

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING

JANUARY 8, 1996

199618

CALL TO ORDER:

7:00 p.m.

ROLL CALL:Councilmember Pedersen  
excusedMINUTES OF PREVIOUS MEETINGS:

1. City Council Minutes 1/2/96

Approved

AUDIENCE PARTICIPATION:

None

CONSENT AGENDA:

Approved:

1. Approval of Dec. 1995 Payroll in the amount of \$741,308.81; paid with check nos. 19427 thru 20169 with check nos. 19443, 19470 and 19547 thru 19935 void.
2. Affirm the Hearing Examiner's Recommendation to Approve a Conditional Use Permit, Subject to Conditions, to allow the construction of 7 duplexes within a residential zone; Scrupps Development; PA 9510050.
3. Affirm Hearing Examiner's Recommendation to Approve Rezone from Rural Use to Single Family Residential 9600; Marjory Homan; PA 9511054.
5. Authorize Mayor to Sign Contract with Urban Forestry Services, Inc. for Comprehensive Urban Forestry Plan.

(4. Moved to New Business #5)

STAFF'S BUSINESS:MAYOR'S BUSINESS:CALL ON COUNCILMEMBERS:PETITIONS & COMMUNICATIONS:

None

PRESENTATIONS:

1. M. Ward Hinds, MD, MPH; Health Officer; Snohomish Health Dist.

EXECUTIVE SESSION:

1. Litigation.

7:36 p.m.

(No Action)

RECONVENED:

7:58 p.m.

REVIEW BIDS:

None

CURRENT BUSINESS:

None

NEW BUSINESS:

1. Request re USS Missouri. Res. 1776 Approved
2. Exemption from Compulsory Garbage Collection. Continued to 2/26/96
3. Utility Variance Ralph Monty; ) Cont. to 2/26/96 or  
167th St. Smokey Pt. Blvd. UV95-020) 2/12/96 if information
4. Utility Variance Ralph Monty; ) is available earlier  
167th St. Smokey Pt. Blvd. UV95-021)
5. Golf Course Architect Contract Approved w/changes

ORDINANCES & RESOLUTIONS:

None

LEGAL MATTERS:

None

ADJOURNMENT INTO EXECUTIVE SESSION:

10:50 p.m.

1. Litigation.

(No Action)

RECONVENED & ADJOURNED:

11:30 p.m.

MARYSVILLE CITY COUNCIL MINUTES

JANUARY 8, 1996

7:00 p.m.

Council Chambers

Present:

- Dave Weiser, Mayor
- Councilmembers:
- Donna Wright, Mayor Pro Tem
- John Myers
- Ken Baxter
- Donna Pedersen (excused)
- Mike Leighan
- Otto Herman
- Shirley Bartholomew

Administrative Staff:

- Dave Zabell, City Administrator
- Steve Wilson, Finance Director
- Grant Weed, City Attorney
- Gloria Hirashima, City Planner
- Ken Winckler, Director of Public Works
- Jim Ballew, Parks & Recreation Director
- Wanda Iverson, Recording Secretary

CALL TO ORDER:

Mayor Weiser called the City Council meeting to order and led 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:

*Both for a one month period of time.*

CORRECTED: SEE 1/22/96 MINUTES

Councilmember Myers noted in the minutes of the 1/2/96 Council meeting on page 2, in the third paragraph from the bottom, that the 53,000 items circulated at the new library was for only one month; 34,000 items circulated in the old library was for one year. Also, on page 4, in the fourth paragraph, it was noted that only Councilmember Leighan was against the motion and so it passed 6-1.

There being no further corrections, Councilmember Herman moved and Councilmember Myers seconded to approve the 1/2/96 Council minutes as amended. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS: None.

CONSENT AGENDA:

1. Approval of Dec. 1995 Payroll in the amount of \$741,308.81; paid with check nos. 19427 thru 20169 with check nos. 19443, 19470 and 19547 thru 19935 void.
2. Affirm the Hearing Examiner's Recommendation to Approve a Conditional Use Permit, Subject to Conditions, to allow the construction of 7 duplexes within a residential zone; Scrapps Development; PA 9510050.
3. Affirm Hearing Examiner's Recommendation to Approve Rezone from Rural Use to Single Family Residential 9600; Marjory Homan; PA 9511054.
5. Authorize Mayor to Sign Contract with Urban Forestry Services, Inc. for Comprehensive Urban Forestry Plan.

(4. Moved to New Business #5)

Councilmember Myers moved and Councilmember Herman seconded to approved Consent Agenda Items 1, 2, 3 & 5 with Item #4 moved to New Business on tonight's agenda. Passed unanimously.

STAFF BUSINESS:

City Administrator Zabell reminded Council of the AWC Legislative Conference coming up 2/6 & 2/7 and for them to get their RSVPs in to Lillie.

City Planner Hirashima reported the Planning Commission is now finished with the Small Farms Ordinance which will come before Council in a month, after the Planning Commission holds a public hearing.

Public Works Director Winckler reported the annual pre-construction meeting for contractors will be held this Wednesday at Public Works. Also, there will be a RUSA meeting 1/11/96.

MAYOR'S BUSINESS:

Mayor Weiser mentioned upcoming multi-cultural diversity assemblies to be held at MPHS; Lillie Lien has more information if Council is interested.

2. 1/9/96 Adult Entertainment Review Committee to hold a public hearing at the Library regarding land use.

CALL ON COUNCILMEMBERS:

Councilmember Leighan asked about adopting City standards within the UGB and Mayor Weiser stated that a "Phase 2" planning process and annexation policy is being looked at; the county is reviewing and there are some provisions in the GMA but each city has different standards and the county is on notice of the interest by citizens to institute such standards and policies within the UGB.

