

Gig Harbor City Council Meeting

**November 24, 2003
7:00 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
November 24, 2003 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE: Led by Fircrest Boy Scout Troop #47.

PUBLIC HEARING:

1. 2004 Proposed Budget - Final Hearing.
2. Deleting Reference to Signs in the Non-conforming Use Chapter.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meeting of November 10, 2003.
2. Correspondence: GHHS Service Leadership Class.
3. Certificate of Need Support Letter.
4. Appointment to Gig Harbor Arts Commission.
5. WWTP In-Channel Fine Screen Equipment Purchase Authorization.
6. Approval of Payment of Bills for November 24, 2003.
Checks #41729 through #41853 in the amount of \$307,809.26.

OLD BUSINESS:

1. Second Reading of Ordinance – Authorizing the Issuance and Sale of a Local Improvement District No. 99-1 Bond.
2. Second Reading of Ordinance – Providing for the Issuance and Sale of a Water and Sewer Revenue and Refunding Bond.
3. Second Reading of Ordinance – 2004 Proposed Budget.
4. Second Reading of Ordinance – Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs.

NEW BUSINESS:

1. Resolution – Peninsula Recreation Center Field Development.
2. First Reading of Ordinance – Hollycroft Rezone (REZ 00-01).
3. First Reading of Ordinance - Deleting Reference to Signs in the Non-conforming Use Chapter.
4. First Reading of Ordinance – Calculation of Density in Residential Zones.
5. Resolution – Re-appointments to the Building Code Advisory Board.
6. Notice of Intention to Commence Annexation Proceedings – Michaelson (ANX-03-06).
7. Extension of Closing Date – Hific Six Associates.

STAFF REPORT:

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

ANNOUNCEMENT OF OTHER MEETINGS:

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

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF NOVEMBER 10, 2003

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

CALL TO ORDER: 7:03 p.m.

PLEDGE OF ALLEGIANCE

PUBLIC HEARING:

1. 2004 Proposed Budget. Mayor Wilbert opened the public hearing at 7:03 p.m. David Rodenbach, Finance Director, presented information on the proposed budget for the upcoming year and offered to answer questions.

Jeremy Bubnick – Recreation Supervisor for the Peninsula Recreation Program. Mr. Bubnick gave a brief description of the partnership between the City of Gig Harbor, Peninsula School District and Pierce County Parks and Recreation. He thanked Councilmembers for support of the program in 2003, and gave an overview of some of the accomplishments during its first year. He talked about the community use and benefit of the improvements at the Peninsula High School sports fields and the proposed project to improve the fields at Gig Harbor High School.

Mark Bonsell – 9608 Jacobsen Lane. Mr. Bonsell explained that he came to speak in support of the improvements to the Wheeler Street end. He said that this is about the only street that goes down to the bay. He said that the location has a great view, and the improvements would tie in nicely with the Crescent Creek Park.

Sherri Bonsell – 9608 Jacobsen Lane. Ms. Bonsell said that she too is in favor of the Wheeler Street end project.

There were no more comments. The Mayor closed this public hearing was closed at 7:09 p.m. and opened the public hearing on the next agenda item.

2. Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs. Steve Osguthorpe, Planning and Building Manager, explained that there are three ordinances submitted by Courtesy Ford for consideration, amending the non-conforming section of the city's sign code. He stressed that although the ordinances are not specific to the Ford site, they are the result of a denial of a request to make changes to an existing nonconforming pole sign in order to be consistent with the Ford corporate signage. The proposed text amendments provide different provisions for changing out non-conforming signs, particularly as they pertain to pole signs.

Steve reminded Council of the highly controversial process to adopt the sign code, and in particular, the amortization clause which was amended in 1998 to allow the owner of a non-conforming sign to maintain or to change out the face of the sign if it met with the city's illumination and text requirements. He described the options currently available to

Courtesy Ford to replace the existing panel or to replace the pole sign with a monument sign, which would not be as visible as the existing sign. He then introduced Kristen Riebli, Associate Planner, who provided the background information on the project.

Kristen explained that Courtesy Ford has filed an appeal with staff regarding the interpretation of the code and denial of the request to change the non-conforming sign. This appeal is on hold pending the outcome of the text amendment. She gave a description of the three proposed text amendments, all of them allowing structural changes to a non-conforming sign, and explained the concerns with each proposed amendment. She explained that staff would have to determine compliance without any guidance from the code, leading to difficulty in interpretation, implementation and enforcement. She said that due to the difficulty in administering these code provisions, city staff is recommending denial of all the proposed amendments.

Kristen continued to explain that the Planning Commission held a public hearing on the proposed amendments and held a lengthy discussion in which they expressed a number of concerns. The Planning Commission was not supportive of the text amendments and made no motion to recommend approval. Kristen continued to read language from the Comprehensive Plan, Zoning Code, and the Design Manual that assisted staff in making the decision to recommend denial of the text amendments.

Mayor Wilbert asked how many non-conforming pole signs are in existence at this time. Kristen said that there are at several throughout the city, but they couldn't come up with a specific number.

Dick Settle – 1111 Third Ave. Suite 3400, Seattle, WA 98101. Mr. Settle explained that he represents John Hern, owner of Gig Harbor Ford. Mr. Settle talked about the ongoing two-year process to come to a solution regarding changing the style of the existing pole sign. He discussed the method of calculating the signage, adding that the proposed sign would be a little bit smaller than the existing sign and much more appealing. He said that the change would allow this business to continue to provide jobs and tax revenue, and in the course of the change, at least one existing non-conforming sign would be removed. He said that other dealers in Washington and Oregon have been able to change to the new sign style, but this hasn't been allowed here in Gig Harbor. He discussed the two policies at stake: the fairness to someone who relied upon existing regulations, and reducing non-conformity. He said that both these policies are served by the proposed amendments. He said that he believes that the regulation stating that any change that reduces the non-conformity shall be allowed could be the basis for allowing this change. He went over the points in the proposed text amendments, explaining that they were trying to find a solution that would allow the change to occur without any adverse consequences to the community. He said that they are willing to work with staff and the City Council to achieve a common sense solution.

John Hern – President of Courtesy Auto Group. Mr. Hern explained that he lives in Silverdale and owns nine car dealerships on the Peninsula. He said that he deals with all 168 of the Ford dealers in Washington and Oregon, and in the last year and one-half, only four haven't been able to replace their signs. Mr. Hern discussed the importance of

signage in destination points because they draw business from the surrounding area, and those traveling through that may be looking for services. Mr. Hern said that he has three choices if the city will not let him replace his pole sign: to go without the pylon sign and lose business, to go into litigation regarding violation of business rights, and finally, to move the dealership.

Bill Bowe – Capital Signs and Awning. Mr. Bowe handed out a packet that illustrates the new signs and discussed the design. He said that his main point is how the proposed oval sign would be substantially smaller than the calculation that is used by the city staff for rectangles, as there is no provision for calculating ovals. Mr. Bowe discussed the options for the signage on the site and stressed that it would be important for Mr. Hern to retain the used car sign as he has both new and used vehicles at the same location.

Councilmember asked questions of Mr. Hern and Mr. Bowe to clarify their understanding of both the existing and the proposed signage. They also asked staff members for clarification of the code language for non-conforming signs. Steve Osguthorpe was asked to compile an inventory of non-conforming signs around town so that Council would be aware of the possible impacts of the proposed text amendments.

Mayor Wilbert closed the public hearing at 8:40 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 October 27, 2003.
2. Correspondence / Proclamations: Veteran's Day.
3. Bremerton Motorsports Park Agreement.
4. Cushman Trailhead Park Contract.
5. Pump Station 2-A Replacement Project - Temporary Construction Easement.
6. Renewal of Interlocal Agreement – Fire Prevention Activities.
7. Liquor License Assumption: QFC #886.
8. Liquor License Renewals: The Harbor Kitchen, Marco's Restaurant, and Terracciano's Restaurant.
9. Approval of Payment of Bills for November 10, 2003.
Checks #41604 through #41782 in the amount of \$273,577.87.
10. Approval of payroll for the month of October.
Checks #2866 through #2913 and direct deposit entries in the amount of \$231,155.37.

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

OLD BUSINESS:

1. Second Reading of Ordinance – 2004 Property Tax Levy. David Rodenbach explained that this represents a 1% increase over the current levy and offered to answer questions.

MOTION: Move to adopt Ordinance No. 944, levying the general property taxes for 2004.
Picinich / Young – unanimously approved.

NEW BUSINESS:

1. Victim Advocacy Interlocal Agreement. Chief Mitch Barker presented the agreement to add the services of a Domestic Violence Victim Advocate five days a week to improve the investigation and prosecution of domestic violence cases as well as providing increased services to victims of domestic violence.

MOTION: Move to authorize the Mayor to execute the attached Victim Advocacy Interlocal Agreement.
Ruffo / Picinich – six members voted in favor. Councilmember Dick abstained.

2. First Reading of Ordinance – 2004 Proposed Budget. David Rodenbach said that he had no changes from the information presented during the public hearing.

Councilmember Owel mentioned the memo regarding an issue that would require a resolution to the budget and asked if this would be an appropriate time to discuss the issue.

Mark Hoppen described the two possible options regarding support for the field lighting at Gig Harbor High School: one is for staff to bring back a resolution, and the second is to include the lighting as a part of the budget adoption. He said that the budget objectives could be rewritten to express the option of providing field lighting by participating with the school district and Pierce County in the development of field project at Gig Harbor High School.

Councilmember Franich said that because he just received the memo, he would like additional time to ask questions before making a decision. Councilmember Young said that there would be time to add this before the next reading and adoption. David Rodenbach explained that it would not require a budget amendment in the formal sense because the proposal for this funding will come from the property development and park acquisition funds, a legal purpose for these monies. Mark answered questions on how the process would proceed if Council recommended that the funds be allocated for the project. A resolution will be brought back at the next meeting for consideration.

Councilmember Young then explained that at the budget workshops, Councilmembers instructed staff to remove \$4000 from the amount for maintaining a tourism database and website support at the Chamber of Commerce. He said that he found out that the increase from last year was due to the fact that Pierce County removed their support, not an increase in the services being provided. He asked that this amount be added back in.

MOTION: Move to increase the amount back to \$8500 on item number 4 on page 104 of the budget.
Young / Ekberg – six voted in favor. Councilmember Franich voted no.

Councilmember Young left the meeting at this time.

3. First Reading of Ordinance – Authorizing the Issuance and Sale of a Local Improvement District No. 99-1 Bond. David Rodenbach explained that this is the last step in the LID No. 99-1 for construction of Borgen Boulevard. He gave an overview of interest rates and offered to answer questions. This will return for a second reading at the next meeting.

4. First Reading of Ordinance – Providing for the Issuance and Sale of a Water and Sewer Revenue and Refunding Bond. David Rodenbach explained that this bond will refund the current outstanding balance for the 1994 Water / Sewer Revenue Refunding Bonds. He gave an overview of the bond process and offered to answer questions. This also will return at the next meeting.

5. First Reading of Ordinance – Zoning Text Amendments to Allow Structural Changes to Non-Conforming Signs. Councilmember Franich asked if the definition of freestanding signs in the municipal code referred to pole signs. Kristen Riebli explained that there is no definition of pole signs in the code. He then asked how tall a new sign would be allowed on that site. Kristen answered that a new sign could be 8 foot high and 100 square feet wide.

Councilmember Ekberg asked for clarification on the minutes of the Planning Commission, because there was no decision was made to forward to Council. Steve Osguthorpe explained that he asked the Planning Commission for clarification at the next meeting and was told that the intent was to recommend denial. Councilmember Ekberg asked for a copy of the minutes of that meeting reflecting the intent.

Councilmember Franich said that it was important to study this very carefully because part of what makes Gig Harbor a nice area is that there isn't a great deal of sign clutter. Although the changing of the Ford sign seems to be a simple matter, if variations from the code are allowed, fairness becomes subjective. He added that he hopes that an agreement could be reached because it is important that the Ford dealer remain in Gig Harbor.

Councilmember Dick said that it may be better not to address the text amendments and to allow the appeal process to determine whether the new sign is a reduction in non-conformity. If so, then the sign would be specifically allowed and this would occur without damaging the well-crafted sign code.

Carol Morris advised Councilmembers to not comment on the pending appeal because the Hearing Examiner had not acted on it and the requested interpretation has been denied.

Councilmember Picinich mentioned that the dealer does have the option of placing a monument sign and he agreed that it would be best to wait for the appeal process.

Councilmember Ruffo said that he too agreed that there should be a way to come to an agreement. This is a long-time business next to Highway 16, and may have special needs that need to be addressed in a positive way. He said that he understands the dilemma of both sides and hoped that something could be worked out.

Steve Osguthorpe addressed Council's questions of the non-conformity of the proposed sign.

Councilmember Owel explained that she remembered two of the most bitterly discussed issues of the sign code were highway visibility of signage and the desire for corporate signage. She agreed that the proposal is a much better looking sign, but consideration must be given to the wishes of the citizens who worked hard on the sign code.

Steve Osguthorpe pointed out that the Ford site was not located in the highway visibility node per the Design Guidelines and would require screening from the freeway if it were developed new today.

Councilmember Owel said that it is important to review things from time to time to allow improvements.

Councilmember Dick asked if the deletion of the stripe would bring the sign less non-conforming. Steve said that he was hesitant to make that determination, adding that they must make the determination on what is submitted. He said that he would bring back information on the existing pole signs around town.

Jack Bujacich -Mr. Bujacich spoke in favor of allowing the dealer to change the sign.

6. Resolution – Adopting Amendments to the Pierce County Countywide Planning Policies. Mark Hoppen explained that this is an attempt to define specific urban centers and manufacturing centers, which requires a percentage of the participants to approve the amendments.

MOTION: Move to adopt Resolution No. 617 authorizing the amendments to the Pierce County County-wide Planning Policy.

Owel / Dick – unanimously approved.

7. Vernhardson Street Overlay Project Bid Award. John Vodopich described this project to overlay the street from North Harborview to the city park in conjunction with the sidewalk project.

MOTION: Move to authorize the execution of the contract with Woodworth and Company in the amount of thirty-one thousand twenty dollars (\$31,7120) including retail sales tax for the overlay of a portion of Vernhardson Street.
Dick / Picinich – unanimously approved.

STAFF REPORTS: None scheduled.

COUNCIL COMMENTS / MAYOR'S REPORT:

PUBLIC COMMENT:

Jack Bujacich. Mr. Bujacich explained that he attended an informational meeting on the proposed hospital where the Certificate of Need had been discussed. He asked Council to pass a resolution in support. Mark Hoppen explained that the hearing for the Certificate of Need had been delayed from December 1st and had not been rescheduled, allowing Council time to consider a resolution.

