

**MINUTES
MARYSVILLE CITY COUNCIL - RETREAT
MARCH 24, 2000**

001000

CALL TO ORDER

The retreat was called to order by Mayor David Weiser 8:30 a.m. at Marina Village Inn, Everett. Attendance was as follows:

Councilmembers Present:
David Weiser, Mayor
Mike Leighan, Mayor Pro Tem
Shirley Bartholomew
Jim Brennick
Norma Jean Dierck
Donna Pedersen
Suzanne Smith
John Soriano

Administrative Staff present:
Dave Zabell, City Administrator
Mary Swenson, Assistant City Administrator
Grant Weed, City Attorney
Ken Winckler, Public Works Director
Robin Nelson, Assistant City Engineer

Mayor Weiser introduced the focus of the day, the city's utilities. An overview of the contracts that had been negotiated and lawsuits conducted, would be followed by a review of the current status. This would prepare council for an executive session to consider questions about the future: should the city supply utilities on the West Side of the freeway? If so, when would the city be in a position to do so? Did council want to establish a negotiating team to work with the Tribes on their requests for service? The federal and state regulations were changing and the city needed to respond.

Mr. Winckler stated his presentation would cover agreements with the Tulalip Tribes that affected the city's utilities. The documents covered, and additional comments offered, follow.

Weed	Reviewed the types of land ownership on the reservation. 1. Property held in trust status as either part of the original allotment of tribal land from the government or property that has taken on that status. Some of the trust property is leased to homeowners with BIA approval. 2. Property owned by Tulalip Tribes of Washington in fee. This includes property that was part of the original allotment from the government, then was sold to private property owners and in recent years was being acquired back by the Tribes. When it came back, it no longer was trust land. There are distinct differences, as trust land had restrictions - it can't be encumbered with easements or liens and the Tribes claim it cannot be annexed. 3. Property owned in fee by non-tribal persons. This is no different than property off the reservation.
Bartholomew	The Tribe currently owned 11,000 acres of its original 22,000-acre grant; they have avowed and are working towards re-owning all 22,000 acres again.
Soriano	Status of property in the city purchased by the Tribes. Weed: Snohomish County believes if property that was originally trust property was sold and then purchased back by the Tribes, it lost its special trust status and they have zoning powers over it. He agrees as to property within the city - we would not lose the power to impose zoning regulations but would probably lose the tax base.
Pedersen	Which category does the land at 116 th fall into? It is a significant access point to all properties the city in doing the Master Plan. Weed: Tribes purchased it from private property owners, so it is not trust property; it's Category 2. He believed the city could impose its rules and regulations.
Brennick	Who owned the trestle over the freeway? Winckler: John Kissell, for the Tribes, says it is owned by Tribes. They have an agreement with Snohomish county for maintenance and state they are following Snohomish County standards for their roads. Who owned the waterline attached to the trestle? The city was not serving water into 116 th at this time; the water service in the business park is the Tribes own system. Nelson: There was a 4" line under the freeway to serve the truck stop, but this was a utility variance, not an agreement. Zabell: a retail arrangement, not a wholesale agreement.
Zabell	The view of the Tribes is that at one time all of this land was theirs, but they got squeezed onto the reservation. When the city tries to impose regulations, they do not take kindly to it.

1. Resolution 985.

Provided utilities to the Tri-Way Manufacturing (Hewlett-Packard) site. The Tribes did concede this property was distinguishable from other properties on the reservation. There was a limitation on the amount and type of service.

Weed:	This property was on the Reservation, but owned in fee and not tribal trust property. The property is still in the county, not the city. Marysville West was encompassed in the settlement agreement; it fell within a special boundary created in 1983.
Swenson	The major city concern at that time was land use issues. The council was getting pressure to not allow businesses to move to the reservation, which would have taken away sales tax.

2. Resolution 1091.

Utility service without annexation.

