

# **Gig Harbor City Council Meeting**

**August 23, 2004  
7:00 p.m.**



**"THE MARITIME CITY"**

**AMENDED AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
August 23, 2004 - 7:00 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**PUBLIC HEARING:**

1. Continuation of Public Hearing – Moratorium on Development within the Height Restriction Area for a Period of Six Months.
2. Traffic Concurrency Management Update.

**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 August 9, 2004.
2. Correspondence / Proclamations: a) Payroll Week b) Letter from WFOA d) Letter from Mayor Baarsma
3. Agreement for Collection of Storm Drainage Infrastructure Data.
4. Liquor License Renewals: Hy-Ui-Hee-Hee; Olympic Village 76
5. Liquor License Assumption: Shell Food Mart
6. Approval of Payment of Bills for August 23, 2004:  
Checks #44828 through #44935 in the amount of \$254,451.70.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Amending Setback Standards in the PCD-BP District.

**NEW BUSINESS:**

1. First Reading of Ordinance Supporting a Continuance of a Moratorium on the Acceptance of Applications for Development in the Height Restriction Area for a Period of Six Months.
2. First Reading of Ordinance – Traffic Concurrency Management Update.
3. First Reading of Ordinance - Northharbor Rezone.
4. First Reading of Ordinance - Burnham Drive Rezone.

**STAFF REPORT:**

David Rodenbach, Finance Director – Voted Bond Levy Amounts.

**PUBLIC COMMENT:**

**COUNCIL COMMENTS / MAYOR'S REPORT:** Upcoming 2005 Budget Process.

**ANNOUNCEMENT OF OTHER MEETINGS:**

Council Retreat – Monday, September 13<sup>th</sup>, 1:00 p.m. – 5:30 p.m. Gig Harbor Civic Center Community Rooms A & B.

**EXECUTIVE SESSION:** For the purpose of discussing property acquisition per RCW 42.30.110(1)(b).

**ADJOURN:**

## GIG HARBOR CITY COUNCIL MEETING OF AUGUST 9, 2004

**PRESENT:** Mayor Gretchen Wilbert, Councilmembers Ekberg, Franich, Conan, Dick and Ruffo.

**ABSENT:** Councilmembers Picinich and Young.

**CALL TO ORDER:** 7:00 p.m.

### **PLEDGE OF ALLEGIANCE:**

**PUBLIC HEARING:** Moratorium on Development within the Height Restriction Area. John Vodopich, Community Development Director, explained that on July 12, 2004 the city adopted Ordinance 965 which imposed an immediate moratorium on the acceptance of development applications within the height restriction area of the city. He stated that this immediate enactment was provided for in state law. The Mayor asked if anyone would like to speak. There were no speakers and the Mayor closed the public hearing at 7:05 p.m.

### **CONSENT AGENDA:**

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

1. Approval of the Minutes of City Council Meeting of July 26, 2004.
2. Correspondence: a) Letter from Mayor Bill Barsma, City of Tacoma b) Harbor Heights Playscape Report c) Letter from Mayor Wiltse, Normandy Park d) Letter from Sara Curnow, Kitsap Regional Coordinating Council e) Letter from Stan Finkelstein, AWC
3. Request for Street Name – Harbor Hill Drive.
4. Olympic Drive / 56<sup>th</sup> Street Improvement Project – Right of Way Acquisition.
5. Change Order No. 1 – Well No. 6 Sand Repack Project.
6. Approval of Payment of Bills for August 9, 2004:  
Checks #44708 through #44827 in the amount of \$327,106.94.
7. Approval of Payroll for the month of July:  
Checks #3321 through #3377 direct deposit entries in the amount of \$280,759.29.

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

### **OLD BUSINESS:**

1. Continuation of Moratorium on Development within the Height Restriction Area. John Vodopich, Community Development Director, explained that Council must deliberate and decide whether or not to continue the moratorium for a period for up to six months, then if they wish to do so, identify findings of fact that would support the continuation of the moratorium. He said that staff has recommended that if the Council decides to continue the moratorium, that staff would like to add several types of permits to the list of exempted permits located in the staff memorandum. Mr. Vodopich further stated that the items that would be added to the list of exemptions from the moratorium would include sign permits, demolition permits, marinas without upland buildings and any building permits that would

be associated with development applications which were deemed complete by the city before the effective date of the ordinance, which was July 12, 2004.

Councilmember Ruffo asked Mr. Vodopich which specific developments would be exempt. Mr. Vodopich responded with the Timberland Bank drive-up window, the Bayview Office Building located at the Bayview Marina, the Sunshine Marina, and the Babich Fuel Dock.

Councilmember Franich asked for a brief description of the Sunshine Marina project. City Attorney Carol Morris explained that at this time we should not be discussing a project that currently is being processed by the city. She stated that it would be okay to ask why this project may be subject to the moratorium. Councilmember Franich then asked why the Sunshine Marina project is subject to the moratorium. Mr. Vodopich responded that the verbiage in the moratorium precluded the acceptance of any development applications that were not deemed complete by the effective date of the ordinance. He further stated that while the permit review of the marina project could go forward, the issuance of any subsequent building permits would be subject to the development moratorium. Mr. Vodopich explained that is why the staff, in part, is recommending adding the list of exempted building permits that were associated with applications that were already deemed complete. Councilmember Franich asked if there were any upland buildings associated with this project. Mr. Vodopich responded no.

**MOTION:** Move to continue the moratorium on development as so listed with the exemptions and modifications as highlighted by Mr. Vodopich.  
Ruffo / Ekberg –

Mayor Wilbert asked if it would be possible to exclude numbers 5 and 6 on the list of exemptions and still keep the moratorium in place.

Mr. Vodopich stated that the City Attorney reminded him that the purpose of the public hearing was to establish findings of fact that would justify the continued existence of the moratorium. He asked Council to deliberate and pontificate on the reasons why they feel this moratorium should be continued.

Councilmember Dick asked Mr. Vodopich how Council could deliberate this issue if they didn't have a draft or proposed findings to aid them in justifying the continuation of the moratorium. Mr. Vodopich explained that the agenda packet contained the ordinance adopted on July 12, 2004.

Councilmember Ruffo asked if Mr. Vodopich was suggesting that Council continue the actual ordinance with the recommended modifications. Ms. Morris responded that as Council adopted the last moratorium for water, the Council made findings of facts consistent with their determination that the moratorium should be in place. She explained that what is being asked of Council is to deliberate and explain their rationale for the maintenance for the moratorium so it can be put in the findings of fact conclusions, and asked if Council would like staff to draft up findings and conclusions and present them in draft form. Councilmember Dick stated that without any public testimony, Council is reliant

solely upon the facts that staff has presented. Ms. Morris stated that this moratorium isn't necessarily imposed based upon facts from the staff, but it was her belief that it is based upon the information received during the Council work sessions for the Building Size Analysis.

Councilmember Ruffo asked if there were any impacts to the moratorium if Council adopts the modifications of exemptions as highlighted. Mr. Vodopich responded that he believed so. Councilmember Ruffo asked what is the effect of having the moratorium if everything is exempted, adding that he didn't think that there was any substance to it.

Councilmember Ekberg stated the he believed the findings of fact to be well documented in the title of the ordinance itself and until the code review was finished this would prevent anything new from coming in that would not benefit the community.

Councilmember Dick asked when must Council adopt a resolution, in order for the current moratorium to continue. Ms. Morris said September 10, 2004. She explained that the ordinance describes the procedure for a moratorium and why a moratorium should be put into effect to prevent the submission of applications while you are working on development regulations. She said that the findings of fact that Council needs to establish for the maintenance of the moratorium relate more to the substance of the moratorium for building sizes than to the subject matter of the moratorium. She stated that if Council would like to reschedule the hearing, staff could draft proposed findings of fact, as there was still time before the September 10<sup>th</sup> deadline. At that time, Council could review the proposed findings of fact and adopt them at the next hearing.

Councilmember Dick asked the staff to bring back a proposal with at least enough information that can be supported and considered in an appropriate session.

Councilmember Dick stated that he didn't think that a new motion was needed. He said that he would like to direct staff to bring back to Council an appropriate draft set of findings which can be discussed to determine whether they are appropriate or whether other findings need to be considered to maintain the current moratorium.

Ms. Morris suggested that Council move to continue the hearing to a date certain before September 10<sup>th</sup> and direct the staff to come back with the draft findings of fact and conclusions. She stated that what staff will do is go back to the work study session and get the language and discussions from this session in order to draft up the findings of fact.

AMENDED MOTION: Move to continue the hearing on this to a date certain before September 10<sup>th</sup> and direct the staff to come back with the draft findings of fact and conclusions.  
Dick / Ruffo – unanimously approved

Mr. Vodopich stated that this date would be the August 23, 2004 meeting. The Mayor asked if the public had an opportunity to see these exemptions in the beginning and stated that they will have an opportunity to review this information prior to the next meeting.

2. Harbor Cove Settlement Agreement. City Attorney Carol Morris explained to Council that the proposed settlement agreement would allow the city to issue a revised MDNS. She stated that the revised MDNS once issued would follow the city's current procedures for public comment and public appeal. Ms. Morris made a recommendation to Council to execute this agreement.

Jake Bujacich – 3607 Ross Avenue. Mr. Bujacich stated that his concerns were in regards to when the property is developed in terms of setback requirements and variances on such narrow lot sizes. He asked the Council to hold this decision over for further study.

Bill Fogerty – 3614 Butler Drive. Mr. Fogerty said that he understood that the property being discussed was zoned RB1. Council advised Mr. Fogerty that he was incorrect, the property is zoned Waterfront Commercial (WC). He stated that he agreed with what Mr. Bujacich had said and asked Council to hold their decision over for further study. He also was in favor of floating a bond to buy this property and relocating the Historical Society at this site. He also suggested that the city consider a parking structure downtown that could be placed on the same bond issue. Mr. Fogerty stressed the need for more parking for public events to reduce the impacts for those residents that live on the waterfront. He summarized by saying that we need the Historical Society downtown in a location that people can find and the need to preserve the open space at the Eddon Boat building site.

Erik Peavy – 7315 Forest Glen Court. Mr. Peavy stated that he was reacting primarily to the boat yard being used a residential property. He discussed the charm and character of the many towns and cities that he has visited. He asked Council to think about what they envision Gig Harbor to become. Mr. Peavy explained that some towns are able to keep with these aesthetics by allowing only the interiors to be re-done and maintaining the integrity of the outside of the buildings. He was in favor of a band stand at Skansie Brothers Park. He stated that if all the little areas of charm are taken away then all Gig Harbor will be is a little town on the edge of a harbor.

Linda Gair – 9301 North Harborview Drive. Ms. Gair stated that Council needed to look at this settlement agreement carefully. She was not in favor of demolition being part of the list of exemptions on the proposed development moratorium ordinance. She didn't think that anything should be done on the Eddon Boat building site until the Ecology report is in. Ms. Gair further stated that this is a highly polluted site and has heard little discussion about it. She asked that Council preserve the waterfront history and fishing.

John McMillan – 9816 Jacobsen Lane. Mr. McMillan asked Council to reject any settlement agreement that facilitates the demolition of the historic Eddon Boatyard. He stated that the waterfront is already loaded with single-use development in the form of condos and marinas. He said that it was time that we stop destroying our historic shoreline. He read from the Shoreline Master Program and pointed out the guidelines that supported the preservation of the boating, fishing and tourist industries. Mr. McMillan proposed a real working waterfront complete with a restored boatyard, family based education boat building programs, a heritage site, the Shenandoah display, a museum, a

park, municipal parking and a waterfront boardwalk the full length of the property. He was strongly in favor of saving the Eddon Boatyard.

Lynn Lewis – 11707 16<sup>th</sup> Avenue NW. Lynn Lewis' written statement was forwarded to the Assistant City Clerk for the record.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton addressed Council and said that she loves Gig Harbor and is committed to preserving the scale and character of Gig Harbor. She stated that the purchase of the Skansie Park was a landmark decision and the Eddon Boatyard and Council's position now is another. She stated that the Council could not deny the demolition permit outright but Council could demand that the goals set out by the Comprehensive and Shoreline Master Plans are upheld. Ms. Stanton said that the City Manager commented that the Shoreline Master Program did not include direct regulatory language to implement these statements. Ms. Stanton questioned that if the city does not have regulatory language to support the subject documents, then why don't they and whose job is it to ensure that we do. She further stated that certified local government status was approved over a year ago in order to create historic preservation ordinances and nothing has been done. She further stated that project by project, Gig Harbor is losing a little more character. Ms. Stanton pointed out that the citizens need the kind of leadership that understands how to make this happen and stressed that we need a more transparent process that puts the community first. She discussed five ways that decisions are made. Ms. Stanton asked Council to delay their decision to allow time for critical evaluation of the meeting's public comments before approving the settlement agreement.

Mary Manning – 9816 Jacobsen Lane (on behalf of Guy Hoppen). Ms. Manning spoke on behalf of Guy Hoppen who was in Alaska, and read his letter aloud.

Chuck Hunter – 8829 Franklin Avenue. Mr. Hunter summarized the letter that he had recently forwarded to Council. He stated that the community has a tremendous chance to save the real character of Gig Harbor. He said that the Historical Preservationist Report was very compelling as it explained what the activities had been on this property for the last one hundred years and the Thunderbird sailing vessel development there. He stated that there has not been any public forum and everything has taken place either in executive session or at staff meetings on this subject. He pointed out that the Historical Report was generated in April, and throughout all the meetings that have transpired, this has never come out in the building size ordinance when there was the proposed change of zone. He said that he felt that this project does not meet the Comprehensive and Shoreline Management Plan(s) and asked Council to get an independent person to review this. He asked Council to take a critical look at the permit application for this project and stated that the Council has no obligation to make the project pencil out for the developer by way of variances and concessions.

Roseanne Sachson – 3502 Harborview Drive. Ms. Sachson said that she had attended all of the workshops and stated that it was repeated from the community to hold on and don't make any moves without thinking about a vision for the city. She further stated that we still hadn't come up with that. She questioned how this item is being listed on the agenda.

She stated that she had not seen it on last meeting's agenda and asked that the city come up with some consistency in a name, i.e. Harbor Cove / Eddon Boat Building.

Councilmember Ekberg stated that the agenda is completed by the Thursday before the Monday meeting and the article that Ms. Sachson referred to was an advertisement that the city had nothing to do with. He understood the confusion that Ms. Sachson was speaking about, and said that often times a project picks up a local name versus the applicant's name, which is usually the way the project is listed. Ms. Sachson asked Council to listen to the applause and support from those in the audience and stated that this support speaks volumes. She asked Council to stop, listen and look at this and come up with the best way to make Gig Harbor what we want it to be and said that there have been great suggestions offered.

Ann Erren – 11221 35<sup>th</sup> Avenue Court. Ms. Erren identified herself as a psychologist and stated the Council has the ability to affect the quality of life in Gig Harbor. She stated the importance of having the best possible atmosphere that we can with all that is going on in the world. She said that Gig Harbor is a haven for peace and history, the rooted ness of this and how much this means to people. She asked that Council preserve the quality of life in Gig Harbor.

Scott Wagner – PO Box 492. Mr. Wagner spoke briefly and asked Council what is it that we are trying to protect and save in our city. He stated that this issue is exactly what everyone's efforts have been for – to save things like this. He further asked Council to do whatever they could in their power to keep this building standing as it is very important to the community.

Robert Windskill – current tenant of the Harbor Cove Group. Mr. Windskill explained that he has been involved with the Eddon Boat Shop for the past twenty-two years. He has recently taken over the tenancy from the Harbor Cove group. He explained that the Harbor Cove group purchased this property last year for 1.2 million dollars and pointed out that this property has been for sale for about eighteen years and once the group decided to clear the lots after much engineering and site work clean up, no one from the community has spoken up until now. He further stated that this now will cost the city and the Historical Society a substantial amount of money if it is purchased from the group. He stated that after this subject has come up, he is amazed at how many people come down to see the Eddon boat shop and discuss numerous ideas for the site. He stated that his personal opinion was that the developers are anxious to tear down the rest of the buildings to spur on a decision from the city. He discussed the possibilities of the property and hoped that it can be made part of the ambiance of the city for the future, a chance for the town to grow responsibly. He also spoke about the serious public support.

Chip Cherry – 2907 Harborview Drive. Mr. Cherry identified himself as a boat builder. He stated that the building should stand and discussed the one hundred year history of boat building, which he said cannot be thrown away, as it is an important part of the city's heritage.



Jeff Bailey, Bailey and Associates – 7700 Pioneer Way. Mr. Bailey identified himself as a consultant to the Harbor Cove property owners. He stated that this issue is one of process, product and vision. He thanked the city staff for conducting themselves in a very professional manner and sticking to the technical and legal points at hand while negotiating a very fair agreement. He further stated that under the process issue, what was before the Council was an opportunity to sign an agreement that allows a revised MDNS to be issued. Mr. Bailey explained that an MDNS for this property has already been issued and challenged on demolition action only. He further stated that the issue before Council was whether or not they would allow a revised MDNS to be issued, and secondly it would provide a public comment period with a right to speak and challenge any revised MDNS that was issued. He suggested Council approve the agreement, as it allows for public input and input from the Harbor Cove Board.

Denny Lang – 305 34<sup>th</sup> Avenue NW. Mr. Lang asked for a straw poll as whom would support putting the breaks on. He stated that he didn't think it was too late to put the breaks on this issue. Mr. Lang said that this site is one of the last remaining vestiges of the old harbor and called it a "jewel" of the harbor. He stated that more study, more debate, and more vision are required to take a hard look at the long term benefits for the city rather than the short term benefits. He encouraged the city to slow down a bit and to be receptive.

Barry Margolese – 108 S. Jackson, Suite 300, Seattle. Mr. Margolese identified himself as the development manager for the Harbor Cove group. He explained that the concept for this property was discussed with the administration and staff fairly early on. He further stated that they looked at the zoning of this property, which was zoned Waterfront Commercial. He said that this zoning and the Comprehensive Plan allows residential development of this property. As a result, he explained, they started the process for how to plan development of this property, considered what steps needed to be taken, and have worked with city staff to achieve these steps. He reminded everyone that once someone purchases property there are expenses, explaining that the Harbor Cove group is paying real estate taxes, mortgage interest, and utilities on this property. Mr. Margolese also stated that they have followed the process and followed the laws of the City of Gig Harbor to get to this point. He said that they have negotiated with city staff and the City attorney, who recommends that Council sign this agreement. He strongly suggested that Council sign this agreement. He suggested that in order to do what is right, Council should follow the city's own regulations and laws which suggest that this is a fair and just agreement. He also added that if there is a debate, there will be a process for an appeal so that the Hearing Examiner can review these issues. Mr. Margolese encouraged the Council to hear the recommendation of the City Attorney and staff and move ahead with the agreement.

Ms. Morris responded to some of the comments from the public. She addressed the question regarding whether the settlement agreement addressed future permits or development on the site. She said that this does not. She explained that the property owner has submitted a demolition permit application for the property. The city staff issued a mitigated determination of non significance, meaning that the city has made a

determination that there are not going to be significant adverse environmental impacts on the property that warrants the preparation of an environmental impact statement. The MDNS that was issued by staff contains conditions that would be imposed on the demolition permit. Ms. Morris continued that this decision is not whether the application will be approved or denied; it is the staff's decision whether or not there are significant adverse environmental impacts on the property associated with the demolition permit that would require the preparation of an environmental impact statement. She further clarified that the MDNS contains certain conditions that would be imposed on the demolition permit if it issues. She clarified that when the original MDNS was issued the public could have appealed it. Ms. Morris continued to explain that when the property owners appealed certain conditions, staff met with them to work out a settlement agreement that does not avoid any process or procedure in the city's codes. She explained that the agreement allows for a revised MDNS that would again allow all the members of the public to comment and to appeal it just as there was the opportunity to appeal the first MDNS. Ms. Morris stated again that no process has been avoided by this, stressing that it does not approve or deny the demolition permit.

Ms. Morris continued to explain that the issue before the Council is whether or not to sign the settlement agreement. She said that if the Council does not wish to sign the settlement agreement or if they would like to hold off for further study, the applicant does not need to wait, because they have a pending application and the city is mandated by law to process that application within a certain time period. If the applicant wishes to withdraw right now, the existing MDNS would be applicable, their appeal would then proceed, and the city would be required to defend the existing MDNS. She pointed out that this would not come before the public, but it would go before the Hearing Examiner and his decision would be based on law, not based on what would be best for the property. She further explained that this is because the property owner has submitted a demolition permit and this is what is being acted upon at this time.

Ms. Morris said that someone commented that the city should wait for the Department of Ecology to suggest what the action should be taken on the hazardous waste on the site. Ms. Morris responded that the city cannot impose additional conditions relating to hazardous waste clean-ups, as they are regulations that are enforced by the DOE and state law. She further explained that DOE has been notified and is aware of the hazardous waste on the site. She said that this is all the city can do as the city is preempted by law from adopting hazardous waste clean-up regulations.

Ms. Morris continued to address the comments that this settlement agreement somehow weakened the city's authority to enforce its codes or that the city was not going to enforce the Shoreline Master Program. Ms. Morris referred everyone to the revised MDNS, exhibit A, page 2, Other Regulations, that states the proposed project is subject to the provisions of the Shoreline Master Program, the Gig Harbor Municipal Code, the Uniform Building Code, and the Stormwater Drainage Design Manual.

Ms. Morris commented on the statement that the public has not had the opportunity to comment on this issue. Ms. Morris responded that the public had an opportunity to appeal the MDNS, but a timely appeal had not occurred.

Ms. Morris responded to the comment that the city should require that all permits be approved before demolition occurs. She said that if there are conditions in the city code that allow that to take place, then that can be imposed as a condition. She stressed that is not what is before the Council at this meeting. She said that the Council does not have to sign the settlement agreement, as it is the staff's recommendation for the resolution of the appeal.

**MOTION:** Move to table any action on this tonight and instruct the staff to explore any options where the city might be able to acquire this property.  
Ekberg / Ruffo – unanimously approved.

Councilmember Ekberg commented that he has heard a real concern and desire by the community to view this property as anything other than private ownership. He asked staff to see if there was any possible way that the city can come to an agreement under a bond issue to make an effort to acquire it. Councilmember Ekberg stated that this was the only way that he could see to make this happen.

Ms. Morris pointed out that the city cannot prevent this permit to be processed. Someone from the audience asked why not and Ms. Morris stated that state law requires us to process a permit that has been submitted to completion, to a final decision, and there is a statute for when it has to issue. She clarified that when an application is submitted to the city, the city has to process it and issue a final decision within a certain time period.

Mayor Wilbert said that she wanted to exempt demolition in a previous program. Councilmember Dick explained that there is a requirement for the processing of an existing permit application and asked what this was. Ms. Morris answered and said that a demolition permit would normally have to issue in 120 days. Councilmember Dick then asked when the 120 days would expire on this application, as Council needed to know the time in which they must take mandatory action and whether it would allow time to discuss other options that might better serve both the city and the property owner.

Councilmember Ruffo asked Ms. Morris if it made a difference whether the settlement agreement is signed at this meeting. He thought that the developer had the ability to move forward anyway. Ms. Morris said the reason that the staff has come before Council and suggested that they sign the settlement agreement is because the agreement provides a better option to the city than the existing MDNS. She stated that she wanted to make clear that this is not a situation where Council is in control of what will occur because the applicant can withdraw their agreement.

Councilmember Ruffo then asked if there was any scenario where the property owners could proceed and have the Eddon Boat Building demolished. Ms. Morris explained that the property owner could decide that he did not want to negotiate with the city and proceed

to have the demolition permit issued. Ms. Morris stated that the appeal will occur first because the MDNS is on appeal by the property owner. This is a step in the process of the demolition permit. She further explained that after this occurs, then the decision will be made if it is consistent with the city's development regulations and then the final decision on the demolition permit will issue. She further stated that if the property owner decides not to negotiate with the city for the purchase of the property, the demolition permit may be approved. Ms. Morris stated that if it is approved, the property owner can proceed with the demolition. Mayor Wilbert asked if the Hearing Examiner that makes the decision. Ms. Morris replied that it is the Hearing Examiner that makes the decision on the appeal.

Councilmember Ruffo asked for clarification on whether it would help the public stop the demolition of the Eddon Boat building if Council signs the settlement agreement. Ms. Morris replied that it gives the public an additional opportunity to appeal because the appeal period for the existing MDNS has expired. If this revised MDNS issues, there will be a comment period and anyone can comment and anyone can appeal if they meet the city's code requirement, which would allow the ability to appeal the MDNS, and when the demolition permit issues or is denied, this can be appealed as well.

Councilmember Ruffo suggested that the staff talk to the property owners and determine whether there is an option to purchase this property. Councilmember Dick stated that Councilmember Ekberg's motion allows the city the flexibility to explore this option and not squander any valuable right. He further stated that the staff could make some inquiries and find out whether there are options that would work for the developer that would not require the demolition and would better serve the public. He was interested in knowing this information for the next meeting in order to proceed with an appropriate decision.

Ms. Morris restated that signing the settlement agreement may not preserve the status quo because the applicant can withdraw his agreement to sign the settlement agreement. If the application does this, the existing MDNS will stand, there will be no opportunity for the public to appeal the MDNS, and the public will only be allowed to appeal the issuance of the demolition permit.

Mr. Osguthorpe stated that the agreement is not whether to demolish or not to demolish. He explained that what is before the Council is what mitigation the city can impose in terms of the demolition. Mr. Osguthorpe further explained that the city does not have any provisions in the code to prevent demolition. The city has tried to identify ways to address demolition in terms of mitigation, the degree to which it will provide the most benefit to the city. Mr. Osguthorpe further explained that the mitigation proposed in the MDNS was the most that the city could require under this application and the settlement agreement preserves the intent of this.

Councilmember Ekberg clarified that the settlement agreement provides greater public input and gives the staff an opportunity to explore purchase options. Ms. Morris added that the benefit to the city would be that appeal that has been filed by the property owner would be resolved to the best possible solution.

Councilmember Franich asked if the new MDNS would require the property owner to do an environmental impact statement. Ms. Morris stated that it would not. Councilmember Franich stated that he thought that it would be a good idea to table this to provide an additional two weeks to review the public input and testimony.

Councilmember Ruffo asked Ms. Morris if Council could ask the developer's representative if he would maintain the status quo for the next two weeks while Council gave this issue more thought. Ms. Morris stated that Council could ask the developer's representative to come forward and tell you if he would allow additional time to the Council to sign the settlement agreement or if he would withdraw during this period of time. Councilmember Ruffo stated that he would like to do this. Mayor Wilbert asked Mr. Margoese to approach the podium. Mr. Margoese addressed the Council and Mayor and responded that the settlement agreement is in everyone's best interest and urged the Council to consider the advice that they have received from the staff and City Attorney and sign the agreement at this meeting. He stated that otherwise, his group will need to counsel with their attorney and make a decision regarding their next step. He restated that they are paying taxes and interest on the property and intend on this process moving forward. Mr. Margoese further responded to the question of waiting two more weeks and said he was not sure that this could be done.

Councilmember Dick addressed Mr. Margoese and asked if the city might be able to make a proposal without the demolition of the Eddon Boat Building that would still achieve their purposes. Mr. Margoese stated that his group would be available to discuss any and all ideas, however he is not of the mind to allow the process to stop. He further stressed that he urged the process to continue.

Mr. Osguthorpe outlined the end result(s) of every scenario:

1. Scenario 1 - If the city does not sign the settlement agreement, and the applicant chooses, he can move forward with the appeal.
2. Scenario 2 - If the applicant prevails on the appeal, then the city will issue the demolition permit without any mitigation.
3. Scenario 3 - If the applicant does not prevail on the appeal, then the conditions of mitigation of the current MDNS will stand.
4. Scenario 4 - If the settlement agreement is executed, there will be an opportunity for appeal.

Mr. Osguthorpe further explained that there are no provisions in the code to deny a demolition permit. He stated that all that is being addressed is the mitigation that will be required in conjunction with the demolition permit, as well as maximize the mitigation that will be achieved, adding that the settlement agreement does this.

Councilmember Ruffo stated that he thought that the original motion should be withdrawn. Ms. Morris read from page 4 of the settlement agreement that outlines when the comments should be submitted. She further read from the last page of the agreement regarding the appeal process.

**MOTION:** Move to authorize Mayor Wilbert to sign the settlement agreement as written.  
Ruffo / Ekberg –

The Mayor thanked the developer for being present to have heard the discussion and intent of the community. She further stated that she hoped they would be cooperative in helping the city obtain its objectives as stated.

Councilmember Dick stated that although it is true that the public will have additional appeal rights, they can't practically exercise them. He said that it isn't a practical remedy; rather, it is an appropriate legal remedy. Councilmember Dick stated that this will facilitate the demolition, adding that he was in favor of the original motion that suggested working with the developer to try and acquire the property. He expressed his disappointment and then discussed the difficulties associated with the appeal process.

