

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

Tuesday, September 25, 2018

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

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

ELECTED OFFICIALS PRESENT: Councilmembers Kim Daughtry, Gary Petershagen, Todd Welch, Rauchel McDaniel, Brett Gailey and Marcus Tageant

ELECTED OFFICIALS ABSENT: Councilmember Kurt Hilt

STAFF MEMBERS PRESENT: Finance Director Barb Stevens, Community Development Director Russ Wright, Public Works Director Eric Durpos, Police Chief John Dyer, Commander Ron Brooks, Human Resources Director Teri Smith, Human Resources/ Executive Assistant Julie Good, City Clerk Kathy Pugh, Deputy City Clerk Adri Crim, City Attorney Grant Weed, Planning Manager Josh Machen, Associate Planner Dillon Roth, Associate Planner Jill Meis

OTHERS:

Pledge of Allegiance:

Roll Call: Moved by Councilmember Welch, seconded by Councilmember Daughtry, to excuse Councilmember Hilt from the meeting. On vote the motion carried (6-0-0-1).

Approval of Agenda: Mayor Spencer said staff is requesting that an item be added to the consent agenda to appoint two new Arts Commission members.

Councilmember Daughtry requested to remove consent item (F) Approving Family Center Lease from the agenda as there are serious problems with the building that need to be addressed before moving forward with the lease contract.

MOTION: Moved by Councilmember Welch, seconded by Councilmember McDaniel, to approve the agenda as amended. On vote the motion carried (6-0-0-1).

Oath of Office: Mayor Spencer administered the oath of office to newly appointed Planning Commissioner John Cronin.

Citizen Comments:

Scott Erie, representative for Holy Cross Lutheran Church, spoke about the approved Sedona development. He said the legal easement agreement recorded between Holy Cross Lutheran Church and Rob and Collen Turner was never submitted to the Hearing Examiner. This

agreement restricts ingress/egress access to the panhandle road to no more than four properties and the approved plat is in direct conflict with this agreement. He then noted although Holy Cross Lutheran Church is not opposed to the development, they have no intention of relinquishing rights under the easement agreement. Mr. Erie requested that Council direct the City Planning Department to amend the approved plat design to the previously proposed cul-de-sac design in order to conform with this legal agreement.

Rob Turner, 9627 20th Street SE, Lake Stevens, followed up on Mr. Erie's comments, saying he is the landowner who pushed the Sedona project through the pre-plat process and is content with the conforming plan for the cul-de-sac. Mr. Turner then voiced support for the Holy Cross Lutheran Church and requested Council direct the Planning Department to revert to the cul-de-sac design.

Council Business:

- Councilmember Daughtry: Snohomish County Committee for Improved Transportation (SCCIT) Meeting.
- Councilmember Petershagen: Sewer Utility Committee meeting.
- Councilmember Gailey: Automated Vehicle Conference.
- Councilmember Tageant: Sewer Utility Committee meeting.

Mayor's Business: Sewer District planning meeting and Sewer Utility Committee meeting, Cavelero Park County documents are under review and project moving forward.

Consent Agenda:

MOTION: Moved by Councilmember Daughtry, seconded by Councilmember Welch, to approve (A) 2018 Vouchers [Payroll Direct Deposits of \$212,360.52, Payroll Checks 46102-46103 totaling \$4,043.03, Tax Deposits of \$79,118.01, Electronic Funds Transfers (ACH) of \$6,293.34, Claims Check Nos. 46009-46101 totaling \$400,725.69, Total Vouchers Approved: \$702,540.59], (B) City Council Special Meeting Minutes of September 5, 2018, (C) City Council Regular Meeting Minutes of September 11, 2018, (D) City Council Workshop Meeting Minutes of September 18, 2018, (E) Rowing Club Facilities Use Agreement, (F) Removed, (G) Appointments to Arts Commission. On vote the motion carried (6-0-0-1).

Public Hearing:

Rhodora Annexation: Mayor Spencer opened the public hearing.

