

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING APRIL 13, 1998

CALL TO ORDER/FLAG SALUTE: 7:00 p.m. 00040

ROLL CALL: All present

MINUTES OF PREVIOUS MEETINGS:

1. 4/6/98 Council Meeting Minutes Approved

AUDIENCE PARTICIPATION: None

CONSENT AGENDA: Approved:

1. Approval of 4/13/98 Claims in the amount of \$733,483.27; paid by check nos. 38650 through 38946 with check nos. 38216, 38403, 38434, 38486, 38557, 38606, and 38646 void.

2. Approval of March, 1998 Payroll in the Amount of \$691,509.99; paid by check nos. 28535 through 28903 with check nos. 28434, 28503, 28504, 28524, 28527, 28533, 28534, 28545, 28546, 28547, 28658, 28661, and 28662 void.

STAFF'S BUSINESS:

MAYOR'S BUSINESS:

CALL ON COUNCILMEMBERS:

PRESENTATIONS: None

PUBLIC HEARINGS: None

CURRENT BUSINESS:

1. Professional Services Agreement; Lloyd Taubeneck Bldg. Remodel; Driftmier Architects, P.S. Approved

2. Mobile Home Park Standards; Code Amendment Request; Terra Firma Cont. to 4/27/98

3. Design Standards; Planning Comm. Recommendation Ord. 2187 Approved

4. Comprehensive Stormwater Management Plan Public Hearing 5/11/98

NEW BUSINESS:

1. Purchase of Edward Springs Water for Bottling & Resale; K.A. Development, Inc. Approved

2. Professional Services Proposal for Area Wide Rezone; McConnell-Burke, Inc. Approved

3. Short Plat of Seventy Eight Sixty Rezone/Variance Appeal; PA 9710049 Public Hearing 5/4/98

4. Grove Street Short Plat Rezone/Variance Appeal; PA 9707028 Public Hearing 5/4/98

5. Request to Amend Contract Rezone Appeal; PA 9801008 Public Hearing 5/4/98

6. Appeals Process - Title 15. City Attorney to draft ordinance changes

ADJOURNMENT: 10:44 p.m.

EXECUTIVE SESSION: 10:50 to 11:59 p.m.

1. Potential Litigation No Action

RECONVENED & ADJOURNED: 11:59 p.m.

MARYSVILLE CITY COUNCIL MINUTES

00040<sub>27</sub>

APRIL 13, 1998

7:00 p.m.

Council Chambers

00041

Present: Dave Weiser, Mayor  
Councilmembers:  
Donna Wright, Mayor Pro Tem  
John Myers  
NormaJean Dierck  
Donna Pedersen  
Mike Leighan  
Otto Herman, Jr.  
Shirley Bartholomew  
Administrative Staff:  
Dave Zabell, City Administrator  
Grant Weed, City Attorney  
Gloria Hirashima, City Planner  
Bob Carden, Police Chief  
Ken Winckler, Public Works Director  
Wanda Iverson, Recording Secretary

CORRECTED: SEE 4/27/98  
MINUTES

CALL TO ORDER/FLAG SALUTE:

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

ROLL CALL:

City Administrator Zabell called the roll with all members present/absent as indicated above.

MINUTES OF THE PREVIOUS MEETINGS:

**1. City Council Meeting; April 6, 1998.**

Councilmember Pedersen noted "NormaJean" was misspelled on page 1 but this had already been corrected on meeting minutes disk.

Councilmember Pedersen also noted on page 9, 5th paragraph, it should be Leif "Loney" instead of "Logie." On page 13, it was noted in the 7th, 9th and 11th paragraphs, Ms. "Bry" should be Ms. "Bray."

There being no further corrections, Councilmember Bartholomew moved and Councilmember Myers seconded to approve the 4/6/98 minutes as corrected. Motion passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS: None.

CONSENT AGENDA:

1. Approval of 4/13/98 Claims in the amount of \$733,483.27; paid by check nos. 38650 through 38946 with check nos. 38216, 38403, 38434, 38486, 38557, 38606, and 38646 void.
2. Approval of March, 1998 Payroll in the Amount of \$691,509.99; paid by check nos. 28535 through 28903 with check nos. 28434, 28503, 28504, 28524, 28527, 28533, 28534, 28545, 28546, 28547, 28658, 28661, and 28662 void.

