

**Town of Coupeville
Regular Council Meeting
Tuesday, June 28, 2011
6:30 p.m.**

Due to technical difficulties with the audio recording equipment the meeting did not convene until 7:25 pm.

PRESENT: Mayor Nancy Conard, Councilmembers Dianne Binder, Bob Clay, Ann Dannhauer, Molly Hughes, Tom Tack.

STAFF PRESENT: Town Planner Larry Kwarsick, Town Attorney Thom Graafstra, Public Works Director Malcolm Bishop, Town Engineer Greg Cane, Clerk Treasurer Judy Thomas

CHANGES AND APPROVAL OF THE AGENDA

Council Action: A motion was made by Councilmember Tack, second by Councilmember Clay, to approve the Agenda as presented. The motion passed 5-0.

APPROVAL OF MINUTES

Regular Meeting of May 10, 2011

The minutes of the Regular Meeting of June 14, 2011, and the Council Workshop of June 20, 2011, were approved as submitted.

MAYOR'S REPORT

- Mayor Conard noted that the final draft of the Ebey's Reserve Design Guidelines is available on the Town's website, and a public open house will be held on Wednesday, July 13th at 6:00 pm, at the Services Alternatives building.
- We have received an offer on the property at 209 Broadway, we counter-offered, consistent with Council direction, and the prospective buyer accepted our counter-offer.

AUDIENCE INPUT

Gary Piazzon, Coupeville, handed out copies of a memo about a meeting of the International Program on the State of the Ocean (IPOSC), in which six different countries reviewed the global research on the marine environment. He summarized the findings of the report that they determined that the negative impacts are greater than the worst predictions, and the speed and rate of degeneration are faster than anyone predicted. The report can be found online at: <http://www.stateoftheocean.org/>.

PUBLIC HEARING

Appeal of Right-of-Way Permit 10-4, issued to Foster Faris for Lot 24 in the Plat of Pennington Hills

Mayor Conard explained the format of the public hearing; and declared the public hearing open at 7:35 pm.

Mayor Conard explained that this is a quasi judicial hearing and asked if any Councilmembers have any conflict of interest, or any ex-parte communication. She noted that she and Council had

received an email from Will Jones, which qualifies as ex-parte communication and identified the document as: Exhibit 1 - email from Will Jones dated May 16, 2011. Mayor Conard and Council acknowledged that they had received the email. Brendan Donckers asked if Mayor Conard had a conflict of interest and she replied that she did not.

Mayor Conard identified Exhibit 2 - Staff Report from Town Planner Larry Kwarsick dated June 23, 2011; and Exhibit 3 – Email from Brendan Donckers received at Town Hall today, June 28, 2011.

Mayor Conard asked that all persons planning to speak at the public hearing, to please stand, raise their right hands, and take the following oath: “Do you swear that the testimony you are about give, is true to the best of your knowledge?” The following persons stood and raised their right hands: Larry Kwarsick, Malcolm Bishop, Will Jones, and Brendan Donckers, all stated “I do.”

Mr. Kwarsick explained that Foster Faris received a conditioned clearing and grading permit to remove trees from Lot 24, in August 2010. In order for Mr. Faris to access Lot 24 by motorized vehicle (construction or other purpose) a construction access is required in accordance with Town standards. The approved site plan associated with this permit depicts a construction access to the property. CTC (Coupeville Town Code) 16.24.070 requires an entry permit for vehicular access to private property from the Town’s public streets. On November 26, 2010, Mr. Faris filed an appeal of the conditions imposed by staff, requesting that the Town issue a right-of-way permit that authorizes loading and unloading activities in the right-of-way so as to enable Mr. Faris to clear trees from his property. This is an appeal on one of the conditions.

Tom Graafstra, Town Attorney, noted for the record, that if there is testimony about other lots or other grading permits besides Lot 24 and the appeal of the right-of-way permit, that rather than objecting continually as that testimony and evidence is presented, and this includes Exhibit 3 in the record, that we are not waiving objections, that in fact from the Town’s point of view, is that this is an appeal to a specific right-of-way permit for Lot 24; and he asked that the record reflect the continuing objection.

