

MINUTES
Ferndale City Council Meeting
Held Monday, August 21, 2006
City Hall Annex – Council Chambers
7 p.m.

PRESENT BY ROLL CALL:

Councilmember Steve Oliver
Councilmember Ken Downey
Councilmember Keith Olson

Councilmember Mike Reilly
Councilmember Gary Jensen

ABSENT: Councilmember Mel Hansen (Excused)

STAFF:

City Administrator Greg Young
Planning Director Tom Black
Police Chief Michael Knapp
Deputy City Clerk Sylvia Stiles

City Clerk Linda Knutson
Public Works Director Bob Cecile
Associate Planner Michael Jones
City Attorney Richard Langabeer

Mayor Jerry Landcastle Presiding

STUDY SESSION 6 p.m. – 6:55 p.m.: DOWNTOWN ZONING AND DESIGN STANDARDS

Associate Planner Michael Jones reviewed for the Council some proposed zone changes for the downtown core and surrounding areas, as well as several proposed design standards for those areas. He noted that the design standards are still being refined for the most flexibility and “triggers”.

The Council had several questions regarding permitted uses versus conditional uses in the proposed zones. Also discussed were setbacks, building heights, parking issues, and street classifications.

This item will appear on the evening’s regular agenda as a public hearing.

CALL TO ORDER

Mayor Landcastle called the meeting to order at 7 p.m.

CONSENT AGENDA

The following consent agenda was moved for approval by Councilmember Oliver and seconded by Councilmember Downey:

- *Approval of Minutes of Council meeting of August 21, 2006*
- *Approval of Payroll of September 1, 2006 – Auto Deposit amount \$129,792.24; Checks #23194 - #23214 amount: \$51,769.75 Total Payroll: \$181,561.99 (Regular Payroll)*
- *Approval of Claims Run of September 5, 2006 – **Manual** Checks #60224 - #60232; amount: \$119,051.17; **Regular** Checks #60233 - #60314; amount: \$205,327.75, Totaling \$324,378.92.*

Motion passed unanimously.

PUBLIC COMMENT

Joan Aioldi, Whatcom County Libraries, urged the Council to consider quickly putting together some ballot language to allow citizens to vote on a “rollover” of the current Library bond which is about to conclude. This, in addition to the recent \$1 million donation, would enable the Library system to begin their needs assessment study, and put together additional grants and fundraising efforts.

Councilmember Reilly expressed concerns regarding rushing anything at this point, but understood the urgency to take advantage of both the donation and the momentum it has generated. He wondered if the Community Visioning Committee would be finished with their priority recommendation list, including the library, before the next Council meeting. **Brent Goodrich** responded that the Committee is meeting on September 14 and could get their recommendations to City Administration before the next Council

meeting. **Administrator Young** responded that the City will work with the City Attorney to put together language for the ballot for Council consideration at the September 18th meeting.

PROCLAMATION – ASSISTED LIVING WEEK

Mayor Landcastle proclaimed September 10 -16, 2006 as National Assisted Living Week in the City of Ferndale and presented a signed and sealed copy to representatives of the Louisa House.

PUBLIC HEARING – BLOMQUIST HEIGHTS PRELIMINART PLAT & PLAT VARIANCE

Planning Director Tom Black reviewed the long and somewhat complex history of the Blomquist annexation and preliminary plat, consisting of 99 single-family residential lots and 12 open space lots on approximately 68.7 acres in the RS 10.5 zone and located on the south side of Thornton Road, approximately 3,000 feet west of the intersection of Church Road and Thornton Road, addressed as 2717 Thornton Road.

The applicant requests City approval of a land division to create 99 lots for residential development. The application includes a Preliminary Plat and a Plat Variance. The project has previously been reviewed and approved by Whatcom County. After approval by the County of the plat and associated site specific rezone, some minor modifications were made to the plat. These changes were primarily to make the County-approved plat consistent with the City's subdivision standards.

The plat has previously been through a public hearing at the County Hearings Examiner. The applicant has agreed to a second public hearing so that the City Council will have an opportunity to review the project and consider conditions of approval. The County Council approved a site-specific rezone for the site from "Long Term Planning Area" to "Short Term Planning Area." This facilitated the County's participation in an Interlocal Agreement Amendment regarding annexation of the site into the City of Ferndale.

The plat variance request is to allow lots with less than the required frontage and one with reduced width. Frontage is specifically that portion of the lot along the public right-of-way. Lot width is the measurement across the buildable portion of the lot. Reduced frontage is requested for Lots 13, 14, 27, 39, 53, 60 and 94. Reduced lot width is requested for Lot 84. Due to the large number of wetlands, a variance request seems warranted. None of the proposed lots create unreasonable building pads or substantial difficulties for future development consistent with the zone. Staff would recommend that the plat variance be granted as part of the Preliminary Plat approval.

