

MINUTES RECAP

00159

MARYSVILLE CITY COUNCIL MEETING

OCTOBER 12, 1992

CALL TO ORDER:

7:00 p.m.

ROLL CALL:

All present

MINUTES OF PREVIOUS MEETING:

9/24/92 & 10/5/92 Approved

STAFF'S BUSINESS:

MAYOR'S BUSINESS:

CALL ON COUNCILMEMBERS:

AUDIENCE PARTICIPATION:

None

PETITIONS & COMMUNICATIONS:

CONSENT AGENDA:

- 1. 9/92 Payroll - \$440,209.46 Approved
- 2. 10/12/92 Claims - \$256,017.80 Approved

REVIEW BIDS:

None

CURRENT BUSINESS:

- 1. Final Plat for Emerald Ridge Approved w/o Acceptance of Open Space Tracts by City
- 2. Proposed LID No. 64 Approved

NEW BUSINESS:

- 1. Rezone from RR 12,500 to RS 9600 - Muller Approved

PUBLIC HEARING:

- 1. Sensitive Areas Ordinance. Continued to 11/9/92

ORDINANCES & RESOLUTIONS:

- 1. Ord. Annexing Certain Unincorp. Area known as the NW Annexation into City of Marysville Ordinance 1910 Approved
- 2. Resolution establishing a Citizen Award Program Resolution 1588 Approved
- 3. Resolution stating City's Intention to annex certain unincorp. area into the City Known as Potter/Krotke Property & Transmitting the matter to the BRB for Sno. Co. for approval. Resolution 1589 Approved

LEGAL MATTERS:

None

ADJOURNMENT INTO EXECUTIVE SESSION:

10:53 p.m.

- 1. Pending & Potential Litigation

RECONVENE AND ADJOURN:

11:32/11:33 p.m.

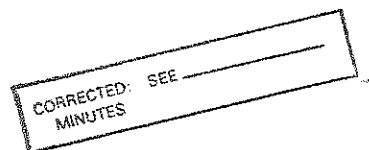
MARYSVILLE CITY COUNCIL MINUTES

OCTOBER 12, 1992

7:00 p.m.

Council Chambers

Present: Dave Weiser, Mayor  
Councilmembers:  
 Donna Pedersen, Mayor Pro Tem  
 Dave McGee  
 John Myers  
 Ken Baxter  
 Donna Wright  
 Mike Leighan  
 Otto Herman  
Administrative Staff:  
 John Garner, City Administrator  
 Grant Weed, City Attorney  
 Steve Wilson, Finance Director  
 Gloria Hirashima, Planning Director  
 Jim Ballew, Parks & Recreation Director  
 Lucy Sloman, Planning Consultant  
 Dave Zabell, Public Works Director  
 Wanda Iverson, Recording Secretary

CALL TO ORDER:

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

ROLL CALL:

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

MINUTES OF PREVIOUS MEETINGS:

Councilor McGee moved and Councilor Leighan seconded to approve the minutes of the 9/24/92 Special Council Meeting. Passed unanimously.

Councilor Pedersen questioned the state funding in City Attorney Weed's statement on page 2 of the 10/5/92 minutes regarding a parental responsibility ordinance. He stated the "state" should be the Washington Cities Insurance Assn. Also, on page 9, Councilor Pedersen noted that the interlocal agreement to establish interim urban growth boundaries matter was to be brought back before Council 10/26/92 not 10/12/92.

Councilor Myers moved and Councilor Wright seconded to approve the 10/5/92 minutes as corrected. Passed unanimously.

STAFF BUSINESS:

Finance Director Wilson stated last Thursday was the first 1993 Budget meeting, so that process has started.

City Administrator Garner reported there were 8 finalists chosen for the Public Works Director position and they will come before the all day assessment center this Thursday. He reminded Council of the special Council Meeting regarding utility bonds 10/19/92. He reported the Public Works Engineer position has been posted again; that the word was received today that the County's tipping fee for 1993 will go up to \$89/ton rather than \$95/ton, recently approved by county council. He reported he will be out of the office Wednesday afternoon.

Planning Director Hirashima reported that interviews for Building Inspector have been occurring and a final decision is to be made soon for this position.

MAYOR'S BUSINESS:

Mayor Weiser appointed a Committee to work on a Mission Statement and Motto for the City: Otto Herman, Chairman; Donna Wright, Jim Ballew, Belinda Beardsley, Gene Gunther and Phyllis Damish.

Mayor Weiser thanked everyone who helped with the recent painting party.

Mayor Weiser explained that Donna Pedersen's term is already up with the Health District (she was finishing up someone else's term) and he said he wished to resubmit her name for another term. There was consensus on this.

Mayor Weiser moved the Public Hearing down on the agenda until after New Business.

CALL ON COUNCILMEMBERS:

Councilor Leighan reported on the recent TV Advisory Board Committee meeting, stating they received a bid back from CSI for a robotic system of cameras and other recording equipment for Council Chambers, in the amount of \$45,210. He also noted that Channel 18 is actually a "PEC" (Public Education Channel) station rather than a community information channel.

