

MINUTES RECAP

MARYSVILLE CITY COUNCIL MEETING MARCH 23, 1998 00008

CALL TO ORDER: 7:00 p.m.

ROLL CALL: Councilmember Myers  
excused

MINUTES OF PREVIOUS MEETINGS:

1. City Council Meeting 3/9/98 Approved
2. City Council Workshop 3/16/98 Approved

AUDIENCE PARTICIPATION: None

CONSENT AGENDA: Approved:

1. Approval of 3/23/98 Claims in the Amount of \$688,996.19; paid by check nos. 38389 through 38649.
2. Approval of New Liquor License for Captain Dizzy Exxon and Renewal Liquor License for Conto's Pizza & Pasta, Inc.
3. Approval of Amendment to Finance Dept. Budget for P/T Receptionist - City Hall.

STAFF'S BUSINESS:

MAYOR'S BUSINESS:

1. Proclamation: Public Health Week (April 6-12, 1998).

CALL ON COUNCILMEMBERS:

PRESENTATIONS: None

PUBLIC HEARINGS:

1. Preliminary Plat & Rezone Appeal; Hearing Examiner Decision  
Cedarcrest Park; PA 9707022. Upheld/Approved

REVIEW BIDS:

1. Golf & Parks Dept. Turf Maint. Approved for 7 pieces of  
Equipment Equipment

CURRENT BUSINESS: None

NEW BUSINESS:

1. Professional Services Agreement; Approved  
Grove & 47th Ave. & Grove & 67th  
Ave. Traffic Signal Designs;  
Skillings-Connelly, Inc.
2. Prof. Svcs. Agreement, LID No. 69 Approved  
Sanitary Sewer Design Engrg.;  
Hammond, Collier & Wade
3. Utility Variance for 1 Sewer Denied Without Prejudice  
Connection without Covering  
Frontage; Tony & Maureen Sitz;  
5008-73rd Dr. NE; UV 98-008.
4. Utility Variance; Nancy Barnes; Approved  
5027 102nd Pl. NE; UV 98-010.
5. New Parking Designation. Approved

ORDINANCES & RESOLUTIONS:

1. Ord. 2183 Approved Adopting City-Wide Access Management Plan  
and an Access Management Plan for 88th St. Corridor from I-5  
to State Ave., Amending Comprehensive Plan by Adopting Said  
Access Management Plans by Reference & Amending MMC 12.02.090.
2. Ord. 2184 Approved Affirming Hearing Examiner Decision & Re-  
zoning property owned by Tom Graham and amending Official  
Zoning Map Previously Adopted in Ordinance No. 772.
3. Res. 1877 Approved Granting Utility Variance for Peter & Cathy  
Smith for property located at 11617 55th Ave. NE, Marysville.
4. Res. 1878 Approved Granting Utility Variance for Luis &  
Michelle Romero for property at 11611-55th Ave. NE, Marysville.
5. Res. 1879 Approved Urging Voters to Consider the Importance of  
Marysville School Dist. Maint. & Operation Levy 4/28/98.

LEGAL MATTERS:

1. Recovery Contract 206 Approved for Recovery of Utility  
Construction Costs; Charlie Cruzen.

ADJOURNMENT: 10:17 p.m.

EXECUTIVE SESSION:

1. Litigation
2. Personnel

10:30 to 10:57 p.m.  
(No Action)  
(No Action)

RECONVENED & ADJOURNED:

10:57 p.m.

MARYSVILLE CITY COUNCIL MINUTES

00008

MARCH 23, 1998

7:00 p.m.

Council Chambers

Present: Dave Weiser, Mayor  
Councilmembers:  
Donna Wright, Mayor Pro Tem  
John Myers (excused)  
NormaJean Dierck  
Donna Pedersen  
Mike Leighan  
Otto Herman  
Shirley Bartholomew

CORRECTED: SEE 4/6/98  
MINUTES

Administrative Staff:  
Dave Zabell, City Administrator  
Grant Weed, City Attorney  
Gloria Hirashima, City Planner  
Ken Winckler, Public Works Director  
Robert Carden, Police Chief  
Eric Thompson, Senior Planner  
Jim Ballew, Parks & Recreation Director  
Wanda Iverson, Recording Secretary

CALL TO ORDER:

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

ROLL CALL:

City Administrator Zabell called the roll and all members were present/absent as indicated above.

MINUTES OF PREVIOUS MEETINGS:

**1. City Council Meeting of March 9, 1998.**

Councilmember Pedersen moved and Councilmember Leighan seconded to approve the March 9, 1998 City Council Minutes as presented. Passed unanimously.

**2. City Council Workshop; March 16, 1998.**

Councilmember Dierck indicated she was interested in being on the Golf Committee as discussed at the Workshop. Councilmember Herman so moved, Councilmember Leighan seconded her nomination to that committee with the Workshop minutes reflecting same. Passed unanimously.

