

**MINUTES RECAP
MARYSVILLE CITY COUNCIL - REGULAR MEETING
SEPTEMBER 7, 1999**

00239

EXECUTIVE SESSION	6:30 p.m.
CALL TO ORDER/FLAG SALUTE	7:15 p.m.
ROLL CALL	All present
MINUTES OF PREVIOUS MEETING 1. August 16, 1999 council workshop 2. August 23, 1999 council meeting	Approved as corrected. Approved as corrected
AUDIENCE PARTICIPATION	Brad Johnson
PRESENTATIONS/PETITIONS/COMMUNICATIONS 1. Association of Washington Cities - Stan Finkelstein	
CONSENT AGENDA 1. Approve September 7, 1999 claims in the amount of \$631,444.30 paid by check Nos. 47494 through 47746, with check Nos. 47207, 47359, 47622, and 47603 void. 2. Approve new liquor license application for 7-Eleven Store #2306-18861J and renewals for Big K-mart #7253, Mai's Restaurant, Marysville Oriental Store, Don's Restaurant, and Safeway Store #1485. 3. Authorize Mayor to sign the final plat mylar for Cedar Crest Greens, Division II, PA 9806036. 4. Sunnyside Trunk D Sewer Phase 1 change order (information only). 5. Approve professional services agreement, Supplement No. 5, with Perteet Engineering in the amount of \$13,047.00 for the SR528 67 th to 83 rd Street road improvement project. 6. Authorize "No Parking" signs both North and South on the West side of the intersection of 44 th Place NE and Sunnyside Boulevard. 7. Authorize a stop sign on the 64 th Drive NE leg of the intersection of 64 th Drive NE and 77 th Place NE.	Approved; Leighan abstaining. Approved. Approved. Approved. Approved. Approved.
ACTION ITEMS	
REVIEW BIDS None.	
PUBLIC HEARING 1. Sensitive Area Code Revisions PA 9906.026 2. Moratorium on gambling activities per Ordinance No. 2270	Approved with additions and corrections. Continued public hearing until 9/27/99.
CURRENT BUSINESS None	
NEW BUSINESS 1. Utility Variance Application for Belmark Industries Inc. for property located at 9409 35 Avenue NE, UV 99-07 2. Utility Variance Application for Donald and Gayle Davis for Property located at 6820 96 Street NE, UV 99-05 3. Traffic mitigation ordinance - revised capital facilities plan (Planning Commission Recommendation)	Closed public hearing; continued to 9/27/99 for council deliberation and action, only. Approved. Approved.
ORDINANCES AND RESOLUTIONS 1. An ordinance of the City of Marysville amending Ordinance No. 2218 relating to the 1999 budget and providing for the increase of certain expenditure items as budgeted for in 1999. 2. An ordinance of the City of Marysville, Washington adopting engineering design and development standards and repealing inconsistent standards	Approved Ordinance 2277. Approved Ordinance 2278.
LEGAL MATTERS None.	
INFORMATION ITEMS 1. Mayor's business 2. Staff's business 3. Call on councilmembers	
ADJOURN	10:20 p.m.
EXECUTIVE SESSION	To discuss one real estate matter and one item of pending litigation.
RECONVENE	No action taken.
ADJOURN	10:55 p.m. (estimated)

**MINUTES
MARYSVILLE CITY COUNCIL - REGULAR MEETING
September 7, 1999**

EXECUTIVE SESSION

Councilmembers convened at 6:30 p.m. into an Executive Session to discuss litigation. They reconvened into regular session at 7:15 p.m.

CALL TO ORDER/FLAG SALUTE

The meeting was called to order by Mayor Weiser at 7:15 p.m. in the Council Chambers, and the assemblage joined in the flag salute. A voice roll call was conducted. Attendance was as follows:

Councilmembers Present:	Administrative Staff present:
Dave Weiser, Mayor	Dave Zabell, City Administrator
Donna Wright, Mayor Pro Tem	Ralph Krusey, Police Commander
Shirley Bartholomew	Ed Erickson, Finance Director
NormaJean Dierck	Gloria Hirashima, City Planner
Otto Herman, Jr.	Grant Weed, City Attorney
Mike Leighan	Ken Winckler, Public Works Director
Donna Pedersen	
Brett Roark	

MINUTES OF PREVIOUS MEETING

Mayor Weiser noted that the minutes presented for approval were a synopsis of what was said and should be corrected as to what was said, not what was meant. If there was a question about what was said, the tape recording could be consulted.

1. City Council Workshop, August 16, 1999

Councilmembers noted the following corrections:

- Page 3, paragraph 4, letter from State Fish and Wildlife should be letter from National Marine Fisheries. Add to last sentence "and I would like us to do the same."

MOTION by Bartholomew, second by Dierck, to approve the minutes of the August 16, 1999 council workshop as corrected. Motion carried unanimously (7-0).

