

MARYSVILLE CITY COUNCIL MEETING**September 10, 2007****7:00 p.m.****City Hall****CALL TO ORDER / INVOCATION / PLEDGE OF ALLEGIANCE**

Mayor Dennis Kendall called the June 11, 2007 meeting of the Marysville City Council to order at 7:03 p.m. The invocation was given by Pastor Greg Kanehan of Marysville Free Methodist Church. Mayor Kendall led those present in the Pledge of Allegiance.

ROLL CALL

Chief Administrative Officer Mary Swenson gave the roll call. The following staff and councilmembers were in attendance.

Mayor: Dennis Kendall

Present: Councilmember Jon Nehring, Councilmember Lee Phillips, Councilmember Carmen Rasmussen, Councilmember Jeff Seibert, Councilmember John Soriano, Councilmember Jeff Vaughan and Councilmember Donna Wright

Also Present: Parks and Recreation Director Jim Ballew, Senior Planner Cheryl Dungan, Community Development Director Gloria Hirashima, Recording Secretary Laurie Hugdahl, City Clerk Tracy Jeffries, Finance Director Sandy Langdon, Public Works Director Paul Roberts, Chief of Police Rick Smith and Chief Administrative Officer Mary Swenson

Committee Reports – None

Mayor Kendall noted that item 15 under Current Business, *45-day Lien Filing Period for the Stillaguamish Water Treatment Plant*, would be pulled and held over until the next meeting.

Presentations - None**Audience Participation**

Kelly Boren, 8507 66th Place NE, Marysville. Mr. Boren discussed six concerns he had regarding the Wal-Mart on 528 and Highway 9 and the impacts it would have on the Rock Creek neighborhood:

1. The connecting road may direct traffic directly from a parking lot into adjoining neighborhoods.
2. The current buffer of tall trees will be reduced by the civil plan that's currently in work. This will open a line of sight from the proposed intersection directly into the neighborhood.
3. Concerns about the tall lights.
4. Concerns about the noise from the tire center, which is located on the edge closest to the neighborhood.
5. Walking paths look like they would be public walkways that open directly from the Wal-Mart parking lot into the homeowners' association walkways.
6. Current site is not well-secured by Wal-Mart. 4x4's and motorcycles are entering down the homeowners' association's walking paths, mixing with children and foot traffic.

Councilmember Nehring disclosed that he lives in this neighborhood. Mr. Boren is a member of the board of the homeowners association. Councilmember Nehring said that he believes Mr. Boren speaks for the majority of the neighborhood on this issue. He thanked Mr. Boren for coming to the meeting.

Councilmember Rasmussen asked Gloria Hirashima if Community Development was already considering the lighting and the noise from the tire center. Community Development Director Hirashima indicated that it had been considered.

Approval of Minutes

1. Approval of July 23, 2007 City Council Meeting Minutes.

Councilmember Vaughan indicated he would be abstaining since he did not attend the July 23 meeting.

Motion made by Councilmember Wright, seconded by Councilmember Nehring to approve as presented. **Motion** passed unanimously (6-0) with Councilmember Vaughan abstaining.

2. Approval of September 4, 2007 City Council Work Session Minutes.

Councilmembers Phillips and Soriano indicated they would be abstaining since they did not attend the September 4 work session.

Motion made by Councilmember Nehring, seconded by Councilmember Rasmussen to approve as presented. **Motion** passed unanimously (5-0) with Councilmembers Phillips and Soriano abstaining.

Consent

Councilmember Nehring asked to remove item 24 for discussion.

Motion made by Councilmember Vaughan, seconded by Councilmember Wright, to approve Consent Agenda items 3-8, 17, 26, 13, 25, 11, 14, 16, 18, 27, and 28 as follows:

- 3. Approval of July 27, 2007 Claims in the Amount of \$477,382.63; Paid by Check No.'s 40802 through 40925 with check No.'s 30697 and 40661 voided.
- 4. Approval of August 1, 2007 Claims in the Amount of \$907,319.73; Paid by Check No.'s 40926 through 41077 with Check No.'s 40852 and 40890 voided.
- 5. Approval of August 8, 2007 Claims in the Amount of \$959,063.14; Paid by Check No.'s 41078 through 41278 with Check No.'s 28362, 38067, and 41025 voided.
- 6. Approval of August 15, 2007 Claims in the Amount of \$600,616.40; Paid by Check No.'s 41279 through 41430 with Check No.'s 38772 and 40926 voided.
- 7. Approval of the August 3, 2007 Payroll in the Amount of \$1,080,372.12; Paid by Check No.'s 18286 through 18376 with Check No. 18366 voided.
- 8. Approval of the August 20, 2007 Payroll in the Amount of \$680,587.27; Paid by Check No.'s 18377 through 18459.
- 17. Approval of August 22, 2007 Claims in the Amount of \$476,214.94; Paid by Check No.'s 41431 through 41584 with Check No.'s 31455 and 41274 voided.
- 26. Approval of August 29, 2007 Claims in the Amount of \$474,713.24; Paid by Check No.'s 41585 through 41722 with no Check No.'s voided.
- 13. Professional Services Supplemental Agreement # 3 for Pertteet Engineering for the SR 528, 47th Avenue NE to 67th Avenue NE Road Improvement Project.
- 25. Annual Support Agreement and License Agreement for Munis Software.
- 11. Award Janitorial Contract to Advantage Building Services under Contract No. 18989.

14. Professional Services Agreement with Blue Marble Environmental, LLC to aid in the design and implementation of the Commercial Food Waste Composting Program
16. Acceptance of the Jennings Park Plaza/Sidewalk Installation Project 45-day Lien Filing Period.
18. Contract for Marysville Municipal Court Commissioner.
27. Approval of the September 5, 2007 Payroll in the Amount of \$1,069,555.89, Paid by Check No.'s 18460 through 18541.
28. Approval of September 5, 2007 Claims in the Amount of \$498,202.71; Paid by Check No.'s 41288 through 41526 voided.

Motion passed unanimously (7-0).

24. Approve the Recommendation to Award Funding of the Hotel/Motel Tax Grant Project.

Councilmember Nehring noted it looks like that the applications exactly matched the dollars available. Councilmember Phillips affirmed that they did. He explained the process of grading that they went through when considering the applications. Councilmember Nehring asked if a representative from the new Holiday Inn would be on the committee next year. Councilmember Phillips explained that he is already attending the meetings and is looking forward to next year. Councilmember Nehring commented that as the City begins to grow this could become a more viable source of income. He just wanted to make sure they give careful consideration to which applications are approved. Councilmember Phillips concurred.

Councilmember Rasmussen commented that as this fund grows it would be nice to get the word out about this source of funding for non-profit organizations to have a broader pool of applicants.

Motion made by Councilmember Nehring, seconded by Councilmember Phillips to approve item 24 as presented. **Motion** passed unanimously (7-0).

Review Bids - None

Public Hearings - None

Current Business

15. Acceptance of the Stillaguamish Water Treatment Plant Project 45-day Lien Filing Period

This item was removed from the agenda, to be held until the next meeting.

23. The Ridge at Rock Creek Phase 1-Final Plat Mylar.

Public Comment:

Dean Fink, 7131 83rd Avenue NE, Marysville, introduced himself as the sole resident in the middle of the Ridge at Rock Creek. He has been involved with this issue for about three years and has been concerned about impacts it will have on his life and his property. He noted that there is now grading activity within inches of his drain field. He discussed a situation last year with a catch basin which caused an inch of water to flow over his land during the rainy season. He said his drain field was resurveyed showing that it is between three and four feet over the property line. Originally when he moved in it was six feet away from the property line. He is very concerned about the drainage onto the drain field. The interceptor ditch was removed by his drain field to comply with a state requirement. Now, what used to have collateral flow through it is blocked with soil. He was very frustrated with the lack of response regarding his concerns.

Brent Carson, 2025 1st Avenue, Suite 500, Seattle, WA, spoke as a representative of Gordon Derr, the law firm representing the developer of this project. He claimed that the issues raised by Mr. Fink were completely resolved awhile ago. He addressed the issue of the property line and said that there is no property line dispute in this case. There has been an agreement and Mr. Fink moved his fence to the agreed property line in September of 2006. That agreed line is the plat property line. Mr. Fink claims that the line has somehow moved since September 2006. The pins referred to by Mr. Fink are offset pins and are not related to the property line.

