

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING JANUARY 3, 1995

CALL TO ORDER: 7:00 p.m.

ROLL CALL: All present

MINUTES OF PREVIOUS MEETINGS: 12/12/94 Council Approved

AUDIENCE PARTICIPATION: Rep. Jeri Costa

CONSENT AGENDA: Approved:

1. Approval of Liquor License Renewals for Alfys Pizza, Buzz Inn, California Tavern, Jackpot Food Mart, Village, Inc.
2. Authorize Public Works Dept. to notify Sno. Co. to Award Bid Contract for State Av. & 136th St. NE Signalization to Low Bidder, Marshbank Const.
3. Shoreline Conditional Use Permit & Height Variance; PUD of Snohomish County; PA9301001.

STAFF BUSINESS:

MAYOR'S BUSINESS:

CALL ON COUNCILMEMBERS:

PETITIONS & COMMUNICATIONS: None

PRESENTATIONS: None

PUBLIC HEARINGS:

1. Animal Code; cont. from 12/5/94 Approved

REVIEW BIDS: None

CURRENT BUSINESS:

1. Ross/Hill Annexation 60% Pet. Approved - PH 1/23/95  
PA 9410038
2. Kellogg Marsh Annexation 60% Pet. Approved - PH 3/6/95  
PA9309028

NEW BUSINESS:

1. Conditional Use Permit; Msvl. Approved  
First Assembly of God; PA9408031

ORDINANCES & RESOLUTIONS:

1. Resolution Amending Res. 1690 Res. 1714 Approved  
relating to Application for  
Utility Variance for Property  
Owned by HKS Partnership by Ex-  
tending the Time Period within  
which the Applicant May Review  
its Request for a Variance.

LEGAL MATTERS:

1. Interlocal Agreement for Animal Shelter Services & Office Space; City of Arlington Approved

ADJOURNED INTO EXECUTIVE SESSION: 10:02 p.m.

1. Personnel. No Action
2. Real Estate. No Action
3. Litigation. No Action

RECONVENED & ADJOURNED: 11:02 p.m.

MARYSVILLE CITY COUNCIL MINUTES

JANUARY 3, 1995

7:00 p.m.

Council Chambers

Present: Dave Weiser, MayorCouncilmembers:

Donna Pedersen, Mayor Pro Tem

John Myers

Ken Baxter

Donna Wright

Mike Leighan

Otto Herman

Shirley Bartholomew

Administrative Staff:

Dave Zabell, City Administrator

Steve Wilson, Finance Director

Gloria Hirashima, City Planner

Ken Winckler, Public Works Director

Grant Weed, City Attorney

Walt McKinney, Asst. Police Chief

Lt. Dennis Peterson, MPD

Wanda Iverson, Recording Secretary

CALL TO ORDER:

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

ROLL CALL:

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

MINUTES OF PREVIOUS MEETINGS:

Councilmember Herman noted his name was misspelled under the roll call of the 12/12/94 Council minutes. He also noted on page 3, about half way down the word "could" should be "would". Also, on page 4 where Councilmember Pedersen withdrew her motion and Councilmember Wright seconded, it should read Councilmember Wright withdrew her second. On page 8, under the first item under Ordinances & Resolutions, after "have all been addressed", the words "through the interlocal agreement" should be added.

There being no further corrections, Councilmember Herman moved and Councilmember Wright seconded to approve the minutes of the 12/12/94 meeting as corrected. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS: None.

CONSENT AGENDA:

1. **Approval of Liquor License Renewals for Alfy's Pizza and Pasta, Buzz Inn, California Tavern, Jackpot Food Mart and Village, Inc.**
2. **Authorize the Public Works Dept. to notify Snohomish County to Award Bid Contract for State Av. & 136th St. NE Signalization to the Low Bidder, Marshbank Construction.**
3. **Shoreline Conditional Use Permit & Height Variance; PUD of Snohomish County; PA9301001.**

Councilmember Pedersen moved and Councilmember Myers seconded to Approve the Consent Agenda, Items 1, 2 & 3. Passed with Councilmember Bartholomew against.

Councilmember Bartholomew explained there are a lot of issues she feels need to be addressed under #3 and after discussion, Councilmember Pedersen moved to reconsider Item #3. Councilmember Wright seconded and the motion passed unanimously.

3. **Shoreline Conditional Use Permit & Height Variance; PUD of Snohomish County; PA9301001.**

City Planner Hirashima explained Snohomish County PUD is both proponent and lead agency and this request was filed with the Planning Dept. office 1-1/2 years ago. She stated only a small portion of the total project involves Marysville; only 2 poles are within Marysville and PUD is also having to go to Everett and Snohomish with this variance and conditional use permit request.