2. City Council Meeting, August 23, 1999.

Councilmembers noted the following corrections:

- Mayor Weiser noted Councilmember Dierck had requested a correction of the minutes of the August 9 meeting to indicate the Mayor was unaware of the State Department of Fish and Wildlife funding for city projects. After carefully reviewing the tapes from that meeting, he stated his response had been that the city did not have any suitable projects which qualified for the current funding cycle. Consequently, the suggested correction had not been made.
- Page 7, paragraph 3, correct Ebbe Slough to Ebey Slough. Same paragraph corrected sentence should read "When the parts come in, the east Steamboat Slough bridge,"
- Page 7, paragraph 4, the portion of Community Transit's operating budget which was funded by the Motor Vehicle Excise Tax was 30 percent.

MOTION by Bartholomew, second by Roark, to approve the minutes of the August 23 council meeting as corrected. Motion carried unanimously (7-0).

AUDIENCE PARTICIPATION

Brad Johnson, 4821 75th Ave. NE noted that a year ago when the city acquired the Deering wildflower property a Mayoral Advisory Board had been established to assist with the policies on that property. He had attended a Board meeting recently and felt the Board's role was unclear. As a concerned citizen he suggested the city needed to define the role of the Board and how it should interface with the Parks Department or Parks Commission.

PRESENTATIONS/PETITIONS/COMMUNICATIONS

1. Association of Washington Cities – Stan Finkelstein
Mr. Finkelstein, Executive Director of the Association of Washington Cities, noted that several years ago the Association's Board established the Municipal Leadership Program for enhanced training for city officials to help them do their jobs in governing cities and towns. The program consisted of 30 credit hours of approved courses and 640 community leaders had become certified in the past three years. He presented congratulations and certificates of completion to Mayor Weiser and Mayor Pro Tem Wright.

CONSENT AGENDA

1. Approve September 7, 1999 claims in the amount of \$631,444.30 paid by check Nos. 47494 through 47746, with check Nos. 47207, 47359, 47622, and 47603 void.
2. Approve new liquor license application for 7-Eleven Store #2306-18861J and renewals for Big K-mart #7253, Mai's Restaurant, Marysville Oriental Store, Don's Restaurant, and Safeway Store #1485.
3. Authorize Mayor to sign the final plat mylar for Cedar Crest Greens, Dvision II, PA 9806036.
4. Sunnyside Trunk D Sewer Phase 1 change order (information only).
5. Approve professional services agreement, Supplement No. 5, with Pertect Engineering in the amount of \$13,047.00 for the SR528 67th to 83rd Street road improvement project.
6. Authorize "No Parking" signs both North and South on the West side of the intersection of 44th Place NE and Sunnyside Boulevard.
7. Authorize a stop sign on the 64th Drive NE leg of the intersection of 64th Drive NE and 77th Place NE.

MOTION by Herman, second by Dierck to approve items 2 and 7. Motion carried unanimously (7-0).

Regarding item 1, Councilmember Dierck questioned voided check 47622; Mr. Erickson responded that all checks to Vinyl Signs & Banners since July 25th had been voided and no further invoices had been presented for payment.

Regarding item 3, Councilmember Dierck noted she had gone to city hall and reviewed the letters from the Department of Fish and Wildlife. It appeared the State recommended a 125' buffer but was willing to accept a 100' buffer. The developer's consultant asserted a 75' buffer was adequate. It appeared the city was ignoring the State's recommendation. Ms. Hirashima responded that this was an issue which had been debated through a number of plats and related specifically to use of enhancements in a disturbed area, such as a pasture, in order to obtain a buffer reduction. The application had been reviewed in the context of the sensitive areas criteria and existing code. The issue of dealing with buffers in sensitive areas had driven the recommended code revisions which council would address later in tonight's meeting. Councilmember Dierck stated she would vote against approval based on the buffer reduction.

Regarding item 4, Councilmember Dierck questioned the "information only."

Regarding item 5, Councilmember Dierck asked if the biological assessment had been done; Mr. Winckler responded in the affirmative.

Regarding item 6, Councilmember Dierck asked how far on Sunnyside Boulevard the "no parking" signs would extend; Mr. Carter responded they would be installed only in those areas that had curbs, gutters and sidewalks, approximately 200'.

MOTION by Bartholomew, second by Wright, to approve items 1, 3, 4, 5, and 6. Item 1 passed 6-0, with Leighan abstaining. Item 3 passed 6-1, with Dierck voting nay. Items 4, 5, and 6 passed unanimously (7-0).

ACTION ITEMS**Review Bids**

None.

Public Hearing

1. Sensitive Area Code Revisions PA 9906.026

Ms. Hirashima backgrounded council, noting the recommended code revisions had been identified as those requiring immediate revision. They had been considered by the Planning Commission and the council had hosted a public workshop. Copies of the proposed ordinance were available at this meeting.

Councilmember Pedersen asked about the effective date of the revised code and what the effect would be on existing plats. Mr. Weed responded that if council approved the changes tonight, the final ordinance, incorporating some changes to form and recitals, would come back for approval at the next council meeting. Upon adoption of the ordinance, it would become effective five days following publication, so if it were adopted on September 13 and published on September 14 it would be effective September 21. Pending applications would be reviewed by the Planning Department according to the existing ordinance, not the revised one.

