

Gig Harbor City Council Meeting

**June 27, 2005
7:00 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
June 27, 2005 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

PUBLIC HEARING: Adoption of Ordinance 1003 – Establishment of a Moratorium on the Acceptance of Applications for New Development of Non-Residential Structures or Certain Types of Re-Development on Non-Residential Structures in the Waterfront Millville Zone for a Period of Two Months.

CONSENT AGENDA:

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.

1. Approval of the Minutes of City Council Meeting of June 13, 2005.
2. Correspondence / Proclamations: CenturyTel Day.
3. Reappointment to Design Review Board.
4. Reappointment to Planning Commission.
5. Temporary Construction Easements for 56th Street / Olympic Drive Improvement Project.
6. Liquor License Assumption (amended): Gig Harbor Chevron.
7. Liquor License Assumption: Gig Harbor Gasoline LLC dba Central 76.
8. Approval of Payment of Bills for June 27, 2005:
Checks #47427 through #47549 in the amount of \$374,298.63.

OLD BUSINESS:

1. Adoption of Ordinance 1003 – Establishment of a Moratorium on the Acceptance of Applications for New Development of Non-Residential Structures or Certain Types of Re-Development on Non-Residential Structures in the Waterfront Millville Zone for a Period of Two Months.
2. Second Reading of Ordinance - Amendment to Ordinance 712 - Adopting the Access Manual.
3. Second Reading of Ordinance – Amendment to GHMC 17.98 Design Review Standards and Review.
4. Proposed Annexation - Wright (ANX 04-02) – Public Meeting.

NEW BUSINESS: None scheduled.

STAFF REPORT:

Steve Misiurak, City Engineer: a) Transportation Issue; b) Pt. Fosdick / 36th Roundabout Public Meeting.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor's Report – Planning for a Livable Community in 2006 and Beyond.

ANNOUNCEMENT OF OTHER MEETINGS:

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF JUNE 13, 2005

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Dick, Picinich, and Mayor Wilbert. Councilmember Ruffo was absent.

CALL TO ORDER: 7:01 p.m.

PLEDGE OF ALLEGIANCE

PUBLIC MEETING: Notice of Intention to Commence Annexation Proceedings – Ness, aka Rainbow Burnham LLC Request (ANX 04-03).

The public hearing opened at 7:04 p.m. and John Vodopich, Community Development Director, gave a brief overview of this request to annex approximately 34 acres of property located west of Burnham Drive NW, north of 96th Street NW and east of Highway 15. No one signed up to speak and the public hearing closed at 7:04 p.m.

CONSENT AGENDA:

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.

1. Approval of the Minutes of City Council Meeting of May 23, 2005 and the minutes of the Special City Council Meeting of May 31, 2005.
2. Correspondence / Proclamations: Hire a Veteran Month.
3. ~~Pape & Sons Construction, Inc. Escrow Agreement – Rushmore Water Main Replacement Project Retainage.~~
4. Design Review Board - Member Terms and Planning Commission Representative.
5. Pump Station 2A - Consultant Contract Authorization - URS Corporation.
6. Bid Award - 36th Street/Point Fosdick Intersection Improvement Project - Harlow Construction.
7. 36th Street/Point Fosdick Intersection Improvement Project - Consultant Services Contract Amendment No. 2 - HDR Engineering.
8. 36th Street/Point Fosdick Intersection Improvement Project - Contract Authorization - Compaction Testing Services – General Testing Laboratories, Inc.
9. Approval of the Kitsap Peninsula and Island (WRIA 15) revised Watershed Management Plan.
10. 2005 Summer Sounds at Skansie - Performers Contracts.
11. 2005 Summer Sounds at Skansie – Sound System Contract.
12. Liquor License Renewals: The Keeping Room; Harbor Rock Café; Hunan Garden; Kinza Teriyaki; and Spiro's Bella Notte.
13. Approval of Payment of Bills for June 13, 2005:
Checks #47259 through #47351 and #47358 through #47426 in the amount of \$301,575.43.
14. Approval of Payroll for the Month of May:
Checks #3750 through #3797 and direct deposits in the amount of \$238,662.97.

MOTION: Move to approve the Consent Agenda as presented.
Ekberg / Picinich – unanimously approved.

OLD BUSINESS:

1. Ratification of Ordinance 1003 - Moratorium on Development in the Waterfront Millville Zone. Carol Morris, City Attorney, explained that this is an opportunity for Council to ratify the moratorium ordinance passed on May 31, 2005. Although not required, this gives Councilmembers an opportunity to give any additional comments for the imposition of the moratorium.

MOTION: Move to ratify the imposition of the moratorium Ordinance 1003 passed at the Special City Council meeting of May 31st, and also to schedule the public hearing for June 27, 2005.
Picinich / Franich – four voted in favor. Councilmember Young abstained.

2. Second Reading of Ordinance - Updating References in Relation to Elections. Molly Towslee, City Clerk, presented this ordinance updating the City of Gig Harbor Municipal Code so that references to State Law are consistent with the newly amended statutes.

MOTION: Move to adopt Ordinance No. 1004 as presented.
Picinich / Franich – unanimously approved.

NEW BUSINESS:

1. Proposed Annexation - Ness, aka Rainbow Burnham LLC (ANX 04-03). John Vodopich answered Council's questions regarding zoning, density and the issue of irregular boundaries for this annexation effort. He recommended that Council accept the notice of intent and circulation of a petition. Council discussed whether or not to move forward until the concern with the irregular boundaries is addressed. After further debate the following motion was made.

MOTION: Move to accept the notice of intent to commence annexation and further authorize the circulation of a petition to annex the subject property upon conditions.
Picinich / Ekberg – four voted in favor. Councilmembers Franich and Conan voted no. The motion carried four to two.

2. Notice of Intention to Request Annexation Proceedings - Wright Request (ANX 04-02). John Vodopich presented the background information on this effort to annex approximately 8.62 acres of property located at the intersection of Hunt Street and 46th Avenue. He recommended that Council set a date to meet with the initiating parties to begin annexation efforts. Councilmembers discussed this annexation effort.

MOTION: Move to set a date of June 27th, 2005 to meet with the initiating parties of the Wright Notice of Intention to Commence Annexation Proceedings.
Picinich / Dick – five voted in favor. Councilmember Franich voted no.

3. Resolution No. 651 - Adding "Ancich" to List of Historical Names for New Streets. Mayor Wilbert presented information of the history of the Kate and Pete Ancich family, requesting that this name be added to the list of names for new streets in the city. Councilmembers and the Mayor encouraged others to submit names that should be considered by the Historical Society.

MOTION: Move to adopt Resolution No. 651 as presented.
Dick / Conan – unanimously approved.

4. Request for Engineering FTE - Associate Engineer. John Vodopich requested authorization to hire an Associate Engineer to assist in the evaluation of transportation impact analysis that currently is being performed by outside consultant services. He explained that having traffic engineering expertise in-house would cut back the time it takes to review projects. He added that the intent is to find someone with a level of transportation expertise to fill the position. John Vodopich and Gus Garcia, Associate Engineer, addressed questions regarding application deadlines and the resulting savings in consulting fees.

MOTION: Move to authorize the budget amendment adjustment for the immediate hiring of an Associate Engineer.
Dick / Young – unanimously approved.

5. First Reading of Ordinance - Amendment to Ordinance 712 - Adopting the Access Manual. John Vodopich presented this ordinance that amends the municipal code to reflect updates to reference manuals and adds reference to two additional manuals to the list adopted by reference. He added that copies of the reference manuals are available for review. This will return for a second reading at the next meeting.

6. First Reading of Ordinance – Amendment to GHMC 17.98 Design Review Standards and Review. Rob White, Planning Manager, gave an overview of this ordinance that would allow the Design Review Board an opportunity to hold design review pre-application meetings and encourages DRB members to provide input on all non-residential, multi-family, and planned residential development.

Tiffany Speir – Master Building Association. Ms. Speir asked for clarification on the process in which the DRB is being pulled into administrative review applications. She commented that if an application is submitted that doesn't require Design Review Board review, this seems to sidestep the administrative process. She agreed that pre-application meetings are preferable to address community concerns.

Mr. White explained that this allows the DRB to be a second set of eyes and to note anything that may become an issue.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton referred to Section 2, paragraph (d) of the proposed ordinance. She suggested a change to the language to the effect that if more than three letters come forward from the DRB members stating that they believe a project should go through design review, then the project will then be referred to the board.

Councilmembers asked Carol Morris to comment on this issue before the second reading.

Councilmember Franich asked for clarification on the same language, asking how the final decision was made prior to the addition of this amendment. Councilmember Young responded that previously, the board was not notified of administrative decision so there was no option for comment. He agreed that further clarification was needed to this language.

STAFF REPORT:

GHPD - Monthly Report for May. No verbal report given.

PUBLIC COMMENT:

John Oldham – 5212 45th Ave Ct NW. Mr. Oldham explained that he is the Chairperson for the St. Nicholas Knights of Columbus Blessing of the Fleet Committee. He extended gratitude to the city and Mayor Wilbert for the support of this community event. He gave an overview of all the groups involved in the success of the event, adding that they hoped that this will continue to strengthen the fishing community each year. Mr. Oldham had three suggestions for future success: permanent speakers at the Skansie Park and Jerisich Dock area; a buoy for larger vessels to tie up; and for a permanent, controlled phone devise at the end of the dock.

Rosanne Sachson – PO Box 71. Ms. Sachson asked for an update on the Charrette process. Mr. Vodopich responded that in April a draft RFQ was distributed for comment. Ms. Sachson encouraged staff to give the community an answer to when this would move forward.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor's Report – Progress at a Glance Throughout the Last Decade. Mayor Wilbert asked Council to review the information in the packet.

Councilmember Franich commented favorably on the repaving project on Pioneer Way. Councilmember Picinich added that only half of the crosswalks had been painted. Mr. Vodopich responded that it would be repainted later in the year.

Councilmember Franich then asked for a timeline on the ADA access in the front of the Civic Center, requesting that he be allowed input on the installation.

Councilmember Young commented on the traffic study on Briarwood Lane using speed humps. He asked for Council support of another budget amendment in support of the installation of sidewalks to narrow the street and to facilitate pedestrian travel.

Steve Misiurak, City Engineer, explained that it is better to narrow the street rather than installing speed humps. He reported that grant funding is available for sidewalk improvements and this area may be a potential candidate.

Councilmembers further discussed the safety issues in this area and asked staff to come back with an estimate for what the project may cost.

Councilmember Picinich voiced concern for the high speeds along Edwards Street. Mr. Misiurak asked if Council wanted to do a traffic study on that street. They responded favorably to the idea.

Councilmember Young asked that the Council Retreat be held earlier this year in order to get ideas to staff in ample time before the budget process. Staff was directed to coordinate scheduling of the retreat.

Mayor Wilbert asked staff to clean up the overgrowth along the trails in Grandview Forest Park and the Adam Tallman Nature Trail to make pedestrian travel safer. Councilmember Franich asked whether citizen volunteers would be available to do the work. Mayor Wilbert said that EnviroCorp had requested such a project and had been referred to Sonia Billingsley in the Community Development Department.

Councilmember Picinich commented that the sidewalks on Harborview Drive need to be trimmed and cleaned. Mayor Wilbert added that with the addition of more grass has come the responsibility of keeping it neat.

ANNOUNCEMENT OF OTHER MEETINGS:

ADJOURN:

MOTION: Move to adjourn at 8:35 p.m.
Ekberg / Picinich – unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 – 10.
Disc #2 Tracks 1 – 19.

Gretchen A. Wilbert, Mayor

Molly Towslee, City Clerk

PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

WHEREAS, CenturyTel supports our local economy by providing local family-wage jobs and benefits for area residents; and

WHEREAS, CenturyTel consistently invests into developing and maintaining its high-quality communications networks; and

WHEREAS, CenturyTel serves Gig Harbor as a good community citizen through support of local non-profit organizations, service clubs and schools; and

WHEREAS, CenturyTel accomplishes these goals within an environment of honesty and integrity; and

WHEREAS, the community is grateful for the good jobs that CenturyTel provides here in the Gig Harbor community; and

WHEREAS, the City appreciates the extent to which CenturyTel, its leadership, and its employees are tremendous corporate citizens; and

WHEREAS, the City of Gig Harbor is eager to see CenturyTel continue to grow, succeed, and stay in this community; and

NOW THEREFORE, I, Gretchen Wilbert, Mayor, do hereby proclaim Tuesday, June 28, 2005 as

CENTURYTEL DAY

in Gig Harbor, and I urge all citizens to recognize and applaud the service of this corporation to our greater community.

Gretchen A. Wilbert, Mayor

Date



"THE MARITIME CITY"

ADMINISTRATION

TO: CITY COUNCIL
FROM: MAYOR GRETCHEN WILBERT *GW*
SUBJECT: RE-APPOINTMENT TO THE DESIGN REVIEW BOARD
DATE: JUNE 27, 2005

INFORMATION/BACKGROUND

Paul Kadzik was recently elected chair of the newly reorganized Design Review Board. His term will expire the end of this month, and he has submitted a letter requesting to be reappointed to another two-year term.

RECOMMENDATION

A motion for re-appointment of Paul Kadzik to the Design Review Board for a two-year term.

PAUL L KADZIK DDS

JUN 9 2005

June 9, 2005

TO: Mayor and City Council
City of Gig Harbor

Dear Mayor Wilbert and Council Members:

The Design Review Board has entered a new phase in its development. It has a majority of new members, a new Design Manual, and a new design process. The DRB is taking advantage of this sea change to restructure and make more efficient its decision making process. I have recently been elected chair of the DRB and am look forward to working with it on its reorganization and lending my experience to upcoming projects.

My term on the DRB expires in July and I respectfully request to be reappointed.

Sincerely,



Paul L. Kadzik, DDS



"THE MARITIME CITY"

ADMINISTRATION

TO: CITY COUNCILMEMBERS
FROM: MAYOR GRETCHEN WILBERT *aw*
SUBJECT: REAPPOINTMENT TO THE PLANNING COMMISSION
DATE: JUNE 27, 2005

INTRODUCTION / BACKGROUND

In June, Scott Wagner's position on the Gig Harbor Planning Commission comes up for appointment consideration.

Scott has submitted a letter stating his desire to serve another term in order to see several complicated issues through completion.

RECOMMENDATION

To reappoint Scott Wagner to a six-year term on the Gig Harbor Planning Commission.



Scott Wagner
6507 27th Av NW
Gig Harbor, WA 98335

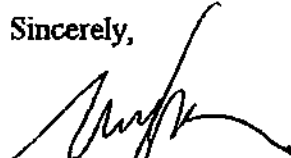
Mayor Wilbert
City of Gig Harbor
3510 Grandview St
Gig Harbor, WA 98335

Dear Mayor Wilbert,

This letter is a follow up to the email I previously sent to you. I have enjoyed working on the Planning Commission and am willing to continue for another term if you would like me to.