Councilmember Myers moved and Councilmember Bartholomew seconded to approve Consent Agenda Items 1 & 2. Passed with Councilmember Leighan not voting on check #38933.

STAFF'S BUSINESS:

Police Chief Carden reported Loree Parker is now back home, doing better and people may call the police station and get his phone number if they would like to call and wish him well.

City Administrator Zabell reviewed handouts to Council:

1. Memo from Judge Trivett announcing Marysville's Law Day May 8th from 12:30 to 2:30.
2. AWC Directors & Officers elections.
3. AWC Conference 6/16/98 to 6/19/98 in Tacoma. Contact Lillie or Mary if you'd like to attend.

4. Snohomish County Tomorrow meeting of 4/22 postponed, next meeting 4/27/98.

City Attorney Weed reported about a recently decided case, Boding & Roderick vs Harris where it was ruled local elected officials had legal immunity when acting in a legislative manner.

City Planner Hirashima reported on the 3 requests sent to the county in July, 1997 for docketing. The three requests being processed and moving on to county council are concerning land use designations for the Highway 9 Reservoir property, Strawberry Fields and the UGA pocket between Marysville and Arlington. It is anticipated the public hearings will be over by August, she said.

Public Works Director Winckler reported he had received a letter from TIB Friday concerning SR 528 from 67th to 73rd, noting that project is one step closer to being done; there will be UTAT and ISTEAF funds on this project. State from 1st to Grove also looks very possible, he said, and the State and City are moving forward with both these projects. He reminded those concerned there will be a Utilities Committee Meeting 4/16/98 at 7:30 a.m. at the Public Works Building.

MAYOR'S BUSINESS:

Mayor Weiser referred to the previously handed out ballots to nominate citizen volunteers with the winner to be announced at the awards dinner 4/30/98 at the Ken Baxter Senior Community Center.

He discussed Strawberry Fields land use, process with county council.

CALL ON COUNCILMEMBERS:

Councilmember Leighan made the suggestion to call "dead end streets" instead "future road extensions" so the intent is clearer to the public as to what is going to eventually happen. He reported the Downtown Merchants meeting tomorrow at 7:30 a.m. will be at the Masonic Lodge and will feature Chief Carden as their speaker.

Councilmember Wright noted that during the last legislature, a bill passed regarding tobacco use by underage children and she said she would like to see the MMC updated to agree with the state law.

Councilmember Pedersen noted the Health District is looking at it being a misdemeanor for underage individuals to possess tobacco, also. She commented that over the years, the Health District has been responsible for getting vending machines moved away from the doors in bars, restaurants, etc., which has helped deter teenagers.

Chief Carden said this was something the police can take a proactive role in and his department is looking forward to direction from City Council.

Councilmember Pedersen reported on her attendance at the Library Board Meeting today: They thanked the City for the invitation to the Volunteer Social 4/30/98, they commented on how nice the parks grounds look, were wondering about the progress on the pedestrian crossing at the Library, to be completed this summer.

Mayor Weiser said the pedestrian crosswalk issue will be on the next Council meeting agenda. There is a representative coming from another city to make a presentation, he said.

Councilmember Pedersen said the Library Board is interested in getting some art displayed in the library and would like to see the City take the lead as far as an Art Commission/Council, otherwise they will do it. Mayor Weiser to follow up on this.

Councilmember Pedersen reported the Granite Falls Library has received a Washington Supreme Court decision to allow them to form a taxing district; Marysville is looking at this regarding forming a library district for other beneficial purposes.

Mayor Weiser noted Lee Voorhees is sending a copy of the court decision to City Attorney Weed.

Councilmember Pedersen announced that the Marysville Library has had a long term goal of beating the Lynnwood Library in items borrowed in one month and they did just that in March: Marysville had a circulation of 54,036 and Lynnwood had 53,763 items borrowed.

Councilmember Pedersen asked about the WSDOT presentation to be made to Council and Public Works Director Winckler said he is still pursuing this. He anticipates they will be able to come up around the beginning of May, he said.

Councilmember Pedersen expressed concern about tonight's heavy City Council agenda, saying she would like to know what other city's do as far as possibly ending meetings at a certain time, what out Councilmembers suggest, also expressing concern about staff workload involved. She also said she wished to follow up on televising of Marysville City Council meetings, noting Lynnwood has someone come in with their own equipment to televise their meetings.

CORRECTED: SEE 4/27/98  
MINUTES s/b "out"

She also followed up on a nine year request, that all maintenance agreements be tabulated for copy machines, etc., to find out if it's more economic for the City to "self-insure" vs paying for service contracts.

