our community that are well above our budgetary ability. Thank you!

I look forward to your input regarding the 2012 budget.

Respectfully,

H. Dean Maxwell
Mayor