

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING JUNE 24, 1996

CALL TO ORDER: 7:00 p.m.

ROLL CALL: All present

MINUTES OF PREVIOUS MEETINGS: 6/17/96 Approved

AUDIENCE PARTICIPATION: None

CONSENT AGENDA: Approved:

1. Approval of 6/24/96 Claims in the Amount of \$373,437.42; paid by check nos. 29572 through 29763 with check nos. 29295, 29335 & 29387 void.
2. Approval of (8) Fireworks Applications.

STAFF'S BUSINESS:

MAYOR'S BUSINESS:

CALL ON COUNCILMEMBERS:

PRESENTATIONS: Community Transit Update

PUBLIC HEARINGS:

1. Weiser/Belmark, Vacation of 10' City Right of Way; PA 9602011. Approved under 4 separate motions (based on ownrshp)
2. Belmark/Reed & Belmark/Olson Lot 16 Denied Without Prej Variance to Substandard Lot Code; Lot 19 Approved PA 9603013

REVIEW BIDS: None

CURRENT BUSINESS: None

NEW BUSINESS:

1. Hotel/Motel Grant Program Recomm. Approved

ORDINANCES & RESOLUTIONS: None

LEGAL MATTERS:

1. Recovery Contract #190 approved for Utility Const. Costs, Smith Family Partnership.
2. Recovery Contract #191 approved for Utility Const. Costs, Elmer Mickelson.
3. Recovery Contract #192 approved for Utility Const. Costs, Glenn Dale.
4. Recovery Contract #193 approved for Utility Const. Costs, Ken & Marian Berg and Barry & Lisa Graber.
5. Recovery Contract #194 approved for Utility Const. Costs, Robert Grimm.
6. Recovery Contract #195 approved for Utility Const. Costs, Joel Hylback.

ADJOURNMENT: 11:20 p.m.

EXECUTIVE SESSION: 11:30 p.m.

1. Real Estate No Action
2. Personnel Action - See Minutes

RECONVENED: 11:55 p.m.

ADJOURNED: 11:58 p.m.

MARYSVILLE CITY COUNCIL MEETING

CORRECTED: SEE 7/1/96  
MINUTES

JUNE 24, 1996

7:00 p.m.

Council Chambers

00227

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

CALL TO ORDER:

Mayor Weiser called the City Council Meeting to order and led us in the pledge of allegiance at approximately 7:00 p.m.

ROLL CALL:

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

MINUTES OF PREVIOUS MEETINGS:

Councilmember Herman noted on page 1 of the 6/17/96 Council minutes, under Minutes of the Previous Meetings, 2nd paragraph, at the end of the 3rd line, the word "has" should be "as". On page 5, in the 2nd line from the top, "whom" should be "whose family."

There being no further corrections, Councilmember Bartholomew moved and Councilmember Myers seconded to approve the 6/17/96 minutes as corrected. Passed unanimously.

AUDIENCE PARTICIPATION: None.

CONSENT AGENDA:

1. Approval of 6/24/96 Claims in the Amount of \$373,437.42; paid by check nos. 29572 through 29763 with check nos. 29295, 29335 & 29387 void.
2. Approval of (8) Fireworks Applications.

CORRECTED: SEE 7/1/96  
MINUTES that the Council Consider

Councilmember Pedersen suggested that the fireworks stands post signs showing when fireworks can be sold and also rules about parking. Councilmember Leighan stated he would be abstaining from voting on Voucher #29754 and Councilmember Baxter stated he would be abstaining from voting on Voucher #29686.

Councilmember Myers moved and Councilmember Bartholomew seconded to approve Consent Agenda Items 1 & 2 with the above exceptions. Passed unanimously.

STAFF BUSINESS:

City Planner Hirashima reported the Mixed Use Code Workshop will be held tomorrow evening at 6 p.m. in the Fire Training Room.

Public Works Director Winckler reported 7 people plus a representative from the Globe were in attendance at the Beach Av. neighborhood meeting and he said he will be bringing a summary of what happened back to Council for the next Council meeting, with regard to the tree situation, etc. He noted anyone wishing to, needs to get their questionnaires in by Friday.

He reported the 109th to 116th on Hwy. 99 traffic situation is now

There was further discussion about January and June application time slots, possibly changing the 60-40 ratio, the majority of the Council wishing to hear from the Chamber tonight as to their request for \$7800 from the City's General Fund, however it was made clear no final decision would be made tonight regarding the \$7800.

Milton Odum, owner, Olympic Ford, 3520 136th St. NE, addressed Council on behalf of the Chamber of Commerce. He said the Chamber is very appreciative of the \$4200 but actually need another \$7800 for the "Beckons" project. He said he feels the City and the Chamber should be a business partnership, each helping the other, similar to other partnerships around the country such as Boeing in partnership with various communities. He pointed out that "Marysville Beckons" advertises the City of Marysville and promotes business in Marysville. For example, with Olympic Ford, he said he feels he can't afford not to advertise even though you can't prove advertising works, but he said he is sure advertising works because the minute he quits, the business quits coming in. He noted there are many businesses in Marysville that advertise in the "Beckons" publication and these businesses also support the City through sales tax. For example, Olympic Ford in the first 5 months of '96 is up over last year 285% and he calculates that they contribute in excess of \$100,000 per year in sales tax, so he said he has a hard time with why \$7800 is so hard for the City to come up with.

