

**TOWN OF YARROW POINT
COUNCIL MEETING MINUTES
April 14, 2009
7:00 PM**

The following is a summary of the proceedings and is not a verbatim transcript. The meeting is recorded, and the audio files are public record.

CALL TO ORDER:

Mayor David Cooper called the meeting to order at 7:01 p.m.

MEMBERS PRESENT:

Mayor: David Cooper

Mayor Pro-Tem: Lisa Mushel

Council Members: John DesCamp
Steve Rutledge (excused)
Carl Scandella
Andy Valaas

Staff: Lt. Kyle Kolling – Clyde Hill Police
Sara McMillon – Town Clerk-Treasurer
John Joplin – Fiscal Coordinator
Mona Green – Town Planner
Stacia Schroeder – Town Engineer
Wayne Stewart – Town Attorney
Steve Wilcox – Town Building Official

Guests: Cheryl Pietromonaco – 3445 92nd Ave., Yarrow Point
Carl Lombardi – 4225 91st Ave. NE, Yarrow Point
Kerie Whitaker-Kremian – 9033 NE 32nd St., Yarrow Point
Bruce Jaffe – 9235 NE 37th Pl., Yarrow Point
Chris Jaffe – 9235 NE 37th Pl., Yarrow Point

APPEARANCES:

Yarrow Point resident Carl Lombardi addressed the Council. He said it would be helpful if the agenda could be posted on the Town's Web site.

Yarrow Point resident Cheryl Pietromonaco addressed the Council. At the last Council meeting, it was stated that the Town was experiencing budget difficulties. She asked why the Town is pursuing the construction of a public sport court facility during a time of financial uncertainty.

Mayor Cooper responded that the sport court project has been a part of the Town's budget for two years. It was an idea brought forward by the Park Board. A survey concerning parks projects was distributed to residents prior to moving forward on the project, and this survey showed some community interest in pursuing a sport court.

Mrs. Pietromonaco stated that she did not receive a survey. In the future, Town staff will make sure that she is on the mailing list, Mayor Cooper said. Mrs. Pietromonaco asserted that the results would be different now due to global economic conditions. Councilmember Scandella stated that the Council is aware that the Town is in a different situation, and the sport court may need to be reconsidered. A final decision has not yet been made.

Mrs. Pietromonaco requested that permit applications be posted on the Town's Web site before the permit is issued. Town Clerk McMillon said the report that she posts on the Web site includes permits that have not yet been issued.

The Town is expecting that it will experience a decline in revenue, because some of its funds are generated from real estate sales, Fiscal Coordinator John Joplin reported. However, currently the Town has not seen a dramatic decline. In managing its finances, the Town has been very conservative. It has money invested in a government pool and some in reserve.

MINUTES:

Councilmember Valaas noted a correction on page five, on the third line. The last word should be transformer "ratings." On page seven the minutes should say the King County "code" has advantages. Councilmember Mushel noted that Steve Rutledge did not attend the meeting, but part of a discussion is attributed to him on page seven.

MOTION: Councilmember Andy Valaas motioned to approve the minutes of the regular Town Council Meeting March 10, 2009, as amended. Councilmember Lisa Mushel seconded the motion.

Vote: 3 For, 0 Against, 1 Abstain. Motion carried.

CONSENT CALENDAR:

MOTION: Councilmember Lisa Mushel motioned to approve the consent calendar as presented including the warrant register dated April 9, 2009, for warrant numbers 16417 through 16457 totaling \$150,200.24. Councilmember Andy Valaas seconded the motion.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

STAFF REPORTS:

Wayne Stewart, Town Attorney – Mr. Stewart reported on the condition of property located on 95th Avenue. The Town has issued a letter to the property owner stating that conditions at the site create an attractive nuisance. Fire officials at the City of Bellevue

also have notified the property owner that a cleanup is required. The cleanup is not happening in an expedient way, but progress is being made, he said.

Stacia Schroeder, Town Engineer – Mrs. Schroeder reported that JGM Landscape Architects is making some corrections to the sport court proposal. The bid package should soon be ready.

