

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING MAY 4, 1998 00067

CALL TO ORDER: 7:00 p.m.

ROLL CALL: All Present

MINUTES OF PREVIOUS MEETINGS:  
1. City Council Meeting; 4/27/98 Approved

AUDIENCE PARTICIPATION: Tara Deffries, Dan Gartiez

CONSENT AGENDA: Approved:  
1. Approval of and Authorization for Mayor to Sign Professional Services Agreement with Hammond, Collier & Wade-Livingstone in the amount of \$58,844 for Engineering Services for an infiltration and inflow study.  
2. Approval of and Authorization for Mayor to Sign Professional Services Agreement with Hammond, Collier & Wade-Livingstone in the amount of \$36,743 for Engineering Services for the Regional Detention Pond C Design Report.

STAFF'S BUSINESS:

MAYOR'S BUSINESS:  
1. Proclamation: "Try Transit Week" May 11-15, 1998

CALL ON COUNCILMEMBERS:

REVIEW BIDS: None

CURRENT BUSINESS:  
1. LID 64 & 65 Bond Issue Ordinance 2188 Approved

PUBLIC HEARINGS:  
1. Closed Record Hearing; Carol Kapua Amendment for use of  
Amendment Appeal; PA9801008 property  
2. Closed Record Hearing; Rezone/  
Variance Appeal; Robert Aldridge; Appeal Denied; Rezone/  
PA9710049 Variance Approved  
3. Closed Record Hrg; Rezone/Variance Appeal Denied; Rezone/  
Appeal; Rbt. Aldridge; PA9707028 Variance Approved

ORDINANCES & RESOLUTIONS:  
1. Ordinance 2189 Approved Ordering Construction & Installation of Sewer Main & Appurtenance Along Parkside Dr. & 72nd St. NE all in accordance with Res. No. 1875 of the City Council; Establishing LID 69 and Ordering Carrying Out of the Proposed Improvement; providing that Payment for the Improvement be made by special assessments upon property in the district, payable by the mode of "Payment by Bonds"; and Providing for the Issurance and Sale of Local Improvement District Warrants Redeemable in Cash or Other Short-Term Financing and Local Improvement District Bonds.

ADJOURNED: 11:15 p.m.

EXECUTIVE SESSION: 11:22 to 11:59 p.m.  
1. Personnel No Action

RECONVENED & ADJOURNED: 11:59 p.m.

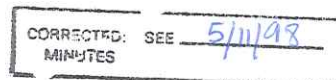
## MARYSVILLE CITY COUNCIL MEETING

MAY 4, 1998

7:00 p.m.

Council Chambers

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

CALL TO ORDER:

Mayor Weiser called the City Council 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 PREVIOUS MEETINGS:**1. Council Minutes 4/27/98 Meeting.**

Councilmember Pedersen asked that the 2nd paragraph from the bottom, page 2, be reworded as follows: "Councilmember Pedersen followed up on televising of Council meetings and how other cities handle the length of their Council meetings."

On page 7, 3rd paragraph under Current Business, Councilmember Pedersen asked that the words "and the 4th phase would have to meet code" be deleted. On page 10, 3rd paragraph from the bottom, she asked that the words "and dispatch center" be inserted between "jail" and "profitability".

Councilmember Herman noted on page 5, first sentence, that the word "estimated" should be inserted between "the" and "assessment" and at the end of the sentence, to add "in the future."

On page 11, 4th paragraph, Councilmember Herman asked that the words "visible proof of the use of" be changed to "credit given to" and at the end of the same sentence, the word "uncumbered" should be "unencumbered."

On page 9, last paragraph, Councilmember Myers asked that the commas and the word "however" be taken out of the second sentence, also to change "this is going to be attracting" to "this will be attracting."

It was also noted on page 11 about half way down, Councilmember Pedersen returned at 11:02 not 10:02 p.m.

On page 11, 4th paragraph from the bottom, Councilmember Herman stated the correct spelling of the name should be "Don Berkey."

There being no further corrections, Councilmember Myers moved and Councilmembers Pedersen and Bartholomew seconded to approve the 4/27/98 minutes as corrected. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Tara Deffries, 4304 Sunnyside Blvd., addressed Council and stated four weeks ago her daughter (Nikki) was killed on Sunnyside and Councilmember Myers was working on getting a sign put up in her memory.