AUDIENCE PARTICIPATION FOR NON-AGENDA ITEMS: None

CONSENT AGENDA:

1. Approval of 3/23/98 Claims in the Amount of \$688,996.19; paid by check nos. 38389 through 38649.
2. Approval of New Liquor License for Captain Dizzy Exxon and Renewal Liquor License for Conto's Pizza & Pasta, Inc.
3. Approval of Amendment to Finance Dept. Budget for P/T Receptionist - City Hall.

Councilmember Herman moved and Councilmember Pedersen seconded to approve Consent Agenda Items 1, 2 & 3. Passed with Councilmember Leighan abstaining on check #38634.

STAFF'S BUSINESS:

Chief Carden reported Loree Parker, Marysville Seniors Against Crime Coordinator, was recently taken to Colby Campus CCU. He is only being allowed visitors from his immediate family, however.

Chief Carden reported he was impressed with the way the Safety Fair went Saturday; they had a very good turnout. He said it was actually the best attended fair ever, in spite of the weather.

City Administrator Zabell reported he received a press release from the Tulalip Tribes announcing Stan Jones was re-elected as Board Chairman, as well as the rest of their board.

He said he also received a Stan Finklestein communique with regard to the process of submitting and passing resolutions.

Public Works Director Winckler reviewed Change Order #3 for State Avenue which is an \$18,000 credit with regard to traffic control, rechannalization, etc. He said the total of the change orders to date is still within 10% of the total project amount.

He said there will be a presentation regarding 60th Drive at next Council meeting.

MAYOR'S BUSINESS:

Mayor Weiser read and signed a Proclamation naming April 6 to April 12, 1998 PUBLIC HEALTH WEEK.

Dr. Spidders of the Health District thanked the Mayor and City Councilmembers for their support and especially thanked Councilmember Pedersen for her participation on their board. He noted they will be taking a survey of some registered voters with regard to their opinions about health services in the community.

LIBRARY BOARD VACANCY. Mayor Weiser said he has contacted about eight people and would like to appoint Jeff Moses who is very anxious to serve.

Councilmember Pedersen added that the Library Board Members were looking for the new person to have small children and be someone with new ideas and Jeff Moses fits these criteria.

Councilmember Pedersen then moved and Councilmember Leighan seconded to approve the Mayor's appointment of Jeff Moses to the Library Board. Passed 5-1 with Councilmember Herman against.

CALL ON COUNCILMEMBERS:

Councilmember Leighan reported that Traffic Advisory Committee is preparing for another busy construction season and he handed out the Six Year Transportation Plan.

Councilmember Pedersen reported on her meeting with 4th grader Boy Scouts at City Hall so they could learn about City government; she said she thought it was very successful and thanked City Administrator Zabell for helping with that.

She reported she has had calls from concerned citizens who live in the Glenwood Mobile Home Park regarding the 60th Street Extension and planned traffic light; if there are more than 5 cars stopped eastbound, people won't be able to get out of the mobile home park. This will be covered/discussed at the next Council Meeting in a presentation, it was noted.

Councilmember Dierck said she has been contacted by the Downtown Merchants Assn. regarding 7 different breakins downtown and they will be inviting Chief Carden to come to their next meeting.

Councilmember Bartholomew asked about the priority for State Ave. from 1st to Grove on the TIP priority list and Public Works Director Winckler said Marysville is on the final cut list; it will be determined in May and he will keep Council informed.

Councilmember Bartholomew asked about the traffic light at 1st and State and Public Works Director Winckler said the project is designed and it is planned for construction during the closure of 529/bridges next spring probably.

MAYOR'S BUSINESS, CONTINUED:

Mayor Weiser reported he had received a thank you card from Liz McLaughlin regarding flowers and a card sent to her husband's funeral from the City of Marysville.

PUBLIC HEARINGS:

**1. Preliminary Plat & Rezone Appeal; Cedarcrest Park; PA 9707022.**

City Attorney Weed reviewed the process as per MMC 15.11, noting this is a closed record appeal and no new testimony or evidence is allowed. A letter dated March 6th was sent to the appellant in which the procedures were explained including the allowance of a 5 minute oral summation from each side, he said. He outlined the steps:

- 1) He will call for any challenges regarding the Appearance of Fairness Doctrine
- 2) Staff will give a report
- 3) 5 Minute oral summation from each side
- 4) Staff remarks
- 5) Council deliberation.

He asked if any Councilmember knew of any knowledge or situation where they would be unable to deal with this appeal in a fair manner.

Councilmember Bartholomew noted the appellant in this case used to mow her lawn and she paid her (Suzanne Smith) for it. This was many years ago, it was noted, and she said she just wanted it on the record. She said she believes Suzanne Smith is now Mr. Johnson's wife.

Applicant's attorney, Brad Cattle, stated the applicant has no objections to Councilmember Bartholomew remaining to hear this.

The appellant, Brad Johnson, said he had no objections or challenges.

City Attorney Weed asked if there were any objections to the procedures as outlined and Messrs. Cattle and Johnson both stated they had no objections.