The Mayor called for public comments.

Brad Johnson 4821 75 Ave. NE testified he had attended several hearings and meetings on this ordinance. He was an approved wildlife consultant for the City of Marysville and applauded staff's work on the ordinance revisions. He provided council with three pages of suggested revisions and reviewed them, noting mainly that there was no trained biologist on the city's staff qualified to make the determinations encompassed in the code. This was important because the consultants hired by applicants would be biased towards the applicant's point of view.

Councilmember Roark stated he had worked with biology consultants and did not agree they were biased toward the applicant. He disagreed that the city needed to have a trained biologist on staff to review the work of other trained biologists. Ms. Hirashima added that two planners in her department had environmental science degrees and were trained biologists, but did not work in the capacity of doing wildlife and wetland reports; they worked more in the generalist capacity of reviewing reports prepared by qualified consultants. Staff did have the expertise to identify basic wetland and wildlife characteristics and when there was uncertainty they consulted with the State Fisheries and Ecology Departments. The department also had funds budgeted for hiring its own consultants when a separate opinion was needed. The code contained a provision where the city could require a developer, at its own expense, to obtain a second when the initial opinion had been prepared by a consultant who was not on the city's list of qualified consultants. She concluded that the city had not encountered many problems where technical reports were submitted by people who did not have the appropriate education or training in that field.

Ms. Hirashima noted that while Section 19.24.340 of the Sensitive Areas Code spoke to the creation of the approved consultants list, the General Definitions section of the Zoning Code contained the specific education, licensing and training qualifications which were required. She read those definitions for council and emphasized that they would apply to the Sensitive Areas Code. Councilmember Leighan recommended that they be specifically set out in 19.24.340 to add clarity.

There being no one further wishing to testify, the Mayor closed the public input portion of the hearing.

Councilmember Herman reviewed the difficulties the city had encountered in planning for sensitive areas in the past, noting these code revisions dealt with only the most urgent problems and future code revision work would be required. He suggested Mr. Johnson's suggestions could require a lengthy review process and he did not want to delay action on the work which had been done. He suggested correcting one typographical error pointed out by Mr. Johnson. Section 19.24 330(2)(a), line 7, should read "the planning director for inclusion of a" Ms. Hirashima agreed.

MOTION by Herman, second by Roark, to approve the Sensitive Areas code revisions as recommended by the Planning Commission with the addition of the text for clarification in 19.24.340 and the correction in 19.24.330(2)(a). Dierck voted nay; all others voted aye; motion carried (6-1).

2. Moratorium on gambling activities per Ordinance No. 2270

Mr. Weed advised that publication of the ordinance did not constitute adequate public notice and that a notice of public hearing was required. He recommended opening the hearing and then continuing it until September 27 to allow full public notice to be given.

FILE FOR YOUR RECORDS DEPARTMENT

Mayor Weiser opened the public hearing. There were no public comments on this topic.

MOTION by Roark, second by Pedersen, to continue the public hearing on Ordinance 2270, Moratorium on Gambling Activities, until September 27. Motion carried unanimously (7-0).

Current Business

None.

New Business

1. Utility Variance Application for Belmark Industries Inc., for property located at 9409 35th Avenue NE, UV 99-07.

Mr. Winckler gave the staff presentation.

Mayor Weiser opened the topic for public input.

Gary Petershagen, Belmark Industries, 525 cedar Ave., Suite B1, the applicant, recounted the process he had followed, noting he had received approval from the city in November on 1998 for 40 water and 40 sewer hookups. Based on that approval he began the county's process, including preliminary plat application, SEPA review, and staff meetings. The city's approval was confirmed in March with the Certificate of Sewer Availability. Prior to his July 20 hearing with the county, he received a letter from the city stating that while he did have a commitment he needed to carefully review Section 14.32 of Marysville Municipal Code regarding developments within RUSA. He read the code carefully and questioned the need for a variance request when the commitment had already been issued. He stated his attorney was present and would speak to the issue because the process had become so confused.

Samuel Plauche, Buck & Gordon LLP, 902 Waterfront Place, 1011 Western Ave., Seattle, attorney for applicant, noted the process appeared to have gotten "muddied." His review of the utility commitment letter signed November 10, 1998 by Mr. Winckler showed approval for 40 water and 40 sewer hookups, subject to certain conditions. Though there may have been things to look at there, it was clear that there was a commitment to provide 40 water and sewer hookups. Mr. Plauche provided council with copies of the Certificate of Sewer Availability and read some of the text, noting there was a commitment to provide 40 hookups for 41 lots. He asserted that Mr. Petershagen had relied on these two documents in proceeding in his process. Subsequently, the Planning Department had raised concerns about the proposed densities, but that was well after the execution of the above documents.

