

October 8, 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, Doyle, Edmundson, Loving, Montgomery and Valentine. Staff present: Buckholz, Cavanaugh, Fleek, Martin, Sheahan, Stafford, Thomas, Thramer, VanWieringen, Burwash, Jewett, Floyd and Blair.

APPROVAL OF MINUTES:

A motion was made by **Councilors Loving/Valentine** to approve the minutes of the September 24, 2009 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 56449 – 56557 in the amount of \$137,696.64. All were in favor. Motion carried.

Current Expense	\$ 34,556.60
Current Expense Cumulative Reserve	224.00
Fire Equipment Cumulative Reserve	958.48
City Street	11,580.11
Hopper Construction Fund	740.00
Library	5,908.37
Cemetery Fund	264.61
Stadium Fund	18,601.19
Park & Recreation Reserve	4,186.27
Sewer Fund	21,109.19
Sewer Cumulative Reserve	26,531.15
Storm Drainage Utility	8,984.43
Total	\$ 137,696.64

PUBLIC COMMENTS:

There were no public comments.

OFFICER REPORTS:

Police Chief VanWieringen reported on the sale of surplus cars. All five vehicles have been sold, the city will receive about 70% of sale price from the auction company.

Planning Director Fleek reported that the Planning staff is continuing to review the sign code and expect to bring it back to council next month for consideration.

Councilor Aslett asked **Planning Director Fleek** to check the location of a wayfinding sign located on Fairhaven near the Canton Restaurant. He indicated the sign may not be close enough to the intersection to be clearly understood.

Chris Loving asked to be excused from the next council meeting (October 22, 2009).

City Attorney Thomas distributed a draft of an ordinance regarding possible reduction in pay for Council members. He stated that the ordinance would allow council members to decline a portion of their pay with the provision that the portion of the pay declined

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would be directed to a specified fund. He suggested a Library fund be selected along with a request from the Friends of the Library provide matching funds for purchase of books. He noted that the council cannot change their wages during current terms, but after consultation with Municipal Research and the Internal Revenue Service it was determined the draft ordinance would provide the legal mechanism to reduce pay. **Councilor Aslett** noted that he asked personnel at the Internal Revenue Service the same question and received the same answer as **City Attorney Thomas**. **City Attorney Thomas** stated both council member and their spouse would have to sign an authorization for pay to be redirected to another city fund. Unless he hears any objections, he will bring the ordinance to the next council meeting for consideration.

SPECIAL REPORT:

Ms. Lisa Swanson, Burlington Chamber of Commerce, reported that Harvest Festival was very successful with more people attending than in past years. The Pumpkin Pitch had 16 competitors. The Chamber's membership emphasis this time of year is on retaining members into the next year. She noted there were five new members this month. The new Chamber website should be live within the month. Visitor Information Center staff member is working hard. Walk-in visitors and phone contacts are higher than same time last year.

UNFINISHED BUSINESS:

COSTCO LATECOMERS AGREEMENT.

City Attorney Thomas stated that this will be handled as a land use issue. He presented a brief history of the Costco development from 2004 forward to present. Traffic count calculations in the agreement will be used for future developers to determine the amount of pay-back fees. He noted that the fees will be due at time of issuance of a building permit. **Councilor Edmundson** asked about new businesses who established after Costco or those that might come into vacant buildings. **City Attorney Thomas** noted that new business already in place will not be required to pay a reimbursement fee. A new business that comes in to an existing building after this agreement would only be required to pay if they remodeled so that they would generate additional traffic trips beyond the business that occupied the building prior to the new business. He stated that a latecomer's agreement would be in effect for fifteen (15) years.

Mr. Melaney, of Foster Pepper Law Firm representing Costco, asked that the appeals be denied. He went on to describe the history of the process. He noted a two year delay (2007 to now) has not been the fault of Costco and thus developments that have happened in the past two years will not pay fees to help Costco recover their development costs. He noted that Costco will not recover any fees if there is no new development following execution of the agreement.