Councilmember Wright announced an upcoming 2/25/96 Cities & Towns meeting in Lynnwood and stated she will be attending the AWC Legislative Session both days (2/6 & 2/7).

Councilmember Baxter asked about a Phase 2 Critical Water Study Area meeting and Public Works Director Winckler explained there was a staff meeting and they discussed strategies with regard to systems in south county, if each purveyor would be considered a separate user or as part of a consortium. He said the City's recommendation was that things continue through expansion processes and that is the recommendation that will be generally made along with PUD, Stanwood, Arlington. He promised to keep Councilmember Baxter informed of any future meetings.

Councilmember Myers asked about the City Council agendas on the public access channel. He had heard complaints that the action taken at the last Council meeting is shown but no upcoming agenda.

PRESENTATION:

**1. M. Ward Hinds, MD, MPH; Health Officer; Snohomish Health Dist.**

Dr. Hinds referred to a recent publication, "Community Health Assessment" and also passed out charts from that publication to Council. He used the overhead for the charts and reviewed life expectancy in Snohomish County, mortality rates, causes of death, how Snohomish County compares with the rest of the nation/world, homicide rates, AIDS incidence, TB incidence, tobacco use, teenage suicide rates, Healthy People 2000 Objective.

Councilmember Bartholomew asked about the increase in teenage smoking and Dr. Hinds said they do not know why this has increased because their surveys are done by phone and must have parental consent for the survey. Also, the surveys done informally at local schools are not representative of teenagers who have dropped out of school. He also noted he has no definitive reasons for the increase in teenage suicide, whether it has to do with a perception of an uncertain future, lack of jobs, economical situation, possibly influence from TV and the movies, availability of hand guns. He also noted a decline in AIDS incidents in the county which is attributable, he feels, to increased education, effective prevention activities, such as the needle exchange.

EXECUTIVE SESSION: 7:36 p.m.

Mayor Weiser called an Executive Session to discuss a legal issue that came up this afternoon.

RECONVENED: 7:58 p.m.

NEW BUSINESS:

**1. Request Regarding the USS Missouri.**

Mayor Weiser referred to the letter in the packets from the Mayor of Bremerton and their desire to receive support to have the USS Missouri permanently moored in Bremerton.

After brief discussion, Councilmember Bartholomew moved and Councilmember Myers seconded to adopt/approve Resolution 1776 and transmit a copy to the City of Bremerton. Passed unanimously.

**2. Exemption from Compulsory Garbage Collection.**

City Administrator Zabell reviewed the agenda bill and explained the unique circumstances of Mr. Yunge's being on a small farm and able to accommodate their own garbage, the fact that there are only about 6 small farms within City limits and it's more costly to serve these properties. He stated the Public Works staff recommends exemption but the City ordinance would need to be revised if the exemption were given.

Councilmember Herman suggested this issue could be covered under the Small Farms Ordinance as a further attempt to allow them to survive and exist. City Planner Hirashima noted the minimum size for a small farm in the Small Farms Ordinance is 2.3 acres, however a smaller size might be included. She added they are attempting to work from a list of farms in the watershed which would be about 20 total, 12 or less within City limits.

Councilmember Baxter said he could see some future problems here; there are several people who object to mandatory garbage collection and they don't have small farms and perhaps a reduced service should be considered as opposed to exemption from mandatory garbage collection. He noted that one of the reasons the City decided to stay in the garbage collection business was because they could count on a certain amount of revenue from mandatory garbage collection.

There was further discussion regarding being inundated with requests for exemption.

Rocky Yunge, 8112 67th Av. NE, addressed Council and stated he can understand the Council's concern about the flood of requests. He said he has been on the same farm for 35 years, it's 6 acres that was just added to the City 5 years ago and he takes care of his own garbage as he has for many years and it costs him less to take his garbage to the transfer station twice a year than to have it picked up by the City. He conceded that it is a difficult call for the Council to make but he wanted to go with the common sense approach on it.

Dan Verone, 5703 67th Av. NE, addressed Council and said he objects to what he sees as an "imposed tax"/mandatory garbage collection also. He cited that it is very expensive, that he rejected it after 2 months and takes his garbage to the dump four times a year. As far as the health issue, he keeps it in plastic bags and there is no contamination whatsoever from his garbage, he said. He noted there is a bigger problem he thinks with cats and dogs that are allowed to run free all over the county. He said he doesn't want to be charged for garbage when it costs three or 4 times as much as it is worth; he would rather see this on a ballot.

Councilmember Myers noted he serves on the Solid Waste Management Advisory Committee and they are considering mandatory garbage collection county wide so it may not matter what Marysville decides here.

Mayor Weiser explained the different jurisdictions and after annexation into Marysville, the City doesn't start picking up garbage for five years.

Councilmember Wright noted a number of business people have complained to her about overfilled dumpsters from others adding garbage illegally to business dumpsters, people putting their garbage under their houses in the crawl space and other unsanitary practices.

Mr. Verone said he knows there is a problem but he disagrees with the way it is being imposed. He reiterated that he takes care to make sure there are no health problems with his garbage and it bothers him that Council's concern is that they will have a lot of people wanting the exemption; he said he doesn't think that's the way to handle it.

Mayor Weiser noted part of the discussion when the City decided to stay in the garbage business was that there be different rates to accommodate different needs and this did go through a public process at that time.

