

MARYSVILLE CITY COUNCIL MINUTES

DECEMBER 3, 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 (7:45)
Bob Lashua
Lee Cundiff
Administrative Staff:
Mary Swenson, Administrative Asst.
Phil Dexter, Finance Director
Dave Zabell, Public Works Director
Jim Allendoerfer, City Attorney
Jim Ballew, Parks & Recreation Supt.
Wanda Iverson, Recording Secretary

CORRECTED: SEE 12/10/91
MINUTES

00264

CALL TO ORDER:

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

ROLL CALL:

City Clerk/Finance Director Dexter called the roll with all members present/absent as indicated above. It was noted that Councilor Wright would be late due to having to be at a School Board meeting.

MINUTES OF THE PREVIOUS MEETINGS:

In the third paragraph on page 4 of the minutes of 11/26/90, Councilor Pedersen noted that labeling Ms. Lambert's question as "popular" is not a reflection of the opinion of City Council nor City staff, but rather editorialization on behalf of the Recording Secretary. Also, in the last paragraph on page 4, the fee should be shown as \$425 not \$25. On page 6, she noted that at the beginning of paragraph 8, it should read "Both Councilors Pedersen and McGee" rather than "Pedersen and Weiser" and on page 9, regarding the Council Absenteeism Policy, Councilor McGee was in favor, rather than abstaining. [Recording Secretary's note: I thought he said "pass" instead of "yes".]

On page 10, regarding the Garbage Rate Adjustments, it was noted that a motion had been made to allow staff to adjust garbage rates downward as much as \$3.00 per household. Councilor Lashua said he recalled making the motion, with Councilor Pedersen seconding.

In the 11/19/90 minutes, Councilor Pedersen noted on page 3 in the third paragraph, "the temporary \$300 for the heating system may not be enough" should be clarified. In clarification, it was pointed out that \$300 had just been spent for repairing the heating system but \$15,000 has actually been budgeted for a new heating system; it is not known at this time whether or not the repairs to the heating system will last and if not, then the budgeted \$15,000 will be needed.

On page 6, under Public Safety Bldg. budget, it was noted that it was meant to move the money only over to the decor budget, not the actual window opening/closing device. It was agreed there was no need for the device and the \$350 could be used toward other decor.

Mary Swenson noted in the 11/26/90 minutes, on page 5, under the budget discussion, the third paragraph indicates that the Union makes 50% payments for union employees. This is incorrect--the City makes these 50% payments for union employees, if they wish the coverage.

Councilor Pedersen moved that both sets of minutes be approved as corrected. Councilor Cundiff seconded and the motion passed.

PRESENTATION:

1. Snohomish County Economic Development Council.

Janet McNeilly of the EDC explained the EDC was founded in 1955 and they now have a staff of 6. One of their missions is to help companies locate in the county and they also focus on helping existing businesses through the EDC business retention program, businesses that may be considering bankruptcy, she noted. They have also been investigating impacts of the Navy locating in the county, timber industry impacts with regard to the spotted owl issue, working with the health care industry (5 hospitals) in the county, trying to keep our infrastructure healthy, she said. She noted there is currently a shortage of dental and medical support personnel and they are bringing this fact to the attention of local high school students.

David Porter, EDC Director of Bargaining, Everett, then addressed Council, stating they very much wish to have the continued support of the City of Marysville. As far as what role the EDC plays and how that affects Marysville, he explained that Marysville has an extremely high growth and they like to think they help with the growth management by showing companies property in the county where they might want to locate. He noted that north of 128th has a lot of potential for growth, with adequate water, sewer and infrastructure in place. He stated the EDC is interested in where Marysville wants to go.

Mayor Matheny pointed out that unfortunately, the City's water and sewer problems have a lot to do with litigation proceedings at this point and asked if the EDC could help out there. Mr. Porter said not as a rule, but they could help with grants, possibly.