After further discussion regarding removal of trees, total project ramification, Councilmember Herman moved to affirm the Hearing Examiner's recommendation for approval of the request and Councilmember Myers seconded.

After further discussion regarding a possible conflict with the proposed boat launch location and exact proposed location of the poles, the motion passed unanimously.

Councilmember Bartholomew noted she would like to see an ongoing review of this situation.

STAFF BUSINESS:

Public Works Director Winckler reported the Christmas tree chipping program is this Saturday in conjunction with the local Boy Scouts.

Lt. Dennis Peterson asked for Council direction with regarding to recent requests for what Marysville would charge for dispatch services. He explained that there are different ways to calculate fees such as per call or flat rate but he said he did not recommend the additional staffing costs, etc. if it came to that as he did not feel it would be cost effective at all if additional staff and space would be required to meet other cities' needs. He pointed out that Marysville Dispatch is maxed out in the communication center now so to add services would require larger space as well as more staff.

After discussion about running a service on a break even basis, or at least not to be in the red, as well as the fact that Marysville would need an additional \$37,000 tower in order to expand services, it was the consensus that Lt. Peterson would do more specific calculations in order that this would be a win-win situation for the parties involved and bring the figures back to Council at a later time.

MAYOR'S BUSINESS: None.

CALL ON COUNCILMEMBERS:

Councilmember Wright asked for an update on the problem at Grove and Cedar and City Planner Hirashima explained MPD and the Code Enforcement Officer have both visited the property many times. The property owner says the vehicles are personal vehicles, gets rid of some vehicles and then reviolates with junk vehicles. It is an ongoing problem and the Code Enforcement Office goes out on a regular basis and she suggested the MMC should be changed.

There was discussion about looking into modeling Marysville's section of the code regarding nuisance/junk vehicles after the Snohomish County code which has "more teeth". City Attorney Weed briefly talked about a court injunction vs temporary abatement for junk vehicles, which is possible under the county code.

Councilmember Pedersen asked about the Library RFP and City Administrator Zabell reported on bid information/letters of interest that have been received to date.

Councilmember Baxter noted there was a rash of graffiti this past weekend and Lt. Peterson said the MPD is looking for leads but have nothing yet.

Councilmember Baxter asked about who works with PUD on easements and City Administrator Zabell stated it usually is the Public Works Director and/or City Engineer.

Councilmember Myers announced the new librarian's name is John Beaman and he is from Mukilteo. He said he would like to see the issue regarding meetings that are and are not considered Council official business, placed on the agenda 1/23/95.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS:

Representative Jeri Costa apologized for arriving late this evening and gave a short presentation. She said she is excited to have Marysville represented in the Legislature and with potential spending cuts coming up we need to work very closely with State legislators. She announced her setting up of Advisory Councils: Business/Economic Issues; Education; Criminal Justice; Social/Community Services; and Transportation. She said her goal is to have a constant open dialogue with these groups. She will be retaining Dick King's phone number and former assistant, Judith. She invited anyone interested in serving on one of the Advisory Councils to contact her at 786-7864.

PUBLIC HEARING:

**1. Title 10 Animal Code; continued from 12/5/94.**

Councilmember Herman stated he would like to see another draft based on the workshop held tonight as there were several changes suggested tonight.

Councilmember Bartholomew stated she didn't feel that was necessary and moved for adoption of the Animal Code. Councilmember Baxter seconded.

There was discussion about removing the two complainant and Animal Code Officer requirement back to one person and that was agreed as Amendment 1 to the motion.

There was consensus that the code should be consistent throughout with the use of either large animals or livestock - Amendment 2.

City Attorney Weed suggested adding a sentence including factors that would determine the need for a kennel license and the appeal process - Amendment 3.

Councilmember Pedersen asked about a Citizens Advisory Group and Mayor Weiser said he would check with the Everett group. He said he wanted to see this group's existence justified before setting one up; Councilmember Herman said he would be in favor of a Citizens Advisory Group and would like a report back from the Mayor.

The motion passed unanimously.

CURRENT BUSINESS:

**1. Ross/Hill Annexation 60% Petition; PA 9410038.**

City Planner Hirashima reviewed the agenda bill.

Councilmember Baxter left Council Chambers at 8:05 p.m.

City Planner Hirashima stated the proponents were unable to get a signature for the PUD owned lot and as a result, the request is to decrease the annexation by that parcel.

