

**CITY OF LAKE STEVENS  
CITY COUNCIL REGULAR MEETING MINUTES**

Tuesday, April 25, 2017

Lake Stevens School District Educational Service Center (Admin. Bldg.)  
12309 22<sup>nd</sup> Street N.E. Lake Stevens

CALL TO ORDER: 7:00 p.m. by Mayor John Spencer

ELECTED OFFICIALS PRESENT: Councilmembers Kim Daughtry, Gary Petershagen, Kurt Hilt, Todd Welch, Rauchel McDaniel, Kathy Holder, Marcus Tageant

ELECTED OFFICIALS ABSENT: None.

STAFF MEMBERS PRESENT: City Administrator Gene Brazel, Finance Director/City Clerk Barb Stevens, Community Development Director Russ Wright, Public Works Director Eric Durpos, Police Commander Ron Brooks, Deputy City Clerk Kathy Pugh, City Attorney Grant Weed, Economic Development Coordinator Jeanie Ashe, Receptionist Carin Hinman, Permit Specialist Jennie Fenrich

OTHERS: Fire Chief Kevin O'Brien, Snohomish County Councilman Sam Low, Representative John Lovick, Representative Mark Harmsworth, Senator Steve Hobbs, Lourdes "Alfie" Alvarado-Ramos, Washington State Department of Veteran Affairs, Ben Studley, Wounded Warriors/Congresswoman Suzan DelBene's Staff,

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**Pledge of Allegiance:** Council President Kurt Hilt introduced Abigail McCarthy, a fifth grader at Mt. Pilchuck Elementary School, who led the Pledge of Allegiance.

**Roll Call:** All present.

Councilmember Daughtry led a moment of silence in recognition of former City Clerk Norma Scott who passed away on April 24, 2017.

**Approval of Agenda:** Council President Hilt said the following items are being removed from tonight's agenda: Marysville Court Presentation under Guest Business, Consent Item E: Approve Appointment of Design Review Board Alternate Sammie Thurber to Design Review Board Vacancy, Action Item A, Approve Professional Services Agreement with Lochner for 24<sup>th</sup> Street Design, and Action Item C, Revised Council Procedures.

Moved by Councilmember McDaniel, seconded by Councilmember Petershagen to approve the agenda as revised. On vote the motion carried (7-0-0-0).

**Employee Recognition:** Mayor Spencer recognized Steve Edin, Human Resources Director, for 11 years of service. Mr. Edin accepted the position of Management Services Director with the City of Mukilteo.

Mayor Spencer next recognized the following employees: Carin Hinman, 30 years, Police Officer Dennis Irwin who is not present, 10 years, Permit Specialist Jennie Fenrich, 10 years, and Public Works crewmember Rex Ubert, who is not present, 10 years.

**Special Action Item:** Councilmember Kurt Hilt introduced Ordinance 996, creating a Veterans Commission. Councilmember Hilt said the commission will work to provide support and opportunities to veterans and their families in the Lake Stevens community.

**MOTION:** Moved by Councilmember Daughtry, seconded by Councilmember Tageant, to approve Ordinance 996.

Council President Hilt then welcomed Ben Studley of Wounded Warriors and Congresswoman Suzan DelBene's office, Alfie Lourdes of the Washington State Department of Veterans Affairs, Senator Steve Hobbs, Representative John Lovick and Representative Mark Harmsworth, and invited their comments.

Mr. Studley works in the office of Congresswoman Suzan DelBene as her veteran's advisor. He works with the Veterans Administration daily to improve what is being done for veterans. He formerly lived in Lake Stevens and raised his family here; he has a vested interest in the community. Mr. Studley said it is important to take care of veterans when they make the transition from military to civilian life. Veterans continue to serve and it is important for communities to create an environment that allows for this service.

Lourdes "Alfie" Alvarado-Ramos, Washington State Department of Veteran Affairs, said that the character of a city is defined by the way it treats its veterans, and this ordinance speaks volumes about the city's commitment to veterans and to its veteran allies. Ms. Alvarado Ramos congratulated the city on moving forward with this ordinance to create a welcoming environment for veterans. She further commented that this type of organization also helps bring services to veterans in the community and that the Department of Veteran Affairs is committed to working with the city to leverage resources to ensure that veterans and their families receive services to assist them.