Mr. David Markley, Transportation Solutions Incorporated, described the traffic count studies that were developed prior to and following construction of Costco. He noted the study done prior to construction was not done by his firm, but he did state that their study of actual traffic counts done following development confirmed traffic count estimates projected in the study done prior to Costco development. He noted that his firm has done several studies for other reasons in the same area and the Costco traffic counts in their study are confirmed. He noted concerns about possible expansion of the Costco fuel station. If that happens, Costco would pay latecomer fees for any additional development. **Councilor Loving** asked why buildings developed since Costco but prior to the latecomers agreement won't have to pay. Mr. Markley explained the details of a latecomers agreement. Mayor Brunz asked if a very big business moved into the area, might they have to pay all the fees. Mr. Markley explained how the fees would be repaid by various developers.

Mr. Brad Furlong, 825 Cleveland Avenue, Mount Vernon, representing the Nagatani Partnership reminded folks that the Nagatanis had been farmers in the City of Burlington

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area since the 1940's. The City grew up around them and with no male heirs, the 62 acres of property is in trust. He noted that Costco has made several million dollars in revenue over the past few years. He suggested that Costco, in a deal with another developer, now wants to impose fees on other property owners. He suggested that the Council reject the latecomers agreement. He talked about numbers of trips and trip capacity. He noted the tremendous amount of development in Burlington Crossings and across from Burlington Boulevard totaling 513,000 square feet of additional retail area. He believes all the capacity available has been consumed by the development already constructed since Costco. He talked about possible development of the Nagatani property. He complemented the City Attorney and Planning Department but noted the City ordinances are out dated. He noted the uncertainty for owners of undeveloped property relating to the possible change of flood elevations by FEMA.

Mr. Tom Moser, 411 Main Street, Mt. Vernon, representing the Vern Sims and X families who own property along Goldenrod Road. He noted that when the traffic studies were done, the bridge on Goldenrod Road had not been constructed. He noted his disagreement is not with Costco, but rather with the issue of the latecomers agreement itself. He stated it has been ten years since Costco came to town and it is too late now to ask the remaining property owners to pay.

Mr. John Ravnik, representing Ms. Sandra Coons (owner of the Cocusa Motel) distributed a document requesting a change to their TAZ designation. He noted that the Cocusa Motel customers cannot get to the motel by exiting Interstate 5 at Hopper Road; they must exit at State Route 20.

Mr. Mark Osborne, Warren Jewelers on Burlington Boulevard, asked that the city not enter into a latecomer's agreement. He noted there are several property owners not represented here tonight that should not be burdened with this development fee. He asked the city council to reject the agreement.

Rebuttal/response by Mr. Melany stated that Costco is a member of this community just as other citizens and business. Costco pays 1 million dollars in sales tax to the City, which is 1/6 of the city's annual sales tax revenue. Costco employs 250 people and provide benefits to those employees. He noted that the Revised Code of Washington (RCW) allows the recovery of development impact costs. **Councilor Loving** asked why the reimbursement amount cannot be reduced based on the other developments in place since Costco. Mr. Osborne explained why the repayment amount does not change, but it cannot be imposed on developments prior to the date of the agreement. It is imposed upon a certain pool of properties. He stated that he has no problem changing the TZA for Mr. Moser's client and for Mr. Ravnik's client.

Mr. Markley, Transportation Solutions. He noted that while the improvements increased by 655 trips, there was a number of trips in the location already in place. He restated that existing businesses will not be affected by these fees in the latecomers agreement; only new developments. He clarified why the existing businesses cannot be included in this agreement.

Mr. Furlong reviewed his argument against the latecomer's agreement. He noted Costco makes a lot of money and really has no need to be reimbursed for the \$1 million by requiring property owners to pay Costco for traffic capacity that is no longer available.

City Attorney Thomas outlined the following procedure and asked that council provide verbal discussion and decision. **Councilor Loving** asked if the latecomer's agreement could be tossed. **City Attorney Thomas** clarified that the decision before council tonight is to approve the appeal of the four property owners here tonight by removing them from the assessment area or not. Following a decision by Council he will prepare Conclusions of Law and Findings of Fact and bring it to Council at the next regular meeting. Following that, the Council would consider the latecomer's agreement.