Weed:	<p>The Tribes sued the city for utility service without the necessity of signing a covenant to annex. The litigation was settled out of court by entering into an agreement that defined a boundary within which the city would serve utilities; the city expanded its RUSA boundary into a limited area on the west side of the freeway; defined the zoning and land use it would serve in that area; recognized the Tribes had unique jurisdictional sovereign status so made an exception regarding the annexation covenant.</p> <p>The city has remained consistent with this agreement over the years in granting service.</p> <p>If a bill is not paid, the city has no authority to lien the property to collect the debt. Utilities could be shut off, but that presented a difficult situation. The city entered into a contract with the Tribes and they guarantee payment. If the city had to sue to enforce this contract, it would be difficult to determine which court had jurisdiction. Getting the necessary easements to run pipelines was also difficult as the Tribe had no authority to grant easements across trust property.</p>
Weiser	This agreement covered a specific area on the reservation, the 20 acres that the Tribes owned as Tribal Trust property.
Zabell	<p>The agreement recognized there were capacity issues with the city's treatment plant and stated that if the city had to impose a moratorium to limit flow, the Tribes would have no recourse. Stated the parties would strive to mitigate traffic impacts at 4th and 5th (because of the Casino).</p> <p>This agreement is viewed negatively by the Tribes and they often try to exclude its limiting language during current negotiations.</p> <p>When the Tribes pushed for First Street to go through, they indicated that was part of the mitigation called for; the city disagreed. Staff felt the Tribes had mitigated traffic by putting in 88th, because if it were not there, 4th would be impassable.</p>
Dierck	Do recipients of service on the reservation pay the same hookup fees as everyone else? Weed: yes, per this agreement.
Soriano	Lake Stevens a participant? Zabell: No, Lake Stevens was served by the PUD. The city and PUD have not finalized negotiations on splitting up the overlay area. Capacity can be sold if all parties agree; also, there is a buy-back provision.

3. Joint Operating Agreement.

Weed	Occurred as the result of a lawsuit, a SEPA appeal. It was a negotiated settlement with the help of a skilled negotiator and was so difficult that the parties could not get to the detail level in all areas. It anticipated that future agreements would be needed. One point the city stood firm on was that it would be the owner and maintainer of the line. That is still the case. The Tribes had to pay their fair share of building the line before they could begin using their share of the capacity.
Winckler	Allowed for construction of a 30", 5-mile line to provide approximately 4 million gallons per day peak flow to the Tribes.
Zabell	This line had been planned in the late 80's and would have provided for sufficient water for the city to 2050. The lawsuit held up the project for 1.5 years, added \$1 Million to the cost, and resulted in the city losing 40% of the line's capacity, bringing the useful life to 2020.
Brennick	Provisions to go further north? Weed: Intent was that if service was going further north, it would be through a second pipeline (JOA-2). Winckler: The PUD and Arlington have discussed JOA-2, but the city has not participated because we do not have a need for additional water now. We are looking at the potential for 88 th . Zabell: the 30" line ended at 83 rd ; it

	was later extended by the city and no one wanted to participate. The city essentially designed it for city needs. Winckler: The city anticipated the Tribes might need some capacity in the future, so the line was somewhat over-sized. If the Tribes did need that capacity, they would have to pay the city for the cost of over-sizing the line.
Swenson	Marysville had been a major player in the North Snohomish County water discussions. A non-profit coalition was formed, the city was the lead agency, with the PUD, Tribes, and Everett as participants. This was prior to the JOA, but the area was declared a critical water area.
Weiser	While the city was negotiating to supply water from its Edwards Springs facility until Everett water was available, it was being sued by the Tribes to stop from increasing its capacity at Edwards Springs. The suit was settled by the city agreeing to put additional flow into the stream out of the Edwards system several months out of the year. Zabell: This highlights the splits in power at the Tribes – environmental and business.