She referred to a Herald article about different corporations now hiring ethics officers and she said she thought this an interesting concept that she would like the City to take a look at.

Councilmember Myers said he's been approached by a couple citizens about putting up "Don't Drink and Drive" signs in memory of Nikki Deffries who was struck and killed by a vehicle on Sunnyside Blvd. Saturday night. There is no policy in effect at this time about this, it was noted.

There was discussion about a Norma Thompson Award (Norma was a strong advocate and member of MADD), putting up little crosses along the road, sometimes the signs can be a hazard, issue to be referred to the Traffic Advisory Committee, checking into other cities' policy, need family's permission to put up signs.

Councilmember Bartholomew reported she attended the Solid Waste Committee Meeting last Wednesday and there will be no immediate increase in the current tipping fee (\$89 per ton) however, it is anticipated annual dumping will increase to over 400,000 tons and they will have to start looking for a new landfill.

CORRECTED: SEE 4/27/98  
MINUTES

She also noted the passing of "Frisco" Mitchell, a former Marysville City Councilmember. His funeral will be tomorrow and she will be attending, she said.

Councilmember Herman reported he attended the Community Transit Board of Directors retreat last weekend and they had a good facilitator, with a presentation from Sound Transit/Regional Transit System. He reported commuter rail is scheduled to be operating in the year 2001 in Everett. He noted the policies now instituted may be favorable as far as districts joining the RTA, eg. no latecomer fees for newly annexed areas and all monies raised within that area would be expended only in that area for the first 5 years, at least. He said he would like Marysville to consider this at some future date, possibly.

CURRENT BUSINESS:

**1. Professional Services Agreement; Lloyd Taubeneck Building Remodel; Driftmier Architects, P.S. (cont. from 4/6/98)**

Public Works Director Winckler reviewed the agenda bill and noted the scope of work would be for the 1st and 2nd floor remodel and upgrading the electrical panel to accommodate a new air conditioning system. He reported favorable comments have been received about Driftmier, they have good experience and competency for prior work performed. He gave a breakdown of the total request for \$38,622.00, including a \$3,000 contingency figure. He noted the City's estimated project cost was \$155,000, it has been budgeted for and the Building Committee has approved. A one million dollar liability insurance clause is included in the contract, increased from the previous \$500,000 noted at last meeting.

Councilmember Myers moved and Councilmember Leighan seconded to authorize the Mayor to sign the contract with Driftmier Architects as recommended, including the change in liability insurance coverage to \$1,000,000. The motion passed 6-1 with Councilmember Herman against.

**2. Mobile Home Park Standards; Code Amendment Request; Terra Firma (cont. from 4/6/98)**

City Planner Hirashima noted this was continued at the applicant's request from last meeting and the applicant is not in the audience at the present time.

It was the consensus to set this aside until later.

**3. Design Standards; Planning Commission Recommendation.**

City Planner Hirashima reviewed the agenda bill presenting the draft ordinance, which is amending MMC 19.14.060, 19.14.080 and 19.14.090. She spoke about other cities' process/design standards.

There was discussion about setbacks, for example the building at 51st & Grove where the front actually has overhanging parts of the building over the sidewalk, discussion of mixed use zoning in the downtown area vs other areas of the City, bike paths, plantings.

There was discussion about having an ordinance in place with the Hearing Examiner process as we have now vs having a Design Review Board, discussion about parking in the rear vs the front of a mixed use building.

City Planner Hirashima noted one of the differences between the new language and the old is in roofline variation. She noted the recommendation on the agenda bill should be "Staff recommends approval of the draft ordinance by City Council" rather than what was shown.

Councilmember Herman reiterated the need to be careful about no overhangs of buildings in downtown Marysville because of the high pedestrian use of sidewalks.

City Planner Hirashima said staff can bring back different mixed use areas to be reviewed by City Council; several buildings have gone in away from the downtown area with zero lot lines but downtown was based on a pedestrian-oriented district which is a design that would not necessarily apply to a building further up north, for example. She added it might be appropriate to look at parking requirements and design standards.

Councilmember Pedersen said she wants to make sure the Planning Commission has completed their Comp Plan review, for example, before redoing the Design Standards review.

Councilmember Leighan asked about current project and whether they conform to Mixed Use requirements.