Councilmember Mushel asked if repairs are being made to the walking path on 92nd Avenue. Potelco has committed to doing the repair, Mrs. Schroeder answered. The company experienced some difficulty locating the vendor of the polymer used for the pathway. Installation has to take place when the weather is dry. It is more expensive to replace the pathway polymer than it would be to bore under it, and Potelco has requested that in the future the Town inform contractors of the expense.

Councilmember Valaas asked if the builders who cut the walking path further to the south made a repair, and Mayor Cooper responded that it was repaired, although it was not an exact match. Mrs. Mushel asked if something has been put in place to make sure that this does not happen again, and Mrs. Schroeder said nothing formal has been adopted. In this situation, it was an emergency repair, Mayor Cooper said. Usually contractors are informed about the material used for the pathway.

Steve Wilcox, Town Building Official – Mr. Wilcox reported that development activity in Yarrow Point has slowed. He said he is working with Bellevue Fire to bring prevention activities into the community. He is working to build an improved relationship with Bellevue agencies.

Mr. Valaas asked if fencing has been installed in the right-of-way at a project located at the end of NE 33rd. By looking at corner stakes, it appears that the fence is on private property, Mr. Wilcox said. Mrs. Pietromonaco asked about a gate that was installed without a Yarrow Point building permit. This gate is to be removed, Mr. Wilcox stated. Property owners do not plan to apply for a building permit at this time.

John Joplin, Fiscal Coordinator – A couple of years ago, a group approached the Town asking for a donation for playground equipment at Clyde Hill Elementary, Mr. Joplin stated. Since that time, the City of Clyde Hill and Yarrow Point have carried over the pledged donation to the following year's budget cycle. Work is now moving forward, so the donation will finally be disbursed and a hold harmless agreement with the school district for maintenance and liabilities will be obtained.

Mr. Joplin reported that the Town has received a specific request for a donation from a group called KITH. This group belongs to ARCH, and the Town already contributes to ARCH for affordable housing efforts. Donating to KITH would require a budget amendment. The Council discussed ARCH, and decided to continue to contribute to the larger consortium.

Lt. Kyle Kolling, Clyde Hill Police – Lt. Kolling reported that the Clyde Hill Police made five arrests in Yarrow Point during March. Four were for criminal offenses. One person was picked up on a warrant. One of those arrested failed to stop for a construction flagger and almost hit a police officer head on. Nine infractions and four warnings were issued.

The Clyde Hill Police recently purchased software that enables officers to connect to databases at pawn shops and antique stores for the recovery of stolen possessions. Last month, the police recovered \$55,000 in stolen property.

Lt. Kolling reported on a document shredding event organized by the Clyde Hill Police. Clyde Hill would like to hold the event at the Yarrow Point Kiss and Ride. If Yarrow Point shares in the cost, residents can bring two to three boxes of documents for secure destruction. The cost to the Town is \$275. This event is tentatively scheduled for Saturday, May 30.

Councilmember Mushel said she is uncertain if the Town needs to participate. Many people own document shredders. Mr. Valaas agreed and stated his opposition. Members of the audience expressed their support of the event. Councilmembers decided that the cost seemed reasonable.

Councilmember Scandella stated that the Council is requesting more information on a payment to Clyde Hill for criminal justice equipment. Lt. Kolling said he would need to do some research. The Council discussed a recent car theft incident with Mr. Kolling.

REGULAR BUSINESS:

AB 09-019 – Proposed Payment for Upsizing Storm Water Distribution Line – Improvements at 9100 NE 47th St.

Engineer Schroeder explained that Eric Lang is constructing a new residence at 47th and 92nd. In order to gravity drain the project's approved storm water detention system the contractor will need to excavate an existing 15-inch line located within the right-of-way. Contractors are only required to replace what currently exists.

Plans for a Town storm water system capital improvement project show lines in this area as 24 inches in diameter. If workers for the Lang project install 15-inch lines, the Town would have to replace them with 24-inch lines. It would be logical that the Town pay Mr. Lang for the difference in cost between the 15-inch and 24-inch line, Mrs. Schroeder said.

Councilmember Scandella noted that if the Town compensates Lang now, the Town would not have to incur an additional charge later. In response to a question from Mr. Valaas, Mrs. Schroeder said the pipe will be aligned to conform to the capital improvement project plans. She discussed some technical aspects of the proposal with the Council. Mayor Cooper said it appears to be an advantageous situation for both parties.

