

March 12, 2009

CALL TO ORDER:

Mayor Brunz called the meeting to order at 7:00 p.m., with the Pledge of Allegiance. Council members present: Aslett, Bensen, Edmundson, Loving, Montgomery and Valentine. Staff present: Aarstad, Fleek, Martin, Sheahan, Thomas, Thramer, and VanWieringen.

A motion was made by **Councilors Edmundson/Montgomery** to excuse **Councilor Doyle** from tonight's meeting. All agreed. Motion carried.

APPROVAL OF MINUTES:

A motion was made by **Councilors Loving/Valentine** to approve the minutes of the February 26, 2009 regular Council meeting and the March 4, 2009 special Council meeting. All agreed. Motion carried.

AUDIT OF BILLS:

Councilor Aslett presented the bills. A motion was made by **Councilors Aslett/Edmundson** to approve vouchers 54878 -54996 in the amount of \$141,966.81. All were in favor. Motion carried.

Current Expense	\$ 39,889.37
Current Expense Cumulative Reserve	7148.31
Fire Equipment Cumulative Reserve	632.98
City Street	38,873.92
Library	4,655.98
Parks & Recreation	6,615.56
Cemetery Fund	112.26
Stadium Fund	6,404.46
Local Capital Improvement	9,536.40
Parks & Recreation Reserve	6,280.20
Sewer Fund	21,470.30
Storm Drainage Utility	347.07
Total	\$ 141,966.81

PUBLIC COMMENTS:

Mr. Rob Miner, 18206 W. Big Lake Boulevard, asked why the City of Burlington declined a grant that would have allowed the City to hire three additional firefighters. **City Administrator Aarstad** noted that the grant would have provided \$325,000 over five years to hire three firefighters which would be than 25% of the actual cost for salary and benefits over the five year period. The additional cost would have to be paid by the City. The City has been facing declining revenues. In these uncertain economic times, it was determined that the City could not afford an expenditure of this size at a time when we are trying hard to not lay off employees to keep the current budget in balance.

OFFICER REPORTS:

Police Chief VanWieringen introduced two new Police Officers; **Officer Jonathan Weiss** and **Officer Bryan Hull**. They recently graduated from the law enforcement training academy and have now begun their Field Training.

SPECIAL PRESENTATION:

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Ms. Lisa Swanson, Burlington Chamber of Commerce, reported on current projects underway by the Chamber. She noted that six chambers are working together to promote hotels and shopping in Skagit Valley. In February the Burlington Chamber had many web site searches. The Visitor Information Center employee recently attended a seminar for additional training. There are 22 new Chamber members since January 1, 2009. A Burlington Chamber directory will be available in April. The directory includes hotels, maps, and member businesses. Plans are currently underway for the 72nd Berry Dairy Days Festival which will take place over Father's Day weekend in June.

UNFINISHED BUSINESS:

There was no unfinished business.

NEW BUSINESS:

PROPOSED CONDITIONAL USE PERMIT TO ESTABLISH USE AS A RELIGIOUS INSTITUTION IN THE BUILDING LOCATED AT 612 E. FAIRHAVEN AVENUE. APPLICANT IS DAVE BROWNING OF CHRIST THE KING CHURCH.

City Attorney Thomas reviewed the rules that will apply to this agenda item as well as the next agenda item (Fred Meyer). He explained that these are quasi judicial matters; the council will act as judges in their decision. The order of business will first be a general overview and background presented by City staff; then we will listen to appellant's arguments; then listen to the permit applicant; and finally listen to any rebuttals. Each speaker will be limited to three minutes. The evidence that can be relied upon is that which is already in the record. Public speakers can make arguments based only upon the record. **City Attorney Thomas** then asked each council member if they have had any conversations or communication regarding this issue that was separate from the materials in their packets. He also asked if they could be impartial in their decision. Following the decision, he will draft finding of facts and conclusions of law, (a written document required by state law). This will be presented at the April 9, 2009 council meeting for approval. **Councilor Montgomery** stated that he had a casual conversation with a customer at his place of business, and that he could remain impartial. **Councilors Edmundson, Aslett, Valentine, Loving and Bensen** stated that they had each received two letters commenting on the issue. They stated that these letters would not affect their decisions tonight; they could remain impartial.

City Attorney Thomas stated that regarding the Fred Meyer issue; the appellant has requested the decision be held over to another meeting as they are not able to attend tonight's meeting. If held over, the matter would not be concluded until April 9, 2009.

Mayor Brunz opened the public hearing. **Planning Director Fleek** stated that the Planning Commission conducted a public hearing on February 18, 2009 on a proposed conditional use permit to establish use a religious institution in the building located at 612 East Fairhaven Avenue, expanding the Christ the King Church into the adjacent building, establishing an auditorium with a capacity of 330 people with accessory classrooms, offices and an art gallery with food and coffee bar adjacent to the street. Applicant is Christ the King Church represented by Jennifer Aylor and Dave Browning.

