



several of the adjacent parcels have similar opportunities for subdividing.

In some cases, properties are constrained from subdividing by the location of an existing house; since the house occupies the front of the lot, the new lot would have to be located to the rear, and would not have frontage on the roadway. This parcel, being undeveloped, could be subdivided so that both lots would have frontage on Malloy Avenue, but the lots would not meet the minimum lot width in the zone.

Simply stated, while the RS 6.5 zone anticipates smaller lots and higher density development, the lots that are large enough in area to subdivide cannot do so. Either the minimum lot width requirement cannot be met, or the requirement that every lot must abut a street cannot be met. The only way these lots can subdivide is if variances to the subdivision design standards are granted.

Section 17.12.095 of the Ferndale Municipal Code specifies that in order to grant a variance to the subdivision standards, the Council must make the following findings:

1. That the public interest does not require strict compliance with the specified short plat requirements because the proposed short plat is clearly in an area or of a type that will not likely add to or result in any type of urbanization or increased density of use in the foreseeable future.
2. That the variance would not confer a special benefit upon persons or property that would not be equally available to all persons or property under the same circumstances.
3. That the hardship to the applicant outweighs the public benefit to be derived from strict compliance with the specified short plat requirements.
4. That fairness could be achieved and the public interest secured by the granting of the variance.

The primary public benefit to be derived by not allowing easement access for newly subdivided parcels relates to providing emergency services. It is simply easier, faster, and less confusing for emergency services to locate a particular address when every lot has clear frontage on a city street. This need not be an overriding factor, however, as long as the Fire District determines that adequate emergency access can be accommodated.

In certain cases, as long as emergency access is adequate, it may actually be of benefit to the public to allow access by easement. This is the case where the city may wish to reduce the number of access points on a street that is a collector or arterial roadway. Although Malloy Avenue is not an arterial, it is a developing collector road with significant amounts of through traffic. In such a circumstance, it would be advantageous to reduce the number of individual access points to reduce potential traffic conflicts. Accessing two lots by a single easement would accomplish this reduction in access points.

Another benefit to be considered is that of in-fill. The Growth Management Act (GMA) and associated regulations are designed to promote in-fill of less dense areas within the city as a preferred way of accommodating growth. In light of these overall policies, and recognizing the small lot zoning of this area (i.e. RS 6.5), it would seem appropriate that in-fill occur in this area where there are remaining large lots. As previously stated, this cannot occur without some sort of variance to subdivision standards being granted. While such in-filling would increase the density of residential development at this location, it would do so in an area that is already developed far below the density envisioned by the zoning.

{ TC \14 }

In this case, staff is of the opinion that a variance to the subdivision design standards can be supported. The subdivision can be accomplished without creating a significant problem with regard to emergency access. The proposal also provides some public benefit in terms of reducing the access points on Malloy Avenue. In addition, approval of the variance will allow the property to be subdivided in a manner to more closely conform to the density associated with the underlying RS 6.5 zone, supporting the goals of growth management.

{ TC \14 }

Based on the foregoing discussion, staff recommends that the proposed Short Plat Variance be APPROVED, based on the following Findings of Fact, and subject to the Conditions of Approval listed below.

{ TC \12 }

1. The public interest does not require strict compliance with the specified short plat requirements in that adequate emergency access can be provided to the satisfaction of the Fire District. In fact, there is some benefit to the public to be derived if the variance is approved because access points on Malloy Avenue will be reduced, and because granting the variance will allow in-fill of a large lot in the RS 6.5 zone, supporting the goals of growth management.

The granting of the variance will not increase urbanization, and density will be increased only in an area where existing development is well below the density specified in the zone.

2. The granting of the variance would not confer a special benefit upon the applicant, in that a variance would be granted to others under similar circumstances (for instance, lots to the north).

3. Without a variance being granted, the applicant would be able to develop only one residential unit on a parcel that is 2 ½ times larger than the minimum lot size in the zone. There is no public benefit to be gained by requiring strict compliance with the subdivision development standards that would clearly outweigh this hardship to the applicant.

4. Given the circumstances of this case, granting the proposed variance would be fair, and would not jeopardize the public interest.

#### CONDITIONS OF APPROVAL{ TC \12 }

1. This variance shall become null and void unless an associated Short Plat Application is submitted within one year of the date of the Notice of Decision.

2. When construction occurs on each of the proposed two lots associated with this request, vehicular access shall be provided from the easement. There shall be no direct vehicular access onto Malloy Avenue. A note referencing this restriction shall be included on the face of the Short Plat.

