

MARYSVILLE CITY COUNCIL MINUTES

JULY 22, 1991

7:00 p.m.

Council Chambers

Present: Rita Matheny, Mayor
Councilmembers:
 Ken Baxter, Mayor Pro Tem
 Dave McGee (excused)
 Dave Weiser
 Donna Pedersen
 Donna Wright
 Lee Cundiff
 Bob Lashua
Administrative Staff:
 Carolyn Sanden, City Administrator
 Gloria Hirashima, Associate Planner
 Grant Weed, City Attorney
 Steve Wilson, Asst. Finance Director
 Roger Kelley, Community Information Officer
 Dave Zabell, Public Works Director
 Bob Dyer, Police Chief
 Gerry Becker, Planning Dept.
 Wanda Iverson, Recording Secretary

CORRECTED: SEE 8/5/91
MINUTESCALL TO ORDER:

Mayor Matheny called the meeting to order at 7:00 p.m. and led the flag salute.

ROLL CALL:

Asst. Finance Director/City Clerk Wilson called the roll with all members present/absent as indicated above. Councilor Pedersen moved and Councilor Wright seconded to excuse Councilor McGee from tonight's meeting as he is out of the country. Passed unanimously.

MINUTES OF PREVIOUS MEETINGS:

In the 7/8/91 minutes, Councilor Pedersen clarified that on page 6, in the second paragraph, it was her intention to recommend that the City look for the best price available.

Councilor Cundiff moved and Councilor Wright seconded to approve the 7/8/91 minutes as corrected. Passed unanimously.

STAFF BUSINESS: Deferred.

MAYOR'S BUSINESS: Deferred because of large audience/time restraints.

CALL ON COUNCILMEMBERS:

Councilor Weiser said he would comment later, after public testimony this evening.

Councilor Baxter said the same.

Councilor Pedersen said she will be attending the Cities & Towns dinner on Thursday.

Councilor Wright asked about the progress of the Comp Plan update and Associate Planner Hirashima said the Planning Commission is beginning Section VI which is the actual mapping and they would like to have a joint Planning Commission-City Council meeting soon.

Councilor Wright noted that Snohomish County Tomorrow is meeting on a regular basis and it would be good for Marysville go go in with a definite plan.

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Councilor Pedersen asked if it is the intent to still have neighborhood meetings and Associate Planner Hirashima said it is.

Councilor Cundiff reported that he attended a special meeting of the Stillaguamish Sr. Center regarding a HUD grant for a new 40 apartment unit. He said the SSC has received a number of letters of support and were requesting City of Marysville support, possibly in the form of a resolution. He said one of the main concerns is sewer but the SSC board discussed the "no net increase" concept.

Councilor Lashua had no comments at this time.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Bud Darling, 1916 Grove St., addressed Council. He reminded Council that he came before them 2 weeks ago with a letter with regard to a plat and said they don't want their hearing of 8/5 to be tied in with the Marysville-PUD negotiations. He said he read that revenue is down, according to the Globe, and he said he hopes City Council and staff is doing everything possible to get the sewer moratorium lifted. He noted there had only been 41 hookups in the last 3-4 months and we are in dire need of homes and do have a 2-3 year inventory of sewer hookups at this point. He added they are sincerely trying to keep the prices of houses down but these delays are not helping.

City Administrator Sanden commented that sales tax revenues go to the General Fund and utility revenues do not, although the City could borrow those funds.

Mr. Darling said he was just pointing out the opportunity to increase revenue by lifting of the moratorium.

PRESENTATIONS: None.

PETITIONS & COMMUNICATIONS: None.

PUBLIC HEARINGS:

1. Marysville Golf Center.

City Attorney introduced the matter and gave history of the Hearing Examiner's decision. He said the City Council was given 3 options:

- adopt the hearing examiner's decision
- remand the matter back to the hearing examiner
- have a public hearing (which is what the City Council decided to do)--tonight.

He explained tonight's public hearing is to take testimony that has not been presented before with all people wishing to give testimony to be sworn in. He then outlined the procedure of the public hearing and swore in those people wishing to give testimony (approximately ten people raised their hands).

Associate Planner Hirashima reviewed the matter, reading the staff report in the packets. She concluded that the City Attorney would provide comment and direction with regard to liability and responsibility for golf balls. She showed an overhead of Kellogg Meadows, showing their complaints of golf balls hitting homes, play grounds, near misses, etc. She added that there have been 2 additional submittals received -- a petition of support for the Marysville Golf Center, as well as a memo from their attorney, Kevin Hanchett.

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Kevin Hanchett, Attorney, addressed City Council, stating there is no dispute regarding the golf balls and they wish to arrive at a solution. He said one extreme would be to allow the Marysville Golf Center to remain the same and the other extreme is to shut the golf center down entirely--neither of these is an acceptable solution, he said. He enumerated the four problems:

1. Noise from the lawn mowing.
2. Glare from the lighting.
3. Landscaping.
4. Stray golf balls.

As far as #1 is concerned, they have changed the times of mowing and that seems to have solved that problem, he said. With regard to #2, they are making sure they comply with Section 19 of the MMC for placement of the light and he explained possible alternatives. With regard to landscaping, some of the property is not under the control of the Marysville Golf Center, he said, but they are bringing their property into compliance. The fourth and most serious problem is the golf balls, he said and he pointed out that the 75' height of the nets is limited under the present conditional use permit, however the nets could be raised. Some of the tees can be covered and he said they would like to meet with the City engineering dept. with regard to this. He said logistics and cost need to be kept in mind.

With regard to the liability issue, Mr. Hanchett made the following proposals:

1. Addition of the City of Marysville as a named insured under the golf center's \$1 million insurance policy.
2. Golfers would give their name and address and would be assigned a stall. This will make it much easier to figure out who hit the ball over the nets, he explained. He stated they would also be shifting the pads to help prevent stray golf balls.