City Attorney Weed explained no one will be sworn in and there will be no new testimony taken as this is a closed record appeal.

City Planner Hirashima noted a full packet/report was sent with a memo dated 3/18/98 to each of the Councilmembers. She reviewed this information, outlining the request and giving chronology of the appeal. She referred to the issues raised by the applicant's attorney (the issues of standing and merit), as well as issues raised by the appellant, one of which was PRD appropriateness. She noted the PRD section outlines purpose and intent, for example, design flexibility, but it is not incumbent on every application to meet every single objective, even though this one does, she said. She spoke about the PRD providing many types of housing and explained the RML zone, density objective, landscaping, public road system, PRD overlay with some zero lot lines, harmony with surrounding area. She noted there was discussion during enactment of the new zoning code concerning density, open space, variances, criteria, zero lot lines, affordability, etc., all of which the applicant has complied with.

With regard to the open space argument, she said there is no federal or state codes mandating minimum open space or recreation requirements within a subdivision or PRD; the City does require 15% of the gross project area to be established as open space. Parking areas, driveways, access streets and required yards are not considered to be open space, she said. She noted there also seems to be some confusing of the term "open space" with "recreation" and the City's PRD code does not actually require recreation area. The applicant did not apply for any bonus density, she said.

In addition to mitigation fees for traffic, parks, schools and the diking district, the applicant is proposing improvements to nearby parks, she said and it was determined that improvements to the larger nearby parks would provide a better alternative than a small park within Cedarcrest Park PRD itself.

She continued to review her memo regarding preservation of natural amentities, the applicant's proposal to remove debris, blackberries, etc. and enhance the stream corridor where it has been damaged. She highlighted exhibits 37, 43 and 53 concerning protection and delineation of wetlands and other sensitive areas and she noted included in the applicant's request is a dual request to reduce some buffers and also average buffers. She quoted the code where it does allow reduction of buffers up to 25% which was denied where the buffer was healthy.

She spoke about the 100' buffer, reduction of buffer if it is enhanced, buffer width averaging and strict adherence to the code. She referred to the qualified consultant, Terra & Associates who prepared a revised evaluation. She noted two areas where there were existing legal non-conforming houses are exempt from the ordinance.

She spoke about requirements to fence around the wetlands, that the applicant's proposal is consistent with the code for anadromous fish habitat and consistent with the wetland consultant's opinion that a smaller enhanced buffer would be better than a large unimproved buffer. She added that the Dept. of Fisheries was impressed with the improvement to the culvert even though the appellant contended a longer culvert should have been put in.

With regard to the density transfer calculations, the Sensitive Areas Ordinance allows transfer with mitigation, she said and she then referred to the memo from Grant Weed on procedural items.

Councilmember Pedersen asked at what point the Council would consider issues raised by the City Attorney and City Attorney Weed said he would like to hear from the two sides first, i.e., after their oral summation.

Mayor Weiser then asked for the appellant's 5 minute oral summation.

Brad Johnson, 4821 75th Ave. NE, Marysville, addressed Council. He stated he is a City of Marysville approved fish and wildlife consultant, also representing the Quilceda/Allen Creek Defenders. He read from a prepared statement, noting he feels the City should deny the application as the applicant has failed to comply with PRD regulations, specifically to produce open space and recreational areas and to produce a more desirable environment. It also fails to adequately protect critical stream and fish habitat by providing sufficient buffer widths, he said.

He said the applicant's attorney is basically grasping at legal straws to distract from the violations that are inherent in this development and the bottom line on the standing argument is that protection of the water and fish and wildlife quality is the right of all Marysville citizens. Many people use the downstream of Munson Creek, eg. Jennings Park which has high levels of fecal coliform from pets and he said he was born and raised in Marysville, near Munson Creek, has lived here for over 40 years, is an avid fisherman of the downstream waters. He added his mother is also a member of the Quilceda Allen Defenders and lives just downstream from the subject property, adjacent to Munson Creek and he may inherit his mother's property, he said.

He noted that similar cases to this have been appealed numerous times at considerable taxpayer expense and he feels it's the City Council's job to legally approve this plat.

As far as the merits of the appeal, the City's PRD code states a

PRD must produce certain requirements and this application uses sensitive areas that are required to be protected under the Sensitive Area Management Code and illegally calls it "new" open space and recreation areas. Marysville's PRD code says a minimum of 15% of the gross project area shall be established as open space and it is illegal to use these sensitive areas or buffers or habitat as open space--it cannot have a duplicate use as open space under the PRD, he said.

He continued that the City code also states fish and wildlife habitat is to be protected under the Sensitive Area Code and this PRD application also violates these requirements by allowing excessively high density which may potentially cause serious impacts to the adjacent sensitive areas. In addition, the variances being applied for with regard to smaller yards will add to these impacts, he said.

This proposal does not produce any PRD required new open and recreational spaces necessary to support the high density allowed in this PRD, he said, thus the residents are going to be forced to use the protected sensitive areas, buffers and habitat for their recreation and open space areas.

