

MARYSVILLE CITY COUNCIL MINUTES

JANUARY 14, 1991

7:30 p.m.

Council Chambers

Present: Rita Matheny, Mayor
Councilmembers:
 Ken Baxter, Mayor Pro Tem

Dave McGee
 Dave Weiser
 Donna Pedersen
 Donna Wright
 Lee Cundiff
 Bob Lashua

CORRECTED: SEE 1/28/91
 MINUTES

Administrative Staff:
 Carolyn Sanden, City Administrator
 Dave Zabell, Public Works Director
 Mike Corcoran, City Planner
 Phil Dexter, Finance Director
 Grant Weed, Acting City Attorney
 Wanda Iverson, Recording Secretary

CALL TO ORDER:

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

ROLL CALL:

Finance Director Dexter called the roll with all members present/absent as indicated above.

MINUTES OF PREVIOUS MEETING:

Councilor Pedersen noted in the minutes of the 1/7/91 meeting, on page 4, third paragraph the spelling of "Wiede" should be changed to "Weed".

Councilor Cundiff moved and Councilor Pedersen seconded to approve the 1/7/91 minutes as corrected. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Bill White, 7032 57th Dr. NE, addressed Council, stating he wished to bring something to their attention regarding lack of garbage collection. He said he understood the reasons for the garbage trucks not being able to collect garbage in certain areas because of the roads, but he and a friend went down to 80 Columbia on Saturday to deposit their garbage and it was closed and they were unable to get in to put garbage in the dumpster, as advertised on TV. There was no phone number or hours listed with respect to this alternative and he added that many people can't get in during the week to 80 Columbia, anyway. He suggested either having the dumpster outside of the fence or else having someone there on Saturday until our roads are back to normal.

Public Works Director Zabell said the normal policy has been to supply a container during normal working hours only; he apologized for any inconvenience and said they did not anticipate the problem Saturday.

Mr. White mentioned there were other people down there and he said he feel there are going to be problems, especially if this goes on for any period of time, with wind, animals, etc.

Mayor Matheny thanked Mr. White for his input and for bringing this to the attention of the City.

Councilor Pedersen stated she would like to see a policy in the event of two missed pickups, say, whereby people would be allowed to bring their garbage down to 80 Columbia on Saturdays.

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Public Works Director Zabell noted that the way Waste Management Northwest handles missed pickups is to give the customer a credit if they produce a transfer station receipt for the week missed. He admitted that this problem has never come up before.

Councilor Baxter noted that this is the first time the problem has taken on such major proportions, with the alleys still being very soft, for example.

Councilor Pedersen pointed out that the customer is trying to help out the City and in turn, is not able to deposit their garbage and risking it getting all over and causing a health hazard.

Councilor Cundiff said he would like to see staff work something out to take care of the problem and discussion ensued about having someone at 80 Columbia next Saturday, the need to advertise about the availability of a container at 80 Columbia on Channel 18 and in the Globe.

PUBLIC HEARING:

- 1. An Ordinance imposing temporary restrictions on new sewer connections to the City's sewer system in response to an emergency condition relating to the capacity and functional performance of the City's wastewater treatment facility; adopting a SEPA policy relating to the adverse environmental impact of an overburdened wastewater treatment facility; and repealing Ordinance 1795.**

City Administrator Sanden noted this draft ordinance was passed out to the City Council last week and it includes the priority listing, eliminates a SEPA/EIS review and includes a 168 gpd restriction per hookup.

Public Works Director Zabell explained that the EIS portion of the ordinance has been changed but it can't be completely lifted until the City's master EIS is completed (which should be very soon). He reviewed 2.1 and 2.2 which he said are basically the same as 1795 and he noted 2.3 relates to the dry sewer ordinance. Section 3 itemizes priority ranking and he noted that "the Director of the Dept. of Public Works shall have discretion to limit the number of new sewer connections, reconnections or increases in meter size, (calculated in terms of residential equivalents), which will be authorized or approved in any month." There are 12 priority listings and section 4 has to do with Sewer Priority Letters, he pointed out. These would replace the Utility Commitment Letters previously given to applicants. He reviewed vesting rights under section 5 and "no net increase" under section 6. He then speculated on different scenarios and concerns with regard to vesting rights.

Councilor Pedersen asked about the language regarding the public hearing process and City Planner Corcoran pointed out that no applications for hookup would be entertained by the City until the final EIS is completed.

Councilor Lashua asked how priority was going to be established if the applications did not all come in at the same time and Public Works Director Zabell said he would have to wait for the first two weeks of the month, receiving applications at that time and then the third week would be reviewing for priority and the fourth, advising applicants and processing the paperwork.

Councilor Weiser noted there was no limit of the number of connections noted in the draft ordinance and asked if 100 hookups were applied for in a month, say, would they all be granted?

Public Works Director Zabell said he would have to take as many under #1 as there are submitted, go on to #2, and so on.

Councilor Pedersen asked about vesting letters in existence now and Public Works Director Zabell stated they would have expired after six months, so there should be no commitment letters out there now.

Councilor Baxter asked about no net increase applications and Public Works Director Zabell explained this section is basically copied from 1795.

