



City Council Minutes – October 10, 2011

At 8:40 p.m. Mayor Dean Maxwell called the continued 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.

Continued Closed Record Appeal and Hearing: Anacortes Memory Care Conditional Use Permit

Mayor Maxwell introduced attorney Stephanie Croll of Keating, Bucklin & McCormack who was serving as legal counsel in the absence of City Attorney Brad Furlong.

Assistant Planning Director Don Measamer summarized Council action on the agenda item to date. He recalled that at its regularly scheduled meeting on October 3, 2011, Council heard from all six appellants and the applicant and began its deliberations, then continued the hearing to this evening. He advised that staff had prepared and provided to Council a matrix summarizing the issues raised in the appeals and which appeals each issue pertained to as well as the criteria for evaluating a conditional use permit.

Mrs. Richardson said that the appeals and the testimony at the Planning Commission hearings both needed to be considered. She suggested using the matrix to begin the discussion but not taking action to approve or deny anything until the end of the discussion since the topics were interconnected. The mayor said that was typical procedure. Mr. Geer agreed, as did Mr. Johnson.

Mr. Geer began with the first matrix topic, Parking. He reiterated that the proponent's traffic study underwhelmed him. He said the proposal meets City code but he was not too comfortable with the parking and access for commercial trucks. Mrs. Pickett countered that the issues of parking and traffic had the most hard core facts in the record, based on national data. She said City code would require 12 parking spaces and the proponent was offering 18. She said nothing in the code requires providing parking for holidays and special occasions and there are off site parking options for such occasions. Mr. Geer said after the site visit and looking at the plans he felt there would be somewhat of an impact. Mr. Turner compared the proposed memory care center to the 6 residential lots already platted and said there was not a lot of difference in the traffic impacts of the two and in fact there was some evidence that there would be less impact from the proposed facility. Mr. Adams said 18 spots could go fast given residents, caretakers, doctors and visitors and said there would also be parking needs during construction. He called parking a challenge on this site. Mr. Turner disagreed and said 18 spots was sufficient and the professional reports said so.

Mrs. Richardson described the two levels of professional standards in the record. One is national prepared by professionals in the field based on studies in real communities. The other standard is the Anacortes code which defines levels of service. She said in residential areas fewer than 500 cars per day is considered a very acceptable level of service in the Anacortes code. She acknowledged that is more trips than the neighborhood sees now but it is still the standard applied throughout the city for what residents can expect. She noted that the most ambitious numbers in the testimony were far below that. She said the record includes the expected number of trips from this facility and from residential lots and even if the memory care center produced a few more trips than homes would generate the street still wouldn't be a superhighway. She said it may have more traffic than the residents are used to but it will still be a relatively quiet neighborhood with less traffic than many Anacortes neighborhoods. She concluded that she was not willing to deny the project based on speculations about increased traffic and suggested discussing potential mitigation for traffic impacts.

Mr. Johnson addressed the question of safe roads and said City code says a minimum residential street is 32' wide edge to edge but the streets leading in to the proposed facility are 20 to 21 feet wide which raises a question of safety. Mrs. Pickett said based on discussions in the Safe Routes to Schools Committee, 32' is handier for cars and may result in fewer car-car accidents but narrower streets are actually safer for pedestrians because cars go slower so the injury rate drops dramatically. She said the traffic study in the record points out there should be at least one driving lane between cars parked on both sides and that is not quite the case all the way along K Avenue now. Mr. Johnson added that the R2 and

R3 zones also require 5' sidewalks. Mr. Petrish said four of the six appellants addressed density. He stated that the project doesn't fit the density so all the other issues would become moot. Mayor Maxwell reminded that Council was still discussing parking and traffic. Mr. Petrish said the issues are inextricably related. Mayor Maxwell said Council agreed to address one topic at a time. Mrs. Richardson outlined two courses of action: Council could determine that there is too much traffic or not enough parking and turn the project down flat but Council could also, under the code, propose mitigation measures to address those concerns. She said the Planning Commission proposed one such measure, a pathway on one side of K Avenue. She said Council could consider more mitigation such as additional sidewalks, or rebuilding the street, but before saying that there is so much traffic that the project has to be denied, Council should discuss whether there are additional mitigation measures that would alleviate the concerns. Mr. Adams noted that conditions are placed on the project, not on the appeals. Mrs. Richardson urged discussing mitigation measures as part of the overall picture. Mr. Adams said the street is very narrow and the type of traffic generated by the memory care center would be different from single family homes. He reported that when running or cycling he always prefers a sidewalk to a narrow street because it's much safer.