MAY 4, 1998

Page 1

Councilmember Myers responded that he had brought this up at last Council meeting.

Mayor Weiser stated the City does not have a policy in place and it would be up to the family.

Mrs. Deffries said she would like a sign put up and also asked what it would take to have a petition signed with regard to a sidewalk along Sunnyside Blvd. as well as having the road actually widened.

City Attorney Weed explained the LID process for widening of the road as well as possible other road improvements that could be paid for through the budget process and/or possibly paid upfront by the City (through the LID process or development requirements); it depends on a number of factors, he said.

City Planner Hirashima noted the Planning Dept. is currently reviewing a subdivision in that area and one of the conditions they are discussing is an off shoulder improvement.

Mrs. Deffries pointed out that there is one side of Sunnyside that is widened and she would like to see a sidewalk put in there; there are a lot of kids along there and she said she heard there was another one hit on Saturday. She said she would really like to get this process moving.

Councilmember Herman said what's currently being done probably needs to be identified, as well as what other alternatives are available. He suggested the Planning Dept. and/or City Administrator put this in a letter for her from staff so it's not something that's going to be dealt with off the top of Council's heads. He added that he would like to at least see the signage go ahead.

Councilmember Pedersen suggested Mrs. Deffries get in touch with MADD (Mothers Against Drunk Drivers) to see how they go about arranging to put up signs, what criteria they use and then bring that information back to Council so Council can make a decision quicker.

Dan Gartiez, 6409 83rd NE, addressed Council. He said he just moved here and it turns out his house is right next to a school that has track meets on a regular basis and they use a starting gun and/or bullhorn. He said he is deathly afraid of firearms and besides it is a very loud noise for which he is asking if they could come up with an alternative that's less noisy. He noted the track meets are several times a week and go on all day long. He added that he also has concerns about Sunnyside because people go over 50 mph in a 35 mph zone; it's very hazardous.

Councilmember Wright suggested putting the portable speed monitor out on Sunnyside for awhile so people become aware of how fast they are going.

CONSENT AGENDA:

- 1. Approval of and Authorization for Mayor to Sign Professional Services Agreement with Hammond, Collier & Wade-Livingstone in the amount of \$58,844 for Engineering Services for an infiltration and inflow study.**

Councilmember Herman moved and Councilmember Wright seconded to approve Item 1 under Consent Agenda. Passed unanimously.

- 2. Approval of and Authorization for Mayor to Sign Professional Services Agreement with Hammond, Collier & Wade-Livingstone in the amount of \$36,743 for Engineering Services for the Regional Detention Pond C Design Report.**

MARYSVILLE CITY COUNCIL MINUTES  
MAY 4, 1998  
Page 3

Councilmember Herman said this is for a facility that if done on an individual basis, would be borne 100% by the developer but for some reason the cost of this regional facility is being borne by the City and he wished to have more information about this.

City Administrator Zabell explained the developers on the first one went all together and on the 2nd one the City recovered costs. He said the intent originally was that the City was going to do the engineering and the intent on this is similar; the policy is not codified as yet.

Councilmember Herman said he would like to see that happen so there is no surprise for future property owners.

City Administrator Zabell said another route is to recover under a stormwater contract and Public Works Director Winckler said an alternative was to get an estimate and they were going to bring back a proposal for mitigation and recovery to Council.

Councilmember Herman moved and Councilmember Myers seconded to approve Consent Agenda Item 2. Passed unanimously.

STAFF BUSINESS:

Police Chief Carden announced Walt McKinney's retirement dinner, for which invitations have gone out, May 7th at the Commons at the Everett Navy Homeport.

He also reminded everyone of the Medal of Honor presentation that will be made posthumously to William "Don" Arndt at the Criminal Justice Center in Seattle, 1:00 p.m. on May 11th.

City Attorney Weed reported the state statute is being amended with regard to it being illegal for minors to possess tobacco products and once it is amended, the City of Marysville can adopt the RCW by reference.

It was the consensus that City Attorney Weed draft an ordinance to this effect and bring before Council.