Mr. Donckers, the attorney representing Foster Faris, referred to the notice of Appeal of Right-of-Way Permit No. 10-04, and Exhibit 3 which includes all conversations and actions taken by the Town, dating back to Foster Faris’ clearing and grading permit application of August 2009. Mayor Conard agreed with Mr. Graafstra’s ‘note for the record’, that rather than continually objecting, that she would like to give Mr. Donckers the opportunity to discuss more than the appeal of the right of way permit.

Mr. Donckers discussed some of the highlights of his letter of June 28th to the Town Council. He stated that the Town is saying that the scope of this appeal is narrow; but that is not true, it is based on their interpretation of the law that applies to this situation. His client submitted his application according to the requirements on the face of the application. In September 2009, the Town claimed that Mr. Faris needed to provide additional information for the application to be complete; which Mr. Donckers claims is the staff ‘opinion’, not the requirements of the Town Code. He noted that it is the Town Council’s responsibility, to enforce the Town Code; and his client complied with the Town Code. He discussed the details of the events over the next 14 months, when the permit was approved with 12 conditions, with one condition that restricted the use of rights-of-way for short term loading. He noted that Mr. Faris simply wanted to cut down trees and remove them from his property; and there was not going to be any construction on the

property and he should not be required to have a costly construction access to load and unload trees. Mr. Donckers explained that Mr. Faris filed an application in accordance with the Town Code in 2009, and the Town is required to follow that. He offered to answer questions and noted that his client, Foster Faris, was also available on the speaker phone in the room.

Public comment:

Will Jones, Pennington Hill, Coupeville, referred to his email to Council (Exhibit1). He suggested that Mr. Faris could access lot 23 through lot 24, for logging. He explained that logging in a residential neighborhood, is not like logging in a forest, and the impacts would be much greater on residential streets. He suggested the Town require a direct path from lot 24 to the highway, for minimal impact on town streets. The condition of the site will have an impact on the surrounding properties and if there is nothing left but stumps, it will not contribute to the quality of the neighborhood. There should be a requirement to clean up all the area and replant new trees, until the property is developed.

Mr. Kwarsick noted that no comment letters were received.

Mr. Donckers responded to Mr. Jones comments about replanting trees and aesthetics of the property and impacts to streets; this permit is SEPA (State Environmental Policy Act) exempt and that is not required, and opinions of Town Staff and others who don't want this clearing to occur, aren't relevant to the Town Code. The Town Council must use the Town Code to make its decision.

Councilmember Tack asked Mr. Kwarsick to explain the language in the existing Town Code, in respect to the applicant's right to use, the Town right-of-way. Mr. Kwarsick explained that this is a dedicated public right-of-way, dedicated to the public as part of the process in developing the plat of Sunset Terrace. The Town has the custody of those public rights-of-way, primarily used for roads and streets, drainage, utilities for the public use. Private use of the roadway is for private or public utility installations, driveways, drainage and are subject to approval under the Town Code and Washington State Law. In this case, Mr. Faris submitted a right-of-way application for two authorizations, one was to build a construction access, and the second to use the street as the platform for parking and loading a logging truck, for loading logs onto the truck from his property. Staff's opinion is that use of the street right-of-way for the purposes of parking or loading a logging truck, is not necessary, and we have the responsibility to the public for guardianship of that road right-of-way; and we saw no reason, and no reason was offered in the application, or appeal, or this evening, why the Town Council should have allowed the use of the right-of-way as requested by Mr. Faris.

Mr. Donckers commented that Mr. Kwarsick's response was opinion and there was no citation of Town Code. Regarding no reason was offered he explained that building the construction access was cost prohibitive.

Councilmember Hughes asked Mr. Kwarsick about the construction access to the property. Mr. Kwarsick responded that the construction access is to extend into the property as shown on the site plan; and it was Staff opinion that that was sufficient to accommodate the applicant's needs for parking and loading harvested timber.

Councilmember Clay asked Mr. Donckers, it appears that two permits were issued; one is the clearing and grading permit, which had several conditions imposed on it. Two of the conditions have been applied to the Town right-of-way permits: 1) a permit is required within all Town

right-of-way; 2) The Town right-of-way shall not be used for storage of equipment or materials nor shall the right-of-way be used for parking at any time. And, it appears to me that you are saying that those conditions shouldn't apply. As long as the Town has authority to require a right-of-way permit, these are the conditions to use the right-of-way.