There was discussion about the 12% interest rate to be paid by the City on funds collected and not expended within five years of mitigation collection. Acting City Attorney Weed pointed out that this is per RCW 82.02.

Councilor Pedersen asked about the "qualified sanitarian" under Section 10.1 and Public Works Director Zabell said this was from 1795.

Councilor Pedersen asked about the interpretation of "significant" under Section 10.2 and Public Works Director Zabell said the interpretation would be up to City Council. Councilor Pedersen said she would like to see something a little more defined than "significant".

Councilor Weiser asked if there would be a 168 gpd limitation on industrial/commercial connections, even if they are unvested and Acting City Attorney Weed said no, it's only if they are vested that they would be limited to 168 gpd.

Councilor Baxter speculated that if the City gets the approvals on the WWTF upgrade and start on construction this fall, on the completion of the upgrade to 4.8 mgpd, this whole thing could be opened up.

Public Works Director Zabell stated it's going to take most developers six months to a year before they are ready to use/hook up to the sewer.

Councilor Baxter pointed out that this ordinance could be used for some time in the future but City Administrator Sanden said she suggested the ordinance be in place until the upgrade; we would want to maintain some kind of controls in the event of a violation, she said.

Councilor Baxter said he would like people to be given a little better idea of what's going to happen, depending on the market picking up--the ordinance would not have to restrict the builders forever, he noted, because we are in a very slow market right now and it shouldn't be seen as "sure death" for builders, he said.

Mayor Matheny asked what the estimated date of completion is for the WWTF upgrade and Public Works Director Zabell said 9/92. He added that the main think we need to do is change the outfall location and he noted that we know Steamboat Slough can handle it and the engineering reports and permit process can be started at this time.

City Planner Corcoran noted there is also a Shoreline permit required which must be done once the EIS is completed.

Councilor Weiser pointed out a discrepancy in the draft ordinance whereby there would be more gallonage allowed under Priority 11 as an unvested connection than under Priority 6. He referred to the Vine St. Group application, noting the applicant could have two connections right away at 168 gpd per connection or wait about six weeks and get a higher gallonage under the unvested status.

City Administrator Sanden pointed out that there are not that many applications now; the intent is to allow use of all property owners and it's conceivable Mr. McKinley may get his unvested connection.

Councilor Weiser again questioned the draft ordinance for not naming a specific limitation on the number of connections to be allowed in a given month, say.

City Administrator Sanden suggested that the Public Works Director would be able to determine this by checking on monthly readings at the sewer lagoon and checking other resources to determine capacity. THE PUBLIC HEARING WAS OPENED TO THE AUDIENCE.

Bernie Sigler, 626 128th St. SW, Everett, addressed Council, stating his project barely missed getting into the system and they were given no warning before they were "cut off at the pass". He said he frankly did not see where the City can deny a connection at the present time with the lagoon in compliance and he said he would recommend the City pass the ordinance as it stands.

Bob Otis addressed Council, stating he owns property on 67th and asked about the effect this ordinance would have on applications for preliminary plats.

City Planner Corcoran said the EIS is about to be completed and that he expects the City will be scheduling preliminary plats for public hearings at that time on a first come, first serve basis. He said they are projecting the EIS to be finalized in a month at the most.

Brent Carson, Attorney, Seattle, representing Belmark Industries, addressed Council. He reminded Council that he came before them last time and said they were shocked that that this similar ordinance has come back again. He referred to his 12/6/90 letter, restating that they see no reason or necessity for this ordinance; that there is overwhelming evidence the lagoon is in compliance; progress is being made on the EIS and that it was his understanding that the Council was going to hold this ordinance "in their back pocket" and use only in the event it became necessary. He said he sees no necessity for it, that 1795 does not need to be changed in order to process the paperwork and the City's EIS can be adopted by reference on vested projects. He said as far as "vested rights" are concerned, they are difficult to describe, especially when a ban can take it away and therefore, it's not really a "vested right". He said it needs to mean a right to connect that can't be taken away and he reiterated that the City has the capacity easily in the WWTF at this point. He said what he thinks is behind this ordinance (the driver) is the DOE Consent Order and as far as that's concerned, he said he would strongly recommend that the City renegotiate the Consent Order with the DOE because he understands they are willing to do this and then the City would have an ordinance that allows connections with a vested right, he stated. He added that he feels badly for Mr. Zabell trying to determine priority--it might turn into a lot more complicated process, he noted and become an enormous nightmare for him. He concluded that he didn't think the City needs another ordinance; that the City should instead revise the Consent Order from the DOE.

Bill Roberts, 4129 76th St. NE, addressed Council and asked what unvested connections are.

Public Works Director Zabell said he interprets it as any property that does not fall into the vested criteria.

Mr. Roberts asked about an approved plat that does not have sewer connections as yet and Acting City Attorney Weed referred to section 5.2 of the draft ordinance. Mr. Roberts said he would

expect then that it would mean anything that's included under Priority 9 or 10, referring to unvested connections.

Acting City Attorney Weed concurred with Mr. Roberts, stating if the preliminary plat (approved) does not have stub outs yet, yes, it would be classed as unvested.

