

City Council Minutes – December 5, 2016

Mayor Laurie Gere called to order the regular Anacortes City Council meeting of December 5, 2016 at 6:00 p.m. Councilmembers Ryan Walters, Erica Pickett, Liz Lovelett, John Archibald and Matt Miller were present. Councilmembers Eric Johnson and Brad Adams were absent. The assembly joined in the Pledge of Allegiance.

Mr. Walters moved, seconded by Ms. Lovelett, to excuse the absence of Mr. Johnson who was activating the Salvation Army cold weather shelter. The motion passed unanimously by voice vote.

Ms. Lovelett moved, seconded by Mr. Archibald, to excuse the absence of Mr. Adams who was traveling out of state. The motion passed unanimously by voice vote.

Mr. Walters moved, seconded by Ms. Lovelett, to insert a new agenda item before Item 7a for a report on the Swinomish Indian Tribal Community Constitutional Amendment. The motion passed unanimously by voice vote.

Announcements and Committee Reports

Board and Commission Appointments: Mayor Gere requested Council confirmation of the following reappointments:

- Reappointment of Ken Hansen to the Historic Preservation Board for a three-year term expiring December 31, 2019
- Reappointment of Judy Weathers to the Anacortes Library Board of Trustees for a five-year term expiring December 2021
- Reappointment of Nick Alphin to the Anacortes Library Board of Trustees for a five-year term expiring December 2021
- Reappointment of Sandra Starbuck to the Anacortes Forest Advisory Board for a five-year term expiring November 2021

Mr. Walters moved, seconded by Mr. Miller, to confirm the appointments. Vote: Ayes – Walters, Pickett, Lovelett, Archibald and Miller. Motion carried.

Mayor Gere reported that she had also reappointed Laura Hamilton, Karla Locke, and Ron Smith to serve terms on the Anacortes Arts Commission expiring December 2018; reappointed Lisa Rhoades, Lanny Bergner, and Terry MacDonald to serve three-year terms on the Anacortes Arts Commission expiring December 2019; and had reappointed James English as an alternate on the Civil Service Commission for a three-year term expiring December 2019.

Pride in Service Awards: Mayor Gere recognized Mr. Johnson and Mr. Walters for their five years of service on the City Council.

Mayor Gere announced that Mr. Johnson was at the Salvation Army setting up the cold weather shelter and invited anyone able to volunteer to assist at the shelter during the winter months to contact Mr. Johnson or the Salvation Army.

Ms. Lovelett reported from the Public Works Committee meeting earlier in the evening, at which the group discussed options for storm utility rate increases. She advised that a proposal would come before Council for consideration and action after the first of the year.

Public Comment

Beth Bell, 1514 7th Street, told Council she was in the process of developing property and understood that the codes and permit fee structures would be changing for 2017. She said she had thought that topic was on the agenda for this meeting but it was not. She said Planning Department staff had not been able to provide her specific information regarding the new fees but she was concerned that the fees might rise by

as much as twenty percent. She asked when the topic would be addressed by Council and when the public would have an opportunity to comment on the fee structure. Planning Director Don Measamer reported that his department was working with Finance Department staff to develop the new rates which would include the standard increase in water and sewer General Facilities Charges of about 2%, possibly a new fire impact fee and associated storm rates. He advised that staff would be bringing a fee schedule before Council in the next few weeks, including public process, with the intent of putting new rates into effect for January 1, 2017. Mayor Gere invited Ms. Bell to attend the December 12, 2016 City Council meeting.

Consent Agenda

Ms. Pickett removed Item 5c, Resolution 1977: Sole Source Procurement of Patented Micro-Duct Installation for Telemetry, from the Consent Agenda. Ms. Lovelett moved, seconded by Mr. Miller, to approve the following Consent Agenda items. Vote: Ayes – Pickett, Lovelett, Archibald, Miller and Walters. Motion carried.

- a. Minutes of November 28, 2016
- b. Approval of Claims in the amount of: \$238,144.81
- d. Ordinances 2997, 2998 and 2999: Correcting Legal Descriptions on 10th Street Vacations
- e. Accept Donation of Exercise Equipment to Anacortes Fire Department

The following vouchers/checks were approved for payment:
Voucher (check) numbers: 83008 through 83034, total \$166,927.34
EFT numbers: 82980 through 83007, total \$60,357.71

- c. Resolution 1977: Sole Source Procurement of Patented Micro-Duct Installation for Telemetry

Ms. Pickett requested additional information on this item. Public Works Director Fred Buckenmeyer advised that staff had consulted with City Attorney Darcy Swetnam and outside counsel Steve DiJulio on this matter. He reminded that the RCW exempts telemetry work from bid laws but said staff chose to entirely transparently declare sole source procurement for this item which was a proprietary device different from most buried ductwork and could be pulled with higher tensile strength. Ms. Pickett moved, seconded by Mr. Archibald, to approve **Resolution 1977** for sole source procurement of patented Micro-Duct installation for telemetry. The motion passed unanimously by voice vote.