4. Debt Service Agreement.

Weed	Sets out how the Tribes will pay to purchase their share of capacity covered in the JOA.
Zabell	The Tribes are making their payments, and the city is not losing money on it. The city can incur bonded indebtedness, the Tribes cannot. So if funds are needed for future improvements, they would have to come up with their own financing if they wanted to participate. They do not pay a separate amount for maintenance; that is built into the rates.

5. Resolution 1674.

Winckler	Provided water service at 116 th to service the casino complex, only. No JOA water was available at that site (and still is not). The city had to use water from the Stillaguamish Ranney well as an interim solution until a JOA supply was available.
Weed	This utility variance was granted at the extreme urging of the Tribes because they were ready to move forward with their new casino project. Because there was no JOA water to that location, the city agreed to provide water through its existing well system, but on a temporary basis only. This illustrated the city's willingness to supply water, subject to conditions being met.
Brennick	Regarding the use of Ranney well, where does the city stand on the state mandate to get out of the rivers? Nelson: The city has a perfected water right.

6. 1995 Agreement to Wheel Water

7. MOU of 12-14-98

Winckler	Provided for sewer from 50,000 to 150,000 gpd to serve the Tulalip business park and other issues. Calls for negotiating incremental agreements to get up to 150,000 as city needed to study its system and make infrastructure changes in order to serve each increased stage.
Weed	Agreement addressed the piecemeal way requests were coming; city demanded an overall agreement that looked at the bigger picture and took it out of reactionary mode.
Zabell	The agreement for 50,000 is done; the sanitary sewer study now being discussed is a different one.
Nelson	The Tribes said they did not need capacity at 88 th , so the city sized accordingly; then the Tribes said they needed capacity.
Zabell	The city has committed to forming a partnership with the Tribes to develop a solution; that may not be Marysville sewer. The city has done one feasibility study, but a joint one has not been done. They are now interested in a more comprehensive study, "ridge to ridge," to help them determine if they need to put in a wastewater treatment plant of their own or participate in upgrading the city's.
Winckler	While the city was negotiating the MOA, the Tribes asked for assistance with a health emergency – 16 homes on Rainwater Road. The city provided connections, ensuring it counted toward their peak day demand for water in that location.
Leighan	The city suggested a LID to help pay, so the solution could be extended to other homes on that road. The LID concept was not well regarded. The Tribes are refusing service to non-tribal members there. The city is refusing them service as well, as it has already provided service to the meter there.

8. MOA 4-12-99

Winckler	Covered 88 th Street lift station modifications; 50,000 gpd discharge; wastewater strength limits; rates and fees. Additional capacity to be determined on a request basis.
Zabell	The system at 88 th was designed to take care of the area up to Quilceda Creek. There is adequate capacity to handle 150,000 gpd in that pump station, but there is not necessarily that flexibility in the treatment plant.
Winckler	While negotiating the MOA, the Department of Interior put together a Tulalip Conceptual Study for the purpose of pursuing funding to support the MOA. It was not an accurate study.

Mr. Nelson then led a presentation on the Tribe's current request and its impacts on the city's systems.

Nelson	RUSA boundary established in 82. City has sized its utilities to handle service within that boundary on a systematic basis. Compared with GMA map.
Winckler	The differences in boundaries causes confusion in providing services. The city hoped to resolve these in the near future and get to one boundary.
Zabell	The brown line (RUSA boundary) could be extended by annexation. For the boundary to be expanded without annexation would take Snohomish County Boundary Review Board action.
Nelson	The city had planned for its utilities quite well. The city developed a coordinated water system boundary (blue line) which encompassed all of the urban growth area: 45 Road, 172 nd , out to Highway 9, majority of eastern boundary is I-5.
Weed	Critical water plan areas are required by state law to sit down with other purveyors in the region and do a planning document. Arlington, Seven Lakes, PUD, Marysville defined their relationship and service areas.