Two items were raised at the Planning & Judicial Committee that are not reflected in the staff report for this project. Those items are:

1. Concerns about future road connectivity, and
2. Trail access to the adjacent schools through the site.

At the request of the Planning and Judicial Committee, staff has drafted an alternative to Condition #24, which, at the Council's discretion, could be substituted as Condition #24A. This alternative condition would require full development of the intersection near the southeast corner of the site, and clearly indicate the future connection of the roads within Blomquist Heights to the neighborhood to the southeast.

A motion to approve with the alternative condition should indicate "...subject to the recommended conditions of approval with replacement of Condition #24 with Condition #24A."

24A. The street stub at the southeast corner of the plat, aligned with Nubgaard Road/Lakeridge Drive, shall be fully developed for a distance of 5 feet beyond the curb returns. A sign shall be installed at the end of the developed section that reads "Future Street Extension." The remaining right-of-way shall be created as a separate tract and indicated as a reserve tract for future public road right-of-way on the face of the plat. Said tract shall be maintained in a natural condition and shall be owned by the homeowners

association until such time as the City of Ferndale, with the development of the southerly and easterly properties, requires connectivity with the Blomquist Heights plat and the installation of the road, or until such time as the City shall acquire or cause to be acquired by eminent domain, the adjoining road right-of-way to connect to the proposed road right-of-way. At such time as the extended road is to be installed as provided herein, the homeowners association shall dedicate said tract to the City of Ferndale as public right-of-way. The homeowners association shall have no responsibility for construction costs of the roadway extension. The CC&R's for the project shall clearly indicate the status of the tract and the homeowners association's obligation to dedicate upon demand of the City.

Also at the request of the Planning & Judicial Committee, staff met with the Ferndale School District to determine the feasibility of a trail connection to the Horizon Middle School/Eagleridge Elementary School complex. The District is supportive of trail connections to schools for student access and also for general public access during non-school hours. One concern for the District is student safety and security while school is in session. The District is willing to work with the City and the developer to make a trail connection possible at the site. Specific District concerns are as follows:

- Trail lighting at the entry to school grounds and on school grounds,
- Clear line of sight from the buildings and appropriate landscaping so that the trail does not create a hiding place near student traffic areas, and
- Appropriate measures (signs, gates, or public education) that indicate access to school grounds during school hours is restricted.

It is feasible that a trail could be developed that created a viable connection that met the schools concerns.

Any trail connection would include some construction on District property, and the District has not budgeted for trail development. Costs would need paid through another source. Perhaps the developer would be willing to construct the entire trail connection even though a small portion extends off of the Blomquist Heights site and onto the school property.

If Council chooses to require a trail connection, the following condition is recommended as Condition # 33:

33. The applicant shall work with the Ferndale School District and the City to plan and construct a trail connection from the main road in the plat, at about the site of the proposed park, to the Horizon Middle School property, at about the location of the school's stormwater management pond. The trail shall be dedicated as a public easement. The applicant shall construct the trail prior to Final Plat approval.

Staff suggests that if Council creates a trail connection to the school, Council may wish to consider an east-west trail connection through the entire Blomquist Heights plat so that future development to the west can access the school site as well. However, a trail connection to the west is not advisable at this time due to the rural nature of the land to the west. A dead-end trail would likely initiate trespass and create an attractive nuisance. A trail easement may be beneficial for the future. The Council may wish to seek a trail easement across Tracts C, D, and E for a public trail, and if so, Council should seek the applicant's agreement to provide the trail easement without protest. A condition for a future trail could be as follows:

34. The applicant shall dedicate a public access easement over Tracts C, D, and E to the City of Ferndale for future trail construction and use. The easement can only be exercised for City development of a multi-use, non-motorized public trail, and not general access by the public to the open space tracts.

Mayor Landcastle reviewed the protocol governing public hearings.

Public Hearing Opened

Doug Robertson, Attorney for the Proponent, gave a brief history of the Plat and displayed a map showing the project has varied only slightly since its inception. He did note that he would revise condition #23 revised to read “with final construction plans” instead of “concurrent with the revised Preliminary Plat”. In relation to the Nubgaard stub-out, he felt that it was likely that that road would never be built out, unless the adjacent property owner decided to develop, and suggested a sunset clause be added to condition #24. And finally Robertson stated that the developer is in total agreement with the inclusion of trails and paths, and will work to accomplish that, but would like Council consideration of a reduction in Park impact fees to equalize the cost of installation.

Craig Parkinson, David Evans and Associates, echoed Mr. Robertson’s statements, noting that this process began in 2003. When asked by Councilmember Oliver to clarify why Mr. Robertson had said that the Nubgaard stub would never be built, Mr. Parkinson stated that the neighboring property is in the County and the property owner has shown no desire to annex.