Senator Steve Hobbs said he became involved in politics because he wanted to contribute to the community. He is proud of the projects that have been brought to Lake Stevens. Senator Hobbs said that the Transportation package that was passed on April 21, 2017 included \$69.5 million for improvements to the SR 9/SR 204 intersection. The Transportation budget also includes funding in the amount of \$466,000 for improvements for 91<sup>st</sup> Avenue and 4<sup>th</sup> Street NE, including sidewalks, curbs, ramping and signage, as part of the Safe Routes to School grant funding program. Also, there is \$420,000 in funding for improvements to the intersection of SR 9 and 4<sup>th</sup> Street. Senator Hobbs also said there are funds set aside for a study to determine how to pay for improvements to the U.S. Trestle, and then reviewed some of the various funding options that might be considered. He also said there is funding for a connector at 84<sup>th</sup> Street for the Centennial Trail. Senator Hobbs thanked everyone for their support.

Representative Lovick thanked everyone for their support of veterans.

Representative Harmsworth commented briefly on the budget and then thanked veterans for their service and the Council for their support of veterans.

County Councilman Sam Low thanked the Council for passing this ordinance. He then recognized and thanked Councilmembers Holder, Tageant, Welch and Daughtry, as well as all veterans in the audience, for their service to the country. Councilmember Low said this is a proud moment for the City of Lake Stevens.

Councilmember Daughtry requested that all veterans stand and be recognized.

Council President Hilt thanked Director Alvarado Ramos for the commitment from the Department of Veterans Affairs to join forces with the city to provide services to veterans. He shared the following inscription on the Franklin D. Roosevelt Memorial Wall in Washington, DC: "I propose to create a civilian conservation corps to be used in simple work. More important, however than the material gains will be the moral and spiritual value of such work."

Mayor Spencer commented the goal is to make this a community where veterans thrive.

**VOTE:** On vote the motion to approve Ordinance 996, creating a Veterans Commission, carried unanimously (7-0-0-0).

Mayor Spencer signed Ordinance 996 and then announced a brief recess beginning at 7:28 p.m. The meeting reconvened at 7:38 p.m.

#### **Citizen Comments:**

Julie Baldwin, 1808 – 131<sup>st</sup> Drive NE, Lake Stevens, commented on her next-door neighbors' potentially dangerous dogs and expressed concern that the dogs are a safety concern for herself and her neighborhood. She requested the animal laws be made more stringent and provide more teeth to police officers in protecting the community from potentially dangerous dogs.

Michael Fear, 820 – 99<sup>th</sup> Avenue SE, Lake Stevens, said that the Westlake Crossing development continues to be troublesome to neighbors. He specifically commented on water pumps that work and emit loud noises occasionally at night.. Mr Fear commented electric pumps could solve this problem, and this developer needs to follow the laws.

Dick Todd, 825 – 9<sup>th</sup> Avenue SE, Lake Stevens, said he is aware the City is conducting an onsite meeting with the developer and at least three regulatory agencies including Department of Ecology, Department of Fish & Wildlife, and the US Army Corps of Engineers at Westlake Crossing on April 27. Mr. Todd requested that the Mayor share what he knows about the meeting and asked if it will address Stitch Creek.

Mayor Spencer responded that staff requested this meeting and that the Army Corps of Engineers is not able to attend [subsequently, they were able to attend]. The purpose of the meeting with the developer is to review the regulatory requirements and to establish a basis for moving forward so that all actions are coordinated with respect to enforcing the regulatory requirements on this development.

Sally Jo Sebring, 1023 – 99<sup>th</sup> Avenue SE, Lake Stevens, said she is disappointed with the Administrative Decision that was issued this afternoon.

Tina Brooks, 1528 South Lake Stevens Road, Lake Stevens, said her home is located on the downhill side of developments and that water from the properties being developed all flow into the watershed. Ms. Brooks asserts a new stream has formed from the Eagle Glen project. She provided pictures of this channel and said that there is erosion of what was formerly a game trail, as well as erosion to the ground where sizable trees are located. She believes, once houses are constructed and being lived in the runoff will also contain runoff from driveways and streets and other hazardous wastes that will negatively affect her property. A second set of photos shows an erosion fence that is filled and water is flowing over the top of it. Ms. Brooks is also concerned about light and noise pollution.

Teresa Park, 11410 – 19<sup>th</sup> Street NE, Lake Stevens, wants to learn more about the development going in on 19<sup>th</sup> Street near her home. Ms. Park was referred to Community Development Director Wright.

Scott Gable, 11408 – 17<sup>th</sup> Place NE, Lake Stevens, expressed concerns about water issues at his home and he is trying to work with the City to resolve those. Mr. Gable suggested if there is a water management plan in place for the proposed properties maybe he and his neighbors could tie into it to resolve the problem.