We are in the middle of working through several complicated issues, and I would appreciate the opportunity to see them through.

Sincerely,



Scott Wagner



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E. *lma*
CITY ENGINEER
RE: OLYMPIC DRIVE AND 56TH STREET ROADWAY IMPROVEMENT
PROJECT (CSP-0133)
- TEMPORARY CONSTRUCTION EASEMENT AGREEMENTS FOR
JON H. KVINSLAND
DATE: JUNE 27, 2005

INTRODUCTION/BACKGROUND

As part of the ongoing process for the City's Olympic Drive and 56th Street Roadway Improvement Project (CSP-0133), agreements for Temporary Construction Easements are required from parcel number 0221177026, 0221177025, and 0221177036, owned by Jon H. Kvinsland. In order for the City to have access and the ability to construct this project, the subject easements have been granted by the owner for these purposes.

The City's standard agreement for dedication of Temporary Construction Easements have been drafted and approved by City Attorney, Carol Morris.

City Council approval of the easement agreements is requested.

FISCAL CONSIDERATIONS

No funds will be expended for the acquisition of the described easements.

RECOMMENDATION

I recommend that City Council approve these easement agreements as presented.

**AGREEMENT FOR DEDICATION OF
TEMPORARY SLOPE AND CONSTRUCTION EASEMENTS
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this 21st day of June, 2005, by and between CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and JON H. KVINSLAND, as his separate estate, (hereinafter the "Owner"), whose mailing address is 5122 OLYMPIC DR NW, STE A201, GIG HARBOR, WASHINGTON, 98335-1762.

RECITALS

WHEREAS, the Owner is a holder of a fee or substantial beneficial interest in the real property commonly known as MEDICAL OFFICES, 5122 OLYMPIC DR NW, GIG HARBOR, WASHINGTON (Tax Parcel Number 0221177025) which is legally described in **Exhibit A**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owner has agreed to dedicate Temporary Slope and Construction Easements, which easements are legally described in **Exhibit B** (the "Temporary Slope Easement" and "Temporary Construction Easement") which are attached hereto and by this reference incorporated herein, to the City for construction purposes associated with the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133); and

WHEREAS, the City requires a Temporary Slope Easement to tie into the roadway any improvements requiring a permanent slope, and the City requires the Temporary Construction Easement on and abutting the Property in order to tie the driveway accessing the Property into the City's permanent Roadway (the Olympic Drive and 56th Street Roadway Project) so that the Property Owner will have access to the Roadway. In exchange for the Owner's dedication of the Temporary Slope and Construction Easements, the Owner will obtain the benefits associated with construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP - 0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

TERMS

Section 1. Grant of Temporary Slope and Construction Easements to the City.

A. **Grant.**

1. TEMPORARY SLOPE AND CONSTRUCTION EASEMENTS. The Owner hereby grants nonexclusive Temporary Slope and Construction Easements for the City to tie

into the permanent Roadway any improvements requiring a permanent slope, and where the City requires the Temporary Construction Easement over and adjoining the Property in order to tie the private driveway adjoining the Property into the City's permanent Roadway for the construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133) across, along, in, upon, under and over the Owner's property as the easement is described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C** for the Temporary Slope Easement, and **Exhibit C-2** for the Temporary Construction Easement.

The City shall, upon completion of any work within the Property covered by these Easements, restore the surface of the Easements and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable, to the conditions described in the roadway improvement project's plans and specifications. These Temporary Slope and Construction Easements shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

B. Conditions. The Temporary Slope and Construction Easements described above are subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the permanent slope and construction improvements.

2. The Owner shall not use any portion of the areas within the temporary easement for any purpose inconsistent with the City's construction of the Roadway, during the term of this Agreement. The Owner shall not construct any structures or plant any landscaping on or over the temporary easement during the term of this Agreement.

3. The City shall have all necessary access to the Temporary Slope and Construction Easements without prior notification to the Owner.

Section 2. The rights granted herein to the City shall continue in force until such time as the City Council accepts the roadway improvements for public ownership and maintenance, or December 31, 2008, whichever comes first. Owner may be agreeable to extending Easements.

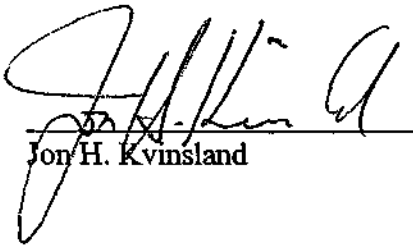
Section 3. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 4. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

Section 5. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

Section 6. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

By: 
Jon H. Kvinsland

ACCEPTANCE:

CITY OF GIG HARBOR

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

(Signature)

NOTARY PUBLIC, State of Washington,
residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Jon H. Kvinsland is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: June 21, 2005

Jacquelyn A. Mills
(Signature)

Jacquelyn A. Mills

NOTARY PUBLIC, State of Washington,
residing at: Thurston County
My appointment expires: April 25, 2009

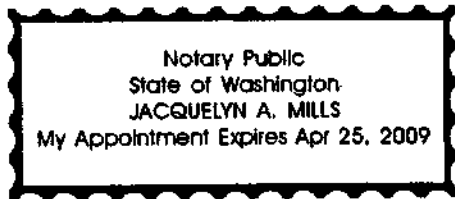


EXHIBIT A

PROPERTY LEGAL DESCRIPTION

LOT(S) 1, AS SHOWN ON SHORT PLAT 8407300292, FILED WITH PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

EXHIBIT B

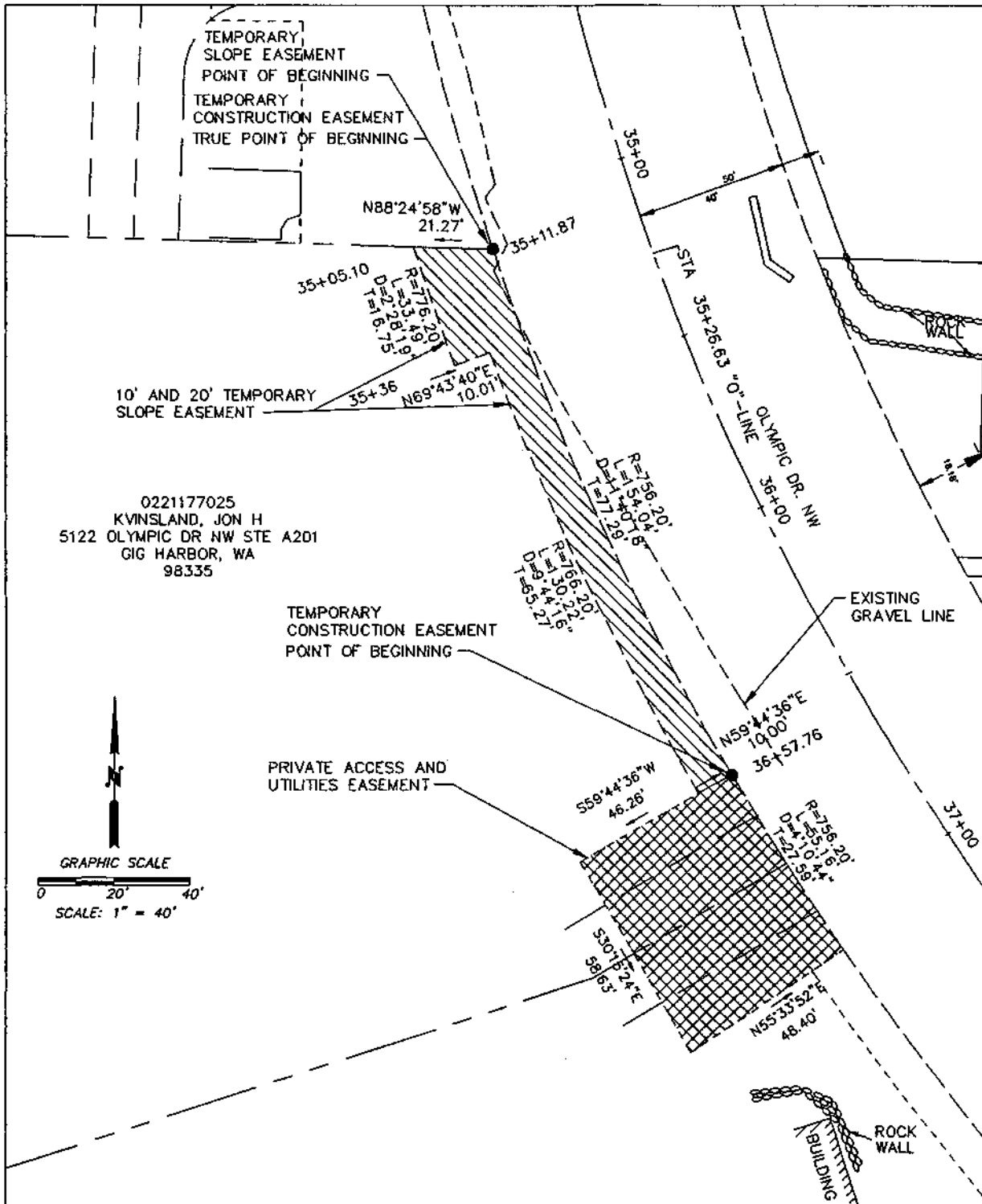
TEMPORARY SLOPE EASEMENT

A PORTION OF PARCEL NO. 0221177025 AND DESIGNATED AS A "10' AND 20' TEMPORARY SLOPE EASEMENT" AND WHOSE NORTHEAST PROPERTY CORNER AT 35+11.87 ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING", THENCE N88°24'58"W A DISTANCE OF 21.27', THENCE ALONG A CURVE WHOSE RADIUS IS 776.20' AND WHOSE LENGTH IS 33.49' AND WHOSE ANGLE IS 2°28'19" AND WHOSE TANGENT IS 16.75', THENCE N69°43'40"E A DISTANCE OF 10.01', THENCE ALONG A CURVE WHOSE RADIUS IS 766.20' AND WHOSE LENGTH IS 130.22' AND WHOSE ANGLE IS 9°44'16" AND WHOSE TANGENT IS 65.27', THENCE N59°44'36"E A DISTANCE OF 10.00', THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 154.04' AND WHOSE ANGLE IS 11°40'18" AND WHOSE TANGENT IS 77.29' AND RETURNING TO THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING" AT 35+11.87.

AND

TEMPORARY CONSTRUCTION EASEMENT ON A PRIVATE ACCESS AND UTILITIES EASEMENT

A PORTION OF A PRIVATE ACCESS AND UTILITIES EASEMENT ALONG OLYMPIC DRIVE NW AND WITHIN PARCELS 0221177025 AND 0221177026, AND WHOSE NORTHEAST PROPERTY CORNER OF PARCEL NUMBER 0221177025 AT 35+11.87 ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY CONSTRUCTION EASEMENT TRUE POINT OF BEGINNING", THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 154.04' AND WHOSE ANGLE IS 11°40'18" AND WHOSE TANGENT IS 77.29' TO A POINT DESIGNATED AS THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING" AT 36+57.76, THENCE S59°44'36"W A DISTANCE OF 46.26', THENCE S30°15'24"E A DISTANCE OF 58.63', THENCE N55°33'52"E A DISTANCE OF 48.40', THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 55.16' AND WHOSE ANGLE IS 4°10'44" AND WHOSE TANGENT IS 27.59' AND RETURNING TO THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING" AT 36+57.76.



56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPROVEMENT PROJECT
 TEMPORARY CONSTRUCTION AND SLOPE EASEMENTS

**AGREEMENT FOR DEDICATION OF
TEMPORARY SLOPE AND CONSTRUCTION EASEMENTS
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this 21st day of June, 2005, by and between CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and JON H. KVINSLAND, as his separate estate, (hereinafter the "Owner"), whose mailing address is 5122 OLYMPIC DR NW, STE A201, GIG HARBOR, WASHINGTON, 98335-1762.

RECITALS

WHEREAS, the Owner is a holder of a fee or substantial beneficial interest in the real property commonly known as MEDICAL OFFICES, 3206 – 50th Street Court NW, GIG HARBOR, WASHINGTON (Tax Parcel Number 0221177036) which is legally described in Exhibit A, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owner has agreed to dedicate Temporary Slope and Construction Easements, which easements are legally described in Exhibit B (the "Temporary Slope Easement" and "Temporary Construction Easement") which are attached hereto and by this reference incorporated herein, to the City for construction purposes associated with the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133); and

WHEREAS, the City requires a Temporary Slope Easement to tie into the roadway any improvements requiring a permanent slope, and the City requires the Temporary Construction Easement abutting the Property in order to tie the driveway accessing the Property into the City's permanent Roadway (the Olympic Drive and 56th Street Roadway Project) so that the Property Owner will have access to the Roadway. In exchange for the Owner's dedication of the Temporary Slope and Construction Easements, the Owner will obtain the benefits associated with construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP -0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

TERMS

Section 1. Grant of Temporary Slope and Construction Easements to the City.

A. **Grant.**

1. TEMPORARY SLOPE AND CONSTRUCTION EASEMENTS. The Owner hereby grants nonexclusive Temporary Slope and Construction Easements for the City to tie

into the permanent Roadway any improvements requiring a permanent slope, and where the City requires the Temporary Construction Easement over the Property in order to tie the private driveway adjoining the Property into the City's permanent Roadway for the construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133) across, along, in, upon, under and over the Owners' property as the easements described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C** for the Temporary Slope and Construction Easements.

The City shall, upon completion of any work within the Property covered by these Easements, restore the surface of the Easements and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable, to the conditions described in the roadway improvement project's plans and specifications. These Temporary Slope and Construction Easements shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

B. Conditions. The Temporary Slope and Construction Easements described above are subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the permanent slope and construction improvements.

2. The Owner shall not use any portion of the areas within the temporary easement for any purpose inconsistent with the City's construction of the Roadway, during the term of this Agreement. The Owner shall not construct any structures or plant any landscaping on or over the temporary easement during the term of this Agreement.

3. The City shall have all necessary access to the Temporary Slope and Construction Easements without prior notification to the Owner.

Section 2. The rights granted herein to the City shall continue in force until such time as the City Council accepts the roadway improvements for public ownership and maintenance, or December 31, 2008, whichever comes first. Owner may be agreeable to extending Easements.