He concluded that they want to be consistent with the neighborhood and after the mitigation is put in place, they would like the situation/use reviewed and be allowed to shift the use, if necessary. He said they have to make a cost effective study of what's best and possibly will have to rezone, if it comes to that. He said they want to have adequate time to transform in the event it's determined that their facility is inconsistent with the neighborhood.

He was asked how much time they are asking for to institute mitigation/modification and Mr. Hanchett said 30 days, depending on recommendation of City Council.

Councilor Lashua asked about actual figures of people being hit by golf balls and Mr. Hanchett stated the neighbors have made a study and can come up with actual figures during their testimony. He added that the nets did suffer some damage over the 4th of July (holes in nets) and this is being repaired.

Public Works Director Zabell made it clear that the City would not design or engineer the nets and would be acting as approval entity only.

Steve Richter, 5900 64th NE #104, addressed Council and said he is in favor of the continuance of the operation of the range because it is an activity provided for by private funds. He stated he has never hit a ball over the fence however he could see how that

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could happen. As far as responsibility for this, he said he thinks it's the person who hits the ball and the Marysville Golf Center has made a proposal to help with identification of that person. He noted that on the golf course, the City does not accept responsibility either, for broken windshields, etc.--the golfer is responsible, the individual in charge of the projectile should be responsible whether it's a softball, a rock or a golf ball. I said he really would like to see private investors encouraged.

Steven Connelly, 19324 23rd Av. NE, Arlington, addressed Council, stating he feels the driving range provides a great opportunity to practice, they are nice people and he is in favor of keeping the driving range open.

Bob Denby, 17824 Marine Dr., addressed Council and stated he is an employee of the Marysville Golf Center but has not been recruited by them to speak. I said he believes there has been a reasonable distortion of facts and would like City Council to reconsider the matter. He noted they have many holes in the fences and the periphery is scattered with balls. There are many people that have been supplied with golf balls and they have seen ample opportunity to make a mistake as to where the balls have come from, he said. Balls have an opportunity to come through the nets from below, also and there have been some instances where people have reported balls doing damage when there is no way the balls could have arrived at these points as reported. He also said he would like to see this golf driving range continue as part of Marysville's golfing heritage.

David Ray, 7511 67th Av. NE, addressed Council, noting that their residence has not been hit by a golf ball. They have seen children throwing golf balls, however. As far as the light, he said they just pull down their blinds and the lights don't bother them. As far as the lawn mower, his next door neighbor's lawn mower bothers them more than the driving range lawn mower, he said and added that he thinks the problems can be solved and wishes to see the driving range continue. It was noted that he has lived in his present house 2-1/2 yrs.

Robert O'Callahan, 7801 56th Dr. NE, addressed Council, stating he lives 1/2 mile away and finds it an advantage to have a golf driving range in the area. They are friendly and he has a slice and has never hit a ball over the fence, he said. He said a lot of time they have beginning golfers and this is a good place for people to practice their shots vs. on the golf course. He noted that golf requires a lot of practice and the driving range is very valuable. He said he has spent many years in the management of airports and a lot of times people forget that the airport (or a driving range) is serving a very real need in the community. He said he would hope that the driving range can continue to operate.

Kurt Ramcke, 19629 65th Av. SE, Snohomish, stated he would be available for questions, as owner/manager of Marysville Golf Center.

Councilor Weiser asked how often the grass is mowed and Mr. Ramcke said once a week from March 1 thru November 15 (the growing season) and it takes approx. 3 hours after balls are picked up. He said he starts at about 6 a.m.

Councilor Weiser asked how many buckets per day on the average are hit and Mr. Ramcke said approx. 50 in the summer, 20 in the winter and there are 75 balls in a large bucket, 30 in a small bucket.

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Councilor Cundiff asked him to outline their property on the map, which Mr. Ramcke did. Mr. Ramcke explained there is a 20' "inset" on each side and when asked about the ownership of property right around the driving range, he stated it belongs to Burl Tudor.

Councilor Pedersen asked him how long he has owned/operated the Marysville Golf Center and what the hours are. Mr. Ramcke stated since 4/88 and from 9 a.m. to 9 p.m.

Councilor Baxter asked what the size of the nets is and Mr. Ramcke guessed about 1" and stated they have driven balls right into the net to see if it would go through and a ball can't go through.

Councilor Baxter asked if the main problem is going over the net vs. going through and Mr. Ramcke said, yes, that they still have some holes in the bottom of the nets and some knives have been found, so there maybe some ball stealing going on. He said they have also seen kids reaching through the nets stealing golf balls and that it is very hard for him to work inside and watch the kids, too. He said sometimes he has called the police department and they have taken the kids home to their parents. In fact, one kid the other day had 90 balls in his back pack, Mr. Ramcke said.

Councilor Baxter asked about the height of the nets and Mr. Ramcke said they were 90' but there are two sections on the SW side that had dropped down 20'. He said most of the golfers have a tendency to slice the ball and he showed where the main problem is on the map. He added that the golfers aren't so much of a problem either, but rather the young people who are not experience golfers. He said they have talked with people in Oregon with regard to extending the nets 25' which they feel will capture most of the balls and have also talked with a driving range in Bellevue with a 100' net. He said they report still having a few balls go over the net, even with 100'. They apparently tried covering the driving range but the snow brought it down in the winter, so that was not a practical idea, he said.

Councilor Weiser referred to the way they used to have orange netting on arms going out from each stall and Mr. Ramcke said they had so many complaints from the golfers that the driving range took the orange nets down about two years ago.

Councilor Cundiff asked what the distance is to 67th and Mr. Ramcke said 250 yards.

Councilor Cundiff asked if the landscaping was actually completed on 67th at one time and Mr. Ramcke said yes, but when the sidewalks were put in, the trees and landscaping was destroyed.

Councilor Baxter asked about just using the north side for woods and Mr. Ramcke said it's been better since that restriction; that people usually use the driver to hit further and they use the wood and often end up slicing.

Public Works Director Zabell stated the street widening that destroyed the landscaping on 67th was done by the developer and it's up to them to put that back. He noted the previous owner and developer were one in the same person.