ANNOUNCEMENT OF OTHER MEETINGS:

Public Workshop on Building Size Analysis at the Gig Harbor Civic Center, November 17th at 6:30 P.M.

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

MOTION: Move to adjourn to Executive Session for approximately thirty minutes at 9:05 p.m. for the purpose of discussion pending litigation.
Franich / Picinich - unanimously approved.

MOTION: Move to return to regular session at 9:40 p.m.
Ruffo / Franich – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 9:40 p.m.
Ekberg / Franich – unanimously approved.

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

Gretchen Wilbert, Mayor

Molly Towslee, City Clerk



TO: CITY COUNCILMEMBERS
FROM: MAYOR GRETCHEN WILBERT
SUBJECT: GIG HARBOR HIGH SCHOOL SERVICE LEADERSHIP CLASS
DATE: NOVEMBER 20, 2003

The Gig Harbor High School Service Leadership Class will be visiting the Council Meeting of November 24, 2003. I requested Nicole Schermerhorn to give us a memo regarding their membership and goals as you will see as stated below.

Gig Harbor Service Leadership

Coordinators: Lacey Watland and Nicole Schermerhorn, Seniors

What we do: Our class is a group of sophomores, juniors, and seniors who are assigned individual service projects. We have coordinators for The Martin Luther King Shelter, Tacoma Rescue Mission, The Boys and Girls Club, and other various projects around Gig Harbor High School. Service Leadership teaches us, the students, leadership qualities and develops our natural abilities. The way in which we differ from the Leadership class is that we become leaders through service. Along with our own projects, each of us is required to participate in five individual service projects. As a class at Gig Harbor we provide our fellow students with opportunities to volunteer and contribute to our community.

What we're up to now: As we are in the holiday season, we have opportunities for students to volunteer collecting donations for FISH food bank and the Salvation Army. Our major project right now is holding a school wide canned good food drive for FISH food bank.



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: CERTIFICATE OF NEED SUPPORT LETTER
DATE: NOVEMBER 18, 2003

INFORMATION/BACKGROUND

At the previous City Council Meeting, the City Council directed staff to return to Council with a means to support the Certificate of Need application for the Franciscan Hospital. The attached letter mirrors a letter recently authorized by the Chamber of Commerce for the same purpose.

RECOMMENDATION

The letter can be forwarded with all Council signatures if it meets with City Council approval. Staff recommends signature of the letter by all Council members.



November 24, 2003

Department of Health Certificate of Need Program

c/o Karen Nidermayer
P.O. Box 47852
Olympia, WA 98504-7852

Dear Ms. Nidermayer:

The City Council of the City of Gig Harbor strongly encourages the approval of the Certificate of Need for the proposed Franciscan Health System hospital in Gig Harbor. The City Council recognizes the current need for local hospital. Traveling to downtown Tacoma for care causes a number of hardships:

- **Delayed emergency care, the foremost concern.** Often, it takes more than a hour to get to an emergency room because of distance, traffic and the fact that the big downtown hospital emergency rooms are often full and not accepting patients.
- **Planned visits to downtown hospitals are a problematic for local residents.** Many people, especially seniors, are uncomfortable traveling across the bridge and through metropolitan traffic. Traveling to downtown Tacoma for care or to visit a friend often means finding a third party to provide necessary transportation. This transportation problem adds stress to already stressful situations and reduces the likelihood making a necessary trip.
- **Traveling to Tacoma for care adds a time burden for Peninsula employers and employees.** Many people report leaving the Peninsula area at least two hours before an appointment with a doctor. Often, a half-day or more may be lost from work simply because of the distance and the traffic involved with a hospital commute.

The city of Gig Harbor thinks that a community hospital is needed to address these issues. The City of Gig Harbor fully supports the Franciscan proposal and asks that you move forward as soon as possible to approve a Certificate of Need.

Sincerely,


The City of Gig Harbor

Gretchen Wilbert, Mayor

Bob Dick, City Council

Steve Ekberg, City Council

John Picinich, City Council





Jim Franich, City Council

Marilyn Owel, City Council

Derek Young, City Council

Frank Ruffo, City Council





ADMINISTRATION

TO: PERSONS RECOMMENDED FOR COMMISSION
FROM: MAYOR GRETCHEN WILBERT *GW*
SUBJECT: APPOINTMENT TO ARTS COMMISSION
DATE: NOVEMBER 18, 2003

INFORMATION/BACKGROUND

A position on the Gig Harbor Arts Commission has become vacant with the departure of Denise Schmidt. We thank Denise for serving for the past three years and wish her the best.

The City of Gig Harbor placed an ad for citizens interested in serving the remainder of the term, asking them to submit a letter of interest before August 1, 2003. We received no response to the ad.

A local artist, Nancy Weaver, attended the September GHAC meeting with an interest in serving.

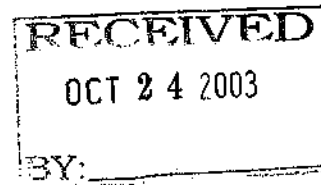
The ad ran again in October, with a response from J. Nina Miller, and Nancy Weaver.

The Arts Commission has reviewed the information and has made a recommendation to appoint Nancy Weaver to fill the vacant position.

RECOMMENDATION

City Council approve the appointment of Nancy Weaver to fill the remainder of the vacant position on the Gig Harbor Arts Commission.

October 23, 2003



To the Honorable Gretchen Wilbert,

My name is Nancy Weaver and, after attending a Gig Harbor Art Commission meeting and learning more about the group, would like to apply to become a member. I was very impressed with the women I met and am excited about the banner project they are working on right now and about future ideas to enhance our city.

A little background information: My husband, Alan, and I have lived in the Rosedale area for about thirty years and love Gig Harbor and our community. I enjoyed teaching at Purdy and Voyager for many years. I always had a special interest in teaching art to children, was on the new art curriculum committee for the district, and helped select public art for Voyager when it opened. I also have been a docent for the Tacoma Art Museum and belong to the Peninsula Art League as a practicing artist.

Most of all, I would like to encourage and help increase an awareness in all the arts in our city and community. You have already helped in this area in many ways as mayor, and hopefully the committee will continue to carry the torch.

Thank you for your consideration,

Sincerely yours,
Nancy Weaver

Nancy Weaver

8916 90th Ave. N. W.
Gig Harbor, WA 98332

851 2347

Woodside Developments Incorporated

Founded 1962

A Real Estate Development and Investment Corporation

PO Box 1841

Gig Harbor, Washington

98335

253.853.6631

Roger E. Miller, Founder
J. Nina Miller, President

October 16, 2003

Mayor
City of Gig Harbor
3510 Grandview Street
Gig Harbor, Wa. 98335

re: City of Gig Harbor Arts Commission

Ms. Mayor:

I am very interested in serving on the Gig Harbor Arts Commission. I have lived in Gig Harbor at Point Richmond Beach for the last ten years, my family has been here since the 1960's.

Prior to moving here, I owned an international fine art gallery in Seattle, and was a private art consultant for years as well. I participated as a judge in many local art shows as well as the annual Pioneer Square Gallery walk. I studied at the University of London, England under Professor Raymond Watkinson, a well known art historian. I love the arts, love living and working in Gig Harbor, and am very excited about the Arts Commission.

Thank you for your time and in considering me to serve on the Arts Commission.



J. Nina Miller

Mailing address: listed above

Home: 13321 Point Richmond Beach Road NW, Gig Harbor, 98332



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: PURCHASE AUTHORIZATION
- WWTP IN-CHANNEL FINE SCREEN EQUIPMENT
DATE: NOVEMBER 24, 2003

INTRODUCTION/BACKGROUND

An identified Sewer Operating Objective in the 2003 Budget was to replace the problematic externally fed rotary screens with an in-channel fine screen. Contract documents and specifications were developed in accordance with RCW 35.23.352. The specifications for the screen was published October 29th and November 5th, 2003. On November 18, 2003, the bid was closed with four vendors responding. The lowest quotation provided from WesTech was determined to be non responsive because it did not provide all the required submittal information.

The second lowest and responsive price quotation received was from Parkson Corporation, in the amount of \$46,070.00 including retail sales tax. A review of their submittal information indicated they are able to satisfy all the performance standards specified.

<u>Vendor</u>	<u>Total</u> (including sales tax)
Parkson Corporation	\$ 46,070.00
WesTech	\$ 37,019.00
Vanderbeken Enterprises Ltd.	\$ 53,018.00
Andritz-Ruthner	\$ 60,493.00

ISSUES/FISCAL IMPACT

The purchase of the fine screen is within the 2003 Sewer Operating budget amount of \$365,000.00.

RECOMMENDATION

I recommend that Council authorize the purchase from Parkson Corporation, for their price quotation proposal amount of forty-six thousand seventy dollars and zero cents (\$46,070.00), including retail sales tax.



"THE MARITIME CITY"

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR *DR*
DATE: NOVEMBER 18, 2003
**SUBJECT: SECOND READING - ORDINANCE AUTHORIZING THE ISSUANCE
AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND.**

BACKGROUND

Ordinance 934 confirmed the final assessment roll in the amount of \$1,889,492.42. Of this amount, \$807,659.10 remains unpaid.

FISCAL CONSIDERATIONS

The bond is due November 1, 2015 and carries an interest rate of 4.53%. Prepayments may be made without penalty, and all special assessments and related interest and penalties are pledged as security for payment of the bond.

RECOMMENDATION

I recommend adoption of this ordinance.

CITY OF GIG HARBOR, WASHINGTON

LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND, 2003

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND IN THE PRINCIPAL AMOUNT OF \$807,659.10; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

APPROVED ON NOVEMBER 24, 2003

PREPARED BY:

PRESTON GATES & ELLIS

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE ISSUANCE AND SALE OF A LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND IN THE PRINCIPAL AMOUNT OF \$807,659.10; PROVIDING THE FORM, TERMS, CONDITIONS AND COVENANTS OF SAID BOND; PROVIDING FOR THE SALE THEREOF; AND PROVIDING FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE.

WHEREAS, the City Council of the City of Gig Harbor, Washington (the "City"), by Ordinance No. 833, created Local Improvement District No. 99-1 (the "District"); and

WHEREAS, the assessment roll for the District has been confirmed in the manner required by law by Ordinance No. 934 in the amount of \$1,889,492.42, of which \$1,081,833.32 has been prepaid; and

WHEREAS, it is deemed necessary and desirable that the City issue its Local Improvement District No. 99-1 Bond in the amount of \$807,659.10, which is the amount of assessments unpaid; and

WHEREAS, the City has heretofore accepted the offer of Bank of America, N.A. to purchase the Bond on the terms and conditions set forth therein and herein;

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

Section 1. Definitions. As used in this ordinance the following terms shall have the following meanings, unless a different meaning clearly appears from the context:

Assessments means the assessments levied in Local Improvement District No. 99-1, which assessments are pledged to be paid into the LID No. 99-1 Fund, including installments thereof and any interest and penalties due or which may become due thereon.

Bank means Bank of America, N.A., or its successor or assigns.

Bond means the Local Improvement District No. 99-1 Bond authorized by this ordinance to be issued.

Bond Register means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond owned by such owner or nominee.

City means the City of Gig Harbor, Washington, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Washington.

Council means the general legislative authority of the City as the same shall be duly and regularly constituted from time to time.

District means Local Improvement District No. 99-1 of the City.

Government Obligations has the meaning given such term in RCW Ch. 39.53, as such chapter may be hereafter amended or restated.

Guaranty Fund means the Guaranty Fund of the City authorized and maintained pursuant to Ch. 35.54 RCW.

Improvements means the street and drainage improvements made within the District as described in Ordinance No. 833.

LID No. 99-1 Fund means the Local Improvement District No. 99-1 Fund created by Ordinance No. 833 of the City.

Registrar means the Treasurer for the purposes of registering and authenticating the Bond, maintaining the Bond Register, and paying the principal of and interest on the Bond as the same become due and payable.

Treasurer means the Finance Director of the City, or other officer or officers succeeding to the duties of such office.

Section 2. Authorization of Bond. For the purpose of paying the costs of the Improvement and issuing the Bond, the City shall issue its Local Improvement District No. 99-1 Bond, 2003 (the "Bond") in the principal amount of \$807,659.10. The Bond shall be dated as of the date of its delivery to Bank of America, N.A. (the "Bank"), shall be in fully registered form, shall be numbered for the purpose of identification and control, shall be in the denomination of \$807,659.10, and shall bear interest from its date at the per annum rate of 4.53%, computed on the basis of a 360-day year of twelve 30-day months. Interest shall be payable annually beginning November 1, 2004, and thereafter on the 1st day of November of each year, and the Bond shall mature November 1, 2015. Principal on the Bond may be prepaid as provided in Section 4 hereof.

The Bond shall be an obligation only of the LID No. 99-1 Fund and the Local Improvement Guaranty Fund of the City (the "Guaranty Fund") and shall not be a general obligation of the City. All money received by the City in payment of, penalties, if any, and interest on the Assessments levied in the District shall be paid into the LID No. 99-1 Fund and used to pay the principal of and interest on the Bond, and as security for such payment the LID No. 99-1 Fund is hereby pledged.

Both the principal of and interest on the Bond shall be payable in lawful money of the United States of America. Interest on the Bond shall be paid by check or draft mailed to the

registered owner or assigns at the address appearing on the Bond Register as of the 15th day of the month prior to which an interest payment is due. All principal payments shall be paid by check or draft mailed to the Bank, as the registered owner of the Bond, and the amount of the principal paid shall be noted on the Bond. Upon receipt of the final payment of principal and interest, the Bank shall surrender the Bond at the office of the Registrar for cancellation in accordance with law.

Section 3. Registrar; Bond Register. The Treasurer shall serve as registrar and paying agent for the Bond (the "Registrar"). The Registrar shall keep, or cause to be kept, sufficient books or records for the registration of the Bond. The Registrar is authorized to authenticate and deliver the Bond in accordance with the provisions of this ordinance and to carry out all of the Registrar's powers and duties under this ordinance. The Bond Register shall be maintained by the Registrar, and shall contain the name and mailing address of the owner of the Bond or nominee of such owner and the principal amount of the Bond.

Section 4. Redemption. The principal amount of the Bond shall be prepaid without penalty by application of Assessments and prepayments thereof, in whole or in part, on any interest payment date whenever there shall be sufficient money in the LID No. 99-1 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on the Bond. Prepayments of principal shall be noted on the Bond. No prepayments may be made from sources other than Assessments and prepayments thereof.

Notice of any such permitted intended prepayment of principal shall be given not less than 3 days prior to the date fixed for prepayment by telephone or in writing to the registered owner of the Bond. The requirements of this section shall be deemed to be complied with when

notice is mailed as herein provided regardless of whether or not it is actually received by the owner of the Bond.