Mr. Plauche then voiced three legal arguments in support of his client's position. First, a strict reading of the RUSA procedures showed two sets of criteria and implementation rules, with 14.31.060 showing how these were to be applied. Once the application was granted by the city there was commitment, and contract rights were established. Had the application been denied, a separate process, the variance procedure, would have been required. The granting of the application precluded any need to look at a variance or appeal process. He asserted the current process, a post-decisional variance process, was not a valid interpretation of the code or commitment letter. From a process standpoint a variance was not required and a commitment had been made.

Secondly, he questioned what the council would review in a variance process if it determined one was needed. RUSA was clear that if there was a conflict between Snohomish County's comp plan and the RUSA plan, and there was a conflict in this case, then RUSA controlled unless there were pre-existing contract rights. Since there were contract rights, based on the commitment letter, the county's plan controlled unless there were strict reasons why the city could not provide the number of hookups stated in its commitment. Because the city issued a Certificate of Sewer Availability, its subsequent concerns were of a planning nature and were not utility related.

His third point was that the Water System Coordination Act, RCW 70.116.050, dictated what the city's plans should and should not account for. It stated the city's plan should, under state law, call for densities as called out in the county's plan. Mr. Plauche read a portion of Section 3 of the county's coordinated water system plan. He asserted that arguing that the city's plan should control was contrary to state law and that the entire RUSA system and the criteria relied on by staff was not consistent with state law and could not be relied upon.

Mr. Pluache's final point dealt with the county's requirement that a condition of any variance was that county road standards apply. He asserted that road standards do not come into consideration in a utility-related context.

Mr. Pluache concluded by stating the city had committed to providing a certain number of connections. For planning related concerns it later decided it did not want to live up to that, but it was too late to revoke its commitment. He asserted the city was bound to provide the hookups it had committed to.

Councilmember Leighan asked how being within the RUSA boundary related to sewer; Mr. Pluache responded that it only related to water.

Councilmember Pedersen asked about the road standards. Mr. Pluache responded that the city had requested that as a condition of any variance the property be developed to city road standards and while that may be valid to raise in the forum of the Snohomish County Hearing Examiner, it was not properly a part of the RUSA proceeding.

Councilmember Leighan disclosed that he had been contacted by an attorney, Mr. Tyler, via telephone on Saturday regarding this issue. Mr. Weed asked him if, in spite of that contact, he could review this question in a fair and impartial manner. Councilmember Leighan replied in the affirmative. Mr. Weed then asked if there was anyone in the audience who wished to challenge Councilmember Leighan's ability to deal fairly and impartially with the issue based on that contact. No one responded, and Mayor Weiser moved forward with the public comments.

Juanita Steiner, 3532 97 PL NE, opposed the granting of the variance. She reviewed the timeline of the development, and provided council with copies of application for utility commitment and the city's March 25 memorandum to the county, which indicated the proposal conflicted with the city's Sanitary Sewer Comp Plan and that the applicant would need to apply for a RUSA variance. In spite of this notice, applicant continued its process and in July brought up the city's commitment letter which the Hearing Examiner refused to accept. She requested the council enforce its own code and save Marysville from over development.

Benedicta Hill, 3622 97 PL NE, spoke in opposition, supplying council with a portion of the RUSA variance procedure. She read a portion of the document, highlighting the text that set out that council could authorize a variance only if all the facts and conditions existed, particularly paragraph (d).

Rolf Kradenpoth, 3726 92 PL NE, opposed, stating he was the person who had gathered signatures on the letter in opposition to the Quilceda Vista development, particularly in regards to the infiltration system from the development being routed onto their property. The swale that handled the water from the streets in his neighborhood were not maintained by the county or anyone else and technical information suggested that when infiltration systems were not maintained they would ultimately fail. The neighborhood asked that this be seriously considered. The swale dated from 1993 and there were no problems with it currently but Quilceda Vista would be the third development to drain into it. Councilmember Dierck suggested the overflow from the swale was not filtered so sediments and oils ended up in a salmon bearing stream. Mr. Kradenpoth responded that the actual stream was 100' away but the swale's runoff in the winter ultimately seeped into the creek. He added that he had not brought these concerns to the Hearing Examiner's attention but had directed letters to the *Globe* with copies to the city.

Marlene Oliver, 9417 35 Ave. NE, spoke in opposition, noting she lived on 1-1/4 acres and the proposed development would be next to her property. She provided council with copies of the petition containing 64 signatures in opposition. When her uncle, Ralph Jennings, passed away half of the property in question had been offered to the city as a park; that had not materialized. She requested council to strictly adhere to its codes and not allow this level of development to occur. Councilmember Bartholomew noted that the city had been interested in the park proposal but the neighborhood had not been. Ms. Oliver agreed that was the case.

C. A. Farkasosky, 3621 93 PL NE, suggested council should focus on what is right, not who was right. He added the neighbors had not supported the proposed park because the city wanted to utilize sani-cans there.

Marvin Schott, 3602 93 PL NE, spoke in opposition, noting that a density of 40 houses on the property would only result in trouble.

Jeff Seibert, 5004 80 Street NE, spoke in opposition, noting the city could require road standards and zoning be applied to areas outside the city. He suggested a more thorough review in the future before commitment letters were issued, and recommended

that if legal action resulted from this issue then disciplinary sanctions should be brought against the staff member who allowed this application to be approved.

