

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING

JUNE 6, 1994

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CALL TO ORDER:

7:00 p.m.

MINUTES OF PREVIOUS MEETINGS:

Council 5/23/94 - Approved
Comp Plan W/S 4/28/94 - Appr.
" " " 5/3/94 - Appr.
" " " 5/5/94 - Appr.
PRD Workshop 5/24/94 - Appr.
Big D's Batting Cage & Mini
Golf allowed to remain in
operation for 60 days under
temp. business license

AUDIENCE PARTICIPATION:

STAFF BUSINESS:

MAYOR'S BUSINESS:

CALL ON COUNCILMEMBERS:

PETITIONS & COMMUNICATIONS:

None

PRESENTATION:

- 1. Marysville Library; Request to Proceed with Construction Documents Approved - Lewis & Co.

PUBLIC HEARINGS:

- 1. Brennick Annexation; 60% Peition Approved
- 2. Vacation of Alley; Rbt. Cole Approved
- 3. Preliminary Plat & Rezone; Louis Griffore/Dennis Wintch Approved

REVIEW BIDS:

None

CURRENT BUSINESS:

None

NEW BUSINESS:

None

CONSENT AGENDA:

- 1. Approval of Fireworks Stand Permits for Knights of Columbus #1, Knights of Columbus #2, Msvl. Kiwanis #1, Msvl. Kiwanis #2, Boys Club of Snohomish County & Msvl/Tulalip Visitor Info. Center Approved
- 2. Affirmation of Hearing Examiner's Recommendations for Hasko Rezone Approved
- 3. Affirmation of Hearing Examiner's Recommendations for Lindal Cedar Homes Approved
- 4. Acceptance of TIB Project (R94-02); Continued to 6/13/94 SR 528 from 53rd Av. NE to 67th Av. NE

ORDINANCES & RESOLUTIONS:

- 1. Resolution establishing a Safety Res. 1685 Approved
- 2. Resolution amending Personnel Rules & Establishing Harassment Policy Res. 1686 Approved
- 3. Resolution granting a Variance for Pacific Coast Feather Co. Res. 1687 Approved
- 4. Resolution Denying Without Prej. Utility Var. for Poeschel/Norettep Res. 1688 Approved
- 5. Resolution Denying Without Prej. Utility Variance for Bud Darling Res. 1689 Approved
- 6. Resolution amending Res. 1646. Res. 1690 Approved

ADJOURNED INTO EXECUTIVE SESSION:

11:11 p.m.
(No Action)
(No Action)

- 1. Litigation.
- 2. Real Estate.

RECONVENED & ADJOURNED:

11:39 & 11:40 p.m.

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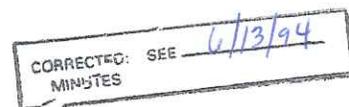
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7:00 p.m.

Council Chambers

Present: Dave Weiser, Mayor
Councilmembers:
Donna Pedersen, Mayor Pro Tem
Ken Baxter
John Myers
Dave McGee
Donna Wright
Mike Leighan
Otto Herman
Administrative Staff:
Dave Zabell, City Administrator
Gloria Hirashima, City Planner
Steve Wilson, Finance Director
Grant Weed, City Attorney
Ken Winckler, Public Works Director
Wanda Iverson, Recording Secretary



CALL TO ORDER:

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

ROLL CALL:

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

MINUTES OF THE PREVIOUS MEETINGS:

Councilmember Leighan noted in the Council minutes of May 23, 1994 on page 4 in the second paragraph, his comment was regarding angle parking on 10th between Cedar & Beach. In the next paragraph, he noted it should be CHIPS meeting not CHPS meeting. On page 10, in the first line, "taht" should be "that" and on page 12 in the 9th paragraph, one "that" should be eliminated in the first line of that paragraph.

Councilmember Pedersen noted on page 3 2nd line under Call on Council, "ot" should be "to".

There being no further corrections, Councilmember Wright moved and Councilmember Leighan seconded to approve the 5/23/94 minutes as corrected. Passed unanimously.

In the 4/28/94 Comp Plan Workshop Minutes, Councilmember Pedersen noted a typo on page 3 last line of the 4th paragraph from the bottom: "form" should be "from".

There being no further corrections noted, Councilmember McGee moved and Councilmember Herman seconded to approve the 4/28/94 minutes as corrected. Passed unanimously.

In the 5/3/94 Comp Plan Workshop Minutes, Councilmember Herman noted on page 2 in the last paragraph dealing with Business Park Designation, he said he thought it was discussed regarding the requirement regarding 88th and that there was agreement on two issues: common development with regard to egress/ingress and signalization and this to be clearly spelled out in the minutes. It was the consensus to do this.

On page 3 in the 3rd to last paragraph, he asked if the wrecking yard would in fact be allowed in Community Commercial and City Planner Hirashima stated no, it would be allowed in General Industrial. It is an existing non-conforming use right now in a General Commercial zone, she said. Councilmember Herman suggested striking everything after the word "Commercial", i.e. "She noted Fred Meyer is Community Commercial."

On page 5, Councilmember Herman said he recalled the same requirements were agreed as for 88th and he said he thought the Council was taking a little stronger direction than "where possible" in the last line of paragraph 5.

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Councilmember Herman said he would like to see policy that development would be concurrent with signalization and common egress/ingress. It was agreed to delete "where possible."