Planning Manager Machen provided a brief history of the Growth Management Act (GMA), which was adopted approximately thirty years ago, and provides a roadmap for how growth is managed in Washington. Planner Machen said the GMA provides that growth should happen in areas that have cities and facilities such as sewer and water. Under the GMA, much of the outlying county areas are preserved as rural. Planner Machen then reviewed the GMA requirements including development of comprehensive plans by both cities and counties. Planner Machen explained that within the comprehensive plans, Urban Growth Areas (UGA) are identified adjacent to cities, and they are intended to be used for growth and eventual annexation into the adjacent city. Land outside of a UGA is not authorized by counties to be annexed into cities. Planner Machen reviewed the similarities in density requirements set by the

County in UGA areas to those of the adjacent city. He then commented on the differences of development in UGAs under the county versus if the developed area is annexed into the city and then developed under City development regulations.

Planner Machen explained that if the Rhodora annexation area is developed in the City, the land would be designated as Medium Density Residential under the City's Comprehensive Plan and as High Urban Residential (HUR) under the City's Zoning Code. Planner Machen explained what types of residential development would be allowed under these designations and stated that commercial development would not be allowed.

Planner Machen next reviewed the process for the Rhodora Heights Annexation, including that there is a recorded annexation covenant in place, that delegates to the City the authority to sign annexation petitions for specific parcels of land that are identified in the covenant. In this case that was 29 lots in the proposed annexation area. He said on June 19, 2018, the City Council held a public hearing and approved Resolution 2018-018 providing Snohomish County notice of the City's intent to annex the Rhodora area. The Snohomish County Boundary Review Board will hold a public hearing on the Rhodora Annexation proposal on October 1, 2018. In accordance with Washington State law, the City is to hold two public hearings on the annexation and simultaneous adoption of land use and zoning designations. Tonight's hearing is the second public hearing. Planning Manager Machen then responded to Councilmembers' questions.

City Attorney Weed spoke regarding the annexation covenant, saying there are at least two appellate court rulings that uphold the annexation covenants as a proxy for a public entity to sign in favor of an annexation. These two cases have been in place for a number of years, and are the law. Additionally, this covenant runs with the land and is part of the title of the property. The covenant binds both the developer and lot purchasers, and their heirs, successors and assigns. Secondly, the language in the covenant in section 6.37 provides that (1) each lot owner, by accepting title to their lot, expressly waives their right to protest or otherwise contest the annexation of the plat by the City of Lake Stevens, and (2) grants the City an irrevocable proxy to petition in their name, place and stead for annexation of the plat to the City of Lake Stevens. A covenant is a bilateral commitment between the developer and the City, and cannot be unilaterally amended by subsequent property owners. The commitment was made at the time the plat was developed. Subsequent property owners were on notice of these covenants because they were recorded and would be included as part of any title report; they are a binding and enforceable commitment. Responding to Councilmember Welch's question, Attorney Weed said the commitment in the covenants is to the City of Lake Stevens, and gives the proxy to sign the 60% annexation petition to the City of Lake Stevens.

Responding to Councilmember Gailey's question, Planner Machen said that the County could change their zoning designations and there are mechanisms in the County code that would allow for higher density.

Responding to Councilmember Tageant's question, Planner Machen said with development under the County, mitigation funds could be used throughout the County, whereas development under the City would keep the mitigation fees within the City. Additionally, Planner Machen noted the City's taxation rate is slightly lower than the County's.

Responding to Councilmember Petershagen's questions, Planner Machen said the County's minimum lot size under a Planned Residential Development is 3500 [PRD allow 120% density

increase or 9 units per acre in current county zone / Lot size averaging allows 3000 square feet] square feet and the City's minimum size is 3600 square feet.

Mayor Spencer then opened the public comment portion of the public hearing.

J.L. Purvis, 509 South Lake Stevens Road, Lake Stevens, is not in the city limits, but she is invested in the community and is at the meeting tonight to hear what is happening.

Mike Mashock, 12102 7th Place SE, Lake Stevens, is not in favor of the annexation. He said for him it is a matter of historical trust with the City and he expressed concerns with the high-density zoning designation causing extra burdens on the community.

Mike Flathers, 600 Rhodora Heights Road, Lake Stevens, opposes the annexation and is concerned about the possibility of commercial development being included in the HUA zoning designation. He mentioned he reached out and gathered signatures from residents against this annexation, and then submitted them to staff after his comments.

Stacy Brewer, 1101 116th Avenue SE, Lake Stevens, opposes the annexation and believes the Rhodora Annexation process involved methods that are far from what was intended by lawmakers, and is concerned with the process and with the spirit of the law in general. He expressed concern that the public notices for the public hearings were not adequate, and allowing high-density residential will put more strain on the already lacking infrastructure.