Dennis Reynolds, Attorney representing Tom Withers, addressed Council. He pointed out that this ordinance is not needed and that Mr. Zabell should be able to handle the small amount of applications. He noted there is no emergency at this time--that the ordinance is using language from a year ago when there was an emergency. What is needed, he said, is for the vested rights to not be affected by a ban, i.e. no strings attached to being vested. He proceeded to again briefly review the Withers situation, noting that Mr. Withers has expended well over \$1,000,000 and thought he had 97 lots that were vested and on which he could proceed with development. Mr. Reynolds then referred to the Webster's definition of "vested" and noted it implies a strong commitment of an economic or financial nature and he said he interprets this to mean that it would be exempt from a ban. He pointed out that the word "vested" has ended up meaning "if the City is out of compliance, the vested right can be taken back" which is a false promise and it's no wonder lending institutions are totally unwilling to lend money on that promise, he said. He continued that "vested" should be "vested" with no strings, there is capacity at this point and as far as the Consent Order with DOE, DOE has issued a number of Consent Orders and vested lots are usually exempted(except Marysville). He noted this is the only city that allows a ban to cancel vested rights and he encouraged Marysville to "go forward" and not give people any more false promises by virtue of the Consent Order. He concluded that the solution is to go back to the DOE, noting that the situation has changed. He stated his client is also willing to work with the DOE and other agencies, such as the Pollution Control Board.

Rich Metzner, 824 E. Lk. Stevens Rd., addressed the Council as owner/developer of the 54 lot plat called "Crystal Terrace" and noted that with the economy the way it is, they really have had a tough time and with the sewer moratorium, it's been very hard to stick it out. He said they would like to get out and build some affordable homes but with more restrictions, eg. sewer moratorium, it's adding a big expense. He said that passing a new ordinance is like this is also putting a lot of weight on the shoulders of Dave Zabell and giving him the power to decide who has to wait to develop and possibly go bankrupt. He concluded that the draft ordinance is discriminatory.

Brent McKinley, 516 N. Olympic, Arlington addressed Council and made some comparisons between his request for sewer connections to a shopping center and Withers' 97 hookups. He noted that the Withers project had only been in existence since June 1989 whereas Mr. McKinley has a paid up ULID which came about 15 years ago. He stated he is not in opposition to the ordinance except where it discriminates against industrial and commercial users and only allows 168 gpd; he noted it also discriminates between users inside and those outside of City limits. He noted that he has 12 acres and is only allowed 2 connections under Priority 6 whereas Tom Withers is vested under Priority 7 with 97 connections and Mr. McKinley would have to go to Priority 11 in order to get his request fulfilled as far as gallonage, he pointed out.

Mike Papa, 9128 58th Dr. NE, asked what the current excess capacity for the WWTF for January.

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Public Works Director Zabell said the only figures he has available at this point are for December and with a 4500 lb. limit, we only had 2800 lbs. in Dec., which indicates a 1700 lb. capacity.

Mr. Papa asked if it was conceivable for the lagoon to go out of compliance if everyone hooked up at once and Public Works Director Zabell said yes.

Jim Egge, Everett Planning Consultant, representing Heritage Park, addressed Council and noted that he understands section 5 is probably for the purpose of slowing down sewer permits, however, he pointed out that Marysville is at an all time low as far as the building/construction market and in addition, he can see some problems arising for Dave Zabell here, inherent in ranking priority. He also questioned the necessity of the ordinance, noting that banning of new connections is already provided by the Consent Order and further, priority ranking #1 and #2 for "no net increase" and "unique hardship" could very well use up the whole allotment of say, 100 connections per month, he pointed out. He said if a project is truly "no net increase" it should not even be mentioned in the ordinance at all as it's a "given" and he said he felt this is simply going to create a lot of administrative nightmares. He said he felt the same to be true of the priority to do with dry sewer extensions and the priority ranking letter and asked why a permit couldn't be issued instead of trying to give them a priority. He noted that Heritage Park had been given a letter dated 12/10/90 from Dave Zabell giving vesting rights to Heritage Park and they are negotiating some rewording, adding "unless otherwise covered by the letter" in the ordinance. He concluded that he understands why the ordinance is being proposed but he sees some real problems administratively and would suggest either reinstating 1795 or rewording this one.

Bud Darling, 1916 Grove St., addressed Council, stating there are a lot of people who have been paying a lot of money in interest, they have gone along with the moratorium, the market is very slow right now and he says he sees this as an opportunity to help these people. He concluded that we need affordable housing, but the delays keep putting the prices up.

Mike Brown, Seattle, addressed Council, noting he also has an interest in seeing Crystal Terrace completed. He agreed that the proposed ordinance is totally unnecessary, especially when they were already given a priority for vesting rights on the development. He also agreed that when you have a no net increase project, they should not be on the priority listing because those people will be using up time and priority ranking that could be given to others.

Councilor Cundiff asked about references made that the DOE is willing to change the Consent Order and Mr. Brown said he could not speak clearly to that but that he does know people who have been in touch with the DOE and spoken with them directly; he has not.

Dennis Reynolds addressed Council again, noting his firm has had meetings with the DOE on the regional level and he named several names -- Fred Olsen, Mr. Lien, others with whom they have spoken regarding the Consent Order and its implications. He noted that Mr. Lien was to have gotten back with his firm with regard to modification of the Consent Order regarding vested rights and the sewer bank. He did admit that he has not actually heard anyone say they would be in favor of changing the Consent Order but on the other hand, he has not heard any officials say that they would not entertain a modification.