MOTION: Councilmember Andy Valaas motioned to approve the proposal from Eric Lang to install a section of storm water drainage line. Councilmember John DesCamp seconded the motion.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

AB 09-020 – Storm Water Improvement Project – CIP#3 at NE 47th Street and 92nd Avenue – Alternatives for Restoration of Existing Landscaping

Mayor Cooper reported that the Park Board has suggested some changes to landscaping at Road End Beach that could be made when the beach is disturbed for an upcoming capital improvement project. The alternative is to restore the beach to its current condition. Park Board members thought that a grassy area should be located on the south side of the beach as well as on the north side. Currently the south side contains ground cover and is not useable.

Councilmember DesCamp said that the proposed landscaping change does not seem to open the area up for activities. It would not create a continuous flow of open space. Mrs. Schroeder said the Park Board's proposed alternative would mean an increase of \$5,000 in the cost of the capital improvement project.

Town Attorney Stewart said the Town is restricted in what it can create at the Road End Beach. According to the findings of a lawsuit, expanded uses that result in a park-like setting are prohibited. Installation of grass would have to be a negotiated agreement with an adjacent property owner. Councilmembers came to the consensus that putting in grass would be an unnecessary expense.

Mrs. Schroeder reported that as part of the same storm water capital improvement project, some established plants in front of John Heller's residence would need to be removed, but Mr. Heller does not want the vegetation removed. Adjusting the alignment of the storm water lines as the Hellers are proposing would be an additional cost of about \$28,000.

Mr. Stewart said that according to the Heller lawsuit findings, the Hellers have the right to keep the vegetation in the right-of-way. However, he said he doubts a judge would rule that the Town is precluded from its use of the right-of-way for storm water drainage. The Town would be responsible for restoring the landscaping to its present state.

Mayor Cooper said the Hellers are questioning the need for improvement to that area of storm water piping. The critical nature of the proposed improvement is documented in a storm water study commissioned by the Town. Storm water is washing out the beach and shooting up from catch basins during heavy rains.

The Hellers are proposing that the Town place the storm pipe and other improvements along the south side of the existing curb, Mrs. Schroeder said. There may be a way to go around that is less expensive than what the Hellers have proposed. Mr. Scandella noted that the Hellers are questioning the need for the improvement, and Mayor Cooper said the storm water study removes speculation. The request from the Hellers seems unreasonable, Councilmember Valaas said, because the purpose of a right-of-way is for the location of public utilities.

Councilmembers Mushel and DesCamp said it would be beneficial to see another alternative. Mayor Cooper said he agrees, but he would like to keep the project moving forward. The Town could instruct consultants to draw up another alternative to include in

the bid package. Councilmembers agreed that the Town is willing to work with the Hellers to try to find a mutually beneficial and reasonable alternative.

AB 09-021 – Review of Proposed Ordinance No. 599 – Amending Title 2 of Town Code – Administration and Personnel

Town resident Pietromonaco requested that she ask some general questions before the review of proposed code revisions. Mrs. Pietromonaco asserted that Mr. Stewart is changing Town rules in regard to taxing. She asked for improved public notification. Agendas should be posted on pagodas a week ahead of time and the agendas should be put on the Town’s Web site. Handouts should be available at the meeting.

Mayor Cooper assured Mrs. Pietromonaco that the Town will do what it can to provide advance notice. Mr. Stewart is changing the outdated Town Code to bring it into compliance with current state and county laws, Mr. Cooper said. No substantive changes regarding taxation are being made.

Attorney Stewart addressed the Council concerning the changes. He reported that none of the revisions deal with increasing taxes. The code is being modified to make it consistent with state law, and things that are no longer applicable were removed.

Sections of Title 2 that discuss a Town Marshal and Deputy Town Marshal were deleted, because the Town no longer has these positions. A Deputy Water Safety Marshal is a position that never existed. In section 2.2430, the Town sets a bonding amount comparable with state law.

In Chapter 2.24, there are two separate sections for bonding of the “Clerk” position and “Treasurer” position, but in other parts of the Code refer to one Clerk-Treasurer position. Councilmembers agreed that section 2.24.010 should be eliminated, combining the officer bond into one for the Clerk-Treasurer position.