There was further discussion between Council on this issue. Councilmember Dick expressed his feelings of failure on this issue, stating that he believes the city needs to follow the rules, and not merely wished that they had. He said that if historic structures add value to the community, then an appropriate system must be devised to protect these structures. He explained that Council has been discussing crafting an ordinance for at least six years, but had not followed through. He said that the city should be able to work with a developer to honor their legitimate rights and the rights of other property owners, as well as follow the rules, and come up with a project that will serve the public and serve the legitimate rights of the developer.

**AMENDED MOTION:** Move to authorize Mayor Wilber to sign the settlement agreement as written and work with the developer to make every effort to either purchase the property or somehow save the Eddon Boat building.  
Ruffo / Ekberg – Four voted in favor. Councilmember Dick voted no.  
The motion carried four to one.

**NEW BUSINESS:**

1. Introduction of Ordinance – Amending the Design Manual. Steve Osguthorpe, Building and Planning Manager, presented information and background on the proposed ordinance for the revision of the Design Manual. He explained that the proposal is to update the manual and incorporate it as a new chapter in the Gig Harbor Municipal Code. He stated that the existing design manual was adopted in 1996 and has not been amended since that time.

Mr. Osguthorpe outlined the proposed changes as follows:

1. Revise the format to make the manual more user-friendly.
2. Correct the inconsistencies and errors in the existing manual.
3. Address design issues that were not fully addressed in the original manual.
4. Clarify standards by providing more specific and definitive language.
5. Provide additional design options.
6. Define and provide design exemptions for industrial buildings.

7. Identify parkways, activity centers and newly annexed areas since the adoption of the original design manual.
8. Enlarge the historic district boundaries to include parcels on both sides of streets that currently define the historic district.

Mr. Osguthorpe stated that there were numerous work sessions between the Design Review Board and the Planning Commission. The Planning Commission held a public hearing on the proposed amendments. Mr. Osguthorpe said that there were two sections that the City Attorney advised to not include in the update which are all standards pertaining to right-of-way development and the standards that pertain to onsite common areas.

Councilmember Ekberg suggested that there be 1-2 work study sessions to discuss the amendments. Councilmember Dick inquired about the common areas and asked if this covered design issues that might occur through the use of the condominium ownership device. Mr. Osguthorpe replied no. There was further discussion and clarification in relation to residential versus commercial and binding site plans.

Councilmember Franich stated that he had many issues and concerns and was in favor of workshops as a venue to address his concerns.

Jim Pasin – 3208 50<sup>th</sup> Street Court. Mr. Pasin stated that he was prepared to make comment about a number of issues and agreed to withhold his issues until the work sessions. He expressed some broad concerns about the process. He also suggested that public works follows the same rules as the development community. Mr. Pasin encouraged Council to review the manual for its practicality.

Mr. Osguthorpe said that he had received a letter from Mr. Paul Kadzik, Planning Commission Chair, whereby he expressed his concerns regarding the process issue. He asked that Council review the process issue after the adoption of the Design Manual.

Wade Perrow – 9119 North Harborview Drive. Mr. Perrow thanked the members of the Design Review Board for their countless hours of dedication. Mr. Perrow supported the need for the proposed work session to work through any issues.

Councilmember Ruffo asked Mr. Perrow what was needed in the development community, besides having a strong Design Review Manual and a strong Design Review Board to help achieve the integrity of the city. Mr. Perrow summarized by stating that much depends on early involvement and having a community with diversity. Mr. Perrow also spoke about having the end in mind in terms of flexibility and working together with the Design Review Board about meeting the design goals of the city. He spoke of the manual having more flexibility and gave an example of building a hospital.

Councilmember Franich said that while flexibility is important for diversity, it is also important to have some predictability on what is going to be built in the neighborhoods, stressing that balance is vital. Councilmember Franich stressed that he would like to know

what mechanism in the Design Manual is going to protect the community from another large building showing up, and wants this question addressed in the work sessions.

Mayor Wilbert stated that the city used to measure from the highest point of the footprint of the project. She said that now we are going to the highest point of the height of the property and stated that this may add another component to the height concerns in the community. Mayor Wilbert recommended that she would like to see this changed back to the highest point of the footprint rather than the highest point of the setback. Mr. Osguthorpe stated that the current proposed provision aligns the city closer to this recommendation and can be discussed more fully in the work sessions.

Roseanne Sachson – 3502 Harborview Drive. Ms. Sachson spoke about the need for a vision for the city that would be helpful in filling all of the needs of the manual both for the Design Review Board and the Planning Commission. She stated that she didn't think that it is that far away from something that the Council and Mayor could achieve by just taking what they have been hearing and what the history of the town is. Ms. Sachson encouraged Council not to rush on something like this because of the massive amount of work that has gone into amending the Design Manual. She pointed out that the one thing that the Design Manual does not state is each particular site will come up with its own needs and each time these discussions will need to be well thought out. She further stated that Council needs to look at a time frame that makes sense for a project to move forward so that we don't run into something like this, whereby the passage of the settlement agreement will cause the community to go against the Council. She asked Council to come up with a realistic time frame that is both workable for the developer and the city.

Dale Pinney, First Western Development – 1359 Shoreline. Mr. Pinney expressed his concerns in regards to the process. He stated that he had taken two projects through the Design Review Board and said that it is an iterative process of trying to determine what was best for the project, the site, and what goals are to be met. He gave an example of a 6-ft. wall requirement which would not leave the Design Review Board the ability to approve that change even though they unanimously agreed that this was the best thing for the project. Mr. Pinney pointed out that this would go before the Hearing Examiner, who would look at the code and ask if the four requirements have been met to get a variance, adding that the four requirements are generally very difficult to meet. He stated that what works now is that the Design Review Process is under the umbrella of site plan review which is an administrative decision that could be appealed. The DRB currently has the ability to mold the project and come up with a package that meets the vision of the manual. Mr. Pinney suggested a change to the Design Manual's proposed wall requirement. He stressed that how the manual states the goals makes a big difference when the DRB does not have the right or authority to change the specific requirements. He stated that getting a variance is very expensive and difficult and a low percentage business. His concern is that with the proposed changes, he could very easily see a large project needing twenty variances, which could cause a developer to say why bother, it's just not worth it. Mr. Pinney said that the goal should be to avoid the need for variances. He summarized that the most important issue was the process and where this design review fits in the approval sequence.



Councilmember Ekberg asked how do you balance the certainty in a neighborhood whereby a wall cannot be built more than 6-ft. with the ability to deviate from this. Mr. Pinney suggested that some middle ground should be considered as there is no perfect scenario. Mr. Pinney stated that he would not have a problem with the manual having a 6-ft. requirement but stated that the DRB needs to have the ability to accept a percentage deviation from this requirement to provide flexibility in the process.

Mr. Osguthorpe said that clarification is needed on this issue. He stated that the existing manual has fairly vague language in terms of the administrative process; as there is no number. Mr. Osguthorpe explained that the one thing that he has strived for in the existing Design Manual was to provide a dual process. One, where an applicant could come in with certainty and know what was required to get a permit and get approved administratively by the staff within the 120 day turnaround time. He further stated that the specific requirements of the Design Manual achieve this goal. Mr. Osguthorpe said that in this particular situation, there is no number, so all that staff knows is that they are supposed to respect the natural topography which could vary from 6-ft., 10-ft, or 20-ft. Mr. Osguthorpe stated that in order to take away this ambiguity, at least in the administrative process, a number was given but this does not change in any way the process before the DRB. He further explained that in almost every situation they have removed numbers in terms of the general requirement that the DRB would consider. The requirement of the DRB is to maintain the natural topography, and if they see a project that meets that intent, the Hearing Examiner would be basing his final decision on their recommendation, using the same criteria that the DRB used.

David Boe – 705 Pacific Avenue, Tacoma. Mr. Boe said that he had dealt with design manuals up and down the Puget Sound and west coast. He stated that this was a basic fundamental decision – does the city want to be rules based or principal based? He further stated that a process that is principal based allows for creativity and the ability to look at historic buildings and do things creatively that follows a principal. He further explained that rules tend to state what one can't do.

2. Introduction of Ordinance – Amending Chapters in Title 17 to Ensure Consistency with the Design Manual. Steve Osguthorpe, Building and Planning Manager, presented information and background on the proposed ordinance. He stated that when the original and existing Design Manual had been adopted, it was recognized at that time that there were a number of inconsistencies that were created between the Design Manual and the zoning code. He explained that in order to address this, a provision was included in Chapter 17.98 that states that if there are contradictions between the Design Manual standards and those in the zoning code, then the design standards will prevail. He further explained that in the past, this has created a lot of confusion for the public who has a tendency to first look at the zoning standards, and think that those are what need to be followed. This update provides the opportunity to go through the entire zoning code and eliminate any inconsistencies between the two, and will cross reference chapters and the Design Manual.

Councilmember Ruffo asked Mr. Osguthorpe if this will be also discussed in the upcoming work sessions. Mr. Osguthorpe responded yes.

Councilmember Ekberg suggested and it was agreed that two work sessions will be held on Monday, August 30<sup>th</sup> and Monday, September 20<sup>th</sup>, 6:00 – 8:00 p.m.

**STAFF REPORTS:**

1. GHPD – July Stats. No verbal was given. The Mayor commended Chief Davis for his attendance at the Council meetings and thanked him for his comprehensive staff reports.

**PUBLIC COMMENT:**

Jake Bujacich – 3607 Ross Ave. Mr. Bujacich expressed concern about the how the city determines non-significance. He spoke of the Eddon Boat building, the contamination and the removal of a bulk head. He expressed his difficulty understanding how the city came up with this determination on this piece of property.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton thanked Councilmember Dick for his vote of no in regards to the settlement agreement. She said that she was under the impression that the MDNS requirement had to do with documenting the Eddon Boat building with pictures, how in depth those pictures are, and how the city is going to keep it as a historical record. She further stated that this is what the MDNS required. She said that by voting in favor of the settlement agreement, it leaves the community to appeal the City Council's decision in front of the Hearing Examiner. She stated that this didn't have to do with the substance of the MDNS as much as it had to do with the public's position when it comes to the appeal process. She stated that that she thought the Council made a mistake.

Scott Wagner – PO Box 492. Mr. Wagner requested Council to direct the staff and the City Attorney to figure out a way to stop the demolition of the Eddon Boat building. He asked if there is a way to rezone or put it on historic preservation. He said that in the event that the negotiations can't fairly purchase the property he asked the Council to think carefully about who will represent the city in the negotiations and what direction will be given to successfully complete this.

Chuck Hunter – 8829 Franklin Avenue. Mr. Hunter spoke about the developer's representative's statements at this meeting and his discussions with the administration. Mr. Hunter stated that he didn't think that it was the administration who was supposed to be making the decisions; rather he stated he thought it was the staff. He suggested that Council should look into this. Mr. Hunter expressed his concerns and stated that he thought this decision zipped through and was a fishy deal.

John McMillian – 9816 Jacobsen Lane. Mr. McMillian directed his question to City Attorney Carol Morris. He asked Ms. Morris if she could promise the community that the Eddon Boat building will not be demolished.

Ms. Morris responded that she gives legal advice to the city. She stated that she cannot promise that it will or won't be demolished. She further explained that the property owner has submitted a demolition permit and suggested that he talk to the property owner as to whether or not they will demolish it. Mr. McMillian asked how the demolition of this building could be in the best interest of the community. Ms. Morris stated that she gives legal advice and does not make decisions about what is in the best interest of the city. Mr. McMillian stated that the community just needs to be assured that the building won't get demolished. Mr. McMillian stated that he wanted this question to go on the record. Councilmember Ruffo stated that they cannot change the law. Mr. McMillian said that this is a serious situation and worth a law suit. Mr. Hoppen responded that there is only one way to remedy this situation and that is to buy the property.

Roseanne Sachson – 3502 Harborview Drive. Ms. Sachson directed her comment to Mr. Hoppen. She said that Mr. Hoppen stated that there is only one way. She asked how did the city acquire Wilkinson Farm? Councilmember Dick responded that in that unfortunate circumstance the city had saved the money. She suggested a phone call to the property owners, as it may behoove them to know that the city is trying to work out a solution so that they don't risk losing their investment and maybe make a small profit.

Councilmember Dick stated that he believed what was needed was an historic preservation ordinance that decides what is historic enough to be kept and how to keep it. Councilmember Ruffo asked why don't we direct staff to do this. Councilmember Dick stated that he thought that this had been requested in the past, but it hadn't been followed up on. He stressed the importance of having such an ordinance in case Council is faced with this situation again.

Councilmember Ekberg asked for clarification on whether historic preservation should be voluntary or mandatory. Councilmember Dick explained that the ordinance must include some mandatory elements, but then other things can be preserved through appropriate incentives.

Mayor Wilbert asked that a preservation policy be proposed and it be brought to Council. Mr. Osguthorpe stated that he has drafted an ordinance that would adopt certified local government status for the city and would create a review board as a certified local government. Mr. Osguthorpe further explained that his intent was to use the Design Review Board to redefine the DRB membership requirements to be expanded to use them as the review body. He stated that it would then be the responsibility of the review body, in conjunction with historic preservationists, to make recommendations to the Council on matters of historic preservation. The certified local government option does not in of itself mandate anything. It simply creates a mechanism to address historical preservation to administer funds that come down from the state to certified local governments. It would then be the certified local government who would then make the recommendations. Mr. Osguthorpe stated that there are very few jurisdictions nationwide that have actual prohibitions on historic structures. He described the process in which a local jurisdiction can impose a waiting period so that a sign can be placed on a property. By doing this

people would know that the property was being proposed for demolition, and would give time for someone to buy the property and/or move the structure.

Ms. Morris spoke about a very strict ordinance with the City of Seattle that she had worked on that was building specific. She explained that there is a board that goes out and identifies certain properties or buildings that are to be designated as historic. She said that once this occurred, even if the property owner did not agree, it would be designated as such and then the property owner would be limited in what they could do with the building. Councilmember Ekberg asked if there was a compensation clause in this ordinance. Ms. Morris stated that the law has changed significantly since she worked on this and offered to draft something if Council wished.

Councilmembers said that they would like to review both the draft voluntary ordinance that Lita Dawn Stanton had submitted and a mandatory ordinance.

**COUNCIL COMMENTS / MAYOR'S REPORT:**

Gig Harbor Peninsula Community Center. No verbal report given.

**ANNOUNCEMENT OF OTHER MEETINGS:** None.

**EXECUTIVE SESSION:** For the purpose of discussing property acquisition per RCW 42.30.110(1)(b).

**MOTION:** Move to adjourn to Executive Session to discuss property acquisition per RCW 42.30.110(1)(b) for approximately fifteen minutes at 10:00 p.m.  
Ekberg / Ruffo – unanimously approved.

**MOTION:** Move to return to regular session at 10:18 p.m.  
Ekberg / Conan – unanimously approved.

**MOTION:** Move to adjourn at 10:18 p.m.  
Ekberg / Conan - unanimously approved.

CD recorder utilized:  
Disc #1 Tracks 1 – 24.  
Disk #2 Tracks 1 - 5.  
Dish #3 Tracks 1 - 9.

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Gretchen Wilbert, Mayor

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Maureen Whitaker, Assistant City Clerk



RECEIVED

JUL 29 2004

CITY OF GIG HARBOR

Mayor Gretchen Wilbert  
City Hall  
3510 Grandview Street  
Gig Harbor, WA 98335

Dear Mayor Wilbert,


I am writing on behalf of the American Payroll Association to seek your support for a Payroll Week in Gig Harbor, Washington. We believe the designation the week in which Labor Day occurs as Payroll Week would go far to recognize the important contributions of the people of this city who work to support the American Dream and highlight the partnership between taxpayers and payroll professionals. As former President Bill Clinton said: By honoring hardworking Americans across our nation and underscoring the vital importance of payroll taxes to our country's strength and security, National Payroll Week helps to foster growth and prosperity for our entire nation. The American Payroll Association has designated the week in which Labor Day occurs as National Payroll Week.

The American Payroll Association represents over 6 million residents in our state and over 3700 businesses. Needless to say these taxpayers and businesses contribute millions of dollars to the state and federal treasuries through payroll taxes each year, which go toward important civic projects including roads, schools and parks. Taxpayers and payroll professionals are also partners in supporting the social security and Medicare systems. In addition, companies are now playing an increasingly important role in the enforcement of child support laws by calculating and deducting child support payments from workers' pay.

The theme of National Payroll Week is "American works because we're working for America." The collection, reporting and payment of payroll taxes by employers is a positive example of what works in America. Your support of Payroll Week would be an important step in recognizing and celebrating the contributions of workers in the United States and the payroll professional's who report these workers' earnings, collect their taxes and pay their wages. We believe the proclamation of Payroll Week in Gig Harbor, Washington will enhance the public's understanding of their role in helping support the system and the contributions of payroll professionals.

Enclosed is a proclamation proposal, which we believe captures the spirit of Payroll Week. Last year our Chapter received first place in the Local Government Outreach category. Twenty different Washington State cities responded with a proclamation along with Governor Gary Locke. All of the participating cities had their name listed as supporters of National Payroll Week. The Rainier Chapter also received Honorable Mention in the Local Media Outreach Contest, and First Place in the Chapter Promotion Contest. Our goal for this year is to increase statewide participation by 50 percent. Your proclamation would enable us to reach that goal. I am enclosing a copy of the magazine article for you to peruse.

I look forward to hearing from you and your staff in the near future. Please feel free to contact me at either 206-854-1182 or [kristiwillson@msn.com](mailto:kristiwillson@msn.com).

Sincerely  
  
Kristine K. Willson, CPP  
Rainier Chapter

Enclosures

P.O. Box 55745 Seattle, WA 98155-0745

The American Payroll Association assumes no responsibility or liability in connection with activities of its affiliated chapters

# PROCLAMATION OF THE MAYOR OF THE CITY OF GIG HARBOR

*WHEREAS*, the American Payroll Association and its 21,000 members have launched a nationwide public awareness campaign that pays tribute to the more than 140 million people who work in the United States and the payroll professionals who support the American system by paying wages, reporting worker earnings and withholding federal employment taxes; and

*WHEREAS*, payroll professionals in Gig Harbor, Washington play a key role in maintaining Gig Harbor's economic health, carrying out such diverse tasks as paying into the unemployment insurance system, providing information for child support enforcement and carrying out tax withholding, reporting and depositing; and

*WHEREAS*, payroll departments collectively spend more than \$15 billion annually complying with a myriad of federal and state wage and tax laws; and

*WHEREAS*, payroll professionals play an increasingly important role ensuring the economic security of American families by helping to identify non-custodial parents and making sure they comply with their child support mandates; and

*WHEREAS*, payroll professionals have become increasingly proactive in educating both the business community and the public at large about the payroll tax withholding systems; and

*WHEREAS*, payroll professionals meeting regularly with federal and state tax officials to discuss both improving compliance with government procedures and how compliance can be achieved at less cost to both government and businesses; and

*NOW, THEREFORE*, I, Gretchen A. Wilbert, Mayor of the City of Gig Harbor, hereby give additional support to the efforts of the people who work in Gig Harbor, Washington and of the payroll profession by proclaiming the first full week of September Payroll Week for this Gig Harbor, Washington,

## **NATIONAL PAYROLL WEEK – GIG HARBOR PAYROLL WEEK**

in the City of Gig Harbor and encourage all citizens to join me in celebrating these professionals.

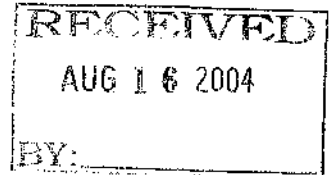
In Witness Whereof, I have hereunto set my hand and caused the Seal of the City of Gig Harbor to be affixed this 23<sup>rd</sup> day of August, 2004.

\_\_\_\_\_  
Gretchen A. Wilbert, Mayor

\_\_\_\_\_  
Date



# Washington Finance Officers Association



August 11, 2004

Gretchen Wilbert, Mayor  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Dear Mayor Wilbert:

This is to notify you that the City of Gig Harbor 2004 Budget has earned the Washington Finance Officers Association Distinguished Budget Award. This award is patterned after the Government Finance Officers' Program and is the highest form of recognition in fiscal planning and budgeting within the State of Washington. In order to earn this award, the budget documents are critiqued by a minimum of two reviewers who return a favorable response. I have received at least two favorable responses from the reviewers of your 2004 document.

A summary of the responses will be mailed under separate cover to the official requesting the results. Please be sure to look these comments over carefully as they contain valuable suggestions that will help to ensure receiving a WFOA Budget Award in the future.

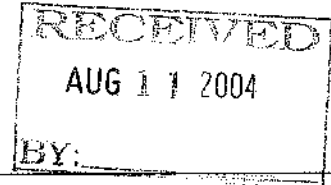
The budget document is judged on meeting program criteria covering policies, operations, financial planning and communications. The receipt of this award is evidence of an interest in effective fiscal management programs benefiting the customers of the City of Gig Harbor. You and your staff are to be commended for such an interest.

A plaque and certificates for your 2004 budget document will be available for presentation at the 49<sup>th</sup> annual WFOA conference in Wenatchee this September. These items may be picked up at the education table.

Sincerely,

Bonita R. Fell  
WFOA Budget Awards Chair  
% City of Kent Finance Department  
220 Fourth Avenue South  
Kent, WA 98032-5895  
Telephone: 253-856-5245  
Email: [bfell@ci.kent.wa.us](mailto:bfell@ci.kent.wa.us)

cc: David Rodenbach, Finance Director



City of Tacoma

Mayor Bill Baarsma

August 10, 2004

The Honorable Gretchen Wilbert, Mayor  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

  
Dear Mayor Wilbert:

Maritime Fest is an annual event in which the City of Tacoma celebrates its working waterfront. Part of that celebration is the Dragon Boat races among corporate teams on Saturday and the Mayor's Challenge Cup teams on Sunday. We would like to invite you to participate in the 3<sup>rd</sup> Annual Mayor's Challenge Cup for community governments on Sunday, September 19, 2004. This race would include up to twelve teams. Each team will be comprised of amateur athletes, at least two-thirds of whom are government employees, and include the mayor (or designee) of the community it represents. Individual place medals will be awarded to all participants and a Mayor's Challenge Cup trophy will be awarded to the overall winner.

The Tacoma Dragon Boat Association (TDBA), a 501c3 non-profit corporation, will provide a steersperson and on the water coaching for your team prior to race day. The participation fee of \$500 per team, which will benefit the TDBA, includes 16-20 paddlers and a drummer can be sent directly to TDBA c/o Petrich Marine Dock, 1118 East D Street, Suite 1, Tacoma, WA 98421-1708. Please contact Mike Gehrke, Race Registrar at (253) 307-5355 or on-line at [tdbamike22@aol.com](mailto:tdbamike22@aol.com) for details.

I hope that you will join us on Sunday, September 19<sup>th</sup> to unite the communities in Western Washington in friendly competition.

Sincerely,



Bill Baarsma  
Mayor





COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISIURAK, P.E.** *SM*  
**CITY ENGINEER**  
**SUBJECT: AGREEMENT FOR COLLECTION OF STORM DRAINAGE**  
**INFRASTRUCTURE BETWEEN PIERCE COUNTY ISD/GIS AND THE**  
**CITY OF GIG HARBOR**  
**DATE: AUGUST 23, 2004**

**INTRODUCTION/BACKGROUND**

A budgeted 2004 Storm Sewer Operating objective provides for the field inventorying of the entire City's storm drainage system and the creation of a City wide global information system (GIS) database and mapping system. Pierce County GIS was selected as the most qualified agency to provide these services.

The County staff person dedicated to the project will be responsible for the data collection, adjusting the global positioning system (GPS) data for GIS and loading the information into the County's database and into the County's GIS system that the City currently utilizes.

The City Attorney has reviewed and approved the proposed agreement.

**ISSUES/FISCAL IMPACT**

This work was anticipated in the adopted 2004 Budget, identified under the Storm Sewer Operating Fund, objective #4, and is within the allocated amount of \$35,000.00.

**RECOMMENDATION**

I recommend that Council authorize the award and execution of Agreement #35894 between Pierce County and the City for the amount of Twenty-six thousand dollars and no cents (\$26,000).

**AGREEMENT # 35894**  
**"COLLECTION OF STORM DRAINAGE INFRASTRUCTURE"**  
**BETWEEN**  
**PIERCE COUNTY ISD/GIS**  
**AND**  
**CITY OF GIG HARBOR**

This Agreement is made and effective as of this \_\_\_\_ day of \_\_\_\_\_, 2004. This Agreement provides for service as outlined herein, by and between the City of Gig Harbor ("City") and Pierce County ("County").

The term of this Agreement shall commence on or about the 2nd day of September, 2004, and shall, unless terminated or renewed elsewhere on the Agreement, terminate on the 28th day of February, 2005.

The maximum consideration for the initial term of this Agreement or for any renewal period shall not exceed \$26,000.00.

**WHEREAS**, City and County have executed a separate CMS (Community Information/Network Services Access Agreement) and the City currently has access to the County's GIS; and

**WHEREAS**, the City requires data and the location for the existing storm drainage infrastructure to be collected;

**WHEREAS**, the County has agreed to provide services to the City relating to the development of a drainage feature inventory within the City;

**NOW WHEREFORE**, City and County mutually agree as set forth below:

**SERVICE DESCRIPTION**

The following is a description of the service that would be provided and the products that would be produced for the City.

Pierce County will provide:

1. A drainage feature inventory for the City. The data will be collected with GPS equipment which has a positional accuracy of +/- 2 1/2 feet. The GPS data will be corrected to correspond to the County's State Plane coordinate system. It is estimated that the drainage inventory can be completed in less than 6 months by a field crew consisting of a GIS person from the County and one staff person from the City that is knowledgeable of the drainage system. (See Attachment A)
2. The drainage feature inventory will utilize the existing County data dictionary for drainage and the features that will be collected include structures (culverts, inlets, outlets, catch basins, dry wells) and open

channels. Additional attribution for capturing the pipe invert measurements inside structures will be added to the database. Outlet points that cannot be found will be noted for future research by the City. Drainage features will be collected within the City's boundary on public land, private systems (when accessible) and commercial/parking lots. Drainage features on SR 16 will not be collected.

3. The drainage inventory will be loaded into the shapefile format. The shapefiles for the drainage features will be loaded into the County's GIS system. Data access will be entered via the GIS and can subsequently be viewed, analyzed and plotted.
4. Before the data is loaded into the GIS system, the data will need to be "cleaned" as it moves from the GPS systems into the production environment. County staff will utilize the County's PCMS software to conduct the initial quality control for this project.
5. The County staff person dedicated to the project will be responsible for the data collection, adjusting the GPS data for the GIS and loading the information into the database and GIS themes. The procedures utilized in previous drainage inventory projects will be incorporated for this project to improve the quality and accuracy of data. The County has provided the City with a current copy of the *Standard Operating Procedures* utilized for the collection of drainage for previous projects. Errors or omissions to the data found during these processes will be noted for correction by the crew when they return to the field.
6. The County does not guarantee an error free dataset. The project dataset is created with information jointly gathered by City and County staff. Errors found in the dataset during the collection phase of the project will be corrected immediately. Errors, e.g. missing features, incorrect attribution, flow direction, etc., found after the initial dataset has been accepted will be corrected during the next update cycle as provided under Item #3 under *Cost Assumptions*.
7. The County will provide metadata documentation for the digital data set.
8. Data collected for Gig Harbor from this project is the property of the City and all source materials and documentation will be returned to the City at the completion of the project.
9. As part of the field collection process, the County will provide a technical transfer of knowledge to City staff on the drainage data dictionary, the collection methodology, utilization of the GPS equipment and downloading of the raw data.
10. The County Project Manager will provide monthly status reports to the City Project Manager

The City will provide:

1. A person having in-depth knowledge of the City's drainage system for the length of the project.
2. A vehicle capable of carrying the crew and GPS equipment for the duration of project.
3. Necessary tools to inspect the drainage features, e.g. tape measure, CB hook, yellow chalk, steel pry bar, flashlight, etc.
4. Supply and maintenance of their Trimble Pro XR GPS equipment.
5. If warranted, traffic control on appropriate streets.
6. The City is responsible for the final quality control and acceptance of deliverables.
7. A Project Manager for the drainage inventory that will coordinate activities with the County.

### Costs

If the project requirements do not change, the costs for the drainage facilities project will be based on time and materials at the current GIS rate of \$65 per hour with a not to exceed total of \$26,000. For the project, the estimate for the number of days is based on timing from previous drainage projects with areas that were similar in parcel density and road miles. The cost components for the drainage inventory are shown in the Attachment A.

