

# POULSBO CITY COUNCIL MEETING OF SEPTEMBER 2, 2009

## MINUTES

**PRESENT:** Mayor Quade; Councilmembers: Berry-Maraist, Crowder, Erickson, Lord, McGinty, Rudolph, Stern.  
Staff: Berezowsky, Berghoff, Boltz, Booher, McCluskey, Stephens, Swiney, Treacher.  
Also present: Project Manager Potter, City Attorney Haney, and Karla Boughton, kb Consulting.

### MAJOR BUSINESS ITEMS

- \* \* \* Constitution Week Proclamation
- \* \* \* International Fetal Alcohol Spectrum Disorders Awareness Day Proclamation
- \* \* \* American Legion Proclamation
- \* \* \* New City Hall update
- \* \* \* Minutes of July 8, 2009 City Council Meeting
- \* \* \* Minutes of July 15, 2009 City Council Meeting
- \* \* \* Centennial Park Pergolas
- \* \* \* Gaines Annexation – Initial Meeting
- \* \* \* Interlocal Agreement with Kitsap County for Support Services
- \* \* \* Workshop: Comprehensive Plan

### 1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Quade called the meeting to order in the Council Chambers at 7:01 PM and lead the Pledge of Allegiance.

### 2. MAYOR'S REPORT AND CHANGE TO AGENDA

- a. Constitution Week Proclamation: Mayor Quade read and proclaimed September 17-23, 2009 as Constitution Week, presenting the proclamation to Barbara Simmons.
- b. American Legion Proclamation: Mayor Quade read and proclaimed the month of September 2009 as American Legion Month, presenting the proclamation to Bob Thiele.

Thiele announced the 2<sup>nd</sup> Annual Freedom Walk will be held on September 11<sup>th</sup> at 12:00 PM, starting at the Poulsbo Parks and Recreation building.

- c. Mayor Quade stated the agreement for the American Legion to lease the vacant Municipal Court space has been drafted, and the American Legion would like to be able to move in tomorrow. City Attorney Haney provided an overview of the terms and conditions of the lease agreement.

Councilmember Stern questioned if the records were comprised in any way, i.e. fire, water damage, would the city be liable; Haney stated the city would not be liable for any damage or loss of the records.

**MOTION:** Crowder/Lord. Move to approve the lease agreement between the American Legion and City of Poulsbo, dated September 2, 2009. Motion carried unanimously.

- d. International Fetal Alcohol Spectrum Disorders Awareness Day Proclamation: Mayor Quade read and proclaimed September 9, 2009 as International Fetal Alcohol Spectrum Disorders Awareness Day.
- e. Mayor Quade informed the council, Administrative Assistant Hamrick, has been awarded a Certificate of Appreciation in recognition for earning the Professional Finance Officer award.
- f. New City Hall update: Project Manager Potter reported the concrete subcontractor has been replaced, and the work has progressed since. The utility work in the roads is almost complete, with minimal street closures anticipated. Council concurred to allow periodic street closures on 3<sup>rd</sup> Avenue, during the concrete work for the garage slab and unloading of materials.

### 3. MAYOR AND COUNCIL DISCUSSION

- a. Councilmember Stern, Rudolph and Crowder commented on the Town Hall meetings attended by Representative Inslee. The meeting was informational and well attended.
- b. Councilmember Crowder informed the council of the upcoming Susan G. Komen Breast Cancer 3-day walk; stating contributions can be made at Kitsap Bank.
- c. Councilmember Berry-Maraist commented on the Washington State Ferries public hearings regarding the proposed increased ferry fees and a super summer charge.

#### **4. COUNCIL COMMITTEE REPORTS (FOR ITEMS ON CURRENT AGENDA)**

- a.** Community Services Committee: Councilmember Lord reported on discussion and the recommendation for approval for the Centennial Park Pergolas.
- b.** Finance/Administration Committee: Councilmember Stern reported on the recommendation for approval for the Interlocal Agreement with Kitsap County for Support Services.