Chapter 2 will also be amended to remove language regarding a Board of Library Commissioners, Mr. Stewart continued. This board does not exist and has never existed. The code also was changed to change the Town’s official newspaper because the previous official newspaper has gone out of business.

Mrs. Pietromonaco stated that she thinks the section regarding a library board should be left in the Code. Councilmember DesCamp disagreed. Library initiatives have been defeated twice by Yarrow Point voters. It is unlikely that this type of measure would ever pass. If it did pass, the Town would be a part of the county’s system and a local board would be unnecessary.

Mr. Stewart continued that a change in Chapter 2.36 eliminates “hosting (meals for, or entertainment of, others)” from nonreimbursable expenses. Each month Mayors of the five Points communities get together for a breakfast meeting, and share in the expense. This change would allow the Mayor to be reimbursed for the expense of the “Points Communities Mayor’s Breakfast.”

Mrs. Pietromonaco stated her opposition to this Code change. It would mean that whoever in the Town wants to host a party could do so. Councilmember Valaas said he disagrees. The intent is clear that it would have to be in connection with an official duty. Town officials would not tolerate the scenario Mrs. Pietromonaco is discussing.

Mr. Stewart continued that in Chapter 2.44, the state's "Local Government Whistleblower Protection" is adopted by reference. In the chapter dealing with the municipal court, a provision for a local violations bureau is eliminated. This bureau was to assist the court in processing traffic cases, but that is unnecessary. Language designating court employees as employees of the Town is outdated. The Code is changed to eliminate specific court fees. The municipal court sets its own fees.

MOTION: Councilmember Andy Valaas motioned to approve Ordinance No. 599 as presented, with the exception that in Chapter 2.24 the bond for Clerk and Treasurer be combined into one. Councilmember Lisa Mushel seconded the motion.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

AB 09-022 – Review of Proposed Ordinance No. 600 – Amending Title 3 of Town Code – Revenue and Finance

Town Attorney Stewart explained that two changes were made to the Code in regard to sales and use tax. One change updates the reference to the State Code. A section was added that clarifies the taxation the Town is allowed under the sales and use tax. Mrs. Pietromonaco asked if the Town is required to make these changes, and Mr. Stewart responded that the Town will lose revenue if it does not make the change. Mr. Joplin added that most of the language is directly from state code.

Mr. Stewart continued that the changes mean a private citizen can't start an initiative to increase the sales tax. A greater penalty for violating the sales tax code also is provided for. If someone does not collect the tax as required, the penalty is a civil infraction. Councilmember DesCamp commented that this would not appear to affect very many people living in Yarrow Point.

The Town's park fund is eliminated, and funds for these types of improvements will be taken from the general fund. A local improvement guaranty fund was removed from the Code because it is unnecessary. Some of the funds from the Chapter regarding miscellaneous funds were removed, and a fund was added, to reflect what the Town's current accounting practices.

Mrs. Pietromonaco stated that the Code does not specify exactly how money is to be spent. Mr. Stewart responded that it does not need to. As representatives of Yarrow Point residents, elected officials are empowered to make decisions regarding how money is spent. They are elected to make decisions regarding the Town's finances. Mayor Cooper added that if officials are not making the right decisions, citizens are empowered to vote them out of office.

In response to a question from Mrs. Pietromonaco, Councilmember Valaas said that previously invoices for development services were paid for out of the general fund. The

Town did not think it was charging enough in permit fees to cover its costs, but did not have a clear view of that because the funds were lumped together. Councilmembers have the philosophy that development should pay for itself, so by creating the separation, there is greater visibility.

Mrs. Pietromonaco continued to assert that the Code should specify exactly how Town monies are to be spent. She asked if the people of the Town have any input into how the money is spent. Councilmember Valaas responded that the Town is required to have public hearings on its annual budget, and is required to follow the approved budget. The process is regulated by the State. Resident Whitaker-Kremian agreed that it is not the job of the town's citizens to tell elected officials how every dollar is to be spent. Resident Jaffe and others in the audience agreed that the Town is following a formal process set by State law.