CORRECTED: SEE 7/1/96  
MINUTES SIB FAST-FOOD CHAIN

Councilmember Pedersen agreed there may not currently be the best relationship between the City and the Chamber but she remembers a sign about a supermarket saying they don't cash checks and the banks don't sell groceries! She pointed out that in Branson, MO they have a very tall Chamber of Commerce sign and she said she wished the Marysville Chamber of Commerce were more visible. She questioned how "Beckons" really promotes the City and what Marysville has to gain from helping to fund the publication. She also noted the budget for "Beckons" seems to have gone from \$12,000 a couple years ago to \$52,000 this year.

CORRECTED: SEE 7/1/96  
MINUTES SIB \$12,000

Caldie Rogers, Executive Director of the Greater Marysville Chamber of Commerce, 4411 76th Dr. NE, addressed Council. She explained they didn't know how many they were going to print the first year and didn't have a budget, but the cost was much greater than \$12,000 in 1993. This time, the county is going to fund \$3,000, \$16,000 will be coming in from the Chamber's membership. She said they can't say "Beckons" brought in any particular business to Marysville but it may have helped with a lot of relocation of residents and businesses; the Marysville School District hands out a copy of "Beckons" to all new employees and it was a tool used by the Economic Development Council, she noted.

Councilmember Baxter noted now appears to be a very opportune time for the City and Chamber to sit down together and discuss what they can do for each other. Mr. Odum agreed.

PRESENTATIONS:

1. **Community Transit Update.**

CORRECTED: SEE 7/1/96  
MINUTES SIB "Brakke"

Kathy Johnson, Supervisor of Scheduling and Tim Brekke of Service Planning addressed the Council. Ms. Johnson handed out information about the different kinds of CT routes, both existing and proposed, in Marysville:

- Route 210
- Boeing routes
- Community needs based routes
- Commuter and Collector routes

CORRECTED: SEE 7/1/96  
MINUTES

to include collector service on this route

She noted they are looking at expanding Route 421 (collector) which is proposed to start by the new library, go to 67th, over to 64th and then west on 4th to I-5. This is planned for Sept., 1996. She also talked about Park & Pool/Park & Ride lots and said

CORRECTED: SEE 7/1/96  
MINUTES mbourne

under control with hopefully no more delays. He announced an open house for the new 6 million gallon reservoir (tentatively to be called "Getchell Reservoir") 7/26 at 10 a.m. at the reservoir site.

MAYOR'S BUSINESS:

Mayor Weiser passed around a plaque that was presented to the Council at the Fire and Police Memorial Ceremony last Saturday. The plaque was one of several presented to groups and individuals who had contributed time and money toward making the Memorial for fallen police and firemen a reality at the new library site. Mayor Weiser also noted he just received word about a member of the business community retiring and a letter will be oging out to her from the City.

CALL ON COUNCILMEMBERS:

CORRECTED: SEE 7/1/96  
MINUTES s13 "Tjerner"

CORRECTED: SEE 7/1/96  
MINUTES s13 "going"

Councilmember Bartholomew noted Gordon Turney, Mayor of Monroe, was riding his bicycle when he was in a bad accident this past weekend. He is still in serious condition at Harborview and she suggested well wishes be sent on behalf of the City of Marysville. She asked about the 38th & 116th St. situation and City Administrator Zabell said the Police Dept. has been stepping up patrol of the area.

Councilmember Herman announced a Community Transit groundbreaking ceremony 7/1. He noted CT is nearing full capacity and some changes are going to have to occur over the next few years; community service is leased and may not be available in a couple years, he added.

*s13 Commuter base from which commuter service operates is leased*

Councilmember Pedersen suggested moving the Hotel/Motel grant program item up on the agenda and it was the consensus to do this, in view of the possible lengthy public hearings tonight.

Councilmember Baxter reported on the Cedarcrest Golf Course status and also gave a Groundwater Advisory Committee update. He said he will keep the Council informed; he talked about documentation with some inaccuracies that need to be corrected with regard to water usage by the City.

PRESENTATIONS: (Representatives from CT not here yet.)

NEW BUSINESS:

**1. Hotel/Motel Grant Program Recommendations.**

City Clerk Swenson reviewed the agenda bill with regard to the Hotel/Motel Grant Program recommendations by the review panel. Three requests were submitted:

- Greater Msvl. Artists Build for Sights & Bites - \$2,000
- Maryfest for a Banner - \$1,000
- Grater Msvl. Chamber of Commerce for "Beckons" Publication - \$12,000

She explained the way the fund is set up, 60% is to be disbursed through the grant process and 40% to be approved by the Council. The review panel, made up of Mayor Weiser, Councilmembers Pedersen & Leighan, Jim Ballew and Mary Swenson, suggest two application process periods per year in the future. At this time, there is only \$7200 available under the above guidelines and so the review panel is recommending that the first two requests be granted in full and the Chamber be granted \$4200. The Chamber has indicated they would like to address Council with regard to increasing the amount of the grant, up to \$12,000, she said.