Russ Nordquist, 3527 93 PL NE, stated he lived on the south boundary of proposed development and his preference would be to keep the woods. He felt he did not have the right to speak to the owner's plans. He pointed out the city had guidelines but apparently had not followed them, as the commitment letter was in violation of city code. He recommended strict adherence to the city's codes.

Gary Gooch, 3812 93 PL NE, opposed, testifying he had developed the property directly to the south, Cedar Crest Estates, and had a water recovery contract on 93rd. He requested clarification of who would be hooking up and who would be paying. He expressed concern about the level of density being proposed because the road was a dead end which meant a huge increase in traffic going out to 88th. The majority of homes in the area were on wells that were 30 to 40 feet deep. The infiltration overflow would affect their water quality. He mentioned a waiver request which had been denied to a neighbor on 93rd and questioned how the city could allow a doubling of density on the subject property while denying his neighbor a hookup to an existing line.

The Mayor called a five minute recess, resuming the meeting at 9:09 p.m.

Rocky Hoagland, spoke in opposition and gave additional details regarding the park issue. He suggested citizens needed to know whether or not city staff had the authority to commit to hookups or whether the full authorization of city council would be needed each time. He added that he had not brought his concerns regarding the swale to the Hearing Examiner's attention because the hearing was during the work day and he could not attend.

Mr. Weed noted that an application for utility service which met all the provisions of the city code could be approved administratively by the Public Works Director. An application which did not meet city or RUSA code required a variance. The variance application required staff and Planning Commission review and a decision by council.

Diane Gooch, 3812 93 PL NE, stated she had attended the hearing in question and testified regarding the infiltration system. She stated that approximately 50 homes in the back area were on wells and were unlikely to ever get city water because of the creek. She recently sold a home there and knew it was becoming increasingly difficult to get water purification certificates for the wells.

The Mayor closed the public input portion of the hearing at this point.

MOTION by Herman, second by Bartholomew, to continue this matter to the September 27 meeting for council deliberations, only, to allow time to review the new information which had been presented. Roark and Dierck voted nay; all others voted aye; motion carried (5-2).

2. Utility Variance Application for Donald and Gayle Davis for property located at 6820 96th Street NE, UV 99-05.

Mr. Winckler presented the background material, noting he would supply the applicants with information regarding what their fees for water would be.

MOTION by Roark, second by Dierck, to approve Utility Variance 99-05. Motion carried unanimously (7-0).

3. Traffic mitigation ordinance - revised capital facilities plan (Planning Commission Recommendation).

Ms. Hirashima presented the agenda materials, noting the staff recommended adoption of the Planning Commission's recommended fees. She added that no comparison with other cities had been prepared because each city's fees were based on its transportation element, the capital facilities program, and proposed capacity improvements within each city's planning area. The city was in the process of hiring a consultant to look at updating the 1994 Transportation Plan and that could result in an updated project list.

Councilmember Dierck asked if higher fees had been considered because of I-695's potential impact. Mr. Weed responded that any fee that was not based on the 20 year transportation plan would be subject to challenge and invalidation in light of GMA's requirements that fees be based on project needs. The proposed fees had been arrived at consistent with the city's 20 year transportation plan and facilities plan. Ms. Hirashima gave some examples of the assumption which had gone into the 1994 plan which had now been revised, resulting in higher fees.

Councilmember Wright asked if nexus, or relationship, came into play so that a development at 162nd, for example, was not paying for improvements to Sunnyside Boulevard. Mr. Weed acknowledged there needed to be a nexus between a proposed development and impacts to the road system that it was being charged for. That analysis was done for the 1994 study, but a specific site evaluation should result in fees being charged which were proportionate to the impacts.

Councilmember Roark thanked Ms. Hirashima and her staff and the Planning Commission for the work which had gone into this proposal.

Councilmember Herman repeated that passage of I-695 would impact approximately 30% of Community Transit's operating budget. Their contingency plans could impact the city's congestion and transportation needs. He noted CT would be taking public input at several meetings, and suggested someone from the city attend.

Councilmember Pedersen stated she wanted to hear from the public but noted the fees were based on data from the capital improvement plan so council could not arbitrarily adjust them.

Jeff Seibert suggested the fees should be raised higher because of the possible impacts from I-695.

MOTION by Herman, second by Bartholomew to approve the Traffic Mitigation Ordinance as recommended by the Planning Commission. Motion carried unanimously (7-0).

Ordinances & Resolutions

1. An ordinance of the City of Marysville amending Ordinance No. 2218 relating to the 1999 budget and providing for the increase of certain expenditure items as budgeted for in 1999.

MOTION by Bartholomew, second by Roark to approve Ordinance 2277. Dierck voted nay; all others voted aye; motion carried (6-1).