Councilor Aslett suggested an executive session regarding possible litigation – to have a few questions answered prior to a council decision. The Mayor and Council adjourned to executive session at 8:36 p.m. The Mayor and Council returned at 8:49 p.m.

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A motion was made by **Councilors Bensen/Edmunson** to deny the appeals of the property owners regarding the COSTCO Latecomers Agreement. Voting in favor were **Councilors Bensen, Valentine, Aslett, Montgomery, Doyle and Edmundson**. Voting against was **Councilor Loving**. Motion carried.

NEW BUSINESS:**PROPOSED 2010 – 2015 CAPITAL IMPROVEMENT PLAN.**

Planning Director Fleek stated that the Planning Commission conducted a public hearing on September 16, 2009 regarding the proposed Capital Improvement Plan. A motion was made to recommend adoption of the plan, and to send a letter to the Mayor and City Council to further explain the concerns and priorities of the Planning Commission. Following the public hearing, a letter expressing concerns about setting priorities for residential streets, community connections and park maintenance was sent to the Council and the Mayor. She noted a request by Parks & Recreation Director Cavanaugh to include a hose reel for Skagit River Park that is being recommended for partial funding through the use of Lodging Tax Funds. The cost of the water cannon reel is \$28,500, Lodging Tax Funds would pay for \$20,000 of the total. A motion was made by **Councilors Aslett/Montgomery** to approve the resolution adopting the 2010 – 2015 Burlington Capital Improvement Plan. All agreed. Motion carried.

(Resolution 16 – 2009)**PROPOSED AMENDMENTS TO CRITICAL AREAS ORDINANCE FOR FLOOD HAZARD AREAS.**

Planning Director Fleek stated that the Federal Emergency Management Agency (FEMA) conducted a Community Assistance Visit and asked that the Flood Hazard Area standards be updated to include definitions of basement, substantial damage, and that specific section be added on interpretations of the Flood Insurance Rate Maps. The City has also been discussing options for infill development with Tom Carlson, who lives next to Gages Slough and would like to add one or two more residences to the site. FEMA has reviewed the proposal and is in agreement with the proposed language. Minor cleanup is also included, updating the location of city hall and the reference to the International Building Code. A motion was made by **Councilors Aslett/Loving** to adopt amendments to Burlington Municipal Code Chapter 15.15 Critical Areas. All agreed. Motion carried.

(Ordinance # 1683)**LODGING TAX ADVISORY COMMITTEE RECOMMENDATION FOR 2010 FUNDS.**

Finance Director Thramer stated that there were twenty-one (21) requests for lodging tax funds amounting to \$343,656. The advisory committee recommends funding \$259,350 (\$141,350 from 2010 revenues and \$118,000 from lodging tax fund reserves). A motion was made by **Councilors Valentine/Edmundson** to adopt the Lodging Tax Advisory Committee recommendation for 2010 funding in the amount of \$259,350. All agreed. Motion carried.

ORDINANCE TO AMEND THE 2009 BUDGET ORDINANCE AS A RESULT OF A GRANT AWARD TO THE CITY.

Finance Director Thramer stated that the City received a FEMA grant in 2009 in the amount of \$132,205 for the purchase of self-contained breathing apparatus. This grant was not included in the original 2009 budget. By adopting this ordinance, the City will effectively increase the budget authority in the Fire Reserve Fund to cover this purchase. A motion was made by **Councilors Bensen/Aslett** to approve the ordinance to amend the 2009 Budget Ordinance #1676. All agreed. Motion Carried.

(Ordinance #1684)

COUNCIL CHAMBERS

CITY HALL

BURLINGTON, WA

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EXECUTIVE SESSION:

There was not an executive session.

ADJOURNMENT:

The meeting was adjourned at 8:58 p.m. by **Mayor Brunz**.

Greg Thrumer
Finance Director / City Clerk

Edward J. Brunz
Mayor