Sean Hawes, Ferndale, stated that the idea of installing paths and trails within the plat is very consistent with the Community Visioning Committee’s hopes for future network of interconnecting trails within the City. He added that the School District’s desire to have the head of the pathway illuminated for safety reasons could be accommodated through alternative power sources, such as solar power.

Keith Reed, Butler Ditching District, stated that he had notified the City of the District’s concerns regarding runoff from this plat, as well as the School District’s property. He said his District is a small one with limited resources and they would like financial help from the City to address these impacts.

Dick Langabeer, Whatcom County, stated that he is the adjacent property owner that other speakers were referring to regarding the Nubgaard stub. He said that the development of a road probably won’t happen in the near future and that another neighboring property is a much more likely candidate for connectivity roads due to better topography and less wetlands. He stated that his preference for the stubbed road would be non-intrusive and natural because he did not want to funnel people onto his land, which contains a large pond that might be a danger to persons wandering onto his property. He noted that the developer has done a good job of “keeping his word” to the neighboring properties.

Public Hearing Closed

Council Discussion

The Council had many questions for the speakers and for City staff.

Councilmember Jensen wondered how to fairly estimate a Park Mitigation reduction for the proposed trails. Director Black felt that the issue should go to the Parks Board for a recommendation.

Motion

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to approve the Blomquist Heights Preliminary Plat and associate Plat Variances subject to the Findings of Fact contained in the staff reports, as well as the Conditions stated in the staff report, with the following modifications: Modify condition #23 to read: “with final construction plans” instead of “concurrent with the revised Preliminary Plat”; replace condition #24 with condition #24 A; Strike Condition #26, and add conditions #33 and #34, Renumber the conditions to synchronize with these changes. Motion passed four-to-one, with Councilmember Olson voting no.

PUBLIC HEARING: DOWNTOWN ZONING CHANGES AND DESIGN STANDARDS

As in the earlier Study Session, Associate Planner Michael Jones reviewed for the Council some proposed zone changes for the downtown core and surrounding areas, as well as several proposed design standards for those areas. He noted that the design standards are still being refined for the most flexibility and “triggers”. The Public Hearing will be opened, then continued to the Council meeting of October 2, at which time the ordinance will be ready for final Council consideration.

Mayor Landcastle stated that the protocol governing public hearings was again in effect.

Public Hearing Opened

Walt Pollman stated that as a current property owner and former business owner, he had serious concerns regarding parking, which he noted is a “necessity for a customer base”. He urged the City to study the impacts of these types of downtowns on parking issues and through-traffic.

Brent Goodrich liked many of the items in the proposal, but was worried about transportation issues. He added that he didn’t want to see businesses closing down in the downtown core.

Sean Hawes said that traffic has always been a concern for any ideas aimed at revitalizing and enhancing downtown, but that the City has nothing to lose and much to gain by moving forward with this proposal. He said that without a plan, downtown businesses are closing anyway, so implementing a plan would be a positive move towards revitalization.

Public Hearing Closed

It was moved by Councilmember Oliver and seconded by Councilmember Downey to continue the public hearing to the Council meeting of October 2nd. Motion passed unanimously.

PUBLIC HEARING: REVISIONS TO FERNDALE MUNICIPAL CODE - CLEAN UP

Planning Director Tom Black reviewed that he and the department planners have been working on language revisions to the FMC. Several items in all titles of the code have conflicting language and outdated provisions that can cause confusion when being interpreted. A great majority of the corrections of simple language changes that do not affect set policy.

Mayor Landcastle stated that the protocol governing public hearings was again in effect.

Public Hearing Opened

No one spoke

Public Hearing Closed

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to approve Ordinance #1396 replacing Title 14 of the FMC. Motion passed unanimously.

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to approve Ordinance #1397 amending Title 15 of the FMC to achieve internal consistence with Title 14 as recently amended. Motion passed unanimously.

It was moved by Councilmember Oliver and seconded by Councilmember Downey to approve Ordinance #1398 amending Title 16 of the FMC to achieve internal consistence with Title 14 as recently amended. Motion passed unanimously.

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to approve Ordinance #1399 amending Title 17 of the FMC to achieve internal consistence with Title 14 as recently amended. Motion passed unanimously.

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to approve Ordinance #1400 amending Title 18 of the FMC to achieve internal consistence with Title 14 as recently amended. Motion passed unanimously.

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to approve Ordinance #1401 amending Chapter 2.24 and Chapter 3.40 of the FMC to achieve internal consistence with Title 14 as recently amended. Motion passed unanimously.

PRESENTATION: LABOUNTY LID FEASIBILITY

The Council listened to a presentation from McCauley and Associates regarding the feasibility study they conducted on LaBounty for two potential Local Improvement Districts. Greg Mueller noted that the study showed that the street improvements for the larger section did not show a cost-to-benefit gain for the property owners. However, the short “punch-through” does have a cost-to-benefit gain, and it has the support of 100% of the affected property owners.