With regard to the building in question at 51st & Grove, City Planner Hirashima said there was a misinterpretation regarding an overhang and a projection of the building and the Planning Department does not expect that to happen again.

Councilmember Leighan noted he thinks the building actually is a nice looking building; it has nice roof modulation, maybe a little large for the property, but it's looking pretty good.

City Planner Hirashima noted often what happens is the Planning Department gets a lot of calls when buildings first start to go up, such as the Thriftway building, and then the negative comments stop as the building gets closer to completion and looking more like what was planned.

Councilmember Wright commented on how "Downtown Marysville" has changed its boundaries, how it used to just be from the water to 5th St. and now it seems to go up to Grove and east to 51st.

Councilmember Herman moved and Councilmember Myers seconded to adopt Ordinance 2187, enacting the design standard changes as recommended by staff. The motion passed 6-1 with Councilmember Leighan against.

#### **4. Comprehensive Stormwater Management Plan.**

Larry Wade reviewed the Hammond, Collier, Wade-Livingstone handout entitled "Suggested Revisions to City of Marysville Comprehensive Stormwater Management Plan, May 1998." He highlighted some of the elements of the Comprehensive Stormwater Management Plan, including mapping and inventory of the present system, identification of trouble spots, water quality and treatment program, draft drainage ordinance, capital improvement program.

He also spoke about detention facilities, funding options and outlined elements in the August 1997 version of the Comp Plan. He noted part of the proposal is to add detention and infiltration facilities and he said he would like to bring the language up to date regarding present facilities and detention ponds. He spoke about the MPDS requirements instituted in January, 1998 concerning water quality and the Chinook salmon being proposed for the endangered species list and how this is going to impact many standards.

Councilmember Leighan asked about the current status of standing water and flooding problems in Downtown Marysville and he was assured with the addition of infrastructure as proposed, these problems will be addressed.

Councilmember Dierck asked about impacts of the Endangered Species Act and Mr. Wade spoke about mitigation such as stream repair and enhancement, shade trees, removal of silt, improving water quality that can be done and will have to be done in order to comply with new regulations coming out.

Councilmember Dierck asked for specific page references and Mr. Wade said he'd get back to her on that.

Councilmember Bartholomew moved and Councilmember Leighan seconded to hold a public hearing on the Comprehensive Stormwater Management Plan Proposed Revisions May 11, 1998. Passed unanimously.

#### **2. Mobile Home Park Standards; Code Amendment Request; Terra Firma (cont. from 4/6/98).**

Councilmember Leighan moved and Councilmember Herman seconded to continue this to 4/27/98. Passed unanimously.

NEW BUSINESS:

**1. Purchase of Edward Springs Water for Bottling and Resale;  
K. A. Development, Inc.**

Public Works Director Winckler reviewed the agenda bill, noting there are representatives here from K. A. Development and staff/Utility Committee recommend Council review the request and recommend a contract be drawn up if it is an activity the Council would like to pursue.

Councilmember Myer asked about a proposed rate, installing a meter and liability insurance.

City Attorney Weed said as this is something unique and not covered in the MMC, City Council would need to set up a policy with a contract drawn up if they wish.

Councilmember Pedersen asked what Edward Springs capacity is and Mr. Wade said about 2.5 to 3 million gallons per day.

Public Works Director Winckler noted that when the Stilly Well is under turbidity, the City uses Edward Springs and so that would decrease availability of water from Edward Springs.

Councilmember Pedersen asked about future facilities' usage, eg. the proposed community college and jail facility and Public Works Director Winckler said there may be some future capacity concerns.

Councilmember Myers asked about the state's stringent filtration requirements and Public Works Director Winckler said they are going to require higher water quality in 5 years.

Councilmember Herman asked about the filtration system for the Stilly and Edward Springs Wells and Public Works Director Winckler said there will be additional lines layed for that purpose.

Councilmember Herman said he could see a contract with a termination clause based on unforeseen conditions.

Councilmember Myers asked about the Tulalip Tribes' agreement about Edward Springs Well #3 and City Administrator Zabell said the Tulalip Tribes has not indicated they want to renegotiate and this should not impact that agreement.

Councilmember Bartholomew pointed out that Marysville has made no commitment to the county regarding serving a jail.

Councilmember Herman added that the proposed jail sites within Marysville's UGA are not viewed with any particular favor and are quite inappropriate for a jail.

Councilmember Dierck noted the proposed water needs for the community college and jail facility is one million gallons per day but City Administrator Zabell noted there are no firm figures; this is an estimate only.