Councilmember Bartholomew noted the recycling bins at Hereth's are being operated by Mr. Hereth as a business and he could close that business up at any time, so people should not be counting on that service forever. *Mr. Hereth operates the recycling domes as a public service at his place of business.*

CORRECTED: SEE 1/22/96  
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Councilmember Leighan calculated that at \$18 per truckload to the dump, four times a year it would cost \$72 as opposed to \$84 per year for the monthly City rate, which works out to only a dollar a month extra.

There was further discussion about recycling efforts, people who do not dispose of garbage properly, need to review City policy, reorganizing the Solid Waste Committee to review rates, mandatory pick up, postponing decision until last meeting in Feb., including this in the Small Farms Ordinance (public hearing in 3 weeks), need to have assurance of finances/revenues, not limiting review to small farms.

Councilmember Baxter moved and Councilmember Myers seconded to continue this until the Compulsory Garbage Collection Committee can review the rules and report back to Council, 2/26/96. Passed unanimously.

**3. Utility Variance Ralph Monty; 167th St. & Smokey Point Blvd.; UV 95-020.**

City Attorney Weed stated firstly this is a public meeting and not a public hearing. Secondly, that the court recorder in Council Chambers is not taking the official record of the Council Minutes, the normal Recording Secretary is taking the minutes and seated to the right of Councilmember Bartholomew. Thirdly, Mr. and Mrs. Monty and their partners are parties to a lawsuit in which Judge Thibodeau denied their request for a writ of mandamus without prejudice; his decision was based primarily on Montys' failure to exhaust their administrative remedies, particularly the fact that they had not requested or availed themselves of the variance process in the Marysville City Code.

The public meeting tonight is to consider a variance request and City Attorney Weed reviewed MMC Section 14.32.060 subsection 4 regarding variance criteria to be met:

1. That there are exceptional or extraordinary circumstances or conditions applying to the subject property or as to the intended use thereof that do not apply generally to other properties in the same vicinity;
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by owners of other properties in the same vicinity;
3. That the authorization of the variance will not be materially detrimental to the public interest, welfare or the environment;
4. That the granting of the variance will not be inconsistent with the long range plans of the City utility system, or jeopardize utility availability for properties within the City limits.

He noted there is also language in the code stating that in authorizing such a variance, the Council can attach such conditions as they deem necessary to carry out the purposes of MMC 14.32 and to protect the long range plans of the City utility system in the public interest. Also, each variance to be considered on a case by case basis and shall not be considered as setting precedent. He added that there are additional conditions under MMC 14.32.040 and 14.32.050 as per information in the packets.

Finally, he noted it is the staff's intent to submit for the record items listed on the blue agenda bill as well as a copy of all the applications and attachments that have already been submitted in connection with the lawsuit action as part of that file and will be made a part of the record tonight.

Public Works Director Winckler reviewed the agenda bill in the packets:

On June 13, 1995 the applicant submitted a Utility Commitment Letter request for (18) water connections and (18) sewer connections for property located at 167th Street and Smokey Point Blvd. That was later changed on December 14, 1995 to (14) water connections and (14) sewer connections. The utility commitment letter request was denied since the criteria for MMC 14.32.040 which states particularly that the applicant sign an annexation covenant could not be met.

The property is located outside Marysville City limits however it is within the RUSA boundary, Marysville CWSP boundary and it is also within the Urban Growth Boundary. The property is fronted by an 8" water main and a 16" water main on the east and west sides of Smokey Pt. Blvd., along with a 12" PVC sewer main in Smokey Point Blvd. and it is noted the RUSA Committee and Public Works Staff reviewed this utility variance on December 21, 1995. Their recommendation is that Council deny approval of the utility variance for (14) water connections and (14) sewer connections since the applicant is unable to comply with the criteria set forth in MMC 14.32.040 and 14.32.050.

City Administrator Zabell explained it has been Marysville's long-standing policy to provide water and sewer service to property owners within City limits and this has been a policy of the City for more than two decades now. He also noted Marysville is not the only purveyor of water and sewer utilities in the area requested (Smokey Point), that the property is located within ULID #1 whose purpose was to provide a funding mechanism for sewer collection lines within that portion of Smokey Point which was felt would be part of an annexation to Marysville. The ULID funded only sewer collection lines and did not in any way fund the main line necessary to transmit the sewage to the Wastewater Treatment Plant, nor the lift stations, nor the Wastewater Treatment Plant, no water distribution lines, no water transmission lines, no water reservoirs. He noted the citizens of Marysville

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have spent tens of millions of dollars over the last few decades developing water and sewer systems to service City limits and serve areas outside the City limits which could meet the conditions set forth in the RUSA code. He went on to say the MMC sets forth criteria including the property being suitable for ultimate annexation to Marysville and that the property owner favor the City with an annexation covenant or a petition for annexation to the City of Marysville at the time water and/or sewer service is applied for. In this case, the subject property is included on the Arlington annexation petition and unfortunately is not in a position to be able to sign an annexation covenant for the City of Marysville nor to sign a petition for annexation to the City of Marysville.

Dennis Jordan, Attorney, 2907 Hewitt, Everett, WA 98201, addressed Council, stating he represents Montys, Stampf, Hudifer and Sandstrom. He stated it is true that Montys cannot comply with the annexation covenant for petition on one of the parcels but noted there are actually two parcels in question: A 5 acre parcel west of 99 and a 26 acre parcel east of 99. The 26 acre parcel is intended to be developed into a commercial space and Montys did not sign the Arlington annexation petition on this one. The annexation petition was signed by Fred Wegrum who was Montys' predecessor, however Montys did sign the Arlington annexation petition with respect to the 5 acre parcel on the west side of 99.