City Planner Hirashima said the Planning Dept./Code Enforcement Officer has followed up with regard to mowing of grass on the Tudor property. Also, the school mitigation fees are being reviewed and in bringing this up before the Planning Commission, the question was raised as to whether parks and traffic mitigation fees should come before Council at the same time as school mitigation fee increases. She noted the school district would like to see the City's ordinance with regard to school mitigation fees in place as soon as possible.

There was considerable discussion regarding the timeline of the county's hearing dates, when the school district's capital facilities plan will be adopted, the fact that if all three are brought before Council the same night, it's going to make for a long meeting.

Mayor Weiser said he understood that it was going to be brought in as a package.

Public Works Director Winckler summarized Change Order #2 for the Highway 9 Reservoir, outlet pipe modification and pumping on a weekend, in the amount of \$253.40 which amounts to 4/100ths of 1% of the total project.

He reminded Council of the Utilities Committee meeting on 5/14 at 7:30 a.m. and noted the 92nd & State traffic signal has been activated but the timing has to be adjusted still. There will be an official "turning on ceremony" soon and Councilmember Wright will be asked to participate in that.

**There was a return of discussion regarding the mitigation fees and the consensus was to bring them all in as a package.**

Public Works Director Winckler said regarding the sidewalk program, he will be bringing a report back to Council soon as well as engineering studies required by the state. He said DOT is still planning on being at the 5/11 Council meeting to make a presentation on state highway closures.

MAYOR'S BUSINESS:

**1. Proclamation: "Try Transit Week" May 11-15, 1998.**

Mayor Weiser read, signed and presented the proclamation to Mr. Perry from the Community Transit Board.

CALL ON COUNCILMEMBERS:

Councilmember Dierck reported she will be attending a meeting regarding the Chinook salmon issue, May 11 at the Seattle Hilton and also a meeting/conference May 20-21 in Mount Vernon, called "Salmon in the City."

Councilmember Myers followed up on the 88th & State proposed longer left hand turn lanes.

Public Works Director Winckler said the new traffic signal has still not come in; several items need to be replaced and the State is going to also replace the signal cabinet this month.

Councilmember Myers asked about Law Day and Mayor Weiser said it will be from 12:30 to 2:30 on 5/8 in the Public Safety Building.

Councilmember Myers asked about a televising Council meetings budget and noted he has researched this a little and found out that the average time for a city who televises meetings takes another hour and a half longer than it would if it weren't televised.

Councilmember Herman expressed concern about traffic mitigation, transit and parking issues in Marysville and asked about DOT being contacted about Park and Ride lots. He said in the long term he sees a number of things that need to be done and knows CT is talking about a transit center. There is nothing firm about this yet but CT is accepting ideas of how this might work in this area, eg. how it might contribute to downtown revitalization, how such a facility could be situated to meet long range needs of the community. He said he would like to see some interactive communications on these issues.

Councilmember Leighan asked about a more ornate light pole for the First & State intersection and Public Works Director Winckler said he could bring some ideas back before Council.

Councilmember Wright said she will be attending the May 11th meeting regarding Chinook salmon also. She also thanked whoever was responsible for finally getting the 92nd & State traffic signal operational; she said it has made a tremendous improvement both to pedestrian and vehicular traffic flow.

Councilmember Pedersen followed up regarding looking into the feasibility of the City having an ethics officer and Mayor Weiser said Mary Swenson is looking into that and will probably have some information on it very soon.

Councilmember Pedersen noted the Housing Hope Action Committee would like to know when the Human Services Committee will be meeting and Mayor Weiser said he would follow up on that.

Councilmember Pedersen reported she met with the Library Board and they would like to know when the presentation will be made to Council regarding the pedestrian crossing/yellow turtles.

Public Works Director Winckler said probably next meeting.

Councilmember Pedersen followed up about the Arts Council or Commission and Mayor Weiser said he has talked with the President of the Greater Marysville Artists Guild who would like to meet with the Library Board, along with the other people who have been recommended.

CURRENT BUSINESS:

**1. LID 64 & 65 Bond Issue.**

Finance Director Wilson reviewed the agenda bill and introduced Steve Gaidos and Lee Voorhees.

