

Gig Harbor City Council Meeting

**January 12, 2004
7:00 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
January 12, 2004 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

SWEARING IN CEREMONY: Councilmembers Bob Dick, Jim Franich and Paul Conan.

PUBLIC HEARING:

Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs.

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 December 8, 2003.
2. Correspondence:
 - a) Letter from Rep. Lois McMahan in Support of Hospital.
 - b) Letter from Rep. Pat Lantz regarding Narrows Bridge Project.
3. Amendments to City Council Minutes of June 9, 2003.
4. Communications Maintenance Contract.
5. Appointment to Council Committees.
6. Lobbyist Contract.
7. Pioneer Way Watermain Replacement Project – Bid Award.
8. Canterwood Sewer Request.
9. Sanitary Sewer Facilities Maintenance Agreement – 3519 56th St. Professionals, LLC.
10. Liquor License Renewal: El Pueblito Restaurant.
11. Approval of Payment of Bills for December 22, 2003.
Checks #41940 through #42072 in the amount of \$301,284.75.
12. Payment of Bills for January 12, 2004.
Checks #42073 through #42195 in the amount of \$354,183.43.
13. Approval of payroll for the month of December.
Checks #2960 through #3006 and direct deposit entries in the amount of \$239,439.90.

OLD BUSINESS:

1. Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs.
2. Second Reading of Ordinance Deleting Reference to Signs in the Non-Conforming Use Chapter (first reading 11/24/03).
3. Second Reading of Ordinance – Calculation of Density in Residential Zones.

NEW BUSINESS:

1. First Reading of Ordinance – Performance Based Height Exemptions and Height Exceptions.
2. Peninsula Recreation Center Field Development – Interlocal Agreement.
3. First Reading of Ordinance – Relating to Annexation and Zoning (Hazen Annexation).
4. Well #6 Susceptibility Assessment – Consultant Services Contract.

STAFF REPORT:

1. GHPD – November Stats.
2. John Vodopich, Director of Community Development - View Protection and Trees.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

EXECUTIVE SESSION: For the purpose of discussing potential litigation per RCW 42.30.110(1)(i) and property acquisition per RCW 42.30.110(1)(b).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF DECEMBER 8, 2003

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

CALL TO ORDER: 7:03 p.m.

PLEDGE OF ALLEGIANCE:

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 November 24, 2003.
2. Correspondence: letters from: Association of Washington Cities, Department of the Army, and Comcast.
3. Contract Amendment No. 2 – 56th Street / Olympic Drive Street Improvement Project.
4. Stormwater Facilities Maintenance Agreement – 3519 56th Street Professionals LLC.
5. Liquor License Applications: The Green Turtle, Isamira Gourmet Cheese & Wine.
6. Liquor License Renewals: Gourmet Essentials, Harbor Arco AM/PM, Harbor Inn.
7. Approval of Payment of Bills for December 8, 2003.
Checks #41854 through #41939 in the amount of \$1,382,851.66.
8. Approval of payroll for the month of November.
Checks #2914 through #2959 and direct deposit entries in the amount of \$231,055.80.

MOTION: Move to approve the consent agenda as presented.
Picinich / Ruffo – unanimously approved.

OLD BUSINESS:

1. Second Reading or Ordinance – Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs. Steve Osguthorpe, Planning / Building Manager, explained that what is being presented is a different approach to the signage issue. Using a PowerPoint presentation to provide background and to illustrate the different options, Mr. Osguthorpe explained how the proposal currently before Council compares to what had previously been discussed and the existing city codes.

Steve explained that the revised proposal includes three options to allow flexibility. He explained that this ordinance includes some changes that are supported by staff and Courtesy Ford, changes proposed by Ford that are not supported by staff, and changes proposed by staff that come closer to meeting the intent of the current goals and policies in the Comp Plan and City Code. He added that staff believes that the current code fully achieves what the current Comp Plan, Design Manual, and other portions of

the Zoning Code set out to achieve. Steve gave an overview of each of the options contained in the proposed ordinance and answered Council's questions.

Steve asked for direction on how to proceed. He explained that consideration of the newly proposed ordinance would require another public hearing which could be held by either the Planning Commission, or by the City Council. He said that Council would also need to identify which options should be considered during the public hearing.

Richard Settle – Attorney for Courtesy Ford. Mr. Settle complimented Mr. Osguthorpe on the presentation, adding that it was a fair representation of the alternatives. He continued to say that he thought that significant progress had been made in negotiation, but unfortunately they were unable to reach an agreement on all aspects. He reiterated that his client's minimum need to retain the taller freestanding sign and one lower freestanding sign for the pre-owned vehicles in order to continue in business. Mr. Settle continued to give an explanation of the negotiations that resulted in the proposed ordinance before Council for consideration.

Councilmember Franich said that he thought the present sign code was an asset to the community, then continued to explain that he would like to see something simple when dealing with non-conforming signs that would allow a business to make changes as long as the sign does not become more non-conforming.

Councilmember Owel commented that this area of the city is not very attractive due to the amount of pole structures. She recommended that the applicant ought to consider the height at which a sign be most visible to the driver on the highway, which may be lower than the signs that already exist.

Councilmember Ruffo agreed, adding that it would take more than just Courtesy Ford to address the issue of the rest of the signs and light poles along that stretch. He said that he is looking for a solution similar to Councilmember Franich; something simple that would allow a business owner to make changes. He said that both sides have proposed something better than what currently exists, and it should be a simple thing to implement. Councilmember Ruffo acknowledged that it could set precedent, and that the consequences of precedent need to be taking into consideration, but if someone else comes forward with a similar proposal that improves the aesthetics of their location, it too should be considered because it is an improvement. He added that if the proposed ordinance must have a public hearing due to the legal ramifications, then Council should hold the hearing.

Councilmember Dick said that he appreciates the work that has gone into the proposed ordinance to address ways to reduce non-conformity. He then encouraged the use of the Planning Commission to hold the public hearing process to synthesize the information and make recommendations to Council.

Councilmember Young recommended asking the Planning Commission to take a look at whether pole signs should be allowed in certain areas of the city. He voiced his concern

that if non-conforming signs are allowed to continue, then it would set a precedent that would provide competitive disadvantage to a new business or a business that has moved to a new location.

Councilmember Dick brought attention to item 'E' of the proposal that would only allow for a one-time change to a non-conforming sign.

Councilmember Franich and Young discussed the merits of allowing non-conformity to continue and whether it would be more desirous to change the code to allow a non-conforming sign or a non-conforming building to exist legally.

Councilmember Ruffo said that Council needs to use common sense and make exceptions to accommodate a proposal that makes an improvement. He said that sending the issue back to the Planning Commission would take longer and that he thought Council should be able to make a code revision that would address all similar situations.

MOTION: Move that we follow the staff recommendation and we schedule a public hearing to be held by the Planning Commission.
Owel / Dick –

Council, staff members and Carol Morris all discussed the timing of sending this back to the Planning Commission and the fact that they had made a recommendation to deny any text amendments. Councilmember Ruffo called for the question.

RESTATED MOTION: Move that we follow the staff recommendation and we schedule a public hearing to be held by the Planning Commission.
Owel / Dick – a roll call vote was taken with the following results:

Young, no; Franich, no; Owel, yes; Dick, yes; Picinich, no; and Ruffo, no.

The motion failed four to two. The following motion was made to set a date for Council to hold a public hearing.

MOTION: Move that Council hold a public hearing at the first meeting in January.
Ruffo / Dick – unanimously approved.

POINT OF ORDER: Councilmember Dick asked John Vodopich, Community Development Director, whether comments would be required before the ordinance was sent to the state for consideration. Mr. Vodopich assured Councilmembers that it was highly unlikely that there would be any comments from the state on this issue and it would be okay to move forward with the public hearing at the same time the proposal

was submitted to the state. Councilmember Dick then asked what version would be considered during the public hearing.

Carol Morris, Legal Counsel, explained that it would be this version, with the various options. Council would then decide after the public comments which paragraph to adopt.

Richard Settle. Mr. Settle explained that his client is running out of time and recommended that Council allow all versions of text amendments to be available to the public for comment.

John Vodopich said that the first three versions had already been transmitted to the state for comment, so this was an option if Council wished. Councilmembers Franich and Ruffo agreed that this would be a good idea.

2. Second Reading of Ordinance – Hollycroft Rezone (REZ 00-01). John Vodopich, Community Development Director, presented this proposed rezone from B-1 to RB-2 to allow for professional offices. He said that the rezone was approved by the Hearing Examiner in March of 2001 for approximately 2.4 acres of property at the intersection of Hollycroft and Olympic Drive.

MOTION: Move to adopt Ordinance No. 948 adopting the Hollycroft Rezone. Dick / Ruffo - unanimously approved.

Carol Morris asked for clarification on the sign proposal and whether all proposals were to come back in January.

MOTION: Move to bring back all seven options. Young / Ruffo – three voted yes. Councilmember Dick and Owei voted no. The motion carried.

NEW BUSINESS:

1. Building Size Analysis Presentation – Final Report. John Vodopich introduced John Hoffman, Perteet Engineering, Inc., who summarized his comprehensive review of the issue of building size limitations. Mr. Perteet explained that he enjoyed working on this project with the task force comprised of staff, Planning Commission members, and Councilmembers. He gave an overview of the recommendations for each zone, and answered questions.

Dave Morris – 6018 106th Ave NW. Mr. Morris explained that he was very supportive of the Council's decision to bring in a professional to analyze the building size limitation issue. He then requested that properties located in the Urban Growth Area also be considered if changes were to be made to the B-2 zones within the city limits.

Evie Lynn – 10321 Rosedale Bay. Ms. Lynn said that she thought the city was a bit short-sited in setting arbitrary limitations on building size that may have a negative affect on future development. She said that there is a good design review process in place and a great Planning Commission, and every development should be judged on its own merits, its own location and its own size. She asked Council to trust the Design Review Board and Planning Commission to evaluate each development on its own merits.

Dave Orem – Gig Harbor Motor Inn. Mr. Orem said he is the owner of property adjacent to that owned by Evie Lynn, and said that he echoed her comments. He said that he was pleased at the amount of attention given to the B-2 zoning designation. He pointed out that the recommendation bases the need for a 65,000 square foot building to house a grocery store to keep them competitive. He asked if Costco is imminent, what the possibility that a new grocery would be coming to town. He asked for consideration to something other than a grocery store that might require more than 65,000 square feet.

Carl Halsan – 7766 52nd Place. Mr. Halsan asked for clarification if the 3,500 square foot limit applies to houses. His second question is whether the PUD process is still available in the B-2 zone. He then thanked Council for bringing in a consultant and asked where the process goes from here.

Mark Hoppen, City Administrator, explained that the PUD process is still available but the 65,000 square foot limitation is absolute. Councilmember Young explained that the reason for this is that it puts the redeveloped properties at a disadvantage because they were unable to achieve the same credits as an undeveloped property.

John Vodopich explained that no action was required and that a written report by Mr. Hoffman would be distributed to Council. This will come back to Council as a discussion item and to ask for guidance as to which recommendations would go through the public hearing process.

Nick Tarabochia – 8021 Shirley Avenue. Mr. Tarabochia said that he would like to see the 3,500 square foot limit on the Waterfront Millville addressed in the future. He said that he agreed with the other comments about building size limitations. He asked if Council could have one more vote so that Councilmember Owe! could finish with on a positive note.

Dawn Stanton – 111 Raft Island. Ms. Stanton asked about the recommendation to change the Waterfront Commercial to Waterfront Millville and the boundaries of this change. Councilmember Franich explained that the change in boundary would be from Wild Birds to the Lovrovich Netshed. John Vodopich explained that the change would still allow the more traditional marine uses such as commercial fishing.

Councilmember Young thanked Mr. Hoffman for the presentation and the outside expertise. He also thanked Planning Commissioners Dick Allen, Paul Kadzik, Councilmember Elect Paul Conan, and all the others who participated on the committee helping to craft the report.

2. Resolution – Adopting an Employee and Volunteer Recognition Program. Mark Hoppen, City Administrator, explained that this is a housekeeping personnel policy that provides for common recognition awards. He explained that it references state statute that sets a \$200 limit for costs related to such purchases.

MOTION: Move to adopt Resolution No. 619 adopting an Employee and Volunteer Recognition Program.
Ruffo / Owel - unanimously approved.

STAFF REPORTS:

City Administrator Mark Hoppen asked Council for direction related to the 2004 objective to find lobbyist services. He explained that in his initial discussion with lobbyist, Tim Shellberg, he came up with a scheme that is a little bit broader than what had been envisioned with the \$10,000 allocation for an on-call lobbyist. Shellberg recommended a \$30,000 stipend, which appears to be a large amount, until you look at the list of tasks that are available. These include an office in Washington D.C. and the possibility of obtaining federal grant money for things like renovation of historical buildings. Mr. Hoppen offered to draft a contract if Council so wished.

Councilmember Young said that when he saw the concept, he was interested because it is different than what they first discussed. He recommended that Councilmembers at least take a look at it.

Councilmember Franich said that he has complete faith in staff to handle any grant needs that the city may have.

Mr. Hoppen then discussed the purchase of the Westside Park. He explained that all the conditions of the purchase and sale agreement had been met with the exception of a title report to cover the value of the property. The appraisal exceeded the purchase price in the agreement. The wetlands located on the property has been identified as 10,000 square feet as opposed to the initial estimate of 50,000 square feet, and that allowed the costs to be consistent with the purchase and sale agreement. The environmental review has no conditions, which means that the 5.5 acres is available for purchase for the price of \$758,000.

MOTION: Move to authorize the City Administrator to proceed as recommended.
Dick / Ruffo – five voted in favor. Councilmember Franich abstained.

Mark Hoppen mentioned a letter sent to Council last week from Doug Sorensen, who was present in the audience, offering his property on a long-term basis. Mr. Hoppen said that if Council would like to consider the offer, it would be appropriate to let Mr. Sorensen know. If Council is interested, the first step would be to include the property

within the Parks, Recreation and Open Space plan. Councilmember Young said that he thought it was an interesting piece of property, and he would like to explore the possibilities. Councilmember Ruffo agreed.

GHPD – October Stats. Chief Mitch Barker explained that this would be his last staff report before leaving for Vancouver. He said that he has been reflecting on tonight's agenda and jokingly said that when he first came to work in 1995, the agenda items were the sign code, building size, and design review.

Chief Barker said that it has been wonderful working with this Council. He continued to thank Council on behalf of the Department for their support over the years, adding that that it has been a wonderful experience.

Councilmembers all voiced their thanks, and praised Chief Barker for a job well done.

PUBLIC COMMENT:

Keith Hamilton – 3502 Grandview Street. Mr. Hamilton thanked Council for the opportunity to view concerns regarding views. He mentioned the article in the Gateway, and asked for the opportunity to join in any effort to come to a solution.

Charlene Sandoval – 8033 Bayridge Avenue. Ms. Sandoval echoed Mr. Hamilton's comments, adding that she wanted to assure that their concerns are being addressed and that the city will follow through to come to a resolution.

Dawn Stanton – 111 Raft Island. Ms. Stanton referred to a letter from the Washington State Office of Archaeology and Historic Preservation. She read several of the recommendations stressing a conservative management of both the Skansie and Wilkinson properties. She voiced her concern that changes were being made to structures on these properties without the proper consultation with a historic preservationist. Ms. Stanton stressed the importance of the Skansie property as an historic landscape, adding that the Ad Hoc Committee would like to continue working on these properties.

Mark Hoppen explained that Dave Brereton, Director of Operations, is in contact with the state and consults them before making changes. Councilmember Ruffo directed Mr. Hoppen to draft a request for proposal for an historic preservationist, with a scope of work that would include community outreach. This will be brought back at the next meeting for consideration.

Nick Tarabochia. Mr. Tarabochia said that a complete inventory of what is located at the Skansie property should be done. He added that members of the Fisherman's Club should be included on the committee for the Skansie property. He then said that he lives on Shirley Avenue and agrees with comments made by Charlene Sandoval that something should be done.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Owel said that she would like to let the citizens of Gig Harbor know that it has been an honor to serve them on the City Council, and that she is proud of the things that this community has achieved and has been able to prevent. She continued to say that it has been a pleasure to serve with the other Councilmembers, and that all of those who have volunteered at one time or another should congratulate themselves on the fine service that they give.

Mayor Wilbert presented Councilmember Owel with a plaque in appreciation of her dedication and service.

The other Councilmembers took turns voicing their appreciation for all that Councilmember Owel has contributed over the years. She said that she will enjoy remaining active and will come and speak on the issues during the public comment period.

ANNOUNCEMENT OF OTHER MEETINGS:

Going away ceremony for Chief Barker, Friday, 4:30 p.m. at the Civic Center.

EXECUTIVE SESSION: For the purpose of discussing property acquisition per RCW 42.30.110(1)(b) and pending litigation per RCW 42.30.110(1)(i).

MOTION: Move to adjourn to Executive Session for approximately thirty minutes at 9:42 p.m. for the purpose of discussion pending and potential litigation.
Picinich Ruffo - unanimously approved.

MOTION: Move to return to regular session at 10:15 p.m.
Ruffo / Owel – unanimously approved.

MOTION: Move to adjourn at 10:15 p.m.
Ruffo / Ekberg – unanimously approved.

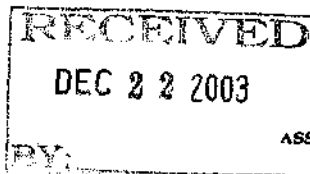
CD recorder utilized:
Disc #1 Tracks 1 – 14.
Disc #2 Tracks 1 – 18.

Gretchen Wilbert, Mayor

Molly Towslee, City Clerk

STATE REPRESENTATIVE
26th DISTRICT
LOIS McMAHAN
ASSISTANT REPUBLICAN WHIP
December 17, 2003

State of
Washington
House of
Representatives



EDUCATION
JUDICIARY
ASSISTANT RANKING MEMBER
TECHNOLOGY,
TELECOMMUNICATIONS & ENERGY



Karen Nidermayer
Certificate of Need Program
Department of Health
PO Box 47852
Olympia, WA 98504-7852

Dear Karen:

I am writing this letter in support of the Franciscan Health System which has submitted a Certificate of Need request to the Washington State Department of Health for approval of plans to build a 112-bed community hospital in Gig Harbor.

Gig Harbor is one of the state's largest populations without a hospital. It would greatly benefit this area to have medical and surgical beds close to home to serve our local communities. Thousands of our citizens are forced to travel out of the area to receive needed care.

Anyone following construction of the second Narrows Bridge is aware of the challenges we face when an accident occurs on the bridge, sometimes causing the need for emergency assistance and often taking 90 minutes or more for the responders to arrive during the rush hour. It can also take 20-30 minutes just to transport an emergency case to Tacoma not related to the bridge.

Several years ago when my mother-in-law was undergoing radiation treatments for throat cancer, our family drove her to a hospital in Tacoma five days per week. Some days the bridge situation made it difficult for her to make those appointments. We often wished there was a facility in Gig Harbor where her needs could be met.

We have a need for additional hospital beds in the region and a 112-bed community hospital in Gig Harbor will meet those needs. By adding hospital beds in the Gig Harbor community where they are critically needed, we free up beds at St. Joseph Hospital to meet the needs of our growing community. I ask your favorable consideration in support of this application.

Sincerely,

Lois McMahan
State Representative
26th Legislative District

COPY

cc: The Honorable Mary C. Selecky, Secretary, Department of Health
Joseph Wilczek, President & Chief Executive Officer, Franciscan Health System
Budd Wagner, Vice President, Marketing and Communications, FHS
✓ Mayor Gretchen Wilbert, Mayor, City of Gig Harbor
Mark Hoppen, City Administrator, City of Gig Harbor
Key Peninsula Business Association

LEGISLATIVE OFFICE: 423 JOHN L. O'BRIEN BUILDING, PO BOX 40600, OLYMPIA, WA 98504-0600 • 360-786-7802

E-MAIL: mcmahan_lo@leg.wa.gov

TOLL-FREE LEGISLATIVE HOTLINE: 1-800-562-6000 • TDD: 1-800-635-9993

DISTRICT OFFICE: 6625 WAGNER WAY, STE. 208, GIG HARBOR, WA 98335 • 253-851-LOIS

PRINTED ON RECYCLED PAPER

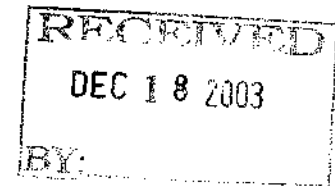


**Washington State
Department of Transportation**
Douglas B. MacDonald
Secretary of Transportation

Olympic Region
Tacoma Narrows Bridge Office
3214 50th Street Court NW, Suite 302
Gig Harbor, WA 98335-8583
253-564-4640 / Fax 253-534-4679
TTY: 1-800-833-6388
www.wsdot.wa.gov

December 12, 2003

Patricia Lantz
State Representative
333 John L. O'Brien Building
Olympia, WA 98504-0600



Re: C-6441 Tacoma Narrows Bridge Project
Enhanced Landscaping Plans

Dear Representative Lantz:

At our October 2 meeting with you and City of Gig Harbor representatives, we promised to develop enhanced plans for landscaping and the toll administrative building. Enclosed for your review and comment is a proposed revised landscaping plan. We believe we have captured the appropriate enhancements in this plan discussed at that meeting. This revised plan highlights a corridor perspective and includes prevailing tree spacing of 20 feet and tree heights of 3-feet to 4-feet at the time of planting. Additional details will be worked out as WSDOT develops plans for a project change order. If our revised plan is acceptable to you, we will forward it to Tacoma Narrows Constructors (TNC) for pricing and incorporation into the project.

Our recommendation on tree height and spacing is based on the extensive experience of our landscape architect, Bob Barnes. His experience is that this spacing and plant height optimizes cost-effectiveness and plant survivability. All areas including trees also include shrubs that are planted four feet apart.

Our enhanced landscape plan also includes several areas where WSDOT has worked with specific communities to address their landscaping concerns. For example, WSDOT and TNC have worked with the 35th Street NW community to adjust plant types and spacing to respond to their concerns and reflect our agreement with that community. We also plan to enhance landscaping near the north end of the Performance Golf property to help reduce glare from the golf property's lights on highway drivers and increase motorist safety.

As regards the toll administrative building enhancements, we are moving forward on action items discussed at our October meeting. The roof pitch of the building is now designed at 1/12, meaning for every 12 horizontal feet of roof, it increases in vertical

Representative Lantz
December 12, 2003
Page 2 of 2

height by one foot. We will ask TNC to provide a revised price for a 4/12 roof (increasing the vertical height by four feet rather than one). We will also request the blocks be a split-faced material as suggested in the City of Gig Harbor's letter. The color scheme that was specified in the Design Build Contract was gray on the concrete elements, with gray green for the roof elements. We believe this meets the intent of earth tone colors as suggested by the City of Gig Harbor.

I hope to have an architectural rendering of both the administrative building and toll plaza in the very near future so we can continue discussions on building aesthetics. As soon as these drawings are available, I will contact you and City's representatives to establish a meeting for review and further actions.

We've also reviewed fencing plans. As discussed at the meeting, we will ask that fencing along the walkway in the vicinity of the 24th Street NW interchange be upgraded to include a black vinyl coating. The fence supports are integral to the roof design and we have not yet determined if changes to the support system are reasonable.

You may be interested to hear that we are in the process of hiring a consultant to help facilitate the community planning exercise for future development of the Narrows Gate property. We expect to schedule preparatory meetings with you, staff, and City and County representatives after the first of the year. Our plan is to schedule our first facilitated open community planning sessions by late spring. These planning sessions will be a good opportunity to incorporate discussions and ideas regarding "Indian Creek" type development designs.

If you have any questions concerning this information, or would like to schedule a meeting to discuss it in more detail, please call me at 253-534-4642.

Sincerely,



Linea Laird
TNB Project Manager

lkl:

cc: Mark Hoppen
Rob White
Terry Lee

File:
Letter: 00308

TACOMA NARROWS BRIDGE PROJECT
 GIG HARBOR SIDE
 PROPOSED ENHANCED LANDSCAPING

Legend

ENHANCED TREE & SHRUB GIG HARBOR SIDE

COMMON NAME	PERCENTAGE	SIZE	SPACING
TREES			
DOUGLAS FIR	40	3-4'	20 FEET ON CENTER
JAPANESE BLACK PINE	10	3-4'	20 FEET ON CENTER
INCENSE CEDAR	5	3-4'	20 FEET ON CENTER
PATMORE ASH	5	4-5'	20 FEET ON CENTER
CANADIAN SERVICEBERRY	15	3-4'	20 FEET ON CENTER
AMUR MAPLE	15	3-4'	20 FEET ON CENTER
BEAKED HAZELNUT	10	3-4'	20 FEET ON CENTER
	100		
SHRUBS			
OREGON GRAPE	20	10-12"	4 FEET ON CENTER
FRAGRANT SUMAC	20	12-18"	4 FEET ON CENTER
BLACK CHOKEBERRY	20	12-18"	4 FEET ON CENTER
NOOTKA ROSE	20	12-18"	4 FEET ON CENTER
SNOWBERRY	20	12-18"	4 FEET ON CENTER
	100		

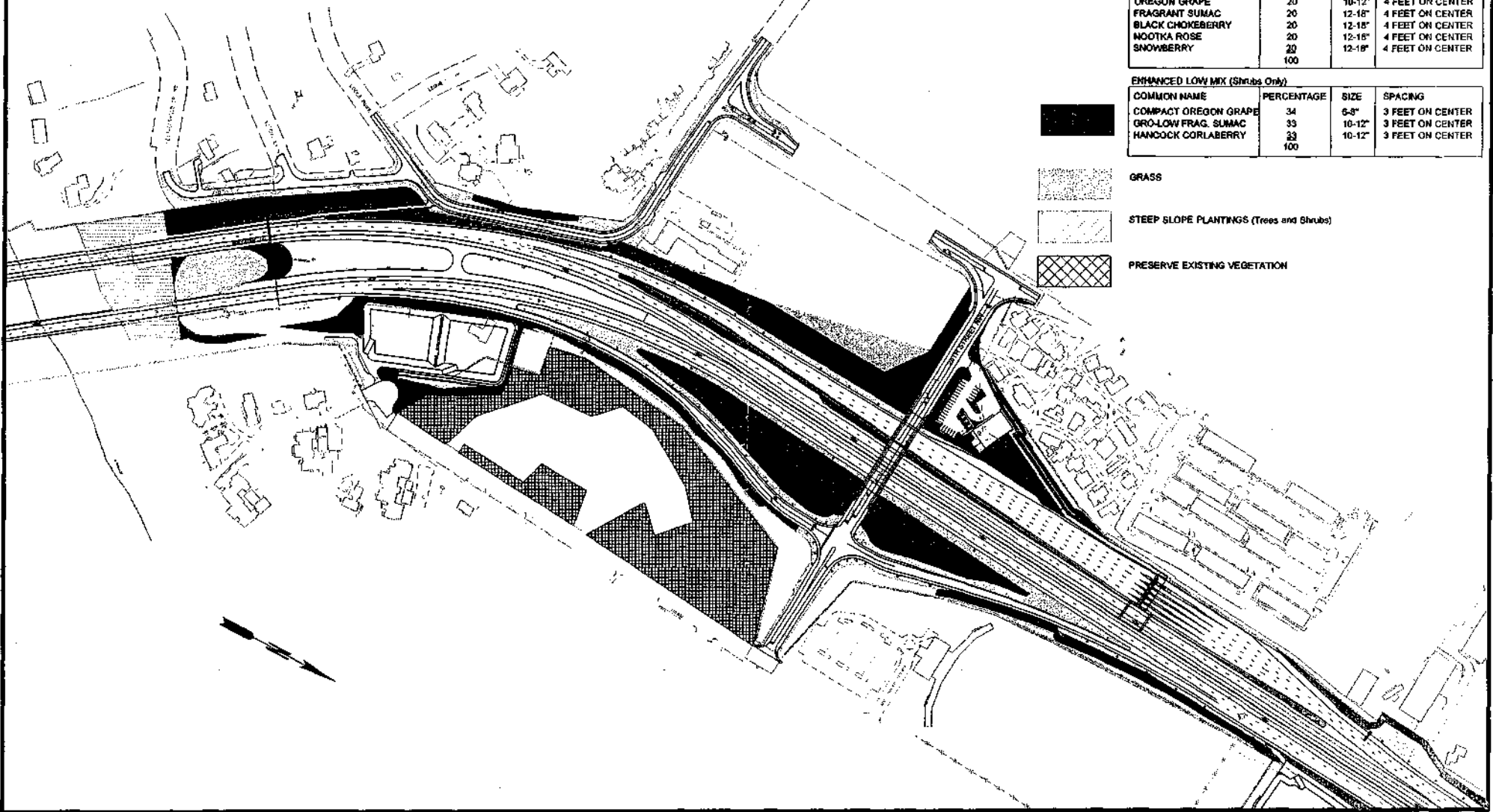
ENHANCED LOW MIX (Shrubs Only)

COMMON NAME	PERCENTAGE	SIZE	SPACING
COMPACT OREGON GRAPE	34	6-8"	3 FEET ON CENTER
GRO-LOW FRAG. SUMAC	33	10-12"	3 FEET ON CENTER
HANCOCK CORLABERRY	33	10-12"	3 FEET ON CENTER
	100		

GRASS






STEEP SLOPE PLANTINGS (Trees and Shrubs)

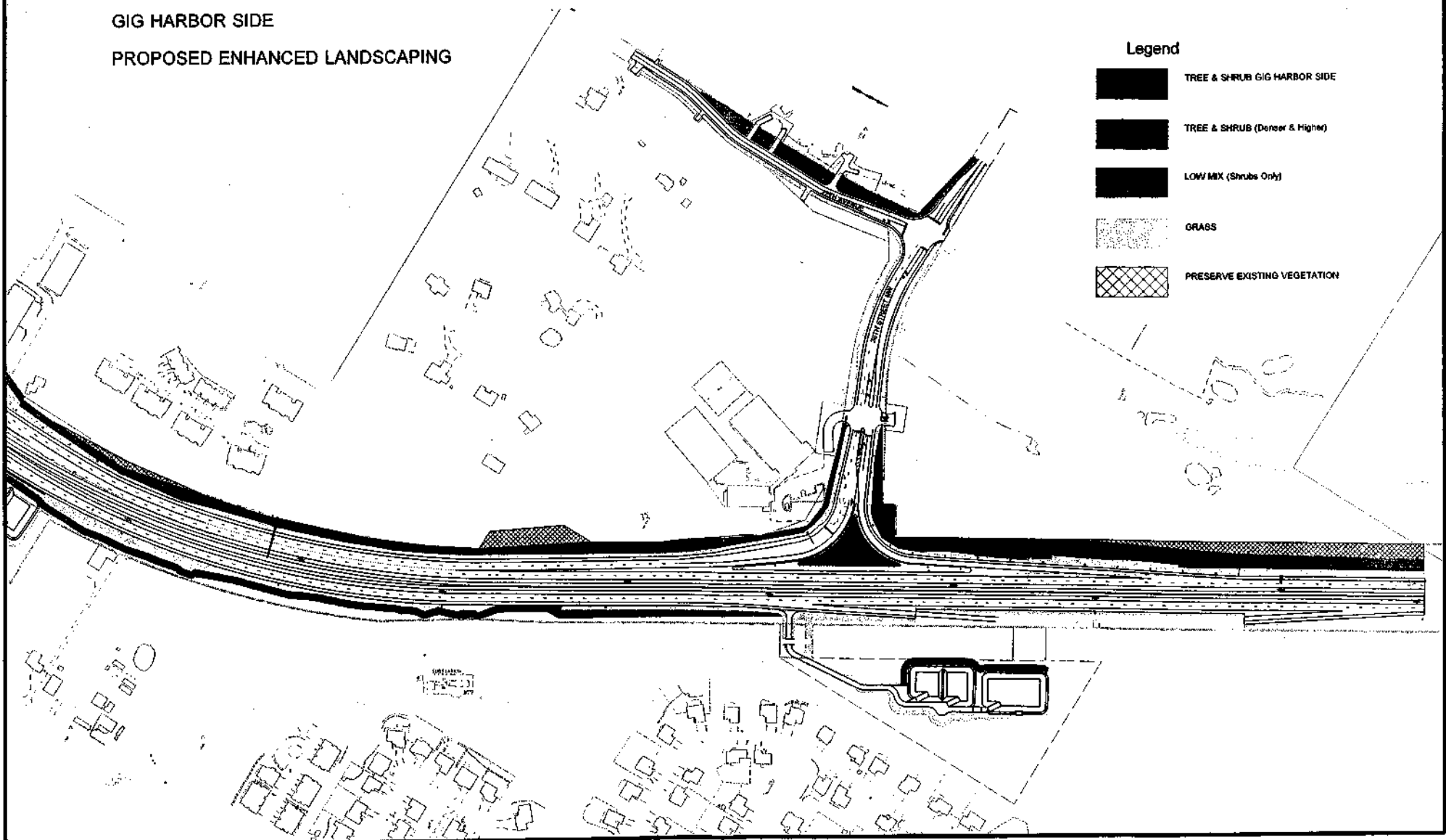
PRESERVE EXISTING VEGETATION



TACOMA NARROWS BRIDGE PROJECT
GIG HARBOR SIDE
PROPOSED ENHANCED LANDSCAPING

Legend

-  TREE & SHRUB GIG HARBOR SIDE
-  TREE & SHRUB (Denser & Higher)
-  LOW MIX (Shrubs Only)
-  GRASS
-  PRESERVE EXISTING VEGETATION





TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MOLLY TOWSLEE, CITY CLERK
SUBJECT: AMENDMENTS TO MINUTES OF JUNE 9, 2003
DATE: JANUARY 7, 2004

INFORMATION/BACKGROUND

Resolution numbers, 610 and 611, were assigned to resolutions at the meeting of June 9, 2003. Due to a clerical error, these same numbers were assigned to resolutions at the next meeting of June 23, 2003.