Section 3. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 4. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

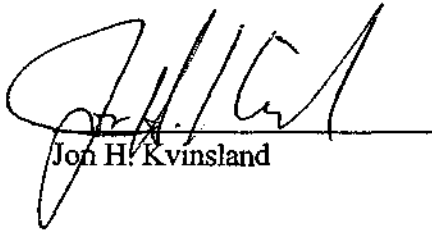
Section 5. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

Section 6. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

ACCEPTANCE:

CITY OF GIG HARBOR

By: 
Jon H. Kvinsland

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

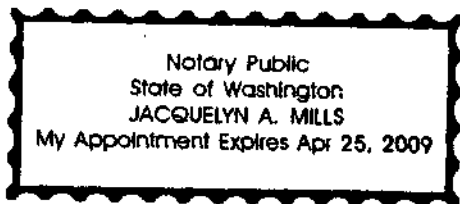
(Signature)

NOTARY PUBLIC, State of Washington,
residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Jon H. Kvinsland is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: June 21, 2005



Jacquelyn A. Mills
(Signature)

Jacquelyn A. Mills
NOTARY PUBLIC, State of Washington,
residing at: Thurston County
My appointment expires: April 25, 2009

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

LOT(S) 4, AS SHOWN ON SHORT PLAT 8407300292, FILED WITH PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

EXHIBIT B

TEMPORARY SLOPE EASEMENT

A PORTION OF PARCEL NO. 0221177036 AND DESIGNATED AS A "10' TEMPORARY SLOPE EASEMENT" AND WHOSE NORTHEAST PROPERTY CORNER AT 38+22.54 ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY SLOPE EASEMENT TRUE POINT OF BEGINNING", THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 169.41' AND WHOSE ANGLE IS 12°50'08" AND WHOSE TANGENT IS 85.06' TO A POINT DESIGNATED AS THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING" AT 39+82.99, THENCE S33°43'31W" A DISTANCE OF 10.00', THENCE ALONG A CURVE WHOSE RADIUS IS 10.00' AND WHOSE LENGTH IS 18.28' AND WHOSE ANGLE IS 104°45'29" AND WHOSE TANGENT IS 12.98', THENCE ALONG A CURVE WHOSE RADIUS IS 185.14' AND WHOSE LENGTH IS 61.25' AND WHOSE ANGLE IS 18°57'21" AND WHOSE TANGENT IS 30.91', THENCE S22°33'39"E A DISTANCE OF 10.00', THENCE ALONG A CURVE WHOSE RADIUS IS 195.14' AND WHOSE LENGTH IS 64.56' AND WHOSE ANGLE IS 18°57'21" AND WHOSE TANGENT IS 32.58', THENCE ALONG A CURVE WHOSE RADIUS IS 20.00' AND WHOSE LENGTH IS 36.57' AND WHOSE ANGLE IS 104°45'29" AND WHOSE TANGENT IS 25'95' AND RETURNING TO THE "TEMPORARY SLOPE EASEMENT POINT OF BEGINNING" AT 39+82.99.

AND

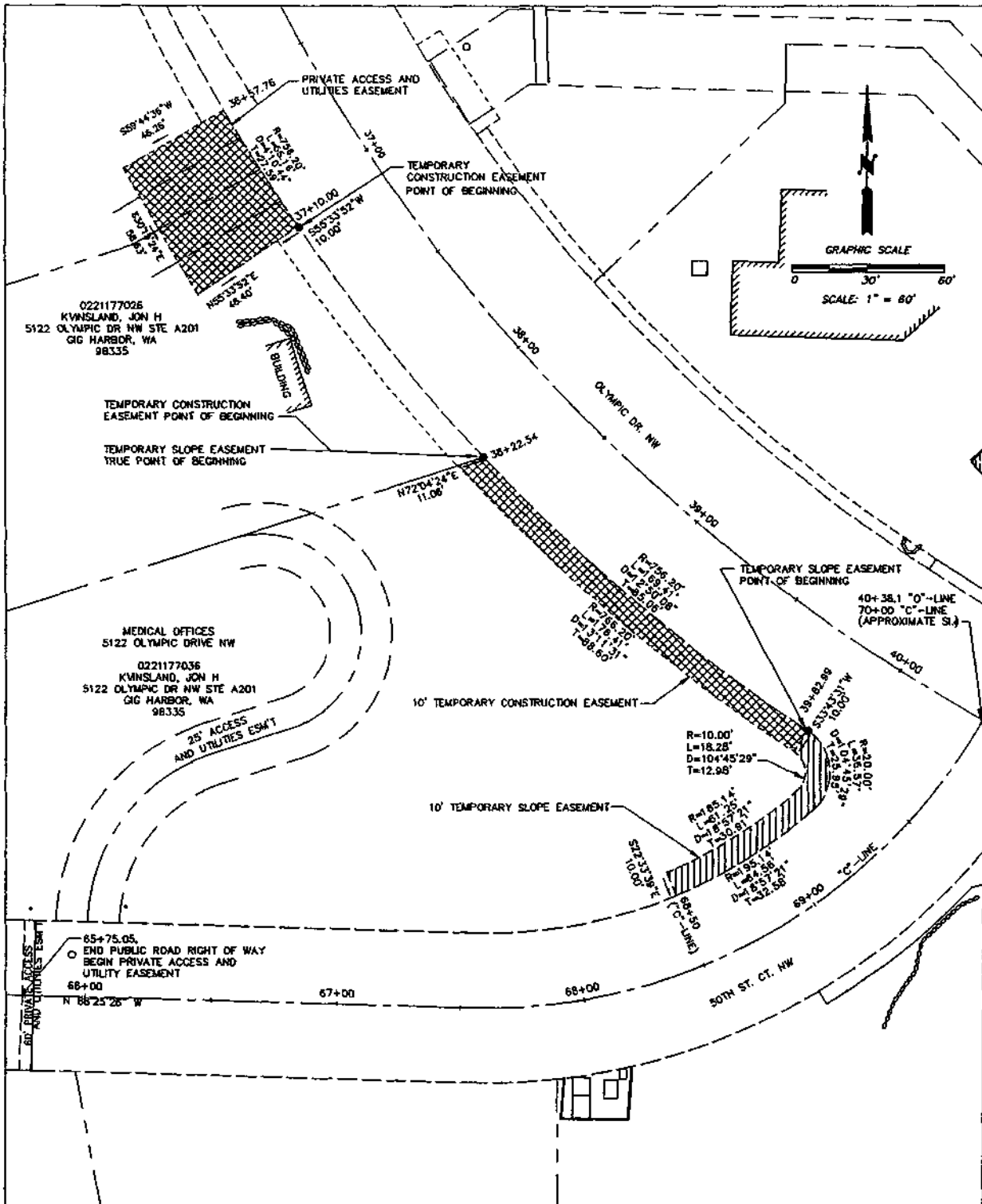
TEMPORARY CONSTRUCTION EASEMENT

A PORTION OF PARCEL NO. 0221177036 AND DESIGNATED AS A "10' TEMPORARY CONSTRUCTION EASEMENT" AND WHOSE NORTHEAST PROPERTY CORNER AT STATION 38+22.54 ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING", THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 169.41' AND WHOSE ANGLE IS 12°50'08" AND WHOSE TANGENT IS 85.06' TO 39+82.99, THENCE S33°43'31W" A DISTANCE OF 10.00', THENCE ALONG A CURVE WHOSE RADIUS IS 766.20' AND WHOSE LENGTH IS 176.41' AND WHOSE ANGLE IS 13°11'31" AND WHOSE TANGENT IS 88.60', THENCE N72°04'24"E A DISTANCE OF 11.06' AND RETURNING TO THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING" AT 38+22.54.

AND

**TEMPORARY CONSTRUCTION EASEMENT ON A
PRIVATE ACCESS AND UTILITIES EASEMENT**

A PORTION OF A PRIVATE ACCESS AND UTILITIES EASEMENT ALONG OLYMPIC DRIVE NW AND WITHIN PARCELS 0221177025 AND 0221177026, AND WHOSE SOUTHEAST PROPERTY CORNER OF PARCEL NUMBER 0221177026 AT 37+10.00 ALONG OLYMPIC DRIVE NW BEING THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING", THENCE ALONG A CURVE WHOSE RADIUS IS 756.20' AND WHOSE LENGTH IS 55.16' AND WHOSE ANGLE IS 4°10'44" AND WHOSE TANGENT IS 27.59' TO 36+57.76, THENCE S59°44'36"W A DISTANCE OF 46.26', THENCE S30°15'24"E A DISTANCE OF 58.63', THENCE N55°33'52"E A DISTANCE OF 48.40', AND RETURNING TO THE "TEMPORARY CONSTRUCTION EASEMENT POINT OF BEGINNING" AT 37+10.00.



56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPORVEMENT PROJECT
 TEMPORARY SLOPE AND CONSTRUCTION EASEMENTS

**AGREEMENT FOR DEDICATION OF
TEMPORARY CONSTRUCTION EASEMENTS
TO THE CITY OF GIG HARBOR**

THIS AGREEMENT is made this 21st day of June, 2005, by and between CITY OF GIG HARBOR, a Washington municipal corporation, (hereinafter the "City"), and JON H. KVINSLAND, as his separate estate, (hereinafter the "Owner"), whose mailing address is 5122 OLYMPIC DR NW, STE A201, GIG HARBOR, WASHINGTON, 98335-1762.

RECITALS

WHEREAS, the Owner is a holder of a fee or substantial beneficial interest in the real property commonly known as PROFESSIONAL OFFICE BUILDINGS, 5122 OLYMPIC DR NW, GIG HARBOR, WASHINGTON (Tax Parcel Number 0221177026) which is legally described in **Exhibit A**, (hereinafter the "Property") which is attached hereto and by this reference incorporated herein; and

WHEREAS, the Owner has agreed to dedicate Temporary Construction Easements, which easements are legally described in **Exhibit B** (the "Temporary Construction Easements") which are attached hereto and by this reference incorporated herein, to the City for construction purposes associated with the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133); and

WHEREAS, the City requires the Temporary Construction Easement abutting the Property in order to tie the driveway accessing the Property into the City's permanent Roadway (the Olympic Drive and 56th Street Roadway Project) so that the Property Owner will have access to the Roadway and the other Temporary Construction Easement is to allow the clearing of an area behind the rock wall in the City's right of way. In exchange for the Owner's dedication of the Temporary Construction Easements, the Owner will obtain the benefits associated with construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP -0133); and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, as well as other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner agree as follows:

TERMS

Section 1. Grant of Temporary Construction Easements to the City.

A. Grant.

1. **TEMPORARY CONSTRUCTION EASEMENTS.** The Owner hereby grants nonexclusive Temporary Construction Easements for the City to tie into the permanent

Roadway over the private access and utilities easement in order to tie the private driveway into the City's permanent Roadway and to clear an area behind the rock wall on the City's right of way for the construction of the OLYMPIC DRIVE AND 56TH STREET Roadway Improvement Project (CSP-0133) across, along, in, upon, under and over the Owner's property as the easement is described in **Exhibit B** and as depicted in a map attached hereto and incorporated herein as **Exhibit C**.

The City shall, upon completion of any work within the Property covered by these Easements, restore the surface of the Easements and any private improvements disturbed or destroyed by the City during execution of the work, as nearly as practicable, to the conditions described in the roadway improvement project's plans and specifications. These Temporary Construction Easements shall commence on the date of the City Council award of the Construction Project, and shall terminate on the date the roadway improvements are accepted by the City Council.

B. Conditions. The Temporary Construction Easements described above are subject to and conditioned upon the following terms and covenants, which all parties agree to faithfully perform:

1. The City shall bear all costs and expenses associated with the permanent construction improvements.

2. The Owner shall not use any portion of the areas within the temporary easement for any purpose inconsistent with the City's construction of the Roadway, during the term of this Agreement. The Owner shall not construct any structures or plant any landscaping on or over the temporary easement during the term of this Agreement.

3. The City shall have all necessary access to the Temporary Construction Easements without prior notification to the Owner.

Section 2. The rights granted herein to the City shall continue in force until such time as the City Council accepts the roadway improvements for public ownership and maintenance, or December 31, 2008, whichever comes first. Owner may be agreeable to extending Easements.

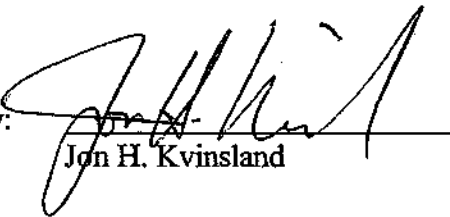
Section 3. This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any litigation arising out of this Agreement shall be in Pierce County Superior Court. The prevailing party in any litigation brought to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and costs.

Section 4. Other than the documents attached to this Agreement as exhibits, there are no other verbal or written agreements that modify this Agreement, which contains the entire understanding of the parties on the subject.

Section 5. Any invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision.

Section 6. No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

By: 
Jon H. Kvinsland

ACCEPTANCE:

CITY OF GIG HARBOR

By: _____
Its Mayor

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen Wilbert is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor for the uses and purposes mentioned in this instrument.

DATED: _____

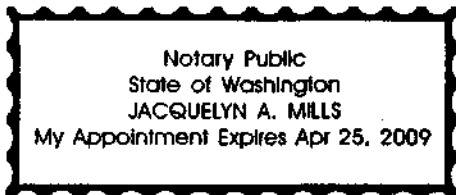
(Signature)

NOTARY PUBLIC, State of Washington,
residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Jon H. Kvinsland is the person who appeared before me, and said person acknowledged that he was authorized to execute the instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED: June 21, 2005



Jacquelyn A. Mills
(Signature)

Jacquelyn A. Mills

NOTARY PUBLIC, State of Washington,
residing at: Thurston County
My appointment expires: April 25, 2009

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

LOT(S) 2, AS SHOWN ON SHORT PLAT 8407300292, FILED WITH PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

