



## **City Council Minutes – October 17, 2011**

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At 7:00 p.m. Mayor Dean Maxwell called the regularly scheduled Anacortes City Council meeting of October 17, 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. Geer moved, seconded by Mr. Turner, that the minutes of September 26, 2011, October 3, 2011 and October 10, 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 agenda.

### **Mayor/Council Communication and Committee Reports**

Public Works Director Fred Buckenmeyer recognized Water Treatment Plant Manger Jamie LeBlanc, Water Treatment Plant Supervisor George Atkinson, Water Treatment Plant Lead Operator and Safety Committee Chair Jeff Marrs, and Human Resources Director Emily Schuh. He then introduced Dr. Michael Silverstein, Assistant Director for the State of Washington Department of Labor and Industries. Dr. Silverstein advised that the Anacortes Water Treatment Plant has been recognized with a START award (Safety Through Achieving Recognition Together). He explained that this flagship program recognizes exemplary workplaces for preventing workplace illnesses and injuries. He said the award is given only to workplaces that demonstrate a comprehensive commitment to safety and health which features a focus on prevention, active participation, and a sense of partnership between management, workers and government. Dr. Silverstein said the Anacortes WTP has been part of L&I's Blueprint for Safety program for some time and its success is now recognized by the START award. Dr. Silverstein added that this is the first time START has been awarded to a municipality. Dr. Silverstein urged the City to share its expertise and mentor other local employers to reduce injuries. He introduced other members of his staff at L&I. Dr. Silverstein then presented certificates to Mayor Maxwell and the WTP staff to enthusiastic applause. Mayor Maxwell emphasized that the City is committed to sending workers home safe every night and congratulated the WTP and the rest of the city staff for making that happen.

Mrs. Pickett announced that Trident Seafoods recently won a merit award from the Department of L&I for safety. She said Trident worked with the Department for over a year to review and develop safe practices for its 225 employees and then went through a week-long audit with nine L&I auditors. She said Ed Tostenrud at Trident advised that his company learned a lot from the process.

Planning Director Ryan Larsen announced that Planning Commissioner Clay Leming would like to make a statement. Mr. Leming announced that for health reasons he was resigning his Planning Commission position effective immediately. He thanked the mayor and City Councils past and present for appointing and confirming him for his 18 years of service on the Commission. Mr. Leming received a standing ovation from the Council and audience.

Mrs. Richardson commented on very successful Friends of the Forest benefit event Saturday night to fund its environmental education program.

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

Mayor Maxwell invited Council to continue its deliberation which was continued from October 10, 2011. The mayor advised that in the interim he had asked staff to review the AMC regarding the original Ordinance 2316 that governs the R3 zone. Mrs. Richardson thanked staff for investigating the original ordinance and said they had discovered an error in how Ordinance 2316 was codified into the Anacortes Municipal Code. She explained how the code is published. In this case, she said, the term "dwelling units" was used in Ordinance 2316 but was simply termed "units" in AMC 17.34.070. She said several of the public comments and appeals concerned whether "dwelling units" should apply to the proposed facility. Mrs. Richardson said the proposed facility does not contain "dwelling units" because the rooms don't

have kitchens, etc., hence the R3 density limit of nine *dwelling* units per acre does not apply to this facility. Mr. Johnson inquired if the entire facility would be considered a single dwelling unit. Mrs. Richardson said no but that neither are the individual living units “dwelling units”.

Mr. Petrish asked City Attorney Brad Furlong what the venue would be for subsequent appeals by any party of whatever decision Council makes. Mr. Furlong said the next level would be Skagit County Superior Court. Mr. Petrish asked what evidence would be made available to the court. Mr. Furlong said that depends on the scope of the appeal but usually the project record, hearing transcripts, and occasionally some additional outside evidence. Mr. Petrish observed that the last Council packet contained a transcript of the last Planning Commission meeting that wasn't supposed to be included and asked if the Court would look at that. Mr. Furlong said that transcript is not part of the record either before City Council nor in Superior Court though the judge may be asked to look at whether it should have been.