After brief discussion, Councilmember Herman moved and Councilmember Pedersen seconded to grant the \$7200 as outlined by Ms. Swenson and as recommended by the review panel. Passed unanimously.

they are looking at ways to mitigate parking around Comeford Park. She talked about community based services and how CT is trying to meet the needs of the community, especially on the east and in the north of Marysville; community based services would utilize smaller buses and hopefully be as successful as the flexible routes they have in Brier and Darrington who already have this service where it is very well received.

There was discussion about potential park and pool lots, about the City, CT & DOT being in partnership and working together on future routes, that Marysville is first on the list for community bases buses and extensive discussion about the perimeter of Asbury Field being utilized as a park and ride lot. Mr. Brekke stated this same concept is working well around McCollum Park; there was some parking set aside just for park users, but most of the commuters are gone by the time you need the park for recreation, he noted. He added that CT's proposal is for improvement of parking as well as designated parking for certain groups.

CORRECTED: SEE 7/1/96 MINUTES "Brekke"

CORRECTED: SEE 7/1/96 MINUTES

he would like to see signs go up before commuters start thinking about parking at the new library

Councilmember Myers noted ~~commuters are already parking at the library~~ and there was discussion about utilization of Beach vs State, realignment of Boeing commuter routes, parking on Beach, extension of collector service, availability of parking at park and ride lots, Everett Transit was talking about a route from Marysville to Everett to Boeing, Route 421 can be changed, community based services can be used to feed other routes.

PUBLIC HEARINGS:

1. Weiser/Belmark, Vacation of 10' City Right-of-Way; PA 9602011.
2. Belmark/Reed and Belmark/Olson Variance to Substandard Lot Code; PA 9603013.

Mayor Weiser stepped down.

CORRECTED: SEE 7/1/96 MINUTES

Councilmember Pedersen disclosed that she had a telephone conversation regarding ~~the fence issue with one of the parties.~~ viewing the property from one of the parties and Councilmember Pedersen declined.

Mayor Pro Tem Wright announced there would be a time limit of 3 minutes per individual.

City Attorney Weed stated there is testimony that will overlap and it was the intent of staff to combine the two matters into one public hearing but the Council should offer the opportunity to the audience and invite anyone who has objections to combining the two hearings to come forward. There would still be separate decisions, however.

No one from the audience voiced any objection.

Councilmember Herman moved to hear both public hearings together and Councilmember Pedersen seconded. Passed unanimously.

City Attorney Weed explained that because one of the items involves hearing examiner recommendations and has been before the hearing examiner, testimony must be given under oath. He then swore in about 7 or 8 people who indicated they wished to testify.

City Planner Hirashima gave the staff report and reviewed the agenda bills. She commented on the receipt of a petition, Lots 1-6 to be used as a building site, substandard lots, "Exhibit 9" showing the vacation and "Exhibit 10" showing the substandard lot variance, to be made part of the record.

Councilmember Pedersen asked about grandfathering in a private road and setback requirements on a substandard lot.

City Planner Hirashima said the setbacks would have to meet today's requirements: 5' on the sides and 20' front and rear. Access requirements would be 20' for one lot, she said.

Councilmember Pedersen asked about the house on Lot 15 and an agreement with Belmark regarding setbacks and City Planner Hirashima said the house on Lot 15 did meet setback requirements at the time it was built but does not now; it's grandfathered in.

Councilmember Pedersen asked about future owners and the City's responsibilities/existing agreements and City Attorney Weed said he didn't know whether agreements are written or verbal or recorded. He said they need to be memorialized by recording an easement, for example, or some form of covenant or some kind of deed so agreement on the fences (or lack of fences) is recorded. He said with respect to the driveway to access one more lot, there is a 20' requirement.

City Planner Hirashima added the 20' access would apply for Lots 7, 8 & 9 which are proposed to be combined into one lot. The applicant was proposing to have direct access from Lot 16, she said.

CORRECTED: SEE 7/1/96  
MINUTES

*Withdrawing his signature from*

Councilmember Pedersen asked about Erik Olson ~~not signing~~ the petition to vacate the road and whether there still is a two-thirds majority in favor of the street vacation. City Attorney Weed said that still is the case.

Councilmember Herman asked about the sewer line easement and City Administrator Zabell explained it runs from 49th to 51st. Councilmember Herman asked about switching septic over to sewer and offstreet parking requirements.

City Planner Hirashima said the offstreet parking requirements are two spaces per dwelling unit. There were more comments about the garage being removed and where offstreet parking would be located, the house that is close to the property line.