Steve Gaidos, Vice President of Key Capital Markets, 700 5th St., 48th Floor, Seattle, addressed Council. He handed out copies of the purchase offer and explained the bond issue in detail, explaining that it would be a 17 year bond at a 5.9% assessment interest rate, which is .1% below what was estimated. He compared this bond issue with a revenue bond issue for Friday Harbor which was non-rated, explaining that LIDs are also non-rated bonds. He summarized that they feel they have done a good job for the City and ask that the Council approve the offer for sale.

Lee Voorhees, Municipal Lawyer and Bond Counsel, Foster Peper & Shefelman, addressed Council and spoke about a recent court ruling on an LID appeal which was dismissed with prejudice by Judge Keeling. He reviewed the ordinance in the packets and specifically reviewed interest rates as well as the favorable court action already mentioned. He also highlighted redemption provisions, use of bond proceeds, recommending that favorable action be taken by Council tonight.

Councilmember Myers moved and Councilmember Bartholomew seconded to approve Ordinance 2188, approving the bond purchase contract as recommended. The motion passed 6-1 with Councilmember Dierck against.

PUBLIC HEARINGS:

**1. Closed Record Hearing; Carol Kapua Amendment Appeal; PA9801008.**

City Attorney Weed reviewed the procedure, noting City Council is acting as a judge with regard to the Hearing Examiner hearing and a copy of the record was supplied to the City Council and appellant. He asked for declarations under the Appearance of Fairness Doctrine.

Councilmember Leighan said he has had ex parte communications with the appellant and his business was used as an example in her appeal. He said he wished to step down as there may be an appearance of unfairness and he did so. There were no other declarations from any of the others on Council.

City Attorney Weed asked the appellant if she had any challenges and Ms. Kapua said she did not.

City Attorney Weed outlined the procedural steps:

1. Staff report to be given.
2. Any questions from Council.
3. 5 minute oral summation by appellant.
4. Opportunity for Council to ask appellant questions.
5. Close of Closed Record Appeal.
6. Council discussion and deliberation.

City Planner Hirashima reviewed the agenda bill, noting the Hearing Examiner had recommended approval of change of ownership provided the use is limited to a retail neighborhood specialty shop with the name of "Nature's Cache." She said the appellant is claiming inequity with other businesses and rezone requests,

has a business history of 11 years in neighborhood with long term future interests in maintaining the neighborhood as a residential property owner within the neighborhood.

There was discussion about the area wide rezone and contract rezones. City Attorney Weed noted generally the language in a contract rezone doesn't guarantee the zoning will go into perpetuity. City Planner Hirashima noted until the area wide rezone goes into effect later this year, the majority of this area will be called single family high density but until that time, the old use matrix will apply which is an inconsistency but it is only for an interim period.

Councilmember Herman asked about long term use and perception and City Planner Hirashima said the appellant noted an equity issue because she thought she should be considered for business/community commercial use; the issue is, is this compelling enough and the Hearing Examiner thought that the record did not show that it was, she said.

Carol Kapua, 5930 74th St. NE, addressed the Council. She thanked Council for considering her appeal and said she would like to clarify that she purchased a map from the City and according to the map it was shown as Single Family at 51st & Grove and then it was changed since the map was published. (She purchased the map in 1997.) She went on to say that she has been in her location for 11 years and put in motion lights for security as well as other improvements including trees along 3rd. She pointed out that she is very close to the downtown business corridor and the building across the street from her on the southwest corner has been petitioned by 3 attorneys to put in an office building now. She said she thought that would be a nice addition to the neighborhood. Also, there is an inhouse business near Nature's Cache and a lot of homes in there are rentals and she said she would like to see a business go in where she is, rather than reverting to single family. She concluded that she wished she had come before Council years ago and now she can't seem to do it but her main concern is about having equality with other businesses.

Councilmember Dierck asked about the 3 attorneys and City Planner Hirashima said they would still have to meet some code issues but through the conditional use process they would have a public hearing with regard to what conditions would be placed; they want a professional office building but they have some parking issues to deal with.

This portion of the closed record hearing was closed at 8:35 p.m.

There was a very lengthy Council discussion/deliberation in which issues brought up were requirements of a single family residential area, conditional use process, contract rezone conditions, whether the "specialty" can change, whether Ms. Kapua could change the use to a professional office space.

There was also extensive review of the 4/28/87 Planning Commission minutes as well as the 5/4/87 City Council minutes regarding intent, how restrictive this particular contract rezone is. It was noted that a Comp Plan amendment could have been done but wasn't, that there is a compelling argument to stick to the records and documents in place at this time.

