

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING MARCH 4, 1996 15

CALL TO ORDER: 7:00 p.m.

ROLL CALL: All present

MINUTES OF PREVIOUS MEETINGS: 2/26/96 Approved

AUDIENCE PARTICIPATION: None

CONSENT AGENDA: None

STAFF'S BUSINESS:

MAYOR'S BUSINESS:

CALL ON COUNCILMEMBERS:

PETITIONS & COMMUNICATIONS: None

PRESENTATIONS:

1. Strawberry Festival Pageant.
2. Police & Fire Memorial Committee Cont. to 3/25/96

PUBLIC HEARINGS: None

CURRENT BUSINESS:

1. Requests for Exemption from Compul- Denied
sory Garbage Collection
2. Util. Var. Ralph & Mary Ann Monty; Denied
UV 95-020
3. Util. Var. Ralph & Mary Ann Monty; Denied
UV 95-021.

NEW BUSINESS:

1. Professional Consultant Agreement; Approved
Terry Gibson; Traffic/Safety Study
for Potential Reopening of 5th St.
Railroad Crossing
2. Construction & Maintenance Agree- Approved
ment; BN Railroad; Widen & Improve
88th St. Grade Crossing
3. Util. Variance; Vine St. Commercial Denied
Group; UV 96-003

ORDINANCES & RESOLUTIONS: None

LEGAL MATTERS: None

ADJOURNMENT INTO EXECUTIVE SESSION: 9:54 p.m.

1. Litigation (No Action)
2. Real Estate (No Action)

RECONVENED & ADJOURNED: 10:35 p.m.

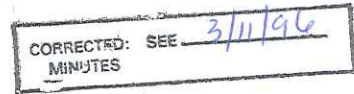
MARYSVILLE CITY COUNCIL MEETING

MARCH 4, 1996

7:00 p.m.

Council Chambers

Present: Dave Weiser, Mayor
Councilmembers:
 Donna Pedersen
 John Myers
 Ken Baxter
 Donna Wright, Mayor Pro Tem
 Mike Leighan
 Otto Herman
 Shirley Bartholomew
Administrative Staff:
 Dave Zabell, City Administrator
 Steve Wilson, Finance Director
 Grant Weed, City Attorney
 Gloria Hirashima, City Planner
 Bob Dyer, Police Chief
 Rex Tucker, Asst. Fire Chief
 Ernie Berg, City Engineer
 Doug Buell, Community Information Officer
 Wanda Iverson, Recording Secretary

CALL TO ORDER:

Mayor Weiser called the City Council Meeting to order and led us in the pledge of allegiance at approximately 7:00 p.m.

ROLL CALL:

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

MINUTES OF PREVIOUS MEETINGS:

Councilmember Leighan questioned the abbreviation of "Jt." on page 1 in the last paragraph of the 2/26/96 minutes and it was explained this meant "Joint".

Councilmember Bartholomew noted on page 10 in the middle of the page regarding the motion to continue, it should read that the matter was continued to look at the possibility of a portion of the City Administrator's workload being transferred.

There being no further corrections, Councilmember Wright moved and Councilmember Myers seconded to approve the 2/26/96 minutes as corrected. Passed unanimously.

AUDIENCE PARTICIPATION: None.

CONSENT AGENDA: None.

STAFF'S BUSINESS:

City Planner Hirashima reported the census has been completed in the Van Asshe and Wright annexations, with a population of 132 in the Van Asshe Annexation and 274 in the Wright Annexation. She noted that this is not 100% of the population because if people were not home (about 16 households), they did not provide the required information nor return forms left at their door. The result is that the City does not receive revenue from the state for these households.

Councilmember Wright noted that in the past the fire dept. has assisted with the census and people seemed to respond more cooperatively.

City Planner Hirashima said in most cases people were very cooperative; the fire dept. did assist but in the case of where people were not home, they did not respond. She reported that the Planning Commission will be finishing up the Small Farms Overlay tomorrow as well as reviewing the Adult Use Review Committee recommendations. She noted a 3/12/96 public hearing has been set for the adult use code.