Dave Markle, 817 116th Avenue SE, Lake Stevens, mentioned he is on the HOA Board and does not agree with the 60% petition. He explained how he understands CCR's usually work, noting homeowners should receive a copy during closing when purchasing a new home but often do not. He asked that this item be reviewed further.

Laura Schonburn-Flathers, 600 Rhodora Heights Road, Lake Stevens, lives just north of annexation area. She said the proposed development is not an insignificant amount of housing to the existing residents. She expressed concerns about green spaces being protected and believes the environment should be taken into consideration.

Aaron Verba, 919 117th Drive SE, Lake Stevens, brought the CCR he signed when purchasing his property and commented that the development plan is conditioned and that if certain conditions were met, the annexation covenant would expire. He opposes this annexation, does not think it has been a fair process and does not understand why citizens can sign the 10% petition, but the Mayor can sign the 60% petition.

Janice Huxford, POB 1357, Lake Stevens, resides on South Lake Stevens Road and owns property in the proposed annexation area. The concern is not an annexation problem, it is a question of respect to those who are already invested in this community. She requested the Council halt this process and take some time to listen to the future constituents to find out their true concerns with this annexation.

Josh Montgomery, 605 115th Avenue SE, Lake Stevens, is outside of the annexation area, but believes his properties will be next. He supports Janice Huxford's comments and noted the process needs fixing. He also expressed concerns with density and said the growth will affect residents all the way down to the water.

Chris Jacks, 916 116th Avenue SE, Lake Stevens, is not opposed to annexation in principle but wants to know the infrastructure is in place to make it smart for the whole community.

Dave Schultz, 11721 Meridian Place SE, Lake Stevens, is opposed to this annexation and the high-density designation. He mentioned the topography changes whenever development happens and it affects all the properties around it. He expressed concerns with taxes continuing to increase and noted there will be additional taxes upon annexation.

Robert Sheran, 11716 7th Place SE, Lake Stevens, lives adjacent to the proposed annexation area and is opposed to this annexation. He agrees with all the earlier comments and believes the City is moving towards annexation for financial gain.

Trina Iblings, 1016 113th Drive SE, Lake Stevens, said she and her family recently moved into her family home to raise the third generation. She wants to raise her children in this small community. She commented the residents should be involved in this decision.

Rick Langlois, 529 Rhodora Heights, Lake Stevens, has lived here for over 30 years and opposes this annexation. He said he does not know many people who want to be annexed into the City because there are no benefits in annexation. He said it is clear the City wants this annexation for money.

Mayor Spencer closed the public comment portion of the public hearing, and invited additional questions and comments of Council.

Councilmember Petershagen clarified that the existing areas have been developed by the County and within that there are UGA issues and the encouragement of annexing areas within the Urban Growth Area (UGA). His quandary is there are state issues that must be dealt with, which is the driving force of annexation, there are property rights, and there is not the ability to build a gate or a wall so how do we balance all of this. Councilmember Petershagen said this property is going to be developed, if not in the City, then in the County, with the end result being pretty much the same thing. The mitigation fees that will be generated from this development will be local and will be spent in Lake Stevens, rather than in other parts of the County. Councilmember Petershagen said this is a tough issue but there is a process for annexation and he supports this annexation.

Councilmember Tageant said when it comes to design standards, road standards, etc., the City has received many plats from the County that have been substandard. If this property is developed under the County, we could continue to see substandard development.

Planner Machen confirmed Councilmember Tageant's comments and reminded Council that the City is currently working on a widened trail system along South Lake Stevens Road to allow for more non-motorized traffic. He said one of the benefits of this annexation would be that the local mitigation dollars would continue to stay within this community. He added the City has very strict road standards that provide for a 28-foot roadway width, sidewalks and planter strips.

City Attorney Weed responded to Councilmember Gailey's question regarding the development agreement and said the agreement is between the developer and prospective property owners; it does not change the covenant that is recorded and runs with the land. That commitment was in place at the time the land was platted, and is not changed by any of the language in the

development plans. The commitment cannot be changed by amendment to the CCR's to take it out.

Councilmember Gailey thanked everyone for coming to the meeting and said it is great to see this sort of excitement in our community. He added he has issues with the process, but it is the process and it has been followed so he will support it.

Planner Machen responded to Mayor Spencer's questions regarding density and noted at the time of annexation, the City Council will decide on both the Comprehensive Plan designation and the zoning designation. He also noted when you go from a broad zoning discussion to a project specific impact, City staff will be looking at layouts and how this development will function within the neighborhood.