EXHIBIT B

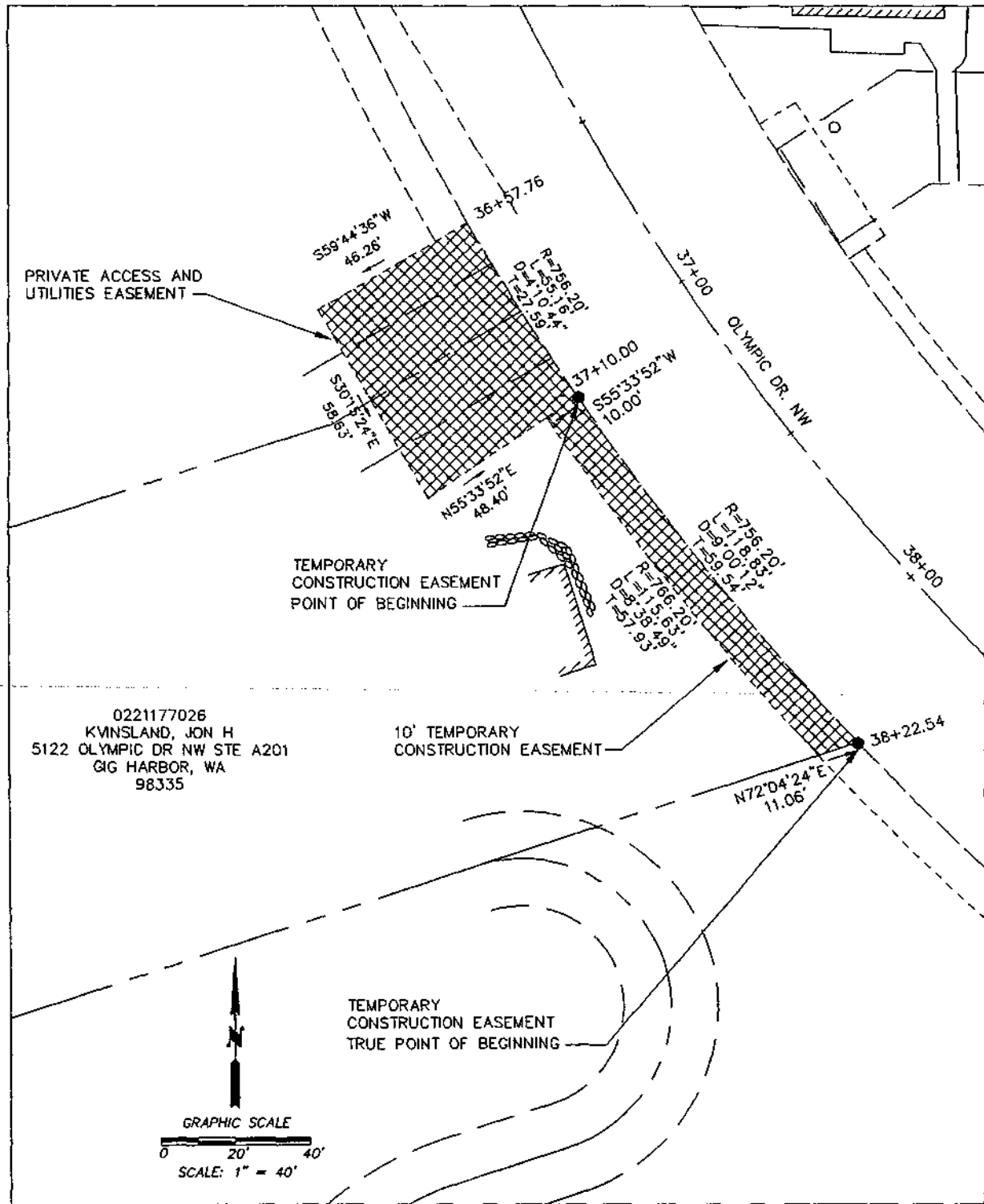
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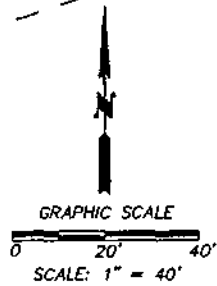
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0221177026
 KVINSTLAND, JON H
 5122 OLYMPIC DR NW STE A201
 GIG HARBOR, WA
 98335



56TH ST. NW AND OLYMPIC DR. NW ROADWAY IMPORVEMENT PROJECT
 TEMPORARY CONSTRUCTION EASEMENTS



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 6/08/05

TO: MOLLY TOWSLEE, CITY CLERK

AMENDED

RE: ASSUMPTION
From SNC INVESTMENTS, L.L.C.
Db a GIG HARBOR CHEVRON

APPLICANTS:

MI CHA KIM, INC.

TAE, MI CHA 1954-01-20

License: 072786 - 1U County: 27
UBI: 602-500-495-001-0001
Tradename: GIG HARBOR CHEVRON
Address: 5006 PT FOSDICK DR NW
GIG HARBOR WA 98335-1715

PAID JUN 10 2005

Phone No.: 971-506-2665 MI TAE

Privileges Applied For:
GROCERY STORE - BEER/WINE

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- 1. Do you approve of applicant ?
2. Do you approve of location ?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE SIGNATURE OF MAYOR,CITY MANAGER,COUNTY COMMISSIONERS OR DESIGNEE



NOTICE OF LIQUOR LICENSE APPLICATION

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075

Jan

RETURN TO:

Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov

RECEIVED
JUN 20 2005
BY:

DATE: 6/16/05

TO: MOLLY TOWSLEE, CITY CLERK

RE: ASSUMPTION
From GIG HARBOR GASOLINE LLC
Dba CENTRAL 76

APPLICANTS:

GIG HARBOR GAS & FOOD MART, INC.

KAUSHIK, AMIT
1962-09-03

SHAUNAK, SUKHDEV
1946-02-10

License: 081604 - 1U County: 27
UBI: 602-498-847-001-0001
Tradename: GIG HARBOR 76
Loc Addr: 5501 38TH AVE NW
GIG HARBOR WA 98335-8236

Mail Addr: 6540 NE 196TH
KENMORE WA 98028-3462

Phone No.: 206-321-7357 AMIT KAUSHIK

Privileges Applied For:
GROCERY STORE - BEER/WINE

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

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2. Do you approve of location?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING ON THE ADOPTION OF ORDINANCE 1003 -
ESTABLISHMENT OF A MORATORIUM ON THE ACCEPTANCE OF
APPLICATIONS FOR NEW DEVELOPMENT OF NON-RESIDENTIAL
STRUCTURES OR CERTAIN TYPES OF RE-DEVELOPMENT OF NON-
RESIDENTIAL STRUCTURES IN THE WATERFRONT MILLVILLE
ZONE FOR A PERIOD OF TWO MONTHS
DATE: JUNE 27, 2005

INFORMATION/BACKGROUND

The City Council adopted Ordinance No. 1003 which imposed an immediate moratorium for a period of up to two months on the acceptance of applications for new development of non-residential structures or certain types of re-development of non-residential structures in the Waterfront Millville (WM) zone on May 31, 2005. Adoption of this Ordinance was predicated on the City Council holding a public hearing on the proposed moratorium within sixty (60) days after adoption (RCW 35A.63.220, RCW 36.70A.390). The City Council set the date of June 27, 2005 for such a public hearing on this moratorium at the time of adoption of Ordinance No. 1003.

If, at the conclusion of the public hearing, the Council believes the continuation of the moratorium is justified, findings of fact supporting such a continuation must be stated. Staff will then draft an Ordinance supporting the continuation of the moratorium for consideration at the next Council meeting.

RECOMMENDATION

If, at the conclusion of the public hearing, the Council believes the continuation of the moratorium is justified, findings of fact supporting such a continuation must be stated.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E. *SM*
CITY ENGINEER
SUBJECT: SECOND READING OF ORDINANCE AMENDMENT TO ORDINANCE NO.
712 – ADOPTING THE ACCESS MANAGEMENT MANUAL AND THE
AASHTO POLICY ON THE GEOMETRIC DESIGN OF HIGHWAY AND
STREETS BY REFERENCE
DATE: JUNE 27, 2005

INTRODUCTION/BACKGROUND

The City Engineer desires to update its various list of manuals and guidelines used to administer the Gig Harbor Public Works Standards. The current list of manuals and guidelines have not been updated since the original Public Works Standards adoption in 1993. Adoption of these additional manuals and guidelines will maintain the continuity of the City's transportation facilities.

The proposed ordinance has been reviewed and approved by the City Attorney and the Community Development Director.

RECOMMENDATION

Staff recommends the proposed ordinance, as presented, be approved by the City Council.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO PUBLIC WORKS STANDARDS, ADOPTING THE ACCESS MANAGEMENT MANUAL AND THE AASHTO POLICY ON THE GEOMETRIC DESIGN OF HIGHWAY AND STREETS FOR USE IN THE ADMINISTRATION OF THE CITY OF GIG HARBOR PUBLIC WORKS STANDARDS, AS ADOPTED BY ORDINANCE NO. 712, AMENDING SECTION 1.010.

WHEREAS, the City of Gig Harbor Public Works Standards were adopted by ordinance in Ordinance No. 712; and

WHEREAS, various manuals and guidelines are used to administer the Gig Harbor Public Works Standards; and

WHEREAS, the City has adopted these manuals and guidelines by reference for use in administering the Gig Harbor Public Works Standards; and

WHEREAS, the City Council desires to update and adopt its list of manuals for such use, specifically *Transportation and Land Development*, by Vergil G. Stover and Frank J. Koepke, Transportation Engineers, 2002; as well as the *Access Management Manual*, promulgated by the Transportation Research Board, National Research Council, 2003; and *A Policy on Geometric Design of Highways and Streets*, by American Association of State Highway and Transportation Officials, 2004; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
DO ORDAIN AS FOLLOWS:

Section 1. Section 1.010 of the Gig Harbor Public Works Standards, as adopted in Ordinance No. 712, is hereby amended to read as follows:

1.010 Standard Specifications and use of Other Manuals and Guidelines.

Workmanship performed by contractors and developers, as well as design detail and materials used on projects and developments shall be in accordance with the current edition of the "Standard Specifications for Road, Bridge, and Municipal Construction," the APWA Amendments to Division One," and the "Standard Plans for Road, Bridge and Municipal Construction, all written and promulgated by the Washington State Chapter of the American Public Works Association and the Washington State Department of Transportation, except where these standards provide otherwise.

The following specifications are adopted by reference, and shall be applicable when pertinent, when specifically cited in the standards, or when required by a higher funding authority.

A. Conditions and Standards as set forth in the City of Gig Harbor Water System Plan, ~~February, 1993~~ December, 2002, or most current edition.

B. Conditions and standards as set forth in the City of Gig Harbor Comprehensive Sanitary Sewer Plan, ~~January 1993~~ December, 2002, or most current edition.

C. Rules and regulations as adopted in the City of Gig Harbor Municipal Code.

D. Criteria set forth in the Local Agency Guidelines as amended and approved by the Washington State Department of Transportation.

E. City and County Design Standards for the Construction of Urban and Rural Arterial and Collector Roads promulgated by the City Engineers Association of Washington, May 24, 1989.

F. Conditions and standards as set forth in the WSDOT Design Manual as amended and approved by WSDOT.

G. U.S. Department of Transportation Manual on Uniform Traffic Control Devices (MUTCD), as amended and approved by Washington State Department of Transportation.

H. DOT Construction Manual as amended and approved by Washington State Department of Transportation.

I. Rules and regulations of the State Board of Health regarding public water supplies, as published by the State Department of Health, Washington Administrative Code, chapter 246-290.

J. Conditions and standards as set forth in the State of Washington Department of Ecology "Criteria for Sewage Works Design," most current edition.

K. Conditions and standards as set forth by the State of Washington, Department of Labor and Industries.

L. Criteria set forth in *Transportation and Land Development* by V. G. Stover and F. Koepke and the Institute of Transportation Engineers, 2002.

M. Design criteria of federal agencies including Department of Housing and Urban Development and the Federal Housing Administration.

N. ~~Other specifications not listed above as may apply when required by the City of Gig Harbor.~~ Access Management Manual, Transportation Research Board, National Research Council, 2003.

O. A policy on Geometric Design of Highways and Streets, by American Association of State Highway and Transportation Officials, 2004

Section 2. Pursuant to RCW 35A.12.140, the above manuals and guidelines have been adopted by reference. A copy of each shall be filed in the office of the City Clerk for use and examination by the public. While this ordinance is under consideration by the City Council prior to adoption, one copy shall be filed in the office of the City Clerk for use and examination by the public.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or

constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of a summary, consisting of the title.

PASSED by the Gig Harbor City Council and the Mayor of the City of Gig Harbor this ____th day of _____, 2005.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

By: _____
CAROL A. MORRIS, CITY ATTORNEY

FIRST READING:
DATE PASSED:
DATE OF PUBLICATION:
EFFECTIVE DATE:

**SUMMARY OF ORDINANCE NO. _____
of the City of Gig Harbor, Washington**

On _____, 2005 the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the summary of text of which is as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO PUBLIC WORKS STANDARDS, ADOPTING THE ACCESS MANAGEMENT MANUAL AND THE AASHTO POLICY ON THE GEOMETRIC DESIGN OF HIGHWAY AND STREETS FOR USE IN THE ADMINISTRATION OF THE CITY OF GIG HARBOR PUBLIC WORKS MANUAL, AS ADOPTED BY ORDINANCE NO. _____, AMENDING SECTION 1.010.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting _____ 2005.

BY: _____
MOLLY M. TOWSLEE, CITY CLERK



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: ROB WHITE, PLANNING MANAGER
SUBJECT: SECOND READING OF AN ORDINANCE
AMENDMENT TO GHMC 17.98 DESIGN REVIEW STANDARDS AND
REVIEW
DATE: JUNE 22, 2005

INFORMATION/BACKGROUND

Attached for your consideration and for second reading is an ordinance amending Gig Harbor Municipal Code section 17.98 Design Standards and Review.

Recently, the staff in cooperation with the Design Review Procedures Committee modified the existing design review procedures to allow more interaction between the design review board, project applicants, and the community.

The proposed ordinance, which is attached to this report, provides two main changes to the existing design review procedures. First, the design review board (DRB) will be given the opportunity to hold design review pre-application meetings. This in itself will allow applicants a greater opportunity to discuss design issues with the DRB while a project is still conceptual, both saving the applicant on design expenses, and promoting an open dialogue between the DRB and the applicant.

The other primary change encourages DRB members to provide input on all non-residential, multi-family, and planned residential development, regardless of whether the applicant proposes to take their project to the DRB for review or not. In order to achieve this, planning staff will notify all DRB members in writing with notice of all non-residential, multi-family, and planned residential development applications along with the standard notice of application that is sent out currently on all projects to property owners within 300 feet. DRB members will then have two weeks to provide written comments to the Community Development Director which will be included in the file for the project. This provides DRB members with both the opportunity and the responsibility to help prevent some of the design issues of Gig Harbor's past.

POLICY CONSIDERATIONS

The proposed ordinance will change the functions of the DRB to include pre-application meetings and provide an opportunity for the DRB to submit review comments to the planning staff on administrative proposals.

ENVIRONMENTAL ANALYSIS

The SEPA responsible official has determined that this proposal is exempt from SEPA review as per WAC 197-11-800.

FISCAL IMPACTS

Addition of DRB pre-application meetings and notification requires increased technical and administrative staff time.

RECOMMENDATION

I recommend that the City Council approve the ordinance as presented.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING A NEW PROCEDURE FOR OPTIONAL PRE-APPLICATION MEETING BY THE DESIGN REVIEW BOARD, DESCRIBING THE BENEFITS, LIMITATIONS AND MATERIALS NEEDED FOR SUCH OPTIONAL PRE-APPLICATION MEETING; REQUIRING THAT NOTICE OF APPLICATION FOR CERTAIN TYPES OF PROJECT PERMIT APPLICATIONS BE SENT TO THE DESIGN REVIEW BOARD MEMBERS, FOR THEIR INDEPENDENT, ADVISORY INPUT TO THE COMMUNITY DEVELOPMENT STAFF ON WHETHER THE APPLICATION MEETS THE DESIGN MANUAL CRITERIA FOR ADMINISTRATIVE REVIEW; ADOPTING A NEW SECTION 17.98.037 AND AMENDING SECTIONS 17.98.050 AND 19.02.004 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the Gig Harbor City Council appointed a Design Review Procedures Committee (DRPC) to explore ways of amending the design review process to allow more interaction between the Design Review Board (DRB), the applicant, and the community; and

WHEREAS, the DRPC has recommended amendments that would encourage applicants to seek the input of the DRB prior to submitting development applications; and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Department of Trade and Community Development on April 4, 2005 pursuant to RCW 36.70A.106; and

WHEREAS, the SEPA Responsible Official determined that this proposal is exempt under SEPA as per WAC 197.11.800; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on May 21, 2005, and made a recommendation of approval to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of _____; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new Section 17.98.037 of the Gig Harbor Municipal Code, as last amended by Ordinance #975, is hereby adopted, to read as follows:

17.98.037 Optional Design review pre-application meeting.

A. Purpose. Applicants for projects that will require design review may request a pre-application review by the Design Review Board (DRB) at a DRB meeting. The purpose of the pre-application review is to allow the DRB to provide early input on potential development or redevelopment of a site during the early stages of design. This will allow the Design Review Board to identify specific areas of concerns and design opportunities related to the site for the applicant. The DRB's comments may help the applicant develop a design that conforms to Design Manual standards in a manner more sensitive to specific site conditions and to neighborhood concerns.