Police Chief Dyer introduced Dave Vasconi, Community Services Assistant and Rick Sparr, Police Officer, the two most recent additions to the Marysville Police Dept. Mayor Weiser then administered the Oath of Office to the two men.

Chief Dyer then updated the Council regarding state criminal law enforcement funding and how there are three different programs now amounting to \$6400, \$8400 and \$8400 a year. He noted the police departments are now required to apply to the state for tax dollars and he just wanted to explain the changes in the process, particularly as it related to the Youth Gang Task Force funding. He added that the remote control small safety vehicle is no longer funded by the state, that comes out of the City budget.

Mayor Weiser asked about the funding level of the Youth Gang Task Force and Chief Dyer said with the law enforcement element dropping out, it is the recommendation of the police department that the funding be continued through asking for funds from the City.

Councilmember Bartholomew noted the US Supreme Court ruled today 5-4 that it's legal for a police dept. to confiscate property involved in a crime.

MAYOR'S BUSINESS:

Mayor Weiser stated he, the City Administrator and Councilmembers Herman, Pedersen and Baxter will all be out of town for the next Council meeting, 3/11/96. It was the consensus that because there would be a quorum present, there will still be a Council meeting.

Mayor Weiser reappointed Jack Lovell to the Civil Service Commission.

Mayor Weiser thanked City Planner Hirashima for her participation at the recent Marysville School District workshop. He said they were most appreciative at receiving her expertise and information with regard to population forecasts and other growth issues in Marysville.

CALL ON COUNCILMEMBERS:

Councilmember Herman said he has had some citizen unput about the need for soccer fields in Marysville.

Councilmember Baxter thanked the Marysville Historical Society for their annual dinner they put on for the Council and City Administrator.

Councilmember Myers asked whatever happened to the discussion about hiring a grant writer for the City and whether that got into the budget.

City Administrator Zabell said there are no funds in the budget although there are contractors working in different areas of grant writing.

PRESENTATIONS:

1. Strawberry Festival Pageant.

Judy Strong, Pageant Director, explained the Strawberry Festival started 64 years ago. She introduced four royalty candidates and noted they will be going to over 22 parades this year to represent Marysville. She invited everyone to the actual crowning of the Strawberry Festival queen and princesses 3/23/96 at MPHS.

The four girls who spoke before Council were Patricia Weymeyer, Angela Beyers, Andrea Stell and Sara Torgerson.

2. Police and Fire Memorial Committee.

Asst. Fire Chief Tucker introduced Russ Comire from the Memorial Committee. He stated that although he has just been here one year as a paramedic, he has several years experience on the east coast. Mr. Comire talked about locating a site for a 2000 lb. police and fire memorial and he referred to information handed out to Council. He said out of three sites they looked at, they would prefer the new library because it has good security, good location (exposure to the public), good lighting. He reviewed the names of the donors, noting the whole idea was originally to honor Ole Strand who died in the line of duty and the dedication of the memorial is slated for the latter part of May.

Councilmember Baxter noted he has been a volunteer firefighter since 1962 and a personal friend of the people who are being honored and feels this memorial belongs at the Public Safety Building.

Mr. Comire stated the committee considered the fact that there will be greater exposure at the library and this was the major consideration and reason why the library was chosen as the preferred site.

Councilmember Baxter expressed a strong belief that the memorial should be placed at the Public Safety Building and he noted also that there is 36" of compact pit run under the ground at the Public Safety Building, definitely enough to hold the memorial.

There was discussion about honoring police and firefighters who have died in the line of duty on the memorial, the fact that there would need to be some landscaping work done before the memorial could be installed at the Public Safety Building, who was involved on the committee that made the recommendation for the library to be the preferred site, vandalism prevention to the memorial, vandalism that has occurred in all three sites that were possibilities: Comeford Park, the new library and the Public Safety Building.

Councilmember Myers moved and Councilmember Bartholomew seconded to continue this matter to 3/25/96 to do more research, considering issues discussed tonight, with emphasis on cost of installing the memorial at the Public Safety Building.

Mr. Comire noted they are still waiting for the granite to come from Russia, so there is no immediate hurry on this. There was more discussion about future plans at the new library (eg., artwork/sculpture, expansion of the library and/or parking lot eventually), visibility of the memorial.

