

Langley City Council Meeting Minutes

August 1, 2011

Mayor Samuelson called the meeting to order at 5:30 PM. Present were City Council Members Bob Waterman, Robert Gilman, Rene Neff, Fran Abel, and Hal Seligson. Also present were Director of Finance/City Clerk, Debbie Mahler; Director of Planning Larry Kwarsick; Planner Jeff Arango and several members of the public. The flag salute was led by Council Member Gilman.

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

CONSENT AGENDA

- a. Council Meeting Minutes – July 18, 2011
- b. Workshop Meeting Minutes July 18, 2011
- c. Claims Warrants Nos. 28066, 28115, 28116-28140 in the amount of \$7,148.72
- d. Approval of Agenda

COUNCIL REPORTS

Robert Gilman read a letter into the record (attached hereto). Mr. Gilman is resigning from the Council effective at the end of the meeting. Leanne Finley sent a request to Council for copies of Robert's speech at Governments West conference. Her question was whether a councilman giving a presentation which was not at the request of the city, but on their own time is a public record. Robert researched this issue by calling the ombudsman at the Attorney General's office. Robert was told that his title follows him wherever he speaks, but that if he is not representing the city and talking about the particular governments business, it is not a public record even if you use examples from that city. Bob Waterman stated he felt it is fairly clear that this was not a public record, but does feel the issue of speaking as a council member should be addressed in our ethics policy to make it clear what the roles and responsibilities are. Rene asked if the software Robert has developed was based on Langley's data. Fran thought that it would have been easy to provide information on when and what he was speaking about when it happened. Mayor Samuelson stated that we do have a formal public disclosure request for this information. Councilman Gilman does not believe that what was asked for is a public record and he feels it inappropriate precedent to make this available.

Leanne Finley stated that she made the request in writing to be sure that it was a public record. She felt in speaking to Tim Ford, the ombudsman that it was a public record. She stated that when Robert announced at a meeting that he would be speaking at the conference, that made it a public record. The city will check with our legal counsel to be sure. Robert stated that his presentation was a demo of his interactive graphing and some charts on city population size in Washington and Oregon.

Rene Neff reported that she is part of the Langley Market committee and has been going to meetings every week. The Cemetery Board is working on a revised brochure for the Cemetery. Rene gave her appreciation to Robert Gilman for his service to the City.

Hal Seligson reported that there was a meeting of the personnel policy committee and he posted notes of the meetings on the Langley Electeds website. There will be another meeting in the next week or so. The Committee is looking to have recommendations out by end of September.

Fran Abel reported that the County-wide tourism committee will be gathering on Camano Island this week. She is also a part of the Langley Market. The Market now has 24 vendors and is working well. Fran gave her thanks to Robert for all his years of service to the City.

Bob Waterman reported the Historic Preservation Committee has been interested in sustaining the downtown character. They had a walk thru tour of First Street with Ross Chapin last week and tried to look at all the things that define character. They are working on a document that provides a history of the commercial character of downtown Langley. Bob also stated that he was surprised about Robert's resignation and wanted to thank Robert for getting him involved with the Council and thanked him for all his efforts. Mayor Samuelson also thanked Robert for originally getting him involved in running for Mayor and for his service to Langley.

DEPARTMENT REPORTS

Planning – Jeff Arango passed out a memo to Council regarding the Hearings Examiner issue. The City received five proposals. A review committee consisting of Jeff, Larry Kwarsick, Jim Sundberg and Hal Seligson, reviewed the proposals and two especially stood out. Both firms were interviewed. Sound Law Center is the committee's recommendation for hire as hearing examiner. Larry Kwarsick added that Sound Law Center offered to come to the community and have a meeting explaining the hearing examiner process, who they are, and how they would interact with the community. Larry felt this was not typical and a very nice offer. Larry stated that having a hearing examiner would actually allow the council to interact with the community on quasi-judicial issues. Jim Sundberg and Hal Seligson both stated that they felt Sound Law Center was a very good choice that would fit well with our community. Fran said that she trusts the judgment of the committee and she would confirm their recommendation. Rene Neff asked how much compensation would be needed if they were to come back for a council interview. She is concerned about the expense and said she also trusts the recommendation of the committee and doesn't feel the need to have an additional council interview if there is considerable cost tied to it. Bob Waterman agreed. If the council accepts the recommendation, negotiations would take place with the firm on establishing a contract, compensation, etc. Approval of the contract and a second reading of the Hearing Examiner ordinance would happen at the same time. Hal is part of the interview committee, so he stated if the rest of council is comfortable, it is fine with him.