City Planner Hirashima noted that Ms. Kapua is attempting to sell the property as a commercial property in which case she would get a different value for it vs as a single family property.

Councilmember Wright noted that in the old minutes, Mr. Allendoerfer had said the new owner would have to come back for a rezone. City Attorney Weed stated in order to qualify for professional office, the rezone contract would have to be cleared and then they could apply for a rezone.

City Planner Hirashima added that Ms. Kapua had indicated that at least one of the parties interested was interested in continuing a retail operation but at this point there is more than one potential buyer; possibly a professional office building is another interest.

Councilmember Myers moved to do something to change the limitation currently in place but there was no second.

There was further discussion about the contract rezone in place and the 1987 minutes. City Planner Hirashima noted this situation is very unique because if the conditional use permit is approved they will still be considered a non-conforming use in a single family zone; the contract limits make this very unique.

City Attorney Weed noted that if the Council approved a professional office use it would probably be illegal under the zoning code at this time but could do that if the Council feels there is a reasonable basis for doing that.

Councilmember Myers moved to amend the contract under Exhibit A, last page, sentence (7) - use to be limited to single family residential or retail neighborhood business. There was no second to the motion.

After further discussion, Councilmember Myers moved to partially affirm the Hearing Examiner's decision, amending Exhibit A, #7, to limit the use to Retail Neighborhood Business or Single Family use with no expansion of offstreet parking to be allowed for commercial use. Councilmember Bartholomew seconded.

It was noted that any use that were to go in would have to meet parking requirements on their own.

After further discussion, City Attorney Weed pointed out that this is a bilateral agreement so the motion should be stated that the mayor be authorized on behalf of the City to enter into an amended agreement with Carol Kapua. Councilmembers Myers and Bartholomew agreed.

City Planner Hirashima asked about the intent of the motion, eg. under Neighborhood Business, that would include businesses such as dry cleaning, daycare, some types of auto repair, medical/dental, offices, retail uses. She asked if the intent is to allow Neighborhood Business and Councilmember Myers clarified it should be Retail Neighborhood Specialty Shop.

On questioning, City Planner Hirashima said she would use a variety shop use in that case, as a definition for Retail Neighborhood Specialty Shop.

Councilmember Myers restated his motion that the use be limited to Retail Neighborhood Specialty Shop or Single Family with no expansion of parking to be allowed for commercial use.

City Planner Hirashima acknowledged that this would open it up a little, so it doesn't have to be called "Nature's Cache."

The motion passed 6-0.

**Break:** 9:30 to 9:35 p.m. Councilmember Leighan returned at 9:35 p.m.

**2. Closed Record Hearing; Rezone/Variance Appeal; Robert Aldridge; PA9710049.**

City Attorney Weed briefly explained the closed record appeal process and noted the record has been made available to Council and the appellant. There will be no new testimony or evidence allowed and a 5 minute oral summation each will be allowed from the appellant and applicant, he said.



MARYSVILLE CITY COUNCIL MINUTES  
MAY 4, 1998  
Page 8

He asked if there were any declarations with regard to the Appearance of Fairness Doctrine and Councilmember Bartholomew said the appellant many years ago worked for her, mowing her lawn but Councilmember Bartholomew said she does not believe this would affect her making an impartial decision.

Councilmember Leighan referred to Exhibit 34 submitted by Jeff Thornton of the Fire Dept. and he noted three of the Councilmembers serve on the Fire Board. Councilmembers Leighan, Myers and Wright all indicated they did not feel there would be any effect on their decision in this case.

The appellant, Suzanne Smith, said she had no challenges but wanted to merely mention she did not mow Councilmember Bartholomew's lawn, she actually served on Councilmember Bartholomew's campaign committee several years ago.

Lorna Corrigan, attorney representing Mr. Aldridge, said she had no challenges, either.

City Attorney Weed outlined the procedural steps, noting first the staff report would be given, then Councilmembers' questions, then the appellant would give her 5 minute oral summation, then the applicant or his representative would give his 5 minute oral summation, Council would be allowed to ask questions of each, then the closed record appeal would be closed for Council discussion and deliberation and final decision.

