

MARYSVILLE CITY COUNCIL MINUTES

JULY 24, 1989

7:30 p.m.

Council Chambers

PRESENT: Rita Matheny, Mayor
Councilmembers:
 Ken Baxter, Mayor ProTem
 Mel Schank
 Dave Weiser
 Bill Roberts
 Larry Hots
 Bob Lashua
 Lee Cundiff
Administrative Staff:
 John Garner, City Administrator
 Phillip Dexter, Finance Director
 Jim Allendoerfer, City Attorney
 Mike Corcoran, City Planner
 Gloria Hirashima, Associate Planner
 Jim Ballew, Parks & Rec. Supt.
 Dave Zabell, Public Works Director
 Bob Dyer, Police Chief
 Wanda Iverson, Recording Secretary

CALL TO ORDER:

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

ROLL CALL:

Finance Director/City Clerk Dexter call the roll with all members present/absent as indicated above.

MINUTES OF PREVIOUS MEETING:

Councilor Schank noted that on page 14 of the 7/10/89 Minutes, 7th paragraph, "\$1,000,00" should be "\$1,000,000" and moved that the minutes be approved as corrected. Councilor Hots seconded and the motion passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS: None.

PRESENTATION:

Mayor Matheny swore in Police Chief Dyer and there was a short reception afterwards.

PETITIONS & COMMUNICATIONS:

1. 6/10/89 letter from Dave & Sheri McGee.
2. Letter from Tulalip Tribes.
3. Budget Workshop Meeting 8/28/89.

Under item #2, there was considerable discussion regarding the position of the Tulalip Tribes and the City of Marysville with regard to situating the Navy on the west or the east side of the freeway. Councilor Roberts moved that a letter of support be sent from the City of Marysville to the Tulalip Tribes but reserving the right to make further comment at a later date with more information. Councilor Cundiff seconded and the motion passed unanimously.

Finance Director/City Clerk Dexter reminded everyone of an upcoming budget workshop 8/28/89 in Everett. He also reminded everyone of the four City Council positions open with filing to be done 7/24 to 7/28. The order of the four positions is as follows:

1. Ken Baxter
2. Mel Schank
3. Dave Weiser
4. Bill Roberts.

PUBLIC HEARINGS:

1. Preliminary Plat & Preliminary Site Plan for Meadowcreek.

(Councilor Roberts stepped down.)

City Attorney Allendoerfer asked for disclosures from the Councilors.

Councilor Schank stated he was involved with Mr. Schmelzer purchasing the property 15 years ago.

Councilor Weiser stated he serves on a Citizens Advisory Committee with Mr. Schmelzer.

Councilor Lashua stated he occasionally has coffee in the same location as Mr. Schmelzer but there has never been any discussion about Meadowcreek.

Councilor Cundiff stated he has had a couple of conversations with people from the area.

City Attorney Allendoerfer asked if any of the Councilmembers felt they were biased or if they had pre-judged the case and everyone answered in the negative. Mayor Matheny asked for challenges from the audience and there were no comments whatsoever.

City Attorney Allendoerfer explained that the last public hearing was improperly advertised and therefore was considered actually only a workshop (7/3/89) however the testimony was incorporated into the record and therefore elaboration only is necessary tonight.

Mayor Matheny stated that one hour only would be devoted to the Meadowcreek Public Hearing in the interests of time. Councilor Hots stated that he would like to see the opponents and the proponents receive equal time and it was agreed that would be the case.

City Planner Corcoran addressed the Council and explained the advertising error last time and proceeded to explain that the Planning Commission on 5/9/89 had recommended denial on the basis of too high density, too small lots and the environmentally sensitive area not receiving enough protection. If approved tonight, he said staff would recommend that staff recommendations be included in the motion for approval. He added that staff also would like the figure of \$16,750 as the proportionate share on the TIP included under item #4 of the staff recommendations.

Councilor Weiser asked about the variances that are being requested and City Planner Corcoran stated that it is his understanding there are none.

Gary Wight, 2722 Colby #617, Everett, WA 98201, addressed the Council, representing Ted Schmelzer. He stated that he felt all technical issues have been addressed and the key issue here is whether or not the Council wishes to encourage the development of affordable housing in Marysville, which is strictly a consumer issue. He noted that some people tend to confuse "affordable" housing with "subsidized" or "low income" housing which is not the case. He said the trend up to 10 years ago was one bread winner in the family, now there are two and the next generation--this is the trend--is going to need subsidy from their parents because they will not qualify for a home. These people are being eliminated from the housing market in Marysville and this is a chance for us to turn this situation around, he continued. He explained that the homes in Meadowcreek start at \$80,000 which takes \$5100 upfront for down payment, closing costs, etc. and in order to qualify for the loan, you must have at least a \$2,285 per mo. income and have debts not to exceed \$225 per month in payments. He concluded that the whole matter is a consumer/economics issue.

Councilor Hots asked what it would cost in homeowners dues to maintain the roads and Mr. Wight explained that the roads are being built to City standards as to width and materials and they expect no immediate improvements to be needed, however homeowners dues of about \$50/year will accumulate towards the eventual need for improvement.

Councilor Hots asked who is going to remove the snow in the winter and Mr. Wight said they will probably use the same method the City uses--wait until the snow melts at 10:00 a.m. He added that he felt this a minor issue but he was sure they would hire the City to remove the snow if necessary.

Councilor Baxter explained that the City has just bought a new sander and has the capability of maintaining but because the roads are private, who would the people in the development call? He said he could see how this could cause a problem in the future.

Councilor Hots noted that the City has a good reputation as far as keeping the streets clear and drivable in the winter and snow and ice left on the roads of Meadowcreek would be a poor reflection on the City's maintenance.

Councilor Baxter asked about the access and Mr. Wight explained that there is only one, by design, in order to retain the project's uniqueness.

Councilor Baxter said he didn't believe there to be enough access provided for people to get to the park/open space/trail system through the development. He said he didn't believe the open space a good trade off, either and although the Parks Dept. does want more park land, he said he feels the City should be more choosy and furthermore does not feel there is enough emergency access.

Councilor Cundiff noted that the homeowners dues in Sun Ridge are \$100/yr. and they are talking about an increase in order to keep up with costs so \$50/yr. for Meadowcreek will probably not be adequate.