In favor of the appeal:

Mr. Roger Anderson, 1020 Sterling Street, Sedro-Woolley, wrote a letter appealing the decision of the Planning Commission. Mr. Anderson spoke against the proposed Conditional Use Permit. He noted that the church has created an adverse affect on parking & businesses in the area surrounding the site. The businesses are not growing, but just maintaining. He noted that approval of the permit will double or triple the impact we now face.

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Mr. Pat Hayden, PO Box 454, Sedro-Woolley, spoke on behalf of Mr. Anderson. He summarized the argument to deny the permit. Mr. Hayden stated that he saw no rationale to support a lawsuit by the church, because the denial of a permit should be based on the impacts of expanding the use, and not because of the church's religious use. He noted that Council needs to follow the Burlington Municipal Code and not approve the conditional use permit. Mr. Hayden asked that his written brief be accepted as argument, and considered by the City council.

Mr. Antonio Vega, Los Arcos Restaurant, stated that since the church began services at this site, his business has been affected. Church attendees park in front of his building, thus impacting his customers. He does not believe that church members will park far away from the church; they have not in the past. He has lost profits. His business has always opened at 8 a.m. Sundays; his business is impacted until after 1pm (after church services have concluded for the day).

Mr. Mark Kramer, 506 S. Cherry, stated that the issue tonight is parking – not religious freedoms. He noted that Christ the King Church has historically outgrown small facilities and moved to locations in the community that provided off-street private parking to accommodate their needs. In Burlington they should not be asking the City to provide parking paid for by taxpayers.

Mr. Jeff Anderson, 12841 Padilla Bay Lane, Mount Vernon. He has operated coin operated laundries for many years. He believes that businesses in addition to the nearby laundry have suffered from the parking impact by Christ the King Church on Fairhaven. He stated that the Burlington Municipal Code zoning regulations must be followed. Current use does not allow for this use because of the parking impact. He strongly urged Council to consider the impact to other businesses and deny the conditional use permit.

Mr. James Simmons, 865 Peterson Road, Burlington, does not believe that just because it is a church making this request, they should be treated special. Christ the King Church must meet the requirements of the City code as any other applicant would. He urged Council to stand by the Burlington Municipal Code to make a decision they will not regret.

Against the appeal:

Ms. Jennifer Aylor, 209 Ferry Street, Sedro-Woolley, representing Christ the King Church. She noted that the size of the church may be doubling, but would not increase by three or four times. She noted that the Burlington Municipal Code has an exemption for existing downtown buildings from having to provide additional parking. She noted that Christ the King Church wants to renovate an existing building in addition to the building they are currently using. She stated that Christ the King Church parking impacts complement the other area business because they don't often operate at the same time.

Mr. Dave Browning, 708 Wade Place, Burlington, noted zoning is same as when they came to the site several years ago. The block is a very diverse mix of businesses. Restaurants have changed their hours to open earlier since the church began services at this location. He noted that he helped the City tear down the fire hall to provide additional parking. He displayed pictures of area businesses noting their hours of operation.

Dr. Paul Creelman, 9881 District Line Road, and a business owner in Burlington. He asked that Council rethink the meaning of the term "parking" spots. He suggested that public parking spots are not owned by the adjoining business owners. He stated that the Burlington Municipal Code does not require additional parking to be provided for existing downtown businesses or for remodeled buildings.

Rebuttal:

Mr. Antonio Vega clarified the historical opening hours of his restaurant. He has not changed his hours of operation, but has seen a decline in business when the church is open.

Mr. Pat Hayden, suggested Council members refer to the city attorney to clarification of the City ordinance regarding remodel versus change of use. He stated that this is not a remodel of an existing business, but a substantial change of use for the building. He encouraged

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Council to rely on staff (the Planning Director and City Engineer) to determine peak hour uses, etc. He noted that whatever decision is made tonight, will set the standard for future applicants.

Mr. Dave Browning referred to the religious act. He noted they are an existing use, not a change of use. They've been at the current location since 2004 and simply wish to expand into the next building. He noted that staff report states that the church focus during week is meetings at the Fairhaven location. He noted this is not true, the church prefers to meet in homes during the week and come to church on Sunday for worship at the Fairhaven location.

Mayor Brunz closed the public hearing.

Councilor Loving mentioned other churches in the City that provide parking for their members. **Councilor Aslett** asked **City Attorney Thomas** for interpretation of the Burlington Municipal Code regarding parking in the area proposed. **City Attorney Thomas** referred to Burlington Municipal Code 17.34 and 17.33.010 – **Councilor Aslett** noted that the church has stated there has been no damage to surrounding businesses, yet the surrounding businesses say there have been adverse impacts. **Councilor Valentine** stated that the impact of the parking is a big thing. **Councilor Bensen** asked Ms. Aylor about a picture showing current number of parking spaces available within a one and one-half block radius from the church. He noted some parking shown is on private property. He asked if the church has permission from the private property owners to park on the property. Mr. Browning stated that permission has been granted from Tierra Nueva and The Eagles. They discussed other parking changes on the documents. **Councilor Bensen** pointed out there is not sufficient parking in the 1.5 block area for the church. Mr. Browning stated that during peak usage of the church he estimates about 120 cars. **Councilor Valentine** noted that this block is usually the busiest in town – most every day. **Councilor Aslett** asked if there are other mitigation options that could work with surrounding businesses. Mr. Browning suggested a shuttle from outside the area might be possible.