Councilor Cundiff asked whose responsibility it would be now to replace the landscaping and Mr. Ramcke said to his knowledge, the owner was Mr. Tудо who was responsible for the sidewalks and utilities on 67th. He added that they have had phone calls from people saying golf balls had hit their house at a time when there was no one at the range. He said another time, an instructor and

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a student were the only ones at the range at the time when the complaint came in and there was no way they would have done it.

Vicki Carver, 7314 66th Av. NE, addressed Council, stating the incidents of golf balls have cut down now but they are only using a small part of the range and she said she doesn't know how they can survive, using that small amount of the driving range. She noted there are very large holes in the nets which have been there for a long time and two of her kids have almost been hit. She said there are 15 kids in the neighborhood and they deserve some safety. She presented a very large (5 gallon) bucket of balls which she said were from her property and she explained how children from other neighborhoods are stealing balls, the Marysville Golf Center calling the police for children who were only throwing clay balls not golf balls, and concluded that she is offended by people taking videos of her and offended that she is being accused of stealing balls. With regard to liability, she was in a car about a year ago, hit by a golf ball near Cedarcrest Golf Course, and the City of Marysville ended up paying for it, she said. She said she appreciates people wanting recreation but that the property owners have a right to save recreation in their yards, also. She said they do not want to put the MGC out of business but they need a safe place to live.

Councilor Cundiff asked if their attorney's proposal would meet the needs of the neighborhood, in Mrs. Carver's estimation and she stated that as she understands it, nothing will curb the balls, that it was a big mistake in the first place for the City to allow a golf driving range in a residential area and they have been actually encouraged to appeal to the City to buy the property as the only real solution to the problem.

Councilor Weiser asked about the decrease of use and Mrs. Carver said it has decreased and since that time only 3 balls have come into their yard, but the range can't survive on only 5 people using the driving range at a time. She said they have witnesses from the Herald of these balls coming into the yards and how hard they hit.

Delores Boone, 7404 66th Av. NE, addressed Council, stating they apparently get the most balls in their yard, because they have collected 50 balls since the last meeting and it would have been more if Kurt Ramcke's sons hadn't collected some, too. As far as the petition having been signed wanting the driving range to stay in business, she suggested one of the petitioners put one in their back yard. She asked where the knives are that Mr. Ramcke says they found. As far as balls from other driving ranges, she said she only has 2 out of 500 that are from other places. She asked why anyone would throw golf balls in her yard, as Mr. Ramcke and others had implied, that the balls were thrown there vs. being hit there? With regard to the holes in the nets, she said some of the holes are 20-30' up and she doesn't think there any kids that tall! She asked Councilor Baxter about the lady he said he saw picking up balls from under the fence and he could not identify the person he saw. She talked about the damage to her new car and said 3 balls within 30 minutes came into their yard. As far as keeping the balls in--she noted that's the main concern--it's very hazardous and she wants some assurance that no more balls will go over that net. She asked why no one talked with engineers two years ago when the problem started and she pointed out that Mr. Ramcke is a small business man who seems to be getting a pretty good deal here, despite the hazards he is causing and just because it's recreation, doesn't mean the business should continue, she said. She pointed out that it's too hazardous of a recreation to be allowed in that location and the conditions of the conditional

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use permit are not being met. She said they have lived there less than a year and have picked up 550+ balls from their yard.

Lynn Jefferson, 7321 66th Av. NE, addressed Council and stated the main issue is not lights, landscaping or anything but the golf balls going over the net and coming into people's yards. She reiterated that they can't live there normally or safely (as the conditional use permit stipulates they should be able to) and they just need to correct this, she said. She pointed out they can't park safely, they can't have company over, that the driving range should be responsible if they can't find the person who sent the ball over. She said she knew the driving range was there when they moved in, but was assured by the conditions of the conditional use permit that they could weed their gardens safely and not get hit by a golf ball, at least. She said they have asked the City many times for help on this issue and something just has to be done before someone gets killed, with no more delays. She concluded that she is in favor of stopping the operation until something is done to resolve the problem of the golf balls escaping.

Ralph Druckman, 7322 66th Av. NE, addressed Council, stating he has lived at this location for 2-1/2 years. He said as far as the "irons only" rule, they have had only 3 balls come in the yard since that was imposed. He stated he has actually been hit by a golf ball and is also an engineer, so feels qualified to make comment regarding the situation. He stated the main problem/threat is balls going over the nets and if there is something the owners can do to prevent that, that would certainly satisfy the needs of his family. As far as 25' more of netting height, that would be a good start, but as he understands it, they would still be coming over, he said and with unrestricted use of the golf driving range, they would be back in the position they were 2 years ago. He said he would guess he has collected about 350 balls in the last 2-1/2 years out of his yard and he puts them in the upright posts of his dog kennel.

Mr. Hanchett then gave rebuttal, stating the driving range knew there would be a lot of testimony about golf balls coming into the yards and they would be receptive to any ideas to prevent this. In the event this does not cure the problem, they would want a period of transition to give the owner a chance to try and rezone or whatever is necessary, he said. He said they do not see the City buying the property as a solution to the problem at this time, as was mentioned by Mrs. Carver. To summarize, he said their proposal to solve the problems would be:

1. Make sure adequate insurance is in place with the City of Marysville named as additional insured.
2. Log in the golfers, with name, address and time.
3. Increase the height of the nets and/or put a booth around the golfer, also maintaining nets to prevent balls from going through nets, putting nets around tees.

Councilor Baxter asked why the orange nets were taken down and the history of balls going over when the orange nets were in place.

Steve Richter said he thinks the problem was there were steel rods that came back and hit the golfer if they were hit and so the orange nets were taken down as a quick fix, which was probably unfortunate, he said. He concluded this may be part of the solution if done correctly this time.

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Public Works Director Zabell pointed out that the majority of Kellogg Meadows Div. III was not constructed so it's difficult to give any history of balls going over when the orange nets were in place around each golfer.