Councilor Cundiff asked specifically what businesses the EDC has brought to Snohomish County and Marysville and Mr. Porter pointed to Welco as a major player and said all the impacts in the timber-related industry are being reviewed/studied. He then listed some companies that have recently shown an interest in locating in Marysville - a plastic sheeting company with 50 employees, an aviation/mfg. industry looking for 40-50 acres, a battery recycler, a chemical products firm. He noted that land is very reasonable in Marysville and therefore very attractive to these companies.

Mayor Matheny pointed out that it is because of some of these industrial companies that Marysville is now having sewer and water problems.

Councilor Lashua asked what the EDC has done to create jobs north of Everett and Mr. Porter gave as examples Briggs Technologies, Northwest Composites and a number of businesses in Arlington, for which the EDC was responsible for locating here. He pointed out that Marysville does not have that much industrial property "ready to go" but they have been showing a lot of property in Marysville to prospective buyers.

Councilor Lashua agreed that property in Marysville is very desirable with the rail spur, close proximity to Highways 5 & 9, eg.

Councilor McGee asked about the future of the timber industry and Mr. Porter talked about the squeeze between stumpage, imports, exports, etc.

City Attorney Allendoerfer asked if the EDC got involved in retail sales and Mr. Porter said no, mainly industrial, but there have been inquiries from some major grocery stores and banks.

MARYSVILLE CITY COUNCIL MINUTES
DECEMBER 3, 1990
Page 3

City Attorney Allendoerfer explained that if Marysville is mainly a retail center, that would be the area most interested in and with the EDC mainly industrial, it's difficult to see the benefit of belonging to the EDC.

Mr. Porter said they would like to help Marysville out in the retail/office area, it's just that they had no specific information regarding Marysville's needs in this area. As far as updating of demographic information, he said they collect information from the PSCOG every year and a half and also do a lot of their own market research.

Councilor Baxter said it was difficult for him to believe that Marysville has not talked to the EDC in the 10 years of being a member, about a customer base (retail or otherwise).

Mayor Matheny asked about Boeing and Mr. Porter said they are still considering the west side.

Councilor Lashua asked about surrounding cities and towns being members and Mr. Porter stated Arlington, Darrington and Stanwood are members but the Tulalip Tribes are not (members of the EDC).

There was discussion about Boeing locating in the area, eg. on the west side.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Ray Cobley, 4014 NE 25th, Seattle, addressed Council regarding property he owns east of Rivers Inlet called "Brighton Park". He explained they have been annexed into Marysville, that they want to develop the land and they took out a large bank loan and tore down some rental property in order to do this. They submitted the preliminary plat but then the sewer moratorium came along and he explained that they are really in a financial "fix" and he asked about the City allowing the paperwork to proceed, in order to save time and money for both parties.

City Attorney Allendoerfer explained that this question has come up before and each time the City Council has said no, they do not wish to let developers spend any more money on their projects because it will only increase the bank loans, the expectations, etc. He noted that the EIS has been drafted for the sewer lagoon upgrade and once that's approved by the DOE (which should be by the end of the year), then the City will have "light at the end of the tunnel". He said he felt the request from Mr. Cobley has merit but suggested he wait until the end of the year.

Mr. Cobley stated they are trying to put in affordable housing, they have paid mitigation fees, have cleared the land and done topogs, they are really ready to go and would like some kind of priority on a sewer hookup.

City Attorney Allendoerfer said with the schedule for the sewer lagoon upgrade, it's going to take at least another 13 months and that this is a popular issue with developers. He offered to draft an ordinance for City Council approval to help process plats.

Councilor Pedersen said she would be in favor of the City Attorney drafting up an ordinance and Councilor Baxter said he didn't see why the developers shouldn't be allowed to go as far as they can without a sewer hookup--if they want to go to that additional expense and take the risks involved.

Councilor Pedersen asked about the developer signing a hold harmless agreement and City Attorney Allendoerfer said Centex was the only developer who would sign a hold harmless agreement.

Councilor Baxter suggested keeping track of all developers not willing to sign a hold harmless agreement.

Mr. Cobley said they would be willing to sign a hold harmless agreement and any help the City could give would be appreciated.