Acting City Attorney Weed pointed out that Jim Allendoerfer and Dave Zabell have been dealing with John Glynn from the DOE and

apparently Mr. Reynolds has been working with others. He said as he understands it, John Glynn is actually very inflexible on this issue and it would be difficult to go to someone else, given the fact Mr. Glynn is the one who signed the Consent Order.

Councilor Cundiff asked if perhaps there was someone above Glynn and Mr. Reynolds strongly suggested the City going to Mr. Lien who is the DOE legal advisor and he noted that DOE relies very heavily on what Mr. Lien has to say. He stressed that he thinks there's an additional opportunity now to go to DOE and that he and his firm would assist in any way they can.

Brent Carson, Attorney, addressed Council, noting that he also deals with Mr. Lien at the DOE. He said as he understands the situation, the City's political position plays a major role and that he feels the DOE has somewhat stated their willingness in their letter of 12/7/90 to renegotiate the Consent Order. He said he sees their letter as a recognition of changes in circumstances and he suggested the City take a strong stand and go to the DOE.

Tom Withers, Everett, addressed Council, noting that the last 10½ months have been very complicated for everyone concerned with regard to his plat. He said beginning back on 2/26/90 when the first sewer moratorium was imposed, he had vesting rights for 97 lots and he was approved to make those connections. He explained that he expended an additional \$900,000 in addition to the one million dollars he had already expended to put in the connections and then was not allowed to hook up. He is also donating a park to the City in which he has invested a lot of time and money and as of right now, he is paying \$22,000 per month just in interest payments and he said he doesn't feel as though he owns anything right now. Additionally, he said he seems to have gone from Priority #1 to Priority #8 and asked again, "What does vesting mean?" He pointed out that lending institutions are not going to be real anxious to lend money under these circumstances and he noted that there's still lots of work to do before these homes are ready to be sold. The lending institutions need some kind of guarantee on the vesting rights, he explained, and not to have things keep changing with regard to the sewer ordinance. He concluded that we don't need another ordinance at this time and he said he would like to see the City stand up and say once you are vested, you are vested.

Steve Smallwood, addressed Council, stating he owns a few lots in town. He urged Council to take a stand on the vested rights issue also because he, like a lot of others, is also running out of money.

THERE BEING NO FURTHER INPUT FROM THE AUDIENCE, THE PUBLIC HEARING WAS CLOSED AT 9:20 PM.

Councilor Baxter noted that when the moratorium was discussed originally, the length of it was discussed which at that time, was not estimated to be as long as it has been. He noted that the long duration has been most detrimental to the builders and they were led to believe the ordinance would no longer be in effect once the moratorium was lifted. He added that it does seem to be getting more complicated and he said he is not in favor of passing the new ordinance.

Councilor Pedersen said she thought this ordinance was to be put "in our briefcases" until needed and said she was somewhat surprised when she saw it presented.

Councilor McGee agreed and said he strongly opposes this ordinance because of the current soft market, etc.

Councilor Lashua noted there have been very strong arguments from the audience regarding the severe affects on the pocket books and with regard to the criteria of inside and outside of city limits, he suggested that be changed to inside and outside of RUSA.

Councilor Wright said she felt vesting should be a commitment and would not be in favor of passing the ordinance at this time.

Councilor Pedersen said she remembered discussion about the market being the driving force and that also, the Consent Order would still be there to allow the City to impose a ban if it is necessary.

Councilor Lashua said he felt the State would probably do that for the City, vesting or no vesting.

Councilor Baxter said he understood that once the City lifted the ban, the ordinance would still allow these people to proceed and he said he is now confused because they seem to be still in the same place as when the ban was imposed.

Councilor Weiser said he felt after the ban was lifted, there was a potential of another ban but with a vested lot, they should have been allowed to hook up.

Councilor Lashua pointed out that the City is still under the Consent Order, whether the ordinance is passed tonight or not. He said that perhaps that needs to be changed, but in the meantime, the Consent Order is still in force.

Councilor Cundiff asked about changing the Consent Order and City Administrator Sanden responded that as far as having the capacity, we do for now, but we are right back to where we started when we first came up with the Consent Order. She explained that the vested lots were established so we would not exceed compliance-- we had violators then to the Consent Order and now we have a date to comply with the DOE Consent Order. She noted that 2.1 in 1795 is the element that's causing the problems and if we had never gone out of compliance, probably we would never have had the sewer ban, even on the vested lots. She pointed out however, that DOE wanted that leverage, right up to the permit stage and the City has talked with DOE about the Withers situation and they were not willing to budge, again, probably because the City had gone out of compliance. She said she sees the options here to go back to DOS but it's basically up to the City to draw the line and remain in compliance. Once the Determination of Significance is no longer in place, it will open it up to preliminary plats and this ordinance was to provide some guidelines for staff once the DS is lifted, she said.

Councilor Cundiff asked if problems could be solved on a case by case basis if this ordinance were not passed tonight.