Burl Tudor, 7321 64th Av. NE, addressed the Council, stating he and his wife are the developers of the property surrounding the golf driving range, that Plats Plus do not own any of the property. He stated the Tudors have wrestled with this problem since 8/87 when Al Matter urged them to sell the property to the people who wanted to run the golf driving range. He says they (the Tudors) have come to the conclusion that the Tudors, the City and the Planning Commission made a serious mistake in allowing the golf driving range in the neighborhood, that there is no doubt in his mind that the City would be responsible because he is sure anyone making a claim or suit would name the City and further, it's not as simple a problem as "all the balls go to the right on a slice." He noted that they have buckets of balls from their yard also, just like Mrs. Carver and they have tried to make this thing work and they insisted on clauses shielding the houses but within the first year they brought suit against the owners for not living up to the contract with the Tudors. He said one of the things was that the (previous) owners of the golf drive range stated on three or four different occasions that they would protect the citizenry with 16' (fast growing) trees no less than 15' apart, also they were to put the fence 25' inside the property line with the trees on the outside of the fence, as a double protection. He noted the Tudors did not prevail in that decision and had to settle for some reduction in value of the houses next to the golf driving range, in addition. He concluded that he thinks a mistake has been made here and now the time has come to put 11 more homes in next to the golf driving range, which the Tudors have a right to do, but he is sure will be denied at this point, because of the neighborhood opposition. He noted that he and his wife are retiring, so it will probably be someone else requesting the development!

The Mayor closed the Public Hearing to public testimony at 8:55 p.m.

Councilor Cundiff asked about the liability issue and City Attorney Weed said it's not a cut and dried issue, but there are basically 2 criteria: design features--they are to use due care to protect the public from golf balls and users also have a duty to protect people from errant shots and to use the facility in a proper manner. He said he didn't know of the facts concerning Mrs. Carver's case and does not know why the City did in fact pay a claim as a result of a ball at the Cedarcrest Golf Course. If the Council is considering adopting the Hearing Examiner's decision, the Council must consider whether or not the City has authority to place all the responsibility on the owner, he said and added that there are liability issues that are the owner's as well as the users' and it would not be appropriate for the City to contract any conflict with common law, so he said he would not recommend that portion of the Hearing Examiner's decision be adopted.

Councilor Baxter talked about raising the nets 25', moving the cages, restricting some stalls to irons only--within 30 days--and if not corrected within that time, defer to Hearing Examiner's decision to have the driving range cease operation. He said he thought using a tape with a time clock might help identify users.

Councilor Lashua referenced the contract between the City and the golf driving range through the conditional use permit and said he

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would be in favor of going along with the Hearing Examiner's decision with exception of #8, as per the City Attorney.

Councilor Pedersen stated that one of the primary concerns is the protection of the public and that she would like to see the modifications done in less than 30 days and would be willing to be more receptive to their ideas, if this were the case.

Councilor Baxter agreed, stating the 30 days would be the time limit for modifications to be completed and not just discussed. He said it sounds like the owners have already thoroughly discussed the problem and more discussion is not necessary.

Councilor Pedersen said if she was the owner of the driving range, she would clean up the garbage surrounding the property, whether she was the owner of the adjacent property or not; it's just good for business to do that.

Councilor Baxter pointed out it's difficult to clean up some of the junk equipment on the property next to the driving range and Councilor Lashua agreed, stating there are some pieces that are sitting there illegally but the main concern is the balls going over the fence. He said he is in favor of the Hearing Examiner's decision to shut the operation down until the nets are corrected.

Councilor Weiser said it doesn't sound like raising the nets is going to eliminate the problem entirely; the arms were very effective and he said he would like to see them come back.

Councilor Baxter said he doesn't want to see the City in the business of forcing a business out of business but Council is responsible for the people's protection. He said we need to come up with a height that will do the job and he doesn't think 100' would be any more unsightly than 75' and that can be probably done in 30 days.

Councilor Cundiff said he is concerned about the safety and welfare of people as well as concerned about a business being put out of business. He said he agrees with Councilor Baxter about giving them 30 days to correct the problem.

Councilor Pedersen said she doesn't recall being charged with allowing a business to operate but knows the Council has been charged with protection of people.

Councilor Cundiff said he thinks we owe it to a business to give them this chance.

Councilor Pedersen pointed out that they have had chances to do something about this in the past and she would like to see modifications completed within 30 days, absolutely no longer.

Councilor Wright said she agreed with raising of the nets and modifying the cages within 30 days.

Councilor Pedersen said that in all fairness, she thinks the driving range is trying to solve the problem but if they don't, she wants to make sure the penalty is severe. It was concluded that being put out of business was a severe penalty, indeed.

Associate Planner Hirashima said the raising of the nets would require a building permit but that can be expedited by the Planning Dept.

Public Works Director Zabell noted it would depend on the avail-

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ability of materials, too.

Councilor Pedersen reiterated the Council wants to go along with the Hearing Examiner's decision with the exception of the liability portion.

There was discussion regarding the liability and insurance, the City Attorney saying it would be improper for the City and this property owner to have a contract holding all users harmless; assisting homeowners in finding out who hit the ball should be encouraged, discussion about instances where the user might be able to use the driving range so that a ball goes over the net, eliminating the majority of recklessness, requiring the owner to carry liability insurance, using the north half of the facility first.

Mr. Ramcke commented that they are already using the north half of the facility first however, they do wish permission to run a junior camp for 8-16 year olds on the south side which involves a supervisor/instructor at all times. Mr. Ramcke noted he has yet to see a youngster of that age hit a ball over the net with an iron or wood.

Councilor Baxter said he would agree to that as long as they are supervised and Mr. Ramcke assured the Council that there is an instructor there at all times.

There was more discussion about the lights being brought into compliance with the MMC, noise issues having been solved, requiring the property owner vs. the City to provide engineering concerning the netting.

Councilor Cundiff asked about restricting the mowing from 7:30 a.m. to 7:30 p.m. and it was the consensus to omit this restriction. There was more discussion about the procedure.