Administrator Young said that he had talked to County officials regarding potential grants and/or help with self financing the longer portion, but received a fairly non-committal response.

It was the consensus of the Council that staff begins the process of forming an LID for the short punch-through on LaBounty.

SOUTHWEST REGIONAL STORMWATER PLANS

Administrator Greg Young stated that the City has been talking with several developers regarding the construction of a Southwest Regional Stormwater facility located on City-owned land located on approximately twenty acres in the Douglas/Imhof area. The developers are willing to construct the facility and turn it over to the City in return for capacity credits. The City would retain a substantial amount of current any future capacity requirements as well.

Councilmember Jensen stated that he wanted assurance that the construction of the facility included attractive, interactive and safe features such as trails and pathways.

Councilmember Oliver wanted the City to quantify capacity needs well into the future.

Public Works Director Cecile wished to correct an earlier statement that this facility could accommodate the Church Road area, which he said had not been anticipated.

It was moved by Councilmember Jensen and seconded by Councilmember Reilly to move forward with the concept of a developer agreement, with the inclusion of the concerns voiced in the Council’s discussion. Motion passed unanimously.

REQUEST FOR RECONSIDERATION – VISTA RIDGE DIVISION 2 PUD/PLAT AMENDMENT DENIAL - DAN BARLEAN

Planning Director Black reviewed that on August 7th the Council had denied the request by Mr. Barlean to amend the Vista Ridge Division 2 PUD, adding two homes to his large lot. At the Council meeting of August 21st, the Council issued Findings of Fact for the record as the basis for that denial. Mr. Barlean has the right to request that the Council reconsider that denial at this Council meeting. He had provided to the Council a letter from his attorney outlining his appeal to the Council.

***No motion was made for reconsideration by the prevailing side.
(Note to minutes: See last action of this meeting, following the Executive session)***

MT. VIEW LATECOMERS AGREEMENT

Public Works Director Bob Cecile stated that at the last regular Council meeting, the Council had remanded this item back to staff with the following directions:

Council Discussion of August 21 (Public Hearing)

1. Remove parcels 4 and 5 from the assessment list.
2. Re-calculate the remaining parcels with an acre/pro-rata formula.

3. Consider maximum potential units per parcel calculation.
4. Define what circumstances, such as a remodel or addition, would trigger a connection requirement and latecomer payment.

MOTION TO EXTEND MEETING

At 10 p.m. it was moved by Councilmember Jensen and seconded by Councilmember Oliver to extend the meeting to 10:30 p.m. Motion passed four-to-one with Councilmember Reilly voting no.

MT. VIEW LATECOMERS AGREEMENT (Continued)

Public Works Position

Public Works Program Specialist Radder did an extensive review of City and State regulations regarding latecomer agreements. According to the latecomer provisions spelled out in the FMC, the following rules apply:

The City agrees to enter into a latecomer agreement in accordance with Washington State Code after receiving a bill of sale.

Once the sewer line has been accepted, the City will supply sewer service to the owner/developer upon payment of applicable connection and usage fee(s).

During the fifteen (15) year period of the latecomer agreement, the City will reimburse the owner/developer the pro rata share of the construction costs.

Property owners who connect to or use the line will be charged a pro rate share of the costs of the construction of the sewer line.

No one will use the sewer line until their full latecomer amount has been paid to the City, and the City will forward payments made in accordance with the latecomer agreement to the owner/developer. The Code does not provide for the segregation of the latecomer fee based on the reason for the connection.

Specialist Radder also notes that all current and most past latecomer agreements on the City's books use linear footage as the methodology for computing assessments, and thus becomes the City's current and past practice.

City Attorney's Opinion:

Also reviewed was a copy of the easement that Mr. Irwin referred to during the public hearing on August 21st. A written attorney's opinion was submitted by City Attorney Langabeer regarding same.

Mr. Langabeer's opinions on the various Council concerns are:

1. The Irwin easement specifically provides there is no assessment **only in connection with the sanitary interceptor sewer installed within the easement.** The Easement Agreement did not except or exempt assessments for any future or additional sewer lines. Mt. Langabeer does state that the Council does have "broad discretion" in determining the scope and extent of the recovery area subject to a latecomers agreement and therefore has some flexibility in determining whether parcels 4 and 5 should be in the recovery area.
2. On the question of entering into recovery agreements, Mr. Langabeer's opinion is that state statute provides that cities "...may (not shall) contract with owners of real estate for construction of...water or sewer facilities." He adds that since the City has flexibility in entering into recovery (latecomer) agreements, it makes sense that it would also have flexibility in determining the percentage of costs to be recovered (fifty percent of the cost, for example).
3. Regarding what constitutes a "fair pro-rata share" Mr. Langabeer emphasizes that "fair" is the operative word, and again Council has discretion in deciding what's "fair".
4. Regarding Councilmember Hansen's question on what "triggers" the requirement to hook-up to sewer. Mr. Langabeer suggests the following statement be added to the latecomers agreement: "This recovery agreement applies only to new residential construction or new commercial construction, meaning the

