

City Council Minutes – June 6, 2016

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

Mr. Walters moved, seconded by Mr. Johnson, to excuse the absence of Mr. Miller. The motion passed unanimously by voice vote.

Mayor Gere announced that the Agenda Item 3d, Finance Committee Report, had been deleted and that in lieu of that report the Parks Department would make a presentation. Mr. Johnson asked to move Agenda Item 7a, Anacortes Railway Presentation, forward on the agenda. Councilmembers unanimously agreed to consider Agenda Item 7a immediately before the Consent Agenda.

Announcements and Committee Reports

AWWA Meter Madness Award: Water Treatment Plant Manager Jeff Marrs announced that plant supervisor Mario Gonzales had participated in a contest hosted by the Northwest Washington Subsection of the American Water Works Association and had placed third in the recent Pacific Northwest Section competition in Boise. Mr. Marrs introduced NWW Subsection President Bridget August who presented an award to Mr. Gonzales. Ms. August explained the mission of the association and the affordable and high quality training it provides to water industry professionals. She also presented a plaque to Mayor Gere in recognition of the city's support of the AWWA.

Proclamation: General Aviation Appreciation Month: Mayor Gere read a statement proclaiming June 2016 General Aviation Appreciation Month in Anacortes and inviting all citizens to recognize the occasion.

Mayor Opens 2017/2018 Budget Cycle

Mayor Gere kicked off the 2017/2018 budget cycle, noting that this would be the first biennial budget for Anacortes. Finance Director Steve Hoglund summarized the upcoming events for the 2017/2018 budget process including the June 13, 2016 public open house in Council Chambers 4:30-5:30 p.m. and the City Council special meeting for budget planning with staff 4:00-8:00 p.m. on Tuesday, June 14, 2016 in Council Chambers. He referenced the additional budget materials posted on the city website.

Finance Committee Report: The May 25, 2016 Finance Committee meeting was cancelled so there was no report.

Recreation Manager Director Dustin South thanked the Anacortes Yacht Club for its support and assistance hosting the district youth sailing regatta and the national youth sailing regatta, both held in Anacortes in May. Mr. South explained the huge undertaking and success of the events. Mr. South presented the Club with a plaque in recognition of its support of the youth sailing program in Anacortes and the recent regattas. Steve Orsini accepted the plaque on behalf of the club. He thanked the mayor for welcoming the sailors at both regattas and noted the large number of out of town participants who enjoyed Anacortes hotels and restaurants during the competitions.

Housing Affordability and Community Services Report: Ms. Lovelett reported from the committee meeting the prior Thursday regarding organization and developing a work plan. She advised that Bill Henkel from Community Action of Skagit County would be a guest at the committee's July 7 meeting.

Mayor Gere reported that she had attended the Housing Affordability Leadership Group meeting the prior week with a broad spectrum of stakeholders from around the county. She said the group would be focusing on two projects, establishing quality multifamily housing in Mt. Vernon and a permanent supported services shelter including case management. She said the New Wilson Hotel in Anacortes was cited as an example of a successful affordable housing initiative.

Mr. Johnson reported he would be attending the Housing Data Dashboard Focus Group on June 15.

Public Works Committee Report: Mr. Johnson reported from the committee meeting earlier in the evening at which the group considered the stormwater utility rates to be discussed later in the evening. He said staff also updated the committee on design options for the 3MG water tank project and the NoaNet fiber optic network.

Public Comment

No one present wished to address the Council.

Consent Agenda

Ms. Lovelett removed Item 5d, Contract Award: Install Rapid Flashing Beacons, from the Consent Agenda.

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

- a. Minutes of May 23, 2016 and May 24, 2016
- b. Approval of Claims in the amount of: \$643,238.16
- c. Resolution 1962: Emergency Declaration - Sanitary Sewer Repair between 24th & 26th Streets East of Island Hospital

The following vouchers/checks were approved for payment:

Voucher (check) numbers: 80648 through 80781, total \$638,430.89

EFT numbers: 203849 through 204612, total \$13,516.59

- d. Contract Award: Install Rapid Flashing Beacons

Ms. Lovelett inquired where the beacons would be installed. Public Works Director Fred Buckenmeyer replied that the flashing beacon pedestrian crossings would be installed at the intersections of 32nd Street and M Avenue, 12th Street and H Avenue, and Oakes Avenue and Kansas Avenue. Ms. Lovelett moved, seconded by Mr. Johnson, to approve the contract award to install rapid flashing beacons. The motion passed unanimously by voice vote.