The motion passed unanimously to continue this to 3/25/96.

CURRENT BUSINESS:

1. Requests for Exemption from Compulsory Garbage Collection.

Finance Director Wilson reviewed the agenda bill, noting the Solid Waste Committee recommends denial of the requests. Some of the considerations (out of the original ordinance) were that garbage should be collected on a minimum basis of once a month for health and sanitary care reasons and for hardship cases, door side pick up is available. Also, small farms do not constitute a need for exclusion, it was decided by the committee, he said. He passed out information that is given to citizens regarding City utilities as well as recycling information and noted Ordinance 436 was enacted in Aug. 1957 providing for compulsory pickup and that ordinance is still in place.

Councilmember Myers moved and Councilmember Bartholomew seconded to approve the Solid Waste Committee recommendation to deny the requests for exemption from compulsory garbage collection. The motion passed unanimously and staff is to notify the appropriate people about this.

2. Utility Variance, Ralph & Mary Ann Monty; UV 95-020.
3. Utility Variance, Ralph & Mary Ann Monty; UV 95-021.

Councilmember Bartholomew made a statement relative to the Public Disclosure Law/Appearance of Fairness that on two occasions recently she has had occasion to sit next to the Montys at a social event but nothing about this case was discussed. Also, she was at Ron Huitger's today as he is her cat's veterinarian and for no other reason, she stated.

CORRECTED:
MINUTES SEE 3/11/96
S/b one

City Attorney Weed said these utility variances are not considered to be quasi judicial hearings and so Council is not subject to the Appearance of Fairness Doctrine but Councilmember Bartholomew's remarks will be put in the record.

Mayor Weiser stated Mr. Jordan is doing work for a cousin and aunt and invited him to comment.

Dennis Jordan, Attorney, 2907 Hewitt, Everett, stated the work he is doing for Mayor Weiser's cousin and aunt does not involve Weiser Cedar Sales nor Mayor Weiser personally.

CORRECTED:
MINUTES SEE 3/11/96
S/b cousin

City Attorney Weed noted for the record, that the official record of this meeting is kept by the City Council's Recording Secretary, Wanda Iverson, seated to the right of Councilmember Bartholomew even though it is noted there is a court recorder present in Council Chambers.

City Administrator Zabell reviewed the request and the documents in Council packets. He gave some history of the application, noting these requests were previously denied because the property owners had signed an annexation petition with Arlington, the annexation procedure has gone to the BRB and if annexed into Arlington, this would make the property ineligible for annexation into Marysville. Under 14.32.040 it is a requirement that the property be eligible for annexation into Marysville in order to be served by Marysville utilities, he pointed out. He referred to the previous City Council meeting and the fact that the applicants were to inquire about Arlington's ability to serve the property with utilities. He noted Arlington officials were at the 1/10/96 utility workshop where Larry Wade reviewed costs and other requirements involved in this issue.

Dennis Jordan, Attorney, 2907 Hewitt, Everett, WA 98201, representing the applicants, addressed City Council. He stated his comments are for both Items 2 & 3. With regard to the utility workshop he stated that his clients were not informed about that and did not attend. They were asked to provide a letter from Arlington regarding providing services, however they did not do this because they feel this issue is with Marysville: They were requesting a variance. He said they did receive letters addressed to the Marysville Mayor and City Council dated 2/27/96 from the City of Arlington as well as a letter dated 2/28/96 from the City of Arlington to Sue Ann Peck with regard to their ability/commitment to provide water and sewer and he asked that these letters be entered into the record tonight. He gave them to the Recording Secretary.

Mr. Jordan said that since the last hearing the City of Marysville has appealed the Boundary Review Board decision, and Arlington is unable to extend sewer or water to the Smokey Point area. With regard to the sewer, it doesn't make much sense to find out who will provide services until it's known which city it will become part of. With regard to the water service, he said as he understands it, there can't be more than one purveyor to an area so Arlington can't provide water to that area unless Marysville says they can't provide water to that area. He referred to the CWSP agreement from the county; he said as he reads it once the boundary is established, the purveyor for that area assumes direct responsibility. Retail water services are to be provided by one purveyor in order to prevent duplication, so if Arlington were to

provide water when surrounding properties are served by Marysville, then it's not in agreement with the CWSP agreement which is preventing duplication of services, he said.

