

Original

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING

MAY 3, 1999

98100

CALL TO ORDER/FLAG SALUTE:

7:00 p.m.

ROLL CALL:

Councilmember Pedersen
excused (on vacation)

MINUTES OF PREVIOUS MEETINGS:

- 1. City Council Meeting; April 26, 1999 - Approved

AUDIENCE PARTICIPATION:

Jeff Seibert, Bruce Tipton
Bob Aldridge

CONSENT AGENDA:

Approved:

- 1. Approval of 5/3/99 Claims in the Amount of \$217,699.73; paid by check nos. 44903 through 45033 with check nos. 44590, 44809 and 44610 void. (Approved after Executive Session)
- 2. Plan Check/Building Inspector - Establish Position and Authorize Budget Amendment.
- 3. Amend 1999 City Operating Budget.

ACTION ITEMS:

New Business

- 1. Sensitive Areas Ordinance Revisions "Immediate Revisions"
- Prioritize Revisions to be brought back to Council by June 28/99.

Ordinances & Resolutions

- 1. Res. 1927 Approved 6-0 Declaring Certain Items of Personal Property to be Surplus and Authorizing the Sale or Disposal Thereof.

LEGAL MATTERS:

- 1. State of Washington Interlocal Cooperative Agreement ICA-99312 with the Office of the Administrator for the Courts for JIS Equipment Replacement Upgrade Fees
Approved/Mayor Authorized to sign

INFORMATION ITEMS:

- 1. Mayor's Business
- 2. Staff's Business
- 3. Call on Council Members

ADJOURNMENT:

8:58 p.m.

EXECUTIVE SESSION:

- 1. Real Estate 9:05 to 9:33 p.m.
See Ordinance Below
- 2. Personnel Consent Agenda Item #1
Approved
- 3. Litigation No Action

RECONVENED:

9:33 p.m.

Ord. 2256 Approved 5-1 authorizing the Condemnation, Appropriation, Taking and Damaging of Land and Other Property for Construction of Facilities for Marysville Fire District Purposes.

ADJOURNED:

9:38 p.m.

MARYSVILLE CITY COUNCIL MINUTES

MAY 3, 1999

7:00 p.m.

Council Chambers

00137

Present: Dave Weiser, Mayor
Councilmembers:
 Donna Wright, Mayor Pro Tem
 Brett Roark
 NormaJean Dierck
 Donna Pedersen (excused)
 Mike Leighan
 Otto Herman, Jr.
 Shirley Bartholomew
Administrative Staff:
 Grant Weed, City Attorney
 Dave Zabell, City Administrator
 Ed Erickson, Finance Director
 Dr. Romero Protacio, Human Resources Manager
 Ken Winckler, Public Works Director
 Robert Carden, Police Chief
 Gloria Hirashima, City Planner
 Roger Kennedy, Fleet/Facilities Manager
 Wanda Iverson, Recording Secretary

CALL TO ORDER/FLAG SALUTE:

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

ROLL CALL:

Mayor Weiser asked the Recording Secretary to note members present/absent (as indicated above).

MINUTES OF THE PREVIOUS MEETINGS:

1. City Council Meeting; April 26, 1999.

Councilmember Dierck noted on page 4, in the paragraph just above "Noise Ordinance" that she was opposed to the motion as she would like to see more flexibility as this was pertaining to only one duplex.

On page 8, Councilmember Leighan noted in the 2nd paragraph from the bottom under Call on Council, he was referring to Brownfield grants that the City might be able to apply for.

There being no further corrections, Councilmember Herman moved and Councilmember Dierck seconded to approve the April 26, 1999 minutes as corrected. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Jeff Seibert, 5004 80th St. NE, addressed Council. He thanked the Public Works Dept. for keeping his driveway open last week during the sewer construction. He asked the City Attorney about seeming conflicting chapters in the MMC regarding street standards/access standards and asked which chapter would supersede, Chapter 12 or 20.

City Attorney Weed said occasionally the old code does not get replaced so he will take a look at this and he explained how you can tell new from old and this can a lot of times be taken care of by the staff administratively.

Bruce Tipton, 6308 100th St. NE, addressed Council. He pointed out that the Washington Association of Real Estate Brokers is involved in a lawsuit with the National Marine Fisheries concerning the Endangered Species Act and Sensitive Areas Ordinance and he specifically noted Councilmember Wright should excuse herself from any discussions in this regard.

