

MARYSVILLE CITY COUNCIL MINUTES

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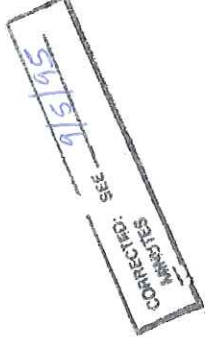
AUGUST 28, 1995

7:12 p.m.

Council Chambers

Present:

Dave Weiser, Mayor
Councilmembers:
Donna Pedersen, Mayor Pro Tem (excused)
John Myers
Ken Baxter
Donna Wright
Mike Leighan
Otto Herman
Shirley Bartholomew
Administrative Staff:
Steve Wilson, Finance Director
Grant Weed, City Attorney
Gloria Hirashima, City Planner
Larry Larsen, Utilities Supt. (for Public Works Director)
Dave Zabell, City Administrator
Larry Wade, Utilities Consultant
Wanda Iverson, Recording Secretary



EXECUTIVE SESSION:

Potential Litigation discussed in Police Conference Room.

ADJOURNED & RECONVENE: 7:12 p.m.

CALL TO ORDER/FLAG SALUTE:

Mayor Weiser called the Council meeting to order at 7:12 p.m. and led us in the flag salute.

ROLL CALL:

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

MINUTES OF THE PREVIOUS MEETING:

Councilmember Herman noted in the 8/14/95 minutes on page 3, in the first paragraph, his reference to Mountlake Terrace and Marysville was in relationship to population threshold; Mountlake Terrace is over and Marysville is close to that threshold and the meeting will determine whether or not they remain medium sized cities. The meeting will also determine makeup of the board of directors, he said.

There being no further corrections, Councilmember Myers moved and Councilmember Bartholomew seconded to approve the 8/14/95 Council Minutes as corrected. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS: None.

CONSENT AGENDA:

1. **Approval of 8/28/95 Claims in the amount of \$365,995.06; paid by check nos. 25533 through 25715 with check no. 25353 void.**

Councilmember Bartholomew moved and Councilmember Myers seconded to approve the Consent Agenda Item #1. Passed unanimously with Councilmember Leighan abstaining on Voucher #25703 and Councilmember Baxter abstaining on Voucher #25636.

STAFF BUSINESS:

Utilities Supt. Larsen reported last Thursday DOE inspected our WWTF and an inspection summary will follow. He stated their comments were positive and the inspection went well. He also reported the 24" transmission main project is almost complete now and the reservoir project excavation is about 35% complete. He suggested a field trip for Council, possibly, in September.

MAYOR'S BUSINESS:

Mayor Weiser presented Dale Thayer, Marysville WWTF Manager, the Pacific Northwest Pollution Control Association Operator of the Year Award.

CALL ON COUNCILMEMBERS:

Councilmember Leighan asked about the status of the Grove St. project and Utilities Supt. Larsen said the contractor should be mobilizing this week.

Councilmember Wright asked about the status of the street lights in the Parkside area and Utilities Supt. Larsen said he will check on this in the morning.

PUBLIC HEARINGS:

1. Six-Year Transportation Improvement Plan.

City Administrator Zabell reviewed the agenda bill, noting the 6 Year Plan indicates major projects, funding sources, is consistent with the Comprehensive Plan and Transportation Plan recently completed by Transpo. Tonight's public hearing is to take input from the public, he stated.

There was no public input and so the public hearing was closed at 7:22 p.m.

Councilmember Baxter moved and Councilmember Bartholomew seconded to approve Resolution 1741. Passed unanimously.

2. Utility Service issues to the Smokey Point Area (property lying within Arlington's Smokey Point Annexation Area).

Mayor Weiser asked how many people would be speaking from the audience on this issue and about 9 people raised their hands. He asked people to try and limit their comments to 5 minutes, definitely no more than 7 minutes. He explained the City of Marysville has called this public hearing to get testimony from people who live or work in the Smokey Point Area regarding utilities. He stated the City of Marysville wishes to limit this to public testimony and not too many questions will be answered unless they are strictly of a technical nature.