Councilor Schank asked who makes up the homeowners association and Mr. Wight stated they would have their own board from within the development. He added that getting off on tangents such as this is not accomplishing anything and that he would rather see the Council address the consumer issue of whether or not they wish affordable housing.

Councilor Baxter asked if this were to remain zoned at RR 7200, how many units could be built in Meadowcreek and Mr. Wight estimated 60-80 vs. the proposal for 108. He noted that the key item is that these are not going to be undesirable people moving in-- it would be the same way to qualify as with other developments.

Councilor Hots noted that he has a hard time thinking of homes at \$80,000 cost as "affordable" and Mr. Wight explained that new homes in Marysville are now running from at least \$90,000 and in 18 mos. a \$90,000 home will be \$100,000 so in those terms, \$80,000 is more affordable.

No one else spoke in favor.

Sheila Price, 7003 61st Pl. NE, addressed the Council and stated she lives across the street and wished to briefly restate her opposition to Meadowcreek. She read from a prepared statement, listing her reasons for opposition being too high density (25 more homes than Sun Ridge), built on a hillside (making it more visible than Sun Ridge), incompatibility with surrounding 12,500 lots, traffic in conjunction with other developments will be overwhelming, safety hazards for children because of lack of sidewalks, doesn't think he should be entitled to the 20% bonus when he is simply dedicating

unbuildable land to the City just so he won't have to pay taxes on it and lastly, it should be developed to be more compatible with Soundview East and then there would not be the opposition there is to Meadowcreek.

Maribeth Woodall, 6909 61st Pl. NE, addressed the Council and said 100% of the surrounding neighbors are opposed because, mainly, people feel their property values will go down and the density/safety issues. She predicted a death on 4th very soon unless something is done about signalization, channelization or something. She added that Marysville can't even handle the traffic which already exists, how is it going to handle traffic from an additional 108 homes in that area and what about the impact on the schools? We need to look at these issues, she concluded.

Pam Johnson, 6509 61st St. NE, addressed the Council and said she is not against growth however she is against poor planning and has a concern about lack of sidewalks for the children and that the roads will not be full width. She noted that if the roads are private, that will probably mean that all the children will have to go to 67th to wait for the school buses because buses won't travel on private roads. She noted that would probably mean a lot of children--at one per household, a minimum of 108 standing on 67th! She added that she would rather he built \$220,000 homes and not cause the problems that he will be causing with this development.

Kenneth Price, 7003 61st Pl. NE, addressed the Council and read a letter which had just been handed out to the Council. He said he feels there is a safety factor affecting quality of life with this project that is even more dense than Sun Ridge. He noted that according to the Sun Ridge survey, people there are of an average older age than would reside at Meadowcreek and therefore would probably have less children than Meadowcreek and asked if Meadowcreek, with all the safety concerns and traffic congestion would really be achieving the intent of affordable housing.

As far as it being stated that there are no variances being requested, Mr. Price pointed out that there are seven variances that he sees being requested:

1. Private road widths from 30' to 26'. This is at least one variance and could be two, depending on the definition of an improved street, he said.
2. There is not adequate room for a vehicle to maneuver and/or back up between Lots 60 & 61.
3. a) b) c) d) - Lot size variances around the perimeter of Meadowcreek, not compatible with adjacent developments.
4. Parking not buffered.
5. Emergency access.
6. Dispersal of housing types throughout development.
7. 20% density bonus variance request.

Mr. Price also pointed out that the public would have to use private roads in order to gain access to a public park/trail system, that the City is being donated a lot of wetlands that carry with them a lot of responsibility and maintenance as well. He concluded that if the City Council does approve Meadowcreek, it would be his request that the binding site plan be reviewed by City Council rather than just a formal, perfunctory review and signature by the mayor and that a public hearing should be held for final review to make sure all matters have been taken care of.

Brad Cattle, Attorney, addressed the Council, representing Mary

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Vanderway and 108 other opponents, he said. He stated that he heard Mr. Wight say in presentation that he did not wish to discuss technical issues and that the developer really doesn't care one way or the other if Meadowcreek is approved. Mr. Cattle noted that an environmentally sensitive area is probably not the best place to put affordable housing, especially with high density. He continued that he knows the City Council is in a bit of a hard spot on this but that he would like to see identified where in the record the proof is of "non-significance" because there is information from the Dept. of Fisheries and there is impact with the access. He reiterated that the City has the burden of proof with regard to impact and mitigation requirements for that impact. For example, a level of service E will result at the intersection of SR 528 & 4th and also he asked where the school buses are going to go. Another impact/adverse effect is the issue of compatibility (or lack of it) with adjoining property and he noted that Mrs. Vanderway has pasture land with a dense development coming in and should the burden be on the property owner or the developer for adequate fencing? He added that as far as the dedication of open space to the City is concerned, he submits that this is largely unbuildable land and said he would defer Council to interpretation of the ordinance. He further noted that Meadowcreek has been before the Planning Commission and after 5 hours of public hearing, it was agreed there were some good concepts but it was concluded that it was of too high density, too small lots and not enough protection for the environmentally sensitive area.

Diane Buechel, 7006 61st Pl. NE, addressed the Council and noted that she hates speaking before groups but that she wished to simply state that she is totally against the project.

Keith Buechel, 7006 61st Pl. NE, addressed the Council and stated that he was incensed at the developer referring to surrounding neighbors as "neutral" with regard to Meadowcreek being approved or not; that he and his wife had spent many hours talking with the people in the neighborhood and had gathered 108 signatures against the project. He said Mr. McArdle spoke to some of the people and thought some were favorable to the project but in contrast, Mr. Buechel has produced 108 signatures of people who do not feel comfortable coming before City Council, maybe, but are definitely opposed to the development coming in. He asked that the Council please think about the future of Marysville and deny approval of Meadowcreek.

Richard Bleasdale, 6244 68th Av. NE, addressed the Council and said that he resents the fact that the developer and consultant are hiding under the guise of affordable housing because this project, in his opinion, does not qualify as affordable housing with \$80,000 homes. He concluded that the City should stop him from advertising that he works with HUD for affordable housing.

Gary Wight addressed Council again and suggested that technical issues be submitted by way of a memo to the consultants. He concluded that if this development is not approved, unfortunately, the loser will be the future home buyer.

The public hearing was closed.

Councilor Lashua said it seems to him that the public has some valid concerns with the density, the stream and the park issues.