Because the second Resolution No. 610 passed on June 23rd references the setting of a date for the public hearing for LID-99, it is preferable to leave number 610 assigned to that resolution and to renumber the previous two that were passed on June 9th.

I have attached a copy of the page from the minutes of June 9th with the amendments that reassign numbers 609-B and 609-C to the prior resolutions to correct the error.

RECOMMENDATION

Move to authorize the amendments to the minutes of the City Council meeting of June 9, 2003.

Helen Nupp, 9229 66th St Ct NW, Gig Harbor WA - Mrs. Nupp stated that she thought the Council should approve this resolution.

MOTION: Move to approve Resolution 640 609-B as written.
Motion carried with Councilmember Franich voting no.

2. Resolution – Declaration of Surplus Property. City Administrator Mark Hoppen gave a brief overview on this resolution to declare surplus property.

MOTION: Move to approve Resolution 644 609-C as written.
Owel/Young – Approved unanimously

3. Notice of Intention to Commence Annexation Proceedings – Hazen. Community Development Director John Vodopich an overview of proposed annexation east of Soundview Drive and north of 64th adjacent to the existing City limits. He further explained that no later than sixty (60) days from receipt, the City Council is to meet with the initiating parties and staff is recommending setting a date of June 23, 2003.

Councilmember Bob Dick asked why one particular parcel was not included in the annexation when it is surrounded on three sides by city property.

Mr. Vodopich replied that the map reflects what the initiating parties have proposed and that staff will have their recommendation for the boundaries at the meeting on the 23rd.

Councilmember Young pointed out that some people avoid annexing into the city due to their fear of increased taxes when in fact in our case they typically go down and their level of service goes up.

City Administrator Mark Hoppen said that he usually holds neighborhood meetings with people intending to annex to let them know about services and taxes.

MOTION: Move to set June 23rd, 2003 to meet with initiating parties of the proposed annexation.
Owel/Ruffo – Motion carried with Franich voting no.

4. Recommendation from the Wilkinson Farm Ad Hoc Committee. Darrin Filon, a member of the Ad Hoc Committee gave a short power point presentation outlining the groups mission statement and site design ideas. He then asked if there were any questions from the City Council.

Councilmember Ekberg complimented the committee on their concept and asked about parking.

Mr. Filon stated that there were some limited areas for parking and pointed those out. He further stated that parking would be more event specific and that they were hoping that most users would utilize surrounding parking opportunities and walk to the site.

Minutes amended 1/12/04 due to clerical error in assigning duplicate resolution numbers.



TO: MAYOR WILBERT AND CITY COUNCIL
FROM: Lt. BILL COLBERG (ACOPY *WCB*)
SUBJECT: COMMUNICATIONS MAINTENANCE CONTRACT
DATE: JANUARY 7, 2004

INFORMATION/BACKGROUND

The Police Department and Public Works Department have used the services of the Pierce County radio shop for communications maintenance for a number of years. This is a year-to-year contract and requires renewal to continue. The renewal date is January 1, 2004.

FISCAL IMPACTS

The rates quoted in the submitted contracts were used in our budget planning for 2004.

RECOMMENDATION

The Police and Public Works Departments recommend that the Council authorize the Mayor to renew the contract with Pierce County for communications maintenance services for 2004.



Pierce County

Department of Emergency Management

STEVEN C. BAILEY
Director

Radio Communications Division
2403 South 35th Street
Tacoma, Washington 98409
(253) 798-7147 • FAX (253) 472-5565

TIM LENK
Supervisor

December 8, 2003

MEMO

TO: All Contracting Agencies
FROM: Yoli Roberts / Office Administrator
SUBJECT: RENEWAL OF CONTRACT FOR 2004

Please find enclosed two copies of your contract for radio communications work to be performed in the year 2004. If you wish to contract with us for the year 2004, please sign both copies, retain one for your records, and return one to us in the enclosed self-addressed envelope.

Should you have any questions or require additional information, please do not hesitate to contact us. We can be reached Monday – Friday from 7:00 a.m. to 3:30 p.m.

We look forward to working with you in the coming new year.

2 Enclosures (as stated)



AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM

AGREEMENT made January 1, 2004, between PIERCE COUNTY, herein referred to as "County," and CITY OF GIG HARBOR (PD) referred to as CITY OF GIG HARBOR (PD).

SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between CITY OF GIG HARBOR (PD) and PIERCE COUNTY.

SECTION II. TERM OF AGREEMENT – TERMINATION

This agreement shall commence as of January 1, 2004 and terminate on December 31, 2004. Either party may terminate this agreement upon thirty- (30) days written notice.

SECTION III. OBLIGATIONS OF COUNTY

- A. All maintenance, repair, installation, engineering, and upgrading of CITY OF GIG HARBOR (PD)'s radio communications system previously agreed to or requested in writing by CITY OF GIG HARBOR (PD) shall be carried out by County, according to schedules or arrangements to be negotiated by the parties giving due consideration to the immediacy of the need and the workload of the County.
- B. On notice from CITY OF GIG HARBOR (PD), County shall make any repairs necessitated by normal wear and tear resulting from normal operation, whenever such repairs are required for safe and proper operation of radio system unit.
- C. County and its agents and representatives shall at all reasonable times be given access to the radio system unit for the purpose of inspecting, altering, repairing, improving or adding to or removing the same.
- D. The described work on base station and associated equipment will be done on site. Work on all equipment, including portables, will be performed at the County Radio Shop, which shall include installation of radio equipment in all CITY OF GIG HARBOR (PD)'s vehicles.

SECTION IV. FEES

CITY OF GIG HARBOR (PD) Shall reimburse the County for its services described above, at the rate of Ninety (\$90.00) Dollars per hour from 7:30 a.m. through 3:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by CITY OF GIG HARBOR (PD). In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County; except that prior written authorization by CITY OF GIG HARBOR (PD) shall be required for materials or parts in excess of Five Hundred (\$500.00) dollars. Payment shall be made by CITY OF GIG HARBOR (PD) within thirty (30) days of presentation of invoice listing time, parts and materials by the County.

SECTION V. INDEMNITY

Notwithstanding anything to the contrary contained in this agreement, CITY OF GIG HARBOR (PD) shall not be responsible or liable in any manner whatsoever for, and the County shall indemnify CITY OF GIG HARBOR (PD) against any and all claims, suits, damages, costs or expenses arising from or growing out of, or caused directly or indirectly by any defect or error in, or any negligence or error, in connection with the installation, maintenance, engineering or upgrading of the radio system unit performed by the County, except for the sole negligence of CITY OF GIG HARBOR (PD). The County will not be responsible for claims arising out of the Antenna Supporting Structures.

SECTION VI. ASSIGNABILITY

This agreement shall not be assigned by County without the written consent of CITY OF GIG HARBOR (PD). If this agreement is assigned without CITY OF GIG HARBOR (PD)'s written consent either by act of County or by operation of law, it shall thereupon terminate subject to the provisions herein before set forth.

SECTION VII. GOVERNING LAW

This agreement shall be governed by and construed under the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this agreement this _____ day of _____, 20____.

CITY OF GIG HARBOR (PD)



BY: _____
Authorized Signatory

Steven C. Bailey
Steven C. Bailey, Director
Department of Emergency Management
Radio Communications Division



TO: CITY COUNCIL
FROM: MAYOR GRETCHEN WILBERT
SUBJECT: ADVISORY COMMITTEES
DATE: JANUARY 12, 2004

INFORMATION/BACKGROUND

I invited Councilmembers to self-select the committees that may be of interest to them for the upcoming year. The following list is a result of that invitation.

- Finance Committee: Councilmembers Ekberg, Conan, and Young.
- Public Safety: Councilmembers Dick, Picinich, and Ruffo.
- Community Development: Councilmembers Conan, Franich, and Young.
- Parks: Councilmembers Dick, Ruffo, and Ekberg.

The Public Safety Committee is required by OSHA to meet at least once a year. The others meet on an as-needed basis.

RECOMMENDATION:

A motion accepting these appointments for the Council Committees for 2004.



"THE MARITIME CITY"

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: LOBBYIST CONTRACT
DATE: JANUARY 5, 2004

INFORMATION/BACKGROUND

An objective for 2004 is to contract for lobbyist services. The attached proposed contract with Tim Schellberg of Smith Alling Lane will identify and track Washington state legislation, provide regular updates, attend legislative meetings involving city interests, coordinate testimony when necessary, and lobby to pass, defeat or amend legislation. The contract does not include introducing legislation. The term of the contract extends from January through May.

POLICY CONSIDERATIONS

The proposed contract is strictly for in-state lobby efforts. An alternative approach that provides more extensive services at much greater cost would include federal lobbying services. If the City Council were to choose such additional services through Smith Alling Lane's Washington D.C. office, then federal lobbying might provide improved access to federal funds. Such services would be much more expensive, but might potentially provide commensurate returns.

Federal services would include: working to identify appropriate "public use" projects where a congressional earmark and federal funding would be appropriate; developing a written strategy to identify multiple funding sources; developing a funding partnership with federal delegations to pursue a congressional earmark during the 2005 Congress; completing preliminary lobbying for 2005; and applying for relevant grants.

FISCAL CONSIDERATIONS

The \$10,000 budgeted is the figure identified in the 2004 City of Gig Harbor Annual Budget.

RECOMMENDATION

I recommend that the City Council move to approve the contract as attached.

**CITY OF GIG HARBOR
CONSULTING AGREEMENT**

This Agreement is entered into by and between City of Gig Harbor and Smith Alling Lane, and Timothy M. Schellberg, 1102 Broadway Plaza, #403, Tacoma, Washington, 98402, (hereinafter referred to as "Consultant").

WHEREAS, the City's interests are affected by legislation considered for adoption by the Washington State Legislature; and

WHEREAS, the City's interests are not always the same as those promoted by the lobbyist for the Association of Washington Cities; and

WHEREAS, the City desires to have a separate voice in the Washington State Legislature on legislation that is considered for adoption; and

WHEREAS, the Consultant, specifically Timothy M. Schellberg, who lobbies for a firm that is experienced in municipal interests; and

WHEREAS, the Consultant agrees to provide the City with the lobbyist services more specifically described in Attachment A; now therefore,

For and in consideration of the following terms and conditions, the parties agree as follows:

A. Scope of Work. Consultant will advise and assist the City of Gig Harbor in accordance with Consultant's Scope of Work, described in Attachment "A" hereto and incorporated herein, and Consultant will do and produce such other things as are set forth in the Scope of Work (the "Services"). The Consultant will not only advise the City with regard to legislation that should be handled as set forth in the Scope of Work, Attachment A, the Consultant will also accept direction from the City on specific legislation that must be given the same treatment. The City Administrator may provide the Consultant with specific direction to handle certain legislation under any method set forth in Attachment A.

B. Compensation; Expenses. The City shall pay Consultant an amount not to exceed Two Thousand Dollars (\$2,000.00) per month during the months of January 2004 through May 2004, for the services described in Attachment A. The sum of Ten Thousand Dollars (\$10,000.00) is the maximum amount to be paid under this Agreement for the work described in Attachment A, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant shall not bill any expenses to the City. The Consultant shall submit monthly invoices to the City after such services have been performed. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Term. Consultant shall promptly begin the Services hereunder after this Agreement is signed by the duly authorized representatives of both parties and shall terminate the same on May 31, 2004, unless earlier terminated as set forth herein.

D. Ownership of Work Product. The product of all work performed under this agreement, including reports, and other related materials shall be the property of the City or its officers, officials and representatives, and the same shall have the sole right to use, sell, license, publish or otherwise disseminate or transfer rights in such work product.

E. Independent Contractor. Consultant is an independent contractor and nothing contained herein shall be deemed to make Consultant an employee of the City of Gig Harbor, or to empower consultant to bind or obligate the City of Gig Harbor in any way. Consultant is solely responsible for paying all of Consultant's own tax obligations, as well as those due for any employee/subcontractor permitted to work for Consultant hereunder. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from the City to the Consultant or its employees, agents, representatives or subconsultants. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

F. Termination. The City may terminate this Agreement for public convenience or the Consultant's default at any time prior to completion of the work described in Attachment A. If delivered to the Consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later. In the event of termination, the amount to be paid by the City shall be pro-rated to the effective date of termination. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction.

G. Indemnification. The Consultant shall defend, indemnify and hold the City, its officers, officials, employees and agents harmless from any and all claims, injuries, damages, losses or suits, including legal costs and attorneys' fees arising out of or in connection with the performance of this Agreement, except for injuries caused by the negligence of the City. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees and agents, then the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The Consultant's

waiver of immunity under the provisions of this Section does not include, or extend to, any claims by the Consultant's employees directly against the Consultant. The provisions of this Section shall survive the expiration or termination of this Agreement.

H. Insurance. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's work under this Agreement. The Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party.

I. Ownership of Documents. Original documents and reports developed under this Agreement shall belong to and become the property of the City.

J. Compliance with Law. The Consultant agrees to comply with all federal, state and municipal laws, rules or regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's performance under this Agreement, or accruing out of the performance of this Agreement. The Consultant shall comply with all federal and state laws applicable to independent contractors, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship which is subject to Title 51 RCW.

K. Assignment. Consultant's rights and obligations hereunder shall not be assigned or transferred without the City of Gig Harbor's prior written consent; subject thereto, this Agreement shall be binding upon and inure to the benefit of the parties' heirs, and successors.

L. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

M. Governing Law; Severability. This Agreement shall be governed by the laws of the State of Washington, U.S.A. (excluding conflict of laws provisions). If any term or provision of this Agreement is determined to be legally invalid or unenforceable by a court with lawful jurisdiction (excluding arbitrators), such term or provision shall not affect the validity or enforceability of any remaining terms or provisions of this Agreement, and the court shall, so far as possible, construe the invalid portion to implement the original intent thereof.

N. Resolution of Disputes. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Administrator and the City Administrator shall determine the term or provision's true intent or meaning. The City Administrator shall also decide all questions which may arise between the parties relative to the actual services

provided or to the sufficiency of the performance hereunder. If any dispute arises between the City and the Consultant which cannot be resolved by the City Administrator's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be in Pierce County Superior Court, Pierce County, Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other party's expenses and reasonable attorney's fees.

O. Entire Agreement; Etc. This Agreement, and its incorporated attachments hereto, state the entire agreement between the parties regarding the subject matter hereof and supersede any prior agreements or understandings pertaining thereto. Any modification to this Agreement must be made in writing and signed by authorized representatives of both parties. No delay or failure in exercising any right hereunder shall be deemed to constitute a waiver of any right granted hereunder or at law by either party.

P. Written Notice. All communications regarding this agreement shall be sent to the parties at the addresses listed on the signature page of this Agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address on the signature page of this Agreement.

Consultant: Smith Alling Lane --
Timothy M. Schellberg
1102 Broadway Plaza #403
Tacoma, WA 98402
(253) 627-1091

Sign _____

Date _____

Tax ID No.: 91-1257316

The City of Gig Harbor

Attn: Mark Hoppen, City Administrator
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

By _____
Its Mayor

ATTEST:

Molly Towslee, City Clerk

Approved as to Form:

Carol A. Morris, City Attorney

**ATTACHMENT "A" TO
CITY OF GIG HARBOR CONSULTING AGREEMENT**

- A. Scope of Work:** Consultant shall provide the City of Gig Harbor with the following governmental affair services, which shall be provided not only as to legislation or potential legislation identified by the Consultant, but also by the City Administrator:

Washington State Legislative Session

- Identify and track all relevant legislation
- Provide City of Gig Harbor with verbal and written updates as needed.
- Attend all relevant legislative hearings where the City of Gig Harbor's interests are directly affected.
- Coordinate City of Gig Harbor officials to testify at relevant legislative hearings.
- Lobby to pass, defeat or amend legislation introduced by other interests that negatively directly affect the City of Gig Harbor's interests.
- This contract does not include lobbying to introduce and pass legislation where the City of Gig Harbor is the entity originating the legislation. If the City of Gig Harbor wishes to have legislation introduced and passed, a separate contract will be necessary.



'THE MARITIME CITY'

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PIONEER WAY WATERMAIN REPLACEMENT PROJECT (CWP-0301)
- BID AWARD
DATE: JANUARY 12, 2004

INTRODUCTION/BACKGROUND

A budgeted objective from the City's water department provides for the replacement of an undersized and problematic watermain along Pioneer Way between Uddenberg Lane and Harborview Drive.

Fourteen contractors were contacted in accordance with the City's Small Works Roster process (Resolution No. 592). Two contractors responded with the following bid proposals:

Pivetta Brothers Construction, Inc	\$181,262.69
Pape and Sons Construction, Inc	\$236,703.76

ISSUES/FISCAL IMPACT

While the project exceeds the budgeted amount of \$115,000 allocated in the Water Capital Fund, Objective No. 12 of the 2003 Annual Budget, sufficient funds are available in the capital fund for this project. The allocated budget of \$115,000 did not reflect several unknown site conditions and restraints. For example, most of the construction will be night work in order to avoid disruption to the local businesses. The night work increases the construction costs considerably.

RECOMMENDATION

I recommend Council authorize award and execution of the contract for the Pioneer Watermain Replacement Project (CWP-0301) to Pivetta Brothers Construction, Inc., as the lowest responsible bidder, for their bid proposal amount of one hundred eighty one thousand five two hundred sixty-two dollars and sixty-nine cents (\$181,262.69), including retail sales tax.



"THE MARITIME CITY"

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: CANTERWOOD SEWER REQUEST
DATE: JANUARY 5, 2004

INFORMATION/BACKGROUND

Ms. Eva Jacobson,, agent for Canterwood Development Corporation, is requesting an additional 50 ERUs of sewer for the Canterwood development area. In 2002, Canterwood Development contracted for 50 ERUs, and has now nearly connected all 50 ERUs. Contracted capacity will be available generally within the entire boundary of Canterwood.

POLICY CONSIDERATIONS

Much of Canterwood is connected to city sewer on Canterwood Blvd through the Canterwood STEP system. The STEP system agreement between the City of Gig Harbor and Canterwood is addressed in a separate agreement. The boundary of Canterwood subject to the proposed contract is within Canterwood's benefit area in ULID #3.

FISCAL CONSIDERATIONS

The current connection fee for sewer connection in the ULID #3 area is \$3050. The capacity commitment payment for a three-year capacity commitment period for 50 Equivalent Residential Units of sewer is 50 multiplied times \$3050 multiplied times 15 percent ($50 \times \$3050 \times .15$) or \$22,875. The remainder of each contracted ERU will be charged at the then-current connection fee rate at the time of actual connection. (The connection fee in this zone may be adjusted over time depending on rate studies, etc.) The capacity commitment payment will be pro-rated and credited per each actual sewer connection at the time of connection. If all contracted sewer connections are not utilized and/or paid-in-full prior to the termination of the contract, then any remaining capacity commitment payment will be forfeit.

RECOMMENDATION

Staff recommends the extension of 50 ERUs of sewer to the Canterwood Development.

**UTILITY EXTENSION, CAPACITY AGREEMENT
AND AGREEMENT WAIVING RIGHT TO PROTEST LID**

THIS AGREEMENT is entered into on this ____ day of _____, 2004, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", and Canterwood Development Company, hereinafter referred to as "the Owner".

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described as set forth in Exhibit 'A' attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City water and sewer utility system, hereinafter referred to as "the utility," and is willing to allow connection only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal code, as now enacted or hereinafter amended, NOW, THEREFORE,

FOR AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

1. **Warranty of Title.** The Owner warrants that he/she is the Owner of the property described in Exhibit 'A' and is authorized to enter into this Agreement.

2. **Extension Authorized.** The City hereby authorizes the Owner to extend service to Owner's property from the existing utility line on Canterwood Blvd (street or right-of-way) at the following location: Baker Way and Canterwood Blvd.

3. **Costs.** Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City's Public Works Director. Any and all costs incurred by the City in reviewing plans and in inspecting construction shall be paid for by the Owner.

4. **Sewer Capacity Commitment.** The City agrees to provide to the Owner sewer utility service and hereby reserves to the Owner the right to discharge to the City's sewerage system 50 ERUs; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety, or where required to comply with the City's NPDES permit, or any other permits required by any agency with jurisdiction. These capacity rights are allocated only to the Owner's system as herein described. Any addition to this system must first be approved by the City. Capacity rights acquired by the Owner pursuant to this agreement shall not constitute ownership by

the Owner of any facilities comprising the City sewerage system. The City agrees to reserve to the Owner this capacity for a period of 36 months ending on JANUARY 11, 2007, provided this agreement is signed and payment for sewer capacity is commitment received within 45 days after City Council approval of extending sewer capacity to the Owner's property. Sewer capacity shall not be committed beyond a three-year period.

5. Capacity Commitment Payment. The Owner agrees to pay the City the sum of \$22,875.00 to reserve the above specified time in accordance with the schedule set forth below.

Commitment period	Percent (%) of Connection Fee	
Three years	Fifteen percent	(15%)

In no event, however, shall the Owner pay the City less than five hundred dollars (\$500) for commitment for sewer reserve capacity. In the event the Owner has not made connection to the City's utility system by the date set forth above, such capacity commitment shall expire and the Owner shall forfeit one hundred percent (100%) of this capacity commitment payment to cover the City's administrative and related expenses.

In the event the Pierce County Boundary Review Board should not approve extension of the City's sewer system prior to the extension of the commitment period, the Owner shall be entitled to a full refund (without interest) from the City of the capacity agreement.

6. Extension of Commitment Period. In the event the Owner chooses to permanently reserve sewer capacity by paying the entire connection fee for the number of equivalent residential units desired to be reserved before the expiration date set forth above, the Owner shall be responsible for paying each year for the sewer utility system's depreciation based on the following formula: (Owner's reserved capacity divided by the total plant capacity times the annual budgeted depreciation of the sewer facilities.)

7. Permits - Easements. Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Public Works Department.

8. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the construction of water or sewer main lines, pump stations, wells, and/or other city required capital facilities, the Owner agrees if required by the city to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Public Works Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 year(s).

9. **Connection Charges.** The Owner agrees to pay the connection charges, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his property to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges. Should the Owner not initially connect 100% of the Sewer Capacity Commitment, the Capacity Commitment payment shall be credited on a pro-rated percentage basis to the connection charges as they are levied.

10. **Service Charges.** In addition to the charges for connection, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, which is presently at 150% the rate charged to customers inside city limits, or as they may be hereafter amended or modified.

11. **Annexation.** Owner understands that annexation of the property described on Exhibit 'A' to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police, fire and utility service, will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments

applicable to the property may be different from those applicable prior to the effective date of annexation;

- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and
- F. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in RCW 35.14.120, as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex, Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit 'A' is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

12. Land Use. The Owner agrees that any development or redevelopment of the property described on Exhibit 'A' shall meet the following conditions after execution of Agreement:

- A. The use of the property will be restricted to uses allowed in the following City zoning district at the time of development or redevelopment: R-1
- B. The development or redevelopment of the property shall comply with all requirements of the City Comprehensive Land Use Plan, Zoning Code, Design Review Guidelines, Building Regulations, and City Public Works Standards for similar zoned development or redevelopment in effect in the City at the time of such development or redevelopment. The intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which does conform to City standards.

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above-described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced

in accordance with RCW 35.67.220 through RCW 35.67.280, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

14. Termination for Non-Compliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it.

15. Waiver of Right to Protest LID. Owner acknowledges that the entire property legally described in Exhibit 'A' would be specially benefited by the following improvements (specify):

none

Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

16. Specific Enforcement. In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

17. Covenant. This agreement shall be recorded with the Pierce County Auditor and shall constitute a covenant running with the land described on Exhibit 'A', and shall be binding on the Owner, his/her heirs, successors and assigns. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

18. Attorney's Fees. In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement.

19. Severability. If any provision of this Agreement or its application to any circumstance is held invalid, the remainder of the Agreement or the application to other circumstances shall not be affected.

DATED this _____ day of _____, 2004.

CITY OF GIG HARBOR

Mayor Gretchen Wilbert

OWNER

Name:

Title:

ATTEST/AUTHENTICATED:

City Clerk, Molly Towslee

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires: _____

STATE OF WASHINGTON)
)ss:
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert, is the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires: _____

EXHIBIT A

Legal Description - Includes all sites in Canterwood that are currently connected to the Canterwood STEP system and all sites that will have either the STEP system or gravity full sewer available for connection.

Lot 76 Division 1 AFN # 2984785 *pn# 2827410760*

Lots 10, 11,12 Division 4 AFN # 8905250266 *pn# 2827440321 thru 2827440324*

Short plat of lot 32 Division 4 AFN #9007170402 *pn# 282744032-1 thru 282744032-4*

Short plat of lot 9 Division 4 AFN #9007310699 *pn# 282744009-1 thru 282744009-4*

Division 5 Replat "A" AFN# 9007300358 *pn# 300002001-0 thru 300002008-0*

Division 6 AFN #9006050477 *pn# 400012-0010 thru 400012-0160*

Division 7 AFN # 9007240290 *pn# 300001-0010 thru 300001-0110*

Division 8 AFN #9006260161 *pn# 400021-0010 thru 400021-0410*

Division 9 phase 1 AFN# 9012100403 and phase 2
The West Half of the Northwest Quarter of Section 30, Township 22 North, Range 2 East of the W.M., in Pierce County, Washington.
Containing 79.2 Acres
pn# 400036-0010 thru 400036-0850 and 022230-1072

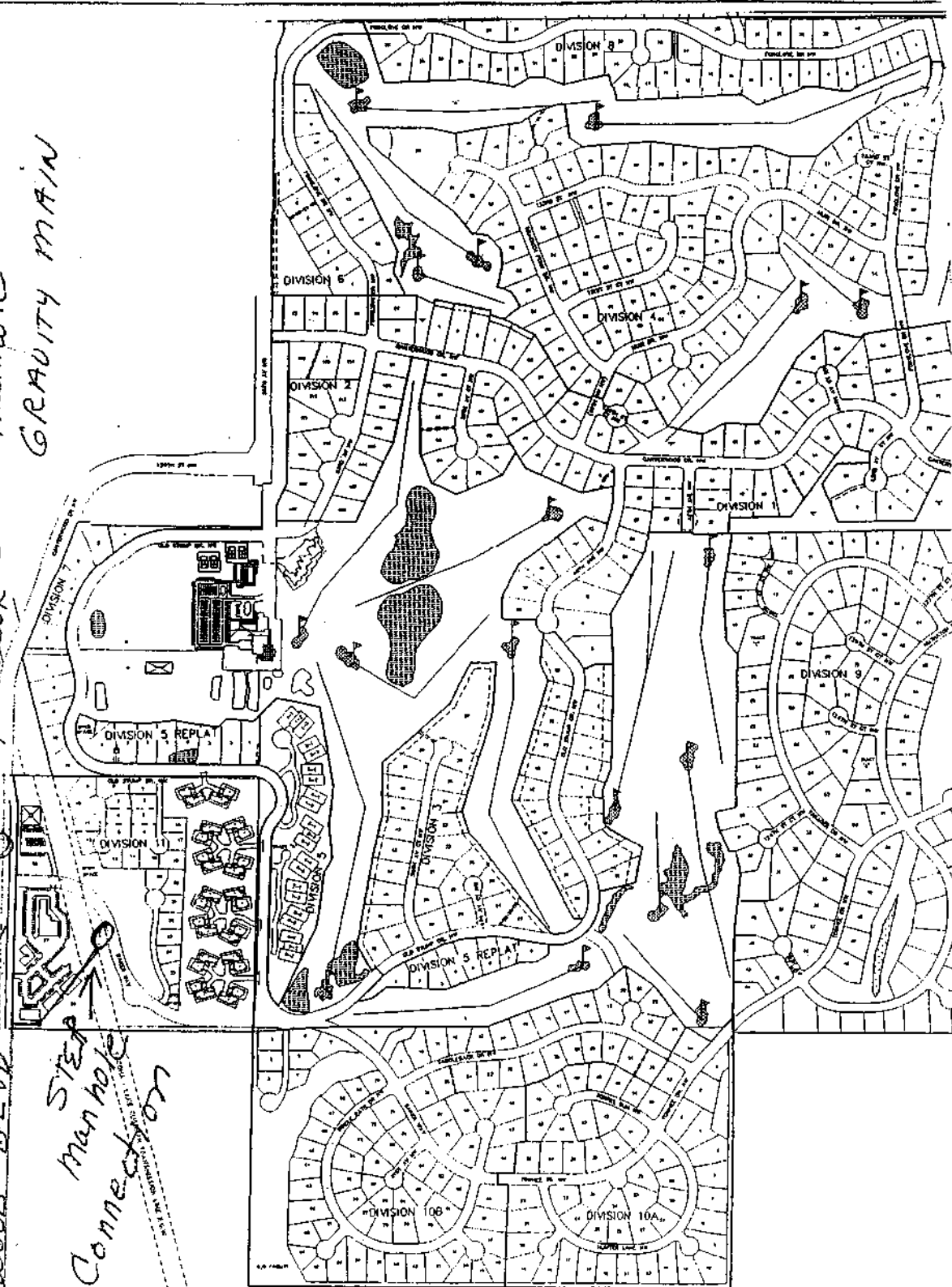
Division 10 phase A - AFN# 9311090619 and 10 phase B - AFN # 200201255001
The Northeast Quarter of the Southwest Quarter of Section 30, Township 22 North, Range 2 East of the W.M., in Pierce County, Washington.
And:
The Northeast Quarter of the Southwest Quarter of Section 30, Township 22 North, Range 2 East of the W.M., in Pierce County, Washington.
pn# 400091-0010 thru 400091-0540 and 400213-0010 thru 400213-0820

Division 11 phase I through 4
The Southeast Quarter of the Northeast Quarter of Section 25, Township 22 North, Range 1 East of the W.M., Records of Pierce County;

Except That Portion Conveyed to the City of Tacoma, for Transmission Right of Way, by Deed Recorded Under Auditor's No. 677886.
Also Except That Portion Conveyed to the State of Washington for State Route 16
pn# 300013-0010 thru 300013-0280 and 0122251052, 0122251051

619 HARBOR sewer manhole
GRAVITY MAIN
DANFORTH BLVD

STEP
Man hole
Connection



November 28, 2003

City of Gig Harbor
3510 Grandview St.
Gig Harbor, WA 98335

Subject: Sewer Capacity Agreement for Canterwood

Dear Mr. Hoppen,

Canterwood Development Company currently has a sewer capacity agreement with the City, dated November 25th, 2002. At this time, we anticipate that we will use this capacity in the near future and Canterwood Development Company requests to have additional capacity to serve the new residential lots within Canterwood.

The contracted capacity will be available for all of the Canterwood property within the boundary as described by the attached map and legal description. This is the same property as in the previous agreement.

Connection will be made through the existing Canterwood STEP system as per the agreement between the City and Canterwood STEP Association.

Included herein is a copy of the current agreement, legal description, map, application for sewer service and the application fee.

Thank you for giving this your attention.