If Arlington were to provide sewer services when Marysville has assumed direct responsibility, he said that is not appropriate. He said he doesn't know if Marysville can just say that they don't want to provide water but he wanted to raise the point that the CWSP is a document that Marysville signed and a document which tries to avoid duplication of services.

He said it appears from the letters from Arlington that they are willing to sit down with the City of Marysville and work this out, they are willing to be the applicant's agent and he said his clients' position at this time is that Marysville remains the water and sewer purveyors and Arlington can't do anything; both he and Bill Foster on behalf of Vine Street Properties, concluded Arlington can't do anything for these properties. He pointed out that his clients are spending \$10,000 a month to keep properties that they can't do anything with; it's \$20,000 per month in deferred payments so they are in a position of not being able to take any action with the county and they don't have a utility letter from Marysville.

He said last time there was a comment that they were to make connections within six months under the variance provision granted at the discretion of the City Council. He said this is not helping them out at all, the projects have had to be shelved and they are in a financial position now where things are going to have to be changed completely awaiting Marysville's decision. He said they had taken the original position, seeking a variance, but they are also maintaining that the RUSA Act does not apply in this case. The judge declined to rule on that and sent it back for exhaustion of legal remedies; all these issues are before City Council at this time, he pointed out.

He said he would also like to indicate he has read Mr. Foster's Exhibit B regarding having met the 4 requirements of the variance. The general comments he puts forth also apply to the Montys' situation, he said and he asked if there was any more information required by City Council.

Councilmember Herman asked about Arlington's letters and Mr. Jordan stated the question was asked about when Arlington can provide utilities and Arlington's letter is in response to another person's request, not Mr. Jordan's. Apparently during the BRB hearing Arlington made some representation that they could provide services but the BRB decision has been appealed, he said.

City Administrator Zabell apologized for any confusion about Montys not being aware of the public utility workshop and indicated the workshop was publicly advertised.

City Attorney Weed stated his office received by fax this afternoon a cover letter from Mr. Jordan that enclosed the 2 letters he is referring to but these letters were not received until late this afternoon. Regarding the Arlington 2/27/96 letter, there are a number of things that need to be corrected on the record, he said:

1. They do not address the 4 variance criteria under the MMC and Marysville must follow Chap. 14.32.040 which concerns signing of annexation covenants.
2. Arlington is under the impression that contributions to a ULID somehow create a contract; Marysville has used these funds to build some of the infrastructure only and such ULIDs create no future guarantee of unconditional utility connections.

3. Their reference to procedural hurdles regarding utility service apparently refers to Marysville asking for a utility letter from Arlington and Marysville has always asked for other purveyors to provide a letter regarding ability to provide utilities.
4. Regarding the CWSP agreement which Marysville signed, he said he sees no provision that requires Marysville to serve utilities to anyone outside of city limits.
5. With regard to Arlington's intent to inquire of the DOH & DOE to acquire temporary utility service in that area, Marysville has no knowledge of this and perhaps they do have potential ability to service these properties.
6. Arlington was asked to provide a comprehensive proposal as to how they intend to serve properties in the Smokey Point area and to date, Marysville has not received a response.
7. Regarding RUSA, Snohomish County Superior Court has asked Montys to exhaust their legal remedies so it seems that the judge must have determined that the RUSA code applies to them as it is very clear who is to be served within that code.

Mr. Jordan responded that with regard to what the judge must have indicated or what he intended can be debated all night, but Mr. Jordan doesn't wish to do that. With regard to the CWSP, he read from the user's guide provided by the county, which familiarizes the user with the process. He then quoted from 70.116.060(D):

"No other purveyor shall establish a system within the plan unless the local authority establishes that the existing purveyor is unable to provide the service within 120 days."

He added that once the CWSP area has been established the legal purveyor must provide service, unless they are unable to do so. At the last meeting, he said, it was established that Marysville is able to provide utilities and so he is operating on that assumption. He pointed out that water and sewer are immediately adjacent to his clients' property.