Councilor Baxter said he concurred that \$80,000 is not affordable, adding that he doesn't like the density of the project or the park land, poor access, private streets can cause problems maintaining, etc. He said he just doesn't think Marysville should have a lot of private roads within city limits and concluded that he is not in favor of the PRD.

Councilor Hots said he also questions this being "affordable housing", has a concern regarding private street maintenance, the school bus

issue, a public park with private access, density, too few sidewalks. He concluded that he is against the project being approved.

Councilor Cundiff stated he is not really opposed to the concept of zero lot lines and affordable housing but he is opposed to the density, too small lot sizes, concerned about lack of compatibility and the private roads and does not feel this is affordable housing, either.

Councilor Schank noted that as far as compatibility with surrounding homes, there is a wide range--between 7200 and 12,500--and he would prefer this project being somewhere in that range, more like the surrounding homes. He said he remembered when 7200 used to be for "affordable" homes and would prefer this project to have lot sizes in the area of 8200 to 8400 sq. ft.

Councilor Weiser said he sees land use and the density bonus as the two variances and that it should be up to the applicant to comply with the PRD ordinance.

Councilor Cundiff moved that the PRD/Plat of Meadowcreek be denied (with prejudice), Councilor Hots seconded the motion and it passed 4-2 for denial. Councilor Baxter said he would have been in favor of denial without prejudice and Councilor Lashua was against denial.

3. Boston Pizza Business License.

City Attorney Allendoerfer explained that this matter is before Council tonight as a result of certain police reports alleging illegal activities on premises concerning alcohol consumption and serving, sexual activities and marijuana use. He noted that a partial exhibit is contained in the packets and he read the new text concerning revoking or suspending of a business license, with the main test being whether or not the owner knowingly violated the law.

Attorney Charles French, representing Gerald Clark, owner of Boston Pizza, addressed the Council and explained that the hearing was originally scheduled for 7/3/89 but was postponed until tonight because he (Mr. French) was out of town 7/3/89. He said he is asking for another continuance tonight because certain evidence has been submitted but he was not notified that this evidence was going to be used tonight and he therefore did not have time to arrange a defense. He said the evidence is testimony from a couple of witnesses who are not here tonight and whose testimony is mostly hearsay and that Mr. Clark should be allowed to prepare his position in rebuttal to the testimony that they were not aware of, especially in light of the serious consequences that can result if the City suspends or revokes his client's business license.

City Administrator Garner pointed out that the next meeting is not until 8/7/89 and Mr. French said that would be fine.

Councilor Hots asked if the problem is that they had not received all the information and Mr. French stated that he had received nothing from the City of Marysville concerning how the hearing would be conducted tonight nor the witness testimony to be used.

City Attorney Allendoerfer explained to Council that the defendant is going to be going before the Washington State Liquor Control Board and he will be going before a jury with regard to a child molestation case. He said the packet of witness statements was sent to Mr. Clark however a duplicate packet was not sent out to Mr. French and that is what Mr. French is referring to by saying he has not been notified by the City. In order to expedite matters, parts of the packet can be deleted, he said.

There ensued discussion regarding whether or not to hold this hearing tonight or postpone until after the defendant has been

before the WSLCB and court on the other charges and it was the consensus that this is a hearing to determine whether or not the MMC has been violated. Councilor Hots asked about liability on the part of the City in the event Mr. Clark is found not guilty by the State but if the City has revoked his license and City Attorney Allendoerfer stated that no, this is not a court of law and the City's responsibility is to protect the community. It was the consensus not to postpone the hearing.

City Attorney Allendoerfer advised Council to remove the last two pages of the packet--Ms. Gina Johnson's statement and Mr. French stated he would also like page two of the packet removed because it is based on hearsay and the licensee was not given reasonable notice that this testimony was to be part of the procedure which has precluded Mr. Clark from responding to the issue.

City Attorney Allendoerfer said that if in fact that's not part of the prosecuting attorney's statement and is a separate document, that it can also be stricken from the packet.

Councilor Hots moved to deny the request for postponement/continuance of the public hearing. Councilor Cundiff seconded and the motion passed unanimously.

The first person called to testify was WSLCB Agent J. D. Alcorn who was sworn in by the Mayor.

Mr. French asked for ground rules and City Attorney Allendoerfer stated that it was his intention to allow narrative testimony, including any relative hearsay to be allowed.

Agent Alcorn proceeded and stated he has been with the Liquor Control Board 3 years and in law enforcement since 1967. He stated this case started 1/23/89 with an anonymous complaint of juveniles being allowed to drink at Boston Pizza as well as there being a mattress on the premises for possible sex acts. He said Mr. Clark, when questioned about the air mattress, just said it was a joke.

Agent Alcorn started to say something about speaking with Jean Johnson and Mr. French objected to referring to information that had been deleted from the packets. The objection was sustained.

Agent Alcorn continued that in May, he was introduced to 5 or 6 juveniles in an undercover mode and observed minors serving and consuming liquor/wine coolers on the premises of the Boston Pizza House, several times over the course of the month. He said that on 5/29 he received a phone call that there was going to be a party for a juvenile turning 15 that night and so he so he notified the Marysville Police Dept. that he was going to investigate. He gained entry of the premises at about 11:15 p.m. through the rear door when he was allowed in by juveniles who recognized him in his cover. He then observed mostly wine being consumed by 5 juveniles, 2 adults and one minor who arrived later, he said. One of the female juveniles then lit a marijuana pipe and passed it around the table, he said; Mr. Clark had gone to pick up some pop. When Mr. Clark returned Agent Alcorn said he was going to get his girlfriend and went outside and contacted the Marysville Police Dept. He said that Mr. Clark apologized to him as he was leaving for not letting him in earlier because he (Mr. Clark) didn't know Agent Alcorn had been invited to the party, he said. When Agent Alcorn returned shortly after midnight, Mr. Clark and a juvenile went into the back office for about five minutes at which time Agent Alcorn showed his badge to "Gary" and instructed him to let the police in. He said he wrote up Mr. Clark, five minors and let an 18 and 22 yr. old go. He said he completed reports to the Liquor Control Board which resulted in a 29 day suspension which has now expired.

Councilor Hots asked what the maximum penalty would be and Agent Alcorn said he would like to see a total suspension of the license

however that is not his decision to make.