#### **Public Hearing Opened**

##### ***Proponents:***

**Joe Bencivenga, 1587 Kingswood Ct, Bellingham**, stated that he is a long-time friend of the applicant, who was ill and could not attend this hearing. He felt that the variance would provide for "in-fill" which is a GMA goal. He further felt that the project would have a minimum effect on traffic.

##### ***Opponents***

**Juanita Van Egdome, 5861 Malloy Avenue, Ferndale**, said that her main concern was that no survey has been done to establish property lines between her property and the applicant's. She also felt that the proposed easement might run too close to her home's bedroom windows, and that there might not be enough room on the easement to provide for emergency turn-around. While she is not opposed to the variance, Ms. Van Egdome asked that the Council consider delaying a decision at least until a survey can be accomplished.

#### **Public Hearing Closed**

##### **Council Discussion**

Councilmember Landcastle asked the Planning Director to address the concerns of Ms. Van Egdome. Director Black said the applicant would need to complete a survey before final plat. He also said that emergency personnel were satisfied with the proportions of the easement. All construction relating to the plat will take place within the property boundaries, and will not encroach upon Ms. Egdome's property.

Councilmember Hansen pointed out that any difference in surveys would be a civil matter between the property owners.

## **Motion**

***Councilmember Landcastle moved to support the variance based on the staff report, with the added condition that screening, either by fence, shrubbery, or burm, be required along the northern boundary of the easement. Motion seconded by Councilmember Wilson.***

## **Further Council Discussion**

Councilmember Hansen was concerned that imposing such a screening would set a precedent for future easement requests. Attorney Langabeer felt the Council could require this condition without setting a precedent.

## **Vote**

***Motion passed unanimously.***

## **CONSIDERATION OF BID - MAIN STREET IMPROVEMENT PROJECT**

### **Streets and Utilities Committee Action Item**

Public Works Director Loren Sperry and City Engineer Greg Ebe related that they had traveled to Pullman to meet with the Transportation Improvement Board in the hopes of securing additional funds for the Main Street Improvement Project. The TIB was supportive of the project to the extent that they provided an additional \$600,000 . With the removal of two project components, the remaining City portion is at just over \$400,000 .

Councilmember Landcastle wanted the Third Street improvements and sidewalks, curbs and gutters on south Main and east of the railroad tracks. Councilmember Reilly agreed, and expressed his disappointment that the Douglas Road Improvements were eliminated to complete this project.

## **Motion**

***Councilmember Wilson moved to accept the bid by Wilder Construction and re-include the curb, gutter, and sidewalks on the south side of Main Street east of the railroad tracks, and the Third Street improvements. Councilmember Landcastle seconded.***

## **Discussion**

Councilmember Landcastle requested that Engineer Ebe give his opinion on splitting out the project and re-bidding. Ebe stated that there is no real way to know if this would save the City any money over the long run, as the bidding climate is currently unpredictable.

Councilmember Oliver stated that he was supportive of moving this project forward, but only with the inclusion of the Third Street improvements. He felt that the curb, gutter, and sidewalks could be a stand-alone future project, but that when development occurs along that stretch of street, the City could revisit that component of the project at that time.

Councilmember Cole agreed, saying that development could be looked at at a later time.

Councilmember Elgart also agreed with Councilmembers Oliver and Cole.

Councilmember Hansen stated that he would prefer to see the curb, gutter and sidewalk portion included, but that it was not financially responsible at this point. He said that curbcuts and re-alignments would be likely initiated by development, which would be difficult to defend to taxpayers who would have spent more than \$100,000 improving.

## **Amendment to Main Motion**

***Councilmember Hansen moved to remove the inclusion of the curb, gutter, and sidewalks on the south side of Main Street east of the railroad tracks from the main motion. Councilmember Cole seconded.***

***Amendment passed five-to-two, with Councilmembers Landcastle and Wilson voting no.***

**Vote on Main Motion as Amended**

***Main motion, as amended, passed unanimously.***

**CONSIDERATION OF BID - TOSCO PROJECT**

Engineer Ebe reviewed that the City's bid opening on the Tosco Project had resulted in Dependable Designs as the apparent low bidder at \$660,425.75 . The engineer's estimate was \$640,719.28 . Ebe stated that he had not before worked with this company, and that a reference check had yielded favorable responses from both the City of Bellingham and the City of Mount Vernon.

City Attorney Langabeer noted that a form that had been included with the bid packet, requiring a list of sub-contractors, was only applicable to projects exceeding \$1 million, according to state statute.