City Attorney Grant Weed asked Mr. Carson about Mr. Fink's claim to a prescriptive easement right to certain property. Mr. Carson stated that Mr. Fink's drain field is entirely on his own property. To the extent that there is an easement claim, it can be resolved in litigation and does not affect the City.

Bill Rogers, Registered Land Surveyor in the State of Washington, Vice President, D.R. Strong, Survey Department, said he made a site visit today. The wood fence and the drain field pipes do not encroach across the property line. On his visit he confirmed that there is no encroachment problem on site.

Mr. Weed referred to Mr. Fink's September 5, 2007 letter which says he discussed this issue extensively with Cascade Engineering. Mr. Fink contends says that Cascade's survey conflicts with the other surveys that the developer has provided. Mr. Rogers explained that there is a certain degree of interpretation involved in determining boundaries. He pointed out that even the three surveys done by Cascade Engineering did not agree with each other as far as the sectional

breakdown. The information used for DR Strong's sectional breakdown was based upon numerous other surveys in this section and fit with all the adjoining plats and the proposed Wal-Mart development.

Community Development Director Hirashima explained that this relates to a preliminary plat that was approved by Snohomish County. This has been annexed by the City since the approval. She discussed the division of duties in this matter. The County staff approved the civil construction plans and did the construction inspection. Marysville staff became aware of Mr. Fink's concerns about a year ago and has been working with Snohomish County staff on their inspections. Staff feels that the issues have been resolved as to the plat condition requirements. Staff obtained a letter from Snohomish County Construction Inspection stating that they believed the plat met all of the county conditions of the subdivision. They have provided a letter stating that they feel it is ready to proceed to final plat. There were some verbal contact from Mr. Fink a week ago and a letter was received last Friday, September 5. A response from Harbor Homes was received today.

Councilmember Seibert discussed Mr. Fink's reference to a wooden fence. He asked where this was located. Mr. Fink explained that it is located along the southwest corner and extends 150 – 180 feet along the south property line where it cuts north. He clarified that there is no point of contention where the wood fence is. Where the property line extends east through the woods it does cross the ends of his drain field. The Cascade Engineering survey shows a detail of each leg of the drain field over the property line. That is the issue that he claims has not been resolved. He has been using this drain field for 15 years. He emphasized that he wants to resolve this issue and live at peace with his neighbors.

Councilmember Seibert asked about other attachments, such as other surveys, that Council did not receive. Cheryl Dungan provided copies of those survey maps to Council.

Mr. Weed commented that the September 5 letter indicates that a letter discussing Cascade Engineering's survey methodology would be coming to the City. Mr. Fink explained that this letter has not yet been provided. Cascade Engineering said they would call City staff to explain their methodology. Ms. Hirashima said they did not receive a call today.

Councilmember Seibert asked if there were any other attachments they did not receive. Cheryl Dungan replied that they had included everything that was emailed to them. Some items might have been too large to email.

Councilmember Seibert asked Grant Weed if there was anything else that could be done by the City between the property owners. Grant Weed said that was mainly between the parties. He stated that the task before the Council was to determine if the final plat should be approved. There are two questions to be considered by the

City. One is, can the City certify that all state laws and county ordinances and standards have been met? He noted that the County has indicated that all standards and requirements have been met. Also, under state law, and city and county ordinance and case law, all owners or parties with an interest in the land that's being platted have to be able to sign off on the final plat. Can the City conclude that there is no legitimate property interest here? If Cascade surveyors have some way to show to the City with any kind of legitimacy that there is a bona fide property ownership dispute, he would be advising the City to not grant final plat approval until that issue is resolved. Choices to the Council would be to grant final plat approval tonight or postpone it a very short period of time to see what Cascade Engineering will provide.

Councilmember Seibert referred to the discrepancies between the surveys. He was not comfortable with the plat going forward with there being a question of the property line. Grant Weed stated that the issue was if the City could conclude that there is no property ownership claim that Mr. Fink has within any of the areas of the boundary of this plat. Without the benefit of the information from Cascade Engineering, they are left with Mr. Fink's statement that he agreed to the property line and did so by moving his fence.

Councilmember Phillips suggested postponing this until next cycle to allow time for Cascade Engineering to get their information in. Grant Weed stated that this would be a reasonable amount of time.