With regard to the fact that the City Attorney did not receive the copies of the letters from Arlington until late this afternoon, Mr. Jordan stated that he himself just received these letters late Friday afternoon and had to actually have them refaxed because of the City of Arlington's transmission problems. These were in response to "What will Arlington do?", he said and he concluded they can do nothing.

He noted the City of Arlington was going to apply to the DOH & DOE to get a temporary service line--it was for serving islands of property only and he said he doesn't think DOH or DOE are going to approve these because they are going to want to avoid duplication of services.

City Attorney Weed pointed out that the user's guide is not a part of the CWSP contract between the City of Marysville and any other party. Also, he would ask if there is anything that forbids any utility purveyor from asking for covenants/conditioning service based on compliance with Marysville codes/ordinances.

Mr. Jordan said he would say that conditions can be imposed on extensions of water service but they disagree on the extent. He said he doesn't believe Marysville should ask for a covenant but rather he agrees that the use can be conditioned. He pointed out that Marysville agreed to be a purveyor of an area unless they can't provide service in which case another purveyor can come in.

City Attorney Weed said one of the conditions/criteria is that the utility request be consistent with the City's long range plans of the City and this application he doesn't believe is in the long range plan.

Ralph Monty, 17215 Smokey Point Dr., Arlington, WA 98223, addressed Council. He said when he went into the City of Arlington and asked for temporary utilities he learned they were going to go to the Dept. of Ecology, that was about 3-4 months ago.

Hank Stampf, 11908 N. Lake Shore Dr., Lake Stevens, WA 98258, addressed Council. He asked if Marysville were to provide the services whether they would make a profit or would they lose money.

Mayor Weiser explained that the utility is an enterprise operation but it is not a profit making operation as most people would think of a business.

Dr. Stampf pointed out that the City of Marysville might not be a business but they are a service organization, so to speak and he said he thinks the citizens would react negatively to the City of Marysville's actions of not bringing in more revenue here.

Mary Ann Monty, 17215 Smokey Point Dr., Arlington, WA 98223, addressed Council. She said in response to Mr. Weed's comments that the City has always wanted to annex within their utility area she knows Marysville has never wanted to go north of 152nd. Also, according to newspaper articles, representatives of the City of Marysville said Smokey Point should always determine their own destiny, she said.

Ralph Monty addressed Council again. He pointed out there is a 25% surcharge for hookups to utilities if you are outside city limits, plus another 25% surcharge on the monthly fees, so that represents a lot of extra revenue.

Mayor Weiser said that surcharge was a lot larger in years past but it was lowered in contemplation of annexation potential.

City Administrator Zabell added that also, you must realize that the further away from the source (WWTF) you are, the more expensive it is for operation of the Wastewater Treatment Facility.

Councilmember Bartholomew asked about the debt load factor, for example, people who live within the City are under obligation to be sure the bonds are paid.

Finance Director Wilson said it is a part of the total cost of the service.

Councilmember Bartholomew pointed out that if anyone defaults, the citizens of Marysville have to pick up that cost.

Dr. Stampf addressed Council again, noting they have millions of dollars involved and do not intend to default.

City Administrator Zabell asked if comments applied to both utility variance requests and Mr. Jordan said his assumption would be that they would want all the comments to be applied to both utility variances.

Councilmember Herman said he would like to be able to provide services and at the same time provide integrity of Marysville utilities. He said he was looking to Arlington to help Marysville out here with some answers; Marysville doesn't want to put their system at risk. He noted one of the attorneys made a valid point with regard to it not making sense about extending sewer when we don't know which city the Monty project is going to be in. But he

added that the 3rd and 4th criteria of the variance request do give him problems and these issues need to be addressed in his mind.

Councilmember Baxter commented that normally there is a form letter from Arlington but not in this case.

Councilmember Herman moved to deny UV 95-020 based on the request not meeting criteria 3 & 4. Councilmember Bartholomew seconded and the motion passed unanimously.

Councilmember Herman stated his comments also apply to UV 95-021 and he repeated the same motion: To deny UV 95-021 based on the request not meeting criteria 3 & 4. Councilmember Bartholomew seconded and the motion passed unanimously.