Councilmember Bartholomew added that a jail or college may be 10 years away, too.

Neal Green, 9803 39th Dr. NE, Marysville, addressed Council. He said they (K. A. Development) are currently working with the City of Darrington to purchase water; Darrington has a deep artesian well system and not the same capacity as Marysville. He explained the Dept. of Ecology have no concerns about their impact; on a daily basis, they would be more than happy to come in after midnight so as to avoid any impact on the Marysville system, he said. He added they are looking for a long term commitment and would like to serve customers for 10-20 years with Edward Springs water. They have a 20 year contract with Darrington with a 10 year option, he said. He noted they do not want to have a major

impact on the City; also, with Darrington, they have a profit sharing agreement so it could be an additional source of revenue for the City but if Marysville does not want them to come in, they would not want to have an agreement.

Mr. Green went on to explain they are a small company, not a bottler, they bring the natural resources to the end user and there would be no bottling facility in Marysville, eg. like A&W Root Beer in Everett. He said they would sell to supermarkets as a "spring water" and they like to stay with a source but if they do have to change, they don't want to have to change the name from "Edward Springs Water" to "Spring Water", so will just go with "spring water." He said they also like to have chlorinated water (which is what Marysville's is); they have to label water the water "spring" or "artesian" in compliance with the Truth in Labeling Act.

City Administrator Zabell clarified that Edward Springs water is actually not 100% spring water and Mr. Green said he knows; that it is about 75% spring water at peak times.

City Attorney Weed brought up the issue of change in place of use because DOE has been very stringent about location of certification and he said Marysville would like some recognition from the DOE so as not to have to apply for this change.

Mr. Green said his manager, Mr. Petrovitch, has no opposition to getting this from DOE.

City Attorney Weed said the City would want to see a letter from DOE and Mr. Green said that would be no problem. Mr. Green added that they would cover the City on a \$1,000,000 policy for product liability, as well.

Councilmember Herman asked about the capacity of their trucks and Mr. Green said 5,000 to 7,600 gallons.

Councilmember Herman asked about the rate of withdrawal of water from the system and how that might affect the system pressures in the immediate areas.

Mr. Green said they draw directly from a fire hydrant and Councilmember Herman said the Utilities Committee would recommend a meter vs drawing directly from a fire hydrant.

Mr. Green said Darrington allows them to take water from a fire hydrant and then use a weight ticket.

Councilmember Bartholomew noted there are a lot of liability issues here.

City Attorney Weed said the concept the City would try and accomplish is to provide water quality at our source and what K. A. Development does after that is their responsibility.

Mr. Green said they have a \$1,000,000 product liability insurance policy for use of Darrington's water.

City Administrator Zabell explained that Marysville would prefer a permanently placed meter and if water is drawn at an offpeak time, it would not affect fire flow.

Mr. Green explained the rate of withdrawal depends on the size of the water line; in Darrington they can load a 5,000 gallon truck in 9 minutes with no dirty water complaints whatsoever.

Larry Wade added that the point at which they take off the water can be critical from a velocity standpoint; he would recommend a permanent metering stand somewhether near the headworks because disturbances need to be considered.

CORRECTED: SEE 4/27/98  
MINUTES 5/6 "somewhere"



Councilmember Bartholomew moved to direct staff to begin preliminary negotiations for an agreement with K.A. Development, including product liability, how the water is withdrawn, hours, to include items 1 through 13 on the memo from the City Attorney distributed in the packets, termination clause of 10 years, eg. termination could be based on filtration issues that can't be determined at this time. Councilmember Herman seconded the motion and it passed 5-2 with Councilmembers Pedersen and Dierck against.

**2. Professional Services Proposal for Area Wide Rezone; McConnell-Burke, Inc.**

City Planner Hirashima reviewed the agenda bill, noting data by the Planning Dept. has been compiled by the GIS person with total review about 50% to 60% complete, identification of problem areas, 1998 Comp Plan amendment has been completed. She referred to McConnell-Burke's proposal in the amount of \$27,648 with individual tasks itemized and an estimated completion date for their part of the process, 6/1/98. She referred to page 6 of their proposal.

Councilmember Pedersen asked about actual completion date of the area wide rezones and City Planner Hirashima said it depends on how many public hearings are involved.