B. Optional pre-application meeting with staff. It is highly recommended that the applicant request and attend a pre-application meeting with the Community Development Department staff prior to requesting a pre-application meeting with the Design Review Board. This will allow the staff to identify for the applicant obvious site design deficiencies that do not fall under the purview of the Design Review Board (e.g., street access; fire fighting access; utility availability; critical area protection; non-compliant use, density, height, setbacks, etc.).

C. Benefits of pre-application meeting with DRB:

1. Provides opportunity to dialogue with the Design Review Board to determine specific areas of interest and, if notice is provided to the public, an opportunity to dialogue with individuals in the surrounding neighborhood.
2. Expands the level of input prior to application submittal.
3. Provides early feedback on draft proposals.
4. May help identify non-compliant design concepts before expending money on detailed plans and drawings.
5. May help applicant determine whether to pursue the project or not.

D. DRB pre-application review is limited to one meeting. Applicants may request one pre-application meeting with the DRB, which will be at no charge for any project that will require design review under the site plan review category specified in Section 17.98.040(A). The meeting shall be held within 28 days of receipt of the request.

E. Information needed for pre-application meeting with DRB. To enable the DRB to provide a meaningful response, requests for design review pre-application meetings should include the following:

1. The location of the site (a map showing the site in context with surrounding sites and development is encouraged)
2. A sketch or drawing of the site showing its approximate configuration and dimensions.
3. A sketch or drawing of the site showing natural site conditions including topographic information and existing vegetation. Photographs are encouraged.
4. Conceptual drawings or sketches of proposed development.

F. Notice. Notice of a pre-application meeting with the DRB is not required, however, at the request of the applicant, notice will be mailed to the owner of all properties within 300 feet of the subject site. The applicant shall provide preprinted labels bearing the names and addresses of the property owners of record within 300 feet of the project property.

G. Non-binding nature of pre-application meeting. Neither DRB nor staff comments at the pre-application meeting with the DRB are binding on the applicant. Nor will they bind the City in any manner or prevent the City from fully applying or enforcing all applicable codes, ordinances and regulations.

Section 2. Section 17.98.050 as amended in Section 14 of Ordinance #975 is hereby amended to read as follows:

17.98.050 Design review and project approval.

The applicant shall choose one of the following application review paths, based upon whether or not the application strictly conforms to the specific design standards of Chapter 17.99:

A. Administrative Approval. A design review application for administrative approval shall may be processed by the director as follows:

1. Notice of application for the following types of development shall be forwarded to all members of the Design Review Board (DRB) pursuant to GHMC Section 19.02.004.

a. Non-residential development.

b. Multi-family residential development as defined in Section 17.04.290, GHMC.

c. Planned Residential Development (PRD) as described in GHMC Chapter

17.89.

d. Public projects, except for normal maintenance and in-kind replacement.

The DRB members may independently review the application, which will be available at the Community Development Department. Individual DRB members may submit written comments to the director within two weeks beyond the date of notice of application. If DRB members identify design elements that they believe do not comply with the specific requirements of the Design Manual, they may advise the director in writing of those items that they believe do not comply. The DRB members' input will be advisory only and become part of the application file. The final decision as to whether or not all specific requirements have been complied with shall be made by the director.

4 2. The application shall be reviewed by the director for compliance with the specific requirements of Chapter 17.99 and all other applicable codes. The director shall issue a decision approving the application or portions thereof if he/she finds that the application or portions of the application satisfy the strict requirements of Chapter 17.99 design standards. The director shall not approve any application or portion thereof that does not comply with applicable codes.

2 3. An applicant may choose to submit an application for review by the director on a single category or multiple categories from GHMC 17.98.040. If an applicant chooses to submit fewer than all categories from GHMC 17.98.040, the director shall only provide preliminary decisions on each category. Once the city has received a complete application for all categories from GHMC 17.98.040, the director shall issue a final

decision on those portions of the application submitted for administrative approval. The preliminary decisions made by the director on each category may be different from the final decision on each category.

3 4. A notice of complete application shall not be issued until the city has received a complete application (as described in GHMC 17.98.040). A notice of application shall be issued for any complete application processed under this subsection A, as set forth in GHMC Title 19 for a Type III project permit application. The complete application shall otherwise be processed as a Type II project permit application, and a final decision shall be issued on a complete application before the deadline established in GHMC 19.05.009. If the final decision is appealed, the appeal shall be considered in an open record hearing, as described in GHMC Title 19.

B. Design Review Board Recommendation. A design review application requesting review by the design review board shall ~~may be processed for review by the design review board~~ as follows:

.....

Section 3. Section 19.02.004 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.02.004 Notice of application.

A. Generally. A notice of application shall be provided to all city departments and agencies with jurisdiction of all Type III and IV project permit applications. In addition, a notice of application for all (a) non-residential development, (b) multi-family residential development as defined in Section 17.04.290, GHMC, (c) planned residential development (PRD) as described in GHMC Chapter 17.89, and (d) public projects, except for normal maintenance and in-kind replacement, shall be sent to all members of the Design Review Board as set forth in Section 17.98.050(d).

.....

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 5. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 2005.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 6/8/05
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PROPOSED ANNEXATION - WRIGHT (ANX 04-02)
DATE: JUNE 27, 2005

INFORMATION/BACKGROUND

The City has received a complete Notice of Intention to Commence Annexation Proceedings from James Wright for a proposal to annex approximately 8.62 acres of property located northwest of the intersection of Hunt Street NW and 46th Avenue NW (Skansie Avenue) adjacent to the existing City limits. The City Council approved the applicants request on February 28, 2005 to revise the annexation boundaries to encompass this one parcel.

Property owners of more than the required ten percent (10%) of the acreage for which annexation is sought signed this request. The pre-annexation zoning for the area is Single-Family Residential (R-1).

Pursuant to the process for annexations by code cities in Pierce County, a copy of the proposed legal description was sent to the Clerk of the Boundary Review Board for review and comment. Pierce County has approved the legal description and map as presented.

Additionally, this request was distributed to the City Administrator, Chief of Police, Director of Operations, Engineer, Building Official/Fire Marshal, Planning Manager, Finance Director, and Pierce County Fire District #5 for review and comment.

The Council is required to meet with the initiating parties to determine the following:

1. Whether the City Council will accept, reject, or geographically modify the proposed annexation;
2. Whether the City Council will require the simultaneous adoption of the zoning for the proposed area in substantial compliance with the proposed Comprehensive Plan as adopted by City of Gig Harbor Ordinance No. 981; and
3. Whether the City Council will require the assumption of all or any portion of indebtedness by the area to be annexed.

The Council set the date of June 24, 2005 for such a meeting at the June 13, 2005 meeting. Notice of this meeting was sent to property owners of record within the area proposed for annexation as well as those within three hundred feet (300') on June 14, 2005.

If accepted, the process will then move forward with the circulation of a formal petition for annexation. The petition must be signed by either by the owners of a majority of the acreage and a majority of the registered voters residing in the area considered for annexation; or by property owners of sixty percent (60%) of the assessed value of the area proposed for annexation.

POLICY CONSIDERATIONS

The City of Gig Harbor Building Official/Fire Marshal reviewed the proposal and did not identify any building or fire code related reasons to object to the request.

The City of Gig Harbor Finance Director noted that there was nothing financially significant concerning this annexation.

The City of Gig Harbor Chief of Police noted no concerns or adverse effects would be anticipated from the annexation by the Police Department.

The City Planning Department has noted that Pierce County 'countyview' data indicates that there may be wetland areas on this parcel. The applicant will be required to have the wetlands evaluated and categorized as required by 18.08.090 which requires a wetland analysis report for annexations which are not already mapped on the City's wetland maps.

The Boundary Review Board is guided by RCW 36.93.180 in making decisions on proposed annexations and is directed to attempt to achieve stated objectives. These objectives, listed below, are worthy of consideration by the Council in determining the appropriateness of this annexation. Responsive comments to each of these objectives have been provided by City staff.

RCW 36.93.180

Objectives of boundary review board.

The decisions of the boundary review board shall attempt to achieve the following objectives:

- (1) Preservation of natural neighborhoods and communities;

Comment: The proposed annexation area is primarily undeveloped with one existing single-family dwelling.

- (2) Use of physical boundaries, including but not limited to bodies of water, highways, and land contours;

Comment: Hunt Street NW, Skansie Avenue NW, and the Urban Growth Area (UGA) bound the proposed annexation.

- (3) Creation and preservation of logical service areas;

Comment: The proposed annexation would not alter any service area boundaries.

- (4) Prevention of abnormally irregular boundaries;

Comment: The proposed annexation would not create an abnormally irregular boundary.

- (5) Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated urban areas;

Comment: Not applicable with regards to this proposed annexation.

- (6) Dissolution of inactive special purpose districts;

Comment: The proposed annexation would not dissolve an inactive special purpose districts

- (7) Adjustment of impractical boundaries;

Comment: Not applicable with regards to this proposed annexation, the area proposed for annexation is entirely within the City's Urban Growth Boundary.

- (8) Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character; and

Comment: The proposed annexation is of an unincorporated area with a lot size of 8.62 acres. The proposed annexation area is within the City's Urban Growth Boundary and is planned for urban levels of development.

- (9) Protection of agricultural and rural lands which are designated for long-term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority.

Comment: The proposed annexation does not involve designated agricultural or rural lands.

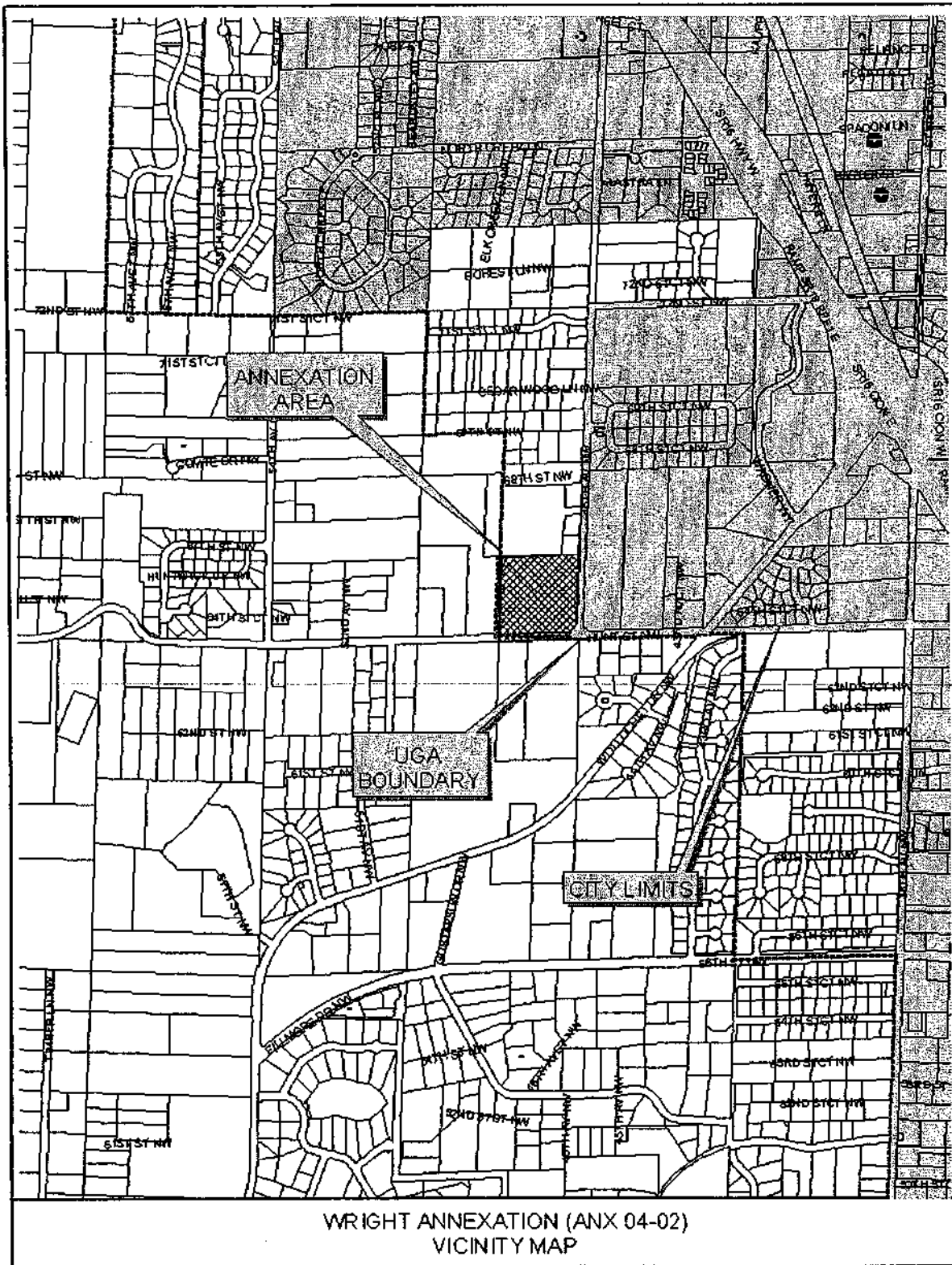
FISCAL CONSIDERATIONS

The Finance Director has noted that financial impacts from this proposed annexation would not be significant to the City.

RECOMMENDATION

I recommend that the Council accept the notice of intent to commence annexation and further authorize the circulation of a petition to annex the subject property to the following conditions:

1. The City shall require that the property owner(s) assume all of the existing indebtedness of the area being annexed;
2. Pursuant to GHMC Section 18.08.090, a wetland analysis report shall be prepared by a qualified wetland specialist and submitted with the petition for annexation; and
3. The City will require the simultaneous adoption of Single-Family Residential (R-1) for the proposed annexation area in substantial compliance with the Comprehensive Plan as adopted by City of Gig Harbor Ordinance No. 981.