Councilor Baxter then made the motion: to raise the nets a minimum of 25', the cages to be modified to correct the problem of the errant balls and the northern most 5 stalls only to be used for woods. Further, the owner is to provide a means of identifying the users of different cages and all improvements to be made, acceptable to the City, within 30 days, otherwise the driving range to be closed until compliance. Also, lights to be corrected and adjusted and brought into compliance with the MMC (as agreed by owner), also within 30 days. Councilor Cundiff seconded and there was discussion regarding the landscaping being a concern that can be addressed by the original CUP and the intention is that they should be allowed to open more stalls for woods at a later date.

In addition to the above motion, Councilor Baxter moved and Councilor Cundiff seconded that the rules regarding the northern stalls are to remain in place during the next 30 days with the liability insurance offer regarding adding the City as an additional insured, to be included.

A roll call vote was taken and the only Councilor not in favor of the above motion was Councilor Lashua. The motion passed 5-1.

City Attorney Weed noted that the 30 days would technically run from the next City Council meeting when written Findings of Fact are signed. There was more discussion about intent of the motion, which was within 30 days from tomorrow (7/23/91).

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2. Quilceda Auto Annexation.

Associate Planner Hirashima reviewed the request, noting that the proposed annexation includes Hidden Lake Estates, Indian Creek Estates, rural residential and commercial uses. She stated the total assessed value of the annexation area is \$11,306,000. The total of signed petitions and annexation covenants is \$4,204,900 and \$3,850,900 respectively, totalling \$8,055,800. This represents 71% of the valuation for the area, she reported. She showed a map depicting covenants and signed petitions and stated staff recommendation is to approve the annexation and to submit to the Boundary Review Board. She also showed a map including Quilceda Auto Wrecking, Brookside Mobile Home Park and other commercial uses along Hwy. 99, as part of the proposed annexation.

Reid Shockey, 2924 Colby, Everett, addressed Council, representing Rich Warbus, owner of Quilceda Auto Wrecking. He showed the map and the proposed improvement of the logical City boundaries with regard to the inclusion of Brookside Mobile Home Park. He noted that Mr. Warbus has been trying to become part of the City for 4-1/2 years, mainly initiated by the need to replace a structure on his property because of the safety factor. He had problems with the County and therefore wished to come into the City and was requested by City Council to increase the area of the original proposed annexation, which he did, Mr. Shockey reported. It was noted that there is more support from people in the proposed annexation area now, than previously indicated.

Joel Hylback, 10310 Old Hwy. 99, addressed Council, stating he is in favor of the annexation. He pointed out on the map the property he owns and leases within the proposed annexation area and he noted he has some long term commitments in the area. He also gave the reason of better response from Marysville Police Dept. as one for his wanting to annex, but the biggest reason, he said, for wanting to annex would be the accessibility of City staff. He said they are very approachable. It's really kind of a toss up between the City and the County, he said, were it not for the fact that the City staff is so much more accessible than the County. He noted there are about 6 or 7 parcels that are in favor of annexation in addition to the "green" ones shown on the map.

Edward Oas, 10532 41st Av. NE, addressed Council, stating he did not sign a petition as depicted on the map. He said he is not absolutely against annexation but would like some answers first. He said he is concerned about reassessments once annexed, concerned about garbage rates, necessity of burning yard waste from fir needles.

Councilor Baxter explained that you need a burning permit the same as if you are in the City or the County, the same with assessments.

Mr. Oas asked about sidewalks and other improvements and who makes the decisions about whether or not you have to hook up to the sewer, for instance. He said he was hoping that the residents would have some written responses to the information sheet; that he sees a very small portion of property owners actually initiating the annexation, that it seems to be based on who owns the most land and is not a one lot-one person-one vote situation.

Public Works Director Zabell explained that the County would still assess property, whether you live in the City or County, that the trash rates would stay the same for at least 5 years, that you must obtain a burning permit whether you live in the City or the County, that you would not be forced to hook up to sewers unless

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60% of your neighbors wanted to and he explained the possibility of initiating ULIDs for improvements such as sewers and sidewalks. He also mentioned the sidewalk 50/50 program where the City will pay half.

Councilor Weiser pointed out that you must have 60% in favor of sewers, before hooking up, whether you are in the City or County.

Mayor Matheny explained that she has no City water, sewer or sidewalks and has lived in the City for 30 years.

Mike Papa, 9128 58th Dr. NE, addressed the Council on behalf of the Marysville Community Action Network, stating they are opposed to the proposed annexation until there are enough signatures from current owners to support a petition. He referred to Attorney Drewell's interpretation with regard to covenants/non-protest agreements and annexation of property contiguous to the City. He pointed out that 37% of the 71% are actual petitioners, 34% is by covenant from previous property owners and the property in the Hidden Lake Estates and Indian Creek Estates area is not contiguous to City limits. He accused the City of being very insecure by having to resort to these tactics.

Margaret Natterstad, 10532 38th Av. NE, addressed Council, as owner of Lot #36, Indian Creek Estates. She said she and her husband first heard about this annexation covenant this last week and in signing the papers for their house, nothing showed up in the title search and they have lived there for 11 years. She stated they are protesting something that they feel is taking away their rights. She asked if the LID for the street lights would be taken over by the City if they were to be annexed. She also asked about ground surface water jurisdiction and auto emissions. Public Works Director Zabell said yes, the City would take it over. As far as the ground surface water, the City would have jurisdiction once annexed and as far as auto emissions, he said that is a state law and would not be handled by the City.

Mrs. Natterstad pointed out that recently the neighborhood fought a garbage rail transfer station being located in that neighborhood when in fact Quilceda Creek has been identified as wetlands. She asked how the City would protect those wetlands.

City Attorney Sanden admitted the City does not have a wetlands ordinance at this time but is working on developing one. She noted that the County does not have one, either.

Public Works Director Zabell added that the City is very sensitive to environmental issues and cognizant of all laws governing them.

Mrs. Natterstad said she would like to go on record as being against the proposed annexation.