Section 5. Payment of Assessments; Interest on Assessments. The City has heretofore levied Assessments payable into the LID No. 99-1 Fund by Ordinance No. 934 in the total amount of \$1,889,492.42, of which \$1,081,833.32 was prepaid prior to the passage of this ordinance and \$807,659.10 remains payable in annual installments together with interest and penalties thereon in the manner and at the times specified in Ordinance No. 934. The balance of Assessments remaining unpaid at the end of the thirty-day prepayment period shall bear interest at a rate of 5.03%, which is 1/2% greater than the interest rate on the Bond. Both principal of and interest on the Bond are payable solely out of the LID No. 99-1 Fund and from the Guaranty Fund.

Section 6. Form of Bond. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. 1

\$807,659.10

STATE OF WASHINGTON

CITY OF GIG HARBOR

LOCAL IMPROVEMENT DISTRICT NO. 99-1 BOND, 2003

REGISTERED OWNER: Bank of America, N.A.

PRINCIPAL AMOUNT: EIGHT HUNDRED SEVEN THOUSAND SIX HUNDRED FIFTY NINE AND 10/100 DOLLARS

INTEREST RATE: 4.53%

MATURITY DATE: November 1, 2015

Laws of Washington 1965, Chapter 7, § 35.45.070 provides, in part, as follows:

Neither the holder nor owner of any bond, interest coupon, or warrant issued against a local improvement fund shall have any claim therefor against the city or town by which it is issued, except for payment from the special assessments made for the improvement for which the bond or warrant was issued and except also for payment from the local improvement guaranty fund of the city or town as to bonds issued after the creation of a local improvement guaranty fund of the city or town. The city or town shall not be liable to the holder or owner of any bond, interest coupon, or warrant for any loss to the local improvement guaranty fund occurring in the lawful operation thereof.

The City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, solely out of the sources referred to herein, on the Maturity Date set forth above, the Principal Amount set forth above in lawful money of the United States of America, with interest on the unpaid balance hereof from the date hereof at the Interest Rate per annum set forth above, payable November 1, 2004, and annually thereafter on November 1st of each year until payment of the principal sum has been made or duly provided for. Interest on and principal of this bond is payable by check or draft mailed on the date such interest is due to the registered owner hereof at the address appearing on the bond registration books as of the 15th day of the month prior to which an interest payment is due. Upon receipt of the final payment of principal and interest, the Registered Owner shall presentation and surrender the Bond at the office of the City's Treasurer (the "Registrar") for cancellation in accordance with law.

Principal of this bond is subject to prepayment in advance of its scheduled maturity, in whole or in part on any interest payment date whenever there shall be sufficient money in the LID No. 99-1 Fund to pay the same over and above an amount sufficient for the payment of the interest next accruing on this bond. Prepayments of principal shall be entered below. Notice of any such intended prepayment shall be given by telephone or in writing to the Registered Owner not fewer than 3 days prior to such prepayment.

This bond, both principal and interest, is payable only out of the Local Improvement District No. 99-1 Fund (the "LID No. 99-1 Fund") created by Ordinance No. 833 of the City, and from the local improvement guaranty fund of the City created pursuant to Chapter 209, Session Laws, 1927, and acts amendatory thereof. The City has irrevocably obligated and bound itself to pay into the LID No. 99-1 Fund all assessments levied within LID No. 99-1. The owner of this bond shall have no claim therefor against the City except for payment from the special assessments made for the improvements for which this bond was issued, and except as against the local improvement guaranty fund of the City, and the City shall not be liable to any owner of such Bond for any loss to the guaranty fund occurring in the lawful operation thereof by the City. The remedy of the owner of this bond in case of nonpayment of either principal or interest shall be confined to the enforcement of the assessments and to the guaranty fund. The Bond is not a general obligation of the City.

The City has designated the Bond as a "qualified tax-exempt obligation" under Section 265(b) of the Internal Revenue Code of 1986, as amended.

This bond is authorized by Ordinance No. _____ of the City, passed on November 24, 2003 (the "Bond Ordinance"), and is issued to finance improvements in Local Improvement District No. 99-1.

The City hereby covenants and agrees with the owner of the Bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for the definitions of defined terms used herein.

Reference to the Bond Ordinance and any and all modifications and amendments thereto is made for a description of the nature and extent of the security for the Bond, the funds pledged, and the terms and conditions upon which the Bond is issued.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City, and that acts, conditions, and things required to be done precedent to and in the issuance of this bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this bond to be signed on behalf of the City with the manual or facsimile signature of its Mayor, to be attested by the manual or facsimile signature of its Clerk this _____ day of _____, 2003.

CITY OF GIG HARBOR, WASHINGTON

[SEAL]

By _____ /s/
Mayor

ATTEST:

/s/
Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is the bond described in the within-mentioned Bond Ordinance and is the Local Improvement District No. 99-1 Bond, 2003, of the City of Gig Harbor, Washington.

CITY OF GIG HARBOR
City Treasurer, Registrar

By _____ /s/ _____

Principal Amount Paid	Payment Date

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____

PLEASE INSERT SOCIAL SECURITY OR TAXPAYER IDENTIFICATION NUMBER OF TRANSFEREE

[Empty rectangular box for Social Security or Taxpayer Identification Number]

(Please print or typewrite name and address, including zip code, of Transferee) _____
the within bond and does hereby irrevocably constitute and appoint _____ of
_____, or its successor, as Registrar to transfer said bond on the books
kept for registration thereof with full power of substitution in the premises.

DATED: _____.

SIGNATURE GUARANTEED:

NOTE: The signature on this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Section 7. Execution of Bond. The Bond shall be signed on behalf of the City by the manual or facsimile signature of the Mayor, and shall be attested by the manual or facsimile signature of the Clerk.

Only such Bond as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bond so authenticated has been duly executed, authenticated and delivered hereunder and is entitled to the benefits of this ordinance.

In case either of the officers who shall have executed the Bond shall cease to be such officer or officers of the City before the Bond so signed shall have been authenticated or delivered by the Registrar, or issued by the City, such Bond may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Bond may also be signed and attested on behalf of the City by such persons as at the actual date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond any such person shall not have been such officer of the City.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing at such time or times and bearing interest to be earned thereon in amounts (together with such money if necessary) sufficient to redeem and retire the Bond in accordance with its terms are set aside in a special account to effect such redemption or retirement and such money and/or the principal of and interest on such obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the LID No. 99-1 Fund for the payment of the principal of and interest on the Bond, and the owner of the Bond shall cease to be entitled to any lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and the Bond shall be deemed not to be outstanding hereunder.

Section 9. Sale of the Bond. The proposal of the Bank dated October 9, 2003 for sale of the Bond to the Bank, heretofore approved by the Council, is hereby ratified and confirmed, and the City agrees to pay the fees and perform the reporting requirements specified therein, and to pay a structuring fee to Banc of America Securities LLC. The appropriate City officials are hereby authorized and directed to do everything necessary for the prompt issuance, execution and delivery of the Bond and for the proper application and use of the proceeds thereof.

Section 10. Disposition of Bond Proceeds. The Bond proceeds shall be deposited into the LID No. 99-1 Fund and used to pay any remaining costs of the Improvements and pay costs of issuing the Bond.

Section 11. Bond Designated "Qualified Tax-Exempt Obligation." The Bond is hereby designated as a "qualified tax-exempt obligation" for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"). The City does not expect to issue more than \$10,000,000 in qualified tax exempt obligations during 2003.

Section 12. Lost or Destroyed Bond. In case the Bond shall be lost, stolen or destroyed, the Registrar may execute and deliver a new Bond of like amount, date, and tenor to the registered owner thereof upon the owner paying the expenses and charges of the City in connection therewith and upon his/her filing with the Registrar evidence satisfactory to the Registrar that such Bond was actually lost, stolen or destroyed and of his/her ownership thereof, and upon furnishing the Registrar with indemnity satisfactory to the Registrar.

Section 13. Bond Not Arbitrage Bond; Not Private Activity Bond. The City covenants and agrees that throughout the term of the Bond no part of the proceeds of the Bond or any other money or obligations held under this ordinance shall at any time be used for any purpose or invested in such a manner, nor shall the City take any other action, that would cause the Bond to be (i) an "arbitrage bond" under the Code or (ii) a "private activity bond" under the Code.

Section 14. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 15. Prior Acts. Any act taken pursuant to the authority of this ordinance but prior to its effective date is hereby ratified and confirmed.

Section 16. Effective Date. This ordinance shall become effective five days from its passage and publication as required by law.

PASSED by the City Council at a regular meeting held this 24th day of November, 2003.

GIG HARBOR, WASHINGTON

By _____
Mayor

ATTEST:

Clerk

First Reading: November 10, 2003

Date Adopted: November 24, 2003

Date of Publication: _____, 2003

Effective Date: _____, 2003

CERTIFICATE OF CLERK

I DO HEREBY CERTIFY that I am the duly chosen, qualified and acting Clerk of the City of Gig Harbor, Washington (the "City"), and keeper of the records of the City; and

I HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. ___ of the City (the "Ordinance"), as finally passed at a regular meeting of the City Council held on the 24th day of November, 2003, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a legally sufficient number of members of the City Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of November, 2003.

Clerk



Bank of America
WA1-501-34-03
800 5th Avenue, Floor 34
Seattle, WA 98104

Kerrin.m.gibbons@bankofamerica.com

Kerrin M. Gibbons
Senior Vice President
Public Sector Banking

October 9, 2003

David Rodenbach
Finance Director
City of Gig Harbor
3510 Grandview St
Gig Harbor, WA 98335

Dear Dave:

Bank of America ("Bank") is pleased to provide the following proposal to finance the City's Local Improvement District Number 99-1. This letter is a proposal only and does not commit us to offer credit under these or any other terms or conditions. Please keep the contents of this letter confidential.

Proposed rates and terms are as follows:

Borrower:	City of Gig Harbor ("City")
Amount:	\$807,659.10
Term:	12 years. Final maturity November 1, 2015
Form of Obligation:	Local Improvement District Bond Tax Exempt, Bank Qualified
Interest Rate:	4.25% Rates are an indication only and are subject to changes in market conditions. Rates can be set upon credit approval and once closing date is known. Interest is calculated on a 30/360-day basis.
Loan Fee:	\$1,500.00. The City is responsible for bank counsel and bond counsel and BAS structuring fees.
Repayments:	Principal and interest due annually every November 1 st

beginning November 1, 2004. Loan is fully amortizing.

Financial Reporting Requirements:

State Audit Report within 10 days of publication.
In-house financial statement or CAFR within eight months of year-end.

City's Budget due within 90 days of the beginning of the budgeted cycle.

Security:

Pledge of special assessments on affected properties and assignment of assessment liens, including net proceeds of liquidation of foreclosed properties on settlement of such assessments. To the extent that the assessment payments are not sufficient to pay the Bond, the city will utilize the LID Guaranty fund of the City to pay the Bond. 10% of the Bond proceeds will be deposited into the Guaranty Fund at Bond closing.

Prepayment:

Any portion of the outstanding principal amount of the Bond may be prepaid by the City without penalty on each debt service payment date with funds generated from the local improvement district (including installment payments, assessment payments, surplus Bond proceeds, excess taxes levied to replenish the Guaranty Fund, delinquent payments, proceeds from foreclosure or balances in the LID Guaranty Fund). Such prepayments are to be applied first to interest and then to last principal payment due.

This financing is subject to satisfactory receipt and satisfactory review by Bank of all normal documents to be prepared by the City's bond counsel, including:

1. A legal opinion from the City's bond counsel stating the indebtedness is legal and valid, is a bank qualified transaction, and the interest income is tax-exempt to Bank;
2. A copy of the Ordinance passed by the City Council authorizing the issuance of debt;
3. Receipt of the registered bond at closing;
4. A copy of the IRS form evidencing the interest income as tax-exempt to Bank of America;
5. Updated financial information as may be requested by Bank;

City of Gig Harbor
October 9, 2003

6. Documentation subject to review by Bank counsel.

Dave, as always, it's a pleasure to do business with you. I am available to answer any questions you may have regarding this proposal. Bank of America is pleased to be able to work with the City on this financing.

Again, this letter is a proposal for discussion purposes only and does not constitute a commitment. Any commitment is subject to receipt and further evaluation of the Borrower's financial information, credit history, and such other information as may be requested by the Bank. If the Bank subsequently commits credit, some terms, conditions and covenants may be different from or in addition to those that are stated in this letter.

Sincerely,



Kerrin M. Gibbons
Senior Client Manager



Nancy Nuerenberg
Senior Credit Products Officer

cc Cynthia Weed, Preston, Gates & Ellis
Peter Butterfield, Preston, Gates & Ellis
Dave Trageser, Banc of America Securities

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR DR
DATE: NOVEMBER 18, 2003
SUBJECT: SECOND READING - ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE AND REFUNDING BOND.

BACKGROUND

The city sold a 3-year \$1.5 million bond July 31, 2001. The proceeds were used for construction of Pump Station 3A.

The bond principal amount will be \$1,811,000. This is a decrease from the first reading estimate of \$1,825,000, due to lower issuance costs.

This bond, totaling \$1,811,000 will refinance the 3-year bond and refund the 1994 Water and Sewer Revenue and Refunding bonds, which have \$460,000 in principal outstanding and carry a 6% interest rate. The 1994 Water and Sewer Revenue and Refunding bonds will be refunded using \$401,000 currently in the Reserve Account and \$80,000 in bond proceeds.

FISCAL CONSIDERATIONS

This is a 10-year bond with an average annual debt service requirement of \$225,000. The interest rate is 3.89%. The debt coverage requirement for net revenues is 1.25 times maximum annual debt service in a succeeding year. The 2004 proposed budget meets this requirement. The city must also fund the reserve account within 5 years. The reserve requirement is \$181,100; therefore, \$36,220 will be placed into the Reserve Account annually.

RECOMMENDATION

I recommend adoption of this ordinance.

CITY OF GIG HARBOR, WASHINGTON

WATER AND SEWER REVENUE AND REFUNDING BOND, 2003

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE AND REFUNDING BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$1,811,000 TO PROVIDE PERMANENT FINANCING FOR CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY AND TO REFUND ON A CURRENT BASIS CERTAIN OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS OF THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF THE BOND; AND APPROVING THE SALE OF THE BOND.