Councilor Lashua asked for clarification of the definition of a minor vs. a juvenile and Agent Alcorn explained a minor is from 18-20 yrs. of age, a juvenile is 17 and under. He added that the minors were pretty well serving themselves in the presence of Gary, a 33 year old employee. Mr. Clark returned and did observe minors drinking in his establishment, Agent Alcorn said.

Attorney French then cross-examined Agent Alcorn, starting with the reason for his being transferred from Spokane recently. Agent Alcorn stated that the local office had been expanded. He asked Agent Alcorn how many times he had frequented the restaurant prior to the night of the arrests and Agent Alcorn responded about five times. Mr. French then questioned Agent Alcorn whether the minors were observed, specifically Mr. Clark's minor/employee son, by Mr. Clark and whether a minor consuming alcohol is in violation of State or Liquor Control Board rules and regulations or laws. Agent Alcorn stated that minors serving adults is in violation of State law (WAC) as is minors consuming alcohol on public premises.

Mr. French then referred to a phone call he had someone else make to Agent Alcorn, questioning him about tonight's testimony and it came to light that Agent Alcorn refused to give that person information. Mr. French stated that because of this, he really had no notification of what testimony was to be used tonight. He then asked Agent Alcorn if he had used a weapon on the night of 5/28 and Agent Alcorn said no, he does not have a weapon. Mr. French asked who let him in and Agent Alcorn stated one of the juveniles. Mr. French asked if Agent Alcorn had any reason to believe there was anything other than a birthday party going on. Agent Alcorn stated there was liquor/wine being served and three bottles were confiscated. Mr. French asked about the seating arrangement and Agent Alcorn explained that two tables were being used. Mr. French asked if Jerry (Mr. Clark) unloaded pop when he returned and Agent Alcorn said yes, but he came up and asked for help first and in Agent Alcorn's opinion would have ample opportunity to observe drinking of the wine.

Mr. French asked Agent Alcorn if Agent Alcorn mentioned to Mr. Kirkwood about it being illegal for the kids to be drinking and Agent Alcorn said no. Mr. French questioned the seating arrangement again and Agent Alcorn stated that everybody was in one area. He noted that some were more to the back of the restaurant but Mr. Kirkwood was seated basically in the middle and he, as well as Mr. Clark both had ample opportunity to observe alcohol being consumed by minors and juveniles. Mr. French asked if 5/28 was the only night Agent Alcorn had observed alcohol being consumed by minors and juveniles and Agent Alcorn said yes. Mr. French asked if Mr. Clark observed the marijuana use on the premises and Agent Alcorn said no. Mr. French concluded by that statement that Mr. Clark was not tolerating the use of marijuana and had in fact, fired an employee at one time for smoking marijuana as well as fired employees for serving alcohol to minors in the past. Agent Alcorn admitted he did not know that. Finally, Mr. French questioned the eating of birthday cake and the validity of it being someone's birthday and Agent Alcorn said he believed they were celebrating "her" birthday which had been 5/25/89.

Officer Mike Sigman of the Marysville Police Dept. then gave his testimony and noted that he became aware of problems at Boston Pizza several years ago. Agent Alcorn had told the police dept. that he would be contacting them 5/29. MPD's concern was with the 15 year old juvenile that Mr. Clark was not to have contact with, under restraining order and a pending investigation of child molestation. Officer Sigman said that when they first entered the premises on the night in question, no guns were displayed and Heather (the 15 yr. old) was in the back office with Jerry Clark. He said he saw several Seagram's wine coolers being consumed by minors and adults. He continued that they went to the back office and upon entering,

observed Heather rearranging her clothes. Heather and Jerry then came out front, he said and they then made the referrals for marijuana use and talked to Jerry about his contact with Heather. Evidence was taken care of by Agent Alcorn, he stated.

Councilor Hots asked if the investigation was originally to do with illegal alcohol consumption and Sgt. Sigman said yes, but no citations were written. He added that there were some confidential informers that came out of these previous events.

Mr. French asked Sgt. Sigman if he ever saw the court order restraining Jerry Clark from contacting Heather and Sgt. Sigman said no, but both Agent Alcorn and Mr. Clark had referred to its existence. Mr. French then questioned Sgt. Sigman about previous problems with Mr. Clark and it was concluded that previous problems had been with clientele of Boston Pizza, not specifically previous problems with Mr. Clark.

Penny Kief, 6309 88th St. NE, was then sworn in by the Mayor and gave her testimony. She stated she is Heather's mother and when questioned by City Attorney Allendoerfer about the court order, stated that it came into effect at the beginning of May and Mr. Clark was to have appeared on the Tuesday after the 5/28 party for arraignment. City Attorney Allendoerfer asked if Heather worked at the Boston Pizza House and Mrs. Kief said she used to. Mr. French objected to this line of questioning. City Attorney Allendoerfer asked if Heather's mother knew if Heather had had sexual intercourse with Mr. Clark and Mr. French objected to this line of questioning also. City Attorney asked if there had been any medical tests and Mrs. Kief said yes and Mr. French said he objected to the use or mention of medical tests as evidence. City Attorney Allendoerfer asked if Mrs. Kief's daughter had ever discussed the matter of sexual intercourse with her and Mrs. Kief said yes. City Attorney Allendoerfer asked if Heather had ever come home intoxicated after being at Boston Pizza and Mrs. Kief said Heather told her that Mr. Clark let them drink down at Boston Pizza but she never came home intoxicated. When questioned, she said on the night of 5/28 Heather came home crying and tearful but not intoxicated. When asked her age, Mrs. Kief stated Heather just turned 16 on 6/20.

Councilor Hots asked about the restraining order and Mrs. Kief stated that she asked if she could file a restraining order but was told one was already in force. Mr. French asked her if she had actually seen a court order and Mrs. Kief said no. Mr. French then showed her a copy of the court order and noted 5/30 is the date shown on the bottom and Mrs. Kief said yes, that was when he (Mr. Clark) was going to court to be arraigned on the charges. Mr. French submitted the court order as evidence.

Mayor Matheny asked what Mr. Clark's age is and it was determined to be 49.