### Assumptions:

1. The field crew consists of two staff with the City providing one member who is knowledgeable of the City's drainage system and the County providing an experienced GIS /GPS person. The field staff should have attended safety training and will wear protective footwear and reflective vests.
2. The crew will be in the field one or two days a week based on the City's member availability. When not in the field, the GIS member will complete the office work to load the raw data, conduct the initial quality control of the data and append the data with previously collected data. Based on the complexity and density of the data, the approximate time required for this process will vary between one (1) and three (3) hours *per* collection day. By utilizing a weekly incremental update, the database and shapefiles are useable immediately by Gig Harbor staff. This allows the team member from the City time to complete other tasks and responsibilities during each week.
3. After the City has accepted the initial drainage datasets, the City will be responsible for collecting future drainage features and the maintenance of their existing drainage datasets. Integrating new data into the master file has the potential to be

very complex and the City has requested County assistance in completing this phase. After the City has collected new files, they will notify the County and a schedule to process the updates will be established. As the time needed for these updates will be limited and the drainage data will be part of the CountyView menu for the City, the City and County have agreed to utilize support hours allocated in the CountyView On-Line Services Contract #9475 for this purpose.

4. All equipment purchased by the City for the project is the property of the City.

### **Project Schedule**

The project will start in 2004 and will be completed in approximately six months. During the project, monthly status reports will be completed to document the progress and issues that may need to be addressed in the future. At the end of the initial collection period, the crew will make a second trip to locations where the City knows that drainage has been added or modified since the crew's original collection.

### **Project Manager**

The Pierce County Project Manager will be Art Seeley. Art has completed major data conversion projects for parcel, zoning, retention ponds and was the project manager for the County and University Place drainage projects. Art understands the requirements for data accuracy and completeness and has expertise in the County's ESRI systems. Art will be the point of contact for Gig Harbor Public Works.

### **Defense & Indemnity Agreement:**

The City shall defend, indemnify and hold the County, its officers, officials and employees harmless from any claims, injuries, damages, losses or suits including attorneys' fees arising out of or in connection with the City's performance of the City's responsibilities under this Agreement, except for injuries and damages caused by the sole negligence of the County.

The County shall defend, indemnify and hold the City, its officers, officials and employees harmless from any claims, injuries, damages, losses or suits including attorney's fees arising out of or in connection with the County's performance of the County's responsibilities under this Agreement, except for injuries and damages caused by the sole 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 County and the City, their officers, officials and employees, then each party's liability hereunder shall be only to the extent of each party's respective negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the City's and the County's waivers of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. These waivers have been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_ day of \_\_\_\_\_, 2004

**CITY OF GIG HARBOR:**

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address:

\_\_\_\_\_  
Mailing Address:

\_\_\_\_\_  
Contact Name:

\_\_\_\_\_  
Contact Phone:

\_\_\_\_\_  
Contact FAX:

**PIERCE COUNTY:**

**Reviewed:**

\_\_\_\_\_  
Deputy Prosecuting Attorney Date  
*(Approved as to form only)*

\_\_\_\_\_  
Budget and Finance Date

**Approved:**

\_\_\_\_\_  
Department Director Date  
*(less than \$250,000)*

\_\_\_\_\_  
Department GIS Manager Date  
*(less than \$250,000)*

\_\_\_\_\_  
County Executive *(over \$250,000)* Date

Attachment A  
Time Estimate to Complete City of Gig Harbor Drainage

## Overview

ArcView was used to query the amount of features collected in a day for finished drainage project. Shapefiles were made of these feature and overlaid onto the roads. Next, a shapefile was made of the roads, where the features were present, in order to ascertain the amount of miles collected in one day. To obtain a good cross section and taking into account different features, terrain and GPS signals, three different areas were calculated to acquire the number of road miles covered in one day's work. The first area was over by Gig Harbor, which had catch basin, channels, pipes, drywells, and manholes. The second area was done just south of Spanaway, which had drywells, catch basins, and pipes. The third area was in University Place and included drywells, catch basins, and pipes.

1. In Gig Harbor area, average 1.43 miles of roadway were collected in one day.
2. In the Spanaway area, average 1.63 miles of roadway were collected in one day.
3. In the City of University Place, average 2.01 miles of roadway collected in a day.

**Note: These figures were generated using an 8 hour workday.**

In the scenarios, a three-person crew consisting of an employee knowledgeable of the drainage, a note taker and a GIS member was utilized. Field notes were critical as the team was in the field for three weeks before working on the files and a reference source was needed to complete the initial quality control of the data. The third person was also utilized for field research especially in the urban setting. The City and County have decided to start with a two-person crew, as the GIS person will be in the field for only two days before working on the files. Once collection starts, the team will let management know if this deviation from the three-person team concept has a significant negative affect on production.

## Analysis

After reviewing both the Gig Harbor and Spanaway data, travel time and poor GPS signals affected the collection time. A better comparison to estimate average miles per day for Gig Harbor will be the average of University Place and Gig Harbor.

- Miles of Roadway Needing Collection in the City of Gig Harbor: 47.6 miles without SR 16  
47.6 miles divided by 1.72 = 27.7 field days
- Commercial systems and large parking lots.  
Utilizing the Orthos and field collection - 13 field days is needed to collect both
- Upload and quality control – Estimate is 9 days
- **Total estimated time to complete project: 49.7 days**

**City of Gig Harbor  
Drainage Inventory Project  
August 16, 2004**

Item		Time	Rate	Cost	Total
<b>Crew</b>					
	1 staff supplied by City	325 hours		City staff	
	1 from County GIS	400 hours	\$65	\$26,000	\$26,000
<b>Equipment</b>					
	Van			City equipment	
	GPS (Pro XR)			City equipment	
	Cell phone			City equipment	
<b>Software</b>					
	County PCMS sw for data quality control			no charge	
	County GPS base station files			no charge	
	County GPS base station software and processing			no charge	
	Upload of GH data to CountyView			charge to on- line service hours	
<b>Future Collection</b>					
	Collected by City staff			no charge	
	Update and appended by County			charge to on- line service hours	
				<b>Project Total</b>	<b>\$26,000</b>



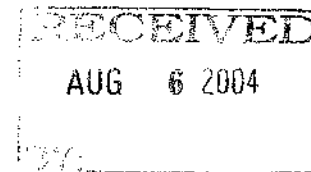
C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 8/03/04

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR  
(BY ZIP CODE) FOR EXPIRATION DATE OF 20041130

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 ISEMAN, INC.	HY-IU-HEE-HEE 4309 BURNHAM DR GIG HARBOR WA 98335 0000	367497	SPIRITS/BR/WN REST LOUNGE -
2 M&J FUEL, L.L.C.	OLYMPIC VILLAGE 76 5555 SOUNDVIEW DR NW GIG HARBOR WA 98335 0000	071544	GROCERY STORE - BEER/WINE





NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 8/09/04

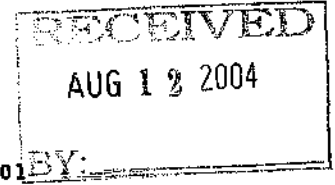
TO: CITY OF GIG HARBOR

CORRECTED

RE: ASSUMPTION
From WEST STAR CORPORATION
Dba NOW! #86

APPLICANTS:

SAID SAMI BARSOUM
1958-04-01



License: 365441 - 1J County: 27
UBI: 601-887-282-001-0026
Tradename: SHELL FOOD MART, GIG HARBOR
Loc Addr: 5115 OLYMPIC DR NW
GIG HARBOR WA 98335-1704
Mail Addr: 5224 12TH ST E STE C
FIFE WA 98424-2765
Phone No.: 253-941-2415 NANCY HERR
Privileges Applied For:
GROCERY STORE - BEER/WINE

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

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

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: SECOND READING OF ORDINANCE AMENDING THE SETBACK**  
**STANDARDS IN THE PCD-BP DISTRICT**  
**DATE: AUGUST 23, 2004**

**INFORMATION/BACKGROUND**

Attached for the Council's consideration is a draft ordinance amending the setback requirements in the PCD-BP district (Planned Community Development – Business Park) as defined in GHMC section 17.54 to reflect types of uses permitted or conditionally permitted in the district, and establishing categories that uses will be listed under for purposes of defining setback requirements.

The PCD-BP standards were adopted in 1997 as part of the overall Gig Harbor North development regulations. The PCD acronym used in all Gig Harbor North zone designations stands for "Planned Community Development". Accordingly, the PCD standards were intended to provide a "planned" approach to an entire area without relying upon standard Euclidian zoning practices. While that "planned" approach is not specifically defined in the code or Comp Plan, the staff recalls that the idea behind Gig Harbor North was to take a more holistic approach to planning the area and to strive for an appropriate mixture of complimentary uses that would provide housing, shopping and employment opportunities, all carefully integrated into what was then a relatively untouched natural environment. It is therefore assumed that large setback areas between uses were intended to achieve compatibility between residential development and such uses as light manufacturing, warehousing, distribution facilities, research and development facilities and (under a recent amendment) hospitals. However, the district also allows less impacting uses that are often found in zones abutting residential development, such as professional office.

To address these differing uses, the applicant's proposal establishes two different categories of uses and places the more impacting type of uses (e.g., manufacturing) into one category, and the less impacting (e.g., professional office) into the other. The proposal then defines different setbacks for each of the two categories, with the more impacting uses requiring a wider setback for the structures on the site than the less impacting uses.

A public hearing before the Planning Commission was held on July 1, 2004. After receiving public testimony, the Commission voted unanimously to forward to the City Council a recommendation to approve the proposed amendments.

## **POLICY CONSIDERATIONS**

Applicable land use policies and codes are as follows:

**A. Comprehensive Plan:** There are no comprehensive plan policies that specifically address setback requirements. There are, however, policies pertaining to vegetation retention, timber, woodland and wildlife habitat which are implemented, in part, under zoning code setback and landscape standards (discussed under subsection B below). Specific Comp Plan goals and policies are as follows:

No. 1 on page 29 has the goal to "incorporate existing vegetation into site plan. As much as possible, site plans should be designed to protect existing vegetation. . ."

No. 14 on page 37 states that, "Those lands within the urban growth area which contain commercially valuable timber are considered suitable for conversion to non-forestry uses, consistent with the goals of this Plan the State Forest Practices Act."

No. 15 on page 37 has the goal to, "Enforce exacting standards governing possible land use development of existing, natural open space areas which contain prime wildlife habitat characteristics. Promote use of clustered development patterns, common area conservancies and other innovative concepts which conserve or allow, the possible coexistence of natural, open space area within or adjacent to the developing urban area. . ."

No. 17 on page 37 has the goal to "protect lands, soils or other wooded areas which have prime woodland habitat characteristics. Promote use of buffer zones, common areas, trails and paths, and other innovative concepts which conserve or increase woodland habitats. . ."

**B. Gig Harbor Municipal Code:** Section 17.78.070(A) requires perimeter areas (elsewhere defined as setback areas) to be landscaped. Section 17.78.050 requires the retention of significant trees within required perimeter landscaping areas.

Section 17.54.030(B) defines setback areas for the PCD-BP zone. Setback standards are: "No structure shall be closer than 150 feet to any residential zone or development or closer than 50 feet to any street or property line. Parking shall not be located any closer than 30 feet to a property line."

Section 17.54.030(D) states that, ". . . All required yards shall be landscaped in accordance with the landscaping requirements of Chapter 17.78 GHMC."

The Intent stated for the PCD-BP zone of GHMC Section 17.54.010 states that, "The business park district provides for the location of high quality design development and operational standards for technology research and development facilities, light assembly and warehousing, associated support service and retail uses, business and professional office uses, corporate headquarters and other supporting enterprises. The business park district is intended to be devoid of nuisance factors, hazards and potentially high public facility demands. Retail uses are not encouraged in order to preserve these districts for major employment opportunities and to reduce the demand for vehicular access."

**C. Design Manual:** Page 24 of the design Manual includes "transition zone" standard that apply wherever two zoning designation meet. The standards require that buildings on parcels abutting an opposing zone be no larger or taller than the average footprint size and height of the closest three parcels in the opposing zone. The Manual also states that buffer or screens can be an acceptable means of meeting the zone transition standards (as opposed to architectural standards). The 150-foot setback would provide a meaningful buffer between abutting zones if its natural vegetation were retained.

At the first reading of the proposed ordinance, Councilmember Franich expressed concern over how the proposed setbacks would be applied to the entire PCD-BP district, and asked for maps that illustrate the proposal. I am therefore attaching a map showing the entire PCD-BP district, and also the maps that were presented to the Planning Commission showing the existing and proposed setbacks on all lots in the PCD-BP district. It should be noted, however, that the "existing/proposed" maps do not reflect the proposed 10-foot increase in the parking lot setback for parcels abutting residential districts (total 40-feet).

#### **ENVIRONMENTAL ANALYSIS**

After review of a completed environmental checklist and other information on file with the agency, the City of Gig Harbor has determined this proposal will not have a probable significant adverse impact on the environment. A DNS was therefore issued for this proposal. The DNS does not become final until the end of the comment period, which is August 6, 2004. The deadline for appealing the SEPA determination is August 20, 2004. The public may submit written comments up to the end of the comment period.

#### **FISCAL IMPACTS**

There are no adverse fiscal impacts associated with this rezone.

#### **RECOMMENDATION**

The staff recommends that the City Council adopt the proposed changes as reflected in the attached draft ordinance.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, CHANGING THE SETBACK REQUIREMENTS IN THE PCD-PB DISTRICT AS DEFINED IN GHMC SECTION 17.54.030 TO REFLECT TYPES OF USES PERMITTED OR CONDITIONALLY PERMITTED IN THE DISTRICT, AND ESTABLISHING CATEGORIES OF USES FOR PURPOSES OF DEFINING SETBACK REQUIREMENTS.**

---

WHEREAS, the City of Gig Harbor has adopted setback standards in the PCD-BP zone that require a greater setback for structures than for parking lots; and

WHEREAS, the setbacks in the PCD-BP district are intended to provide adequate separation between abutting residential development or districts and uses allowed in the PCD-BP district that have a high nuisance factor potential; and

WHEREAS, some permitted uses in the PCD-BP district have less potential to negatively impact abutting residential uses than other permitted or conditionally permitted uses allowed in the district; and

WHEREAS, a proposed text amendment has been submitted by Dale Pinney of First Western Development that places permitted uses having more potential for negatively impacting residential development in one category, and those with less potential for impacting residential development in a second category, and which provides a reduced setback for the uses in the second category of uses; and

WHEREAS, the proposed setbacks for those uses in the second category of uses are similar to setbacks adopted for the same or similar types of uses allowed in other zoning districts in the City, and

WHEREAS, the Council finds that the proposed setbacks provide adequate separation between the various types of uses allowed in the PCD-BP zone and abutting residential development, and

WHEREAS, the City's SEPA Responsible Official issued a determination of Non-significance for the proposed parking amendments on June 4, 2004 pursuant to WAC 197-11-350; and

WHEREAS, the City Community Development Director forwarded a copy of this Ordinance to the Washington State Department of Trade and Community Development on June 7, 2004, pursuant to RCW 36.70A.106; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on July 1, 2004, and made a recommendation of approval to the City Council; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of July 26, 2004; Now, Therefore,

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

Section 1. Section 17.54.02 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.54.020 Permitted uses.** ~~The following uses are permitted in the planned community development business park district:~~

- ~~A. Research and development facilities.~~
  - ~~B. Light assembly and warehousing.~~
  - ~~C. Light manufacturing.~~
  - ~~D. Service and retail uses which support and are ancillary to the primary uses allowed in the business park district.~~
  - ~~E. Professional offices and corporate headquarters.~~
  - ~~F. Distribution facilities.~~
  - ~~G. Vocational, trade and business schools.~~
  - ~~H. Book and magazine publishing and printing.~~
  - ~~I. Financial and investment institutions.~~
  - ~~J. Commercial photography, cinematography and video productions facilities.~~
  - ~~K. Reprographic, computer, courier services, mail and packaging facilities.~~
  - ~~L. Trails, open space, community centers.~~
  - ~~M. Schools, public and private.~~
  - ~~N. Public facilities.~~
  - ~~O. Adult family homes and family day care.~~
- ~~(Ord. 747 § 4, 1997).~~

The following uses are permitted in the planned community development business park district:

Category I uses:

- A. Research and development facilities.
- B. Light assembly and warehousing.
- C. Light Manufacturing.
- D. Distribution facilities.
- E. Vocational, trade, and business schools.
- F. Book and magazine publishing and printing.

G. Commercial photography, cinematography and video production facilities.

H. Reprographic, computer, courier services, mail and packaging facilities.

I. Trails, open space, community centers.

J. Schools, public and private.

K. Public facilities.

Category II uses:

A. Service and retail uses which support and are ancillary to the primary uses allowed in the business park district.

B. Professional offices and corporate headquarters.

C. Financial and investment institutions.

D. Adult family homes and family day care.

Section 2. Section 17.54.025 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.54.025 Conditional Uses.**

Subject to the requirements of Chapter 17.64 GHMC and the procedures for conditional uses as set forth in this title, the following uses may be permitted in a PCD-BP district:

Category I uses:

A. Hospitals. (Ord. 958 § 1, 2004).

Section 3. Section 17.54.030 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**17.54.030 Performance standards.**

All uses in the business park zone shall be regulated by the following performance standards:

A. General. Uses which create a risk of hazardous waste spills must provide hazardous waste containment provisions that meet building code, fire code and health and environmental regulations to prevent air, ground and surface water contamination.

~~B. Setbacks. No structure shall be closer than 150 feet to any residential zone or development or closer than 50 feet to any street or property line. Parking shall not be located any closer than 30 feet to a property line.~~

B. Setbacks.

1. Category I uses: No structure shall be closer than 150 feet to any residential zone or residential development or closer than 50 feet to any street or property line. Parking shall not be located any closer than 40 feet to any residential zone or residential development, or closer than 30 feet to any street or property line.

2. Category II uses: No structure shall be closer than 40 feet to any residential zone or residential development or closer than 30 feet to any street or property line. Parking shall not be any closer than 40 feet to any residential zone or residential development or closer than 30 feet to any street or property line.

C. Open Space. A minimum of 20 percent of the site, excluding setbacks, shall remain in open space, with either retained natural vegetation or new landscaping.

...



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

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

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2004.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

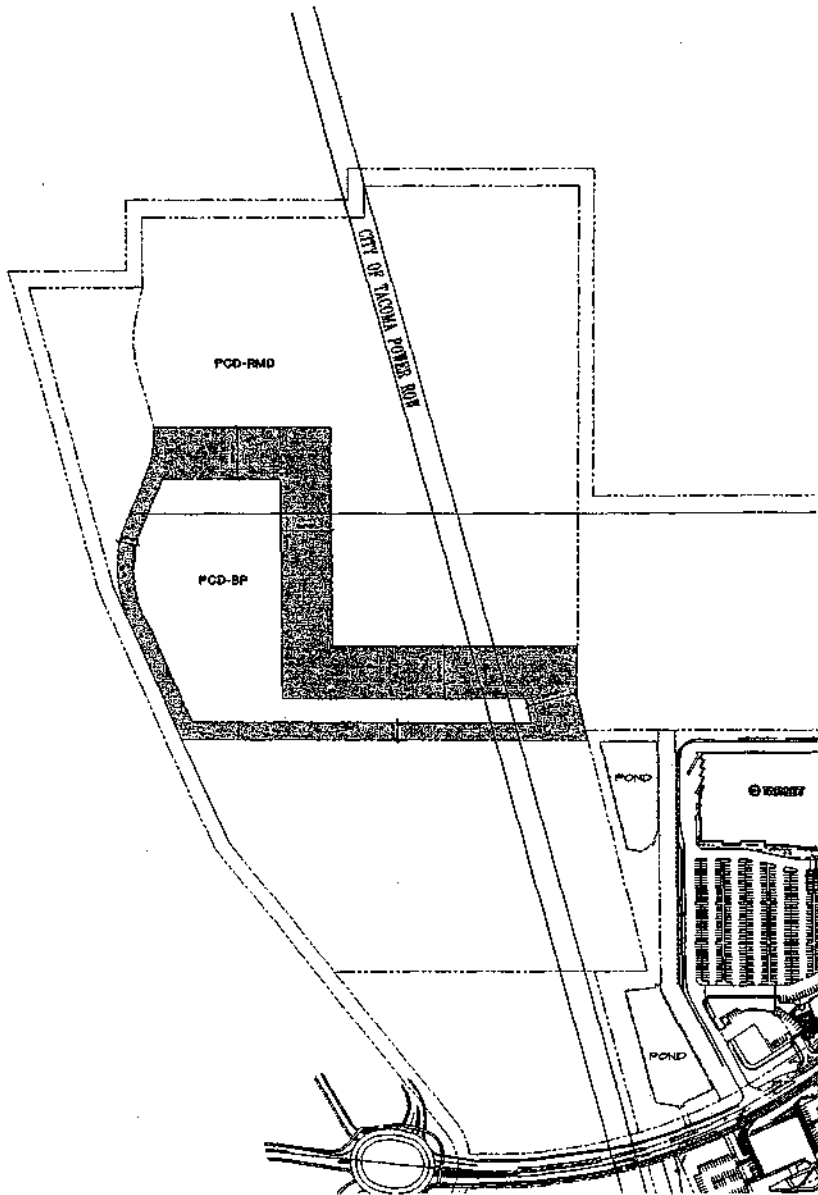
ATTEST/AUTHENTICATED:

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: \_\_\_\_\_



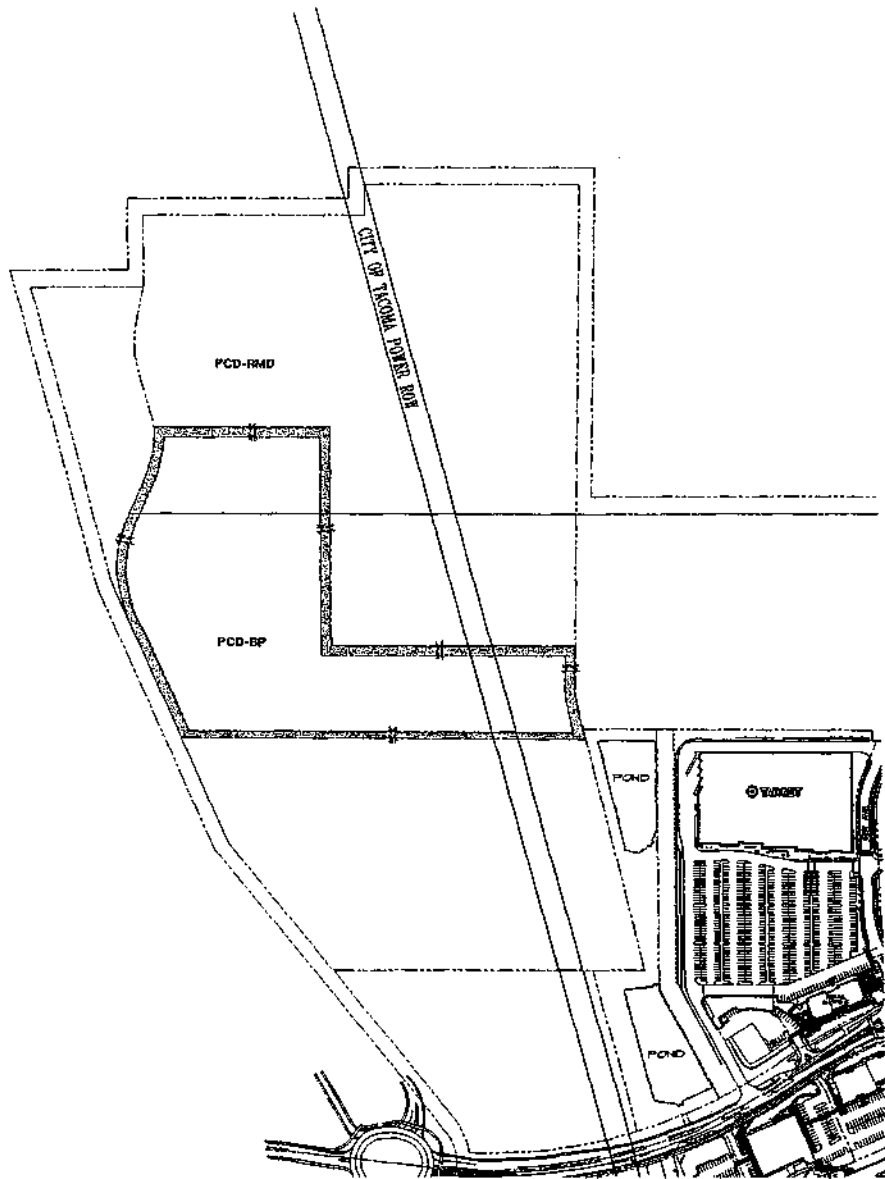
**PCD-BP TEXT AMENDMENT**  
 Gig Harbor, Washington

**BOHANNON DESIGN GROUP** SEASIDE, WA  
1000 1st St. SEASIDE, WA 98138 TEL: 206.451.1111 FAX: 206.451.1112

SCALE: 1" = 200'-0"

EXISTING SETBACKS


Front	20'-0"
Side	10'-0"
Rear	20'-0"



**PCD-BP TEXT AMENDMENT**

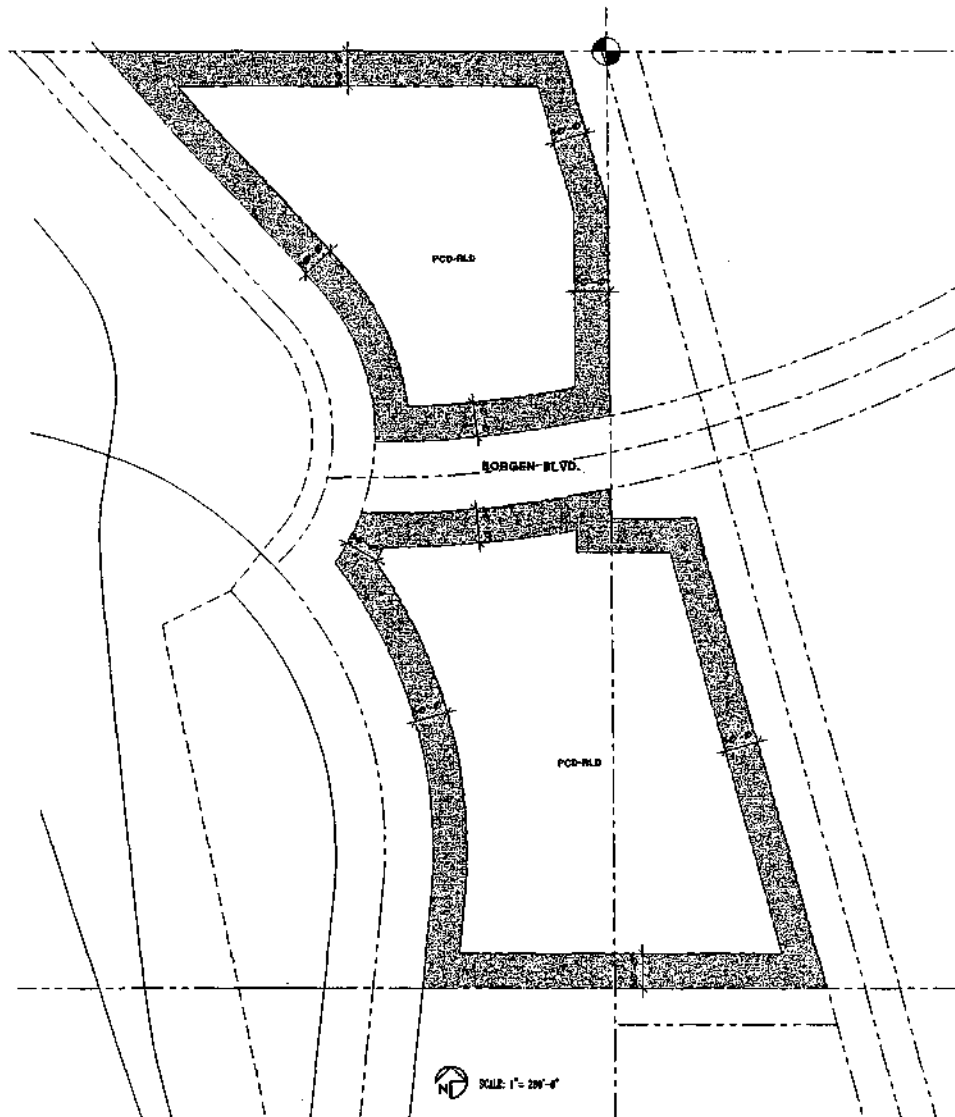
Gig Harbor, Washington

BOXABOX DESIGN GROUP, LLC  
10000 1st Ave, Suite 100, Gig Harbor, WA 98143  
Phone: 253-838-8888 Fax: 253-838-8889  
www.boxaboxdesign.com

 SCALE: 1" = 200'-0"

**PROPOSED SETBACKS**

FRONT	5'-0"
REAR	5'-0"
SIDE	5'-0"

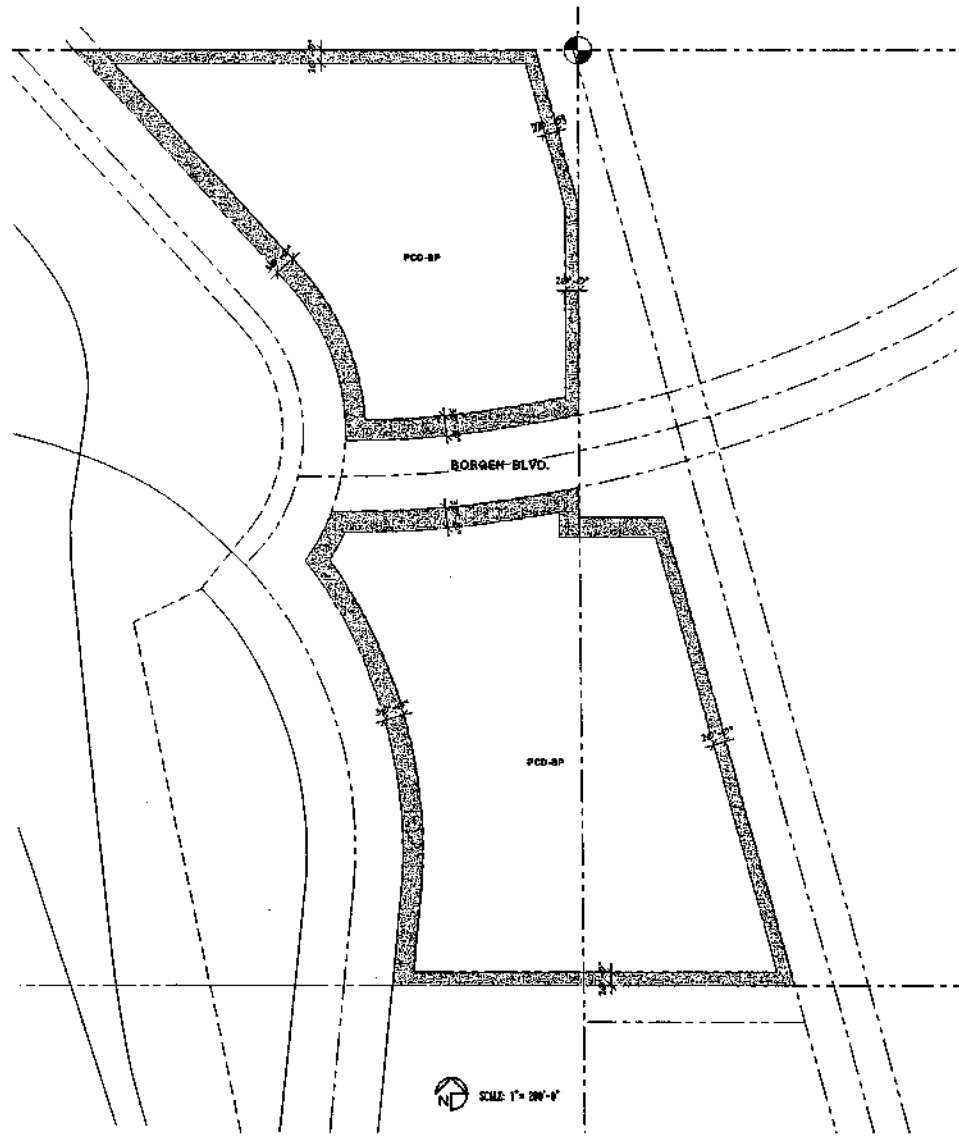


**PCD-BP TEXT AMENDMENT**  
 Gig Harbor, Washington

**BOHANNON DESIGN GROUP, LLC**  
 1000 1st Ave. S.E. Gig Harbor, WA 98503  
 (253) 831-1111

**EXISTING SETBACKS**

Setback	Distance
Front	100'-0"
Side	100'-0"
Rear	100'-0"



**PCD-BP TEXT AMENDMENT**  
 Gig Harbor, Washington

**HOWARD DESIGN GROUP, LLC**  
1000 1st Ave. Suite 200 Gig Harbor, WA 98559

**PROPOSED SETBACKS**

Area	Front	Side	Rear
PCD-BP	10'	5'	5'
PCD-BP	10'	5'	5'

BORGES BLVD.