There being no further corrections, Councilmember McGee moved and Councilmember Herman seconded to approve the Comp Plan Workshop Minutes of 5/3/94 as corrected. Passed unanimously.

In the 5/5/94 Comp Plan Workshop Minutes, Councilmember Herman noted under Planning Area 9, second line, the word "shwon" should be "shown".

There being no further corrections, Councilmember Myers moved and Councilmember McGee seconded to approve the 5/5/94 Minutes as corrected. Passed unanimously.

There were no corrections in the 5/24/94 PRD Workshop Minutes.

Councilmember Herman moved and Councilmember Pedersen seconded to approve these minutes as written. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Doris Pierce, 3806 100th Pl. NE, Marysville 98271, addressed the Council. She explained she owns the batting cage and mini golf on Columbia and had put in for a rezone two years ago and she said she guessed it never went through. Last week she got a call from Paul Rochon, the City's code enforcement office saying she needed to close down the golf again until it's approved. She pointed out she has had to close it down before because of the City's regulations and it's not very good for business and so she is asking City Council to possibly waive this requirement this time. She explained she owns both businesses, not the property they are on. She added there was a conflict when Mrs. Schultz didn't want the rezone (Mrs. Schultz owns the property the mini golf is on).

City Planner Hirashima stated the Hearing Examiner recommended approval but it was necessary for Mrs. Pierce to act on the rezone but the owner asked that the rezone be pulled. Council recently adjusted the matrix to allow mini golf and not have to have a conditional use permit in a residential zone but it still needs to go back to a hearing, she said.

Councilmember Pedersen asked whether Mrs. Pierce has a business license to operate the mini golf and City Planner Hirashima stated one of the conditions to get a business license is to get a conditional use permit. The occupancy permit would be required to be signed off by the fire dept. and Planning Dept., she said but the main problem is that the owner of the property does not wish the property to be rezoned and so has asked that the application be withdrawn and so the application was considered void.

Councilmember Leighan asked if Mrs. Pierce was notified of this and City Planner Hirashima said yes, but in the meantime, the Council has amended the zoning matrix to allow mini golf.

Mrs. Pierce stated she did not receive a letter until just recently and when she went down to see Paul Rochon and submit documents.

Councilmember Pedersen asked if there have been any problems with the mini golf as far as the City is concerned and City Planner Hirashima stated they had received a couple complaints about the business in the past but nothing recently.

Councilmember Herman explained it's difficult for Council to grant permission for something when a permit doesn't exist and he said he is at a loss to see a process that would expedite this.

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City Attorney Weed explained one of the issues here is mitigation even though the City now allows this type of business in a residential zone.

Councilmember Pedersen stated she has a problem with Mrs. Pierce not having a business license and City Attorney Weed said he would recommend Council direct staff to work with the Hearing Examiner to have a hearing as soon as possible.

Councilmember Baxter pointed out that usually the Council is faced with a list of complaints and they aren't in this case.

City Planner Hirashima noted there is such a thing as a temporary business license, too, for example, during Maryfest.

City Attorney Weed noted even with a temporary license, the City would still have the requirement to have a hearing scheduled immediately in order to get the conditional use permit.

Mrs. Pierce stated she is pretty sure she included the mini golf operation with the batting cage on her business license application and City Planner Hirashima said she could check that. Also, there is an outside chance the Planning Dept. could set up a Hearing Examiner meeting at the end of June, she said.

Mrs. Pierce pointed out that if she has to shut down, this would cause a major hardship for her with regard to employees and the fact the business only does well in the summer.

Councilmember Pedersen asked City Planner Hirashima to check on the business license situation and when a Hearing Examiner hearing could be next scheduled.

Councilmember McGee stated he would like a temporary business license awarded for 60 days and in the meantime the Planning Dept. can research to see whether Mrs. Pierce's business license encompasses both businesses.

Councilmember Baxter asked why they are considered two separate businesses and City Planner Hirashima explained the batting cage was in business 4 years ago and then Mrs. Pierce put in the mini golf; it's two uses and until recently were under different requirements.

Councilmember Herman asked what the normal process is if a business is operating illegally and City Planner Hirashima explained they are asked to close and submit the proper application and fees.

Councilmember Herman said if the applicant is doing that then there is no action required by Council; a non-conforming business would have to move in the direction to obtain the proper licenses and permits and they are now on notice and are moving promptly in that direction.

City Planner Hirashima stated the business is also asked to close down in the meantime.

City Attorney Weed added that under this business license a requirement would be that the zoning code be met which they were not doing.

Councilmember Baxter said he sees it as precedent setting if Council allows a temporary business license.

City Attorney Weed noted it would make it difficult for Paul Rochon to ask future businesses to close down if this one was allowed to stay open.

Councilmember Baxter noted part of the goal is to have businesses licensed but the other part is not to put them out of business. He said he sees this as a long process sometimes and possibly confusing to applicants.

Councilmember Leighan said he assumed the City notified Mrs. Pierce 1-1/2 years ago, last winter would have been a great time to have gotten this settle and he said he thinks there has been ample time to get this settled although he is not sure whose responsibility this has been but there has obviously been some miscommunication.

Councilmember Herman said he thinks it's clear the Council would like an expedited process but he said he is left with the same discomfort: without the proper permits and licenses, he has a problem with the business remaining open and feels it would set a precedent and possibly could cause future problems for the City.

Councilmember Baxter disagreed.