Councilmember Myers asked who is going to pay for the City sewer hookup and City Planner Hirashima said Belmark, the property owner. (This is a condition for the variance on Lot 19.)

Councilmember Leighan asked about the width of a private driveway and City Planner Hirashima said it was 12 to 14 feet; access needs to be 20', however (minimum).

Mayor Pro Tem Wright opened the public hearing to public testimony at this time.

Brian Duce, Attorney, 5912 70th St. NE, representing Norma Jean Dierck and Craig Massey, addressed Council. He reviewed the MMC and variance criteria. He said it is felt the vacation would be to the public benefit, they are against putting in a roadway and are submitting another petition to this effect. He noted the alleyway does not go through, it's been this way for 30 years with no access. As far as having no adverse affect on the street pattern or circulation of the immediate area or of the community as a whole, it would just be access for Lots 6, 7 & 8, he said. The public need will not be adversely affected and the street is not contemplated or needed for future public use, he said. Regarding the 5th criteria: That there be no abutting owner who will become landlocked or have his access substantially impaired; i.e. there must be an alternative mode of ingress and egress even if less convenient.... Mr. Olson/Belmark can access from Lot 16 and there may be the possibility of access on Lot 14 & 15, he said. All the property owners except for Mr. Olson have agreed to this vacation, he said, and you have to look at what's happening for that one person: First of all, he's asking for a variance on the substandard lot, second he wants to open up that right of way that's been closed for over 30 years before the City even acquired the property and finally, he's then going to come in a ask for a variance on the street coming through that right of way in order to access his lot. He pointed out that the whole thing needs to be looked at together, you can't just vacate all the property and then what good is the Lot 16 substandard variance to him if he

still can't access the lot, he would have to use that as a driveway? The landowners take the position basically, if necessary they will carry this to another forum, but their position is the property was previously owned by them by adverse possession which means they had common use of the property, there's a carport and fences back there. Approximately 18 to 25 yrs. ago, grandfather went to the county and said he needed to have this property vacated so he could buy it and they said he didn't have to buy it, he already has the property, for him not to go to the expense of buying it.

Mr. Duce then submitted a letter for the record to Mr. Weed, which speaks about the vacation by operation of law. Basically, that land was owned by the county for a period of over 5 years and was not opened up for public use, basically was vacated by operation of law. He said he would like to bring this to the attention of Council and he has cited a case in the letter. In the letter, he said he has asked Mr. Weed to respond and give his interpretation in this area but Mr. Duce is arguing on behalf of his clients that this was vacated back when the county owned it and the City then annexed the property. He said they also have a problem with the house being 2' to the edge of the property line and then with a fence and a 5' setback and this will maximize use just for one property owner when these other landowners have owned the property for a long time. The county records are not clear if it came from a common grantor or not, they are still researching it, he said. But there are problems with the grandparents owning property, adverse possession and the neighbors wish the carport and fences to stay back there and so they are proposing that the Council look at the public good and that is to keep the access closed in the back and have Mr. Olson look for an alternative way to access those lots if he does want to continue to develop his property. Mr. Duce said he feels Mr. Olson does have the right to develop his property but the neighbors have built and relied upon that piece of property for so many years.

He asked if there were any questions and there were none at that time. He asked if anyone knew how many feet there are on the one side of the house on Lot 14 & 15. Perhaps that is the way to solve this whole dilemma, is to put the access in there instead for the duplex lots. He said he thinks there should be another way besides bulldozing over the fence and carport to push a road back there to maximize another duplex in the City of Marysville.

Stanley Dierck, 4905 75th Pl. NE, addressed Council. He said he opposes Belmark's and Mr. Olson's proposals, they are bending every rule in the book to squeeze all they can in there. All the neighbors were against it, this is a community and they do not want to be squeezed out by developers--let them go somewhere else --they ruined California and now they are up here trying to ruin Marysville.

Councilmember Pedersen asked if Mr. Dierck opposes both the proposals and Mr. Dierck said he does. He added that the developers are not going to build single family dwellings, they are going to build duplexes and triplexes and in fact, he has never had a clear picture of what they are going to build in there. He asked if they had presented anything to Council as to what they are going to build.

City Planner Hirashima stated they have maintained that the lots will be used for a minimum single family dwelling with the potential of a duplex. Right now, under the existing code, she explained, Mr. Olson on Lots 7, 8 & 9 could build a single family dwelling; Belmark can build 2 single family dwellings. She added they have indicated that they are looking at the Comp Plan which supports duplexes outright and they anticipate Marysville will be following through with their zoning code update within the next six months which will enable them to build a duplex on each of those lots but at this time, if they want to go ahead currently, they are only allowed to build a single family dwelling, she said.

In response to Councilmember Pedersen's question, City Planner Hirashima said with the combination of 3 lots, they would have enough space for a duplex. On the substandard lots, they would only be able to build single family residences, she added.