With regard to the buffer issue, buffer averaging, the Sensitive Area Code specifically states that buffer width averaging shall only be allowed when the applicant demonstrates to the Planning Dept. that the habitat contains variations in sensitivity due to existing physical characteristics. The City erred in approving the applicants buffer width averaging plan because they said the buffer had variations in sensitivity, not the habitat, he said.

Also, the applicant is required to put lower density land use adjacent to the buffer width averaging areas and it was also never proven that buffer width averaging will not adversely impact habitat functional values.

With the Chinook Salmon being proposed to be put on the endangered species list, the habitat shall be increased from the standard width and he read from the code. He concluded that the higher PRD zoning is illegal and should not be allowed on the site due to the critical and sensitive nature. Buffer width averaging was used only to increase the developed portion of the site and no variation in habitat sensitivity was proven by the applicant.

Brad Cattle, Attorney, 2707 Colby Ave., Everett, representing the applicant, addressed the Council. He said he believes the burden of proof in this appeal is on the appellant and if the Council is uncertain as to whether the record supports the Hearing Examiner's decision, then the uncertainty should be resolved by the party with the burden of proof.

Unfortunately, Mr. Johnson has not provided a single reference to the record to allow the Council to reach the same conclusions that he has drawn and that are wholly inconsistent with conclusions drawn by the staff and by the discussion provided by Mr. Cattle, he said.

He reiterated that the appeal issues are limited to those in the appeal statement and it is Mr. Johnson's personal appeal, not on behalf of a local group or other concern.

In the issue of buffer widths, Mr. Cattle referred to a submittal previously presented and noted Mr. Johnson does not provide all the language of the section that provides that you may indeed increase buffer widths. Mr. Johnson referenced MMC 19.24.230(5)(a) where he says it is stated there would have to be a qualified determination based on a site specific habitat analysis that the impacts on the habitat from the proposed development can only be mitigated by a greater buffer width or that the increased buffer is necessary to protect the habitat of the listed species that are to be protected--Mr. Cattle stressed there is no such evidence in this record. Mr. Johnson is simply not using all of the section, he said.

Mr. Cattle said he would urge City Council to address both the procedural and the substantive issues both and not simply determine that the appellant has no standing. He said he thinks it would make a better record if the City Council addressed the substantive issues in the appeal and based on the record, Mr. Johnson has no standing and he also has no substance and therefore no appeal.

Mayor Weiser asked if there were any questions. Hearing none, he closed the summation portion at 8:00 p.m.

Councilmember Bartholomew asked if the appeal filed by Mr. Johnson as a representative of Habitats Northwest gives him standing.

City Attorney Weed said an appellant can be any aggrieved "party of record" and Mr. Johnson individually is listed as a party of record and no other organization is listed. Also, the party of record must be "aggrieved" which is defined as someone who can show a proprietary, pecuniary or personal right that has substantially been affected, he said. He referred to a previous memo submitted in the file and said the person must show some substantial and direct injury to have standing and the only party of record is Mr. Johnson, as an individual.

Councilmember Dierck noted in Mr. Johnson's appeal he mentions the Quilceda/Allen Creek Defenders and also his mother lives very near the subject property.

City Attorney Weed said what needs to be considered is that Mr. Johnson is the party of record who came before the Hearing Examiner originally as an individual.

Councilmember Pedersen noted Mr. Johnson makes a point that protection of streams is the right of all Marysville residents and she asked if that was a point he made at the Hearing Examiner's hearing.

City Attorney Weed advised the Council to look at findings and conclusions of the Hearing Examiner and identify which one(s) are being challenged by Mr. Johnson and focus on these. There are findings of the Hearing Examiner that deal with buffer widths, eg., he said.

Councilmember Herman asked for clarification of "standing" and "merits" of the appellant.

City Attorney Weed said before Council gets to the merits, there ought to be a finding that Mr. Johnson has suffered some direct impact personally, or to his own property or to some right he may have. Mr. Cattle has suggested to look at the case on merit, even if no standing is found, he said.

Councilmember Herman clarified whether merits can be reviewed without standing and also asked about a further appeal going to Superior Court.

City Attorney Weed said technically, if there is no standing, the Council cannot rely on merit.

Councilmember Herman said his concern is if no standing is found he has reluctance to not hear arguments for the merits of the issue.

City Attorney Weed said in a court of law typically, the standing is usually ruled on first but City Council can review the merits, whether standing is found or not, if they wish.

Councilmember Herman said it would appear the appellant has quite a bit of background and experience in fish and wildlife, etc. and in reading through the appeal letter and recalling prior discussion over the years about uses under the PRD, there may be a basis for review of the PRD but it does allow the density transfer



and buffer calculations that were done.

City Planner Hirashima confirmed that streams can be included in open space under the PRD code and 95% of the PRD development applications are submitted because they have sensitive areas and these types of areas lend themselves well to a PRD overlay. She added that both Everett's and Snohomish County's code allow sensitive areas to be included in open space calculations.