CORRECTED: SEE 1/22/96  
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It was clarified that the 26 acre parcel is the one that carries the request for (14) water and (14) sewer connections. Mr. Jordan stated he is speaking about both parcels; the only thing that distinguishes the two is that they did not sign an annexation covenant with the City of Arlington on the 26 acre parcel, Fred Wegrum signed the petition.

Mr. Jordan said the variance request is twofold: 1) They can't provide an annexation covenant or petition and 2) because of the action of the Boundary Review Board last month, it can be conceded that if that action holds up, this property would be included as not suitable for annexation to Marysville. However, they believe there are special circumstances upon which the variance on both properties should be granted:

- 1) Participation and payment for a sewer LID. Even with distinguishment about paying for the main lines, etc., the fact is that they paid for something and that something is the right to have their property served by sewer, otherwise they've paid for naught and he said he would point out to Council that he can think of a circumstance where they did not sign an annexation petition into the City of Arlington but everyone else in that area did, thereby writing Montys into the process. That did not specifically occur here but the fact is whether they signed or not, the Boundary Review Board approved the annexation so it doesn't matter how you get there, and lack of one signature on the petition probably would not have had an affect on the overall petition for annexation. He noted that from his standpoint, they wished something else had happened in that case but at the time this issue came up, their signature did appear on one annexation petition in terms of their seeking a letter of commitment for utilities. He concluded they were stuck with the process running its course. It could have resulted in the annexation petition ultimately being discharged or being defeated because of court action but the fact of the matter is that they remain under the Boundary Review Board at this time. So they paid for something and if they are not able to hook up to Marysville sewer, then they have paid for nothing as opposed to the intent of receiving something.
- 2) Another special circumstance is that others are being provided the services that Montys are requesting. People on either side of them are being provided service yet Montys are not being

provided the service because they have been brought into the City of Arlington. They are simply asking that they be treated like the people on either side of Montys and be provided service, subject to what is ultimately going to happen anyway, and that is the two cities agree on some interlocal process whereby they either buy the system from Marysville or Marysville continues to service the area as they have for years and the property owners continue to pay Marysville the service fees.

- 3) Another special circumstance Mr. Jordan said he feels exists in this case and may get into a discrimination issue, is that Kentucky Fried Chicken has already been allowed to hook up to the system. The only difference is that KFC had their building up but neither signed the annexation petition.

Mr. Jordan noted there is a substantial hardship imposed on his clients in not being able to obtain variances in that they have no other immediate source of utilities. They purchased the property with the intent of developing it, they have obligations they are paying on the property and at this point in time, without utilities, they are unable to proceed with development and are not even able to apply for a building permit at this time. He pointed out that in prior variance requests, the City of Marysville has imposed conditions that if annexation is ultimately approved to the City of Arlington, then Marysville has the right to disconnect the utilities from the various property owners they granted temporary approval to. He said he would point out to Council that if there is any intent of imposing a condition like that on the Montys, that is the same thing as saying they cannot hook up to the utility because it will not allow them to obtain financing, it will not allow them to obtain a building permit from Snohomish County. He added that in the cases where a temporary approval was given, a building permit was already given by the county and they couldn't withdraw or prevent them and in most cases, the buildings had already been constructed at the time the utility issue came up.

Councilmember Herman asked if Mr. Jordan was saying that the variance is a request for a permanent connection or not at all and Mr. Jordan said he was indicating that if Council imposed a condition, they are asking for hookups and if Council imposed that condition, they would have no choice but to go along with it, however it will not do them a lot of good because they cannot get financing with a temporary hookup. No lender is going to give the financing for a multi million dollar type of development they are going to do. He said he was not saying they would reject it, because that's the City's prerogative, but that condition would not do them any good because they will not be able to move forward with their projects and that is what their ultimate objective is. He added that they do not have the ability to accept or reject a condition, that if the City of Marysville grants a temporary hookup, and has the right to disconnect utilities, that would be the same thing as giving his client a "no" that they can't hook up to the utilities as it will not allow them to obtain financing, it will not allow them probably to obtain a building permit from Snohomish County. He noted that all the other grants that the City attached that condition to, the building permits had already been issued by the county, they couldn't withdraw them and in most cases, the buildings had already been constructed at the time the utility issue came up which was not something that was anticipated.

Councilmember Herman asked if the request was for a permanent connection or none at all.

Mr. Jordan reiterated that if the City of Marysville imposes the condition they would have to accept the condition however, the condition as outlined, would not do them a lot of good because



they cannot get financing with a temporary hookup, the lender is not going to provide financing necessary to do the multi million dollar kind of construction they are going to do there. He said he is not saying they would reject it, because that's the City's prerogative to give it and place the condition on it but it just won't do them any good. It won't allow them to move forward with their projects and that's what their ultimate objective is. He said he was just trying to head off that kind of conditioned approval because it just doesn't accomplish much for them. He added that a temporary hookup is fine for Kentucky Fried Chicken or the grocery store, that the City of Marysville gave a temporary hookup for, because it still allowed them to hook up because they had their buildings in place, nobody was going to prevent them from doing so, it was not going to retard their development but in Montys' case, if it's a temporary hookup, no lender will provide the type of financing they need and he said he doubts the Building Dept. at Snohomish County will even issue a permit unless they can provide an approval for permanent utilities. In the other cases, the county assumed that permanent utilities existed, he said, even though there was not a utility commitment letter from the City. The county, because there is only a temporary hookup that was ultimately approved, is not going to come in and pull a building permit for the units already been constructed.