Mayor Weiser noted there have been other instances where businesses have been asked to close down and had to go down and submit the proper applications; this is going to be a minimum of 2 weeks to 2 months before this matter is heard and he said he is hearing Mrs. Pierce will have to close down until she goes through the Hearing Examiner process.

Councilmember Baxter moved to allow this operation to remain open for 60 days until proper licensing is obtained. Councilmember McGee seconded the motion. (The name of the operation is "Big D's Batting Cage & Mini Golf.") A roll call vote revealed Councilmembers Pedersen, Leighan and Herman against, so the motion passed 4-3.

Mayor Weiser explained the need for her to get with Gloria Hira-shima tomorrow morning.

STAFF BUSINESS:

City Administrator Zabell noted they are still experiencing vandalism problems with the park restrooms; the police were called again this evening.

Public Works Director Winckler reported they had a break in of the Public Works area this weekend and there was damage to PK Const. equipment, vandalism, they drove some trucks around, not too much damage. He reminded Council of the upcoming RUSA meeting 6/9/94 in the Public Works Bldg. and the Traffic Advisory Committee meeting 6/16/94 at 10:30 in the Public Works Bldg.

Councilmember Pedersen noted there is a conflict there with the upcoming AWC Convention and Public Works Director Winckler said he would follow up on this.

MAYOR'S BUSINESS:

Mayor Weiser reported Marysville's sister city/county in China has invited a contingency from Marysville to travel to China--5-7 people invited, they suggested coming in June and he noted airfare would have to be covered personally by any individuals going.

Councilmember Pedersen noted no travel expenses were to be paid for by the City and Mayor Weiser said he was just looking for anyone possibly interest; it would be for a week to 9 days and airfare is about \$1200.

Mayor Weiser noted there is considerable interest in siting a supplemental airport in the North County area and there will be a sub committee meeting of the Puget Sound Regional Council held 6/24 and he said he will be in contact with Arlington, Lake Stevens, the Tulalip Tribes, to see if they wish to get together and discuss this further.

CALL ON COUNCILMEMBERS:

Councilmember Myers said he would like to see something in the papers about the City's fireworks ordinances/regulations. He asked about the east side of Armar in front of Jennings Park, noting cars are constantly parked there and he believes it is a bicycle lane. He asked about the Street Dept. denoting it as such to deter vehicular parking. Public Works Director Winckler said he would follow up on this.

Councilmember McGee reported the Fire Board will meet this Wednesday regarding EMS, etc.

Councilmember Pedersen asked about the traffic light proposed on State near State Street Square--they keep asking her when it is going in.

Public Works Director Winckler reported the light at 92nd is under design right now and they are still hoping for it to go out to bid this fall.

Councilmember Pedersen asked about the light scheduled to go in at 528 & 67th and whether this is on schedule. Public Works Director Winckler stated bids were received last week and he met with WSDOT. Construction will begin fairly soon, the bid will be awarded next Monday and the signal should be installed in 2 mos., he said.

City Administrator Zabell warned it does have to go through some testing so it may be longer than 2 months.

Councilmember Pedersen asked about the newest Comp Plan maps and City Planner Hirashima stated she will get them to Council.

Councilmember Baxter asked about the poor patching job on 528 and Public Works Director Winckler said that was done by Belmark. It was originally put in with cold mix and now they have to go back and replace it with hot mix; Public Works is staying on top of this, he said.

Councilmember Baxter noted he and Councilmember Pedersen attended a fire district meeting in Lake Chelan this past weekend and brought back some information for anyone interested.

PRESENTATION:

1. Marysville Library; Request to Proceed with Construction Documents.

Councilmember Pedersen clarified that the plans have included City Council suggestions and she then introduced Ross Jamieson of Lewis & Co., Architects.

Mr. Jamieson presented several blueprints and drawings and said since City Council approval they have been doing a lot of refinement of the plans. He said they are presently putting together bidding documents which they hope to have completed by Aug./Sep. and then the construction process will take about 7 months, so the new library should be open next spring. He noted the timeline and budget has been included in the packets and a full set of design documents is available for anyone interested. He showed the site plan, noting they have done a preliminary drainage plan as well. He showed the parking lot, open space for future growth, access, right of way, fire hydrants and fire dept. access, views, floor plan, furnishings plan, where the meeting rooms (2) will be, children's area, kitchen area, staff support area, public area, open concept of main library, etc. He talked about the interior color schemes, exterior building material, exterior elevation, showed the use of cupolas, noting room for expansion has been allowed in the overall plan and the building will be sprinklered.

He reviewed the construction cost estimate, noting the landscape budget was reduced and some items have been separated out from the main cost (alternates) such as walking path, natural wood ceilings, interior upgrades, mechanical equipment and garbage enclosures and they have also reduced the design contingency, he said. He said new furnishings for the whole interior came in at \$14 per square foot which is average and the total project cost ended up only 10% higher than a year ago. He stated they tried to stay on the conservative side and there is some flexibility in that if the building bids come in lower than expected, there may be more spent on furnishings.

He explained "General Conditions" would include the construction supervisor, bond and insurance premiums, project overhead, equipment rentals, etc.

Councilmember Myers said he would like the 1% artwork included and Mr. Jamieson said he would be comfortable with that. Sculptures, artwork, screen printing, etc. could be incorporated into the building or an artist could be commissioned, he said.

Councilmember Pedersen noted the Library Building Committee did appoint a sub committee with Bob Graef as chair, to look at furnishings.