#### **5. CITIZEN COMMENTS**

- a.** Molly Lee, Poulsbo, recited RCW 35.13.340 and commented on documents she provided the council regarding the Gaines Annexation, and the inclusion of property outside of the urban growth area.
- b.** Jan Wold, Poulsbo, stated the Gaines Annexation should wait until the completion of the Comprehensive Plan and the city's high growth target. Wold requested Councilmember Berry-Maraist and Erickson recuse themselves from the annexation discussion.
- c.** Rita Hagwell, Poulsbo, expressed concerns with her continued ownership and access to Marelaine Lane; and not being notified of the Viking Avenue open house.
- d.** John Johnson, Poulsbo, commented on the increased property owner support of the Gaines Annexation. Johnson also commented on the dispute with Ms. Hagwell regarding her easement access.
- e.** Mark Kuhlman, Team 4 Engineering, stated the Gaines Annexation has a higher level of support than the previous application brought forward to council. Kuhlman stated there is a failing public water system in the area, therefore is in need of city urban services.
- f.** Kurt Nordberg, Poulsbo, commented on the cost to citizens who annex into the city, to hook up to water and sewer; stating a majority of the property owners opposes the annexation.
- g.** Bob Hawkinson commented on his support of the Gaines Annexation, and stated there is only one property owner, the Hensley's, within the annexation area, that is against the annexation. Hawkinson commented the failing water and septic systems in the area, and the need to revitalize west Poulsbo.

- h. Sherry Hagey stated she is requesting to have her property included in the Gaines Annexation, and urged the council to support the annexation application.
- i. Tom Anderson, North Kitsap School Board, commented on the small amount of information regarding schools and the school district's inclusion in the Comprehensive Plan. Anderson requested the city work with the school district on coordinating planning and facilities plans.
- j. Debra Purcell clarified the Hensley's are not in opposition to the Gaines Annexation; the Hopkins are in opposition.

## 6. CONSENT AGENDA

Councilmember Rudolph requested clarification on the amount of the change order, and if it was a single change order, and multiple change orders, as noted in the July 8, 2009 minutes. Project Manager Potter stated the change order was a single item in the amount of \$6,460.

**MOTION:** Rudolph/Stern. Move to approve the City Council minutes of July 8, 2009.

Motion carried unanimously.

Councilmember Stern noted the correct spelling for Craig Grescham, in the July 15, 2009 City Council minutes.

**MOTION:** Stern/McGinty. Move to approve the City Council minutes of July 15, 2009, as corrected.

Motion carried unanimously.

## 7. MAJOR BUSINESS ITEMS

### a. Centennial Park Pergolas

Parks and Recreation Director McCluskey stated on August 11, 2009 bids were opened for the Centennial Park Pergolas Project, and recommends to award the bid to Shovel & Company.

**MOTION:** Berry-Maraist/Crowder. Move to award the bid for the Centennial Park Pergola Project to Shovel & Company in the amount of \$12,624.75 and subject to the City Attorney's approval of the contract documents. Direct staff to move forward on any necessary budget amendments with the project and give the Mayor authority to authorize change orders up to 10% of the contract price.

Motion carried unanimously.

McCluskey also informed the council the Poulsbo Lions Club will be improving the two foot bridges in Centennial Park.

**b. Gaines Annexation – Initial Meeting**

Associate Planner Berghoff stated the city has received signatures representing 15% of the assessed value for the proposed Gaines annexation area. The annexation proposal was posted on the website, circulated to Kitsap County, Kitsap Regional Coordinating Council (KRCC) and city departments; none had any comments at this time. Berghoff stated the purpose of the initial meeting is for the council to determine if they will allow circulation of the petition, and determine the annexation boundary area; which can be larger, smaller or the area as requested. The property owner to the south of the annexation area has requested to be included in the annexation. The proponent surveyed the property owners within the requested annexation area, as well as to the north and south; based on the number of positive responses a potential alternative annexation area (approximately 70 acres) is being proposed by the Planning Department.

City Attorney Haney addressed several citizen comments made; with respect to RCW 35.13.340, as mentioned by Molly Lee; it is true that provision could be used to annex the remainder of a parcel if that parcel is not annexed totally during these annexation proceedings. But that provision can only be used, if in fact the entire parcel is within the Urban Growth Area (UGA). The Growth Management Act says cities cannot annex any property which is located outside of the UGA. The growth management act was enacted in 1991, the statute Ms. Lee is referring to is from 1989, as the later of the two statutes the Growth Management Act serves as a limitation on the ability to annex parcels under the statute that Ms. Lee cited. Assuming the remainder of the parcel is brought into the UGA or within the UGA, that process could indeed be used to annex the remainder of the property. If it is outside of the UGA, the provision cannot be used until the UGA is changed.