Gary Kirkwood, 1215 Everett Avenue, Everett, was sworn in by the Mayor and stated that he has been an employee of Boston Pizza since February, 1989. He was questioned by Mr. French about being on the premises the night of 5/28-29 and Mr. Kirkwood stated that he arrived shortly after closing, about 10:15; he brought Phyllis, Angie and Heather with him, for the purpose of attending a birthday party. Mr. French's line of questioning also produced the following statements from Mr. Kirkwood: He gained entry through the unlocked back door and there were several juveniles and minors present including Heather. Heather and he then left to get the cake mix but then he had to leave to help Phyllis with some personal belongings and when he came back, the lights were out in the restaurant, it was very dim, he said with John Turk. He (Gary) could not observe what the juveniles were drinking. Also it looked like the tables had not been cleared from earlier--there were still wine bottles on the tables and Gary testified that he did not see any juveniles or minors drinking at all. It was dark and if wine coolers were being drunk, it must have been smuggled to the table, he said;

because he saw only root beer being drunk. Mr. French then questioned him about Agent Alcorn's entry and Gary stated that Phyllis and Heather let Agent Alcorn in the back door. It was noted that Agent Alcorn was dressed like a biker and the kids knew him. When asked if Agent Alcorn observed any drinking, Gary stated, "not that I know of." Gary said he (Gary) was helping unload the pop for about seven minutes and Jerry came inside then and they (Jerry & Gary) put the pop in the walkin cooler. After that, Gary went back to the table but neither he nor Mr. Clark observed any of the kids drinking. The police arrived about 1/2 hr. later, he said--they were outside and he heard someone say, "Drink up, ladies." Then Mr. Alcorn showed him his badge and jabbed a gun at him (Gary), telling him to open the door and let the police in.

Councilor Hots asked if any marijuana was being smoked on premises and Mr. Kirkwood stated he did not see anything but did hear someone say they hoped Mr. Alcorn wasn't a narc. Heather and Phyllis referred to him as Uncle JD and he could have coerced or colluded with them, he said, and concluded that he (Gary) thought this was a set up.

City Attorney Allendoerfer asked Mr. Kirkwood if he was aware that it was Mr. Clark's intention to propose marriage to Heather as soon as she turned 16 and Mr. Kirkwood said no. He then asked Mr. Kirkwood if the inflatable air mattress is to be used for sexual activities with juveniles and Mr. Kirkwood said that as far as he knew, no.

City Attorney Allendoerfer asked how many juveniles/minors were on the premises on the night in question and Mr. Kirkwood stated five. City Attorney Allendoerfer asked what they were drinking and Gary said he assumed they were drinking Shasta root beer, that he was not "in charge" of the premises or activities. City Attorney Allendoerfer reminded him that he had stated at the time that he (Gary) was a mere employee and not responsible for any criminal activities.

Mayor Matheny asked what kind of pop was purchased that night and Mr. Kirkwood stated Dr. Pepper, Shasta root beer, Pepsi, cherry Pepsi, diet Pepsi.

Councilor Cundiff asked why so much pop was purchased and Mr. Kirkwood explained it was store inventory.

Councilor Lashua asked if all the pop was in cans and Mr. Kirkwood said yes. Councilor Lashua pointed out that the testimony was that there were bottles on the tables.

Mayor Matheny questioned how well one could see a gun in a dark room and Mr. Kirkwood stated there was some light coming from the streetlights and everybody had seen the gun--he doesn't wear it in a holster, it's just tucked in his belt, Mr. Kirkwood testified.

Councilor Cundiff stated he had heard Mr. Kirkwood say he didn't have much to talk to the minors about and questioned why Mr. Kirkwood was even attending the birthday party or why he was invited. Mr. Kirkwood explained that he kind of got stuck getting the cake mix; that he had been in there earlier in the day to eat.

Councilor Hots questioned his coming from Everett to Marysville to eat on his day off and Mr. Kirkwood explained that the food's better.

Mayor Matheny asked Mr. Kirkwood where he worked before and Mr. Kirkwood stated Shakey's Pizza, in California.

Councilor Shank asked what kind of gun Agent Alcorn had and Mr. Kirkwood stated a .357 or a .38. He added that it was a silvery gun, easily seen in a dark room and everyone had seen it. Mayor Matheny asked if he is right or left handed and Gary said J.D. is right handed.

There were no further witnesses.

Councilor Cundiff stated his concern is for violation of the City ordinance and that he believes there has been.

Councilor Hots stated that he saw a conflict in the testimony about cans vs. bottles and that both the MPD and LCB saw marijuana on the premises. He said he believes they are in violation of the MMC also.

Councilor Baxter said he thought it pretty difficult to control everything that comes into the premises so has no reason to disbelieve Mr. Alcorn's statement regarding liquor being consumed and would therefore go along with suspension of the license at least until after the LCB and court hearings.

Councilor Schank said he feels there has definitely been breach of code and would agree to the license being revoked.

Councilor Cundiff moved to revoke Boston Pizza's business license, Councilor Baxter seconded.

Councilor Roberts asked if there should be a time limit after which they may re-apply for a business license again.

Mr. French stated that it seemed to him that there are a couple allegations here and if the City Council is going to take action, that he would prefer they do so for the right reason. He said the minors drinking is against LCB rules and that would not justify the City revoking their business license. Secondly, the allegation of marijuana being smoked--this was not observed by Mr. Clark and finally, whether there was service to minors knowingly is justification to suspend the license but he said he didn't see any evidence of that here and he noted that the business license can't be revoked on the grounds of contributing to juveniles/minors. He added that Mr. Clark's liquor license has been suspended by the LCB which has created a substantial impact on his business and if the City puts him out of business, that will also impact the several employees. He continued that there has only been this one incident and said he maintains that Mr. Clark is already receiving the loss of income with the loss of the liquor license and that he didn't think evidence has been presented to warrant closing down the business.

Councilor Hots pointed out that there has been an ongoing investigation of Mr. Clark for a couple years and Mr. French pointed out that it is investigation of Mr. Clark's clientele, not of Mr. Clark. Councilor Hots said he believed the testimony was against Mr. Clark and furthermore, Marysville needs people in business with good moral character.

Councilor Cundiff said with regard to Mr. French's remark that the City would be putting him out of business--Mr. Clark has done that to himself by violating the ordinance.

City Attorney Allendoerfer pointed out that a business license may be suspended or revoked whenever it is deemed through public hearing that conduct occurred which was not legal and/or in compliance with the code and was knowingly permitted by the owner.