Mr. Turner said councilmembers had expressed their views on parking and traffic and suggested moving on to discuss density. He said he was okay with the density. Mr. Geer said the residents of the facility don't drive but they have relatives and friends and that impacts traffic and parking. He said the impact is greater than City codes and technical manuals address. Mrs. Pickett said there's a lot of speculation in the record but both parking and traffic are addressed by traffic engineers who really do know what they're doing. She contrasted perceived impact with the actual numbers. She said Council can trust the information in the record and added that no one brought in countervailing information from another facility for the record. Mr. Johnson said some of the appeals included photos from other facilities across the valley that have wide streets, unlike the proposed site. Mr. Johnson said 9 units per acre would work with wide streets but with narrow streets you'd aim more and more towards 5 units per acre which would be nine units for this facility. Mr. Turner agreed that 5 to 9 units per gross acre is what the comprehensive plan lists for the R3 zone but said that's for multi-family units not assisted living units. He repeated that the site is already platted for 7 living units, the proponent said the impact of the facility would be no more than that, and he agreed with them. He said he didn't oppose discussing mitigation measures but that nothing in the record proves that there would be more traffic than code allows.

Mr. Geer said that if Council has already met the threshold for a conditional use permit then all the appeals should be denied and all that's left is to discuss mitigation. Mrs. Richardson disagreed and said the previous decision was that this was an assisted living facility hence could be considered for a conditional use permit but Council can still either approve, deny or mitigate that permit. She returned to her previous comments on AMC 17.34.070 regarding maximum density. She said this is a stand alone paragraph in the code which says the density shall not exceed 9 units per gross acre, period. She said the code does not allow deviation if assisted living "units" are the same as "dwelling units" for the density computation. She noted that there are no floor plans for the building in the record and said if Council approves the project as assisted living facility the proponent could rearrange the rooms, maybe put kitchenettes in them, and then they would in fact be dwelling units. She said Council does thus need to apply the 9 units per gross acre limit and could add that as a condition. That would proportionally reduce the impact of traffic, parking, etc., and would also meet the comprehensive plan intent to make the project scale compatible with the neighborhood.

Mr. Adams reiterated that R3 is a residential zone and said if the project is denser than the neighborhood, you have to consider if there are adverse impacts on the neighbors. He felt there was an impact. Mr. Petrish asked Mrs. Richardson if she was in favor of the project if it were scaled back to 9 units to gross acre. Mrs. Richardson said with regard to density it would meet that part of code if scaled back but there may be other issues to discuss. She added that counter to some comments in the record, this is a residential project not a commercial project. Mrs. Pickett noted that the State will license the facility with an R (residential) license just like Chandler's Square, not with a nursing home (I) license. Regarding density, Mrs. Pickett said the code defines dwelling unit but not individual living unit. She said density is defined by dwelling units, and dwelling unit is defined in the code, and these individual living units are different and also have impacts to the neighborhood that are not as great as if they were single family

homes. Mr. Turner said a 20,000 SF building with 39 residents is 513 SF per person and he currently lives in a 1,000 SF home for two people which is not very dense.

Mr. Adams turned to the next matrix topic, Classification of Use under 17.34 AMC. He said appellant Muntean argued that the proponent was trying to fit the definition of assisted living care center to get approval but that the facility would be licensed as a boarding home. Mrs. Pickett explained the difference between a boarding *house* which is what is addressed in the City code and a boarding *home* which is the type of license the state issues. Mr. Adams noted that the term memory care center isn't in the City code either so Council still has to determine if this use meets the code. Mrs. Richardson referred to WAC 388-110-020 which explains that the State uses the term boarding home to apply to anywhere from 2 boarders to hundreds of boarders and said the classification depends on the type of care provided and not on size or even on whether the home is commercial or not.