↑ ALBERTSONS ↑

LOT 4

LOT 3  
PCD-RMD

BINGHAM  
PCD-RLD

# LOT 4 EXISTING ZONING

Gig Harbor, Washington

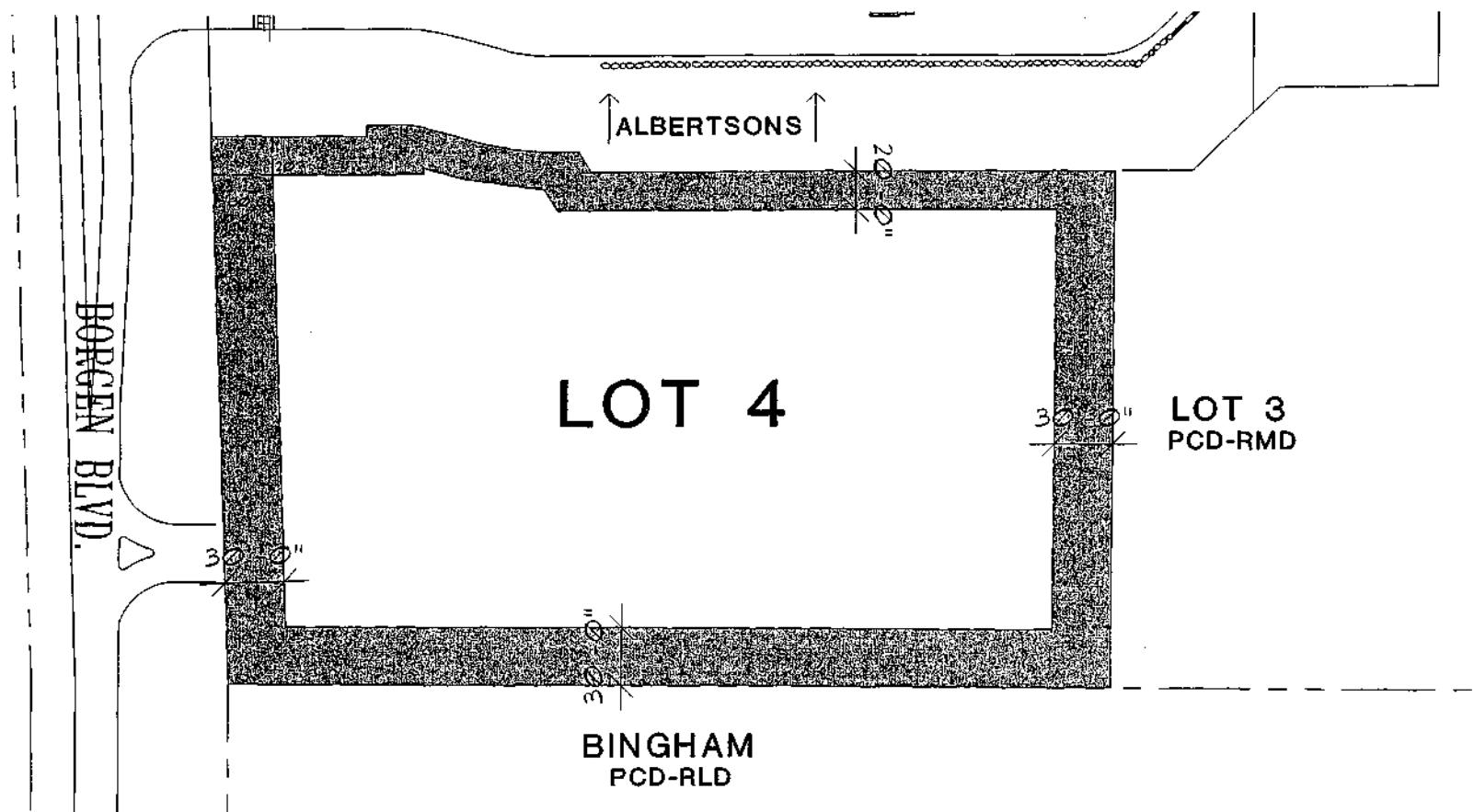


SCALE: 1" = 50'-0"

EXISTING SETBACKS

DONAHOU DESIGN GROUP ARCHITECTS, L.L.C.  
1400 WEST AVENUE #200, SUITE 1000, GIG HARBOR, WASHINGTON 98250-1000  
TEL: 206-835-1000 FAX: 206-835-1001

DATE: 3-08-09  
JOB #: 2003-23  
FILE NAME: LOT 4.RVT  
LOT 4.RVT



# LOT 4 PROPOSED ZONING

Gig Harbor, Washington

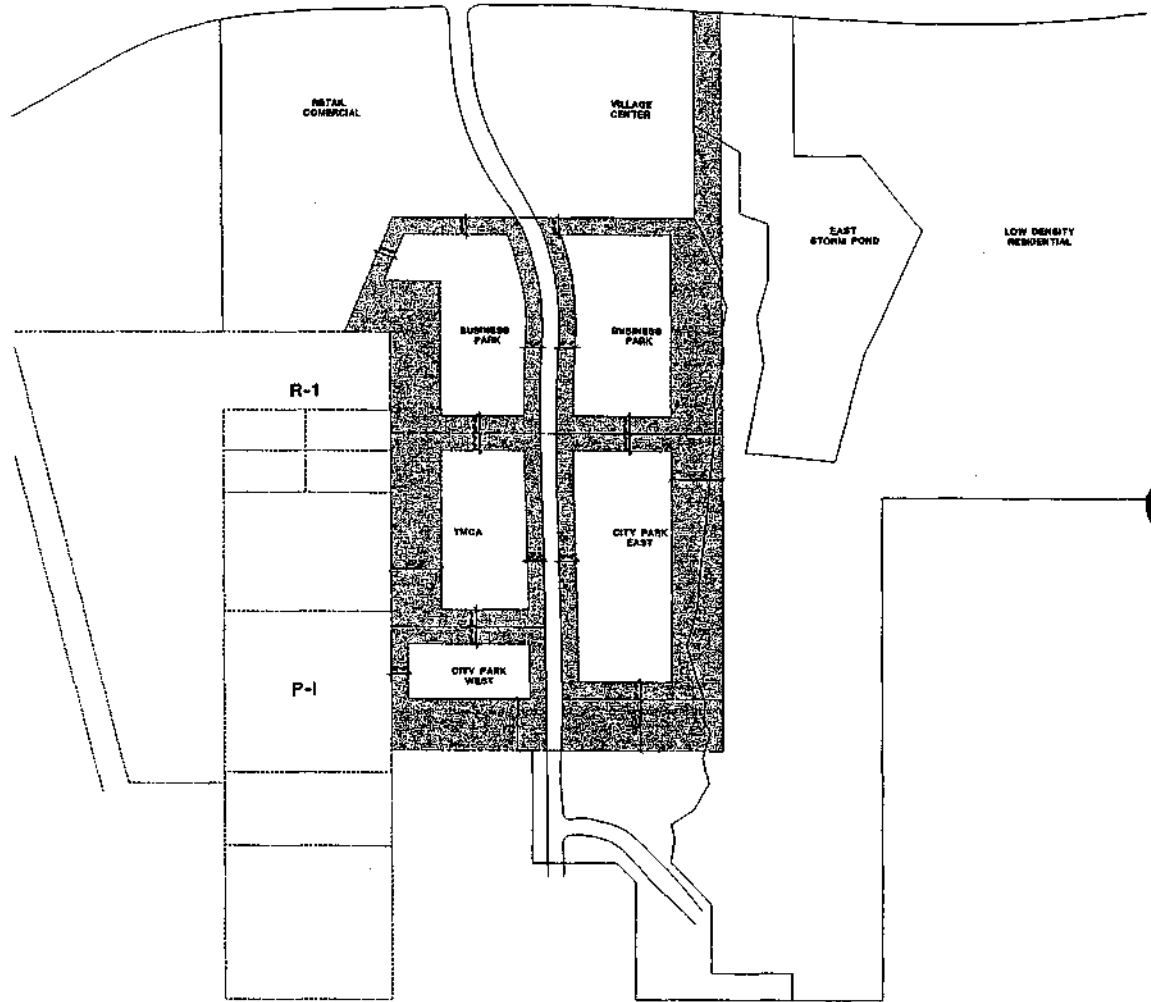
DONAHOU DESIGN GROUP ARCHITECTS, L.L.C.  
ONE BAYVIEW AVENUE, SUITE 200 GIG HARBOR, WASHINGTON 98250-1100 TEL: 253-836-1178



SCALE: 1" = 50'-0"

PROPOSED SETBACKS

DATE:	3-30-04
JOB #:	2803-02
FILE NAME:	LOT 4.DWG



SCALE: 1" = 100'-0"

# PCD-BP TEXT AMENDMENT

Gig Harbor, Washington

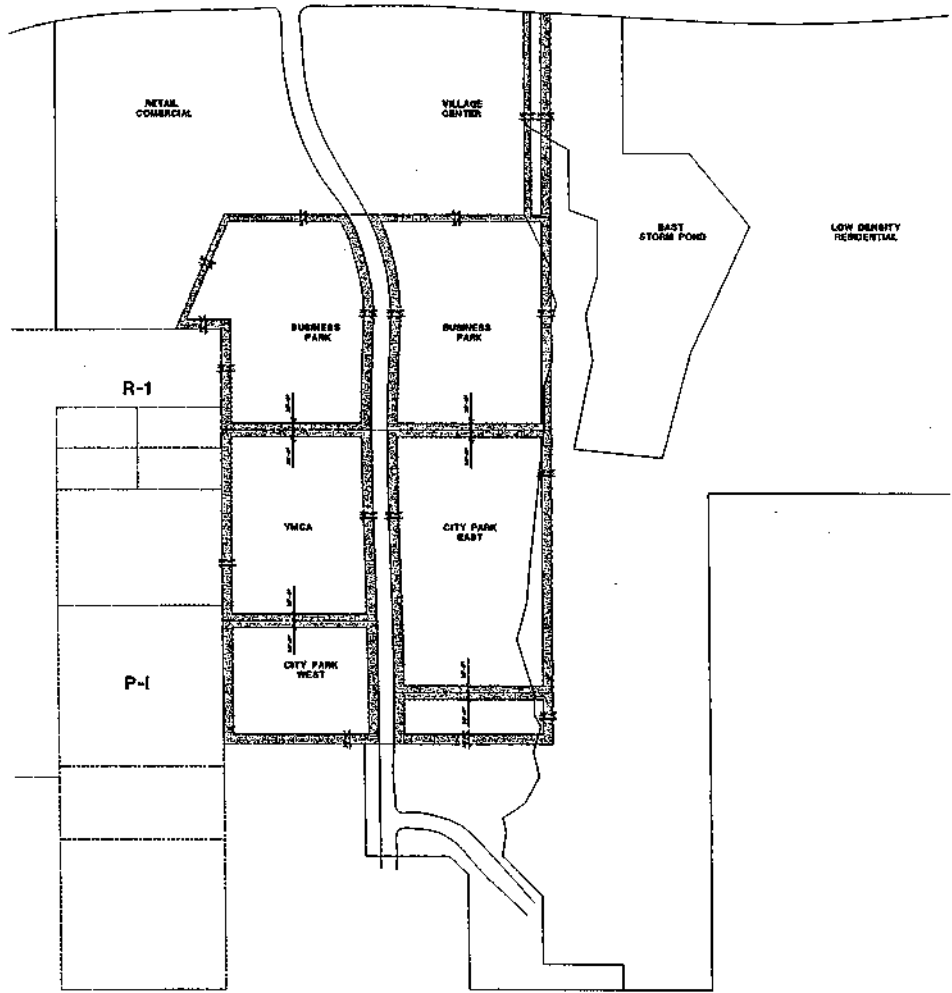
DONAHOU DESIGN GROUP ARCHITECTS, L.L.C.  
 1200 10TH AVENUE SE SUITE 1000 BELLEVUE, WASHINGTON 98003-4000

## EXISTING SETBACKS

\* GRAPH REPRESENTATION OF LOTS ONLY

DATE:	3-20-04
REV #:	2004-08
FILE NAME:	1072.dwg





ND SCALE 1" = 200'-0"

**PCD-BP TEXT AMENDMENT**

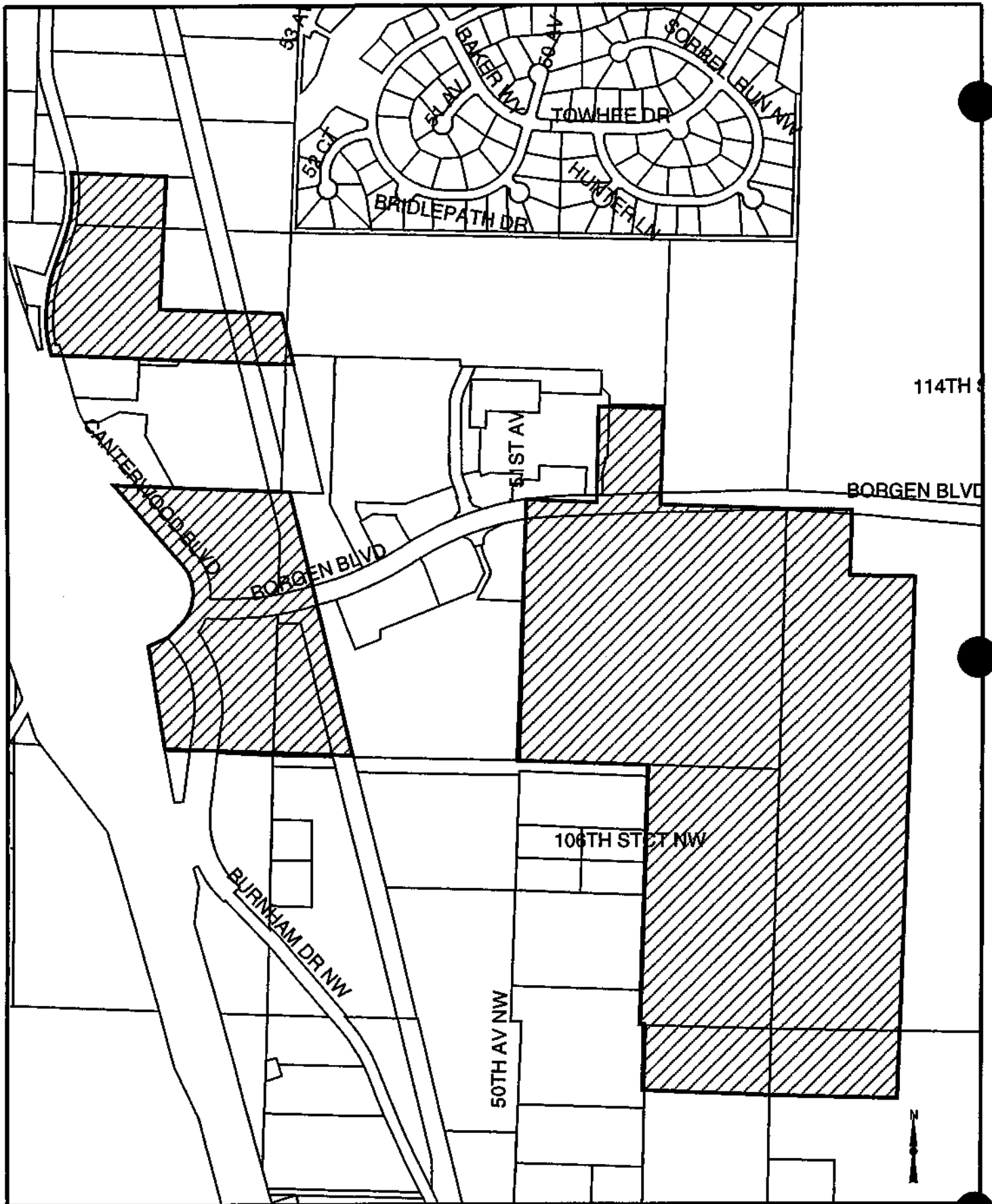
Gig Harbor, Washington

BORGARD DESIGN GROUP ARCHITECTS, LLC

**PROPOSED SETBACKS**

FRONT	5'-0"
REAR	5'-0"
SIDE	5'-0"

\* GRAPH REPRESENTATION OF LOTS ONLY



Planned Community Development  
Business Park (PCD-BP) zone



**City of Gig Harbor Planning Commission  
Minutes of Work-Study Session  
Thursday, May 6, 2004  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Kathy Franklin, Carol Johnson, Theresa Malich, Bruce Gair, Scott Wagner and Chairman Paul Kadzik. Commissioner Dick Allen was absent. Staff present: Steve Osguthorpe and Diane Gagnon.

**CALL TO ORDER:** 6:00 p.m.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of April 1, 2004  
Franklin/Johnson – unanimously approved.

**NEW BUSINESS**

**WORK-STUDY SESSION**

**Dale Pinney, Proposed text amendments reducing setback requirements in the PCD-BP (ZONE 04-03)**

Planning Manager Steve Osguthorpe briefly outlined the staff report and stated that the setbacks, when applied to a smaller lot, seem restrictive. They are, however, more reasonable for the remainder of the property in the PCD-BP.

Dale Pinney then distributed maps of all the sites affected by his proposal with the setback areas highlighted in blue.

The Planning Commission invited the applicant, Mr. Dale Pinney to address the commission regarding his proposal.

Dale Pinney, 1359 N 205<sup>th</sup>, Shoreline WA - Mr. Pinney stated that his biggest concern with his parcel was road access to the residential development on lot 4 and how that would impact the setbacks. Other buildings in the area (i.e., Washington Mutual, etc.) are on 1-2 acre lots. This parcel should support more than one building. Mr. Pinney questioned why such a burden was being placed on the PCD-BP area with setbacks so much larger than in the rest of the city with really no benefit.

Planning Manager Steve Osguthorpe stated that if Mr. Pinney felt that his parcel was different than other lots and more encumbered he should consider applying for a variance. Mr. Pinney acknowledged that that may be necessary.

Mr. Pinney went on to state that the setbacks they are asking for are comparable to other business park zones. He said that the price of this property dictates higher end

uses rather than industrial and asked what we are buffering from if surrounded by commercial.

Commissioner Johnson suggested that perhaps the text could specify different setbacks for smaller lots and additionally stated that the buffer has a higher function to provide ambience and green space.

Planning Manager Steve Osguthorpe replied that it would be highly unusual to base setbacks on lot size as no matter what the size of lot you would still want residential buffered from a commercial use.

Chairman Paul Kadzik commented that when this area was annexed it was all forested and that it was the intent to maintain some of the green space.

Commissioner Scott Wagner asked why there are different setbacks for parking lots versus buildings.

Mr. Osguthorpe read from the intent section of the PCD-BP Chapter 17.54 and stated that the increased setbacks were to protect surrounding residential uses from industrial uses, however, it was adopted prior to the design manual.

Mr. Pinney added that the design manual dictates all these issues such as location of buildings, landscaping and setbacks. He pointed out that the setback behind Target and Albertsons is only 30' and that he felt that the city had all the tools in place in the design manual to accomplish the goals of the PCD-BP.

Discussion followed on the possibility of getting a variance for Mr. Pinney's site. Mr. Osguthorpe read the variance criteria and Mr. Pinney expressed his doubt that he could meet the "reasonable use of the land" criteria.

Planning Manager Osguthorpe suggested to the Planning Commission that they go back to the intent of the zone and use that as a guide and decide what they want to encourage in this zone.

Commissioner Johnson then asked if other cities have attached setbacks to use. Mr. Osguthorpe answered that he believed that reasonably you could assume that.

Mr. Pinney asked why heavy industrial uses were even allowed in the PCD-BP zone.

Commissioner Wagner added that he agreed that larger warehouse uses won't go into Gig Harbor North because they don't pencil financially. Mr. Wagner further stated that he felt a 30' buffer between residential and commercial is more reasonable and supported the idea to make it use specific.

Commissioner Malich pointed out that one of the sites that this amendment would affect borders on residential low which is what we really want to protect.

Commissioner Gair stated that the difference between 30' and 40' is hard to tell and cautioned the Planning Commission to not depend on the design manual as it has a lot of flexibility.

Discussion followed on the road placement and the applicant's concern that if they put in a private road and develop the site as a PRD (which requires 30% open space) the road placement would obliterate the lot.

Mr. Pinney stated that he felt that he could solve the road issue and asked which uses the Planning Commission would consider for reduced setbacks.

Mr. Osguthorpe read the allowed uses in the PCD-BP zone and then the Planning Commission went through the list one at a time and came to an agreement on those that they would consider for a reduced setback.

- A. Research and development facilities – Not reduce
- B. Light assembly and warehousing – Not reduce
- C. Light manufacturing – Not reduce
- D. Service and retail uses which support and are ancillary to the primary uses allowed in the business park district – Reduce
- E. Professional offices and corporate headquarters – Reduce
- F. Distribution facilities – Not reduce
- G. Vocational, trade and business schools – Not reduce
- H. Book and magazine publishing and printing – Not reduce
- I. Financial and investment institutions – Reduce
- J. Commercial Photography, cinematography and video productions facilities – Reduce
- K. Reprographic, computer, courier services, mail and packaging facilities – Not reduce
- L. Trails, open space, community centers – Not reduce
- M. Schools, public and private – Not reduce
- N. Public facilities – Not reduce
- O. Adult family homes and family day care – Reduce

As a conditional use:

- A. Hospitals – Not reduce

Planning Manager Steve Osguthorpe asked what the Planning Commission was proposing for the reduction and pointed out the Design Review Board is recommending a proposed definition of a dense vegetative buffer which may work in this instance also and provide continuity between the regulations.

Discussion followed on the buffers for parking lots.

Chairman Kadzik suggested a 75' setback for those uses allowing the reduction along with 30' of that being retained landscaping.

Mr. Pinney stated that he felt that 40' was a reasonable compromise and would bring back a proposal maintaining the current parking lot setback and allowing a reduced setback of 40' for those uses listed.

It was decided that this item would be brought back for a public hearing on June 3rd, 2004.

**NEXT REGULAR MEETING:**

May 20, 2004  
June 3, 2004

Meeting Cancelled  
Public Hearing

**ADJOURN:**

**MOTION:** Move to adjourn at 8:00 p.m.  
Johnson/Malich – unanimously approved

CD recorder utilized:  
Disc #1 Track 1

**City of Gig Harbor Planning Commission  
Minutes of Public Hearing  
Thursday, July 1, 2004  
Gig Harbor Civic Center**

**PRESENT:** Commissioners Carol Johnson, Kathy Franklin, Bruce Gair, Dick Allen, Chairman Paul Kadzik. Staff present: Steve Osguthorpe .

**CALL TO ORDER:** 7:00 p.m.

**APPROVAL OF MINUTES:**

Deferred until the next meeting as not everyone had a copy.

The Chairman opened the public hearing at 7:02.

**PUBLIC HEARING**

**Dale Pinney, Proposed text amendments reducing setbacks requirements in the PCD-BP (ZONE 04-03) –**

Planning Manager Steve Osguthorpe gave a staff report giving the history of the PCD-BP zone and the current proposal. He stated that in 1997 Gig Harbor North Development regulations were adopted. The idea at that time was a planned approach to the entire area coordinate uses amongst uses, carefully mixed and integrated. Large setbacks were intended for where intense uses were abutting residential zones. The current proposal is to create two categories of uses which place more impacting type of uses in one, less in another. The proposal defines different setbacks for each category with more impacting uses having a larger setback. Staff is recommending that the Planning Commission conduct the public hearing and forward a recommendation for approval to the City Council.

Chairman Paul Kadzik opened the Public Hearing

**Dale Pinney, First Western Development, 1359 N 205<sup>th</sup>, Shoreline**

Mr. Pinney stated that he felt that the ordinance as drafted meets with what was discussed in the work session with the Planning Commission and that the proposed setbacks were more appropriate and accomplished the city's goals.

Commissioner Allen asked staff at what point would each site be classified. Mr. Osguthorpe replied that a site would not be classified, it depends on the use and that the use would be classified more or less at the time of application.

There being no further comment Chairman Kadzik closed the public hearing at 7:07

**Motion:** Move we recommend adoption of the ordinance as written.  
Johnson/Franklin – motion carried unanimously.

**Design Manual Update -**

Planning Manager Steve Osguthorpe outlined his staff report stating that the Design Review Board has been working on the update for over 2 years resulting in a major rewrite of the formatting and some substantive changes. Mr. Osguthorpe then distributed a summary of the proposed changes, highlighting the incorporation of the design manual into the zoning code and the correction of inconsistencies between the design manual and the zoning code. He reported that staff believes this is a positive change in the administration of the design standards and the Design Review Board voted unanimously to recommend approval to the Planning Commission. As a result of the previous work sessions held with the Planning Commission the only changes recommended are (1) the elimination of provisions for extra height on primary structures within the entire height restriction area rather than just on parcels within defined view corridors, (2) an additional Industrial Building Exemption for interior parking lot landscaping provided that additional trees will be provided in the perimeter landscaping (this was done to provide for maneuverability of large semi trucks), (3) to redefine transition zone standards to not apply between R-1 and R-2 and R-2 and R-3 zones and (4) only those buildings within 200 feet of subject site would be used for calculation of building footprint size in zone transition areas.