Mr. Johnson resumed deliberation with the topic of adding a sidewalk to 34<sup>th</sup> Street. He cited a legal case requiring an essential nexus between the legitimate public interest and conditions imposed. Mr. Johnson referred to testimony that children walk on 34<sup>th</sup> Street to get to the school bus stop and observed that both K Avenue and 34<sup>th</sup> Street are narrow and without sidewalks. He said the proposed project would exacerbate the problem with large vehicles such as delivery trucks, ambulances and garbage trucks on both K Avenue and 34<sup>th</sup> Street. Mr. Johnson suggested striking the staff recommendation to negotiate with the developer for sidewalks and instead adding a condition to require sidewalks, curb and gutter on 34<sup>th</sup> Street from K Avenue to M Avenue and on K Avenue from 32<sup>nd</sup> Street to the project site. Mr. Geer agreed. He said the risks of impacts are greater than what City codes and ordinances cover and suggested half street improvements in the same locations because the streets were not built to accommodate commercial traffic. Mrs. Pickett observed that residents on 34<sup>th</sup> Street are farming the right of way so not everyone there may want sidewalks. She suggested staff and the proponent may need to work with neighbors to devise a pathway for the school kids that isn't too disruptive. Mr. Turner said the wording of the Planning Commission recommendation may have been intended to accommodate input from the neighbors on the location of the sidewalk.

Responding to Mr. Johnson, Mr. Turner said the proposed facility will create additional trips in the neighborhood but no more than residential development would. He asked if a church or school locating in the neighborhood would be required to install sidewalks and said the City hasn't done that in the past. He added that if the project were conditioned to widen the street the neighborhood would look very different than now. Mr. Adams said those streets weren't designed for large delivery trucks and observed that the facility does not have good access for fire trucks. Mayor Maxwell advised that the Fire Department reviews plans and requires all facilities to meet fire code. Mr. Turner reminded that the proponent has said there will only be one food delivery truck per week. Mr. Adams said construction traffic will also be difficult. Mr. Geer responded to Mr. Turner that in his experience as an emergency services responder, neighborhood kids won't be dodging ambulances daily but there will be an impact from linen trucks, food trucks, maintenance and supply trucks, staff vehicles, etc. Mr. Geer said he was open to suggestions for how to mitigate the increased traffic and added that he wasn't sure 18 parking spots was sufficient. Mr. Turner said he favored a sidewalk on one side of the street at least but said any consideration of widening the street should also consider the impacts to the neighborhood of doing so.

Mr. Petrish stated that density is the whole issue and drives parking, traffic, buffers, etc. He said the area is a pure residential neighborhood and the proposed facility would take up every possible square foot of space primarily for profit purposes. He added that building homes on the site would impact the neighborhood but in the way the neighborhood is supposed to be impacted, not create an artificial density that will adversely affect the neighborhood and change its character. Mrs. Richardson referred back to a comment Mrs. Pickett made several meetings prior and asked, do only healthy young people have the right to live in a nice quiet neighborhood? She said the proposed project is a residential facility, larger than most single family homes but only one story, at the end of a street tucked behind trees so it will have little visual impact on the neighborhood. She added that it will only cover 23% of the lot instead of the 50% houses could cover. She agreed with Mr. Turner that the traffic will be similar to 6 or 7 new homes and said the traffic studies confirm that there will be a little more traffic than single family homes but not exponentially more. She said the primary traffic issue is pedestrian safety and that there is a nexus between pedestrian safety and this facility but not between the traffic and full street improvements or even

half street improvements. Mrs. Richardson proposed to change Condition 25 to read: "The developer shall provide a 5 ft. wide concrete sidewalk along the east side of K Avenue from the site to 32<sup>nd</sup> Street and along one side of 34<sup>th</sup> Street from K Avenue to M Avenue, and these shall be constructed prior to beginning construction on the project site. The sidewalks shall be separated from the street by a curb and/or planting area." Mrs. Pickett clarified that would be five blocks of sidewalk.