Sincerely,



Eva Jacobson
Agent for Canterwood Development Company

Still Water Planning
5500 Olympic Dr. NW #A105
PMB #207
Gig Harbor, WA 98335
Tel: 851-2243



3510 GRANDVIEW STREET
 GIG HARBOR, WASHINGTON 98335
 (253) 851-8136 • WWW.CITYOFGIGHARBOR.NET

"THE MARITIME CITY"

SEWER CAPACITY Agreement

CITY OF GIG HARBOR - UTILITIES SERVICE APPLICATION

Application No. _____, Parcel No. STEP SEWER LOTS, Date December 2, 2002

Applicant CANTERWOOD DEVELOPMENT Co, Phone # 851-1645

Mailing Address 4026 Canterwood Dr. NW Gig Harbor
STEP SEWER CONNECTION - RESIDENTIAL LOTS

STORM WATER CALCULATION:

Impervious Area (Sq.Ft.)	Calculation	Units

Connection/Service ADDRESS OR LOCATION: Canterwood Subdivision
 Subdivision _____, Lot No. _____
 Date of Hook-Up _____, Meter No. _____, Size _____, Rate _____
 Account No. _____, Meter Location _____

WATER SYSTEM HOOK-UP & METER INSTALLATION CHARGES:

Meter Size	Capacity Factor(s)	Hook-Up Fee (Inside City Limits)	Hook-Up Fee (Outside City) (1)	Meter Charge	Total Fees
3/4"	1.0	\$3,740.00	\$5,610.00	\$486.00	\$
1"	1.67	\$6,250.00	\$9,375.00	\$567.00	\$
1-1/2"	3.33	\$12,450.00	\$18,675.00	(2) \$1,130.00	\$
2"	5.33	\$19,930.00	\$29,895.00	(2) \$1,800.00	\$
Over 2"	(3)	(3)\$	(3)\$	(3) \$	\$

IMPACT FEES & OTHER CHARGES:

Street Boring (2)	\$ 16.20 / Foot		\$
Open Street Cut (2)	\$ 20.00 / Foot		\$
Park Impact Fees	Residential @ \$1,500.00		\$
Transportation Impact Fees	Residential @ \$ 517.30 Commercial/Multi - @ \$		\$
Water Latecomer Fees	Latecomer Fee Calculation \$ Administration Fee \$		\$

Notes: (1) If project is outside the city limits, the hook-up fee is (1.5) times inside city rate.
 (2) Time & Material Plus 10% (3) Negotiable

TOTAL WATER, IMPACT AND OTHER CHARGES: \$ _____

BASIC SEWER SYSTEM CONNECTION FEE:

Zone A	Zone B	Zone C	Other	# ERU's *	Total Fee
\$3,250.00	\$ 3,070.00	\$ 3,050.00	\$3,390.00	50	\$ _____ .00

• Equivalent Residential Unit Calculation for non-residential service: *RESIDENTIAL*
 • _____ (_____ ERU's per _____) X (_____) =
 Class of Service Conversion rate for appropriate unit (sq. ft., seats, students, etc.) Number of units Equivalent ERU's

SPECIAL CHARGES:

Check (X)	Type of Fee (1)	FEE
<input type="checkbox"/>	Encroachment Permit Application & Fee	\$ 50.00
<input type="checkbox"/>	Sewer Stub Inspection Fee	\$ 125.00
<input type="checkbox"/>	House Stub Inspection Fee (\$25 in city / \$37.50 out)	\$
<input type="checkbox"/>	As-Built Plans Fee – Residential Only (Refundable)	\$ 150.00
<input type="checkbox"/>	Sewer Latecomers Fee/Administration Fee	\$

Note: (1) Single Family Residence only (See Public Works Department for Multi-Family and Commercial)

Application is hereby made by the undersigned property owner for the above stated utilities in the following amount: _____ at the above stated location, for the following purposes: _____ for which I agree to pay in advance the following estimated charges, the exact charges shall be paid as established by City Resolution, and will be determined at the time a water availability certificate issues and be payable immediately:

Engineering Fees:

Water Main Extension:

Street Repair:

Water Service Connection Charge:

Park Impact Fees:

Transportation Impact Fees:

Water/Sewer Latecomer Fees:

Sewer System Fees:

TOTAL

I further agree that all rates and charges for water service to the above property shall be paid in accordance with the now-existing ordinances and regulations of the City, or any ordinances and regulations passed hereafter.

I understand that the City will use all reasonable effort to maintain uninterrupted service, but reserves the right to shut off the water at any time without notice for repairs, expansions, nonpayment of rates or any other reason and assumes no liability for any damage as a result or interruption of service from any cause whatsoever.

I understand that if the City issues a water availability certificate to me, such certificate shall be subject to all ordinances and regulations of the City, as they now exist or may hereafter be amended, and that such certificate expires within three (3) years from the date of issuance. If I do not pay the required fees and request an actual hook-up or connection to the above-identified individual parcel of property within this time period, a water availability certificate may be revoked.

I understand that the City shall maintain ownership in such water meters installed by the City and the City shall be responsible for providing reasonable and normal maintenance to such meters.

Eva Pearson, agent 12/2/2003
 Applicant's Signature Date
 Agent FOR *CANTERWOOD DEV. CO.*

TO BE COMPLETED BY STAFF ONLY:

Receipt No.	Fees Paid	Date	Received By	Bldg. Official

CANTERWOOD DEVELOPMENT COMPANY

4026 CANTERWOOD DRIVE NW SUITE B
GIG HARBOR, WA 98332
(253) 851-1645



HARBOR BANK
7022 Pioneer Way
Gig Harbor, WA 98335
98-841/1251

8929

11/20/2003

PAY TO THE City of Gig Harbor
ORDER OF

**100.00

\$

One Hundred and 00/100*****

DOLLARS

City of Gig Harbor

[Handwritten Signature]
AUTHORIZED SIGNATURE

MEMO

⑈008929⑈ ⑆125108418⑆0115001158⑈

City of Gig Harbor

01/05/2004 3:42:58 PM
Receipt No. 0018871

CR		100.00
Admin fees - 402 Sewer/Canterwood Subdivision (50 ER U) Applicat.		100.00

Total		100.00
100.00		
Cash		0.00
Check	8929	100.00

Change		0.00

Canterwood Development Co
Customer #: 000000

Cashier: Jaci
Station: CITY-CASHDRWR1



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: SANITARY SEWER FACILITIES MAINTENANCE AGREEMENT
- 3519 56TH STREET PROFESSIONALS, LLC
DATE: JANUARY 12, 2004

INTRODUCTION/BACKGROUND

As a condition of project approval, the 3519 56th Street Professionals, LLC is required to enter into a Sanitary Sewer Facilities Maintenance Agreement and Restrictive Covenant for the Robinson Office Building development. This will ensure that the sanitary sewer system will be constructed, operated and maintained in accordance with all applicable rules and regulations. The sanitary sewer system is on private property, and the city will not be responsible for the operation and maintenance of this system. This agreement allows the city a nonexclusive right of entry onto those portions of the property in order to access the sanitary sewer system for inspection and monitoring of the system.

The city's standard Sanitary Sewer Facilities Maintenance Agreement and Restrictive Covenant has been drafted and approved by Carol Morris, City Attorney. This covenant will be recorded with the property.

Council approval of this agreement is requested.

FISCAL CONSIDERATIONS

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

RECOMMENDATION

I recommend that City Council approve this agreement.

**SANITARY SEWER FACILITIES EASEMENT
AND MAINTENANCE AGREEMENT**

This Sanitary Sewer Facilities Easement and Maintenance Agreement is made this 17TH day of DECEMBER, 2003, by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and 3519-56th ST. PROFESSIONALS, LLC, residing at 5715 WOLLOCHET DR., GIG HARBOR, WA. (hereinafter the "Owner").
NW 98335

RECITALS

WHEREAS, Owner is the owner of fee title or a substantial beneficial interest in certain real property located in Gig Harbor, Washington, commonly described as 3519 56th St. (street address) GIG HARBOR, WA., (hereinafter the "Property") and legally described in Exhibit A, which is attached hereto and incorporated herein by this reference; and

WHEREAS, in connection with the Owner's proposed development of the Property, the City has required and the Owner has constructed a private sanitary sewer system on the Property; and

WHEREAS, such sanitary sewer system is described and shown on a construction drawing(s) prepared by the engineering firm of NORTH PACIFIC DESIGN, dated 12/17/03 (hereinafter the "Plans"), for the Owner's Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference; and

WHEREAS, as a condition of project approval, and/or due to the nature of the development, the sanitary sewer system on the Property is private, and will not be the responsibility of and/or owned, operated and maintained by the City; and

WHEREAS, the private sanitary sewer will eventually be connected to the City's sanitary sewer system and the City desires an easement to definitively establish the permissible location of the City's access on the Property described in Exhibit A, for the purposes described in this Agreement; and

WHEREAS, as a result of said private ownership and responsibility for operation and maintenance, including repair, rehabilitation, replacement, alterations and/or modifications, the parties have entered in to this Easement and Maintenance Agreement, in order to ensure that the sanitary sewer system will be constructed, operated and maintained in accordance with the approved Plans and all applicable rules and regulations;

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

TERMS

Section 1. Affected Property. The real property subject to this Agreement is legally described in Exhibit A.

Section 2. Definitions. As used in this instrument:

A. The word "plat" refers to the _____, and any other plat or plats, including short plats, covering all real property which may hereafter be made subject to the

provisions of this instrument by a written instrument signed by the Owner, its successors and assigns, in accordance with this Agreement.

B. The word "lot" refers to a lot shown on any plat defined herein, but shall not include any parcel designated as a "tract" on a plat. "Lot" shall include any parcel of land that is separately subjected to this instrument without having been subdivided into two or more parcels by a plat recorded subsequent to the recording of this instrument.

C. The word "Owner" or "Owners" refers to the entity, whether an individual, corporation, joint venture or partnership which is an owner in fee simple or of a substantial beneficial interest (except for mineral estate) in all or any portion of the property in the Plat or the Property. A "substantial beneficial interest" shall include both legal and equitable interests in the Property.

D. The words "Owners' Association" refer to a nonprofit corporation which may be formed for the purpose of operating and maintaining the facilities described in Exhibit B on the Property, which may be independently conveyed by the Owner or its successors and assigns to an Owners' Association, and to which the Owners' Association may provide other services in order to benefit the owners of property within the plat or the Property.

Section 3. Maintenance Obligations. The Owner, its successors, assigns and/or owners of an after-acquired interest in the Property, hereby covenant and agree that they are jointly and severally responsible for the installation, operation, perpetual maintenance, of a sanitary sewer system on the Property, as shown on the Plans attached hereto as Exhibit B. The sanitary sewer system shall be operated, maintained and preserved by the Owner in accordance with the Plans and all applicable ordinances, codes, rules and regulations. The sanitary sewer system shall be preserved in conformance with the Plans until such time as all parties to this Agreement, including the City, agree in writing that the sanitary sewer system should be altered in some manner or eliminated. In the event the sanitary sewer system is eliminated as provided hereinabove, the Owner shall be relieved of operation and maintenance responsibilities. No such elimination of the sanitary sewer system will be allowed prior to the Community Development Director's written approval.

Section 4. Notice to City. The Owner shall obtain written approval from the Director prior to performing any alterations or modifications to the sanitary sewer system located on the Property described in Exhibit A. No part of the sanitary sewer system shall be dismantled, revised, altered or removed, except as provided hereinabove, and except as necessary for maintenance, including repair, rehabilitation, replacement, alterations, and/or other modifications.

Section 5. Easement for Access. The Owner hereby grants and conveys to the City a perpetual, non-exclusive easement, under, over, along, through and in the Property, as such Easement is legally described in Exhibit C, attached hereto and incorporated herein by this reference. This Easement is granted to the City for the purpose of providing the City with ingress and egress in order to access the sanitary sewer system on the Property for inspection, and to reasonably monitor the system for performance, operational flows, defects, and/or conformance with applicable rules and regulations. In addition, the City may use this Easement to exercise its rights as described in Section 8 herein.

Section 6. Assignment to an Owners' Association. In the event that an Owners' Association is formed under a Declaration of Covenants, Conditions and Restrictions which includes all of the Property in Exhibit A, the Owner may assign responsibility for installation and perpetual maintenance of the sanitary sewer system to such Owners' Association for so long as the Owners' Association remains in existence and upon the conditions that the Owners' Association assumes all of the obligations, liabilities, covenants and agreements of the Owner under this Agreement. Such assignment of the Owner's

obligations shall be in a duly executed instrument in recordable form, and for so long as such assignment remains effective, the Owner shall have no further responsibility or liability under this Agreement.

Section 7. Conveyances. In the event the Owner shall convey its substantial beneficial or fee interest in any property in the Plat, any lot, or the Property, the conveying Owner shall be free from all liabilities respecting the performance of the restrictions, covenants and conditions in this Agreement; PROVIDED, HOWEVER, that the conveying Owner shall remain liable for any acts or omissions during such Owner's period of ownership of such Property.

Section 8. Rights of the City of Gig Harbor.

A. Execution of this Agreement shall not affect the City of Gig Harbor's present or future interest or use of any public or private sanitary sewer system. If the City determines that maintenance is required for the sanitary sewer system, and/or there is/are illegal connection(s) to or discharges into the sanitary sewer system, the Community Development Director or his/her designee shall give notice to the Owner(s) of the specific maintenance and/or changes required, and the basis for said required maintenance and/or changes. The Director shall also set a reasonable time in which the Owner(s) shall perform such work. If the maintenance required by the Director is not completed within the time set by the Director, the City may perform the required maintenance. Written notice will be sent to the Owner(s), stating the City's intention to perform such maintenance, and such work will not commence until at least five (5) days after such notice is mailed, except in situations of emergency. If, at the sole discretion of the Director, there exists an imminent or present danger to the sanitary sewer system, the City's facilities or the public health and safety, such five (5) day period will be waived, and the necessary maintenance will begin immediately.

B. In order to assure the proper maintenance of the Owner's sanitary sewer system, and to ensure there will be no damage to the City's sanitary sewer system, the City of Gig Harbor shall have the right as provided below, but not the obligation, to maintain the system, if the Owner(s) fail to do so, and such failure continues for more than five (5)-days after written notice of the failure is sent to the responsible parties. However, no notice shall be required in the event that the City of Gig Harbor determines that an emergency situation exists in which damage to person or property may result if the situation is not remedied prior to the time required for notice.

C. If the City provides notice in writing, but the Owner or Owners' Association fails or refuses to perform any maintenance or operational duties as requested by the City, the City's employees, officials, agents or representatives may enter the Property and undertake the necessary maintenance, repair or operational duties to the City's satisfaction. The City's ability to enforce this provision is subject further to the City's right to impose materialmen's and/or laborer's liens and to foreclose upon any and all properties owned by the Owner(s).

D. If the City exercises its rights under this Section, then the Owner(s) or Owners' Association shall reimburse the City on demand for all reasonable and necessary expenses incurred incident thereto. In addition, the City is hereby given the right, power and authority acting in the name of the Owner's Association to exercise and enforce on behalf of the Association and at the Association's cost, the assessment of dues and charges for such costs and to enforce the Association's lien right for any assessments, dues and charges as herein specified. The City shall also be permitted to collect the costs of administration and enforcement through the lien attachment and collection process as is permitted under chapter 35.67 RCW, or any other applicable law.

E. In addition to or in lieu of the remedies listed in this Section, if the Owners or Owner's Association, after the written notice described in Section 8A above, fails or refuses to perform the

necessary maintenance, repair, replacement or modifications, the City may enjoin, abate or remedy such breach or continuation of such breach by appropriate proceedings, and may bring an action against the violator for penalties under the Gig Harbor Municipal Code.

Section 9. Indemnification of City. The Owner(s) agree to defend, indemnify and hold harmless the City of Gig Harbor, its officials, officers, employees and agents, for any and all claims, demands, actions, injuries, losses, damages, costs or liabilities of any kind or amount whatsoever, whether known or unknown, foreseen or unforeseen, fixed or contingent, liquidated or unliquidated, arising from an alleged defect in the design of the sanitary sewer system as installed by the Owner(s), or arising by reason of any omission or performance under this Agreement by the Owner(s), its successors and assigns, and/or Owners' Association, of any of the obligations hereunder.

Section 10. Rights Subject to Permits and Approvals. The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Easement and Maintenance Agreement.

Section 11. Terms Run with the Property. The promises, conditions, covenants and restrictions contained herein shall constitute a covenant or equitable servitude, the burden and benefit of which shall run with the land and bind successive owners with equitable or legal interests in the Property. Accordingly, by its acceptance of a deed or other instrument vesting a substantial beneficial interest in all or any lot, or other portion of the Property or the Plat in such Owner, each Owner shall covenant to be bound by all the obligations incumbent upon an Owner as set forth herein, and shall be entitled to all rights and benefits accruing to an Owner hereunder. This Agreement shall be recorded in the Pierce County Assessor's Office, and shall serve as notice to holders of after-acquired interests in the Property.

Section 12. Notice. All notices require or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt on three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

To the City:

City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

To the Declarant:

SOUTH ST. PROFESSIONALS, LLC
5715 WOLLOCHET DR, NW
GIG HARBOR, WA 98335

Section 13. Severability. Any invalidity, in whole or in part, of any provision of this Easement and Maintenance Agreement shall not affect the validity of any other provision.

Section 14. Waiver. 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.

Section 15. Governing Law, Disputes. Jurisdiction of any dispute over this Easement and Maintenance Agreement shall be solely with Pierce county Superior Court, Pierce County, Washington.

This Easement and Maintenance Agreement shall be interpreted under the laws of the State of Washington. The prevailing party in any litigation arising out of this Easement and Maintenance Agreement shall be entitled to its reasonable attorneys' fees, costs, expenses and expert witness fees.

Section 16. Integration. This Easement and Maintenance Agreement constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

IN WITNESS WHEREOF, the parties have caused this Easement and Maintenance Agreement be executed this _____ day of _____, 200__.


THE CITY OF GIG HARBOR

OWNER

By: _____
Its Mayor

By: 
Its: MANAGING MEMBER
Print Name: GORDON RUSH

APPROVED AS TO FORM:



City Attorney

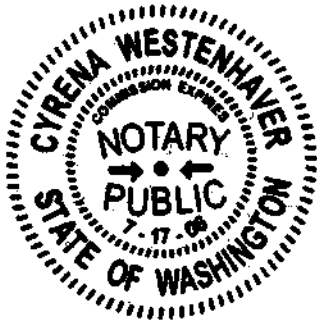
ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that GORDON RUSH is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the MANAGING MEMBER of 3519-51st St. Professionals, LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 12/17/03



Cyrena Westenhaver
Notary Public in and for the
State of Washington,
Title: NOTARY PUBLIC
My appointment expires: 7/17/06

STATE OF WASHINGTON)
) ss.
COUNTY OF P I E R C E)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____, of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Notary Public in and for the
State of Washington,
Title: _____
My appointment expires: _____

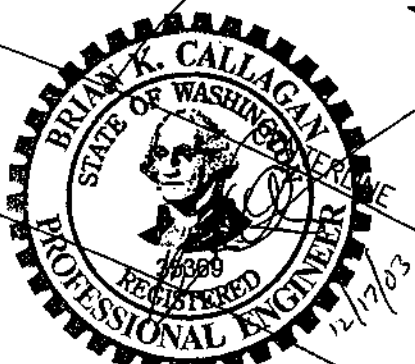
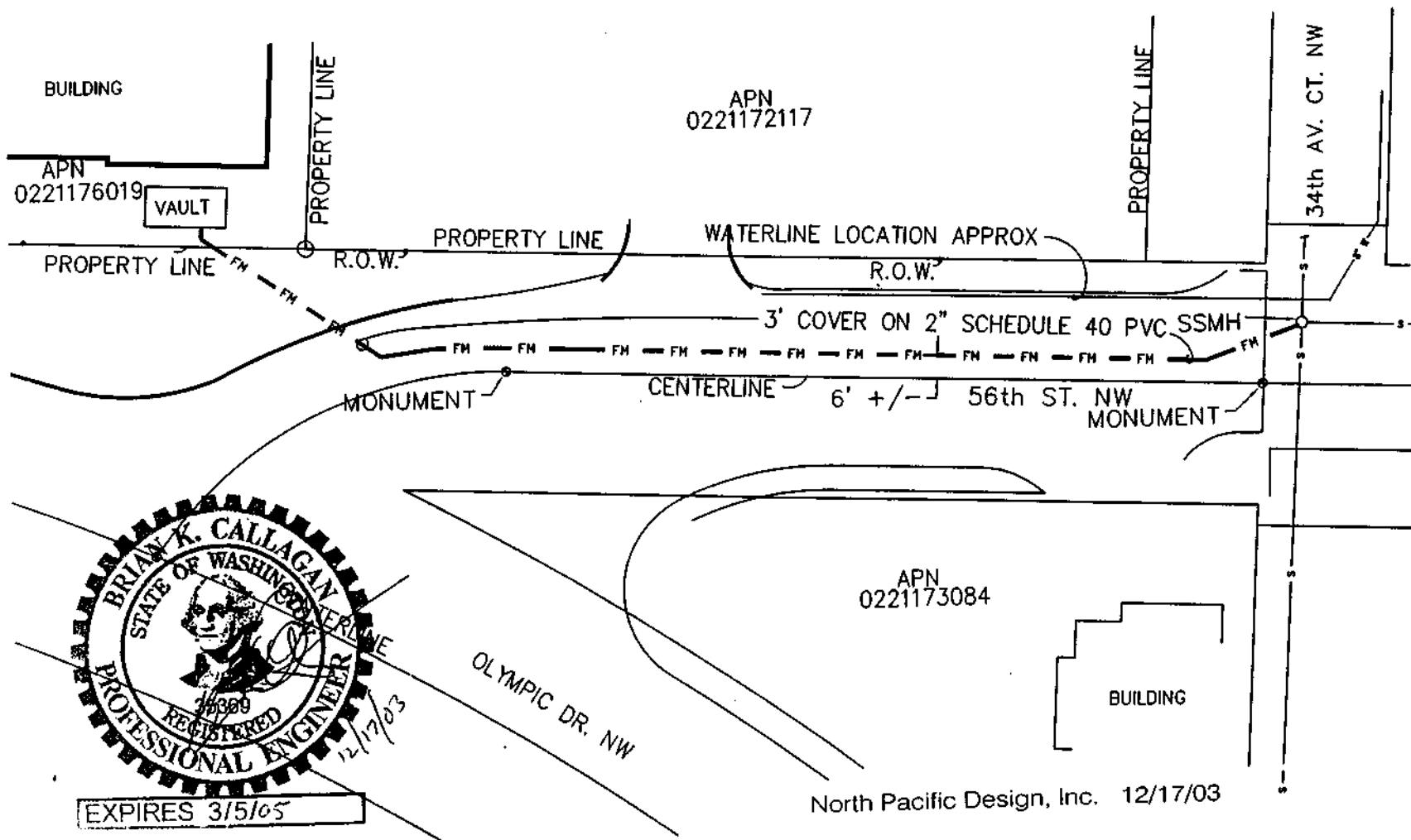
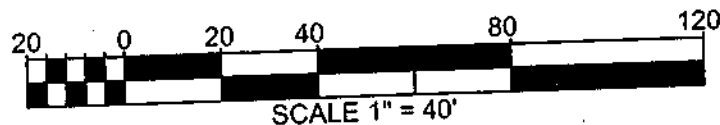
EXHIBIT A

LOT 2 of PEIRCE COUNTY SHORT PLAT NO. 8211150277, according to Plat
Recorded November 15, 1982, in Pierce County, Washington.

Situate in the County of Pierce, State of Washington.

Assessor's Property Tax Parcel #022117-601-9

EXHIBIT B



EXPIRES 3/5/05

North Pacific Design, Inc. 12/17/03

CP 1080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 1/05/04

RECEIVED
JAN 7 2004
EY

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20040430

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 LA FAMILIA LOPEZ, INC.	EL PUEBLITO FAMILY MEXICAN RESTAURANT 3226 HARBORVIEW DR STE 7 GIG HARBOR WA 98332 2182	358890	SPIRITS/BR/WN REST LOUNGE +



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PUBLIC HEARING AND CONTINUED SECOND READING OF FOUR
ALTERNATIVE ORDINANCES AMENDING GHMC SECTION 17.80.130,
TO ALLOW STRUCTURAL CHANGES TO NONCONFORMING SIGNS.
ZONING TEXT AMENDMENT #03-08
DATE: JANUARY 12, 2004

INFORMATION/BACKGROUND

At the December 8, 2003 City Council meeting, the staff presented an alternative draft ordinance that would amend the City's non-conforming sign provisions. The alternative ordinance was intended to address both the specific needs of Courtesy Ford as expressed during the public hearing before the Council on November 4, 2003 and also the concerns addressed in the staff report to the Council over three alternative proposals submitted by Courtesy Ford. At the December 8th meeting, the Council directed staff to bring the alternative draft ordinance back to the Council for a public hearing. While making their motion on this matter, Mr. Dick Settle, representing Courtesy Ford, asked the Council if they would also be willing to bring back for the same hearing the original three ordinances submitted by Courtesy Ford. The Council agreed.

Accordingly, attached for Council's consideration and for public hearing are four separate ordinances that would amend the City's non-conforming sign provisions. The ordinances are briefly summarized as follows:

Courtesy Ford Alternative "A"

This ordinance allows changes to non-conforming signs which do not increase the overall height or area of the sign face. However, the ordinance requires the widening of the sign pole and allows unlimited increase in the size of a sign base structure. The effect will be a sign and its associated structure that will be significantly larger than the existing non-conforming sign. The ordinance allows changes only if one other non-conforming sign of an unspecified type is removed, and is conditioned upon the change complying with a change to a national or international corporate logo or graphics. The ordinance requires that signs comply with the City's signage illumination requirements, except that it allows illuminated letter sizes in excess of current regulations if the average letter size is no larger than those on the existing non-conforming sign face.

(The current code requires full conformance with all illumination and letter size requirements any time there is a change to the face of a non-conforming sign).

Courtesy Ford Alternative "B"

This ordinance includes the same provisions as Alternative "A", except that it does not limit sign changes to those that conform with a change to a national or international corporate logo or graphics; nor does it include the provisions for requiring the enlargement of the sign pole base. It would nonetheless *allow*, as in alternative "A", an unlimited increase in the size of a sign base structure.

Courtesy Ford Alternative "C"

This ordinance is the same as Alternative "B", except that it applies not just to nonconforming *pole* signs, but to nonconforming signs of any type, and it does not require the removal of any nonconforming signs as a condition of changing an existing nonconforming sign.

Staff / Ford Alternative Ordinance

This ordinance was drafted in response to concerns expressed in the staff report to the City Council for the public hearing of Courtesy Ford's three alternative ordinances. The Council agreed to postpone further discussion to allow both the staff and the applicant time to develop a revised ordinance that would address both the specific needs of Courtesy Ford as expressed during the public hearing before the Council and also the concerns expressed by the staff over each of the original three proposals.

The staff therefore met with the applicant's attorney, Mr. Dick Settle, and developed an ordinance that includes provisions that the staff believes are more consistent with adopted goals, policies and regulations of the City, and which also includes provisions that would meet the needs of Courtesy Ford. There were some issues, however, that the staff and the applicant did not agree upon. The ordinance is therefore drafted to show mutually agreeable language, and also language specifically proposed by either the staff or Mr. Settle. Accordingly, changes that Courtesy Ford is proposing that are not supported by staff are identified in bold text with a dotted underline. Changes that staff has proposed that are not acceptable to Ford are identified by a shaded background. Differences between the staff and the applicant pertained to (1) the number of freestanding signs to be removed in order to qualify for changes to an existing sign, (2) the specific conditions for changing a nonconforming sign.

The staff's full proposal includes amendments would provide three options to make structural alterations to one nonconforming freestanding sign of the owners choosing, but in a manner that significantly reduces other non-conformities related to the sign or the property. These options are shown on the attached illustrations. The first option allows the owner to make any changes that do not increase the height, sign area or mass and bulk of the sign and sign supporting structure. Under this option, Ford would

not be able to add their proposed shroud around the pole because the shroud would increase the overall mass of the sign by more than two-fold.

The second option would allow an increase in the overall mass (and therefore allow Ford's proposed pole shroud) if the nonconforming height and sign area were reduced by 50%. This option would result in a lower sign than currently exists, but still tall enough to provide Ford with a sign that would be highly visible from the freeway. (The lower sign might be even more visible than the existing Ford sign which, from certain vantage points, is blocked by the existing Chevrolet signs).

The third option would allow an increase in overall mass (thereby allowing Ford's pole shroud), provided that the sign height and sign area not be increased, and provided that the property frontage be landscaped as per current landscaping requirements. This option is significant because many existing sites in the C-1 zone do not comply with current landscaping requirements. There may therefore be no open, unobstructed areas near the road that would provide visibility of the 8-foot freestanding signs otherwise allowed in those areas. This is the case with both the Ford and Chevrolet sites in Gig Harbor. Both sites have cars parked right up to and within the right-of-way, leaving no opportunity to view low profile signage. Because their existing signs are not low profile, there are no incentives to install landscaping for visibility purposes. While the required landscaping proposed in the revised ordinance would not be necessary for increased visibility of Ford's sign, it would help to soften the visual impacts associated with the increased size of the sign structure with the added shroud. It would also provide an incentive to bring landscaping closer to conformance with current codes.

Mr. Settle also indicates that his client is not willing to remove all remaining nonconforming signs as a condition of changing their primary pole sign. He states that his client must have two free-standing signs – one to identify the dealership and the other to identify their "pre-owned cars". Accordingly, Ford's proposal includes the ability to both retain and structurally alter two free-standing signs.

Additionally, Mr. Settle has indicated that his client is not willing to conform to the color, sign graphics, materials and illumination requirements of the current sign code. His proposed changes therefore delete this section.

Finally, Mr. Settle states that his client is opposed to all three options under the staff's recommended language in the ordinance. He states that the first option would result in a "mutant" sign unlike any other in the state; that the second option would result in a sign that would be "dwarfed" by Chevrolet signs; and that the third option would require removal of asphalt, which he claims that Ford, as lessee, has no right to do.

The revised ordinance includes one other change that was not part of Courtesy Ford's original proposal. It includes the elimination of the provision that allows the Design Review Board (DRB) to deem a nonconforming sign as conforming if it met certain design criteria. This provision was originally adopted when the City adopted its

amortization provision. However, with the amortization provision being eliminated, there is no longer a need for the provision allowing the DRB to deem signs as conforming.

Regarding provisions that would apply to changing nonconforming signs, it should be noted that these provision would only apply to signs that are legally nonconforming. It is not clear at this point how many of Ford's existing free-standing signs are legal. The staff is aware of changes to existing signage that occurred without permits when the business name was changed to Courtesy Ford and which may have triggered removal of the non-conforming signs. There has also been an expansion of the site coverage that might have triggered removal of existing signs, depending upon when the expansion occurred and whether it was approved by Pierce County prior to annexation. The staff will have to do further investigation of this issue before issuing any permits under the proposed new language.

POLICY CONSIDERATIONS

Applicable land use policies and codes are as follows:

a. Comprehensive plan:

The City of Gig Harbor Comprehensive Plan Community Design Element includes the following goals and policies that relate to the proposed amendments:

Pg. 30 **SIGNAGE AND ILLUMINATION SUBSECTION.** Signs have become one of the more visual components of modern urbanscapes and are of primary concern to business owners. Clear and effective signage is essential to the operation of businesses and can facilitate vehicular and pedestrian activities. However, signage can also be the greatest contributor to visual clutter and blight. Large, garish signs designed as "attention getters" are neither necessary nor desirable in Gig Harbor's small town setting.

Pg. 34 – **GOAL: RESTRICT USE OF OFF PREMISE SIGNS –Objective # 2 –**
Avoid signs designed for distant viewing.

b. Zoning Code:

Chapter 17.80 of the Gig Harbor Municipal Code regulates signs. Section 17.80.130 Nonconforming signs provides a mechanism by which the owner of a non-conforming sign may make modest changes to their sign. Changes to a sign face must conform to the city's restrictions for color, sign graphics, materials, and illumination. Signs must be brought into full compliance with the City's sign code if the owner seeks to change the structure supporting, holding, or surrounding the sign. These provisions were adopted in 1998 when the City decided to remove the amortization clause for non-conforming signs.

c. Design Manual

Both the Design Manual and the Comprehensive Plan designate SR-16 as an enhancement corridor. Page 40 of the Design Manual states that:

Development within 300 feet of SR-16 and within 100 feet of Burnham Drive ROW must either be screened or conform to all design criteria if required screening cannot be achieved within 3 years. The purpose of enhancement corridors is to maintain the scenic beauty which characterizes highway travel across the peninsula, to maintain a more distinct city "edge", to assure a stronger sense of arrival at visual interchange and activity nodes, and to provide visual separation between districts.