Additionally, Mr. Osguthorpe stated that the Design Review Board had proposed exclusion of alders and maples from significant vegetation and the Planning Commission had expressed concern with that proposal.

Mr. Osguthorpe distributed a letter he had received from Wade Perrow and reminded the Planning Commission of a letter from Lita Dawn Stanton which was e-mailed or delivered to them. He further stated that the City Attorney had drafted a response, of which he then gave a copy to Ms. Stanton and the Planning Commission. He stated that the response basically reiterated the need to be specific in our standards due to state case law and also included a full copy of the article referenced in Ms. Stanton's letter.

Chairman Paul Kadzik asked if staff could remind everyone of the schedule set forth by the city council for adoption of the Design Manual. Planning Manager Steve Osguthorpe replied that the next scheduled work session with the Planning Commission is July 15<sup>th</sup> at which time they should finalize their recommendation to the City Council. The City Council has directed that this item be brought to them on August 9<sup>th</sup> and 23<sup>rd</sup>, 2004.

Chairman Kadzik opened the public hearing with a limit of 10 minutes per person.

David Fisher, North Pacific Design, 2727 Hollycroft, Gig Harbor



Mr. Fisher submitted two letters, one from Gordon Rush and one from himself. He stated that he had gone through the design manual changes and noted that it seemed clearer and more organized and felt that this would help streamline design review. Mr. Fisher expressed his concern that prescriptive review could prevent a better design and suggested that there be a time limit such as; 20 business days for staff review, 20 days for a report and if necessary 20 days for the Design Review Board report. He pointed out that on page 8 of the manual there is a reference to the DRB not recommending approval for dimensional standards and that a variance is required. He recommended that these standards be in the municipal code. He felt that the introduction was clear on the two paths of design review. However, there should be more options and suggested that the Planning Commission delete the alley requirement. Mr. Fisher went on to say that he was concerned with the zone transition standards and comparing one's building size and height to that of one's neighbors. If the building is right next door (within 100') it may make sense but 200' away does not seem reasonable. He felt that there should be an option to increase the size by about 1/3. He further stated that the exterior materials section should not be specific but rather have two categories (premium and commodity) and proposed that at least 50% of the building be premium materials (premium being brick and stone). Additionally he suggested providing options for de-emphasizing garage doors.

Commissioner Bruce Gair asked Mr. Fisher about the delays he had experienced and what he felt had caused them. Mr. Fisher stated that he felt it was a lack of clarity and SEPA not running concurrently with the Design Review Process.

Jake Bujacich, 3607 Ross Ave., Gig Harbor

Mr. Bujacich wished to comment on the proposed expansion of the Historic District and observed that when this is adopted there will be approximately over 100 homes in the historic district. He noted that there were approximately nine building lots without homes not counting the parcel behind Yacht Club and the Franich residence. He noted that there are new houses that have been built and according to this manual those houses would not be able to be built because of the setbacks. Now according to this manual you can build as close as 3' from the rear lot line or 5' from the side. Mr. Bujacich stated that it seems almost impossible to build and that this document makes it take too long. He then cited a case where he had to plant 9 trees for taking down a Madrona without a permit. He felt that we should use the height restrictions and zoning to regulate and stated that we created this quaint little village without any of these regulations.

Mr. Osguthorpe stated that the update addresses the tree issue as the Design Review Board has recommended a selective thinning and maintenance provision.

Wade Perrow, 9119 North Harborview Dr., Gig Harbor

Mr. Perrow thanked Mr. Osguthorpe for sending an early copy of the Design Manual for review and said that up to this point we haven't been able to comment. Mr. Perrow

went over his written comments and suggested the city hold a work study session like what is being done with the Building Size Analysis so that we can have more of a dialog. He pointed out that his comments only encompass the introduction and stated that he still needed to take the time to thoroughly review the manual. Mr. Perrow cautioned that once this manual is codified it's a zoning ordinance and you will have to go to the Hearing Examiner and the DRB won't have any authority. He asked how do you define equivalent or superior design solutions. He stated that in the update 50% of the lots have to have an alley and asked what if you are on a steep hillside and can only have 25%. He noted that now that it's codified the DRB can't rule. This is legislating good taste. He suggested that the city get a land use attorney other than Carol Morris to review it so that we can have real design review instead of legislating it. Design is art and art needs to be flexible. He cited an example of metal siding which can only be on certain parts of the building and pointed out that Albertsons and Home Depot have metal siding and everyone thinks it looks great.

Chairman Kadzik asked to let the record show that Commissioner Scott Wagner arrived.

Lita Dawn Stanton, 111 Raft Island, Gig Harbor

Ms. Stanton stated that her comments were not intended to derail the design manual, however she did have concerns for the process. She voiced her hope that there will be changes to manual along with a hope that there be a good look at the process. She thanked Carol Morris for the lengthy response. She then noted that on page 5 of the manual in the overview item c) originally said facilitate early and ongoing communication, a dialog among project proponents, neighborhoods and city's design review board in a public meetings setting. She stated that the Design Review Board had changed that language and until tonight she didn't realize how important the word neighborhood is. She then noted that some of the staff don't live in this area and don't know what's in your backyard and don't know what Gig Harbor North looks like. She said that if you take the public out of the process you will lose resources and insights about those properties. I can't tell you what color to paint your house and I shouldn't have that authority in my opinion. Ms. Stanton told the Planning Commission they could pass either manual as far as she was concerned and with as much time as it's taken to get this far she would assume you would because there are some good things in the manual. She noted that Seattle has a process in place and that they are 10 years ahead of us and they've got some good things to look at. She pointed out that on the Design Review Board agenda it states: all public attendance is encouraged, and that this is a public meeting not a public hearing; public testimony will not be accepted at this time. This is our manual, this is our town and we should say what it looks like, and if you are not opening the doors and encouraging public input in some capacity then you shut the door on your own community. Ms. Stanton further emphasized that she didn't mean to say that things in it aren't valid but she thought that the process was broken and encouraged the commission to please, caveat your decision with some kind of work sessions or some kind of ability to review other cities and their procedures.

Jason Fowers 18526 Newell Rd, Poulsbo

Mr. Fowers noted that he doesn't live in the community, however, loved it here and have been designing here for the last couple of years and wanted to continue to do so. He stated that his comments were from experiencing Design Review. He then went on to explain that in his reading of the Design Manual and the section on retention of 20% retention of significant vegetation, if that happens to be in the middle of your lot you are out of luck and can't replace with like kind. He then asked if that is that different now.

Planning Manager Steve Osguthorpe responded that the three-tree replacement issue pertains to trees that were required to be retained but which were subsequently lost. It was not intended to allow a replacement process without efforts to retain what exists.

Mr. Fowers stated that he didn't mean to throw out the design manual as some have here tonight, and further stated that he actually thought a lot of it was good. He then went through his outline which was submitted to the Planning Commission. He voiced his concern with zone transition buffer and stated that he had encountered problems especially for commercial lots when the 40% buffer is in a zone across the street from a residential zone, when doing a commercial project if your project doesn't have frontage you tend to lose that street presence and without that street presence the business will fold. He continued to say that then he would have to make the building the same size as the residence across the street within 200' feet and, again, commercially speaking, if there is a 1700 sq ft residence across the street it becomes a lot more expensive to try to build multiple small 1700 sq ft buildings as opposed to a larger building. He pointed out that when you are in the same zone you could build a 6000 sq ft home right next to a 1700 sq ft home but not a commercial building. He proposed to allow commercial across from residential and to use modulation like we have done in the past. He continued with his next item which was the 20% retention of significant vegetation. He pointed out that commercial developments usually need the center of their lots. He expressed that he did not understand the proposal to perhaps exclude alders and maples and asked why save one species of tree and say another doesn't matter, voicing his opinion to have that deleted. Mr. Fowers went on to explain his recommendation to allow replacement of like kind vegetation during the construction process not just after it, along with a requirement to put an 8' or 12' tree. His next issue was the modulation of all facades and ridges. He quoted from the manual and stated that the problem again is more a functional one, to make all facades fit within this requirement, stating that he agreed that it is important on prominent facades but to also require it on the non prominent facades is a waste of material.

Planning Manager Steve Osguthorpe pointed out that facades which are not prominent do not have to comply with the design standards.

Randy Boss, Seattle Pacific Realty.

Mr. Boss stated that he had sat in with several of the design review sub-committee meetings with planning staff and expressed his pleasure with being able to have an opportunity to talk rather than listen. He further stated that one of the issues that came

before the city council during the west side rezone and building size discussion was the 65,000 sq ft boxes that were going to be allowed over on the west side and that discussion at that point was that the city council eliminated the PUD process for any developments that went into that development then came back at the end of the day and said okay PUDs would be okay except that we can't change the box size through a PUD. He thought that some of the comments that came out tonight could be addressed through the PUD process, stating that the planning department and the city could to take a look at a project using the design manual as a guideline and someone who wanted to vary would have the opportunity for a PUD process that would then invite the public to the table and give the planning department and the public input on that project. He encouraged a discussion or a blending of those two and somehow get the PUD process incorporated into the design manual because he thought that it would address some of the concerns that the public has about the process and the restrictions that they perceive would be imposed by this manual. He then stated that he had 40 complaints but would limit those to less than a dozen tonight and speak on them quickly. He noted that the code says that your building can't be any bigger than the building adjacent to it and can't be any taller than the building next to it if you're next to a transitional line. He felt that that would place a real burden on property owners not just commercial property owners but any property owner. He had talked to the real estate director for Safeway and he said he was not happy about their recent remodel. He wanted to tear the structure down and build a new Safeway, even though they spent 3 million dollars on it. When he went to the City they handed him the new design manual which isn't in affect yet and told him if he was going to do this you might as well comply with this manual which required him to take his building and push it up to the front setback line with the parking behind the store. Even with that the buildings across the street were a gas station and a bank existed, the transitional zoning wouldn't have allowed the building to be built. He thought this was detrimental to the city and one of the unintended consequences of the design manual. He then addressed the requirement for no retaining walls to be over 6 feet tall. He continued to say that Costco is now in the process of trying to get a site plan approved with the city and they have a 27 foot grade elevation change so they have to build a retaining wall on the back in order to get a flat site. If there is no modification to this or if Costco is required to comply with this requirement it would eliminate the Costco from that site. Furthermore, in talking with the developer on that site, Costco is the primary structure on that site and therefore would have to be on the front property line and the city wasn't happy with having a 130,000 square foot building on the front property line and of course this is heresay, but I understand that Costco is going to be required to apply for a variance to move their building to the back of the property so as not to have such a massive structure up on the street. He felt that this was a ludicrous regulation to have to comply with. He stated that the PUD process would have worked to resolve that issue. Mr. Boss then addressed common areas equal to 10% of the gross square footage of the project. He explained that on Pt Fosdick there is 30 acres where the WalMart/Fred Meyer site was and if you joined that with Safeway you have about 47 acres. He went on to explain that if you were to redevelop that whole property obviously there's 4700 square feet of required common area which is over an acre of common area that would have to be developed. That's an extreme taking that someone has to pay commercial

property taxes on. He pointed out that shoppers park at the front door, go in the store and then go home and that nobody takes their groceries and then sits and has a sandwich before they go home. He admitted it may be a nice amenity for the community but if you go up to Gig Harbor North there is never anyone there. It looks nice but the cost is too high.

Continuing, Mr. Boss stated that one of the parties that's interested in bringing a new theatre to Gig Harbor would have to have the front of their building facing Pt Fosdick with a 40' buffer in front of it so the front door of the theatre is behind 40' of trees with the parking to the side or behind the building. He guaranteed that the theatre is never coming to Gig Harbor with that design requirement in place. He felt that there should be some review criteria and suggested that maybe it's the PUD.

Commissioner Allen asked in the case of the theatre illustration what is it that drives the 40' buffer?

Mr. Boss replied that it was the property line setback requirement.

Mr. Allen further queried if it was in the transition zone. Mr. Boss replied that he understood that the entire perimeter must be retained.

Mr. Osguthorpe clarified that the zoning code requires that all significant trees within the setback be retained and that the design manual just states 20% retention, so the 40' requirement does not apply. He further pointed out that the front setback is actually 20' in the B-2 zone and if there were significant trees within that setback they would have to be retained. Additionally he explained that the side yard setback in the B-2 is 5' or 10' and the side would only be 40' if it was abutting a different zone.

Commissioner Wagner asked about the zone transition standards and would they apply to this site. Planning Manager Steve Osguthorpe answered that no, they were not abutting a different zone.

Mr. Boss further stated that he had heard that Costco was having difficulty in the process here in Gig Harbor and they originally wanted to go to Port Orchard but they were given headaches there and decided to come to Gig Harbor North but now have renewed their interest in Port Orchard. He felt that would be a significant loss for the revenue stream in Gig Harbor of over about a million dollars in sales tax revenue.

Chairman Kadzik asked if it was possible to have written comments from Mr. Boss. He answered that his comments tonight were off the cuff and he would e-mail written comments.

Chuck Hunter, 8829 Franklin Ave., Gig Harbor

Mr. Hunter stated that he was a member of the Design Review Board but was speaking on his own behalf. He stated that the Design Review Board had never held up a project

more than over a couple of meetings. He explained that the requirements of the design manual are carried out by the staff and the applicant and that usually the DRB will deal with 3 or 4 items, sometimes 1 item and you can guess that one item isn't going to affect a project very much. He further stated that most of the time things have been resolved between staff and the applicant when it gets to us. He expressed that he would like to see the DRB be able to look at the entire staff report when a project reaches a certain threshold to provide a little oversight as to how staff is interpreting the manual. He further stated that in the manual itself he would like to see less formulas and no prohibited items and a chance for a little more creativity. He expressed skepticism about codifying the manual. He agreed that he couldn't argue with the staff or the city attorney about the good points and bad points about codifying it but thought that once it's codified it will be more intimidating and reduce creativity. Mr. Hunter recommended that there be some kind of standard operating procedure for staff and noted design review really went off the track here about 2-3 years ago when a couple of projects in the view basin that we had a lot questions about resulted in a gag order. The next project we tried to review while not being able to have any dialogue with the applicant. It's impossible to negotiate and be able to have a dialogue. He went on to explain that he'd like to see some neighborhood participation on the design review board. He reminded the Planning Commission that the same requirement in downtown Gig Harbor doesn't necessarily work at Point Fosdick and stated that there was a need for a narrow scope in the view basin and then lessen the scope as you move outward until you get to the UGA. Continuing, he explained that Design Review was great and does good things but he would hate to see every building looking the same.

Dale Pinney, First Western Development, 1359 N 205<sup>th</sup> Shoreline Washington

Mr. Pinney stated that the city has a design manual because it has a general idea of what the city should look like and there are some good clinical examples of the pitfalls of trying to be too specific about how you get to your vision. He voiced his concern in regard to what Mr. Perrow was saying in that all regulations have of a little bit of wiggle room but the zoning code is pretty strict and how you would interpret "that the alternative design meets the intent of each general requirement". "Intent" is not a zoning code type of word, those are flexibility words. He stated that he went through two design review processes and they were more of an administrative process. The DRB had an administrative role to aid you in meeting the city's vision while having the flexibility to make it's own decisions. He noted that somebody said the theatre had to be on the front setback line and if we were to submit a building design that looks really good I'm not sure that if this is part of the zoning code the DRB would still have the flexibility to decide these things. He recommended that there be a vehicle in this document that specifically says the DRB has parameters, that they are not stuck with certain provisions. He cautioned the Planning Commission in their review of the residential sections of the manual and recommended that cottage design style and it's pedestrian features shouldn't be excluded. He went to say that in the parking garage section the Planning Commission should consider that any parking garage is probably more than 20 cars and asked if underground parking had been considered the same as a parking garage.

Jake Bujacich, 3607 Ross Ave., Gig Harbor

Mr. Bujacich asked if he has a lot in a residential district now and wants to build a 3500 sq ft building in Waterfront Millville and if the residences across the street within 200 feet are smaller, would he have to put in a 40' buffer.

Planning Manager Steve Osguthorpe replied that under the proposed changes if the use is allowed in the opposing zone then the zone transition standards do not apply, yet if it's an office building across from a residence in a different zone the zone transition standards would apply and pointed out that you would have the choice to reflect the scale of the abutting buildings or buffering. He further stated that the current and proposed standards allow a smaller structure in front and a larger structure in the rear to reflect the scale.

Mr. Bujacich voiced his concern that we enjoy the view of the bay and if you start building residences and putting up a buffer, you'll be building a wall. Additionally he noted that there should not be a choice to build as close as 5' to the side property line. He explained that if you have to put a driveway on one side and then you are forced to do the 5' on one side.

Commissioner Allen added that Waterfront Millville allows duplexes so all of the distance on the shoreline side of the street of Harborview from Rosedale to Stinson is Waterfront Millville. If someone wanted to build a 4000 square foot duplex and has a 900 square foot house across the street he has a problem.

Lita Dawn Stanton, 111 Raft Island, Gig Harbor

Ms. Stanton stated that she would like to comment on just one more thing. She stated that if you are taking the flexibility out of the manual by getting very prescriptive with your formulas where are you going to accommodate flexibility. She noted that in Seattle's municipal code they require a pre-application conference and these meetings happen early on. She expressed that if we don't have these meetings early on with neighborhoods we lose an opportunity and that this particular process works to include neighborhoods. She felt that if you restrict it to five people on a board and three staff members then you have to provide prescriptive mechanisms to kick into place because you don't have access to your neighborhood. She further pointed that the Design Review Board had unanimously agreed to send a letter to the Planning Commission regarding the public works requirements being taken out completely from the manual and voiced her concern with the Public Works department not having to comply with design review.

Planning Manager Steve Osguthorpe replied that the Seattle Code is certainly worth looking at. Mr. Osguthorpe went on to explain that there are two processes in Seattle, with one being a Design Review Board process and the other being an Administrative Process very much like we have here. He explained that a project in which goes before

the Design Review Board in Seattle does require both a pre-application conference and also what they call an early design guidance public meeting with the Design Review Board. The pre-application conference is a staff meeting the same as what we have here in Gig Harbor; not a neighborhood meeting. He further stated that we have pre-application meetings with applicants before they actually submit an application and that we certainly encourage those. Mr. Osguthorpe continued that the only time that you have to have the early design guidance public meeting in Seattle is if you choose the Design Review Board process and in both situations, however, whether it's administrative by the director or the Design Review Board, the Seattle DRB is also a recommending body only; not a decision making body. He noted the difference between Seattle and Gig Harbor is that unlike the Hearing Examiner making the final decision on design review based upon the DRB recommendation, Seattle's Planning Director makes the final decision based upon the recommendation of the DRB. He summarized by saying those are the two processes much like what we have here and that he would expect that probably the reason for the dual process in Seattle was the same as our concern for the need to provide specificity because the state has mandated a turnaround time for review. He explained that we have the 120 day requirement to turn a project around and you usually cannot do that with the DRB process. Therefore, the alternate administrative process gives the applicant specific information to decide if they want to meet those or not which allows them the opportunity to meet that turnaround time. He closed by saying the Seattle process is definitely worth looking at as there are some similarities and some differences as well.

Dale Pinney, First Western Development, 1359 N 205<sup>th</sup> Shoreline Washington:

Mr. Pinney stated that he had just completed a 70,000 sq ft medical office building in the Northgate design review district in Seattle and that their design review method is very prescriptive. He said that they have a very different vision of what their city is going to be than Gig Harbor does. He noted that it was much easier to meet their standards and they have very wide tolerances and there is lots of stuff you can do but a totally different perspective. He felt that it was not a good comparison. He noted that the pre-design meetings were very different and the interactive process in Seattle was very much more impersonal, cold and calculating.

Commissioner Wagner asked Mr. Pinney, as a developer who has recently been through both processes, which process he enjoyed going through better and if the Seattle process was more timely. Mr. Pinney replied that the vision is different because their districts are set up throughout the city and their design manuals are set up differently. He stated that their Design Review Manual is part of their zoning code and you look at it and you know what you can do. He noted that here in Gig Harbor there are so many different alternatives to achieve your vision that he wasn't sure we should try to be that narrow and prescriptive in how you want to do it or let the DRB give their opinion. He explained that the process in Gig Harbor was very difficult and time consuming for larger box-type projects because he couldn't build it the way the book said, so he had to work with the Design Review Board to come up with ways that met the intent or that the Board thought looked good and further explained that that



inherently is going to take a lot more time. He emphasized that if he turned a project in that is a prescriptive project he'd probably go right through. The types of projects like Gig Harbor North, large medical projects or Safeways, don't fit your manual very well. He further stated that if you want to build a Costco or a Safeway or a large theatre or a big office building then the rules and the vision that Gig Harbor has doesn't fit that project very well.

Commissioner Wagner clarified that if you wanted to build Randy Boss's project in Seattle, a Safeway and a theatre and go through their process in a commercial zone would that be a lot simpler.

Mr. Pinney explained that Safeways and big theatres don't look like the Civic Center building, which he thought was what Gig Harbor wanted. Smaller buildings can meet your vision much easier.

Commissioner Allen asked who is making these discretionary calls when you have to tweak the system to build these buildings.

Mr. Pinney replied that the most difficult part for us has been getting through the Design Review Board because it's the most constraining element, so in our process it was staff, the DRB and us putting up examples and trying to win DRB support for our ideas by making something fatter, taller, wider, different to the point that it was acceptable. He explained that zoning code review is clinical and that once you had design review approval the zoning code part was a lot simpler.

Commissioner Gair commented that the rules need to be formulated for the neighborhood. He noted that Seattle has been around a long time and have a lot of staff and they have a different approach for each neighborhood. He pointed out that we are trying to write one manual for all and cautioned that we have the potential to make a big mistake because we are growing.

There being no further testimony Chairman Paul Kadzik closed the Public Hearing. The next meeting is a work-study session on July 15<sup>th</sup>, 2004.

Commissioner Wagner stated that there was a lot of discussion tonight on zone transitions and was wondering if there is a way to make a map to see all the properties that are affected by transition zones. He noted that the topic came up 60-70% of the time and asked if a staff member could make a map that shows this. Commissioners Gair and Allen agreed that it would be helpful to see this on a larger scale.

Mr. Osguthorpe stated that he would pull together something.

Commissioner Gair noted that this was a tough time of year to get everyone together and asked if there was any possibility that we could open up the next work session as a public hearing in case anyone else wants to say something.

Mr. Osguthorpe pointed out that as a work session you can still allow public dialogue. Commissioner Johnson reiterated that the City Council has given the Planning Commission an August deadline. Mr. Osguthorpe stated that the Council may want to have their own workshops or public hearings and that those work sessions with the City Council will need to have definite agendas so that discussion topics do not drift and repeat.

Commissioner Allen expressed a concern that we haven't received enough comments from citizens at large. He noted that there are some changes within the Historic District which really affect people's property and they don't realize it. He further stated that he didn't like these things happening without ordinary citizens being aware.

Commissioner Johnson asked what process had been used to solicit participation in the building size analysis. She further pointed out that she would really like to use the next work session to discuss the issues as a Commission so that they could formulate a recommendation and let the City Council hold a public hearing.

Chairman Kadzik expressed his wish to also get staff's input on the public comments received and their validity. He suggested that the next meeting be used to go over the comments presented tonight. Commissioner Wagner reiterated the need for time to discuss everyone's concerns.

Planning Manager Steve Osguthorpe went over some of the comments presented and those which he would clarify further at the next meeting and pointed out that the design manual update was not initiated to create an entire new design review process.

Commissioner Gair suggested that the design review process be looked at separately from the design manual update.

Planning Manager Steve Osguthorpe pointed out that specific notice was sent out to every property owner affected by the expansion of the historic district and staff received 3 or 4 phone calls but those residents did not show up at the hearing. He suggested that the requirement that all property owners meet the historic district standards be removed.

Chairman Kadzik stated that the next meeting would be a work-study session and suggested that if there is time we could allow for some input at that meeting.

**NEXT REGULAR MEETING:**

July 15, 2004 at 6pm – Work Study Session

**ADJOURN:**

**MOTION:** Move to adjourn at 10:00 p.m.  
Johnson/Allen – unanimously approved



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: CONTINUED PUBLIC HEARING AND FIRST READING OF**  
**ORDINANCE SUPPORTING A CONTINUATION OF A**  
**MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS**  
**FOR DEVELOPMENT IN THE HEIGHT RESTRICTION AREA**  
**FOR A PERIOD OF SIX MONTHS**  
**DATE: AUGUST 23, 2004**

**INFORMATION/BACKGROUND**

The City Council adopted Ordinance No. 965 which imposed an immediate moratorium for a period of up to six-months on the acceptance of applications for new development or re-development within the height restriction area on July 12, 2004. Adoption of this Ordinance was predicated on the City Council holding a public hearing on the proposed moratorium within sixty (60) days after adoption (RCW 35A.63.220, RCW 36.70A.390).

The City Council held a public hearing on this moratorium on August 9, 2004 at which time no public testimony was received. At that time, Council directed staff to prepare draft proposed findings of fact supporting the continuation of the moratorium for a period of six-months and further directed that the public hearing be continued to August 23, 2004. The City Attorney has prepared proposed findings of fact for Council's consideration

**RECOMMENDATION**

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

Additionally, if it is determined that the continuation is justified, staff would recommend that the following amendment be made to Section A:

A. "Exempt Development Permits" shall include all of the following permit applications for "development" or "development activity" defined in GHMC Section 19.14.010(24) and 19.14.010(26), a copy of which is attached to this Ordinance as Exhibit B, which:

1. are not subject to any other moratorium in the City;
2. were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance;

3. propose development or a development activity on property located outside the City height restriction area (*see*, Subsection B below);  
and 4. are project(s) located on publicly owned property and which building(s) do not exceed one thousand (1,000) square feet in size;  
5. include sign permits and marinas without upland buildings; and  
6. are building permits associated with development applications which were determined complete by City staff before the effective date of this Ordinance.

"Exempt development permits" shall also include any permits meeting all of the above criteria and which involve interior remodeling of existing structures anywhere in the City, as long as the remodeling will not increase the size of the existing structure in footprint, height, bulk and scale.

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE ADOPTION OF FINDINGS AND CONCLUSIONS TO SUPPORT AN EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT WITHIN THE HEIGHT RESTRICTION AREA AS SHOWN ON THE OFFICIAL HEIGHT RESTRICTION MAP, UNTIL THE CITY FINISHES THE PROCESS OF CODE REVIEW AND AMENDMENT RELATING TO BUILDING SIZE LIMITATIONS, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, AND CONFIRMING THE MAINTENANCE OF THE MORATORIUM FOR SIX MONTHS AFTER INITIAL IMPOSITION AS THE EFFECTIVE PERIOD.**

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WHEREAS, the City Council of the City of Gig Harbor may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications and utility extension agreements, as long as the City Council holds a public hearing on the proposed moratorium within sixty (60) days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, on July 12, 2004, the Gig Harbor City Council passed Ordinance No. 965 imposing an immediate moratorium on the acceptance of acceptance of applications for new development or certain types of re-development within the height restriction area as shown on the official height restriction map; and

WHEREAS, the City held a public hearing on the moratorium on August 9, 2004, which was continued until August 23, 2004; and

WHEREAS, the City Council desires to enter findings and conclusions in support of the continued maintenance of the moratorium for a period of six months after the

adoption of the moratorium (which would be on or about January 12, 2005); Now,  
Therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. **“Exempt Development Permits”** shall include all of the following permit applications for “development” or “development activity” defined in GHMC Section 19.14.010(24) and 19.14.010(26), a copy of which is attached to this Ordinance as Exhibit B, which:

1. are not subject to any other moratorium in the City;
2. were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance;
3. propose development or a development activity on property located outside the City height restriction area (see, Subsection B below); and
4. are project(s) located on publicly owned property and which building(s) do not exceed one thousand (1,000) square feet in size.

“Exempt development permits” shall also include any permits meeting all of the above criteria and which involve interior remodeling of existing structures anywhere in the City, as long as the remodeling will not increase the size of the existing structure in footprint, height, bulk and scale.

B. **“Non-Exempt Development Permits”** shall include any permits or permit applications for any “development activity” as defined in GHMC Section 19.14.010(24) and 19.14.010(26) proposed to take place on property located within the City's height restriction area, submitted after the effective date of this Ordinance. Any permits

meeting this description that were submitted to the City but not determined complete by City staff on or before the effective date of this Ordinance, are also "non-exempt development permits." The "height restriction area" is that area shown on the City's official height restriction area map, as adopted in GHMC Section 17.62.020, a copy of which is attached to this Ordinance as Exhibit A.