City Planner Hirashima reviewed the agenda bill and information in the packets, noting the Hearing Examiner recommended approval of the rezone and variance which was then appealed by Suzanne Smith/Habitats Northwest - QUAD, who is basically saying the Hearing Examiner did not require adequate buffer widths per the Sensitive Areas Ordinance and Comprehensive Plan policies, that the Hearing Examiner erred by granting of variances to lot 8 and that the Hearing Examiner erred in determining the development made adequate provisions for parks and recreation facilities, playgrounds, sites for schools and school grounds.

Councilmember Leighan asked about the habitat analysis and City Planner Hirashima explained the qualified consultant utilized in this case was Wetland Resources.

There was discussion about the "standing" and "merit" issues involved in a closed record appeal and City Attorney Weed said he would recommend standing be first considered and even if no standing is discovered, Council should listen to both parties' summations and consider merit.

Suzanne Smith, 4821 75th Ave. NE, Marysville, addressed Council and said she is entertaining the idea of dropping these two appeals on the following conditions: That the Sensitive Areas Ordinance be remanded to the Planning Commission for revisions to make it firm so people know where they stand and also that the ordinance be repealed that the City Attorney is writing right now about appeals having to go to the Superior Court vs City Council. She pointed out that the City Council currently adopts ordinances that give Council a judicial role and so Council should also be able to handle appeals. She added that she would like some decision tonight.

Councilmember Dierk noted this is something that the Council has talked about at their workshops, etc. and she said she thinks it sounds like a good idea to do.

Councilmember Herman agreed, stating at the last Council meeting there was discussion about looking at the Sensitive Areas Ordinance and these are revisions that he perceives would be when buffers are to be revised. He said with regard to the second issue, he feels there is some perception that the City Council is a policy making body and changing hats to a judicial role puts a great deal of stress on Councilmembers so he would prefer appeals go to a court setting, he said.

MAY 4, 1998

Page 8

CORRECTED: SEE 5/4/98  
MINUTES

There was brief discussion and it was noted that Mr. Aldridge is paying an attorney to represent him and so it would probably be most fair to at least hear his 5 minute oral summation.

Councilmember Leighan said as one of the people who was against passing of the current Sensitive Areas Ordinance, he would not be opposed to it being reviewed in light of the Snohomish County SAO, eg., which is less stringent. As far as the Title 15 ordinance being repealed, he said he would still like to hear the appeal.

Suzanne Smith then read her statement, stating there are standards outlined in MMC 19.24.230 set forth regarding with regard to when the buffer shall be increased, it's a guideline regarding when the buffer shall be increased, not mitigated. She noted the state is the one that put the Chinook on the Endangered Species List and this is an emergency situation. Further, she noted the decision of the Hearing Examiner may be appealed by anyone who has a proprietary, pecuniary or personal right affected by his decision and she said she feels her personal rights are affected as she is entitled to clean water and fish and her children and their children have the same rights. She said she is for responsible development and approval of this plat does not protect Chinook salmon nor personal rights.

Lorna Corrigan, Attorney with Newton Kight, representing Robert Aldridge, addressed City Council. She said as far as the issue of standing, she said she believes submittals show standing has not been met by the appellant. What is the test of this person vs a person from the public at large? Ms. Smith has the same record as everyone else in the United States which does not meet the standing criteria, Ms. Corrigan said. She said it is their position that neither Ms. Smith nor her business nor QUAD have standing to pursue this appeal before Council. With respect to the substantive issues, even though Ms. Smith feels the applicant is not meeting code, the issue comes down to interpretation of the code. The language talks about increasing buffers but the ordinance continues to say "and if an increased buffer is necessary to perpetuate the habitat or protect the animal." Ms. Corrigan stated the difficulty with this argument is that Ms. Smith neglects the evidence that indicates in this case an enhanced buffer is of much more benefit to the environment than increasing the buffer because there is a degraded buffer and in this case it would be more appropriate to enhance it than increase it to 100', she said. She went on to say that the qualified consultant has stated that increasing the buffer is not the answer and enhancing the buffer has been given as a recommendation, providing the adequate amount of shade, for example. She referred to Exhibit 37 from the qualified consultant and said all goals and purposes of the Sensitive Areas Ordinance have been met.