City Administrator Zabell stated the purpose of the hearing is for Council to take input from the audience regarding water and sewer provision to the Smokey Point Area. He noted the City of Arlington has accepted a 60% petition for a portion of the Smokey Point Area and tonight's hearing would include property owners within RUSA and CWSP as well as outside. He gave a brief history, stating Marysville has been serving water and sewer to that area since the late 1960's with the distribution lines having been put in by the City. The citizens of Marysville hold bonds on the ULID and they are responsible for the bonds and there is a provision in the code (Sec. 14.32.040 paragraph 2) that any property that receives utilities must be suitable for ultimate annexation to the City. He pointed out that if the property in Smokey Point is annexed to Arlington, it would obviously not be suitable for ultimate annexation to Marysville and aside from the issue of the citizens of Marysville holding those bonds, there are a number of other issues that go along with that of concern to the City. He said for the edification of the audience and the Council, as far as the LID assessments and payments, those pay for the lines in the ground in front of your property, basically. What pays for the sewer treatment plant, water supply and reservoirs that are needed to serve the property are primarily the connection fees and a portion of that also through rates. You do not pay connection fees nor rates until you hook up, he explained, and so those that have not hooked up are not paying toward the treatment plant or water supply system at this point in time.

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City Administrator Zabell reiterated that DOE has given us some positive remarks with regard to the onsite inspection of the WWTF which at this point from a flow standpoint is at 52%, meaning about 3 million gallons capacity. He stated the BOD reduction is at 97% and the permitted requirement is 85% so that is functioning very well. Total suspended solids also as far as loading is about half capacity of the plant. He said there has been some confusion with questions from the public with regard to total suspended solids in the effluent as far as concentration but that's because this is a new plant and we are going through a couple different phases in terms of optimizing the efficiency of the plant and we have met with DOE, they are on board with us on that issue. The report from DOE will be coming out very soon, he said.

Mayor Weiser then opened the public hearing to public testimony and firstly, read into the record a letter from Mayor Kraski from Arlington. It was explained that originally it was Mayor Kraski's intent to attend tonight's hearing however today we received a fax stating he would be unable to and asking if the letter could be made part of the record.

"August 28, 1995

Mayor David A. Weiser
Marysville City Council
City of Marysville
514 Delta Avenue
Marysville, Washington 98270

RE: Utility Service to Smokey Point

Ladies and Gentlemen:

The City of Arlington appreciates your invitation to comment on the future of utility service within the Smokey Point area that has petitioned for annexation into Arlington. The property owners within this annexation area will appreciate an expeditious resolution of this question by the City of Marysville.

Water and sewer service has been provided to the Smokey Point area for some years by the City of Marysville. This situation is acknowledged by the comprehensive plans prepared by the City of Arlington. Accordingly, when this annexation petition appeared before the City of Arlington, we requested a meeting with the City of Marysville to discuss the water/sewer alternatives and learn how the City of Marysville wished these issues addressed. That meeting occurred on May 16, 1995 at the Cedarcrest Restaurant in Marysville. At that meeting, Marysville stated that they believed that any discussion on the issues was premature. Subsequent inquiries by the City of Arlington on the same issue received the same response.

We are delighted that the City of Marysville now believes that the timing is appropriate to answer these questions. Before Arlington can comment on the question, however, Marysville must respond to the questions first asked in our May 3, 1995 letter to Mayor Weiser:

1. Does Marysville want to continue providing water and sewer service to Smokey Point after annexation to Arlington, and under what conditions would that be included in an interlocal agreement between our cities?
2. If not, does Marysville want to transfer some or all water/sewer responsibilities to Arlington and in what process, or what alternative does Marysville propose?

The City of Arlington, like the property owners in the Smokey Point area, has believed that Marysville desired to include the residents and business owners of Smokey Point in its customer base for water and sewer services.

"Letter to Mayor Weiser and the
Marysville City Council
RE: Utility Service to Smokey Point
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This public hearing provides Marysville with the opportunity to publicly answer the question of whether Marysville wishes to be the long-term provider of water and sewer utility service to Smokey Point. We look forward to the decision of the Marysville City Council on the subject, following this public process. We are aware that several property owners have development proposals pending which may be affected by your decision. For their sake, we urge you to come to a prompt decision, so that all interested parties can make their future plans.