Councilor Wright reported the CHP (Homeporting) meeting will not be meeting this month.

Councilor Pedersen reported the Board of Health meets tomorrow and Dr. Ward Hines will be making a presentation on the effects of secondary smoke/non-smoking restaurants. She asked for input of Council as she believed this will be controversial.

Councilor Pedersen gave Finance Director Wilson a sample of the City of Spokane's utility billing, including an envelope. She noted the postage was 24.2 cents per piece vs. 29 cents.

Councilor Baxter commented on the non-smoking issue, stating he doesn't mind the direction the non-smoking issue is going as long as it is left to the owner of the restaurant with regard to whether they are a smoking or non-smoking establishment.

Councilor Myers thanked staff for all their help and effort in getting information out to the Council on a consistent basis each week.

Councilor McGee commended the MPD on their efforts; he rode with one of the patrol cars over the weekend and was witness to a couple DWI arrests.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS: None.

CONSENT AGENDA:

1. September 1992 Payroll Claims in the amount of \$440,209.46.
2. 10/12/92 Claims in the amount of \$256,017.80.

Councilor Pedersen moved and Councilor Herman seconded to approve Consent Agenda Items 1 & 2. Passed unanimously.

REVIEW BIDS: None.

CURRENT BUSINESS:

**1. Final Plat for Emerald Ridge; Jim Mulligan; PA 9108029.**

Councilor Pedersen disclosed that she and her husband have a rental house in the area but there were no objections to her sitting on the Council regarding this matter.

Planning Director Hirashima gave the staff report, reviewing the agenda bill and noting that the only issue here is whether or not the City will accept the open space tracts. She stated when the preliminary plat was approved the City indicated they would accept the open space but Council has since voiced some concern over this type of dedication where there are liability issues involved regarding tree removal, for example. She noted there is 10.5 acres to be dedicated here and the open space encompasses a drainage swale which connects to the Sunnyside Creek drainage basin and could ultimately connect through the surrounding plat system to Eastwood Hills, Sunnybrook, Windsong III, Albert Griffore Division and Sunnyside East. She concluded that the Planning Dept. wishes to have a consistent policy with regard to acceptance of these types of open space dedications, especially with other plats coming up. Parks & Recreation Director Ballew passed around a vicinity and aerial map and Ms. Hirashima noted the dedication would include the creek and associated wetland and the proposal is that maybe a pedestrian trail could be allowed on the edge of the open space, however that use would be limited due to the sensitivity of the creek, she said. The City would be viewed as having a protection/regulation and maintenance role for the wetland, she said, but if the City isn't interested in accepting the open space the land would revert to the Homeowner's Assn.

Parks & Recreation Director Ballew said right now the intent is not for the City to develop the open space; it's a lot of natural low vegetation--shrubs, mainly, but treed on the upper portion. As far as maintenance, the City would go into the area probably twice a year as it's a seasonal stream and has a long corridor which takes a lot of manpower to maintain, he pointed out.

Councilor Baxter commented that if the City takes it and some neighbors don't want anything done and others do, the City is back into the same hassle with a strip that's hard to get at and the City doesn't come out the winner, he said.

Parks & Recreation Director Ballew said the Parks Dept. doesn't have a lot of personnel to maintain some of the new areas but the benefit would be the recreation potential and if it is turned over to a homeowner's association, the City would have no control. He stated a blanket easement would be necessary in order for the City to have access to the creek/swale system.

Councilor Baxter pointed out that with this open space being unbuildable, that probably means it's very difficult to maintain. He said he would be much more interested in a neighborhood park; these long strips that are hard to get into are a constant headache, he pointed out.

Councilor Herman said that as far as the future potential use, some neighborhoods are very fortunate in having trail systems developed and that's a real asset for them, but the cost factor is also important to consider.

Councilor Baxter said he has a concern about fire hazards in dry grass and Parks & Recreation Director Ballew said this particular area is appropriate for discussion under the Sensitive Areas

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Ordinance. He said he is not sure if it will be deemed appropriate for a trail system, it depends on Council's discussion tonight, he said. He added that Sunnyside Blvd. is to be improved but he didn't believe this open space tract would be conducive to a trail system because of the waterway and other factors.

Councilor Pedersen referred to the hearing examiner's recommendations regarding the drainage plan and asked about mitigation measures on the west side.

Public Works Director Zabell explained the detailed drainage plan is to be submitted by the applicant and would include catch basins, oil water separators, retention systems, releasing water at a metered rate, biofiltration swales, etc. He noted that besides approval from the Public Works Dept., the drainage plan must also be approved by the Dept. of Fisheries.

Councilor Herman asked how stewardship could be provided through an easement and Public Works Director Zabell stated the easement would ensure the City's access in order to make sure the channel is kept clear and to be able to enforce streamside protection, etc.

Planning Director Hirashima explained there is easement language proposed and there would also be restrictive language on the open space--removal of trees, etc. She added there is also language with regard to Tracts A & B with regard to allowing the City access to the open space tract.

