

January 21, 2003 **Marysville City Council Work Session**
7:00 p.m. **Public Safety Center**

Call to Order/Pledge of Allegiance

Mayor Weiser called the January 21, 2003 Work Session to order at 7:00 p.m.

Invocation

Chaplain Fry gave the invocation.

Roll Call

Sandy Langdon called the roll:

Council: Mayor David Weiser, Mayor Pro Tem Mike Leighan, Suzanne Smith, John Soriano, Jon Nehring, Jeff Seibert, Donna Wright, and Lisa Vares.

Staff: Mary Swenson, Chief Administrative Officer; Sandy Langdon, Finance Director; Grant Weed, City Attorney; Gloria Hirashima, Community Development Director; Jim Owens, Public Works Director; Jim Ballew, Parks and Recreation Director, Randy Brower, Program Engineer – Surface Water, and Eric Thompson, Program Engineer – Land Development.

Committee Reports

Mayor Weiser updated Council on the Governmental Affairs Committee. Salary commission was discussed and it will be coming back to Council for discussion. The Committee also reviewed several bills currently being discussed in Olympia such as water rights, the annexation issue, and the Open Meetings Act. Mayor Weiser concluded by saying that nothing had been presented yet on gambling issues.

Councilmember Lisa Vares reported on the Public Works Committee meeting. State Avenue Improvements was one of the topics discussed, especially how to direct traffic around the improvements and potential rerouting for the Strawberry Festival parade. Another topic discussed was the pre-treating of grease by restaurants in order to be in compliance so the sewer system doesn't clog up. They also reviewed the overlay projects for 2003 and received an update on the Grove Street Advisory Committee.

Discussion Items

A. Storm Water Drainage Discussion

Randy Brower, Program Engineer – Surface Water, introduced the discussion topic for the evening and the guest speakers.

Hilary Culverwell, Local Liaison Snohomish - Skagit - and Whatcom County

Ms. Culverwell represented the Snohomish Sound Water Quality Action Team whose mission it is to restore and protect the biological health of the waters in the area. Stormwater is a very high priority for the Snohomish Sound Water Quality Action Team as it is the leading cause of pollution in the U.S. and in this state as well. She discussed the 2000 Puget Sound Water Quality Management Plan that says every city and county shall develop and implement a comprehensive stormwater management program including stormwater controls for new development and redevelopment.

She began by defining stormwater as water from rain or snowmelt that falls on impervious surfaces and is routed to natural or artificial drainage systems of water bodies. It is a problem because of development and impervious surfaces which increase the amount of water runoff. Water from developed land is 16 times greater than undeveloped land. Ms. Culverwell explained that in a natural environment 36.6% goes into groundwater. In more developed land about 15% goes to groundwater and more goes into runoff. She noted that it is very costly to address the issue to help solve the flooding problems, but runoff has a huge impact on aquatic resources, especially water quality and water quantity.

Water quality effects include increased sediments, toxic metals (especially copper), organics (pesticides and herbicides), hydrocarbons, fecal coliform bacteria (pathogens), and nutrients. She showed a graph that described the direct correlation between greater amounts of impervious surfaces and deteriorating biological health. Water quantity effects include flooding and stream impacts such as stream bank and stream bed erosion.

Ms. Culverwell proceeded to discuss ways cities and counties can solve the problem. One way she discussed was developing stormwater programs, especially utilizing the DOE's Stormwater Manual. She explained that usual complaints about adopting the manual have to do with the negative impact on the business community especially with respect to detention ponds. She stated that the standards can potentially increase the cost to the developer, but they don't have to. Washington State is currently researching low impact developments (LID) to allow less water to runoff. Examples such as permeable pavers were discussed. Ms. Culverwell stressed that Puget Sound Action Team is committed to helping local governments make progress in this area. In summary she said stormwater is a big problem, adoption of the Ecology's Manual is an important step, innovative approaches exist and they are willing to help.

Melodie A. Selby, PE, Washington State Department of Ecology

Ms. Selby focused on the Manual from a policy and legal standpoint. The DOE has legal requirements to properly manage stormwater runoff in order to prevent water quality problems. Legal requirements started with the Federal Clean Water Act, which says that the water must be fishable and swim able. The state is required to adopt standards adopted by the government. The State Water Pollution Control Act also controls groundwater and smaller streams and discharges to treatment plants. The Endangered Species Act affects this area because of large numbers of wildlife that are part of the habitat. She also reiterated that stormwater is one of the leading causes of pollution.