ENVIRONMENTAL ANALYSIS

A SEPA threshold Determination of Nonsignificance (DNS) was issued for the proposed amendments on August 27, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003. The deadline for appealing the determination was September 17, 2003. No appeals have been filed and, to date, no public comments have been submitted. The public was allowed to comment on the SEPA determination at the public hearing before the Planning Commission. A copy of the DNS was included in the November 11th Council packet. The SEPA Responsible Official has determined that the revised ordinance is within the scope of the original three proposed ordinances and therefore requires no additional SEPA action or review.

FISCAL IMPACTS

No significant fiscal impacts are expected with the proposed revised ordinance.

STAFF ANALYSIS

Staff concerns over each of the ordinances proposed by Courtesy Ford include:

1. Alternative "A" is not "content neutral" because it favors national or international corporations over other types of business. It might therefore be suspect under the free speech clause of the U.S. Constitution.
2. Each alternative allows unlimited increase in the size of the sign base (alternative "A" actually requires a size increase), meaning that the revised sign may be (or in the case of alternative "A", will be) much more visually intrusive in terms of mass and bulk than the existing nonconforming sign.
3. Each alternative result in a loosening of existing standards pertaining to signage illumination, which is one of the more defining features of Gig Harbor's sign code over sign codes of surrounding jurisdictions. These standards were adopted in response to public outcry over some of the larger illuminated signs installed within the past 10 years.
4. The averaging of letter height under the illumination standards in Ford's proposed ordinances would be difficult to interpret.
5. The proposed language that requires removal of one non-conforming sign as a condition of modifying another non-conforming sign may be interpreted to mean that multiple non-conforming signs may be modified if only one other sign is removed. In other words, the language does not specify that one sign must be removed for every sign retained and modified.

6. The visual benefits that might be derived under each alternative are negligible in terms of comprehensive plan and design manual policies. While two of the ordinances require removal of one non-conforming sign, the signs that would be removed are far less impacting in terms of their visibility from the enhancement corridor (SR-16) than the two signs Ford wishes to retain and modify. Moreover, the increase in mass for the signs to be retained and modified may be far more noticeable than the signs that might otherwise be removed under the ordinance. The modified signs would therefore be particularly non-compliant with adopted goals and polices pertaining to the SR-16 enhancement corridor. The signs that Ford would likely remove are set some distance back on their site and do not face SR-16. The public may not even notice that signs were removed in exchange for the larger new sign structure that would be visible from the freeway.

While the staff will not be recommending any changes to the existing code, we believe that the language in the Staff/Ford alternative (revised) ordinance addresses many of the concerns expressed in the staff report on Ford's previous three alternative ordinances. However, some language specifically proposed by Courtesy Ford is too limited in its application. For example, if Chevrolet were to come in and ask to change both their primary and used car sale signs, they could not qualify for changes under Ford's proposed revisions. The staff's proposed language may be more universally applied to other businesses than Courtesy Ford's suggested language; it would provide Ford with an opportunity to retain highly visible signage; it would reduce the more obvious signage nonconformities; and it would potentially reduce existing landscaping nonconformities.

Regarding Mr. Settle's comment that option 1 of the staff's proposed language would result in a "mutant" sign unlike any other in the state, it is noteworthy that all other corporations that have installed signage in Gig Harbor (e.g., McDonald's, Hollywood Video, Olson Brothers Chevrolet, Target, Albertsons, etc.) have altered their standard corporate sign package in order to comply with Gig Harbor's sign code.

Regarding Mr. Settle's further comment that Courtesy Ford, as lessee, is not able to remove asphalt in order to comply with the landscaping provision under option 3 of the staff's proposed language, the staff believes that it would be highly unusual for a property owner to not allow this change. In most cases, it is the lessee that develops a site to conform to their business needs, including the installation of asphalt (meaning that the asphalt often belongs to the lessee). Even if the owner of the Ford site does not allow removal of the asphalt, the staff believes that this provision would be applicable to most situations and is therefore appropriate as a text amendment.

RECOMMENDATION

The staff does not recommend any changes to the existing language pertaining to nonconforming signs. This existing language was developed as a compromise to the

previously adopted amortization clause. It ensures that all nonconforming signs will eventually come into compliance with current codes but it allows owners of nonconforming signs to maintain them and even change the sign faces in them provided that the new sign faces conform to the City's material, color and illumination standards. The existing language retains the City's characteristic illumination standards, which would be significantly compromised under Ford's proposed language.

If the Council wishes to amend the code as per one of the proposed ordinances, the staff recommends that the Council adopt the staff-proposed language contained in the Staff/Ford alternative ordinance. While this language will result in significant compromises to Gig Harbor's current code, it is nonetheless the least problematic in terms of consistency with existing codes and policies. Again, however, **the staff does not recommend any changes.**

Attachments

Original 3 Ordinances proposed by Courtesy Ford

Staff / Ford Alternative Ordinance

Photo of existing Ford sign as seen from SR-16

Option 1 Photo showing new Ford Sign on existing pole (no shroud)

Option 2 Photo showing proposed Ford sign (with shroud) with a 50% reduction of nonconformity.

Option 3 Photo showing Ford's proposed sign (full height with shroud) with landscaping.

Photo showing Ford's proposed sign (full height with shroud) and with no other requirements.

Photo showing signage and landscaping as required under current code provisions.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE SIGN CODE, SECTION 17.80.130 OF THE GIG HARBOR MUNICIPAL CODE

WHEREAS, amendments were proposed to the Gig Harbor Municipal Code regarding non-conforming signs by Courtesy Ford, which owns a local business within the City; and

WHEREAS, the amendments would permit modest changes to be made to a nonconforming sign if sign face area and height are not increased, and the applicant also removes one nonconforming sign from the same property; and

WHEREAS, the Gig Harbor Comprehensive Plan encourages both the removal of non-conforming signage and the retention of local businesses;

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance on August 27, 2003;

WHEREAS, notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003, and no appeal was filed; and

WHEREAS, public notice was provided for a Planning Commission work session on September 4, 2003, a Planning Commission hearing on October 2, 2003, and a City Council hearing on October 27, 2003; and

WHEREAS, the City Planning Commission held a work session on September 4, 2003; and

WHEREAS, the City Planning Commission held a public hearing on October 2, 2003, and heard public testimony, but did not make a recommendation to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of October 27, 2003; Now, Therefore,

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

Section 1. Section 17.80.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

GHMC 17.80.130 Nonconforming signs.

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or

2. The sign was erected prior to January 1, 1992.

B. A sign must be brought into compliance with the requirements of this code unless it conforms to subsection (A) of this section.

C. Changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials, and illumination. A permit for such changes must be obtained.

D. A legal nonconforming sign shall be brought into compliance with this chapter or shall be removed if:

1. The sign is abandoned;

2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;

3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding a nonconforming pole sign may be made, without bringing the legal nonconforming pole sign into compliance with this chapter and without removal, if:

a. Such changes do not increase the overall actual height of the sign or the actual area of the sign face;

b. Such changes include widening the pole or the appearance of the pole, through surrounding material containing no sign graphics;

c. Such changes are designed to conform with changes in national or international corporate logo or graphics by the manufacturer of the principal product sold on the premises of the sign;

d. Such changes do not make the sign more nonconforming to this code than the existing sign as to colors, sign graphics, materials and illumination (the size of letters may be averaged to determine whether they are not more nonconforming); and

e. At least one other nonconforming sign on the premises is removed.

4. The tenant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the tenant space floor area or site coverage area by 20 percent or more, unless the sign is brought into conformance under the provisions of subsection (E) of this section;

5. The building to which the sign applies is demolished.

E. An owner of a nonconforming sign may, under the provisions of GHMC 17.80.140, request the design review board (DRB) to approve a design allowance deeming the sign conforming if the DRB makes all findings of fact specified for the following sign types:

1. Signs Attached to Buildings.

- a. The sign is not a dominant feature on a blank wall, but is positioned within architectural features of a building specifically designed and intended for signage, such as parapets, sign bands, or fascias, or is positioned between other architectural features such as doors, windows or projections which provide architectural relief and detailing.
- b. The sign is smaller than the architectural space the sign fits within so as to leave wall reveal around all sides of the sign.
- c. The sign face conforms to all restrictions on background illumination and sign color.
- d. The sign is consistent with the intent and general scope of the sign code and design manual standards.

2. Freestanding Signs.

- a. The sign has design features which reflect design elements of surrounding structures, or the sign is incorporated into a landscaped area with large and mature plantings which provide a backdrop to the sign and which are at least as tall as the sign.

- b. The sign has the characteristics of a monument sign rather than a pole sign (e.g., the base of the sign support where it meets the ground is at least as wide as the sign face).
- c. The sign is consistent with the intent and general scope of the city's sign code and design manual standards. (Ord. 788 § 13, 1998).

Section 2. 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 3. 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 October, 2003.

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: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: _____

L:\Rieb\HK\2003\long range projects\FORD TEXT AMEND\applicant proposed ordinances\Ordinance Alternative #A.doc

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE SIGN CODE, SECTION 17.80.130 OF THE GIG HARBOR MUNICIPAL CODE

WHEREAS, amendments were proposed to the Gig Harbor Municipal Code regarding non-conforming signs by Courtesy Ford, which owns a local business within the City; and

WHEREAS, the amendments would permit modest changes to be made to a nonconforming sign if sign face area and height are not increased, and the applicant also removes one nonconforming sign from the same property; and

WHEREAS, the Gig Harbor Comprehensive Plan encourages both the removal of non-conforming signage and the retention of local businesses;

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance on August 27, 2003;

WHEREAS, notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003, and no appeal was filed; and

WHEREAS, public notice was provided for a Planning Commission work session on September 4, 2003, a Planning Commission hearing on October 2, 2003, and a City Council hearing on October 27, 2003; and

WHEREAS, the City Planning Commission held a work session on September 4, 2003; and

WHEREAS, the City Planning Commission held a public hearing on October 2, 2003, and heard public testimony, but did not make a recommendation to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of October 27, 2003; Now, Therefore,

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

Section 1. Section 17.80.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

GHMC 17.80.130 Nonconforming signs.

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or

2. The sign was erected prior to January 1, 1992.

B. A sign must be brought into compliance with the requirements of this code unless it conforms to subsection (A) of this section.

C. Changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials, and illumination. A permit for such changes must be obtained.

D. A legal nonconforming sign shall be brought into compliance with this chapter or shall be removed if:

1. The sign is abandoned;

2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;

3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding a nonconforming pole sign may be made, without bringing the legal nonconforming pole sign into compliance with this chapter and without removal, if:

a. Such changes do not increase the overall actual height of the sign or the actual area of the sign face;

b. Such changes do not make the sign more nonconforming to this code than the existing sign as to colors, sign graphics, materials and illumination (the size of letters may be averaged to determine whether they are not more nonconforming); and

c. At least one other nonconforming sign on the premises is removed.

4. The tenant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the tenant space floor area or site coverage area by 20 percent or more, unless the sign is brought into conformance under the provisions of subsection (E) of this section;

5. The building to which the sign applies is demolished.

E. An owner of a nonconforming sign may, under the provisions of GHMC 17.80.140, request the design review board (DRB) to approve a design allowance deeming the sign conforming if the DRB makes all findings of fact specified for the following sign types:

1. Signs Attached to Buildings.

- a. The sign is not a dominant feature on a blank wall, but is positioned within architectural features of a building specifically designed and intended for signage, such as parapets, sign bands, or fascias, or is positioned between other architectural features such as doors, windows or projections which provide architectural relief and detailing.
- b. The sign is smaller than the architectural space the sign fits within so as to leave wall reveal around all sides of the sign.
- c. The sign face conforms to all restrictions on background illumination and sign color.
- d. The sign is consistent with the intent and general scope of the sign code and design manual standards.

2. Freestanding Signs.

- a. The sign has design features which reflect design elements of surrounding structures, or the sign is incorporated into a landscaped area with large and mature plantings which provide a backdrop to the sign and which are at least as tall as the sign.
- b. The sign has the characteristics of a monument sign rather than a pole sign (e.g., the base of the sign support where it meets the ground is at least as wide as the sign face).
- c. The sign is consistent with the intent and general scope of the city's sign code and design manual standards. (Ord. 788 § 13, 1998).

Section 2. 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 3. 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 October, 2003.

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: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE SIGN CODE, SECTION 17.80.130 OF THE GIG HARBOR MUNICIPAL CODE

WHEREAS, amendments were proposed to the Gig Harbor Municipal Code regarding non-conforming signs by Courtesy Ford, which owns a local business within the City; and

WHEREAS, the amendments would permit modest changes to be made to a nonconforming sign if sign face area and height are not increased; and

WHEREAS, the Gig Harbor Comprehensive Plan encourages retention of local businesses;

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance on August 27, 2003;

WHEREAS, notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003, and no appeal was filed; and

WHEREAS, public notice was provided for a Planning Commission work session on September 4, 2003, a Planning Commission hearing on October 2, 2003, and a City Council hearing on October 27, 2003; and

WHEREAS, the City Planning Commission held a work session on September 4, 2003; and

WHEREAS, the City Planning Commission held a public hearing on October 2, 2003, and heard public testimony, but did not make a recommendation to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of October 27, 2003; Now, Therefore,

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

Section 1. Section 17.80.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

GHMC 17.80.130 Nonconforming signs.

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or

2. The sign was erected prior to January 1, 1992.

B. A sign must be brought into compliance with the requirements of this code unless it conforms to subsection (A) of this section.

C. Changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials, and illumination. A permit for such changes must be obtained.

D. A legal nonconforming sign shall be brought into compliance with this chapter or shall be removed if:

1. The sign is abandoned;

2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;

3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding a nonconforming sign may be made, without bringing the legal nonconforming sign into compliance with this chapter and without removal, if:

a. Such changes do not increase the overall actual height of the sign or the actual area of the sign face;

b. Such changes do not make the sign more nonconforming to this code than the existing sign as to colors, sign graphics, materials and illumination (the size of letters may be averaged to determine whether they are not more nonconforming); and

4. The tenant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the tenant space floor area or site coverage area by 20 percent or more, unless the sign is brought into conformance under the provisions of subsection (E) of this section;

5. The building to which the sign applies is demolished.

E. An owner of a nonconforming sign may, under the provisions of GHMC 17.80.140, request the design review board (DRB) to approve a design allowance deeming the sign conforming if the DRB makes all findings of fact specified for the following sign types:

1. Signs Attached to Buildings.

- a. The sign is not a dominant feature on a blank wall, but is positioned within architectural features of a building specifically designed and intended for signage, such as parapets, sign bands, or fascias, or is positioned between other architectural features such as doors, windows or projections which provide architectural relief and detailing.
- b. The sign is smaller than the architectural space the sign fits within so as to leave wall reveal around all sides of the sign.
- c. The sign face conforms to all restrictions on background illumination and sign color.
- d. The sign is consistent with the intent and general scope of the sign code and design manual standards.

2. Freestanding Signs.

- a. The sign has design features which reflect design elements of surrounding structures, or the sign is incorporated into a landscaped area with large and mature plantings which provide a backdrop to the sign and which are at least as tall as the sign.
- b. The sign has the characteristics of a monument sign rather than a pole sign (e.g., the base of the sign support where it meets the ground is at least as wide as the sign face).
- c. The sign is consistent with the intent and general scope of the city's sign code and design manual standards. (Ord. 788 § 13, 1998).

Section 2. 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 3. 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 October, 2003.

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: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: _____

L:\Riebl\K2003\long range projects\FORD TEXT AMEND\applicant proposed ordinances\Ordinance Alternative #C.doc

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE SIGN CODE TO ESTABLISH CRITERIA FOR CITY APPROVALS TO CHANGES OF CERTAIN TYPES OF NONCONFORMING SIGNS AND TO ELIMINATE THE PROCEDURE FOR DESIGN ALLOWANCES TO DEEM EXISTING ILLEGAL NONCONFORMING SIGNS LEGALLY CONFORMING BY THE DESIGN REVIEW BOARD; AMENDING GIG HARBOR MUNICIPAL CODE SECTION 17.80.130.

WHEREAS, three alternative amendments to GHMC Section 17.80.130 were proposed to allow changes to certain non-conforming signs by Courtesy Ford, which owns a local business within the City; and

WHEREAS, the amendments were incorporated into an ordinance draft dated November 24, 2003; and

WHEREAS, the Gig Harbor Comprehensive Plan encourages both the removal of non-conforming signage and the retention of local businesses;

WHEREAS, the City's SEPA Responsible Official issued a determination of non-significance for this draft of the ordinance on August 27, 2003;

WHEREAS, notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003, and no appeal was filed; and

WHEREAS, public notice was provided for a Planning Commission work session on September 4, 2003, a Planning Commission hearing on October 2, 2003, and a City Council hearing on October 27, 2003, all for the consideration of this draft of the ordinance; and

WHEREAS, the City Planning Commission held a work session on September 4, 2003 on this draft of the ordinance; and

WHEREAS, the City Planning Commission held a public hearing on October 2, 2003, and heard public testimony, but did not make a recommendation to the City Council due to lack of support for the proposed amendments, which lack of support was confirmed at their October 16, 2003 meeting; and

WHEREAS, the City Council considered this draft of the ordinance during its regular City Council meeting of October 27, 2003; and

WHEREAS, the City staff report to the Council identified various concerns for each of the proposals; and

WHEREAS, the Council directed the staff to provide additional information regarding other nonconforming signs throughout the City and moved to continue the second reading of the ordinance to allow the staff and the applicant time to bring back a revised ordinance that addressed the concerns expressed by the applicant at the Council's public hearing and also to more closely conform to existing codes and policies relating to signage in the City; and

WHEREAS, the City Planning Department worked to develop a revised ordinance, and in the process, realized that GHMC Section 17.80.130(E) should be repealed for reasons unrelated to the code amendment proposed by Courtesy Ford; and

WHEREAS, as background for the repeal of GHMC Section 17.80.130(E), the following facts are relevant: (1) the City amended the sign code in 1998 to eliminate an amortization clause that would have required all nonconforming signs to be removed after notification from the City; (2) this 1988 amendment neglected to eliminate a provision that allowed the DRB to deem non-conforming signs as conforming so that they would not have to be removed under the eliminated amortization clause; (3) there is no need to retain provisions that allow the DRB to deem nonconforming signs as conforming and the revised ordinance therefore deletes said provisions; and

WHEREAS, the City's SEPA Responsible Official has determined that the revised ordinance is within the scope of the original three alternatives submitted by the applicant and therefore does not require additional SEPA notice or action; and further determines that elimination of a procedure for review of signs is exempt from SEPA review under WAC 197-11-800(20); and

WHEREAS, a revised ordinance dated December 8, 2003 was submitted for the Council's review at their December 8, 2003 meeting incorporating the above proposed revisions; and

WHEREAS, at the City Council's regular meeting on December 8, 2003, the Council [directed staff to place the revised ordinance on the Planning Commission's calendar for a public hearing, or directed staff to schedule a public hearing on the revised ordinance, which public hearing would be held by the City Council]; and

WHEREAS, public notice was provided in the Peninsula Gateway on _____ for a City Council hearing on _____; and

WHEREAS, the City Council held a public hearing on the proposed revised 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. Section 17.80.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

GHMC 17.80.130 Nonconforming signs.

A. A sign is legally nonconforming if it is out of conformance with this code, and:

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or

2. The sign was erected prior to January 1, 1992.

B. A sign must be brought into compliance with the requirements of this code unless it conforms to subsection (A) of this section.

C. Changes to the sign face and sign graphics may be made to a legally nonconforming sign provided that the City has not approved a change of the sign under the provisions of subsection (D)3, except that such changes must conform to this code as to colors, sign graphics, materials, and illumination. A permit for such changes must be obtained.

D. A legal nonconforming sign shall be brought into compliance with this chapter or shall be removed if:

1. The sign is abandoned;

2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;

3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding no more than two one nonconforming freestanding signs sign (the retained signs sign) may be made, without bringing the retained signs sign into compliance with this chapter and without removal, if:

- a. The property owner or lessee selects and removes two or more other nonconforming signs, which shall include at least one all additional nonconforming freestanding sign signs on the premises for each retained freestanding sign; and
- b. Changes to the sign structure supporting, holding, or surrounding the retained signs sign would not increase the height or sign area of the overall retained signs sign and sign support structures structure; and
- c. On premises where there are two retained freestanding signs, the height of one of the signs shall not exceed eight feet and shall have the characteristics of a monument sign rather than a pole sign, as described in GHMC 17.80.130(E)(2)(b); and
- c. Changes to the structure supporting, holding, or surrounding the retained sign would not increase the overall mass or bulk of the retained sign and retained sign support structure, unless (a) the existing nonconforming height and area of the retained sign is reduced by at least 50 percent, or (b) all landscaping required under Section 17.78.070 and 17.78.080 is installed along the subject site's property frontage abutting the street, and
- d. Landscaping is installed at the base of the retained signs sign as specified under GHMC Section 17.80.090 and 17.80.100; and
- e. The City has not previously approved a change of the sign under the provisions of this section; and
- f. The changed sign face conforms to all colors, sign graphics, materials and illumination requirements of Chapter 17.80.

4. The tenant space(s) to which the sign applies is undergoing an expansion or renovation which increases the size of the tenant space floor area or site coverage area by 20 percent or more, unless the sign is brought into conformance under the provisions of subsection (E) of this section;

5. The building to which the sign applies is demolished.

~~E. An owner of a nonconforming sign may, under the provisions of GHMC 17.80.140, request the design review board (DRB) to approve a design allowance deeming the sign conforming if the DRB makes all findings of fact specified for the following sign types:~~

1. ~~Signs Attached to Buildings.~~

- ~~a. The sign is not a dominant feature on a blank wall, but is positioned within architectural features of a building specifically designed and intended for signage, such as parapets, sign bands, or fascias, or is positioned between other architectural features such as doors, windows or projections which provide architectural relief and detailing.~~
- ~~b. The sign is smaller than the architectural space the sign fits within so as to leave wall reveal around all sides of the sign.~~
- ~~c. The sign face conforms to all restrictions on background illumination and sign color.~~
- ~~d. The sign is consistent with the intent and general scope of the sign code and design manual standards.~~

2. ~~Freestanding Signs.~~

- ~~a. The sign has design features which reflect design elements of surrounding structures, or the sign is incorporated into a landscaped area with large and mature plantings which provide a backdrop to the sign and which are at least as tall as the sign.~~
- ~~b. The sign has the characteristics of a monument sign rather than a pole sign (e.g., the base of the sign support where it meets the ground is at least as wide as the sign face).~~
- ~~c. The sign is consistent with the intent and general scope of the city's sign code and design manual standards. (Ord. 788 § 13, 1998).~~

Section 2. 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 3. 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 _____, 200__.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

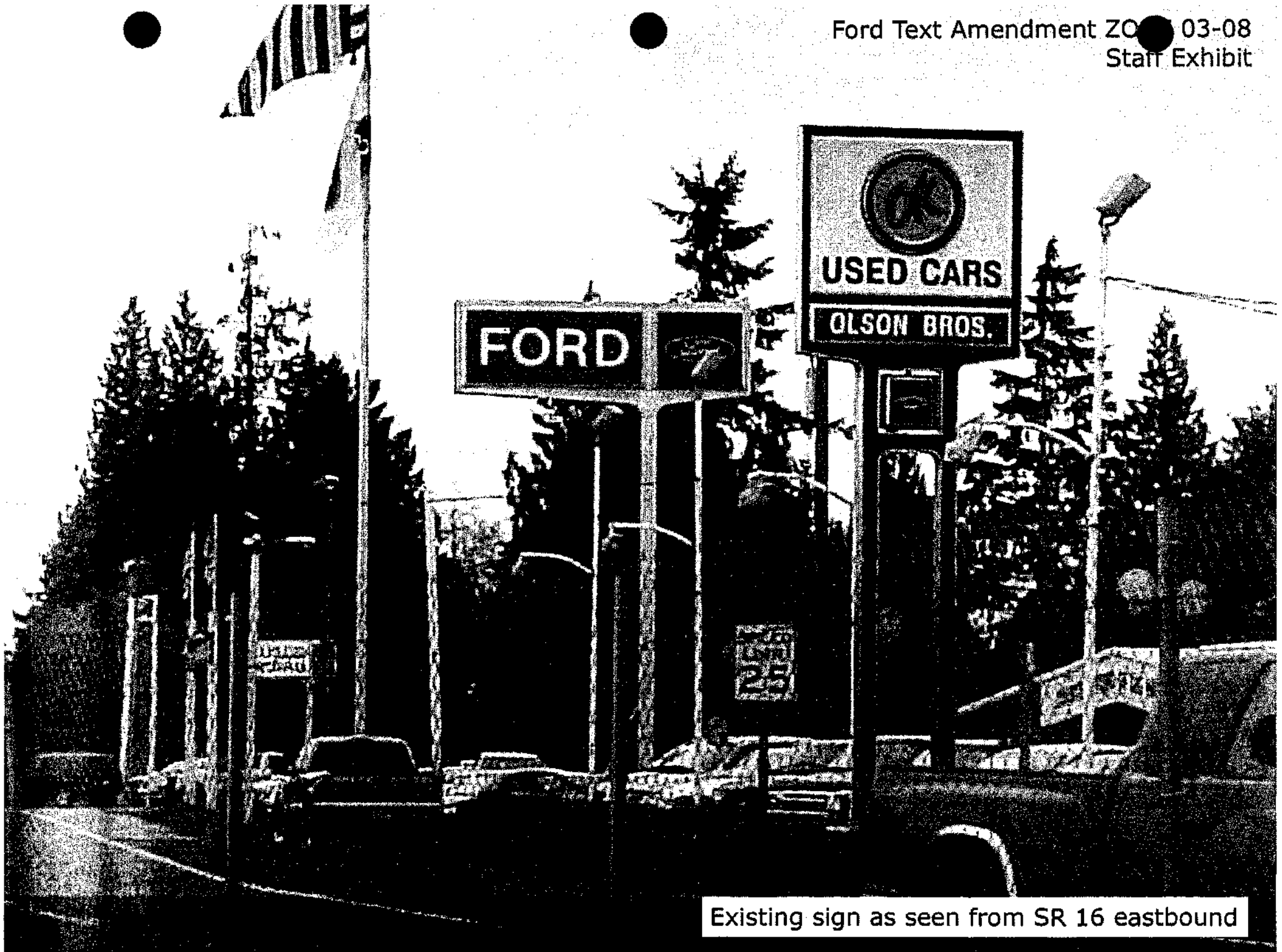
ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

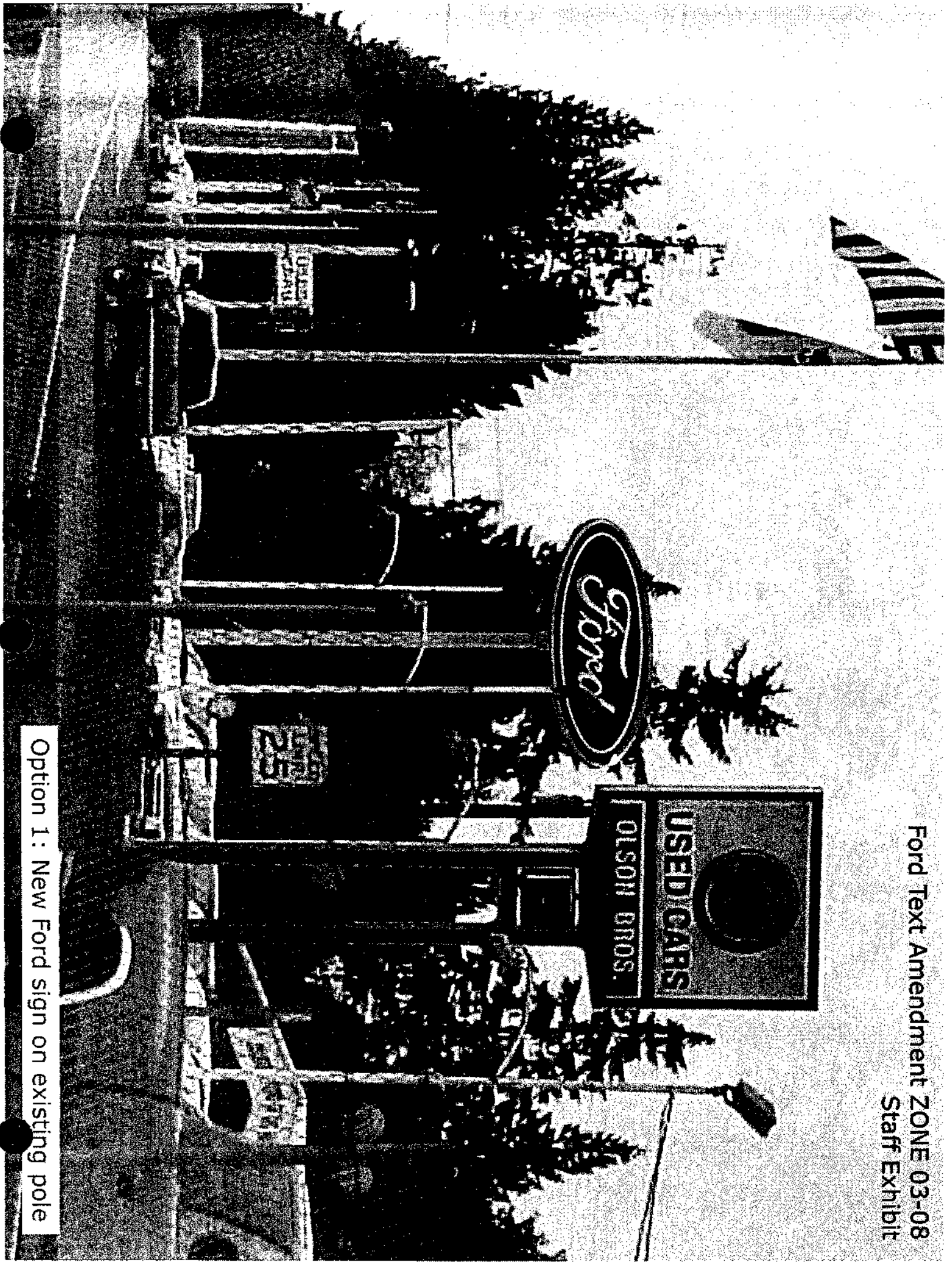
APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

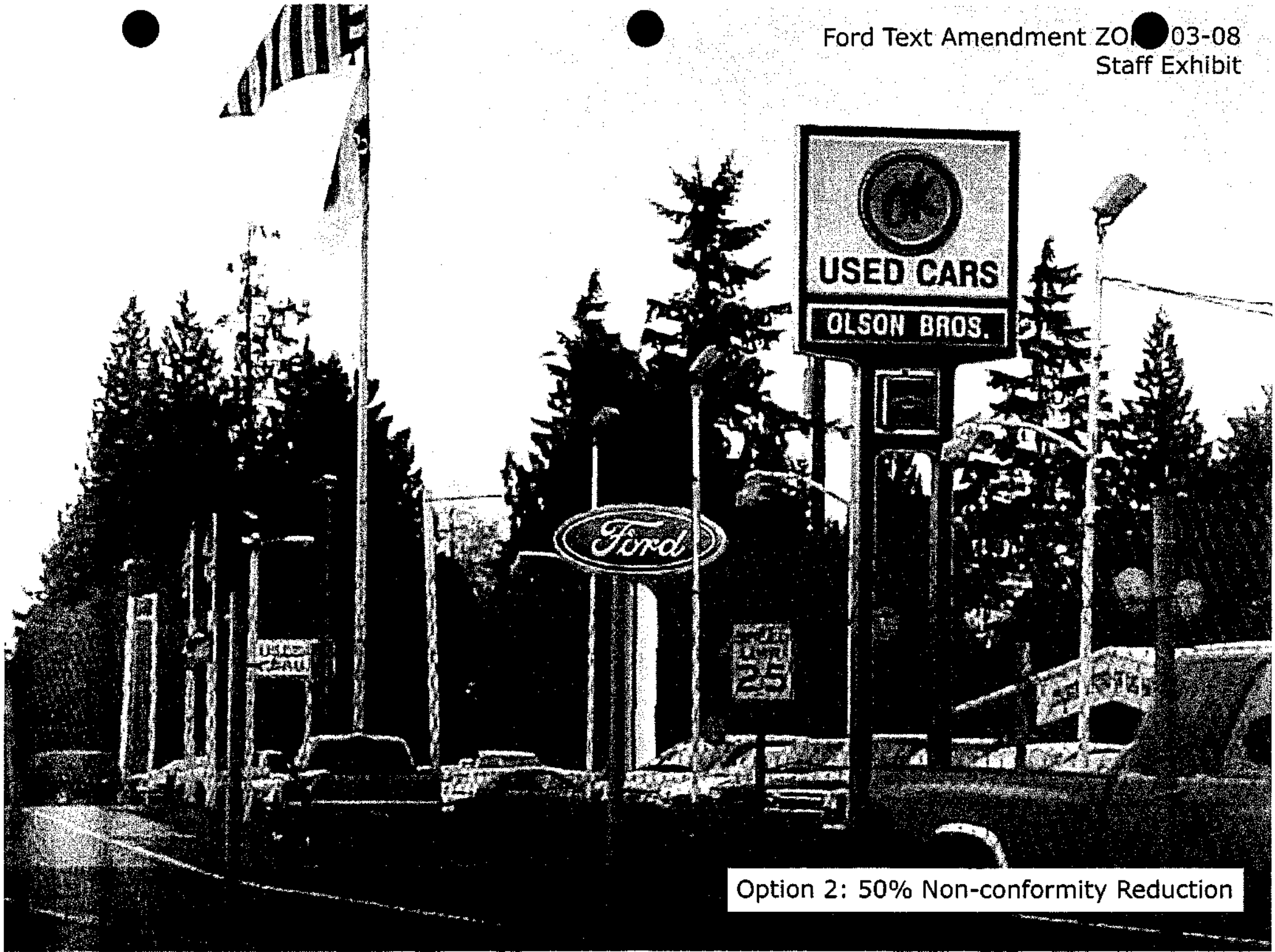
FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: _____