Councilor Herman noted that only Tract A is labeled as a Native Growth Protection Area and Planning Director Hirashima stated Tract B was not a wetland area.

Councilor Pedersen commented that keeping the natural vegetation would protect from erosion, she would think, and she said she would like to see a consistent policy be adopted with regard to acceptance of open space tracts such as this.

Councilor McGee pointed out that this piece is unique, it is very wet and is different from other possible future dedications that might come up.

Councilor Herman said he has some strong beliefs that the City should be the stewards of these types of areas.

Councilor Herman moved and Councilor Leighan seconded to authorize the Mayor to sign off on the Final Plat mylar, with the City accepting the open space dedication as proposed by the applicant.

The motion failed 5-2, with Councilors Herman and Leighan being the only ones in favor.

Councilor Baxter then moved that the Mayor be authorized to sign off on the Final Plat mylar, with the City not accepting the open space in Tracts A & B because of liability issues but with a blanket easement for maintenance of the regional drainage outfall. Councilor McGee seconded.

After brief discussion, the maker of the motion and the seconder agreed to add the following to the motion: That #4 of the hearing examiner's recommendations be deleted (with regard to putting in a pedestrian path) and that under #5 of the hearing examiner's recommendations, the word "to" be inserted after "submitted", regarding the drainage plan. The motion then passed 6-1 with Councilor Herman against.

**2. Proposed L.I.D. No. 64.**

Public Works Director Zabell explained that the City and property owners have been trying to put this together for approx. 2 years. The project includes widening of 67th and 88th from 2 lanes to 4 lanes with curbs, gutters and sidewalks and putting in 5 lanes at major intersections for left turns, as well as drainage being installed to serve the stream, he said. He said the request is for the Mayor to be authorized to sign the petition on behalf of the City so that the City would be a party to LID #64, as the Cedarcrest Golf Course is part of the LID properties. He noted the school district and Plat of Cloverdale have already agreed to participate in LID #64.

Councilor Baxter moved and Councilor Wright seconded to authorize the Mayor to sign the petition on behalf of the City and become a party to LID No. 64. Passed unanimously.

NEW BUSINESS:

**1. Rezone from RR 12,500 to RS 9600; Stephen Muller; PA 9208035.**

Planning Director Hirashima gave the staff report, noting this property was annexed in 1990 under the Griffore Annexation; it previously had been zoned R 12,500 in the county and this is primarily an administrative rezone to RS 9600 in order to short plat into 3 lots, she explained. She noted that the hearing examiner is recommending approval of the rezone and staff concurs.

Councilor Leighan disclosed that he and the applicant both belong to the Marysville Rotary but City Attorney Weed said he saw no conflict of interest there.

Mayor Weiser asked about access and Planning Director Hirashima explained.

Councilor Herman asked about the 9600 designation and Planning Director Hirashima said it was designated suburban residential but when it was annexed, it was identified as under a Comp Plan designation of 9600, she said.

Councilor Herman moved to affirm the hearing examiner's recommendation to approve the rezone. Councilor McGee seconded and the motion passed unanimously.

PUBLIC HEARING:

**1. Sensitive Areas Ordinance.**

Mayor Weiser set a time limit of 5 minutes for each speaker, in view of the many people who wished to address Council tonight. He also explained that the City Attorney would swear in all those, including staff, who wished to give testimony on this matter.

City Attorney Weed explained this is a public hearing, consolidated together with testimony to be given under an appeal that has been filed under the SEPA/DNS. He swore in all those indicating they wished to give testimony in this matter.

Carl Baird, 10512 38th Av. NE, addressed Council. He pointed out that the enforcement of this ordinance will be an enormous undertaking and said he feels the City's personnel/equipment/enforcement resources for 1992 are inadequate to control this ordinance and asked if the 1993 budget would support additional personnel. Without these additional resources, the DNS would be deemed

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invalid, he said, in other words, it's like a speed limit that's placed but not enforceable and so is invalid without controls.

Planning Director Hirashima gave a brief summary of the Sensitive Areas Ordinance, giving some history of the process, the large amount of testimony that has been received to date at Planning Commission workshops and public hearings. She reviewed the several letters that have been received by the City:

The Marysville Community Action Network appeal of the DNS in which they recommend use of the 1989 manual vs. the 1987 manual; they suggest regulated Class IV wetlands be lowered (i.e. the exemption level, they feel, is too high).

Letter from Master Builders in which they would prefer no regulation for Class IV wetlands, 50' buffers and they say the Geological Hazard section is "deeply flawed".

Barghausen Engineers letter, supporting reduced wetland buffers.

Dept. of Wildlife letter which supports the use of the 1989 vs. 1987 manual, raising buffers from 50' upwards.

Snohomish County-Camano Realtors letter which supports use of the 1987 manual, 50' maximum buffers, no regulation of Class IV wetlands and dropping the geological hazards section as the UBC would cover items adequately.

Economic Development Council letter which references a white paper they prepared.