Councilmember Herman said regarding buffer widths that have been allowed have been consistent with how the ordinance functions, which may be different from how he views whether this is how people like the ordinance to function. He said he would urge Council 1) not to make findings on standing and 2) continue deliberations on the merits of the appeal and so far, he has not found any merit based on any violation of the code at this point.

Councilmember Pedersen noted that after this is over, Council should probably give some direction to staff regarding standing so this is not a recurrent situation.

Councilmember Herman agreed that there should be some public education on standing and he would like to see an agenda bill on this whole appeal process.

Councilmember Dierck said regarding standing, one of the roles of City Councilmembers is to invite people to come and voice their opinions and putting Chinook on the endangered species list will affect Marysville as a whole and if a citizen can't come forth because of so many restrictions, that is defeating the purpose. She asked what message is being sent by not allowing citizens to speak tonight and said she thinks Council should review everything before them.

Councilmember Pedersen said she wants people to come forward but they do have the process of going before the Planning Commission, the Hearing Examiner, public workshops and hearings--that process did happen and that's what Council has to base their decision on, whatever ordinances and laws are in place.

Councilmember Bartholomew commented the Council is not dealing with what they would like to see but what the procedure says they must do and the first issue is standing. Mr. Johnson is listed as an individual at the Hearing Examiner meeting and was quoted extensively in the minutes as an individual and not as representing any organization or group, she said.

Councilmember Wright said she also feels Mr. Johnson is not addressing the specific issues; he is making very broad comments.

Councilmember Leighan noted Mr. Johnson did refer to the transfer of densities but he didn't raise these issues at the Hearing Examiner meeting. One of the problems is that at the last minute, we don't suddenly want a sighting of an endangered species, eg., he said. He added that Mr. Johnson has also failed to submit any disputing information with the habitat consultant.

Councilmember Dierck referred to MMC 19.24.11 where variations in sensitivity do require the buffers to be increased when a species is proposed to be added to the endangered species list. She said the bottom line is we are going to have to pay attention to this issue--all the cities and counties are going to have to get together and help do this. She proposed that Marysville be first in supporting Governor Locke on this issue.

Councilmember Pedersen noted a PRD does protect sensitive areas and also allows buffer averaging and the question before Council is whether the Hearing Examiner or the staff erred and she said she doesn't think they did. She admitted there are some things she doesn't like, perhaps, but that is not anything they can change right now; these ordinances are in place and Council must go by that. Councilmember Herman agreed.

Councilmember Bartholomew moved to deny the appeal on the basis of lack of standing by the appellant as an aggrieved party. Councilmember Wright seconded. Discussion followed.

Councilmember Herman said there are some arguments raised in support of standing and he would prefer this motion not be before Council as he would rather not decide on standing but rather on the merits and he would rather not be recognized as part of a body that doesn't want people to be heard. He said he can't support the motion and would rather it be withdrawn than his voting "no" on it.

Councilmember Wright asked if standing can be set aside and City Attorney Weed said yes, but it leaves the question of standing open and a judge would likely interpret it as saying there is standing; if the motion denying standing passes, the Council could still consider merit, however, he added.

Councilmember Pedersen said she feels very strongly Council should list findings on the merit and she would support setting the standing issue aside.

Councilmember Bartholomew said she believes the standing issue should come first.

City Attorney Weed said Council could make the decision that Mr. Johnson has no standing and then go on with the merits or not. A judge would make assessment based on the code as to whether City Council made the right decision on standing, he said.

Councilmember Dierck asked about liability in the case of saying there was standing and City Attorney Weed said as long as there is no capricious action on behalf of Council, there would be no liability.

Councilmember Bartholomew said she believes Mr. Johnson, according to the record, has no standing, other than as an individual.

Councilmember Pedersen added that he does not meet the definition of an aggrieved person under the MMC nor does he meet any of the requirements that constitute having standing (she read conditions that constitute standing under the code).

City Attorney Weed referred to the administrative procedural act and urged Council to focus on the definition of standing as someone who stands to suffer in a direct proprietary, pecuniary or financial way or have personal rights directly and adversely affected. He noted this is a statutory issue.

A roll call vote revealed the motion to deny the appeal based on standing passed 4-2, with Councilmembers Herman and Dierck against.

Councilmember Herman moved and Councilmember Bartholomew seconded to deny the appeal on its merits, based on the following findings:

1. The Hearing Examiner decision embodies the proper application of the PRD ordinance, within its use;
2. Not all criteria under 19.48.010 need to be met;
3. There has been a credible argument given that this does meet the PRD ordinance criteria;
4. No density bonus was applied for;
5. The buffer language was properly complied with;
6. The wetland consultant's analysis in the record supports the Hearing Examiner's decision;
7. Nothing found in the record to indicate any error made on the part of the staff or the Hearing Examiner, as Mr. Johnson suggested in his appeal.