Sincerely,

/s/ Bob Kraski

Bob Kraski
Mayor

BK/l's"

Mayor Weiser asked Dennis Jordan to speak.

Dennis Jordan, Attorney, 2907 Hewitt, Everett, addressed Council. He stated he represents Ralph and Mary Ann Monty who own a substantial amount of property that is located within ULID #1. It is a parcel of land in conjunction with other land they own that is adjacent to 172nd which is adjacent to the City of Arlington existing city limits. There are a number of different types and categories of properties that are affected by this hearing tonight and he stated he is simply here to address the property that is contained within ULID #1. His client has presently approx. \$12 million worth of projects that are slated for a portion of that property, one is a 110 unit hotel with restaurant facility, another is a 50,000 sq.ft. office building. "We have presently, just to let you know the seriousness of the issues affecting Montys, there is a \$25,000 a month carrying cost on this property right now, \$200,000 committed in existing payments for contract obligations for design of the facility and they have already lost one sale to the State of Washington for a work release facility because of this issue and the unresolved issue concerning service of utilities in that area," he stated; "Montys have a real serious investment and they can't afford to have this matter sit around."

He said the issue he wants to bring to Marysville City Council is whether or not the City of Marysville is going to act as a utility purveyor as a matter of general policy or whether they are going to follow the RUSA ordinance which is opposite to that policy, that is the City would not be the general purveyor of utilities unless it's going to be of benefit to the municipality itself, the citizens within the municipality. He said he would like to specifically address the position of his client and that is that the City has a contractual obligation to provide ULID #1 participants water and sewer, they have essentially paid for it at this point in time and as Mr. Zabell points out, there's a difference between paying for the lines and paying for the utility hookups. They recognize that and their position is that they have already paid for the lines and the utility hookup is simply a function of when they desire to hook up that they pay for the cost associated with the maintenance of the water and sewer system. He said it is his client's understanding that the cost of hookup for this project will run in the neighborhood of \$250,000 to \$300,000 and all he wants to do is pay the money to the City so he can get along with his project and then leave it up to the City of Marysville and Arlington to discuss the interlocal agreement as to whether or not the annexation goes through.

Mr. Jordan pointed out his client was one of the people who participated in the petition for annexation to Arlington; the only reason he did that was because he wanted to be annexed either to Marysville or Arlington; Arlington was the one that made sense, Arlington was the one that was approaching the people within this ULID area, Marysville was not. Marysville has apparently come into the fray after Arlington took its initiative to annex this property and now they are caught in the middle with respect to the potential to develop the property. Mr. Jordan stated he thought he had faxed a copy of a letter to Grant Weed, apparently it didn't get faxed over but he has been given a copy tonight, that outlines Monty's position on the RUSA statute in terms of what they believe is the obligation of the City of Marysville to provide utilities. Mr. Zabell pointed out that one of the RUSA's provisions for hookup into the City system is that if they are not part of Marysville in the sense that they can never be part because they have joined Arlington, then that is a reason to not be hooked up or that the ordinance provides they cannot be hooked up, but Mr. Jordan stated he would point out that under 14.32.050 subparagraph 3, that that talks about the particular, that if you are already within a ULID and you have a preexisting commitment from the City, that you need not comply with that specific portion of the RUSA ordinance that requires you to become or at least have the potential of becoming a member of the City of Marysville city limits. He said he would point out that 14.32.040 specifically provides that the City has no obligation to provide any utility service to anyone and then says however, the City will consider sewer and water services provided certain criteria are met; there is an exception for those already under contract with the City, privately or through a utility local improvement district and so they feel they fall within that exception; items 1 through 10 are the criteria statements contained within the ordinance and these only apply in the event the City has a question of capacity with respect to the sewer or water facility, or a question of capacity for someone who is located within an existing ULID then those criteria give priority to those who are within the ULID and a lesser priority to those who are not within the ULID.