Section 2. Purpose. The purpose of this moratorium is to allow the City adequate time to hold additional workshops, public hearings and meetings on the possibility of adopting regulations which limit building size in the Height Restriction Zone (attached as Exhibit A hereto, and incorporated herein by this reference).

Section 3. Findings and Conclusions in Support of Moratorium. On August 9 and August 23, 2004, the City Council held a public hearing on the moratorium imposed on July 12, 2004.

A. John P. Vodopich, AICP, City of Gig Harbor Community Development Director, provided the chronology of events and background for the Council's consideration of building size limitations. Mr. Vodopich explained that the Council has been interested in this issue since April 2001, and that there have been at least ten related meetings and hearings. On August 11, 2003, the City commissioned a consultant to prepare a report on whether the City should adopt limitations on building size. This report issued on January 12, 2004, and was considered in three Planning Commission/City Council meetings/hearings. After a review of the report, the City Council decided to hold work-study sessions to determine whether building sizes should be limited in the City, and if so, where. These work-study sessions were held on June 1, June 7, June 21, July 6, and July 19, 2004. On June 21, 2004, the City Council

decided that the height restriction area was the most vulnerable to new development that would be incompatible with the type of regulations considered during the work-study sessions, and directed the City staff to draft a moratorium ordinance.

On July 12, 2004, the ordinance was presented to the City Council as an emergency measure, and the Council passed it as Ordinance No. 965, to be effective immediately. A hearing was scheduled on Ordinance No. 965, to take place on August 9, 2004.

On August 9, 2004, the Council held the public hearing. No members of the public asked to speak on the issue. A letter was received from an attorney, Traci Shallbetter, dated August 4, 2004, stating that there were "serious concerns" with Ordinance 965. Ms. Shallbetter would not identify her clients.

The City Council decided to continue the public hearing until August 23, 2004, and directed the City staff to draft findings and conclusions to support the maintenance of the moratorium, consistent with the Council's comments at the last workshop session.

B. [ reserved for public hearing testimony]

C. [ reserved for public hearing testimony]

D. [ reserved for public hearing testimony]

E. After this testimony and staff reports, the City Council discussed the need for the moratorium. First, the Council stated that the workshop sessions on the subject of building size had confirmed their belief that many residents were concerned about the size of structures that could be built under the City's existing regulations. Residents are concerned because of recent development that was permitted under the existing regulations, including the City's Design Review Manual. Many were under the



impression that the City's Design Review Manual would have more of an impact in the regulation of height, bulk and scale with regard to new development, but were unhappy with certain new structures. The Council identified the height restriction zone as an area that is vulnerable to massively-sized structures because the height of structures is limited there. It is important to ensure that these low structures are proportionately constructed, which is a difficult task, given that the value of property in the area has increased, and property owners would like to ensure that they can develop their properties to the fullest extent possible.

The City is currently updating the Design Review Manual, and it may be that some of the concerns can be addressed in the amendments to the Manual. However, there is no way to know until the City performs the full analysis, which involves two Council work-study sessions on the subject of the Design Review Manual.

The City Council determined to maintain the moratorium imposed by Ordinance No. 965 for the six-month period allowed by state law, based on the above facts. The Council noted that there was no testimony or evidence introduced in opposition of the moratorium. The Council concluded that maintenance of the moratorium was required for the public health, safety and welfare, given that the majority of the persons testifying at the Building Size Analysis work-study sessions were in favor of building size limitations, and without a moratorium, there was a risk that development applications for the type of development not favored by the public could become vested under the existing codes and constructed, thereby thwarting the efforts of the Council.

Section 4. Moratorium Maintained. A moratorium shall be maintained on the acceptance of all non-exempt development permit applications for property inside and

outside the City limits for six months, which began on the date of adoption of Ordinance No. 965. The City Council hereby directs the City Clerk to schedule a public hearing on the extension of the moratorium, to be held before expiration of this moratorium on or about January 12, 2005. The Council shall make the decision to terminate the moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 6. 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 \_\_\_th day of September, 2004.

\_\_\_\_\_  
MAYOR Gretchen Wilbert

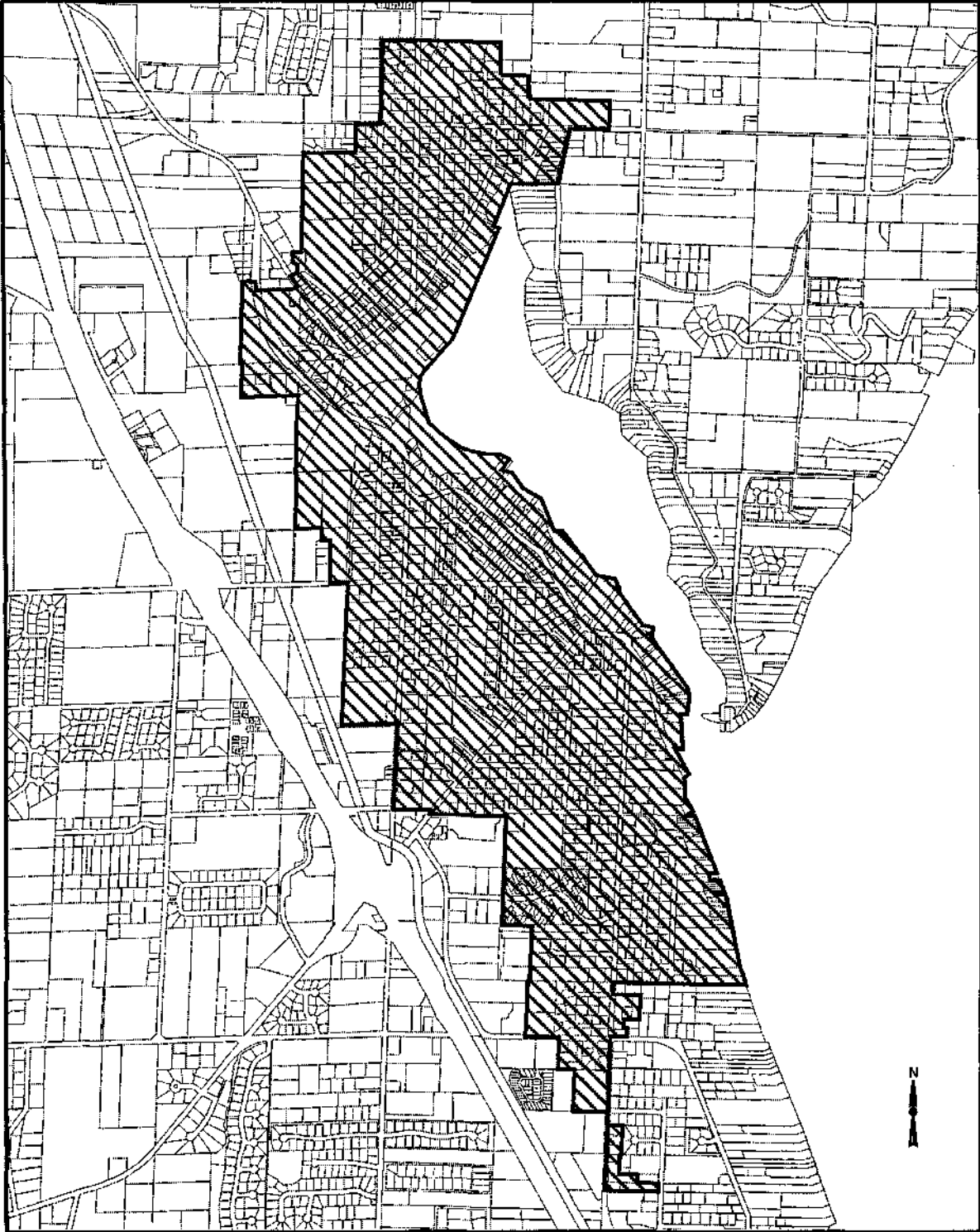
ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Molly Towslee, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Carol A. Morris, City Attorney

# Exhibit "A"



Height Restriction Area

# Exhibit "B"

## Gig Harbor Municipal Code

### Chapter 19.14

#### CONCURRENCY AND IMPACT FEE PROGRAM DEFINITIONS


##### 19.14.010 Definitions.

24. "Development activity" or "development" means any construction or expansion of a building, structure, or use; any change in the use of a building or structure; or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the city.

26. "Development permit" or "project permit" means any land use permit required by the city for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site specific rezones, and, for purposes of the city's concurrency ordinance, shall include applications for amendments to the city's comprehensive plan which request an increase in the extent or density of development on the subject property.



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: STEPHEN MISIURAK, P.E., CITY ENGINEER**   
**SUBJECT: PUBLIC HEARING AND FIRST READING OF ORDINANCE**  
**TRAFFIC CONCURRENCY MANAGEMENT UPDATE**  
**DATE: AUGUST 23, 2004**

**INFORMATION/BACKGROUND**

The Growth Management Act, (Chapter 36.70A RCW) requires the City to adopt a concurrency ordinance for transportation facilities "which prohibits development approval if the development causes the level of service on a locally-owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of the development are made concurrent with the development" (RCW 36.70A.060(6)(b)). The City has adopted traffic and water concurrency regulations (Chapter 19.10 GHMC). The traffic concurrency regulations exempt public transportation facilities, public libraries, public parks and recreational facilities (GHMC Section 19.10.003(C)).

The Washington Court of Appeals recently invalidated an exemption created by the City of Bellevue in its traffic concurrency regulations. *Bellevue v. East Bellevue Community Municipal Corporation*, 119 Wn. App. 405, 81 P.3d 148 (2003). The court held that: "under the clear and plain language of RCW 36.70A(6)(b), the City cannot create exemptions to its concurrency ordinance." Bellevue petitioned the Washington Supreme Court for review of this decision, but the Court has not yet issued a decision.

**ANALYSIS**

The City Attorney has recommended that the City eliminate the traffic concurrency exemptions in GHMC Section 19.10.003(C). Adoption of this ordinance will not mean that property owners submitting development applications for single family residential structures will be required to perform full-blown traffic analyses. A traffic report will only be required for development that will generate more than 15 new p.m. peak hour trips. For the single family residential structure, 1.02 peak p.m. trips are generated.

**FISCAL IMPACTS**

There will be no fiscal impacts as a result of this ordinance.

**RECOMMENDATION**

Staff recommends that the Council adopt this ordinance as presented at the second reading.

ORDINANCE NO. \_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO CONCURRENCY MANAGEMENT, ELIMINATING CERTAIN EXEMPTIONS FROM WATER AND TRAFFIC CONCURRENCY MANAGEMENT RELATING TO PUBLIC TRANSPORTATION FACILITIES, PUBLIC PARKS AND RECREATIONAL FACILITIES AND PUBLIC LIBRARIES, IN ACCORDANCE WITH RECENT CASE LAW; ELIMINATING THE EXEMPTION FOR DEVELOPMENT OR CHANGES IN USE INITIATED PRIOR TO OR DURING 1999, ALL OF WHICH HAVE NOW BEEN COMPLETED; ELIMINATING THE 15 NEW P.M. PEAK HOUR TRIP THRESHOLD FOR TRANSPORTATION FACILITIES; AMENDING GIG HARBOR MUNICIPAL CODE SECTION 19.10.003.**

---

WHEREAS, the Growth Management Act requires that the City of Gig Harbor adopt a concurrency ordinance for transportation facilities "which prohibits development approval if the development causes the level of service on a locally-owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of the development are made concurrent with the development" (RCW 36.70A.070(6)(b)); and

WHEREAS, the City has adopted concurrency regulations for water and transportation (chapter 19.10 of the Gig Harbor Municipal Code); and

WHEREAS, the City's code currently exempts public transportation facilities, public parks and recreational facilities and public libraries from the concurrency requirements (GHMC Section 19.10.003(C)); and

WHEREAS, the Washington Court of Appeals recently determined that "under the clear and plain language of RCW 36.70A.070(6)(b), the City cannot create exemptions to its concurrency ordinance." *Bellevue v. East Bellevue Community Municipal Corporation*, 119 Wn. App. 405, 81 P.3d 148 (2003); and

WHEREAS, although the parties in this case have petitioned the Washington Supreme Court for review, the Supreme Court has not yet determined whether it will accept review; and

WHEREAS, even if the Washington Supreme Court accepts review, a final decision will not likely be immediately forthcoming; and

WHEREAS, in Section 19.10.003(A), there is an exemption for construction or change in use initiated pursuant to a development permit issued prior to the effective date of Ordinance 818, which was the Concurrency Ordinance, adopted in 1999; and

WHEREAS, all construction or changes in use initiated pursuant to a development permit issued prior to 1999 has long since been complete, and this exemption is no longer required; and

WHEREAS, the City Council desires to conform its concurrency requirements to this recent decision; Now, Therefore:

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

Section 1. Section 19.10.003 of the Gig Harbor Municipal Code is hereby amended to read as follows:

Section 2. Section 13.02.040 of the Gig Harbor Municipal Code is hereby amended to read as follows:

**19.10.003 Exempt development.**

~~A. Development Permit Issued Prior to Effective Date of this Chapter. All construction or change in use initiated pursuant to a development permit issued prior to the effective date of the ordinance codified in this chapter shall be exempt from the requirements of this chapter; provided however, that no development permit shall be extended except in conformance with this chapter. If the city determines that a previously issued development permit has lapsed or expired, pursuant to the applicable development regulations, then no subsequent development permit shall be issued except in accordance with this chapter.~~

~~A. DeMinimis Development. After the effective date of the ordinance codified in this chapter, No development activity (as defined in Chapter 19.14 GHMC) shall be exempt from the requirements of this chapter unless specifically exempted in subsection C of this section. the permit is listed below. C. Exempt permits. The following types of permits are not subject to exempt from the capacity reservation certificate (CRC) process because they do not create additional long-term impacts on road facilities or water capacity in the City's water system:~~

- ~~1. Administrative interpretations;~~
- ~~2. Sign permit;~~
- ~~3. Street vacation;~~
- ~~4. Demolition permit;~~
- ~~5. Street Use permit;~~
- ~~6. Interior alterations with no change of use;~~
- ~~7. Excavation/clearing permit;~~
- ~~8. Hydrant use permit;~~
- ~~9. Right-of-way permit;~~
- ~~10. Single-family remodeling with no change of use;~~
- ~~11. Plumbing permit;~~
- ~~12. Electrical permit;~~
- ~~13. Mechanical permit;~~
- ~~14. Excavation permit;~~
- ~~15. Sewer connection permit;~~
- ~~16. Driveway or street access permit;~~
- ~~17. Grading permit;~~
- ~~18. Tenant improvement permit;~~
- ~~19. Fire Code permit;~~
- ~~20. Design Review approval.~~



Notwithstanding the above, if any of the above permit applications will generate ~~15~~ any new p.m. peak hour trips or increase water consumption, such application shall not be exempt from the requirements of this chapter.

- ~~2. The portion of any project used for any of the following purposes is exempt from the requirements of this chapter:~~
  - ~~a. Public transportation facilities;~~
  - ~~b. Public parks and recreational facilities;~~
  - ~~c. Public libraries.~~

~~Notwithstanding the exemptions hereunder provided, the traffic resulting from an exempt use shall nonetheless be included in computing background traffic for any nonexempt project. In addition, the water capacity used by an exempt project shall be included in the computations for the capacity remaining in the city's water system.~~

~~B. D. Threshold for Other Exempt Permits.~~

1. Traffic. This chapter shall apply to all development applications for development or redevelopment if the proposal or use will generate any more than 15 new p.m. peak hour trips.
2. Water. This chapter shall apply to all development applications for development or redevelopment if the proposal or use requires water from the city's water system. In addition, this chapter shall apply to existing developments to the extent that the property owner requires water for a use not disclosed on a previously submitted water service application under GHMC 13.02.030 or a previously submitted application for a capacity reservation certificate.
3. If the permit application will generate more than 15 new p.m. peak hour trips, a transportation capacity evaluation application and report shall be required in conformance with Chapter 19.10 of the Gig Harbor Municipal Code.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4 Effective Date. This Ordinance shall take effect and be in full force after publication of the approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor  
this \_\_\_\_ day of \_\_\_\_\_, 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.

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

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

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO CONCURRENCY MANAGEMENT, ELIMINATING CERTAIN EXEMPTIONS FROM WATER AND TRAFFIC CONCURRENCY MANAGEMENT RELATING TO PUBLIC TRANSPORTATION FACILITIES, PUBLIC PARKS AND RECREATIONAL FACILITIES AND PUBLIC LIBRARIES, IN ACCORDANCE WITH RECENT CASE LAW; ELIMINATING THE 15 NEW P.M. PEAK HOUR TRIP THRESHOLD FOR TRAFFIC CONCURRENCY EXEMPTIONS; ELIMINATING THE EXEMPTION FOR DEVELOPMENT OR CHANGES IN USE INITIATED PRIOR TO OR DURING 1999, ALL OF WHICH HAVE NOW BEEN COMPLETED; AMENDING GIG HARBOR MUNICIPAL CODE SECTION 19.10.003.**

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

APPROVED by the City Council at their regular meeting of \_\_\_\_\_,  
2004.

BY: \_\_\_\_\_

MOLLY M. TOWSLEE, CITY CLERK



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: FIRST READING OF ORDINANCE – NORTHARBOR BUSINESS**  
**CAMPUS REZONE - REZ 03- 02**  
**DATE: AUGUST 23, 2004**

**INTRODUCTION/BACKGROUND**

On October 29, 2003, Michael Perrow of Donkey Creek Holdings submitted a request to the City of Gig Harbor to rezone property located at 9700 Burnham Drive from Mixed Use District Overlay (MUD) to Employment District (ED).

A public hearing on the proposed rezone was held before the Hearing Examiner on April 21, 2004. The written decision to approve the rezone was issued by the Hearing Examiner on April 30, 2004. To effectuate the rezone, it must now be adopted by ordinance. A map and legal description, (exhibit A), draft ordinance approving the rezone, and a copy of the Hearing Examiner's decision, are all attached for the Council's consideration.

**POLICY CONSIDERATIONS**

**1. APPLICABLE LAND-USE POLICIES/CODES**

**a. Comprehensive Plan:**

The City of Gig Harbor Comprehensive Plan Land Use Map designates the site as MUD – Mixed Use District Overlay. Page 10 of the Land Use Element of the Comp Plan states that the mixed use designation is an area of commercial/employment, office, and multifamily uses which link the downtown area with SR-16.

**b. Zoning Code:**

Allowable uses in the proposed ED designation are defined in Section 17.45.020 of the Gig Harbor Municipal Code.

The Gig Harbor Municipal Code specifies general criteria for the approval of zoning district map amendments, including, but not limited to site specific rezones (17.100.035). These criteria include the following:

- A. The application for the Zoning District Map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;
- B. The application for the Zoning District amendment must further or bear a substantial relationship to the public health, safety and general welfare;
- C. No substantial detrimental effect will be caused by the granting of the application for amendment; and
- D. The proponents of the application have the burden of proof in demonstrating that the conditions have changed since the original zoning or original designation for the property on the Zoning District Map.

## **2. REZONE APPROVAL POLICIES/CODES**

Site-specific rezones are considered a Type III application, which are approvable by the Hearing Examiner as per GHMC 19.01.003(A). Rezones must be adopted by ordinance as per GHMC 17.100.070 under the provisions of Chapter 1.08 GHMC.

## **FISCAL IMPACTS**

There are no adverse fiscal impacts associated with this rezone. It is expected that development allowed by the rezone would generate additional jobs within the City.

## **RECOMMENDATION**

This is a first reading only and requires no action.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REZONING 12 ACRES FROM AN RB-2 (RESIDENTIAL AND BUSINESS) DISTRICT WITH A MUD (MIXED USE DISTRICT) OVERLAY TO AN ED (EMPLOYMENT DISTRICT) ZONING DISTRICT, LOCATED AT 9700 BURNHAM DRIVE, ASSESSOR'S PARCEL NUMBERS 4001020010, 4001020020, 4001020030, 4001020040, 4001020050, 4001020060, 4001020100, 4001020110, 4001020120, 4001020130, 4001020140, 4001020161, 4001020190, & 4001020200.

**WHEREAS**, Mr. Michael Perrow of Donkey Creek Holdings, represents the owner of contiguous parcels located at 9700 Burnham Drive, Assessor's Parcel Numbers 4001020010, 4001020020, 4001020030, 4001020040, 4001020050, 4001020060, 4001020100, 4001020110, 4001020120, 4001020130, 4001020140, 4001020161, 4001020190, & 4001020200; and

**WHEREAS**, RCW 36.70.545 requires consistency between comprehensive plans and development regulations; and

**WHEREAS**, Mr. Perrow has requested that the property be rezoned from RB-2 (residential and business) with a MUD (Mixed Use District Overlay) to ED (employment district); and

**WHEREAS**, a SEPA threshold mitigated determination of non-significance (DNS) for the proposed rezone was issued on February 16, 2004; and

**WHEREAS**, the SEPA threshold decision was not appealed; and

**WHEREAS**, the proposed rezone is a Type III action as defined in GHMC 19.01.003(B) for site-specific rezones; and

**WHEREAS**, A final decision for a Type III application shall be rendered by the Hearing Examiner as per GHMC 19.01.003(A); and

**WHEREAS**, a public hearing on the proposed rezone was held before the Hearing Examiner on April 21, 2004, at which time no public input was received except from the applicant; and

**WHEREAS**, the Hearing Examiner approved the proposed rezone in his decision dated April 30, 2004; and

**WHEREAS**, rezones must be adopted by ordinance as per GHMC 17.100.070 under the provisions of Chapter 1.08 GHMC; and

**WHEREAS**, the City Council considered this Ordinance during its regular City Council meeting of September 13, 2004;

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

Section 1. The real property located at 9700 Burnham Drive, Assessor's Parcel Numbers 4001020010, 4001020020, 4001020030, 4001020040, 4001020050, 4001020060, 4001020100, 4001020110, 4001020120, 4001020130, 4001020140, 4001020161, 4001020190, & 4001020200 and as shown on attached Exhibit "A", is hereby rezoned from RB-2 (residential and business) with MUD (Mixed Use District Overlay) to ED (employment district).

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 by this section.

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

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2004.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
MOLLY TOWSLEE, City Clerk

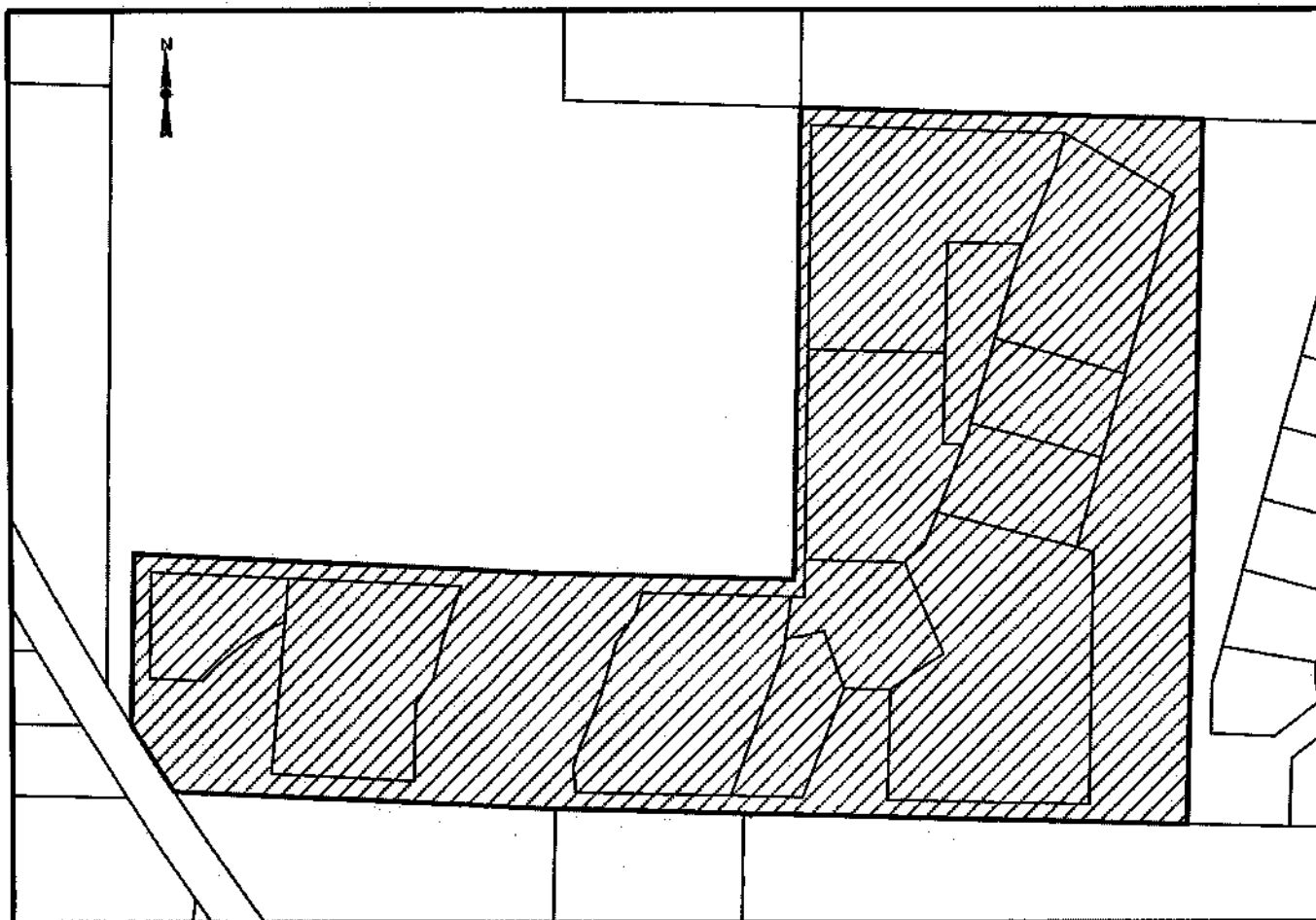
APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
CAROL A. MORRIS

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



# Exhibit "A"



ATR Parcels: 4001020141, 4001020200, 4001020121, 4001020110, 4001020100, 4001020161, 4001020190, 4001020010, 4001020051, 4001020061, 4001020020, 4001020030, and 4001020040,

## Northharbor Business Campus Legal Description

BEGINNING AT THE MOST WESTERLY NORTHWESTERLY CORNER OF TRACT "A" OF NORTHARBOR BUSINESS CAMPUS BINDING SITE PLAN AS RECORDED UNDER AUDITOR'S FILE NUMBER 9403090799 RECORDS OF SAID COUNTY; THENCE SOUTH  $01^{\circ}00'37''$  WEST ALONG THE WEST LINE OF SAID TRACT "A" 290.03 FEET TO THE NORTHEASTERLY MARGIN OF BURNHAM DRIVE N.W. AND THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1880.00 FEET (THE RADIUS CENTER BEARS NORTH  $58^{\circ}13'58''$  EAST); THENCE SOUTHEASTERLY ALONG SAID MARGIN AND SAID CURVE 48.33 FEET THROUGH A CENTRAL ANGLE OF  $01^{\circ}28'24''$ ; THENCE LEAVING SAID MARGIN AND CONTINUING ALONG THE SOUTHERLY LINE OF SAID TRACT "A" OF SAID BINDING SITE PLAN SOUTH  $88^{\circ}19'50''$  EAST 585.17 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE SOUTH  $88^{\circ}17'13''$  EAST 886.08 FEET TO THE MOST SOUTHEASTERLY CORNER OF SAID TRACT "A"; THENCE NORTH  $01^{\circ}11'48''$  EAST ALONG THE EASTERLY LINE OF SAID TRACT "A"; 997.91 FEET TO THE MOST NORTHEASTERLY CORNER OF SAID TRACT "A" AND SAID BINDING SITE PLAN; THENCE NORTH  $88^{\circ}17'14''$  WEST ALONG THE NORTHERLY LINE OF SAID TRACT "A" 553.51 FEET TO THE MOST NORTHERLY NORTHWEST CORNER OF SAID TRACT "A" AND SAID BINDING SITE PLAN; THENCE SOUTH  $01^{\circ}11'48''$  WEST ALONG THE WESTERLY LINE OF SAID TRACT "A" 667.90 FEET TO AN ANGLE POINT IN SAID TRACT "A" AND SAID BINDING SITE PLAN; THENCE NORTH  $88^{\circ}17'13''$  WEST ALONG THE NORTH LINE OF SAID TRACT "A" 332.87 FEET; THENCE CONTINUING ALONG SAID NORTH LINE NORTH  $88^{\circ}19'50''$  WEST 612.64 FEET TO THE TRUE POINT OF BEGINNING

SUBJECT TO EASEMENTS, RESTRICTIONS AND CONDITION AS OF RECORD OR UNWRITTEN.