Councilmember Baxter returned to Council Chambers at 8:07 p.m.



City Planner Hirashima explained the valuation on the PUD sub-station property is over \$200,000 which would have brought the participation down to 55% and so they wish that lot excluded.

Councilmember Pedersen pointed out that a copy of the PUD letter explaining their position and reason for not signing the petition has been omitted from the packets. She also asked which staff was recommending approval and City Planner Hirashima responded that it is the Planning Staff. She added that the current zoning is residential for the subject property and the proponents are not interested in a prezone now.

Councilmember Herman asked about park mitigation on commercial businesses and City Planner Hirashima stated it is not recommended on commercial property at this point by the City.

Councilmember Herman then moved and Councilmember Bartholomew seconded to accept the 60% annexation petition with a public hearing to be set for 1/23/95. Approval of the annexation would be subject to the property accepting the City's bonded indebtedness and Comprehensive Plan zoning for the subject property.

There was further discussion about squaring off boundaries, eventually surrounding the PUD property and then annexing an "island", having a copy of the PUD letter available for Council and the Boundary Review Board. The motion passed unanimously.

## 2. Kellogg Marsh Annexation 60% Petition; PA 9309028.

City Planner Hirashima reviewed the agenda bill, explaining zoning within the proposed annexation.

City Attorney Weed noted a letter had been received by the City dated 12/28/94 from Attorney Julian Doole raising the issue concerning annexation covenant validation and the letter asks that the annexation process be delayed until this is resolved. City Attorney Weed pointed out that this same issue was raised in April, 1991.

Julian Doole, Attorney in Everett, representing Michael Doleshel and Bruce Tipton, explained they object to the use of their covenants. He stated the covenant may be valid if they are property utilized however they do not feel the covenants here are being property utilized; the property must be contiguous to City property/limits. He stated the City entered into limited contracts with these two property owners and others and they consent to annex if City property abuts their property and it does not. The actual signed petitions represent only 18.5%, he said, and the covenants represent 46.5%. He noted there are at least 31 covenants that are limited by the "contiguous" wording and there may be more. There is new language; 3 property owners who have signed the covenant with additional language that is a broader statement included, but his clients, as well as 31 others, do not have the broader language that would in fact allow annexation to occur without the property being directly contiguous. He added that under basic contract law, the City and the clients have an agreement. He cited People vs Spokane that went to the Court of Appeals and the questions were asked: Is the City complying with its agreement with the land owners? and Did the property owners comply with the agreements? He referred to a letter of May 14/91 with the same issues brought up and again in a letter of Dec. 28, 1994 he sent a letter to the City. He stated that in an opinion from the Municipal Research Center, they confirm Doole's opinion that the property must be contiguous. In 1988 the Spokane Courts denied the City annexation with a broader language than in the Doleshel and Tipton covenants, he pointed out.

CORRECTED: SEE 1/9/95  
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sp s/b Dewell

He stated you must ask whether the City is carrying out their contractual agreement. He added if the City approves this 60% petition tonight the City would be in violation of the contracts with the property owners and will have taken an action contrary with the law. In addition, the City would be in violation of a contract and would subject itself potentially to lawsuit by the 31 property owners and/or a class action suit, he said. In the Spokane case, he said if you contract with land owners to annex properties, you must be utilizing the covenants in an appropriate manner and he said he submits that based upon the foregoing, the Council should not approve this annexation as the property in question is not contiguous to City limits.

Councilmember Pedersen asked where Mr. Doole was getting his definition of "contiguous" and Mr. Doole stated he was getting it out of the dictionary and that his interpretation was "along-side and abutting."

Councilmember Pedersen made the point that the property owners/annexation is initiated by property owners not the City. She also noted that the Municipal Research Center opinion was only that, their opinion.

Councilmember Leighan noted Doleshel is not included in the petitioners who wish to annex or whose covenant was being used as part of the 60%.

City Planner Hirashima noted that to be true and also noted Mr. Tipton has one property within the proposed annexation area, valued at \$93,500.

Councilmember Pedersen asked if the proponent actually does the research and submits the petition and covenants to be used for annexations and City Planner Hirashima stated yes, that is correct.

Mr. Doole said he recently was aware of a class action with 17 people in Thurston County which can happen if the court so decides there are enough people affected by a decision.

