

APRIL 2, 1990

7:30 p.m.

Council Chambers

PRESENT: Rita Matheny, Mayor
Councilmembers:
Ken Baxter, Mayor Pro Tem
Dave McGee
Dave Weiser
Donna Pedersen
Donna Wright
Bob Lashua
Lee Cundiff
Administrative Staff:
Carolyn Sanden, City Administrator
Jim Allendoerfer, City Attorney
Bob Kissinger, Utilities Supt.
Dave Zabell, Public Works Director
Lt. Walt McKinney, Marysville Police Dept.
Jim Ballew, Parks & Rec. Supt.
Wanda Iverson, Recording Secretary

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CALL TO ORDER:

Mayor Matheny called the meeting to order at 7:30 p.m. and led the flag salute.

ROLL CALL:

City Administrator/Clerk Sanden called the roll with all members present/absent as indicated above.

MINUTES OF THE PREVIOUS MEETING:

Councilor Lashua moved that the minutes of the 3/26/90 meeting be approved as submitted. Councilor Baxter seconded and the motion passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Reid Shockey, 2924 Colby, Everett, addressed Council on behalf of his client, Rich Warbus, owner of Quilceda Auto Wrecking at 100th & State. It was noted that the subject property is immediately north of City limits and Mr. Warbus has been dealing with the County for over 2 years trying to make improvements on his property (without success) and now wishes to annex into Marysville. Mr. Shockey gave a little history, saying that the County first requested that Mr. Warbus provide 15 parking spaces according to code for a new building but Mr. Warbus could only provide 5 and then he was told he would have to vacate some of Smokey Pt. Blvd. but the County doesn't know how much right of way he needs to give. Apparently his property is in Phase IV of the County's RID on Smokey Pt. Blvd. and so it won't be known for 4-5 yrs. how much right of way Mr. Warbus needs to give the County. In the meantime, Mr. Shockey explained, Mr. Warbus wants to replace his building only and simply make an improvement to his property, no expansion, and it would be consistent with Marysville regulations. He added that Mr. Warbus would do anything he can to comply and does know about the petition method of annexation--they would just like to know if Marysville is interested in having him annex and Mr. Warbus would like the City to consider the concept only at this point.

Councilor Baxter asked Mr. Shockey to be specific about which land/property would be applying for annexation and Mr. Shockey stated Mr. Warbus' property would be combined with the Detert property immediately south for annexation.

Councilor Lashua asked if it would be both sides of Smokey Pt. Blvd. and Mr. Shockey said it would be, that Mr. Warbus has checked with his neighbors across the street and there is some interest in annexation there.

City Attorney Allendoerfer noted that if the City were to annex, it might involve the City taking over jurisdiction of the bridge which will be a very expensive project to rebuild.

Mr. Shockey explained that it's the County's intention to shift the right of way to the east for alignment and the bridge is part of Phase IV of the RID. He said he understood the County is considering a span type of culvert to replace the existing structure.

Discussion followed regarding fill, the difference between a bridge and a culvert, and it was noted that Warbus wants to help as much as he can. City Attorney Allendoerfer suggested getting more information regarding the bridge improvement, RID, etc., looking into the design report.

Mr. Shockey concluded by stating they would proceed with the 10% petition for annexation.

CONSENT AGENDA:

1. Approval of Fireworks Stand Permits:
 - a. Boys Club of Snohomish County, 4th & State.
 - b. Marysville Lions Club, 84th & State.
 - c. Kiwanis Club of Marysville #1, 1052 State Avenue.
 - d. Kiwanis Club of Marysville #2, 9620 Old Highway 99.
 - e. Marysville-Tulalip Visitors Information Center, 9925 Old Highway 99.

Councilor Weiser clarified whose jurisdiction fireworks stands come under and City Administrator Sanden stated they are the jurisdiction of the Planning/Bldg. Dept.

Councilor Lashua moved that the Consent Agenda Item 1, a, b, c, d, and e be approved. Councilor Cundiff seconded and the motion passed unanimously.

REVIEW BIDS:

1. Aeration Equipment.

Utilities Supt. Kissinger explained 2 bids were received, of which Oxygen Aeration's bid of \$75,561.90 including sales tax was low bid and he noted that delivery could be made in 48 days. He stated this would be staff's recommendation.