City Administrator Sanden explained that one option would be to keep 1795 in place; unvested lots would have no option except for a no net increase, the DS would be released and she said she did not know how preliminary plats would attain vesting rights. She said the proposed ordinance does not solve the "pending" cases, either.

Councilor Pedersen asked about the status of the three violators and other readings and Public Works Director Zabell said the 3 violators have significantly reduced their BOD, compliance orders have been sent to the violators and the plan is to have them signed by 1/31/91. He noted the BOD reading for Dec. was at 89% which was well below the 4500# limit.

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Acting City Attorney Weed explained that 1795 would continue in effect until 2/11/91 unless City Council passes a separate action.

Councilor Baxter pointed out that the new proposal is not alleviating the builders' problems but Acting City Attorney Weed said the intent is to get the City to a situation so that a public hearing can take place and sewage can be added on an incremental basis, depending on the readings and how many applications are received.

Councilor Pedersen suggested just removing 5.1 and 5.2 from 1795 concerning the processing of vested rights/connections but Councilor Baxter pointed out that would not work for the people it's intended for.

Acting City Attorney Weed explained that the intent was for "vested rights" to give a status but not a guarantee or contractual right. There would be no contractual right until the fee is paid and permit issued, he said and agreed it's very difficult for a lending institution because there's no guarantee on "vested right".

Councilor Baxter said he felt as though the original purpose has been defeated and added that if we had not gone out of compliance, we never would have had all these problems. He said he feels we have criteria at this point to do away with the ordinance because there's no indication that the market is going to allow enough builders to apply for enough permits that there's going to be a problem.

Councilor Pedersen stated she would like to suggest an alternate ordinance be developed by staff, based on tonight's comments.

Councilor Baxter pointed out that if we stay in compliance with the Consent Order, the DOE has no reason to cause any problems and Public Works Director Zabell agreed we are heading in the right direction there.

Councilor Baxter noted that if we go out of compliance, the DOE can still impose a ban and Public Works Director Zabell said it is basically up to the City to put a restriction on the building permits so that we do not go out of compliance with the Consent Order.

Councilor Baxter asked if there was a sunset clause on the Consent Order and/or the ordinances and City Administrator Sanden explained that once we have completed the project, the new outfall is in place, we are in compliance, then we will be released from the Consent Order.

Councilor Pedersen said in the event of going out of compliance again, she would like to see an alternate ordinance, for example, one combining wording from 1795 minus 5.1 and 5.2 plus the new ordinance.

Councilor Lashua asked what would happen to the builders and Public Works Director Zabell agreed they can't get any more money from the lending institutions because of the City's interpretation of the vesting rights under 1795 or the DOE Consent Order.

Acting City Attorney Weed reminded Council there's no contractual obligation until the building/sewer connection permit is issued.

Councilor Weiser asked if a person had paid and received their permit, would they be allowed to construct a sewer hookup in the event of a total ban and Public Works Director Zabell said no, unless paying the fee is the same as "connected". He questioned whether a dry sewer might be considered "connected", also.

Councilor Cundiff commented there is no problem with capacity right now and if we were to go out of compliance again, we can still exercise our option under the Consent Order to freeze connections again.

City Administrator Sanden pointed out that if 1795 runs out, first come first served would be the order of the day again, with no protection of vested rights.

Mayor Matheny suggested this topic be discussed in more depth at a public workshop and suggested 1/21/91. It was the consensus that this should be done, noting that it needs to be advertised and also that 1/21 is Martin Luther King's Birthday, but this is a very important issue that needs to be resolved in a timely manner.

Councilor Baxter asked if ordinance 1795 runs out, how many days it would take to reinstate it, if necessary. Acting City Attorney Weed said it would take 5 days after passage of a replacement ordinance unless an emergency situation existed.

- BREAK - 9:56 p.m.

CONSENT AGENDA:

1. **1/14/91 Claims Check No. 22532 through No. 22696 in the amount of \$206,454.98.**

After one brief question, Councilor Lashua moved and Councilor McGee seconded to approve the Consent Agenda. Passed unanimously.

REVIEW BIDS:

1. Banking Services.

Finance Director Dexter noted that in addition to the figures in the packets, there are some other factors involved such as the automated statement format which can be coupled into the City's PC capabilities by modem. He said the Security Pacific statement appeared more detailed than Seafirst's. Also, SPB appears to excel in the investments area over Seafirst because Security Pacific has the contract with the State and therefore does not have to make a charge for going through the federal wire service, he said. He estimated an absolute minimum of \$19/mo. savings there, which offsets the overall \$13/mo. savings with Seafirst. He admitted that overall, both banking facilities came in fairly close; he noted that the City has been dealing with Seafirst for 100 years and has a good rapport with them, but dealings with either bank would be through their Seattle branches. One disadvantage to using Security Pacific is that the City would have to have an armored car come in for deposits vs. someone taking the deposits across the street, as is done now. The armored car would not be an additional charge, only a little less convenient.

Councilor McGee asked about anticipated cost for checking services and Finance Director Dexter explained the City has about \$500 worth of old checks left and would probably spend that much to reprint new checks.

Councilor Cundiff said as long as the City is satisfied with Seafirst, and the cost is so close between the two, he would just as soon see the City stay where they are, which would also save having to reprint checks.