Haney also addressed Ms. Wold's comments on the appearance of fairness doctrine. The appearance of fairness doctrine only applies to quasi-judicial proceedings. The materials that were passed out by Ms. Wold, related to a conditional use permit, which is a quasi-judicial matter; annexations are not quasi-judicial, they are legislative in nature and the appearance of fairness does not apply. Haney stated in his opinion Councilmembers Berry-Maraist and Erickson have no reason why they would need to step down based on the appearance of fairness doctrine.

Haney further stated he would not comment on Ms. Hagwell's statements regarding her prescriptive easement, which are matters between private property owners, and since he is not the attorney for either party, would not want to comment. Prescriptive easements are very fact intensive. To show a prescriptive easement you have to show that you have used the property for a period of ten years, in a way which is open and adverse to the rights of the owner. If you are able to do that, then you can establish you have a prescription easement. Haney stated since he does not know the facts in this case, he would not comment on whether anyone has a prescriptive easement or not. Ms. Hagwell cited the case of Halgerson vs. the City of Bellevue, which Haney stated he is very familiar with, however he did not feel it had any application with this situation. The Halgerson case dealt with a subdivision. The owner of parcel adjacent to the subdivision claimed to have adversely possessed some of the property which was part of the subdivision application. The court decided because there is a provision in the state subdivision law that requires all owners of the property to specifically consent to the subdivision because people who adversely possess property, are owners to that property. Also because cities have no ability to determine who owns the property, only the courts can determine that. The City of Bellevue, in that case, was precluded from granting final plat approval, until such time as the title issue was resolved. The only way the Halgerson case would come into play in this particular issues, would be if there was a subdivision of the property, and Ms. Hagwell was claiming to have possessed part of the property or gain title to it, by adverse possession. Haney stated since he does not know the facts there, he cannot comment on the whether that is the case. However the Halgerson case does not apply to annexation actions.

Haney addressed Ms. Hagwell's comments regarding notice for the Viking Avenue project, stating there is no notice required to property owners for an initial meeting for annexation proponents. As the Council knows, the way the annexation process works, is people representing 10% of the assessed valuation of the proposed annexation area file a notice of intent, the statute says the legislative body of the city shall meet with the initiating parties within sixty days in order to determine whether the legislative body, the City Council, will authorize them to go forward and circulate an annexation petition. And that is the issue in front of the council, is the council willing to entertain this annexation and authorize the petition to go forward; and if so, what is the petition going to look like, what will the boundaries be, is there going to be pre-annexation zoning, and are they going to be subject to tax. All of those items need to be in the petition. That is the issue before the council and there is no notice that is required to individual property owners for this meeting. The City's annexation policies provide that once the notice of intent is received

and the petition is authorized, then the initiators of the annexation must hold a neighborhood meeting with all property owners who might be affected by the annexation. The annexation statues state before the council takes final action on the annexation there has to be a public hearing, and people must be notified of the public hearing, so they may come and provide the council with their input, prior to the council taking the annexation action. The courts have repeatedly held that is the due process that is required in an annexation, the public hearing at which people get to come and express their opinions before the council takes that action. Also there is due process involved in that you have to file the annexation with the Boundary Review board, people have an opportunity to request a hearing in front of the Boundary Review board, and the Boundary Review board has to review the annexation and approve it, if people request that public hearing. There is plenty of due process that is involved, that Ms. Hagwell and others will receive at some point during the process. But as far as the notice for tonight proceeding, there is no requirement to give notice.

Councilmember Erickson requested clarification that the community meeting notification requirements, as discussed in the annexation task force, will include the annexation area and associated area, as determined by council. Berghoff confirmed the council does determine the area to be notified outside of the annexation area.

Councilmember Rudolph commented the intent of the task force was for annexations such as this, the notification would go to at least to Finn Hill. Rudolph also requested clarification on the easement along the Watts property. Berghoff the easement is within the annexation area, and is a flag lot that accesses the Watts property.

Councilmember Berry-Maraist questioned why the city would not also annex Liberty Road; Berghoff stated the council could include the road. Councilmember McGinty requested staff's recommendation on the inclusion of Liberty Road. Berezowsky stated the recommendation is to include the road as part of this annexation.

Councilmember Lord questioned if the properties were annexed would they be vested to the old functional plans, Berezowsky stated vesting to the functional plans is based on development, not annexation.

Councilmember McGinty requested clarification on whether the proponents wanted the Hagey property included in the annexation. Berghoff stated the original application did not include the Hagey

property, however as the proponents have stated the support, and it is recommended to include the Hagey property.