He said he would like to close by requesting that the City Council truly consider those within this ULID to be in a separate category from the broad policy issues to be discussed with respect to people outside the ULID because they are in a different situation and are desperate to get a hookup notwithstanding the pending litigation between Marysville and Arlington over whether or not Arlington's annexation petition is appropriate or not; they need these hookups and they have to do something to get them.

Glen Johnston, 5623 86th Pl. NE, Marysville, addressed Council, stating he is a real estate agent working at Smokey Point. He said he would like the Council to consider the residents of Smokey Point. They are not too numerous because most of the land is considered underdeveloped at this time but those not too numerous residents of Smokey Point on their own, spent their own money, to petition the City of Marysville for a ULID and had it put it because they saw a future in the area of Smokey Point. No one in Marysville or Arlington shared that vision back in the late 1970's when they spent this money. In addition to that, later on, when the road system was inadequate, it wasn't a municipality or a government that came to the aid of the area, it was the residents who formed an RID and paid millions of dollars to have four lanes and all the intersections put in, he said. These forward thinking people have been good customers of the City of Marysville, he pointed out, all these years and he urged Council not to reject them as they have been Marysville's friends and customers.

Bud Darling (1916 Grove St., Marysville), addressed Council and referred to a hand out map. He said this map shows what's been going on over the years. In 1968, Pony Estates went in with 120 hookups and there was no problem at that time with RUSA area or any other kind of area, he said. Then in 1991, #9 - there was 249 hookups approved for Lakewood Commons which was involved with ULID

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10 but the water situation came in after ULID 10 for sewers and to the best of his knowledge in that area, was brought into the service area of Marysville up to that line that now goes around "9" on the map. The RUSA boundary was set up in approximately 1982, he said, to see if Marysville could serve this area because they had the town of Marysville to serve and they were getting out of their territory and they were concerned about that and his understanding was RUSA was set up to stop going too far out. When they set this RUSA area up, not to go out of it, he pointed out on the map, there were 11 and lots more things that happened, example Noretap, Resolution 1542 approved 21 lots by this Council, the Tulalip Tribes, Resolution 1674 approved 91,000 sq.ft. for a new casino. He said he doesn't know how many hookups that's going to be or how much water they are going to use but it's going to be there and Marysville also has a working agreement with the Tulalip Tribes, after that was approved. Wilber & Monica Baker came in, they have 5 hookups that were approved by this Council, he pointed out. Again outside of the RUSA area on 188th & Smokey Point Blvd. which is being built on right now. The Arlington Christian School put in a new facility for 40 students, they got a new water hookup outside of the RUSA area again; Gary Newcomb, a single person, got one; Cameron Elder got one because when they expanded the Senior Center Elder's well was in the road of the new project so they had to hook them up to City water, which they've done and they just got 3 hookups within the last 9 months; the Stillaguamish Sr. Citizens outside this RUSA area which was formed in 1982, has roughly 132 units there and 70 of those units were approved through Resolution 1558 through this Council, again outside of RUSA area, he pointed out. He continued: Justin Estates, a trailer park, Mr. Darling said he couldn't find the resolution on this but when he went through the files at Public Works found they were approved for 10 lots. Again, Lakewood Commons 249 hookups; Still Scene Estates, another mobile park, has 13 mobiles in there off Smokey Point Blvd., again outside RUSA area; Smokey Pt. Church of Christ, again approved.

He said the concern they have is they come before Council and ask for water and then you get told to go to Public Works, they tell you to go up to Arlington, get a letter to serve you, Arlington sends a letter back saying they can't serve you, they don't have any water. Then you go down and get a variance and go up and get rejected. And this goes on and on but yet these other ones have been approved under the same process, he stated. He said this is a very confusing issue: Why? He said it just seems to him Marysville has the water, Arlington doesn't have the water, there's no service at all in that area from Arlington but yet it's their claiming area, PUD can't serve it, Marysville can't serve it; Marysville does have a supply of water now --there's no doubt about it and it was just said Marysville has lots of sewers, clean sewers, and it just seems that now is the time to give the people in that area water. Some might say that the annexation is the problem, if it wasn't for that, you probably could get water but he pointed out that his development was rejected in front of the Council before the annexation came into effect and he said he would like to know why he is getting rejected and all these other things are going through.