construction of residential or commercial structures that were not situated on any property subject to this agreement at the time the City of Ferndale approved this agreement. If, at the time this recovery agreement is approved by the City of Ferndale, there is an existing residential structure that is not connected to the Ferndale sewer system, and because of the installation of the sewer interceptor line that the residential structure may be required for any reason in the future to connect to the sewer interceptor line, such connection is hereby excepted from the recovery agreement.” Mr. Langabeer suggests that the Council could use linear footage as a basis to determine a fair pro-rata share of the cost for each of the parties and at the same time except existing residential structures from the recovery agreement if they are required to connect to the sewer line.

MOTION TO EXTEND MEETING

At 10:30 p.m. it was moved by Councilmember Jensen and seconded by Councilmember Oliver to extend the meeting to 10:45 p.m. Motion passed four-to-one with Councilmember Reilly voting no.

MT. VIEW LATECOMERS AGREEMENT (Continued)

Committee Analysis

After a lengthy discussion, the Committee determined that Council should consider the following in determining the scope and terms of the proposed latecomers agreement:

1. A vote on whether to include or exclude parcels 4 and/or 5 from the latecomers.
2. A vote on whether to use linear feet as the methodology in determining pro rata assessments.
3. What triggers the need to connect to sewer, thus paying latecomer fees and sewer connection fees,(i.e. septic tank failure, development, change in the footprint of existing structure, etc.

It was moved by Councilmember Reilly and seconded by Councilmember Jensen to exclude parcels four and five from the Latecomers agreement. Motion passed unanimously.

It was moved by Councilmember Reilly and seconded by Councilmember Olson to calculate assessments using the square footage method. Motion failed three-to-two with Councilmembers Olson and Reilly voting yes.

It was moved by Councilmember Downey and seconded by Councilmember Jensen to use the linear foot method to calculate assessments. Motion passed three-to-two with Councilmembers Reilly and Olson voting no.

It was moved by Councilmember Reilly and seconded by Councilmember Oliver that the “triggers” for connection and latecomer payments are septic failure, development, and change of footprint. Motion failed two-to-three, with Councilmembers Reilly and Oliver voting yes.

It was moved by Councilmember Oliver and seconded by Councilmember Jensen to use the following language regarding what “triggers” connection and latecomer payments: “This recovery agreement applies only to new residential construction or new commercial construction, meaning the construction of residential or commercial structures that were not situated on any property subject to this agreement at the time the City of Ferndale approved this agreement. If, at the time this recovery agreement is approved by the City of Ferndale, there is an existing residential structure that is not connected to the Ferndale sewer system, and because of the installation of the sewer interceptor line that the residential structure may be required for any reason in the future to connect to the sewer interceptor line, such connection is hereby excepted from the recovery agreement.” Motion passed unanimously.

MAIN AND DOUGLAS SIGNALIZATION

Director Cecile updated that Council that the project known as the Douglas/Main Signalization Project was put on hold a few years ago, and the federal dollars transferred to the Main Street Project at a time

when there appeared to be a shortage of funds. The City has transferred the unused fed monies in the amount of \$285,000 back to the Main Street Project.

Recently the City was notified by the School District that they were awarded \$95,000 as part of a "Safe Routes to School" grant program which they would like to use towards the Douglas/Main Signalization Project. Director Cecile believes that this is a financially viable plan with almost all the pieces, including right-of-way, in place necessary to revive this project. He is asking for Council approval to get a scope of services for final design and bid documents, and an engineer's estimate of probable costs.

It was moved by Councilmember Oliver and seconded by Councilmember Reilly to authorize \$53,021.00 to complete design of this project. Motion passed unanimously.

MOTION TO EXTEND MEETING

At 10:45 p.m. it was moved by Councilmember Jensen and seconded by Councilmember Downey to extend the meeting to 11 p.m. Motion passed four-to-one with Councilmember Reilly voting no.

STATUS OF TOURNAMENT DISPUTE BETWEEN OSA AND BBB

Don Imhof, President of the Old Settlers Association was present to update the Council that the Old Settlers and the Bob's Burger and Brew Baseball Team have worked out their differences regarding the Tournament that occurs on the OSA Picnic weekend. He said that OSA will host the event, and BBB will sponsor the tournament, with no fees paid to OSA. If at any point in the future BBB decides they no longer want to do this tournament, OSA will receive first rights (and first right of refusal).

EXECUTIVE SESSION

At 10:55 p.m. the Council adjourned to executive session for approximately ten minutes to discuss potential litigation. It was anticipated that action could occur upon reconvening.

The Council reconvened at 11:05 p.m.