Mr. Donckers said that condition number six, that was attached to the actual right-of-way permit says, 'no use of the right-of-way for storage of equipment or materials.' The condition with the permit says there shall not be any loading. He discussed the difference between parking versus using the right-of way for a temporary period to load logs, which they estimate 1-1/2 hrs of loading occurring five to seven times.

Mayor Conard asked Foster Faris (who was on the speaker phone) if the testimony he was about to give was the truth, to the best of his knowledge, and he responded, yes.

Mr. Faris said the logger told him it would take about two hours for each load and he estimated six to eight loads.

Councilmember Dannhauer asked about the total time to load the logs from Lot 24. Mr. Faris responded that Lot 24 would be just two loads.

Councilmember Clay asked Town Attorney Graafstra, if the Town has the right to set conditions such as, the town's right-of-way could not be used for loading trucks. Mr. Graafstra responded that the town controls the right-of-way and the public use of the public right-of-way, and the Town control extends to the back of the right-of-way line.

Councilmember Hughes asked Mr. Donckers, that since Mr. Faris has applied for a construction access permit why doesn't he want to use the access, to park the logging truck.

Mr. Faris responded that the construction access was a requirement of the permit and he doesn't feel the construction access is necessary and he should be able to load in the right-of-way.

Councilmember Hughes repeated what she understood Mr. Faris to say, that he wants to load the logging truck in the Town's right-of-way, and does not want to build the construction access. Mr. Faris responded affirmatively.

Mayor Conard asked if the construction access was a requirement of the clearing and grading permit, then the right-of-way permit cannot undo that requirement, can it?

Mr. Graafstra responded that an application was made for a Clearing and Grading Permit, and a determination was issued by the Town; and the period of time to appeal the Clearing and Grading Permit had expired without an appeal. Therefore, it is his opinion that the terms of the Clearing and Grading Permit were final. The Clearing and Grading Permit requires a construction access, regardless of whether the right-of-way requires a construction access.

Councilmember Tack asked Mr. Donckers, 'So you believe that Mr. Faris has an inherent right to encumber the public right-of-ways while he clears the property? Mr. Donckers responded that he believes Mr. Faris has rights as they existed in the Town Code in 2009.

Councilmember Hughes noted that whether it is opinion or law, many applications are issued in the Town with conditions, that are approved by Staff, Planning Commission, Design Review Board, or Town Council; that is a common way to approve a permit.

Mr. Kwarsick added that is correct, it is staff opinion that it is our responsibility to preserve and protect the public's interest in the public right-of-way, that we can appropriately condition the

request to use the public right-of-way. Without justification submitted as part of the application or presented to date, we saw no reason to allow the use of the public right-of-way for loading of logging trucks, when sufficient area was available on the property. To clarify, the specific condition, denying the use of the right-of-way was in direct response to the application that was submitted; Mr. Faris asked for that right and we denied that right. We did not change conditions, we responded to the permit.

Councilmember Binder asked Mr. Kwarsick for clarification on the application that is being considered. Mr. Kwarsick explained that it is the 'Application to Perform Work on Town Right-of-Way' dated October 14, 2010, approved on October 19, 2010 and signed by Malcolm Bishop.

Mayor Conard asked Mr. Faris if he wished to add anything at this time. Mr. Faris responded, "I want what's right."

Mr. Donckers addressed the Council, "We have already submitted our arguments in details to the Council. When you are looking through and consulting with your attorney, on what action is proper for the Town, on what the likelihood of an appeal, may or may not be. I would incur Council not to question whether or not the Town has authority to issue conditions but with looking at the jurisprudence of the due process clause, you should look at arbitrary conditions. Then look to a course of conduct that would outline and see how close that comes with the cases, construing those statutes in both federal and state constitutions."

Mayor Conard declared the public hearing closed at 8:30 pm.

Council Discussion:

Councilmember Tack stated that Mr. Faris has an inherent right to clear his property, and he apologized that he has had to go through a lengthy process. The application was approved with conditions, which happens with many permits in town. But he did not believe that he has the inherent right to encumber the public right-of-way; that is the Town's jurisdiction and the Town's prerogative to determine how much encumbering of the public right-of-way is allowed. The real question comes down to, does he (Faris) have the inherent right to encumber the public right-of-way; and Councilmember Tack does not believe that he does.