Mr. Dierck said his objection is that they are saying one thing and then they are going to wait until the code changes and then they are going to stick some more in and they are crowded enough in there. The neighbors object, he said.

Councilmember Herman asked about Mr. Dierck's opposition to the street vacation and Mr. Dierck clarified that he is in fact opposed to Mr. Olson putting a street through that property that the neighbors want to vacate. In other words, he is in favor of the street being vacated and given to adjacent property owners who have had it for over 30 years.

Councilmember Leighan asked if the proposal is to combine Lots 17 & 18 for a duplex and City Planner Hirashima said those lots have previously been approved for one single family residence on each.

Craig Massey, 7533 49th Dr. NE, addressed Council. He said he is opposed to both proposals. They have been overcrowded in that area for the last few years and they keep building up more and more apartments and more and more houses on substandard lots and he said he would ask Council to take into account the community; the interests of the community is made up of its residents and that's the neighbors who have come up here tonight. He said he feels these new houses are far more than the area can handle, the streets are not designed to handle that much traffic, that's a dead end street that they are proposing to add traffic to and for a dead end street it's already very busy. He said he would like the Council to consider the people who have lived there for 30 years, or 27-28 years, planned to retire there and now they are feeling like they are being squeezed out. It was a nice neighborhood and it just keeps getting worse and worse and it gives Marysville a poor name when the residents feel like their area is declining. He said he would think the Council would want their residents to be praising what the City is becoming and not be sorrowful for what is happening in Marysville. He said he realizes people have the right to develop but that the Council needs to take a look at the whole picture and consider the whole community.

Councilmember Leighan asked Mr. Massey to clarify what he is opposed to and Mr. Massey said he is opposed to a street going through there and he said it is his understanding that the neighbors have owned the property all these years so is not really in favor of having to pay anything for it.

Councilmember Pedersen referred to Mr. Duce's testimony that ~~they feel the neighbors already own the property~~, that the property owners would like to remain owners of the property and object to the substandard lot variance.

City Attorney Weed commented on Mr. Duce's letter and some of the questions raised. He noted that the letter was delivered at 3 p.m. last Friday and Mr. Weed was on his way out of the office on his way to another meeting and did not review the letter until mid morning today. The issues essentially are whether there is a claim of the land that now constitutes the driveway by adverse possession and the law of adverse possession is that a party lays claim to property, has used it as their own continuously for a period of 10 years and then have a right of title to that land. There is also a period of time that Mr. Duce alludes to of 5 years, he said, but whichever the case may be, the questions and issues deal with who the chain of title has been vested in, they deal with issues of how the property has been used and they deal with issues that are decided by the courts and not City Council.

The second issue is the one of ownership of the right of way by

CORRECTED: SEE 21/94 MINUTES

abandonment or by operation of law which is kind of a spin off on adverse possession. The 1955 case he refers to talks about a highway that was dedicated in the early 1800s and parts of the ROW were vacated, other parts requested for vacation but never acted upon and 40 years later two private property owners got into a dispute concerning access. The case did not arise under a street vacation request such as the one before us and even in the 1955 case, the court did talk about abandonment or vacation by operation of law where vacation would occur without the formal process of vacation. He said he wasn't sure which of the facts from that case applied to this one, but the adverse possession question he feels is up to a court to decide; the City Council's charge is to judge this street vacation by the criteria under the Marysville Municipal Code.

Councilmember Baxter said he doesn't understand how a sewer easement that has been used as such for many years by the City can be considered "not used" or abandoned and open to adverse possession.

City Attorney Weed said one of the questions is whether there is a City sewer line going through there and City Administrator Zabell stated yes, the City sewer line was put in there about 12 yrs. ago.

Norma Jean Dierck, 7605 49th Dr. NE, addressed Council. She said she noticed the individual from Belmark has handed in a paper stating he wishes to speak and she said she would like to speak after him. One of the reasons would be so she could get a better idea of the whole picture and what's going to happen before she responds.

Ty Waude, Belmark Industries, 505 Cedar, addressed Council. He said he is not before Council to talk about what's going to happen in Lots 1-6 but to support staff position and report and to give Council a copy of exhibits that were entered into the Hearing Examiner's record. They are Exhibits 27 and 28 which show site plans similar to what they would be building on the non-conforming lots 17 & 18, single family residences, which show they do meet the setback requirements and the lot coverage is 27.9% which is less than the maximum. Exhibit 28 is a front elevation and floor plan and these exhibits are part of the hearing examiner record. As far as Ms. Dierck's request about what is going to happen, he said he does know. Duplexes are not allowed under the current zoning code and Belmark has no other plans at this point; it would be their intention at some future date to submit requests for duplexes if that's possible, but that isn't really in front of the Council tonight.

Councilmember Leighan asked what the setback arrangement is on Lot 16 and Mr. Waude said the 3' was an easement that would be recorded as a covenant or condition on Lot 16 where a fence could not be placed within that western 3' so as to prevent somebody having that very limited access to do maintenance on the side of the house, eg. He said he is not aware of a proposed fence, it was more that there would not be a fence allowed on that side. Right now, he pointed out, that would leave 7' between the buildings and UBC requires 6-8' unless you go to some extraordinary fire code measures which at this point they would not have to do with the type of construction they have.