Councilmember Landcastle stated that he had no idea who this contractor was, and was not comfortable with awarding the bid to them. City Attorney Langabeer stated that according to competitive bidding laws, the City must accept the lowest responsible bid, and that the City had no reason to believe that this company was not responsible. Councilmember Reilly added that performance bonding was in place to protect the City.

***Councilmember Hansen moved to accept the low bid of \$660,425.75 by Dependable Designs, which was seconded by Councilmember Elgart.***

***Motion passed unanimously.***

**MEMORANDUM OF UNDERSTANDING - BURLINGTON NORTHERN SANTA FE RAILROAD**

**Streets and Utilities Committee Action Item**

Councilmember Reilly said that this agreement secures BNSF RR's financial cooperation with the Thornton Road Extension Project by building an access road.

***It was moved by Councilmember Reilly and seconded by Councilmember Hansen to accept the Memorandum of Understanding with Burlington Northern Santa Fe Railroad.***

***Motion passed unanimously.***

**AUTHORIZATION TO GO TO BID - RURAL AND SUNSET PROJECT**

**Streets and Utilities Committee Action**

Councilmember Reilly noted that there is only one permit remaining unsettled before this project may be bid. Councilmember Oliver asked which permit was outstanding. Director Sperry stated that it was the Disadvantage Business Goals.

***It was moved by Councilmember Reilly and seconded by Councilmember Landcastle to authorize going to bid as soon as the DBG is settled.***

***Motion passed unanimously.***

**ORDINANCE #1300 - SOLID WASTE UTILITY TAX**

**Planning and Judicial Committee Action Item**

Councilmember Cole, Chair of the Committee, stated that staff has drafted a Solid Waste Utility Tax Ordinance as a form of a business tax to be imposed upon businesses located within the City which accept, handle and process solid waste/garbage. Administrator Signett added that the City is currently looking at a rate of .0044 to be applied upon the gross revenues of such businesses.

***Councilmember Cole moved to send Ordinance #1300 to a second reading at the next regular Council meeting. Councilmember Wilson seconded.***

The Council generally felt that the proposed rate should be studied at the Planning and Judicial Committee meeting in two weeks.

***Motion passed unanimously.***

**INTERLOCAL AGREEMENT - SCHOOL ASSIGNED OFFICER**

**Planning and Judicial Committee Action Item**

Councilmember Cole reviewed that the Interlocal Agreement for School Assigned Officer for the Ferndale School District. The agreement provides for \$25,000 to be paid to the City for each of the school years for an SAO who will rotate among the District's schools during the year. Officer Rich Turner will be assigned to this position.

***Councilmember Cole moved to approve the Interlocal Agreement with the Ferndale School District for a School Assigned Officer, 2002 through 2004. This was seconded by Councilmember Reilly.***

***Motion passed unanimously.***

**SET COMMITTEE MEETINGS**

Streets and Utilities                      Wednesday, June 4<sup>th</sup> 10 a.m.  
Planning and Judicial Wednesday, June 4<sup>th</sup> 1 p.m.

**ADMINISTRATOR REPORTS**

**Administrator Signett** said that revenues are up approximately 8 percent over projections through April, and that expenditures are near projected levels.

**COUNCIL REPORTS**

**Councilmember Oliver** reported that the Whatcom County Council will be considering the siting of a temporary jail facility at their next meeting.

**Councilmember Cole** asked that a letter of appreciation be sent to Representative Doug Erickson for his strong support in securing additional funding for the Main Street Project.

**DEPARTMENTAL REPORTS**

**Director Black** reminded the Council of th joint workshop to consider changes to the Planned Unit Development Ordinance to be held Monday, June 9<sup>th</sup>. The Planning Short Course Dinner has been cancelled on June 12<sup>th</sup> at 5 p.m., however the Short Course will proceed as planned at 6 p.m.

**ADJOURNMENT**

There being no further scheduled City business, the meeting was adjourned at 9:15 p.m.

**ATTEST:**

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Carolyn Jensen, Mayor

Linda Knutson, City Clerk

***ATTACHMENT "A":***

**MINUTES  
Streets and Utilities Committee Meeting**

**Wednesday, May 21, 2003  
City Hall Conference Room  
10 a.m.**

**COMMITTEE: Councilmembers Reilly, Hansen, and Landcastle**

**STAFF: Roland Signett, Loren Sperry, Tom Black, Linda Knutson**

**BOB McFARLAND CONNECTION FEES**

Mr. McFarland was not in attendance. Administrator Signett stated that water and sewer connection fees for commercial projects probably need to be revised from the current up-front requirements. While this requirement works appropriately for residential projects, commercial projects have different needs to consider.