Councilor Cundiff asked if this would be the same type of aerator as used/installed before and Utilities Supt. Kissinger said yes, but the ones we have now are only 7.5 h.p. and with the 25 h.p. aerators bid on, the City now needs only 10 aerators.

Councilor Baxter moved to accept the bid from Oxygen as per staff recommendation and Councilor Weiser seconded the motion. Passed unanimously.

Utilities Supt. Kissinger added that the lagoon is working very well at this time, with no odor at all, most probably due for the most part, to the good weather we have been experiencing lately.

ORDINANCES & RESOLUTIONS:

4. Resolution Adopting Marysville Water Comprehensive Plan.

Public Works Director Zabell referred to the packets and explained that staff is recommending maintaining the current RUSA boundaries with any expansions being done through annexations, and excluding PUD's water service area. He noted that the Stilly Well has been scheduled in the Comp Plan for completion of improvements in the fall of 1994. He also explained that the cost savings of \$30,000 for an 18" water pipeline at this time will be lost because we will probably be at capacity in 2-3 yrs. and would have to pay more for additional pipeline then.

Councilor Pedersen asked if the Sunnyside/Griffore annexation area would be excluded from the Marysville RUSA/Water Comp Plan and Public Works Director Zabell stated they would be excluded at this time; that DOH looks at lines "in the ground" and that excluding

that area was a compromise but it can be addressed as it is annexed into the City.

City Administrator Sanden added that with the area (Sunnyside) that has pipes in the ground, once annexed in, Marysville can take over the lines or put them on contract. She did note that the City views these lines as substandard at this time and they would probably have to be standardized.

Councilor Cundiff asked about sewer service to the Sunnyside area and Public Works Director Zabell stated they would have to apply for a variance.

City Attorney Allendoerfer explained that the proposed resolution would officially adopt the 1989 Comp Plan Update based on the 1984 Comp Plan, including availability of Everett water and phasing out of the Stilly Well. He said DOH has reviewed (for almost 4 mos.) this plan, with considerable input from the County and PUD also, and it has finally been approved by DOH. He added there were no challenges to the DNS and that staff feels the Comp Plan has complied with all possible regulations.

Councilor Cundiff moved and Councilor Baxter seconded to approve/adopt Resolution #1415. Passed unanimously.

REVIEW BIDS:

2. Marysville/Everett Water Supply Pipeline Project.

Public Works Director Zabell stated 9 bids were received on this project, and Robison Construction was the low bidder at \$2,527,473 however a letter has been received from Volker Steven Pacific Inc. protesting the low bid.

CORRECTED: SEE 4/9/90
MINUTES

City Attorney Allendoerfer explained that Volker Stevin's letter is regarding the issue of whether the bid was understood by all the bidders--they understood the bid requirements to mean three different pipe materials must all be by the same manufacturer and Robison Construction did not. Volker Stevin feel they were misled by the bid specifications however City Attorney Allendoerfer said he has reviewed the situation carefully and in fact advised Robison Construction was not in violation of the bid specs however Mr. Levere of Volker Stevin is arguing the wording is confusing, he stated.

There was a brief discussion about semantics and the experience of the bidders being key to knowing how to respond to the bid specs correctly.

Councilor Baxter moved and Councilor Pedersen seconded to accept the low bid, from Robison Construction. Passed unanimously.

CURRENT BUSINESS:

1. Harvey Jubie - Appeal of Administrative Determination/Ord. 1763.

Public Works Director Zabell explained that Mr. Jubie was issued (5) building permits before Ord. 1763 was passed and prior to that, started pouring foundation, however did not have sewer pipes within 500' (i.e., did not have vested sewer rights). He stated that rather than an appeal, this would actually be a variance request.

Harvey Jubie, 9905 39th Dr. NE, Marysville, addressed Council and stated that he was issued five building permits on 2/16/90 for 5208 64th St. NE, expending \$7,125 for permit fees, \$2,000 for Parks Dept. and \$2,120 for traffic light mitigation fees for two intersections. He said the sewer line needs to be extended, a fact which was unknown at the time of issuance of the building permits; that the foundations are in (5) but they have now stopped construction until this issue is resolved.

Councilor Lashua asked how far it is from the sewer main.

Mr. Jubie explained the line would have to come 86' east from Sunnyside and then 400' back through the subject property.