NEW BUSINESS:

1. Professional Consultant Agreement; Terry Gibson; Traffic/Safety Study for Potential Reopening of 5th St. Railroad Crossing.

Mayor Weiser stepped down and Mayor Pro Tem Wright assumed the chair.

City Engineer Berg reviewed the agenda bill, noting staff is recommending the Mayor be authorized to sign the agreement with Gibson Traffic Consultants.

There was discussion about competitive RFPs, liability insurance coverage to hold harmless the city, its officers, agents and employees; discussions that have been held with the railroad; when construction on 88th will be completed; the question being when 5th St. was to be reopened, not whether it was to be reopened; Mr. Gibson's previous experience with the City.

Councilmember Baxter moved to authorize the Mayor to sign the agreement subject to approval of the contract by the City Attorney. Councilmember Myers seconded and the motion passed unanimously.

Mayor Weiser returned to Council Chambers at 9:12 p.m.

2. Construction and Maintenance Agreement; Burlington Northern Railroad; Widen and Improve 88th St. Grade Crossing.

City Engineer Berg reviewed the agenda bill, noting staff recommends that the City Council authorize the Mayor to sign the Construction & Maintenance Agreement and Petition before the Washington Utilities and Transportation Commission.

Councilmember Herman commented on the high cost of maintenance and said he felt \$10,000 was an outrageous and unreasonable fee.

City Engineer Berg said he made the same comment to Burlington Northern and was told \$5,000 was for the right of way and \$5,000 for signal boxes; they apparently charged Mount Vernon \$19,000 for the same thing.

There was discussion about not being able to deal locally any more now that Burlington Northern has moved their headquarters to Fort Worth, it's the railroad's way or no way, there is no room to negotiate, county and ISETEA will be providing some grant money for this project, it is hoped this project will be completed this year.

Councilmember Bartholomew moved and Councilmember Myers seconded to authorize the Mayor to sign the agreement with Burlington Northern/Santa Fe Railroad and to present the petition to the Washington Utilities and Transportation Commission. Passed unanimously.

3. Utility Variance; Vine Street Commercial Group; UV 96-003.

City Administrator Zabell reviewed the agenda bill, noting this is part of ULID #1, within RUSA and CWSP. He gave some history with regard to previous denial based on applicant having signed a petition to annex into the City of Arlington. He referred to information in the packets and correspondence to and from the applicant's attorney, Bill Foster.

City Attorney Weed noted the official record of these minutes is being kept by Wanda Iverson, Recording Secretary. It was noted there is a court recorder in Council Chambers.

Bill Foster, 20006 Cedar Valley Rd., Lynnwood, WA 98036, addressed Council. He said for the record the reason they have a recorder is so they can get the record quickly and did not put a burden on the City Recording Secretary.

First of all, he said he wanted to say that as he reads the RUSA ordinance, city utilities will not be offered for properties that have other utility access. In reality in watching the BRB hearings, the statements made by both Marysville and Arlington have no reality in fact. The City of Arlington, regardless of what they may say, is not going to be in a position within a reasonable time to provide utilities to the Smokey Point area whereas Marysville has had utilities for a number of years in that area, he said. He added that he doesn't believe what Arlington does has any bearing on this: His client still maintains that they have a contractual right with the City of Marysville to provide water and sewer.

He noted the City of Marysville has asked them to go through a variance procedure. They had received a call from Ms. Hegge for information and in looking at the criteria, this case is very similar to Mr. Monty's: The Vine St. property is contiguous and south of the Gateway. Sewer was provided in 1991, it's part of ULID #1 and Vine St. Property paid over \$70,000 in connection charges at that time, he said. Gateway looped the water system at that time to provide greater fire flow for their property and Vine St. Property at a substantial cost; they need the utilities and unless they have approval it will do no good as far as conditions being placed, he said.

Mr. Jordan said they are in the process of refinancing Gateway and the lender has asked for an appropriate certification that utilities have been provided to the property. So the necessity is clear: They have waited 5 years for this. They submitted a request for this and because they could not get the utility commitment letter, the potential lessee has gone elsewhere.