Bob Pascoe, 727 21st Dr. NE, addressed Council and noted that many of the smaller developers can be hurt with a long process of paperwork. He said he has been waiting 5 years in Whatcom County and thinks the City should pass the ordinance allowing the paperwork to be processed while the sewer moratorium is on because there is going to be a problem with clearing all the plats at once once the moratorium is lifted and it would be beneficial for the City as well as the developer to get the majority of the process completed beforehand. He said he is having a problem in Whatcom County with zoning--the developer likes to know whether or not they still have the zoning, he explained.

Councilor Weiser asked whether anything had been heard back from DOE and Public Works Director Zabell said no.

Henry Osborn, 30 140th NE, addressed Council and encouraged everyone to read the letter he had passed out to them earlier regarding the two houses he has without sewer hookups.

City Attorney Allendoerfer noted that Mr. Osborn is in a special category and stated that on 12/10 the City Council will be reopening the sewer moratorium for 500 vested properties. He pointed out that Mr. Osborn has two houses built and ready to occupy except for sewer.

Ron Loop, 7017 51st Av. NE, addressed Council and said as far as a developer shooting himself in the foot, so to speak, if you have already put out the money for the property, you are not putting out that much more money getting the platting process started. He pointed out that if developers were allowed to get the paperwork processed, the City would not have to hire more employees for the "rush" (when the moratorium is lifted) if the paperwork was done ahead of time.

City Attorney Allendoerfer pointed out that the City does not have an approved plan for the sewer lagoon upgrade right now and it sounds as if the developer is assuming the sewer lagoon upgrade will be done soon. "But what if it's more like 5-10 years?" he asked--in that event, you would have to redo your rezone to 12,500 probably in order to accommodate a septic system, he said.

Mr. Loop said he could wait 30 days with his project and come back before the City Council at that time but that something needs to be done to give relief here, he felt.

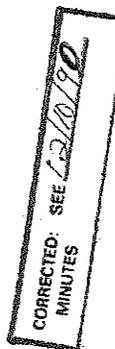
Councilor Cundiff said he would agree with Councilor Pedersen's suggested to proceed with the ordinance wording with no dates filled in, so it could be ready by the first of the year, say.

CURRENT BUSINESS:

1. Golf Course Restaurant Proposal (continued from 11/26/90).

Councilor Cundiff noted that 24 pages had been passed out for Council to read just prior to the meeting this evening and requested again that some consideration be given to the fact that that's a bit too much to expect people to digest in five minutes.

Parks & Recreation Supt. Ballew apologized for being responsible for handing out some of that paperwork, although the document had been presented to Council two weeks ago, also. He reviewed



changes to the contract document including floor rate for monthly rental plus 6% of gross receipts with a grace period. The counter-proposal in the packets was referred to, offering 50% of \$1200 for the first six months floor rate. There was some discussion about the 6% rate and Parks & Recreation Supt. Ballew stated this is a fair market percentage at this time but may need to be adjusted at a later date.

Mayor Matheny asked about the equity of the offers and it was pointed out that the Neubauers had rejected all other offers and the "floor" is a new clause.

A closing date of 12/31 is desired, Parks & Recreation Supt. Ballew said and he answered questions concerning the minimum rent clause.

Councilor Pedersen related two bad experiences with AJ's in Mukilteo, noting that possibly they were two isolated situations.

Parks & Recreation Supt. Ballew related a couple of good experiences and noted that they have great food and good restaurant experience.

Councilor Lashua moved to approve the amendment to the lease. Councilor Cundiff seconded and the motion passed with Councilor Pedersen opposed.

3. Wastewater Treatment Facility Status.

Public Works Director Zabell reported that developers only attended the sewer lagoon update meeting last Friday. He noted that curtain replacement will be starting next week, that the BOD loading is down and there are two more readings to report to the DOE. Staff met with DOE regarding some sewer hookups, he said and he will be talking with John Glynn again. He added that they will know by next Monday night (12/10) whether or not any sewer hookups can be allowed. He reported also that a new pump has been ordered and it will take about two days to install once it arrives.