More than the distance issue, City Attorney Allendoerfer pointed out that there is a hardship with the fees already having been paid and that it is rare to issue a building permit prior to utilities being in. It was noted that the foundation having already been put in also represents a fair investment, even though Ordinance 1763 really only contemplated money being paid into utilities, he said. He noted that staff recommends granting the variance on the basis of this being a hardship case. He added that it is possible that Council may think 10 dwelling units would produce a significant amount of effluent, in which case they could deny the variance. There was some discussion regarding total impact, cumulative effect, etc.

Councilor Weiser asked about the practice of putting in the foundation first and Mr. Jubie stated they (Jubie Construction) has never experienced this particular problem with getting sewer in before and he added that the engineering had been done prior to the moratorium. He stated also that it is normal practice to start the foundation, that usually the sewer is close by and normally, lines aren't put in first anyway. For example, he noted, up by the golf course, the buildings were completed prior to putting in sewer.

City Attorney Allendoerfer asked if he had taken out 5 building permits and Mr. Jubie explained that he had only one building permit for five foundations for duplexes on one lot.

Councilor Lashua asked how much had been expended on fees and foundations to date and Mr. Jubie stated \$2,120 for traffic light mitigation, \$2,000 for the Parks Dept., \$15,000 to date on foundations plus engineering and permit fees.

Councilor Lashua stated he felt this a unique hardship with no ill intent on the part of the applicant and moved that the request for a variance be granted with findings of fact that this is a unique hardship which was not self-generation, that there would be no detriment to health with the additional dwellings and in consideration of \$22,000 paid out by the applicant, \$7,000 of which was for traffic lights and parks and building permits. Councilor Wright seconded the motion and a roll call vote was taken:

Councilor McGee - against
Councilor Weiser - against
Councilor Baxter - in favor
Councilor Pedersen - against
Councilor Wright - in favor
Councilor Lashua - in favor
Councilor Cundiff - in favor The motion passed 4-3.

2. Sagebrush Development - Variance/Ordinance No. 1763.

Public Works Director Zabell stated the applicant has all permits and is also looking for extension of the sewer to the subject property.

Lorna Corrigan, Attorney with Newton, Kight, Adams & Castleberry, on behalf of Sagebrush Developers, addressed Council and explained the building permit was issued prior to passing of Ordinance 1763. She noted that one of the contingencies to developing the property was based on the building permit process and Sagebrush spent thousands of dollars purchasing the property and a conditional use permit was issued by the City of Marysville on 2/13/90 with a building permit issued the following day. She said typically, you do see the utilities in place first but here again, similar to the Jubie case, the permits were issued prior to the utilities being in place and Sagebrush committed \$44,000 specifically for this project and feel they should be subject to the regulations in effect as of 2/13/90. She noted that the sewer extension would

only be 300', that there would be no overwhelming harm to the public and that this case is very similar to the Jubie case although they understand the importance of no precedent-setting here. She reiterated about the funds having been committed in purchase of the property with the building permit having been issued 2/14/90.

City Attorney Allendoerfer asked if the City staff had advised of a possible sewer moratorium or given any warning notice of any kind and Ms. Corrigan stated none was given.

City Attorney Allendoerfer stated that City staff had tried to make sure there was a red stamp on building permits issued, warning about a possible sewer moratorium. He added that this case is a variance request under the single family section of Ordinance 1763 where there is a sewer main across the frontage of the property. He added that this differs from the Jubie case in that there is nothing in the ground.

Ms. Corrigan argued that there was intent to develop the property and Sagebrush did in fact demolish an income producing project based on the fact he felt utilities would be available.

City Attorney Allendoerfer asked about what was demolished and Hank Aasen, owner of Sagebrush Developers, 1106 Columbia, addressed Council and stated a house trailer and appurtenant structures were removed before 2/26/90 at a cost of approx. \$6,000. He added he did not put a foundation in the ground because he was then notified by Mr. Zabell about the sewer restriction/moratorium.

Councilor Lashua asked about the state law regarding moratoriums and City Attorney Allendoerfer stated building permits are vested according to regulations in effect at the time of the building permit with the exception of a community-wide health/sewer moratorium which would change the vesting rule.

Councilor Baxter commented that the applicant did have a valid building permit 12 days before the moratorium and if he hadn't gone through all these hurdles, he would not have a building permit.