There was discussion concerning the Hearing Examiner's decision, that if this motion passes, the Hearing Examiner's decision would stand on the rezone and PRD.

Councilmember Dierck referred to the Hearing Examiner's decision, noting he stated that it should serve health and public welfare, and the fire district had some concerns about the project not connecting with 80th, that the roads are too narrow for emergency vehicles. She added that the City Engineer says the roads don't meet minimum standards and the school district comments that they are unable to meet the needs of this project for schooling.

The motion passed unanimously.

Councilmember Herman said he would like to see an agenda bill in the future discussing the process under which appeals are done. Mayor Weiser said that could probably be put on the agenda 4/6 or 4/13.

Councilmember Herman said he would also like to review how the City is going to deal with stream corridors in light of the Endangered Species Act, eg. enhancements that are allowed for habitat in relationship to new development and in existing corridors to enhance habitat and water quality.

There was brief discussion about county based meetings with regard to this.

REVIEW BIDS:

**1. Golf and Parks Department Turf Maintenance Equipment.**

Parks & Recreation Director Ballew reviewed the agenda bill, noting 5 bids were received and one was rejected due to failure to get a bid bond. The recommended total is for \$202,160, a savings of \$11,000 over what was budgeted, he noted. He added that this equipment is partially being funded by the recycling program and there will be an advertising campaign done giving the recycling program credit. He spoke about the bids that were rejected, noting all firms were well informed of the needs of the Parks Dept. and Golf Course.

Councilmember Bartholomew moved and Councilmember Leighan seconded to approve purchase of a Fairway Mower from Barnett Implement in the amount of \$30,526.12 including tax. Passed unanimously.

Councilmember Wright moved and Councilmember Bartholomew seconded to approve purchase of (4) Greens Mowers from Western Equipment in the amount of \$67,875.00 including tax. Passed unanimously.

Councilmember Bartholomew moved and Councilmember Leighan seconded to approve purchase of (4) Utility Vehicles (3 for the golf course and 1 for Parks) from Western Equipment in the amount of \$41,222.38 including tax. Passed unanimously.

Councilmember Wright moved and Councilmember Pedersen seconded to approve the purchase of a Tractor & Aerator from Barnett Implement in the amount of \$34,453.52 including tax. Passed unanimously.

Councilmember Bartholomew moved and Councilment Leighan seconded to approve the purchase of a Turf Sweeper from Barnett Implement in the amount of \$14,343.08 including tax. Passed unanimously.

Councilmember Bartholomew moved and Councilmember Dierck seconded to approve purchase of a Mulching Riding Mower (for Parks Dept.) from Barnett Implement in the amount of \$13,034.66 including tax. Passed unanimously.

Councilmember Pedersen moved and Councilmember Bartholomew seconded to approve purchase of a Walk behind Mulching Mower (for Parks) from Western Equipment in the amount of \$705.90 including tax. Passed unanimously.

Parks & Recreation Director Ballew explained recycling vegetation and how the grant requires monitoring of performance, time and material saved. He noted the equipment is scheduled/budgeted to be replaced in 3 years.

CORRECTED: SEE 4/6/98  
MINUTES  
CORRECTED: SEE 4/6/98  
MINUTES 5/6 "required"

CALL ON COUNCIL, CONTINUED:

Councilmember Pedersen asked Tara Mizell and Jim Ballew to share about the visit from Dr. Ensley and Dr. Lyons from the Dept. of Health, to review Marysville Parks & Recreation's After School Program.

Tara Mizell reported that documentation sent to the Dept. of Health showed Marysville's program is on the cutting edge and the representatives from the Dept. of Health spent almost 3 hours here. They looked at funding sources, how Marysville works with the school district, evaluation documentation of the program, what our biggest successes and challenges have been. She said they are hoping to gather information with regard to President Clinton's suggestions for after school programs throughout the nation and it will be interesting to see their report when it is done.

Councilmember Pedersen said she did talk with Dr. Lyons about President Clinton's program and had Tara get in touch with Dr. Lyons as he seemed interest in what Marysville is doing.

NEW BUSINESS:

**1. Professional Services Agreement; Grove & 47th Ave. and Grove & 67th Ave. Traffic Signal Designs; Skillings-Connelly, Inc.**

Public Works Director Winckler reviewed the agenda bill, noting the project is proposed to be completed/installed by 12/31/98. He reviewed Skillings-Connelly's experience and said it is recommended the Mayor be authorized to sign the agreement which pays Skillings-Connelly \$72,110.85 including construction management. He added that both projects had been budgeted for \$80,000; \$72,000 is a very good price.

There was considerable discussion about the 51st & Grove intersection being between these two signals and still having a four-way stop and what impact that will have on traffic safety, etc. It was noted that 51st & Grove has not met warrants yet but probably will soon and it was suggested design work should be done for all three signals at the same time. City Administrator Zabell said he would research information as to combining this project with the other two, researching traffic volume at 51st & Grove, review of impact with and without a signal at that intersection, research whether there are any signals at an intersection that doesn't meet warrants yet.