Councilmember Leighan asked about a satellite antenna and Mr. Jamieson explained they just wanted a conduit stubbed in for one, the project does not include the actual antenna.

Councilmember Pedersen moved to approve the plans they have seen so far and to authorize Lewis & Co. Architects to proceed with the construction documents. Councilmember McGee seconded and the motion passed unanimously.

PUBLIC HEARINGS:

1. Brennick Annexation; 60% Petition; PA 9203007.

Mayor Weiser asked for disclosures, challenges, etc. and there were none.

City Attorney Weed swore in all parties who wished to give public testimony.

City Planner Hirashima explained this is a single lot annexation: Lot 6 of Marysville Garden Tracts and the applicant represents 100% of the assessed valuation. There had been discussion at previous hearings to expand the annexation, however City Council has allowed the annexation to proceed on a single lot basis, she said. She noted the Planning Dept. has not received any new material since this was last before Council.

Jim Brennick, 4508 105th Pl. NE, addressed Council. He said he has stated his concerns at previous Council meetings regarding the Scott Ray Annexation. He noted which lots signed non-protest agreements and which ones did not and he noted Lot 6 is the only one involved in this annexation. The east side is served by City utilities but instead of making neighbors upset, he said he is sticking to one lot at this time.

James Messner, 8428 47th Dr. NE (Lot 2), addressed Council. He said he has just learned about this annexation; it is a very quiet neighborhood and he is worried that with development, subdividing, growth, he doesn't want to see it over developed. Traffic on 47th is bad already, he said, and more development is going to add to that. He said he would like to see it stay the way it is--quiet. He noted he recently had to chase down a speeding Coca Cola truck in the area, so things are already starting to get out of control.

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Mayor Weiser explained where City limits are and that most of the area Mr. Messner lives in was developed in the county. He added that the Marysville land use Comp Plan covers that area and will be very similar to the county; being inside or outside the City, the land use designation will essentially be the same, he said.

Councilmember Herman asked what the proposed Comp Plan designation is and City Planner Hirashima said the current zoning is 7200, the corner lot on 47th is 7200, the lot to be annexed has the potential to be subdivided whether it is in the City or county; it's got the potential for 2 lots. The present Comp Plan is for high density single family which would allow duplexes, she explained.

Councilmember Herman noted duplexes and accessory units (mother-in-law units) are mandated as acceptable and encouraged by the GMA.

Mr. Messner said he just doesn't want to see a lot of duplexes in there; he moved from Lynnwood and that's why.

Tim Thometz, 8518 47th Dr. NE, addressed Council. He noted this matter was brought up before and overwhelmingly opposed by the neighborhood despite the "advantages" of being in the City. He said Mr. Ray is currently developing and there wasn't supposed to be any problems but he has had cars drive through his property, etc. He came to City Council and was assured that there would be no access and the developers used it anyway (the stub on 85th). He said they have had to put up with a lot of construction noise and have a new baby in their house. As he understands it, there is a desire to put another rental in, he said and he understands Lot 5 signed a non-protest covenant. The story there is that during construction Lot 5's well went dry and they went to Mr. Jubie and his response was that the well must have worn out which is not correct, he said, but they now have to go on City water. Mr. Thometz noted there is no proper access to Mr. Brennick's property if it's subdivided and so it will need a variance or special treatment to make it work and he said he would hate to see it annexed just so Mr. Brennick can bypass county regulations--they need to adhere to setbacks, etc. He said he got no notification on Maple Place, he doesn't get the Globe, but he was assured there would be no confusion with public safety services but there is. He asked if it's easier to go through the City than the County and whether Mr. Brennick gets special consideration because he performs a public service. He noted a lot of people are having to move out of here and he thinks the council needs to keep the people who care here because this type of thing only encourages a transient population who don't care about the Public Works Building getting broken into, for example.

There being no one further who wished to give public testimony, the public hearing was closed at 8:44 p.m.

Councilmember Leighan explained the Ray property is being subdivided but remains in the county; there is no difference whether it stays in the county or City.

Councilmember Myers commented that growth is still going to continue despite this annexation, whether it's approved or not.

Councilmember Herman said he continues to be troubled as to how to find support for annexation into the City. He pointed out that what they have just seen here tonight is that the City seems to bear responsibility for change and we need to gain support from people to continue to want to live in Marysville. He said he was one of the Councilmembers who suggested the annexation stay a single lot annexation in order to not coerce neighbors although logically there should be a squaring off of boundaries but that would require a lot more public support than what he sees here tonight, he said. He then moved to accept the annexation subject to the City's bonded indebtedness and Comp Plan designation and direct the City Attorney to prepare a resolution and to submit this to the Boundary Review Board for their approval. Councilmember Leighan seconded and the motion passed unanimously.

2. Vacation of Alley; Robert Cole; PA 9401004.

Mayor Weiser noted that all those who had been sworn in at the previous hearing are still under oath and there was no one further who indicated they wished to testify.

City Planner Hirashima reviewed the agenda bill and Mr. Cole presented several photos to Council. He explained that with the elimination of the hedge, Mr. Lindborg would have access to his property without utilization of the alley. He stated other neighbors would be willing to participate in the sidewalk, curb and gutter program as well as helping Mr. Lindborg move his shed.