Councilor Hots asked how soon after a license is revoked he could reapply and City Attorney Allendoerfer stated there is no time limit at present but there are certain criteria that must be met before he could reapply.

There was further discussion and Councilor Cundiff stated that based on the testimony, he felt that both Mr. Clark and Mr. Kirkwood knowingly permitted liquor and marijuana use by minors and was in violation of the MMC. Councilor Lashua stated he would rather see a deferment of the Council's decision until after the LCB and court hearing. A roll call vote was called for:

Councilor Schank - in favor
Councilor Weiser - against
Councilor Baxter - against
Councilor Roberts - against
Councilor Hots - in favor
Councilor Lashua - against
Councilor Cundiff - in favor.

The motion to revoke the business license was defeated 4-3.

Councilor Lashua then moved to suspend the business license until resolution of the LCB and court hearings with City Council to make a decision within 30 days after the other two hearings. Councilor Baxter seconded.

There followed discussion regarding mismanagement and lack of supervision of the business, the sexual molestation charges (it was determined that the incident did occur on the premises), and discussion about the definite conflict of testimony tonight. It was concluded that the court hearing will definitely provide more information and the suspension of the license (effective immediately) by the City can be reconsidered at an open hearing in about 2 months.

The motion passed with Councilors Hots and Cundiff against suspension until after the other two proceedings.

CURRENT BUSINESS:

1. Planning Commission Action - Bartlett/Stanton Rezone.

(Councilors Lashua and Roberts stepped down.)

City Planner Corcoran explained that the Planning Commission recommended approval of this request for RR 7200 to multi-family with a binding site plan, for a 30 unit apartment complex near the intersection of 72nd & 47th. He stated that staff has recommended deletion of a portion of #4 relating to reimbursement to the Street Dept. regarding removal of trees.

Councilor Cundiff asked if three stories is within the 35' height limit and City Planner Corcoran stated it is.

Councilor Schank stated that it appears the Planning Commission has gone through the request very thoroughly and moved that it be approved as per staff and Planning Commission recommendations to be rezoned to RMM. Councilor Hots seconded and the motion passed.

2. Planning Commission Action - Mulligan Shoreline Permit.

(Councilor Roberts stepped down.)

City Planner Corcoran explained that the Planning Commission has recommended approval of this request for a 20,000 sq.ft. warehouse.

Councilor Baxter noted that it is contiguous to Brashler Industrial Park which area was intended for this use and he moved that the shoreline permit be approved according to Planning Commission recommendations and including the four findings of fact. Councilor Schank seconded and the motion passed. There followed a brief discussion regarding the procedure for obtaining shoreline management permits and City Planner Corcoran noted that this may be a procedure that needs to be changed now that the City has a full time City Planner.

PUBLIC HEARINGS:

2. Hearing Examiner Proposal.

George Wilcox, Planning Commission Chairperson, addressed the Council and reported that the 6/13 Planning Commission meeting adjourned at

8:30 p.m., the 6/27 meeting at 9:15 p.m. and the 7/11 meeting at 8:15 p.m. He said the Planning Commission schedule is lighter in the summer and members are willing to put the time in as far as regular meetings and Comp Plan Workshops; that they are willing to meet and in fact look forward to meeting once a week. He noted that at the 7/11 meeting, they discussed the hearing examiner issue and concluded that they wish to continue on as is for the time being, the main reason being that with the City Planner's present workload, he is unable to support the Planning Commission any more than twice a month but with the lighter workload in the summer, he said he expects the work on the Comp Plan to accelerate. He noted that they are reviewing two planning areas per Comp Plan meeting and that may develop into three planning areas per meeting. He said he felt they are doing a good job, especially with the full time City Planner and that is reflected in his staff reports. He said as far as the argument that a hearing examiner would be more consistent in his decisions than the Planning Commission, he disagrees, especially with Mike Corcoran and Gloria Hirashima putting so much time, effort and research into the staff reports. He noted that the Planning Commission does have a poor precedent on PRDs and bonuses but for the most part, he said he feels City Council has vindicated the Planning Commission, for example on Parkview Estates and Meadowcreek.

Planning Commission Chairperson Wilcox continued that they do look to the City Council for policy and he attends most of the City Council meetings and reports back to the Planning Commission. For example, on Ripper and Kingswood those hearings set good policy on access. He commented that with the six commissioners on the Planning Commission, that represents over 100 years of living experience which can't be matched by a hearing examiner. He said in addition to drawing upon living experiences in Marysville and on the Planning Commission, the Commissioners keep gaining experience and knowledge with each hearing and this can then be used in the Comp Plan review. As far as a decision by the hearing examiner being any more legal than the Planning Commission's decisions, he said he felt it less likely than ever that the Planning Commission would have a decision overturned in court. He said there has never been a Planning Commission decision overturned in 15 years and with full time staff support that we have now, it would be even less likely. He explained that an analysis is submitted to staff and they then put that into formal findings of fact which gives a better picture than the minutes. Another example of this is when dispersal of types of housing were discussed as well as density of 8 units vs 6--this did not come through in the minutes as well as it should have, he said, but was covered in the staff findings of facts. He added that the last few Belmark projects have been based on what the Planning Commission is looking for and has discussed in workshop sessions. No one on the Planning Commission has an ax to grind, he stated, and pointed out that the Commissioners retain a non-biased state and listen very attentively at public hearings, for example the one on 47th where they had a 6-0 decision for approval even in light of neighborhood testimony against. He also noted that at a recent state workshop they attended it was very apparent that the Marysville Planning Commission has a lot more knowledge and information than other jurisdictions present. He concluded that the workload at present is not enough to warrant a hearing examiner and that he really feels that seven heads are better than one.

Councilor Weiser asked if the experience gained with plats, multi-family housing, etc. helps with the Comp Plan review rather than the other way around and Chairperson Wilcox said yes.

Councilor Weiser asked if there are any other areas that they feel they should be working on and Chairperson Wilcox noted the Planning Commission hasn't been doing that much revision on ordinances.

Councilor Schank asked what the situation is in the Planning Dept. as far as time scheduling.

City Planner Corcoran stated they have come to a point where the majority of parcels that are developable have been submitted, however there is an annexation coming up which consists of 120 acres, east of the golf course and some proposals close to Sunnyside. He added that they are catching up right now and have time to work on larger annexations.