Councilmember Rasmussen asked if Mr. Fink's drain field was inadvertently placed in a manner that it overran his property line, and it actually does sit partially on the other side of the property line, what kind of position would that put him in. Grant Weed explained that this was a complex area of the law and would be either a prescriptive easement or a claim of adverse possession. Either way, this would not impact Council's decision about the final plat approval. It would be a private property matter that needs to be resolved between the property owners. Councilmember Rasmussen asked if they would be able to take action at next week's work session. Grant Weed replied that they could make an exception and take action on this at the work session.

Councilmember Nehring commented that it seemed that regardless of what comes back from Cascade Engineering, it's going to end up being between those two parties. He wondered what the City's responsibility would be at this point. Mr. Weed said if there is a legitimate property ownership claim he will either need to be willing to sign off on the plat or the city council would be in a position to decline the final plat.

Councilmember Wright stated that the issue of ownership does not appear to be in question here. She referred to the last paragraph of Mr. Fink's letter and asked if this was something that should be discussed in Executive Session. Grant Weed did not

think so at this point although the Council does have the right to discuss potential claims or litigation in Executive Session.

Councilmember Seibert summarized that Mr. Fink would have a claim if the boundary line was not correct and his property was actually inside the boundary as shown on the plat. Mr. Weed agreed with this. He added that Mr. Fink has agreed to the property line by observing the previous survey and moving his fence to that point. Councilmember Seibert commented that if the fence does not go the full distance of the property line then it might be an issue.

Mr. Carson respectfully requested approval tonight. He emphasized that ownership is not at issue since Mr. Fink has agreed that the fence is on the property line. The line has not moved since September of 2006 when Mr. Fink agreed to it. He stated that Mr. Fink believes that an angle was put in after the fence was moved to that line. Mr. Carson said that there is no angle. It is a straight line and has not moved since September of 2006. He then claimed that the dispute with Cascade Engineering was resolved when Mr. Fink moved the fence.

With regard to the drain field, D.R. Strong's surveyors dug up the ends of the drain field pipes and located those all on Mr. Fink's property. There is no encroachment and there is no drain field issue of prescriptive easement.

Regarding delay of approval of the final plat, they do have presales and buyers waiting. Mr. Fink's issues are more about the future drainage issues. The drainage plans have all been reviewed by the County and designed by professional engineers who stand behind their work.

Councilmember Rasmussen asked if Snohomish Health District has been on site, has approved the way the drainage runs to the drain field, and has no objections to the plat. Director Hirashima said that the City has not been involved in the drain field review, but they did receive a letter from the Snohomish Health District stating they have no concerns.

Senior Planner Cheryl Dungan explained that the Health District met Mr. Fink and Harbor Homes out on the site and some issues were identified. Harbor Homes had those items fixed and sent a letter to the Health District stating that those items were fixed. Based on that letter the Health District approved the plat.

Mr. Fink said he contacted Snohomish Health District on July 30 and asked them to go out and look because he was told that they had approved it without a site visit. The field investigation was done by Bill Heaton. Mr. Fink summarized the field investigation he received in the mail this weekend. Mr. Heaton said he did not see any evidence that there would be any down slope activity. Mr. Heaton said that there will be a lot of water, especially during heavy rain. Councilmember Rasmussen requested that he forward that field investigation to City staff. Mr. Fink said that after

discussing the situation with another sanitarian he also had concurred that there would be a lot of water on the site. He discussed reasons why the sanitarian had reached on that conclusion. Councilmember Rasmussen explained that they would need to defer to the opinion of the Health District.

James Barnum, Senior Design Engineer, DR Strong 10604 NE 38th Place, Suite 101 Kirkland, WA 98033 stated that Snohomish County Department of Health gave them a preliminary plat approval for all related drain field items on the site. Subsequent to that, Mr. Fink brought it to people's attention that his drain field was in a location that was previously unknown. It is questionable whether the situation Mr. Fink brings up as far as the drain field draining directly into the interceptor ditch actually exists. The drain field runs parallel down the hill and the interceptor ditch runs perpendicular to that so there really is no evidence of cross-contamination between the two. Regardless of that fact, Harbor Homes decided it was pertinent to remove a portion of that interceptor trench that was within the thirty feet up-gradient of the drain field. Once Mr. Fink brought it to the County's attention that the drain field appeared to be not in compliance with the interceptor ditch, Snohomish County Health issued a letter rescinding their approval. Subsequent to that the drain field conflict was resolved and the senior sanitarian from their office as well as a licensed professional engineer supervised and verified the work. Once that work was complete they sent a letter dated May 5 to the Snohomish Health District. Subsequent to that Brent Rossina issued an approval, rescinding his disapproval of the plat, recommending that it go forward. He asked Mr. Fink the date on his letter he was referring to. Mr. Fink stated that his field investigation report was dated July 26, 2007.