Pierce County

Boundary Review Board

2401 South 95th Street
Tacoma, Washington 98409-7460
(253) 798-7156 • FAX (253) 798-3680

May 23, 2005

RECEIVED
CITY OF GIG HARBOR

MAY 25 2005

COMMUNITY
DEVELOPMENT

Mr. John Vodopich
Director of Community Development
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

RE: Proposed Annexation to City of Gig Harbor - Wright

Dear Mr. Vodopich:

Review of the revised legal description for the above proposal has been completed. The legal description has been found acceptable. Enclosed please find copies of the acceptable revised legal description and map date stamped May 16, 2005, on the proposed Wright proposal for annexation.

Sincerely,

Toni Fairbanks
Chief Clerk
Boundary Review Board

f:\clerk\br\annexations\GH Ltr Wright 5-05.doc
Enclosures

cc: Julie Klontz, Public Works and Utilities



Printed on recycled paper

**NOTICE OF INTENTION TO COMMENCE ANNEXATION
PROCEEDINGS**

The Honorable Mayor and City Council
City of Gig Harbor
3510 Grandview Street
Gig Harbor WA, 98335

Dear Mayor and City Council:

The undersigned, who are the owners of not less than ten percent (10%) of the acreage for which annexation is sought, hereby advise the City Council of the City of Gig Harbor that it is the desire of the undersigned owners of the following area to commence annexation proceedings:

The property herein referred to is legally described on Exhibit "A" attached hereto and is geographically depicted on a Pierce County Assessor's parcel map on Exhibit "B" further attached hereto.

It is requested that the City Council of the City of Gig Harbor set a date, not later than sixty (60) days after the filing of this request, for a meeting with the undersigned to determine:

1. Whether the City Council will accept, reject, or geographically modify the proposed annexation;
2. Whether the City Council will require the simultaneous adoption of the zoning for the proposed area in substantial compliance with the proposed Comprehensive Plan as adopted by City of Gig Harbor Ordinance No. 686; and
3. Whether the City Council will require the assumption of all or any portion of indebtedness by the area to be annexed.

This page is one of a group of pages containing identical text material and is intended by the signers of the Notice of Intention of Commence Annexation Proceedings to be presented and considered as one Notice of Intention of Commence Annexation Proceedings and may be filed with other pages containing additional signatures which cumulatively may be considered as a single Notice of Intention of Commence Annexation Proceedings.

Resident/Owner Signature	Printed Name	Address & Tax Parcel Number	Date Signed
<i>James A. Wright</i>	James A Wright	4613 Hunt St NW 0821073086	3/17/04

Exhibit A
Wright Annexation Legal Description ANX 04-02

WRIGHT ANNEXATION
ANX 04-02

LEGAL DESCRIPTION

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M., IN PIERCE COUNTY, WASHINGTON;

EXCEPT THE WEST 8 FEET THEREOF;

EXCEPT 46TH AVENUE NORTHWEST;

EXCEPT THAT PORTION CONVEYED TO THE STATE OF WASHINGTON BY DEED RECORDED UNDER RECORDING NUMBER 2364858;

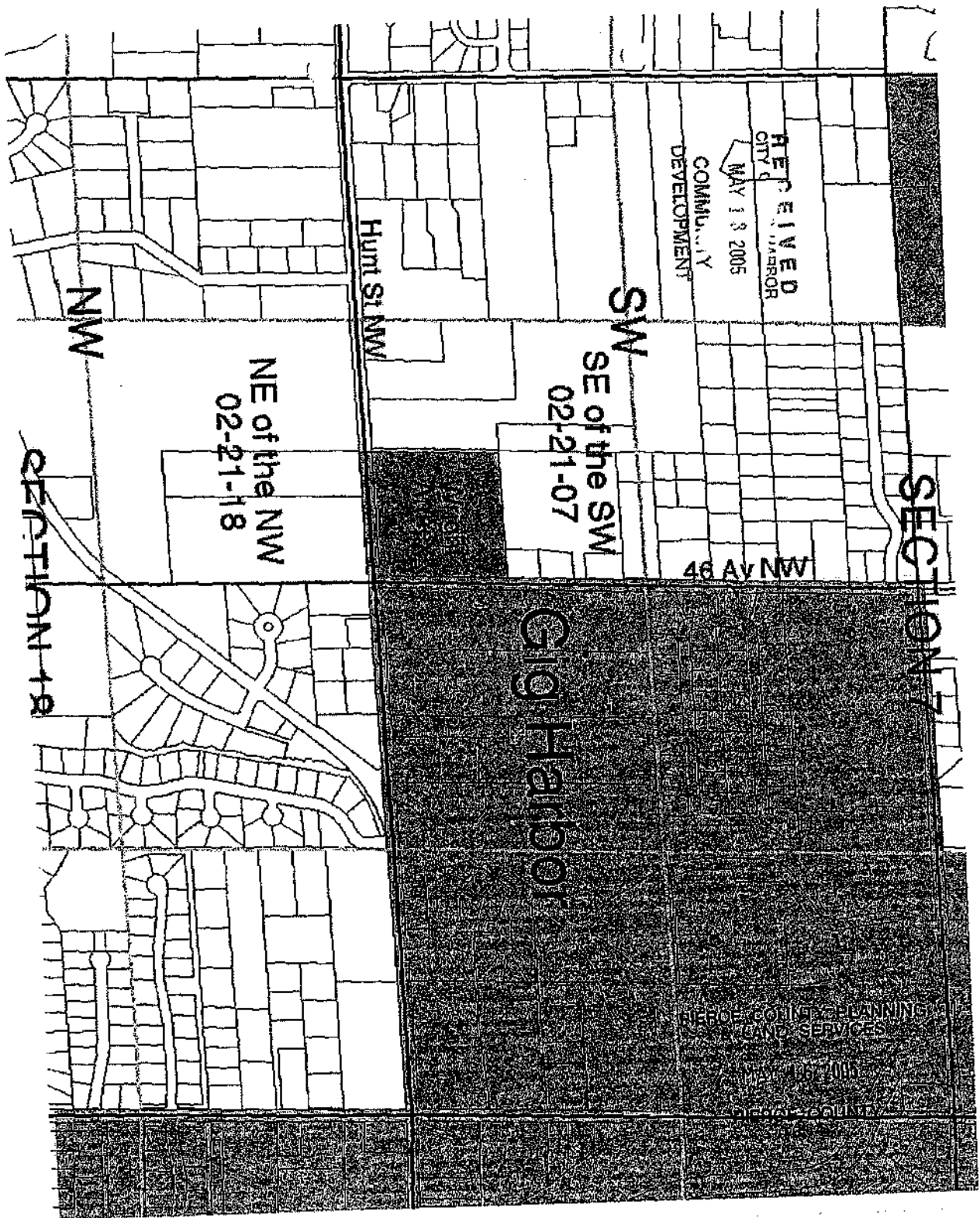
INCLUDING HUNT STREET NORTHWEST ABUTTING SAID ANNEXATION IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 21 NORTH, RANGE 2 EAST, W.M.

SITUATED IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.

PIERCE COUNTY PLANNING
& LAND SERVICES
MAY 16 2005
PIERCE COUNTY

RECEIVED
CITY OF GIG HARBOR
MAY 13 2005
COMMUNITY
DEVELOPMENT

Exhibit B
Wright Annexation Map ANX 04-02





COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEPHEN MISIURAK, P.E. *SM*
CITY ENGINEER
SUBJECT: STAFF REPORT – TRANSPORTATION ISSUES
DATE: JUNE 27, 2005

At the June 6, 2005 City Council meeting, Council directed staff to commence a traffic speed study on Edwards Street and to look at the feasibility of allocating additional design and construction funds towards pedestrian improvements along Briarwood Ave.

In response to Council request, staff has completed the following:

Edwards Street:


Placed tube speed sensing devices on Edwards street for a one week duration. These counters will then be removed and the City will review the data which will in turn establish the required posted speed limit. It is estimated it will take 2 weeks to review the data and another week to order and fabricate the speed limit signs and to install them.

Briarwood Lane:

The current budget for Briarwood Lane is \$72,250.00. Engineering will present a consultant services contract for Council approval at the July 11th meeting for surveying and final design services. The remaining funds will be utilized towards constructing a portion of curb and gutter along Briarwood Lane. Preliminary construction cost estimate to install curb and gutter on both sides of Briarwood along with sidewalk on one side only is estimated at \$350,000.00. The remainder of improvements can occur in the summer of 2006, pending the city receives grant funding from a Pedestrian Safety and Mobility competitive grant program.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: STEPHEN MISURAK, P.E. 
CITY ENGINEER
SUBJECT: STAFF REPORT – 36TH STREET/POINT FOSDICK INTERSECTION
IMPROVEMENT PROJECT
DATE: JUNE 27, 2005

STAFF REPORT

City staff held a public meeting on June 8, 2005 at 6:00 p.m. in the Community Conference Room to discuss the 36th Street/Point Fosdick Intersection Improvement Project. In an effort to notify the adjacent property owners and public about this project, the public meeting notification was posted on the city website and approximately seventy notices were mailed to the surrounding property owners. Members of the City Council, Planning Commission and Design Review Board were also notified of the public meeting.

Nine citizens attended the meeting, the Mayor, Steve Ekberg, City Councilman, as well as three city staff members. Steve Misiurak, City Engineer opened the meeting and explained the scope of the project and asked those in attendance for any questions they may have. Gus Garcia, Associate Engineer, assisted Mr. Misiurak in answering questions.

Questions were asked in regards to landscape restoration, traffic control issues, the contractor's start and finish dates and roadway reconstruction, as well as the capability of the roundabout to hold large trucks and trailers. The questions were answered to the satisfaction of all those in attendance and the meeting adjourned at 7:00 p.m.

The estimated project start date is mid-July with an anticipated completion date of mid-September. Substantial traffic delays may occur.



"THE MARITIME CITY"

ADMINISTRATION

TO: CITY COUNCIL
FROM: MAYOR GRETCHEN A. WILBERT *GW*
SUBJECT: MAYOR'S REPORT
PLANNING FOR A LIVABLE COMMUNITY IN 2006 AND BEYOND
DATE: JUNE 27, 2005

Major accomplishments have been in the works for the past fifteen years thanks to the dedication of our staff. Our major objective now is to focus on those accomplishments and create a vision for the future.

PARKS AND TRAILS

Thanks to the vision and leadership of the City Council, the staff and the vote of the citizens, Gig Harbor was able to acquire major land and waterfront properties for public parks.

On May 23, 2005, the City Council voted to establish a "Friends of the Parks Commission". The Peninsula Gateway will provide a Public Notice asking for citizen interest in serving on the committee. The committee will be asked to establish three sub committees to help develop plans for Skansie Brothers Park, Eddon Boat Park and the Wilkinson Family Farm Park.

The City should work with the Gig Harbor Peninsula Historical Society as they develop their Heritage Center across from Donkey Creek Park. The City should plan to obtain the property to open up the covered portion of Donkey Creek for salmon and visitor viewing. The City should create a trail to the beach on the City property at Harborview Street end viewpoint. The City should continue to help the Kayak group meet their needs.

Encourage preservation of historic properties through the Preservation Ordinance recently passed by Council.

GIG HARBOR COMMUNITY CENTER

The reality is finally taking shape with a partnership between Pierce County, Peninsula School District, the City, and the citizen based fund raising group. Our aging population needs a senior center; a place for socializing and the senior

noontime meal site with activities that are provided by community volunteers and Pierce County Human Services.

The Community Center will also accommodate a Boys & Girls Club program to give our children ages 6 through 16 a place to call their own. After school programs will have top notch mentors guiding the activities.

If you are interested in touring a Senior Center and/or a Boys & Girls Club, visit Gig Harbor's Volunteer Center in the Bogue Building on Judson Street. Sign your name and telephone number on the interest sheet.

The City should help fund the management and operation of the Gig Harbor Community Center. The center should be available to the citizens for scheduling evening and weekend events.

THE BOGUE VOLUNTEER CENTER (BVC)

Have you noticed in *The Peninsula Gateway* the array of non-profit organizations providing social services to our community? Because of volunteer contributions of time and energy government is able to focus on our mission to provide a safe and secure community. The BVC provides meeting space for these organizations and neighborhood groups.

NEIGHBORHOOD PREPAREDNESS

Continue to encourage neighborhoods to prepare for a major power outage, earthquake or other disaster that may require neighborhoods be on their own for 72 hours. Pierce County Emergency Management will assist in a plan for each neighborhood consisting of between 25 to 50 homes. It has been calculated that 54 neighborhoods exist within the city limits of Gig Harbor. The marinas have yet to recognize that they, too, need a plan. Boats may become an important transportation element in an emergency.

TOWN-AROUND BUS

Continue to work with Pierce Transit to bring a small and more frequent alternative transportation opportunity to citizens of all ages as well as visitors.

TRANSPORTATION WITH SAFE EFFICIENCY

Enforce the 25 mph speed limits on all arterials, including but not limited to, Soundview Drive, Stinson Avenue, Pioneer Way, Harborview Drive, and Peacock Hill Avenue. How do we slow traffic at the corner of North Harborview Drive and Vernhardson Street?

High Priority Items:

- Traffic signal at 45th Street Court and Pt. Fosdick Drive
- Partner with Pierce County to extend 36th Street to 38th Avenue from the planned Pt. Fosdick round-about.

COMMUNITY DEVELOPMENT

Continue to focus on customer service. Retain Design Review Guidelines and the Sign Code. For sound and air quality create vegetation screening requirements for properties adjacent to Highway 16.

TOURISM/MARKETING

Re-evaluate the City being in the business of selling clothing and art work to the public. My suggestion to Council would be to market the items through local businesses and galleries.

PARTNERSHIPS are the reality of success in our years of progress. We should look forward to continuing coordination with Pierce County, Peninsula Metropolitan Park District, service clubs, the Peninsula School District and the community to accomplish our long term goals. No one alone can create a livable community.

Memorandum

To: Mayor and City Council, Gig Harbor
CC: Mark Hoppen, John Vodopich, Rob White
From: Carol Morris
Date: 6/23/2005
Re: **Design Review Procedures – Draft Ordinance**

At the last City Council meeting, it was suggested that Section 17.98.050 of the draft Design Review Procedures ordinance be changed to allow a majority of the Design Review Board to make the final decision whether an application should be processed administratively or by the Board. As the ordinance is currently drafted, the applicant makes the decision on the type of procedure for processing of his/her application. The Board members may independently (outside of their meetings) review the submitted application, and thereafter provide comment to the director on the issue whether the application should be processed administratively or by the Board. The director reviews the comments and makes the final decision on the correct procedure.

My recommendation is as follows:

1. This first comment does not relate to the Board's ability to vote on the correct procedure for processing. After reviewing the language of the draft ordinance in light of the comments, I recommend that it be amended to simply refer to the administrative or the Board process, instead of "items that do not comply." Use of "does not comply" or a "final decision as to whether or not all specific requirements have been complied with" will create confusion, given that this stage of the process is not to determine "compliance" with the Manual, only the correct procedure. Attached is my recommendation for an amendment of the code to address this point.
2. Under GHMC Section 17.98.050, the applicant, not the Design Review Board, makes the decision whether to select the administrative or the Design Review Board process. Adopting a procedure that would force applicants to unwillingly accept processing by the Design Review Board could raise serious issues.