APPROVED ON NOVEMBER 24, 2003

PREPARED BY:

PRESTON GATES & ELLIS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A WATER AND SEWER REVENUE AND REFUNDING BOND OF THE CITY IN THE PRINCIPAL AMOUNT OF \$1,811,000 TO PROVIDE PERMANENT FINANCING FOR CERTAIN IMPROVEMENTS TO THE WATER AND SEWER SYSTEM OF THE CITY AND TO REFUND ON A CURRENT BASIS CERTAIN OUTSTANDING WATER AND SEWER REVENUE AND REFUNDING BONDS OF THE CITY; PROVIDING THE DATE, FORM, TERMS AND MATURITY OF THE BOND; AND APPROVING THE SALE OF THE BOND.

WHEREAS, the City of Gig Harbor the ("City") issued its Water and Sewer Revenue Bond Anticipation Note, 2001 (Junior Lien) in the principal amount of \$1,500,000 (the "Note") authorized by Ordinance No. 887 of the City for the purpose of providing temporary financing for certain improvement to the System (the "Improvements"); and

WHEREAS, Ordinance No. 887 authorizes prepayment of the Note on any date, subject to certain penalties specified therein; and

WHEREAS, the City has issued its Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994, issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently remaining outstanding maturing on September 1 of the following years and bearing interest at the following rates:

<u>Maturity Years (September 1)</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
2004	\$300,000	6.00%
2005	160,000	6.10

(the "1994 Bonds")

WHEREAS, Ordinance No. 677 authorizes the defeasance and redemption on March 1, 2004 of the 1994 Bonds at a price of par plus accrued interest; and

WHEREAS, it is now deemed necessary and desirable to issue and sell a water and sewer revenue and refunding bond in order to provide permanent financing for the Improvements (by pre-paying the Note) and to refund the 1994 Bonds; and

WHEREAS, the City has received an offer from Bank of America, N.A. to purchase such revenue and refunding bond on terms and conditions that are acceptable to this Council; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON DOES ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance, unless a different meaning clearly appears from the context:

Acquired Obligations means the Government Obligations acquired by the City under the terms of this ordinance to effect the defeasance and refunding of the 1994 Bonds.

Annual Debt Service means, with respect to any issue of Parity Bonds, the amount required in a given calendar year for the payment of the principal of and interest on such Parity Bonds.

Assessments means any assessments levied in any utility local improvement district of the City created for the acquisition or construction of additions and improvements to and extensions of the System, if such assessments are pledged to be paid into the Bond Fund. The word *Assessments* shall also include any installments of assessments and any interest or penalties which may be due thereon.

Assessment Income means the principal of and interest on assessments levied in any utility local improvement district and pledged to be paid into the Bond Fund. In the case of assessments payable in installments, Assessment Income shall be allocated to the years in which it would be

received if the unpaid principal balance of each assessment roll were paid in equal principal amounts over the remaining number of installments with interest on the declining balance at the times and at the rate provided in the ordinance confirming the assessment roll.

Average Annual Debt Service means the average amount of annual debt service which will become due in any fiscal year hereafter on all Parity Bonds then outstanding.

Bank means Bank of America, N.A., or its successor or assigns.

Bond means the City of Gig Harbor, Washington Water and Sewer Revenue and Refunding Bond, 2003, issued pursuant to this ordinance.

Bond Fund means the City of Gig Harbor Utility Bond Redemption Fund created in the office of the Treasurer of the City pursuant to Section 13 of Ordinance No. 468.

Bond Register means the books or records maintained by the Registrar containing the name and mailing address of the owner of the Bond or nominee of the owner and the remaining principal amount of the Bond held by the owner or nominee.

City means the City of Gig Harbor, Washington, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Washington.

Code means the federal Internal Revenue Code of 1986, as the same shall be amended from time to time, and all regulations promulgated or applicable thereunder.

Costs of Maintenance and Operation mean all necessary operating expenses, current maintenance expenses, expenses of reasonable upkeep and repairs, and insurance and administrative expenses with respect to the System, but excludes depreciation, payments for debt service or into reserve accounts, costs of capital additions to or replacements of the System, municipal taxes or payments to the City in lieu of taxes.

Council means the City Council as the general legislative authority of the City as the same

shall be duly and regularly constituted from time to time.

Debt Service Account means the account of that name created in the Bond Fund by Ordinance No. 468.

Future Parity Bonds means any water and sewer revenue bonds which the City may hereafter issue having a lien upon the Revenue of the System for the payment of the principal thereof and interest thereon equal to the lien upon the Revenue of the System of the Bonds.

Improvements means those additions, betterments and improvements to the System authorized by Ordinance No. 887.

Maximum Annual Debt Service means the highest remaining Annual Debt Service Requirement for outstanding Parity Bonds.

Net Revenue means the Revenue of the System less the Costs of Maintenance and Operation.

1994 Bonds means the City's Water and Sewer Revenue and Refunding Bonds, 1994 dated July 1, 1994, issued pursuant to Ordinance No. 677 in the original principal amount of \$2,995,000 and currently remaining outstanding maturing on September 1 of the following years and bearing interest at the following rates:

<u>Maturity Years (September 1)</u>	<u>Principal Amounts</u>	<u>Interest Rates</u>
2004	\$300,000	6.00%
2005	160,000	6.10

1994 Bond Ordinance means Ordinance No. 677 of the City.

Note means the City's Water and Sewer Revenue Bond Anticipation Notes, 2001 (Junior Lien), issued pursuant to Ordinance No. 887 under date of July 31, 2001 in the principal amount of \$1,500,000.

Parity Bonds means the Bond and any Future Parity Bonds.

Refunding Account means the account by that name established within the Bond Fund pursuant to Section 6 of this ordinance.

Registrar means the Treasurer of the City as registrar and paying agent for the Bond.

Registered Owner means the person in whose name the Bond is registered on the Bond Register.

Reserve Account means the account created in the Bond Fund by Section 15 of Ordinance No. 468 and shall include any subaccount created therein.

Reserve Account Requirement means the lesser of (A) 10% of the net proceeds of each series of Parity Bonds, (B) Maximum Annual Debt Service, (C) 1.25 times average Annual Debt Service, or (D) such amount as shall be required to maintain the exemption of interest of any series of Parity Bonds from taxation under the Code.

Revenue Fund means the "City of Gig Harbor Utility Revenue Fund" authorized to be created by Section 12 of Ordinance No. 468, into which fund all of the Revenue of the System is to be deposited, as collected. The Revenue Fund may be maintained as one or more separate funds of the City into which all of the Revenue of the System shall be deposited.

Revenue of the System means all earnings, revenue and moneys received by the City from or on account of the operation of the System, including the income from investments of money in the Revenue Fund and the Bond Fund or from any other investment thereof. "Revenue of the System" shall also include any federal or state reimbursements of operating expenses to the extent such expenses are included as "Costs of Maintenance and Operation."

System means the existing sanitary sewerage collection and treatment system of the City, as it now exists and as it may later be added to, extended and improved, and the existing water supply and

distribution system of the City, as it now exists and as it may later be added to, extended and improved for as long as any Parity Bonds remain outstanding.

Term Bonds means any Parity Bonds identified as such in the ordinance authorizing the issuance thereof, the payment of which is provided for by a requirement for mandatory deposits of money into a "sinking fund account" in the Bond Fund.

Treasurer means the Finance Director of the City.

Rules of Interpretation. In this Ordinance, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and sections of this Ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect;

(e) All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and

(f) Words importing the singular number include the plural number and vice versa.

Section 2. Authorization of the Bond. For the purpose of pre-paying the Note, refunding the 1994 Bonds and paying costs of issuance, the City Council hereby authorizes the issuance and sale of its water and sewer revenue and refunding bond (the "Bond"). The Bond shall be designated as the "City of Gig Harbor, Washington, Water and Sewer Revenue and Refunding Bond, 2003," shall be dated as of its date of delivery, shall be issued in fully registered form in the denomination of \$1,811,000, shall bear interest on unpaid principal from its date at a per annum rate of 3.89% (calculated on the basis of a 360-day year with twelve 30-day months), payable on the first days of each March and September, commencing March 1, 2004, shall mature on September 1, 2013 and shall be payable in installments of principal on September 1 of the following years in the following amounts:

<u>Year</u> <u>(September 1)</u>	<u>Principal Payment</u>
2004	\$117,000
2005	161,000
2006	167,000
2007	173,000
2008	181,000
2009	188,000
2010	194,000
2011	202,000
2012	210,000
2013	218,000

The Bond shall not be a general obligation of the City. The Bond shall be an obligation only of the Bond Fund and shall be payable and secured as provided herein. The Bond does not constitute an indebtedness of the City within the meaning of the constitutional provisions and limitations of the State of Washington.

The Treasurer shall act as transfer agent, paying agent and registrar for the Bond (the "Registrar"). Both principal of and interest on the Bond shall be payable in lawful money of the United States of America. Upon final payment of all principal and interest thereon, the Bond shall be submitted to the Registrar for cancellation and surrender.

The Bond Register shall be maintained by the Registrar, and shall contain the name and mailing address of the registered owner of the Bond or nominee of such registered owner.

The Bond may be transferred only on the Bond Register maintained by the Registrar for that purpose upon the surrender thereof by the registered owner or nominee or his duly authorized agent and only if endorsed in the manner provided thereon and thereupon a new fully registered Bond of like principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor. Such exchange or transfer shall be without cost to the owner or transferee.

Section 3. Optional Redemption. The City has reserved the right to prepay the Bond prior to its maturity in whole or in part at any time, upon at least 5 days' written notice to the Bank subject only to prepayment fees as stated in Exhibit A attached hereto.

Section 4. Priority of Payments from Revenue Fund There has heretofore been established in the office of the Treasurer a special fund of the City known as the "City of Gig Harbor Utility Revenue Fund" (the "Revenue Fund"), into which the Revenue of the System is deposited as collected. The Revenue Fund shall be held separate and apart from all other funds and accounts of the City, and the Revenue of the System shall be used only for the following purposes and in the following order of priority:

First, to pay the Costs of Maintenance and Operation of the System;

Second, to make all payments required to be made into the Bond Fund to pay the interest on any Parity Bonds;

Third, to make all payments required to be made into the Bond Fund to pay the maturing principal of any Parity Bonds;

Fourth, to make all payments required to be made into the Reserve Account created to secure the payment of the Parity Bonds;

Fifth, to make all payments required to be made into any other revenue bond redemption fund or revenue warrant redemption fund and debt service account or reserve account created to pay and secure the payment of the principal of and interest on any revenue bonds or revenue warrants of the City having a lien upon the Revenue of the System junior and inferior to the lien thereon for the payment of the principal of and interest on the Parity Bonds; and

Sixth, to retire by redemption or purchase any outstanding revenue bonds or revenue warrants of the City, to make necessary additions, betterments and improvements and repairs to or extensions and replacements of the System, or for any other lawful City purposes.

Section 5. Bond Fund. A special fund of the City known as the "Utility Bond Redemption Fund" (the "Bond Fund") has heretofore been created by the City for the sole purpose of paying and securing the payment of Parity Bonds.

(a) *Payments into Debt Service Account.* A special account to be known as the "Debt Service Account" has heretofore been created in the Bond Fund for the purpose of paying the principal of, premium, if any, and interest on Parity Bonds.

As long as any Parity Bonds remain outstanding, the City hereby obligates and binds itself to set aside and pay from the Bond Fund into the Debt Service Account those amounts necessary, together with such other funds as are on hand and available in the Debt Service Account, to pay the principal of and the interest on such Parity Bonds as the same respectively become due and payable. Such payments from the Bond Fund shall be made in a fixed amount without regard to any fixed

proportion on or before the 20th day of each month, an amount such that, if the same amount were so set aside and paid into said Debt Service Account on the 20th day of each succeeding calendar month thereafter prior to the next date upon which an installment of interest or principal and interest falls due on the Bonds, the aggregate of the amounts so set aside and paid into the Debt Service Account will on such date be equal to the installment of interest or principal and interest.

(b) *Payments into Reserve Account.* A Utility Reserve Account has heretofore been created in the Bond Fund for the purpose of securing the payment of the principal of and the interest on all bonds payable out of such Fund.

In the event that the City issues any Term Bonds in the future and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the term Average Annual Debt Service shall be deemed to exclude from principal an amount of Term Bonds equal to such mandatory payments, and from interest, the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The City hereby covenants and agrees that on the date of issuance of the Bonds it will pay into the Reserve Account (out of Revenue of the System or any funds on hand legally available for such purpose) one fifth of the Reserve Requirement, and thereafter not less than approximately equal additional annual payments so that by five years from the date of issuance of the Bonds there will have been paid into the Reserve Account an amount which, with the money already on deposit therein (or any insurance policy(ies) or letter(s) of credit), will be equal to the Reserve Requirement.

The City hereby further covenants and agrees that in the event it issues any Future Parity Bonds that it will provide in the ordinance authorizing the issuance of the same that it will pay into

the Reserve Account out of the Revenue of the System or Assessments (or, at the option of the City, out of any other funds on hand legally available for such purpose) not less than approximately equal additional annual payments so that by five years from the date of such Future Parity Bonds there will have been paid into the Reserve Account an amount which, with the money already on deposit therein (or any insurance policy(ies) or letter(s) of credit), will be equal to the Reserve Requirement.

The City further covenants and agrees that when the required deposits have been made into the Reserve Account, it will at all times maintain therein an amount at least equal to the Reserve Requirement. Whenever there is a sufficient amount in the Revenue Bond Fund, including the Reserve Account and the Debt Service Account, to pay the principal of, premium if any, and interest on all outstanding Parity Bonds, the money in the Reserve Account may be used to pay such principal, premium and interest. Money in the Reserve Account may also be withdrawn to redeem and retire, and to pay the premium, if any, and interest due to such date of redemption, on any outstanding Parity Bonds, as long as the monies left remaining on deposit in the Reserve Account are equal to the Reserve Requirement.

In the event there shall be a deficiency in the Debt Service Account to meet maturing installments of either interest on or principal of and interest on the outstanding bonds payable out of such Account, such deficiency shall be made up from the Reserve Account by the withdrawal of monies therefrom. Any deficiency created in the Reserve Account by reason of any such withdrawal shall then be made up out of Revenue of the System or Assessments after making necessary provision for the payments required to be made by subparagraphs First, Second, Third, Fourth and Fifth of Section 4 hereof.

(c) *Priority of Lien of Payments into Bond Fund.* The amounts so pledged to be paid into the Bond Fund are hereby declared to be a lien and charge upon the Revenue of the System junior in

lien to the Costs of Maintenance and Operation, equal to the lien of the charges upon such Revenue to pay and secure the payment of the principal of and interest on any Future Parity Bonds, and prior and superior to all other charges of any kind or nature whatsoever.

(d) *Application and Investment of Money in the Bond Fund.* Moneys in the Bond Fund shall be invested in any investments that are permitted by law for the investment of City funds. Investments in the Debt Service Account shall mature prior to the date on which such money shall be needed for required interest or principal payments. Investments in the Reserve Account shall mature not later than the last maturity of the Parity Bonds secured thereby. All interest earned and income derived by virtue of such investments shall remain in the Bond Fund and be used to meet the required deposits into any account therein.