Responding to Mayor Spencer's questions, Director Wright mentioned under the City's substantive authority of SEPA, the City could require some offsite improvements if they had a nexus with the development. The City could also stipulate that the local impact fees go to local projects in the development area.

Councilmember Tageant asked staff if this annexation is not approved, could the developer put a PRD together and apply to the County for a similar development and what would happen to the parks mitigation fees. Director Wright responded that if the property is developed under the City the parks mitigation fees would go to support city parks within the area of the development, but if the property is developed under the County, the mitigation fees could go to support a couple of county parks that are within the city limits, but they could also be directed to parks outside of Lake Stevens that are designated within the County's Comprehensive Plan.

Councilmember Welch said he does not like this type of annexation process and believes most people are frustrated because they feel like they do not have a voice in their property and where it is going. He would prefer the City move to a vote process for annexation rather than this style of annexation.

Councilmember McDaniel said she supports the idea of Lake Stevens being one community around the lake, and does want this area to be annexed. Councilmember McDaniel added that growth is difficult and she sympathizes with the loss of the green space, but this green space is going to disappear because this developer is going to develop this area. She appreciated everyone coming to the meeting and wished there was more participation like this when other projects are coming up; she is in favor of this annexation.

Mayor Spencer asked staff what is the opportunity to address the citizen concerns if this annexation goes forward.

Director Wright responded that part of answer is community involvement such as coming to the Planning Commission and City Council meetings to help develop the rules, and offering input when projects are being reviewed. He added that all projects go through a development review process and the City must follow the established development standards. Within this there is a process for public participation where citizens can share concerns and ideas with the project proponent/applicant. Director Wright added the City has a Comprehensive Plan and explained that it does provide for roads and other infrastructure over a twenty-year period, but that takes time to implement these identified projects as funding and planning can take several years to develop. Director Wright said the staff advocates for the citizens, but is also bound by

standards that the city is required to follow. He encouraged that the public attend meetings and be involved in the process.

Mayor Spencer said the City has had this experience in the past with other developments and has been able to successfully leverage developers into lower densities, better roads, more parking, etc. to have citizen concerns met. As for transportation concerns, Mayor Spencer said the Council has been working very hard to get funding to get the Trestle fixed.

Mayor Spencer closed the public hearing. He then asked Council for additional questions and there were none.

MOTION: Moved by Councilmember Petershagen, seconded by Councilmember McDaniel, to reaffirm support for the Rhodora Annexation (Resolution 2018-018), providing the Notice of Intent to Annex and require upon annexation the simultaneous adoption of land use and zoning designations and require the assumption of a proportionate share of all existing City indebtedness. On vote the motion carried (5-1-0-1).

Action Items:

Approve Resolution 2018-27 Adrian Annexation Petition: Associate Planner Roth presented the staff report and noted on August 22, 2018 the City received an annexation petition signed by the property owner representing more than 10 percent of the assessed value in the Adrian Annexation area, which consists of a single property owner with a parcel of approximately 5.4 acres. Staff's recommendation is that the property be designated as Urban Residential (UR). Planner Roth then invited questions of Council.

Responding to Councilmember Petershagen's question, Attorney Weed said to follow the state statute regarding annexations faithfully, it requires a two-step process, consisting of both the 10% petition and the 60% petition.

MOTION: Moved by Councilmember Daughtry, seconded by Councilmember Welch, to adopt Resolution 2018-27 accepting the 10% annexation petition and authorize the circulation of 60% petition for the Adrian Annexation, while also recommending the simultaneous adoption of land use and zoning designations and require the assumption of a proportionate share of the existing City indebtedness. On vote the motion carried (6-0-0-1).

Approve Ordinance 1033 re Business License Requirements: Associate Planner Meis presented the staff report and summarized the actions cities with business license and local (B&O) taxes are required to take based on the 2017 Legislative session, EHB 2005 (RCW 35.90). The legislation requires that all cities contract with the State for business license services and that cities adopt a \$2,000 threshold for requiring a business license. Staff's recommendation is to adopt the \$2,000 threshold for requiring a business license. She then invited questions of Council.

Councilmember McDaniel expressed concern that the threshold will undermine brick and mortar businesses that are invested in this community.