Councilmember Crowder stated she does not feel this is the right time for an annexation; focus needs to be on the areas already established and in the city.

Councilmember McGinty recommended the annexation petition include the annexation of the Hagey property, the flag property and Liberty Road.

Councilmember Rudolph stated as a member of the annexation task force, most of the effort was focused on notification area and who pays for the annexation. It would be expected that key staff attend the annexation community meeting. Rudolph expressed his opposition to denying the annexation after the delay and time the applicants waited during the task force process.

**MOTION:** McGinty/Rudolph. Move to authorize the proponents to circulate an annexation petition, requiring the annexation assume its proportionate share of the City's bonded indebtedness, and requiring zoning per the Urban Growth Area Sub-Area Plan for the Gaines property, Hagey, as defined, and Liberty Road along the boundary, and define the notice area is the entire unincorporated west Poulsbo Urban Growth Area.  
Yes: Stern, Rudolph, Berry-Maraist, McGinty, Erickson, Lord.  
No: Crowder.  
Motion carried.

Councilmember Lord questioned if there are changes to the zoning codes through the Comprehensive Plan, would permits coming in be subject to the new regulations and zoning codes. Berezowsky stated until there is a development application submitted there is no vesting for zoning codes.

**c. Interlocal Agreement with Kitsap County for Support Services**

Information Technology (IT) Manager Treacher stated the Interlocal Agreement (ILA) would allow for IT support, and would also include support for GIS services, help desk support and engineering design for the new City Hall.

Bud Harris, Kitsap County IS Manager, commented on the many benefits of jurisdictions working together, specifically in the technology field.

Councilmember Rudolph requested clarification on why the GIS development and support component was included in the ILA, and if the minimum required hours stated in the agreement will be used. Treacher

stated the GIS components would allow multiple departments and projects to utilize the GIS services; the city does not currently have the technology or resources to support that. Berezowsky stated the Planning staff does not have the time to do some of the analysis that can be done using the GIS services.

**MOTION:** McGinty/Erickson. Move to approve the Interlocal Agreement KC-366-09 with Kitsap County for various technology support services. Motion carried unanimously.

Mayor Quade reconvened the meeting at 9:11 PM, after a 12-minute break.

**d. Workshop: Comprehensive Plan**

Planning Director Berezowsky stated the Planning Department received a number of comments from council members, and those have been organized by chapter in a discussion matrix, to allow for an organized discussion; Exhibit 60 identifies the 102 items/topics. Berezowsky requested the council take time to thoroughly review the matrix provided in the upcoming week.

Councilmember Rudolph stated the council should not discuss the details of ordinances, but rather discuss the policy documents and changes to the policies themselves.

Councilmember Erickson questioned the nature of the Comprehensive Plan for planning. The issues/concerns she raised were to put a concept in the policy for future discussion, and questioned the appropriateness of those items in the Comprehensive Plan. Berezowsky stated the Comprehensive Plan does not state specific regulations; it is a general policy document.

Karla Boughton, kb consulting, presented the revised workshop schedule, outlining which chapters and topics will be discussed on the previously identified dates.

**MOTION:** McGinty/Crowder. Move to adjourn. Councilmember Lord requested continued comments from citizen be allowed.

Yes: Stern, McGinty

No: Rudolph, Crowder, Berry-Maraist, Erickson, Lord.

**8. CITIZEN COMMENTS**

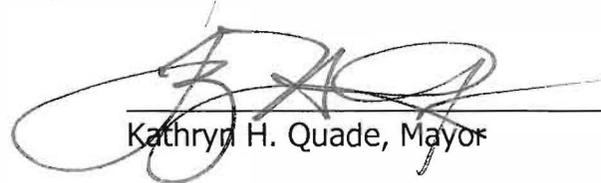
- a. Tom Anderson, North Kitsap School District, commented on the proposed Johnson Ridge development and the impact to the school district and city, due to the single access.

**9. COUNCILMEMBER COMMENTS**

- a. Councilmember Rudolph stated the Transportation 2040 special financing meeting will be held in the next few weeks, to focus on the funding for the plan.
- b. Councilmember Crowder stated there is a Kitsap Transit meeting at the Fire Station, September 3<sup>rd</sup>, to discuss proposed budget cuts.

**10. ADJOURNMENT**

**MOTION:** Stern/Rudolph. Move to adjourn at 9:42 PM.  
Motion carried unanimously.



Kathryn H. Quade, Mayor

ATTEST:



Jill A. Boltz, City Clerk