

## Minutes for board meeting of Fairhaven Neighbors – July 11, 2005

Time and Location: 7:30-10:00 p.m., at house of Thom Prichard

Present: Migo Biciunas, Glenn Denkler, Jim Johannessen, Bob Keller, Thom Prichard, Michael Lilliquist, Janet Simpson, Paul Schissler, and Karl Thomas. Sue Kaun also attended, and Ralph Thacker showed up 40-minutes late, after attending the City Council meeting that started at 7:00 p.m.

Absent: Deborah Frost and Brennan Schumacher.

- 1) Thom began by outlining the purpose of this meeting, which was to prepare for briefing by our attorney Philip Buri on the status of the Fairhaven Neighbors' appeal to the Shorelines Review Board regarding the decision to allow development within the 100-foot setback from Padden Creek. The hope is that we can lighten Philip's load (and our expenses) by contacting witnesses and lining up testimony to be presented to the board. Other business was attended to prior to Philip's arrival at 8:00 p.m.
- 2) Janet says that she is interested in having a on-line "virtual garage sale" as a fund-raiser. Several people thought it was a good idea; but further consideration was put off until a later time.
- 3) Former treasurer Migo Biciunas says that we need to close the old bank accounts (still in Paul Schissler's name) and set up new ones with current treasurer Glenn Denkler as signatory. To do so, the bank requires formal, written authorization from Fairhaven Neighbors. After discussion, it was concluded that all executive officers should be signatories on the account, but that at least two of the four officers' signatures will be required for disbursements greater than \$200. We also need two separate accounts, to avoid mingling of funds raised specifically for legal proceedings with regular monies.

Migo moved that the board authorize Thom, as president, to write a letter authorizing Glenn to make all necessary changes and all necessary arrangements, such as obtaining the signatures of the executive officers to be placed on file at the bank. Seconded by Janet and passed by unopposed voice vote.

[After the meeting, FN Secretary Michael Lilliquist picked up the association's mail from the P.O. box. The balance in WECU account #705370 was shown as \$3916.37 in checking and \$2090.07 in savings as of 06/30/2005.]

- 4) No general meeting in August. Concern with low attendance and people feeling "meeting'd out" prompted general consensus that we should skip a meeting in August and plan a social event like a pot luck instead. Several people said that we also need better advertising of the meetings, and Glenn asked if we need a designated person to contact the newspapers about future meetings. Paul volunteered to be the one. Also, Michael said that he would as Matt Chrissman who runs the Firehouse performance center if we can put up a sandwich board to notify the public of meetings, just as the South Hill neighborhood association currently does. Thom reported that many people found the Friday night meeting time a difficult one, and suggested that we find an alternative evening for the next meeting, tentatively in September.

5) Discussion with attorney Philip Buri of BuriFunston.

- a) Philip asked about tonight's City Council meeting, which was slated to take up the issue of changes to 8<sup>th</sup> Street to accommodate Ted Mischaikov's "Fairhaven Harbors" project. Ralph reported that the meeting was packed and overwhelmed by the another issue on the agenda, the proposed Fairhaven Highlands project on Chuckanut Ridge. Ralph submitted written comments in lieu of spoken testimony, saying that any possible changes are premature given the ongoing legal dispute regarding the project. Philip wondered if the council will even take up 8<sup>th</sup> Street tonight. The matter was apparently discussed earlier in the day, during the council's working session.
- b) Our initial hearing proposal was intentionally broad to allow greater flexibility, but opposing counsel objected. Philip will need to tighten up the language. The general thrust will be that all pertinent regulations and planning documents carry the common theme of less impermeable surfaces near protected waterways, rather than more. The decision by the board under appeal does the opposite.
- c) The city attorney contacted Philip, to feel out our position, which Philip took as a good sign. Specifically, the city's attorney wondered what Fairhaven Neighbors would need to settle, and would a vacation of 8<sup>th</sup> Street satisfy? Discussion indicated that vacation of the street may or may not be the correct legal route, but that replacement of the paved street with permeable vegetation would be looked at quite favorably. Vacate to whom? It's already owned by the public. De-commission? Remain on the books with a permanent restriction? What about the sidewalk and the stoops of the proposed dwellings: they, too, are in the right of way and within the 100-foot setback. Would they be eliminated as well?