City Planner Hirashima noted with regard to the sewer, several existing homes are served from the alley and the manhole is behind Mr. Lindborg's property. She said if the vacation is granted a 10' easement needs to be allowed for utilities. She said the applicant has asked for waiver of compensation and it is noted that the circumstances are different from other alley vacations. Another issue is whether the alley should be vacated one section at a time, she said.

Mr. Cole explained the setbacks on the east side and said there would be plenty of room with the hedges removed and nothing to impede access to Mr. Lindborg's property. He noted with regard to sewers he believes there is going to be some upgrade to the sewer by the City and the storm drain system probably also needs upgrading as the systems are so old. He added that some of the problems with the older plat is that there is quite a bit of unimproved sidewalks, alleys, curbs, gutters in that area if it's going to be developed.

Mayor Weiser asked about a possible agreement with regard to the shed and Mr. Cole stated his attorney has not been able to communicate with Mr. Lindborg at all.

David Duskin, Attorney for Cole, Pinkston and Foster, addressed the Council. He stated the alley dead ends and is not used as an alley. It's actually 10' and the petitioner has no objection to an easement for the sewer, he said. He added they don't know the condition of the sewer but would echo staff's comments that this meets requirements and they would ask that Council waive compensation with their giving up the easement, he said. Mr. Lindberg indicated some grandfathering rights but these have not been uncovered, Mr. Duskin stated; there would be no right of adverse possession but Mr. Lindberg has not responded to Mr. Duskin's office, he said. He added that if his client develops the property with new sewer lines in there that would be more advantageous.

Councilmember Leighan asked about Mr. Cole's sewer line and Mr. Duskin said Mr. Cole is confident he accesses it off 8th but there is no confirmation of this.

Councilmember Pedersen asked for clarification of the difference between an easement and a right of way and City Attorney Weed stated the easement would be for maintenance of utilities but a right of way would be for right of travel, not for utilities.

Councilmember Pedersen asked about criteria, public benefit or public purpose. She said she recalls when the mall was put in there was some street/alley vacation for public benefit but she is not sure how that applies here. She also noted that under #4 right of way is not contemplated.

Public Works Director Winckler said with a utility easement the City could do quite a bit of construction, with a right of way they could run garbage trucks down the alley, for example.

Councilmember Baxter asked more about sewer line improvements and where the information is coming from.

Public Works Director Winckler said the City may have to do some digups but right now they have to do some relining.

Councilmember Baxter said apparently the easement does not go all the way through to Ash and Public Works Director Winckler said right, and in fact, the manhole is not included in the easement/right of way--there is actually a sewer line that runs in there and beyond the easement.

Councilmember Herman noted that vacating without compensation is not something he would support here. He asked about the meaning of "public benefit" in this case and City Attorney Weed stated it is a broad meaning and there are 2 or 3 things to consider: making it available for multifamily use, the issue of gaining compensation for the property, possible public benefit in relieving the need to maintain the property and any liability that's related to that.

Councilmember Herman asked about legal issues with regard to having the structure on the right of way and City Attorney Weed said even if it has been on the property for 10 years the rule of adverse possession does not apply to a public entity and the City has the right to ask the property owner to remove the structure even though the City has not been using it for garbage trucks but if the City is to retain ownership they have the right to ask that the structure be removed, he said. The City would not be involved in any liability issues, that would be between the property owners, he said.

Councilmember Herman asked about the encroachment and City Planner said it encroaches 1'--the shed is 11.66' x 19.3'.

Councilmember Myers said he is against the vacation of the alley and can't see how it is going to benefit the public without compensation.

Councilmember Baxter said it is obvious the City has to have the alley or the easement. He asked if the neighbor wants to have that building off their property and noted that is up to the neighbor and it's not a very big building so it's not a big problem. Either way, you can't build on it, it has to stay open, so the City can use it and he said he doesn't see any purpose in vacating it.

Councilmember Herman commented that the City is proposing a Comp Plan with very significant land use changes and sometimes there seems to be less than clear direction, for example, this area is proposed mixed use and in order to accomplish that there has to be the ability to combine smaller lots so they can be developed. He said he sees some pretty conflicting uses and some disruption in people's property use.

Councilmember Leighan pointed out that if you can't build on it, perhaps they could use it for parking for a multifamily unit.

City Administrator Zabell said basically they just want to use the square footage in their total amount of land.

City Planner Hirashima added that since the alley is not being used, they thought it reasonable to have the square footage included.

Mr. Duskin said it was obviously platted for single family and if the Comp Plan is encouraging multifamily it's going to have to address some issues: You are not going to have truck traffic in a dead end alley. Relocating an easement is a lot easier than relocating an alley, he pointed out and Mr. Lindberg has been using the alley for access but it would be more flexible for the property owners to have an easement for the City. Apparently Block 4, etc. are on septic but they are going to probably have to go to sewer soon and there will be need for a utility easement, particularly with multifamily development, he said.

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Mr. Lindberg addressed Council. He said it would probably be more advantageous to him if the alley were vacated except he would have to take out the hedge, rearrange the shed and all his plumbing. He noted it hasn't bothered anyone until Mr. Cole came in and Mr. Cole insists it's going to be "his" alley so Mr. Cole keeps parking in it. Mr. Lindberg said he has had to call the cops twice now about this.

Councilmember Herman asked if there is any way these conflicts can be resolved and Mr. Lindberg said Mr. Cole's attorney wrote him a letter and accused him of thinking he owns the alley.