#1 and #2 criteria have been met. #3--how does granting the variance serve the public interest? He said he has never seen a public body convince anyone that well water and septic systems are better than public water and sewer. It's safe, clean, a sanitary source of water to people who are going to pay for it. As far as sanitary sewer the necessity is there--it's cleaner, better for the environment and definitely within the public interest. With regard to it being in the public interest for the City of Marysville, he said he doesn't believe there's a problem with capacity. As far as default on the ULID, they have been paid for, risk as far as monthly charges is nil, the City just has to turn the water off.

He said he agrees that profit is not a huge factor but hookup and monthly service is going to put money in the city coffers it would not otherwise have. As far as the long range plan, that was decided in 1971 that there would be an assessment to form ULID #1 which was done in 1971 and the justification was that there was going to be a benefit. The lines have been put in and the assessment has been paid for but now that Arlington comes in as a possible annexor, what's going to happen now, he asked. This

sewer system is either going to be administered by the City of Marysville or they can sell the system to the City of Arlington, he said and he asked how this can be inconsistent with the city's long range plan.

What is inconsistent is that Marysville is never going to collect money for the services. Just because they did not sign an annexation petition to Marysville should not be the criteria, he said. For example, Tulalip Tribes is never going to be annexed to

Marysville and they are being provided Marysville services. So he said he submits that his client has complied with all 4 criteria.

City Administrator Zabell asked about his client signing the annexation covenant with Arlington and Mr. Foster said yes, they did.

City Administrator Zabell explained the reason for the looping of the system and he also noted the rate differential: Properties within the City are responsible for defaults out of the City. Yes, foreclosure is a possibility but not one they would prefer to take as a rule, he said. As far as the Tribes, there is a joint water agreement but on the sewer, there is no agreement signed as yet with Marysville.

City Attorney Weed said whether Arlington can or can't serve is a non-issue with regard to the variance but is an issue with regard to compliance with the City's code. He quoted MMC 14.32.040(9), noting utilities will not be granted when there is a conflict with another jurisdiction or where an annexation would be legally impossible because of conflicting jurisdictions.

Mr. Foster said his client's application for a utility commitment letter was made well before the BRB hearing and they all know that the BRB appeal process is going to take a long time so in the meantime, Arlington has not annexed the property and so there is no conflict at this time.

City Attorney Weed said it was known that an annexation petition has been signed by the applicants to Arlington and now the BRB has approved that annexation, even though there are appeals outstanding.

Mr. Foster responded that annexation to Marysville is not legally impossible. Once the annexation is final, it would be legally impossible and according to the RUSA ordinance, he said it would be in conflict to grant utilities.

Councilmember Herman commented that the applicant was aware of the Marysville Municipal Code from previous experience and has placed themselves in a position of not being able to comply with the MMC by their own action. Arlington has indicated they can provide the services; communications from Arlington seem to posture and obscure the issue, he said. He asked about the present debt service on the WWTF fund.

Finance Director Wilson stated it is \$26,000,000.

Councilmember Herman said that represents a significant responsibility on the part of the citizens of Marysville. Also, under variance criteria #3, public interest, he said Marysville must look at the benefit as well as the liability to the system, the environment, etc. As far as the long range planning, situations have come into play since 1971 and need to be considered in the future.

Councilmember Bartholomew asked what the lifetime was of the existing indebtedness and Finance Director Wilson explained that currently there are two bond issues: One for \$22.5 million that was taken out in 1993 for 20 years and one for \$5.8 million that was taken out in 1994 for 20 years.

Councilmember Baxter moved and Councilmember Herman seconded to deny the request for utility variance UV 96-003. Passed unanimously.

LEGAL MATTERS:

City Attorney Weed said he will be preparing resolutions confirming these actions tonight.

ADJOURNMENT INTO EXECUTIVE SESSION: 9:54 p.m.

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

RECONVENED & ADJOURNED: 10:35 p.m.

Accepted this 11th day of March, 1996.

Donald M. Wright
MAYOR

Mary S. Suers
CITY CLERK

Shanda K. Averson
RECORDING SECRETARY