Councilmember Leighan asked about conflicts or challenges, using the same person as a consultant as the City uses for their Hearing Examiner and City Planner Hirashima said in this case, they are simply assisting staff and not acting in a quasi judicial capacity.

City Attorney Weed added that the process is largely legislative and City Council will need to adopt an ordinance with McConnell-Burke playing a support role.

Councilmember Bartholomew referred to the Fairness Doctrine, noting it is "what the public perceives fairness/conflict to be" and she said she has a problem with the same person developing the rules then interpreting and acting upon them.

City Planner Hirashima said her inclination would be that staff would be presenting the requests, ie. the staff would be administering the documents and McConnell-Burke has been working closely with staff but staff ultimately ends up being very involved and with the area wide rezones staff has done 50% to 60% of the reviews.

Councilmember Bartholomew said she will still be voting no, based on the fairness issue.

Councilmember Pedersen asked about individual backgrounds and if Mr. Burke would be more appropriate and City Planner Hirashima pointed out that he acts as Hearing Examiner pro tem.

Councilmember Herman suggested using Lucy Sloman who worked on the Comp Plan with staff and City Planner Hirashima said she would not be available to work on this project; Ron McConnell, Don Largen and Emil King did the majority of the work. She explained that Ron would be supervisory; he is also the Hearing Examiner for Kirkland and worked with staff on area wide rezones there, as well as hearings and in Medina, also. She explained the time line: McConnell-Burke was hired in 1989 as the company that would provide a Hearing Examiner and then later on that same year, they started working on the Comp Plan as consultants.

City Attorney Weed noted it's purely a legislative process and the appearance of fairness does not apply (legally) for an area wide rezone and/or hearing examiner issues.

Councilmember Leighan moved and Councilmember Wright seconded to authorize the Mayor to sign the Professional Services Agreement with McConnell-Burke in the amount of \$27,648, with the majority of the Comprehensive Plan amendment review to be completed no later than June 1, 1998 and the 116th St. NE comprehensive plan amendment review to follow, all subject to the City Attorney's approval of the contract. The motion passed 5-2 with Councilmembers Bartholomew and Dierck against.

**3. Short Plat of Seventy Eight Sixty Rezone/Variance Appeal; PA 9710049.**

Councilmember Myers moved and Councilmember Bartholomew seconded to hold a closed record hearing May 4, 1998.

City Planner Hirashima clarified that the appellant's written argument must be received by 4/20/98, the applicant's rebuttal by 4/27/98 and staff's deadline for review would be 4/30/98.

There was discussion about the file preparation, standing, lack of process in place, preliminary issues to be addressed at the public hearing, memo may notify appellant about standing being verified, prehearing conference being included in the process, a lot of time involved if there is no standing.

Included in the motion was allowance of a 5 minute oral summation from each side; maker and seconder of the motion agreed and the motion passed unanimously.

**4. Grove Street Short Plat Rezone/Variance Appeal; PA 9710049.**

Councilmember Pedersen recommended the two properties that have the same owner be put together on the agenda and the third, the week after.

Robert Aldridge (applicant), 5420 79th Pl. NE, addressed Council. He explained that he would prefer both items 3 and 4 here be heard on the same night so he doesn't have to hire legal counsel for two different nights.

Councilmember Herman moved and Councilmember Leighan seconded to hold a closed record hearing 5/4/98 with the appellant's written argument to be received by 4/20/98, the applicant's rebuttal by 4/27/98 and staff's deadline for review 4/30/98. There would be a 5 minute oral summation allowed from the appellant and applicant. The motion passed unanimously.

**5. Request to Amend Contract Rezone Appeal; PA 9801008.**

Councilmember Leighan stepped down.

There was discussion about a 5/4 or 5/11 hearing.

Carol Kapua (applicant), 5930 74th St. NE, addressed Council. She said if at all possible she would prefer her hearing on the 4th also.

Councilmember Pedersen moved and Councilmember Myers seconded to set 5/4/98 as the closed record hearing date; the appellant's written argument must be received by 4/20/98 (the appellant and the applicant is the same person in this case) and staff's deadline for review would be 4/23/98. The motion passed 6-0 with Councilmember Leighan abstaining.

**6. Appeals Process - Title 15.**

City Attorney Weed explained one of the issues brought up was a prehearing type process, whether it's advisable to have all quasi judicial decisions made final by the hearing examiner. City Council could change the current process, with appeals not appealable to Council, he said.