**Council Business:** Deferred.

**Mayor's Business:** Deferred.

**City Department Report:** Deferred.

**Consent Agenda:**

**MOTION:** Moved by Councilmember Tageant, seconded by Councilmember Hilt, to approve (A) 2017 Vouchers [Payroll Direct Deposits of \$181,988.35, Payroll Checks Nos. 42349-42351 totaling \$6,705.25, Tax Deposits of \$76,726.18, Electronic Funds Transfers (ACH) of \$4,772.46, Claims Check Nos. 42348, 42352-42466 totaling \$242,794.74, Void Check Nos. 41071 and 42218 totaling \$307.48, Total Vouchers Approved: \$512,679.50]; (B) City Council Regular Meeting Minutes of April 11, 2017, (C) Contract with Feldman & Lee re Social Worker Services, (D) Revised Amendment No. 1 to ISOOutsource Professional Services Agreement, (E) Removed. On vote the motion carried (7-0-0-0).

**Public Hearing:**

**Approve Ordinance 995 re Nourse Right-of-Way Vacation:** Mayor Spencer opened the public hearing and said the intent is to continue the hearing, and there will be a second time to comment during that meeting.

Director Wright provided a history and background of the property and proposed development. The property was annexed into the City in 2006 under Ordinance 719. The land use designation and zoning for the property was established at the time of annexation. The land was zoned for multi-family development to allow for higher density development. The Hearing Examiner approved a conditional use permit for the property, setting the parameters for development, which was a maximum of 288 condominium units. In this case condominium is an ownership function and is not related to multi-tenant buildings that are attached structures. The proposed development would include single-family detached homes. The Hearing Examiner

noted in his decision that future actions would be necessary including two right-of-way vacations. Following the Hearing Examiner's decision, the City Council acted to memorialize the decision through a development agreement that set the terms and phases for the development. That development agreement ran for a period of five years. Council by resolution amended that original development agreement by adding an additional five years and also added conditions on the development agreement requiring the applicant and owners to provide progress reports, completion of construction activities, building permits and the like.

Director Wright said that the City has issued a determination. The applicant has requested a code interpretation. Anyone can request a code interpretation to ask the City to look at irregularities in the code, ambiguous sections of code, and prior decisions. In this case, the applicant is asking for a decision on prior determination related to fulfillment of permit conditions and the effect on vesting rights. Staff, with assistance from the City Attorney, reviewed case law that would affect this project, as well as state statutes, local ordinances, and the progress of the applicant up to this point. The determination was that the applicant can continue and remain vested to the conditions of approval as they have shown significant progress towards completion through a combination of physical actions and financial investment. This includes the issuance of building permits by the City, they have been on site and started construction by installing temporary erosion control, installed construction access and are working with other partner agencies to obtain the necessary approvals. Additionally, financial securities have been delivered to the City for some of the requirements identified by the Hearing Examiner. The City has found that the applicant is compliant and continues to be compliant with the conditions set forth by the City Council and the Hearing Examiner under the development agreement.

The applicant voluntarily held two open houses for the community as requested by staff, because this project sat for several years and staff believes that it was important to not blindsides the community with what is being brought forward. Staff identified four areas of concern from the community with this project: density, environmental concerns, concerns about process and the development type. Density concerns are related to schools, traffic and infrastructure. Environmental concerns related to the critical areas onsite including wetlands, streams, steep slopes and wildlife corridors, as well as questions about the original SEPA determination and how it fits into the process.

Director Wright said that based upon public comment and review of the documents to this point, the City has gone back to the owner and developer and invoked certain sections of the Development Agreement that allow the City to negotiate some different terms to the agreement. The Applicant/Owner has invoked other sections of the Development Agreement that allow them to go into dispute resolution. At this point the City is insisting that the following actions happen: the collection of current mitigation fees for schools, parks and traffic; an overall reduction in project density; increases in critical areas buffers; increases in parks sizes; and buffering and screening of adjacent neighborhoods. Additionally, the City has requested the developer construct significant off-site road and stormwater improvements to ensure the infrastructure meets the needs of the community and this project.

At this time, the property owners are working cooperatively with the City through the dispute resolution process. At the culmination of the dispute resolution process this project will be brought back to Council as the second amendment to the Development Agreement. Ultimately it will be City Council's decision to determine if this project continues under the revisions that were just reviewed. Depending on the Council's decision, either the project will terminate, or the

owners/applicants will be asked to do revisions to their plans that are under review by the City, including the binding site plan and the construction plans.