MOTION FOR RECONSIDERATION – VISTA RIDGE DIVISION 2 PLAT AMENDMENT – BARLEAN

It was moved by Councilmember Reilly and seconded by Councilmember Jensen to reconsider the Council's denial of the Barlean Vista Ridge Division 2 PUD/Plat Amendment on August 7th and August 21st. Motion passed unanimously.

It was moved by Councilmember Reilly and seconded by Councilmember Downey to send the issue back to Planning and Judicial for further study.

(Note to minutes: A vote for reconsideration puts the matter back in front of the Council as a new item and negates all past actions.)

ADJOURNMENT

There being no further scheduled City business the meeting was adjourned at 11:10 p.m.

ATTEST:

Jerry Landcastle, Mayor

Linda Knutson, City Clerk

ATTACHMENT A:

**MINUTES
Streets and Utilities Committee Meeting**

**Held Wednesday, August 30, 2006
City Hall Conference Room
7:30 a.m.**

PRESENT: Councilmembers Oliver and Jensen
ADMINISTRATION: Greg Young, Linda Knutson, Bob Cecile

MT. VIEW LATECOMER AGREEMENT AND BILL OF SALE

Public Works Director Bob Cecile stated that at the last regular Council meeting, the Council had remanded this item back to staff with the following directions:

Council Discussion of August 21 (Public Hearing)

1. Remove parcels 4 and 5 from the assessment list.
2. Re-calculate the remaining parcels with an acre/pro-rata formula.
3. Consider maximum potential units per parcel calculation.
4. Define what circumstances, such as a remodel or addition, would trigger a connection requirement and latecomer payment.

Public Works Position

Public Works Program Specialist Radder did an extensive review of City and State regulations regarding latecomer agreements. According to the latecomer provisions spelled out in the FMC, the following rules apply:

The City agrees to enter into a latecomer agreement in accordance with Washington State Code after receiving a bill of sale.

Once the sewer line has been accepted, the City will supply sewer service to the owner/developer upon payment of applicable connection and usage fee(s).

During the fifteen (15) year period of the latecomer agreement, the City will reimburse the owner/developer the pro rata share of the construction costs.

Property owners who connect to or use the line will be charged a pro rate share of the costs of the construction of the sewer line.

No one will use the sewer line until their full latecomer amount has been paid to the City, and the City will forward payments made in accordance with the latecomer agreement to the owner/developer. The Code does not provide for the segregation of the latecomer fee based on the reason for the connection.

Specialist Radder also notes that all current and most past latecomer agreements on the City's books use linear footage as the methodology for computing assessments, and thus becomes the City's current and past practice.

City Attorney's Opinion:

The Committee also reviewed a copy of the easement that Mr. Irwin referred to during the public hearing on August 21st. A written attorney's opinion was submitted by City Attorney Langabeer regarding same. Mr. Langabeer's opinions on the various Council concerns are:

1. The Irwin easement specifically provides there is no assessment **only in connection with the sanitary interceptor sewer installed within the easement.** The Easement Agreement did not except or exempt assessments for any future or additional sewer lines. Mt. Langabeer does state that the Council does have "broad discretion" in determining the scope and extent of the recovery area subject to a latecomers agreement and therefore has some flexibility in determining whether parcels 4 and 5 should be in the recovery area.

2. On the question of entering into recovery agreements, Mr. Langabeer's opinion is that state statute provides that cities "...may (not shall) contract with owners of real estate for construction of...water or sewer facilities." He adds that since the City has flexibility in entering into recovery (latecomer)

agreements, it makes sense that it would also have flexibility in determining the percentage of costs to be recovered (fifty percent of the cost, for example).

3. Regarding what constitutes a “fair pro-rata share” Mr. Langabeer emphasizes that “fair” is the operative word, and again Council has discretion in deciding what’s “fair”.

4. Regarding Councilmember Hansen’s question on what “triggers” the requirement to hook-up to sewer. Mr. Langabeer suggests the following statement be added to the latecomers agreement: “This recovery agreement applies only to new residential construction or new commercial construction, meaning the construction of residential or commercial structures that were not situated on any property subject to this agreement at the time the City of Ferndale approved this agreement. If, at the time this recovery agreement is approved by the City of Ferndale, there is an existing residential structure that is not connected to the Ferndale sewer system, and because of the installation of the sewer interceptor line that the residential structure may be required for any reason in the future to connect to the sewer interceptor line, such connection is hereby excepted from the recovery agreement.” Mr. Langabeer suggests that the Council could use linear footage as a basis to determine a fair pro-rata share of the cost for each of the parties and at the same time except existing residential structures from the recovery agreement if they are required to connect to the sewer line.