In describing ways to monitor compliance with the Manual she described the Demonstration Approach in which an approval agency individually reviews and conditions proposed projects to meet federal and state stormwater standards based on current science. Problems with this are that it lacks predictability and can be very time consuming. For larger complex projects it may reduce costs and/or improve environmental protection.

The Presumptive Approach is a default set of stormwater practices based on current science that will satisfy state and federal stormwater requirements – Ecology Stormwater Manual or equivalent. This is more predictable and practices are approved across jurisdictions. Costly studies, etc. are not required as they may be under the demonstration approach. It was the intent of DOE to allow for the use of the Presumptive Approach although they have determined that the Demonstration Approach also needs to be used at times.

The objective of the manual was to provide a commonly accepted set of standards and guidance to control quality and quantity of runoff from new development and redevelopment in order to comply with WQ standards. The manual has been updated to comply with Federal Clean Water Act, State Water Pollution Control Act, and the Federal Endangered Species Act. A major priority of the manual is to be able to continue with the Presumptive Approach.

Those affected by the Puget Sound Water Quality Management Plan include Puget Sound communities who must adopt the Department of Ecology's new manual or an equivalent by March of 2003. Those affected by NPDES Phase I Communities are King, Snohomish, Pierce, Clark Counties, Seattle, Tacoma, and WSDOT. The time frame for adoption of the new manual or equivalent set by new Phase I permit. This also affects construction sites greater than or equal to five acres and heavy industry. Phase II NPDES Permittees include construction sites greater than or equal to one acre, at least 90 cities and 12 counties, and municipal industrial sites.

The current status of Phase II is that it goes into effect in March of 2003. The Department of Ecology worked with municipalities and developed an application of the standards. DOE plans to develop separate Phase II permits for Eastern and Western Washington. They do not expect to begin work on the Phase II permits until this fall. Ecology will work with affected and interested parties to develop these permits.

Ms. Selby reviewed risk management considerations such as the impairment of water bodies and liability issues such as CWA third party lawsuits and ESA liability. She encouraged the city to stay in the preventative mode. In order to maintain local control she said the city should be aware of local watersheds, know what is threatening them, develop and implement appropriate management strategies then submit Phase II application.

Ralph Svrjcek, Washington State Department of Ecology Water Quality Program

Mr. Svrjcek summarized the water quality problems as having high levels of bacteria and low levels of dissolved oxygen. He then described the Department of Ecology's approach to achieving clean water. He noted that DOE has shifted to a watershed approach using the Performance Measure. They focus on how clean is the water and an implementation strategy.

In discussing risk management Mr. Svrjcek said if this strategy does not work there would likely be more frequent and severe flooding and poor water quality. He added that correcting the problem would be even harder than preventing it. Mr. Svrjcek noted that the costs would shift to local governments and that it could be difficult for industry/construction to get permits.

He went on to describe what DOE is likely to do. He listed working harder to find innovative solutions and funding, utilizing stricter permit conditions, and possibly enforcement. Solutions to the issue include instilling in staff the importance of viewing streams as more than drainage conveyances. He noted with pleasure that the city is already examining local needs with its Surface Water Management Program. He encouraged the city to utilize a master drainage study and special regional solutions as needed.

Mr. Svrjcek summarized by encouraging the city to keep up the good work in order to save the fish runs. He noted that the city is also fostering continued economic development with local-based solutions. He concluded by stating the need for the city to make local streams a safe place for kids to play and to keep the new stormwater manual as an important part of the tool kit.

Questions and Discussion

Councilmember Jon Nehring asked about the separation issue and why that was changed to five feet. Mr. Svrjcek stated that there needs to be enough separation to

filter out the pollutants. He did not feel qualified to thoroughly answer this, but said there was an engineer on staff who could answer this. Melodie Selby stated that it was based on the region, but if it could be demonstrated that it was unnecessary in this area it could be changed.

Mr. Nehring stated the challenge of doing this and promoting economic development at the same time. He mentioned the Tulalip Tribes and asked about their requirements. Ms. Selby replied that they work directly with EPA. They are supposed to develop water quality standards. They can be their own permitting authority or have EPA do the permitting. She wasn't sure how the Tribes and EPA work together in this area, but noted that they can basically police themselves. She said to contact her for more information.