Motion made by Councilmember Seibert, seconded by Councilmember Phillips, to postpone this matter until the work session to allow Mr. Fink time to contact Cascade Engineering to provide more information and present this as an action item for the September 17 work shop.

Councilmember Rasmussen requested that staff follow up with the HD on that field report.

Councilmember Soriano asked Mr. Weed if both parties were aware of the drain field location and if Mr. Fink was utilizing the services of Cascade at the time of the Hearing Examiner. City Attorney Weed was not certain. Senior Planner Dungan explained that the preliminary plat hearing was held at the Snohomish County Hearing Examiner and from the minutes it appears that both parties were in attendance. Mr. Fink added that Cascade Surveying was commissioned by him in March of 2006. He did not consult with them at the time of the preliminary plat hearing.

Mr. Carson requested that Mr. Fink provide any documents to them on the same day that he provides them to the City.

Motion passed 5-2, with Vaughan and Wright voting against, to continue the Ridge at Rock Creek Phase 1 Final Plat Mylar Approval until the September 17 work session.

New Business

9. A **Resolution** of the City of Marysville to Accept Property Donation from WCD Development, Inc.

Motion made by Councilmember Rasmussen, seconded by Councilmember Soriano, to approve Resolution 2220. **Motion** passed unanimously (7-0).

21. Recovery Contract (Sewer) for Powell-Smokey Point, LLC.

Motion made by Councilmember Wright, seconded by Councilmember Vaughan, to approve Recovery Contract 278. **Motion** passed unanimously (7-0).

22. An **Ordinance** of the City of Marysville Annexing Certain Unincorporated Area Known as the Lakewood South Annexation Area into the City of Marysville and Rezoning Said Properties Consistent with the City's Comprehensive Land Use Plan Designations.

Motion made by Councilmember Vaughan, seconded by Councilmember Seibert to approve Ordinance 2707. **Motion** passed unanimously (7-0).

Legal – None.

Mayor's Business

19. Marysville Planning Commission Board Re-appointment; Stephen Leifer.

Motion made by Councilmember Wright, seconded by Councilmember Seibert, to affirm the reappointment of Stephen Leifer to the Marysville Planning Commission for a six-year term ending August 2, 2013. **Motion** passed unanimously (7-0).

20. Marysville Salary Commission Board Appoints; Kamille Norton.

Motion made by Councilmember Vaughan, seconded by Councilmember Nehring, to approve the appointment of Kamille Norton to the Marysville Salary Commission Board serving until July 23, 2010. **Motion** passed unanimously (7-0).

Councilmember Vaughan pointed out that Ms. Norton was in the audience tonight. Mayor Kendall welcomed her to the Salary Commission.

Other Mayor's Business items:

- He attended the Touch a Truck event on Saturday. There was tremendous participation from the community.
- He celebrated the first anniversary of the Harley Davidson store. It was a great year.
- Staff is busily working toward the college site selection process.
- Mayor Kendall commended Public Work's quick response to a sewer incident.

Staff Business

Jim Ballew thanked the Mayor for participating in Touch a Truck. It was a great event

Gloria Hirashima discussed the need for a letter to support a grant. The deadline is next week and staff is required to have a letter of support from City Council. The proposed grant is to the Community Trade and Economic Development Department and would add a planned action EIS to the downtown area proposal. This would cover the environmental review for the entire area that is studied. Councilmember Seibert asked if this would provide all the environmental SEPA information for the downtown area in one chunk. Ms. Hirashima affirmed that it would.

Motion made by Councilmember Seibert, seconded by Councilmember Nehring, to support the CTED grant for the EIS and authorize the Mayor to sign the letter for the grant. **Motion** passed unanimously (7-0).

Mary Swenson said it was good to see everyone again. Staff is very busy working on the college proposal in addition to budget preparation. She felt that in order to do this right, the City needs to have consultant help. This money would come from the Economic Development fund and other funds. She suggested a budget of \$100,000, but felt that it would be closer to \$60,000.