RECEIVED  
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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF GIG HARBOR

IN RE: the Application of Michael Perrow  
for Donkey Creek Holdings,

REZ 03-02  
  
FINDINGS, CONCLUSIONS AND  
DECISION

**I. SUMMARY OF DECISION**

The application for a rezone from an RB-2 (Residential and Business) zoning district with a Mixed-Use district (MUD) overlay to an ED (Employment District) of approximately 13.62 acres located at 9700 Burnham Drive, within the City of Gig Harbor, is hereby approved.

**II. SUMMARY OF PROCEDURE**

A. Hearing. An open record hearing was held in the City of Gig Harbor on April 21, 2004.

B. Exhibits. The examiner admitted the following exhibits:

1. Staff Report to the Hearing Examiner for REZ 03-02, dated April 15, 2004;
2. Donkey Creek Holdings, LLC's Rezone Application for Northarbor Business Campus, 9700 Burnham Drive;
3. Zoning map; and
4. Gig Harbor Ordinance No. 921 and related Staff Report.

ORIGINAL

1 C. Pleadings. In addition, the hearing examiner considered the following:

2 1. City's Brief on Rezone Process, dated April 10, 2004.

3 D. Testimony. The following individuals provided testimony under oath:

4 1. The Staff Report was presented by Rob White, Senior Planner.

5 **III. FINDINGS**

6 1. The applicant is requesting the rezone of approximately 13.62 acres located at  
7 9700 Burnham Drive (Assessor's Parcel Nos. 4001020010, 4001020020, 4001020030,  
8 4001020040, 4001020050, 4001020060, 4001020100, 4001020110, 4001020120,  
9 4001020130, 4001020140, 4001020161, 4001020190, and 4001020200). The rezone would  
10 change the existing RB-2 (Residential and Business) zoning district with a Mixed-Use  
11 district (MUD) overlay to ED (Employment District). The site is adjacent to a single-family  
12 development on the south and east. The proposed rezone is in follow-up to an amendment  
13 to the land use designation on the site that was approved in 2001. Ex. 1.

14 2. The land use designation of the subject site was changed in 2001 from Mixed Use  
15 to Employment District at the request of the applicant, who wishes to expand the types of  
16 uses allowed within their current facility. Ex. 1.

17 3. The subject site totals 13.62 acres. The subject parcel is zoned RB-2 with MUD  
18 overlay. Current land use is General Warehouse Storage according to the Pierce County  
19 Tax Assessor. Adjacent zoning and land use is as follows:

20 North: PCD-RMD, Planned Community Development-Residential Medium Density  
21 West: RB-2 Zone, Residential and Business  
22 South: RB-2 Zone, Residential and Business  
23 East: R-1 Zone, Residential Low

24 Ex. 1.

25 4. The City of Gig Harbor Comprehensive Plan Land Use Map designates the site as  
Mixed Use. Page 10 of the Land Use Element of the Comp Plan states that mixed use is an  
area of commercial/employment, office and multi-family located along principle collector  
routes which link the downtown area with SR-16. Commercial/Employment activity with a  
Mixed Use caters to a customer base beyond the immediately surrounding neighborhoods  
due to its location along the collector routes. The individual commercial/employment  
activities or developments in these areas are not of a size or character to be considered  
"major" activity or traffic generating uses. Multifamily and office uses are allowed within  
the Mixed Use area to provide economic diversity and housing opportunities near transit  
routes and business activities. The proposal is consistent with the comprehensive plan land  
use designation. Ex. 1.

1 5. Allowable uses in the proposed ED designation are defined in Section 17.45.020  
2 of the Gig Harbor Municipal Code. Light manufacturing, light assembly and warehousing  
3 are among the more intensive permitted uses in the zone. In general, the ED zone allows  
4 more intense uses than the RB-2 zone.

5 6. Gig Harbor Municipal Code Section 17.100.035 specifies general criteria for the  
6 approval of zoning district map amendments, including, but not limited to, site specific  
7 rezones. The examiner addresses these criteria as follows:

8 A. The application for the Zoning District Map amendment must be consistent  
9 with and further the goals, policies and objectives of the comprehensive plan;

10 • The Washington State Growth Management Act (GMA) requires  
11 consistency between the adopted Comprehensive Plan and the adopted development  
12 regulations. RCW 36.70A.040(4)(d). The proposed zoning district map amendment is  
13 consistent with and furthers the goals, policies, and objectives of the comprehensive plan, as  
14 the plan was last amended. This review criterion is satisfied.

15 B. The application for the Zoning District amendment must further or bear a  
16 substantial relationship to the public health, safety and general welfare;

17 • The proposed zoning district map amendment furthers or bears a  
18 substantial relationship to the public health, safety, and general welfare by providing an  
19 appropriate location for employment opportunities within an existing facility, and by  
20 bringing site zoning into conformity with the comp plan. This review criterion is satisfied.

21 C. No substantial detrimental effect will be caused by the granting of the  
22 application for amendment; and

23 • No substantial detrimental effect will be caused by the granting of the  
24 application for amendment. Consistency between the zoning code and the comp plan is a  
25 positive effect. No evidence of detrimental effect exists in this record. This review criterion  
is satisfied.

D. The proponents of the application have the burden of proof in demonstrating  
that the conditions have changed since the original zoning or original designation for the  
property on the Zoning District Map.

• Conditions have changed since the original zoning or original  
designation for the property on the Zoning District Map. Specifically, the passing of the  
comprehensive plan amendment (Ex. 4) allowing the proposed level of activity that the ED  
zone permits requires a rezone to implement the Comprehensive Plan change. This review  
criterion is satisfied.

7. The City of Gig Harbor SEPA Responsible Official has reviewed the request and  
issued a Determination of Non-significance (DNS) for this request on December 17, 2003.

1 The appeal period for this SEPA determination ended on March 1, 2004. No comments or  
2 appeals have been submitted.

3 8. The legal notice of the proposed action and scheduled hearing was published in  
4 the Peninsula Gateway on March 3, 2004, and again on April 7, 2004. Notice was also  
5 posted on the subject site on March 1, 2004. Finally, notice was mailed to property owners  
6 within 300 feet of the subject property on March 1, 2004. No public comments have been  
7 submitted. Ex. 1.

#### 8 IV. CONCLUSIONS

9 A. Jurisdiction. The examiner has jurisdiction to rule on the rezone pursuant to  
10 GHMC 17.96.030. See, Ordinance No. 903.

11 B. Criteria for Review. The criteria for the examiner to consider in deciding on a  
12 rezone application are set forth at GHMC 17.100.035.

13 C. Conclusions Based on Findings. The examiner adopts the findings set forth  
14 above, and accordingly concludes that all of the criteria necessary to grant the requested  
15 application have been satisfied.

#### 16 V. DECISION

17 Based on the above findings and conclusions, Rezone Application REZ 03-03,  
18 relating to the rezone from a RB-2 zoning district with a MUD overlay to an Employment  
19 District of approximately 13.62 acres located at 9700 Burnham Drive within Gig Harbor, is  
20 APPROVED.

#### 21 VI. PARTIES OF RECORD

- 22 1. Rob White, Senior Planner  
23 City of Gig Harbor  
24 3510 Grandview Street  
25 Gig Harbor, WA 98335
2. Michael Perrow  
Donkey Creek Holdings  
P.O. Box 245  
Gig Harbor, WA 98335

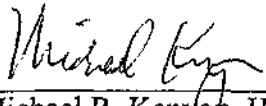
#### 26 VII. APPEAL OF EXAMINER'S DECISION

27 Pursuant to GHMC 19.01.003 as amended by Ordinance No. 903, any party of  
28 record with standing to file a land use petition and desiring to appeal the examiner's decision  
29 may do so within 10 working days of the issuance of this decision by filing an appeal with  
30 the City, as specified in GHMC 19.06.004.

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DATED this 30 day of April, 2004.

KENYON DISEND, PLLC

  
\_\_\_\_\_  
Michael R. Kenyon, Hearing Examiner

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF GIG HARBOR

In Re: the Application of Michael Perrow  
for Donkey Creek Holdings

REZ 03-02

DECLARATION OF MAILING

I, Margaret Starkey, declare and state:

1. I am a citizen of the State of Washington, over the age of 18 years, not a party to this action, and competent to testify as a witness herein.

2. On April 30, 2004, I mailed by regular mail, postage prepaid, a copy of the Findings, Conclusions and Decision in this matter, and this Declaration of Mailing, to:

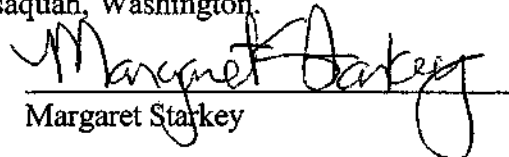
Michael Perrow  
Donkey Creek Holdings  
P.O. Box 245  
Gig Harbor, WA 98335

3. On April 30, 2004, I mailed by regular mail, postage prepaid, the *original* Findings, Conclusions and Decision in this matter, and this Declaration of Mailing, to:

Rob White, Senior Planner  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 30th day of April, 2004, at Issaquah, Washington.

  
Margaret Starkey



COMMUNITY DEVELOPMENT DEPARTMENT

**TO: MAYOR WILBERT AND CITY COUNCIL**  
**FROM: JOHN P. VODOPICH, AICP**  
**COMMUNITY DEVELOPMENT DIRECTOR**  
**SUBJECT: FIRST READING OF ORDINANCE – BURNHAM DRIVE**  
**COMMERCIAL PARK REZONE - REZ 03- 03**  
**DATE: AUGUST 23, 2004**

**INTRODUCTION/BACKGROUND**

On October 29, 2003, Michael Perrow of Donkey Creek Holdings submitted a request to the City of Gig Harbor to rezone property located at 10421 Burnham Drive from Mixed Use District Overlay (MUD) to Employment District (ED).

A public hearing on the proposed rezone was held before the Hearing Examiner on April 21, 2004. The written decision to approve the rezone was issued by the Hearing Examiner on April 30, 2004. To effectuate the rezone, it must now be adopted by ordinance. A map and legal description, (exhibit A), draft ordinance approving the rezone, and a copy of the Hearing Examiner's decision, are all attached for the Council's consideration.

**POLICY CONSIDERATIONS**

**1. APPLICABLE LAND-USE POLICIES/CODES**

**a. Comprehensive Plan:**

The City of Gig Harbor Comprehensive Plan Land Use Map designates the site as MUD – Mixed Use District Overlay. Page 10 of the Land Use Element of the Comp Plan states that the mixed use designation is an area of commercial/employment, office, and multifamily uses which link the downtown area with SR-16.

**b. Zoning Code:**

Allowable uses in the proposed ED designation are defined in Section 17.45.020 of the Gig Harbor Municipal Code.

The Gig Harbor Municipal Code specifies general criteria for the approval of zoning district map amendments, including, but not limited to site specific rezones (17.100.035). These criteria include the following:



- A. The application for the Zoning District Map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;
- B. The application for the Zoning District amendment must further or bear a substantial relationship to the public health, safety and general welfare;
- C. No substantial detrimental effect will be caused by the granting of the application for amendment; and
- D. The proponents of the application have the burden of proof in demonstrating that the conditions have changed since the original zoning or original designation for the property on the Zoning District Map.

## **2. REZONE APPROVAL POLICIES/CODES**

Site-specific rezones are considered a Type III application, which are approvable by the Hearing Examiner as per GHMC 19.01.003(A). Rezones must be adopted by ordinance as per GHMC 17.100.070 under the provisions of Chapter 1.08 GHMC.

### **FISCAL IMPACTS**

There are no adverse fiscal impacts associated with this rezone. It is expected that development allowed by the rezone would generate additional jobs within the City.

### **RECOMMENDATION**

This is a first reading only and requires no action.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REZONING 12 ACRES FROM AN RB-2 (RESIDENTIAL AND BUSINESS) DISTRICT WITH A MUD (MIXED USE DISTRICT) OVERLAY TO AN ED (EMPLOYMENT DISTRICT) ZONING DISTRICT, LOCATED AT 10421 BURNHAM DRIVE, ASSESSOR'S PARCEL NUMBERS 0222312034, 0222312033, & 0222312035.

**WHEREAS**, Mr. Michael Perrow of Donkey Creek Holdings, represents the owner of contiguous parcels located at 10421 Burnham Drive, Assessor's Parcel Numbers 0222312034, 0222312033, & 0222312035.; and

**WHEREAS**, RCW 36.70.545 requires consistency between comprehensive plans and development regulations; and

**WHEREAS**, Mr. Perrow has requested that the property be rezoned from RB-2 (residential and business) with a MUD (Mixed Use District Overlay) to ED (employment district); and

**WHEREAS**, a SEPA threshold mitigated determination of non-significance (DNS) for the proposed rezone was issued on February 16, 2004; and

**WHEREAS**, the SEPA threshold decision was not appealed; and

**WHEREAS**, the proposed rezone is a Type III action as defined in GHMC 19.01.003(B) for site-specific rezones; and

**WHEREAS**, A final decision for a Type III application shall be rendered by the Hearing Examiner as per GHMC 19.01.003(A); and

**WHEREAS**, a public hearing on the proposed rezone was held before the Hearing Examiner on April 21, 2004, at which time no public input was received except from the applicant; and

**WHEREAS**, the Hearing Examiner approved the proposed rezone in his decision dated April 30, 2004; and

**WHEREAS**, rezones must be adopted by ordinance as per GHMC 17.100.070 under the provisions of Chapter 1.08 GHMC; and

**WHEREAS**, the City Council considered this Ordinance during its regular City Council meeting of September 13, 2004;

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

Section 1. The real property located at 10421 Burnham Drive, Assessor's Parcel Numbers 0222312034, 0222312033, & 0222312035 and as shown on attached Exhibit "A", is hereby rezoned from RB-2 (residential and business) with MUD (Mixed Use District Overlay) to ED (employment district).

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 by this section.

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

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2004.

CITY OF GIG HARBOR

\_\_\_\_\_  
GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

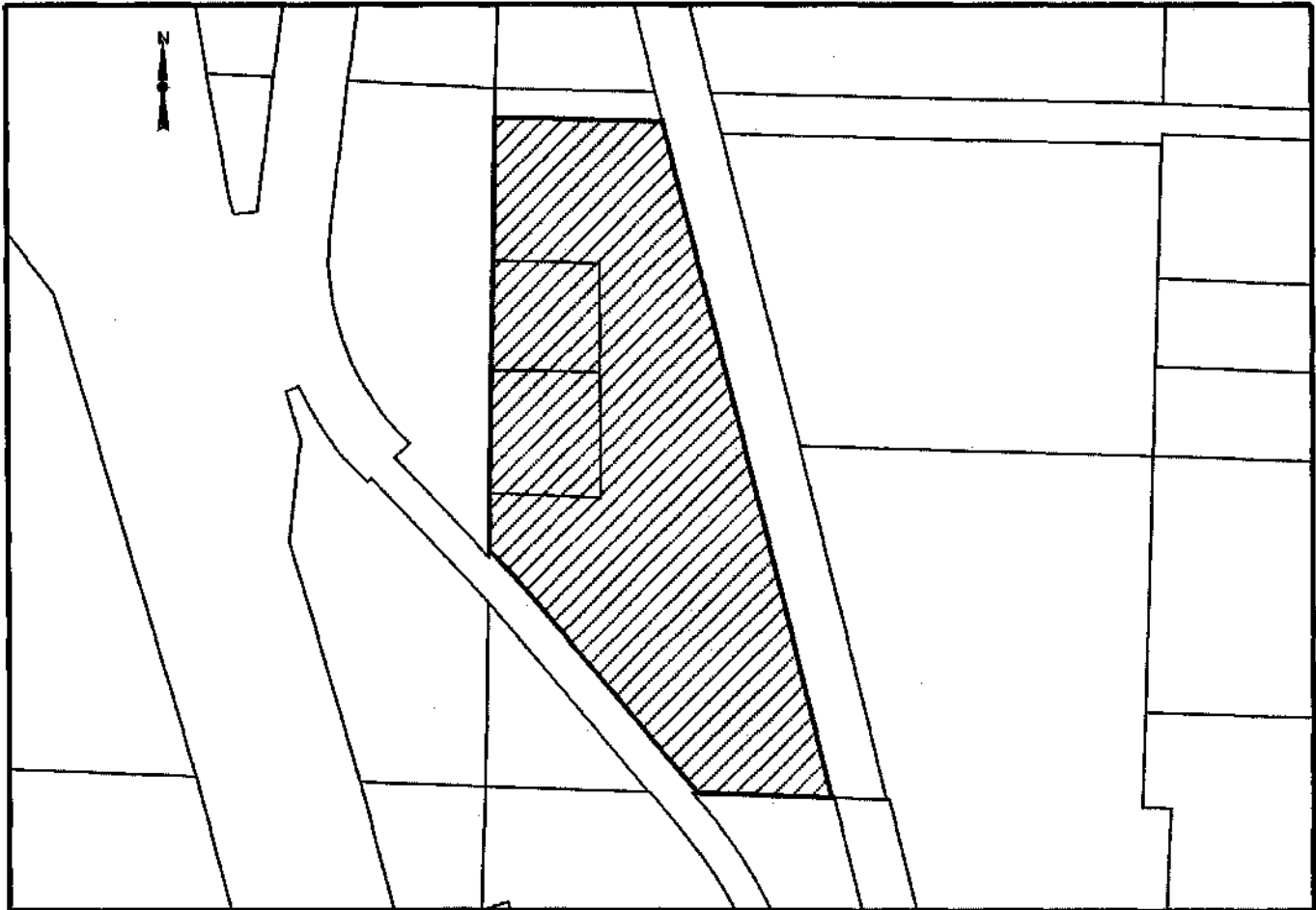
By: \_\_\_\_\_  
MOLLY TOWSLEE, City Clerk

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: \_\_\_\_\_

# Exhibit "A"



ATR Parcels: 0222312034, 0222312033, 0222312035

## Burnham Drive Commercial Park Legal Description:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SUBDIVISION; THENCE SOUTH  $01^{\circ}51'38''$  WEST ALONG THE WEST LINE OF SAID SUBDIVISION TO A POINT WHICH LIES 60.00 FEET SOUTH OF SAID NORTHWEST CORNER AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTH  $01^{\circ}51'38''$  WEST A DISTANCE OF 834.86 FEET TO THE NORTHEASTERLY MARGIN OF BURNHAM DRIVE NW; THENCE SOUTH  $43^{\circ}24'59''$  EAST ALONG SAID MARGIN 513.83 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 1025.00 FEET; THENCE SOUTHEASTERLY 87.29 FEET ALONG SAID CURVE AND SAID MARGIN THROUGH A CENTRAL ANGLE OF  $04^{\circ}52'46''$  TO THE SOUTH LINE OF SAID NORTHWEST QUARTER; THENCE SOUTH  $88^{\circ}17'08''$  EAST ALONG SAID SOUTH LINE 239.92 FEET TO THE WESTERLY MARGIN OF TACOMA LAKE CUSHMAN POWER LINE RIGHT-OF-WAY; THENCE NORTH  $13^{\circ}21'48''$  WEST A DISTANCE OF 1307.11 FEET TO A POINT WHICH LIES 60.00 FEET SOUTH OF THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE NORTH  $88^{\circ}23'41''$  WEST PARALLEL WITH SAID NORTH LINE 321.11 FEET TO THE TRUE POINT OF BEGINNING.

SUBJECT TO EASEMENTS, RESTRICTIONS AND CONDITIONS UNWRITTEN OR OF RECORD.

FILED  
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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF GIG HARBOR

IN RE: the Application of Michael Perrow  
for Donkey Creek Holdings,

REZ 03-03  
  
FINDINGS, CONCLUSIONS AND  
DECISION

**I. SUMMARY OF DECISION**

The application for a rezone from an RB-2 (Residential and Business) zoning district with a Mixed-Use district (MUD) overlay to an ED (Employment District) of approximately 12 acres located at 10421 Burnham Drive, within the City of Gig Harbor, is hereby approved.

**II. SUMMARY OF PROCEDURE**

A. Hearing. An open record hearing was held in the City of Gig Harbor on April 21, 2004.

B. Exhibits. The examiner admitted the following exhibits:

1. Staff Report to the Hearing Examiner for REZ 03-03, dated April 15, 2004;
2. Donkey Creek Holdings, LLC's Rezone Application for Burnham Drive Commercial Park, 10421 Burnham Drive;
3. Zoning map; and
4. Gig Harbor Ordinance No. 921 and related Staff Report.

ORIGINAL

1 C. Pleadings. In addition, the hearing examiner considered the following:

2 1. City's Brief on Rezone Process, dated April 10, 2004.

3 D. Testimony. The following individuals provided testimony under oath:

4 1. The Staff Report was presented by Rob White, Senior Planner.

5 **III. FINDINGS**

6 1. The applicant is requesting the rezone of approximately 12 acres located at 10421  
7 Burnham Drive (Assessor's Parcel Nos. 0222312034, 0222312033, and 0222312035). The  
8 rezone would change the existing RB-2 (Residential and Business) zoning district with a  
9 Mixed-Use district (MUD) overlay to ED (Employment District). The site is adjacent to a  
single-family development on the south and east. The proposed rezone is in follow-up to an  
amendment to the land use designation on the site that was approved in 2001. Ex. 1.

10 2. The land use designation of the subject site was changed in 2001 from Mixed Use  
11 to Employment District at the request of the applicant, who wishes to expand the types of  
uses allowed within their current facility. Ex. 1.

12 3. The subject site totals 12 acres. The subject parcel is zoned RB-2 with MUD  
13 overlay. Current land use is Warehouse Condo according to the Pierce County Tax  
Assessor. Adjacent zoning and land use is as follows:

14 North: PCD-BP, Planned Community Development – Business Park

15 West: RB-2 Zone, Residential and Business

16 South: MSF – Moderate Density Single Family (Pierce County)

17 East: R-1 Zone, Residential Low

18 Ex. 1.

19 4. The City of Gig Harbor Comprehensive Plan Land Use Map designates the site  
20 as Mixed Use. Page 10 of the Land Use Element of the Comp Plan states that mixed use is  
21 an area of commercial/employment, office and multi-family located along principle  
22 collector routes which link the downtown area with SR-16. Commercial/Employment  
23 activity with a Mixed Use caters to a customer base beyond the immediately surrounding  
24 neighborhoods due to its location along the collector routes. The individual  
commercial/employment activities or developments in these areas are not of a size or  
character to be considered "major" activity or traffic generating uses. Multifamily and  
office uses are allowed within the Mixed Use area to provide economic diversity and  
housing opportunities near transit routes and business activities. The proposal is consistent  
with the comprehensive plan land use designation. Ex. 1.

25 5. Allowable uses in the proposed ED designation are defined in Section 17.45.020  
of the Gig Harbor Municipal Code. Light manufacturing, light assembly and warehousing

1 are among the more intensive permitted uses in the zone. In general, the ED zone allows  
2 more intense uses than the RB-2 zone.

3 6. Gig Harbor Municipal Code Section 17.100.035 specifies general criteria for the  
4 approval of zoning district map amendments, including, but not limited to, site specific  
5 rezones. The examiner addresses these criteria as follows:

6 A. The application for the Zoning District Map amendment must be consistent  
7 with and further the goals, policies and objectives of the comprehensive plan;

8 • The Washington State Growth Management Act (GMA) requires  
9 consistency between the adopted Comprehensive Plan and the adopted development  
10 regulations. RCW 36.70A.040(4)(d). The proposed zoning district map amendment is  
11 consistent with and furthers the goals, policies, and objectives of the comprehensive plan, as  
12 the plan was last amended. This review criterion is satisfied.

13 B. The application for the Zoning District amendment must further or bear a  
14 substantial relationship to the public health, safety and general welfare;

15 • The proposed zoning district map amendment furthers or bears a  
16 substantial relationship to the public health, safety, and general welfare by providing an  
17 appropriate location for employment opportunities within an existing facility, and by  
18 bringing site zoning into conformity with the comp plan. This review criterion is satisfied.

19 C. No substantial detrimental effect will be caused by the granting of the  
20 application for amendment; and

21 • No substantial detrimental effect will be caused by the granting of the  
22 application for amendment. Consistency between the zoning code and the comp plan is a  
23 positive effect. No evidence of detrimental effect exists in this record. This review criterion  
24 is satisfied.

25 D. The proponents of the application have the burden of proof in demonstrating  
that the conditions have changed since the original zoning or original designation for the  
property on the Zoning District Map.

• Conditions have changed since the original zoning or original  
designation for the property on the Zoning District Map. Specifically, the passing of the  
comprehensive plan amendment (Ex. 4) allowing the proposed level of activity that the ED  
zone permits requires a rezone to implement the Comprehensive Plan change. This review  
criterion is satisfied.

7. The City of Gig Harbor SEPA Responsible Official has reviewed the request and  
issued a Determination of Non-significance (DNS) for this request on December 17, 2003.  
The appeal period for this SEPA determination ended on March 1, 2004. No comments or  
appeals have been submitted.



1 8. The legal notice of the proposed action and scheduled hearing was published in  
2 the Peninsula Gateway on March 3, 2004, and again on April 7, 2004. Notice was also  
3 posted on the subject site on March 1, 2004. Finally, notice was mailed to property owners  
4 within 300 feet of the subject property on March 1, 2004. No public comments have been  
5 submitted. Ex. 1.

#### 4 IV. CONCLUSIONS

5 A. Jurisdiction. The examiner has jurisdiction to rule on the rezone pursuant to  
6 GHMC 17.96.030. See, Ordinance No. 903.

7 B. Criteria for Review. The criteria for the examiner to consider in deciding on a  
8 rezone application are set forth at GHMC 17.100.035.

9 C. Conclusions Based on Findings. The examiner adopts the findings set forth  
10 above, and accordingly concludes that all of the criteria necessary to grant the requested  
11 application have been satisfied.

#### 11 V. DECISION

12 Based on the above findings and conclusions, Rezone Application REZ 03-03,  
13 relating to the rezone from a RB-2 zoning district with a MUD overlay to an Employment  
14 District of approximately 12 acres located at 10421 Burnham Drive within Gig Harbor, is  
15 APPROVED.

#### 16 VI. PARTIES OF RECORD

- 17 1. Rob White, Senior Planner  
18 City of Gig Harbor  
19 3510 Grandview Street  
20 Gig Harbor, WA 98335
- 21 2. Michael Perrow  
22 Donkey Creek Holdings  
23 P.O. Box 245  
24 Gig Harbor, WA 98335

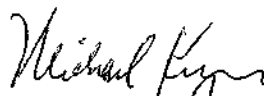
#### 25 VII. APPEAL OF EXAMINER'S DECISION

Pursuant to GHMC 19.01.003 as amended by Ordinance No. 903, any party of  
record with standing to file a land use petition and desiring to appeal the examiner's decision  
may do so within 10 working days of the issuance of this decision by filing an appeal with  
the City, as specified in GHMC 19.06.004.

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DATED this 30 day of April, 2004.

KENYON DISEND, PLLC

  
\_\_\_\_\_  
Michael R. Kenyon, Hearing Examiner

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF GIG HARBOR

In Re: the Application of Michael Perrow  
for Donkey Creek Holdings

REZ 03-03

DECLARATION OF MAILING

I, Margaret Starkey, declare and state:

1. I am a citizen of the State of Washington, over the age of 18 years, not a party to this action, and competent to testify as a witness herein.

2. On April 30, 2004, I mailed by regular mail, postage prepaid, a copy of the Findings, Conclusions and Decision in this matter, and this Declaration of Mailing, to:

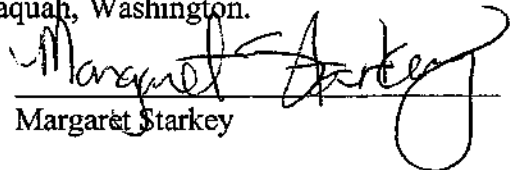
Michael Perrow  
Donkey Creek Holdings  
P.O. Box 245  
Gig Harbor, WA 98335

3. On April 30, 2004, I mailed by regular mail, postage prepaid, the *original* Findings, Conclusions and Decision in this matter, and this Declaration of Mailing, to:

Rob White, Senior Planner  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 30th day of April, 2004, at Issaquah, Washington.

  
Margaret Starkey



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL  
 FROM: DAVID RODENBACH, FINANCE DIRECTOR *DR*  
 DATE: AUGUST 18, 2004  
 SUBJECT: VOTED BOND LEVY AMOUNTS

**BACKGROUND**

Estimated annual levy amounts per \$100,000 in bonds sold are presented below.

**FISCAL CONSIDERATIONS**

The proposed bonds will each have a 20-year term. The annual debt service is approximately \$81,319 per \$1 million borrowed.