Anacortes Railway Presentation

Brooks Middleton, 4419 H Avenue, and his colleague Per Kefgen reported on the project to reactivate the Tommy Thompson train and narrow gauge railway. Mr. Middleton displayed a map of the proposed Phase I route which followed the historic route of standard gauge trains from 4th to 11th Streets largely along Market Street. He said that part of the route was on Port of Anacortes property and part was on City of Anacortes property. He reported that Port Commissioners unanimously approved the train's use of their property the prior Thursday. Mr. Middleton shared a presentation summarizing his group's proposal and discussed the potential tourism draw of the train and the feasibility investigation already completed. He said the Anacortes Railway is a registered non-profit with a certified steam train operator and community support to maintain the train. He anticipated that the railway would be self-supporting including maintaining insurance. Mr. Middleton addressed concerns about the permanence of the infrastructure, saying that both the train and the tracks could relatively easily be moved if required. He cited widespread community support for the railway and the wealth of experience available locally. He requested permission to run the train on city property and also to construct a secure shelter for the train adjacent to the tracks, possibly east of the W.T. Preston.

Mayor Gere asked Planning Director Don Measamer what the next steps might be. Mr. Measamer discussed insurance requirements, a letter of understanding with the city addressing use of right of way

and maintenance of the train, and wetland mitigation along the proposed route. Mr. Measamer asked if Council wished for staff to begin drafting a letter of understanding.

Mr. Middleton responded to councilmember questions about potential locations for a train shed. Ms. Lovelett reported from the discussion of the topic at prior Depot master planning meetings. She agreed there was widespread interest in finding solutions to reactivate the train as a tourist attraction and educational opportunity at virtually no cost to the city. Mr. Johnson, Ms. Pickett, Mr. Adams and Mr. Archibald supported the concept. Mr. Walters did not. Mayor Gere concluded that the majority of the councilmembers present would like Mr. Measamer to begin investigating a memorandum of agreement with the Anacortes Railway.

PUBLIC HEARINGS

Open Record Public Hearing, SPL-2015-0006, 38th Street Short Plat, Appeal of Administrative Decision

Mayor Gere opened the open record public hearing on the appeal of the administrative decision approving SPL-2015-0006, 38th Street Short Plat. The Mayor advised this was a quasi-judicial hearing before the Council which was acting as the appellant body reviewing the administrative decision of the Planning Director. She asked City Attorney Darcy Swetnam to address the hearing procedures and the standard to be used in evaluating the appeal.

Ms. Swetnam advised that during this quasi-judicial hearing Council should restrict its review to the issues raised by the appellant in her appeal. Ms. Swetnam explained that the standard of review in this matter was substantial evidence so if the administrator's findings were supported by substantial evidence (sufficient evidence to persuade a fair minded person of the truth or correctness of the decision) his decision should be affirmed and the appeal denied; if the administrator's approval was not supported by substantial evidence the appeal should be granted. She explained that the substantial evidence standard gives some deference to the administrator for his expertise in local rules and procedures.

Mayor Gere summarized the Appearance of Fairness Doctrine. She then asked councilmembers to indicate if they had any interest in the property or the application or if they owned property within 300 feet of the subject property; if they stood to gain or financially 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 the proponents or the opponents and if so, to disclose the substance of such communication so that interested parties could rebut them.

Ms. Lovelett stated that the subject property is adjacent to land owned by her parents so she would recuse herself from participating in the hearing. Ms. Lovelett left the Council Chambers.

No other councilmembers made disclosures.

Mayor Gere asked if anyone in the audience wished to challenge any councilmember's participation on the basis of the Appearance of Fairness Doctrine. No one present raised a challenge.