City Attorney Weed said the issue is whether the Sensitive Areas Ordinance is quasi judicial or legislative and it is clearly a legislative action, so the Appearance of Fairness Doctrine would

CORRECTED: SEE 5/10/99 MINUTES

not apply; even if the Sensitive Areas Ordinance issue was quasi judicial he said he is not sure this would excuse any Councilmember.

Councilmember Roark asked if you were working with a real estate agent, if that would be a conflict of interest and City Attorney Weed said no, the Sensitive Areas Ordinance is a legislative matter and the Appearance of Fairness Doctrine would not apply unless a Councilmember had a bias by being a member of a particular association. City Attorney Weed said he would take a closer look at the matter but it's rare that an association with a group would create a Conflict of Interest; this is a legislative action.

Mr. Tipton said he feels there are going to be quasi judicial actions coming before Council and he said he would like a ruling on this from the City Attorney so there would not be an unfair burden on the public to come to every meeting and make sure a challenge is made, if necessary. He noted that even the Critical Area Ordinance affects land use and he would see formalization of buffer sizes as land use/quasi judicial issues.

City Attorney Weed pointed out that if it's a general consideration of the ordinance and not site specific, that would not be quasi judicial. He added that in the future the Planning Commission/Hearing Examiner will set forth a recommendation and if that comes before City Council, the Conflict of Interest Doctrine may come into play at that time. He said a rezone of a specific area would be quasi judicial, a general action would be legislative and it's rare that land use issues would come before City Council with the Hearing Examiner process. He also noted that every quasi judicial issue is different and so it is hard for him to be too specific, without saying there might be some exceptions.

There was discussion about financial gain being one of the criteria, with the implementation of larger buffers, eg., how each case needs to be considered separately, City Attorney Weed said he would follow up on this.

Bob Aldridge, 5420 79th Pl. NE, addressed the Council. He explained he wished to speak about a plat already approved by the Hearing Examiner, a plat being graded that someone seemed upset about at last week's City Council meeting. He explained they had done extensive grading using alternative means of erosion control with close monitoring and no siltation went into the creek. He added they have been very conscientious about the work and the Compliance Officer has been very pleased; they have been working with staff.

Councilmember Herman explained his comments of last week and said he was glad to hear Mr. Aldridge is working with staff.

Mr. Aldridge explained further that they direct water away from the slope and that way they don't need an erosion control fence.

City Planner Hirashima reported (per her handout) the Grove Street Plat was adjacent and east of Allen Creek and Category III wetland. The project included review relative to the creek, wetland and slopes. The minimum point of the creek buffer is 75', and 100' from the lot line along the majority of the site. In most cases the prevailing buffer was the wetland buffer which is 30' at its minimum point. Grading of the top of bank was recommended by the geotechnical engineer to remove fill material and allow construction on native soils. This work is quite evident and is undoubtedly the cause for concerns by people passing the site. The site was graded to promote drainage away from the top of bank and as a result, staff visiting the site believe there is no erosion occurring as a result of grading to either the wetland or stream. The developer has been installing

all plantings required in the buffer enhancement plan and has completed construction of the wetland fence at the back of the lots.

Mr. Aldridge added further that it was originally an old farming homestead and it was recommended that the loose soil be graded so there would be stable soil for construction; he made sure there was no silt that went into the creek and they did remove some blackberries. The bank is now in grass and other native vegetation. He said he is still concerned to the point where he is not sure whether he should sell this property to a builder or develop it himself.

CONSENT AGENDA:

1. **Approval of 5/3/99 Claims in the Amount of \$217,699.73; paid by check nos. 44903 through 45033 with check nos. 44590, 44809 and 44610 void.**
2. **Plan Check/Building Inspector - Establish Position and Authorize Budget Amendment.**
3. **Amend 1999 City Operating Budget.**

Councilmember Leighan asked that Items 1 & 2 be pulled. He said he wished to have Item #1 discussed in Executive Session under Personnel. Councilmember Dierck asked that #3 be pulled and voted on separately.

Finance Director Erickson addressed Item #2, noting the budget amendment is for \$2,000 and would come out of the General Fund. He also noted there is a new process for approving budget amendment ordinances.

City Attorney Weed explained as per state law, the ordinance is introduced at one meeting and approved at the next so the public has a chance to review and give input, if necessary, except in the case of an emergency appropriation.