Councilor Schank asked how long the Planning Commission/Comp Plan Workshop meetings are and Chairperson Wilcox stated about 1½ hours.

Councilor Hots asked about attendance and Chairperson Wilcox said Jann Smith has now resigned due to health problems and when members were polled, Erik Olson was the only one who had reservations about being able to attend all meetings because of his involvement in a new business, but he has been attending well.

Councilor Roberts pointed out that a hearing examiner would work strictly on the decision making process and Chairperson Wilcox agreed but pointed out that he would have problems with the PRD ordinance, for example, until such time as policy has been set. City Planner Corcoran added that the City's Comp Plan has a few developmental standards but needs more in order to be an effective decision making tool and added that a hearing examiner would probably have the same problems as the Planning Commission and City Council in administering the code.

There was discussion regarding day time vs. evening meetings and it was noted that the Board of Adjustment meetings were set up during the day because originally that was the only time the library was available.

City Planner Corcoran noted that both the Planning Commission and Hearing Examiner methods have advantages and that City Council helps set future policy for parks, for example. Council Hots asked if City Planner Corcoran would express his preference between working with a Planning Commission or a Hearing Examiner and City Planner Corcoran stated that he did not wish to answer that question.

Mayor Matheny asked about the scheduled completion for the Comp Plan review and City Planner Corcoran stated it was originally planned to be completed by January, 1990 but it now appears as tho it will be March or April, 1990.

Councilor Weiser asked if he felt there are other areas that need to be worked on such as land use ordinance, PRD ordinance, landscaping and subdivision ordinance and City Planner Corcoran agreed.

There was discussion about the Planning Commission's workload and in just which areas a hearing examiner could be used. Mayor Matheny pointed out that a hearing examiner would be on a contract basis, to be hired on a "per job" basis. Councilor Cundiff said he feels the Planning Commission is doing a commendable job and the City is not in a position to hire a hearing examiner. Councilor Baxter said it looked to him like a hearing examiner wouldn't really free up much more time for the Planning Commission and Councilor Roberts said he feels the Planning Commission has Marysville at heart, is doing the best they can, but a hearing examiner would render a more professional decision and with the growth of Marysville, the Planning Commission will not be able to keep up.

City Planner Corcoran noted that a hearing examiner would write their own findings of fact, rather than the staff doing that, which is a time savings for staff and Planning Commission alike.

Councilor Roberts added that in Everett, the hearing examiner takes 15 days to make a decision and that he thinks the process is better, more professional, a more complete decision. But the services are costly--you pay for that decision and so far no cost estimates have been done and that needs to be considered, he said.

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Pat Glein, 4028 63rd Av. NE, Marysville, addressed the Council and explained that she was on the Marysville Planning Commission for 8 years. She said she thinks the hearing examiner system works better for quasijudicial and legislative issues and the Planning Commission needs to work on policy issues. She noted that the automatic tendency will be for members of a Planning Commission to resist the hearing examiner system and also this may not be quite the right time for a hearing examiner because the Comp Plan is not quite ready, but if you have a hearing examiner doing all the technical work with the Planning Commission doing the policy work, they are each more proficient in their own areas.

There was brief discussion about the way the hearing examiner must base decisions on the present ordinances, the same information as the City Council and Planning Commission do now and it was noted that a hearing examiner would also listen to neighborhood testimony on rezones and variances.

Chairperson Wilcox stated that with regard to repetitive testimony, that can be handled by the Planning Commission with the lighter workload. He added that he and Pat have long disagreed on separation of the two areas, that he feels the two areas need to go hand in hand. He also noted the reason it takes John Gault 15 days is because he has a lot more cases than the Marysville Planning Commission.

Councilor Weiser asked Mrs. Glein if she still feels the Comp Plan should be in place prior to hiring a hearing examiner and she said yes, a hearing examiner system would not work very well without a Comp Plan in place. Councilor Weiser said he felt the Planning Commission might develop better policies based on a hearing examiner's decisions, also.

Mayor Matheny stated that once the Comp Plan is completed, it is possible that a hearing examiner may not be required any more but Councilor Cundiff noted that it has been his experience that once a person is hired that person generally stays on. Mayor Matheny pointed out that the hearing examiner would be under contract and added that she would like to see better progress being made on the Comp Plan update.

Chairperson Wilcox stated that with more staff time and support an acceleration can be made on the Comp Plan review but Councilor Weiser stated he doesn't feel it is something that should be rushed.

Councilor Schank asked if it would be appropriate for the hearing examiner to get involved in the Comp Plan and Councilor Roberts stated that traditionally, no, he bases decisions on the information and documentation at hand. He added that he feels the cost should be investigated, workload, availability of people, credentials at this time, as the next step.

Councilor Cundiff pointed out that this was checked into about a year ago by City Attorney Allendoerfer and Councilor Roberts said he would like to know if there is anyone else available besides the circuit rider referred to by the city attorney and also, he would like to see some resumes.

City Attorney Allendoerfer stated the circuit rider is Jim Driscoll who serves Everett and Edmonds and he charges a retainer of \$500 plus an hourly rate.

There was further discussion regarding the duties of a hearing examiner and City Administrator Garner pointed out that this is a very important/weighty decision to be making at such a late hour and suggested postponing/continuing the discussion to 8/7/89. It was the consensus that this be done.

NEW BUSINESS:

4. Utility Variance - Monica Baker.

Public Works Director Zabell stated that the applicant has received an unsatisfactory test from the Health District and staff has recommended approval of the utility variance request for a 3 bedroom home, 12,500 zoning; the application is for one hookup.

Councilor Baxter moved to approve the request for one water hookup. Councilor Lashua seconded and the motion passed unanimously.

5. Utility Variance - Todd Summers.

Public Works Director Zabell stated that the applicant has a bad well with Health District letter testifying to that fact and the applicant is within the expanded RUSA boundaries.

Councilor Hots moved and Councilor Cundiff seconded to grand the variance for water. Passed unanimously.

6. Utility Variance - Larry Trivett.

Public Works Director Zabell stated that the applicant is outside present RUSA boundaries but within the proposed RUSA boundaries; water pressure is at a minimum so they would have to install a pump; request is for water and sewer.

Councilor Baxter noted that the property is in the process of annexation and City Attorney Allendoerfer noted that normally the City does not extend utilities without prior annexation.

Larry Trivett addressed the Council and stated that yes, he would like to be annexed into the City of Marysville.