Could the Board issue a timely recommendation that would allow the City to meet the 120 day deadline for issuance of the final decision, and if not, could the City force the applicant to sign a waiver of the 120 day deadline?

An applicant may choose the administrative process in order to obtain an administrative decision without a hearing/meeting, which will issue within the 120 day deadline established in state law and our code. Because the Design Review Board process could take longer (involving one or more public meetings), the code requires an applicant choosing the Board process to sign a waiver from the 120 day deadline.

If the code is changed to allow the Board to vote, and by majority decision, determine that an application must be decided by the Board, an applicant may not agree to sign this waiver. The City cannot force an applicant to forego a mandatory permit processing requirement of state law.

The Board may argue that a waiver will not be required because they will expeditiously process the application. However, the Board does not control the timing of all steps in the permit application process. The 120 days begins when the City determines that an application is complete, and ends when the final decision on the application is made. For decisions under the Design Manual, the Hearing Examiner makes the final decision. Therefore, in order to meet the 120 day deadline, the City staff would have to ensure that the staff report was completed in time to issue prior to the Design Review Board's meeting, that the Board's meeting schedule could accommodate this application in a timely way, that the staff report on the underlying application was completed in time to issue prior to the Hearing Examiner's hearing, that adequate notice of the Hearing Examiner's hearing was provided, that the Hearing Examiner's hearing schedule could accommodate this application in a timely way, all so that the Hearing Examiner's decision would issue on or before expiration of the 120 day deadline. (See the discussion below and consider whether allowing the Board to vote on processing additional applications will further delay permit processing.)

If the applicant does not believe that the Board process is appropriate (because the applicant believes that the application strictly conforms to the general requirements of the Design Manual), how can the City force the applicant to satisfy his/her burden under the Board criteria for approval of applications?

Under GHMC 17.99.030(B), it is clear that the Board is required to make findings on two criteria in order to approve an application that does not conform to the specific requirements of the Design Manual. These are:

1. An alternative design represents an equivalent or superior design solution to what would otherwise be achieved by rigidly applying specific requirements, and
2. The alternative design meets the intent of each general requirement.

Normally, in order to obtain approval before the Board, the applicant has the burden of demonstrating that the above two criteria are met. If the Board is allowed to decide that the application must be reviewed by the Board under these two criteria, against the wishes of the applicant, then the applicant may not believe that he/she is required to demonstrate that the two criteria have been met. In other words, the applicant may argue that the application meets the general requirements of the Manual before the Board. However, the Board does not have jurisdiction to approve any application that conforms to the general requirements of the Manual.

The Board may then assume the applicant's burden of demonstrating whether the criteria are satisfied, based on the application itself. This type of procedure would be highly unusual – it is always the applicant's burden to demonstrate that a project permit application complies with the code and all other applicable requirements. Even if the Council believed that this unusual procedure was acceptable, it would create many other problems. First, it likely would require more work by the Board, thereby delaying processing of this application (and others waiting in line to be processed).

Second, the Board's decision on the application is only a recommendation. The Hearing Examiner holds a public record hearing on the application to consider the Board's recommendation. The applicant may ask the Examiner to totally disregard the Board's decision, because the applicant wants the Examiner to determine whether the application strictly conforms to the general requirements of the Design Manual. At that point, the Examiner may believe he is forced to do so, especially if the applicant did not include any evidence or argument in the record to satisfy the criteria supporting an approval by the Board. At that point, if the Examiner believed that the applicant was correct, the Examiner would be making what should have been the director's administrative design decision.

Will the Board's vote to force processing of applications by the Board cause additional delays in the Board's normal workload of applications?

Allowing the Board to vote on all submitted applications could cause additional timing problems. For example, during the Design Review Committee meetings, Chuck Hunter stated that many people were not interested in submitting applications that would be processed by the Board because they considered the Board process to be a "black hole." If the Board is given additional duties, such as review of all submitted applications, voting on applications that would not normally follow the

Board process, as well as crafting, review and approval of findings and conclusions to support the decision, this will delay the processing time for all other applications.

The Board may argue that they will independently review the submitted applications, and only vote in a meeting on the applications that they believe do not conform to the Manual. Keep in mind that the current draft of the amendment to GHMC 17.98.050 does not include a process for the Board to vote on these applications. It would have to be added to the code. Currently, the Board only makes a recommendation to the Hearing Examiner on applications, so it would be unusual to allow the Board to make a decision (not a recommendation) on the correct processing procedure for applications.

The Board's vote would have to be memorialized in a written decision. The written decision would have to be supported by findings and conclusions. The staff would have to draft these written findings and conclusions of the Board. After they have been drafted, the findings and conclusions would have to be brought back to the Board for their review and approval. All of this would take additional time from the processing of applications that would normally be slated for Board review.

Would the City have to allow a separate appeal of the Board's decision to force Board review of an application, and would this violate the state law prohibition on more than one open record hearing and one closed record hearing/appeal?

If an applicant initially chose the administrative process for his/her application, the applicant would very likely be opposed to the Board's decision that the application will follow the Board process. This opposition may be for many reasons. Perhaps the applicant does not want to go through a meeting before a Board, or the applicant perceives the Board process will take longer than the administrative process. The question is whether the City will allow an applicant to separately appeal the Board's decision, and who would decide the appeal. Allowing a separate appeal would substantially increase the processing time, and the applicant would face the delay associated with the appeal, even if he/she successfully overturned the Board's decision. (Another factor to consider is whether the Board's decisions will actually be drafted to withstand a challenge – adequate findings and conclusions cannot be drafted in a short period of time.)

State law requires the City to process project permit applications with one open record hearing and one closed record hearing. RCW 36.70B.060. In order to allow the Board to vote on the correct procedures, the Board would have to hold a meeting on the application to vote on the procedure. The findings and conclusions would be brought back to the Board for consideration in another meeting. Leaving aside the question of a separate appeal for a moment, consider that the Board would then hold another meeting on the application, to determine whether or not it should be approved. After this meeting, the Board holds another to consider its findings and

conclusions on the recommendation for the application. Then, the Hearing Examiner holds an open public hearing.

Although the public meeting process is not an open or closed public hearing subject to the prohibition in RCW 36.70B.060, requiring an unwilling applicant to have his/her application processed in two or more public meetings prior to the open record hearing may create an appeal issue. (I do not believe that the City is particularly vulnerable to a challenge on this issue under the current procedures, given that an applicant **chooses** this procedure as an alternative to the administrative process. Forcing the applicant to go through these public meetings as well as an open public hearing creates a different situation altogether.) An applicant may argue to a court that in reality, there was no difference between the Board's public meetings and an open public hearing, and that the City has circumvented the prohibition in RCW 36.70B.060 by simply calling public hearings "meetings." This argument might be strengthened by the City's addition of a separate appeal procedure for the Board's decision on the correct processing procedure.

The City could decide not to allow an independent appeal of the Board's decision, and instead require an appeal of the Board's decision to be folded into an appeal of the Board's recommendation on the underlying application. This means that the applicant would be required to unwillingly appear before the Board, obtain a recommendation from the Board on the application, and then appeal the processing procedure to the Hearing Examiner (and then to court). If the applicant is successful in his/her appeal of the Board's decision to require Board review, the question is whether the applicant would subsequently file a damage action against the City for requiring the applicant to erroneously follow a process not of his choosing, which added delays and additional costs to the proposed development. (Under RCW 64.40.020, owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency, which are arbitrary, capricious, unlawful or exceed lawful authority, *or relief from a failure to act within time limits established by law.*)

In sum, my recommendation is to reject the suggestion to amend the procedure to allow a Board vote to force an applicant to follow the Design Review Board process. My suggestion for amendment to the procedure is attached on the next page.

To be inserted the draft ordinance:

17.98.050 Design Review and project approval.

A. The applicant shall choose one of the following application review paths, based on whether or not the application strictly conforms to the specific design standards of chapter 17.99 GHMC.

B. A- A design review application for administrative approval shall ~~may be~~ processed by the director as long as it strictly conforms to the specific design standards of chapter 17.99 GHMC as follows:

1. Notice of application for the following types of development shall be forwarded to all members of the Design Review Board (DRB) pursuant to GHMC Section 19.02.004:

a. Non-residential development;

b. Multi-family residential development as defined in GHMC Section 17.04.290;

c. Planned Residential Development (PRD) as described in GHMC Chapter 17.89 and;

d. Public projects, except for normal maintenance and in-kind replacement.

2. The DRB members may independently review the application, which will be available at the Community Development Department. Individual DRB members may submit written comments to the director within two weeks after the date of the notice of application. If the individual DRB members identify design elements that they believe do not comply with the specific requirements of the Design Manual, they may advise the director in writing of this advisory opinion.

3. If the director receives written advisory opinions of the DRB members that certain design elements of an application do not comply with the specific requirements of the Design Manual, the director shall re-evaluate the decision whether the application should be processed administratively or through the Design Review Board process. If the director finds that the application should be processed through the Design Review Board process because not all elements strictly conform to the general requirements of the Manual, the director shall notify the applicant. The applicant may choose to amend the application or select the Design Review Board process for further processing of the application.



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June 27, 2005

HAND DELIVERED

City of Gig Harbor City Council
3510 Grandview Street
Gig Harbor, Washington 98335

Re: Ordinance No. 1003: Written Comments

Gentlemen:

The purpose of this letter is to provide written comments on Ordinance No. 1003, adopted on an emergency basis on May 31, 2005. Ordinance No. 1003 (the "Ordinance") establishes an emergency moratorium on the acceptance of applications for new development of non-residential structures or certain types of re-development of non-residential structures within the Waterfront Millville Zone. For reasons which follow, we believe the Ordinance violates state law and cannot be imposed in its present form.

Ordinance No. 1003 imposes an immediate moratorium on the acceptance of development applications for any "development activity" or "development permit" as defined in Gig Harbor Municipal Code § 19.14.010(24) and (26) for any non-residential structure in the Waterfront Millville (WM) Zone. The only exceptions are if (1) a permit application has been vested, i.e. "determined complete by City staff" and submitted to the City on or before the effective date of the Ordinance, or (2) unless the development is actually a remodel of an existing non-residential which would not increase the size of the existing structure. "Development or development activity" which is not a "non-residential structure" in the WM Zone is not subject to the terms of Ordinance No. 1003, as we read them.

Ordinance No. 1003 fails to vest permits for development activity in the WM Zone which were submitted before the effective date of the Ordinance, but not deemed "complete" by City staff on



or before the effective date of the law. We question whether the City has the authority under the vested rights doctrine to decline to vest applications which are not determined "complete" by City staff received before the effective date of the Ordinance. However, we limit our comments to the validity of the Ordinance itself.

The WM Zone includes a significant amount of property that is subject to the Shoreline Management Act, Chapter 90.58, RCW ("the SMA"). The WM Zone is designated as "urban" under the environmental designations of the City of Gig Harbor Shoreline Master Program ("the SMP"). Within the urban shoreline designation, the SMP explicitly provides for "commercial development." See SMP § 3.05. The term "commercial development" is defined as follows:

Those uses which are involved in wholesale and retail trade, business, or professions, along with accessory activities such as services, storage, and parking. For uses such as marinas, piers, industries, the commercial fishing industry and parking, see Policies and Regulations for the appropriate use activity category.

SMP 3.05, p. 15.

The SMP provides that commercial development is a permitted use within the WM Zone and the Urban SMP environmental designation. Commercial development, however, is subject to significant, and important policies. Most importantly, these include providing visual access to the water, including public view corridors, public paths and public viewing platforms. These policies are intended to open up the privately owned waterfront to members of the public, but also allow reasonable use and development of property.

Ordinance No. 1003 ostensibly is adopted pursuant to Growth Management Act, RCW 36.70A.390 ("the GMA"), and the Municipal Planning and Enabling Act, RCW 35A.63.220. However, the Ordinance regulates development within areas regulated by the SMA. In a recent decision issued by the Court of Appeals, Division II, *Biggers, et al v. City of Bainbridge Island*, the Court of Appeals, Division II, struck down a moratorium which prohibited the filing of development applications in areas regulated by the SMA, even though the City urged such authority existed under the GMA and the Planning Enabling Act. A copy of the *Biggers* decision is annexed hereto.

We see no basis upon which to distinguish the *Biggers* holding from the regulatory actions taken by the City of Gig Harbor when adopting Ordinance No. 1003. The Ordinance directly contravenes the holding in the *Biggers* case that the SMA does not allow for a moratorium on shoreline development. Therefore, its adoption and application to SMA jurisdictional areas is invalid. If the City of Gig Harbor desires to have a moratorium on development within the WM Zone, it must exempt from its moratorium those portions of the zone which are regulated by the SMA. Further, we suggest that if the City desires to enact an amended moratorium



ordinance, it vest any and all applications which were filed at the time the moratorium was enacted. Further, we suggest that the City Council give serious considerations to whether a moratorium is really required under the circumstances.

While the GMA does allow use of moratorium for those areas that are not subject to SMA jurisdiction, a moratorium must be "reasonable." Moratoriums, where authorized, are designed to preserve the status quo so that new plans and regulations will not be rendered moot by intervening development. *See Matson v. Clark County Bd. of Comm'rs*, 79 Wn. App. 641, 644, 904 P.2d 317 (1995). They are designed to be "emergency, temporary, and expedient" in nature. *Id.* An ordinance adopting a moratorium must not be "conclusory in nature;" it must contain specific facts and factually support conclusions that justify the determination that a moratorium is necessary. *Id.* at 650.

The ordinance appears to be an over-reaction to concerns regarding the size of commercial structures in the WM Zone. The City appears to desire to go down a road of significantly limiting the size of commercial structures, by including underground garages in the calculations of "gross floor areas," on the one hand, and limiting the size of commercial structures on the other. The inevitable result will be legal challenges, since the restrictions are such as to preclude commercially viable development. What seems lost in the recent flurry of new legislation is the benefits of new shoreline commercial development, which under the terms of the SMP must open up the shoreline to public view and access.

The laws should not mandate public view corridors at private expense by precluding reasonable development. Our State Supreme Court in the *Isla Verde* case has struck down 30% open space set asides as illegal exactions under Chapter 82.02, RCW. It appears that the current restrictions as to the size of commercial structures in the WM Zone combined with new definitions including underground garages, and other appurtenances, in the definition of "gross floor area" will result in open space view corridors that cannot be defended. Thank you for your attention to these comments.

Very truly yours,

Davis Wright Tremaine LLP


Dennis D. Reynolds

Enclosure

C

Court of Appeals of Washington,
Division 2.
Ray and Julie BIGGERS, husband and wife; Andy
Mueller d/b/a Mueller
Construction and Andy Mueller, individually; Craig
and Sandy Powell, d/b/a
Sealevel Bulkhead Builders; and Home Builders
Association of Kitsap County,
Respondents,
v.
CITY OF BAINBRIDGE ISLAND, Appellant.
No. 30752-9-II.