George Wilcox, 9212 67th Av. NE, addressed Council. He pointed out that the closest property within the proposed annexation is 1/4 mile away from City limits. He noted covenants have been authorized since 1976 which predates the two City attorneys: Allendoerfer and Weed. He noted all the covenants have the "contiguous" wording and in the past Allendoerfer asked that more people sign the petition and that covenants not be used. A new covenant wording has been developed and that's fine but if they are under the old covenant, the City needs to honor that covenant, he said. He said he reviewed the Municipal Research letter/opinion and they agreed that "contiguous" means if it abuts City limits. He pointed out that the petition was only signed by 18.5% even after an open house and mass mailings; this is not a popular annexation, he noted. Also, the 10% petition was only accepted 4-3 by the Council, he said. He noted this is a hatchet shaped annexation, very confusing to emergency responses, not a logical boundary and after a year they have not been able to get more signatures. At the meeting at the school, they didn't get a positive response to the annexation and now they are trying to use the old covenants, he said. He added he sees annexation as courtship leading to marriage but the analogy here is more like using the old covenants as a form of date rape, he said. If the City were playing by the rules and within contract rights it would be different, but he said he is asking Council to be sensitive to these people and to consider how they would feel. He pointed out that some of these people are angry about this situation and the Council should tell the developer to come back in when they have won the hearts and minds of the people out there and have got them to sign the petition.

Councilmember Baxter pointed out that the original covenants were written up so that people could get water and sewer, stating they would not oppose annexation and since then, the City has had to accept a lot of opposition. The reason behind these covenants was so they could come into the City, he said.

Mr. Wilcox said he thinks the City should live by their contract; the people outside the City do pay higher utility rates. The intent is that when the City property is contiguous, then the contract should be upheld, he said. He noted that if you were to buy property and you have an encumbrance like this, it needs to be understood and upheld.

City Attorney Weed said he thinks the issue is what the clear intent of the covenants and ordinance is. He added he thinks the Court would look at this and what the definition of contiguous is--is it only property deep along the perimeter of the City? He said he is saying there may be some differences of opinion.

Mr. Wilcox pointed out that the Municipal Research Center is a neutral company and their opinion was based on review of all the City ordinances.

City Attorney Weed said the analysis begins with clarification of the language of the covenant but there is underlying intent and pertinent information, however he is not trying to predict how a court would rule, he said.

Councilmember Pedersen pointed out that this issue has been going on for many years and she would like to see it resolved.

City Attorney Weed said he thinks Council has the right to discuss this under Executive Session.

Mr. Wilcox noted the City changed the wording of the covenant for a reason several years ago.

Reid Shockey, Planning Consultant, 2924 Colby, Everett, representing the proponents, addressed Council. He pointed out that the Neff property is outside the county UGB but within the City UGB. He stated they believe the matter will be resolved 1/8/95 after the county hearing. He talked about the meaning of the word "gambit"--a ploy or scheme--and he said it seems to him if people years ago came to the City for water and sewer, signed a covenant and then changed their minds years later because they were not contiguous, that is a gambit. He explained that expecting all 31 properties to be contiguous is ludicrous; the boundary has to be logical and it can't follow a "crazy quilt" pattern. He stated the proponent was told to go out and get a more logical boundary and they did that. Also, there is a new ball game now called Growth Management, he said and Marysville's UGB runs along the northern border of this annexation. He said if the City insists on contiguous boundaries the City will be acting contrary to the Growth Management Act and the UGB. He added that the old covenant is general and he said he thinks the City needs to consider the logical intent. The services were provided to these people and he said he believes it's time they uphold their portion of the covenant and the Council should stand up to this and go through with an annexation public hearing.

Martin Robinett, 3601 Colby, Everett, Attorney, addressed Council. He stated it is his opinion that a court would have to look at the intent and definition of contiguous and he feels they would go with the annexation as these people have received services from the City. He stated the proponents would defend the City's

position that if someone refused to go along with the covenant, the City should have the right to shut off their water. People will always threaten to sue, he said, but the proponents believe they can win. He stated his client (Boyden, Robinett) owns a large piece of property out there and it makes sense that with it being within Marysville's UGB, the City should be giving input here and be the recipient of mitigation fees, for example.

Councilmember Herman asked about parks mitigation and said he would be concerned about keeping the funds within the community. He also noted Title 26 funds may or may not cover parks mitigation.

Mr. Robinett said development of this project would have a definite impact on parks and would involve parks mitigation fees. Also, the developer has recognized that and it is a reality that they would pay mitigation for schools, parks, traffic, but he said he doesn't believe there is impact on parks at the commercial stage. He added, however, that it's jobs that bring in people and that's something for the City to consider.

Mr. Doole stated that if the language of the covenant is ambiguous, it will be construed against the City because that's the general rule of law, since the City drew up the document.