(e) *Sufficiency of Revenues.* The Council hereby finds that in fixing the amounts to be paid into the Bond Fund out of the Revenue of the System, it has exercised due regard for the Costs of Maintenance and Operation and has not obligated the City to set aside and pay into such Fund a greater amount of such Revenue than in its judgment will be available over and above the Costs of Maintenance and Operation.

Section 6. Refunding Account. There is hereby authorized to be created in the Bond Fund an account known as the "Refunding Account" which Account is to be drawn upon for the sole purpose of paying the principal of and interest on the 1994 Bonds on their date of redemption and of paying costs related to the refunding of the 1994 Bonds.

A portion of the proceeds of sale of the Bond shall be credited to the Refunding Account, and shall be used immediately upon receipt thereof to defease the 1994 Bonds as authorized by the 1994 Bond Ordinance and to pay a portion of the costs of issuance of the Bond. The City shall defease the 1994 Bonds and discharge such obligations by the use of money in the Refunding Account to

purchase certain Government Obligations (which obligations so purchased, are herein called "Acquired Obligations"), bearing such interest and maturing as to principal and interest in such amounts and at such times which, together with any necessary beginning cash balance, will provide for the payment of:

- (a) interest on the 1994 Bonds due and payable on March 1, 2004; and
- (b) the redemption price (100% of the principal amount thereof) on March 1, 2004 of the 1994 Bonds.

Section 7. Call For Redemption of 1994 Bonds. The City hereby irrevocably sets aside sufficient funds out of the purchase of Acquired Obligations from proceeds of the Bond to make the payments described in Section 6 of this ordinance.

The City hereby irrevocably calls the 1994 Bonds for redemption on March 1, 2004 in accordance with the provisions of the 1994 Bond Ordinance, authorizing the redemption and retirement of the 1994 Bonds prior to their fixed maturities.

Said defeasance and call for redemption of the 1994 Bonds shall be irrevocable after the final establishment of the escrow account and delivery of the Acquired Obligations.

The Treasurer is hereby authorized and directed to enter into an escrow agreement with a financial institution to be selected by the Treasurer in order to acquire and hold the Acquired Obligations and to provide for the giving of notice of the redemption of the 1994 Bonds in accordance with the applicable provisions of the 1994 Bond Ordinance.

Section 8. Defeasance. In the event that money and/or Government Obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times and bearing interest to be earned thereon in amounts (together with such money, if any) sufficient to redeem and retire the Bond in accordance with the its terms, are hereafter irrevocably set aside in a special

account and pledged to effect such redemption and retirement, then no further payments need be made into the Bond Fund or any account therein for the payment of the principal of and interest on all or any portion of the Bond, and the Bond shall then cease to be entitled to any lien, benefit or security of this ordinance, except the right to receive the funds so set aside and pledged, and such Bond shall no longer be deemed to be outstanding hereunder, or under any ordinance authorizing the issuance of bonds or other indebtedness of the City.

Section 9. Tax Covenants. The City hereby covenants that it will not make any use of the proceeds of sale of the Bond or any other funds of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 of the Code which will cause the Bond to be an "arbitrage bond" within the meaning of said section. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Bond) and the applicable Regulations thereunder throughout the term of the Bond.

The City further covenants that it will not take any action or permit any action to be taken that would cause the Bond to constitute a "private activity bonds" under Section 141 of the Code.

The Bond is hereby designated as a "qualified tax-exempt obligation" pursuant to Section 265(b) of the Code for investment by financial institutions. The City does not expect to issue more than \$10,000,000 in tax-exempt obligations during 2003.

This City Council hereby finds and determines that the refunding of the 1994 Bonds by the issuance and sale of the Bond at this time will effect savings to the City. In making such finding and determination this City Council has given consideration to the debt service requirements of the portion of the Bond attributable to the refunding of the 1994 Bonds, the debt service requirements of the 1994 Bonds, and the costs of the issuance of the Bond attributed to the refunding of the 1994 Bonds.

Section 10. Bond Covenants.

(a) *Maintenance of System.* The City shall at all time maintain, preserve and keep the properties of the System in good repair, working order and condition and will from time to time make all necessary and proper repairs, renewals, replacements, extensions and betterments thereto, so that at all times the business carried on in connection therewith will be properly and advantageously conducted and said properties of the System and the business in connection therewith administered in an efficient manner and at a reasonable cost.

(b) *Collection and Application of Assessments.* The City will promptly collect all Assessments levied in utility local improvement districts that have been heretofore created by the City and all Assessments levied in utility local improvement districts heretofore created, and all utility local improvement districts that are hereafter created to secure the payment of the principal of and interest on Parity Bonds and will pay the same into the Bond Fund. The same may be used to meet required payments into any Account of the Bond Fund and may be used to pay the principal of and interest on any Parity Bonds without said Assessments being particularly allocated to the payment of any particular series of bonds payable out of such Fund. It is hereby further provided, however, that nothing in this ordinance or in this subsection shall be construed to prohibit the City from issuing revenue bonds having a lien on the Revenue of the System and the money in the Revenue Fund junior to the lien on such revenue and money for the payment of the principal of and interest on the Bonds and pledging as security for the payment of such junior lien bonds assessments levied in any utility local improvement district that may have been created to pay part or all of the cost of improvements to the System for which such junior revenue bonds were specifically issued.

(c) *Rates and Charges.* The City shall fix, maintain and collect rates and charges for the use of the services and facilities and all commodities sold, furnished or supplied by the System,

which shall be fair and nondiscriminatory and shall adjust such rates and charges from time to time so that:

(1) the Revenue of the System derived therefrom, together with Assessments collected, will at all times be sufficient (A) to pay the Costs of Maintenance and Operation, (B) to pay the principal of and interest on all Parity Bonds, as and when the same shall become due and payable, (C) to make adequate provision for the payment of the any Term Bonds, (D) to make when due all payments which the City is obligated to make into the Reserve Account and all other payments which the City is obligated to make pursuant to this ordinance, and (F) to pay all taxes, assessments or other governmental charges lawfully imposed on the System or the revenue therefrom or payments in lieu thereof and any and all other amounts which the City may now or hereafter become obligated to pay from the Revenue of the System by law or contract; and

(2) the Net Revenue together with Assessment Income in each calendar year will equal at least 1.25 times the maximum amount required to be paid in any succeeding calendar year for the principal of and interest on all Parity Bonds then outstanding. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule of payments into a sinking fund account in the Bond Fund, the words "principal of and interest on all outstanding Parity Bonds" in the preceding sentence shall be deemed to exclude from "principal" an amount of Term Bonds equal to such mandatory payments, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the date of the respective deposits.

(d) *Net Revenue.* After making or providing for the monthly payments from the Revenue Fund as required by Section 4 hereof, there shall be maintained in the Revenue Fund sufficient

moneys to enable the City to meet the Costs of Maintenance and Operation of the System on a current basis. The City shall not change any rate or charge for service of the System as now established by the existing rate ordinance or ordinances that will reduce substantially the annual Net Revenues below that which would have been obtained before such change, unless the City shall have on file a certificate from a licensed professional engineer experienced in the design, construction and operation of municipal utilities or from an independent certified public accountant stating that the rates and charges as so changed will provide Net Revenues sufficient to comply with all the covenants and requirements of this ordinance.

(e) *Sale of Properties.* The City will not sell or otherwise dispose of the System in its entirety unless simultaneously with such sale or other disposition, provision is made for the payment into the Bond Fund of cash or Government Obligations sufficient (taking into account interest to be earned on any such Government Obligations) to pay the principal of and interest on all then outstanding Parity Bonds, nor will it sell or otherwise dispose of any part of the useful operating properties of the System unless such facilities are replaced or provision is made for payment into the Bond Fund of the greatest of the following:

(1) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and Accounts therein) that the Revenue from the portion of the System sold or disposed of for the preceding year bears to the total Revenue of the System for such period; or

(2) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (defined as the total amount of the Parity Bonds less the amount of cash and investments in the Bond Fund and Accounts therein) that the Net Revenue from the portion of the

System sold or disposed of for the preceding year bears to the total Net Revenue of the System for such period; or

(3) An amount which will be in the same proportion to the net amount of Parity Bonds then outstanding (as defined above) that the depreciated cost value of the facilities sold or disposed of bears to the depreciated cost value of the entire System immediately prior to such sale or disposition.

The proceeds of any such sale or disposition of a portion of the properties of the System (to the extent required above) shall be paid into the Reserve Account in the Bond Fund.

Notwithstanding any other provision of this paragraph, the City may sell or otherwise dispose of any of the works, plant, properties and facilities of the System or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the System, or no longer necessary, material to or useful in such operation, without making any deposit into the Bond Fund.

(f) *No Encumbrances.* The City will not at any time create or permit to accrue or to exist any lien or other encumbrance or indebtedness upon the System or the Revenue of the System, or any part thereof, prior or superior to the lien thereon for the payment of Parity Bonds, and will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the Revenue of the System, or any part thereof, or upon any funds in the hands of the City, prior to or superior to the lien of Parity Bonds, or which might impair the security of Parity Bonds.

(g) *Insurance.* The City will keep the works, plants and facilities comprising the System insured, and will carry such other insurance, with responsible insurers, with policies payable to the City, against risks, accidents or casualties, at least to the extent that insurance is usually carried by

private corporations operating like properties, or will implement a self-insurance program with reserves adequate, in the judgment of the Council, to protect City and the owners of the Bonds against loss. In the event of any loss or damage, the City will promptly repair or replace the damaged portion of the insured property and apply the proceeds of any insurance policy for that purpose; or in the event the City should determine not to repair or reconstruct such damaged portion of the properties of the System, the proceeds of such insurance shall be paid into the Reserve Account to the extent that such transfer shall be necessary to make up any deficiency in said Reserve Account and the balance, if any, shall at the option of the City, be used either for repairs, renewals, replacements, or capital additions to the System, for the redemption of Parity Bonds, or for deposit into the Reserve Account.

(h) *Books and Accounts.* The City shall keep proper books of account which shall be kept in accordance with any applicable rules and regulations prescribed by the State of Washington. The City shall prepare, and any owner of Parity Bonds may obtain copies of, balance sheets and profit and loss statements showing in reasonable detail the financial condition of the System as of the close of each year, and the income and expenses of such year, including the amounts paid into the Revenue Fund, the Bond Fund, and into any and all special funds or accounts created pursuant to the provisions of this ordinance, and the amounts expended for maintenance, renewals, replacements, and capital additions to the System.

(i) *No Free Service.* The City will not furnish or supply or permit the furnishing or supplying of any commodity, service or facility furnished by or in connection with the operation of the System, free of charge to any person, firm or corporation, public or private, so long as any Bonds are outstanding and unpaid.

(j) *Sound Expenditures.* The City will not expend any of the Revenues derived by it

from the operation of the System or the proceeds of any indebtedness payable from Revenue of the System for any extensions, betterments and improvements to the System which are not legally required or economically sound, and which will not properly and advantageously contribute to the conduct of the business of the System in an efficient manner.

(k) *Enforcement of Collection of Service Charges and Assessments.* The City shall promptly take action to enforce the payment of delinquent service charges and Assessments by such means as are legally available.

Section 11. Issuance of Future Parity Bonds. The City hereby further covenants and agrees with the owners of each of the Bonds for as long as any of the same remain outstanding as follows:

The City will not issue any bonds having a greater or equal priority of lien upon the Revenue of the System to pay and secure the payment of the principal of and interest on such bonds than the priority of lien created on such bonds than the priority of lien created on such Revenue to pay and secure the payment of the principal of and interest on the Parity Bonds except as follows:

(a) The City reserves the right to issue Future Parity Bonds for the purposes of

First, providing funds to acquire, construct, reconstruct, install, or replace any equipment, facilities, additions, betterments, or other capital improvements to the System for which it is authorized by law to issue revenue bonds, or

Second, refunding at or prior to their maturity, any revenue bond anticipation notes, or outstanding revenue bonds or other obligations payable out of the Revenue of the System and to pledge that payments will be made out of the Revenue of the System and into the Bond Fund and the Reserve Account therein to pay and secure the payment of the principal of and interest on such Future Parity Bonds on a parity with the payments required herein to be made out of such Revenue into such Fund and Account to pay and secure the payment of the principal of and interest on any

Parity Bonds then outstanding, upon compliance with the following conditions:

(1) At the time of the issuance of any Future Parity Bonds there is no deficiency in the Bond Fund or the Reserve Account.

(2) If there are Assessments levied in any utility local improvement district to pay for additions and improvements to and extensions of the System which will be constructed from the proceeds of such Future Parity Bonds, the ordinance authorizing such Future Parity Bonds shall require that such Assessments be paid into the Bond Fund.

(3) If there are Assessments pledged to be paid into a warrant or bond redemption fund for revenue bonds or warrants being refunded by Future Parity Bonds, the ordinance authorizing the Future Parity Bonds shall require such Assessments to be paid into the Bond Fund.

(4) The principal of and interest on the Future Parity Bonds shall be payable out of the Bond Fund and the requirements for Reserve Account payments in Section 14(b) hereof shall be met.

(5) Prior to the delivery of any Future Parity Bonds the City shall have on file a certificate of an independent professional engineer, certified public accountant or City representative dated not earlier than 90 days prior to the date of delivery of such Future Parity Bonds and showing that the Net Revenue determined and adjusted as hereafter provided for each calendar or fiscal year after the issuance of such Parity Bonds (the "Adjusted Net Revenue") together with Assessment Income will equal at least 1.25 times the amount required in any such year for the payment of the principal of and interest on all Parity Bonds then outstanding, including the Future Parity Bonds proposed to be issued, except that the certificate of a City representative shall be based on actual historical Net Revenue of the System and no adjustments to that revenue shall be allowed. In the event the City issues any Term Bonds, and provides for the payment thereof by a mandatory schedule

of payments into a sinking fund account in the Bond Fund, the words "principal of and interest on all outstanding Parity Bonds" in the preceding sentence shall be deemed to exclude from "principal" an amount of Term Bonds equal to such mandatory payments, and from "interest" the interest on such Term Bonds subsequent to the date of the respective deposits, and to include in lieu thereof the mandatory sinking fund deposits as of the date required and interest on Term Bonds provided for by such deposits only to the dates of the respective deposits.