Committee Analysis

After a lengthy discussion, ***the Committee determined that Council should consider the following in determining the scope and terms of the proposed latecomers agreement:***

- 1. A vote on whether to include or exclude parcels 4 and/or 5 from the latecomers.***
- 2. A vote on whether to use linear feet as the methodology in determining pro rata assessments.***
- 3. What triggers the need to connect to sewer, thus paying latecomer fees and sewer connection fees,(i.e. septic tank failure, development, change in the footprint of existing structure, etc.***

This will go forward to the full Council for the September 5th meeting.

LABOUNTY LOCAL IMPROVEMENT DISTRICT FEASIBILITY

Administrator Young reviewed that there will be a presentation at the next Council meeting regarding the formation of a LaBounty Local Improvement District. The short portion of the proposed LID (the “punch-through” to Slater) has been deemed financial feasible (cost-to-benefit formula), and has 100% of the affected property owner’s support. The longer street improvement portion of the LID has been determined to have a one-to-one cost/benefit and is not deemed feasible. The City would recommend moving forward with the formation of the LID “punch-through”. On the street improvement portion it would be necessary to either abandon the project or look into a possible EDI grant. Administrator Young will be ready to submit documents to request EDI grant funding (in the \$800,000 range) after talking to County officials supporting such a request.

McCauley and Associates will present this information in more detail at the Council meeting of September 5th.

ENGINEERING PROPOSAL FOR THE SW REGIONAL STORMWATER FACILITY

Administrator Young indicated that the City has been talking to several of the developers who would benefit from the proposed SW Regional Stormwater facility. Those developers have expressed a strong interest in designing and constructing the facility themselves, then turning the facility over to the City for operation and maintenance (with the developers sharing in some of the operating costs).

The Committee felt that this was a sensible and cost-effective approach to the facility, but wanted to remain in the process of making this project aesthetically pleasing, citizen/pedestrian-friendly, and safely designed.

This item will be presented as a conceptual overview, and alternative to the previous OTAK presentation, to the full Council at the September 5th meeting.

MAIN AND DOUGLAS – DESIGN, ENGINEERING AND FUNDING

Public Works Director Cecile stated that preliminary design and engineering numbers have been received from Reichhardt and Ebe for the abbreviated Main and Douglas Signalization project. The design cost is estimated at \$53, 020.96 and preliminary project costs at \$776, 945.

The City has \$285,000 in grant funds and \$95,000 for the Ferndale School District, leaving about \$450,000 needed to complete the project. The City, with Council approval, would apply for COG funding, at an 80-20 match.

It was moved by Councilmember Jensen and seconded by Councilmember Downey to move forward staff's request for approval of \$53,020.96 for project design. Motion passed.

Public Works Director Cecile will bring to the meeting a drawing of the proposed project.

ATTACHMENT B:

**MINUTES
Recreation and Finance Committee Meeting
Held Wednesday, August 30, 2006
City Hall Conference Room
8:30 a.m.**

PRESENT: Councilmembers Jensen and Downey
ADMINISTRATION: Greg Young, Linda Knutson

2007 BUDGET CALENDAR

City Administrator Greg Young briefed the Committee on the calendar for the upcoming 2007 Budget process. He added that four candidates for the Treasurer's position have been scheduled for interviews on September 8th, and that the State Auditors will be on site on September 12th.

SCHEDULING DISPUTE: OLD SETTLERS AND BOB'S BURGER AND BREW

Representatives from the Old Settlers Association and the Bob's Burger and Brew Baseball Team will be meeting later on this day to work out a solution over tournament scheduling on the weekend of the Old Settlers Picnic.

The Council will be updated as to the progress of these talks, and the Parks Board will provide some input from the City's perspective.

ATTACHMENT C:

**MINUTES
Planning and Judicial Committee Meeting
Held Wednesday, August 30, 2006
City Hall Conference Room
9 a.m.**

PRESENT: Councilmembers Jensen and Downey
ADMINISTRATION: Greg Young, Linda Knutson, Michael Jones

PUBLIC HEARING – BLOMQUIST HEIGHTS PRELIMINARY PLAT

Associate Planner Michael Jones reviewed the long and somewhat complex history of the Blomquist annexation and preliminary plat, consisting of 99 single-family residential lots and 12 open space lots on

approximately 68.7 acres in the RS 10.5 zone and located on the south side of Thornton Road, approximately 3,000 feet west of the intersection of Church Road and Thornton Road, addressed as 2717 Thornton Road.

The applicant requests City approval of a land division to create 99 lots for residential development. The application includes a Preliminary Plat and a Plat Variance. The project has previously been reviewed and approved by Whatcom County. After approval by the County of the plat and associated site specific rezone, some minor modifications were made to the plat. These changes were primarily to make the County-approved plat consistent with the City's subdivision standards.

The plat has previously been through a public hearing at the County Hearings Examiner. The applicant has agreed to a second public hearing so that the City Council will have an opportunity to review the project and consider conditions of approval. The County Council approved a site-specific rezone for the site from "Long Term Planning Area" to "Short Term Planning Area." This facilitated the County's participation in an Interlocal Agreement Amendment regarding annexation of the site into the City of Ferndale.