Nelson	Water system overview. Covered supply and not using secondary sources because of iron manganese issues. City has not used these for about 10 years, but they are available for emergencies.
--------	---

Nelson	Water availability. Gave statistics on customers, storage volume and current demand.
Bartholomew	Charge from Everett based on peak? Nelson: By building the Getchell Hill reservoir, the city gained a buffer from that peaking charge.
Brennick	Storage adequate? Nelson: Yes, except in north end. City utilizes dual service systems because one premise of the JOA was not co-mingling of sources. Up to 100 th was JOA water, north of that was served from Edwards Spring Reservoir, Stilly and Springs. Part of planning as growth occurs is for at least one north end reservoir planned.
Weiser	The city was required to have a conservation plan and those measures were working. Residential consumption was gradually going down, between 1.5% and 3.5% per year.
Nelson	Regarding north end sources, the city recently did a series of FDA tests to determine whether groundwater was being influenced by surface water. The answer was yes. One site was marginal, but Ranney well was obviously being influenced. Under a compliance order from the Department of Health, the city will be required to provide treatment to that site. Through disinfection, we may not have to treat Edwards Springs. A consultant will help prepare a compliance program.

Nelson	Comprehensive sewer plan. Must be updated every five years, with the next update being 2000. A draft has been prepared.
--------	---

Nelson	Sewer system overview. The city's permit is based on average month, not maximum monthly capacity.
--------	---

Nelson	NPDES permit 1995 - 1999. Gave details of effluent limitations. The city's treatment plant was upgraded in 1991 to meet these standards, which were mass based, meaning the concentration could increase as the flow increased. The important point was that these were not seasonal limitations but year-round annual limits. The city reports monthly and the agencies come every two years for a personal inspection and to conduct tests. If we exceed our limits, we notify immediately, but the city has not exceeded in a
--------	---

	long time.
Brennick	Does weather affect the treatment? Nelson: the lagoon requires few chemicals for processing, it's mostly a biological process. The weather impacts the process in algae bloom, which displaces oxygen. A filter was installed in the last upgrade to handle seasonal spikes of TSS.
Nelson	New NPDES Permit. Gave details of new requests – seasonal limits and mass-based. These were directly descended from the DOE TMDL study, were restrictive in nature and mass-based – not proportional to flow.
Leighan	What is the Tribes' role in TMDL discharges into rivers? Nelson: The Tribes have had little role but have done their own study and maintained their own water quality limits. He felt their science was within an acceptable margin of error and the limits were not too far off. The Puyallups invoked water quality limits in the Puyallup River; this required some cities to begin negotiations with the Tribe regarding waste load allocations. Winckler: staff met with DOE and advised the city may be joining with the Tribes to deal with some of their waste discharge. DOE advised that would have to part of the city's current allocation; they were not willing to give the Tribes its own allocation.
Nelson	Meeting the limits. The city's current system will not be able to meet the interim limits or the final limits.
Weed	Any leeway for negotiating different limits? Nelson: No, these are the limits and the city must find a way to comply in a fairly short period of time.
Nelson	Everett's permit was stringent, but it had the capability to go to deep-water outfall. Monroe, Snohomish, Lake Stevens and Marysville, anyone discharging into the Snohomish River estuary, was facing stringent new requirements.
Nelson	New limits are designed to address dissolved oxygen, as that is important for the life of the estuary. The TMDLs only look at those specific elements that drive the completion of dissolved oxygen. These wasteload allocations are based on loading into the estuary.
Weed	If population increased in the next 4 to 5 years, the city would not get any leeway in its permitted discharge, it must still stay within these ratcheted down limits. There is no factoring at all for growth, even though GMA mandates that growth occur in cities.
Smith	Does one law have precedence? Weed: They both are law and the city is subject to compliance.
Nelson	Staff had not yet prepared a plan for coming into compliance, including the length of time and costs. DOE has demanded immediate compliance; the city received the draft in December 1999 and immediate compliance is impossible. The city's system is a biological process and does not have the capacity of removing ammonia.
Weed	In '91, as a result of a sewer moratorium, the city was forced to act immediately and spend \$12 Million to upgrade its treatment plant to get into compliance with the standards of that time. The city planned for 20 years out; now halfway through, those standards have changed.
Nelson	The city has requested a minimum of 4 years within which to come into compliance. The city requested that the limits for silver be removed, and because they had erred in their calculations, DOE may remove this requirement.
Dierck	Attended a DOE workshop and grants are available to do studies, upgrade existing plants and build new ones. <u>If</u> a regional approach to treatment was encouraged.
Nelson	Availability. Reviewed data. Without TMDLs the city would still be in good shape and able to handle growth. The city's planning has been good and it meets everything within the existing permits. Now treatment will be required through the low flow season.
Nelson	WWTP Capital Facilities Plan. KCM Petrotech was chosen as the consultant for this planning; the scope of work and fees are in negotiation. The schedule is to have the plan completed by the end of the year, then move into the design phase and funding phase.
Nelson	Recent request from Tribes. Gave details.
Winckler	Staff feels the city needs to address its own issues and then consider the request from the Tribes.
Pedersen	Was staff communicating and coordinating with the tribes? Zabell: much of this information had been communicated and they were aware of the TMDL issue; however, those were not the same people who were making the requests for service.