With regard to the lot depth variance on lot 8, she said this is referring to the general shape and topography of the lot and has nothing to do with buffers. She pointed out that the Comp Plan and strictures are in place and indeed met by the information from the qualified consultant.

Councilmember Dierck asked about the reference to 200' buffers which she understood the applicant's represent said the appellant was requesting.

Ms. Corrigan said no, it was her understanding they were asking for 100' buffers and not 200' buffers.

There were no other questions of the appellant nor the applicant's representative and this portion of the hearing was closed at 10:05 p.m.

There was discussion about individual and/or organization standing and City Attorney Weed commented that in order to sue and be sued, a corporation, partnership or LLC needs to be formed, eg. have articles of incorporation, certificate of formation, partnership

MARYSVILLE CITY COUNCIL MINUTES  
MAY 4, 1998  
Page 10

agreement in conformance with state statute, prepare annual reports, publish a list of corporate officers, have a registered agent; there would be a separate set of rules for a lobbyist, eg. filing with the PDC.

Councilmember Bartholomew referenced page 7 of the 3/12/98 Hearing Examiner minutes where Ms. Smith is testifying on behalf of Habitats Northwest and Quilceda/Allen Creek Watershed Friends and not as an individual.

Councilmember Bartholomew then moved and Councilmember Wright seconded that the appellant does not have standing. The motion failed 4-3, with Councilmembers Myers, Dierck, Leighan and Herman against.

Councilmember Myers said he is against reducing any buffers, especially to add one more lot. Also, the fire dept. responded regarding parking in the street, he pointed out.

Councilmember Herman noted it's very difficult to separate out the Council's judicial role from policy setting and he noted some discrepancy between the MMC quoted by Ms. Smith and his code book.

City Planner Hirashima said he needs to have his code book updated as it was renumbered, although the language in this case remains unchanged.

There was further discussion concerning the expert testimony supplied regarding enhancing vs expanding buffers as well as testimony from a qualified consultant vs a private citizen.

City Attorney Weed pointed out there are several parts to the MMC in question: Determination by a qualified wetland consultant, enhancing the buffer being recommended over increasing the buffer.

Councilmember Dierck pointed out that the consultant was hired by the developer and there were references in the record where one project was opposed by a whole neighborhood and then Wetland Resources successfully represented a developer (Exhibit 40).

Councilmember Leighan noted the appellant could have hired their own wetland consultant but there is testimony from only one qualified consultant in the record to go by.

Councilmember Herman noted that with regard to the variance it was pointed out that this variance only applied to lot 8 and he said he found merit in some of the other arguments with regard to buffers and consultants hired. He said he would have preferred more than one consultant represented in the record. Also, the issues for the variance don't seem to be supported by the record and given the reference to the qualified consultant that also does not seem to be based on what is in the record, he said. Under 5a it seems like the qualified consultant says it's not necessary to protect the habitat but the appellant did not offer any testimony to offset that and so it supports the Hearing Examiner decision, he concluded.

Councilmember Leighan moved and Councilmember Wright seconded to deny the appeal and uphold the Hearing Examiner's recommendation to approve the rezone and variance with findings as listed by Councilmember Herman.

The motion passed 6-1 with Councilmember Dierck opposed.

Councilmember Pedersen left Council Chambers at 10:35 p.m. (and did not return).

MARYSVILLE CITY COUNCIL MINUTES  
MAY 4, 1998  
Page 11

**3. Closed Record Hearing; Rezone/Variance Appeal; Robert Aldridge; PA9707028.**

City Attorney Weed said he wished the record to reflect that the same parties are involved with the same procedure as under the immediately previous item. He asked for declarations under the Appearance of Fairness Doctrine other than those already raised. There were none from the Council and no challenges from the appellant or applicant.

City Planner Hirashima gave the staff report, reviewing the information in the packets.

Suzanne Smith, 4821 75th Ave. NE, addressed Council. She said Habitats Northwest is a qualified habitat consultant for the City of Marysville and she was very disappointed Gloria did not mention that. She said she (Ms. Smith) was also in communication with wetlands ecologists about buffers but she didn't think she would have been allowed on the developer's property to get a site specific analysis in this case, to check out degraded buffers. She also noted that a consultant being paid by the developer is not going to recommend the developer increase buffers. She also noted that removal of blackberries within the buffers is going to allow the stream to get hot and Chinook can't survive when the water is hot. Blackberries will shade the stream and she said her point is expansion of a buffer as well as enhancement is the ideal. They are asking for a variance on a variance and it's a small site, she concluded.