Dept. of Fisheries letter, which they have asked be read into the record (she did): supporting 100' buffers for protection of salmon, reinforced adoption of buffers as proposed with no reduction, use of the '89 manual; the letter was signed by Mike Chamlin, Regional Habitat Manager.

She noted that a code compliance officer will be requested by the Planning Dept. for the 1993 budget year.

Lucy Sloman, Planning Consultant, addressed Council. She explained that Class IV wetlands engendered a lot of discussion, with the 1987 and 1989 both identifying wetlands. She stated Class IV wetlands can't be eliminated by virtue of them being included in the definition of wetlands. She also noted that the City has jurisdiction for wetlands under one acre so that they can be filled, above that one acre, the Army Corps of Engineers regulates and to eliminate Class IV, it would just become Class III with more regulation, she said. With regard to the Geological Hazard section, she said it is not the same as the UBC. The Geological Hazard would be identified at the end of the process vs. at the building stage if it were eliminated, she pointed out. She explained that the TDR section is to be held until more research can be done--onsite TDRs under this ordinance would offer more than the State and this ordinance proposes that both the sensitive area and buffer be included, she said.

Councilor Herman clarified that it is "offsite" TDRs that are to be held until more research can be done and Ms. Sloman said yes.

David Brock, 405 N. Stillaguamish, Arlington, addressed Council. He stated his concern is for salmon and he explained he works for the Stillaguamish Tribe and is also a member of other wildlife and habitat oriented groups. He said he commends the City for their efforts and he wishes Arlington would put into force an ordinance

such as Marysville's. He said he hoped everyone shares the concern he does for the salmon, that the population is declining and we need to protect this resource. We need fresh water so the salmon can survive, he said and he read a letter from the State reinforcing the need for protection. He referenced a King Co. paper with regard to buffer widths, noting that it takes at least 100' to reduce fecal coliform, 100' to reduce sediment and the authors of the paper consistently recommend 100', he said. He noted that the habitat within Marysville is not the major habitat of the salmon however it's a factor. As far as the 1987 vs. 1989 issue, he said the 1987 version was intended for field testing with the '89 manual being a "corrected version" which has passed the test of many courts whereas the 1987 manual has not.

Terry Williams representing the Tulalip Tribes, addressed Council. He stated he also has worked with the Pacific Salmon Commission and Puget Sound Water Quality Authority. He thanked the Council for the opportunity for the Tribes to work together toward a package that's designed toward protection of the streams and wetlands. He noted he has also worked with the Environmental Committee at the White House and the Tribes are looking for the ordinance and regulations to do the necessary job of protecting wildlife, shellfish, etc. upon which the Tulalip Tribes economy is based. He noted their economy has been reduced by 60% because of habitat/landscape change problems. He noted this is a serious problem; we need better education about this, for example and he stated he approached the Surface Water Management Dept. at the county and it will cost \$70 million just for the southwest corner of the county to repair erosion, roadways and that doesn't even address clean water, he said. He said he understands people's concerns for their property rights and we should not have to pay that \$70 million. He presented a county report on the Quil Ceda/Allen Creek Systems and pointed out that this report states clearly that our local water system exceeds the fecal coliform of the Ganges River in India, the most polluted in the world! He asked whether the buffers will work. He pointed out that DOE's model ordinance took several years to develop and they came up with a minimum of 50' buffers for Class III wetlands and 200'-300' for Class I and II.

Mr. Williams pointed out that there are going to be costs to the environment, the homeowners, everyone is involved. There is some confusion, he said, over tertiary habitat where a 100' buffer has been recommended; wildlife needs a corridor for protection, he pointed out. He said the Tulalip Tribes also support the 1989 manual. As far as "substantial property right" they interpret that as vesting which is not specifically to protect wildlife/fishing and may come to mean "grandfathering", he said. He pointed out that 40% of Marysville's groundwater ends up in the streams and if it's polluted that's passed on to the streams.

Councilor Pedersen asked how they feel about fisheries protection and Mr. Williams said they agree with the 100' buffer.

Councilor Herman asked about the highest fecal coliform count he referred to and Mr. Williams stated that was in the Stilly System.

Councilor Herman asked him why the Tribes support use of the 1989 manual and Mr. Williams stated the intent was held up in court with the state and Tribes to use the best information and available regulations--the Magnusson Act supports this, he said. He stated the letter that he read was directed at jurisdictions including Snohomish County who have endangered species habitat. He said he knows of at least 2 endangered species and there may be more in Snohomish County.



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Councilor Baxter asked about the \$70 million and how the county collects that.

Mr. Williams said it comes from property taxes, watershed management taxes, etc.

Councilor Baxter asked about the Tribes' portion and Mr. Williams stated the Tribes pay about \$1.5 million to \$2 million each year in resource management and they have lost 60% of their income as a result of loss of habitat/fish and wildlife damage.

Bob Banks, 4914 133rd Pl. NE, addressed Council. He said he is generally in favor of the ordinance with the exception of the use of the '87 manual and would encourage the '89 Army Corps of Engrs. version. He said he has become painfully aware of the degradation of fish and wildlife habitat and failure to protect this valuable resource may damage shorelines extensively as well as other areas. He said he encourages adoption of the ordinance with the '89 version of the manual.