Councilmember Pedersen said her concern is with the amount of time staff is spending in preparation and that standing has not really been established first. Also, fees and costs involved are a concern, she said and she added she would like more information about that.

City Planner Hirashima said as far as staff time, there are 4 people involved at the Planning Dept. level and with the last closed record appeal, it took 4 days for those 4 people to complete all the necessary copying and research. She noted there is a \$50 appeal fee and about \$60 per packet; she said they made up about 15 packets.

Councilmember Pedersen asked about the prehearing process/determining standing upfront, as far as a proprietary, pecuniary and/or personal rights vs open record hearing vs closed record appeal by an "aggrieved" person.

City Attorney Weed said there was some discussion about the person who has the right to appeal; anybody no matter what, discussed or only a person who owned property and has a direct impact or is within 100', eg. Both of these are unreasonable and unfair; City Council chose middle ground from another jurisdiction's ordinance: Direct impact as far as property, proprietary, pecuniary or personal rights, he said. He added that other jurisdictions ask that you show other direct impacts by the proposal--the process might run smoothly with a preliminary hearing for both the appellant and applicant which would save a lot of staff time, clarifies issues and disposes of some issues early on but it might take a lengthening of time frames, he said. He added that the City would want to make sure all aspects of ESHB 1724 are being complied with.

Councilmember Pedersen asked about updating of the MMC with short subdivisions being remanded back to the Hearing Examiner and reconsideration with regard to Grove St.; she asked what the difference is between an appeal and a reconsideration.

City Planner Hirashima admitted it has become a little confusing but for the most part, SEPA and some CUPs are administrative decisions made by the Planning Dept. and the Hearing Examiner makes the final decision on conditional use, administrative appeals, short plat appeals. In this case, the short plat has not been approved and the Hearing Examiner is issuing a recommendation on the rezone and variance; he is not taking any action on the short plat, she said.

City Attorney Weed noted reconsideration is only when there has been a final decision and the appellant is confused in this case because the final decision is going to be made by the City Council, so she means an "appeal" not a "reconsideration" of the Hearing Examiner decision and that needs to be clarified with the appellant, he said.

Councilmember Herman said he has a similar concern about the process; it's a judicial process vs a policy making one. He spoke about the appellant's arguments and said he is not convinced the process is clear to anyone, the applicant or the appellant and it's not clear to the City Council what the rule might be at all times, so ultimately a process is needed that works. He noted some communities send appeals directly to Superior Court but in terms of timeliness that may tie up someone's project for a long time.

City Attorney Weed said no, under the Land Use Petition Act, an appeal must be made within 21 days, another hearing must be held within 10 days and everything must be wrapped up within 90 to 120 days under the Land Use Petition Act. He admitted a lot of this process is confusing but it's been mandated under the Growth Management Act.

Councilmember Herman spoke about the judicial aspect and whether someone is personally affected on City Council by decisions made.

Councilmember Pedersen said she thinks there is a big difference between a legitimate concern and a specific project.

Councilmember Dierck referred to definitions, paragraph 2 and said she feels Sensitive Areas Ordinance and SEPA issues should be added so that anyone should be able to appeal because the environment is everyone's business and she said she would like to have that added in.

Councilmember Pedersen said she thinks there is a process in place for that; if we don't like the present buffers, we need to take another look at the policies under the Sensitive Areas Ordinance.

Councilmember Dierck said she would just like environmental impacts included under the definition for an aggrieved person.

Councilmember Herman said he agrees that environmental effects is a legal standing but doesn't feel the present language needs to be changed there, but appellants need to know how to structure their statement/argument in a way that reflects that.

Councilmember Bartholomew asked if case law establishes the definition of an aggrieved person and standing in general and City Attorney Weed said it does. He referred to the last appeal and memo he wrote to the Council; the common theme is a direct and significant impact on the proprietary, pecuniary and personal rights as upheld by courts.

Steve Mueller, 4919 Sunnyside Blvd., addressed Council. He said his concern is the short plat and formal subdivision process and there are a lot of issues such as MDNS, area wide rezones, appeals, then you are told the appeal is not valid. These issues should come up at the rezone hearing, he suggested.

Councilmember Herman said his understand of ESHB 1724 is to combine all land use actions under one process; one open record hearing and one closed record appeal. With an area wide rezone, it's probably an administrative action, he said.