Councilmember Leighan asked what the actual setback on Lot 16 would be and Mr. Waude said they would stay at a minimum of 5' for new construction. The non-conforming setback on Lot 15, which was prior to the City taking over and incorporating area, nor were there any county setback standards at the time the house was built is 2'. There is a total of 7' between the structures. Now the City would like to see 10' between structures, but it would not be less than 7' and the idea is that the new owner could not put a fence on that property line so that someone with only 2' could still maintain their house. So there would be a covenant that a fence would not be placed on the property, he said.

Erik Olson, 3630 Sunnyside Blvd., addressed the Council. First of all, he said the substandard lot in the front is just that, a substandard lot (Lot 16); Lots 7, 8 & 9 when combined are not substandard. He said there is a garage and trees on 7, 8 & 9. These three lots meet current zoning requirements but there needs to be access to that lot. No duplexes can be built on that lot at this time and he is proposing that the access can run along from 49th up to that lot and no further, access for one additional family in there.

In response to Councilmember Herman's questions, Mr. Olson said the total combined square footage of Lots 7, 8 & 9 would equal in excess of 8,000 sq.ft. Lot 15 is 4320 sq. ft. and Lot 16 is 4320 sq.ft. also.

Councilmember Pedersen explained <sup>to the audience</sup> the elevations submitted by Belmark were for a two story single family house with a double garage, with three bedrooms upstairs which is what they are proposing for Lot 16 & 19. She asked if Mr. Olson was favoring or opposing the street vacation and Mr. Olson said he is opposing the vacation as it will landlock Lots 7, 8 & 9. On parking, he said he has already applied to the City for a building permit to put a two car garage in the front.

CORRECTED: SEE 7/1/96  
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Councilmember Myers asked how much distance there is between the house and property line and Mr. Olson said approx. 17'. Councilmember Myers asked if that was enough room for access to the back lots and Mr. Olson said no, minimum is a 20' requirement.

City Planner Hirashima noted that if Mr. Olson went for an alternative access, there would be no issue with the vacation but the only alternative that could potentially be utilized would be for him to apply for a variance to use the 17' wide access on Lots 14 & 15. She explained that you can build right up to an easement.

Councilmember Leighan asked about the 10 x 13 addition on the house and Mr. Olson explained it is an office or bedroom and was actually an original part of the house, it was built that way. He mentioned alternatives for a driveway could be the 16' paved street to provide access to the back lot and no buildings would have to be removed.

Councilmember Myers asked him if he would consider negotiating an easement with the neighbors and Mr. Olson said no, he knows they would not grant an easement.

Councilmember Pedersen asked about the 2 concrete block buildings and a wooden building to be demolished and Mr. Olson said those are all on Lot 7.

City Administrator Zabell noted the sewer line easement is 10' and asked in the event the vacation is denied, who would be responsible for maintenance of the access road. Mr. Olson said per the City (Ernie Berg), the City would be responsible, even though only about 4 people would be using it, but it would be considered a City street.

Councilmember Leighan asked why the City would allow something to be built less than City standards and Public Works Director Winckler said that is part of the review process.

Norma Jean Dierck, 7605 49th Dr. NE, addressed Council again. She submitted a new petition consisting of 4 pages and 51 names and addresses of people in favor of the property from 49th to 51st to be sold to the adjoining neighbors and not to be allowed as a City street. She asked about a contract that Belmark could sign so they would know exactly what is going in.

City Attorney Weed said the City does not have the authority to have an owner sign a document such as that nor to force the developer to commit to something by denying or granting a street vacation, for example.

Councilmember Pedersen asked about a previous voluntary agreement between Parkside Estates and Parkside Manor regarding single vs two story houses.

City Attorney Weed said that's not something that the City gets involved in; we know that the Comp Plan may allow duplexes in the future and the City can't get involved with the developer as far as forcing them to sign an agreement, he said.

Councilmember Pedersen asked what the neighborhood could be told as far as the maximum that could be put in there and City Planner Hirashima said the maximum would be one duplex on Lots 7, 8 & 9 and 3 on Lots 1 through 6. She said it is anticipated the zoning code will be completed in about 8 months and two more duplexes could be put on Lots 19-21 but currently all they can do is put in a maximum of 3 single family dwellings, she said, no duplexes.

Ms. Dierck asked about the 2/3 majority on the street vacation being still in effect and City Attorney Weed explained a vacation can go forward with 2/3 of the property owners being represented.

~~Ms. Dierck questioned whether Mr. Weed was actually in the office last Friday afternoon and Mr. Weed said he believed he was on his way out the door when the letter from Mr. Duce came in.~~

Ms. Dierck asked about the 16' right of way and City Planner Hirashima explained Mr. Olson has requested a 16' wide private right of way, not a public roadway; standards for public roads are based on volume of traffic and this would have very limited traffic.