The Adjusted Net Revenue shall be the Net Revenue for a period of any 12 consecutive months out of the 24 months immediately preceding the date of delivery of such proposed Parity Bonds as adjusted by such engineer or accountant to take into consideration changes in Net Revenue estimated to occur under one or more of the following conditions for each year after such delivery for so long as any Parity Bonds, including the Future Parity Bonds proposed to be issued, shall be outstanding:

(i) any increase or decrease in Net Revenue which would result if any change in rates and charges adopted prior to the date of such certificate and subsequent to the beginning of such 12-month period, had been in force during the full 12-month period;

(ii) any increase or decrease in Net Revenue estimated by such Engineer or Accountant to result from any additions, betterments and improvements to and extensions of any facilities of the System which (a) became fully operational during such 12-month period, (b) were under construction at the time of such certificate or (c) will be constructed from the proceeds of the Parity Bonds to be issued;

(iii) the additional Net Revenue which would have been received if any customers added to the System during such 12-month period were customers for the entire period;

Such Engineer or Accountant shall base his or her certification upon, and his or her certificate

shall have attached thereto, financial statements of the System audited by the State Examiner (unless such an audit is not available for a 12-month period within the preceding 24 months) and certified by the City Administrator, showing income and expenses for the period upon which the same is based.

The certificate of such Engineer or Accountant shall be conclusive and the only evidence required to show compliance with the provisions and requirements of this subsection (5).

Notwithstanding the foregoing requirement, if Future Parity Bonds are to be issued for the purpose of refunding at or prior to their maturity any part or all of the then outstanding Parity Bonds and the issuance of such refunding Parity Bonds results in a debt service savings and does not require an increase of more than \$5,000 in any year for principal and interest on such refunding Parity Bonds, the certificate required by subsection (a)(5) of this section need not be obtained.

(b) Nothing herein contained shall prevent the City from issuing revenue bonds or other obligations which are a charge upon the Revenue of the System junior or inferior to the payments required by this ordinance to be made out of such Revenue into the Bond Fund and Reserve Account to pay and secure the payment of any outstanding Parity Bonds.

(c) Nothing herein contained shall prevent the City from issuing revenue bonds to refund maturing Parity Bonds for the payment which moneys are not otherwise available.

Section 12. Form of Bond and Certificate of Authentication. The Bond shall be in substantially the following form:

UNITED STATES OF AMERICA

No. R-1

\$ _____

STATE OF WASHINGTON
CITY OF GIG HARBOR
WATER AND SEWER REVENUE AND REFUNDING BOND, 2003

INTEREST RATE: 3.89%

MATURITY DATE: SEPTEMBER 1, 2013

REGISTERED OWNER: BANK OF AMERICA, N.A.

PRINCIPAL AMOUNT: ONE MILLION EIGHT HUNDRED ELEVEN THOUSAND DOLLARS

The City of Gig Harbor, Washington, a municipal corporation of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, but solely from the Bond Fund (hereinafter defined) on the Maturity Date the Principal Amount specified above and to pay interest thereon from the date hereof at the rate per annum of 3.89% computed on a 360-day year and twelve months of 30 days each.

This bond is issued pursuant to Ordinance No. ___ of the City, adopted on November 24, 2003 (the "Bond Ordinance"), for the purpose of providing permanent financing various capital improvements to the City's combined system of water and sewerage and to refund certain outstanding water and revenue and refunding bonds of the City, all in conformity with the Constitution and laws of the State of Washington.

Interest on this bond is payable on the first days of each March and September, commencing March 1, 2004, and principal is payable in installments of principal on September 1 of the following years in the following amounts:

<u>Year</u> <u>(September 1)</u>	<u>Principal Payment</u>
2004	\$117,000
2005	161,000
2006	167,000
2007	173,000
2008	181,000
2009	188,000
2010	194,000
2011	202,000
2012	210,000
2013	218,000

Upon final payment of all principal and interest thereon, this bond shall be submitted to the Finance Director of the City ("Registrar") for cancellation and surrender.

The City has reserved the right to repay the principal amount of this bond in whole or in part prior to its maturity on five days' written notice subject to prepayment fees as provided in the Bond Ordinance.

This bond is payable solely out of the Revenue of the System, and does not constitute a general obligation of the City. Both principal of and interest on this bond are payable solely out of the special fund of the City known as the Bond Fund. The City does hereby pledge and bind itself to set aside and pay into the Bond Fund the amounts required by the Bond Ordinance to be paid therein on or prior to the maturity of the Bond as the same shall become due from the proceeds of the Bonds (as authorized in the Bond Ordinance) or from the sources and in the priority specified in the Bond Ordinance.

This bond is not a "private activity bond." The City has designated this bond as a qualified tax exempt obligation for investment by financial institutions pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended.

The City hereby irrevocably covenants and agrees with the Registered Owner of this bond that it will keep and perform all the covenants of this bond and of the Bond Ordinance to be by it kept and performed. Reference is hereby made to the Bond Ordinance for a complete statement of such covenants and for the definition of capitalized terms used herein.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Registrar.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this bond have happened, been done and performed and that the issuance of this bond and the Bond of this issue does not violate any constitutional, statutory or other limitation upon the amount of indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Gig Harbor, Washington, has caused this bond to be signed with the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk of the City, as of this ____ day of _____, 2003.

CITY OF GIG HARBOR, WASHINGTON

By _____ /s/ manual or facsimile
Mayor

hereby authorized and directed to do everything necessary to complete such sale and delivery of the Bond to the purchaser thereof upon the payment of the purchase price thereof, all in accordance with this ordinance and the proposal of the Bank

Section 15. Application of Bond Proceeds. Out of the net proceeds of the Bond received by the City \$72,930.40 will be deposited in the Bond Fund and used together with other funds of the City available therefor to refund the 1994 Bonds as provided in Section 6 hereof, and \$1,683,800.67 will be used to pay the Note, together with pre-payment penalties as provided in Ordinance No. 887. The remainder of the net proceeds of the Bond shall be deposited into the Bond Fund and used to pay debt service on the Bond and to pay costs of issuance of the Bond.

Section 16. Severability. If any one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Bond.

Section 17. Effect of Covenants, Etc. All covenants, obligations and agreements of the City contained in this ordinance shall be deemed to be covenants, obligations and agreements of the City to the full extent authorized by the Act and permitted by the Constitution of the State of Washington. No covenant, obligation or agreement contained herein shall be deemed to be a covenant, obligation or agreement of any present or future official, member, agent or employee of the City in his or her individual capacity, and neither the members of the Council nor any officer thereof executing the Bond shall be liable personally on the Bond or be subject to any personal liability or accountability by reason of the issuance thereof. No member, officer, agent or employee of the City shall incur any

liability in acting or proceeding or in not acting or proceeding, in good faith in accordance with the terms of this ordinance.

Section 18. Ongoing Disclosure. The City is exempt from the ongoing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 by reason of the exemption set forth in subsection (d)(i) of that rule with respect to the issuance of securities in authorized denominations of \$100,000 or more.

Section 19. Effective Date. This ordinance shall be effective five days after its passage and publication in the manner required by law.

PASSED by the Council of the City of Gig Harbor, Washington at a regular meeting held on the 24th day of November, 2003.

CITY OF GIG HARBOR, WASHINGTON

Mayor

ATTEST:

City Clerk

First Reading: November 10, 2003

Date Adopted: November 24, 2003

Date of Publication: _____, 2003

Effective Date: _____, 2003

CERTIFICATE

I, the undersigned, City Clerk of the City of Gig Harbor, Washington (the "City") and keeper of the records of the City Council (the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. ____ of the Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 24th day of July, 2003.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of November, 2003.

Molly Towslee, City Clerk

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Bank of America
WA1-501-34-03
800 5th Avenue, Floor 34
Seattle, WA 98104

kerrin.m.gibbons@bankofamerica.com

Kerrin M. Gibbons
Senior Vice President
Public Sector Banking

October 9, 2003

David Rodenbach
Finance Director
City of Gig Harbor
3510 Grandview St
Gig Harbor, WA 98335

Re: Water and Sewer Revenue Bond Financing

Dear Dave:

Bank of America ("Bank") is pleased to provide the following proposal to finance the City's Water/Sewer Revenue financing. This letter is a proposal only and does not commit us to offer credit under these or any other terms or conditions. Please keep the contents of this letter confidential.

Proposed rates and terms are as follows:

Borrower:	City of Gig Harbor ("City")
Amount:	\$1,785,000.00 (estimated)
Term:	10 years. Final maturity September 1, 2013 Closing date no earlier than December 2, 2003
Form of Obligation:	Water Sewer Revenue Bond, Parity Tax Exempt, Bank Qualified
Interest Rate:	4.09% Rates are an indication only and are subject to changes in market conditions. Rates can be set upon credit approval and once closing date is known. Interest is calculated on a 30/360-day basis.
Loan Fee:	\$1,500.00. The City is responsible for bank counsel, bond

counsel and BAS structuring fees.

Repayments:

Interest due semi-annually every March 1 and September 1, beginning March 1, 2004. Principal is due annually every September 1, beginning September 1, 2004. Loan is fully amortizing.

Security:

Debt Service coverage:

City agrees to set rates at a level adequate to produce net revenues adequate to meet maximum annual debt service in succeeding years at 1.25x coverage on parity bonds.

Reserve Account:

City agrees to maintain in bond fund an amount equal to IRS guidelines of the lesser of three standard IRS tests on all parity bonds. City has 5 years from date of closing to fully fund reserve account.

Financial Reporting Requirements:

State Audit Report within 10 days of publication.
In-house financial statement or CAFR within eight months of year-end.
City's Budget due within 90 days of the beginning of the budgeted cycle.

Prepayment:

Balances prepaid may be subject to penalty. See attached Exhibit I prepayment language.

This financing is subject to satisfactory receipt and satisfactory review by Bank of all normal documents to be prepared by the City's bond counsel, including:

1. A legal opinion from the City's bond counsel stating the indebtedness is legal and valid, is a bank qualified transaction, and the interest income is tax-exempt to Bank;
2. A copy of the Ordinance passed by the City Council authorizing the issuance of debt;
3. Receipt of the registered bond at closing;
4. A copy of the IRS form evidencing the interest income as tax-exempt to Bank of America;
5. Updated financial information as may be requested by Bank;

City of Gig Harbor
October 9, 2003

6. Documentation subject to review by Bank counsel.

Dave, as always, it's a pleasure doing business with you. I am available to answer any questions you may have regarding this proposal. Bank of America is pleased to be able to work with the City on this financing.

Again, this letter is a proposal for discussion purposes only and does not constitute a commitment. Any commitment is subject to receipt and further evaluation of the Borrower's financial information, credit history, and such other information as may be requested by the Bank. If the Bank subsequently commits credit, some terms, conditions and covenants may be different from or in addition to those that are stated in this letter.

Sincerely,



Kerrin M. Gibbons
Senior Client Manager



Nancy Nuereberg
Senior Credit Products Officer

cc Cynthia Weed, Preston, Gates & Ellis
Peter Butterfield, Preston, Gates & Ellis
Dave Trageser, Banc of America Securities

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, TO EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

**Prepayment
Exhibit I**

City may prepay the Note in whole or in part at any time by paying the principal amount thereof to be prepaid together with accrued interest on the amount prepaid to the date of prepayment. Any Fixed Interest Rate Principal that is prepaid in whole or in part prior to the last day of its Fixed Interest Rate Period, as applicable, shall be subject to a prepayment fee calculated as follows:

A. The prepayment fee will be the sum of fees calculated separately for each "Prepaid Installment," as follows, or such lesser sum to which the Bank shall agree, at its sole discretion:

(1) The Bank will first determine the amount of interest which would have accrued each month for the Prepaid Installment had it remained outstanding until the applicable Original Payment Date, using the interest rate applicable to the Prepaid Installment under the Notes;

(2) the Bank will then subtract from each monthly interest amount determined in (1), above, the amount of interest which would accrue for that Prepaid Installment if it were reinvested from the date of prepayment through the Original Payment Date, using the Treasury Rate.

(3) if (1) minus (2) for the Prepaid Installment is greater than zero, the Bank will discount the monthly differences to the date of prepayment by the Treasury Rate. The Bank will then add together all of the discounted monthly differences for the Prepaid Installment.

B. The following definitions will apply to the calculation of the prepayment fee:

(1) "Original Payment Dates" mean the dates on which the prepaid principal would have been paid if there had been no prepayment. If any of the principal would have been paid later than the end of the fixed rate interest period in effect at the time of prepayment, then the Original Payment Date for that amount will be the last day of the interest period.

(2) "Prepaid Installment" means the amount of the prepaid principal which would have been paid on a single Original Payment Date.

(3) "Treasury Rate" means the interest rate yield for U.S. Government Treasury Securities which the Bank reasonably determines could be obtained by reinvesting a specified Prepaid Installment in such securities from the date of prepayment through the Original Payment Date. The Bank may adjust the Treasury Rate to reflect the compounding, accrual basis, or other costs of the prepaid amount. Each of the rates is the Bank's estimate only and the Bank is under no obligation to actually reinvest any prepayment. The rates will

City of Gig Harbor
October 9, 2003

be based on information from either the Telerate or Reuters information services, The Wall Street Journal, or other information sources the Bank deems appropriate.

Upon prepayment, interest on the principal amount prepaid shall cease to accrue on the date such prepayment occurs.



"THE MARITIME CITY"

ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR
SUBJECT: SECOND READING - 2004 BUDGET ORDINANCE
DATE: NOVEMBER 17, 2003

BACKGROUND

The total 2004 proposed budget is \$20,466,513.

The General Fund accounts for 42 percent of total expenditures, while Special Revenue (Streets, Drug Investigation, Hotel - Motel, Public Art Capital Projects, Park Development, Civic Center Debt Reserve, Property Acquisition, General Government Capital Improvement, LID No. 99-1 Project, Impact Fee Trust and Lighthouse Maintenance) and Enterprise Funds (Water, Sewer and Storm Drainage) are 25 percent and 28 percent of total expenditures. General government debt service payments are 5 percent of 2004 budgeted expenditures.

The 2004 proposed budget includes two new funds. The Public Art Capital Projects Fund will accumulate unspent appropriations of the Arts Commission for future purchases of public art and the Park Development Fund will accumulate resources, mostly from General Fund transfers, for further development and enhancement of city parks. This budget also converts the General Government Capital Assets Fund into the Property Acquisition Fund. This fund has a dedicated annual revenue stream (the first one-quarter percent real estate excise tax) of approximately \$125,000.

This budget includes five additional positions; Court Clerk, Community Service Officer, Temporary Mechanic Assistant, Temporary Construction Inspector and a part-time Temporary Laborer are included in this budget.

In addition to the 2004 proposed budget ordinance, changes to the budget resulting from the November 4th and 5th study sessions are attached.

RECOMMENDATION

Staff recommends adoption of the 2004 budget ordinance.