The city might be hesitant to vacate 8<sup>th</sup> Street, because the developer might sue if his access is taken away retroactively. There are also serious concerns about fire truck access that the city must consider.

Philip stated that our greatest leverage is the encroachment of the building into the 100-foot stream buffer, which is not the same as the matter of 8<sup>th</sup> Street. What is it that we can reasonably hope to achieve? 1) vacate the street and replace with vegetation 2) move the building back beyond the 100-foot limit. What will the developer's response be? Will he oppose the changes tooth-and-nail? Will he threaten to build up, if not out?

Janet added that the northwest corner of the building may actually be within 200 feet of the estuary, if not closer. She noted that the Shoreline Review board seems to have focused solely on the creek, and did not seem to consider the estuary at all. If that is the case, then the proximity to the estuary, by itself, gives the Hearings Board jurisdiction to consider our appeal. Padden lagoon is the most important and healthiest salmon waterway in the entire Bellingham Bay.

- d) Lining up our expert witnesses. We must submit our list of witnesses by August 1<sup>st</sup>, which means that Philip would like to know all possible candidates by the end of next week, July 22<sup>nd</sup>. Here's what each witness should be told:
  - i) Any witness must be available October 25-26<sup>th</sup>, for the Shorelines Hearings Board.

- ii) Witnesses will get a friendly call from Philip and a brief conversation about what we are asking them to do. In most cases, we will be asking them only to testify on what they already know, or about work they have already done. We're not asking for new work.
- iii) Each witness's deposition will be taken, completed by Sept. 24<sup>th</sup>.
- iv) A written declaration is acceptable as testimony, but an in person testimony is far more effective. Looking the hearing examiner in the eye is what will carry our case.
- e) Witnesses, as Philip sees it, will serve two broad purposes. First, to establish the harmful effects of development that close to the creek. Second, to indicate the harmful ramifications of that environmental degradation. Possible witnesses include:
  - i) Jim agreed to talk with Ann Eissinger regarding testifying on the matter of Post Point herons, and their use of Padden Lagoon for feeding.
  - ii) Thom will contact Wendy Scherrer of NSEA, regarding testifying on the salmon runs in Padden Creek, as well as why light on the stream is harmful, and why close development is detrimental to the protected salmon.
  - iii) Janet will talk with former FN president John Blethen, to testify on the 1988 agreement between the association and the city, and well as to testify on the findings and recommendations of the Waterfront Futures Group, of which he was a member.
  - iv) Ralph said that he will contact John McLaughlin at WWU, to see if we can recruit Dr. Robin Matthews to testify as well, or to find a more suitable expert to testify on health and water quality issues.
  - v) We still need a storm water expert. Any ideas? We need to identify one soon.
  - vi) Someone from the Lummi tribe, regarding their interest in managing the fish resources. Bob said that he will contact people from the tribe that he knows.
  - vii) Someone from the Clean Water Alliance. Anybody have an "in"?
  - viii) Commercial and/or sport fisherman?
- f) We also have the right to subpoena witnesses. For example, we may wish testimony from a city or state official, who may not want to testify against his/her employer, but may be compelled to or given cover to do so by a subpoena.
  - i) Steve Seymore, of the State Fish and Wildlife, has done a lot of studies of Padden Creek, and has worked with NSEA. He may be a perfect candidate to subpoena, in order to provide him "political cover," Jim will talk with him.
  - ii) Anchor Engineering, LLC conducted a thorough study of the pervious and impervious surfaces near Padden Creek in 1993. Should we subpoena them? Who has seen the study?