Councilor Lashua asked about the effluent level in Ebey Slough and there was some discussion. Public Works Director Zabell noted that we came through the flooding very well and that they will report on the three industrial violators in the Friday briefing.

ORDINANCES & RESOLUTIONS:

1. Ordinance Imposing a Gross Receipts Tax on the Water-Sewer Utility Department.

City Attorney Allendoerfer explained this is a 6% tax on the City's water and sewer dept. to be transferred from Utilities to the General Fund to help with the administration of the City. He noted that a lot of cities do this to help with overhead and as far as which gross receipts it would apply to, it would exclude Arlington, 7 Lakes, PUD, Tulalip Tribes and other possible wholesale customer receipts. This does not transfer the increase on to the customer, he added.

Councilor Weiser moved and Councilor McGee seconded to approve/adopt Ordinance #1812. Passed unanimously.

2. Ordinance Imposing a Gross Receipts Tax on the Solid Waste Utility Department.

City Attorney Allendoerfer explained this is a 6% tax that parallels the water-sewer tax on solid waste.

Councilor Lashua moved and Councilor McGee seconded to approve/adopt Ordinance #1813. Passed unanimously.



4. Resolution regarding City Council Absenteeism Policy.

There was discussion about City Council absenteeism policy, noting that acute illness in the immediate family had been included under #2, vacation added as #4.

Councilor Lashua moved and Councilor Pedersen seconded to approve Resolution #1453 setting forth the City Council Absenteeism Policy. Passed unanimously.

3. Ordinance Adopting 1991 Budget.

Councilor Cundiff moved and Councilor McGee seconded to approve/adopt Ordinance #1814, allowing 25¢ per mile for mileage on page 2 of the Budget.

There was discussion, with Finance Director Dexter stating that under Section 3, the policy is being spelled out as to what is done in actuality, just to clarify regarding the salaries/upgrades/steps that occur between budget approvals.

The motion passed unanimously.

CURRENT BUSINESS:

2. North Snohomish County Regional Water Supply Joint Operating Agreement (JOA).

City Attorney Allendoerfer reviewed the differences between Draft 4 and Draft 6 with regard to veto power/rights, capacity rights, etc. He explained that in effect, the agreement is only for a 24" pipeline now which will only be good to 2005 but this was one of the compromises made to get the agreement. The trade-off is that PUD and the Tulalip Tribes will help build a 42" line when it is needed and they will proportionately help with costs of Phase II. "Costs" exclude legal fees incurred in litigation directly between participants in the JOA, he explained. He described a "worst case scenario" where only Marysville needed more capacity and the question would come up as to whether or not the cost of building the 42" line would have to be borne solely by Marysville. He stated it depends on growth projections and Marysville is a growth center, whereas PUD, Tulalip Tribes and Granite Falls do not have comp plans nor validated projected figures at this time.

There was considerable discussion regarding the Winters Water Rights, Tribal Treaty Rights and the Centennial Accord which were included because the Tribes had requested the other two parties to the agreement recognize these terms. It was explained and discussed that Winters Water Rights is pertinent to tribal ground water rights and Councilor Lashua noted that the Indians want to have all water rights in Kittitas and Yakima Counties in eastern Washington and he expressed a concern regarding how this may be interpreted in this Joint Operating Agreement between Marysville, PUD and the Tulalip Tribes.

There was also discussion about the "Centennial Accord" and other documents that the City Attorney has not seen, land use planning "goals" vs. "requirements", the PUD & Tulalip Tribes vote on this agreement not known yet, user fees/revenue bonds to finance pipeline, overlapping areas, DOH being the final judge of who serves Sunnyside, growth in the Sunnyside area.

Bruce McKinnon, 7612 75th Dr. NE, addressed Council, stating that Belmark is building in Granite Falls now and there are only 300 customers there. He asked if Marysville would be able to buy back water from the areas not using it.

