City Council Minutes – August 15, 2016

Special Meeting

At 4:00 p.m. Mayor Laurie Gere called to order the advertised special meeting of the Anacortes City Council for the purpose of a site visit regarding the Haddon Road 13 Lot Plat & PUD, PUD-2016-1001. Council convened at the subject property on Haddon Road's cul-de-sac east of Whistle Lake Road, Anacortes. Councilmembers Eric Johnson, Ryan Walters, Brad Adams, Liz Lovelett, John Archibald and Matt Miller were present. No testimony was received and no action was taken. At approximately 4:35 p.m. the special meeting adjourned.

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Special Meeting

Mayor Laurie Gere called to order an advertised special meeting of the Anacortes City Council on August 15, 2016 at 5:30 p.m. Councilmembers Eric Johnson, Ryan Walters, Brad Adams, Liz Lovelett and Matt Miller were present. Councilmember Erica Pickett joined the meeting after approximately ten minutes.

Executive Session (30 Minutes) per RCW 42.30.110 (b, c)
Mayor Gere announced that Council would convene in Executive Session for no more than 30 minutes to discuss a potential real estate transaction about which open discussion could result in terms unfavorable to the City and that following the executive session the meeting would adjourn with no action being taken.

There being no further business, at approximately 5:49 p.m. the advertised special meeting of the Anacortes City Council for August 15, 2016 was adjourned.

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Regular Meeting

Mayor Laurie Gere called to order the regular Anacortes City Council meeting of August 15, 2016 at 6:00 p.m. Councilmembers Eric Johnson, Ryan Walters, Erica Pickett, Brad Adams, Liz Lovelett, John Archibald and Matt Miller were present. The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports
No announcements were made.

Public Comment
No one present wished to address Council on any topic not already on the agenda.

Consent Agenda
Mr. Walters removed Item 5E, Interlocal Agreement: Narcotics Enforcement Multi-Jurisdictional Task Force, from the Consent Agenda. City Attorney Darcy Swetnam advised that the agenda item had been withdrawn by staff and would be rescheduled for a future meeting.

Ms. Lovelett removed Item 5F, Ordinance 2986: Establishing a Moratorium on PUDs, from the Consent Agenda.

Mr. Johnson moved, seconded by Mr. Archibald, to approve the following Consent Agenda items. The motion passed unanimously by voice vote.

a. Minutes of August 8, 2016
b. Approval of Claims in the amount of: $766,671.98
c. Contract Award: VFD Drives Pumps 3 & 4 @ WTP Intake Pump Station
d. Contract Award: Excavate & Remove Sediment Materials from WTP Lagoons

The following vouchers/checks were approved for payment:
Voucher (check) numbers: 81612 through 81693, total $642,189.78
EFT numbers: 206379 through 206930, total $110,783.78

f. **Ordinance 2986**: Establishing a Moratorium on PUDs

Ms. Lovelett asked the reason for the updated ordinance. Ms. Swetnam explained that the original moratorium adopted by Ordinance 2980 on June 6, 2016 required a public hearing to develop and adopt a work plan for updating the PUD codes but that scheduling conflicts had pushed that hearing to September 12, 2016, after the 60 day public hearing window, so a new moratorium was required to set the public hearing date. Mr. Adams confirmed that a six month moratorium would be effective beginning at the present meeting. Ms. Lovelett moved, seconded by Mr. Walters, to approve Consent Agenda Item 5f. The motion passed unanimously by voice vote.

PUBLIC HEARINGS

Closed Record Public Hearing to Decide on Appeals and Planning Commission's Recommendation on the Haddon Road 13 Lot Plat & PUD, PUD-2016-1001

Mayor Gere called to order a closed record public hearing on the appeals of the Planning Commission's recommendation of approval of the plat and Planned Unit Development on Haddon Road, project PUD-2016-1001. She stated that this was a quasi-judicial hearing before the Council which was acting as the appellant body reviewing the recommendation of the Planning Commission.

City Attorney Darcy Swetnam explained the hearing procedures and standard to be used in evaluating the appeals. She said the one open record public hearing allowed by RCW 36.70B.060 was held before the Planning Commission so no additional comments could be accepted at this evening's closed record public hearing but Council could ask clarification questions of staff and parties of record. Ms. Swetnam advised that the standard of review was substantial evidence so the Planning Commission recommendation should be sustained if it was supported by substantial evidence. Ms. Swetnam said Council had the option of denying all appeals and then consider the Planning Commission's recommendation, of granting any of the appeals in which case the project would not move forward, of remanding the project to the Planning Commission to address questions of law, or of adding conditions to the project based on information already in the record.