Associate Planner Kevin Cricchio summarized the project, referring to his slide presentation included in the packet materials for the evening. He said the 9-lot short plat was reviewed and approved by the administrator. He addressed the site and surrounding zoning and land uses, acreage of the project, density calculations, lot size, the application chronology, noticing, critical areas, tree preservation, SEPA environmental review, transportation, notice of decision, appeals received and appeals withdrawn. Mr. Cricchio quoted the six assignments of error raised in the appeal. He advised that the staff response to each assignment was included in the staff report in the packet. Mr. Cricchio displayed aerial photos of the area and the short plat map and said the civil plans indicated the street access for each lot.

Mr. Johnson noted the Kelly appeal had been withdrawn and asked for clarification of the location of the unimproved K Avenue right of way. Mr. Measamer pointed out the unopened right of way west of Lots 2, 1 and 9. He said a building permit application had been filed for Lot 2 showing a driveway access onto the

K Avenue right of way and a neighbor had appealed the short plat because of that but that the applicant had worked out a paved access on that road to reduce dust concerns so the appeal had been withdrawn. Mr. Measamer said the building permit had not been issued and was not subject to the present appeal.

Mayor Gere then opened the hearing for public comment. She asked that everyone who wished to speak stand and be sworn in. Sara Holahan, Pam Allen, John Ravnik and Steve Nicol stood, raised their right hands, and swore to affirm and tell the truth in the testimony they were about to give. Mayor Gere reminded the speakers to provide a full name and address for the record, keep remarks to 10 minutes, restrict comments to appeals of the 38th Street short plat, and provide any physical evidence to staff to be marked with an exhibit label.

Mayor Gere invited the appellant to the microphone to present her appeal and provided 15 minutes for her to do so.

Sara Holahan, 1511 38th Street, presented her appeal, referring to her slide presentation which was added to the packet materials for the evening. She said the scope of the short plat was radically out of scale with the neighborhood and argued that the preliminary plot map showed too many lots for the acreage and the conditions. She focused her presentation on minimum setback requirements in the rules for short cul-de-sacs, stormwater drainage plan, and landscaping and tree protection. She cited AMC 16.32.020, Short cul-de-sac, said the proposed cul-de-sac is longer than 150 feet, and asked for clarification on how the length of short cul-de-sacs are measured. She also expressed concern that Lot 9 would be later subdivided, creating more than the allowed six lots on the short cul-de-sac, and objected that the addresses for the lots were not included in the short plat application. Ms. Holahan then cited setback requirements from AMC 17.36.060 and indicated on a sketch in her presentation that Lots 2 and 3 would not have setbacks consistent with that code. She also objected that Lot 2 would not have 30 feet of street frontage. Ms. Holahan next addressed stormwater which she said runs down 38th Street from Ace of Hearts Park. She reviewed DOE mitigation criteria and argued that the short plat's proposed bioswale is not large enough, and is also located where the sidewalk should be. Ms. Holahan then turned to the tree preservation plan. She said some of the trees that would be saved according to the plan would in fact be damaged if K Avenue was improved to provide driveway access. Ms. Holahan objected that the landscaping shown on the plan overlaps the bioswale. She also objected that the proposed location of sidewalks did not include a 6-foot planted median separating the sidewalk from curb and gutter as specified in AMC 16.32.020, Pedestrian Facilities. Ms. Holahan concluded that the short plat needed further review including specifications for the drainage plan, increase in the biofiltration area, confirmation that lots meet minimum setbacks, sidewalk and landscaping plans to include a planting strip along 38th Street, and additional tree planting to account for trees that would be lost due to an inadequate tree preservation plan.

Mayor Gere then invited the applicant to respond.

Pam Allen, 14435 Jura Place, responded to a few points in the appeal, referring to her slide presentation which was added to the packet materials for the evening. She explained the prior configuration of homes on the property, then demonstrated on a site plan that the proposed short plat was surrounded by many 7500 SF lots which meet the minimum lot size of the R2 zone. Regarding parking, Ms. Allen displayed drawings showing that the proposed lots would provide more than the required two off street parking spaces per lot. Ms. Allen said key points of the short plat included lack of critical areas, a strong tree preservation plan, and conformance with minimum lots size and maximum density per AMC 17.36.050 and AMC 17.36.070. Ms. Allen concluded by noting the shortage of housing for working families, first time home buyers and seniors. She asked that the appeal be denied and the project be allowed to move forward.