CORRECTED: SEE 4-10-00
 Minutes Delete "14"

Weed	TMDL talks have been ongoing, but the Tribes have not participated. They also have not participated in Everett's water meetings.
Nelson	Impacts to city. There are capacity limitations in UGA. The Tribes are outside the city's urban growth area; we are not set to provide service outside that area. To do that would require an amendment to the Comprehensive Sewer Plan.
Nelson	Water options. Developers could design, fund and construct all improvements then deed them to the city, then, through a wheeling agreement, establish the rate for consumption and allow Tribes to recover.
Weed	There are restrictions in the city's agreement with Everett regarding where we can serve Everett water. He did not think the agreement anticipated service of water out to the Tribes.
Nelson	Another option was to purchase transmission capacity. There is only a 1.5 mile gap in getting JOA water from the city's system to 88 th . The Tribes could buy capacity that the city had planned for growth in that area. The Tribes want JOA water to 88 th ; to get it there it would have to be wheeled through the city's infrastructure.
Zabell	Selling capacity that's available now, will cause the city capacity shortfalls in the future.
Smith	In order to get 240 zone water to 88 th , would the roads have to be torn up? Winckler: the city anticipated this need and put a line in for JOA water when it constructed 88 th . There will have to be recovery for that.
Brennick	Since that was a non-annexable area, was it wise to sell them capacity? Zabell: the only time the city has agreed to sell any capacity was a result of a court-mandated decision. These were the issues the council would have to consider; staff had not made any commitments.
Nelson	City options for sewer were discussed.
Dierck	What is the status of the City's NPDES Permit.
Nelson	The City is currently operating under the old NPDES Permit. We have received the new NPDES permit but only in draft form. There was discussion regarding the TMDL permit and how these requirements relate to the NPDES permit.

ADJOURN INTO EXECUTIVE SESSION

The Council adjourned into Executive Session at 1:35 p.m. to discuss potential litigation.

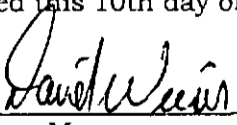

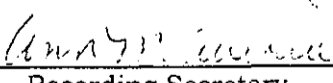
ADJOURN

The Council retreat reconvened into regular session and adjourned at 3:50 p.m.

MARCH 25, 2000

The City Council held a team building session, which began at 9:00 a.m. and ended at 4:00 p.m. The session was conducted by Judy McKellar and was entitled "Creating Synergy and Success".

Accepted this 10th day of April, 2000.

 _____ Mayor	 _____ City Clerk	 _____ Recording Secretary
---	--	---