Ms. Dierck said she filed a grievance on Lot 16, paid her \$50 fee and Mr. Olson now wants to put an access in because he's land-locked himself. She said the other issue is the trees coming down and homes/duplexes going in which is going to reduce property values. She added that her carport is going to be torn down, they are going to lose property they had and this is all because of Erik Olson.

Councilmember Pedersen asked about her carport and Ms. Dierck said with the access request, the carport and Massey's fence would have to be torn down as well as trees having to be removed.

Brian Duce addressed Council again. He noted he looked at 44 fact specific cases and he does believe City Council has the authority to decide on whether this is a case of adverse possession. He noted that granting of the vacation would consider the public good and it was his intention to merely bring this all to the attention of Council so they could make an informed decision. He talked about apparition of law and other issues where one homeowner acquires rights of another, the fact that 8-9 years ago the sewer was put in, vacation would block Mr. Olson's access but he has another alternative through one of his substandard lots, the trees do offer a buffer--all these issues need to be considered by Council, he said.

City Attorney Weed asked when Dierk's grandfather went to the county with regard to the common property/vacation. Mr. Duce said he believed it was 18 years ago. He added it is his understanding that it was a verbal agreement but he believes they have a retired county employee willing to testify about this.

Councilmember Bartholomew pointed out that the county assessor has no authority with regard to property rights and that's apparently who the grandfather went to. She said it needs to go to the county commissioners who have authority over a street vacation issues, eg.

Mr. Duce said the question is if the county doesn't exercise ownership does the property revert back to the property owners prior to the City's ownership?

CORRECTED MINUTES SEE 2/1/96

Councilmember Herman asked about the carport on the right of way on the north side and Mr. Duce said he believes it's on Lot 8.

Councilmember Herman asked if the "common area" was ever used for access to Lots 7, 8 or 9 and Mr. Duce said as far as he knows, no.

Councilmember Herman asked if it is physically possible to drive a car through and Mr. Duce said no.

Councilmember Baxter asked how a sewer easement could be put in if a car can't drive through; there needs to be 10'.

Mr. Massey addressed Council again. He said there is enough room to drive a car back there, but you can't physically do it because of fences, etc. now. He said the trees are on Lots 7, 8 & 9 and provide a buffer between there and the apartments to the north.

Councilmember <sup>Herman</sup> asked about the common area being used as access in the past and Mr. Massey said never. He added he took a tree down and prior to that you could not have gotten a sewer line in. There is a paved driveway through Lot 16 to 7, 8 & 9, he said, with access to a very large garage and shop area.

Erik Olson submitted 2 photos for the record that show where the driveway, carport, etc. are.

There being no one further from the audience wishing to speak, the public testimony portion of the public hearing was closed at 9:53 p.m.

City Planner Hirashima gave a chronological history and noted the Planning Dept. does have separate legal descriptions for all parcels. City Attorney Weed noted the requests could be granted piece meal.

After considerable discussion, Councilmember Myers moved to grant the vacation of a 10' wide alley from the west end of Lot 6 to 51st (Lots 1-6). Motion to include affirmation of all 5 criteria:

- it will provide a public benefit
- it will not adversely affect the street pattern or circulation of the immediate area or of the community as a whole
- the public need will not be adversely affected
- the street is not contemplated or needed for future public use
- no abutting owner will become landlocked or have his access substantially impaired.

Also, it was noted as a finding of fact that 10 feet is inadequate for a roadway, compensation would raise money for the City, Lots 1 through 6 have the same ownership so none will become landlocked. Included in the motion was that the City will maintain the easement to the sewer line, the vacation would not become effective until all parties have paid their portion (1/2 assessed value), with valuation based on fair market value, City to pay for easement and also that the vacation be based on the site plan submitted. Councilmember Bartholomew seconded.

A roll call vote revealed the motion did not pass as Councilmembers Baxter, Pedersen, Herman and Wright were against, so it failed 4-3.

Councilmember Herman then moved that Lot 19 be granted a substandard lot variance, as per the Hearing Examiner's recommendations and findings of fact, also with regard to the sewer connection to be made and no one/nothing has come forward to dispute the facts as presented. Councilmember Pedersen seconded and the motion passed unanimously.

Councilmember Herman then moved that the 10' wide street vacation from 49th to 51st be approved, based on assessed valuation method and to include a 10' sewer line easement to be maintained. He repeated all the variance criteria as per the previous motion (Myers' motion that failed), also approval based on existing access through Lot 16, that lots are the same ownership, and that the street is not contemplated for future public use. Councilmember Pedersen seconded after a friendly amendment to include a one year sunset clause which the maker agreed to.

There was discussion about Belmark proposing a 20' panhandle, the possibility of a holdout property owner not paying the assessment for the vacation, the one year sunset clause, payment of all compensation/assessments before the vacation becomes effective, whether someone else could pay for the holdout portion.