Councilor Cundiff agreed, stating he believes the City is partially at fault and therefore moved that approval of the variance be granted with findings of fact that this case presents a unique hardship, with the building permit having been issued prior to the moratorium, expenditure of \$6,000 by the applicant, no significant generation of effluent and producing no material detrimental to public health. Councilor Wright seconded the motion and a roll call vote was taken:

Councilor McGee - against
Councilor Weiser - against
Councilor Baxter - in favor
Councilor Pedersen - against
Councilor Wright - in favor
Councilor Lashua - in favor
Councilor Cundiff - in favor The motion passed 4-3.

3. Cedarcrest Vista - Variance/Ordinance No. 1763.

Public Works Director Zabell referred to the packets and explained also that the sewer main is about 1/2 mile away from the project. He added that this project wasn't considered in the 400 additional connections and therefore staff is recommending denial.

Councilor Weiser asked if the sewer drawings have been submitted for the 86 connections and Public Works Director Zabell said no, they haven't been.

Councilor Baxter stated he had been contacted by Mr. Sigler and said he would not be voting on the matter.

Councilor Lashua summarized that no drawings have been submitted,

that the sewer main is 1/2 mile away, and that there is no defined plan in this case. He therefore moved that the variance be denied. Councilor McGee seconded and a roll call vote was taken:

Councilor McGee - in favor of denial
Councilor Weiser - in favor of denial
Councilor Baxter did not vote
Councilor Pedersen - in favor of denial
Councilor Wright - in favor of denial
Councilor Lashua - in favor of denial
Councilor Cundiff - in favor of denial. The motion passed.

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4. Timothy & Michele Willis - Variance/Ordinance 1763.

Public Works Director Zabell explained that the property at 6429 67th Av. NE has a failing septic and staff recommends approval of the variance. He added that the property is within RUSA boundaries and that the applicant wishes one sewer connection.

Tim Willis, 6429 67th Av. NE, addressed Council and said it is an older house which they bought 2½ or 3 yrs. ago. It had 2 septic with half of the house on each septic and he has now been informed that his drain field is worn out. He had the first one pumped in 12/89 and the second pumped in 2/90 and now his back lot doesn't perc either, so he can't use that for a drain field. He said he would rather put the money into sewer than fixing the septic but after the second septic was pumped, he was told about the moratorium and instructed to apply for a variance.

Councilor Weiser asked if Mr. Willis had contacted the Health Dept. and Mr. Willis stated he hadn't.

Public Works Director Zabell stated the Willises are about 250' from the sewer main and discussion followed about unique hardship, potential health hazard.

Councilor Pedersen moved and Councilor Lashua seconded that a variance be granted in order to eliminate health hazards, noting there would be no significant generation of sewage effluent and no material detriment to public health or welfare or to the environment. The motion passed unanimously.

5. Mr. Pepelnjak & Mr. Walker - Variance/Ordinance 1763.

Councilors Weiser, McGee and Pedersen all disclosed they had had conversations with Mr. Walker and/or Mr. Pepelnjak but there were no challenges.

Public Works Director Zabell explained the applicant is only 100' from the sewer main and would have been hooked up prior to the moratorium if the contractor had not run into a power pole and had to do extra work in the process.

George Pepelnjak, 1517 10th St., addressed Council and explained that they moved a structure from 5th & Delta to 9031 State and it was placed over the previous drain field area because of the City requirement to hookup to the sewer because it was only 100' away. He noted that the neighbor, Jack Bartlett, is also interested in participating in the sewer as well as two other neighbors to the south. He reiterated that a substantial amount of money has been invested into the project, what with moving of the building, remodelling, etc. and that there would be minimal impact on the City sewer and also he said they feel they have been placed in this position because of the City.

Councilor Lashua asked if the neighbors to the south would be included in the variance and Mr. Pepelnjak stated they have not done anything different with their property at all; that the variance would only be for the Pepelnjak/Walker property. He added that a week before they had sewer plans but the contractor ran into a PUD pole on the Bartlett property.

Councilor Lashua asked if an 8" line is adequate and Public Works

Director Zabell stated yes and added that if the power pole had not been hit, construction would have been complete.