OTHER BUSINESS

Swinomish Indian Tribal Community Proposed Constitutional Amendment

Mayor Gere welcomed Steve LeCuyer, legal director for the Swinomish Indian Tribal Community, to present information regarding the tribe's proposed constitutional amendment. Mr. LeCuyer reported that Tribal Chairman Brian Cladoosby was serving on an advisory committee in Washington, D.C. so was unable to address Council at the present meeting. Mr. LeCuyer reviewed the tribe's long term efforts to amend its constitution to remove paternalistic language from the 1936 document that still required consent of the Secretary of the Interior for the tribe to take basic actions such as leasing tribal land and hiring legal counsel. He explained the amendment process which requires an election conducted by the Secretary of the Interior. Mr. LeCuyer said that this effort was recently brought to local attention by coverage in the *Skagit Valley Herald* following Skagit County's mailing of a letter to property owners in the March Point area. He said the County letter, which the tribe had not been aware of prior to the newspaper article, was responding to outdated information based on an earlier version of the proposed constitutional amendment. Mr. LeCuyer said there appeared to be a fundamental misunderstanding that the tribe was expanding the reservation. He said the tribe's position had long been that the reservation boundaries were created by Treaty of Point Elliott in 1855 which placed its western boundary at the present day location of the golf course and included March Point. Mr. LeCuyer said that in 1873 an Executive Order issued by President Grant purported to redefine the border of the reservation to remove March Point but he argued that only Congress can diminish a reservation and that because Congress had never acted on

the Swinomish reservation it still today included March Point. He emphasized that the Tribe had not in any way engaged in anything that would be a land grab and that all recent property acquisitions such as the golf course, Shell station, and Bayside Fitness were purchased from willing sellers or at public sales. Mayor Gere and councilmembers questioned Mr. LeCuyer about private property ownership and taxing authority in the area disputed by the tribe and conveyed public concern about those questions. Mr. LeCuyer responded by contrasting trust land and fee simple land and concluded that taxing jurisdiction is very complicated on all Indian land and continues to be addressed by the courts. On repeated questioning, Mr. LeCuyer emphasized that the reservation boundary was not a constitutional amendment question and that the amendment, if eventually approved, would not change the reservation boundaries. He refused to speculate on future actions of the tribal senate but did say that if the tribe were to assert jurisdiction, for example through fee to trust applications, that could have an impact on the boundary but that was not part of the constitutional amendment process. He stated that the tribe's goal was to have a constitution that is consistent with its perception of its territory. Mayor Gere expressed the grave concern of the City and property owners in the area. She requested a copy of the current version of the constitutional amendment proposal. Mr. LeCuyer said he would have to request permission from the tribal senate to share that information.

Mayor Gere opened the floor to the audience.

Mark Lawrence, 12375 Reservation Road, said he was currently putting in a facility in the March Point area and asked to know the tribe's true intention and how the change of administration in Washington, D.C. would affect the timing of the tribe's decisions in the months to come. He asked if the tribe intended to put the land in trust. He expressed concern about the status of his fee simple land. He asked for a copy of the letter sent to the County Commissioners.

Mr. LeCuyer assured Mr. Lawrence that the timing of the constitutional amendment had nothing to do with national elections and stressed the long time frame for action by the BIA. As for the status of Mr. Lawrence's property, Mr. LeCuyer said the tribe's constitutional amendment had nothing to do with acquisition of land and that the tribe hadn't exercised eminent domain or taken private property to turn into trust property.

Ordinance 2988: Amendments to AMC Title 2, Title 9, Title 18, and Creating a New Title 20 to Provide for a Fair and Efficient System of Civil Code Enforcement

City Attorney Darcy Swetnam reminded that this topic had last been considered by Council at its October 24, 2016 meeting at which the public hearing had concluded. Ms. Swetnam reminded that AMC Titles 19 and 20 needed to be adopted by year end to meet state requirements for stormwater standards. She reviewed her slide presentation from the October 24, 2016 meeting, summarizing the current and proposed processes for civil code enforcement including handling of appeals by a new position of hearing examiner. Ms. Swetnam then reviewed a matrix summarizing and responding to public comments received on the proposed code; the matrix had been distributed to Council and added to the packet materials prior to the meeting. Councilmembers commented on the discretion of the Director, the enforcement action report proposed by AMC 20.10.090, the cost of engaging a hearing examiner, and the possibility of creating an ombudsmen position staffed by current Improvement Board and/or Board of Adjustment members. Mr. Miller asked Ms. Swetnam to bring back a budget for the hearing examiner position based on the expected number of appeals. Ms. Lovelett suggested defining the legal terms of art used in the code; Ms. Swetnam said that "legalese" commented on by the public could be rephrased. Regarding appeal fees, Mr. Archibald, Mr. Miller and Ms. Pickett explicitly supported refunding appeal fees for code enforcement actions in which the appellant prevailed.