Public Works Director Winckler noted that if this project is delayed slightly, it would not be a significant problem.

Councilmember Wright noted there will no doubt be an increase of traffic with the 2 new buildings right at 51st & Grove and it really does need a signal there.

Councilmember Pedersen moved to authorize the Mayor to sign the agreement, with information to be brought back about 51st & Grove and for the agreement to be possibly amended to include that signal also. Councilmember Leighan seconded and the motion passed unanimously.

**2. Professional Services Agreement, LID No. 69 - Sanitary Sewers Design Engineering; Hammond, Collier & Wade-Livingstone Associates, Inc.**

Public Works Director Winckler reviewed the agenda bill, noting staff is recommending approval of the agreement with Hammond, Collier Wade in the amount of \$23,900 for LID No. 69 in Parkside Manor. Construction/project management will be done by the City, he said.

Councilmember Leighan moved and Councilmember Herman seconded to authorize the Mayor to sign the agreement. The motion passed 5-0. (Councilmember Wright did not vote.)

**3. Utility Variance for one Sewer Connection without Covering Frontage; Tony & Maureen Sitz; 5008-73rd Dr. NE, Marysville; UV 98-008.**

Public Works Director Winckler reviewed the agenda bill, noting staff is recommending denying the utility variance "to not cover frontage."

Maureen Sitz, 5008 73rd Dr. NE, addressed the Council, noting they are in the Pine Green Grove Complex. She said there are 24 lots in the subdivision on 2 blocks and only 10 have access to sewer, so 12 houses will not have sewer. She noted it's completely developed and they asked that the sewer be extended one more house and Mr. Darling couldn't do it at the time. She said they are now willing to put the money in trust for when the City does extend the sewer. They were told the sewers would be extended in 5 years and they would like to improve their house; they are within 200' of the sewer and must connect first, she said. She pointed out that it would not be cost effective for an engineer to design one house; some of the houses have 2 lots and some don't want to be on the sewer and she was told they need to have 15 houses to be on the sewer. The sewer line is actually right on the Sitz' property line, she said and she just doesn't want to have to pay all the engineering fees just for their house so they are asking for a variance.

Councilmember Leighan asked about the 15 house minimum.

Public Works Director Winckler said generally they try to keep the bond minimum at \$150,000 which would equate to about 15 houses, to spread the cost over. In reference to lot 6 on 73rd on the map, he said the design is to continue to the south. There is a possibility of recovery from lot 19.

Councilmember Leighan asked about frontage Scott Darling has paid on lots 1 through 5 and Mrs. Sitz said Scott Darling's dad said there would be no problem with extending but then they didn't. She said they had indicated that they definitely wanted to hook up to the sewer but then they didn't do anything.

Public Works Director Winckler said it is going to be fairly expensive to connect up to the manhole; the design work would be 80' and there is some existing design information that the City could put together, there are design criteria, they just need to submit an extension. He said it will be costly to mobilize equipment and dig; it's about 8' deep, also they can take out a recovery contract, defer frontage and connect to the manhole.

It was noted the Sitz house is about 25 years old and there have already been 2 septic failures in the neighborhood.

Councilmember Leighan said he thinks an LID would be worth looking into and there was more discussion about forming an LID within the next five years. Councilmember Dierck asked Mrs. Sitz her feelings on this.

Mrs. Sitz said there are some new houses at the end that might be interested but she doesn't think the older homes are. They are building a new development really close, the sewer is completely around the neighborhood but they can't hook up and seem to be the only ones who want to. She said they were told it would not be cost effective to hook up and they might as well sell the house because it would cost too much to build their garage.

Councilmember Leighan pointed out that Scott Darling had to cover his frontage on lots 1-5 and Mrs. Sitz asked now that they know it is coming in on the next block, if everyone has to hook up.

Councilmember Herman responded that basically, yes, through an LID or in conjunction with at least one other home. The only recovery would be from across the street and recovery must be accomplished within 15 years, he said.

MARYSVILLE CITY COUNCIL MINUTES  
 MARCH 23, 1998  
 Page 12

Councilmember Leighan explained an LID has to be formed with a minimum of 40% of the assessed valuation, usually requiring a majority of the neighbors. There was a comment about being on sewer enhancing property values.

Councilmember Pedersen suggested denying without prejudice so they don't have to re-pay the fees and will have an opportunity to work things out with the neighbors, City, etc. She was told to contact Robin Nelson in Public Works.

Councilmember Pedersen then moved to deny the utility variance without prejudice and for Mrs. Sitz to come back within six months without repaying the fee. Councilmember Bartholomew seconded and the motion passed unanimously.

**4. Utility Variance; Nancy Barnes; 5027 102nd Pl. NE, Marysville; UF 98-010.**

Public Works Director Winckler reviewed the agenda bill and explained part of the reason for the extreme cost is depth of the system, county requirements for a high density backfill, traffic control costs, etc.