There was discussion about the investment pool account operation costs/charges, the armored car services, present interaction with Security Pacific Securities, bank charges, advantages of Security Pacific being intrinsic values, computer linkage, good statement format, investment advantages by using state investment pool with lower fees.

Councilor Pedersen asked about the possibility of the City using both banks and Finance Director Dexter said that was possible, although not entirely practical.

There was further comment about the bidding process, how using 2 banks might be very confusing, the three year commitment in the contract.

Councilor McGee moved approval of staff switching the City's banking business over to Security Pacific Bank for the next three years. Councilor Wright seconded and the motion passed 4-3 with Councilors Weiser, Pedersen and Baxter in opposition.

CURRENT BUSINESS:

1. TIP #3, I-5 & SR 528 Intersection (continued from 12/10/90 meeting).

Public Works Director Zabell explained this provides a funding mechanism to construct certain improvements to the interchange at SR 528 and I-5. He referred to the packets as far as impact, benefit area, etc. and noted the mitigation fee would be about \$595 per peak hour trip. He introduced Dave Ostergaard who is the consultant very instrumental in coordinating the TIP, he said.

Dave Ostergaard of Everett, addressed Council and stated he has been working with the City of Marysville on this for about two years and they have had discussion with WADOT, the County and a lot of developers who are waiting for this project to be finalized as far as how much the mitigation fees will be, etc. He explained they tried to come up with the best benefit area they could and did work with the transportation study consultants, Transpo. He said they used estimates of traffic volume and had a number of discussions with Dave Zabell, Jim Allendoerfer and some developers and pointed out that the interchange is operating at LOS "E" at this time. The present volume is about 4224 vehicles during every peak hour and over the next two years is expected to increase to 5277 vehicles per peak hour. He reviewed the components of the TIP, including the Scope of Improvement, how Ross Kane has even shown an interest in Traffic Advisory Committee meetings and TIP #3, noting it is very possible Marysville will be receiving assistance from the county in funding the project and once the TIP is in place, the State will also probably contribute, he said. He noted that he had had discussions with Ed Girard at the State who explained that projects have a better chance of receiving State funding once the TIP is in place.

Councilor Cundiff asked if the peak hour projections would change once the 88th St. Interchange is put in and Mr. Ostergaard stated that's possible.

Mayor Matheny noted that the west side of I-5 is going to be growing considerably and she asked if there was any indication from the Tulalips of support financially toward TIP #3.

City Planner Corcoran said he had talked with Jim Cameron from the Tulalip Tribes and he said he was willing to work with the City on this.

Mr. Ostergaard pointed out that the Transpo counts did not include the total Tulalip Tribes projection of growth (100% build out).

Councilor Lashua asked if the cost figures were based on the conceptual drawings and Mr. Ostergaard said yes, and these are the drawings and figures which DOT has reviewed. Initially, it was felt the estimates were a little on the low side and they were adjusted accordingly.

Public Works Director Zabell pointed out that once \$40,000 is collected, the engineering reports can be done to determine the final cost of the project and then the \$595 mitigation fee could be adjusted if necessary.

Other Interstate projects were mentioned and Councilor Baxter said he would like to see some of our gas tax money being put to work; that it should not be up to Marysville to have to pay for the I-5 offramp improvements.

Mr. Ostergaard said the priority list in the State has to be considered and it is felt that once the TIP is put together, it's very possible we will have funds coming in from the State and County for this TIP.

Councilor Baxter reiterated that he would like to see some commitment from the State and/or County first and there was discussion about lack of funds coming to North County, the State never having any extra funds, the 88th St. interchange alleviating 4th St. traffic, cooperation of other agencies for funding, TIP benefit area, spreading out the cost, reviewing the project again once the engineering report is done, participation and interlocal processing/contribution, mitigation fees already being collected by the County, increased development, RUSA, moratorium on development because of LOS "E" at I-5/4th St.

Councilor Baxter noted that we have paid so much into the County and State and that he didn't understand why they can't help us out at this point, when we need it.

Mark Jacobs, traffic consultant with the State, addressed Council, saying the State would rather support 10 projects at 50% rather than 5 projects at 100% and that Marysville will get higher up on the priority list with matching funds already in place.

Bill Roberts, 4129 76th St. NE, Marysville, addressed Council, noting that TIP #3 has been discussed for two years and Brian Corcoran from the TIP Board said the priority for this project is very high and with the TIP in place, we would be in a good position to receive money from the TIP fund, similar to what happened with TIP #2 for 528 & 47th intersection. He noted that the State contributed about \$50,000 on TIP #2 and this is an excellent way to get dollars, with the TIP in place, he said; an opportunity for funds from the State, County and developers. He added that the State did not contribute to the improvements on 67th but they did build the bridge on 528, a very expensive proposition.

Councilor Baxter asked how many homes the benefit area was based on; i.e., how many homes would need to pay the mitigation fee in order to pay for the TIP and Mr. Ostergaard answered 1050, based on one peak hour trip per home per day.

Councilor Lashua moved and Councilor McGee seconded to approve/adopt Ordinance 1821 instituting TIP #3 with a minor correction in the wording under paragraph 4, "on 12/10/90 and on 1/14/91, the City Council found that it was necessary....." A roll call vote was taken and the motion passed 5-2 with Councilors Baxter and Cundiff against.