A roll call vote revealed Councilmembers Leighan, Baxter, Myers and Wright against so the motion failed 4-3.

CORRECTED: SEE 7/1/96  
MINUTES

~~Councilmember Herman then moved to reconsider Councilmember Myers' original motion concerning Lots 1-6; The motion by Councilmember Herman to reconsider was seconded and passed Unanimously.~~

After considerable discussion, Councilmember Myers moved to grant the vacation of a 10' wide alley from the west end of Lot 6 to 51st (Lots 1-6). Motion to include affirmation of all 5 criteria:

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Also, it was noted as a finding of fact that 10 feet is inadequate for a roadway, compensation would raise money for the City, Lots 1 through 6 have the same ownership so none will become landlocked. Included in the motion was that the City will maintain the easement to the sewer line, the vacation would not become effective until all parties have paid their portion (1/2 assessed value), with valuation based on fair market value, City to pay for easement and also that the vacation be based on the site plan submitted. Councilmember Bartholomew seconded.

The motion then passed unanimously.

Councilmember Herman then moved to grant a street vacation of approx. 15' wide, on 76th Pl. NE just south of Lot 8 (the Dierck property), based on the same findings of fact and at the same rate of compensation, with appropriate easement for the sewer line. Councilmember Myers seconded and the motion passed unanimously.

It was explained that the intent was to base the vacations on ownership in the event of a holdout.

Councilmember Herman then moved to approve the street vacation from 49th (southern 1/2) across lots 10-11-12-13 (on the north side of Lots 10 & 11) on 76th Pl. NE, based on the same conditions, findings of fact, compensation method, sewer line easement, as previously stated in the previous motions. Councilmember Myers seconded and the motion passed 6-1 with Councilmember Wright against.

Councilmember Herman then moved to approve the street vacation on 76th across the northern 15' of Lots 7-8-9, based on the same conditions, findings of fact, compensation method, sewer line easement, as previously stated in the previous motions. Councilmember Pedersen seconded and the motion passed unanimously.

Councilmember Pedersen moved to deny the substandard lot variance requested for Lot 16 WITHOUT PREJUDICE, to give the owner an opportunity to explore alternatives. Councilmember Myers seconded. Findings of Fact were outlined on page 3 of the Hearing Examiner recommendations and it was noted that the applicant was to demonstrate or provide an approved alternative access to Lots 7-9 as a condition of the substandard lot variance, as well as to possibly combine Lots 7 & 16 for one buildable lot and Lots 8 & 9 for another, with the applicant to come back within one year.

The motion passed 6-1 with Councilmember Baxter against.

Mayor Weiser returned at 11:15 p.m.

LEGAL MATTERS:

**1. Recovery Contract for Utility Construction Costs, Smith Family Partnership.**

Councilmember Myers moved and Councilmember Wright seconded to adopt/approve Recovery Contract 190. Passed 6-1 with Councilmember Bartholomew abstaining.

**2. Recovery Contract for Utility Construction Costs, Elmer Mickelson.**

Councilmember Leighan moved and Councilmember Myers seconded to adopt/approve Recovery Contract 191. Passed unanimously.

**3. Recovery Contract for Utility Construction Costs, Glenn Dale.**

Councilmember Pedersen moved and Councilmember Myers seconded to adopt/approve Recovery Contract 192. Passed unanimously.

**4. Recovery Contract for Utility Construction Costs, Ken & Marian Berg and Barry & Lisa Graber.**

Councilmember Pedersen moved and Councilmember Myers seconded to adopt/approve Recovery Contract 193. Passed unanimously.

**5. Recovery Contract for Utility Construction Costs, Robert Grimm.**

Councilmember Baxter moved and Councilmember Leighan seconded to adopt/approve Recovery Contract 194. Passed unanimously.

**6. Recovery Contract for Utility Construction Costs, Joel Hylback.**

Councilmember Baxter moved and Councilmember Bartholomew seconded to adopt/approve Recovery Contract 195. Passed unanimously.

ADJOURNED: 11:20 p.m.

EXECUTIVE SESSION: 11:30 p.m.

- 1. Real Estate (No Action)
- 2. Personnel (Action)

RECONVENED: 11:55 p.m.

Councilmember Baxter moved and Councilmember Bartholomew seconded to approve Ordinance 2082 adopting the wage schedule for non-union and management positions effective 7/1/96 through 6/30/97. Passed 6-1 with Councilmember Herman opposed.

Councilmember Leighan moved and Councilmember Myers seconded to approve employment agreement for Don Shaw as per discussion in Executive Session. Passed 7-0.

Councilmember Leighan moved and Councilmember Myers seconded to approve supplemental employment agreement for Don Shaw as per discussion in Executive Session. Passed 7-0.

ADJOURNED: 11:58 p.m.

Accepted this 1st day of July, 1996.

*David Weiser*

MAYOR

*May S. Swenson*

CITY CLERK

*Wanda A. Swenson*

RECORDING SECRETARY