

Langley City Council Meeting Minutes

July 18, 2011

Mayor Samuelson called the meeting to order at 5:30 PM. Present were City Council Members Bob Waterman, Fran Abel, Rene Neff, Bob Robert Gilman and Hal Seligson. Also present was Deputy Clerk, Annette Andrews-Lux, Director of Public Works Challis Stringer, Director of Planning Larry Kwargsick and Planner Jeff Arango. The flag salute was led by Council Member Seligson.

MOTION: To approve the Consent Agenda as amended.
Motion - Waterman, 2nd - Neff. Motion carried
unanimously.

CONSENT AGENDA

- a. Council Meeting Minutes – July 11, 2011
Amendments noted:
 1. Under Department reports, Challis Stringer; amend to read “all the bids were over the engineer’s estimate by approximately \$90,000.”
 2. Under Public Hearing, notes of comments offered by Councilman Segligson, amend to read “he feels that it is important to have an elected official who can break a tie as well as who can veto legislation.”
 3. Under Discussion Topics, Ethic Policies: amend to read “The current code is just three-quarters of a page.”

In reference to Debbie Mahler’s report on the new front desk hire, Councilman Gilman raised the issue of the current code citing that the hire of all new employees needs to be confirmed by the council, although this practice has not been followed. He stated that this discrepancy between the code and actual practice should be rectified.

- b. Claims Warrants Nos. in the amount of \$18,064.97
Councilman Gilman requested further conversation addressing the amount of legal fees that have been paid, the fact that we are over the current amount budgeted and how this issue will be addressed. Mayor Samuelson noted that this will be addressed when Debbie Mahler is able to present the Midyear Budget review.

- c. Payroll Warrants # 27961-27982 (6/15/11) in the amount of \$39,651.43 and # 28025-28047 (06/30/11) in the amount of \$41,672.79
- d. Approval of Agenda.

Amendments to the agenda were made due to the unforeseen absence of Debbie Mahler because of illness. The Mid-Year review under New Business, as well as the Finance and Records Department Work Plan and the 2012 Budget Discussion will be rescheduled.

Also, under the anticipated Mayor's Report, neither the Port of South Whidbey nor the Chamber of Commerce was represented.

MAYOR'S REPORT

a. *Langley Library.* Vicky Welfare, Librarian reported that library building project is moving forward. The anticipated work may not happen in August as planned, but may be delayed until September. They anticipate a closure of 2-3 weeks to complete the work. They have begun to receive some of the anticipated mobile shelving units and are pleased with how they are working in the space. The remodel work is made possible through a donation from library patron Bundy.

She also reported on Summer Reading program for children, teens and adults and commented that the change in hours to a 10:00 am opening Monday-Thursday is proving to be a good choice and the library is being well used during that extra morning hour.

b. Fred Lundhal reported the good news that the Langley main Street Association now has official 401(c) non-profit status.

c. Anderson Farm MOU- Mayor Samuelson shared written comments from the Anderson Family regarding the development of the Langley Community Garden which expressed significant satisfaction with how this project prospered during its first year of operation.

CITIZEN COMMENTS

None were offered.

OLD BUSINESS

Challis Stringer noted that there were no recommended changes to the resolution that were made for the second reading of the 2012-2017 Six Year Transportation Improvement Plan.

MOTION: To adopt Resolution No. 732 adopting the 2012-2017 Six Year Transportation Improvement Plan. Motion - Waterman, 2nd - Neff. Motion carried with all in favor.

PUBLIC HEARING – Hearing Examiner

Mayor Samuelson opened the public hearing at 5:51 PM. Planner Larry Kwarsick explained he is introducing the first reading of this ordinance to adopt a Hearing Examiner System. At the council's request, an RFP for hearing examiner's services has gone out and they have received 5 proposals which are being currently evaluated.

Interviews are currently scheduled with 2 of the 5 applicants and hopefully will lead to the selection of an ideal candidate.

Larry then presented a summary of reasons to adopt a Hearing Examiner system. He noted changes that would incur to the current code in regards to PAB and Council responsibilities. He stated that a second reading of this ordinance should not be scheduled until a negotiated contract with the selected candidate for Hearing examiner is available for confirmation and recommended that the successful candidate take an oath of office during a council meeting.

Each council member had an opportunity to express comments on the proposed ordinance. Robert Gilman asked about the process leading to the selection of the examiner. He made reference to an email sent by Larry that outlined a process and suggested individuals to be part of the process (Hal Seligson and Jim Sundberg), without room for review or input by the council. He would desire a more open process and an opportunity to become familiar with more than one candidate. He expressed concerns with the proposed ordinance, including that it moves things from public process (with the PAB and the Council) to administrative decisions and the fact that appeals would cost money and may be prohibitive for some.