The mayor invited Council to consider the next matrix topic, Critical Areas Regulations. Mrs. Richardson said one reason Council remanded the project to the Planning Commission was because some of the recommended conditions required a change in the site plan but an amended plan was not provided. She said the new site plan addresses the increased setbacks to meet the requirements of the critical areas ordinance and the project now complies. No other councilmembers had comments on that topic.

The mayor invited Council to consider the next matrix topic, Unfair Hearing Process. Mr. Geer said Council had done everything it could to make sure everyone had been heard and noted that on this project he'd heard some of the best prepared appeals he'd heard in a long time.

The mayor invited Council to consider the next matrix topic, Planning Commission Recommendation Based on Inadequate/Inaccurate Information. Mr. Johnson said the information in the record is based on studies, not episodic information. Mrs. Richardson said if someone feels information is inaccurate or inadequate, they need to show Council equally professional accurate and adequate information, which in some cases has been done but not others. Mr. Adams noted the sheer volume of the record.

The mayor invited Council to consider the next matrix topic, Concurrency. Mrs. Pickett noted the existing deficiencies on K Avenue were pointed out and said the question is will they be made worse by 74 trips per day, which is only 14 more than the 60 trips generated by 6 single family residences. She said appellants claimed a semi would be delivering to the facility but the proponent says there will be a weekly food delivery by a 41-46 foot truck, not a 53' semi trailer. She said it's about the size of a garbage truck. She said K Avenue needs to be 23' wide consistently. Mr. Johnson said the Planning Commission reckoned that the pedestrian pathway condition would mitigate traffic on K Avenue but neither staff nor Planning Commission addressed 34th Street which is also a route to the facility so Council should look at mitigation on 34th Street if the project is approved. Mr. Turner said he was also concerned by the 23' street width.

The mayor invited Council to consider the next matrix topic, AMC 17.10.100.B.1. Mr. Petrish said R3 is a residential zone. He said it is important to maintain neighborhoods and that bringing this project into an R3 zone would disrupt that neighborhood and set a bad precedent that the same thing could happen to other neighborhoods. Mr. Geer agreed there are impacts but based on City codes and manuals, he didn't think Council could legally deny the project and needed to discuss mitigation. He said he couldn't support any of the appeals based on what's in the record. Mr. Adams said the applicant must clearly show that the project is not detrimental to the surrounding neighborhood. He said Appellant Lindberg expressed concern about a 24/7 business which is not what the neighborhood has now. Mrs. Richardson said the allowed conditional uses in the code are listed by type but there are no criteria for determining if impacts would be detrimental. She contrasted this conditional use with schools which are another allowed conditional use in the R3 zone. She noted nothing has zero impact and said the question is whether the proposed conditional use is reasonable in the proposed location. Mrs. Pickett said the size of the building fits the scale of the neighborhood, the traffic is not excessive, and said in spite of trying she couldn't see the impacts. She noted improvements in conservation and wildlife with the creek buffer. Mr. Johnson said the code requires the applicant to clearly show the project is not detrimental to the surrounding neighborhood. The way that happens is at the Planning Commission hearing the neighbors can

demonstrate the kind of neighborhood they live in and their expectations and whether the proposed use is detrimental. Mr. Johnson said based on safety, traffic routes, and failure to put in 32' roadway this is detrimental to the neighborhood and it shouldn't be forced upon a neighborhood that isn't built for it. Mayor Maxwell pointed out 32' streets are a new city standard and many older roads were installed to a different standard. Mr. Turner agreed with the mayor and said there's been movement in past few years towards narrower streets for safety and for environmental considerations. Mr. Turner said K Avenue may be slightly too narrow but that 32' streets are a dinosaur of the past that will only be used in main thoroughfares where higher traffic speeds are desired.

Mr. Petrish addressed the next matrix topic, AMC 17.10.100.B.2.a. He said if this type of use was intended for the R3 zone it would have been an outright allowed use. He said the reason it isn't is to protect the neighborhoods.