Planner Meis noted the RCW mandates that the City adopts no less than the \$2,000 threshold.

MOTION: Moved by Councilmember Tageant, seconded by Councilmember Welch, to Adopt Ordinance 1033 Amending Lake Stevens Municipal Code (LSMC) Title 4, Section 4.04.040 and adding a new Section 4.05.045. On vote the motion carried (6-0-0-1).

Approve Supplemental Agreement No. 3 with Crandall Arambula for Architectural Design Services for the Pavilion Design: Community Development Director Wright presented the staff report and noted the supplemental agreement would cover architectural design services performed by TKWA Pacific Studio as a sub-consultant to Crandall Arambula for the North Cove Park Pavilion. The fee for additional services is estimated to be \$95,000. He then invited Councilmembers questions.

Councilmember Petershagen asked about the design of storm drainage and grading design. Director Wright said much of this is being integrated with park design. If additional funding is necessary, staff may turn to Capital Grants. Director Durpos added that this design could be used on any lot and the storm system or utilities would be designed after the fact.

MOTION: Moved by Councilmember Welch, seconded by Councilmember Tageant, to authorize the Mayor to execute Supplemental Agreement No. 3 to the Professional Service Agreement with Crandall Arambula, to authorize additional expenditures for architectural design of the North Cove Park Pavilion by TKWA Pacific Studio in an amount not to exceed \$95,000. On vote the motion carried (6-0-0-1).

Approve Public Works Contract for 4th Street NE Safe Routes to School Construction: Public Works Director Durpos presented the staff report and referenced the updated staff report distributed this evening. He mentioned this project is intended to improve pedestrian safety and reduce traffic congestion associated with Hillcrest Elementary School drop off and pick up. He added that retaining walls are included to minimize right-of-way needs and wetland impacts. Director Durpos said the call for bids was advertised that the bid opening took place September 24, 2018. Director Durpos provided a bid tabulation sheet to Council and said Trinity Contractors of Marysville was the lowest responsive bidder in the amount of \$445,000. Staff requests a \$54,000 management reserve which is under the original budget. He then responded to Councilmembers questions.

MOTION: Moved by Councilmember Tageant, seconded by Councilmember Gailey, to authorize the Mayor to execute a Public Works Contract with Trinity Contractors Inc. of Marysville in the amount of \$445,274.50 with a management reserve of \$54,725.50 for a total of \$500,000 to construct the 91st Ave SE & 4th Street SE Sidewalk Improvements Project near Hillcrest Elementary School. On vote the motion carried (6-0-0-1).

Approve Resolution 2018-28 Accepting Donations for Police Canine Program: Commander Brooks presented the staff report and explained the Police Department has been researching Canine Programs for use as a tool for both enforcing drug laws and to help impact the supply of illegal substances. He said a group of donors has generously offered to donate a 2018 Chevrolet Tahoe valued at approximately \$55,000 to be used as a Police K9 vehicle and \$55,000 in cash to start a Police K9 program; costs to maintain the K9 program after 2019 are estimated to be \$15,000 annually. Commander Brooks then invited questions and there were none.

Mayor Spencer commented that having a drug canine would be a benefit to Lake Stevens officers in drug enforcement actions.

MOTION: Moved by Councilmember Gailey, seconded by Councilmember Daughtry, to approve Resolution 2018-28 Accepting Vehicle and Cash Donations totaling \$110,000 to implement a Police Canine Program. On vote the motion carried (6-0-0-1).

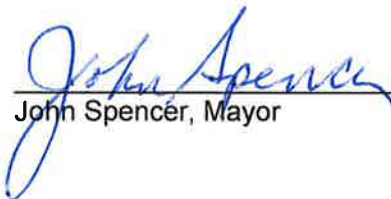
Executive Session: At 8:48 p.m. Mayor Spencer announced an executive session to last 15 minutes to discuss two real property matters, with possible action to follow.

At 9:05 p.m. the regular meeting of the City Council reconvened.

MOTION: Moved by Councilmember Gailey, seconded by Councilmember Welch, to authorize the Mayor to execute a real estate purchase and sale contract with Northland Development Company as discussed in executive session. On vote the motion carried (6-0-0-1).

Adjourn:

Moved by Councilmember Welch, seconded by Councilmember Tageant, to adjourn the meeting at 9:07 p.m. On vote the motion carried (6-0-0-1).



John Spencer, Mayor



Kathy Pugh, City Clerk