Hal Seligson noted that he has some areas of agreement with Gilman, particularly the significant changes in the roles of the PAB. He questioned the inclusion of the parking In-Lieu fee, saying that this is a budgetary not and administrative issue. He asked if the hearings would be held at City Hall. Bob Waterman asked a question of clarification regarding the appointment of a Hearing Examiner that the original appointment would be for one year, to be followed by a reappointment of three years (note typo in resolution draft of "32" years.)

Rene Neff inquired about how does this resolution compares to other jurisdictions using a Hearing Examiner System. Larry responded that given the council's decision to empower an examiner with final decision making power, that this ordinance is fairly typical. She also reiterated her personal reason for supporting this ordinance which is to have a professional, informed land use official making final decisions on key land use issues. She raised again the issue of fees being kept as nominal as possible. She was assured that the Council will set these fees.

Fran Abel affirmed her support of the ordinance and asked a question of clarification on pg. 36 regarding "that decision shall be appealable to the Hearing examiner unless the legislative authority formally eliminates such appeals." It was noted that our code does NOT eliminate such appeals.

Citizen Comments:

Robin Adams, of Furman Ave, noted his dismay at what he called “government creep” which institutes more and more complicated and expensive administrative processes for decisions. He affirmed the need for an enhanced method of resolving disputes before they reach the level of a quasi-legal process. He stated that a greater emphasis should be placed on solving issues around the table.

Barbara Seitle, of Edgecliff echoed some of these concerns about involving a hearing examiner in addressing small issues. She expressed concern at the notation that the examiner may be removed “for cause”, rather than a more “normal procedure of with a contract amended with adequate notice”. She is concerned with the verbiage that an appeal must be made within 10 days from when decision is made, instead of stating from the “date of public notification” as there can be a lapse of several days. She is concerned about the range of issues seemingly removed from the responsibility of the PAB and moved to the Hearing Examiner.

Jonathon Moses, also of Edgecliff, commented that with the election of council members, the council is imbued by the public with authority to make decisions. To bypass the council and going instead to a Hearing Examiner for final decision-making undermines citizen participation and abdicates authority that was given by the community to the council members.

Larry Kwarsick reviewed the process leading to the choice of empowering the Hearing Examiner with decision making authority and why a Hearing Examiner System is so recommended. Hal Seligson inquired about the number of smaller cities that use a Hearing Examiner System and Larry offered to get these figures. Fran Abel also added that with a Hearing Examiner System the appeal process can be more timely and offers greater protection regarding the law.

Kathleen Watters, of Wharf Street, commented that the discussion is a reflection on why the planning staff was asked to create a Hearing Examiner System proposal. The Hearing Examiner System is a known and tested system, and she appreciates this action on the citizens’ behalf. This proposal is being prepared with care and scrutiny, and she appreciates the effort.

Bruce Kortebein, of Edgecliff, focused on the word “interpretation” on pg. 48-i.e. what does it truly mean to “interpret” land use regulations? An example is “on or near a steep bluff” could mean “within 600 feet”. Can more specific language be used? He asked the question if there can be an “administrative appeal”, thinking it meant an appeal to the administrator, but Larry clarified that it meant appealing a decision made by an administrator.

Additional comments from the council:

Rene Neff, referring to pg. 15 , questioned including “Variances from sign code” under responsibilities for a Hearing Examiner. Response was given that there could be legal “Commercial Free Speech” issues that get contested.

Robert Gilman advocated addressing issues at the smaller level but leaving means to send appeals to a Hearing Examiner if needed. Larry Kwarsick and Jeff Arango reiterated that the goal is to avoid appeals to the Hearing Examiner to resolve conflicts. They only get referred to a Hearing Examiner if the individual does not find satisfaction at the level of the planning staff. All the issues noted in the ordinance are not referred to the Hearing Examiner as a matter of course. The difference from our current system is that the final appeal and decision rests with the Hearing Examiner, not the PAB or the council.

Hal Seligson voiced his support of desiring to conform with a legal system that has grown more complex. Rene Neff noted that she learned from the AWC that the council’s role is to make the best possible decisions for the City that will not risk the City loss of funds at a later date and that a Hearing Examiner System best ensures this.

Robert offered comments regarding appeals from the Hearing Examiner coming back to the Council. Might there be cases in which this might be a good idea, in terms of the local perspective that might be lacking on the part of a Hearing Examiner? He assumes that only a few would come to the council and that most of them would b upheld, but occasionally might lead to a different decision on the part of the Council.

Hal Seligson asked the question if the Council is taken out of the quasi-judicial mix, and there is a hearing, can a council member participate in any way in the process? Larry recommends that the council members would not seek to participate in the hearing examiner’s session.

The public hearing was closed at 7:10 PM and the regular meeting reconvened.

MOTION: To bring to a first reading, an Ordinance adopting a Hearing Examiner System. Motion – Neff, 2nd – Seligson. Motion carried with one member (Gilman) in opposition. .

MOTION: To adjourn the meeting at 7:15 PM. Motion - Abel, 2nd – Waterman. Motion carried.

Respectfully submitted,



Annette Andrews-Lux, Deputy City Clerk