Existing sign as seen from SR 16 eastbound



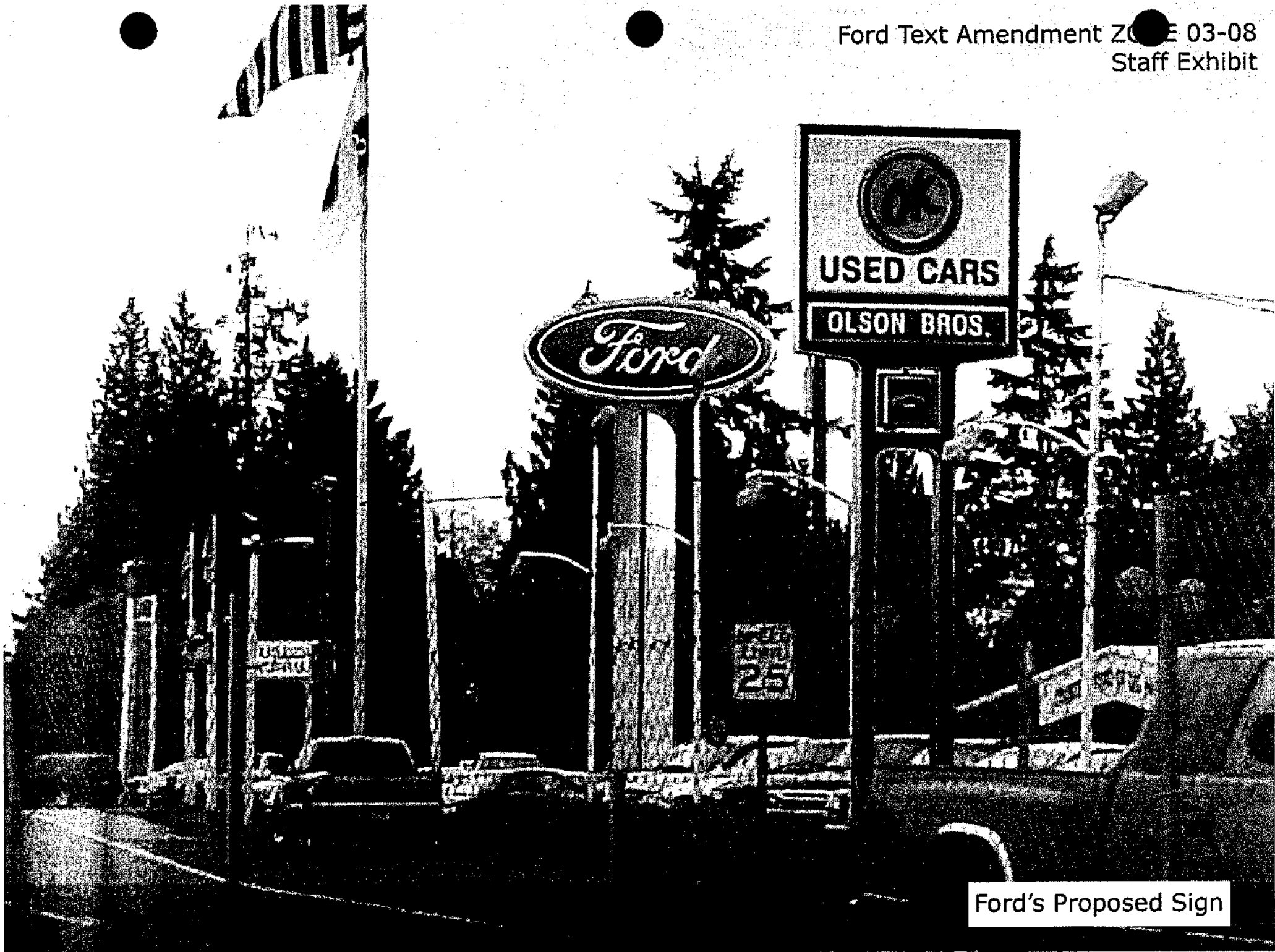
Option 1: New Ford sign on existing pole



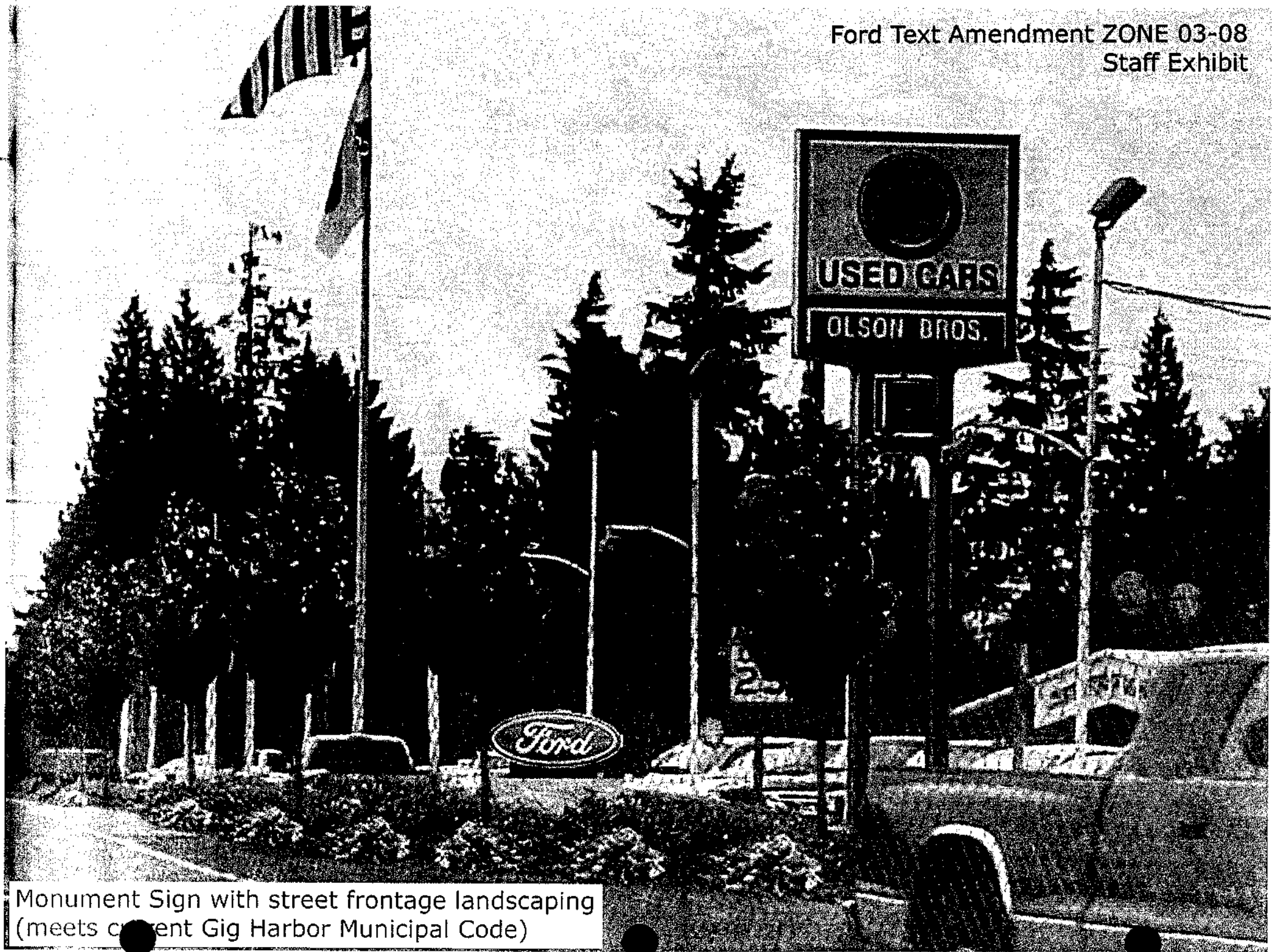
Option 2: 50% Non-conformity Reduction



Option 3: Ford's proposed sign
with street frontage landscaping



Ford's Proposed Sign



Monument Sign with street frontage landscaping
(meets current Gig Harbor Municipal Code)



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: SECOND READING OF AN ORDINANCE AMENDING GHMC SECTION
17.68.070 TO DELETE THE REFERENCE TO SIGNS IN THE
NONCONFORMING USE CHAPTER.
DATE: JANUARY 12, 2004

INFORMATION/BACKGROUND

Attached for consideration is an ordinance amending GHMC Section 17.68.070 which pertains to nonconforming parking and loading signs and other characteristics of use. The proposed amendment eliminates the reference to signs in order to clarify and ensure that nonconforming signs are regulated under the nonconforming sign provisions of the sign code (GHMC section 17.80.130, Nonconforming signs). This amendment is proposed as a simple "housekeeping" matter.

The Planning Commission held a public hearing on the proposed amendments on November 6, 2003. There was no public comment at the hearing. The Planning Commission voted unanimously to recommend approval of the proposed amendment.

Notice of this proposed ordinance was sent to the State for the required 60-day comment period on October 14, 2003. The comment period expired on December 14, 2003; no comments were received.

The first reading of this Ordinance was held on November 24, 2003.

POLICY CONSIDERATIONS

Zoning text amendments are addressed in chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). Zoning text amendments are considered a Type V legislative action (19.01.003, GHMC).

ENVIRONMENTAL ANALYSIS

A SEPA threshold Determination of Nonsignificance (DNS) was issued for the proposed amendments on October 14, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on October 22, 2003. The deadline for appealing the determination was November 5, 2003. No appeals have been filed and, to date, no public comments have been

submitted. The public was allowed to comment on the SEPA determination at the public hearing before the Planning Commission.

FISCAL IMPACTS

There are no anticipated fiscal impacts to the City.

RECOMMENDATION

I recommend approval of the proposed ordinance as presented.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, DELETING THE REFERENCE TO SIGNS IN THE GENERAL NONCONFORMING USE CHAPTER OF THE ZONING CODE TO ELIMINATE CONFUSION AND ENSURE THAT THE REGULATIONS RELATING TO NON-CONFORMING SIGNS IN THE SIGN CHAPTER OF THE ZONING CODE WILL BE APPLIED TO NONCONFORMING SIGNS, AMENDING GIG HARBOR MUNICIPAL CODE SECTION 17.68.070.

WHEREAS, the City adopted chapter 17.68, "Nonconformities," of the Gig Harbor Municipal Code in 1990, and amended it last in 1996; and

WHEREAS, GHMC Section 17.68.070 includes a reference to non-conforming signs; and

WHEREAS, the City amended chapter 17.80 GHMC "Signs," in 1998; and

WHEREAS, at the time the City amended chapter 17.80, a section specifically addressing nonconforming signs was added (GHMC Section 16.80.130); and

WHEREAS, GHMC Section 17.68.070 states that "any change that decreases the nonconformity to the requirements of this title shall be permitted," (meaning Title 17); and

WHEREAS, GHMC Section 17.80.130 is also in Title 17, and GHMC Section 17.80.130 does not automatically allow a nonconforming sign to be changed, as long as the change "decreases the nonconformity to the requirements of this title;" and

WHEREAS, it appears that GHMC Section 17.68.070 should have been amended to delete all references to signs when the City subsequently adopted a specific chapter on the subject of signs and a specific provision on the subject of nonconforming signs (GHMC Section 17.80.130); and

WHEREAS, the City Council desires to eliminate the reference to signs in the general chapter of the Zoning Code dealing with nonconformities to eliminate any confusion and to ensure that GHMC Section 17.80.130 applies to nonconforming signs;

WHEREAS, the City SEPA Responsible Official determined that this ordinance was categorically exempt from SEPA under WAC 197-11-800(20); and

WHEREAS, the Planning Commission held a public hearing on this ordinance on November 6, 2003, and made a recommendation of approval to the City Council; and

WHEREAS, on October 14, 2003 a copy of this Ordinance was sent to the Office of Trade and Community Development; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of November 24, 2003; Now, Therefore,

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

Section 1. Section 17.68.070 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.68.070 Nonconforming parking, loading, ~~signs~~ and other characteristics of use.

If the characteristics of a use such as ~~signs~~, off-street parking, off-street loading, lighting or other matters required by this title in relation to specific uses of land, structures or premises, with the exception of signs, are not in accordance with the requirements of this title, no change that increases the nonconformity with such requirements shall be made in such characteristics of use. Any change that decreases the nonconformity to the requirements of this title shall be permitted. Nonconforming signs are regulated under GHMC Section 17.80.130.

Section 2. 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 3. 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 January, 2004.

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: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: _____



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCILMEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: SECOND READING OF ORDINANCE - CALCULATION OF
DENSITY IN RESIDENTIAL ZONES
DATE: JANUARY 12, 2003

INFORMATION/BACKGROUND

Attached for your consideration is an ordinance amending the definition of alleys, (GHMC section 17.04.030), Planned Residential Developments, (17.89.100), Planned Unit Developments, (17.90.090); and repealing the definition of net buildable lands, (GHMC 17.04.128).

The proposed changes are intended to provide clarification on how residential density is determined in all zones within the city. Currently, the "net buildable lands" definition is *applied* to the entire city, but *referenced* only by GHMC 17.89 Planned Residential Development.

Recently a proposal was submitted to the city that utilized tidelands in calculating allowed density. Staff informed the applicant that the inclusion of tidelands was not allowed when calculating density, as per the city's definition of net buildable lands, (current GHMC 17.04.030). The applicant then requested an Administrative Interpretation from the Community Development Director. The Director's decision affirmed that tidelands were not to be included. The applicant then appealed the Administrative Interpretation to the Hearing Examiner. The Hearing Examiner agreed with staff's interpretations and upheld the decision.

The proposed amendments do not change the way the city currently calculates density. They simply clarify existing language to make the applicability more apparent for future projects by refining the explanation and applicability of net buildable area, and eliminating all unnecessary references. The changes ensure that all areas that are not buildable due to environmental constraints or access requirements are not included in the buildable area calculation.

Further, as alleys are considered to be desirable elements of residential projects, (Design Manual pg.22, #2), they should be encouraged by not subtracting them from net buildable area. In order to do this we must first define alleys, and then allow them within the calculation of net buildable area.

The Planning Commission held a public hearing on the proposed amendments on November 6, 2003. Two individuals testified at the hearing, both of which stated that they felt that wetlands should not be subtracted from gross land area when calculating net buildable area. Written comments were also submitted from Talmo, Inc., Olympic Property Group, and the Master Builder's Association – all opposing the proposed ordinance because they believed the city's net buildable lands definition resulted in density too low to make projects pencil or to meet growth objectives. The staff suggested that their concerns might be more directly addressed by amending the city's density allowances rather than addressing it in the definition of net buildable land. After a brief discussion following public testimony, the Planning Commission voted unanimously to recommend approval of the proposed amendments without changes. Copies of the written comments and November 6, 2003 Planning Commission Minutes were included in the memo for the first reading of this ordinance.

The 60 day notice to state agencies for proposed amendments to development regulations was sent on October 13, 2003. As such, final action on this amendment needed to be held until after December 15, 2003.

On November 24, 2003, the City Council held a first reading of the proposed ordinance. At that meeting there was discussion of including wetland buffers in net buildable area. The Council then directed staff to research the areas of wetlands the areas of wetlands and wetland buffers in the city to determine the impacts to the city's residential capacity if these areas are excluded from the net buildable land calculations. Accordingly, using the city's GIS system, staff analyzed the impacts and found the following:

Existing Net Capacity (excludes roads, wetlands and their buffers)	1,841 units
Remove roads and wetlands	1,904 units
Remove roads only	2,017 units
Gross density	2,363 units

Details for the above figures were included in the November 24, 2003 Council memo.

Anticipating that the Council may want to consider including wetland buffers in the final ordinance, two alternative ordinances have been prepared, one with buffers excluded, and one with buffers included. Additionally, all other editing as discussed has been completed.

POLICY CONSIDERATIONS

As this particular amendment is intended to provide clarification and organization to existing density calculation policies, there is very limited functional change.

ENVIRONMENTAL ANALYSIS

A SEPA threshold Determination of Non-significance (DNS) was issued for the proposed amendments on October 15, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on October 15, 2003. A copy of the SEPA determination was included with the memo for the first reading of this ordinance.

FISCAL IMPACTS

There are no adverse fiscal impacts associated with this amendment.

RECOMMENDATION

The staff recommends that the City Council determine if wetland buffers should be included in the calculation of net buildable land area and adopt the appropriate ordinance as proposed.

**OPTION A – Wetland Buffers Included
in Net Buildable Area**

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADDING A NEW CHAPTER TO ADDRESS THE CALCULATION OF DENSITY IN RESIDENTIAL ZONES, REPEALING THE DEFINITION OF “NET BUILDABLE LANDS” IN THE ZONING CODE AND ELIMINATING REFERENCES TO “NET BUILDABLE LANDS” IN THE ZONING CODE, AMENDING THE DEVELOPMENT STANDARDS FOR PLANNED RESIDENTIAL DEVELOPMENTS TO REFERENCE THE NEW CHAPTER FOR CALCULATION OF DENSITY; AMENDING THE DEFINITION OF “ALLEY”; ADDING A NEW CHAPTER 17.05; AMENDING GHMC SECTION 17.04.030, 17.89.100, 17.90.040 AND 17.90.090; AND REPEALING GHMC SECTION 17.04.128.

WHEREAS, the City adopted a definition of “net buildable lands” in the Zoning Code to calculate the allowed density in residential zones; and

WHEREAS, the Zoning Code needs to reference the method for determining density in a more comprehensive manner and to clarify the fact that such method for calculation of density applies to all residential zones; and

WHEREAS, if the City adopts a separate chapter addressing the manner in which density is calculated, there does not need to be individual references to “net buildable lands” in the Zoning Code (specifically the PRD or PUD chapters); and

WHEREAS, the method for determining density described in this Ordinance excludes certain features and improvements on the site, such as public rights-of-way and private streets, but the City encourages development of alleys, so alleys are included in the calculation of density; and

WHEREAS, the City's definition of "alley" in the Zoning Code needs to be amended because the current definition in GHMC 17.04.030 does not fully describe the appropriate dimension and function of an alley;

WHEREAS, the City's SEPA Responsible Official has determined that this Ordinance is Non-significant (DNS); and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Office of Community, Trade and Development on October 15, 2003; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on November 6, 2003; and recommended approval to the City Council; and

WHEREAS, on December 8, 2003, the City Council considered this Ordinance during a regular meeting; Now, Therefore,

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

Section 1. Section 17.04.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.04.030 Alley. "Alley" means a private access or street, wider than 10 feet and no wider than 16 feet, that provides secondary access to residential parcels or units, and that provides principal access to garages or code-required parking areas. Alleys provide parking and service access, but are not intended for general traffic circulation.

Section 2. Section 17.04.128 of the Gig Harbor Municipal Code is hereby repealed.

Section 3. A new chapter 17.05 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

II. CHAPTER 17.05 DENSITY IN RESIDENTIAL ZONES

- 17.05.010 Purpose**
- 17.05.020 Requirements**

17.05.030 Calculations

17.05.010 Purpose. The density requirement helps to maintain a consistent and compatible land use pattern in Gig Harbor's residential neighborhoods. Other purposes of this requirement are to serve the planned housing needs of the City's residential population and prevent public nuisances that result from a lack of open space and the over utilization of public facilities.

17.05.020 Requirements. The allowed density, as shown for each residential zone in Title 17, represents the maximum number of dwelling units that may occupy an acre of land. This maximum number of units may be exceeded only through participation in the planned residential development process (PRD, chapter 17.89 GHMC).

17.05.030 Calculations. When determining the allowed density for any given lot in the City, the net buildable land area of the site is used. Net buildable land area, for the purpose of determining the allowed dwelling units for a site, shall be calculated by subtracting areas where building is prohibited or subject to significant restrictions from the gross lot area. The area remaining after these exclusions from the gross lot area represents the net buildable land area. The following shall be deducted from the gross lot area to determine net buildable land area:

A. Sensitive areas ~~and associated buffers~~ including: Type I, II, III and IV wetlands; ravine sidewalls, and bluffs.

B. Public rights-of-way, private streets and access corridors; except as excluded under GHMC Section 17.05.040.

C. Tidelands. The area of waterfront lots is considered to be the area landward of the line of the ordinary high water mark, regardless of the extent of ownership, or the area landward of the ordinary high water mark along streams.

17.05.040 Exclusions. The following shall not be deducted from the gross lot area when calculating net buildable land area:

- A. Required setbacks;
- B. Buffers and screening required by Design Manual standards;
- C. Buffers and screening required by zoning performance standards;
- D. Alleys;
- E. Wetland buffers;

Section 4. Section 17.89.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.89.040 Contents of a complete PRD application.

A. In addition to the applicable requirements of GHMC 19.02.002, a complete application for preliminary PRD shall consist of the following information:

* * *

3. A written description addressing the scope of the project, gross acreage, ~~net buildable acreage calculations~~, the nature and size in gross floor area of each use and the total amount of ~~net buildable~~ land in square feet to be covered by impervious surfaces;

* * *

Section 5. Section 17.89.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.89.100 Density Bonus.

A. The density may be increased in a PRD over that permitted in the underlying zone but only if: (~~A-1~~) consistent with the underlying comprehensive plan designation for the property; and (~~B-2~~) the density increase will not exceed 30 percent over the density allowed in the underlying zone. Density calculations shall be made as set forth in chapter 17.05 GHMC. Based on net buildable land

B. Density bonuses may be allowed only as follows:

A-1. Open Space.

~~1-(a)~~ Satisfaction of the standards in GHMC 17.89.110 for open space; and

~~2-(b)~~ Provision of open space exceeding by at least 30 percent of the minimum required by the Design Review Manual or the existing Zoning Code (whichever is greater); or at least 30 percent more than the level of service standards for open space and active recreational areas in the capital facilities element of the adopted Gig Harbor Comprehensive plan: 10 percent increase.

B-2. Preservation of Natural Features. Preservation of a desirable natural feature that would not otherwise be preserved such as, but not limited to an unregulated wetland, stream corridor, unique geological feature, substantial over-story vegetation: 10 percent increase.

C-3. Preservation of Scenic Vistas. Preservation of a scenic vista corridor(s) within and off-site, and accessible to the general public rather than private property owners: 10 percent increase.

D-4. Design of Storm water Treatment System as Amenity. A storm water treatment (retention/detention) facility is also designed as a visually aesthetic and physically accessible amenity for the enjoyment of the public: 10 percent increase.

Section 6. Section 17.90.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.90.040 Contents of a complete preliminary PUD application.

A. In addition to the applicable requirements of GHMC 19.02.002, a complete application for preliminary PUD approval shall consist of the following information:

* * *

4. A written description addressing the scope of the project, gross acreage, ~~net buildable acreage calculations~~, the nature and size in gross floor area of each use and the total amount of ~~net buildable~~ land in square feet to be covered by impervious surfaces;

* * *

Section 7. Section 17.90.090 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.90.090 Maximum gross floor area bonus.

A. The maximum gross floor area of the PUD may be increased over that permitted in the underlying zone as provided in this section, but only if: (A-1) consistent with the underlying comprehensive plan designation for the property; and (B-2) the increase will not exceed 25 percent additional gross floor area, over that allowed in the underlying zone, except in the General Business District (B-2) it shall be up to 50

percent, and in Commercial District (C-1) it shall be 30 percent. Such calculations shall be made as set forth in chapter 17.05 GHMC. ~~On-net buildable land.~~

B. The maximum gross floor area bonus may only be allowed if the applicant demonstrates the following:

~~A-1.~~ Open Space. Open space must satisfy the standards in GHMC 17.90.100 for open space in order to be eligible for a gross floor area bonus. Such open space must be open to the general public.

~~1-(a)~~ Provision of open space exceeding by at least 30 percent the minimum required under the Design Review Manual and proportional to the size of the development: 10 percent increase.

~~2-(b)~~ Preservation of Natural Features. Preservation of a desirable natural feature that would not otherwise be preserved such as, but not limited to an unregulated wetland, stream corridor, unique geological feature, substantial over story vegetation and which would not otherwise be preserved, etc.: 10 percent increase.

~~3-(c)~~ Preservation of Scenic Vistas. Preservation of a scenic vista corridor(s) on-site and off-site and accessible to the general public: 10 percent increase.

~~4-(d)~~ Provision of a Desirable Urban Amenity. Provision of an urban amenity that complements the proposed development and that exceed the requirements of the Design Review Manual for common space or plazas. Such amenity may include such things as a play area, public transit amenities, public restrooms, fountains or other comparable amenities identified by the applicant or city staff: 10 percent increase;

~~5-(e)~~ Design of a Storm water Treatment System as an Amenity. A storm water treatment (retention/detention) facility that is also designed as a visually aesthetic and physically accessible amenity for the enjoyment of the public: 10 percent increase.

Section 8. 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 9. 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 _____, 2003.

CITY OF GIG HARBOR

**OPTION B - Wetland Buffers Excluded
from Net Buildable Area**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADDING A NEW CHAPTER TO ADDRESS THE CALCULATION OF DENSITY IN RESIDENTIAL ZONES, REPEALING THE DEFINITION OF "NET BUILDABLE LANDS" IN THE ZONING CODE AND ELIMINATING REFERENCES TO "NET BUILDABLE LANDS" IN THE ZONING CODE, AMENDING THE DEVELOPMENT STANDARDS FOR PLANNED RESIDENTIAL DEVELOPMENTS TO REFERENCE THE NEW CHAPTER FOR CALCULATION OF DENSITY; AMENDING THE DEFINITION OF "ALLEY"; ADDING A NEW CHAPTER 17.05; AMENDING GHMC SECTION 17.04.030, 17.89.100, 17.90.040 AND 17.90.090; AND REPEALING GHMC SECTION 17.04.128.

WHEREAS, the City adopted a definition of "net buildable lands" in the Zoning Code to calculate the allowed density in residential zones; and

WHEREAS, the Zoning Code needs to reference the method for determining density in a more comprehensive manner and to clarify the fact that such method for calculation of density applies to all residential zones; and

WHEREAS, if the City adopts a separate chapter addressing the manner in which density is calculated, there does not need to be individual references to "net buildable lands" in the Zoning Code (specifically the PRD or PUD chapters); and

WHEREAS, the method for determining density described in this Ordinance excludes certain features and improvements on the site, such as public rights-of-way and private streets, but the City encourages development of alleys, so alleys are included in the calculation of density; and

WHEREAS, the City's definition of "alley" in the Zoning Code needs to be amended because the current definition in GHMC 17.04.030 does not fully describe the appropriate dimension and function of an alley;

WHEREAS, the City's SEPA Responsible Official has determined that this Ordinance is Non-significant (DNS); and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Office of Community, Trade and Development on October 15, 2003; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on November 6, 2003; and recommended approval to the City Council; and

WHEREAS, on December 8, 2003, the City Council considered this Ordinance during a regular meeting; Now, Therefore,

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

Section 1. Section 17.04.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.04.030 Alley. "Alley" means a private access or street, wider than 10 feet and no wider than 16 feet, that provides secondary access to residential parcels or units, and that provides principal access to garages or code-required parking areas. Alleys provide parking and service access, but are not intended for general traffic circulation.

Section 2. Section 17.04.128 of the Gig Harbor Municipal Code is hereby repealed.

Section 3. A new chapter 17.05 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

III. CHAPTER 17.05 DENSITY IN RESIDENTIAL ZONES

- 17.05.010 Purpose**
- 17.05.020 Requirements**

17.05.030 Calculations

17.05.010 Purpose. The density requirement helps to maintain a consistent and compatible land use pattern in Gig Harbor's residential neighborhoods. Other purposes of this requirement are to serve the planned housing needs of the City's residential population and prevent public nuisances that result from a lack of open space and the over utilization of public facilities.

17.05.020 Requirements. The allowed density, as shown for each residential zone in Title 17, represents the maximum number of dwelling units that may occupy an acre of land. This maximum number of units may be exceeded only through participation in the planned residential development process (PRD, chapter 17.89 GHMC).

17.05.030 Calculations. When determining the allowed density for any given lot in the City, the net buildable land area of the site is used. Net buildable land area, for the purpose of determining the allowed dwelling units for a site, shall be calculated by subtracting areas where building is prohibited or subject to significant restrictions from the gross lot area. The area remaining after these exclusions from the gross lot area represents the net buildable land area. The following shall be deducted from the gross lot area to determine net buildable land area:

A. Sensitive areas and associated buffers including: Type I, II, III and IV wetlands; ravine sidewalls, and bluffs.

B. Public rights-of-way, private streets and access corridors; except as excluded under GHMC Section 17.05.040.

C. Tidelands. The area of waterfront lots is considered to be the area landward of the line of the ordinary high water mark, regardless of the extent of ownership, or the area landward of the ordinary high water mark along streams.

17.05.040 Exclusions. The following shall not be deducted from the gross lot area when calculating net buildable land area:

- F. Required setbacks;
- G. Buffers and screening required by Design Manual standards;
- H. Buffers and screening required by zoning performance standards;
- I. Alleys;

Section 4. Section 17.89.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.89.040 Contents of a complete PRD application.

A. In addition to the applicable requirements of GHMC 19.02.002, a complete application for preliminary PRD shall consist of the following information:

* * *

3. A written description addressing the scope of the project, gross acreage, ~~net buildable acreage calculations~~, the nature and size in gross floor area of each use and the total amount of ~~net buildable~~ land in square feet to be covered by impervious surfaces;

* * *

Section 5. Section 17.89.100 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.89.101 Density Bonus.

A. The density may be increased in a PRD over that permitted in the underlying zone but only if: ~~(A-1)~~ consistent with the underlying comprehensive plan designation for the property; and ~~(B-2)~~ the density increase will not exceed 30 percent over the density allowed in the underlying zone. Density calculations shall be made as set forth in chapter 17.05 GHMC. ~~Based on net buildable land~~

C. Density bonuses may be allowed only as follows:

A-1. Open Space.

~~1(a)~~ Satisfaction of the standards in GHMC 17.89.110 for open space; and

~~2(b)~~ Provision of open space exceeding by at least 30 percent of the minimum required by the Design Review Manual or the existing Zoning Code (whichever is greater); or at least 30 percent more than the level of service standards for open space and active recreational areas in the capital facilities element of the adopted Gig Harbor Comprehensive plan: 10 percent increase.

B-2. Preservation of Natural Features. Preservation of a desirable natural feature that would not otherwise be preserved such as, but not limited to an unregulated wetland, stream corridor, unique geological feature, substantial over-story vegetation: 10 percent increase.

C-3. Preservation of Scenic Vistas. Preservation of a scenic vista corridor(s) within and off-site, and accessible to the general public rather than private property owners: 10 percent increase.

D-4. Design of Storm water Treatment System as Amenity. A storm water treatment (retention/detention) facility is also designed as a visually aesthetic and physically accessible amenity for the enjoyment of the public: 10 percent increase.

Section 6. Section 17.90.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.90.040 Contents of a complete preliminary PUD application.