Bud Blethen, 10524 38th Av. NE, addressed Council and said he just found out about this tonight, never received anything in the mail and seeing the signs posted in the neighborhood was their first notification. He said less than 5 years ago an annexation was voted down in some of the same areas depicted on the chart (the previously proposed annexation went out to 156th) and he said it is his understanding that this can't be brought up within 5 years again. Also, he said he understands that as soon as the City's population goes over 15,000 the State will not fund Hwy. 528, 529 or 99, which will become the responsibility of the City. (He admitted that Hwy. 99 is funded a little differently than 528 and 529.) With the Navy coming in, he said he thinks this is a poor time to annex and would like to see what the Navy would be willing to fund.

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William Hugh Lee, 10508 38th Av. NE, addressed Council, stating he has owned Lot 39 for 12-1/2 years, saw the notices posted in the neighborhood and is against the proposed annexation. He said he sees no gain to being in the City, that he is perfectly happy in the County, very active in the community and just do not see any gain in annexing into the City. He said his main concern is with finances and how much more this is going to cost him because right now he is trying to put kids through college and he knows sewers can be expensive. He said he used to live in Alderwood Manor and they went through this same thing and don't want to go through it again. He encouraged the City to "take the businesses, not us."

Carl Baird, 10512 38th Av. NE, addressed Council and said he has questions about the process. He said he wished to know how to obtain a listing of present valuations of all the homes and businesses involved, a listing of which properties have protest and no-protest clauses in their titles, what percentage the ones with no-protest agreements represents, what criteria is used to determine annexation boundaries, who was involved, how he could review the complete submitted application form and all related documents, why some property owners within the proposed annexation did receive notices and some did not.

Associate Planner Hirashima told him he could review the entire file at the Planning Dept.--master application, protest and non-protest agreements, valuations. She added that in some cases, the notification may have gone to the mortgage company.

Mr. Baird asked what the next step is in the process and City Attorney Weed explained that should the Council accept and approve the 60% petition, it will go to the Boundayr Review Board who will set a hearing within 120 days and make a decision as to whether or not to approve the annexation.

Mr. Baird said he would like to obtain a copy of all the regulatory agencies' documentation regarding annexation as well.

Joe Greenwell, 10607 38th Dr. NE, addressed Council, stating he has been out of town quite a bit and so may have missed a notice in the mail about tonight's hearing. He said he has heard a few of his questions answered but it sounds like someone is going to make a decision as to whether he is to live in the County or the City.

City Attorney Weed explained there are two opportunities to provide testimony--at tonight's hearing and at the Boundary Review Board hearing.

Mr. Greenwell said he doesn't want to belong to the City and he feels like they are being attacked. The 60% is not representative of the neighborhood, he said and concluded that "it's not broke, so don't fix it!"

Reid Shockey said he wished to try and explain the situation from Mr. Warbus' point of view, that Mr. Warbus originally came in and asked for his property to be annexed in and at that time City Council requested a larger area. He said Mr. Warbus' concern was very specific but the City wanted to investigate the non-protest agreements. He pointed out that there is almost no protest in the southwestern area and they are contiguous to the City and they really could care less if the City chooses to cut it off between the "purple" and "green" areas on the map. [Purple=Indian Creek Estates; Green=Hidden Lake Estates and Hwy. 99 business]

The public testimony portion of the Public Hearing was closed at 10:25 p.m.

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Councilor Wright asked the City Attorney to explain the non-protest covenants and he said if they are recorded, they should show on a title report when the property is purchased or refinanced. He added that when a City provides utilities, it is often required that a covenant be signed at that time.

Councilor Weiser moved to reopen the Public Hearing so two more people could testify. Councilor Pedersen seconded and the motion passed.

Drew Minnick, 10518 39th Dr. NE, addressed Council, stating he just moved in 1-1/2 yrs. ago. He said he is not opposed nor in favor of annexation but notices that the line is pretty clearly defined pro and con. He said he felt it would be in the City's best interests to bring in the parts that want to come in and not bring in the parts that don't, and this would be a more democratic method.

Fred Schmidt, owner of Schmidt's Auto Parts on Hwy. 99, addressed Council and stated he has lived in Hidden Lake Estates for 9 years. He said he sympathizes with the people who don't want in and the business owners don't mind if they don't get annexed in, it's just that the business owners are sick and tired of dealing with the County. As a residential property owner, he said it doesn't matter if the annexation is cut off between Hidden Lake Estates and Indian Creek Estates, it's just that the businesses are really fed up with the county bureaucracy and would like to annex. As a resident, he said he thinks people have the right to stay in the County if they wish and he didn't think it would make that much difference to the City. But the business owners really want to be able to talk to someone that will listen to them, he said.

Councilor Baxter explained it would be up to the City to convince the Boundary Review Board to split up the annexation even though the City has non-protest agreements. He pointed out that the area would not have been developed in the first place without the City water line.

Councilor Baxter moved to approve the annexation subject to the City's bonded indebtedness and Comprehensive Plan and to submit the proposal to the Boundary Review Board. Councilor Cundiff seconded and the motion passed unanimously.

CONSENT AGENDA:

1. 7/22/91 Claims in the amount of \$154,479.29.

Councilor Wright moved and Councilor Lashua seconded to approve Consent Agenda Item #1. Passed unanimously.

2. Architectural Services Proposal for New City Hall Roof.

City Administrator Sanden reviewed the process and the proposals and stated staff recommends approval of the Dykeman Co. proposal.

Councilor Pedersen asked about a building permit fee and City Administrator Sanden stated the fees were taken out, but was not sure. Public Works Director Zabell couldn't remember either.

Councilor Lashua mentioned the necessity of knowing whether the roof is structurally able to hold the roof proposed and City Administrator Sanden said a structural engineer has been retained by the Dykeman Company, as part of the package proposal. She noted the overall estimate is \$4800 but there are some extras that could be added.