Mr. Pepelnjak itemized the following expenses as of 2/26/90:

\$4,500 moving costs
2,500 foundation
7,000 remodelling
3,500 demolition of previous building on the lot
\$7-10,000 due to the sewer/pole complication
(costs which cannot be recouped)

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Councilor Baxter asked about the use of the building and Mr. Pepelnjak said it will be an office building with two toilets, no showers or tubs. There would be only one tenant, he said, and added that their feeling is they would meet the hardship requirements.

Ron Loop, Ron Loop Construction, 7017 51st Av. NE, addressed Council and testified that he knew of the project and that Mr. Pepelnjak had purchased the land and was working on the project well before the sewer moratorium and also, has well more than any other project heard tonight invested.

Councilor Baxter moved that the variance be granted as a unique hardship and also because there would be no significant generation of sewage effluent and no material detriment to public health or welfare or to the environment. Councilor McGee seconded the motion. There was a roll call vote:

Councilor McGee - in favor
Councilor Weiser - in favor
Councilor Baxter - in favor
Councilor Pedersen did not vote
Councilor Wright - in favor
Councilor Lashua - in favor
Councilor Cundiff - in favor The motion passed.

ORDINANCES & RESOLUTIONS:

1. Ordinance relating to the use of Tow Truck Companies for Police Impounds & Police Referrals.

City Attorney Allendoerfer stated that he had received a communication from Charlie French, Attorney for Harry's Towing, asking for a postponement because of the time element in the ordinance.

Lt. Walt McKinney, Marysville Police Department, addressed Council and explained the need for the ordinance. He said the officers at the scene of an accident often wait 1/2 hour for a tow truck which they feel is an unreasonable amount of time for both the owners of the vehicle and the police officers. He said he would not be opposed to postponement to 4/23/90.

City Attorney Allendoerfer asked about MPD putting the balance of the towing companies on their list and Lt. McKinney explained they would prefer to deal with towing companies that have at least two tow trucks to cut down on waiting time. He said they had received a protest on this from Jim's Texaco, Marysville.

City Attorney Allendoerfer noted that the City of Everett and WSP both use the language "within a reasonable time" and Lt. McKinney testified he felt during the day, 20-25 mins. is too long and what might be considered "reasonable time" to the tow companies is too long of a wait with a DWI, for example, and police officer(s).

Councilor Lashua asked how many wreckers are in Marysville and Lt. McKinney said 8-10.

Councilor Baxter asked how long MPD would normally wait before calling someone else and Lt. McKinney stated they will wait 1/2 hr. but would like to see an ordinance with more "teeth" in it.

APRIL 2, 1990

Page 8

Councilor Baxter asked if requiring a shortened time wouldn't just promote a speeding problem on the part of the tow trucks and Lt. McKinney said a lot of times they are inclined to speed anyway.

Councilor Pedersen pointed out that "reasonable" to one company may not be "reasonable" to another.

Ron Hansen, owner of Harry's (and Hansen's) Towing, addressed Council and stated that the State has addressed response time in this matter many times and that he has been heavily involved in this legislation also. He said the industry is getting "cleaned up" but is still bothered with a "10 minute" or "15 minute" requirement. He said they have done some test runs in Marysville and just driving from Fred Meyer to the very SE corner on Sunnyside takes from 7-14 mins. He urged each Councilmember to take a similar test run from one end of town to the other within 10 mins. He said the towing companies find a time limit of 10 minutes too hard to comply with and that they are in favor of "reasonable". He added that Marysville has about 35 tows per day which is a tremendous increase from only 8 years ago when there were only about 2 a day. He said Harry's tries to service the need of the community with two trucks, two drivers who live in Marysville and he is moving to Marysville soon, he said. But even with drivers right in Marysville, they still feel 10 minutes is unreasonable.

Councilor Pedersen asked if an ordinance stating 20 or 25 mins. would be acceptable and Mr. Hansen said not really and he gave a break down of response time:

3-4 mins.	dispatch time
12-13 mins.	driving time
15-17 mins.	total

Even with drivers taking trucks home, which is normal practice, Mr. Hansen explained that in the evening it takes longer for a truck to respond because the driver is waking up--travel time may be decreased but the time it takes him to get into the truck is increased. He added that they would like to meet with the MPD and work something out.