Councilor Roberts moved to approve the variance for water and sewer based on the applicant's good faith request to be annexed. Councilor Schank seconded the motion and there followed discussion about precedent setting and clarification of the location of the applicant's property. The motion passed unanimously.

CONSENT AGENDA:

1. 7/24/89 Claims in the amount of \$423,513.66.

Councilor Schank moved and Councilor Hots seconded that the claims be approved. Passed. (Councilor Weiser didn't vote.)

NEW BUSINESS:

1. Monte Annexation.

City Planner Corcoran stated that it had been originally intended that this annexation come before City Council prior to the Trivett utility variance because this is the annexation in which the Trivett property is contained. He continued by stating that as of yesterday, only a 60% petition is required now. He described the location of the property.

Councilor Cundiff questioned the number of property owners and Councilor Roberts pointed out that some of the signatures are not now valid on the petition because Monte's property has sold and Borseth died.

After discussion about property not being within current RUSA, being contiguous to other Marysville property, annexation/RUSA policies, city limits, location of storage tanks, City Attorney Allendoerfer concluded that the petition needs to be resigned and brought back before Council.

2. Hickock Annexation.

(Councilor Roberts stepped down.)

City Planner Corcoran explained that the Hickock property is on the south side of 528 and extends west from the 71st alignment. A 10% petition was submitted previously as were vicinity maps and staff recommends a public hearing date be set.

Councilor Cundiff moved and Councilor Baxter seconded that a public hearing be set for August 14, 1989. Passed.

3. Bertelson Annexation.

City Planner Corcoran gave the location of the property and explained that a 10% petition was submitted previously as were vicinity maps and noted that staff recommends a public hearing date be set.

Councilor Lashua moved and Councilor Hots seconded that a public hearing be set for August 14, 1989. Passed.

7. Contract with Snohomish County Sheriff - Automatic Fingerprint Identification System.

City Attorney Allendoerfer recommended that the contract not be signed because the fees to be charged by the county should already be covered by taxes. He added that the same services are not charged for in the county.

Police Chief Dyer explained that to perform the same services here would require the purchase of a very expensive technical system with a scanner and it would only cost \$35.00 each time through the county. It can be done at no charge through the state but they have such a backlog that it would not be effective with the intent being to solve crimes, he said.

Councilor Hots asked how often the service would be required from the county and Police Chief Dyer said it has only been used about four times since the system has been in existence.

Councilor Baxter stated that he would like a letter from Jim Scharf justifying the charge and if he can come up with a satisfactory explanation of the charge, then Councilor Baxter would be in favor of going ahead and signing the contract with the County.

Police Chief Dyer stated the \$35.00 is basically only paying for the manpower involved in processing the fingerprints.

City Attorney Allendoerfer pointed out that the county doesn't charge for the polygraph machine, lineups, investigations of felonies--so why have they decided to charge the City for fingerprinting?

Councilor Hots stated he would like to see the contract signed "under protest" with a letter from Jim Scharf, also.

Councilor Schank asked how the City of Seattle handles fingerprinting and Police Chief Dyer explained that they have a crime lab at their disposal and Snohomish County has their own system, also.

Councilor Lashua pointed out that felonies are not tried here.

Councilor Roberts moved that the contract be approved for signature under protest with a letter from Sheriff Jim Scharf. Councilor Hots seconded and the motion passed unanimously.

CURRENT BUSINESS:

3. Extension of License/Computer Coordinator Position.

Councilor Schank moved and Councilor Baxter seconded that Veda Ferdinand's term be extended as Business License/Computer Coordinator. Passed unanimously.

LEGAL MATTERS/ORDINANCE & RESOLUTIONS:

1. Resolution Adopting an Annexation Policy - Postponed to 8/7/89.
2. Borseth Annexation.

City Attorney Allendoerfer stated this is to go to the Boundary Review Board.

Councilor Schank moved and Councilor Hots seconded that Ordinance #1707 be adopted. Passed unanimously.

3. Withers Annexation.

City Attorney Allendoerfer said this is to be sent to the Boundary Review Board also.

Councilor Schank moved and Councilor Weiser seconded that Resolution #1367 be adopted. Passed unanimously.

4. Ripper Rezone with Contract for 51 unit apartment complex.

City Attorney Allendoerfer explained this was approved at the 7/10/89 public hearing.

Councilor Cundiff moved and Councilor Schank seconded that Ordinance #1708 be adopted. Passed. (Councilor Roberts did not vote.)

5. Ordinance regarding increasing fees for short plats, final plats, binding site plans and boundary line adjustments.

Councilor Roberts questioned final plat fees and Public Works Director Zabell stated he could bring additional information to the next meeting. It was decided to postpone this matter until 8/7/89.

6. Ordinance increasing fees for Shoreline Development Permits.

Postponed.

7. Withers Rezone Contract.

City Attorney Allendoerfer explained this is a contract between the City and Mr. Withers regarding the rezone near the intersection of 64th & 67th.

Councilor Weiser moved and Councilor Baxter seconded to authorize the mayor to sign the contract. The motion passed with Councilor Hots opposed and Councilor Roberts did not vote.

8. Chuck Reagan to be appointed to Planning Commission.

Councilor Baxter moved and Councilor Cundiff seconded that Chuck Reagan be appointed to the Planning Commission. Passed unanimously.

CALL ON COUNCILMEMBERS:

Councilor Lashua announced a surprise party for Don & Dorothy Foxe to be held 7/27 at 5:30 at the store. Councilmembers invited.

Councilor Baxter asked if the City wishes to proceed with remodeling of City Hall with the \$200,000 that's available. This prompted a discussion regarding whether or not a decision was ever made regarding the location/site of City Hall, what services can be obtained for \$200,000, whether or not the architects should be approached again, whether or not to use the architectural draft already submitted as a good place to begin.

Councilor Cundiff stated that at 1:10 a.m., it is too late to be bringing an important matter such as this up and furthermore didn't feel as though he had all the information--for example, was the

location decided to remain at Comeford Park or to be moved?

After more discussion, it was decided that City Administrator Garner would research the previous motion about the location and bring the information back before Council.

ADJOURNMENT: 1:15 a.m. July 25, 1989.

Accepted this 17th day of AUGUST, 1989.

Rita Matheny
Mayor

Nancy J. Hensler
City Clerk Deputy