Robert Aldridge, 5420 79th Pl. NE, addressed Council. He said this is a complicated matter and he would like to see a process that is less cumbersome; there's interpretation of the code, there's mitigation plans and fees, staff comments, more environmental issues, you spend thousands of dollars and then someone can appeal that decision with \$50 and a letter, even though they don't have standing or merit perhaps, so the appeal process/review process should be more thorough. If a person follows all the rules, it's not right that someone can just be able to erroneously come in and appeal when the applicant has paid out all the required mitigation fees, he said and noted this causes a lot of staff time to be spent, also.

Mr. Aldridge went on to say the developer is under onus to provide correct information, supply all data, pay mitigation fees.

Councilmember Herman asked where appeals should go. Having better legal arguments is the key but maybe sending appeals to Superior Court is the answer, he said.

Councilmember Wright said if the intent is to take politics and emotions out of the appeal, she would say go directly to Superior Court.

City Planner Hirashima agreed that would do away with a closed record appeal, so there would be no copying costs, etc.

City Attorney Weed said under the Land Use Petition Act, the City has the right to charge the appellant some of the costs but there is still staff time involved and probably the same time involved, either way.

Councilmember Pedersen asked what requirements would be made of the appellant by the court and City Attorney Weed said verbatim transcripts would be required to be included in a full packet to Superior Court. On an appeal to the administrative decision, the Hearing Examiner would hear that; a Superior Court Judge would hear an appeal to a Hearing Examiner decision, he said.

Councilmember Leighan commented that a Superior Court should only be used if the City Council feels there is no standing.

There was further discussion about costs, attorney fees, keeping the appeal fee low, establishing standing and merit prior to City Council appeal/closed record appeal, need to define standing better perhaps, sometimes impacts can be subjective vs objective, eg. "having a broad based environmental impact," standing and merit issue can frequently get intertwined, whether Council level or Superior Court level of appeal process is preferred. Another issue may be where an applicant is not happy with the Hearing Examiner decision and they file an appeal, do they automatically have standing and/or merit? What's the underlying policy involved?

Councilmember Pedersen said she sees two different things involved here: Is the appeal based on an erroneous decision the Hearing Examiner made or are the appellant's proprietary, pecuniary or personal rights impacted?

Councilmember Herman said he doesn't feel the City Council is the body that should be determining/acting on appeals and thinks they should be sent to Superior Court.

Councilmember Pedersen said she wholly agrees.

Councilmember Myers asked how many appeals there have been in the last 10 years excluding moratorium issues and City Administrator Zabell pointed out that the last changed and the City Council used to have there own public hearing if the Planning Commission decision was appealed.

City Planner Hirashima added that the City went to the Hearing Examiner about 8 years ago with City Council reviewing his actions then it was changed to only certain Hearing Examiner decisions that would have the final City Council decision. In the last year there have been about 5 appeals, she said.

Councilmember Myers said he is not sure the City even has a problem with the process today.

Councilmember Bartholomew said she thinks it should go directly to court.

Councilmember Herman noted the game has changed with public perception also changed, perhaps. He said his concern would be that there be a way for citizens to be sure policy questions would come to the City Council and in terms of appeals, he said he would move to change the process and direct the City Attorney to draft appropriate ordinance changes so that final appeals would go to Superior Court vs City Council with administrative decisions still being made by staff. He said he would like some assurances from staff that they would identify all policy issues with regard to appeals and possibly create future revisions.

Councilmember Bartholomew seconded the motion. She noted the legislature has changed the process and the ground rules.

City Attorney Weed said if City Council approves this motion they might want to consider a broadened process for the reconsideration of a Hearing Examiner decision, back to the Hearing Examiner, for minor typos, oversights, eg. so there are no unnecessary cases going to the Superior Court, such as if an appellant realized they could rectify something at the Hearing Examiner level. The mover and seconder agreed to this amendment to the motion.

The motion passed 5-2 with Councilmembers Myers and Dierck against.

City Attorney Weed noted research must be done first on ESHB 1724 and then only appeals that came after the revised ordinance would go to Superior Court. There was brief discussion about vesting of a complete application.

ADJOURNMENT: 10:44 p.m.

EXECUTIVE SESSION: 10:50 to 11:59 p.m.

1. **Potential Litigation.** No Action.

RECONVENED & ADJOURNED: 11:59 p.m.

Accepted this 27<sup>th</sup> day of April, 1998.

David Weed  
MAYOR

Mary Swenson  
CITY CLERK

Manda K. Swenson  
RECORDING SECRETARY