Mrs. Pickett observed the common sentiment that "in Anacortes we take care of each other" and called it a good organizing principle. She said most of those testifying on the project said this kind of facility is needed in Anacortes. She said the proposal has a lot of positives such as height, lot coverage, buffer protection and a single property owner to deal with. She said the neighbors will hardly see the facility compared to single family homes and called it a win-win proposition for the neighborhood and the town.

Mr. Johnson responded to Mr. Petrish that R1 is the only strictly residential zone in town. He observed that not all R3 neighborhoods are the same and agreed the City should protect neighborhoods but said no one can expect strictly residential development in an R3 zone. Mr. Petrish said the proposed facility doesn't belong there and there are other places better suited for it. He repeated that his goal is to protect existing neighborhoods from adverse affects. Mr. Adams said the intent of the R3 zone is residential so a conditional use needs to be considered as to whether it will be a detriment to the neighborhood. Mr. Geer stated that land use matters must be decided based on the law and opinions aren't part of the law. He said Council denied the appeals based on the code and is now at the point of conditioning the project to lessen the perceived impacts. Mayor Maxwell cautioned that the Council may not come to a consensus on this application and that each Councilor needs to decide. Mr. Turner said he agreed with Mrs. Richardson and Mrs. Pickett that this is a good project. He said this is a good place for the facility because it is private and the creek will be better protected by a single owner. He said pedestrian safety was the only issue left to address.

Mr. Johnson asked staff for more information on Planning Commissioner Lin Folsom's comment in the record that trees in buffer zone will be cut down without mitigation. Mr. Measamer said he was not aware of any vegetation being removed out of the buffer zone. Mrs. Pickett responded to Mrs. Richardson's suggested language for Condition 25 by asking to go back to the term "pathway" instead of "concrete sidewalk" especially on 34<sup>th</sup> Street to try to achieve a path that would protect the kids and still maintain the country lane feeling the neighbors asked for. Mrs. Richardson said a 5' wide sidewalk doesn't have to be straight, it could meander, but it should meet the standards for the zone which is 5' wide. Mr. Measamer amended his prior response to Mr. Johnson about buffer trees to note on the site plan where the new cul-de-sac will impact a small portion of the buffer. He said the Critical Areas Report from the biologist recommends mitigation and buffer restoration. Mrs. Richardson continued her comments, noting that people testified a "path" would have cars parking on it so she suggested separating the sidewalk from the street. She added that she didn't specify which side of 34<sup>th</sup> Street should have the sidewalk so that discussion with neighbors could still occur. Mrs. Pickett asked if the sidewalk construction could be combined with pouring the foundation for the building. Mrs. Richardson said no, the point is to provide pedestrian safety before construction equipment starts accessing the site.

Mrs. Pickett requested adding a Condition 27 stating that the building height shall not exceed 24', which is what the applicant has already proposed. Mr. Turner agreed. Mrs. Richardson said one of her other suggestions was to add to Condition 1 "... as set out in Attachment A, as revised in the plans dated 7/1/11 to incorporate revised conditions" since the revised plans specify items not in earlier versions including a 20' building height, lot coverage, side yards, 24 units, and 32-39 residents. She said that by referencing the specific plans in Condition 1, all of these features apply to the project.

Mr. Turner asked staff how hard it would be to make K Avenue 24 feet wide its entire length. Mr. Measamer said that construction-wise, it could be done. Mrs. Richardson noted that where streets are substandard, sometimes neighbors create a voluntary LID to improve them to a standard the neighborhood all agrees on. Mrs. Pickett added that in the past the City has conditioned projects such that the proponent shall not be allowed to oppose an LID should one form. Mrs. Richardson agreed that has been standard procedure in cases of substandard infrastructure.