Councilmember Herman noted there is a distinction between the other properties and Mr. Jordan said yes, simply because the other buildings were up but he doesn't believe a distinction exists in terms of the reason for imposing the condition, it's just from a practical standpoint imposing the condition didn't harm them any because they already had the financing in place, already had the building in place and imposing the condition for Montys would prevent such a development.

He said he wished to indicate to the Council that in granting the variance, one of the questions is whether it affects long range utility plans of the City and the City already serves that area. The City already provides the bulk of the area with the same service that the Montys are requesting now. It's going to cost them \$300,000 to \$400,000 in connection charges to the City of Marysville to be able to hook up into the system and secondly, in terms of an interlocal agreement, the City of Marysville can turn around potentially and sell the entire system to the City of Arlington or for the City of Marysville to decide they want to retain the system and is going to retain the ability to service the area and collect the service fees from the area. From a practical standpoint, he said it doesn't seem to him that this jeopardizes the long range ability of the City to manage its own system because users are paying substantial fees that are designed to pay for those kinds of things.

Also, if the City of Marysville is successful in negating the Arlington annexation process, by allowing Montys to hook into the existing system, Montys will be able to proceed with the construction of their project which ultimately may then add an additional tax base to the City of Marysville if Marysville ultimately annexes the property. Even if they are unable to sign an annexation petition at this point in time, he said one of the conditions Marysville could certainly impose on them is if they are ultimately able to sign an annexation petition because of the success of the City of Marysville's litigation against the City of Arlington, then certainly that is a condition Marysville could impose and probably would anyway, if the City were to grant the variance but at this point, all they can do is agree to sign a covenant in the event as the result of finality of appeal, etc., that they are in a position to be able to sign one.

Mr. Jordan stated he has been in contact with representatives of the City of Arlington and it seems to him that the interlocal agreement issue between the two cities can go on and on, and this

property could end up in either Arlington or Marysville but there is no justifiable reason for not making the decision about the utilities acquisition.

He said one last point he'd like to make is that in the court litigation, they have challenged the applicability of the RUSA ordinance to the Monty property that's located within the LID and the court has essentially directed them to exhaust administrative remedies so they are assuming the RUSA ordinance does apply and simply asking for a variance to the provisions relating to the signing of the annexation covenant and relating to the suitability for annexation.

Councilmember Baxter asked if they applied for water and sewer from Arlington and Mr. Jordan said no, because it is their understanding that it is not immediately available and will not be for some period of time.

Councilmember Herman asked if Arlington indicated what period of time that might be and Mr. Jordan stated his recollection is that it will be a year to a year and a half even on an emergency basis even to provide water and sewer to the area. He said his conversation was with Thom Meiers and Mr. Jordan had been talking about making application for emergency water and sewer; this conversation occurred sometime ago, much before the BRB hearing. He added that the conclusion his clients came to was that water and sewer would not be provided by Arlington soon and not going to be practical for Montys' project.

Mr. Jordan reiterated that they are asking for a variance to the Marysville RUSA ordinance and their argument is centered around the fact they paid for something and they are not getting anything.

City Administrator Zabell noted their argument for sewer is having paid under the ULID and asked what their justification is, they feel, for asking for water service from Marysville.

Mr. Jordan stated you can't have sewer without water and basically they are talking about a variance to the RUSA ordinance which specifically provides that the City of Marysville won't provide sewer unless the customer also takes water. Also, he pointed out you can't funnel the sewage without liquefying it through the use of water.

City Administrator Zabell pointed out that there are some customers who have Marysville sewer but not Marysville City water, they have wells, eg.

Mr. Jordan responded that for this project, wells are not feasible because they do not have the room nor the capacity for them on the property. He noted that is an engineering issue; the main point is that the RUSA ordinance says on this size of a project they have to take both water and sewer services together from the City. So what they are basically doing is asking for a variance to the sewer LID which then leads to a variance for water service also, he said. He noted if the City of Marysville grants a variance for sewer but not for water, contrary to the terms and conditions of the RUSA ordinance, then obviously they will have to look for a different purveyor as far as water is concerned but they are here asking for water and sewer for both parcels.

City Administrator Zabell reviewed their request for a variance from the RUSA ordinance and Mr. Jordan clarified that he is here because the court has directed them to exhaust their administrative remedies and while they maintained at the time of the original court decision that the RUSA ordinance wasn't applicable at all, the Superior Court has indicated that Montys will not consider that argument until they have gone through the

process of exhausting administrative remedies which requires them to acknowledge the validity of the RUSA ordinance. He said he agrees there are some inconsistencies but their action has been forced upon them by the court.

Councilmember Herman said he was unclear as to Arlington's ability to provide water and sewer, timelines, etc.

Mr. Jordan stated he had not had any recent conversations at all with Arlington; the issue is that Montys paid for a ULID to the City of Marysville and they feel they paid over a fifteen year period for two properties for a contribution for something having to do with the ULID, the sewer line and in terms of what comes to the City of Marysville in the way of hookups that come as a result of the contribution that ULID participants made to Marysville. So they are trying to say they have a "right" by virtue of that participation but by virtue of Arlington Annexation, Marysville's RUSA ordinance prevents Montys from hooking in unless they have a variance so they are essentially saying, they paid for something and are asking for a variance from the strict requirements of the code which they can't possibly meet because of the underlying Review Board decision. Again, having allowed Montys the same privilege as everybody else already has in that area, then deal with the matter in the proper form which is an interlocal agreement or some other process that Marysville and Arlington is going to ultimately be doing certainly with respect to the other properties that are in the annexation area that are being served by the City of Marysville. This, according to what he's heard, but in the meantime he said he feels his client is being "held up" as in the O.K. Corral, not held up as in terms of time.