Mr. Nehring then made reference to the King County Manual and asked what it was. Ms. Selby said it was similar to DOE's manual. Mr. Svrjcek added that King County is also in the process of updating their manual.

Councilmember Jeff Seibert asked if the city should adopt the manual as a reference or as a guideline. Ms. Selby answered that the city should look at the balance between public and private investment in stormwater. She believes in the long run asking people to contribute to protect stormwater is good for economic development. Her recommendation would be that in order to do development, the development needs to be done in compliance with the manual.

Mr. Seibert asked how far the city could veer from the manual and still be equivalent. Ms. Selby said the important thing was if the city was meeting the goal of protecting water quality standard. She clarified that the city needs to be able to prove its case by being consistent and having data to show why it is doing things differently.

Councilmember Seibert then asked for which type of construction sites this applied (commercial or residential). Ms. Selby replied that Federal rules state that it is anything that disturbs more than one acre. It could be anything.

Finally Mr. Seibert asked about retrofit situations. He asked if there was an exemption for this. She stated that the city could take the ideas from the manual and apply them, but they would not be a requirement.

Councilmember Suzanne Smith clarified that the DOE 2002 Manual is not mandatory for the city at this point. Ms. Selby stated that was correct. Ms. Smith then asked about the permit development process to which Ms. Selby explained the permit has not been written yet.

Ms. Smith asked if the manual might become mandatory in the future. Ms. Selby explained that the manual affects different people so it would be difficult to generalize it. It will be mandatory for all construction sites that require a permit and anything over one acre that has a discharge. She could not venture a guess when it might

become mandatory for municipalities. It could be when Phase II is released sometime next year, but there would probably be a phase-in period.

Ms. Smith then inquired about municipalities that have not adopted the manual. She referred to neighboring communities with which the city is in direct competition that have not stepped up to the plate. Ms. Selby explained that industry and construction going into those communities still will need permits. As time goes on there will be more and more difficulties as those areas try to clean up their water bodies. As far as encouraging them to adopt the manual, she noted the Association of Cities is actively working on getting cities to adopt the manual. She suggested contacting them.

Councilmember John Soriano asked about hardships for cities that have begun adopting the manual. She said the biggest concerns have been for communities concerned with vesting issues and liability. Pre-adoption jitters are mostly what she hears. Mr. Soriano suggested compiling some of those concerns as an aid for communities who are beginning the process.

Councilmember Lisa Vares noted that Marysville is downstream from upstream development. She wondered what would happen if its water was not up to standard, but not a result of the city's non-compliance. Mr. Svrjcek said they hope to develop information to determine where the pollution is coming from - the City of Arlington, the Tulalips or Marysville. Their goal is to determine how clean the water is when it comes into the city and how clean it is when it goes out of the city. Ms. Selby agreed that from a clean-up perspective it would be more difficult for Marysville. She suggested using nuisance tactics to people upstream. Mr. Svrjcek stated that DOE is keenly aware of the importance of working with the City of Arlington and others and that they will keep this in mind.

Mayor Weiser referred to a map he received in 2002 showing the quality of streams in the area. He asked if there was a more recent map to show the quality of streams and if it had improved. Ms. Culverwell replied she was not familiar with the map.

Mayor Weiser then asked what assurance the city has, if any, from DOE that the rules are not going to change in five years or ten years. Ms. Selby explained that they have attempted to keep the goals the same. They have attempted to balance what is needed with what is reasonable. Mayor Weiser referred to a specific situation where the requirements for developers had continually changed making it difficult for developers. Ms. Selby said that was unusual and to contact her about that specific situation.

B. Discussion Regarding Repealing Ordinance No. 2324 Prohibiting the Conduct or Operation of Social Card Games as a Commercial Stimulant within the City Limits.

Chief Administrative Officer Mary Swenson explained that the current ordinance that prohibits card rooms is included in the packets. The ordinance from Montlake Terrace

that allows card rooms is also included. She explained that Montlake Terrace currently has one card room. There is a second establishment being considered. The Police Chief there went on record as being in favor of that. Everett was also consulted and the Police Chief there said there were fewer impacts than a tavern that has music and dancing.