Robert Gilman asked that the fiscal impact of having a hearing examiner be examined. Jeff stated that issue is being explored and that fees are being studied.

Jeff distributed and went thru an additional memo responding to Rhonda Salerno's issues she had brought to a previous council meeting. That memo is attached hereto as a part of the record.

CITIZEN COMMENTS

Wayne Body offered his deep appreciation to Robert Gilman for his years of service to the City.

NEW BUSINESS

MOTION: To confirm the Mayor's appointments of Christina Drake, Dominique Emerson, Roger Gage, Bob Gentz, Chris Jerome, John Lawson and Phil Taylor to the Shoreline Advisory Committee. Motion – Neff, 2nd – Waterman. Motion carried with all in favor.

Larry Kwarsick gave an overview of the tasks of the committee. We are currently doing an update as required by the State of our Shoreline Comprehensive Master Program. Phase I of the update: the inventory, has been completed. The second phase is forming the advisory committee and they will be holding open meetings to involve more people in the community. A draft master program and cumulative impact statement will be the task of this phase which will then go on to the PAB and Council.

Mayor Samuelson called a ten minute break at 7 PM. The meeting reconvened at 7:10 PM.

Debbie Mahler presented the mid-year financial reports. She explained the increase in revenues and what expenditures will need to be watched for the rest of the year. Revenues have picked up and expenditures are well within budget with the exception of legal fees. Debbie answered questions from the Council and public.

DISCUSSION TOPICS

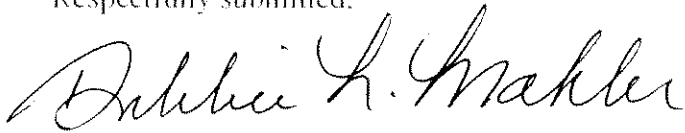
2011 Finance & Records Department work plan and the 2012 Budget. Debbie Mahler went over the Finance and Records Department's 2011 work plan and what has been accomplished so far this year. Debbie then gave an overview of the budget process for 2012 and explained that the Finance Committee is currently working on their recommendations for changes in municipal and land use fees. The finance Committee is also looking over the fiscal policies for any recommended changes and working on getting the essential/core services from each department which must be included in the budget. The finance committee will be making recommendations at the next Council

meeting. Council consensus was to make sure that there is adequate documentation in the budget to explain the utility funds purpose, scope and operations.

Mayor Samuelson expressed his appreciation for Councilman Gilman's dedication to the City and thanked him for all he has done for the City. Councilman Waterman also thanked Robert for establishing the Community Forum website and all the mapping and other things he has done for the city. Rene thanked him for being a mentor to her in the past and appreciated his leadership, creative thought and energy. Fran Abel also expressed her appreciation.

MOTION: To adjourn the meeting at 7:58 pm. Motion – Waterman, 2nd – Seligson. Motion carried.

Respectfully submitted,

A handwritten signature in cursive script that reads "Debbie L. Mahler". The signature is written in black ink and is positioned above the typed name.

Debbie L. Mahler, Director of Finance/City Clerk

I am resigning from the City Council effective at the end of this meeting.

I would like to take this opportunity to describe why I am resigning at this time.

First, some context. I joined the council in January 2004, so I've now been on the council for a little over seven and a half years. My current term runs another two and a half years through the end of 2013. For sometime now I have not expected to run again in 2013.

In the past year or so I have begun exploring a next phase for my life that would involve things like the graphing software that I demonstrated in an April council meeting. The more I have gotten into this exploration, the more I have felt stretched for time, and it has been getting clearer to me that I would likely not serve out my full term.

A number of things have happened in recent months that have brought the question of how long to stay on the council up front-and-center for me. First, the demands in my personal life have increased. Second, there has developed among some in the community a focus on me as a personality in a way that I feel has become a distraction from the real issues that the community faces.

Two events in the past few days have served as a tipping point.

First, the candidates forum on Thursday evening gave me the strong, welcome sense that, one way or another, the council is going to get reinvigorated with fresh energy and commitment. I'm very pleased to see this and confident that the torch can be well passed to a new generation of council members.

Second, Ron Kasprisin's letter to the editor in Saturday's paper made public the accusation that the purpose behind Proposition 1 was to advance some "personal agenda" on my part. Normally I'm content to ignore such letters, but I've heard second hand that there was enough "buzz" in the community that Prop. 1 was based on some such personal agenda, or was based on a power struggle between Paul and me, that I felt I needed to set the record straight.