John Ravnik, 1633 Lindamood Lane, Burlington, civil engineer for the applicant, addressed some of the concerns raised in the appeal including drainage, new road and the widening of 38th Street. He related the investigation of infiltration and detention requirements per the original DOE standards and said the city engineering staff did not want a detention facility included in the short plat but rather treatment of water quality so stormwater could eventually drain into the bay. He said the wording "bioinfiltration and rain

garden” came from city staff, not the applicant. The applicant is instead proposing biofiltration, using DOE criteria. He said the proposed bioswale exceeds the DOE criteria except the 100-foot minimum length, which the engineering department had accepted. Mr. Ravnik displayed civil drawings showing the proposed storm drainage improvements along 38th Street and a runoff interceptor trench to protect adjoining properties. Mr. Ravnik then addressed measurement of the cul-de-sac length, saying that City engineering staff had told him to measure from the south edge of 38th Street. He said the “extra 8 feet” alleged by the appellant had no material effect but that the cul-de-sac would be moved 8 feet if the city so directed. Finally, Mr. Ravnik explained why the sidewalk was proposed to be installed adjacent to the street.

Steven Nicol, 904 South Third Street, Mount Vernon, attorney representing the applicant, enumerated how all six issues raised by the appeal were adequately addressed by the conditions imposed by the Planning Department as part of the preliminary approval. Mr. Nicol noted that on May 23, 2016 the appellant had responded to staff comments on the appeal. He said he objected to that response, that it was effectively an additional appeal filed after the appeal deadline, and that it was material. Mr. Nicol said the short plat was consistent with all the requirements of the R2 zone and so the appeal should be denied. Mr. Nicol also argued that the setbacks on flag Lot 2 were correct per code, quoting from the code and describing the applicant and staff interpretation of what would be the front yard and side yard on that lot. In response to a question from Mr. Archibald, Mr. Measamer said the proposed Lot 2 was typical for flag yard setbacks in town. He noted that the code is silent on the application of setbacks on flag lots. Mr. Nicol added that AMC 16.32.020 says sidewalks “normally” rather than “shall” have a planted median. Mr. Nicol concluded that his client was willing to mitigate any legitimate problem and meet any legal requirement.

Mayor Gere then opened the floor to public comment, asking speakers to limit comments to three minutes. She asked everyone who wished to speak to stand and be sworn in. Wil Houppermans and Sean Bell stood, raised their right hands, and swore to affirm and tell the truth in the testimony they were about to give.

Wil Houppermans, 3412 K Avenue, said everyone should have the definition of the relevant terms available to them on line. He said front yard setbacks are measured over the full width of the lot, the width of the lot is parallel to the frontage, and on Lot 2 that goes from the left to the right.

Sean Bell, 1511 38th Street, addressed drainage which he said he had been studying for 20 years. He said Fidalgo soils have very poor infiltration and that DOE grants to the City to act on DOE’s behalf to understand and plan for drainage. In relation to pollutants moving from one property to another, DOE has final say. Mr. Bell asked what DOE stormwater plan the City of Anacortes was using and that the Planning Department address how it would implement the new regulations that go into effect January 2017.

No other members of the public wished to address the Council.

Mayor Gere allowed the appellant and the applicant each five minutes for rebuttal.

Ms. Holahan expressed concern with the engineer’s presentation. She also clarified that she had not requested a sidewalk planting median in the cul-de-sac, only along 38th Street.

Mr. Nicol said that per the AMC, front yard is the open space between buildings and the front property line and the code was what everyone had to go by. In relation to the length of the cul-de-sac, he said the measurement specification varies between jurisdictions and the Planning Director should do it the way it’s been done in the past to be consistent. Mr. Nicol clarified that the combined side yard setbacks on Lot 5 meet the code requirement of 15 feet.

Mr. Walters asked about reconfiguring lots so Lot 4 could access 38th Street and Lot 2 could cease to be a flag lot. Mr. Ravnik explained that was not possible because Lot 4 access to 38th would be within 50 feet of M Avenue.