A. In addition to the applicable requirements of GHMC 19.02.002, a complete application for preliminary PUD approval shall consist of the following information:

* * *

4. A written description addressing the scope of the project, gross acreage, ~~net buildable acreage calculations~~, the nature and size in gross floor area of each use and the total amount of ~~net buildable~~ land in square feet to be covered by impervious surfaces;

* * *

Section 7. Section 17.90.090 of the Gig Harbor Municipal Code is hereby amended to read as follows:

17.90.090 Maximum gross floor area bonus.

A. The maximum gross floor area of the PUD may be increased over that permitted in the underlying zone as provided in this section, but only if: (A-1) consistent with the underlying comprehensive plan designation for the property; and (B-2) the increase will not exceed 25 percent additional gross floor area, over that allowed in the underlying zone, except in the General Business District (B-2) it shall be up to 50

percent, and in Commercial District (C-1) it shall be 30 percent. Such calculations shall be made as set forth in chapter 17.05 GHMC. ~~On net buildable land.~~

B. The maximum gross floor area bonus may only be allowed if the applicant demonstrates the following:

~~A-1.~~ Open Space. Open space must satisfy the standards in GHMC 17.90.100 for open space in order to be eligible for a gross floor area bonus. Such open space must be open to the general public.

~~1-(a)~~ Provision of open space exceeding by at least 30 percent the minimum required under the Design Review Manual and proportional to the size of the development: 10 percent increase.

~~2-(b)~~ Preservation of Natural Features. Preservation of a desirable natural feature that would not otherwise be preserved such as, but not limited to an unregulated wetland, stream corridor, unique geological feature, substantial over story vegetation and which would not otherwise be preserved, etc.: 10 percent increase.

~~3-(c)~~ Preservation of Scenic Vistas. Preservation of a scenic vista corridor(s) on-site and off-site and accessible to the general public: 10 percent increase.

~~4-(d)~~ Provision of a Desirable Urban Amenity. Provision of an urban amenity that complements the proposed development and that exceed the requirements of the Design Review Manual for common space or plazas. Such amenity may include such things as a play area, public transit amenities, public restrooms, fountains or other comparable amenities identified by the applicant or city staff: 10 percent increase;

~~5-(e)~~ Design of a Storm water Treatment System as an Amenity. A storm water treatment (retention/detention) facility that is also designed as a visually aesthetic and physically accessible amenity for the enjoyment of the public: 10 percent increase.

Section 8. 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 9. 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 _____, 2003.

CITY OF GIG HARBOR



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCILMEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: FIRST READING OF AN ORDINANCE ADDING A NEW CHAPTER
GHMC 17.67 PERFORMANCE-BASED HEIGHT EXCEPTIONS AND
HEIGHT EXEMPTIONS
DATE: JANUARY 12, 2004

INFORMATION/BACKGROUND

Attached for the Council's consideration is a draft ordinance adding GHMC Chapter 17.67 Performance-based Height Exceptions and Height Exemptions. The proposed amendment was initiated by City staff. Current City Code does not provide for the height needs of certain types of structures. Structures such as water tanks, transmission line towers, fire training towers, athletic field lighting, traffic lights and signals, public light standards and flagpoles often need to exceed the height limits of the zoning code in order to function effectively. For example, the current regulations in the Gig Harbor Municipal code would not allow the installation of traffic signals in the Height Restriction Area. And, sports fields cannot be lit to meet the necessary safety standards within the current height restrictions. Currently these structures would require a general variance from the Code requirements. In fact, to date, some structures have been erected in the City, which exceed the height requirements of the underlying zone, without the appropriate variances. A number of these structures would not be able to obtain the appropriate variances because existing variance criteria do not pertain to their kinds of structural needs. The proposed text amendment would remedy this.

The proposed chapter has two main functions: (1) exempting certain structures from the height requirements of the Municipal Code and (2) providing an exception process for other structures requiring height in excess of the limits of the Municipal code for effective performance and operation of the structure.

Certain structures are proposed for exemption from height requirements because they are common fixtures with expected and generally accepted height and design characteristics. These structures are traffic lights and signals, light standards installed on street rights-of-way, and flagpoles that display flags of a political subdivision.

Other structures will require a performance-based height exception in order to exceed the code height limits. A performance-based height exception will be heard and decided upon by the City's Hearing Examiner using specified criteria. The criteria for a

performance-based height exception will ameliorate any potential adverse impacts and will ensure compliance with City of Gig Harbor Design Manual Requirements.

The structures eligible for a performance-based height exception are: elevated reservoirs, water tanks or standpipes under the jurisdiction of the city or another water district; transmission line towers; fire training towers; and athletic field lighting. An exception process is preferred for these structures because, while they serve a public need, they can have aesthetic and environmental impacts depending on location, design or light output.

A performance-based height exception will not apply to Communication Facilities. Regulations for communication facilities are addressed in GHMC 17.61 and these facilities are already allowed height above the code limits. Nor will an exception apply to new structures on prominent parcels and within the view sheds of significant vistas, as identified on the City of Gig Harbor Visually Sensitive Areas map.

In addition, this chapter will facilitate the development of the Peninsula Recreation Center, a joint project between Pierce County Parks Department, the Peninsula School District and the City of Gig Harbor to upgrade the field surface and provide lighting at Gig Harbor High School's multi-purpose field. The adoption of this ordinance will not approve the project, but will create a process for approval. The project will go to the Hearing Examiner for final approval. At that hearing, the public will have an opportunity to comment on the proposal.

The Planning Commission held a public hearing on the proposed amendments on December 18, 2003. One individual testified at the hearing. He was in support of the proposed text amendment. After brief discussion following public testimony, the Planning Commission voted unanimously to recommend approval of the proposed text amendment. A copy of the December 18, 2003 Planning Commission Minutes is attached.

POLICY CONSIDERATIONS

Applicable land use policies and codes are as follows:

Zoning text amendments are addressed in chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a Zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW).

- A. Gig Harbor Municipal Code:** The Gig Harbor Municipal Code regulates building and structure height by zone. The maximum height of a building or structure can range from 16 feet in the Height Restriction Area (view basin) up to the allowed limits defined by building and fire codes in the PCD-C and PCD-BP zones. The majority of zones restrict structures to a maximum height of 35 feet.

Communication facilities, which are regulated by GHMC Chapter 17.61, may exceed the height restriction of a zone provided certain development regulations are met. Such facilities are exempt from the proposed text.

B. Design Manual: Structure and building height is regulated in many ways within the Gig Harbor Design Manual.

1. Buildings or structures on parcels where two zoning designation meet are limited in height to the average height of adjacent structures. (DM pg. 24 #1)
2. The height of outdoor light fixtures is regulated by prohibiting the lighting of large areas with a single source. (DM pg. 57 #3) Typically the higher the light source the greater area lighted.
3. Structures on parcels designated as "prominent" on the City's Visually Sensitive Areas Map are allowed increased height if a landmark-type structure serves to enhance the streetscape without blocking views or vistas. (DM pg. 51 #3)
4. The underlying height limit may be increased by as much as 8 feet on no more than 10% of the building footprint of designated primary structures. (DM pg. 77 #1c)

Additional Design Manual requirements are pertinent to the proposed text amendment

1. Outdoor light fixtures more than 7 feet above ground must be downward directional and may not have an industrial appearance, such as floodlights, cobra lights and mercury vapor lights. (DM pg. 58 #6)

ENVIRONMENTAL ANALYSIS

A SEPA threshold Determination of Nonsignificance (DNS) was issued for the proposed amendments on October 29, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on October 29, 2003. The deadline for appealing the determination was November 12, 2003. No appeals have been filed and, to date, only one comment has been received: Pierce County Planning believes the application of a performance-based height exception within the City's Urban Growth Area will be consistent with the County's Gig Harbor Peninsula Community Plan and development regulations. The public may comment on the SEPA determination at the first reading. A copy of the DNS is attached for your consideration.

FISCAL IMPACTS

There are no adverse fiscal impacts associated with this text amendment. However, on November 24, 2003, the Council passed a resolution authorizing the development of an

interlocal agreement with Pierce County to allocate \$180,000 from the City's 2004 budget as a contribution to the Peninsula Recreation Center at Gig Harbor High School for lighting and a field base. If this draft ordinance is adopted, the City Administrator will develop this interlocal agreement for your review.

RECOMMENDATION

The staff recommends that the City Council adopt the draft ordinance. While this is first reading of the ordinance, due the immediate need to permit and renovate the multi-purpose field at Gig Harbor High School, staff recommends adoption of the ordinance at this reading with a majority vote plus one of the whole membership of the Council, as allowed by Section 1.08.020(B) GHMC.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING CERTAIN STRUCTURES TO EXCEED THE HEIGHT RESTRICTIONS OF THE ZONING CODE AS LONG AS PERFORMANCE-BASED APPROVAL CRITERIA ARE SATISFIED, AND ESTABLISHING HEIGHT EXEMPTIONS, CONSISTENT WITH CURRENT PRACTICE, TO ALLOW STRUCTURES SUCH AS TRAFFIC LIGHTS, PUBLIC LIGHT STANDARDS AND FLAG POLES TO EXCEED THE HEIGHT REQUIREMENTS OF THE ZONING CODE; ADDING A NEW CHAPTER 17.67 AND AMENDING SUBSECTION 19.01.003(B) OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, currently, all new structures within the City must meet the height requirements for the underlying zone, unless a variance is approved; and

WHEREAS, some structures must exceed the height requirements for effective performance and operation; and

WHEREAS, up to this point, some structures have been erected in the City, which exceed the height requirements of the underlying zone, in violation, without the appropriate variances; and

WHEREAS, a number of these structures would not be able to obtain the appropriate variances; and

WHEREAS, the City would like to exempt some of those structures from the height requirements of the Gig Harbor Municipal Code because they are common fixtures with expected and generally accepted height and design characteristics; and

WHEREAS, other structures requiring height in excess of the height requirements of the Gig Harbor Municipal Code for effective performance and operation can potentially cause adverse impacts, if not ameliorated; and

WHEREAS, the City would like to create a performance-based height exception process for these structures and establish criteria for approval to address and ameliorate adverse impacts and ensure compliance with City of Gig Harbor Design Manual requirements; and

WHEREAS, the City's SEPA Responsible Official has issued a declaration of Non-significance (DNS) for this ordinance on October 29, 2003; and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Office of Community, Trade and Development on October 29, 2003; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on December 18, 2003; and recommended approval to the City Council; and

WHEREAS, on _____, the City Council considered this Ordinance during a regular meeting; Now, Therefore,

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

Section 1. A new chapter 17.67 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 17.67
PERFORMANCE-BASED HEIGHT EXCEPTIONS AND HEIGHT EXEMPTIONS

Sections:

- 17.67.010 Intent
- 17.67.020 Applicability – Performance-Based Height Exceptions
- 17.67.030 Applicability - Height Exemptions
- 17.67.040 Complete Application
- 17.67.050 Permit Type
- 17.67.060 Review Criteria
- 17.67.070 Special Review Criteria for Athletic Field Lighting
- 17.67.080 Time Limits

17.67.010 Intent

This chapter is intended to identify those structures to which height limits do not apply and to provide review procedures and criteria for those special situations where the height restrictions of this title may be relaxed. Performance-based height exceptions are intended to allow structures that require height in excess of height limits for effective performance and operation. Performance-based height exceptions are not intended to be used as a means of circumventing individually inconvenient height restrictions.

17.67.020 Applicability – Performance-Based Height Exceptions

- A. Approvals of performance-based height exceptions may be given to only the following structures:
 - 1. Elevated reservoirs, water tanks or standpipes under the jurisdiction of the city or another water district;
 - 2. Transmission line towers;
 - 3. Fire training towers;
 - 4. Athletic field lighting.
- B. Performance-based height exceptions are prohibited for the following:
 - 1. Communications facilities regulated by Chapter 17.61 GHMC;
 - 2. All new structures on parcels identified as prominent on the City of Gig Harbor Visually Sensitive Areas map;

3. All new structures within the view sheds of a significant vista, as identified on the City of Gig Harbor Visually Sensitive Areas map.

17.67.030 Applicability - Height Exemptions

The following structures are exempt from the height restrictions of this title:

- A. Traffic lights and signals;
- B. Light standards installed on street rights-of-way;
- C. Flagpoles that display flags of a political subdivision;
- D. Height exemption are prohibited for communications facility designed to look like any of the above, which are regulated under Chapter 17.61 GHMC Communication Facilities.

17.67.040 Complete Application

An application for a performance-based height exception shall contain seven (7) copies of the following information:

- A. The title and location of the proposed project, together with the names, addresses and telephone numbers of the recorded owners of the land and the applicant, and if applicable, the name, address and telephone number of any architect, planner, designer or engineer responsible for the preparation of the plan, and of any authorized representative of the applicant;
- B. A written description addressing the scope of the project, the use of the site, and the nature and height of the proposed structures.
- C. Color, type, model and specification of all proposed structures. Include the area of illumination and intensity of lighting in footcandles for athletic field lighting.
- D. A vicinity map showing site boundaries and existing roads and accesses within and bounding the site;
- E. Site plans drawn to a scale no smaller than one inch equals 30 feet showing location and size of uses, location of proposed and existing structures, critical areas and wetlands, buffer areas, proposed areas of disturbance or construction outside of the building and structure footprint, yards, open spaces and landscaped areas and any existing structures, easements and utilities;
- F. A written statement of justification for granting the exception pursuant to the requirements of GHMC 17.67.060, and GHMC 17.67.070, if applicable;
- G. A listing of the names and addresses of property owners of record within 300 feet of the project property, including preprinted labels bearing the names and addresses of the property owners of record within 300 feet of the project property;
- H. All application requirements of GHMC 19.02.002.

17.67.050 Permit Type

A performance-based height exception is a Type III permit.

17.67.060 Review Criteria

The applicant shall demonstrate that the following criteria for approval of the exception have been satisfied:

- A. The increased structure height is necessary for effective performance and operation and is the minimum necessary for the structure to function in its intended and permitted use; and
- B. Visual impacts beyond the site and within environmentally sensitive areas have been minimized by such measures as, but not limited to:
 - 1. Avoidance, to the extent possible, of shade or light cast into critical areas and wetlands where shade or light may impact the biological functions of critical areas and wetlands;
 - 2. Using color or material to blend the structure into the surrounding environment;
 - 3. Screening the structure with vegetation;
 - 4. Avoidance, to the extent possible, of light trespass onto adjacent properties.

17.67.070 Special Review Criteria for Athletic Field Lighting

In addition to the criteria specified in Section 17.67.060 GHMC, the applicant for an exception for athletic field lighting shall demonstrate that the following criteria for approval of the exception have been satisfied:

- A. Athletic field light fixtures to be installed are a "shoebox" style and downward-directional; and
- B. Both fixtures and poles are painted black, brown or dark green.

17.67.080 Time Limits

Any exception granted by the hearing examiner shall become null and void if not exercised within one year of the date of approval. Upon written request by the property owner, prior to the date of expiration the director may grant an extension of time up to but not exceeding one year. Any extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the structure or property since the granting of the exception.

Section 2. GHMC 19.01.003 (B) is amended to read as follows:

B. Decisions.

TYPE I	TYPE II	TYPE III	TYPE III-A	TYPE IV	TYPE V
Permitted uses not requiring site plan review	Short plat	Plat vacations and alterations	Preliminary plats	Final plats	Comp. plan amendments
Boundary line adjustments	Sign permits	Site plan/major amendments to site plans	Preliminary PRD/PUD	Final PRD/PUD	Development regulations

Minor amendments to PUD/PRD	Design review	CUP, general variances, sign permit variances, and site specific rezones			Zoning text amendments; area-wide zoning map amendments
Special use permits	Land clearing/grading	Shoreline substantial development, shoreline variance			Annexations
Temporary construction trailers	Revisions to shoreline management permits	Major amendments to PRD and PUD			
	Administrative variances	Amendment to height restriction area map			
	Administrative interpretations	Mobile/manufactured home park or subdivision			
	Home occupation permit	<u>Performance-based height exception</u>			
	Hardship variance, sign code				
	Modification to landscape plans				
	Minor amendment to PRD or PUD				

Section 3. 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 4. 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 on its date of introduction pursuant to Section 1.08.020(B) GHMC, after having receiving an affirmative vote of a majority plus one of the whole membership of the Council, and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 2004.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
DATE PUBLISHED:
DATE EFFECTIVE:



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

**Determination of Nonsignificance (DNS)
W.A.C. 197-11-970**

Environmental Review Application No.: SEPA 03-37
Parcel Number: No parcel number – Proposal is not site-specific

Action: Adding a new chapter to the Gig Harbor Municipal Code, GHMC 17.67 Performance-Based Height Exceptions and Height Exemptions.

Proposal: Adding a Chapter 16.67 "Performance-Based Height Exceptions and Height Exemptions" to the Gig Harbor Municipal Code. The proposed chapter will identify those structures to which height limits do not apply such as traffic lights, City light standards and flagpoles. The proposed chapter will also create an exception process for structures that require height in excess of the height restrictions of the Gig Harbor Municipal Code for the effective performance and operation of the structures. Such structures include elevated reservoirs, water tanks, transmission lines, fire training towers, and athletic field lighting.

Location: Applicable to City of Gig Harbor and its urban growth area (UGA)

Proponent: City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335

Lead Agency: City of Gig Harbor

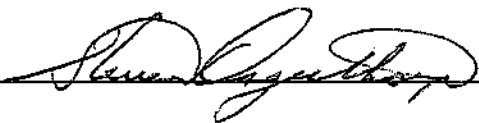
The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

[x] This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for at least 60 days from the date of below. **Comments must be submitted by December 28, 2003.**

Any interested person may appeal the adequacy of this final threshold determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Title 18.04 of the Gig Harbor Municipal Code if a written request for appeal is received within fourteen (14) days of the date of this notice, or November 12, 2003, which ever is later. The written appeal must be submitted with a filing fee of one hundred fifty dollars (\$150).

Responsible Official: Steve Osguthorpe
Position Title: Planning & Building Manager Phone: 851-6170

Address: City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Signature  Date: 10-29-03

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session and Public Hearing
Thursday, December 18, 2003
Gig Harbor Civic Center**

PRESENT: Commissioners Paul Conan, Kathy Franklin, Theresa Malich, Bruce Gair and Dick Allen. Staff present: Steve Osguthorpe, Jennifer Siits and Rob White.

CALL TO ORDER: 6:00 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of December 4, 2003 as presented. Franklin/Malich – unanimously approved.

NEW BUSINESS

Proposed addition of GHMC Chapter 17.01 – General Regulations, Small Animals and Beekeeping (ZONE 03-13). - Jennifer Siits went over proposed text, briefing the Commission on discussions with the City Attorney Carol Morris on the scope of the Planning Commission. She stated that nuisance/dangerous animals regulations are located in Title 6 and it is not within the scope of the Planning Commission to make changes to this section, however, a recommendation could be made to council to update Title 6. Prohibiting of animals is possible within the zoning code, but you must have substantial evidence to support it. Additionally Ms. Siits stated that no city in the state has prohibited beekeeping. Most cities allow it within certain parameters. The City attorney has suggested that we not prohibit bees and use regulations from other cities, modifying them to meet our needs and deal with nuisance animals under Title 6. Ms Siits further stated that the City of Bellevue has most stringent standards. She outlined the changes made, limiting the number of hives to 4 on any city lot and only allowing bees on lots larger than 20,000 sq ft.

Commissioner Conan asked about the 6 foot physical barrier. How does this keep them from swarming? Planning Manager Steve Osguthorpe suggested removal of barrier provision and just have a 30 ft setback.

Commissioner Gair asked if we could have the Ewerts look at these changes since they had originally proposed them? Mr. Osguthorpe again reminded the commission that we have to have findings and evidence and prohibit beekeeping. Commissioner Gair asked if since this was a matter of health and safety was there some liability for the city and stated that he would like to have a position paper from experts on bees. Associate Planner Siits stated that she had researched the topic and couldn't find anything that supports prohibition.

Commissioner Allen stated that bees are dangerous and we live in an urban environment which is not the place for beekeeping and a setback is not going to stop the situation. He further stated that he would rather err on the side of life safety and

assume the risk. Planning Manager Steve Osguthorpe replied that our City Attorney would advise us to utilize the evidence out there, which does not support prohibiting beekeeping. Commissioner Gair stated that there is evidence that bees are fatal. Ms. Sitts clarified that the evidence does not indicate whether these are wild or domesticated bees.

Commissioner Malich suggested requiring beekeepers to have a larger lot? Ms. Sitts stated that the number suggested is an average number, however, we can research it. Mr. Osguthorpe suggested contacting the Ewerts and maybe they know where to obtain this information. Ms. Sitts did ask the state about the number of hives licensed, however she has not received a call back but will keep trying. Bellevue had additional language about re-queening and maintenance, however, staff felt that that would be more appropriately located in title 6. The Planning Commission then directed staff to draft a proposed ordinance for public hearing.

Discussion followed on the other categories of the proposal. Associate Planner Jennifer Sitts reported that there is precedence for prohibiting swine. In the section on household pets staff is recommending allowing them as an accessory use without a maximum number. Ms. Sitts further informed the Commission that they would need to recommend to council a nuisance ordinance if they wanted to limit the number of household pets. There was no substantial change to the section on domestic fowling on size. Ms. Sitts further outlined the section on livestock and informing the Commission that the section on wild animals and reptiles had been removed as that should be in Title 6.

Commissioner Gair asked how many livestock are permitted and stated he thought the number of livestock should be limited. Ms. Sitts stated that there are health regulations which regulate the number of livestock allowed per acre.

Planning Manager Steve Osguthorpe reminded the Commission that we do have regulations regarding where agricultural uses are allowed and that this ordinance is at least more than we have now. Commissioner Conan stated that he did not see a need to address the number of animals.

Proposed amendments to GHMC Chapter 17.54 – Planned Community Development – Business Park (ZONE 03-16)

Senior Planner Rob White gave a brief overview of the application by Swede Hill LLC proposing to add Hospitals to the PCD-BP zone. He further stated that this application was similar to previous proposal adding hospitals to B-2 and reviewed those zones that do allow hospitals; B-2, ED, C-1 and DB. Mr. White stated that the area is capable of supporting high intensity urban development infrastructure and the conditional use criteria can address additional concerns.

Commissioner Conan suggested changing the medical *or* surgical to medical *and* surgical in the definition of hospital, so as not to include a medical office in the definition of a hospital and reminded the other Planning Commission members that this is not a site specific proposal and therefore could apply to any PCD-BP zone. There was no

further discussion and the Planning Commission directed staff to draft an ordinance reflecting the proposed changes.

PUBLIC HEARING

Proposed amendments to GHMC Chapter 17.28 and 17.30 – Add single family residences and accessory apartments in the RB-1 and RB-2 zones (ZONE 03-10).

Rob White outlined the proposed ordinance and the suggested change to clarify buffers that are required only when commercial and residential uses are adjacent. Mr. White brought the commissions attention a letter from Marco and Carla Malich in support of the change and suggesting further changes to alleviate inconsistencies in the zoning hierarchy. Mr. White explained that RB1 does not include those uses allowed in less intense zones and that Mr. & Mrs. Malich are asking that duplexes also be added.

Marco and Carla Malich, 7216 Myers Lane, Gig Harbor, - Mr. Malich testified that they have an interest in this ordinance as they have RB1 property that would be affected and currently does not allow multi-family use. R2 and R3 allow duplexes and multi-family as does RB2, however, it skips RB1. Mr. Malich stated that he felt that RB1 should include everything allowed in the lesser zones in order for it to function as a transition zone and said that it seems like it was just an oversight that these uses were left out.

Senior Planner Rob White suggested that if the Planning Commission desired, staff could draft a separate ordinance to address the Malich's concerns since SEPA notice has gone out on the current proposal. He further suggested that staff process Mr. McNellis's application as it is so as not to further delay his application. Mr. White also noted that the changes Mr. McNellis proposed are already present in the RB1 zone that is why you only see the changes to RB2.

MOTION - Move to recommend approval of the proposed ordinance Franklin/Conan – unanimously approved.

Planning Manager Steve Osguthorpe will add the text amendment for adding duplexes and multi-family to the RB1, as suggested by Mr. & Mrs. Malich to the Planning Commission schedule.

Commissioner Malich stated that looking at the zoning map you can see the progression and stated that it did not make sense to not include the allowed uses of less intense zones in RB1 and RB2.

Proposed addition of GHMC Chapter 17.67 – Performance Based Height Exceptions (ZONE 03-14) - Associate Planner Jennifer Sitts outlined additional housekeeping changes in the proposed ordinance and passed out the new ordinance with changes shown in red. She further explained the process by which certain structures would have to go through and also let Commission know that there has been public support of these proposed changes.

Robert Harding, DA Hogan & Assoc., Seattle WA - Mr. Harding spoke in support of the

changes and stated that he was specifically interested in sports field lighting. He stated that his company is currently attempting to install lighting at a multi-purpose field at Gig Harbor High School and this change will allow them to go forward.

MOTION:– Move to accept staff recommendation and forward the Planning Commissions recommendation to the City Council.
Conan/Franklin – passed unanimously

Proposed amendment to GHMC Chapter 17.65 – Special Use Permits (ZONE 03-05) – Planning Manager Steve Osguthorpe gave a brief history of the proposed ordinance the the original intention to regulate Farmers Markets, however, as further research was done it was found to be too cumbersome to regulate. He further stated that Staff then began to address special uses rather than farmers markets specifically. In the proposed ordinance the provisions for special uses make them a conditional use with 7 12-hour events. In the review of each event parking and impacts will be examined. If someone wants more than the allowed number of events it would go through complete site plan review.

Commissioner Franklin asked if there were other additions or changes than those previously proposed? Mr. Osguthorpe stated that there were no additional changes other than those previously suggested by the Planning Commission.

Commissioner Dick Allen stated that 7 12-hour events is somewhat restrictive and Commissioner Conan pointed out that you could have two of those events.

MOTION: Accept the proposed ordinance and forward the recommendation to the City Council.
Malich/Franklin – passed unanimously

There being no further comments the public hearing was closed at 7:40 p.m..

Co-Chair Bruce Gair pointed out that this would be Paul Conan's last meeting with the Planning Commission as he has been elected to the City Council. The entire Planning Commission thanked him for his service to the community.

Additionally Commissioner Gair stated that the Commission will need to elect a new chair person at next meeting if we have a new Planning Commission member.

Planning Manager Steve Osguthorpe reminded the Planning Commission to include language in each motion to recommend Council accept ordinance.

NEXT REGULAR MEETING:

January 15 th	Worksession and Public Hearing
February 5 th	Worksession and Public Hearing

ADJOURN:

MOTION: Move to adjourn at 7:45 p.m.
Conan/Franklin – unanimously approved

CD recorder utilized:
Disc #1 Track 1-5
Disc #2 Track 1



TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MHO*
SUBJECT: PENINSULA RECREATION CENTER FIELD DEVELOPMENT
INTERLOCAL AGREEMENT
DATE: JANUARY 6, 2004

INFORMATION/BACKGROUND

The attached interlocal agreement, crafted in part by Pierce County, and reviewed and adjusted by City Attorney Carol Morris, provides for the Peninsula Recreation Center field improvements at Gig Harbor High School as supported by City Council resolution at the November 24, 2003, Council Meeting (see attached Resolution No. 618).

Subsequent to City Council approval, the interlocal agreement will be sent to the Pierce County Council and the Peninsula School Board for respective approvals.

RECOMMENDATION

Staff recommends approval of the interlocal agreement as drafted.

**INTER-LOCAL AGREEMENT BETWEEN PIERCE COUNTY,
THE CITY OF GIG HARBOR AND
PENINSULA SCHOOL DISTRICT NO. 401**

WHEREAS, Pierce County is a municipal corporation and a political subdivision of the State of Washington, organized pursuant to RCW Title 36; and

WHEREAS, the City of Gig Harbor is an optional code City of the State of Washington, organized pursuant to RCW Title 35A; and

WHEREAS, the Peninsula School District No. 401 is a School District of the State of Washington organized pursuant to RCW Title 28A; and

WHEREAS, the parties are authorized to enter into interlocal agreements, pursuant to RCW Chapter 39.34; and

WHEREAS, the Peninsula School District acknowledges that any interlocal agreement between a public body and a school district must also comply with the provisions of RCW 28A.320.080 (RCW 39.34.030(2)), and the School District has determined that this Interlocal Agreement complies with the same; and

WHEREAS, the Peninsula School District No. 401 is the owner of the improvements that consist of the Softball and Soccer Field Site of the Gig Harbor High School, known as (and hereinafter referred to as) the Peninsula Recreation Center and located at 5101 38th Ave. NW, Gig Harbor, Washington; and

WHEREAS, the Softball and Soccer Field Improvements of the Peninsula Recreation Center, is described in the future improvement Capital Facilities Plan for the Pierce County Parks and Recreation Services Department and in the City of Gig Harbor Parks, Recreation and Open Space Plan; and

WHEREAS, Pierce County and the Peninsula School District No. 401 previously entered into a "Joint Recreation Agreement for Development and Joint Use of Public Park and Athletic Teaching Stations Between Pierce County and Peninsula School District No. 401", and Addendum No. 1 thereto, for joint cooperation with the design and construction of site improvements to be located at sites which include Gig Harbor High School Softball and Soccer Field improvements, the Peninsula Recreation Center; and

WHEREAS, Pierce County and Peninsula School District No. 401 desire to appropriate, design, fund and install certain improvements to the Peninsula Recreation Center; and

WHEREAS, the City of Gig Harbor also believes that the funding and installation of certain improvements will be of recreational benefit to the citizens of Gig Harbor, because the Peninsula Recreation Center is located in Gig Harbor, and is identified in the City of Gig Harbor Parks, Recreation and Open Space Plan, and exceeds \$2 million in local recreation public investment; and

WHEREAS, it is lawful for Pierce County, the City of Gig Harbor and Peninsula School District No. 401 to cooperate with each other in a project for joint use, pursuant to RCW Chapter 39.34; and

WHEREAS, Pierce County is the Project Manager of the Peninsula Recreation Center site improvements at Gig Harbor High School; and

WHEREAS, Pierce County has made a request for proposals for the Peninsula Recreation Center site improvements, as identified in Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, Pierce County expects to award a contract for public works, for the site improvements to the Peninsula Recreation Center in the event that this Interlocal Agreement is approved and all contingencies herein are performed; NOW, THEREFORE,

THE PARTIES AGREE AS FOLLOWS:

Section 1. Purpose. The parties have entered into this Interlocal Agreement for the purpose of funding, constructing and installing the site improvements to the Peninsula Recreation Center described in Exhibit A, attached hereto.

Section 2. Condition Prerequisite to Performance of Interlocal Agreement. The City of Gig Harbor will consider the passage of the legislative measure of an amendment to its zoning code text to permit the use of the Shoe Box Type of field lighting, as a lawful zoning use in the City of Gig Harbor, and as set forth in the proposed text amendment attached hereto as Exhibit "B". In the event that the City of Gig Harbor does not approve the proposed text amendment in Exhibit B, all parties agree that this Interlocal Agreement shall be null and void and of no further effect. The parties acknowledge that the City's decision whether to approve the text amendment set forth in Exhibit B is a legislative decision, and that if the text amendment is not approved, there will be no consequences to the City under this Interlocal Agreement, other than the release of all of the City's obligations hereunder.

Section 3. Bidding, Award of Contract and Construction of the Site Improvements. The parties acknowledge that agreements made pursuant to chapter 39.34 RCW do not relieve any public agency of any obligation or responsibility imposed upon it by law, and that no joint board has been created to implement any of the obligations under this Agreement. Therefore, all parties acknowledge that all applicable statutes regarding the construction of public works have been or will be complied with in the bidding, award and construction of the site improvements to the Peninsula Recreation Center, as the same apply to each of the individual parties to this Interlocal Agreement. The County, as project manager for the construction of the site improvements, shall provide copies of all of the relevant documents to each of the parties for review, so that each party can determine compliance. After opening of all bids, the County Parks Director shall contact the City Administrator to discuss compliance with the statutes applicable to the award of the contract.

Section 4. Additional Appropriation and Payment by Pierce County. If the condition in No. 2 of this Agreement is performed, Pierce County will appropriate and pay to the Pierce County account of the project the additional sum not to exceed \$78,000. These funds are for the contract to install improvements to the Gig Harbor High School Peninsula Recreation Center contracted multi-use field turf facility, the former Softball and Soccer Field, known as the Peninsula Recreation Center, for recreational and school athletic activities. As part of the field improvements, these funds will allow for the use of the Shoe Box Lighting Design.