Councilmember Hughes explained that, from everything that has been presented, she agrees that the right-of-way that has been approved, allows Mr. Faris to clear the trees from his property. It is not disallowing the use of his property, but is keeping in balance the community's right to safety on that road. That particular lot is on a curve, a downward slope, with a steep hill with vegetation next to it, in a residential neighborhood that is used by vehicles and children and pedestrians. The conditions appear to be a fair compromise to protect the public and allow Mr. Faris the right to clear the trees on his property.

Councilmember Binder agreed with Councilmembers Tack and Hughes, and disagreed that this was an arbitrary condition; it was the right decision to make, in-lieu of the safety of the road, the children, and the Town. Since he has the option to use a construction road and use his own property to do exactly as he wanted; this is not an arbitrary condition to ask.

Councilmember Clay agreed that this is not an arbitrary decision. He felt that in approving the Clearing and Grading Permit and the Right-of-Way permit, Staff looked at the options that were available to Mr. Faris; and the imposition, in his opinion, of conditions are well within the rights of the Town.

Council Action: A motion was made by Councilmember Clay, second by Councilmember Hughes, that the denial of the use of the right-of-way permit, that we have been discussing (ROW 10-04), for loading be upheld and that the appeal be denied for lack of justification for revision of the permit conditions. *Council Discussion*: Councilmember Dannhauer asked if the denial of the right-of-way, does that include the land, off the street? Mr. Kwarsick responded that it includes the entire Town right-of-way. Motion passed 5-0.

Mayor Conard called for a short recess at 8:37 pm, and reconvened to regular session at 8:45 pm.

NEW BUSINESS

Approval of Professional Services Agreement with Tom Davis for Police Department

Review - *Recommend a motion to approve a Professional Services Agreement between the Town of Coupeville and Tom Davis for consultant services, in an amount not to exceed \$15,000.*

Mayor Conard recommends we contract with Tom Davis to provide peer review of the police department. There is currently \$7,900 in the 2011 budget for written policies and procedures and the additional funds will be included in the 2011 budget revision.

Council Action: A motion was made by Councilmember Hughes, second by Councilmember Tack, to approve the Professional Services Agreement between the Town of Coupeville and Tom Davis for consultant services, in an amount not to exceed \$15,000. The motion passed 5-0.

Appointment of Mayor Pro-Tem -- *Council appoints Mayor Pro-Tem every six months.*

Council Action: A motion was made by Councilmember Tack, second by Councilmember Hughes, to appoint Councilmember Bob Clay to serve as mayor pro tem for July through December 2011. The motion passed 5-0.

Approval of June Claims and May Warrants - *Staff recommends approval of the June 28, 2011 claims vouchers/warrants #24035 to #24119 for a total of \$145,614.94; and May 31, 2011 payroll warrants #13392 to #13432 for a total of \$101,857.21.*

Several questions were asked and answered about the vouchers and no changes were suggested.

Council Action: A motion was made by Councilmember Hughes, second by Councilmember Binder, to approve the June 28, 2011 claims vouchers/warrants #24035 to #24119 for a total of \$145,614.94; and May 31, 2011 payroll warrants #13392 to #13432 for a total of \$101,857.21. The motion passed 5-0.

STAFF REPORTS

Ms. Thomas provided a written report with the financial reports of May 31, 2011 and offered to answer any questions. Councilmember Hughes asked about the Ragnar Relay and other special events and whether the Chamber was notified of these events. Ms. Thomas responded, yes, she notifies (by email) the CWCC, Coupeville Historic Waterfront Association, Town Council and Town Staff, early in the week of the special events scheduled for the next weekend.

Larry Kwarsick explained that last week we received three applications for clearing and grading permits from Mr. Faris, and these applications will need to comply with the new tree canopy ordinance. He spoke about how much he has enjoyed working with Malcolm Bishop and noted that in all his years working in public service he has never worked with such a good soul, as Malcolm. Over the years, the department has risen to a higher level and Malcolm always has the community's best interest at heart.