Mr. Geer said he preferred a sidewalk to a gravel path and said he was seeking a balance between safety and preserving neighborhood character. Mrs. Pickett said it is counterintuitive but narrower lanes slow traffic and are safer for pedestrians including kids. She said even curbs make streets look wider and cars drive faster. Mrs. Richardson said Council heard a lot of public sentiment that can be translated into specific requirements for pedestrian safety but no one testified that they want wider streets. She said the question is will a sidewalk on one side provide reasonable safety and be reasonably related to the impacts of this development. She felt it would do both. Mr. Johnson said Condition 26 refers safety issues to the Traffic Safety Committee and asked if Mrs. Richardson's proposed Condition 25 language would replace Condition 26. Mayor Maxwell said staff typically works with the developer to design the sidewalk. Mrs. Richardson and Mr. Johnson agreed that recommended Condition 26 should be deleted.

Mrs. Richardson moved, seconded by Mr. Turner, to approve the conditional use permit with the conditions recommended by the Planning Commission and staff with the following changes:

- Change Condition 1 to read "... as set out in Attachment A, as revised in the plans dated 7/1/11 to incorporate revised conditions".
- Change Condition 2 to insert the words "and on 34<sup>th</sup> Street between K Avenue and M Avenue" and replace the words "to 34<sup>th</sup> Street" with "as required by Condition #25".
- Change Condition 3 add "and adjacent neighbors".
- Change Condition 9 to add "for review and approval".
- Change Condition 24 to read "~~City Staff and the developer shall work cooperatively to~~ The project shall provide a total of 18..."
- Change Condition 25 to read "The developer shall provide a 5 ft. wide concrete sidewalk along the east side of K Avenue from the site to 32<sup>nd</sup> Street and along one side of 34<sup>th</sup> Street from K Avenue to M Avenue, and these shall be constructed prior to beginning construction on the project site. The sidewalks shall be separated from the street by a curb and/or planting area."
- Strike Condition 26 entirely.
- Add new Condition 26 stating that the building height shall not exceed 24'.
- Add new Condition 27 stating that the developer shall sign an agreement not to oppose any future LID for improvement of the street.

Mr. Furlong asked if Condition 9 should say "for review and approval by the Planning Department". Mrs. Richardson said various staff members approve different things so suggested "for review and approval by the City."

Mr. Turner asked why sidewalks are proposed to 32<sup>nd</sup> Street and to M Avenue. Mrs. Richardson said because that is where they can join up to existing sidewalks. Mr. Adams said he still had an issue with the narrow street and the neighbors having to form an LID for a project they weren't in favor of. He also felt the parking was not quite adequate. Mrs. Pickett said the project is consistent with Comprehensive Plan Goal 5 to encourage the development of a balanced and adequate employment and revenue base necessary for provision of needed services. Mr. Petrish reiterated that there are other places to put this facility and it should be put elsewhere. Mrs. Richardson responded to the expressed concern that approval of this application would set a precedent and assured that each conditional use permit is considered on its own merits in the specific location for which it is proposed. Mr. Turner said the project benefits the city and has very little impact and said there is a need for this kind of care. Mr. Geer applauded staff and Planning Commission handling of the process. Mr. Johnson thanked the citizens for bringing forth all the issues for discussion and for their well argued points. Vote: Ayes – Pickett, Turner, Richardson, Geer and Johnson. Nays – Adams, Petrish. Motion carried.

### **Public Hearing: Redistricting City Council Wards**

Mr. Larsen recalled that at its September 6, 2011 regular meeting Council agreed that it's decennial redistricting plan would be not to redistrict. He said Council now needed to hear public comments on that plan and then move to either approve or deny it. Mr. Larsen summarized the RCW regarding redistricting. He said consultant Sammamish Data Systems, Inc. recommended that redistricting is not required at this time. Mr. Larsen displayed the 2010 census population for each of the three wards in the city and the deviation from average in each ward. He noted that ward boundaries currently match precinct boundaries which would not be the case if redistricting were to occur. He then showed residential development data in each ward displaying trends in new housing and remaining capacity to help project population growth in

each ward. He concluded that if Council approves the plan to not redistrict, staff will prepare ordinance to that effect. If not, staff will work with the consultant to develop a redistricting plan.

At approximately 8:34 Mayor Maxwell opened the public hearing.