No one else wishing to speak, at 8: 24 p.m. Mayor Gere closed the public hearing and advised that Council would deliberate on the appeal with no more comment from interested parties unless Council had questions. She said Council could make a decision or postpone to a later date.

Mr. Measamer clarified that the measurement of the cul-de-sac was from the south edge of 38th Street pavement to the center of the cul-de-sac. Steve Lange, Engineering Technician, said he measured from the right of way line of 38th Street to the center of the cul-de-sac, since the pavement did not always match the right of way. He said he'd seen it done that way elsewhere.

Mayor Gere asked each councilmember to speak in turn with any questions or comments.

Mr. Johnson clarified the short cul-de-sac standard with Mr. Measamer and estimated that the cul-de-sac was 160' long.

Ms. Pickett had no questions.

Mr. Adams asked if Lot 9 could have a duplex built on it. Mr. Measamer said that would require a conditional use permit in the R2 use zone. Mr. Adams said he would not want to see that lot split in the future.

Mr. Archibald asked for confirmation of the cul-de-sac length. Mr. Measamer pointed out that the conditions of tentative approval required maximum 150 feet so the applicant would have to achieve a 150 foot maximum to be granted final plat approval. Ms. Swetnam concurred.

Ms. Pickett said the project would look very like the rest of the neighborhood when viewed from 38th Street, that the short plat met lot size and density requirements in the code, and that there was no reason to sustain the appeal.

Mr. Johnson asked about the sidewalk planting issue raised by the appellant. Ms. Swetnam said AMC 16.32.020 allows the city engineer to modify or eliminate the separation where warranted. Mr. Lange explained that the sidewalk alignment along 38th Street would eventually change when the properties to the east were built out.

Mr. Walters explained why he saw no reason to grant the appeal on the grounds of drainage, tree preservation, consistency with the comprehensive plan, or sidewalks. He raised the question of required developed street frontage for Lot 2. Mr. Measamer explained the current conflict in the code between AMC 16.20.040 which requires 30 feet of road frontage and AMC 17.36.110 which requires 20 feet of street frontage. Mr. Walters argued that Title 16 governing subdivisions was more applicable. He said he found no reason to sustain the appeal for any of the identified issues except the flag lot and required frontage on 38th Street.

Mr. Walters moved, seconded by Mr. Archibald, to have the City Attorney draft Findings of Fact and Conclusions of Law that reject the appeal for each of the issues except the question of the required frontage onto 38th Street and remand the application to the department for re-evaluation based on a requirement for 30 feet of street frontage. Ms. Swetnam clarified that the motion included a requirement of 30 feet of street frontage for the entire depth of the flag "pole".

Ms. Pickett asked for a legal opinion on requiring 30 feet of frontage if 20 feet had been typically used on past projects. Ms. Swetnam confirmed that a conflict existed in the code and said that Council was not bound by past interpretations if those interpretations were incorrect. She said Council could direct that the correct interpretation would be a 30-foot width for the entire depth of the flag "pole". Mr. Measamer observed that many codes include a provision that in the case of conflict, the most restrictive interpretation applies. In this case, 30 feet of frontage would be the most restrictive.

Vote on motion by Mr. Walters: Ayes – Walters and Archibald. Nays – Johnson, Pickett, and Adams. Motion failed.

Ms. Pickett moved, seconded by Mr. Johnson, to deny the appeal. Vote: Ayes – Johnson, Pickett and Adams. Nays – Walters and Archibald. Motion carried.

At approximately 9:07 p.m. Mayor Gere called a 5-minute break. She announced that the remaining public works agenda items would be postponed to a future meeting and that Ordinance 2980 establishing a moratorium on PUD applications would be considered after the break.

Ms. Lovelett returned to the Council chambers.

At approximately 9:12 p.m. the mayor called the meeting back to order.

Public Hearing: Proposed Water Use Efficiency Goal (WUE)

Due to the late hour this agenda item was postponed to a future meeting.

OTHER BUSINESS

Ordinance 2979/Resolution 1963: Stormwater Utility Monthly User Fee Rate and Code Update

Due to the late hour this agenda item was postponed to a future meeting.