Ms. Swenson noted that Council was originally interested in this topic because of the feeling that the city was already dealing with the impacts of this from neighboring communities. She reviewed some of the numbers of revenues and projected revenues that she had researched.

Councilmember Soriano asked Grant Weed, City Attorney, if zoning requirements and regulation issues have changed. Mr. Weed replied that there appears to be an ongoing debate about this issue. It has not been decided by the Courts. Mr. Soriano stated that this might be a potential problem. Mr. Weed agreed.

Mr. Soriano asked if the lift on the ban on card rooms could ever be reversed. Mr. Weed said it would require proper public hearings with strong evidence of the negative effects of those types of activities. There would have to be a record of those activities.

Councilmember Mike Leighan noted that the city is already suffering the impacts of these activities from neighboring communities and not gaining any revenue from it. In these difficult times he felt it should be a consideration. Regarding zoning restrictions he asked for clarification on the restrictions cities face. Mr. Weed explained they need to be located in the commercial zone, but the city cannot specify which portion of that zone they could be in. Mr. Leighan then recalled a public hearing held when originally discussing this ban. He asked if a hearing would be required to lift the ban. Mr. Weed stated it would be optional, but not required. Mr. Leighan concluded by stating that he would be in favor of lifting the ban or at the very least of holding a public hearing.

Councilmember Soriano asked about building a component into the ordinance that would dedicate a certain portion of the revenues to covering increased police costs. Mr. Weed stated that could possibly be done. Mr. Soriano asked for clarification about regulating the zoning versus regulating the gambling. Mr. Weed stated that some cities have gone beyond stating where the card rooms can be located by allocating certain portions of commercial zones to those types of businesses. The state gambling commission has said that cities can't get into those types of details.

Councilmember Smith noted the possibility that a large amount of revenues could be gained, but she stated that she could never be in support of this for spiritual reasons. She stated that she envisions more for this city than what gambling has to offer. She cited examples of families ruined because of gambling and also examples of friends who don't seem to have trouble. She believes the money wasted on gambling could be spent elsewhere in the community in a more positive way. She also stated she did not believe it coincided with the city's vision of maintaining a small town feel.

Councilmember Vares said she agrees on many levels with Councilmember Smith, but she believes that the city is going to feel the effects of gaming whether or not they want it because of the neighbors. She stated she would like to have a public hearing to hear the public comments on lifting the ban.

Councilmember Donna Wright stated she also would like to have a public hearing although she would probably personally be opposed to lifting the ban.

Councilmember Jeff Seibert suggested forming a committee to research this further.

Mayor Weiser concluded by saying that this would be an action item at Monday night's meeting.

Consent Agenda Items

The Mayor reviewed the following Consent Items:

- A. Approval of January 27, 2003 Claims.**
- B. Approval of January 21, 2003 Payroll.**
- C. Approval of Liquor License Renewals for Fanny's Restaurant, Jackpot Food Mart (5830 Grove Street), Jackpot Food Mart (1034 State Avenue), 88th Street Texaco Food-Mart and Car Wash, and Vi and Glynn's Tavern.**
- D. Approval of New Liquor License for Ichi Bento Teriyaki and "R" Place Pub and Grill.**
- E. Affirm Hearing Examiner's Recommendation to Approve Rezone, Preliminary Plat, and Utilization of Density Incentives for Ebey Vista; PA 9911056.**

Councilmember Seibert asked if there is a plan to address the needs of offsite walkway requirements for the school district. Community Development Director Gloria Hirashima explained that they are in the process of working on that.

F. Acceptance of Donation from Estate of Julietta Gellerson.

Councilmember Nehring asked if there would be a committee formed to deal with this and if it could be named after Ms. Gellerson. Parks and Recreation Director Jim Ballew explained they would go back to the Park Board with recommended uses and that they could certainly recognize the donor with a plaque stating how the money was used.

G. Authorize Mayor to Sign Interlocal Agreement with Snohomish County for Construction and Maintenance of Portion of 88th Street N.E.

H. Authorize Mayor to Sign Interagency Agreement with Snohomish County for 2003 Overlay Program.

Councilmember Smith asked about the costs to the city of the additional work being added. Mr. Owens said they were getting the work for about 10% less than has been historically paid.

Councilmember Leighan inquired about a management fee that had been discussed with the Utility Committee. Mr. Owens replied that there was a management fee, but even with that cost the price was still less than they were paying.