Councilor Baxter asked why this has come up at this point and Lt. McKinney stated he has waited at injury accidents from 1/2 hr. to 45 mins. for the past 19-20 yrs. and they would like an ordinance that addresses this issue and has some time requirements in it.

Councilor Pedersen moved that this issue be postponed to 4/23/90. Councilor Cundiff seconded and the motion passed unanimously.

2. Ordinance relating to Street Design Criteria.

City Attorney Allendoerfer explained this ordinance modifies the maximum grade for City streets and where there used to be a maximum of 10%, a mountainous access street could now be as much as 15% grade. He noted that there have been several variances because of the 10% maximum. He noted that the section changing the grades allowed is basically the only change in the ordinance to existing MMC wording.

Public Works Director Zabell stated he researched this in conjunction with other documents and based criteria on recognized tolerances for arterials of similar types. He stated staff recommends approval.

Councilor Baxter moved that Ordinance 1773 be approved/adopted. Councilor Weiser seconded and the motion passed unanimously.

3. Ordinance relating to SEPA Appeals.

City Attorney Allendoerfer explained this is to update the City SEPA code regarding appeals to Planning Dept. approvals/denials and to Determinations of Significance and Non-Significance. He noted a 15 day appeal rule has been added. As the code is now

if a DS is filed, a full EIS must be submitted which can be very costly and time consuming but appeal can be made on that immediately to the City Council under the proposed ordinance. He stated also that if you have administrative appeals, the last paragraphs must be included--with SEPA issues being under oath, as well as on page 2, sub-paragraph b, after a decision, the state must send out official notices giving the outcome of the decision. He concluded that staff is recommending approval of the ordinance.

Councilor Pedersen asked who would be allowed to appeal and City Attorney Allendoerfer stated an agency or an aggrieved person.

Councilor Pedersen noted that the County puts everyone under oath when giving testimony and City Attorney Allendoerfer stated yes, if it is regarding a land issue but that he didn't feel the City of Marysville need go that far at this point.

Councilor Baxter moved that Ordinance 1774 be adopted/approved. Councilor Pedersen seconded and the motion passed unanimously.

LEGAL MATTERS:

1. Monty Annexation.

City Attorney Allendoerfer reported that the 144 ac. Monty annexation was recently approved by the BRB, that they agreed it would be in the public interest and also agreed with squaring off of City boundaries. This will be coming back to City Council soon for an ordinance annexing the property into the City.

2. R-L Associates Lawsuit against City regarding Meadow Creek Plat.

City Attorney Allendoerfer explained this lawsuit is because the City will not schedule a hearing because of the sewer moratorium. This is an 85 lot project that would be added to the sewer system. The hearing is Fri. 4/6/90 at 10:00 a.m. and it will go to trial if the court upholds the plaintiff in the lawsuit.

3. Dave Aldridge/PUD Lawsuit against City.

City Attorney Allendoerfer stated this is in connection with the water pipeline issue and there is an upcoming hearing 4/10/90 at 10:00 a.m. He noted that the City of Marysville has made a motion to dismiss the lawsuit.

CALL ON COUNCILMEMBERS:

Councilor Wright noted the time needs to be changed on Channel 18.

Councilor Baxter commented on the increased amount of street construction that comes with the warmer weather.

Councilor Lashua asked about the sale yard at the Red Apple and Lt. McKinney said they did take out a license for part of this year.

Councilor McGee noted that the Mayor's Advisory Committee and the Channel 18 Advisory Committee both meet at the same time (and he was appointed to both).

STAFF'S BUSINESS:

City Administrator Sanden reported that DOH did approve the Comprehensive Water Study and pipeline. Regarding DOE, she and Dave Zabell will be meeting next week on the sewer lagoon issue.

Councilor Pedersen asked about traffic signals at 528 & 67th and Public Works Director Zabell said they are not funded yet but may be accelerated under the 6 year plan with a grant. He added that the light at 47th & 528 will probably be put in by this fall.

Lt. McKinney invited the Mayor and City Council to the upcoming dedication of the Police Conference Room in memory of Don Arendt, 4/4/90 at 10:00 a.m.

ADJOURNMENT: 9:45 p.m.

Accepted this 9th day of April, 1990.

Rita Matheny
MAYOR

Phillip E. Dexter
CITY CLERK

Wanda A. Iverson
RECORDING SECRETARY