Councilmember Dierck asked about the use of consultants once a Plan Check/Building Inspector position is established and City Administrator Zabell said this position would reduce substantially the use of consultants.

Councilmember Bartholomew moved and Councilmember Herman seconded to establish the position of Plan Check/Building Inspector with the provision that the budget amendment will be in next week's packet. Passed unanimously.

Councilmember Dierck noted under #3 "inadequate authority was sought" and Finance Director Erickson explained that LID 69 came in less under budget than originally anticipated.

Councilmember Roark moved and Councilmember Bartholomew seconded to approved Consent Agenda Item #3. Passed unanimously.

Councilmember Bartholomew also noted the bond market took a major hit today and perhaps there was another outstanding bond that could be refinanced.

At this time, Mayor Weiser introduced Dr. Romero Protacio, the City's new Human Resources Manager.

New Business

1. **Sensitive Areas Ordinance Revisions - Prioritize Revisions.**

City Planner Hirashima reviewed the agenda bill, specifically "Immediate Revisions" and "Longer Term Revisions". She noted that some of the agencies are proposing emergency changes, eg. DOE.

Bob Graef, 7311 69th Ave. NE, addressed Council. He noted that land use ethic defines wildlife habitat as parcels with no potential development, so what has happened is there is non-

definitive language which leads to misunderstanding, a concept regarding viability as a corridor, that habitat can easily be replaced, mitigation, and he said he feels there has to be studies to determine and consideration of the policies with regard to aspects other than just slopes; there are already studies and data out there, eg. from the University of Washington and state studies.

Councilmember Roark noted he has seen a lot of conflicts in the studies.

Mr. Graef explained he is a teacher of environmental issues and a published author on the subject and feels he has appropriate credentials in this area. Our conceptions are changing daily and he said he is looking at moving forward to more definitive language in the City's and State's code.

Mike Papa, 8127 54th Dr. NE, addressed Council. He added that a lot of language in the ordinance starts out "Consider...." and that's like "Encourage...." He added that a lot of this passed in 1992; the Planning Commission basically just looked at what other cities' buffers were and he said he would like to see 125% of current buffers which would be more defensible. On the "Immediate Revisions" he said he would see this as a good first step, that the City should go ahead with "Longer Term Revisions" also, as soon as possible. He said he thought there was supposed to be public ownership, eg. trails through the Sensitive Areas.

Mayor Weiser said the City was told they could not put trails in around the new library, eg.

Councilmember Herman said it apparently depends on ownership, dedication, etc., follow up by staff.

City Planner Hirashima noted wetland buffers are placed in a common tract, publicly or privately owned within a subdivision. Last year they reviewed these and they found that under the Sensitive Areas Ordinance the requirement of separate tracts was the one that encouraged protection and reduced infringement, she said. She added they saw easements that resulted in intrusion and infringement, eg. swales.

Mr. Papa said he was hoping that this time line could be moved up.

City Planner Hirashima said the intent is to accomplish the Immediate Revisions this month; a couple issues have come up and she thinks this is a realistic schedule.

Mr. Papa said if the City goes with this action plan, the City will be in a better position than the county and he will be working on them, too!

Mr. Tipton addressed Council again, explaining Mr. Graef was addressing a way of thinking that has gone on. The emergency ordinance that he thinks the City should adopt could be sent back to the Planning Commission for their input after emergency adoption by City Council. He noted there has been a lot of money already spent on studies and the Quilceda/Allen Creek Watershed Plan is out and he said he thinks the City should adopt that flat out, but the slant of the City Council seems so weighted towards developers.

Mayor Weiser asked what he would propose and Mr. Tipton said he thinks the City should adopt the Quilceda/Allen Creek Watershed Plan as an emergency ordinance; the letter of concurrence from the state is not quite final yet but he understands they have made their decision.

City Planner Hirashima said the Planning Dept. has reviewed all implementation measures and with regards to the buffer areas the City has a Sensitive Areas Ordinance in effect and they have

indicated they would consider the Quilceda/Allen Creek Plan but they need to take public input for consideration. She said they sent a letter of concurrence and specific actions will be taken in accordance with the City Council legislative process.

Mr. Tipton pointed out that Council legislative process includes an emergency ordinance and he asked if there was concurrence with the general body.

City Planner Hirashima said there was consensus, however there were specific areas that would require review of the current Sensitive Areas Ordinance.