Frank Spargo, 1408 11<sup>th</sup> Street, provided Councilmembers with legible printed copies of information he had emailed to them earlier. Mr. Spargo said the RCWs say jurisdictions shall prepare a plan and that the numbers should balance as nearly as possible. Mr. Spargo said that if a 10% variation is permissible by the courts that could allow up to 20% swing if one ward was 10% below the average size and another 10% above. He noted that currently there is a 13.6% difference between the populations in Ward 2 and Ward 3. Mr. Spargo said he spoke with consultant Sammamish Data Systems and they can come up with a redistricting scenario very quickly and would charge only \$250 for that service. Mayor Maxwell pointed out there would be many other costs to the City besides the charges from SDS. Mr. Spargo acknowledged that. He said he also talked to Skagit County to find out how redistricting wards would impact precincts. He reported that the Skagit County election office said Anacortes can do what it wants and the county will change its precincts or it won't but everyone will get the right ballot. Mr. Spargo noted that other jurisdictions were able to get variation within 2% between districts and that SDS was very proud of Mt. Vernon in which all three wards were within three people of average. Mr. Spargo recommended that Anacortes try redistricting and try to get the wards of equal size so all citizens have equal representation. Mrs. Pickett asked Mr. Spargo if his contact at SDS indicated why they recommended that Anacortes not redistrict. Mr. Spargo said SDS told him that they didn't make that recommendation. Mr. Johnson thanked Mr. Spargo for the research.

Terry Christiansen, 3302 K Avenue, said he wanted to plant a seed to think about over the next decade even though it probably can't be acted on within the present time frame. He said that under the present system it is possible to have five councilmembers living in the same block. Mayor Maxwell asked Mr. Christiansen to limit his testimony to the redistricting issue. Mr. Christiansen said he would prefer to see the town go to seven wards. Mayor Maxwell said the issue being heard was whether or not to redraw the three existing wards. Mr. Christiansen replied that there may be a better way. Mayor Maxwell invited Mr. Christiansen to submit a different proposal at a different time if he wished. Mr. Christiansen said if he could not speak without interruption he would go home.

No one else wishing to testify, at approximately 8:43 p.m. Mayor Maxwell closed the public hearing.

Mr. Turner stated that he would be derelict to recommend redistricting since Ward 3 is smaller now but is poised to grow faster than the others. Mrs. Richardson agreed with Mr. Turner that trends indicate Ward 3 will grow and the wards will equalize. She added that trends are not something the RCW asks a jurisdiction to consider but it doesn't say that they can't consider it either. She noted the unintended costs of redoing maps, updating websites and working with County and said it doesn't seem like there's a compelling reason to incur that expense since no one in Anacortes is arguing that they are unfairly represented. Mr. Petrish asked when the current wards were drawn. Mayor Maxwell said they have changed twice since the mid 1980s. Mr. Petrish said they haven't changed in at least the past 14 years. Mr. Johnson said there are checks and balances in the system since some councilmembers represent wards and other are elected at large, that SDS recommended accepting the current wards, and that census data has a margin of error anyway. Mrs. Pickett observed that the west end is filled with homes that are vacant half the year and asked how that could possibly be factored in. Mr. Geer agreed with Mrs. Richardson that no residents have claimed they are unfairly represented and he moved, seconded by Mrs. Richardson, to approve the plan not to redistrict. Mr. Adams said he would abstain from voting because Mr. Spargo was proposing to change the ward he represents. Mayor Maxwell said he didn't see a conflict. Mr. Furlong noted that in this case an abstention would be seen as an affirmative vote. Vote: Ayes – Turner, Richardson, Geer, Johnson, Petrish and Pickett. Abstain - Adams. Motion carried.

### **Consent Agenda**

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

### **Approval of Vouchers/Cancellation of Checks**

Council voted unanimously that the following vouchers/checks audited and certified by the City's Auditing Officer (Finance Director) and subsequently reviewed and approved by the Council Finance Committee on October 6, 2011 and October 13, 2011 are approved for payment as of this date October 17, 2011.