Councilmember Leighan asked if Mr. Jordan's client has received water and sewer for other projects in the past and whether they were aware of the criteria.

CORRECTED: SEE 1/22/96  
MINUTES Wiegren

Mr. Jordan said yes to both questions but they have never applied for coverage on property within the LID, all their properties have been outside the LID and Montys were aware of the RUSA requirement for an annexation covenant. But there is a distinction being made here without a difference because the property was purchased by the Montys from Fred Wegrum who signed the annexation petition, so it was outside Montys' control and whether the annexation petition was signed or not, the Boundary Review Board annexed an area which puts anyone in that area in the position of being annexed, whether they wanted to be or not. And being part of that annexation, is in violation of the Marysville RUSA ordinance.

City Administrator Zabell asked about the 14 different lots and 14 different buildings and timelines.

Mr. Jordan stated his understanding is that there was a parcel sold for a work release facility and the state backed out on that parcel because of the utility issue. He said it is his understanding that the development of that property is going to occur on a presale type basis but the infrastructure has to be in first.

Councilmember Leighan noted he serves on the committee that reviewed work release sites and was not aware of a contract or offer on that property from the state. He said he believed Mr. Monty might have presented it for consideration.

Mr. Jordan said he understood it was a primary site for consideration by the state and then it was withdrawn specifically because of the issue of the utilities and was dropped. It was also his understanding that the state went back into the process of re-defining or defining other sites they could look at because they rejected the other site. He reiterated that the site was strongly considered but ultimately rejected because of the inability to provide utility services.

Councilmember Leighan stated it was one of six sites that were reviewed and there was a letter from Mayor Kraski not recommending Mr. Monty's property because of close proximity to population and a daycare facility.

City Administrator Zabell pointed out that if a variance were granted, it would only be good for six months and asked if the 14 buildings would be ready in six months for connection to utilities.

Mr. Jordan said the idea would be to put the infrastructure in first if the City allows six months to not necessary hook up to a building, but in terms of just creating the infrastructure for the utilities and having it in place, then that can happen. He said he was unaware of the provision of having to physically make a connection in six months to a building and they are obviously not able to do that.

It was noted that in the case of a formal plat, the applicant would be allowed a year to hook up.

Ralph Monty, 17215 Smokey Pt. Dr., Arlington, addressed Council. He referred to Mr. Baxter's comment about applying to Arlington for utilities and Mr. Monty asked why they should because they paid for the ULID. He invited the Council to consider the amount that was paid for all the properties and to give the participants interest on that money for the last 25 years. He referred to the situation as Marysville's own personal war with Arlington and has nothing to do with him. He said when he put the shopping center in out there, he never signed any papers that I would have to annex into Marysville and so that looks to him like Marysville is being selective. He said he would like to see copies that he has signed on these properties in the past that everybody talks about. He said he knows about a few of them but he'd like to see copies from the City of Marysville.

City Administrator Zabell stated Mr. Monty signed annexation covenants in 1978, 1982 and 1983 and all Mr. Monty has to do is come down to the Planning Dept. to see them.

City Attorney Weed added that if Mr. Monty could provide the addresses and/or legal descriptions of each of the properties in question, the City can find the records for Mr. Monty.

Mr. Monty countered that he knows he didn't sign a covenant for a lot of the things he built in the past and asked if Marysville was just picking and choosing which ones to serve utilities to. He said he didn't sign for the office buildings at Smokey Point nor for the apartments in the back nor for the shopping center.

Councilmember Herman clarified that the City of Marysville is just trying to follow the ordinances and if Mr. Monty would provide the information as stated by the City Attorney, the City can provide the copies of covenants Mr. Monty is requesting.

Mr. Monty asked if Kentucky Fried Chicken was just "pick and choose" but Councilmember Herman reminded Mr. Monty that his attorney had fully explained that situation and the distinguishing characteristics between the different properties.

Mr. Monty reiterated his request for copies of the covenants and was told again to please provide addresses and approximate dates the hookups occurred so the City can look them up. Mr. Monty asked about development prior to RUSA but City Administrator Zabell clarified that the requirements of the annexation covenants predated RUSA.

Councilmember Baxter noted the Council is here to listen and have treated Mr. Monty cordially in the past. He said it would be appreciated if Mr. Monty would be a little more cordial also.

Henry Stampf, 11908 N. Lake Shore Dr., Lake Stevens, WA 98258, addressed Council and noted he is one of the partners in the 26 acres. He said it is his understanding that the Marysville City Council perceives their actions to be in the best interests of the City of Marysville. He said he also perceives there are emotions involved here that are clouding the issues. He pointed out that you can have lose-lose, win-lose and there are a couple of entities that have themselves in an unworkable position, or at least that appears to be so. But there is another entity out there which is a workable position and he said he would like to encourage the Council for the good of the community, for the growth of the area for good feelings between two cities to come to a workable position and not be like Seattle and Tacoma who have been fighting forever. He said he sees the situation between Marysville and Arlington as the same situation only on a smaller scale and he'd like the Council to think about this whole thing.

Dr. Stampf pointed out he's been a business man since 1967, a chiropractor in Smokey Point since 1976, now retired. He pointed out that there is development all around the subject property and Marysville has a certain amount of money in its coffers from the ULIDs and everyone should get on with it; he noted that Marysville will probably have an interlocal agreement eventually and should be doing other more important things than arguing over these issues. He said he has had the property since 1974 and wanted to use it for his retirement, it's not fair that he has to use money he had for his retirement trying to keep this project alive, waiting for utilities and getting caught in the middle of a problem between Marysville and Arlington. He urged Council to put aside emotions, egos, personalities and get this matter settled.