These funds are in addition to previously appropriated funds that will defray the bid cost of the field improvements contract for public works, which has been previously estimated and appropriated by Pierce County in the sum not to exceed \$2,000,000. Said funds are appropriated and to be expended to carry out the terms of the "Joint Recreation Agreement for Development and Joint Use of Public Park and Athletic Teaching Stations Between Pierce County and Peninsula School District No. 401", as amended, with respect to the Gig Harbor High School Recreation Center, and as conditioned upon the effectuation of the terms of this Inter-local Agreement.

Section 5. Appropriation and Payment by the City of Gig Harbor for Shoe Box Lighting. If the condition in No. 2 of this Interlocal Agreement is performed, the City of Gig Harbor will appropriate and pay to Pierce County as Project Manager, a sum not to exceed \$78,000.00 for the purpose of completing the development and installation of shoebox lighting for the Peninsula Recreation Center multi-use field turf facility at Gig Harbor High School. The actual cost paid by the City will be determined as follows. The shoebox lighting facilities to be paid for by the City are as shown in Exhibit A, attached hereto. The County agrees to advertise bids showing the shoebox lighting facilities shown in Exhibit A, and requesting bids for installation of the facilities, along with the other site improvements for the Peninsula Recreation Center. The County will consult with

the City regarding the contract award, as provided in Section 3 of this Interlocal Agreement. The City will not be obligated to pay more than the actual cost of purchase and installation of the shoebox lighting facilities, as shown on Exhibit A. After installation of the Shoe Box Lighting facilities, the City shall have no further responsibility for ownership, maintenance or operation of the facilities.

Section 6. Appropriation and Payment by the City of Gig Harbor for the Porous Asphalt Field Base. If the condition set forth in No. 2 of this Interlocal Agreement is performed, the City of Gig Harbor will appropriate and pay to Pierce County as Project Manager a sum not to exceed \$60,000.00 for the purpose of completing the installation of a porous asphalt field base surfacing under the artificial surface for the Peninsula Recreation Center multi-use field turf facility at Gig Harbor High School. The actual cost paid by the City will be determined as follows. The porous asphalt field base to be paid for by the City is shown in location and dimension in Exhibit A, attached hereto. The County agrees to advertise bids showing the porous asphalt field base show in Exhibit A, and requesting bids for installation of same, along with the other site improvements for the Peninsula Recreation Center. The County will consult with the City regarding the contract award, as provided in Section 3 of this Interlocal Agreement. The City will not be obligated to pay more than \$60,000 of the actual cost of the porous asphalt field base, as shown on Exhibit A. After installation of the porous asphalt field base, the City shall have no further responsibility for ownership, maintenance or operation of the same.

Section 7. School District Consent to Contract Addenda for Shoe Box Lighting. If the condition set forth in No. 2 of this Interlocal Agreement is performed, then School District No. 401 will give its consent to the installation on-site of Shoe Box Lighting Improvements, to be described in contract documents of the public works contract for site improvements, together with the change orders and contract addenda that will be prepared by Pierce County for this purpose as the project manager.

Section 8. Project Management. Pierce County will provide project management to the completion of the general contract for the Peninsula Recreation Center at the Gig Harbor High School, to include the project amendments for the Shoe Box Lighting referred to herein. Pierce County will supervise the design and construction of the site improvements as amended.

Section 9. Public Appropriations. The parties agree that this Agreement is conditional upon public appropriations for the purposes of this agreement by any and all of the parties. In the event of non-appropriation of funds, by any of the parties, this agreement and the mutually dependent obligations thereunder shall terminate and be null and void and of no effect.

Section 10. Duration of Interlocal Agreement. This interlocal agreement shall remain in effect until December 31, 2005, or until the closure of the Pierce

County Peninsula Recreation Center field improvement project, whichever occurs first.

AGREED TO THIS _____ day of January, 2004.

PIERCE COUNTY

John W. Ladenburg
County Executive

Approved as to Content:

Patrick Kinney, Director
Budget and Finance

Jan Wolcott, Director
Parks and Recreation Services Department

Approved as to Form:

Lloyd Fetterly
Deputy Prosecuting Attorney

CITY OF GIG HARBOR

Gretchen Wilbert
Mayor

ATTEST:

City Clerk, Molly Towslee

Approved as to form:

City Attorney, Carol Morris

PENINSULA SCHOOL DISTRICT NO. 401

J. J. Coolican
Superintendent

Approved as to Form:

Attorney for School District

Exhibit "A"

Gig Harbor High School Field Renovation

Summary of Contract

7-Jan-04

Contractor	Ohnc Construction
Base Bid	\$ 868,500.00
Turf Surface Option 2 - Astro Play	\$ 622,500.00
Additive Alternate #1 - Batting Cage	\$ 13,500.00
Additive Alternate #2 - Porous Asphalt Paving	\$ 106,600.00
Additive Alternate #3 Lighting (Original Bid)	\$ 244,000.00
Change Order No. 1 Increased costs due to delay in Construction Start	\$ 29,207.63
Change Order No. 2 Increased costs due change in design of Lighting System	\$ 155,943.04
Change Order No. 3 Increased costs due to Permit Requirements regarding tree size and Quantity	\$ 4,894.10
Total To Date	\$ 2,045,144.77

EXHIBIT 'B'
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ALLOWING CERTAIN STRUCTURES TO EXCEED THE HEIGHT RESTRICTIONS OF THE ZONING CODE AS LONG AS PERFORMANCE-BASED APPROVAL CRITERIA ARE SATISFIED, AND ESTABLISHING HEIGHT EXEMPTIONS, CONSISTENT WITH CURRENT PRACTICE, TO ALLOW STRUCTURES SUCH AS TRAFFIC LIGHTS, PUBLIC LIGHT STANDARDS AND FLAG POLES TO EXCEED THE HEIGHT REQUIREMENTS OF THE ZONING CODE; ADDING A NEW CHAPTER 17.67 AND AMENDING SUBSECTION 19.01.003(B) OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, currently, all new structures within the City must meet the height requirements for the underlying zone, unless a variance is approved; and

WHEREAS, some structures must exceed the height requirements for effective performance and operation; and

WHEREAS, up to this point, some structures have been erected in the City, which exceed the height requirements of the underlying zone, in violation, without the appropriate variances; and

WHEREAS, a number of these structures would not be able to obtain the appropriate variances; and

WHEREAS, the City would like to exempt some of those structures from the height requirements of the Gig Harbor Municipal Code because they are common fixtures with expected and generally accepted height and design characteristics; and

WHEREAS, other structures requiring height in excess of the height requirements of the Gig Harbor Municipal Code for effective performance and operation can potentially cause adverse impacts, if not ameliorated; and

WHEREAS, the City would like to create a performance-based height exception process for these structures and establish criteria for approval to address and ameliorate adverse impacts and ensure compliance with City of Gig Harbor Design Manual requirements; and

WHEREAS, the City's SEPA Responsible Official has issued a declaration of Non-significance (DNS) for this ordinance on October 29, 2003; and

WHEREAS, the City sent a copy of this Ordinance to the Washington State Office of Community, Trade and Development on October 29, 2003; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on December 18, 2003; and recommended approval to the City Council; and

WHEREAS, on _____, the City Council considered this Ordinance during a regular meeting; Now, Therefore,

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

Section 1. A new chapter 17.67 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 17.67
PERFORMANCE-BASED HEIGHT EXCEPTIONS AND HEIGHT EXEMPTIONS

Sections:

- 17.67.010 Intent
- 17.67.020 Applicability – Performance-Based Height Exceptions
- 17.67.030 Applicability - Height Exemptions
- 17.67.040 Complete Application
- 17.67.050 Permit Type
- 17.67.060 Review Criteria
- 17.67.070 Special Review Criteria for Athletic Field Lighting
- 17.67.080 Time Limits

17.67.010 Intent

This chapter is intended to identify those structures to which height limits do not apply and to provide review procedures and criteria for those special situations where the height restrictions of this title may be relaxed. Performance-based height exceptions are intended to allow structures that require height in excess of height limits for effective performance and operation. Performance-based height exceptions are not intended to be used as a means of circumventing individually inconvenient height restrictions.

17.67.020 Applicability – Performance-Based Height Exceptions

- A. Approvals of performance-based height exceptions may be given to only the following structures:
 - 1. Elevated reservoirs, water tanks or standpipes under the jurisdiction of the city or another water district;
 - 2. Transmission line towers;
 - 3. Fire training towers;
 - 4. Athletic field lighting.
- B. Performance-based height exceptions are prohibited for the following:
 - 1. Communications facilities regulated by Chapter 17.61 GHMC;
 - 2. All new structures on parcels identified as prominent on the City of Gig Harbor Visually Sensitive Areas map;

3. All new structures within the view sheds of a significant vista, as identified on the City of Gig Harbor Visually Sensitive Areas map.

17.67.030 Applicability - Height Exemptions

The following structures are exempt from the height restrictions of this title:

- A. Traffic lights and signals;
- B. Light standards installed on street rights-of-way;
- C. Flagpoles that display flags of a political subdivision;
- D. Height exemption are prohibited for communications facility designed to look like any of the above, which are regulated under Chapter 17.61 GHMC Communication Facilities.

17.67.040 Complete Application

An application for a performance-based height exception shall contain seven (7) copies of the following information:

- A. The title and location of the proposed project, together with the names, addresses and telephone numbers of the recorded owners of the land and the applicant, and if applicable, the name, address and telephone number of any architect, planner, designer or engineer responsible for the preparation of the plan, and of any authorized representative of the applicant;
- B. A written description addressing the scope of the project, the use of the site, and the nature and height of the proposed structures.
- C. Color, type, model and specification of all proposed structures. Include the area of illumination and intensity of lighting in footcandles for athletic field lighting.
- D. A vicinity map showing site boundaries and existing roads and accesses within and bounding the site;
- E. Site plans drawn to a scale no smaller than one inch equals 30 feet showing location and size of uses, location of proposed and existing structures, critical areas and wetlands, buffer areas, proposed areas of disturbance or construction outside of the building and structure footprint, yards, open spaces and landscaped areas and any existing structures, easements and utilities;
- F. A written statement of justification for granting the exception pursuant to the requirements of GHMC 17.67.060, and GHMC 17.67.070, if applicable;
- G. A listing of the names and addresses of property owners of record within 300 feet of the project property, including preprinted labels bearing the names and addresses of the property owners of record within 300 feet of the project property;
- H. All application requirements of GHMC 19.02.002.

17.67.050 Permit Type

A performance-based height exception is a Type III permit.

17.67.060 Review Criteria

The applicant shall demonstrate that the following criteria for approval of the exception have been satisfied:

- A. The increased structure height is necessary for effective performance and operation and is the minimum necessary for the structure to function in its intended and permitted use; and
- B. Visual impacts beyond the site and within environmentally sensitive areas have been minimized by such measures as, but not limited to:
 - 1. Avoidance, to the extent possible, of shade or light cast into critical areas and wetlands where shade or light may impact the biological functions of critical areas and wetlands;
 - 2. Using color or material to blend the structure into the surrounding environment;
 - 3. Screening the structure with vegetation;
 - 4. Avoidance, to the extent possible, of light trespass onto adjacent properties.

17.67.070 Special Review Criteria for Athletic Field Lighting

In addition to the criteria specified in Section 17.67.060 GHMC, the applicant for an exception for athletic field lighting shall demonstrate that the following criteria for approval of the exception have been satisfied:

- A. Athletic field light fixtures to be installed are a "shoebox" style and downward-directional; and
- B. Both fixtures and poles are painted black, brown or dark green.

17.67.080 Time Limits

Any exception granted by the hearing examiner shall become null and void if not exercised within one year of the date of approval. Upon written request by the property owner, prior to the date of expiration the director may grant an extension of time up to but not exceeding one year. Any extension of time shall be based upon a finding that there has been no material change of circumstances applicable to the structure or property since the granting of the exception.

Section 2. GHMC 19.01.003 (B) is amended to read as follows:

B. Decisions.

TYPE I	TYPE II	TYPE III	TYPE III-A	TYPE IV	TYPE V
Permitted uses not requiring site plan review	Short plat	Plat vacations and alterations	Preliminary plats	Final plats	Comp. plan amendments
Boundary line adjustments	Sign permits	Site plan/major amendments to site plans	Preliminary PRD/PUD	Final PRD/PUD	Development regulations

Minor amendments to PUD/PRD	Design review	CUP, general variances, sign permit variances, and site specific rezones			Zoning text amendments; area-wide zoning map amendments
Special use permits	Land clearing/grading	Shoreline substantial development, shoreline variance			Annexations
Temporary construction trailers	Revisions to shoreline management permits	Major amendments to PRD and PUD			
	Administrative variances	Amendment to height restriction area map			
	Administrative interpretations	Mobile/manufactured home park or subdivision			
	Home occupation permit	<u>Performance-based height exception</u>			
	Hardship variance, sign code				
	Modification to landscape plans				
	Minor amendment to PRD or PUD				

Section 3. 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 4. 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 on its date of introduction pursuant to Section 1.08.020(B) GHMC, after having receiving an affirmative vote of a majority plus one of the whole membership of the Council, and approved by the Mayor of the City of Gig Harbor this ____ day of _____, 2004.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
DATE PUBLISHED:
DATE EFFECTIVE:

**CITY OF GIG HARBOR
RESOLUTION NO. 618**

**A RESOLUTION OF THE CITY OF GIG HARBOR,
WASHINGTON, SUPPORTING DEVELOPMENT OF AN
INTERLOCAL AGREEMENT TO ENABLE CITY EXPENDITURES
FOR RECREATIONAL DEVELOPMENT AT THE PENINSULA
RECREATION CENTER AT GIG HARBOR HIGH SCHOOL.**

WHEREAS, the City of Gig Harbor supports development of the Peninsula Recreation Center as identified in the 2003 adopted *City of Gig Harbor Parks, Recreation and Open Space Plan*; and

WHEREAS, interlocal funding cooperation between the City of Gig Harbor and Pierce County is necessary to facilitate completion of field lighting and porous asphalt field base at the multi-use field turf facility at Gig Harbor High School, a recreational improvement within city limits that exceeds \$2 million in local recreation investment; and

WHEREAS, the proposed improvement will benefit the recreational interests of city residents; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AS FOLLOWS:

Section 1. Lighting. The City Administrator is authorized and directed to present to the City of Gig Harbor City Council an interlocal agreement with Pierce County for the purpose of completing the development and installation of shoebox lighting for the Peninsula Recreation Center multi-use field turf facility at Gig Harbor High School in an amount not to exceed \$120,000.

Section 2. Field Surface Base. The City Administrator is authorized and directed to present to the City of Gig Harbor City Council an interlocal agreement with Pierce County for the purpose of completing the installation of a porous asphalt field base for the Peninsula Recreation Center multi-use field turf facility at Gig Harbor High School in an amount not to exceed \$60,000.

Section 3. 2004 Budget Allocation. The not-to-exceed lighting cost expenditure of \$120,000 will be allocated from the City of Gig Harbor 2004 Park Development Fund 109. The not-to-exceed porous asphalt base cost expenditure of \$60,000 will be allocated from the City of Gig Harbor 2004 Property Acquisition Fund 301.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR
this 24th day of November , 2003.**

APPROVED:


GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:


MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 11/24/03
PASSED BY THE CITY COUNCIL: 11/24/03
RESOLUTION NO. 618



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBER'S
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: FIRST READING OF AN ORDINANCE RELATING TO ANNEXATION
AND ZONING (HAZEN ANNEXATION - ANX 03-02)
DATE: JANUARY 12, 2004

INFORMATION/BACKGROUND

The City Council met with the initiators of a 'Notice of Intention to Commence Annexation Proceedings' on June 23, 2003 with regards to a proposed annexation of property located east of Soundview Drive and north of 64th Street. At that time, the Council voted to authorize circulation of the annexation petition subject to the certain conditions including adoption of pre-annexation Single-Family Residential (R-1) zoning; modification of the geographic boundaries of the area proposed for annexation; and a requirement that the property owners assume a proportionate share of the City's indebtedness. The Council subsequently approved the modified legal description and map on August 11, 2003. The City received a petition for annexation on August 14, 2003, which was subsequently certified by the Pierce County Office of the Assessor-Treasurer and Pierce County Auditor on September 3, 2003 as being legally sufficient.

At the conclusion of a public hearing on October 13, 2003, the Council passed Resolution No. 616 accepting the annexation petition and referred the annexation to the Pierce County Boundary Review Board for consideration. The Boundary Review Board subsequently deemed the annexation approved on December 11, 2003.

Adoption of an Ordinance annexing the property and establishing zoning is in order. The City Attorney has reviewed and approved the attached Ordinance for your consideration.

POLICY CONSIDERATIONS

None.

FISCAL IMPACT

None.

RECOMMENDATION

I recommend that the Council approve the Ordinance as presented following the second reading.



Pierce County

Boundary Review Board

2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7158 • FAX (253) 798-3680

December 11, 2003

RECEIVED
CITY OF GIG HARBOR
DEC 12 2003
COMMUNITY
DEVELOPMENT

John Vodopich
Director of Community Development
3510 Grandview Street
Gig Harbor WA 98335

Re: Proposed Hazen Annexation
Boundary Review Board Case No. A-03-3

Dear Mr. Vodopich:

The forty-five (45) day period has elapsed since the Notice of Intention was officially filed with the Pierce County Boundary Review Board on October 22, 2003, and the Board's jurisdiction has not been invoked.

Accordingly, as provided by RCW 36.93.100, the subject proposal is deemed approved by the Boundary Review Board.

The City of Puyallup needs to submit a certified copy of its final ordinance, along with the attached legal description, formally extending its boundaries to accomplish completion of the proposal. The ordinance should come directly to the Boundary Review Board for distribution to all concerned County departments.

Sincerely,

Toni Fairbanks
Chief Clerk

Attachment
brb45end.doc



Printed on recycled paper

**CITY OF GIG HARBOR
ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, ANNEXATING APPROXIMATELY ELEVEN (11) ACRES OF PROPERTY LOCATED IN THE 2800 BLOCK OF 64TH STREET, EAST OF SOUNDVIEW DRIVE AND NORTH OF 64TH STREET LOCATED IN PIERCE COUNTY (ANX 03-02), ADOPTING ZONING REGULATIONS FOR THE ANNEXATION AREA, AND REQUIRING THE PROPERTY OWNERS TO ASSUME THEIR PROPORTIONATE SHARE OF INDEBTEDNESS.

WHEREAS, on June 4, 2003, the City of Gig Harbor received a Notice of Intent to Annex approximately 8.39 acres of property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street located in Pierce County, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully set forth in full; and

WHEREAS, the Notice of Intent was signed by the owners of not less than ten percent (10%) of the acreage of the property described in Exhibit A; and

WHEREAS, on June 5, 2003, the Notice of Intent was forwarded to the Chief Clerk of the Pierce County Boundary Review Board for review and comment; and

WHEREAS, on June 9, 2003, the City Council set a date of June 23, 2003 to meet with the initiating parties of the Notice of Intent; and

WHEREAS, as of June 17, 2003, the Chief Clerk of the Pierce County Boundary Review Board had not commented on the Notice of Intent; and

WHEREAS, on June 23, 2003, the City Council met with the initiators of the petition and voted to authorize circulation of the annexation petition subject to certain conditions including adoption of pre-annexation Single-Family Residential (R-1) zoning; modification of the geographic boundaries of the area proposed for annexation thereby

increasing the size of the annexation are to approximately eleven (11) acres; and requiring that the property owners assume a proportionate share of the City's indebtedness; and

WHEREAS, on June 25, 2003, the revised legal description and map was forwarded to the Chief Clerk of the Pierce County Boundary Review Board for review and comment; and

WHEREAS, on July 18, 2003, e-mailed revisions to the revised legal description were received by City staff from the Chief Clerk of the Pierce County Boundary Review Board; and

WHEREAS, on August 11, 2003, the City Council voted to accept the corrected legal description and map based on comments received from the Pierce County Boundary Review Board on July 18, 2003; and

WHEREAS, on August 14, 2003, a petition for annexation of the property described in Exhibit A was received by the City; and

WHEREAS, on August 15, 2003, the petition for annexation was forwarded to the Pierce County Assessor-Treasurer's Office for a determination of sufficiency; and

WHEREAS, on September 3, 2003, the petition for annexation was certified by the Pierce County Office of the Assessor-Treasurer and the Pierce County Auditor, as being legally sufficient, and as containing the signatures of the owners of a majority of the acreage of the area proposed for annexation and the signatures of a majority of the registered voters in the area described in Exhibit A; and

WHEREAS, on September 8, 2003, the City Council set a public hearing date of October 13, 2003 for the consideration of a resolution approving the annexation as proposed; and

WHEREAS, on September 24, 2003, notice of the October 13, 2003 public hearing was posted within three conspicuous areas within the area proposed for annexation; and

WHEREAS, on September 25, 2003, notice of the October 13, 2003 public hearing was mailed to all property owners of record within the area proposed for annexation and within three-hundred feet (300') of the area proposed for annexation; and

WHEREAS, on October 1 and October 8, 2003, notice of the October 13, 2003 public hearing was published in the Peninsula Gateway; and

WHEREAS, on October 13, 2003, the City Council, following a public hearing on the annexation petition, the City Council voted to approve the annexation with Single-Family Residential (R-1) zoning for the area of annexation, subject to Boundary Review Board approval (City of Gig Harbor Resolution No. 616); and

WHEREAS, on October 21, 2003, the Notice of Intention, together with supporting documentation, was submitted to the Chief Clerk of the Pierce County Boundary Review Board; and

WHEREAS, on October 22, 2003, the Chief Clerk of the Pierce County Boundary Review Board deemed the annexation proposal as complete, set the official filing date as October 22, 2003, initiated the forty-five (45) day review period, and noted that the period during which jurisdiction could be invoked would expire on December 8, 2003; and

WHEREAS, the property described in Exhibit A and proposed to be annexed is within the City of Gig harbor Urban Growth Area as established by Pierce County and included in the Comprehensive Plans of both the County and the City of Gig Harbor; and

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in November, 1994, established a land use map designation for this area as Urban Residential Low Density, along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed Single-Family Residential (R-1) zoning of the property described in Exhibit A is consistent with the City of Gig Harbor Comprehensive Land Use Plan designation as Urban Residential Low Density; and

WHEREAS, the Gig Harbor Council has provided its intent to annex property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street located in Pierce County, contingent upon the following conditions:

- A. Assumption by the property owners of their proportionate share of the City of Gig Harbor's indebtedness; and
- B. Imposition of Single-Family Residential (R-1) zoning of the property; and

WHEREAS, on December 11, 2003, the Pierce County Boundary Review Board issued a written decision approving the annexation of the property as described in Exhibit A; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting's of January 12 and January 26, 2004; Now, Therefore,

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

Section 1. The Gig Harbor City Council hereby approves the annexation of property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street

located in Pierce County, as described in Exhibit A, attached hereto, as part of the City of Gig Harbor, contingent upon compliance with the following conditions:

- A. Pursuant to the terms of the annexation petition, the property in the 2800 block of 64th street, east of Soundview Drive and north of 64th Street located in Pierce County, as described in Exhibit A, shall be assessed and taxed at the same rate and on the same basis as property within the City, including assessments for taxes and payment of any bonds issued or debts contracted prior to or existing as of the date of annexation; and
- B. All property within the area described in Exhibit A shall be zoned as Single-Family Residential (R-1) in accordance with the Gig Harbor Municipal Code, Title 17.

Section 2. The Community Development Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the zoning established in Section 1.

Section 3. The Gig Harbor City Clerk hereby declares the property described in Exhibit A to be contiguous with the boundaries of the City of Gig Harbor.

Section 4. The City Clerk is hereby directed to record a certified copy of this ordinance with the office of the Pierce County Auditor.

Section 5. This ordinance shall take effect five days after passage and publication as required by law.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor
this 26th day of January 2004.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
ORDINANCE NO.

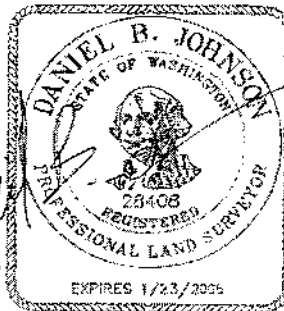
**Exhibit A
Hazen Annexation (ANX 03-02)
Legal Description**

**LEGAL DESCRIPTION
of
PROPOSED ANNEXATION TO GIG HARBOR
for
Joe & Linda Hazen**

A parcel of land in the Southwest Quarter of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M., in Pierce County, Washington, described as follows:

Commencing at the Southwest Corner of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M., in Pierce County, Washington; thence S 88°48'46" E along the south line of said southeast quarter, 200.64 feet; thence N 2°27'47" E, 30.00 feet to the north margin of 64th Street NW and the TRUE POINT OF BEGINNING; thence N 2°27'47" E, 104.03 feet; thence N 88°48'46" W, 49.93 feet; thence N 2°27'47" E, 96.02 feet; thence S 88°48'46" E, 179.96 feet; thence N 2°27'47" E, 294.94 feet to the southeast corner of Short Plat 79-531; thence N 88°48'46" W, 300.00 feet to the easterly margin of Soundview Drive; thence N 2°27'47" E along said margin, 135.00 feet; thence S 88°48'46" E, 930.00 feet; thence S 2°27'47" W, to the south line of Government Lot 5; thence west along said south line to the easterly margin of Reid Drive; thence northwest along the easterly margin of Reid Drive to the north margin of 64th Street NW; thence N 88°48'46" W, along said margin to the True Point of Beginning.

Daniel B. Johnson
8/12/03



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

On January 26, 2004 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, RELATING TO ANNEXATION AND ZONING, ANNEXATING APPROXIMATELY ELEVEN (11) ACRES OF PROPERTY LOCATED IN THE 2800 BLOCK OF 64TH STREET, EAST OF SOUNDVIEW DRIVE AND NORTH OF 64TH STREET LOCATED IN PIERCE COUNTY (ANX 03-02), ADOPTING ZONING REGULATIONS FOR THE ANNEXATION AREA, AND REQUIRING THE PROPERTY OWNERS TO ASSUME THEIR PROPORTIONATE SHARE OF INDEBTEDNESS.

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 of January 26, 2004.

BY:

MOLLY M. TOWSLEE, CITY CLERK



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: WELL NO. 6 SUSCEPTIBILITY ASSESSMENT
- CONSULTANT SERVICES CONTRACT
DATE: JANUARY 12, 2004

INTRODUCTION/BACKGROUND

Part of the approval process for the Well No. 6 water right application is to have a Susceptibility Assessment survey completed. The report is to determine the vulnerability to surface contamination to a drinking water source. Depending on the results of this assessment, the Department of Health may waive some or all of the monitoring requirements.

Gray & Osborne, Inc. was selected based on their firm being the principal design engineer for this project, and their expertise in water distribution systems.

Authorization is requested to execute a Consultant Services Contract in the not-to-exceed amount of \$1,200.00 with Gray & Osborne, Inc., for the Susceptibility Assessment Report for Well No. 6.

FISCAL CONSIDERATIONS

This is an unbudgeted objective using existing funds in the Water Department. Adequate funds are available in the adopted 2004 Water Fund Budget.

RECOMMENDATION

I recommend that Council move to approve and execute the Consultant Services Contract with Gray & Osborne, Inc. for Well No. 6 Susceptibility Assessment Report in an amount not to exceed one thousand two hundred dollars and no cents (\$1,200.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GRAY & OSBORNE, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gray & Osborne, Inc., a corporation organized under the laws of the State of Washington, located and doing business 701 Dexter Avenue North, Suite 200, Seattle, Washington 98109 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the engineering services for Well No. 6 Susceptibility Assessment, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated December 4, 2003, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed One Thousand Two Hundred Dollars and no cents (\$1,200.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement.

The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by February 15, 2004; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs

incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and reasonable attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverage's shall be made on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 days of the City's payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. Under this agreement, for the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Community Development Director and the City shall determine the term or provision's true intent or meaning. The City Community Development Director shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Community Development Director's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT
Gray & Osborne, Inc.
701 Dexter Avenue N., Suite 200
Seattle, Washington 98109
(206) 284-0860

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 200__.

CONSULTANT

CITY OF GIG HARBOR

By: Thomas M. Zudul
Its Principal

By: _____
Mayor

Notices to be sent to:
CONSULTANT
Gray & Osborne, Inc.
701 Dexter Avenue N., Suite 200
Seattle, Washington 98109
(206) 284-0860

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 851-6170

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF King)

I certify that I know or have satisfactory evidence that Thomas Zouker is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the President of Gay Osborne Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 1/5/04

Melissa Drysdale
Melissa Drysdale
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:
Kirkland

My Commission expires: 3/9/07



STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

EXHIBIT "A"
SCOPE OF SERVICES

December 4, 2003

Mr. David Brereton
City of Gig Harbor
Director of Operations
3510 Grandview Street
Gig Harbor, Washington 98335

**SUBJECT: PROPOSAL FOR WELL NO. 6 SUSCEPTIBILITY ACCESSMENT
CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON
G&O #20038.20**

Dear Mr. Brereton:

As requested, we have prepared a proposal to provide engineering services for completing a susceptibility assessment for the City of Gig Harbor Well No. 6. The cost of this service will not exceed \$1,200 without further written notice from the City of Gig Harbor.

SCOPE OF WORK

The following scope of work is as follows:

- PART I - System Information
- PART II - Well Construction and Source Information
- PART III - Hydrogeologic Information
- PART IV - Mapping Your Ground Water Resource
- PART V - Assessment of Water Quality
- PART VI - Geographic or Hydrologic Factors Contributing to a Non-Circular Zone of Contribution

Please contact me if you have any questions.

Very truly yours,

GRAY & OSBORNE, INC.

Hiep Mai, P.E.

HLM/

Encl.

EXHIBIT "B"

**ENGINEERING SERVICES
SCHEDULE OF RATES AND ESTIMATED HOURS**

WELL NO. 6 SUSCEPTIBILITY ASSESSMENT

TASKS	Principal Hours	Project Mgr. Hours	Civil Eng. Hours	CADD Tech. Hours
Engineering Analysis		1	6	
CADD Work				4
Environmental Review			2	
QA/QC	1			
Hour Estimate:	1	1	8	4
Estimated Hourly Rates:	\$47	\$37	\$27	\$23
Direct Labor Cost	\$47	\$37	\$216	\$92

Subtotal Direct Labor:	\$392
Indirect Costs (156%):	\$612
Total Labor Cost:	\$1,004
Fee (15%):	\$151
Subtotal Labor & Fees:	\$1,154
Direct Non-Salary Cost:	
Mileage & Expenses (Mileage @ \$0.36/mile)	\$46
Printing	
Subconsultant:	
Subconsultant Overhead (10%)	
TOTAL ESTIMATED COST:	\$1,200



POLICE DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: BILL COLBERG, LIEUTENANT
SUBJECT: NOVEMBER INFORMATION FROM PD
DATE: JANUARY 7, 2004

The November activity statistics are attached for your review.

As you know, we are now down two full time officers and as of December 14th, a Chief of Police. Officer Garcia, hopefully, will be returning to us full time in February. These are difficult times, but the devotion of our staff will meet the challenge.

Our five Reserve Officers provided 242 hours of service in November. The time was split between patrol duties, training, and traffic control for the Christmas Tree Lighting event.

The patrol boat has been removed from the water for the season and therefore the MSU only logged three hours, all for maintenance.

GIG HARBOR POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

NOV 2003

	<u>NOV</u> <u>2003</u>	<u>YTD</u> <u>2003</u>	<u>YTD</u> <u>2002</u>	<u>% chg</u>
CALLS FOR SERVICE	389	5311	5319	0%
SECONDARY OFFICER ASSIST	42	720	736	- 2%
CRIMINAL TRAFFIC	17	105	133	-21%
TRAFFIC INFRACTIONS	95	848	830	2%
DUI ARRESTS	10	50	56	-11%
FELONY ARRESTS	2	63	72	-13%
WARRANT ARRESTS	9	71	72	-1%
MISDEMEANOR ARRESTS	23	238	185	29%
CASE REPORTS	89	1214	1124	8%
REPORTABLE VEHICLE ACCIDENTS	21	177	174	2%



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: MARK HOPPEN, CITY ADMINISTRATOR *mh*
JOHN P. VODOPICH, AICP *JPV*
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: VIEW PROECTION & TREES
DATE: JANUARY 12, 2004

BACKGROUND

At recent City Council meetings, the issue of protection of views from private properties has been presented for consideration. Staff analyzed information that was presented at the October 26, 2003 Council meeting which was then summarized in a memorandum dated November 24, 2003 from Steve Osguthorpe, Planning & Building Manager. The City Attorney has prepared the attached memorandum which discusses the authority for the adoption of view protection ordinances, existing regulations, and makes recommendation for future action.