2. An ordinance of the City of Marysville, Washington adopting engineering design and development standards and repealing inconsistent standards

Mr. Carter reported that the investigation of pavement thickness was nearly completed; that would come back to council later. Councilmember Pedersen stated she did not want to approve the standards until the package was complete. Councilmember Bartholomew noted section 5(b) line 4 did not specifically name the election officials. Councilmember Dierck requested a copy of the final document be placed in the library. She also favored delaying until the entire document was completed.

Mr. Weed noted that the ordinance could be adopted with a copy of the standards attached, deleting the section in question which would be approved at a future meeting or a provision could be added which would allow the standards to be amended by resolution when updates were needed.

MOTION by Herman, second by Leighan, to approve Ordinance 2278 with the following addition:

Section 7. The city council may from time to time amend the Engineering Design and Development Standards by resolution and direct that a revised copy of the standards be attached to the original ordinance.

And with the direction to staff to promptly bring back the pavement provisions as discussed to be finalized by resolution.

On roll call vote, Pedersen, Dierck and Roark voted nay; all others voted aye; motion carried (4-3).

LEGAL MATTERS

None.

Mayor Weiser opened the public hearing. There were no public comments on this topic.

MOTION by Roark, second by Pedersen, to continue the public hearing on Ordinance 2270, Moratorium on Gambling Activities, until September 27. Motion carried unanimously (7-0).

Current Business

None.

New Business

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Samuel Plauche, Buck & Gordon LLP, 902 Waterfront Place, 1011 Western Ave., Seattle, attorney for applicant, noted the process appeared to have gotten "muddied." His review of the utility commitment letter signed November 10, 1998 by Mr. Winckler showed approval for 40 water and 40 sewer hookups, subject to certain conditions. Though there may have been things to look at there, it was clear that there was a commitment to provide 40 water and sewer hookups. Mr. Plauche provided council with copies of the Certificate of Sewer Availability and read some of the text, noting there was a commitment to provide 40 hookups for 41 lots. He asserted that Mr. Petershagen had relied on these two documents in proceeding in his process. Subsequently, the Planning Department had raised concerns about the proposed densities, but that was well after the execution of the above documents.

Mr. Plauche then voiced three legal arguments in support of his client's position. First, a strict reading of the RUSA procedures showed two sets of criteria and implementation rules, with 14.31.060 showing how these were to be applied. Once the application was granted by the city there was commitment, and contract rights were established. Had the application been denied, a separate process, the variance procedure, would have been required. The granting of the application precluded any need to look at a variance or appeal process. He asserted the current process, a post -decisional variance process, was not a valid interpretation of the code or commitment letter. From a process standpoint a variance was not required and a commitment had been made.

Secondly, he questioned what the council would review in a variance process if it determined one was needed. RUSA was clear that if there was a conflict between Snohomish County's comp plan and the RUSA plan, and there was a conflict in this case, then RUSA controlled unless there were pre-existing contract rights. Since there were contract rights, based on the commitment letter, the county's plan controlled unless there were strict reasons why the city could not provide the number of hookups stated in its commitment. Because the city issued a Certificate of Sewer Availability, its subsequent concerns were of a planning nature and were not utility related.

His third point was that the Water System Coordination Act, RCW 70.116.050, dictated what the city's plans should and should not account for. It stated the city's plan should, under state law, call for densities as called out in the county's plan. Mr. Plauche read a portion of Section 3 of the county's coordinated water system plan. He asserted that arguing that the city's plan should control was contrary to state law and that the entire RUSA system and the criteria relied on by staff was not consistent with state law and could not be relied upon.

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Councilmember Pedersen asked about the road standards. Mr. Pluache responded that the city had requested that as a condition of any variance the property be developed to city road standards and while that may be valid to raise in the forum of the Snohomish County Hearing Examiner, it was not properly a part of the RUSA proceeding.

Councilmember Leighan disclosed that he had been contacted by an attorney, Mr. Tyler, via telephone on Saturday regarding this issue. Mr. Weed asked him if, in spite of that contact, he could review this question in a fair and impartial manner. Councilmember Leighan replied in the affirmative. Mr. Weed then asked if there was anyone in the audience who wished to challenge Councilmember Leighan's ability to deal fairly and impartially with the issue based on that contact. No one responded, and Mayor Weiser moved forward with the public comments.

Juanita Steiner, 3532 97 PL NE, opposed the granting of the variance. She reviewed the timeline of the development, and provided council with copies of application for utility commitment and the city's March 25 memorandum to the county, which indicated the proposal conflicted with the city's Sanitary Sewer Comp Plan and that the applicant would need to apply for a RUSA variance. In spite of this notice, applicant continued its process and in July brought up the city's commitment letter which the Hearing Examiner refused to accept. She requested the council enforce its own code and save Marysville from over development.

Benedicta Hill, 3622 97 PL NE, spoke in opposition, supplying council with a portion of the RUSA variance procedure. She read a portion of the document, highlighting the text that set out that council could authorize a variance only if all the facts and conditions existed, particularly paragraph (d).