The plat variance request is to allow lots with less than the required frontage and one with reduced width. Frontage is specifically that portion of the lot along the public right-of-way. Lot width is the measurement across the buildable portion of the lot. Reduced frontage is requested for Lots 13, 14, 27, 39, 53, 60 and 94. Reduced lot width is requested for Lot 84. Due to the large number of wetlands, a variance request seems warranted. None of the proposed lots create unreasonable building pads or substantial difficulties for future development consistent with the zone. Staff would recommend that the plat variance be granted as part of the Preliminary Plat approval.

The Committee had several questions regarding circulation and roadways within the proposed plat. This project develops a substantial network of streets at the City's western edge; however, until additional areas are developed, the project functions as one very large cul-de-sac. At this time, the connections are through undeveloped lots and residential areas located in the County. Some of the anticipated connections shown are on private streets and driveways, where the public currently has no right to pass. Staff proposes that the existing County roads and private drives located in the UGA should be considered as the most likely location for future City streets. Connection to the south, east, and west are all important, so that as the City grows a grid-like pattern of streets develops giving traffic the ability to spread out. As the City residents are all too aware, traffic bottlenecks due to limited connection points create traffic jams, delay, frustration and public safety concerns.

The proposed project provides two connection points to the east, one to the west, and one to the south. Staff feels that this is the minimum level of connectivity necessary. Additional connections, particularly to the west would be desirable, but the large wetland areas make that difficult, possibly infeasible. The streets stubs align so that they provide future connection to Church Road (through adjacent parcels and via Nubgaard Road/Lakeridge Drive), to Mountainview Road (through adjacent parcels via a private drive and via Nubgaard Road/Storr Road), and to the west through adjacent parcels via Dalyce Drive). Again, staff notes that these are future connections; possibly well into the future. At this time the public has no right to pass over these adjacent private drives and private lands. Nonetheless, these future connections are vital to developing a cohesive street network in the UGA. A revised lot pattern and street alignment has been developed, at staff request, for the southwest corner of the plat (Exhibit 7). The curve in the road allows for a more direct alignment with the off-site, private drive (Dalyce Drive).

The street stub at the southeast corner creates some logistical difficulties related to construction. The street stub at the southeast corner is long (400+ feet) and would be built as a half width road. This long stub has the potential to cause public safety issues. The long dead-end would be a likely place for illegal dumping, and other illicit activity. It would remain a half-width street until the parcel to the south develops. Due to these circumstances, staff recommends the street not be built at this time, but that a mechanism is put in place to allow the City to obtain right-of-way in the future without expense and

without exercising eminent domain. The adjacent property owner has proposed language for a future dedication that would allow the homeowners association to hold title to the property until the City requested the property for right-of-way dedication. Both the project applicant and the adjacent owner have worked to develop the agreement.

A condition of approval is included to require standard payment of park impact mitigation fees. A residential plat has no requirement for providing open space, except when park dedication is required. However, the proposed project includes large areas of open space, including a private, homeowners association controlled park.

The project is expected to generate 947 trips per day including 100 trips per p.m. peak hour. This is a substantial increase over the existing trip generation; however, it is well below what could be expected from the zoning-allowed density.

All new units will be required to pay an additional \$1,000 sewer surcharge, to be used to pay down the construction costs of the SW Sewer Interceptor Project. Numerous storm water ponds will be scattered throughout the site and intermingled with the wetland/mitigation areas.

Taken as a whole, it appears that the proposed Preliminary Plat meets the hearing requirements as specified by Municipal Code sections 17.20.050.A through 17.20.050.C6.

Based on the above analysis, staff recommends that the Blomquist Heights Preliminary Plat and Plat Variance be APPROVED. Staff further recommends that any such approval be subject to the Conditions of Approval listed in the staff report attached to the agenda bill.

The Committee asked that staff refine condition number 24, with a very minor reconfiguration of the Nubgaard Stub. They also would like to see a trail plan incorporated in a suitable location within the plat. Planner Jones will coordinate these suggestions in preparation for Tuesday's public hearing.

STUDY SESSION ON DOWNTOWN ZONING CHANGES

Associate Planner Michael Jones stated that Planning staff will be presenting a one-hour study session on the proposed changes to the downtown business area that would affect design standards, revise one zone, and create two new zones. After Council review, a public hearing is scheduled, and staff is asking that that public hearing be continued /postponed to October 21st, as well as delaying Ordinance consideration to that date. This will allow staff to fine-tune the existing documentation, and make it fully available to the public for review, via several different medias.

OTHER

Councilmember Gary Jensen noted that the recent Old Settlers Auction raised nearly \$15,000 which might be used for structure and pathway improvements at Pioneer Park.