Director Wright invited questions from the Council. Responding to Councilmember Tageant's question regarding improvements to Callow Road, Director Wright said that is under negotiation, but the City has requested significant improvements including sidewalks and stormwater, not only on the frontage of Callow, but that the improvements be extended further down the road toward Lundeen.

Turning to the request for right-of-way vacation, Director Wright said the request is to vacate approximately 450 feet of un-opened right-of-way of 107<sup>th</sup> Avenue NE. Right-of-Way vacations are a Type V legislative action by Council and as such they require public notice and a public hearing. They are not required to go to the Planning Commission or any other body. It is the Council's decision to determine what they want to do with City properties.

Director Wright reviewed the procedural history of this request and said that public notice was provided for the application on March 24, and notice of this hearing was provided on April 14. Public notice is provided in the form of postcards to property owners within a 300-foot radius of the property, as well as being published in the classified legal notices of the Everett Herald. Sign boards are posted at the site and notification is provided on the City's bulletin board.

Director Wright next reviewed the decision criteria including determining property value either by appraisal or assessment. In this case, the applicant used the assessment valuation and determined the property value of \$3,101 by reviewing the square foot values of adjacent properties. This value was assigned to the net usable area of the property. The remainder of the property is totally encumbered in critical areas, steep slopes, wetland and streams, which would be left intact. Staff has suggested that rather than pay the City for this right-of-way that the fees be applied to additional off-site improvements to improve neighborhoods and circulation patterns, and the applicant has agreed to this request.

The legal survey of the right-of-way was prepared by a professional land surveyor and has been reviewed by the City's engineering consultant for consistency. Minor discrepancies have been corrected.

Director Wright said that Council also needs to consider what the public benefit is of the right-of-way vacation. In this case, the property would never be developed for road purposes, but by not building a road through sensitive areas, critical areas and associated buffers remain intact. The roadway is not needed for future road connectivity and does not disrupt traffic patterns in the area, nor does it affect public or private needs.

Based on the foregoing, when Council is ready to take action it is Staff's recommendation that this ordinance be approved.

Mayor Spencer invited public comment and said that testimony should be focused on the right-of-way vacation.

Andrea Wright, 10815 – 29<sup>th</sup> Street NE, Lake Stevens, commented this is an eleven-year old development contract and the administrative code interpretation was received at 5:36 p.m., which she considers stalling. She is concerned about increased traffic and said this is the main thoroughfare for high schoolers in the morning. She performed her own traffic counts and

shared pictures with Council. Ms. Wright said that the area is bottlenecked between 7:20 a.m. and 7:30 a.m. She encouraged that the extension be looked at closely and that the City consider how to help out the existing neighborhood traffic-wise. She also encouraged that the City adopt Ordinance 984 regarding Critical Areas.

CG O'Malley, 3425 111<sup>th</sup> Drive NE, Lake Stevens, wants to respond to the email and Agreement Interpretation that was sent out prior to this meeting. Mr. O'Malley requested City Council wait for more facts before voting on the right-of-way vacation. Mr. O'Malley believes the statement that the agreement is still in force is an error, and that paragraph 4 of the agreement provides that it will automatically terminate. Mr. O'Malley also asked for specificity as to the obligations of the developer. He concluded by saying he is counting on the Mayor to negotiate a better deal.

Kendra McIntosh, 10819 – 29<sup>th</sup> Street NE, Lake Stevens, agreed with Mr. O'Malley's comments and wondered about the timeframe on dispute resolution. Mayor Spencer responded that the City will negotiate until it is satisfied that the conditions satisfy community values and city codes.

Sally Jo Sebring, 1023 – 99<sup>th</sup> Avenue SE, Lake Stevens, read from an email she sent to Director Wright and said she is concerned that citizen comments were not included in the staff report regarding the right-of-way vacation.

Jennie Brown, 2802 – 107<sup>th</sup> Avenue, Lake Stevens, is concerned that the traffic calming devices on 28<sup>th</sup> Street are not effective, and that the traffic study was performed between 4:00 p.m. and 6:00 p.m. and does not consider school traffic. She also expressed concern that this development will completely change her neighborhood.

James Brown, 2802 – 107<sup>th</sup> Avenue NE, Lake Stevens, asked about a reduction in the number of homes being built. Mayor Spencer said that number is not known, but the City is seeking a reduction.