Rolf Kradenpoth, 3726 92 PL NE, opposed, stating he was the person who had gathered signatures on the letter in opposition to the Quilceda Vista development, particularly in regards to the infiltration system from the development being routed onto their property. The swale that handled the water from the streets in his neighborhood were not maintained by the county or anyone else and technical information suggested that when infiltration systems were not maintained they would ultimately fail. The neighborhood asked that this be seriously considered. The swale dated from 1993 and there were no problems with it currently but Quilceda Vista would be the third development to drain into it. Councilmember Dierck suggested the overflow from the swale was not filtered so sediments and oils ended up in a salmon bearing stream. Mr. Kradenpoth responded that the actual stream was 100' away but the swale's runoff in the winter ultimately seeped into the creek. He added that he had not brought these concerns to the Hearing Examiner's attention but had directed letters to the *Globe* with copies to the city.

Marlene Oliver, 9417 35 Ave. NE, spoke in opposition, noting she lived on 1-1/4 acres and the proposed development would be next to her property. She provided council with copies of the petition containing 64 signatures in opposition. When her uncle, Ralph Jennings, passed away half of the property in question had been offered to the city as a park; that had not materialized. She requested council to strictly adhere to its codes and not allow this level of development to occur. Councilmember Bartholomew noted that the city had been interested in the park proposal but the neighborhood had not been. Ms. Oliver agreed that was the case.

C. A. Farkasosky, 3621 93 PL NE, suggested council should focus on what is right, not who was right. He added the neighbors had not supported the proposed park because the city wanted to utilize sani-cans there.

Marvin Schott, 3602 93 PL NE, spoke in opposition, noting that a density of 40 houses on the property would only result in trouble.

Jeff Seibert, 5004 80 Street NE, spoke in opposition, noting the city could require road standards and zoning be applied to areas outside the city. He suggested a more thorough review in the future before commitment letters were issued, and recommended

that if legal action resulted from this issue then disciplinary sanctions should be brought against the staff member who allowed this application to be approved.

Russ Nordquist, 3527 93 PL NE, stated he lived on the south boundary of proposed development and his preference would be to keep the woods. He felt he did not have the right to speak to the owner's plans. He pointed out the city had guidelines but apparently had not followed them, as the commitment letter was in violation of city code. He recommended strict adherence to the city's codes.

Gary Gooch, 3812 93 PL NE, opposed, testifying he had developed the property directly to the south, Cedar Crest Estates, and had a water recovery contract on 93rd. He requested clarification of who would be hooking up and who would be paying. He expressed concern about the level of density being proposed because the road was a dead end which meant a huge increase in traffic going out to 88th. The majority of homes in the area were on wells that were 30 to 40 feet deep. The infiltration overflow would affect their water quality. He mentioned a waiver request which had been denied to a neighbor on 93rd and questioned how the city could allow a doubling of density on the subject property while denying his neighbor a hookup to an existing line.

The Mayor called a five minute recess, resuming the meeting at 9:09 p.m.

Rocky Hoagland, spoke in opposition and gave additional details regarding the park issue. He suggested citizens needed to know whether or not city staff had the authority to commit to hookups or whether the full authorization of city council would be needed each time. He added that he had not brought his concerns regarding the swale to the Hearing Examiner's attention because the hearing was during the work day and he could not attend.

Mr. Weed noted that an application for utility service which met all the provisions of the city code could be approved administratively by the Public Works Director. An application which did not meet city or RUSA code required a variance. The variance application required staff and Planning Commission review and a decision by council.

Diane Gooch, 3812 93 PL NE, stated she had attended the hearing in question and testified regarding the infiltration system. She stated that approximately 50 homes in the back area were on wells and were unlikely to ever get city water because of the creek. She recently sold a home there and knew it was becoming increasingly difficult to get water purification certificates for the wells.

The Mayor closed the public input portion of the hearing at this point.

MOTION by Herman, second by Bartholomew, to continue this matter to the September 27 meeting for council deliberations, only, to allow time to review the new information which had been presented. Roark and Dierck voted nay; all others voted aye; motion carried (5-2).

2. Utility Variance Application for Donald and Gayle Davis for property located at 6820 96th Street NE, UV 99-05.

Mr. Winckler presented the background material, noting he would supply the applicants with information regarding what their fees for water would be.

MOTION by Roark, second by Dierck, to approve Utility Variance 99-05. Motion carried unanimously (7-0).

3. Traffic mitigation ordinance - revised capital facilities plan (Planning Commission Recommendation).

Ms. Hirashima presented the agenda materials, noting the staff recommended adoption of the Planning Commission's recommended fees. She added that no comparison with other cities had been prepared because each city's fees were based on its transportation element, the capital facilities program, and proposed capacity improvements within each city's planning area. The city was in the process of hiring a consultant to look at updating the 1994 Transportation Plan and that could result in an updated project list.

Councilmember Dierck asked if higher fees had been considered because of I-695's potential impact. Mr. Weed responded that any fee that was not based on the 20 year transportation plan would be subject to challenge and invalidation in light of GMA's requirements that fees be based on project needs. The proposed fees had been arrived at consistent with the city's 20 year transportation plan and facilities plan. Ms. Hirashima gave some examples of the assumption which had gone into the 1994 plan which had now been revised, resulting in higher fees.