Councilmembers discussed Fund No. 104, the community development fund. Councilmember Valaas said he would prefer to have separate funds for grant monies and revenue received from building services fees. Fiscal Coordinator Joplin said building activities can create needs in infrastructure. The money can be used for building activities and community infrastructure improvements.

The Council agreed to table the ordinance for further discussion.

AB 09-023 – Review of Proposed Ordinance No. 601 – Repealing Title 5 of Town Code – Cable Television

Town Attorney Stewart explained that municipalities no longer use the method of negotiation discussed in the Code. Towns use contracts instead of franchise agreements, and Yarrow Point has a contract with Comcast Cable. This contract will expire in 2011. A number of cities are currently negotiating contracts. Yarrow Point has the time to wait to see the results of these negotiations. Mr. Stewart said he would begin contract negotiations in 2010.

MOTION: Councilmember Andy Valaas motioned to approve Ordinance No. 601 repealing Title 5 of Yarrow Point Municipal Code as presented. Councilmember Lisa Mushel seconded the motion.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

AB 09-024 – Review of Proposed Ordinance No. 602 – Amending Title 8 of Town Code – Health and Safety

Mr. Stewart said that revising this section of the Code was the most difficult. Case law strictly limits what public nuisance codes can restrict. Courts have been reluctant to impose standards. The old Town nuisance code enacted in 1965 was wiped out, some state codes were adopted and some revisions were borrowed from other cities. A process by which the police can monitor security alarms and a process for someone to challenge a fine were added.

Mr. Jaffe said that if the Town issued a citation for everything that could be considered a nuisance, it would be unfair. The process is designed to get people to comply, instead of punishing them, Mr. Stewart responded. Mayor Cooper added that Bellevue Fire also has standards that it enforces.

The section regarding garbage collection and disposal was eliminated, Mr. Stewart reported. This was done in favor of negotiating a contract with a solid waste hauler. A contract with Allied Waste will be pursued.

At first, the code was amended to prohibit any type of outdoor burning, but on further consideration, some people may want to be able to have a private recreational fire that is properly contained in a commercially constructed pit, Mr. Stewart said. The code section pertaining to fireworks was changed to increase the penalty for violation.

MOTION: Councilmember Lisa Mushel motioned to approve Ordinance No. 602 amending Title 8 of Yarrow Point Municipal Code as presented. Councilmember Andy Valaas seconded the motion.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

AB 09-025 – Review of Proposed Ordinance No. 603 – Amending Title 16 of Town Code – Subdivisions

The only change to this Code section is that the word “engineer” was removed and replaced with the word “staff,” Mr. Stewart reported.

MOTION: Councilmember Lisa Mushel motioned to approve Ordinance No. 603 amending Title 16 of Yarrow Point Municipal Code as presented. Councilmember John DesCamp seconded the motion.

Councilmember Valaas asked if a public hearing is necessary because the ordinance deals with a land use issue. Mr. Stewart responded that a subdivision ordinance is not considered a land use ordinance, and the change is not substantive.

Mrs. Pietromonaco asked if the change means that any member of staff, even unqualified people, can be sent to deal with an engineering problem. Mayor Cooper said that in a situation, an engineer is not always the appropriate person. This change allows the Town to use the most effective member of staff. Town leaders would not send someone unqualified to address an issue. This would not be in anyone’s best interest, nor would it be in the Town’s best interest.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

AB 09-026 – Review of Mayoral Appointment to the Wetherill Nature Preserve Board – Kerie Whitaker-Kremian

Mrs. Kerie Whitaker-Kremian introduced herself and expressed her interest in being involved in the Yarrow Point community.

MOTION: Councilmember Lisa Mushel motioned to approve the appointment of Kerie Whitaker-Kremian to the Wetherill Nature Preserve Board. Councilmember Carl Scandella seconded the motion.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

ADJOURNMENT:

MOTION: Councilmember Andy Valaas motioned to adjourn at 10:03 p.m. Councilmember Lisa Mushel seconded the motion.

Vote: 4 For, 0 Against, 0 Abstain. Motion carried.

APPROVED:

ATTEST:

David Cooper, Mayor

Sara McMillon, Clerk-Treasurer