Bill Foster, P. O. Box 69, Lynnwood, WA 98046, Pine Street Associates, addressed Council. He stated Pine St. Associates owns property on 172nd just south of the City of Arlington and like Mr. Jordan, represents a client whose interest is perhaps not as broad as the entire issue to be addressed tonight but instead is a property owner of property that falls within the LID ordinance 861, LID #1. He referred back to 1975 when this ordinance was approved by the City and read from the ordinance that this LID was passed because "it affords and provides a special benefit to the property within the LID" and that in fact is a statutory requirement of any LID, he pointed out. In reliance upon that special benefit, he said his client not only participated in the LID but has completely paid for the LID and essentially what it comes down to is that his client entered into a contract with the City of Marysville in 1975 and has paid for this contract and is now relying upon it. This property does fall somewhat outside the remaining property that does not

CORRECTED: SEE 9/5/95
MINUTES 5/6 water

CORRECTED: SEE 9/5/95
MINUTES 5/6 VINE

have or is not subject to an LID, he said. He said in looking over this request for his client and reviewing the RUSA statute and LID, it seems to him there is a misconception involved and that is that 14.32.040 somewhat ties the hands of this Council and requires that it only extend sewer service under the RUSA statute if there will be annexation but he said he doesn't believe that's the reading of the statute at all. Nowhere in 14.32.040 or 050 is annexation required, he pointed out, in fact under 040 subsection 2, all it says is that the property, this is the criteria, it isn't even a requirement, it's the criteria the Council should look at, is that the property applying for a connection must be suitable for ultimate annexation --it does set forth a method wherein the Council could require participation, but even that method is not required of the City, it is the option of the City and the City is only bound to follow the criteria and if the property fits within the annexation criteria then the RUSA statute applies. But more importantly, the statute doesn't apply at all because the statute makes a specific exception for property with a vested contract right, he said. He said he was somewhat confused by what Mr. Zabell said when he said the LID only pays for the sewer lines in the ground, it doesn't pay for the treatment plant and with all due respect, he said it doesn't seem to him to make much sense that if you sell a farmer a pig but keep the bacon, that you have really sold him anything. And in fact, that's what the City of Marysville has done if they proceed with their plan to sell Pine Street and all the other people within the LID the lines but deny them the opportunity to connect, he stated. Because the lines in and of themselves are obviously nothing, he said and the sewer treatment plant is going to be paid for in part by the substantial connection charges and monthly service fees. He said if he read Mr. Zabell's comments correctly and took them to their logical conclusion, he would have to conclude that any other owner of property in this area that owns and applies for hookup, after, even within the City of Marysville, but after the construction of that sewer treatment plant, is not paying for the sewer treatment plant through their connection fees or through their monthly service charges, and that simply doesn't make any sense, he said.

In summary, he said his client's interest is just limited to property within the ULID; the other arguments notwithstanding, the fact of the matter remains that this is really a very simple issue and one that simply requires the application of a little common sense: Back in 1975 when the City fathers of Marysville enacted this Ordinance 861, ULID #1, they made a deal and that is a deal the City fathers should live up to now and allow the connection.

Fred Long, 5712 Parkside Dr., Marysville, addressed City Council. He noted he is a resident of Marysville, which may be something the other speakers have not been so far. He said that he was not only speaking for himself but a number of people in his immediate community which he was sure Donna knows as they are neighbors. He said he would ask that Council consider very carefully three factors this evening. First, as a man who owns over two million dollars worth of property in the very area we are talking about, when he comes before Council and says he would like to be annexed into Marysville, he said he means that and he doesn't want a situation where he has to pay more for his utilities elsewhere just to meet the satisfaction of a few people who wish to develop their property. He said what bothers him as a developer and he spoke to Gloria about this a couple of times, is that he things there are some zoning games being played here, not here in Marysville, but elsewhere. Secondly, he said he is concerned that we not get into a situation where someone says the law reads this or the law reads that. He said he has enough familiarity and dealings with attorneys through the years to know that you can find an attorney to argue any side of any case anytime on any given issue, forever, but as to whether it's true or not, that's for a court to decide, but he said he does think this Council has a commitment to the tax paying citizens who have basically been the supporters of this law/LID all along, to go ahead and execute what the City said they were going to do originally.