Councilmember Baxter asked why Mr. Lindberg would have to change the plumbing around and Mr. Lindberg explained they were going to put in a line down 8th so he would have to change everything around.

Councilmember Pedersen asked about fire dept. requirements for access and City Planner Hirashima said they would have to meet parking requirements, allowing an access of 20'.

There being no one further in the audience who wished to testify, the public hearing was closed at 9:30 p.m.

Councilmember Wright pointed out the vacation would allow more flexibility for the proponent but she would want to see compensation to the City.

Councilmember Pedersen asked if the City cares who pays the compensation, could it all be from one party, for example?

City Attorney Weed said it could be.

Councilmember McGee said he thinks this whole discussion might be premature. He said he thinks it should be dealt with when the proponents want to do the rezone.

Mayor Weiser pointed out there may actually be an areawide rezone prior to that.

Councilmember Wright moved to grant the vacation with the City maintaining the easement and requiring compensation in the aggregate amount, based on half of the assessed value, before vacation is finalized, per the memo dated 5/4/94 to Eric Thompson. Councilmember McGee seconded the motion.

Councilmember Baxter asked if the easement is strictly for the City and the adjacent property owners and City Attorney Weed said it would be for the City to maintain utilities.

The motion passed 4-3 with Councilmembers Pedersen, Baxter and Myers against.

3. Preliminary Plat & Rezone; Louis Griffore/Dennis Wintch;
PA 8912076.

City Attorney Weed swore in those wishing to testify.

City Planner Hirashima reviewed the agenda bill and referred to an alternate site plan/building pad layout to improve setbacks which was submitted by the applicant. She also noted they have changed the access to be off a private road. During tech review the fire marshal commented on the 28' wide roads and they are now revised to 32' wide, she pointed out. Copies of the wetland delineation, revised site plan, hearing examiner report (he has recommended approval with 16 conditions) were included in the Council packets.

Councilmember Baxter left at 9:45 and returned to Council Chambers at 9:47 p.m.

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Laurey Tobiason, McArdle & Murray, 2917 Pacific, Everett, addressed Council, representing the applicant. He reviewed the location, noting this is a 10 lot proposal, with an alternative proposal where the garages are behind the homes and are not seen from the street. He said Lots 1, 2 & 3 would retain a solid fence, even though they no longer are requesting a variance or bonus. He pointed out the PRD code would allow 16 lots, 20 with a bonus. To compare with some of the PRDs in Marysville this has much larger lots as well as less density, he said, for example, Strawberry Hills has twice the density of this proposal. He noted the density in the subdivision just south of this one is 4.19 du/ac and this development would be compatible to the neighborhood which includes single family, multifamily and PRDs. The open space proposed would enhance the size of the lots and will provide an opportunity for pedestrian nature trails and aesthetics and the fence in back will protect wetlands, he said. He noted it compares favorably with other PRDs in the area and all agencies unanimously approved of the project and they are asking for Council approval.

Allen Murray, Engineer with McArdle & Murray, addressed Council. He talked about drainage and grading on the project and showed the detention facility on the overhead which will be designed to meet Dept. of Fisheries criteria, for example half of the 2 year storm water volume and 25 year storm water drainage requirements. He explained they would be utilizing a spreader/dispersion trench as opposed to a bio swale system. Slopes to the west will make it so there is no impact to the north and south, he said and further grading will correct a situation where drainage will be away from the homes and if necessary, will provide stubs for drainage or French drains.

Councilmember Pedersen noted Williams, Hillhouse and Lynch sent letters regarding drainage concerns and she asked if Mr. Murray has designed the drainage system and taken measures to insure that the adjacent property owners are not inundated with water.

Mr. Murray said they have not done the final design at this time but the City will approve them.

Councilmember Herman said basically all surface water will drain into the detention pond and Mr. Murray said yes.

Jim Hopkins, Attorney for Wintch, 2926 Colby, Everett, addressed Council. He said he was asked to review Mr. Lynch's concern about the possible boundary dispute. He said generally, the survey line is the boundary line and there is really no question but that is the true boundary line in this case. He said in 1988 Mr. Wintch was the owner of this area and Tim Gallatly was the previous owner of Lynch's property. Mr. Gallatly did have a .21' encroachment at one point on Mr. Wintch's property and Mr. Gallatly did acknowledge that the survey did represent the correct boundary. There was a fence built but the understanding between Mr. Gallatly and Mr. Wintch was that there would be no giving up of property. Mr. Hopkins said legal arguments would include adverse possession but in this instance there are no elements of adverse possession for Mr. Lynch. The 10 year period of use would not apply so he said he is not sure what Mr. Lynch's argument is but there is no element of adverse possession. Both Mr. Gallatly and Wintch back in 1988 agreed that there was a slight encroachment and Mr. Hopkins said he doesn't believe there was any "boundary by acquiescence" either. He said he checked with the county and in both the short plat and construction of the garage, Mr. Gallatly said there was a difference of 7' from the property line although the county would not have allowed that if they had known that. He said it's the engineer's position that the property line is true and represented by the survey.

Councilmember Herman said as he understands it the City has no right to resolve a property line dispute.

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City Attorney Weed pointed out the Hearing Examiner recommended that the applicant resolve the boundary line issue prior to the granting of the request although it is not specific how it was to be resolved.

Mr. Hopkins said litigation is the only way he knows of to resolve this, in his experience.