Councilmember Baxter asked him if his perception was that the whole problem was a conflict of personalities and Dr. Stampf said no, that's not what he said, just that these things should be put aside and get on with making a decision here.

Councilmember Herman assured Dr. Stampf that in spite of emotions that may occur, Marysville City Council can make good decisions.

Dr. Stampf clarified that it was just his observation that there were some things clouding the main issue at hand and if there is any way Marysville can come to a decision, it would solve a lot of problems for everyone.

Maryann Monty, 17215 Smokey Point Dr., Arlington, addressed the Council. She stated she has served on committees that affect others and know the Council has a responsibility to those who elected them. She said as far as applying to the City of Arlington for utilities, that doesn't make sense and if she was a Marysville taxpayer, she would question the value of the sewer line that has been put in, especially if another one from Arlington has to be put in right next to it. That would just be waste of all the money that went into the Marysville coffers. She noted Marysville is in a position to collect connection fees from people who want to hook up and that's a lot of money. If Marysville sells these lines to Arlington, Marysville would still receive the revenue, the money is not going to go back to the property owners, she pointed out. But she noted that the Council has the responsibility of making sure the money is spent wisely that is collected. She conceded she saw a petition in 1983 that the Montys signed but that is the first and only time she saw a petition that Montys signed. She noted one of the questions that came up in the litigation was validation of the signatures so maybe the City should question the validity of the signatures in 1983.

Bill Foster, 2006 Cedar Valley Rd., Lynnwood, Attorney for Vine Street Associates, addressed Council. He stated his client owns property which is essentially behind the Gateway Shopping Center and he echoes Mr. Jordan's comments. He stated his client is going to submit their application tomorrow for a utility commitment letter as per the City of Marysville's requirements. He said he doesn't think hooking up to sewer and water is going to overburden the system and it's not inconsistent with the long term plans of the City. He added the City of Marysville has facilities in the Smokey Point area already provided with water and sewer and Marysville is not going to take those lines out nor is Arlington going to install lines next to Marysville's, so providing further service to that area is consistent with the long range plans. He pointed out that Marysville is also not going to disconnect the Gateway Shopping Center.

He stated Vine Street Associates and Montys' position is that they paid for something although they are not sure what, but Marysville does not have the ability to assess property if there is no benefit, they can't just assess for a 12" PVC line in the ground. Others can hook up only because they did not sign a petition but what about a non-signing business that is sucked into the decision because they were part of the 60% petition, he asked. He said it is almost amusing to him that the City of Marysville points out what they are not paying for, but not every citizen pays for everything, these things are paid for through taxes and assessments, there were ULIDs formed and assessed based on the benefit.

He said the second thing that's unique about Vine Street Properties is the entire water system was looped for fire flow and to provide water to the entire property that they are now trying to develop. The concern he has personally, he said, is what the rational basis is for saying Marysville is not going to hook these people up because Marysville has the capacity, have been paid connection fees plus monthly service charges and Marysville can sell the whole system to Arlington or enter into an interlocal agreement.

City Administrator Zabell pointed out that RUSA Ordinance 1242 referred to the health and welfare of the citizens of Marysville and the City of Marysville can't assume that the treatment center has infinite capacity.

Mr. Foster stated how Marysville controls the purse strings is by charging the customers and if more capacity is needed, Marysville needs a bigger tax base to enlarge the treatment plant. He said it's not his purpose to debate that issue but he thinks the City of Marysville has the ability to charge and to enlarge the tax base.

Mayor Weiser stated it has been suggested that Marysville sell a portion of the utility lines to Arlington but that presupposes that Arlington wants to buy it.

Mr. Foster agreed and added as far as the condition about Marysville shutting off a customer's utilities and the condition that the water and sewer has to be hooked up within six months, if those conditions were imposed on his client that would be the same as if the City of Marysville said "no".

Councilmember Herman explained that he heard a temporary hookup maybe useless to Mr. Jordan's client but he is not sure if enough information is available here tonight to make a decision and he wants to be fair.

Mr. Foster said the reality is that financing is very complex and unless they have a permanent utility agreement, they can't get this off the ground.

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Councilmember Herman said one of the issues the Council and City is sensitive to is the capacity of the Wastewater Treatment Plant and the situation may not be as simple as just paying more money into the system to enlarge the capacity. He said he believes it's possible to have a single user that could place the whole system out of compliance.

City Administrator Zabell agreed, especially in the case of a user that puts heavy metals into the system, for example. He said from an industrial point of view the City has to be very careful.

Councilmember Herman pointed out that the City of Marysville has a draft pretreatment ordinance in progress.

City Attorney Weed noted the City has the right to impose certain restrictions on what goes into the Wastewater Treatment Facility but only within the City limits; also, Marysville does not know if Arlington plans to follow Marysville's pretreatment ordinance and Marysville has no authority over zoning or uses in Arlington and these are issues that have to be considered between the two cities.

Councilmember Herman talked about environmental standards, past, present and future, noting these need to be addressed and it's not just a matter of getting more dollars.

City Attorney Weed noted the RUSA ordinance contemplated better control over what goes into the WWTF if the property is within City limits.

Councilmember Herman added the City has taken a modified approach to "if you annex you can get utilities" but there is no definite time limit as to when Marysville or Arlington can provide water and sewer; Marysville has no information as to Arlington's intent.