Continuing with the matrix topics of AMC 17.10.100.B, Mrs. Richardson noted the code does say conditional uses shall not be detrimental to the neighborhood, not be a liability to the neighboring uses, not conflict with health and safety, be designed in a manner compatible with the character of the neighborhood, etc. She emphasized that the code also says clearly that if there are detrimental impacts, and if those can be mitigated by conditions placed on the permit, the conditional use may be allowed. She said Council's job is to determine whether or not it can craft mitigating conditions that would address the issues discussed this evening. If it can, if mitigation is possible, then Council could approve the project with conditions. If mitigation isn't possible, Council should deny the project because it hasn't met, for example, the health and safety of the community. She said the design, height, lot coverage, setbacks, etc. do meet code. She argued that the only part of the code the project doesn't meet is the 9 units per acre density limit and pedestrian and traffic issues. She suggested increasing the mitigation requirement by asking for a 5' concrete sidewalk separated from street by curb or planting area along one side of K Avenue and one side of 34th Street, which would address most of the traffic issues. Another mitigating condition would be reducing the number of living units to comply with 9 units per gross acre. She said those are the key issues in her mind. She reiterated that this is a residential not a commercial facility, hence compatible with a residential zone. Mr. Turner said he was comfortable mitigating for pedestrian safety but still didn't know how to define individual living units for assisted living facilities. He said it wouldn't improve much to lower the density. Mr. Johnson asked how far from the project site an appellant can be asked to mitigate. The mayor deferred to legal counsel. Mr. Johnson asked if sidewalks can be a required mitigation. The mayor said yes. Mrs. Richardson said case law has established that a developer cannot be required to make up for past deficiencies that were not of their creation but if a project creates impacts, mitigation can be required. She said this is a gray area because the impacts are only impacts because there are past deficiencies. Ms. Croll advised that off site improvements cannot be required to fix pre-existing problems, only to construct improvements that are necessary as a result of the project where there is a direct causal relationship. She added that Council needs to decide whether all the requirements of the conditional use permit are met.

Mr. Adams and Mr. Geer agreed that Council should vote on the appeals and then talk about mitigation. Mrs. Richardson asked Ms. Croll if Council can grant part of an appeal and deny part. Ms. Croll said when an appeal presents separate and distinct issues, some may be affirmed and some may be denied. Mrs. Pickett asked what would be the practical effect of upholding and denying different parts of the appeals. She suggested that Council would still be at the point of approving with mitigation or denying the project. Ms. Croll said there is no legal foundation that Council has to decide each appeal issue before deciding on the project, that's a procedural question. Mr. Geer agreed with Mrs. Pickett. Mr. Turner said all the appellants asked for the CUP to be denied. He said he didn't need to go through each appeal one by one, Council needed to make this the best project it could be and move on to mitigate. Mrs. Richardson said the problem with voting on pieces of appeals is that most the appeals requested that the project be denied. She suggested that Council may need to deny the appeals because each one asked for denying the project outright. She said Council could deny the appeals and still deny the project based on its own conclusions. Ms. Croll said Mrs. Richardson was correct, Council could deny all appeals and still deny the project.

Mr. Adams moved, seconded by Mr. Petrish, to grant the appeals. Mr. Geer clarified that granting the appeals would kill the project. Ms. Croll confirmed that the way the motion was worded, approving the appeals completely, there would be no way to subsequently approve the project. Mr. Adams withdrew his motion and Mr. Petrish withdrew his second. Mr. Geer moved, seconded by Mr. Johnson, to deny the appeals. Mr. Petrish confirmed that the motion was to deny all six appeals. Mrs. Richardson clarified that by this action Council was neither approving nor denying the project, only the appeals. Vote: Ayes – Johnson, Pickett, Turner, Richardson and Geer. Nays – Petrish, Adams. Motion carried.

Due to the lateness of the hour Council agreed to continue the closed record hearing to the next regularly scheduled City Council meeting at 7:00 p.m. on Monday, October 17, 2011.

There being no further business, at approximately 10:25 p.m. the continued Anacortes City Council meeting of October 3, 2011 adjourned.