- g) We can also ask questions of the developer and the city, known as interrogatories. This is our opportunity to learn anything that we want about the actions and thoughts of our legal opposition. What files of theirs would we like to look at, if we could? We don't need to ask for specific evidence, just ask a question which tends to lead to evidence. Every person needs to think about this and come up with suggestions for Philip to submit. These are due to be submitted to the parties in question by July 24<sup>th</sup>, soon!
- h) Other legal issues include the lack of an Environmental Impact Statement. Philip is of the opinion that we don't need an EIS, and in fact it may be counterproductive. An EIS is actually useful for outlining how to accommodate and get around regulations, so it is often more useful to the developer than to those opposed to development. Moreover, the Shorelines Review Board has the authority to review the exact same material as SEPA, though they cannot require an EIS. It is too late to challenge the determination of non-significance; the deadline has passed. Similarly, the lack of an explicit Critical Areas Ordinance by the city may be to our benefit, in that it can be argued that the Hearings Board should therefore apply greater scrutiny to city actions.
- i) How can we address the issue of building height, given that the tall part of the building is outside of the 100-foot setback? The Comprehensive Plan says that "buildings of excess height should be prohibited in transitional areas from residential to nonresidential," which clearly applies. The question is how to make the "should" work like a "shall." Building height does bear on the matter of light pollution of the creek, and possible effects on salmon. Can we rely on NSEA for any help?
- j) Photos and videos may be quite helpful, to show the creek for what it is.
- k) It would be very useful to identify an example of a creek in Western Washington that has been destroyed or degraded even though protections were followed. In other words, it would show that even limited development is harmful, even when steps are taken to minimize impact. Possible examples are Carkeek creek, 10-Mile creek, Dakota creek and Ravenna creek in Seattle. Does anyone know about these?

6) Review of calendar of events leading up to the hearing

July 24	interrogatories and requests due
Aug 1	disclosure of our witness list
Sept 24	completion of depositions
Oct 1	cut off of discovery
Oct 10	final exhibit and witness list
Oct 17	hearing brief due
Oct 24-26	hearing before the Review Board

- 7) Fundraising. We have already spent \$2000 on legal council, and the upcoming work will require a lot more legal time, especially the depositions. At market rate, Philip's time may run to \$10-15,000. We need to set a goal of raising at least \$5000 more.

Who's in charge? Do we need a fundraising committee? Lori Wilkinson and Janet Simpson might serve, but neither has volunteered to lead.

Folksinger Tracy Spring has agreed to do a fundraising concert, which should have a large draw. Probably at Fairhaven Green. This event needs to be well-placed and publicized to get the sort of turnout it deserves. A good date might be early or mid October, to precede the appeal before the Shorelines Hearings Board.

At the general meeting, the idea of using kids' art, rather than professional images, for fundraising was discussed.

Who is our spokesperson to the public on the Protecting Padden Creek effort? Sue is an obvious choice (she had left the meeting by this time). Both Ralph and Thom were willing to volunteer. Bob was concerned that whoever it is be available during ordinary weekday hours, so that a reporter will be able to contact them easily. Thom is often out of town during the week.

- 8) Neighborhood block captains. Bob has been organizing the map of the neighborhood into regions, each under a different captain, to spread word of events and actions. So far, six people have agreed. It would be good to write up a brief introduction leaflet for each captain to hand out, with contact names and numbers, website, dates of up-coming meetings, etc. Issues remaining to be resolved include how to approach new-comers in the large buildings being constructed.
- 9) Press release to the public about the Protecting Padden Creek effort. A draft release was reviewed, and found to be too detailed and informative. A shorter, punchier, pithier version was sought. After throwing around words and phrases, Janet agreed to compile them in order to compose a second draft of the press release. Janet will then forward the draft to the board mailing list. After a day or two for feedback, Michael will make any additional editorial changes and then send the release to the local newspapers and mass media.

Meeting adjourned at 10:00 p.m., although brainstorming on the press release extended afterwards.

Submitted by Michael Lilliquist, July 14, 2005.