So let me be clear. My support for Prop. 1 is based on my seven and a half years of experience with the dysfunctions of the present form, which hasn't managed to keep its systems up-to-date and running well even in good times. Certainly, there is good work that has been done but, more often than I would like, I have seen talented, capable people -- electeds, staff, and volunteers -- bring their good will into city government only to get ground down, ill-used, and frustrated by the systems we now have (or lack). In the process, important community issues simply haven't been attended to. I used to think that was just the way things worked in government. I'm now convinced there is a better way.

That was mostly in easy times. Now, we live in unsettled, challenging times, and I expect these will continue for many years to come. We are headed into stormy waters on a boat with frayed rope, torn sails and growing rust spots. If we are to thrive as a community, we need the best city government we can get. Based on my experience, I doubt that what we have now will be up to the task, and in any case I am convinced that we would do better as a community with a council-manager form of government.

That, in total, is my motivation for supporting Prop. 1. It has always been about systems. I never saw the issue in personal or personality terms. I never saw it as being about a power struggle with Paul. I never saw it as a means to advance any particular legislative agenda. I wasn't interested in being mayor in the council-manager form. It was never about my personal power. Those who make such claims never got in touch with me to verify their assumptions. I hope that my resignation at this time will help the community refocus on the real issues we face in these challenging times.

There is a final factor that influences my choice to resign at this time. Doing so now allows my council seat to be put on the November ballot. I would much prefer that the seat be filled by election.

While being an elected official certainly has its challenges and discomforts, it also has many satisfactions. I am immensely grateful for the experience. I leave this role with a deep appreciation for those with whom I have shared this journey -- fellow electeds, staff, volunteers, engaged citizens. And I offer my thanks to this awesome community for enabling me to serve in this way.

Thank you all,

Robert Gilman
August 1, 2011

Memo

To: Mayor Samuelson, City Council
From: Planning Department
Date: July 15, 2011

Re: Rhonda Salerno Wetland Issues

At the July 11, 2011 Planning Advisory Board (PAB) and City Council meetings Rhonda Salerno raised several issues regarding perceived wetlands and drainage issues on her property at 738 Sandy Point Road as well as on the adjacent property at 813 Edgecliff Drive. The issues raised were:

1. That the property owners at 813 Edgecliff Drive diverted water onto Ms. Salerno's property and "created a wetland"
2. That the previously identified wetland adjacent to the studio building at 813 Edgecliff Drive should not have been declassified as a wetland
3. That the property owners at 813 Edgecliff have destroyed and poisoned the wetland on their property and that the City did not follow through with the requirement that they prepare and implement a restoration plan.
4. Furthermore, the City is "missing deadlines" and not providing proper enforcement of critical areas as they relate to wetland

Staff responses to each issue are identified below:

Issue #1: That the property owners at 813 Edgecliff Drive diverted water onto Ms. Salerno's property and "created a wetland"

Jeff Arango inspected the property at 738 Sandy Point Road with the property owner, Gordon Collins in March of 2011. Mr. Collins stated that he wasn't quite sure what the problem was that Ms. Salerno had contacted the planning department about. Mr. Collins took Mr. Arango to the northeast side of their property and through a gate onto the 813 Edgecliff Drive property where they observed a few inches of water in a ditch that was outside of the Salerno/Collins property's fence line. The water did not appear to be on the Salerno/Gordon property and did not appear to constitute a wetland. The Salerno/Collins property is uphill from the property at 813 Edgecliff and therefore cannot receive water from the 813 Edgecliff Drive property. The existence of water in that location was likely the result of the above average rainfall experienced during this past winter. The City was very responsive to Ms. Salerno's request to inspect the property, but did not observe a violation. The City took no further action because there was no violation for which enforcement was required. Jeff Arango re-inspected the area on July 28, 2011 and found the area to be completely dry and absent of any standing water reinforcing the notion that the existence of water was likely due to the above average rainfall in the winter of 2010/11.

Issue #2 That the previously identified wetland adjacent to the studio building at 813 Edgecliff Drive should not have been declassified as a wetland

The area in question was originally delineated as a wetland in 2007 by Steven Erickson of Frosty Hollow Ecological Restoration. The follow up study that declassified the wetland was prepared by Kevin Karlson of Habitat Ecology & Design. In the study by Kevin Karlson at Habitat Ecology & Design the following findings were generated:

1. Four soil logs were excavated to depths exceeding 18" none of the samples met the criteria established by the State of Washington, Army Corps of Engineers or Version 7.0 Field Indicators of Hydric Soils for soils or hydrology
2. It was not clear how the previous delineation resulted in a positive wetland determination, or what criteria or methods were used, but it was clear that the area in question "**does not meet wetland criteria**, and is upland"

The City of Langley issued a critical areas permit on December 15, 2010 that formally declassified the subject area as a wetland. In the findings of fact for the permit it is noted that the wetland delineation performed by Frosty Hollow Ecological Restoration (Steve Erickson) recommended that "the existing roof runoff be tight-lined to discharge onto the slope just northeast of the parking area on the north side of this structure." The report continued "it is unclear whether the subsurface flow to the south side of the Egghouse (accessory structure) by itself will be sufficient to maintain the exiting wetland without the added roof discharge. If it is not, rerouting the roof runoff will result in the disappearance of wetland #2. City personnel should be asked to confirm that this situation falls with the exemption for "artificial wetlands" in the Langley Municipal Code."