NEW BUSINESS:

1. Utility Variance - Erki Kotilainen.

City Planner Corcoran reviewed the circumstances and referred to the agenda bill. He noted that Mr. Kotilainen's short plat was approved with the existing house, septic tank and two sewer connections however, with the sewer moratorium, the property has been sitting vacant. He noted also that this request was denied last time the applicant came before City Council and there was discussion about Mr. Kotilainen's drain field being on another lot and in the process of putting in the sewer line, the drain field was seriously damaged.

Public Works Director Zabell noted the only change since the last time the applicant came before City Council, is that the City is now in compliance with the DOE Consent Order.

Councilor Pedersen commented that if the applicant is seeking a variance based on being a health hazard, they require a letter from the County and City Planner Corcoran explained they can't occupy the house without a septic tank or sewer hookup.

Councilor Cundiff asked if the applicant didn't create this problem but Mr. Roberts explained the drain field was ruined when they put the sewer in after he had already more than half constructed two houses. He stated the applicant's main argument is the short plat was approved based on sewers and 7200 lots can't support septic tanks. Then the sewer moratorium came along, he noted and it was a foregone conclusion that once the sewer moratorium was lifted he would apply for sewer and he has installed a sewer line.

It was also pointed out that the applicant had had no problems with the drain field until they ruined it digging for the sewer and he elected not to allow anyone in the house, so there is no health hazard as yet. There was further discussion about the stub outs being in place, minimum lot size of 12,500 required for septic, intent to go on sewer under the conditions of the short plat which was approved, the applicant wanting 3 instead of 2 hookups, total ban no longer being in effect, capacity of the sewer, unvested lots, how long the sewer lagoon capacity is going to last.

Councilor Baxter then moved to approve the variance based on the prior commitment from the City and now that the sewer lagoon is in compliance, and with the existing house on a substandard lot for a septic tank. Councilor Lashua seconded and there was more discussion.

Councilor Cundiff pointed out that the applicant was going to put in another drain field but Mr. Roberts argued that yes, the applicant could put in another drain field but once the sewer lagoon is in compliance, he is obligated to hook up to the sewer and then the money spent on the drain field would go to waste.

The motion passed with Councilor Pedersen in opposition.

2. Utility Variance - Vine St. Group.

Brent McKinley addressed Council, pointing out that he is only vested for two hookups with 12 acres zoned commercial and he believes Ordinances 1763/1795 to be discriminatory, favoring single family dwellings over industrial/commercial projects. He again compared Crystal Heights with 97 lots on 35 acres to the Gateway Shopping Center--a 12 acre project with less gallonage, and noted that Mr. Withers somehow has more entitlement when his development only came about a couple years ago; Vine St. Group's ULID has been paid in full and in force for many more years and he said he wished City Council to reconsider their previous denial of his request for more gallonage than 168 gpd per hookup. He added that Council was to reconsider 1795 this week and Dave Zabell now has to look at 12 applicants and Vine St. Group has their building permit, but because of some strange workings of 1795, they have less priority than Crystal Heights, he said.

Councilor Weiser asked how many square feet the shopping center would be and Mr. McKinley responded there would be 4 buildings containing 2 banks, one fast food place in an 80,000 sq. ft. strip mall; a total of 13 shops for a total of 19 tenants. For an on-site septic system, they calculated as a worst case scenario, 13,000 gpd but he said he thought realistically, it would be more like 9,000 gpd.

Councilor Weiser asked about the retail businesses in the strip mall.

Mr. McKinley responded that most of the retail businesses would have a single unisex restroom, there would be a few more sinks in the hair stylist shop and Pay N Pak would have 4 bathrooms. He noted that the highest contributor to the sewer would be the anchor grocery store.

Councilor Lashua asked about the runoff from the parking lot and Mr. McKinley explained there is a common property line between the Vine St. Group and the adjacent Safeway mall, with a retention ditch running along it, emptying into a retention pond/storm drainage in back. He noted the plan was engineered and approved by the County.

Public Works Director Zabell explained that the applicant does have adequate drainage, that he is vested for 336 gpd, but that the assessment on the ULID was for putting in the sewer pipe, basically.

Mr. McKinley pointed out that they are going to be paying something like \$50,000 to the City, total, eventually, for permits and fees which he said he felt should allow them adequate capacity.

There was discussion about the egg farm use of water and sewer capacity, the number of applications Dave Zabell is going to have to prioritize, no other commercial shopping centers coming in to apply, 1½ years for the County to process this application, a year with the City, the possibility of going the "no net increase" route.

Mr. McKinley pointed out that they had come before Council originally with several options--onsite septic system, cooperation with diversion to Arlington (turned down by Arlington), both options of which were too involved and expensive, he said. As far as the storm water, they spent 2-3 months researching and developing an acceptable solution for the County, he said.

Councilor Baxter then moved to approve 19 hookups at 168 gpd, to include conditions under 1795, with findings that the ULID was in effect since the early 70s, with pipe in the ground since then, the lagoon being in compliance and based on the fact a no protest agreement has been signed with the City of Marysville. Councilor Lashua seconded and more discussion ensued.