Mr. Tipton asked if it was the consensus of the City to follow the best science available and City Planner Hirashima said yes.

Councilmember Dierck asked if the Council can bypass the Planning Commission on an emergency ordinance and City Attorney Weed said the Growth Management Act has to be followed with full public participation and hearings.

Mr. Tipton explained the emergency ordinance would be temporary and Councilmember Dierck asked if Council could just bypass the Planning Commission.

City Attorney Weed said if Council wanted to impose a moratorium, yes, they could bypass the Planning Commission.

Councilmember Roark asked about a precedent for this and Mr. Tipton said there was precedent setting when the DNR/Forest Practices/Tulalips changed the stream typing regulations and moved the categories up one type.

Councilmember Roark asked if Mr. Tipton thought public input necessary and Mr. Tipton said no; the City could get public input once the temporary ordinance is passed.

Mr. Papa pointed out that the emergency ordinance would at least take care of the immediate revisions. He said the City of Redmond just put a 6 month moratorium on commercial development so he doesn't see why the City of Marysville can't pass a temporary ordinance.

Councilmember Bartholomew asked how much the sewer moratorium cost the City in legal fees and how long the litigation process lasted.

City Attorney Weed said it was substantial and lasted 4 years.

Councilmember Herman noted this is something he wanted to see before Council and he remembers a discussion at the Planning Commission level of how complex issues can take a long time to accomplish. He said he sees an urgent situation in buffer reduction and enhancements, eg. functional value of a buffer. He said he wants to see this work, he wants to see defensible buffers and not reduced buffers in line with the current ordinance. He said he would suggest the Immediate Revisions plus some mid range revisions out of the Longer Term items listed on the agenda bill.

Councilmember Dierck said she really only sees two workable solutions: A moratorium on growth and with the immediate revisions she sees workshops, hearings at the Planning Commission level and then workshops and hearings at the City Council level and another building season is going to go by so she said she thinks the City needs a moratorium and/or bypass the Planning Commission and impose an emergency ordinance. She said she has contacted the NMPD as well as the state and they are going to look into when they are going to respond to the responses that were sent in to respond to the Endangered Species Act. She summarized that she would like to see a requirement of 125% of what the buffers are now, require buffer enhancement and bump up the categories one type.

Councilmember Bartholomew said she is against any legislation without public input/public hearing(s).

Councilmember Wright said she feels the Council's responsibility is to get local participation.

Councilmember Roark said he would like public input but not to the extent that going back to the Planning Commission is going to cause such a long process and time is an issue here.

Councilmember Dierck asked if the City does not fit the criteria, can they be sued and it was pointed out that anyone can sue anyone but that doesn't mean anything.

Councilmember Dierck moved to put on a building moratorium in any case where the building is affecting growth, effective immediately. The motion died for lack of a second.

Councilmember Dierck moved to bypass the Planning Commission and have the City Council consider revisions to the Sensitive Areas Ordinance. Councilmember Roark seconded but the motion failed 4-2 with Councilmembers Bartholomew, Herman, Leighan and Wright against.

Councilmember Herman moved that the 5 items under Immediate Revisions - Revise language and consider elimination of buffer reduction for enhancement; Change permitted buffer averaging from 50% to 25% maximum; Require a 125% increase in buffers where threatened or endangered species exist, or eliminate the 125% increase provision; Require enhancement when necessary as part of development approval; Revise Category 4 wetland definition, so that exemption level is consistent with Corps of Engineers and DOE approvals - be considered by the Planning Commission as soon as possible and brought back to City Council. Further, that staff review and recommend items from the Longer Term Revisions for priorities. Also, the Immediate Revisions to be brought back before Council no later than the last City Council meeting in June. Councilmember Roark seconded the motion.

Councilmember Dierck asked if an individual Councilmember can be sued for not saving the salmon and City Attorney Weed said anyone can be sued but he didn't see any "cause for action" here.

The motion passed unanimously.

Ordinances & Resolutions

1. Resolution Declaring Certain Items of Personal Property to be Surplus and Authorizing the Sale or Disposal Thereof.

Councilmember Bartholomew moved and Councilmember Dierck seconded to adopt Resolution 1927. Passed unanimously.

LEGAL MATTERS:

1. State of Washington Interlocal Cooperative Agreement ICA-99312 with the Office of the Administrator for the Courts for JIS Equipment Replacement Upgrade Fees.