Don Bayes, 1718 252nd NW, Stanwood, addressed the Council. He stated he is associated with Trout Unlimited and the Adopt-A-Stream program. He pointed out that everyone is a product of their environment; what runs into the wetland causes the problem that we have now. He noted that several cities are now looking at developing wetlands, eg. Stanwood, and Marysville is deciding the future with this ordinance. He added that he has worked on projects involving Church and Portage Creeks, trying to bring back habitat which has been lost through a lack of education. He said the cost of loss was brought to our attention by the developers and we need to protect stream corridors. He encouraged the adoption of the 1989 manual vs. the 1987 version.

Gary Wright, 5533 Parkside Dr., addressed Council, pointing out that many of Marysville's nicer neighborhoods would not be in existence today if the Sensitive Areas Ordinance was in place. He noted that the 1989 manual is not workable and many groups have gone back to the 1987 version. He pointed out that his concern with the Sensitive Areas Ordinance is strictly personal and as far as the wetland buffer widths, he thinks they are excessive. He stated there's no scientific data for anything over 50' as far as a proven correlation for effective buffers and doubling the buffers is not going to bring back land that's already been lost. Also, the ability of the City to increase the width of the buffer up to 125% beyond the 100%, he said, to him, is tremendously excessive so that means that property would have to be very wide in a lot of cases; when reducing the wetland it can only go down 25%, he noted. Another concern is in the TDR section where TDRs would expire after 5 years, he said and he said in his opinion that would constitute a taking if everything is lost in 5 years. He pointed out that sometimes timing is the key in real estate transactions, for example. Also, the GMA is not going to be accomplished if we remove from the City's inventory property that's developable, he said; the purpose of the GMA is to develop the City's core areas and leave the outside areas more rural. He said he would ask Council to look for a balanced approach and not try to make up for past errors through "overkill" in the proposed SAO.

Mayor Weiser noted the 5 year sunset clause was for the offsite TDRs which it has been recommended be put on hold.

Ted Schmelzer, 6207 67th Av. NE, addressed Council, noting he has been a resident of Snohomish County 60 years and of Marysville 30 years. With regard to the '89 vs. '87 manual, he pointed out the US Administration and Army Corps of Engineers went back to the

'87 version until the '89 manual can be rewritten, as he understands it. He said he sat in on a lot of Marysville Planning Commission meetings--Marysville has a very good Planning Commission and Planning Dept. and he said he thinks this is an excellent plan, but it's more than protection of wetlands. Some people's property has now turned into wetland and is now unusable and he said he thinks they should be compensated for any loss of property. He added that he has fished all over Alaska, B.C. and Washington and the loss of habitat is a common problem all over, with a very definite need to protect what we have left. He referenced a recent editorial in the Herald which concurred with his thoughts: that you can't overkill a problem and expect to bring back habitat that has already been lost.

Reid Shockey, 2924 Colby, Everett, addressed Council. He said his personal philosophy is similar to the Assn. of Realtors, that wetlands should be protected, but he said his big complaint is with Class IV wetlands. When an individual comes to City Hall and finds they are significantly restricted because they are a Class IV wetland, that is a major concern, he said. He noted the Sensitive Areas Ordinance does not cover one acre pieces, however. With regard to the 1989 and 1987 versions of the manual, he said a wetlands ecology person on his staff prefers the '89 version, but he prefers the '87 version from a better delineation standpoint. With regard to the TDR section, he said he feels it is good if the public and City understand about receiving properties--increasing densities, for example, because someone is being compensated for wetlands in the public interest. He pointed out that if the SAO disallows the TDR then everything has been lost, but the sunset wording needs to be eliminated, he said. He pointed out that he would like to see "critical" and "significant" wetlands defined. Also, he asked who would make the final determination on the amount of buffer. He referred to the EDC land use white paper and said he agrees with their method of dispute resolution. Increasing buffer widths by 125% seems high (and arbitrary) and he asked if this decision was based on findings of a consultant. He also explained his disagreement with extending buffer widths on a slope (p. 13) and said this has nothing to do with wetland protection. He pointed out there is no mention for a single family residence exemption and asked if a single family parcel could be wiped out with buffer requirements. With regard to the report requirements on page 49, section 5, he said several things need to be contained in a wetland/hydrological report and the items listed are not typically contained in that type of report. He pointed out that analysis is not typically in the report, either but it's typical that a condition of final approval might include this report. Also, he noted affordability is a concern and he said he thinks this needs to be considered when finalizing the SAO.

Ed Hayes, 5215 Old US 99, Marysville, addressed the Council. He presented a letter to Council and read it out loud. (See attached) He noted in his letter that the state will have final say on the SAO, he described the location of his land which was purchased by him in 1960 and it has been zoned industrial since that time. He gave a history of the land and what his intended use of it is. He encourage the Council to consider the effects of the SAO when it comes to his land and requested copies of minutes and tape of this meeting as well as the minutes of the Planning Commission meetings of 10/6/92 and 9/29/92.