Claim Checks

October 2011: Check Numbers 62112 through 62284 in the total amount of \$2,121,036.34

EFT

October 2011: EFT Numbers 62101 through 62111 in the total amount of \$3,553.59

Payroll for October 5, 2011 in the total amount of \$879,936.52

Check Numbers 36517 through 36579 in the total amount of \$36,851.96

Direct Deposit Numbers from 41559 through 41764 in the total amount of \$593,995.59

EFT Numbers from 1335 through 1339 in the total amount of \$285,940.93

In the same motion Council:

Approved a Street Fair Request for the Anacortes High School Homecoming Parade from 3:00 p.m. to 4:00 p.m. on October 21, 2011;

Approved **Resolution 1831** setting a public hearing date of November 21, 2011 on a Petition to Vacate Portion of Right of Way in Short Plat ANA06-011 (South Fidalgo Bay Road); and

Approved Contract Modification 2 in the amount of \$100,721.65 to Contract 05-014-WTR-012 with IMCO General Construction for Water Treatment Plant Improvements.

**Public Hearing: Temporary Moratorium/Draft Work Plan Corresponding with Ordinance 2861**

Assistant Planning Director Don Measamer recalled that at its regular meeting on September 6, 2011 City Council adopted Ordinance 2861 establishing a temporary moratorium on the establishment of medical marijuana dispensaries in the City of Anacortes. He said Ordinance 2861 calls for a work plan to evaluate options for potential long term regulation in Zoning Code Title 17 or other areas of the municipal code. Mr. Measamer introduced the draft work plan that was included in the Council packet and reviewed the tasks on the work plan and the proposed dates. He noted that Ordinance 2861 sunsets on March 14, 2012 and that the draft work plan includes tasks running through May 2012 so Council may need to extend the moratorium if necessary. Mayor Maxwell advised that the state legislature may take up the issue in the meantime. At approximately 8:54 p.m. Mayor Maxwell opened the public hearing. No one wishing to testify, the mayor closed the public hearing. Mr. Johnson moved, seconded by Mr. Geer, to approve the work plan as presented. Mr. Turner asked what the consequences would be of not having the moratorium. Mr. Measamer explained some of some of the complications due to conflicts between state and federal law and noted that the situation may or may not change in the next six months. Mr. Petrish asked if the moratorium applies to individuals who have prescriptions for medical marijuana. Mr. Measamer said no. Chief Bowers clarified that state law allows an individual patient with a prescription to have up to 15 plants or 24 ounces of usable marijuana and that the temporary moratorium applies specifically to collective gardens. Vote: Ayes – Richardson, Geer, Johnson, Petrish, Pickett, Adams and Turner. Motion carried.

**Resolution: Tourism Promotion Fund**

Mr. Larsen asked Council to approve a resolution authorizing contracts disbursing tourism promotion funds. Mr. Larsen said the 17 requests received totaled \$235,121 and the Tourism Committee recommended funding \$210,249 of those. He called attention to the matrix in the Council packet summarizing how much each applicant requested and was recommended to receive. Mr. Larsen acknowledged Tourism Committee members Mayor Maxwell, Steve Hogle, Mark Lione, Andy Stewart, Phil Burton, Doug Colglazier, Brian Geer, Cynthia Richardson, Laurie Gere and Nick Petrish. He also thanked Legal Assistant Carol Yates for doing a phenomenal job of administering the program every year. Mr. Adams inquired about the public restroom contract. The mayor explained that is for the public restroom at 4<sup>th</sup> Street and O Avenue that the city operates and maintains. Mr. Geer moved, seconded by Mr. Adams, to adopt **Resolution 1832** authorizing execution of Tourism Promotion Fund contracts by and between the City of Anacortes and sixteen agencies for seventeen projects. Vote: Ayes – Geer, Johnson, Petrish, Pickett, Adams, Turner and Richardson. Motion carried.

There being no further business, at approximately 9:00 p.m. the regular Anacortes City Council meeting of October 17, 2011 adjourned.