- Councilmember Seibert concurred with the need for professional help.
- Councilmember Phillips was not especially pleased with the amount of money, but was very much in favor of having a college in Marysville.
- Ms. Swenson felt that this was a very important exercise for the City even if Marysville was not selected for the college site.
- Councilmember Vaughan concurred.

Motion made by Councilmember Nehring, seconded by Seibert, to authorize the Mayor to enter into an agreement with a consultant for promotion of the college sites with a budget up to \$100,000. **Motion** passed unanimously (7-0).

Chief Smith applauded the decision.

He followed up on his trip to Idaho and met with a number of Sgt. Rasmussen's peers. His peers commented that he was meticulous, a great team player and highly valued, and he earned the nickname "The Professor".

The first phase of the sergeant testing is done. He commended Kristi and Marcia in the HR department and Sgt. Rasmussen and Commander Krusey for their work on this process. The second part of the testing will occur within the next week or so. The test appears to be very reflective of the job function. He said that his prediction came true with the apprehension of the espresso stand thieves.

Mayor Kendall announced that Thursday is Mary Swenson's 30th anniversary with the City of Marysville. He commended her work and experience with the City. She has been extremely important to the City and to him in his work. He congratulated her.

Call on Councilmembers

Carmen Rasmussen said she was looking forward to event at the Navy regarding working opportunities for families of navy personnel.

She spoke with Mike Robinson about the camera at the skate park. She was very impressed with the results they have had out there. All vandalism has stopped. He was very impressed with the dramatic change. She suggested that adding these surveillance cameras could result in a savings of staff time and may be revenue-neutral.

She congratulated Mary Swenson.

Lee Phillips thanked April O'Brien for emailing the calendars.

Touch a Truck was awesome.

Great to finally have the Lakewood access to the freeway. This has been a major improvement.

Two people commented to him that they were impressed that the people who did the Summer Jubilee cleaned up the streets very quickly.

A few citizens showed up for meetings in August and were upset that there were no meetings and there was no notice on the door. He suggested providing more notice in the future.

He congratulated Mary for her time with the City.

John Soriano congratulated Mary Swenson.

He will be attending the Snohomish County Military Family Friendly event.

He wondered when the first work session on the budget would be. Ms. Swenson said they would have that date by the end of the week.

Jeff Vaughan suggested another coordinated effort with WSP for shopping areas in the north end at Christmas time. Ms. Swenson said she would check on this.

He is very excited that he will be able to do all of his Christmas shopping in Marysville this year.

Congratulations to Mary.

Donna Wright congratulated Mary. She met with State Board of Health Director who passed her congratulations on regarding Healthy Communities. Nationally the CDC is sending out another person to be in Snohomish County to help with Healthy Communities. They are looking to Marysville as an example. Touch a Truck was a great event.

Jeff Seibert congratulated Mary. He complimented the police department and to Chief Smith on their arrest. It is nice to see that the word is getting out that we are catching people. He suggested having warning signs along the exits when there are peak traffic periods. He noted that his wife has gotten involved in an exercise program as a result of Healthy Communities.

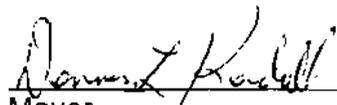
Jon Nehring commended the police arrest. He congratulated Mary and expressed appreciation for her level of expertise, cooperation and trust. He commended Sandy Langdon and her department for another clean audit. He asked for information about sexual offenders and limitations on the City. Mayor Kendall presented information provided by City Attorney Grant Weed. Grant Weed offered to summarize this next week. He asked about bridge painting. Ms. Swenson said they will be discussing this more this week.

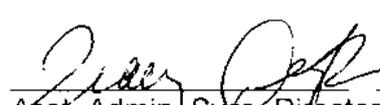
Information Items

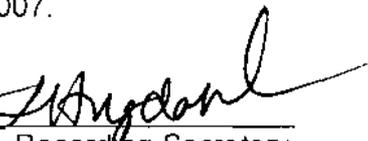
Adjournment

Seeing no further business, Mayor Kendall adjourned the meeting at 8:47 p.m.

Approved this 24th day of September, 2007.


Mayor
Dennis Kendall


Asst. Admin. Svcs. Director
Tracy Jeffries


Recording Secretary
Laurie Hugdahl