Dec. 21, 2004.

Background: Business owners and private citizens sued city, seeking declaratory judgment that ordinance imposing moratorium on certain shoreline development was invalid. Both sides moved for summary judgment on moratorium's validity, and the trial court granted plaintiffs' motion. City appealed.


Holdings: The Court of Appeals, Houghton, P.J., held that:

(1) construction companies had standing to sue for declaratory judgment, and

(2) city had no statutory authority to impose moratorium on shoreline development.


Affirmed.

West Headnotes

[1] Appeal and Error  893(1)
30k893(1) Most Cited Cases


[1] Appeal and Error  895(2)
30k895(2) Most Cited Cases


In reviewing an order granting summary judgment, the appellate court engages in de novo review, taking all facts and inferences in the light most favorable to the nonmoving party.

[2] Declaratory Judgment  300
118Ak300 Most Cited Cases


Two construction companies had standing to sue for a declaratory judgment to invalidate city ordinance imposing moratorium on shoreline development;

companies had interests within the ordinance ambit, inasmuch as the moratorium controlled their business opportunities, and moratorium caused harm that was not speculative or abstract, inasmuch as it affected companies' personal and business interests.


[3] Declaratory Judgment  292
118Ak292 Most Cited Cases

[3] Declaratory Judgment  313
118Ak313 Most Cited Cases

To claim standing in an action for declaratory judgment, a party must allege a justiciable controversy based on allegations of substantial, rather than speculative or abstract, personal harm.

[4] Declaratory Judgment  292
118Ak292 Most Cited Cases

Washington uses a two-part test to determine standing in a declaratory judgment action: first, the interest to be protected must arguably fall within the zone of interests to be protected or regulated by the statute, and second, the action challenged must have caused injury in fact.

[5] Declaratory Judgment  65
118Ak65 Most Cited Cases

In an action for declaratory judgment, a justiciable controversy is an actual and not hypothetical dispute.

[6] Declaratory Judgment  64
118Ak64 Most Cited Cases

In an action for declaratory judgment, a justiciable controversy exists if the parties have direct and substantial opposing interests in the dispute requiring a final and conclusive judicial determination.

[7] Zoning and Planning  86
414k86 Most Cited Cases

City had no statutory authority to impose moratorium on shoreline development; statutes relied on by city were limited to planning and zoning in code cities, and growth management, neither of which applied to shoreline management. West's RCWA 35A.63.220, 36.70A.390.

[8] Zoning and Planning  86
414k86 Most Cited Cases

City had no authority under Growth Management Act (GMA) to impose moratorium on shoreline

development; GMA specifically stated that Shoreline Management Act (SMA) took priority over the GMA, and SMA did not provide for moratoria on shoreline use or development. West's RCWA 36.70A.480.

[9] Costs 194.40

102k194.40 Most Cited Cases

Business owners and citizens who successfully sued city for declaratory judgment to invalidate ordinance that imposed a moratorium on shoreline development were entitled to attorney fees; action fell under statute providing for attorney fees in actions involving land use decisions. West's RCWA 4.84.370.

*245 Dawn Linette Findlay, Inslee Best Doezie & Ryder PS, Bellevue, WA, Stephanie Ellen Croll, Keating Bucklin & McCormack Inc PS, Seattle, WA, for Appellant.

Traci Lyn Shallbetter, Dennis Dean Reynolds, Davis Wright Tremaine LLP, Seattle, WA, for Respondents.

HOUGHTON, P.J.

The City of Bainbridge Island (City) appeals from a trial court order lifting its moratorium on certain shoreline development. We affirm.

FACTS

Forty-five miles of waterfront surround the City. Numerous homes and businesses sit along its shoreline and the area teems with wildlife.

In 1996, acting under the Shoreline Management Act of 1971 (SMA), the City adopted its Shoreline Management Master Program (SMP). At that time, City staff recommended to the City Council's Operations Committee that it place a "temporary nearshore moratorium for all applications for Shoreline Substantial Development Permits and Shoreline Substantial Development Exemptions until the adoption of a revised Shoreline Master Program and Critical Areas Ordinance in late August 2002." Clerk's Papers at 414. The City's SMP did not authorize imposing a moratorium on development and it allowed property owners to apply for permits to build piers, docks, floats, and bulkheads.

On August 22, 2001, the City enacted Ordinance No.2001-34, which imposed a moratorium through September 1, 2002, to preserve the status quo. On October 10, 2001, after holding public hearings and acting under RCW 35A.63.220 and RCW 37.70.390, the City enacted Ordinance No.2001-45, which

placed a restriction on applications for new overwater construction (piers, docks, floats) and new shoreline armoring (bulkheads and revetments) because these structures had the "greatest potential to impact shoreline habitat." CP at 19.

Business owners and private citizens [FN1] (Citizens) sued for a declaratory judgment invalidating *246 Ordinance No.2001-45. On August 14, 2002, after a public hearing, the City enacted Ordinance No.2002-29 and extended the moratorium through March 1, 2003. In response, the Citizens amended their complaint to include Ordinance No.2002-29. [FN2]

FN1. The plaintiffs include Ray and Julie Biggers; Andy Mueller d/b/a Mueller Construction; Craig and Sandy Powell d/b/a Sealevel Bulkhead Builders, Inc.; and Home Builders Association of Kitsap County.

FN2. In February 2003, the City adopted Ordinance No.2003-13 and extended the moratorium through September 1, 2003. In August 2003, the City adopted ordinance No.2003-34 and extended the moratorium until March 1, 2004. The record before us does not indicate a further extension. But neither party raises mootness, and we address the issues before us.

Both sides moved for summary judgment on the moratorium's validity. The trial court issued a memorandum decision in which it determined that: (1) the moratorium was not valid as a de facto amendment to the City's SMP; (2) the City did not have implied authority to impose the moratorium under the SMA; and (3) even if the City had implied authority, its moratorium was invalid because it was an unconstitutional violation of Washington Constitution article XI, section 11 as a local law in conflict with the state's general laws. The trial court entered an order granting the Citizens' motion and the City appeals.

ANALYSIS

[1] In reviewing an order granting summary judgment, we engage in de novo review, taking all facts and inferences in the light most favorable to the nonmoving party. Boag v. Farmer's Ins. Co., 117 Wash.App. 116, 121, 69 P.3d 370 (2003).

We begin by noting that shoreline development commenced after June 1, 1971, must conform with

the SMA and local government shoreline master programs. [FN3] Buechel v. Dep't of Ecology, 125 Wash.2d 196, 203, 884 P.2d 910 (1994); Bellevue Farm Owners Ass'n v. State of Wash. Shorelines Hearings Bd., 100 Wash.App. 341, 350, 997 P.2d 380, review denied, 142 Wash.2d 1014, 16 P.3d 1265 (2000). The SMA seeks to protect fragile shorelines through appropriate utilization, protection, restoration, and preservation. RCW 90.58.020; Bellevue Farm Owners Ass'n, 100 Wash.App. at 350, 997 P.2d 380. We construe the SMA broadly to serve its underlying purpose of protecting and fostering proper use. RCW 90.58.020; Bellevue Farm Owners Ass'n, 100 Wash.App. at 350, 997 P.2d 380 (quoting RCW 90.58.020).

[FN3]. The SMA regulatory scheme requires that all local governments prepare an SMP for their shorelines. RCW 90.58.080(2).

Standing

[2] The City first contends that two of the Citizens lack standing and their claims must be dismissed. The City asserts that the moratorium ordinances do not directly affect Sealevel Bulkhead Builders, Inc. or Home Builders Association of Kitsap County (HBA) and that they cannot seek a declaratory judgment. [FN4]

[FN4]. Sealevel Bulkhead Builders, Inc. is a family-owned company based in Kingston. It primarily constructs single-family protective bulkheads, piers, docks, and other shoreline amenities. A substantial component of its business occurs within the City. HBA, an approximately 500-member Washington nonprofit corporation, comprises individuals and businesses that engage in Kitsap County land development. HBA seeks to ensure the proper implementation of laws relating to Kitsap County real property development, including development within the City. HBA implements that objective by directly participating in the public decision-making process through its officers, employees, and members.

[3] The Citizens sought a declaratory judgment regarding the validity of the ordinance. The Uniform Declaratory Judgments Act allows a party to ask the court to determine an enactment's authority. Chapter 7.24 RCW; Superior Asphalt & Concrete Co. v. Dep't of Labor & Indus., 121 Wash.App. 601, 605, 89 P.3d 316 (2004). To claim standing, a party must

allege a justiciable controversy based on allegations of substantial, rather than speculative or abstract, personal harm. Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wash.2d 791, 802, 83 P.3d 419 (2004); Superior Asphalt, 121 Wash.App. at 605-06, 89 P.3d 316.

[4] Washington uses a two-part test to determine standing in a declaratory judgment action. *247Grant County Fire Prot. Dist., 150 Wash.2d at 802, 83 P.3d 419. First, the interest to be protected must arguably fall within "the zone of interests to be protected or regulated by the statute" Grant County Fire Prot. Dist., 150 Wash.2d at 802, 83 P.3d 419 (citation omitted). Second, the action challenged must have caused "injury in fact." Grant County Fire Prot. Dist., 150 Wash.2d at 802, 83 P.3d 419; Save a Valuable Environment (SAVE) v. City of Bothell, 89 Wash.2d 862, 866-67, 576 P.2d 401 (1978).

[5][6] A justiciable controversy is an actual and not hypothetical dispute. Superior Asphalt, 121 Wash.App. at 606, 89 P.3d 316. A justiciable controversy exists if the parties have direct and substantial opposing interests in the dispute requiring a final and conclusive judicial determination. Superior Asphalt, 121 Wash.App. at 606, 89 P.3d 316.

Applying these criteria here, we first ask whether Sealevel and HBA have interests within the ordinance ambit. We agree that they do. The SMP protects the City's shoreline development. The City passed the moratorium intending to evaluate its shoreline development in order to plan for and prevent further shoreline deterioration. Thus, the moratorium seeks to protect the City's shoreline as required by the SMA. As such, the moratorium controls Sealevel's and HBA's island-based business opportunities.

Next, we must ask whether the moratorium causes Sealevel and HBA harm that is not speculative or abstract. SAVE, 89 Wash.2d at 866, 576 P.2d 401. Both Sealevel and HBA engage in land development and shoreline construction in the City. The record indicates that many HBA members, individually and collectively, will be specifically and perceptibly affected by the moratorium as it affects their personal and business interests. Under these legal tests, Sealevel and HBA have standing. [FN5]

[FN5]. Moreover, HBA has standing under Washington's "association" three-prong test. That is: (1) its members would otherwise

have standing to sue in their own right, (2) the interests that the organization seeks to protect are germane to its purpose, and (3) neither the claims asserted nor the relief requested require the participation of the organizations individual members. Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wash.2d 207, 213-14, 45 P.3d 186 (2002).

Validity of the Moratorium

[7] The City contends that the trial court erred in deciding that the City had no express or implied authority to impose the moratorium and that the moratorium conflicts with the state's general laws in violation of our state constitution. It asserts that RCW 35A.63.220 and RCW 36.70A.390 grant it broad authority to impose the moratorium.

A city exists and derives its authority and power from the state constitution and the legislature. "It has neither existence nor power apart from its creator, the legislature, except such rights as may be granted to municipal corporations by the state constitution." City of Spokane v. J-R Distrib., Inc., 90 Wash.2d 722, 726, 585 P.2d 784 (1978).

The City argues that it retains broad authority to impose a moratorium ordinance under RCW 35A.63.220 and RCW 36.70A.390. [FN6] We disagree.

FN6. As clearly expressed in the titles, chapter 35A.63 RCW regulates planning and zoning in code cities, and chapter 36.70A RCW regulates growth management of selected counties and cities. RCW 35A.63.220 and RCW 36.70A.390 apply to moratoria as interim zoning controls within their respective chapters.

RCW 35A.63.220 provides:

A legislative body that adopts a moratorium ... without holding a public hearing on the proposed moratorium ... shall hold a public hearing on the adopted moratorium ... within at least sixty days of its adoption, whether or not the legislative body received a recommendation on the matter from the planning agency. If the legislative body does not adopt findings of fact justifying its action before this hearing, then the legislative body shall do so immediately after this public hearing. A moratorium ... adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is

developed for related studies providing for such a longer period. *248 A moratorium ... may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

The moratorium authority derived from RCW 35A.63.220 is limited to planning and zoning in code cities. It does not grant the City authority in this case because ordinances involving shoreline master programs and shoreline management regulations do not fall within the definition of zoning. Sammamish Community Council v. City of Bellevue, 108 Wash.App. 46, 55 n. 2, 29 P.3d 728 (2001), review denied, 145 Wash.2d 1037, 43 P.3d 21 (2002).

Similarly, RCW 36.70A.390 provides:

A county or city governing body that adopts a moratorium ... without holding a public hearing on the proposed moratorium ... shall hold a public hearing on the adopted moratorium ... within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium ... adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium ... may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

RCW 36.70A.390 is limited to growth management in selected counties and cities; it does not apply to shoreline management. Thus, neither statute grants the authority the City describes and its argument to the contrary fails. [FN7]

FN7. The City also argues that chapter 35A.63 RCW, Planning and Zoning in Code Cities, provides it further authority to enact the moratorium ordinances. Because we may affirm the trial court's order on summary judgment on any ground raised before it, we do not address this argument. Piper v. Dept. of Labor Indus., 120 Wash.App. 886, 890, 86 P.3d 1231 (2004) (an appellate court may affirm a trial court on any theory supported by the record), (citing LaMon v. Butler, 112 Wash.2d 193,

200- 01, 770 P.2d 1027 (1989)).

footnote 6.

[8] The City further argues that Growth Management Act (GMA) applies to shoreline development, to the exclusion of the SMA or the City's SMP. Again, we disagree.

The GMA refers to the SMA and provides in part:

(1) For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.

(3) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105. [FN8]]

FN8. Section (3) of RCW 36.70A.480 was added in 2003, but this change does not affect our analysis here.

RCW 36.70A.480.

Thus, the GMA states that the provisions of chapter 90.58 RCW take priority over the GMA as long as the provisions are internally consistent with a few specific statutes, none of which apply under these facts. The GMA clearly specifies that chapter 90.58 RCW (the *249 SMA) governs the unique criteria for shoreline development. In other words, the SMA trumps the GMA in this area, and the SMA does not provide for moratoria on shoreline use or development. The City's argument fails. [FN9]

FN9. We do not address the City's other arguments based on trial court error. See

Attorney Fees

[9] The Citizens seek attorney fees on appeal under RCW 4.84.370. That statute provides for awarding fees to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision.

RCW 4.84.370(1).

Here, although the Citizens appealed for a land use decision, it was a land development moratorium and not a land use decision similar to those specified in the statute. We deny the Citizens' request for an award of attorney fees and costs.

Affirmed.

We concur: BRIDGEWATER and ARMSTRONG, JJ.

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