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Councilor Baxter asked about the \$200 per site visit and City Administrator Sanden said that has been deleted. There was more discussion about the fee and City Attorney Weed said the Council needs to be aware of a 7.5% surcharge fee that the architects would charge for liability insurance and he said he recommended rejecting the waiver because it is important to the City to protect itself from potential problems as the result of an improperly designed roof. It was noted that the 7.5% surcharge would amount to about \$360 for \$1 million liability insurance coverage.

A time limit was talked about but nothing definitive arrived at.

Councilor Baxter moved to authorize the Mayor to sign the agreement with the Dykeman Company. Councilor Lashua seconded and the motion passed with Councilors Weiser and Cundiff opposed.

CURRENT BUSINESS:

1. Hearing Examiner Decision - Preliminary Plat of Maple Place.

Associate Planner Hirashima reviewed the staff report/agenda bill and said staff is recommending approval.

Councilor Cundiff moved and Councilor Lashua seconded to affirm the Hearing Examiner's Decision, approving the preliminary plat of Maple Place (Jubie). Passed unanimously.

NEW BUSINESS:

1. Utility Variance E. of 45 Rd., N. of the intersection of 162nd St. NW; Besancon.

Public Works Director Zabell reviewed the request, noting it is a vacant lot and the applicant wishes to construct a single family dwelling. He said staff recommends denial as per the agenda bill. He said there are properties on either side on City water and said that there is a history of contaminated water in the area as well as poor water pressure.

Councilor Cundiff asked if there have been problems with wells and Public Works Director Zabell said yes, that is not uncommon.

There was discussion about wells, history of the area, denial of the request causing a hardship, poor water quality in the area, denial without prejudice a possibility, why neighbor cut off well, County making a report, high mineral content a cause for 1985 variance, requirement of a letter from Snohomish County Health Dept.

Councilor Baxter moved to deny the request without prejudice until evidence of contamination and/or documentation from the Snohomish County Health Dept. is received (within the next six months) as to why they can't have a well. Councilor Cundiff seconded and the motion passed unanimously.

Public Works Director Zabell noted it may become part of RUSA within the next six months.

2. Utility Variance N. of 188th St. NE, W. of Hwy. 9; NORETEP.

Councilor Weiser declared that he is a member of a fraternal organization with one of the partners.

Councilor Lashua declared that he has a financial interest in other property with one of the partners.

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City Attorney Weed recommended that Councilor Lashua step down under the appearance of fairness doctrine, but there would not appear to be a problem with Councilor Weiser participating, he said.

Council Lashua left Council Chambers at 10:55 p.m. and it was then clarified that he does not have a direct financial interest and should be allowed to participate. Councilor Lashua returned at 11:00 p.m. and City Attorney Weed apologized for the misunderstanding.

Ron Shultz addressed Council and explained it will be 2 years before the preliminary plat is approved and they won't need water for at least 2 years but they need approval on the water before they can process the preliminary plat--a Catch 22 situation. He said he couldn't get a letter from Arlington.

There was discussion about the property being outside the CWSA, outside Arlington's water area, outside Marysville RUSA, needing a letter from Arlington because of the conflict with Marysville, Marysville having a 10" line next to the property, Marysville having agreed to serve the property across the street (an 11 lot preliminary plat).

Mr. Shultz asked if he is denied by both Marysville and Arlington if he can put in his own water system and there was discussion about denying his request without prejudice. Mr. Shultz said he would rather have a decision tonight.

Councilor Baxter moved to continue this variance request for the Longhorn Estates to 9/23/91. Councilor Weiser seconded and the motion passed unanimously.

3. Utility Variance 2900 Block of 193rd St. NE; Gary Graber.

Public Works Director Zabell reviewed the request, noting the property is outside RUSA and staff is recommending denial as per the agenda bill. If the Council were to approve, however, he said necessary fire hydrants would be required, as per code, with an 8" water main to be constructed on a 10' easement on the north boundary of the property.

There was discussion regarding this being a hardship on a half acre parcel (too small), getting a letter from the health dept., water needs to be 100' from any pollution/contamination, reserves/drainfields, meeting qualification of a hardship.

Gary Graber, father of the applicant, addressed Council, stating it was the original intent to build on the property. They have water and a fire hydrant across the street, he said, and when they called the City they were told that if there's water in the area, they could also get water (this was in July, 1990). He said they then closed the deal and applied for water service in October 1990 and were denied, which has now become a \$165,000 mistake. He said he does not understand how denial can be recommended when it was City staff who made the error and the property was purchased based on their error. He said he is very concerned about the reason for denial and what will happen.

Public Works Director Zabell explained the four criteria listed in the MMC and that it does not meet these four criteria--he quoted from the code book. He added that one of the other reasons is the same as the previous gentleman's variance request--it's not an area that's in Marysville's proposed RUSA area and so Marysville would like the applicant to obtain a letter from Arlington showing their disinterest.

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There was discussion about the location of the other (Shultz & Poeschel) property, City error causing a purchase of \$165,000, need to front the lot with a water main large enough for a fire hydrant, there being a fire hydrant 430' away from the duplex lot, this not being a subdivision, "generous compromise" proposed by the applicant would be to get water for one lot only with the balance of the property to wait until such time as the water areas are settled between Marysville and Arlington, which is in harmony with the application (according to the applicant's father).

There was further discussion concerning what size main is needed and the cost--\$10-12,000 for a 4" main, needing a letter from Arlington refusing water service, what the alternative is if Arlington denies a letter, the CWAS still not complete, applicant's questions about procedure, applicant agreeing to go to Arlington.

Councilor Weiser moved to continue this matter to 9/23/91 (or sooner, if applicant can get a letter from Arlington before then) and Councilor Baxter seconded the motion. Passed unanimously.

ORDINANCES & RESOLUTIONS:

1. Ordinance pertaining to the Distribution & Custodianship of the Petty Cash Fund.

Asst. Finance Director Wilson explained this is amending a previous ordinance and amending sections of the MMC, due to implementation of garbage tag program. Ready cash/change is needed in various departments when selling the tags, it was explained--\$25.00 for the Public Safety Building, the Library and the Public Works Dept.