I. Approval of Contract for Deferred Construction of Curbs Gutters & Sidewalks; Orlo Williams.

J. Approval of Contract for Deferred Construction of Curbs Gutters and Sidewalks; Paul Bustard.

Councilmember Smith asked if this was the same 46th Street NE on which Ebe Vista was located. Ms. Hirashima replied that it is, but there was a separation. There was discussion about how close the sidewalk needs to be before there is a requirement to create an adjacent sidewalk. Mayor Weiser clarified that since this is a preliminary plat approval it could be anywhere from about six months to three years before this is actually built.

New Business

A. 240 Zone Water Reservoir Phase II; Due Diligence Proposal RH2 Engineering.

Councilmember Seibert had concerns about hazards of this area and wondered if there would be another area that would work as well for the city. Public Works Director Jim Owens said that they had looked at numerous criteria before narrowing it down to five sites. They then looked at the geology and the development of the area. Out of the five sites this was the best option. Aerial photos and topographical maps show that there are very few elevations where the 240 elevation exists. The acquisition of property for other locations would be very expensive as the only other site with the 240 elevation has very expensive homes. Mr. Owens explained that there is evidence that the Boeing Company had deposited some improper material on the site. This area is being monitored very closely. Councilmember Smith asked if the reservoir would be influenced by the contaminated groundwater. Mr. Owens replied that the reservoir is partially above ground. From the data that he had he did not believe the groundwater would be affected.

B. Amendment No. 1 to Professional Services Agreement; Hammond, Collier Wade Livingstone Associates for Trunk D Extension Phase II including Soper Hill Pump Station Project.

Mr. Owens explained that this amendment is necessary to correct the files. This project is completed, but there was an oversight and Council did not give approval to the contract. Mr. Weed explained further that this would help to ratify the agreement, in a written form, in the event of an audit. Councilmember Seibert expressed concerns about this getting through without Council's approval.

C. Supplemental Agreement No. 1 to Professional Services Agreement for State Avenue (116th Street N.E. – 136th Street N.E.) Improvement Project; Lane & Associates.

Mr. Owens explained that this is a no-cost time extension to the contract.

Councilmember Leighan asked if there would be any way to add a penalty if it was not completed in the stated time. Mr. Owens stated that it could not be added to this contract.

D. Supplemental Agreement No. 9 to Professional Services Agreement for State Avenue (116th Street N.E.-136th Street N.E.) Improvement Project; Skillings Connolly Engineers.

Mr. Owens explained that this involved a stormwater detention pond. A developer has approached the city with a large development plan. In order to maximize the development potential of the location he suggested reorienting the pond. It would also make the property more saleable. The city has been in discussions with the developer and is desirous of proceeding with the alternate location. The developer has committed to sharing in 50% of cost of redesign of the pond.

Councilmember Smith asked if the city was over-sizing it at all in order to accommodate the developer. Mr. Owens said they were not. Ms. Smith then asked if it could be built larger in order to be used regionally for that particular area. Mr. Owens said he did not believe it could. The developer has planned out all of the property. There is no adjacent property that would allow for expanding.

There were no further comments or questions.

Legal

A. Contract for Recovery of Utility Construction Costs for Sewer; Harvey & Janet Jubie.

There were no further comments or questions.

*Information Items***A. Mayor's Business**

Mayor Weiser issued a reminder of the city's joint meeting on Tuesday, January 28th at 4:00 p.m. with MERC and the Planning Commission.

He also mentioned that the Smokey Point Chamber is having an installation of officers on Saturday night. If any Councilmembers can attend please call the Smokey Point Chamber office. Mary Swenson added that she had the phone number if anyone needed it.

Adjourn

Mayor Weiser recessed into Executive Session at 9:08 p.m.

*Executive Session***A. Litigation****B. Personnel****C. Real Estate**

City Council met in Executive Session at 9:15 p.m. At 9:56 p.m. Council reconvened into regular session. **Motion** by Councilmember Seibert, **second** by Councilmember Smith to approve the labor contracts as discussed in Executive Session. Motion carried unanimously (7-0).

Adjourn

Mayor Weiser adjourned the January 21, 2003 City Council Work Session at 9:58 p.m.

Approved this 27th day of January, 2003.

David Weiser
Mayor

Perry Becker
City Clerk

Lanni Hugdahl
Recording Secretary