Barry Hammer, President, Able Mortgage & Investment, 1802 Pacific, Everett, addressed Council. He said they own 2 parcels to the north of the subject property and think this project will add to the City and they want to see this type of investment as they feel it meets all the requirements of a PRD and would benefit the City, he said.

Carl Reilley, 5414 67th Av. NE, Marysville, addressed Council. He stated he has property to the north and is in favor of the development. He said it looks like Mr. Wintch has put a lot of thought into the development and he doesn't have a problem with it.

Terry Hillhouse, 5314 67th NE, Marysville, addressed Council. He said he has a concern with the closeness of these homes to him. The first lot is going to affect Mr. Lynch because it's only 5' from him, it's going to be only 6' from the Hillhouse residence. He said his other concern is the wet ground--he can't mow until July and there is nothing but swamp grass in there where they are proposing to develop, he said. He added he objects to the three houses next to his, he has a very nice quality duplex with lots of room but what's being allowed next door is not the same as he has.

Mike Lynch, 5320 67th Av. NE, Marysville, addressed Council and said as far as the boundary line problem, he was just bringing it to Mr. Wintch's attention about the encroachment and noted it needs to be resolved. He said he has the same objection as Mr. Hillhouse with regard to the small lots and the three homes proposed right next to the Lynch residence. He said most PRDs are not being put in the middle of existing neighborhoods where they can't make any changes.

Laurey Tobiason gave his rebuttal: Regarding the 3 lots, there is concern about their appearance and the intent is to give them usable yards. There will be a 6' fence and opportunity for landscaping, hedge, eg., for buffer and screening, he said. Also, they propose no windows or doors on that side of the three houses; separation would be 10' vs. 5' sideyard from the Lynch property in order to provide a good buffer, he said. They are also attempting to provide a pleasing streetscape with garages in behind the houses, he said.

Councilmember Herman clarified that they are no longer requesting a variance and Mr. Tobiason responded in the affirmative, noting a variance is no longer required here.

Councilmember Herman noted they have a 25' height limitation and Mr. Tobiason said yes, Lots 1, 2 & 3 are two sotries to allow tot lots, smaller footprint, etc.

City Planner Hirashima said if the Council were to approve the Hearing Examiner's recommendation, condition #11 would have to be eliminated as it pertains specifically to the variance.

Mr. Tobiason agreed, noting the fence and rear yard setback also related to the variance although they are opting to retain those restrictions.

There being no one further from the audience wishing to testify, the Mayor closed the public hearing at 10:25 p.m.

Mr. Lynch wanted to testify but he said it was not new testimony. The consensus was not to reopen the public hearing.

Councilmember Pedersen asked about this being the latest/revised plan and City Planner Hirashima said it is the latest drawing but the most recent information has not been shown but Lots 1-3 are correct (5600 sf).

Councilmember Herman said according to his calculations the average lot size is 16,000 sf.

slb density is over
City Planner Hirashima stated the zoning for this property is actually Suburban 1-4 du/ac with rezones to 7200 encouraged if there is sewer available.

Councilmember Pedersen asked if the setbacks are to be changed to 10' and City Planner Hirashima said the side yard setback minimum is 5' and that has been changed to the rear yard setback although they are now proposing two stories so that does open the privacy issue back up, she said.

Councilmember Herman pointed out there will be no windows so that will solve the privacy issue. He asked about rear yard setback requirements with a 25' height and City Planner Hirashima said that would depend on whether it is felt compatibility has not been achieved and an increased rear yard setback would be an additional requirement in that case or height limitation, for example.

There was discussion about the need for Lots 1, 2 & 3, single story vs. 2 story, no windows stipulated however bath and den seem to show windows, staff report/recommendations did include a reference to the rear yard setback which was taken out by the hearing examiner, split level compromise where there is the single story portion next to the adjacent property, reference to llc of the hearing examiner's recommendations.

Laurey Tobiason explained the Hearing Examiner put that in as a reiteration of staff comments for mitigation with regard to the variance.

Councilmember Baxter asked if they could build a single story on that lot and Mr. Tobiason said they could but they feel for more landscaping and more desirability it would be better to go with a 2 story and smaller footprint. You could also take the south side of the building and make it look like a single story, he said; there would be no windows and no access doors on the south side on either story, he confirmed.

Councilmember Pedersen asked if there is such a thing as precluding a future homeowner from adding windows on that side and City Attorney Weed said he felt you could with restrictive covenants.

Councilmember Baxter said he thinks the better answer is the single story house and he noted people could build a deck around the house.

Councilmember Herman noted a building adjacent to Lots 1 & @ only 5' away and Councilmember Baxter pointed out that would not be allowed, according to the conditions.

Mr. Tobiason reiterated that the Hearing Examiner has stipulated a 10' separation between the two buildings.

Councilmember Herman said it looks like Lot 1 would have a problem there but Mr. Tobiason said the actual setback/separation is 10' which is what a two story structure would allow.

CORRECTED: 6/13/94
MINUTES

CORRECTED: SEE 6/13/94
MINUTES slb 20'

Councilmember Herman stated that clearly this has been a frustrating and challenging development with the wetlands, open areas, filling of wetlands and it sounds to him if the Hearing Examiner recommendation regarding the 10' separation is kept and allow the 2 story structures, the need for a fence, no windows to address the privacy issue....

Councilmember Baxter asked about maintenance of the wetlands and City Planner Hirashima said in the adjacent plat there is a homeowner's association with a blanket drainage agreement.