Mr. Long said he feels it's very simple: If you want in to the water and you want in to the sewer, you are welcome to it, come in, we're glad to have you, but what that means is you make the commitment that when the time comes in the future, if there is a question of annexation into the City of Marysville, you are coming into Marysville and I believe that's the basis upon which a lot of this was done. He said he may have been misinformed, maybe not, he's only been in Marysville a decade, he stated, a "newcomer" but he said he's seen this process in his lifetime four times: He saw it the first time right after the War, when New Jersey exploded and in 3½ years there were 197,000 homes. He said he saw it the second time in Eastern Long Beach and they bought, though they didn't know it at the time, a large portion of the parking lot of Disneyland. Then it happened again in Los Gatos where he served at one time on the Council and the 20 Year Master Plan Committee, also with his consulting company when he worked with the City of Petaluma, the first controlled growth city in the United States back in 1970. He said the problem is always the same: The planning wasn't done, the zoning wasn't done, both parties concerned in terms of the two cities coming together, nothing happened, so the clash occurs and that's where we are today, he said. He said he doesn't doubt that the two attorneys who have just spoken may be correct but no one has said anything about the commitment that was made originally: You want the service? You're welcome to it, Marysville is delighted to provide it, but when the time comes for annexation, you join us.

He said his third point is that whatever Marysville does, it's not going to be a gift of public funds, to the individuals that wished to be hooked up, he understands that. To be frank, though, he said it sure smacks of it. There are a lot of good taxpaying homeowners in this town who paid for LIDs and supported the bond issues through the years and have done it willingly, done it for services received and are glad to do it again in the future, he said, but he said it really galls a lot of Marysville residents to hear people say later, "Now it's convenient for me to develop my property, now I'll proceed to do as I wish and oh, you had an agreement years ago? About OK when you come in you're going to proceed to join Marysville, oh, forget about that. We'll read you our interpretation of the law, we'll read you our position of what we think it should be. What those commitments were on the other side, oh, forget about those, those are just moral commitments, perhaps, they have no weight of law." Mr. Long said he disagrees with that and he would beg this Council to go ahead and pass the resolution that says, "You want the water? You want the sewer? You are welcome, welcome to Marysville. You don't want to join Marysville? Fine, let Arlington provide you."

Mr. Long said he's tired of going to public meetings in Arlington and being told he will have utilities in 6 months. One of the people here tonight said that--six months. You won't even get a permit, you won't even get a third of the way through a public hearing on the selection of a location to expand sewerage in 6 mos.! Everyone wants expansion of sewerage until they look up and find out it's going to be next door to their house, he noted. He said he beseeches the Council tonight to give careful consideration to not breaking the trust with the citizens of Marysville, that they have a right to request from every single Councilperson here to stand firm, hold the line, they want water and sewerage? They can get it, according to Arlington, it's available. As to when? That is Arlington's problem, it's not for the City of Marysville to pay or take care of.

Harland McElhany, 4232 Wallingford Av. N., Seattle, WA 98103, civil engineer, representing HKS Partnership, addressed Council. He stated they own property on NE 169th between 25th and 27th in the Lakewood-Smokey Point area. He noted they have been before the Council two weeks ago with a request for water and sewer services and are here tonight to urge Council not to preclude the areas that may be outside the annexation from connection to the water and sewer services, particularly those areas that are south and west of the proposed annexation. The owners of HKS Partnership

have requested water and sewer services for a long time, he said; they signed a petition over 21 years ago to be included in the west side LID which unfortunately failed. They asked again at the time of ULID #10, to be included and were not included. They have asked four times now in the last two years to be included and have not yet been included, he said. In 1966, he pointed out, they dedicated an easement on their property for a developer extension of water service in the expectation of mutual benefit, were subjected to a recovery contract for 15 years but yet are denied water service. He said they come before Council tonight and ask that they not take an action that would exclude HKS Partnership from service.