Carl Baird addressed the Council again. (The first time he addressed Council was under the SEPA/DNS appeal portion.) He said he also strongly suggests the ordinance be revised to the 1989 version as it is defensible. He said without enforcement, this ordinance will have no teeth and it will make it nothing more than

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a forgiveness ordinance. With regard to the code compliance officer being hired, he asked what part of their job would be devoted to the SAO enforcement. He pointed out that this ordinance will shape the future of Marysville and historically lawmakers are revered for their foresight after they are no longer Councilors. He said he trusted the Council would be making the decision that will protect our future.

Bud Blethen, 10524 38th Av. NE, addressed Council. He referred to the Emerald Ridge Plat that was just approved tonight and noted Council gave the Public Works Dept. authority to go into the wetlands on that property. With regard to the SAO, he talked about replacing wetlands that are filled on a ratio of 3:1 and how enforcement of this is the key. He gave the example of an illegal bridge that crossed a salmon bearing stream (Indian Creek) about a year or so ago and it took three agencies to get this bridge removed. This type of thing needs to be addressed in the ordinance, he stated and he added Class II buffers need to be increased to 100' and the south side of Ebey Slough also needs to be included in the buffer width table. He concluded that he is favor of the 1989 manual rather than the 1987.

Dana Mower, Barghausen Engineers/Butters Group, 18215 72nd Av. S. Kent, addressed Council. He said he agreed with Gary Wright, Ted Schmelzer, Ed Hayes and Reid Shockey. He said there is an inherent conflict when you ask people to donate their property for the public good without compensation. He noted valuable resources do need to be preserved but who is going to pay for them? The City would have to pay taxes on them as though they are fully usable and that needs to be taken into consideration, he said. With regard to buffer widths, he referred to a letter in the packets, noting his company are soil engineers and they recommend a maximum of 50'. Also, he explained a new permitting process as of 10/1/92: the NPDES (Natl. Pollution and Discharge Elimination System). He pointed out that there are other agencies that are going to be lowering impacts to streams; also, there have been problems with the '89 manual and therefore encouraged use of the '87 manual. He also explained in very technical terms about a headwater point and 5 cfs in a drainage area, above that you can use one acre fill without a nationwide permit and he said he thinks that needs to be recognized in the SAO.

Councilor Herman questioned the NPDES permitting process having anything to do with the SAO because it would suggest and be specific to a certain pollutant in the water.

Mr. Mower referenced page 14, 2.8 G. "Biofiltration swales may be located within wetland buffers only if they will have no negative effect on the functions and purpose the buffer serves for the wetland." He said since the GMA has come about, there has been an attempt to make up for past sins and the NPDES is a separate site specific permit with regard to water quality limits, etc.

Councilor Herman argued that the NPDES would have nothing to do with water and habitat retention or storage capacity issues.

Mr. Mower said there is a manual out that deals with these issues, NPDES deals with water quality issues. He talked a bit about wet pond/standing water requirements to be used as a wetland buffer.

Michael Smith, Snohomish-Camano Assn. of Realtors, 3201 Broadway #B, Everett, addressed Council. He said generally, he sees the SAO as very cumbersome; it needs some paring down. He pointed out that the 1987 manual requires 3 elements--water, soils and hydrology and the '89 manual only requires one, with the other two

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optional. With regard to Class IV wetlands, he said they do not believe they require buffers. He admitted there must be a reconciliation between protection of wetlands and affordability. With regard to buffer widths, he pointed out there is no scientific evidence for effectiveness of buffers over 50' and they would recommend going lower if there was an increase in enhancement of the wetland buffer. With regard to the ability to increase wetland buffers by 125% excessive, the county recommends 25%, he said. He assured Council he is not taking issue with habitats but they do not know how they were developed and would recommend the Dept. of Wildlife list reference be deleted, with alternatives included such as education about wetland protection, which is not covered in the ordinance. As far as TDRs, he noted that in Maryland it took a long time for this concept to work and Marysville needs to get the real estate industry to facilitate, educate the public, etc. and there needs to be reciprocal arrangements with the county, for example, allowing density transfers with no net loss of density. He touched briefly on the geological hazard section as well as the affordability issue. He concluded that giving up a marginal urban wetland may be the price we have to pay for a higher density allowance.