Councilmember Herman talked about having the City Attorney draw up covenants with regard to no windows, doors or decks on the south side.

City Attorney Weed said the covenants would only be enforceable among the homeowners within the plat and they would be self-policing. Perhaps the City could provide some performance criteria, he said, but he is not aware of how those would be enforced within the platting process.

City Planner Hirashima said the lots/plans are actually to be turned around.

Councilmember Herman moved to approve the Hearing Examiner's recommendations with conditions but delete llc, adding a restriction that would require covenants to be recorded following concurrence with the City Attorney that would prohibit windows, doors or decks on the south side of homes on Lots 1, 2 & 3 and that the street and driveway layouts meet the approval of the City Engineer/Public Works Dept. Councilmember Wright seconded the motion and it passed 6-1 with Councilmember Baxter opposed.

CONSENT AGENDA:

1. Approval of Fireworks Stand Permits for Knights of Columbus #1, Knights of Columbus #2, Marysville Kiwanis #1, Marysville Kiwanis #2, Boys Club of Snohomish County and Marysville/Tulalip Visitor Center.
2. Affirmation of Hearing Examiner's REcommendations for Duane Hasko Rezone; PA 9310035.
3. Affirmation of Hearing Examiner's REcommendations for Lindal Cedar Homes; PA 9308026.
4. Acceptance of TIB Project (R94-02); SR 528 (64th St. NE) from 53rd Av. NE to 67th Av. NE

Councilmember Pedersen asked if everyone is aware of the new ('93) fireworks ordinance and whether they will be posted. City Administrator Zabell answered in the affirmative.

Councilmember Pedersen asked about the TIB project and Public Works Director Winckler said they have the choice of going back and getting a skin patch or else completely redoing them.

Councilmember Baxter said he feels the skin patch method would probably work.

Councilmember Herman said he would feel more comfortable if #4 is continued until the Public Works Director is satisfied with the completed job.

Public Works Director Winckler explained he asked the contractor to make the repairs and they came in with a change order.

Councilmember Myers asked how long the City would hold the retainage in a case like this and Finance Director Wilson said a minimum of 30 days and he would have to have releases from the Dept. of Labor & Industries before releasing the retainage.

Councilmember Pedersen asked about the patching process and Public Works Director Winckler explained the cold process is not very effective all the time; they have a one year warranty for the

project with Belmark, that's part of the contract and the City could get it redone, he said.

Councilmember Herman said he is not comfortable accepting the contract until all the work is done and Ken Winckler is satisfied.

Public Works Director Winckler said this can be done this week.

Councilmember Herman asked about #3 - Lindal Cedar Homes, Hearing Examiner recommendation #7 regarding the sign code of the industrial park code.

City Planner Hirashima confirmed the industrial park code has a separate section for signs--19.60.130.

Public Works Director Winckler commented on the TIB project, stating the change order for \$4404 is still well under what Council needs to approve. He said he just wanted to bring this to the Council's attention.

Councilmember Herman moved to approve Consent Agenda Items 1, 2 & 3. Councilmember McGee seconded and the motion passed unanimously.

Councilmember Myers moved to continue Consent Agenda Item #4 to 6/13/94. Councilmember Herman seconded and the motion passed unanimously.

Councilmember Pedersen moved and Councilmember Wright seconded to approve Change Order #3 for the TIB project on SR 528. Passed unanimously.

ORDINANCES & RESOLUTIONS:

1. Resolution Establishing a Safety Committee.

Councilmember Pedersen moved and Councilmember Herman seconded to approve/adopt Resolution #1685. Passed unanimously.

2. Resolution Amending the Personnel Rules and Establishing a Harassment Policy.

Councilmember Herman moved and Councilmember Leighan seconded to approve/adopt Resolution #1686. Passed unanimously.

3. Resolution Granting a Variance for Pacific Coast Feather Co.

Councilmember Wright moved and Councilmember McGee seconded to approve/adopt Resolution #1687. Passed unanimously.

4. Resolution Denying Without Prejudice a Utility Variance for Peter J. Poeschel/NORETEP.

Councilmember Pedersen moved and Councilmember Leighan seconded to approve/adopt Resolution #1688. Passed unanimously.

5. Resolution Denying Without Prejudice a Utility Variance for Bud Darling.

Councilmember Herman moved and Councilmember McGee seconded to approve/adopt Resolution #1689. Passed unanimously.

6. Resolution Amending Resolution 1646.

Councilmember Wright moved and Councilmember Leighan seconded to approve/adopt Resolution #1690. Passed unanimously.

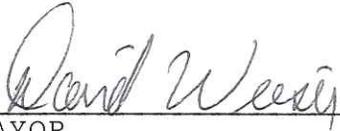
LEGAL MATTERS: None.

ADJOURNMENT INTO EXECUTIVE SESSION: 11:11 p.m.

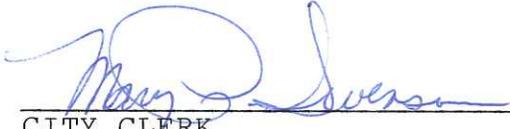
1. Litigation. (No Action)
2. Real Estate. (No Action)

RECONVENED & ADJOURNED: 11:39 p.m. and 11:40 p.m.

Accepted this 13th day of June, 1994.



MAYOR



CITY CLERK



RECORDING SECRETARY