Ms. Swetnam advised that in preparing for the closed record hearing, staff had provided a schedule for the parties to provide their pleadings and that the application for appeals also stated that parties could provide supplemental information up to ten days after the appeal filing deadline, in this case Friday, August 12. Ms. Swetnam said that the city had received comments via email on Monday, August 15, from Ross Barnes after the record had closed and that it was up to Council whether it wished to take those comments into account when considering the appeals. Ms. Swetnam observed that Mr. Barnes characterized the materials submitted on August 15 as updating and condensing his four prior letters and appeal form from over 50 pages to 17 pages. Ms. Pickett moved, seconded by Mr. Miller, to observe the published deadline and exclude the August 15, 2016 email from Mr. Barnes from the record. Councilmembers discussed whether the information presented was new, whether it had already been reviewed by councilmembers, and whether there had been any confusion about the deadline. Vote: Ayes – Pickett. Nays – Walters, Adams, Lovelett, Archibald, Miller and Johnson. Motion failed.

Regarding the Appearance of Fairness Doctrine, Mayor Gere asked councilmember to disclose if they had any interest in the property or the application, if they owned property within 300 feet of the property subject to the application, if they stood to gain or lose any financial benefit as a result of the outcome of the hearing, if they could hear and consider the application in a fair and objective manner, and if they had engaged in any *ex parte* communication with either the proponent or the opponent of the application and if so, the substance of such communication. The only disclosure was by Mr. Walters who referenced an August 4, 2016 email from Ross Barnes about the deadlines. Mayor Gere asked if any member of the

audience wished to challenge any councilmember's participation in the matter on Appearance of Fairness Doctrine grounds. No one present raised any objections.

Associate Planner Kevin Cricchio summarized the project, referring to his slide presentation which was added to the packet materials for the evening (Exhibit 68). Mr. Cricchio described the four code modifications proposed by the applicant, the R1 zoning of the subject property, density calculations, and surrounding zoning and land uses. He summarized the preliminary plat/PUD chronology, noticing, SEPA environmental review and mitigated DNS, critical areas, transportation study, tree assessment and preservation plan, sanitary sewer capacity, agency and department comments and public comments. Mr. Cricchio that an open record public hearing held before the Planning Commission on June 8, 2016, continued to June 22, 2016 and July 13, 2016. He advised that after deliberation the Planning Commission amended conditions of approval number 20 and 23(P)(6) and added conditions 25 and 26, then voted unanimously (4-0) to recommend approval of the subject application subject to the revised conditions of approval. Mr. Cricchio corrected an error made in drafting Condition 26, which should read "All lots must be to the R2 standard including and clarifying that no lot may be under 7,500 square feet." He said sixteen appeals of the Planning Commission recommendation were received by the filing deadline of July 29, 2016 and noted the two staff memoranda included in the evening's packet materials, one addressing the appeals and one addressing the Planning Commission recommendation on the project application.

Mayor Gere asked if councilmembers had questions for staff before hearing from the appellants. Councilmembers discussed the proposed code modifications, particularly regarding R2 standards, with Mr. Cricchio and Planning Director Don Measamer. Mr. Measamer said that councilmembers had discretion to add or modify conditions of approval for the project or could outright deny the project. He suggested hearing from the appellants and applicant and then deciding whether to consider the appeals individually or in groups. Mr. Measamer responded to questions from Mr. Miller about the storm drainage plan (Exhibit 17) and mitigation that would be performed prior to construction of the subject project. Mr. Cricchio responded to questions from Mr. Johnson about which trees would be removed. Ms. Lovelett asked if the geotechnical expert had ever evaluated the site during the wet season. Mr. Measamer deferred to Mr. Ravnik.

Mayor Gere then asked all parties of record who wished to address the Council to stand and swear to tell the truth in the testimony they were about to give.

Mayor Gere reminded the parties that each party must be recognized by the chair, provide full name and address for the record, keep remarks within the established time limits (10 minutes per appellant, one hour for the applicant and its consultants), restrict comments and evidence presented to matters relating directly to the appeals, and must submit any physical evidence to staff to be given an exhibit label.