Councilmember Herman said he had noted in the Hearing Examiner minutes that Habitats Northwest is on the list of qualified consultants for the City, so that's in the record. He asked if she was a qualified consultant as an individual, with credentials.

Ms. Smith asked if she had had someone with credentials represent her when the record was open if that would have qualified her and Councilmember Herman said yes, in his opinion.

Ms. Smith said she did not have anyone representing her as a qualified consultant, but she is a representative of Habitats Northwest.

Lorna Corrigan, Newton Kight, representing Robert Aldridge, addressed Council. She said she thinks there might be a conflict between the ordinance that's been adopted and how it's being applied and that Council should give the members of the public some idea of the expectations. She said she thinks it's unfair to classify Mr. Aldridge as a developer who does not wish to preserve the ordinances or policies put in place by the City, Mr. Aldridge is a responsible developer, the ordinance is to make sure adequate steps are taken and Ms. Smith seems to be saying Mr. Aldridge is not meeting the ordinance. Mr. Aldridge is saying he is, she said. Further, Ms. Smith is saying enhancement is not preferable, however she does not have credentials as stated in the record.

Ms. Corrigan referred to MMC 19.24.230 (5) with regard to increasing buffer width, based on site specific analysis, that the impacts on the habitat can only be mitigated by greater buffer width. The ordinance does however, allow that there may be some circumstances where a greater buffer width does not enhance the environment and greater buffer width in this case would not accomplish the goal of the ordinance as per the qualified consultant, she said. She went on to say the second part of the ordinance says "when the buffer does not protect the habitat" so the ordinance requires the developer to go out and get a qualified consultant which Mr. Aldridge did and he has also demonstrated that he is enhancing the buffers and has complied with all requirements. She concluded that they wish the Council to deny the appeal.

There were no further questions of the appellant or applicant and this portion of this hearing was closed at 10:50 p.m.

MAY 4, 1998

Page 11

MARYSVILLE CITY COUNCIL MINUTES  
 MAY 4, 1998  
 Page 12

Councilmember Herman moved to recognize that Suzanne Smith has standing as an individual in this issue and Councilmember Dierck seconded. There was a 3-3 tie with Councilmembers Wright, Bartholomew and Leighan against and so the Mayor was asked to cast his vote.

Mayor Weiser prefaced his vote with a statement that it has always been his preference that the Council decide issues without his vote however in the interest of time invested by Council here, his vote is that Ms. Smith does have standing. So the motion passed 4-3.

After further discussion and City Attorney Weed reading nine criteria from MMC 19.54.040 regarding variances, determination that the development is consistent with Comp Plan density requirements, discussion about school mitigation, Councilmember Wright moved to deny the appeal and to allow the rezone and variance. Councilmember Bartholomew seconded and the motion passed 5-1 with Councilmember Dierck opposed.

ORDINANCES & RESOLUTIONS:

1. **Ordinance Ordering Construction & Installation of Sewer Main & Appurtenance Along Parkside Dr. & 72nd St. NE all in accordance with Res. No. 1875 of the City Council; Establishing LID 69 and Ordering Carrying Out of the Proposed Improvement; providing that Payment for the Improvement be made by special assessments upon property in the district, payable by the mode of "Payment by Bonds"; and Providing for the Issurance and Sale of Local Improvement District Warrants Redeemable in Cash or Other Short-Term Financing and Local Improvement District Bonds.**

Councilmember Bartholomew moved and Councilmember Leighan seconded to approve/adopt Ordinance 2189. Passed 5-0, with Councilmember Wright abstaining.

ADJOURNMENT: 11:15 p.m.

EXECUTIVE SESSION: 11:22 to 11:59 p.m.

1. **Personnel.** (No Action)

RECONVENED & ADJOURNED: 11:59 p.m.

Accepted this 11<sup>th</sup> day of May, 1998.

David Weiser  
 MAYOR

Mary Swanson  
 CITY CLERK

Standa A. Swanson  
 RECORDING SECRETARY