Malcolm Bishop responded that he has enjoyed working with Larry Kwarsick and he has learned a lot. He spoke about the tour of the facilities with the Town Council on June 20th; and one of the stops was at Well 1-08, where the generator installation at that well, was completed that day. The storage building should be completed by tomorrow, June 29th, except for the fence. Allison Evans, Department of Ecology, and Mark, from the Department of Health, stopped in today for the annual evaluation of the WWTP and they will be sending a report. The Town will be receiving the 2010 Wastewater Treatment Plant Award from the Department of Ecology, which we received in 2009. Councilmembers thanked Malcolm for his service to the Town. Mayor Conard expressed her appreciation to Malcolm for his service to the Town, and noted how he is leaving things in much better shape, than it was when he arrived. Malcolm responded that it wasn't him but a whole team.

COUNCIL REPORTS

Councilmember Dannhauer explained that there have been no Parks & Recreation Commission meetings since February. On a follow-up to the Council workshop, she found that there were to have been three options provided for review, on the Front Street Deck. She attended a Law Seminars International Conference on the 21st, on regulatory takings and she has more information if people are interested. She noticed that the stormwater outflow on Haller seems to be eroding the bluff. She asked when the bike rack at the Town Park is going to be replaced and Mayor Conard responded that we will be ordering a new one. Yesterday, she attended a meeting with Jim Bruner and Representative Norma Smith, regarding Mr. Bruner's idea of a flat 10% income tax that you could opt into, and then not pay any other taxes in the County. She is still trying to find out information on the Cama Beach boating access; most say there are no boat ramps.

Councilmember Clay attended the AWC Annual Conference in Spokane and thought it was one of the best conferences he has attended due to the quality of the speakers, shorter sessions and more classes were offered. He attended sessions on the following topics: land use decisions- does and don'ts; after school programs in your community; the state budget and the political process it goes thru; a water reclamation project in Spokane; Puget Sound Partnership and some of the issues they have been dealing with due to changes in leadership; Great Shakes in the Pacific Northwest discussing earthquakes and preparedness. He discussed a proposal to put a coal loading facility in Bellingham and Mayor Dan Pike is against it, and he had more information for Council if they were interested. He discussed the plan for Island Transit's triangle property to redo the roadway. He added that ridership is up by 4% from last year at this time.

Councilmember Tack spoke about a great program that his son participated in for a week, 'Boys State', sponsored by the American Legion, and it was held at Central Washington University in Ellensburg. The program is open to high school juniors, both boys and girls. The program begins with classes about local, county and state government and how they to function. It was a great opportunity for his son and he encourages other students to take advantage of this great opportunity.

Councilmember Binder thanked Malcolm for the great tour, it was a great refresher and she learned some new things. She thanked him for his service to the Town, and all he has done. On the tourism side, Councilmember Dannhauer shared an article with her, that the State has pulled our funding; we may be the only state that has had that happen. On Thursday, July 7th there will

be a meeting for Island County Tourism Committee, hosting Port of Seattle Commissioner Bill Bryant, and he will discuss and answer questions about, 'Where we go from here.' On the second 2% Committee, she met with Commissioner Helen Price Johnson and another person and they worked on simplifying and making a more equitable grant process for the first round of the grant process.

Councilmember Hughes attended the Coupeville Historic Waterfront Association annual meeting this month and reported on all they accomplished last year; they introduced their new board; and discussed what they are planning to do in 2012. They commended the Town of Coupeville on the remodel of the Rec Hall Kitchen. Regarding Ebey's Trust Board, they have hired two students from the University of Oregon. The National Park Service has decided to put a \$10 parking fee, at the parking lot at Ebey's Landing. She attended the Farm Exchange meeting a few weeks ago, and they did the tour of all the parcels that are up for sale; and she felt the first kick-off meeting was very well attended. She was pleased to report that the Jacob Ebey House opened on June 2nd, and in the first three weeks they had a total of 458 guests.

Mayor Conard thanked Malcolm Bishop for eleven great years of service to the Town of Coupeville, and she wished him the best.

ADJOURNMENT: 10:00 pm

Respectfully Submitted:

MAYOR:

Judy A. Thomas, Clerk Treasurer

Nancy Conard

A complete audio recording of this meeting is available upon request from the Clerk-Treasurer.