It is proposed that commercial connection fees be tied to rates and paid off over time depending upon consumption. This would apply only to commercial development.

Staff will work to draft an ordinance for review by the Committee within thirty days.

**MEMORANDUM OF AGREEMENT - BURLINGTON NORTHERN**

The Committee had reviewed the draft agreement over the past week. The purpose of the agreement is to engage BNSF's financial cooperation with the Thornton Road Extension Project by building an access road. The Committee concurred that this agreement should be secured.

***Councilmember Landcastle moved to recommend approval of the Memorandum of Agreement with Burlington Northern Santa Fe Railway, which was seconded by Councilmember Hansen. Motion passed unanimously.***

**SIX YEAR TRANSPORTATION PLAN REVIEW**

Director Sperry noted that the upcoming Council review and approval of the annual six year transportation plan should be fairly easy with only minor modifications. One project has been completed and another will be added. The modified version will return to the Committee next week.

**UPDATE - RURAL AND SUNSET PROJECT**

Director Sperry and Administrator Signett related that City funding portion of the Rural Sunset Project has been fully satisfied and no additional out-of-pocket expenditures are anticipated, other than pass-throughs. The City is still awaiting one permit authorization from the Federal Government.

***It was moved by Councilmember Landcastle and seconded by Councilmember Hansen that the City go to bid on the Rural and Sunset Project as soon as final permitting is completed. Motion passed unanimously.***

**OTHER**

- X Councilmember Landcastle asked why the street improvements that were to be completed by the bond funds pulled and retained from North Country Homes had not yet begun. Director Sperry explained that the project will have to be re-bid due to time restrictions that had not been met with the previous bid (the bid was only valid for a finite period, which the City apparently missed). The Committee asked that the City Attorney review the allowable percentage limits for performance bonding.
  
- X The draft biosolids plan was submitted for review.
  
- X Event parking at Pioneer Park: Parking is still a concern of one of the residents near the park. Staff has checked the area during events and it appears that there are no health and safety issues. This item will go to Planning and Judicial later this day.

- X Lloyd Zimmerman stated he wasn't sure who at the City had not followed through, but that the scrap steel girders are still available "for pennies on the dollar". Councilmember Landcastle thanked Mr. Zimmerman for looking into this, and pointed out that the City does not need these girders for several reasons: there is no where to store them, there are no funds to purchase them, there is no guarantee that they would work for the City's purposes, and that it would be a very unwise use of City funds at this point.

**ATTACHMENT "B":**

**MINUTES  
Streets and Utilities Committee Meeting  
Wednesday, May 28, 2003  
City Hall Conference Room  
10 a.m.**

**COMMITTEE: Councilmembers Reilly, Hansen, and Landcastle**  
**STAFF: Tom Black and Katy Radder**

**SHORT PLAT VARIANCE (03001.SPV – Bob Swindle)**

Planning Director, Tom Black, reviewed the staff report regarding the short plat variance request at 5869 Malloy. He directed the Committee members to the last page of the staff report, showing an air photo of the subject property. He indicated the request was fairly typical of those submitted to the City in regard to easement access requirements. The property is over 16,000 square feet in size, and because it is located within the RS 6.5 zone, it is large enough to be divided into two separate parcels. However, in order to accomplish this, either the requirements regarding easement access or minimum lot width would need to be varied. In this case, the proponent was requesting the City allow access to the back (westerly) lot via an easement.

Director Black indicated that this area of the City is one where other similar variance requests would most likely be brought before Council in the future. Most lots in the vicinity are between 13,000 to 15,000 square feet in size and are able to be divided. He pointed out that the property to the north of the subject parcel was larger than 20,000 square feet and could be easily short platted, but would also have similar access issues.

Director Black stated that the request closely mirrors previous variance requests brought before the Committee regarding access easements. He explained that Fire District 7 had confirmed their ability to provide fire protection to both lots, and the request was able to meet the required findings of fact. Based on this, staff recommended that the proposed Short Plat Variance **be approved**.

***Councilmember Hansen moved to recommend approval and forward the request to the full City Council for a hearing. Councilmember Reilly seconded.  
Motion passed unanimously.***

**SHORT PLAT VARIANCE CODE REVISIONS**

Director Black indicated that he had prepared suggested revisions to the Ferndale Municipal Code regarding Short Plat Variances, which, if approved, would allow for administrative approval of variance requests similar to the one just brought before the Committee. Because City Administrator Signett, City Clerk Knutson, and Public Works Director Sperry were not available to attend this Streets and Utility Committee meeting and provide input on this issue, review of the proposed revisions would be postponed to the next Committee meeting.