Dr. Hank Stampf, Smokey Point Properties, addressed Council. He stated this company is the group Mr. Jordan was talking about earlier. He stated it consists of himself, Ralph Monty and Robert Sandstrom. He said it is his understanding that--and he is in agreement with what Mr. Jordan and Mr. Foster had to say, but he is here to make a request of City Council. They have a development in Smokey Point with drainage and engineering studies complete and they need to get on with their project, he said. He said it's costing them quite a bit of money every month and it is his understanding that Mr. Monty wrote a letter to the Council requesting that they either deny or grant the right to hook up to the water and sewer system. So he said he is here to formally request a response to that letter so they can determine how they have to proceed.

Craig Ramey, 7690 SW Mohawk St., Tualatin, OR 97062, with Burcher Northwest, addressed Council. He stated they are involved with a contract purchaser of three lots zoned commercial across from Safeway Marketplace on 172nd St. He said they got involved in the project 3 or 4 months ago. Ernst Home Centers had identified that as a site to put in a new home improvement center, he said and in doing the due diligence, they found out this project had been zoned properly and had approved site plan in 1990 to a binding site plan with Snohomish County and with that, they found a letter, an application made for water and sewer hookup with the City of Marysville, which was approved, he said. That expired because they only run for 6 mos. or a year, he said but in getting involved in the project, he called the City of Marysville. Ernst called the City of Marysville and the architects phoned the City of Marysville and explained the situation because before you go spending hundreds of thousands of dollars on architectural drawings and civil drawings and soils and environmental, bank loans and all the other things you have to do to get a development started, you need to do that. They made those calls and were told the City was aware of the development, there was approval in the past but that they should make another application and there shouldn't be a problem. No one said they weren't sure if Marysville was going to provide water and sewer, there's an annexation issue going on with Arlington, had they told us this, he said his company and Ernst and some of the other users would not have spent the time and money to do those things described, but they did do those things at considerable expense and he would urge Council to make a quick resolution of this one way or the other. They have made application and it's neither approved or denied, it's just sitting there and they are willing to pay hookup fees and in terms of an annexation into Marysville or Arlington, as a contract purchaser, if that is a requirement and was something that was asked that would certainly have been considered but that wasn't something that was brought up when they got started in this thing so they now feel like they are sort of in the middle of an annexation battle between Marysville and Arlington. Again, he said if they had known that was going to be the case, that would have been fair at the time, they would have said they would hold off and wait until this is resolved and then move forward, but that wasn't the case. So again, what they urge Council to do is move forward in an expeditious manner so that people that do have large investments in this area or in any of these projects, can then see where they stand and move forward accordingly, he said.

Dale Chandler, 11410 84th Pl. NE, Kirkland, WA 98034, employee of Supermarket Development Corp., addressed Council. He stated Supermarket Development owns a lot at the southwest quadrant of 172nd & Smokey Pt. Blvd. and have a supermarket that's about 2/3rds of the way constructed and they went in to pay their hookup fees last week and were informed that nobody wanted their money so he said they are probably a little more "pregnant" than some of the other folks here tonight. He noted the magnitude of the dollars that have gone into that building mandates they need to get some water into it within the next couple weeks. He stated they have donated the water lines to the City of Marysville, they have not signed up for any annexation to Arlington, are willing to sign a Marysville non-protest instrument and really have relied on the promise of service there. He said he would like to emphasize that now would be better than a week from now to get a decision made and they are stuck in the middle.

There being no one further from the audience wishing to address Council, the public hearing was closed at 8:10 p.m.

Councilmembers Herman and Baxter thanked people for their input. Councilmember Baxter said he heard some positive comments from both sides and he reiterated that the Council needs to look out for the best interests of Marysville's citizens.

Mayor Weiser suggested going into an Executive Session later tonight and perhaps make a decision.

Councilmember Bartholomew said she would like to correct a misconception about water to the Tulalip Tribes: That is Everett/PUD/Tulalip Tribes water under a Joint Operating Agreement and Marysville is only supplying the transmission line. She noted there is no agreement on sewer with them as yet.

Councilmember Baxter noted he would like the RUSA Committee to review the new information received tonight.

Councilmember Bartholomew said she doesn't feel Council is ready to make a decision tonight.