Mayor Weiser pointed out that on 12/21/95 Marysville sent a letter to Arlington asking for their intent and Arlington simply asked for more information and so Marysville still has no definite information at this time.

Councilmember Baxter commented that Marysville needs to address the issue of if Arlington owned sewer and water lines within this area, Marysville still has customers around the perimeter that have to be served and Marysville's system would have to run through the City of Arlington with no agreement between Marysville and Arlington, so Marysville doesn't know how that's going to be taken care of. If Marysville increases its customer base, it's just going to confuse the situation even more; right now, Marysville doesn't seem to be getting any answers from Arlington and it's not so simple. There has to be answers and commitment from Arlington in order to make some decisions, he concluded.

Mayor Weiser noted there is a workshop scheduled 1/29/96 and hopefully, representatives from the City of Arlington will be attending.

Councilmember Herman said he would like to have some kind of answer from Arlington and more information before making a definite decision on the utility request/variance at hand.

Mrs. Monty readdress Council, stating she is a bit confused. She said she is hearing that service to Smokey Point would somehow jeopardize the capacity of the Wastewater Treatment Facility.

City Administrator Zabell stated not necessarily, but its capacity is not infinite and once the property is within another city, there is far less control over what people put into the system.

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Mrs. Monty said she looked at the proposed uses in Smokey Point and it looked like Marysville wanted more industrial use, Arlington wanted more commercial use.

City Administrator Zabell stated sometimes commercial use is a heavier use than industrial.

Mrs. Monty said she would question the service to the Tulalip Tribes and their casino as a WWTF customer and City Administrator Zabell reiterated that if you have another city involved, Marysville has less control over the land use, zoning and discharge.

Mrs. Monty said it seems to her that there would be more control.

Councilmember Baxter pointed out that the Tulalip Tribes has not accepted the contract for service; they are not agreeing to Marysville's conditions.

Mr. Jordan readdressed Council and stated they don't want to compound the problem but do not feel one customer is going to compound the problem. Secondly, they will sign an agreement with regard to Marysville's requirements concerning the water and sewer use, that is, a restrictive covenant and are willing to go along with penalties, for example, disconnection in the event of contamination of the system as Mr. Zabell indicated.

Councilmember Herman said he would like to see compliance and enforcement discussed at the 29th workshop, especially when it involves another jurisdiction. *Covenants regarding the Wastewater Treatment Facility developed at the Jan. 29th Workshop, especially when it involves another jurisdiction, and also would like the City Attorney to look at ways to address the WWTF concerns.* There was discussion about Judge Thibodeau's decision, Arlington's intent, the upcoming workshop on the 29th, discussion at the RUSA meeting on 1/11/96 with regard to serving around the area, etc.

CORRECTED: SEE 1/22/96  
MINUTES

Councilmember Herman moved to continue this to 2/26/96 after the proponent seeks answers from Arlington and Councilmember Bartholomew seconded.

Mr. Jordan said they would have to think about asking Arlington their intentions; it's difficult for he and his client to come up with a decision here tonight and they could get back to Council or City staff by Monday of next week. He added he is not sure they are in any better position to get these answers from Arlington than Marysville is; he would want a list of questions from Grant Weed specific to the Monty property, he said.

Councilmember Herman stated he just wants to know Arlington's intentions about serving that area and the Monty property in terms of water or sewer or both and some kind of timeline for that.

Mr. Jordan said he would have to get back to the City of Marysville by Monday on this.

Councilmember Herman said that information will make the City of Marysville's decision a lot easier.

The motion was amended slightly: Councilmember Herman moved and Councilmember Bartholomew seconded to continue the matter of UV 95-020 to 2/26/96 or 2/12/96 if the information is available earlier. The motion passed 5-1, with Councilmember Leighan against.

**4. Utility Variance Ralph Monty; 167th St. & Smokey Pt. Blvd.; UV 95-021.**

Public Works Director Winckler reviewed the agenda bill, noting this is on the 5 acre parcel on which a 100 unit motel, etc. is proposed. City Administrator Zabell pointed out that the issues are primarily the same as the City Attorney pointed out under UV 95-020.



Mr. Jordan stated his testimony is basically the same as given for UV 95-020, with differences already given.

Councilmember Herman moved and Councilmember Bartholomew seconded to continue this matter to 2/26/96 or 2/12/96 if the information is received earlier (same motion as made for UV 95-020). Passed 5-1 with Councilmember Leighan against.

**5. Golf Course Architect Contract.**

Parks & Recreation Director Ballew reviewed the contract and stated the primary difference is in the fee structure; the architect is desirous of a percentage and a flat fee was offered. He reviewed in detail all changes including changes to sections on site visits, expert witness fees, hold harmless clauses, flat fee, mileage, travel time, flying time, attachments to the contract, errors and omissions policy, inclusion of City of Marysville officers, agents and employees. It was noted the City is to receive certified copies of the insurance policies in the file.

After discussion of each item, Councilmember Leighan moved and Councilmember Baxter seconded to approve the golf course architect contract with John Steidel, as outlined by Parks & Recreation Director Ballew, and to authorize the Mayor to sign the same on behalf of the City of Marysville. Passed unanimously.

ADJOURNMENT INTO EXECUTIVE SESSION: 10:50 p.m.

**1. Potential Litigation.** (No Action)

RECONVENED AND ADJOURNED: 11:30 p.m.

Accepted this 22<sup>nd</sup> day of January, 1996.

David Wuser  
MAYOR

Mary D. Swanson  
CITY CLERK

Standa A. Swanson  
RECORDING SECRETARY