**CITY OF GIG HARBOR
ORDINANCE NO. _____**

**AN ORDINANCE ADOPTING THE BUDGET FOR THE CITY OF GIG
HARBOR, WASHINGTON, FOR THE 2004 FISCAL YEAR.**

WHEREAS, the Mayor of the City of Gig Harbor, Washington completed and placed on file with the city clerk a proposed budget and estimate of the amount of the moneys required to meet the public expenses, bond retirement and interest, reserve funds and expenses of government of said city for the 2004 fiscal year, and a notice was published that the Gig Harbor City Council would meet on November 10 and November 24, 2003 at 7:00 p.m., in the Council Chambers in the City Hall for the purpose of making and adopting a budget for 2004 and giving taxpayers an opportunity to be heard on the budget; and

WHEREAS, the said city council did meet at the established time and place and did consider the matter of the 2004 proposed budget; and

WHEREAS, the 2004 proposed budget does not exceed the lawful limit of taxation allowed by law to be levied on the property within the City of Gig Harbor for the purposes set forth in the budget, and the estimated expenditures set forth in the budget being all necessary to carry on the government of Gig Harbor for 2004 and being sufficient to meet the various needs of Gig Harbor during 2004.

NOW, THEREFORE, the City Council of the City of Gig Harbor **DO ORDAIN** as follows:

Section 1. The budget for the City of Gig Harbor, Washington, for the year 2004 is hereby adopted in its final form and content.

Section 2. Estimated resources, including beginning fund balances, for each separate fund of the City of Gig Harbor, and aggregate total for all funds combined, for the year 2004 are set forth in summary form below, and are hereby appropriated for expenditure during the year 2004 as set forth below:

2004 BUDGET APPROPRIATIONS

<u>FUND / DEPARTMENT</u>	<u>AMOUNT</u>
001 GENERAL GOVERNMENT	
01 NON-DEPARTMENTAL	\$2,325,700
02 LEGISLATIVE	30,600
03 MUNICIPAL COURT	423,420
04 ADMINISTRATIVE/FINANCIAL	700,160
06 POLICE	2,002,950 <u>1,963,950</u>
14 PLANNING / BUILDING	950,850
15 PARKS AND RECREATION	678,550
16 BUILDING	236,900
19 ENDING FUND BALANCE	1,034,540 <u>1,073,540</u>
001 TOTAL GENERAL FUND	8,383,670
101 STREET FUND	2,239,377
105 DRUG INVESTIGATION FUND	287
107 HOTEL-MOTEL FUND	423,922
108 PUBLIC ART CAPITAL PROJECTS	10,250
109 PARK DEVELOPMENT FUND	122,970
110 CIVIC CENTER DEBT RESERVE	1,427,850
208 LTGO BOND REDEMPTION	918,385
209 2000 NOTE REDEMPTION	121,204
210 LID 99-1 GUARANTY	82,785
301 PROPERTY ACQUISITION FUND	339,348
305 GENERAL GOVT. CAPITAL IMPROVEMENT	413,154
309 IMPACT FEE TRUST	150,000
401 WATER OPERATING	1,103,761
402 SEWER OPERATING	1,713,315
407 UTILITY RESERVE	82,919
408 UTILITY BOND REDEMPTION FUND	648,886
410 SEWER CAPITAL CONSTRUCTION	1,352,715
411 STORM SEWER OPERATING	719,900
420 WATER CAPITAL ASSETS	210,094
605 LIGHTHOUSE MAINTENANCE TRUST	<u>1,721</u>
TOTAL ALL FUNDS	<u>\$ 20,466,513</u>

Section 3. Attachment "A" is adopted as the 2004 personnel salary schedule.

Section 4. The city clerk is directed to transmit a certified copy of the 2004 budget hereby adopted to the Division of Municipal Corporations in the Office of the State Auditor and to the Association of Washington Cities.

Section 5. This ordinance shall be in force and take effect five (5) days after its publication according to law.

PASSED by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the council held on this 24th day of November, 2003.

Mayor

ATTEST:

Molly Towslee, City Clerk

Filed with city clerk:
Passed by the city council:
Date published:
Date effective:

ATTACHMENT "A"

2004 Salary Schedule

POSITION	Minimum	Maximum
City Administrator	<u>\$6,986</u> 6,849	<u>\$8,733</u> 8,564
Chief of Police	<u>5,704</u> 5,592	<u>7,130</u> 6,990
Community Development Director	<u>5,688</u> 5,576	<u>7,110</u> 6,970
Finance Director	<u>5,668</u> 5,557	<u>7,085</u> 6,946
Police Lieutenant	<u>5,289</u> 5,185	<u>6,611</u> 6,481
City Engineer	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Director of Operations	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Information Systems Manager	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Planning/Building Manager	<u>4,949</u> 4,854	<u>6,186</u> 6,064
Fire Marshall/Building Official	<u>4,685</u> 4,593	<u>5,856</u> 5,741
Police Sergeant	4,582	5,728
Senior Planner	<u>4,389</u> 4,303	<u>5,486</u> 5,379
City Clerk	<u>4,383</u> 4,297	<u>5,479</u> 5,371
Treatment Plant Supervisor	<u>4,365</u> 4,279	<u>5,456</u> 5,349
Accountant	<u>4,277</u> 4,193	<u>5,346</u> 5,241
Associate Engineer	<u>4,189</u> 4,107	<u>5,236</u> 5,134
Court Administrator	<u>4,123</u> 4,042	<u>5,154</u> 5,053
Assistant Building Official	<u>4,076</u> 3,996	<u>5,095</u> 4,995
Field Supervisor	<u>3,983</u> 3,905	<u>4,979</u> 4,881
Marketing Director	<u>3,944</u> 3,867	<u>4,930</u> 4,834
Associate Planner	<u>3,709</u> 3,636	<u>4,636</u> 4,545
Police Officer	3,596	4,495
Planning/Building Inspector	<u>3,537</u> 3,468	<u>4,421</u> 4,335
Construction Inspector	<u>3,537</u> 3,468	<u>4,421</u> 4,335
Mechanic	<u>3,496</u> 3,427	<u>4,370</u> 4,284
Treatment Plant Operator	<u>3,440</u> 3,373	<u>4,300</u> 4,216
Engineering Technician	<u>3,438</u> 3,371	<u>4,298</u> 4,214
Maintenance Worker	<u>3,342</u> 3,276	<u>4,178</u> 4,095
Assistant City Clerk	<u>3,287</u> 3,223	<u>4,109</u> 4,029
Information Systems Assistant	<u>3,118</u> 3,057	<u>3,898</u> 3,821
Finance Technician	<u>3,023</u> 2,964	<u>3,779</u> 3,705
Community Services Officer	2,954	3,693
Community Development Assistant	<u>2,890</u> 2,833	<u>3,613</u> 3,541
Court Clerk	<u>2,695</u> 2,642	<u>3,369</u> 3,303
Custodian	<u>2,684</u> 2,631	<u>3,355</u> 3,289
Laborer	<u>2,684</u> 2,631	<u>3,355</u> 3,289
Mechanic Assistant	2,684	3,355
Police Services Specialist	<u>2,569</u> 2,519	<u>3,211</u> 3,149
Community Development Clerk	<u>2,350</u> 2,304	<u>2,938</u> 2,880
Administrative Receptionist	<u>\$2,350</u> 2,304	<u>\$2,938</u> 2,880

11. **Hire a city lobbyist.** Hire someone to represent the city's policy interests as necessary. \$10,000 - June.

Information Systems

1. **Bogue Volunteer Center.** The City will be reusing a surplus server at the Bogue Volunteer Center. Currently, the site has no server of any kind and a very basic workgroup (peer to peer). This means important data & database resides on only one PC (which is shared). If they lose the hard drive the data is gone. Currently they are backing up to CD but that will only last a short time until the database becomes too large for CD. The server has the disk capacity for a small agency such as the volunteer center and will provide a genuine network configuration preserving data files. It also contains a tape drive for backup operations. An additional necessity will be a few backup battery/surge suppressors to protect systems in the event of power failure. \$250 - June.
2. **Web council packet, ordinance and public user search & retrieval system.** In lieu of purchasing a document retrieval system priced at 15k, which the public would have no access to, we will contract for web development on a document search & retrieval tool for use internally as well as public use (externally) via the web. This saves a tremendous investment in an application and additionally city personnel and the public will use the same functional tool from the website for search capabilities. This will be a database application front-end with Adobe Acrobat formats for documentation. Additionally this will protect the City's network from public access. \$4,500 - August.
3. ~~Admin Westlaw. Install a public use access terminal & virtual law library. Provides localized legal information services to residents of Pierce County in Gig Harbor and the Key Peninsula. \$4,000 - July.~~

2004
NARRATIVE OF OBJECTIVES

1. **Wilkinson Farm.** Use existing park staff to maintain and improve public access. **December.**
2. **Pedestrian facilities.** Work with Pierce Transit and Planning for design and construction of additional Gig Harbor transit/pedestrian shelters. **\$5,000 - December.**
3. ~~Sign repairs. Sign repairs and/or replacement(s) at the city's parks and gateways. \$15,000 - December.~~ **Sign placement and repair.** Provide informational signage and markers at significant locations and/or repair existing signage. **\$15,000 - December.**
4. **Holiday decorations.** Decorate streetscapes along city arterials with cedar garlands and seasonal banners throughout the winter holiday season. These would be decorated with 4" bows to bring a warm, festive look to the harbor. **\$7,500 - November.**
5. **Continue an Arts Commission Project Support Program.** Continue an Arts Commission Project Support Program to provide funding to nonprofit art and cultural arts organizations that provide benefit for city residents. The program will also fund non-profit organizations that want to do arts projects that involve city residents, such as community service organizations, civic organizations, or libraries. Projects that benefit city residents are the core focus. Project grants can include concerts, theatre productions, visual art exhibits, art festivals, or a broad range of arts-related services. **\$10,000 \$20,000 - December.**
6. ~~Arts Program Specialist. Work jointly with Pierce County to develop a county staff position to promote, organize and supervise community art activities. \$10,000 - February.~~
7. **Donkey Creek Park.** Continue to coordinate the design and construction of the Donkey Creek Park. Provide picnic tables, benches and nature interpretive center. **\$20,000 - December.**
8. **Skate Park.** Purchase and install 2 new spring toys in the play area. **\$2,500 - April.**
9. **Park restroom time locks.** Install time locks on the restroom doors at, Grandview Forest Park, City Park, and Finholm View Climb so they can be closed and opened automatically. **\$9,000 - March.**
10. **Adam Tallman Park.** Construct 2,800 lf of asphalt pathway on the existing gravel nature trail around the wetland providing a more pedestrian walkable surface. **\$35,000 - June.**

2004
NARRATIVE OF OBJECTIVES

1. **Olympic Drive and 56th Street.** Acquire additional right of way necessary for the Olympic Drive and 56th Street Project and acquire the necessary right of way for the 56th Street/Point Fosdick Street Project. **December.**
2. **56th Street/Point Fosdick Drive.** Complete the street design for 56th Street/Point Fosdick Drive from the Olympic intersection to the 56th/Olympic intersection. The improvements include reconstruction of the roadway to provide 3 lanes with bicycle lanes, curb, gutter and sidewalk with landscape planter strip on one side. **\$175,000 - December.**
3. **Annual street rehabilitation and resurfacing.** Consistent with the city's new pavement management system, the city will perform asphalt overlays on various city streets. Roadways include sections of Point Fosdick Dr., Franklin St., Lewis St., Vernhardson St. and Harborview Drive. The city will also chip-seal up to approximately ~~four~~ two lane-miles of city streets in priority areas throughout the city. **\$75,000 - November.**
4. **Curbs, gutters and sidewalks.** Construct minor curb, gutter, and sidewalk and/or walkway improvements and repairs along arterials and in priority locations as identified in the sidewalk inventory program. **\$10,000 - December.**
5. **Harborview Drive crosswalk lighting system.** Design, purchase, and install in-pavement pedestrian crosswalk lighting system at Peacock Hill Ave and North Harborview Dr. including concrete crosswalk. **\$17,000 - October.**
6. **Concrete crosswalks.** Construct colored pattern cement concrete crosswalks at the intersection of Olympic Dr. and Hollycroft St. **\$15,000 - April ~~September~~.**
7. **Shop improvements.** Install new light fixtures in the vehicle maintenance area to provide improved lighting for equipment repairs. **\$5,000 - September.**
8. **Pavement markings.** Install and repaint pavement markings on city streets. **\$30,000 - June.**
9. **Skansie Avenue pedestrian street improvement project.** Construct 700 linear feet (lf) of curb, gutter, sidewalk, and storm drain improvements along the western side between Rosedale Street and the new Henderson Bay Alternative High School. TIB funding assistance, \$68,000, under the Pedestrian Safety & Mobility Program will be requested. The city match will be \$30,000. **\$98,000 - September.**
10. **Edwards St.** Replace 660 lf existing rock walls that have failed with new style concrete block wall. **\$15,000 - February.**

**City of Gig Harbor
2004 Annual Budget**

**Fund 101
Street Operating**

11. **Rosedale St.** Replace the 2 streetlights at the intersection of Rosedale St and Stinson Ave with new lights that meet the lighting requirements for vehicle and pedestrian traffic. **\$10,000 - April.**
12. **Harborview Dr. sidewalk.** Replace 1,000 lf of existing sidewalk on the south side of Harborview Dr. between Stinson Ave. and Dorotich St. Coordinate with Peninsula Light Co. to install under ground utilities within this section. **\$70,000 - October.**
13. **Pioneer Way streetscape.** Construct 200 lf of sidewalk with street trees starting at the intersection of Tarabochia St. and west 200 feet. **\$5,000 - September.**
14. **45th Ave pedestrian improvements.** Design and construct curb, gutter, and sidewalk improvements along 45th Avenue between Point Fosdick Dr. to 30th Ave. **\$50,000 - October.**
15. **Interim 36th/Point Fosdick intersection improvements.** Design and construct interim intersection improvements to accommodate the new SR 16 on ramp at 36th. Interim improvements will consist of a southbound left turn lane and a northbound right turn at 36th. **\$85,000 - August.**
16. **36th/Point Fosdick intersection improvements.** Complete the design of the intersection improvements and procure right of way. **\$180,000 - December.**
17. **Stinson Ave. pedestrian improvements.** Construct phase I of the 3,600 lf of new curb, gutter, sidewalk and streetlights on the east side of Stinson Ave. between Grandview Rosedale St. and Harborview Dr. **September - \$ 100,000.**
18. **Survey monumentation.** In accordance with State Law, register recently placed survey monuments within the City. **\$10,000 - December.**
19. **Briarwood Lane.** Evaluate and install various traffic calming devices. **\$75,000 - September.**
20. **Gig Harbor/Peninsula entrance.** Develop an agreement with WSDOT, and design and construct "Welcome to the Peninsula" entrance signage, lighting, landscaping and beautification at the western bridge entrance to Gig Harbor. **\$45,000 - December. (Funding to be provided from the Hotel/Motel taxes)**

2004
NARRATIVE OF OBJECTIVES

The following projects will be funded and managed through the Marketing Director. The Marketing Director will work directly with outside groups when necessary. Funding support may be provided for those projects approved by the Marketing Director that are in keeping with long term goals and strategic plan.