Amount of bonds sold	Avg. annual debt service	Average annual levy rate per \$1,000 of assessed valuation	Amount of bonds sold	Avg. annual debt service	Average annual levy rate per \$1,000 of assessed valuation
100,000	8,132	0.0087	1,100,000	89,451	0.0957
200,000	16,264	0.0174	1,200,000	97,583	0.1044
300,000	24,396	0.0261	1,300,000	105,715	0.1131
400,000	32,528	0.0348	1,400,000	113,847	0.1218
500,000	40,660	0.0435	1,500,000	121,979	0.1305
600,000	48,791	0.0522	1,600,000	130,110	0.1392
700,000	56,923	0.0609	1,700,000	138,242	0.1479
800,000	65,055	0.0696	1,800,000	146,374	0.1566
900,000	73,187	0.0783	1,900,000	154,506	0.1653
1,000,000	81,319	0.0870	2,000,000	162,638	0.1740



ADMINISTRATION

**Mayor's Report** *JW*  
August 23, 2004

### **Upcoming 2005 Budget Process**

As we enter into our budget process for 2005, I first want to thank you for your years of service to the citizens and businesses with your leadership responsibility respectfully determined through listening and follow-through with confidence.

Secondly, I would like you to list your concerns and actions that should be taken on these issues as we look to the future. Start with your highest priority, and send the list to me by Friday, September 3<sup>rd</sup>, so that Mark, staff and I can establish an agenda to address your questions at our Council Retreat on September 13th.

During the next week, I will place a number of surveys and projects within an Information Folder in the Council mailroom. I ask you to put a check on the cover sheets to indicate you have reviewed each item within the folder.

Immediately, I plan to establish a group of citizens and staff to begin seriously coordinating a Town-Around Bus system with Pierce Transit. I am looking for an interested Councilmember and suggestions from Council for membership on the committee.

I look forward to your responses to this Mayor's Report.



# Davis Wright Tremaine LLP

RECEIVED

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ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

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FAX (206) 628-7699  
www.dwt.com

August 4, 2004

Hon. Mayor and City Council Members for the City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Re: Ordinance No. 965—Establishing Moratorium on Development Applications

Dear Honorable Mayor and Members of the City Council:

At the request of various clients who reside or own property in Gig Harbor, we have reviewed Ordinance No. 965, establishing a moratorium on the acceptance and processing of applications for new development or certain re-development within a portion of Gig Harbor. Moratoriums are strongly disfavored as a matter of law and policy and we have serious concerns about Ordinance No. 965 as it is currently drafted.

*As drafted, the Ordinance appears to be plagued by a handful of constitutional defects. We believe that most of these defects may have been a result of hurried drafting and can be easily cured in a manner consistent with the City's objectives.*

A blackline of Ordinance No. 965 showing the changes that we believe need to be made in order to remedy some of the obvious defects in the Ordinance. Briefly, the more glaring and easily curable problems with Ordinance No. 965 are as follows.

**1. Ordinance No. 965 Fails to Adequately Respect Vested Rights.**

This State's vested rights law requires the City, despite the moratorium, to: (a) process any and all applications that were filed and deemed complete prior to the enactment of Ordinance No. 965, and (b) review for completeness all applications filed prior to the effective date of Ordinance No. 965, processing to completion those that are deemed to have been complete as filed. *See Hull v. Hunt*, 53 Wn.2d 125, 331 P.2d 856; *State ex rel. Ogden v. Bellevue*, 45 Wn.2d 492, 275 P.2d 899 (1954); *Adams v. Thurston County*, 70 Wn.App. 471, 855 P.2d 284



(1993); *Erickson & Associates, Inc. v. McLerran*, 69 Wn.App. 564, 849 P.2d 688, *affirmed* 123 Wn.2d 864, 872 P.2d 1090 (1993).

**(a) As a Matter of Law, Complete Applications Filed Prior to the Enactment of Ordinance No. 985 Must Vest.**

Washington's vested rights doctrine, founded upon due process concerns, provides that a party filing a sufficiently complete building permit application obtains a vested right to have that application processed according to zoning, land use and building ordinances in effect at the time of the application. *State ex rel. Ogden v. Bellevue*, 45 Wn.2d 492, 275 P.2d 899 (1954). The doctrine was created to provide a measure of certainty to developers and to protect their expectations against fluctuating land use policy. *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782 (1986). If a development permit application is filed during the period the zoning ordinances under which the developer seeks to develop are in effect, and such application is complete when filed, then the applicant obtains a vested right to have that application considered under the laws in effect on the date that the application was filed. *Friends of the Law v. King County*, 123 Wn.2d 518, 524 n.3, 869 P.2d 1056 (1994); *Talbot v. Gray*, 11 Wn.App. 807, 525 P.2d 801 (1974) (shoreline substantial development permit); *Buechel v. State Dept. of Ecology*, 125 Wash.2d 196, 207 n. 35 884 P.2d 910 (application for a shoreline variance) (1994); *Juanita Bay Valley Community Ass'n v. City of Kirkland*, 9 Wn.App. 59, 84, 510 P.2d 1140 (1973) (grading permit); *Beach v. Board of Adjustment of Snohomish County*, 73 Wn.2d 343, 347, 438 P.2d 617 (1968) (conditional use permit); *Ford v. Bellingham-Whatcom County Dist. Bd. Of Health*, 16 Wn.App. 709, 715, 558 P.2d 821 (1977) (septic tank permit); *Thurston County Rental Owners v. Thurston County*, 85 Wn.App. 171, 182, 931 P.2d 208 (1997) (septic tank permit); *Assoc. of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 193-95, 4 P.3d 115 (2000) (planned unit development); *see also* RCW 19.27.095 (codifying law with respect to building permits); RCW 58.17.033 (codifying law with respect to plats).

**(b) State Law Requires the City to Review All Applications Filed Prior to July 12, 2004 to Ascertain Whether Such Applications Were Complete When Filed.**

Exempt from the moratorium should be all project permit applications *filed* prior to the enactment of Ordinance No. 985 which applications were complete when filed. The City cannot suspend its obligation to review all applications received prior to the adoption of Ordinance No. 985 in order to determine whether such applications, when filed, were complete. *See cases cited, supra*; RCW 36.70B.070. Failure of the Ordinance to do so results in a violation of substantive due process. *See* U.S. Const. amends. 5, 14; Wash. Const. art. 1, §§ 3, 16 (amend. 9); *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 330, 787 P.2d 907 (1990); 4. *Weyerhaeuser v. Pierce County*, 95 Wn.App. 883, 891, 976 P.2d 1279 (1999).

The vesting date is the *date of application*, if the application is subsequently deemed complete, not the date that City gets around to determining—within the 28 day period required



by law—that the application is complete. RCW 36.70B.070. As stated in *West Main*, developers who file a timely and complete application:

[o]btain a vested right to have their application processed according to the zoning and building ordinances in effect *at the time of application*.

106 Wn.2d at 50 (emphasis added).

In other words, if an application is submitted on or before July 12, 2004, the City needs to review that application and determine whether it was complete when filed. See RCW 36.70B.070. If the application was complete, it of course is vested. See *Adams v. Thurston County*, 70 Wn.App. 471, 855 P.2d 284 (1993); *Erickson & Associates, Inc. v. McLerran*, 69 Wn.App. 564, 849 P.2d 688, *affirmed* 123 Wn.2d 864, 872 P.2d 1090 (1993).<sup>1</sup>

**2. Ordinance No. 985, As Drafted, Does Not Adequately Respect Vested Rights.**

Despite what may have been the intent of the City, as drafted, Ordinance No. 985 fails to recognize such fundamental principles of law. While some language in Ordinance No. 965 indicates that the City intended to recognize vested rights, as required by State law, certain portions of the Ordinance suggests otherwise. Specifically, we draw your attention to the following provisions of Ordinance No. 985.

**(a) Applications Submitted On or Before July 12, 2004 Must Be Reviewed to Ascertain Completeness, and, If Determined to Have Been Complete, Those Applications Must Be Processed.**

The Ordinance's definition of "non-exempt development permits" is problematic. It defines "non-exempt development permits" that are subject to the moratorium as including:

Any permits or permit applications for any "development activity" ...proposed to take place on property located within the City's height restriction area, submitted after the effective date of this Ordinance. *Any permits meeting this description that were submitted to the City but not determined complete by City staff on or before the effective date of this Ordinance, are also "non-exempt development permits."*

<sup>1</sup> Similarly, if an application was deemed incomplete prior to July 12, 2004, but additional information was submitted prior to July 12, 2004 in an effort to make the application complete, such information needs to be reviewed to ascertain whether as of July 12, 2004 the application, as resubmitted, contained the information necessary to vest.





Ord. No. 965, Sec. 1(B). The only way to construe the language of Section 1(B) about permits “not determined complete by City Staff...” in a way that comports with State law is if one reads it as “determined incomplete by City Staff...” Any other reading flies in the face of fairness and the vested rights doctrine.

If by the language, “[a]ny permits meeting this description that were submitted to the City but not determined complete by City staff on or before the effective date of this Ordinance are also “non-exempt development permits,” the City intends to include applications filed prior to the effective date of the Ordinance that the City has yet to review for completeness but which, upon such review, would be deemed complete, then the provision violates State law on vesting. See RCW 36.70B.070; *West Main Assocs. v. City of Bellevue*, 106 Wn.2d 47, 51, 720 P.2d 782 (1986); *Weyerhaeuser*, 95 Wn.App. 883. The City must review any applications filed (or supplemented in response to a request for additional information) on or before July 12, 2004 to ascertain whether such applications were in fact complete on or before to July 12, 2004. Any applications that were complete on or before July 12, 2004 (even if the City has not reviewed the applications for completeness prior to July 12, 2004), vest under the laws in effect prior to Ordinance 985 and must be processed accordingly.

**(b) The City’s Definition of “Exempt Development” Is Confusing.**

Ordinance No. 985 describes “exempt development permits” that are not subject to the moratorium as applications for development or development activity (as defined in Gig Harbor Municipal Code 19.14.101(24) and (26)) that:

1. are not subject to any other moratorium in the City;
2. were determined complete by City staff and submitted to the City on or before the effective date of the Ordinance;
3. propose development or a development activity on property located outside the City height restriction area ...; and
4. are project(s) located on publicly owned property and which building(s) do not exceed one thousand (1,000) square feet in size.

Ord. No. 965, Sec. 1(A) (emphasis added). Also included as “exempt” from the moratorium are permits:

meeting all of the above criteria and which involve interior remodeling of existing structures anywhere in the City, as long as the remodeling will not increase the size of the existing structure in footprint, height, bulk and scale.



Ord. No. 965, Sec. 1(A). Such description of "exempt development" is problematic for multiple reasons.

**(i) Arguably, No Development Qualifies as Exempt Under the City's Definition.**

We believe the City intended that an application satisfying one or more of the four items listed in Section 1(A) be exempt from the moratorium; however, as drafted, the ordinance can easily be construed as meaning otherwise. By using the word "and" and phrasing the list of items as the City did, it appears that an application cannot be exempt unless it satisfies *all* four of the items (not subject to other moratorium, vested, is on property outside of the height restrict area, and is on public property). While such a reading arguably is absurd and unconstitutional, as drafted, the Ordinance could lend itself to such interpretation. U.S. Const. amends. 5, 14; Wash. Const. art. 1, §§ 3, 16; *Presbytery*, 114 Wn.2d at 330. The enclosed blackline Ordinance seeks to clarify what we believe to have been the City's intent.

**(ii) No Rational Basis Exists for Exempting Only Public Property.**

Under the above reading of what is necessary to qualify as "exempt" development, the only development that can be exempt is development on publicly owned property (provided it also meets other criteria) and it difficult to see any rational basis for singling out publicly owned property for special treatment—a potential violation of due process and equal protection. U.S. Const. amends. 5, 14; Wash. Const. art. 1, §§ 3, 12, 16; *Presbytery*, 114 Wn.2d at 330. The enclosed blackline ordinance seeks to clarify what we believe was the City's intent.

**(iii) The City Cannot Suspend Its Obligations Under RCW 36.70B.070.**

Even assuming that the use of "and" at the end of item 3 was inadvertent and actually intended to be "or," item 2 of the definition of "exempt development" is problematic. It states that applications are exempt if they "*were* determined complete by City staff *and* submitted to the City on or before the effective date of the Ordinance." Under RCW 36.70B.070 and the vested rights doctrine, however, the time that the City actually gets around to reviewing and rendering a decision of completeness on an application is irrelevant to when the application vests. If the application is ultimately determined to have been complete on the date filed, then that application vests under the laws in effect on the date of *filing*. As a matter of law, any application filed before the effective date of the moratorium and complete on the date of filing (whether such determination of completeness is made prior to the effective date of the moratorium or on the 28<sup>th</sup> day after the application is filed) is not subject to the moratorium or laws that may be altered by the moratorium. To the extent that item 2 suggests otherwise, it conflicts with the laws of the State, violates due process (vested rights), and is invalid. See U.S. Const. amends. 5, 14; Wash. Const. art. 1, §§ 3, 16 (amend. 9); *Presbytery*, 114 Wn.2d at 330; *Weyerhaeuser*, 95 Wn.App. 883. We would like to see Ordinance No. 925 revised to more clearly reflect what we believe was the Council's intent.



**(iv) No Rational Basis Exists for Including Applications that Do Not Propose a Structure or an Increase in Building Footprint or Height.**

There is no rational basis for subjecting applications that by their express terms will not result in the construction of a new structure or any increase in building footprint or height. Yet, as drafted, the Ordinance appears to be ambiguous about whether such applications may be subject to the moratorium. While the Ordinance has an exception for applications involving interior remodeling of existing structures where such remodeling does not increase the size of the existing structure in footprint, height, bulk and scale, as drafted, the exception is meaningless because it expressly requires that any such applications must also satisfy "all" of the four other criteria for exempt development (including that the application for such interior remodel was filed and determined completely prior to the moratorium, the application propose development outside of the height restriction area, and the application be on publicly owned property).

**3. Amendments Proposed to Ordinance No. 965 for Purposes of Clarifying Council's Intentions.**

We trust that the City will comply with Washington's law on vesting and the requirements of RCW 36.70B, despite the ambiguities contained in Ordinance No. 965. Nonetheless, we believe it would be in everyone's interest to clarify the terms of Ordinance No. 965 prior to extending it. We believe that the enclosed blackline helps alleviate the facial deficiencies of Ordinance No. 985, and we hope that the City will amend Ordinance No. 985 accordingly.

Very truly yours,

Davis Wright Tremaine LLP

A handwritten signature in black ink, appearing to read 'Traci L. Shallbetter', written over the printed name.

Traci L. Shallbetter

Encl.

ORDINANCE NO. 965  
(AMENDED)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, ADOPTING AN IMMEDIATE EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR NEW DEVELOPMENT OR CERTAIN TYPES OF RE-DEVELOPMENT WITHIN THE HEIGHT RESTRICTION AREA AS SHOWN ON THE OFFICIAL HEIGHT RESTRICTION MAP, UNTIL THE CITY FINISHES THE PROCESS OF CODE REVIEW AND AMENDMENT RELATING TO BUILDING SIZE LIMITATIONS, SUCH MORATORIUM TO BE EFFECTIVE IMMEDIATELY, DEFINING THE APPLICATIONS SUBJECT TO THE MORATORIUM, SETTING A DATE FOR A PUBLIC HEARING ON THE MORATORIUM, ESTABLISHING SIX MONTHS AS THE TENTATIVE EFFECTIVE PERIOD UNTIL THE COUNCIL PUBLIC HEARING ON THE CONTINUED MAINTENANCE OF THE MORATORIUM, AND DECLARING AN EMERGENCY NECESSITATING IMMEDIATE ADOPTION OF A MORATORIUM.

---

WHEREAS, the City Council of the City of Gig Harbor commissioned a report from an independent consultant on the issue of building size limitations; and

WHEREAS, after the report was issued, the City Council decided to hold public hearings and workshops to obtain testimony and evidence from the public on the issue of building sizes, especially in the ~~height restriction area~~ Height Restriction Area of the City; and

WHEREAS, while the workshops were underway, the City Council decided that the issue of building size limitations should be addressed while a moratorium is in place, to prevent any property owners from submitting applications for development or redevelopment that could vest under the existing codes; and

WHEREAS, the City Council may adopt an immediate moratorium for a period of up to six months on the acceptance of certain development permit applications as long

as the City Council holds a public hearing on the proposed moratorium within sixty days after adoption (RCW 35A.63.220, RCW 36.70A.390); and

WHEREAS, the City desires to impose an immediate six-month moratorium on the acceptance of development applications for any "development activity" or "development permit" as defined in Gig Harbor Municipal Code Section 19.14.010(24) and (26), ~~for proposed on~~ any property within the ~~height restriction area~~ Height Restriction Area of the City ("Moratorium"), unless the development does not involve the construction of a structure, the development is actually a remodel of an existing structure and will not increase the size of the existing structure, or the development is pursuant to an application that vested under laws in effect prior to the Moratorium;

Now, therefore,

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

Section 1. Definitions. For the purpose of this Ordinance, the following definitions shall apply:

A. ~~"Exempt Development Permits"~~ "Height Restriction Area" is that area shown on the City's official height restriction area map, as adopted in GHMC Section 17.62.020, a copy of which is attached to this Ordinance as Exhibit A.

B. "Exempt Development" which shall not be subject to this moratorium shall include ~~all~~ any of the following permit applications for "development" or "development activity" defined in GHMC Section 19.14.010(24) and 19.14.010(26), a copy of which is attached to this Ordinance as Exhibit B, which:

- ~~1. are not subject to any other moratorium in the City;~~

~~2. were determined complete by City staff and submitted to the City on or before the effective date of this Ordinance;~~  
~~3. propose development or a development activity on property located outside the City height restriction area (see Subsection B below); and~~  
Height Restriction Area:

~~4. are project~~2. development for building(s) located on publicly owned property and which building(s) debuildings will not exceed one thousand (1,000) square feet in size;

3. development within the City Height Restriction Area which does not propose the construction of a structure; and

~~"Exempt development permits" shall also include any permits meeting all of the above criteria and which involve interior remodeling of existing structures anywhere in the City, as long as the remodeling will~~  
4. development within the City Height Restriction Area which does not propose the new construction or any structure, but which proposes a remodel or reconfiguration of an existing structure that does not increase the size of the existing structure in footprint, height, bulk and/or scale; and

5. development pursuant to Vested Applications.

C. "Vested Applications" shall mean complete applications for development that were not subject to any other moratorium in the City at the time such applications were filed with the City, and were submitted to the City on or before the effective date of this Ordinance. For purposes of this definition "complete" shall mean that the application, as submitted or supplemented on or before the effective date of this Ordinance, contained sufficient information necessary for continued processing of the

application, including any specific information required under State or local law for the application to be "complete."

**BD. "Non-Exempt Development Permits" that is subject to the Moratorium** shall include ~~any permits or permit applications for any "development activity" as defined in GHMC Section 19.14.010(24) and 19.14.010(26) proposed to take place on property to located within the City's height restriction area, submitted after the effective date of this Ordinance. Any permits meeting this description that were submitted to the City but not determined complete by City staff on or before the effective date of this Ordinance, are also "non-exempt development permits." The "height restriction area" is that area shown on the City's official height restriction area map, as adopted in GHMC Section 17.62.020, a copy of which is attached to this Ordinance as Exhibit A.~~ Height Restriction Area, which development does not qualify as "Exempt Development."

**Section 2. Purpose.** The purpose of this moratorium ~~Moratorium~~ is to allow the City to continue the process of analyzing the issue of building size limitations without the possibility that developers will flood the City with applications for development under the existing codes. The City Council is currently engaged in a workshop process to determine whether building size limitations should be imposed in Gig Harbor, and if so, on which area(s) of the City. Additional time is needed to fully explore the options available to the City.

**Section 3. Moratorium Imposed.** The City Council hereby imposes an immediate six-month moratorium on the acceptance of ~~all non-exempt development permit applications for development activities on property located within the height restriction area, as shown in the map attached hereto as Exhibit A.~~ All such non-exempt

~~applications shall be rejected and returned to the applicant. With regard to the City's acceptance of any exempt development application, such acceptance shall only allow processing to proceed, but shall not constitute an assurance that the application will be approved.~~ applications for any Non-Exempt Development. Applications for Non-Exempt Development which applications are filed after the effective date of this Moratorium or which applications, on the effective date of the Moratorium, were incomplete, shall be rejected and returned to the applicant.

The City shall promptly review any permit applications for Non-Exempt Development which were submitted to the City on or before the effective date of this Ordinance in order to ascertain whether such applications were complete for purposes of vesting on or before the effective date. If the application is deemed to have been incomplete, then such application shall be subject to the Moratorium. If the application is deemed to have been complete, then such application shall be treated as a Vested Application and processed under the laws in effect on the date of complete application.

Applications for Exempt Development shall be processed under ordinances in effect on the date such applications were complete (i.e., the date the application was filed if such application was complete when filed, or the date of completeness if additional information was submitted after filing but prior to the effective date of the Moratorium).

Section 4. Duration of Moratorium. ~~The moratorium~~Moratorium imposed by this Ordinance shall commence on the date of the adoption of this Ordinance. As long as the City holds a public hearing on the ~~moratorium~~Moratorium and adopts findings and conclusions in support of the ~~moratorium~~Moratorium (as contemplated by Section 5



herein), the ~~meratorium~~Moratorium shall not terminate until six (6) months after the date of adoption, or at the time all of the tasks described herein have been accomplished, whichever is sooner. The Council shall make the decision to terminate the ~~meratorium~~Moratorium by ordinance, and termination shall not otherwise be presumed to have occurred.

Section 5. Public Hearing on Moratorium. Pursuant to RCW 36.70A.390 and RCW 35A.63.220, the City Council shall hold a public hearing on this ~~meratorium~~Moratorium within sixty (60) days of its adoption, or before September 10, 2004. The Council shall hold this hearing on August 9, 2004. Immediately after the public hearing, the City Council shall adopt findings of fact on the subject of this ~~meratorium~~Moratorium and either justify its continued imposition or cancel the ~~meratorium~~Moratorium.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 7. Declaration of Emergency. The City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council, and that the same is not subject to a referendum (RCW 35A.12.130). Without an immediate ~~meratorium~~Moratorium on the City's acceptance of ~~non-exempt development~~ applications for Non-Exempt Development Permits for property, such applications could become vested vest, leading to development that could be incompatible with the codes

eventually adopted by the City. Therefore, the ~~meratorium~~Moratorium must be imposed as an emergency measure to protect the public health, safety and welfare, and to prevent the submission of a flood of applications to the City in an attempt to vest rights for an indefinite period of time. This Ordinance does not affect any ~~existing-vested~~ rights, nor will it prohibit all development in the City, because those property owners ~~with exempt applications/permits, those with previously obtained approvals for development or redevelopment of the type identified as "exempt"~~ may proceed with processing and development, as the case may be submitting complete applications for Exempt Development shall be entitled to have such applications processed under the laws in effect at the time of filing such complete applications, and shall be entitled to develop their property accordingly.

Section 8. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 9. Effective Date. This Ordinance shall take effect and be in full force and effect immediately upon passage, as set forth in Section 7, as long as it is approved by a majority plus one of the entire membership of the Council, as required by RCW 35A.12.130.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 12th day of July, 2004.

CITY OF GIG HARBOR

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Mayor Pro Tem, Jim Franich

ATTEST/AUTHENTICATED:

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Molly Towslee, City Clerk

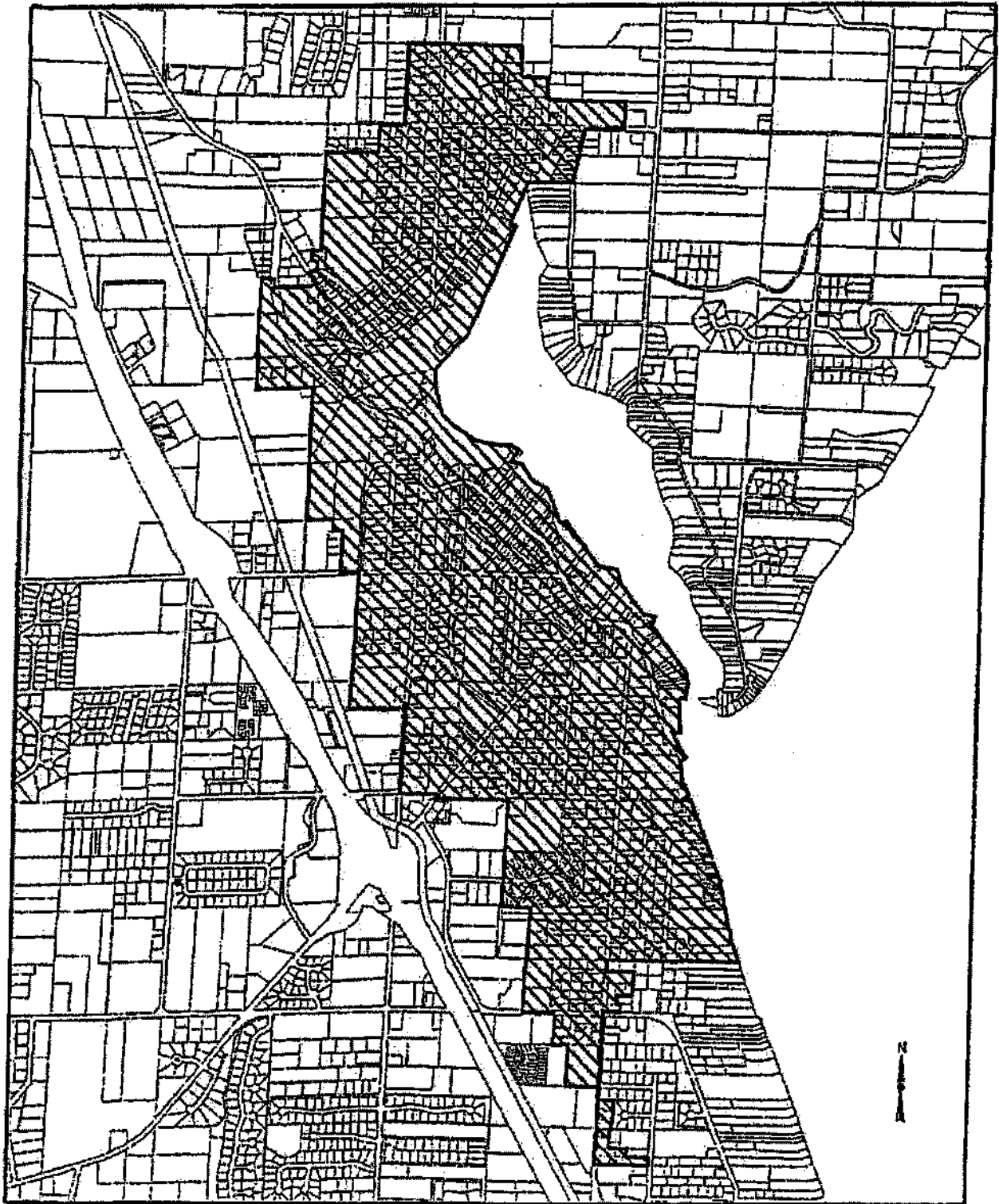
APPROVED AS TO FORM:  
Office of the City Attorney

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Carol A. Morris, City Attorney

FILED WITH THE CITY CLERK: 7/12/04  
PASSED BY THE CITY COUNCIL: 7/12/04  
PUBLISHED: 7/21/04  
EFFECTIVE DATE: 7/12/04  
ORDINANCE NO:

EXHIBIT "A"



Height Restriction Area

## Exhibit "B"

### Gig Harbor Municipal Code

#### Chapter 19.14

#### CONCURRENCY AND IMPACT FEE PROGRAM DEFINITIONS

##### 19.14.010 Definitions.

24. "Development activity" or "development" means any construction or expansion of a building, structure, or use; any change in the use of a building or structure; or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the city.

26. "Development permit" or "project permit" means any land use permit required by the city for a project action, including but not limited to building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional uses, shoreline substantial developments, site plan reviews, or site specific rezones, and, for purposes of the city's concurrency ordinance, shall include applications for amendments to the city's comprehensive plan which request an increase in the extent or density of development on the subject property.

**Osguthorpe, Steve**

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**From:** Tangodoe@aol.com  
**Sent:** Monday, August 23, 2004 4:15 PM  
**To:** Osguthorpe, Steve  
**Subject:** Stutz Fuel Oil property 3003 Harborview Drive

Steve, as owner of the property located at 3003 Harborview Dr. commonly known as the Stutz property, I am unable to attend tonight's City Council meeting. I would like you to address my concerns over our request for a demolition permit to remove the improvements on our property.

Remedial action aside, our goals at this time are focussed on the removal of the five fuel storage tanks and the metal building only.

We have no plans of building anything on the uplands now or in the near future. Our goal is to work with the Department of Ecology as well as the City of Gig Harbor in an attempt to get the site cleaned up.

First things first, we need a demolition permit and have already submitted the paperwork well over a month ago. Please ask council, on our behalf, to grant us an exemption to the current moratorium.

Thank you,

Jim Sullivan  
President  
Tangodoe Investment Properties, LLC

Comp Amend  
01-06