Sabrina O'Malley, 3425 – 111<sup>th</sup> Drive, Lake Stevens, is concerned about the impact to student population that this development poses. Mayor Spencer responded that the City Council cannot answer that question, but that the City will work with the school district on what their plans are.

Becky Denny, 10807 – 28<sup>th</sup> Street NE, Lake Stevens, said she agrees with the previous comments. She is also concerned that this development will further overcrowd the schools and this needs to be addressed. She encouraged the Council to consider the impact on schools that this development may pose.

Debra Van Heuser, 14631 – 79<sup>th</sup> Street NE, Lake Stevens, lives closer to Granite Falls, but she owns two acres near this project. She wonders why the access to this development cannot be accessed off SR 92. The backroads are not the place to add traffic.

Aaron Wright, 10815 – 29<sup>th</sup> Street NE, Lake Stevens, expressed concern about increased vehicle counts on roads that are already failing and do not have sidewalks. He is concerned about safety and also that this is taxing on the City and its resources.

Mayor Spencer closed the public comment portion of the public hearing.

City Attorney Weed reviewed the options for proceeding including continuing the hearing to a date certain, or continuing the hearing to a date uncertain which will require additional advertising. Attorney Weed also reminded Council that the only issue before Council this evening is the future possible adoption of Ordinance 995, vacating right-of-way, and said that the decision criteria for vacating right-of-way is in the Lake Stevens Municipal Code and in the ordinance, and when it is time to consider adoption of the ordinance, the testimony that is heard must be considered in light of what the criteria are in the code.

City Attorney Weed further clarified that decisions regarding the development agreement will come back to Council for a public hearing where citizens can provide testimony about whether to approve any amendment to a development agreement. This would be a separate hearing, for a separate process for a different night. Referencing the Administrative Interpretation issued today, there is a separate appeal process for that interpretation that does not come before Council.

Mayor Spencer said his recommendation is that Council continue this hearing to a date uncertain and bring the right-of-way vacation forward with any proposed amendment to the development agreement at the same time so that it is not "piecemealed", but if Council chooses to go forward with the second hearing on Ordinance 995 his request is that it be continued to June as he will not be attending the second meeting in May.

**MOTION:** Councilmember Tageant moved, Councilmember Hilt seconded, to continue the public hearing on Ordinance 995 providing for a right-of-way vacation of approximately 13,661 square feet of land along approximately 450 feet in length along 107<sup>th</sup> Avenue NE off Oak Road to a date uncertain.

City Attorney Weed responded to Councilmember Petershagen's question, saying that the City has met the time requirement to hold a public hearing on the right-of-way vacation by holding a hearing this evening, and there is nothing procedurally incorrect in deferring action on the ordinance and coupling it with an amendment to the development agreement.

**VOTE:** On vote the motion carried (7-0-0-0).

### **Action Items:**

**Approve Contract with Pacific Mobile for Modular Site Work and Installation:** Director Durpos presented the staff report and said the requested action of Council this evening is to authorize a change order to the original contract with KCDA, which will allow for the completion of the necessary site work and installation of the new modular temporary City Hall building by Pacific Mobile Structures. Director Durpos then responded to Councilmembers' questions.

**MOTION:** Moved by Councilmember Daughtry, seconded by Councilmember Welch, to authorize the Mayor to execute a change order to the original KCDA Temporary City Hall contract agreement to perform the site work in the amount of \$417,290.94 and approve a construction contingency of \$80,000 for a total project budget of \$497,290.24. On vote the motion carried (7-0-0-0).

### **Discussion Items:**



**First Quarter Financial Update:** Finance Director Barb Stevens provided the first quarter financial update and responded to Councilmembers' questions.

**Executive Session:** None.

**Study Session:** None.

Mayor Spencer commended the Public Works crews for their hard work.

Councilmember McDaniel commended Jim Haugen for his help with Earth Day.

Councilmember Welch said he may be late to the May 9 and 23 meetings and that he will be absent for the June 13, 2017 meeting.

Councilmember Hilt said he will not be able to attend the May 9, 2017 meeting.

Councilmember McDaniel reminded of the SR 9/SR 204 open house hosted by Washington State Department of Transportation on May 11.

**Adjourn:**

Moved by Councilmember Hilt, seconded by Councilmember Welch, to adjourn the meeting at 8:56 p.m. On vote the motion carried (7-0-0-0).

  
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Kurt Hilt, Mayor Pro Tem

  
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Kathy Pugh, Deputy City Clerk