City Attorney Weed reviewed this, noting it is basically regarding Y2K compliance.

Councilmember Herman moved and Councilmember Bartholomew seconded to authorize the Mayor to sign the agreement. Passed unanimously.

INFORMATION ITEMS:

1. Mayor's Business.

Mayor Weiser announced next week he will be serving on Superior Court jury duty.

Regarding the Brownfield Seminar coming up, Mayor Weiser said City Planner Hirashima will be attending.

Mayor Weiser said he will be attending the GTE/EDC meeting this Thursday a.m.

Regarding the AWC Resolutions Committee, Councilmember Wright has been appointed by Mayor Hanson for a 2nd term.

AWC Officers up for election are Treasurer, Vice President and President.

Staff's Business

Chief Carden reported on the accreditation process and gave an update/status report which has included evaluations with good participation, committees, etc. He also noted there will be a formal inspection in September which will be video taped for the access channel. He reported on the school resource officer program in conjunction with the school district, which is working well. He said it seems to have improved communications and incidents seem to have dropped off; good feed back has been received.

City Administrator Zabell asked that any Councilmembers wishing to attend the upcoming AWC Convention on the 23 through 25, should please let Lillie or Mary know. He reminded Council of the Cities and Towns meeting Thursday at Fanny's.

City Planner Hirashima referred to her handout on two projects on Grove St., the Aldridge and Jubie projects. She reported on the City's noise ordinance being in force from 7 a.m. to 10 p.m. and actually does not apply in residential areas; the state law applies there but local jurisdictions can change this, she said. She reported the 152nd St. Annexation is in the 45 day review process; Marysville School District wanted their parcel included and the Planning Dept. has been in touch with them. The school district will be withdrawing this request, she said.

Call on Councilmembers

Councilmember Leighan asked about Paul Rochon being on vacation and City Planner Hirashima said yes, as of Wednesday.

Councilmember Leighan noted the First St. Bypass is getting full of potholes and Public Works Director Winckler said they will blade it out.

Councilmember Leighan asked about the 60th Drive light arrows and Public Works Director Winckler said he would follow up.

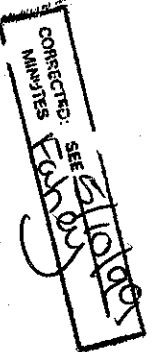
Councilmember Leighan noted some of the road crews could use training regarding public perceptions. Public Works Director Winckler said he would follow up about this, also.

Councilmember Wright reported she will be in Washington, DC the night of the Cities and Towns meeting and they will be holding committee elections as well as the officers reported by the Mayor.

Councilmember Dierck referred to an ESA/SEPA meeting and said she would like to see staff attend all these types of meetings and/or seminars and/or workshops to get as much information as possible.

City Planner Hirashima said she did attend a recent seminar at the county but wasn't aware of the one Councilmember Dierck referred to.

Councilmember Dierck said Terry Williams apologized for not being able to make last Friday's meeting that had been arranged for, but wanted to reschedule. She gave his available dates as 5/11, 5/12 or 5/26 and the consensus was the evening of 5/26, however Councilmember Bartholomew would not be able to attend this.



MARYSVILLE CITY COUNCIL MINUTES

MAY 3, 1999

Page 8

Councilmember Bartholomew reported there is a deep pothole on Columbia when you exit the post office, near 10th. Public Works Director Winckler said he would follow up on this.

ADJOURNED: 8:58 p.m.

EXECUTIVE SESSION: 9:05 to 9:33 p.m.

1. Real Estate.
2. Litigation.
3. Personnel.

RECONVENED: 9:33 p.m.

Ordinances and Resolutions (Continued)

1. Ordinance of the City of Marysville Authorizing the Condemnation, Appropriation, Taking and Damaging of Land and Other Property for Construction of Facilities for Marysville Fire District Purposes.

Councilmember Dierck moved and Councilmember Herman seconded to approve/adopt Ordinance 2256. Passed 5-1 with Councilmember Roark against.

Consent Agenda (Continued)

Councilmember Wright moved and Councilmember Bartholomew seconded to approve Consent Agenda Item #1. Passed 5-1 with Councilmember Roark against.

ADJOURNED: 9:38 p.m.

Accepted this 10th day of May, 1999.

David W. Wier
MAYOR

Wanda R. Iverson
CITY CLERK

Wanda R. Iverson
RECORDING SECRETARY