**COLLAPSE OF STORMWATER CULVERT**

Councilmember Landcastle inquired about the status of proposed repairs to the collapsed 36-inch

corrugated galvanized stormwater pipe located in the Pacific Northwest Bank parking lot. Over time, the culvert had rusted and deteriorated, creating a large sinkhole. The Public Works Department had barricaded the hazard and was in the process of obtaining estimates from several contractors in order to determine which might be the most cost effective means of correcting the failure.

Councilmembers Landcastle and Reilly discussed the feasibility of having the Public Works Department Utility Crew complete the necessary repair on the failing section of line. The Committee would review the issue at more length in a future meeting, when additional information regarding the issue could be reviewed and discussed with the Public Works Director.

**ATTACHMENT "C":**

**MINUTES  
Planning and Judicial Committee Meeting  
Wednesday, May 21, 2003  
City Hall Conference Room  
1 p.m.**

**COMMITTEE: Councilmembers Cole, Elgart and Reilly**

**STAFF: Roland Signett, Dale Baker, Loren Sperry, Tom Black, Linda Knutson**

**SOLID WASTE UTILITY TAX**

Administrator Signett explained that the City has drafted a Solid Waste Tax Ordinance as a form of business and occupation tax to be imposed upon any businesses located within the City which accept and process solid waste/garbage. It has yet to be determined what percentage will be applied to the gross revenue of such businesses.

***It was moved by Councilmember Elgart and seconded by Councilmember Reilly to recommend approval of the Solid Waste Utility Tax Ordinance to the full council. Motion passed unanimously.***

**INTERLOCAL AGREEMENT - SCHOOL ASSIGNED OFFICER**

Administrator Signett reviewed that the annual Interlocal Agreement with the Ferndale School District for a School Assigned Officer covers school years 2002 through 2004. The Agreement provides for \$25,000 to be paid to the City each of the school years for the services of an assigned police officer who will rotate between the district's schools on a rotating basis. Chief Baker related that Officer Rich Turner will be assigned to this position.

***It was moved by Councilmember Reilly and seconded by Councilmember Cole to recommend approval of the Interlocal Agreement between the City of Ferndale and the Ferndale School District for the School Assigned Officer Program beginning September, 2002 and ending June, 2004. Motion passed unanimously.***

**AGREEMENT WITH ALASKA DOT - ALASKA MARINE HIGHWAY SYSTEM AND THE CITY OF FERNDALE FOR K-9 EXPLOSIVES DETECTION SERVICES AT THE BELLINGHAM FERRY TERMINAL**

Chief Baker explained that in accordance with the Mutual Aid and Peace Powers Act, the "Agreement with Alaska Dot - Alaska Marine Highway System and the City of Ferndale for K-9 Explosives Detection Services at the Bellingham Ferry Terminal" would allow for K-9 and handler sweeps of the Alaska Ferry while docked. The Chief stated that such sweeps and searches would be prompted only by threats or terrorist alerts and not a regular scheduled event. K-9 Larko would be compensated at the level of an entry level police officer and Handler Sergeant Bauman would be compensated at time and one-half.

Several revisions need to be made to the document, including Hold Harmless clause, date changes, and "Ferndale Police Department" being changed to "City of Ferndale". Chief Baker will direct the changes and review with the City Attorney as to content and form.

### **EVENT PARKING AT AND NEAR PIONEER PARK**

Parking is still a concern of one of the residents who lives on Second Avenue near Pioneer Park. Staff has checked the area during events and it appears that some people are parking slightly over the fog-line. The area that the home owner claimed was his property is actually City right-of-way, although the owner has taken some care to landscape and improve the area. It was generally agreed that there are no health and safety issues involved, and that perhaps the owner was unaware that the parking strip does not, in fact, belong to him. The City Clerk will draft a letter to the home owner stating the City's position.

### **UPDATE ON OLD SETTLERS DAYS KIDDIE PARADE**

Director Sperry updated the Committee that this year's Kiddie Parade will be held at 6 p.m. rather than the traditional early afternoon parade. The parade route will avoid Main Street, using the Alder route. The City Crew will erect the needed barricades by 5 p.m. and the Old Settlers will remove them to the sidewalks immediately after the parade. This eliminates the need for any overtime.