Doug Barnes, 5027 102nd Pl. NE, addressed Council and said they currently have a health hazard at the house but the cost is pretty exorbitant for them, with a hookup fee of \$2,000. He said Rick Doan said it actually flows the wrong way and that's why the additional cost. Mike Rainwater can do it for \$3500 in 1.5 weeks (rebuild the septic system) and Mr. Barnes said they can't wait very much longer. He added that 3 contractors refused the contract because of the groundwater having to be pumped; Gott quoted \$20,000 and said a stub should have been put in at 51st.

Mayor Weiser reviewed staff recommendations/conditions.

Nancy Barnes, 5027 102nd Pl. NE, addressed Council. She noted the bid for \$17,000 was to hook up to the side sewer from Ken Sather who refused the job. Gott Construction's bid of \$32,000 seems to be the most accurate and if they have to go with it, they would have to abandon their house so they are asking if they can rebuild their drainfield. She said her understanding is with an LID everyone would participate but \$32,000 is outrageous for them.

Councilmember Pedersen pointed out the advantage of an LID is that they can be paid over 15 or 20 years. She added she has never seen a situation where people have been allowed to rebuild a drainfield when they have a letter from the health district saying they have a health hazard.

Mrs. Barnes countered that the health district said they had to have a variance from Marysville first and then they could rebuild the drainfield.

Councilmember Leighan said at the time this was discussed at the Utility Committee Meeting, it was thought the cost of hooking up to the sewer would be about the same as rebuilding but it doesn't seem that way now.

Councilmember Leighan then moved and Councilmember Pedersen seconded to allow the Barnes to rebuild their drainfield/septic system, subject to approval of the design, with an agreement to participate in a future LID or private extension on 102nd Place to satisfy frontage requirements and to sign a non-protest agreement. The motion passed unanimously after brief discussion.

Councilmember Herman suggested the Mayor write a letter for the Snohomish Health District in view of the Barnes' emergency here, explaining action taken tonight, so there is no more delay in getting this started. (Consensus)

**5. New Parking Designation.**

Public Works Director Winckler reviewed the agenda bill.

Councilmember Leighan moved and Councilmember Bartholomew seconded to change the six 2-hour parking spaces on the north side of 1st St. NE between Cedar Ave. and State Ave. to 30-minute parking, as recommended. Passed unanimously.

Councilmember Pedersen moved and Councilmember Bartholomew seconded to change one parking space on the south side of 7th St. west of Columbia in front of Adam & Eve Hair Styling Salon to a handicap parking designation, as recommended. Passed unanimously.

ORDINANCES & RESOLUTIONS:

**1. Ordinance Adopting City-Wide Access Management Plan and an Access Management Plan for 88th St. Corridor from I-5 to State Ave., Amending Comprehensive Plan by Adopting Said Access Management Plans by Reference & Amending MMC 12.02.090.**

Councilmember Bartholomew moved and Councilmember Herman seconded to adopt Ordinance 2183. Passed 4-0. (Councilmembers Wright and Pedersen did not participate/vote.)

**2. Ordinance Affirming Hearing Examiner Decision & Rezoning property owned by Tom Graham and amending Official Zoning Map Previously Adopted in Ordinance No. 772.**

Councilmember Bartholomew moved and Councilmember Leighan seconded to adopt Ordinance 2184. Passed unanimously.

**3. Resolution Granting Utility Variance for Peter & Cathy Smith for property located at 11617 55th Ave. NE, Marysville.**

Councilmember Wright moved and Councilmember Herman seconded to adopt Resolution 1877, with removal of the word "County" between "Snohomish" and "Health District" under #4. Passed unanimously.

**4. Resolution Granting Utility Variance for Luis & Michelle Romero for property at 11611-55th Ave. NE, Marysville.**

Councilmember Herman moved and Councilmember Wright seconded to adopt Resolution 1878, with removal of the word "County" between "Snohomish" and "Health District" under #4. Passed unanimously.

**5. Resolution Urging Voters to Consider the Importance of Marysville School Dist. Maintenance & Operation Levy 4/28/98.**

Councilmember Bartholomew moved and Councilmember Wright seconded to adopt Resolution 1879. Passed 4-2 with Councilmembers Dierck and Leighan against.

LEGAL MATTERS:

**1. Recovery Contract for Utility Construction Costs - Charlie Cruzen.**

Councilmember Herman moved and Councilmember Wright seconded to approve/adopt Recovery Contract #206. Passed unanimously.

ADJOURNED: 10:17 p.m.

EXECUTIVE SESSION: 10:30 p.m. to 10:57 p.m.

1. Personnel. (No Action)
2. Litigation. (No Action)

RECONVENED & ADJOURNED: 10:57 p.m.

Accepted this 6<sup>th</sup> day of April, 1998.

David Weiser  
MAYOR

May Swenson  
CITY CLERK

Wanda A. Swenson  
RECORDING SECRETARY