MARYSVILLE CITY COUNCIL MINUTES
DECEMBER 3, 1990
Page 7

City Attorney Allendoerfer said yes, Marysville would have to lease back their debt service.

Mr. McKinnon asked if Granite Falls would have to participate in the 42" line (if they didn't need it) and City Attorney Allendoerfer said no, that's what he is worried about.

Mr. Pascoe addressed the Council again, stating PUD should be made to sign a no suit clause on behalf of all the citizens who have sued Marysville with PUD in the past.

There was further discussion about "substantial completion", "wheeling charge", Marysville's current capacity, rebuilding of a main to service the Tulalip Tribes with them putting in an extension and/or getting a Smith Island transmission, 116th St. main/extension, whether Marysville would be allowed to hook onto the line if the Tulalip Tribes build along 116th, discrimination clause, lines out to Priest Point, Tulalip Tribes fighting for water rights, recognition of a Sovereign Nation, selling water to the Tulalip Tribes and PUD vs. having a Joint Operating Agreement, "unanimous consent" decisions, not allowing sale of capacity rights, capital outlay, needing another pipeline in 2010 vs. 2040, JOA will help out PUD & Tulalips now but when second phase needs to be done, costs will be higher and people of Marysville will have to pay more for the same amount of water. There was more discussion about a 30" vs. 42" pipeline now and the fact that another EIS will have to be done if we change, discussion about PUD's ownership of water rights just for a "security blanket", timing having been changed, no guarantees that the other two agencies will participate in Phase II. City Attorney Allendoerfer pointed out that Marysville's plans have all been made an issue however Tulalip Tribes and PUD have no plans to base their needs on; a joint supplemental EIS is in the process of being drafted, he said.

Councilor McGee stated the only way he would feel comfortable is if Marysville has a guarantee of participation from PUD and the Tulalip Tribes for Phase II and Mayor Matheny agreed, noting she would like to see the money in a separate account.

It was the consensus to discuss the JOA further at the next Council meeting and for Councilmembers to send any notes/concerns to City Attorney Allendoerfer who will follow up on several items from tonight's discussion, also.

Councilor Baxter commented on the debt service 8% interest rate.

City Attorney Allendoerfer gave the time line for the supplemental joint EIS to be completed--to be drafted by 1/9/91 with the 30 day comment period to expire 2/9/91 and the final statement to be completed 2/28/91.

Councilor Cundiff asked what other possible obstacles there could be and City Attorney Allendoerfer listed several possibilities: an outside party saying the EIS is not adequate (but that would be "stretching" it, he noted); DOH could say they are not happy with the plan (they have ultimate veto power); the county could road block us with regard to the franchise/grading permits; there are still four parcels with no right of way at this point (this is the simplest problem to solve because we have condemnation powers). There could be a minimum of one year in the event of any of these delays in order to wait for the next "dry cycle", he explained.

Mayor Matheny asked about "frivolous delays" and City Attorney Allendoerfer said that is hard to prove but in the meantime, Marysville is paying for pipe storage, etc. which is very costly.

MARYSVILLE CITY COUNCIL MINUTES
DECEMBER 3, 1990
Page 8

Councilor Weiser asked about the 8% of lease back capacity rights and City Attorney Allendoerfer explained it would be 8% of their cash (\$1,000,000 worth).

Councilor Baxter asked about the advantage to holding on to the line and not leasing it back (hoarding), requiring Marysville to go to Phase II and City Attorney Allendoerfer said he thinks the Tulalip Tribes are going to be looking for their own source. He added that unfortunately, Marysville needs the water for next summer and this is the same situation we were in with the Stilly Well and we were held hostage then too and it's hard to cut off an agency who's paying cash, he said. He noted the JOA could be worded so it would be null and void if they don't pay the cash.

Councilor Baxter commented on the customer base in Sunnyside and City Attorney Allendoerfer said both the Tulalip Tribes and PUD say very sincerely they need the water. Councilor Baxter questioned PUD's sincerity in light of the delays they have been causing.

STAFF'S BUSINESS:

Finance Director Dexter asked for approval for Wilder Construction Phase II/Drainage System final progress payment in the amount of \$110,000, with exception of retainage.