Bill Roberts, 4210 63rd Av. NE, addressed Council, noting he is a member of the Marysville Planning Commission. He said he wished to clarify how they came to this point and noted that they had a lot of discussion between environmental issues vs. property rights --they tried to get a balance between the two. With regard to the 1989 vs. 1987 manual, the Planning Commission went to a number of experts and it was noted that farmland may not be a wetland under the 1987 version but may be under the 1989 version. Under the 1987 definition of a wetland, there needs to be water on top of the ground for a certain part of the year; the 1989 version has more technology but he said he understands you still need the 3 elements but under the 1989 manual the water could be 18" below the surface. You have to protect wetlands somehow and the federal government has chosen the 1987 version, he pointed out. He admitted that the Planning Commission never did agree on buffer widths, they could come up with no majority and the proposed SAO is a compromise in this area. He said some of the things they looked at here were other cities such as Lynnwood and Bellevue, that were similar in size to Marysville. As far as the Class IV wetlands were concerned, the Army Corps of Engineers only have 2 things, he said: wetlands and uplands, then the wetlands have to be broken down. It's been included in the 1987 definition, he said. With regard to TDRs--the Planning Commission knew the county, City and state don't have the resources to buy off everyone's property, he said. Offsite TDRs would refer to property that's not developable but he said it's an important part of the property owner rights. That section has not been included until the Planning Commission gets some direction from Council, he said and added they feel they can devise a system that will work. He also said he feels you can control the density transfer and that this can be tracked. He added he doesn't anticipate offsite TDRs are going to be a major issue--it's a last resort solution. The Planning Commission attempted to balance that issue out, he said and with regard to banking, with the enhancement of wetlands in another area, you are allowed to fill more than an acre; he said he would like to see the City do this, it's something Everett is looking into.

Councilor Pedersen asked what considerations were used when the Planning Commission chose Lynnwood, for example, to compare buffer widths--number of streams as compared to Marysville??

Commissioner Roberts said basically it was based on population and size of city only. He added they listened to a number of experts

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with regard to buffers and ended up with a compromise on buffers to protect wetlands. He concluded the Planning Commission did the best job they could based on City of Everett and consultant and other information.

Councilor Pedersen asked about some of the other buffer widths in other cities that were compared and Commissioner Roberts said some cities have no buffers, some have more than that proposed for Marysville. The Army Corps of Engineers have no buffers, wetlands are protected through other measures, he pointed out.

Celeste Kukahiko, 11304 41st Dr. NE, addressed Council. She said her philosophy is that the citizens of our community need to care more about our future and people with dollar signs in their heads have a lack of respect for nature and the environment. She explained that her family has a lot of wildlife in behind their house and if it's rezoned they would lose the hawks, coyotes, possums, etc. She said they want it left the way it is and don't feel it should be changed. As for land investors, it would be the same as losing on the stock market, there's nothing they can do about it, she pointed out.

Councilor Wright asked about a home that Mrs. Kukahiko's children will be able to afford to buy in the future and Mrs. Kukahiko said she didn't feel this would be a problem, that her son is getting a good education and will be able to get a good job (as a doctor) and buy a house in the future, no problem.

Marilyn Phelps, 6307 80th St. NE, addressed Council. She said they bought their home 15 years ago as their retirement. Munson Creek surrounds their house and if you take a 50' wide buffer on each side of the creek, they would end up losing 2 acres of their property, which represents a substantial amount of their land.

Rob Baker, 8305 83rd Av. NE, addressed Council. He said he finds that when he looks at buying a house, the house represents the highest part of the cost, so it doesn't matter how large the property is. With regard to passing the water on into the stream/slough system, it takes everything with it, he said, and gave as an example what happened when Bayview Ridge flooded the Getchell Hill and golf course area. We have to consider where the water goes and we have to take care of that, he said and added that the ponds and streams there can't handle the rainfall and drainage. We have too much concrete, he concluded and added that the Planning Commission was looking at Bellevue and Lynnwood which is exactly how he doesn't want Marysville to end up like. He suggested comparing Marysville with communities which have more similarities than Lynnwood and Bellevue.

Mike Papa, 9128 58th Dr. NE, addressed Council. He said he likes the concept of "no net loss of density" and "no net loss of wetlands" could be put back in the ordinance. He said he wished to give his support for the buffer widths in the ordinance, as per the MCAN appeal. He compared the buffer widths contained in the Everett SAO and said Marysville's is almost as good as Everett's. He referenced a clause about having the ability to reduce buffers 25% and he surmised that's what's going to happen probably, with every applicant that comes before Everett Planning Dept.--people are not going to want more, they are all going to go for less, he guessed. He noted the 1991 Puget Sound Water Quality Management Plan recommends the 1989 manual and they talked about decreasing buffers, too. He concluded that Marysville owes it to the public to explain the rationale for decreasing buffers.

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Dan Flynn, Master Builders, 2820 164th SW, Lynnwood, addressed the Council and referred to their letter in the packets (he submitted the original of the letter for the record). He said he was hoping the Council would have the Snohomish County Tomorrow Critical Areas maps included in the SAO as decisions should be based on these maps. He said they have a concern about the geological hazard section--the county turned down a similar ordinance to Marysville's 5-0. He noted they feel this portion of the ordinance is deeply flawed and stands in potential conflict with the UBC. Some of the provisions actually conflict with sound geotechnical engineering and would result in increasing, not eliminating, dangerous conditions, he said and he added that this is simply another layer of technical language that is not needed.

Councilor Pedersen referred to secret documents released with regard to buffers and Mr. Flynn confirmed that the information contained in those documents was covered up originally because there was no scientific basis for requiring any buffer greater than 50 ft.