Based on the report by Habitat Ecology & Design staff determined that the area in question was in fact not a wetland and that it may have been artificially created due to accepting roof drainage.

Issue #3: That the property owners at 813 Edgecliff have destroyed and poisoned the wetland on their property and that the City did not follow through with the requirement that they prepare and implement a restoration plan.

The City issued a stop work order to the property owners at 813 Edgecliff Drive, Sieb and Cary Jurriaans, on June 16, 2009. The reasons for the stop work order were identified as:

- Use of herbicides on several blackberry bushes, horsetails and ferns in the wetland
- Several trees were removed (later determined to be done by the utility company within their established easement)

The City at that time required a restoration plan for the wetland. The applicable section of the Langley Municipal Code authorizing the city to require a restoration plan was not cited directly in the letter.

The City planning staff at the time met on-site on July 1, 2009 with the property owners and Susan Horton, Island County Noxious Weed Program Coordinator. They observed:

- The blackberry, horsetail and nettle along the Edgecliff Dr. frontage has been removed by hand
- The trees cut down by PSE in the utility easement had been removed and chipped for mulch
- Minor landscaping had occurred in the portion of the buffer that has historically been used as parking; small boulders were placed to outline the parking spaces.
- It was noted that rubbish had been removed from the wetland including several carpets, a kitchen sink and other building and household materials; in addition the previous owners had used plastic tarps to cover a large portion of the area east of the driveway, most likely as a way to inhibit growth.
- Mr. Horton's recommendations were:
 - Continue the hand removal of noxious plants, in particular the blackberry and Canadian Thistle
 - To the west of the driveway the plant management plan should be limited to hand removal of the remaining blackberries, leaving the horsetails, nettle, salmonberry and other species to flourish as understory ground cover.
- Cary Jurriaans will be responsible for preparing a plant management plan for City approval that addresses invasive plant removal and replanting

A plant management plan was submitted to the City on July 14, 2009. Former Planning Director Larry Cort responded on July 30, 2009 and requested a more detailed replanting plan for approval. It does not appear the more detailed planting plan was ever submitted to the City.

On April 11, 2011 new Community Planner Jeff Arango sent a letter to the Jurriaans requesting the replanting plan that was addressed in the July 30, 2009 letter from Larry Cort. As a follow up to the letter Jeff Arango and Planning Director Larry Kwarsick performed a site visit on April 18, 2011. Mr. Kwarsick and Mr. Arango observed native vegetation reasserting itself in the wetland areas that had previously been dominated by invasive species, particularly Himalayan Blackberry. The removal of Himalayan Blackberry by the property owners appeared to have significant beneficial functions on wetland functioning and in particular the flourishing of native wetland vegetation. Based on the site visit a follow up letter was sent to the Jurriaans on April 21, 2011 in which the new planning staff determined that the success of the invasive plant removal efforts in reestablishing native wetland plants negated the need for a replanting plan. The letter also expressed that the continuing removal of invasive species is allowed, but that mowing of the wetland and buffer must cease. Furthermore, it was suggested the owners contact Rob Hallbauer at the Whidbey Island Conservation District for input.

Issue #4 Furthermore, the City is "missing deadlines" and not providing proper enforcement of critical areas as they relate to wetland

There does appear to have been a gap in enforcement of wetland issues as it relates to the property at 813 Edgecliff and as cited above. The current planning staff has adequately addressed those issues and continues to make wetland issues a priority. The planning staff recently required a wetland study at the 909 Edgecliff Dr. property that resulted in the delineation of additional wetland area on the subject property. The staff has also begun preliminary discussions with the Planning Advisory Board (PAB) to perform further wetland reconnaissance and analysis along Edgecliff Drive to provide a comprehensive

delineation of wetlands in the area (See Appendix A for illustration of potential wetland study area). The delineation of wetlands in the Edgecliff Drive area is an important issue that affects the future development potential of the area and must be incorporated into the build out analysis that will be conducted city wide to determine the appropriate boundary of the urban growth area (UGS). The planning department is currently exploring funding and logistical options for performing the wetland analysis.