Mayor Brunz noted that Council does not have to make a decision tonight, but suggested a decision will move the issue along.

A motion was made by **Councilors Loving/Edmundson** to deny the conditional use permit. Voting in favor of the motion were **Councilors Bensen, Loving, Valentine, Edmundson** and **Montgomery**. Motion carried.

PROPOSED CONTRACT REZONE TO ALLOW THE INSTALLATION OF A GAS STATION ISLAND AT THE FRED MEYER PARKING LOT.

Mayor Brunz opened the public hearing. **Planning Director Fleek** stated that the Planning Commission conducted a public hearing on February 18, 2009 on the proposal for a contract rezone to establish a gas station in the Fred Meyer parking lot. Several public hearings were conducted over the course of several months, as the applicant worked with their current tenants to arrive at the location of least impact on the tenants, while meeting their goal of having visibility from Burlington Boulevard. A motion was made to deny; it died for lack of a second. A motion was made to grant and it was a tie; the chair voted to deny the motion, so this case is now before the City Council for consideration. Those objecting cannot be here this evening and have asked for continuance to March 26th. **Mayor Brunz** suggested that the representatives of Fred Meyer present their case tonight and the item will be continued to a following Council meeting where the opponents can present their case.

Mr. Bob McNeill, Barghausen Engineering, a planning/engineering firm that did design and engineering for this project spoke to council. They've discussed problems with adjacent businesses and tried to come up with plans to accommodate concerns of the City and adjacent businesses. **Councilor Loving** asked if the fuel customers are outsiders or Fred Meyer customers. Mr. McNeill stated that about 80% of the fuel customers are also regular Fred Meyer customers..

Mr. James Coombs, Fred Meyer real estate manager noted that Fred Meyer has added fuel to nearly 50% of their stores since 2000. He stated that Fred Meyer is asking for the ability to compete with other grocery stores who also sell fuel. Locating the station at the southeast

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corner of the property was considered, but not acceptable due to the adjacent property owner. He explained the rewards program and noted that regular Fred Meyer rewards customers will receive \$.03 discount per gallon of fuel.

Mr. Mark Kramer, 506 S. Cherry, agrees with the Planning Commission to not allow any additional gas stations on Burlington Boulevard. He is hopeful that the Council will be faithful to that decision. **Councilor Aslett** noted that the City has lost fuel stations over the years. When the decision was made to restrict the number of gas stations, there were many more in the area. A motion was made by **Councilors Bensen/Loving** to table issue to April 9, 2009. All agreed. Motion carried.

PROPOSED AMENDMENT TO THE ZONING CODE TO ESTABLISH REGULATIONS AND PROCEDURES FOR ESSENTIAL PUBLIC FACILITIES.

Planning Director Fleek stated that the Planning Commission conducted a public hearing on February 18, 2009 on the proposal to amend the zoning code to establish regulations and procedures for the two types of Essential Public Facilities. Type One are Regional Essential Public Facilities such as roads, airports, state correction facilities and state education facilities, and Type Two are Local Essential Public Facilities serving residents or property in Skagit County, including Secure Community Transition Facilities, that provide housing for high risk people that are released from correctional facilities to the area where they were first arrested. All types require a conditional use permit with specialized standards and limit the location to areas that do not constitute a “risk potential activity” or “risk potential facility.” She noted that the City of Mount Vernon has similar legislation in place and the City of Sedro-Woolley is also considering similar legislation (all cities would be consistent). A motion was made by **Councilors Bensen/Aslett** to approve the ordinance adopting a new chapter to the Burlington Municipal Code regarding essential public facilities.

(Ordinance #1670)

REVIEW AND APPROVAL OF A RESOLUTION ADOPTING A RESOURCE CONSERVATION MANAGEMENT POLICY FOR THE CITY OF BURLINGTON.

City Administrator Aarstad stated that in October of 2008 the City joined other Skagit County municipalities in an agreement to participate in the Resource Conservation Management Program created by the Skagit Council of governments in cooperation with Puget Sound Energy. This program will provide a Resource Conservation Manager (Ric Boge) who will work with City staff to inventory and identify methods to reduce the City’s energy consumption and recommend programs to reduce our energy use resulting in savings for the City’s budget. A motion was made by **Councilors Bensen/Aslett** to approve the Resolution that establishes a policy for Resource conservation Management in the City of Burlington and authorize the mayor to sign the resolution.

(Resolution #06-2009)

EXECUTIVE SESSION:

There was not an Executive Session.

ADJOURNMENT:

A motion was made by **Councilors Valentine/Loving** to adjourn the meeting at 8:37 p.m. p.m. All agreed. Motion carried.

Greg Thramer
Finance Director / City Clerk

Edward J. Brunz
Mayor