Lucy Sloman said she was not aware of these documents and would be interested in exploring this further.

The public testimony portion of the public hearing was closed at 10:09 p.m. as there was no one further who wished to speak under this section.

**BREAK: 10:10 to 10:20 PM**

(Councilor Baxter not present.)

Mayor Weiser thanked all those who gave testimony for doing so in a professional and efficient manner.

Councilor Baxter returned to Council Chambers at 10:21 p.m.

Councilor Pedersen stated she would like to see something put together regarding the differences between the 1987 and 1989 manuals, she said also she would like to see the Master Builders document referred to with regard to buffers; she said more work needs to be done on the TDR issue, defining terms in the ordinance, looking at section 2.8, defining critical and significant wetlands, dispute resolution for buffer widths.

Councilor Leighan added the single family residence/lot issue that Reid Shockey brought up.

Councilor Pedersen added 2.8 - adding of biofiltration language.

Councilor Wright added 5.2 - #5.

Councilor Pedersen said she understands the DOE was saying 50' buffers were inadequate vs. other information that there is no scientific basis for more than 50' and she said she would like more information on that.

Councilor Baxter asked about the property on the south side of Ebey Slough not being addressed in the buffer widths. He asked what the process is from here.

Councilor Pedersen suggested giving the Planning Commission specific recommendations.

Mayor Weiser said perhaps the offsite TDR section should be sent back to the Planning Commission, but no more than that.

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Discussion followed about how much time the Planning Commission has put in so far, that the Comp Plan update is still in the process of being done. Councilor Herman said he would support a motion to remand the offsite TDR section back to the Planning Commission for finalization.

Mayor Weiser asked about the Snohomish County Tomorrow maps being included in the ordinance.

Councilor Baxter suggested making a list of all the things that need to be done, things that were questioned. He said he would like to continue this issue to another meeting in view of all the unresolved issues at this time.

Mayor Weiser said he would like the information brought back the first meeting of November and that the Council should give the Planning Commission some direction, eg., with regard to TDRs, sunset clause, whether TDRs are going to be recognized by a title company.

There was more discussion about consultants' time and expense, a code compliance officer, delineation of wetlands, penalties, TDR tracking, NPEDS permitting process, fecal chloroform sample sites and results, geological hazard section, fairness of changes, reducing vs. increasing buffers, '87 vs. '89 manual, differences, court decisions, no net loss of density issue and no net loss of wetlands, TDRs (onsite & offsite), scheduling of SAO to come back to Council, Ebey Slough analysis with regard to buffer width recommendations including analogous areas. Nov. 9 was discussed as a better date than Nov. 2 for review by Council because of the Comp Plan and Budget coming up in November also.

City Attorney Weed suggested continue the public hearing or just leaving the part of the public hearing open that would allow more information to be brought back by staff; in order to prevent having to readvertise, he suggested a continuance.

Councilor Herman moved to remand the section on offsite TDRs to the Planning Commission for further work and development of that section, to be rewritten with the assistance of the City Attorney, with a status report to Council the first meeting in Feb., 1993. Councilor McGee seconded the motion.

City Attorney Weed said there are numerous legal issues involved and perhaps the Council would want to adopt the SAO ordinance without the TDR section as it is such a complex section; it could be added later, he noted.

The motion passed unanimously.

Discussion followed concerning reopening of the public hearing/testimony section.

Councilor Pedersen moved to continue the public hearing and public testimony section of the Sensitive Areas Ordinance public hearing to 11/9/92 with the information requested from staff to be provided by 10/30/92 to Councilmembers. Councilor Leighan seconded and the motion passed unanimously.

#### ORDINANCES & RESOLUTIONS:

##### **1. Ordinance Annexing Certain Unincorporated Area Known as the Northwest Annexation into the City of Marysville.**

Councilor Wright moved and Councilor Leighan seconded to approve/

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adopt Ordinance 1910. Passed unanimously.

**2. Resolution Establishing a Citizen Award Program.**

Councilor Myers moved and Councilor Leighan seconded to approve/adopt Resolution 1588. Passed unanimously.

**3. Resolution Stating the City's Intention to Annex Certain Unincorporated Area into the City Known as the Potter/Krotke Property & Transmitting the Matter to the Boundary Review Board for Snohomish County for Approval.**

Councilor McGee moved and Councilor Myers seconded to approve/adopt Resolution 1589. Passed with Councilor Herman against.

ADJOURNED INTO EXECUTIVE SESSION: 10:53 p.m.

**1. Pending & Potential Litigation.**

RECONVENED: 11:32 p.m.

Councilor Leighan moved that the City purchase right of way property from Frontier Bank on 64th St. for the price discussed in Executive Session. Councilor Wright seconded and the motion passed unanimously.

ADJOURNED: 11:33 p.m.

Accepted this 26<sup>th</sup> day of October, 1992.

David Weiser

MAYOR

Mary B. Swanson

CITY CLERK

Thanda R. Swanson

RECORDING SECRETARY