Councilor Weiser moved Ordinance #1851 be approved/adopted making this amendment and Councilor Wright seconded the motion. Passed unanimously.

2. Resolution approving Utility Variance - Church of Christ.

Councilor Cundiff moved and Councilor Weiser seconded to approve/adopt Resolution #1487. Passed unanimously.

3. Resolution approving Utility Variance - J & D Builders.

Councilor Wright moved and Councilor Pedersen seconded to approve/adopt Resolution #1488. Passed unanimously.

LEGAL MATTERS:

1. Right of Way Acquisition.

City Attorney Weed explained that they were successful in right of way acquisition along Grove with the exception of one lot and the request is to proceed with condemnation of this property. He said a letter was sent to the property owner, giving today as the deadline, with no response. It was clarified that the letter was sent out registered, return receipt requested and he said the next step is to file a petition with the court.

Councilor Cundiff moved and Councilor Weiser seconded to approve/adopt Ordinance 1852 authorizing condemnation proceedings of the Arlo Williams property. Passed unanimously.

2. Newsletter Contract Amendment.

City Administrator Sanden explained the request is to extend Maude Barrett's contract and to go to recycled paper on the Newsletter. She said Roger Kelley is willing to do the newsletter, as originally proposed, but he has a very large workload and is willing to wait another 6 months when the situation can be reviewed again.

Councilor Lashua questioned the additional \$150 for recycled paper noting the City has a tight budget and asked if this wasn't just a luxury.

There was discussion about the need for the newsletter, trying to cut back expenses, public relations image of the City, Roger Kelley mentioning that people call saying they did not receive their copy of the newsletter, the cost of the newsletter being budgeted, the cost of recycled paper being higher than regular paper, the newsletter being more than PR--it talks about the Comp Plan, other informational items, gives the City a good forum, good communication tool, glossy paper was an experiment (paid for by Maude Barrett personally), the City having received complaints about the glossy paper looking too expensive.

Community Information Officer Kelley said his concern, if the newsletter is not put on recycled paper, is that the City is approaching businesses and asking them to recycle and it would be nice if the City could set an example. Also, he said there's a possibility of getting some recycled paper from the County and another alternative is no gloss or recycled semi gloss.

Councilor Baxter said he would like to go with the most cost effective method.

Councilor Pedersen agreed, stating she would like to see the contract renewed with Roger Kelley doing the newsletter and go with recycled paper.

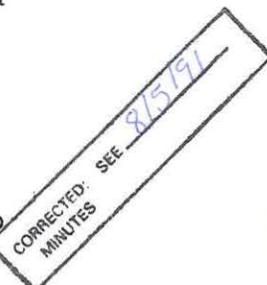
There was more discussion about the production of the newsletter, access to the City word processor, annexation information publications, mail distribution costs, notification of annexation public hearings, existing contract for the newsletter.

Councilor Pedersen moved that the production of the newsletter be transferred to Roger Kelley and that recycled paper be used. Councilor Baxter seconded. It was noted that transferring to Roger Kelley will reduce the cost of production because Roger is salaried and Maude is under a special services contract. The motion passed unanimously.

3. Utility Franchise Agreement.

City Attorney Weed referred to the utility franchise agreement in the packets and stated this is a standard franchise agreement, similar to that used by the County. He noted there is some lengthy indemnification language under which the City is not under obligation to notify our insurance carrier but there are no substitutive changes from the previous draft.

Councilor Baxter moved and Councilor Wright seconded to authorize the Mayor to sign the franchise agreement, without change. Passed unanimously.



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STAFF BUSINESS:

Public Works Director Zabell (for Associate Planner Hirashima) stated the Planning Commission wants to begin their meetings at 7:00 p.m. from now on, to be consistent with other City evening meetings, starting with tomorrow's workshop. He also reported that there will be a Post Office report at the 8/5 Council meeting regarding traffic congestion elimination at the post office.

CALL ON COUNCILMEMBERS:

Councilor Weiser reported on the Fire Joint Operating Committee meeting and recommendations. He said they agreed to use MFD Dispatch subject to the condition that MFD hire and commit to the cost of four additional dispatchers. He said they would like a letter of commitment from the City and noted that this cost will be in excess of what the Joint Fire Dept. will be paying the City. He said there was concern about cost and it was decided that it would be cheaper to dispatch from Marysville than from Fire District 12. He said Fire District 12 has to give SnoPac 120 days notice that we wish to discontinue dispatching from there. There was a draft letter passed around for Council to review.

Councilor Baxter said the questions in the letter are the key to the whole program and the answers will constitute the backbone of the contract. He said he would like to take a consensus to the meeting tomorrow night.

Councilor Weiser talked about the commitment to pay for the four dispatchers--how to fund--he said MFD would pay more than what's now being paid to SnoPac. There was discussion about tax bases, Marysville doing dispatching, customizing the system, SnoPac receiving so many calls and there is no familiarity with the area, buying time to work on a budget before the 2 units actually merge, Mayor Matheny commending the three Councilmembers--Weiser, Baxter and Pedersen--and staff for serving on this committee, need for additional personnel and equipment for 911, paying in that salary amount upfront, also having a need in other areas for salaries.

Consensus of agreement with the proposal for four dispatchers to be hired was reached from all Councilmembers.

ADJOURNMENT INTO EXECUTIVE SESSION: Midnight. RECONVENE: 12:50

1. **Personnel** - Councilor Wright moved and Councilor Lashua seconded to authorize the Mayor to sign the Police Union Contract, subject to review by the City Administrator and conforming to the previously approved draft. Passed unanimously.
2. **Pending Litigation** - Councilor Lashua moved and Councilor Cundiff seconded to authorize the settlement of the Lee Douglas lawsuit per discussion with City Attorney in Executive Session. Passed unanimously.

ADJOURNMENT: 12:55 a.m. 7/23/91.

Accepted this 5th day of August, 1991.

Rita Matheny
 MAYOR

Phillip E. Depler
 CITY CLERK

Manda A. Iverson
 RECORDING SECRETARY