Vernon Lauridsen, 2219 32nd Street, took exception to the state of the appeals presented to Council. Mr. Lauridsen argued that Council did not have discretion to accept or reject the requested code modifications and quoted AMC 17.04.040 regarding minimum requirements, underlining the last sentence in AMC 17.04.040B. Mr. Lauridsen then cited AMC 17.38.070 regarding R1 density: "If a planned unit development is applied for which requests a higher density in a portion of the R1 zone, the density of that portion shall not exceed four units per gross acre, *and* all development standards of the R2 zone *shall* apply, including street and utility improvements [emphasis added]." Mr. Lauridsen referred councilmembers to testimony in the record by Becky Bean and Patrick O'Hearn. He said that existing PUDs in the R1 zone that do not comply with AMC 17.38.070 were approved prior to adoption of Ordinance 2794 in 2008. Mr. Lauridsen concluded that according to city code, R2 standards are mandatory for PUDs in the R1 zone and the proposal did not comply with that requirement. He urged Council to send the project back to the Planning Commission and have the applicant plat the project to meet R2 standards.

Gene Derig, 1302 K Avenue, read from his prepared statement which was added to the packet materials for the evening (Exhibit 69). He traced the development of AMC 17.38.070 in 2008 and the language alternatives proposed, considered and eventually adopted at that time. Mr. Derig said City Council in

2008 clearly did not intend for a wholesale conversion of R1 into R2 and that the intent of the code "should be read to preserve the overall density of 2 units per gross acre and allow no more than 4 units per acre in the denser portions of the R1 PUD." Mr. Derig concluded by agreeing with the Planning Commission recommended conditions of approval and saying they did not go far enough.

Allen Rhoades, 4105 Mitchell Drive, president of the Stittwood Homeowners Association, spoke on behalf of the HOA. He said the members remained concerned about the performance and capacity of the stormwater sewer system in their neighborhood as more homes are added to the system by the PUD. He said the system did not handle the current load and that they would not know if the proposed solutions would work until at least October. Mr. Rhoades said the association was also concerned about the stability of the adjacent hillside as all the trees above the critical slope were slated to be removed. Finally, he expressed concerns about privacy due to public access to the PUD open space. He requested a cyclone fence be installed between the Stittwood common ground and any PUD subdivision plan.

Allen Rhoades, 4105 Mitchell Drive, speaking on his own behalf, opposed the proposed PUD. He applauded the effort of the four Planning Commissioners who added conditions of approval to their recommendation but said those conditions don't go far enough. Mr. Rhoades called the applicant's statement that the PUD would provide a transition between rural and city density absurd and said the PUD lot sizes would be smaller than neighboring lots. He asked why code modifications were required and suggested requesting a rezone to R2 instead. Mr. Rhoades said that the current moratorium on PUD applications was due to the ambiguous and contradictory nature of the code. He suggested that Council should not have to decide this complex issue and that it was more appropriately adjudicated by a judge in court. Mr. Rhoades said Council's job was to protect citizens by defending the intent of the code. He urged Council to reject the PUD application and force the developer to take the decision to a proper court.

Carol O'Hearn, 11039 Post Drive, read from her statement in the record (Exhibit 40) saying that the PUD would destroy the ruralness of the neighborhood. Ms. O'Hearn repeatedly emphasized that the city rather than the developer creates the lots and if the lots are substandard or potentially hazardous, the city created them. She cited prior slides both inside and outside Anacortes, including in 1994 on SR20 less than a quarter mile from the toe of the proposed PUD. Ms. O'Hearn said the applicant's geotechnical studies were performed in September and May, not during the rainy season. She asked why the conditions of approval required recording a covenant on the plat and deed indemnifying the city for approving the development if the city was satisfied that the slope was stable. She expressed concern about how much of the project would be adjusted between staff and the developer without public input. Ms. O'Hearn concluded by asking for a development consistent in density with the R1 code and the existing neighborhood.

Deborah Martin, 6407 Dow Lane, said she did not agree with staff's recommendation to deny all appeals. Ms. Martin emphasized that public input must be considered and disagreed with Mr. Nicol's citation of *Marantha* to dismiss public input. She cited numerous cases and said public testimony regarding the PUD raised questions of law that had not been adequately addressed. She cited a number of exhibits already in the record in support of her contention that public input had not been duly considered. Ms. Martin quoted case law regarding the appearance of fairness. Ms. Martin said she appealed the Planning Commission recommendation on the basis that trees have legal standing. She asked who would be responsible for blow down after adjacent trees were removed and said upland cutting above a steep slope is not as cut and dried as the tree credits suggest. She asked if the city was aware of *every* statute that applies here. She said the wildlife value of the existing trees was not adequately addressed by the tree credits and that fencing in lieu of tree buffers would not provide wildlife corridors.

Jeaneen Brogan, 304 Haddon Road, read from her prepared statement which was added to the packet materials for the evening (Exhibit 70). She thanked City Engineer Steve Lange for working out a road plan that would work with her property. Ms. Brogan said she still had concerns about density, the loss of established trees, loss of animal habitat, increased traffic on Haddon and Whistle Lake Roads, increased noise, groundwater management, downslope and wetlands. Ms. Brogan described the efforts of the neighbors over the years to preserve the area's low density, semi-rural nature. She recalled the time,

effort and cost spend rezoning the area to R1 and wondered why that was now in question. Ms. Brogan closed by urging Council to uphold R1 zoning and require 15,000 SF lots.