After brief discussion, Councilor Lashua moved that the final progress payment be made contingent on clean up to be approved by Dave Zabell if determined to be Wilder's responsibility. Councilor Cundiff seconded the motion and it passed unanimously.

Public Works Director Zabell explained that the City is seeking an easement from Arnold Garka for sewer outfall and Mr. Garka is now looking to have an agreement whereby he would no longer have to pay drainage fees.

City Attorney Allendoerfer explained it is illegal for the City to allow anyone to get out of paying taxes.

There was discussion about Garka's previous requests: striping State, a left turn lane on State, a lump payment for easement, discussion regarding Garka's rights to the river bed, replacement of wetlands necessary, sewer lagoon upgrade impacts on Garka's property.

City Attorney Allendoerfer announced and invited Councilmembers to his swearing in ceremony 12/26/90 at 3 p.m. in the County Courthouse, 2nd Floor, "Presiding Courtroom".

There was discussion about cleaning up legal matters such as the JOA once Jim is a Judge, time limits, pending litigation, good faith agreement (JOA), Mr. Wubbana (the mediator) wanting to get the JOA signed as soon as possible, more discussion about lease backs, getting PUD & TT to participate in Phase II, capacities, needs, Everett water having chloride in it, water quality possibly not good enough for the fish hatchery, tribal rights, difficulty in protecting needs 10-15-20 years down the road in Marysville, Granite Falls, Arlington, PUD, Tulalip Tribes. It was noted that many hours have been spent on this agreement and it was the consensus that the matter should be finished up before City Attorney Allendoerfer leaves the employ of the City.

CALL ON COUNCILMEMBERS:

Councilor McGee asked about the status of the 88th St. interchange and Mayor Matheny said it would probably be the end of 1991 before anything definitive is decided about an interchange at 88th, 100th or wherever. Public Works Director Zabell added that an EIS has to be done to determine where the best place is for the interchange.

00272

There was discussion about whether or not Councilor Baxter's absence last week was excused or unexcused.

Councilor Cundiff moved to make it an excused absence and Councilor McGee seconded. The motion passed unanimously.

Councilor Pedersen asked about what the City is going to do after Jim Allendoerfer leaves and Mayor Matheny said it may need to be advertised. Mary Swenson explained that the contract is with Allendoerfer & Keithly (the firm) and it may be renewed automatically.

There was discussion regarding advertisement of the position, amending of the contract, 60 days written notice to renegotiate, change in terms, having an inhouse attorney vs. outside attorney, need to come up with a decision by 1/1/91, negotiations for a temporary attorney, transition period, 60 days to start from tonight, appearance of fairness, City Council to make the decision, more discussion about interpretation of the contract.

Councilor McGee moved to give 60 days notice to Allendoerfer & Keithly, Inc., expiring 2/28/91, with the month of January to be at the same rate as before--\$93,000/year. Councilor Pedersen seconded and the motion passed with Councilors Weiser and Baxter opposed.

Councilor Wright reported on the AWC meeting recently attended.

Councilor Cundiff mentioned sidewalk washing by City employees he recently witnessed.

Councilor Lashua asked about a City Council meeting on 12/17 and it was decided that it would depend on next Monday night.

MAYOR'S BUSINESS:

CORRECTED: SEE 12/10/90
MINUTES

Mayor Matheny announced that she has appointed John Beaman to the Civil Service Board.

Councilor Baxter reported there is a Joint Fire Meeting tomorrow night at Midway and he talked about some of the issues. Councilor Weiser said he feels the general "tone" of the agreement has changed.

ADJOURNMENT INTO EXECUTIVE SESSION: 11:25 p.m. (Pending Litigation)

RECONVENE AND ADJOURN: Approx. 12:15 a.m. 12/4/90.

Accepted this 10 day of December, 1990.

Lita Matheny
MAYOR

Phillip E. Dexter
CITY CLERK

Nanda A. Iverson
RECORDING SECRETARY