Council did not direct or request any other changes from those mentioned by Ms. Swetnam while reviewing the matrix. Ms. Swetnam advised that she would prepare a final draft of Ordinance 2988 to be distributed with the packet materials for the December 12, 2016 meeting but agreed to accept written comments from the public on the proposed ordinance until noon on Friday, December 9. Mr. Walters requested that any additional written public comments address the latest draft of the ordinance which had been included in the packet materials for the present meeting.

At approximately 8:00 p.m. Mayor Gere called an 8-minute recess. The mayor called the meeting back to order at 8:08 p.m.

Proposed Draft Title 19, Land Use Permit Procedures

Ms. Swetnam reported that the draft of Title 19 had been considered by the Planning Commission at its meeting the previous Wednesday and the Commission subsequently recommended approval with some changes. Ms. Swetnam shared a slide presentation, which was added to packet materials for the meeting, reviewing key policy considerations that had guided development of the unified development code including transparency, public participation, property rights, substantive due process, procedural due process, efficiency of process, and specific legal requirements of federal and state law.

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

Patrick O'Hearn, 11039 Post Drive, said the public was working with the November 16, 2016 version of Title 19 and asked if an update would be available before the next City Council meeting.

Mr. Measamer advised that staff would review the public comments and Planning Commission recommendations with Council at the current meeting, then prepare a revised draft for consideration by Council and the public at the December 12, 2016 City Council meeting, then present a final draft for adoption at the December 19, 2016 meeting. Mr. Measamer then reviewed the 6-page summary of comments and Planning Commission recommendations on Title 19 that had been distributed earlier in the evening. The matrix was added to the packet materials for the meeting, along with a matrix comparing current land use permit procedures with those proposed in Version 10 of Title 19 dated November 16, 2016.

Mr. Measamer and Ms. Swetnam responded to councilmember questions about Boundary Line Adjustments and the Planning Commission recommendation to treat those with a Type 2 review process. Councilmembers discussed procedures for Accessory Dwelling Unit (ADU) applications but reached no consensus on that topic. Mr. Walters expressed concern about administrative interpretations and urged that those interpretations not be binding on subsequent review bodies. Ms. Swetnam advised that staff had sought and was awaiting a recommendation from the Municipal Research and Services Center (MRSC) on that topic. Regarding variances, Mr. Measamer asked for councilmember input on what degree of variation should change a variance to a Type 3. Regarding preparation of transcripts, Mr. Walters suggested that administrative appeals did not need transcripts and appellants should not be required to pay for them but that transcription costs should be borne by any party that requested a transcript of an administrative appeal hearing. Mr. Measamer concurred.

At the completion of Council's review of the comment and recommendation matrix, Mayor Gere again invited members of the audience to comment on this agenda item.

Cynthia Richardson, 315 V Avenue, addressed Type 1 vs. Type 2 reviews and whether public process or public notice should be required. She said the underlying philosophy was that applying to do something allowed by the code should not require public process or public notice if all requirements of the code were met; only exceptions to the code should require notice. Ms. Richardson also addressed the question of standing to appeal. She recalled the societal change achieved in the past due to participation by parties with no direct local interest and supported the Planning Commission recommendation that any party of record should be able to appeal.

Vernon Lauridsen, 2219 32nd Street, encouraged councilmembers to watch the November 30, 2016 Planning Commission meeting on this topic. Mr. Lauridsen discussed Boundary Line Adjustments at length and concluded that the law is not always clear, hence the need for public process. He urged requiring a determination by staff that an application was consistent with city code before it was forwarded to the Planning Commission.

Ms. Swetnam acknowledged Mr. Lauridsen's good examples of the types of conflicts involved with Boundary Line Adjustments. She reported that staff had requested guidance from MRSC on the question of whether determining if a BLA created new lots or not depended on consideration of the tax parcels or the legal lots of record. She said staff was seeking language to clarify what lots or divisions should be considered in determining if a BLA creates new lots. Mr. Walters commented on the shortcomings of the state BLA statute and supported staff's attempts to work within that statute.

No one else present wished to address the Council on this matter.

Ms. Swetnam advised that staff would prepare an updated draft incorporating the Planning Commission recommendations for the December 12, 2016 City Council meeting and would distribute that along with any public comments received by Wednesday, December 7. She said written comments would be accepted through the public hearing scheduled for the December 19, 2016 City Council meeting but encouraged early submission to allow more time for Council consideration of public input.

There being no further business, at approximately 9:20 p.m. the Anacortes City Council meeting of December 5, 2016 was adjourned.