Councilmember Wright asked if nexus, or relationship, came into play so that a development at 162nd, for example, was not paying for improvements to Sunnyside Boulevard. Mr. Weed acknowledged there needed to be a nexus between a proposed development and impacts to the road system that it was being charged for. That analysis was done for the 1994 study, but a specific site evaluation should result in fees being charged which were proportionate to the impacts.

Councilmember Roark thanked Ms. Hirashima and her staff and the Planning Commission for the work which had gone into this proposal.

Councilmember Herman repeated that passage of I-695 would impact approximately 30% of Community Transit's operating budget. Their contingency plans could impact the city's congestion and transportation needs. He noted CT would be taking public input at several meetings, and suggested someone from the city attend.

Councilmember Pedersen stated she wanted to hear from the public but noted the fees were based on data from the capital improvement plan so council could not arbitrarily adjust them.

Jeff Seibert suggested the fees should be raised higher because of the possible impacts from I-695.

MOTION by Herman, second by Bartholomew to approve the Traffic Mitigation Ordinance as recommended by the Planning Commission. Motion carried unanimously (7-0).

Ordinances & Resolutions

1. An ordinance of the City of Marysville amending Ordinance No. 2218 relating to the 1999 budget and providing for the increase of certain expenditure items as budgeted for in 1999.

MOTION by Bartholomew, second by Roark to approve Ordinance 2277. Dierck voted nay; all others voted aye; motion carried (6-1).

2. An ordinance of the City of Marysville, Washington adopting engineering design and development standards and repealing inconsistent standards

Mr. Carter reported that the investigation of pavement thickness was nearly completed; that would come back to council later. Councilmember Pedersen stated she did not want to approve the standards until the package was complete. Councilmember Bartholomew noted section 5(b) line 4 did not specifically name the election officials. Councilmember Dierck requested a copy of the final document be placed in the library. She also favored delaying until the entire document was completed.

Mr. Weed noted that the ordinance could be adopted with a copy of the standards attached, deleting the section in question which would be approved at a future meeting or a provision could be added which would allow the standards to be amended by resolution when updates were needed.

MOTION by Herman, second by Leighan, to approve Ordinance 2278 with the following addition:

Section 7. The city council may from time to time amend the Engineering Design and Development Standards by resolution and direct that a revised copy of the standards be attached to the original ordinance.

And with the direction to staff to promptly bring back the pavement provisions as discussed to be finalized by resolution.

On roll call vote, Pedersen, Dierck and Roark voted nay; all others voted aye; motion carried (4-3).

LEGAL MATTERS

None.

DISCUSSION ITEMS

None.

INFORMATION ITEMS

1. Mayor's business

Mayor Weiser announced that he and Mayor Pro Tem Wright had been appointed to the AWC Legislative Committee; he requested input from council, particularly on the issue of probation limited immunity.

2. Staff's business

None.

3. Call on councilmembers

Councilmember Pedersen stated she would like to meet the new employee at the wastewater treatment plant at have an update on the status of the sampling.

Councilmember Dierck:

- Requested that someone check into the air quality in the council chambers as two citizens had mentioned breathing difficulties to her during the break.
- Asked about park mitigation fees. Ms. Hirashima stated they should be completed within a month.
- Requested the open house to discuss the future of the water tower be delayed until after the election so the city's decision would be made for the correct reasons.

MOTION by Dierck to postpone discussion and action on the water tower until after the general election in November. Motion died for lack of a second.

MOTION by Dierck, second by Pedersen, to host the open house as originally scheduled but take no action until after the general election in November. On roll call vote, Dierck and Pedersen voted aye; all others voted nay; motion failed (5-2).

Councilmember Bartholomew requested from Commander Krusey a status report with three weeks on Cosmos, how it weathered the summer and plans for continuance. Also she requested that Mr. Bendl, a concerned citizen, be contacted regarding the car prowls in the neighborhood of 10th and Quinn.

Councilmember Herman commented that the sensitive area code revisions were an important first step and wanted to see the balance of the proposed revisions, along with staff recommendations, to come back to council for continued movement toward a completed process.

Councilmember Leighan understood there were continuing problems for the Fire Department regarding the dispatch center. He requested an update on what was being done to rectify the situation.

Councilmember Wright reported on her tour of the Deering property and public works projects.

Councilmember Roark asked about the Super Fund clean up project; Mr. Winckler responded that staff had requested a meeting and tour and that would be taking place soon. He would report then.

ADJOURN TO EXECUTIVE SESSION

The meeting adjourned into Executive Session at 10:30 p.m. to discuss one real estate matter and one item of pending litigation.

RECONVENE AND ADJOURN

Council reconvened into regular session, took no further action, and adjourned at 10:55 p.m. (estimated).

Accepted this 13th day of September, 1999.

00218

Daniel Weir
Mayor

Mary P. Swanson
City Clerk

Anniston Amadio
Recording Secretary