Councilmember Leighan said he would reserve a decision one way or the other after Executive Session.

Councilmember Baxter stated the RUSA Committee has spent a lot of time on this issue and have received good input this evening.

Councilmember Baxter then moved to adjourn into Executive Session and set a date after Executive Session for continuance and/or workshop and/or remanding to the RUSA Committee. Councilmember Myers seconded and the motion passed unanimously.

City Attorney Weed noted for the record that City Council is allowed to go into Executive Session for matters of pending and potential litigation and this is an appropriate matter under these headings.

ORDINANCES & RESOLUTIONS:

- 1. An Ordinance of the City of Marysville Annexing Certain Unincorporated Area Known as the Boulton Annexation Area into the City of Marysville.**
Councilmember Wright moved and Councilmember Bartholomew seconded to adopt Ordinance 2041. Passed unanimously.
- 2. Resolution of the City of Marysville Stating Its Intention to Annex Certain Unincorporated Area, Known as the Van Assche Property into the City and Transmitting the Matter to the Snohomish County Boundary Review Board for Approval.**

Councilmember Bartholomew moved and Councilmember Baxter seconded to adopt Resolution 1742. Passed unanimously.

CORRECTED: SEE
MINUTES: 5/5/96
5/6/96

1. Potential Litigation.

RECONVENE: 9:30 p.m.

Utility Service issues to the Smokey Point Area (property lying within Arlington's Smokey Point Annexation Area), continued.

Councilmember Leighan asked about the forming of LID 1.

Larry Wade, Hammond, Collier, Wade, Livingston, addressed Council. He stated ULID 1 was a sewer project basically in the Smokey Point area that took in a portion of I72nd, a portion of Smokey Point Blvd. and did not include water. Water was constructed by the City in 1966 or 1967, that was a City project and the funding source was revenue bonds for the water lines, he said.

Councilmember Herman commented that our current code provides within certain boundaries, eg. RUSA and CWSP, that utility services can be provided under MMC to areas that are ultimately suitable for annexation into the City and there's been a lot of discussion lately how some other actions affect the ultimate suitability for annexation into the City; there has been some arguments about that maybe but one of the arguments that he sees as having merit is that properties which are not otherwise committed through their signature to annex to any other municipality and are within those service areas, are in fact ultimately suitable for annexation into the City of Marysville. Properties which may have similar circumstances but are outside the service boundaries do have provisions where they can apply for a variance request, he noted and he said with those thoughts in mind and knowing that the City's current code was crafted many years ago to best serve the interests of the citizens of Marysville and knowing that there's a lot of interest in having some assurance and predictability of when will the City have some water and/or sewer service, he then moved that the City process as expeditiously as possible those requests for service that come to it that do meet the code requirements and the service area requirements and those requests for service that may meet the code requirements but be outside the service requirements, consequently needing under our code a variance, be brought to Council on as quick a process as possible for their consideration on the merits of the specifics of each of those applications.

Councilmember Bartholomew seconded the motion.

Councilmember Baxter asked for clarification of the motion with regard to the RUSA Committee's role and Councilmember Herman said the RUSA Committee's recommendation on variances has been helpful in terms of Council's whole body analysis. He said he would want to continue to draw on the resource of the RUSA Committee.

Councilmember Leighan asked if a piece of property is within an annexation area but not a signator to it, since the City of Marysville hook up to water and sewer requires a no protest agreement, whether the no protest agreement would still be a requirement if Councilmember Herman's motion is passed.

Councilmember Herman noted the code currently requires a no protest covenant and he stated his motion was not intended to change that requirement and his understanding is that those can be entered into where there is no other obligation on that parcel. In a proposed annexation and if the specific party has not signed the annexation petition, then he said he sees there being no preclusion from their signing a covenant with the City of Marysville.

The motion passed unanimously.

1. Potential Litigation. (No Action)

RECONVENED & ADJOURNED: Approximately 10:00 p.m.

Accepted this 5th day of September, 1995.


David Weser
MAYOR

Mary E. Jensen
CITY CLERK

Wanda A. Anderson
RECORDING SECRETARY