Patricia Young, 2219 32nd Street, addressed two issues, density and trees. Ms. Young played a video recording (Exhibit 71) she had prepared and previously submitted as part of Exhibit 54; she read aloud the official transcript that accompanied it. She said the video speaks to the unique nature of the R1 zone and Haddon Road in particular. Ms. Young asked Council to protect the rights of the residents of Haddon Road by recommending disapproval of the PUD application. Ms. Young then addressed trees. She cited AMC 16.50.060 regarding requirements of tree preservation plans and argued that the plan prepared by Urban Forestry Services for the subject project did not comply with the requirements and implied that the entire western portion of the project would be clear cut. Ms. Young said the loss of an entire forest would have unmitigated negative influence downhill. She referenced slides above the Guemes Channel Trail after clearing up slope and quoted indemnification language from the applicant's geotechnical consultant. Ms. Young concluded that due to the geologically sensitive nature of the site, at the very least the extent and location of all trees to be culled should be delineated and assessed as per AMC 16.50.060.

Patrick O'Hearn, 11039 Post Drive, said the conditions of approval added by the Planning Commission improved the PUD and should be adopted by Council. Mr. O'Hearn spoke from his slide presentation which was added to the packet materials for the evening (Exhibit 72). He said there was no plat map showing the lots as they would have to be reconfigured if the Homeowner's Association recommended by the Planning Commission were responsible for all common areas including Lot 13 and portions of Lots 9-12. Mr. O'Hearn supported with Planning Commission recommendation that all the lots comply with R2 standards. Mr. O'Hearn disagreed that the flag lots proposed were common and allowable. He said the required street frontage is 30 feet and he objected to the triangles used to achieve that frontage. Mr. O'Hearn said there are currently 21 flag lots in the entire R1 zone and that none of them use the shared pennant arrangement to achieve required street frontage. Mr. O'Hearn argued that the proposed flag lots fly in the face of historic practice and do not meet the letter or the spirit of the code. Mr. O'Hearn then addressed consistency with the R1 zone, saying that the proposed PUD does not fit with the surrounding city density. He argued that in the entire R1 zone excluding Fir Crest only 10 lots are less than 8115 SF and comparable to the proposed PUD; he said over 60% (Lots 1-8) of the PUD are not in any way equivalent or comparable to other R1 lots in the city and should be rejected. Mr. O'Hearn submitted but did not speak to additional written comments.

No other appellants wished to address the Council.

Craig Sjostrom, 1204 Cleveland Avenue, Mount Vernon, representing Patrick and Carol O'Hearn, addressed procedural matters. In response to Ms. Lovelett's question about Council's role in code modification requests, Mr. Sjostrom said AMC 16.04.104 requires developers to seek Council approval for code modifications prior to filing a subdivision application. Mr. Sjostrom said he objected at the beginning of the Planning Commission open record public hearing because this had not happened. Mr. Sjostrom said the code modification process was not followed because it was not up to the Planning Commission to hear and decide code modification requests. Mr. Sjostrom agreed with Ms. Swetnam's citation of RCW 36.70B.060 requiring a single public hearing on permit applications but said that conflicted with AMC 16.40.040 requiring four steps for approval of a PUD. Mr. Sjostrom argued that the city's PUD ordinance is invalid and does not comply with the GMA. He concluded that if the PUD ordinance is invalid, the PUD is invalid and needs to be denied.

At approximately 7:59 Mayor Gere called an eight minute break. She announced that the applicant and its consultants would have one hour to address the Council after the break. At 8:08 p.m. the mayor called the meeting back to order and invited the applicant to respond to the appellants.

Brian Allen, 15492 Snee-oosh Road, La Conner, shared a slide presentation (Exhibit 73) summarizing the history of the PUD proposal following Allen Family Investments' earlier 9-lot short plat application. Mr. Allen noted that the conditions of approval recommended by the Planning Commission would likely bring the number of lots in the PUD down to 11. He emphasized that both the previous 9 Lot Short Plat, the 13 Lot PUD proposal, and the likely 11 Lot revised PUD were submitted in good faith and met all known City