Discussion concerned whether or not an Arlington annexation of the 172nd area would supersede the no protest agreement signed with Marysville, whether or not 1795 should be amended, the Vine St. Group having a unique situation, hardship, status, no significant generation of sewage, discussion about the 168 gpd limitation, 12 acres for 19 businesses, violators making others pay, sewer lagoon being in compliance now, the "floodgate opening" concern, doing away with moratorium and variances, inflow and effluent increasing with recent rain, reducing influent, brainstorming at next week's workshop especially regarding the 168 gpd limitation for commercial/industrial, deleting section 5 of 1795.

Councilor Pedersen stated she ~~is not in support of the motion and~~ feels there might be a better way to solve Mr. McKinley's problem. She suggested spending more time at next week's workshop on this issue.

Mr. McKinley said he would prefer a solution tonight one way or the other, i.e. the motion could be withdrawn.

The first and second withdrew the motion, with this item to be first on next week's agenda at the workshop, 1/21/91.

ORDINANCES & RESOLUTIONS:

2. Ordinance Relating to Offensive & Unsanitary Premises for Animals.

George Wilcox, 1522 3rd St., Marysville, addressed Council, asking that an exception be made under this ordinance for customary

CORRECTED: SEE 128791
MINUTES

small farm practises. He noted that there are several things in the ordinance that require a judgment call, such as "smell", "clean", "yards", "open fields" and he said he could see some potential problems with administering the ordinance with regard to small farms.

Councilor Baxter said he agreed and Councilor Cundiff noted that Jennings Park could be in trouble under this ordinance, also.

City Administrator Sanden also noted there may be an accumulation which is offensive to some but not to all.

Councilor Lashua commented that there will always be complaints, no matter what you do and Councilor Weiser commented that his neighbor should be abiding by the kennel law with regard to having four or more dogs. He asked how "normal farm practises" would be defined and there was more discussion.

It was the consensus that the ordinance/wording be reworded and brought back before Council.

1. Ordinance Relating to Recycling of Refuse.

Councilor Weiser moved to adopt/approve Ordinance 1822 and Councilor McGee seconded. Passed unanimously.

LEGAL MATTERS:

1. Janitorial Service Contract/Amendment/City Facilities.

After discussion about the prevailing wage clause being included in the contract, Councilor Lashua moved that the agreement be approved to service City Hall and the Library. Councilor Cundiff seconded and the motion passed unanimously.

Councilor Wright then moved that the addendum to the contract be approved, Councilor McGee seconded and the motion passed unanimously.

NEW BUSINESS:

3. No Net Increase Proposal - Valley Meadows.

Public Works Director Zabell said this needs to be approved prior to Title 26B mitigation fee being levied. He recommended approval.

Councilor Weiser moved and Councilor Wright seconded that the proposal as preauthorized by Dave Zabell be approved with the Mayor authorized to sign. Passed unanimously.

4. No Net Increase Proposal - Cambridge.

This is similar to the Valley Meadows project, also recommended for approval by Public Works Director Zabell.

Councilor Lashua moved that Cambridge No Net Increase Proposal be approved with the Mayor authorized to sign, Councilor Weiser seconded and the motion passed unanimously.

LEGAL MATTERS:

2. Hearing Examiner Contract.

City Administrator Sanden commented that the hearing examiner (Ron McConnell of McConnell & Burke) has been working on an interim basis.

Councilor Wright moved and Councilor Baxter seconded to authorize the Mayor to sign the contract with the hearing examiner. Passed unanimously.

ORDINANCES & RESOLUTIONS:

3. Resolution Granting a Variance to the Sewer Moratorium for Harmony House.

Councilor Baxter moved and Councilor Wright seconded to adopt/approve Resolution 1457. Passed unanimously.

4. Resolution Granting a Variance to the Sewer Moratorium for Dennis Withey.

Councilor Baxter moved and Councilor McGee seconded to adopt/approve Resolution 1458. Passed unanimously.

5. Resolution Denying a Variance to the Sewer Moratorium for Dennis Withey.

Councilor Baxter moved and Councilor Wright seconded to adopt/approve Resolution 1459. Passed unanimously.

6. Resolution Granting a Variance to the Sewer Moratorium for Jack Sleasman.

Councilor Baxter moved and Councilor McGee seconded to adopt/approve Resolution 1460. Passed unanimously.

7. Resolution Granting a Variance to the Sewer Moratorium for Hank Osborn.

Councilor Baxter moved and Councilor Lashua seconded to adopt/approve Resolution 1461. Passed unanimously.

8. Resolution Denying a Variance to the Sewer Moratorium without prejudice for the Vine Street Group.

Councilor Baxter moved and Councilor Cundiff seconded to adopt/approve Resolution 1462. Passed unanimously.

ADJOURNED INTO EXECUTIVE SESSION: 12:20 a.m. 1/15/91.

1. Personnel.

RECONVENE & ADJOURN: Approx. 1:20 a.m. 1/15/91.

Accepted this 28 day of Jan, 1991.

Rita Matheny
MAYOR

Phillip E. Dexter
CITY CLERK

Manda A. Iverson
RECORDING SECRETARY