City Attorney Weed agreed but stated the court would have to take all factors into consideration, such as intent of the covenant, history, etc. He said one process that might be available is a request for declaratory relief in order to clarify whether the City should continue using these covenants in the future as participation in annexations. At this point, the City can accept the petition and go to public hearing, take no action, reject the petition as it stands and direct the proponent to get more signatures or request a declaratory relief order from the courts, he said.

Councilmember Pedersen said she would be in favor of the courts doing a declaration and Councilmember Wright asked how long that would take.

City Attorney Weed guessed 90 to 180 days, depending on the court calendar, how long it would take to produce a record, etc.

Mayor Weiser asked if the court declaration would be binding on everyone and City Attorney Weed said it most probably would, if "collateral estoppel" exists, i.e. the same situations exist in other cases.

Councilmember Pedersen asked about litigation and delay of the annexation process.

City Attorney Weed said if a stay or injunction were placed pending the outcome of the litigation, there would be a delay if the courts upheld the injunction.

Councilmember Pedersen suggested a continuance of the matter after City Attorney Weed has a chance to have a meeting with the other attorneys involved to see if there is a way to come to a quick settlement.

Councilmember Bartholomew asked how long it would take to get this on the court calendar and said she has known such things to take 2-1/2 years; she said she thinks this should be discussed in Executive Session.

Councilmember Myers suggested setting a public hearing for 2/6 and City Attorney Weed could meet with the attorneys in the meantime.



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City Planner Hirashima stated the applicants can't meet until the end of February, now.

Councilmember Baxter moved to accept the 60% petition with no further delays, with a public hearing to be set for 3/6/95. Councilmember Wright seconded.

After further considerable discussion, the motion passed 4-3 with Councilmembers Pedersen, Leighan and Herman against.

NEW BUSINESS:

**1. Conditional Use Permit; Marysville First Assembly of God; PA 9408031.**

City Planner Hirashima reviewed the agenda bill, noting no appeals have been received and the hearing examiner has recommended approval of the conditional use permit.

There was discussion about paving, this being the church's 3rd expansion, traffic, exits/accesses, MPD opinion that there will be no problems.

Asst. Police Chief McKinney stated they do see some of the four way stops in Marysville as needing to be replaced by traffic lights and 47th & Grove is one of those intersections.

Councilmember Pedersen brought up whether the church should be asked to contribute toward future traffic lights at 47th & Grove and City Administrator Zabell pointed out they are not required to make improvements because of the way they have expanded, i.e. not all of their expansions have occurred within 12 months, they have been spread out over the years.

City Planner Hirashima added that they are only required to improve frontage if they are expanding by 50% or more within a one year time period. She pointed out that the hearing examiner included a condition that stop signs be provided at all access points and for them to put in a gate at one of the access points in the parking lot.

After further discussion, Councilmember Bartholomew moved for acceptance of the staff recommendation to approved the conditional use permit and Councilmember Wright seconded the motion.

Councilmember Pedersen asked if that excluded curbs, gutters and sidewalks and she said she feels there should be some traffic mitigation towards the busy intersection at 47th & Grove.

Discussion followed concerning this, eventual plans to use the high school vs. the church for some activities, discussion about gate recommendation, traffic mitigation ordinance being developed, lights to be put in eventually at 47th & Grove and 51st & Grove, some of the neighbors not too happy with the young adults, traffic and parking problems.

The motion passed with Councilmembers Baxter and Pedersen against.

ORDINANCES & RESOLUTIONS:

**1. Resolution Amending Resolution 1690 Relating to an Application for Utility Variance for Property Owned by HKS Partnership by Extending the Time Period within which the Applicant May Review Its Request for a Variance.**

Councilmember Wright moved and Councilmember Herman seconded to approve/adopt Resolution #1714. Passed unanimously.

LEGAL MATTERS:

**1. Interlocal Agreement for Animal Shelter Services and Office Space; City of Arlington.**

City Attorney Weed stated this agreement is identical to the last years agreement with the exception of compensation having been increased from \$8,000 to \$10,000.

Asst. Police Chief McKinney stated the fee is based on use and to offset the cost of having someone there all day.

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

ADJOURNMENT INTO EXECUTIVE SESSION: 10:02 p.m.

- 1. **Litigation.** (No Action)
- 2. **Personnel.** (No Action)
- 3. **Real Estate.** (No Action)

RECONVENED & ADJOURNED: 11:02 p.m.

Accepted this 9th day of January, 1995.

David Weiser  
MAYOR

Mary D. Swenson  
CITY CLERK

Manda K. Swenson  
RECORDING SECRETARY