Ordinance 2980: Establishing a Moratorium on the Receipt and Processing of Planned Unit Development Applications

Ms. Swetnam opened a discussion on possibly establishing a moratorium on accepting and processing new applications for planned unit developments (PUDs). Referring to her slide presentation included in the evening's packet materials, Ms. Swetnam quoted the relevant AMC sections. She listed the five PUD applications submitted to the city since 2014 and summarized the current procedures for processing PUD applications. Ms. Swetnam explained the primary reasons for considering a moratorium including unclear procedural rules and the lack of standards for approval of PUDs. She provided some examples of PUD criteria from other jurisdictions. Ms. Swetnam cited RCW 36.70A.390 and RCW 35A.63.220 which allow the city to establish a moratorium for up to six months subject to specified public hearing and work plan requirements. She outlined staff's plan for updating the PUD code as part of the new Title 19 of the Anacortes Municipal Code and indicated a six-month time frame was anticipated. Ms. Swetnam outlined the features of the proposed moratorium, which would go into effect immediately, would set a public hearing August 1, 2016, and would not apply to PUD applications already accepted and deemed complete by staff at the time of adoption of the moratorium.

Council engaged in considerable discussion regarding PUD applications currently pending and potentially in preparation. Mr. Measamer advised that two complete PUD applications were currently in process and would continue to be processed under the existing code. He said he was aware of two others that developers were assembling for eventual submission, one of which had already been reviewed at two DRG meetings. Councilmembers agreed on the need to proceed without delay to develop the new PUD code and noted that if a moratorium were established it could be terminated as soon as the code was ready, which could be sooner than six months. Mr. Walters emphasized that the proposed moratorium was not in response to any particular project.

Mayor Gere invited members of the audience to comment on this agenda item.

Patrick O'Hearn, 11039 Post Drive, spoke in support of the moratorium. He said a six-month moratorium and revised code would provide developers with more certainty and very little inconvenience.

Allen Schroeder, 4819 Portalis Way, said he was working on an 8-lot PUD and was preparing to submit it following two DRG meetings already held. Mr. Schroeder estimated he would be able to complete and

submit the application in a couple of weeks. He noted that time is money and said a little bit of grace period to get an application in would be appreciated.

Bert Clay, 4927 Portalis Way, expressed concern about short notice and said he just found out about the proposed moratorium the prior Friday. He clarified with Mr. Measamer that amendments to existing PUDs would not be subject to the moratorium. Mr. Clay questioned targeting PUDs specifically when many aspects of the development code needed revision. He also described real estate market cycles and said a moratorium of up to a year could push new PUD projects out beyond the growth market and stymie the expansion of the housing supply in the community.

No one else present wished to address the Council.

Councilmembers discussed with Ms. Swetnam various options for slightly delaying the start of the moratorium. Mr. Johnson and Mayor Gere noted the need to provide adequate notification to the community of such changes.

Mr. O'Hearn returned to the microphone and noted that every PUD application that was accepted before the moratorium went into effect was one more PUD that would be processed under the problematic old code.

Mr. Schroeder returned to the microphone and said he needed just a little more time to submit his complete application. He said he would prefer clear guidelines under new code but that his PUD would be beneficial to the community and would be worth considering before the moratorium went into effect.

Mr. Adams moved, seconded by Mr. Johnson, to adopt Ordinance 2980 establishing a moratorium on the receipt and processing of Planned Unit Development applications effective 30 days after approval. Vote: Ayes – Adams and Johnson. Nays – Walters, Pickett, Lovelett and Archibald. Motion failed.

Mr. Walters moved, seconded by Ms. Pickett, to approve Ordinance 2980 establishing a moratorium on the receipt and processing of Planned Unit Development applications as presented.

Mr. Adams moved, seconded by Ms. Lovelett, to amend the motion to establish the moratorium effective two weeks from approval. Vote: Ayes – Adams, Lovelett, Archibald, Johnson and Pickett. Nays – Walters. Motion carried.

Vote on amended motion: Ayes – Lovelett, Archibald, Johnson, Walters, Pickett and Adams. Motion carried.

There being no further business, at approximately 10:00 p.m. the Anacortes City Council meeting of June 6, 2016 was adjourned.