requirements; that in 2015 the City Council, appellants and community expressed preference for a PUD rather than a short plat; that AFI was committed to individual lots, not a maximum density multifamily building; that AFI was committed to high quality cost effective housing; and that the change from AFI's 2015 short plat proposal to the current PUD proposal was at a significant cost. Mr. Allen objected to appellant mischaracterization of his comments at a December neighborhood meeting and outlined the series of actions AFI had taken to work with appellants of the 9-lot short plat application. Mr. Allen addressed density calculations, concluding that if the PUD eventually contains only 11 lots the density would be 2.08 units per gross acre, very close to allowed density in the R1 zone. Mr. Allen addressed developable slopes, said AFI was not proposing subdividing or developing the slope, and explained how with proper engineering the slope hazard could be eliminated. He emphasized that approximately 60% of the property would remain in common open space. Mr. Allen described the 42 high density condominiums built directly north of the proposed PUD and said the PUD would serve as a transition between that development and Skagit County to the south, noting identical density north and south of Haddon Road. He said Lots 9-12 may be reconfigured into three building sites following the Planning Commission recommended conditions of approval. Mr. Allen addressed appellant concerns about the location of Haddon Road in relation to the Brogan home, discussed LID considerations and staff recommendations, and said AFI would build to any reasonable road standard. Mr. Allen said appeals relating to density, lot shape and code definition, the road, engineering and geotechnical issues and sanitary sewer and storm water systems had all been addressed by professionals. He concluded that Anacortes needs housing and is a challenging location because it is an island; that AFI has a history of responsible development; that the PUD would be a transition from lower density County to higher density City, as per growth management practices; that AFI was in full compliance with Anacortes codes, zoning, and precedent; that AFI was proposing high quality housing; and that AFI listened following rejection of its 9-lot short plat, managing two non-mandatory meetings to solicit input and agreeing to all City proposed PUD modifications.

Mr. Allen responded to questions from Ms. Lovelett regarding R1 density and developable area on slopes. Mr. Allen responded to questions from Mr. Archibald regarding the number of proposed lots, code modifications, and flag lots. Mr. Allen responded to questions from Mr. Johnson regarding open space requirements.

John Ravnik, project civil engineer, displayed Sheet 3 of 4 of the original Utility Plan, previously entered into the record. He said he had addressed two identified physical problems, the Haddon Road alignment at the Brogan home and the Stittwood drainage. In response to appellant and councilmember questions, he confirmed that MTC tests were conducted in September and in May, not in the wet season, but also observed that the third party review performed by GeoEngineers had never requested a wet season review. Mr. Ravnik displayed Sheet 1 of 1 of East Infiltration Trench Plan & Profile previously entered into the record. He said geotechnical consultant MTC did a mounding analysis, which he would provide to the city with the first civil submittal, which showed that water in the infiltration trench would not breach out through the slope. He addressed questions from Ms. Lovelett about surface water runoff, assuring that there was adequate infiltration. Mr. Ravnik said the project would improve the water pressure for the entire neighborhood. He said Semrau's analysis showed that the sanitary sewer has plenty of capacity for the PUD. Mr. Ravnik addressed storm drainage problems at the Stittwood development, distinguishing between city repairs to the current system and upsizing components of the system if additional demands created by the PUD were to require that. In response to a question from Ms. Lovelett regarding the potential for slides following slope clearing, Mr. Ravnik said he could relay that question to the geotechnical consultant, providing specific parameters. Mr. Ravnik addressed the configuration of Haddon Road, explaining options that had been discussed and confirming that AFI would build what staff requested. He summarized the project's betterment of the neighborhood in terms of water pressure, pedestrian infrastructure and other characteristics.

Steven Nicol, 904 S 3rd Street, Mount Vernon, legal counsel for the applicant, shared a slide presentation that was added to the packet materials for the evening (Exhibit 74). Mr. Nicol addressed flexibility versus ambiguity in the development code and cited a number of cases bearing on his arguments as reflected in his slide presentation. Mr. Nicol disagreed with Mr. Sjostrom's contention that code modifications need to be addressed separately from permit applications but said most of the requested code modifications were

not actually required but made the project better. Mr. Nicol responded to questions from Ms. Lovelett and Mr. Archibald about the street frontage requirements and configuration of the flag lots. He observed that the lots could be reconfigured without wedges if Council conditioned the project that way but that the statute allowed for the configuration presented. Mr. Nicol concluded that approving the Planning Commission recommendation with the proposed conditions of approval, and possibly others added by Council, would allow AFI to build the project.

Given the late hour, Mayor Gere suggested continuing the hearing to the next regular City Council meeting. No one objected. Mayor Gere continued the hearing to August 22, 2016 at 6:00 p.m. in the City Council chambers.

There being no further business, at approximately 9:26 p.m. the Anacortes City Council meeting of August 15, 2016 was adjourned.