Memorandum

To: Mark Hoppen, Gig Harbor Administrator
CC: John Vodopich, Gig Harbor Community Development Director
From: Carol Morris, City Attorney
Date: 1/7/2004
Re: View Protection

Mark, several members of the public have asked the City Council to consider the adoption of regulations that would allow pruning or cutting of trees located on private property, in order to preserve private views. Some people asked that the City adopt regulations similar to GHMC 17.78.120(B) for residential development. This memo will discuss the authority for the adoption of view protection ordinances, the existing regulation, and a recommendation for future action.

A. Authority for Adoption of View Protection Ordinances.

1. *There is no right to an unobstructed view, absent an agreement, statute or governmentally imposed condition affirmatively creating that right.*

The Washington courts have long held that: "The right to an unobstructed view does not exist, absent an agreement, statute or governmentally imposed condition affirmatively creating that right." *Karasek v. Peier*, 22 Wash. 419, 61 P. 33 (1900). This rule has been reiterated in recent cases in Washington and other states. (*Pierce v. Northeast Lake Washington Sewer and Water District*, 123 Wn.2d 550, 870 P.2d 305 (1994), in which the court cited this exact language in reference to a California case involving a homeowners' association's unsuccessful attempt to prevent a nearby retirement community from growing trees on its property higher than a five story building. *Pacifica Homeowners' Ass'n v. Wesley Palms Retirement Community*, 178 Cal. App. 3d 1147, 224 Cal. Rptr. 380 (1986).)

In *Pierce*, owners of residentially developed property located next to property owned by a water and sewer district filed an inverse condemnation case against the district. According to the residential property owners, the

district's construction of a water tower that blocked their view and reduced the market value of their property by at least \$30,000.00 was a "taking" of private property without payment of just compensation. The court dismissed in favor of the district, finding that the district owed the property owners no compensation for depreciation in market value caused by a legal act. *Pierce*, 123 Wn.2d at 563.

In another view blockage case, property owners claimed that their neighbor's construction of a multi-story, multi-unit condominium building on adjacent property was a nuisance. *Collinson v. Scott*, 55 Wn. App. 481, 778 P.2d 534 (1989). The court considered the general rule that, absent conveyance of an easement from his/her neighbor, a property owner does not have a right in a view across his neighbor's land, and the following:

The general rule appears to be that a building or structure cannot be complained of as a nuisance merely because it obstructs the view of neighboring property. That rule finds its genesis in the repudiation of the English doctrine of ancient lights. Under that doctrine, a landowner acquired an easement for light across an adjoining landowner's property and could prevent the adjoining landowner from obstructing the light once the easement was established by the passage of time. The doctrine has been repudiated on the basis that 'it is not adapted to the conditions existing in this country and could not be applied to rapidly growing communities without working mischievous consequences to property owners.

Collinson, 55 Wn. App. at 486 (citations omitted). Ultimately, the court determined that the Collinsons had no right under the common law to bring a nuisance action:

[The Collinsons] do not possess any easement of light, air or view, nor do they possess any legal cause for complaint for interference therewith by the lawful erection of a building on respondent's property. . . . [A] building or structure cannot be complained of as a nuisance *merely* because it obstructs the view from neighboring property. Rights of adjoining landowners in the use and enjoyment of their property are relative, but they are also equal. Equity cannot restrict one landowner to confer a benefit on the other.

Id., 55 Wn. App. at 488 (emphasis in original).

The Washington courts have upheld an ordinance prohibiting naturally grown fences exceeding eight feet in height. *Clyde Hill v. Roisen*, 111 Wn.2d 912, 767 P.2d 1375 (1989). However, this case was filed by a property owner who challenged the definition of "fence" as unconstitutionally vague. It does not address the question whether the city has the authority to adopt an ordinance requiring a property owner to cut trees on his/her property down in order to preserve the private view of an adjacent property owner. This case also does not address the question whether an action to enforce this ordinance would violate the constitutional prohibition on the use of public funds for private purposes. These issues were never presented to the court.

In the *Clyde Hill* case, "fence" was defined as: "any barrier which is naturally grown or constructed for the purposes of confinement, means of protection or use as a boundary." The court determined that the property owner's trees violated the ordinance, and that the ordinance was constitutional. According to the court, a property owner's planting of 13 separate 16-20 foot tall Douglas Fir trees in close proximity to his property line constituted a "fence," because they were "massive and dense" and created a barrier impeding human passage, light and view.

Since the *Clyde Hill* case was adopted, the City of Clyde Hill has adopted another ordinance that is more protective of views on private properties. (Chapter 17.38 CHMC, "View Obstruction and Tree Removal.") Recently, I discussed the implementation chapter 17.38 CHMC with the City Administrator, Mitch Wasserman, and he states that the City has never had to enforce the ordinance. Most property owners are able to resolve their problems at the complaint stage (see, CHMC Section 17.38.030).

The Clyde Hill View Obstruction ordinance allows the City to hold a public hearing before the Board of Adjustment on a complaint by a private property owner that the vegetation on his/her neighbor's property obstructs the view from his/her property. If the Board of Adjustment makes certain findings regarding view obstruction, the work on the tree could be ordered. The pruning or removal of the tree is usually paid for by the complainant, and must occur within 90 days of the Board's decision.

Therefore, the property owners in Gig Harbor who have complained to the Council about overgrown trees and vegetation blocking their view currently have no legal right to an unobstructed view (unless they have purchased a view easement from their neighbors). The Clyde Hill natural fence ordinance probably would not address the problem raised by the Gig Harbor property owners because the trees and vegetation must meet the definition of a fence

for the ordinance to apply. Furthermore, the following analysis demonstrates that there is no authority for the adoption of an ordinance which requires removal of trees on private property to protect private views of adjacent property owners.

2. *The City's adoption of an ordinance restricting tree heights on private property to protect adjacent private property owner's views is not likely to be viewed by the courts as a legitimate exercise of police power because it addresses a private, not a public problem.*

Local government often regulates and restricts the use of private property in the interest of the public under the police power. "Police power . . . exists without express declaration, and the only limitation upon it is that it must reasonably tend to correct some evil or promote some interest of the state, and not violate any direct or positive mandate of the constitution." *Manufactured Housing Communities of Washington v. State of Washington*, 142 Wn.2d 347, 355, 13 P.3d 183 (2000). An ordinance requiring property owners to trim their trees to preserve views on adjacent private property does not promote any public interest, and is subject to a "facial" takings challenge under existing Washington and federal law, specifically, amended article I, section 16 of the Washington State Constitution or the Fifth Amendment of the U.S. Constitution. *Manufactured Housing*, 142 Wn.2d at 355.

The threshold question asked by the courts in a "takings" analysis is whether the regulation destroys or derogates any fundamental attribute of property ownership, including the right to possess, to exclude others, to dispose of property or to make some economically viable use of property. *Edmonds Shopping Center Associates v. Edmonds*, 117 Wn. App. 344, 363, 71 P.3d 233 (2003). "Ownership of property not only includes the right to exclusive possession, but also includes the 'right to use the land.'" *Pierce v. Northeast Lake Washington Sewer and Water District*, 123 Wn.2d 550, 561, 870 P.2d 305 (1994). As further explained by the *Pierce* court:

Property in a thing consists not merely in its ownership and possession, but in the unrestricted right of use, enjoyment and disposal. Anything which destroys any of these elements of property, to that extent destroys the property itself. *The substantial value of property lies in its use.* If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right.

Pierce, 123 Wn.2d at 561 (emphasis in original). The *Pierce* court cited the above rule in its determination that a water and sewer district did not "take"

private property without payment of just compensation when it legally constructed a water tower, even though the resulting view blockage reduced the market value of adjacent residentially developed property.

Under the above, a property owner's right to maintain trees on his/her property could be viewed by a court as one "fundamental attribute of ownership" that is destroyed by an ordinance requiring tree trimming to enhance views on other private property. This is because the ordinance would effectively give any private property owner a free view easement over his or her neighbor's property, in the location desired by the first property owner, and allow public funds to be spent in the enforcement of such private view easement.

In *Manufactured Homes*, the Washington Supreme Court determined that a state statute giving qualified tenants a right of first refusal to purchase a mobile home park was an unconstitutional taking of private property for private use. A right of first refusal was held to be not only a contractual right but also an equitable right in the property, which vests when the property owner decides to sell. *Id.*, 142 Wn.2d at 366. While the Court agreed that the statute was a "well-intentioned effort of the Legislature to encourage the conversion of mobile home parks to resident ownership," it invalidated the statute as conflicting with the Washington State constitutional prohibition against taking private property solely for private use. *Id.*, 142 Wn.2d at 376. This case is important to the analysis because the proposed view obstruction ordinance would be viewed by the courts in the same light -- as creating a view easement, which can be both a contractual and an equitable right.

Assuming for argument's sake that a court would not determine that the ordinance destroys a fundamental attribute of property ownership, and the property owner claims less than a "physical invasion" or a "total taking," (the first of which could be implicated here), the next question a court will ask in the takings analysis is "whether the challenged regulation safeguards the public interest in health, safety, the environment, or the fiscal integrity of an area or whether the regulation 'seeks less to prevent a harm than to impose on those regulated the requirement of providing an affirmative public benefit.'" *Edmonds*, 117 Wn. App. at 363. If the answer to both of the threshold questions is negative, then there is no taking. If the answer to one or both of the questions is affirmative, additional analysis is required. *Id.*

As shown above, the Washington courts have not determined that prevention of view blockage on private properties "safeguards the public interest" in any way, even if it diminishes the market value of adjacent property. Therefore, such an ordinance would not prevent a "harm," but it would "impose on those regulated the requirement of providing an affirmative public benefit."

The additional "takings" analysis includes consideration of the following: (1) whether the regulation advances a legitimate state interest; and (2) a balancing test to determine if the state interest in the regulation is outweighed by its adverse economic impact to the landowner, with particular attention to the regulation's economic impact on the property, the extent the regulation interferes with investment-backed expectations, and the character of the government action. *Edmonds*, 117 Wn. App. at 364.

Under the first of these tests, it cannot be argued that the regulation advances a legitimate state interest – it advances private interests only. In addition, if such an ordinance were adopted, it would result in the use of public funds to advance the private interests of only the wealthiest those citizens with view properties. Given the fact that the regulation fails the first of the two-pronged tests above, we should advance to an analysis under the next court-formulated test for due process.

The due process test is: (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is unduly oppressive on the landowner. *Seattle v. McCoy*, 101 Wn. App. 815, 4 P.3d 159 (2000). Again, the proposed ordinance fails the first test because a requirement to trim or remove trees on private property to enhance the views of adjacent private property owners is aimed at achieving a private purpose, not a legitimate public purpose.

While it may be argued that the City imposes height limits on structures on buildings in certain zones, the height limits are not imposed for the sole purpose of enhancing the views of individual property owners, or even the views from public property. Height limits are also imposed by the City for reasons totally unrelated to views – such as design (retaining a small-town character) or for fire protection (the type of equipment owned by the fire protection district/department has a direct bearing on the height limits imposed by the local jurisdiction).

The purpose of the due process analysis has been described by the court as a means to "prevent the use of excessive police power that would require an individual 'to shoulder an economic burden, which in justice and fairness the public should rightfully bear.'" *Edmonds*, 117 Wn. App. at 365. Under this test, an ordinance requiring the removal or trimming of trees on private property to enhance views on adjacent private property requires that the public (as well as the burdened property owners) to bear an economic burden that should be borne by those persons who chose to protect their views. All

of the public would bear the cost of enforcing this ordinance, but it would only benefit those property owners with view properties.

In addition, the proposed ordinance would not use "means that are reasonably necessary to achieve a legitimate public purpose" because there is no public purpose. The "means" are not "reasonably necessary" because a property owner seeking to preserve a view from his/her property over his neighbor's property may purchase a view easement from his or her neighbor. While the property owner may argue that such an easement will be expensive to purchase and enforce, it is a cost that should be borne by the private property owner, since the private property owner alone will subjectively determine what view is worth preserving and obtain the benefit of the view.

GHMC Section 17.78.120(B).

GHMC Section 17.78.120(B) provides that whenever landscaping is required under chapter 17.18 GHMC, the trees shall receive pruning or removal in order to "avoid the creation of a safety hazard or nuisance through excessive shading, overhanging adjacent properties or to preserve a view or scenic vista."

It is my recommendation that subsection 17.78.120(B) be amended to remove the language which requires a private property owner to remove or trim trees in order to avoid the creation of a nuisance through "excessive shading." This language appears to require a property owner to cut branches or limbs to prevent "excessive shading" on his or her own property as well as other private/public properties. If a property owner had a tree on his/her property causing "excessive shading" on his/her own property, it would be a waste of public funds for the City would initiate an enforcement action against the property owner to address this.

I also recommend elimination of the language relating to removal of branches overhanging or shading adjacent private properties. If a private property owner plants a tree which grows branches or limbs over his/her neighbor's property, resolution of this problem is a private matter. The use of public funds to initiate enforcement actions in such situations would violate the constitutional prohibition on use of public funds for private purposes.

In addition, I recommend elimination of the language that requires trees and vegetation to be pruned in order to "preserve a view or scenic vista." This language is not specific as to which view or scenic vista will be preserved, and could be interpreted to mean that the City could initiate an enforcement action to force a private property owner to preserve a scenic vista or view on his or her property to benefit adjacent private property owners. Again, the

use of public funds to initiate enforcement actions to preserve private views would violate the constitutional prohibition on use of public funds for private purposes.

Conclusion

The Mayor has suggested a forum for property owners to work out their problems relating to tree trimming, and there is no problem with this approach. However, there is no legal authority for the City's adoption of a view protection ordinance (as described above) or the enforcement of GHMC Section 17.78.120(B).



January 12, 2004

Gig Harbor City Council
3510 Grandview Street
Gig Harbor, WA 98335

Re: Calculation of Density in Residential Zones

Honorable City Council:

Our concerns with the proposed Density in Residential Zones Ordinance go well beyond the question of whether sensitive area buffers are included in the calculation of net buildable lands. The proposed calculation of net buildable lands excludes other sensitive areas as well, such as steep slopes and also excludes new public roads. None of these exclusions was contemplated when our land was annexed into the City of Gig Harbor. Prior to the annexation, there were extensive negotiations relating to all aspects of the annexation. One of the outcomes of those discussions was that when our land was annexed, our zoning was based on gross density. The evidence of this agreement is still in place for PCD-Low Density Residential (RLD) in GHMC 17.17.040A:

"Density. Maximum base density is four dwelling units per gross acre."
(Emphasis added)

Regardless of whether the definition has been recently applied in other residential zones, the original intent of the net buildable area definition applied only to PRD applications, and it should not apply in any of the residential PCD zones. The net effect of this proposed ordinance could be between 100 and 300 fewer homes on our property.

Very truly yours,

For: Jon Rose
President
Olympic Property Group

cc: Mark Hoppen, John Vodopich, Carol Morris (City of Gig Harbor)



— Olympic Property Group —
19245 Tenth Avenue Northeast, Poulsbo, WA 98370-7456
(360) 697-6626 • Seattle: (206) 292-0517 • Fax: (360) 697-1156





January 12, 2004

City Council
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

RE: Second Reading of the Ordinance –
Calculation of Density in Residential Zones

Mayor Wilbert and City Council Members,

On behalf Rush Construction Companies, I ask for your support of Option A for the above ordinance at tonight's council meeting. Option A allows wetland buffers to be included in the Net Buildable Area calculations.

The delineated wetlands should be protected, to which we are supportive. These wetlands are protected from disturbance by setback buffers. However, we feel these buffers are similar to other setbacks, buffers and/or screening required by zoning and by the Design Manual. As such, we believe that wetland buffers should be treated the same and should not be deducted from the gross site in residential density calculations.

The costs of home construction and lot development continue to increase every year. The cost of required utility extensions; increases in the City's utility hookup fees; traffic and park impact fees; off-site improvement requirements, all continue to rise. The amount of buildable area seems to continuously be eroded by regulations, be it critical areas, buffers, the City's wide street requirements, design review criteria, storm drainage storage and treatment system etc. The remaining properties for development within the area are most often the most difficult and costly to develop these days. A reduction of lots that can be developed on a parcel only serves to increase the per lot cost to the homeowner on the remaining lots due to economy of scale. These are all factors that should be considered in providing for the projected growth within Gig Harbor under the Growth Management Act.

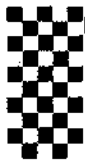
Again, we would like to ask for the council's support in passing Option A, thus allowing wetland buffers to be included in the net buildable area calculation.

We appreciate the opportunity to comment and ask for your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon Rush", is written over a horizontal line.

Gordon Rush, President
Rush Development Co., Inc.



January 12, 2004

Gig Harbor City Council
3510 Grandview Street
Gig Harbor, WA 98335

Re: Calculation of Density in Residential Zones

Honorable City Council:

Our concerns with the proposed Density in Residential Zones Ordinance go well beyond the question of whether sensitive area buffers are included in the calculation of net buildable lands. The proposed calculation of net buildable lands excludes other sensitive areas as well, such as steep slopes and also excludes new public roads. None of these exclusions was contemplated when our land was annexed into the City of Gig Harbor. Prior to the annexation, there were extensive negotiations relating to all aspects of the annexation. One of the outcomes of those discussions was that when our land was annexed, our zoning was based on gross density. The evidence of this agreement is still in place for PCD-Low Density Residential (RLD) in GHMC 17.17.040A:

"Density. Maximum base density is four dwelling units per gross acre."
(Emphasis added)

Regardless of whether the definition has been recently applied in other residential zones, the original intent of the net buildable area definition applied only to PRD applications, and it should not apply in any of the residential PCD zones. The net effect of this proposed ordinance could be between 100 and 300 fewer homes on our property.

Very truly yours,

For: Jon Rose
President
Olympic Property Group

cc: Mark Hoppen, John Vodopich, Carol Morris (City of Gig Harbor)



— Olympic Property Group —
19245 Tenth Avenue Northeast, Poulsbo, WA 98370-7456
(360) 697-6626 • Seattle: (206) 292-0517 • Fax: (360) 697-1156



Towslee, Molly

From: Burt L. Talcott [burt@talcott.org]
Sent: Monday, January 12, 2004 12:27 PM
To: Towslee, Molly
Subject: Zoning and building codes for Westside

--
To: Mayor Wilbert and City Council Members
From: Burt L. Talcott, citizen
Re: Westside zoning
Date: January 8, 2004

My wife and I reside and own property in the ³Westside.² I have been fairly actively involved in the development of the Westside for more than 15 years. Therefore, I was alarmed to read (Gateway, 12/31/03) that the city had hired an ³outside² consultant who has agreed with his patrons that some building sizes in the Westside should be increased to 65,000 sq. feet -- almost double the present limit. For much less than the \$25,000 fee I could have presented that same contrived conclusion -- but it would have been misleading, contrary to the consensus of Westside residents and property owners and wrong for the city's future prosperity and livability.

This unfounded conclusion has been promoted relentlessly for decades by two or three Westside developers who once acquired some land inexpensively and now expect to be guaranteed a handsome profit in spite of the degradation of the nearby community and the future of Gig Harbor.

Westside business is far from ³at a standstill,² as bemoaned by those few greedy developers. The Westside is prospering and will continue to prosper with the present zoning and building codes -- which have been resolved, as needed, fairly and democratically in the best interests of the whole community (which is widely known as a precious, attractive, livable, prosperous community -- envied by outsiders and overwhelmingly appreciated by most of the community).

The Westside presently supports eight banks, two 24-hour grocery stores, three pharmacies, five gas stations, six or seven multi-storied professional office complexes, six restaurants and numerous fast-food outlets, innumerable real estate offices, plus three Starbucks -- with one or more of the above businesses within less than a half mile across SR-16. QFC, one of the larger footprint businesses, recently remodeled; so it is not considering expansion. Safeway, another ³big foot² grocery, contains a pharmacy, a pastry bakery, a Deli (with carry-out, table and seats), a bank, a lotto agency, a CD rental and sales store, a florist shop and a new Starbucks with tables and chairs. Safeway is not squeezed for grocery space. The Olympic Pharmacy and medical complex is doing well under the present codes. Those businesses that serve

well, do well; those which need to exploit, need special deals from their governments.

Governments were not designed to guarantee every land speculator a handsome profit -- particularly at the expense of the community or in derogation of the consistent, overwhelming democratically expressed desires of the other citizens who also work, own property and live nearby.

Some of you know the history of the Westside annexation (both the unsavory failures and the spectacular successes). I urge you to review this history and analyze it carefully. You would be appalled by the amount of consultant fees and campaign contributions paid by these developers over the years to down grade the zoning and increase the size of the footprints of buildings in the Westside. Also, you might be surprised by the amount of research and analysis the grassroots citizens of the Westside have undertaken to study the business, economic, traffic, surface drainage, safety, environmental and scenic issues involved in ensuring the city's prosperity and livability,

Some years ago, a few of these same developers planned an annexation scheme whereby a small number of their acres would be annexed to Gig Harbor coupled with major down-zoning of their properties. This unconventional coupling package was necessary to speed the process, minimize public awareness and possibly preempt any opposition. The mutual quid pro quo was increased tax revenues for the city in exchange for more profitable uses of the developers' properties. The process received swift prearranged approval and persistent promotion by the mayor -- all with no known consultants,² and no consultation with those adversely affected business- and residential-owner, taxpayer neighbors.

When the plan leaked, the crescendo of public outrage appeared to doom the scheme. The Council was forced into damage control by the developers; it obliged by appointing an ad hoc committee² of six members (the three active developers and three diverse citizens²) to resolve the growing problems.² The mayor appeared at the first committee meeting to pitch the scheme; the City staff provided the expertise.² The attempt to load² the committee and influence its deliberations was blatant. Part of the scheme provided for a Freeway commercial² zone and a six-story hotel. The provisions were out of proportion, scale and acceptability for Gig Harbor -- ugly, out-sized buildings, huge traffic and drainage problems and garish billboards visible from SR-16. The scheme required taxpayers to pay for the extraordinary new fire and rescue facilities necessary to protect their hotel. There were other serious flaws in the proposed annexation-rezoning² proposal -- technical, economic, transportation, community health, welfare, safety, environment, esthetic and procedural short-comings.

The matter involved a proposed change in boundaries between Pierce county and Gig Harbor so it was referred by the City Council to the independent Boundary Review Board of Pierce county to review and determine the propriety of the annexation-rezoning proposal of the Gig Harbor officials. (The Gateway and the Chamber of Commerce supported the developers and the Mayor). You will recall that the flawed

annexation-rezoning proposal was resoundingly disapproved for the reasons mentioned above.

The annexation-rezoning scheme was a principal issue in the campaign that first elected Mayor Gilbert -- which the incumbent and developer friends accepted with ³shock and awe² and dismay but a pledge to persist.

The slow evolvement of the contentious state Growth Management Act delayed further efforts to pursue annexation for several years. However, a new coalition of Westside business and residential owners stepped forward and petitioned the City for annexation -- of a larger area including all business and residential properties in the present Westside. The matter was again referred to the Boundary Review Board; the original group of developers demanded a ³review² to delay the matter -- actually to enable them to obtain County building permits that probably would not be permitted by the City after annexation. Many of the property owners seeking expanded development were not residents of the Westside and could care little about the residents, proportion, scale, integrity or future prosperity and livability of our community. Profits were their principal objective. But a decision was made to allow the annexation petition to proceed.

The new petition for annexation was quickly signed by three times the required number of the property owners. An election was called and more than 80% of the votes approved the annexation -- in spite of continued opposition by the developers. This was an overwhelming democratic expression of the wishes of the business and residential property owners of the Westside. They had petitioned and voted to annex to the City to become a part of the City as it was, not to change it or to exploit it.

As part of the annexation process, it was agreed to appoint joint committee of business and residential property owners to consider any recommendations for changes in the zoning regulations. The residential owners agreed to numerous (all) modifications requested by the business owners including one modification of the zoning of the ³Stroh² properties EAST of SR-16 -- which was so outrageous that the City refused to allow it. Westside property owners and the City have been unusually lenient with the developers. But everyone, Westside business and residential property owners, the Gig Harbor planning staff and the Council assumed that the modifications finally allowed were the outside limit for zoning changes and building square footage for the Westside.

You might remember that the Westside citizens rejected the high-powered developer-Wal-mart blitz to allow a big box building on the Westside -- in one of the few successful rejections of Wal-mart in the whole United States. That extraordinary grassroots, democratic effort should be remembered.

The Tacoma Costco fiasco ought to inform you and your consultant. Tacoma was anxious for the tax revenues, the landowner was anxious to reap the profits of sale and Costco liked the location. Regardless of the despoliation of the neighborhood and the certain traffic bottlenecks all around, a deal was concocted. Now, to extricate everyone from the numerous misjudgments, a new street was constructed through a

neighborhood park -- and the poor residential neighbors be damned. A sad commentary on government favoring land exploiters over the livability and convenience of neighbors.

Sometime ago Councilman Robertson resigned and the Council was required to select his replacement. The Council, after considerable advisement, selected an intelligent, honest man who was one of the most knowledgeable citizens relating to planning issues, who was embedded with the Planning Commission, who had attended more Council meetings than any other citizen and who lived on the Westside; but he was perceived to favor ³developers.² At the first election after his appointment, he was defeated.

I mention the above scenario because it again confirmed the strong consistent grassroots, democratic desires of the Westside -- that we do not want any down-zoning or larger buildings on the Westside. What more evidence can we offer? You can't dismiss or counteract the consistent political, civic and business desires of a majority of the citizens, simply by hiring an ³outside consultant.² This ³consultant² did not consult anyone but a developer on the Westside; that is not professional or competent consulting.

Growth and change are both useful and necessary; we support both when accepted by the grass-roots and democratically processed by the whole community. Gig Harbor has experienced extraordinary growth and change without depressing its prosperity. Maintaining its livability is much more difficult; it requires vigilance and commitment; any loss of livability cannot be recouped. Public officials ought to be more committed to the ³livability of the many² than to the ³profitability of a few.² The purpose of governments is to provide security and livability for the total community, not profitability for a special few -- no matter how intimate the property developers-public officials-consultant relationship may be.

We believe and urge governments, large and small, to oppose bailouts and unfair advantages for large property owners over the interests of small businesses and near-by residential owners. Governments can provide rational, moral guardrails; but it is unsettling to be always changing, or threatening to change, the guardrails at the behest of a few exploiters.

Successful and reputable architects, engineers, community planners and officials have always adhered to the most basic rules of their craft: ³Proportion and Scale.² Anything out of proportion or scale with itself, adjoining structures or neighborhoods is unacceptable -- in graduate school or pragmatic community application. The City council ought not to violate such fundamental rules of art, architecture, engineering, neighborhood or community planning. No amount of compromise should be tolerated that does not meet the universal tests of ³scale² and ³proportion.²

Please remember that by every grassroots, democratic decision, without exception, by the Council, by Commission recommendations, by the Boundary Commission decisions, by petition, by mutual committee agreement, by annexation elections, by Mayoral and Council elections, by Wal-mart's rejection, by examples from other

communities, the Westside and the City have developed and maintained the present zoning and building codes -- and have consistently resisted every scheme and consultant recommendation to modify and down-grade the zoning and building codes to expand square footage of buildings on the Westside.

This presentation may seem long; but it could be much longer to present all the relevant historical and factual details. I will be pleased to elaborate, if permitted. I am, however, trusting that the consistent, overwhelming consensus of the Westside residents, property owners and voters will dissuade you from changing the building codes to increase the permissible square footage of buildings on the Westside.

I thank you for your favorable consideration of our views on this critical matter.

30

Active Construction, Inc.
11302 Burnham Dr. NW
PO Box 191
Gig Harbor, Washington 98335

January 12, 2004

John P. Vodopich
Community Development
3510 Grandview Street
Gig Harbor, Washington 98335

RE: Net vs. Gross Density

Dear John:

It is my understanding the City Council will be considering this density issue.

The City's recent land use consultant, I felt, made a compelling case on density issues. He stated that, with all the other controls, i.e. the design review manual, wetland and corresponding buffers, additional restrictions would be counterproductive.

First, by restricting the use of wetland buffers in density calculations, urban densities become difficult to achieve.

Second, it drives development cost even higher to end users, as well as to the Gig Harbor community, in general.

If the City truly values the small, independent business, it needs to look at ways to support, rather than hinder, their existence.

I believe that many other jurisdictions do not subtract wetland buffers. I believe the developer of Gig Harbor's Mallard Landing did an incredible job of working a difficult property with numerous wetlands. Not allowing gross area calculations would be a severe penalty to them as well as to others in similar situations.

Sincerely,

Walt Smith
Active Construction, Inc.

MJM PURCHASING INC.

*108 South Jackson
Seattle, Washington 98104
206 682-7247
fax 224-4908*

6-10-71
L-17-01
01/24/03

December 3, 2003

Members of the Gig Harbor City Council
City Of Gig Harbor
3510 Grandview Drive
Gig Harbor WA 98335

Council Members:

It is my understanding that you are considering adopting an ordinance that will exclude tidelands from calculation of density permitted under Section 17.50.040(H) of the Gig Harbor Municipal Code. I strongly urge you not to adopt this change.

The proposed ordinance evidently is a response to development that my company, MJM Purchasing, Inc., has initiated on lots at 3711 and 3805 Harborview Drive. We do not believe that the ordinance is a good idea, for a number of reasons. Furthermore, we do not believe that the ordinance can fairly, or legally, be applied to our property, given that we have already commenced the process of development, and we object to the change on that basis.

Please consider these points in your deliberations.

Sincerely,
Harbor Cove Group



Barry Margolese
Development Manager

Cc: Clark Davis
Davis Roberts and John

Towslee, Molly

From: Vodopich, John
Sent: Monday, January 12, 2004 2:00 PM
To: Towslee, Molly
Cc: Hoppen, Mark; Osguthorpe, Steve; White, Rob; Conan, Paul; Dick, Bob; Ekberg, Steve; Franich, Jim; Picinich, John; Ruffo, Frank; Wilbert, Gretchen; Young, Derek
Subject: FW: Net Buildable Land Calculations - Option A

Molly - Comment for tonight's meeting. JPV

John P. Vodopich, AICP
Community Development Director
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
253-851-6170
253-853-7597 Fax

From: Van Collins [mailto:vcollins@agcwa.com]
Sent: Monday, January 12, 2004 1:57 PM
To: Vodopich, John
Subject: Net Buildable Land Calculations - Option A

Dear Mr. Vodopich:

I am the District Manager for the Associated General Contractors of Washington ("AGC"). On behalf of our approximately 100 local members, I would like to express AGC's support for the "Option A, Wetland Buffers Included in Net Buildable Area" which is before the City Council for consideration. I apologize for my inability to address this to the Council in person/

There are a number of reasons why Option A should be adopted:

1. It is **consistent** with Pierce County's calculation of Net Buildable Land. Given the requirements of the Growth Management Act to encourage joint planning and cooperation between jurisdictions, it is appropriate to provide for consistent calculation and application of basic land use definitions.
2. It **prevents an unnecessary penalty** to land owners. Restriction of property owners as to the usage of their properties which include environmentally constrained wetlands is done for the public benefit. It is public policy to However, it should be the basic premise that such restrictions enacted in the least obstructive manner. Option A is the least restrictive option that still accomplishes the goal of environmental protection.
3. It **helps balance the requirements of the Growth Management Act**. The GMA mandates jurisdictions to analyze numerous different items. These include environmental protection, economic development, and affordable housing. Often these items conflict and it is up to individual jurisdictions to accommodate a balance between the competing interests.

1/12/2004

Option A represents such a balance. On the one hand, wetlands are protected and removed from the net density calculations. On the other hand, the wetlands are equitably included in the net density calculations.

4. **It helps alleviate future expansion of the Urban Growth Boundary.** The GMA mandates that jurisdictions plan for and accept development within their urban growth area ("UGA"). This is the "anti-sprawl" component of GMA. The corollary of this requirement is that if there is not sufficient numbers of buildable tracts within a jurisdiction, then that jurisdiction is required to either increase density or expand its urban growth boundary to accommodate planned growth. Jurisdictions cannot stop development. They can only plan for it. If Option A is not passed, the net result will be lower than expected densities with the City's UGA. This will result in rightful pressure to address this deficiency under GMA. If Option A is passed today, then density within the UGA will not likely become as critical of an issue in the future.

Again, AGC asks that the City Council pass Option A.

Thank you for your time and consideration.

Van Collins
AGC Southern District Manager
942 Pacific Avenue
Tacoma, WA 98402
(253) 272-7725