1. **Office administration.** This fund will provide the necessary funds for postage, supplies, software, letterhead, envelopes, phones (including toll-free number) memberships in pertinent tourism associations, attending conventions, tradeshows and meetings, receptionist support and other related administrative expenses. **\$12,500 - December.**
2. **Tacoma Regional Convention and Visitors Bureau.** Contribute to Gig Harbor's share of the overall marketing and promotion provided our community through the Tacoma Regional Convention and Visitors Bureau. **~~\$24,000~~ \$21,000 - February.**
3. **Kitsap Convention and Visitor Bureau (CVB).** In an effort to expand our marketing opportunities, a new partnership with the Kitsap CVB will provide us greater exposure on their website and in all their promotional materials. **\$5,000 - February**
4. ~~**Gig Harbor Peninsula Chamber of Commerce Welcome Center.** Continue to support the Welcome Center. The Welcome Center is co-funded by the Pierce County Lodging Tax and Chamber of Commerce Funds. **~~\$8,500~~ - December.**~~
Gig Harbor Peninsula Chamber of Commerce. Contract with the Chamber for tourism support services such as maintenance of the tourism database and website support services. **\$4,000 - December.**
5. **Tourism marketing fund.** This objective continues and enhances the effective marketing and advertising campaign established over the past four years. The marketing campaign for 2004 is organized for the use of tourism dollars on projects and advertising that provide the greatest return on the dollar, keeping many of the same goals from 2003 and adding a new Public Relations focus to focus on garnering more editorial media in travel publications. **\$80,800 - December.**
6. **Gig Harbor/Peninsula entrance.** Develop an agreement with WSDOT, and design and construct "Welcome to the Peninsula" entrance signage, lighting, landscaping and beautification at the western bridge entrance to Gig Harbor. **\$45,000 - December.**
7. **Lodging tax capital reserve.** 10% of annual estimated revenues placed in existing reserve for future capital projects to benefit tourism. **\$18,000 - December. Note: With the \$18,000 placed in reserve during 2004, the balance in this account will be \$44,500. This balance will be applied to the Gig Harbor/Peninsula entrance sign.**

2004
NARRATIVE OF OBJECTIVES

1. ~~Telemetry SCADA system.~~ Construct phase II of the Telemetry SCADA system for the city's wells and storage reservoirs to improve system reliability by reducing response time, and allowing more effective management of the city's resources. ~~\$70,000 - November.~~ (Accounted for in Water Capital Assets Fund 420)
2. **Washington Water Intertie.** Eliminate the unregulated intertie between Washington Water and the city's water system at Ringold and Peacock. Install pressure-regulating valves at the intersection of Prentice/Fennimore and Vernhardson/Peacock. **\$30,000 - July.** (Accounted for in Water Capital Assets Fund 420)
3. **Rescreen Well No. 6.** Rescreen the well to clean up the excessive sanding. **\$50,000 - October.** (Accounted for in Water Capital Assets Fund 420)
4. **Landscape improvements.** Install additional landscape screening at well and storage tank sites, and/or modify fencing at Skansie Avenue reservoir. **\$5,000 - ongoing.**
5. **Conservation program.** Conduct a comprehensive leak detection program for the water distribution system in conjunction with the city's water conservation program as recommended by the State Department of Health. **\$5,000 - December.**
6. **Source meter testing.** Testing of source meters in accordance with Comprehensive Water System Plan. **\$1,500 - July.**
7. **Newsletter.** Mail newsletter regarding water system performance in accordance with Department of Ecology requirements. **\$3,000 - October.**
8. **Backflow device testing and inventory.** Continue to develop an inventory of existing backflow devices throughout the city and conduct testing and repairs of any found defects in the devices. **\$10,000 - November.**
9. **Vulnerability Assessment.** A new Federal Law requires public water systems to evaluate the security of their system and prepare plans for action in the event of an emergency. This plan must be submitted to the U.S. Environmental Protection Agency no later than June 30th 2004. **\$35,000 - June.**

2004

NARRATIVE OF OBJECTIVES

(These capital project objectives are also described under Fund 401 - Water Operating)

1. ~~Telemetry SCADA system.~~ Construct phase II of the Telemetry SCADA system for the city's wells and storage reservoirs to improve system reliability by reducing response time, and allowing more effective management of the city's resources. ~~\$70,000 - November.~~
2. **Washington Water Intertie.** Eliminate the unregulated intertie between Washington Water and the city's water system at Ringold and Peacock. Install pressure-regulating valves at the intersection of Prentice/Fennimore and Vernhardson/Peacock. **\$30,000 - July.**
3. **Rescreen Well No. 6.** Rescreen the well to clean up the excessive sanding. **\$50,000 - October.**



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: KRISTIN RIEBLI
ASSOCIATE PLANNER KMR
SUBJECT: SECOND READING OF ORDINANCE AMENDING GHMC SECTION
17.80.130, TO ALLOW STRUCTURAL CHANGES TO
NONCONFORMING SIGNS. ZONING TEXT AMENDMENT #03-08
DATE: NOVEMBER 24, 2003

INFORMATION/BACKGROUND

Attached for the Council's consideration is a draft ordinance amending GHMC Section 17.80.130, which pertains to nonconforming signs. Courtesy Ford initiated this text amendment, after it requested an interpretation of GHMC Section 17.68.070 Nonconforming parking, loading, signs and other characteristics of use, to allow a change to its existing nonconforming sign. This interpretation was denied, and Courtesy Ford now seeks to make changes to an existing nonconforming pole sign, to be consistent with the latest Ford corporate signs. Courtesy Ford wants to maintain the size and height of this existing pole sign.

Under the current sign code, the only change that can be made to an existing non-conforming sign is the replacement of the plastic sign panel. This allows the owner of the sign to retain and utilize the existing sign *structure* when new text or graphics are desired. This allowance to change sign panels was added to the sign code in 1998 as a compromise measure to a hotly contested amortization clause that was adopted in 1995. The amortization clause required owners of non-conforming signs to remove such signs within two years of notification by the City, or within 5 years through a joint agreement with the City.

The changes Courtesy Ford would like to make to its existing sign go beyond those allowed under the most recently adopted sign code. They will require significant structural changes. These include the replacement of the cabinet supporting the sign face and the installation of a wide stainless-steel shroud that would surround the existing pole and extend up the full height of the pole. These changes involve far more than a simple replacement of a sign panel and are therefore not permitted under the current code.

The Ford Retail Identification Catalogue does include a monument sign option, which would conform to the City's existing sign code. However, Courtesy Ford is anxious to retain its existing pole sign and has therefore proposed three alternative text amendments to GHMC Section 17.80.130 that would accommodate their desired

signage. The alternative proposals have been labeled as alternatives A, B, and C and are attached for the Council's consideration.

Each of the alternatives provide exception criteria that would allow structural changes to nonconforming pole signs, with alternative C allowing structural changes to any sign. The alternatives are progressively less restrictive in terms of their criteria, with alternative A being the most restrictive and alternative C being the least restrictive.

Alternative A allows changes to a nonconforming pole sign structure if the changes are designed to conform to a national corporate logo. This criterion could be problematic because any property owner with nonconforming pole sign and a national product could allege that corporate headquarters requires a change in their sign to reflect a new corporate image. Moreover, any franchisee could simply ask its corporate headquarters to issue a directive for a sign change in order to comply with the City's code. Without detailing all of the concerns raised by the City Attorney to this approach, the major problem is that the criterion is met if some private entity requires that a change be made to a sign. This approach is unprecedented because cities adopt sign regulations by considering the same factors involved in the adoption of zoning regulations – health, safety, welfare and aesthetics. The City does not adopt sign regulations to address changes to a private entity's corporate image and logos. This does not provide a legitimate basis for the regulation.

Alternative A requires that the changes to the sign include widening of the pole by surrounding it with materials containing no sign graphics. This would accommodate the shroud that Courtesy Ford would like to place around its existing sign pole. However, as the enclosed mock-up photo of Ford's proposed sign indicates, a wider pole on a tall pole sign actually increases the visual impact of a sign without reducing any of the sign's nonconformities.

Alternatives A and B, both require removal of at least one other nonconforming sign. However, this "tradeoff" approach would likely result in applicants trading a minor inconsequential sign for an opportunity to upgrade a large prominent sign. The proposal could be amended to describe the minimum size sign to be removed or require that a nonconforming *free standing* sign be removed. However, because all structures have a useful life, it is expected that all nonconforming structures will be removed over time if nonconforming provisions are strictly applied. The staff does not recommend a tradeoff approach that extends the useful life of any nonconformity.

All proposed alternatives would allow changes to the face of the sign so long as such changes do not make the sign more non-conforming in terms of color, graphics, materials and illumination. This requirement is in direct conflict with current code provisions that allow for changes to the face of a nonconforming sign so long as the changes comply with existing color, sign graphics, materials and illumination provisions. It would also be burdensome to administer because it would be difficult to determine if the changes were more or less non-conforming than the existing sign. **City staff recommends denial of all proposed amendments because of the difficulty involved in interpretation, implementation and enforcement.**

The Planning Commission held a public hearing on the proposed amendments on October 2, 2003. Susan Drummond and John Hern, the applicants, testified at the hearing in favor of the proposed amendments. The Planning Commission held a lengthy discussion of the proposed amendments and expressed a number of concerns with the proposed text amendment. The Commission was not supportive of the proposed amendments and therefore made no motion to recommend approval. A copy of the October 2, 2003 Planning Commission Minutes was included in the November 4, 2003 first reading staff report to the Council.

The Council held a public hearing on the proposed amendments on November 11, 2003. Testimony was given by Mr. Dick Settle, attorney representing Courtesy Ford, Mr. John Hern, owner of Courtesy Ford, and Mr. Bill Boad of Capital Sign and Awning. Each spoke in favor of the proposed changes, stating that the changes were necessary for Ford to continue to operate in Gig Harbor. Mr. Hern indicated that Ford Corporation requires changes to his signs in order for his dealership to become "blue oval certified", and stated that he needs to retain visibility from SR-16 - not to sell cars, but to attract travelers along SR-16 who may be in need of service. He stated that while there are Ford dealers who get by with the 8-foot monument sign shown in Ford's Retail Identification Catalogue, he stressed that those dealerships were developed with those signs. He expressed his belief that if his existing pylon sign were suddenly removed, his customers would assume that he was no longer in business.

After public comments, Associate Planner Kristin Riebli and Planning & Building Manager Steve Osguthorpe answered Council questions. In response to proposed language that would require a wide base to be added to provide a "monument sign" character, Mr. Osguthorpe indicated that the sign code defines only *free-standing* signs and does not differentiate between pole signs and monument signs. This point needs clarified, however, because while monument signs are not defined in the code, there are provisions under Section 17.80.130 pertaining to "non-conforming signs" that allows the Design Review Board to deem a non-conforming sign as conforming if it meets certain criteria. (See Section 17.80.130(2)). Among these include the criterion that a non-conforming sign has the character of a *monument* sign rather than a pole sign. However, the preceding criterion (17.80.130(2)(a)) also requires such signs to be located in landscaped areas with large and mature plantings that provide a backdrop to the sign and that are at least as tall as the sign. This indicates that monument signs are not tall, wide pylon signs. Rather, they are expected to be lower ground signs – as the term typically implies.

Ford's 8-foot blue oval monument sign option would be consistent with the sign code's expected monument sign design. Presumably, it would also enable Courtesy Ford to become "blue oval certified", which Mr. Hern indicated is crucial to his business.

Based upon testimony provided at the hearing, the Council asked the staff to provide the following additional information:

1. A copy of the planning commission minutes for October 16, 2003, which was the next scheduled meeting following the public hearing on the proposed text amendments. It was during this meeting the planning commission confirmed that their lack of a motion to recommend approval of the proposed amendments reflected their general lack of support for the amendments.
2. An inventory of existing free-standing signs in the City that exceed current height limits for signs.
3. A copy of the administrative interpretation confirming that the general non-conformity provisions of Chapter 17.68.070 do not apply to nonconforming signs because nonconforming signs are regulated in GHMC Chapter 17.80.

The requested minutes and administrative interpretation are attached for the Council's consideration. Also attached is an inventory of all known free-standing signs that do not conform to current height limits for signs, along with pictures of each sign. The inventory identifies signs by code-defined sign areas. Sign Area 1 includes all areas of the City except for the view basin area and has a sign height limit of 8 feet; Sign Area 2 primarily includes the view basin area and has a sign height limit of 6 feet. The list of signs includes only those that are known to be over height. There may be additional signs that are slightly over height, but which cannot be determined by casual visual inspection.

As the inventory indicates that are a total of 42 over-height free-standing signs, including 28 signs in Area 1 and 14 signs in Area 2.

POLICY CONSIDERATIONS

Applicable land use policies and codes are as follows:

a. Comprehensive plan:

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

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

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

b. Zoning Code:

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

c. Design Manual

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

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

ENVIRONMENTAL ANALYSIS

A SEPA threshold Determination of Nonsignificance (DNS) was issued for the proposed amendments on August 27, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on September 3, 2003. The deadline for appealing the determination was September 17, 2003. No appeals have been filed and, to date, no public comments have been submitted. The public was allowed to comment on the SEPA determination at the public hearing before the Planning Commission. A copy of the DNS was included in the November 11th Council packet.

FISCAL IMPACTS

The addition of the proposed criteria for reviewing changes to legally nonconforming signs will require additional staff time due to the ambiguity of the requirements and the research that will be required to determine compliance.

RECOMMENDATION

At the first reading, the Council did not direct the staff to draft a revised ordinance addressing the issues identified in the staff's analysis. Rather, the Council requested additional information before rendering a final decision. Accordingly, there have been no changes to draft ordinances that would adopt the applicant's proposed amendments. **The staff therefore recommends that the Council reject each of the proposed ordinances.** If the Council wishes to adopt changes that address the needs of the applicant, the staff recommends that the Council direct staff to work with the applicant to develop language that will (a) enable Courtesy Ford to retain existing freeway sign

visibility and, (b), be more consistent with the City's comprehensive plan, zoning code and design manual.

Attachments

Alternative A

Alternative B

Alternative C

Photo of existing Ford sign from SR-16

Photo modified by staff to show proposed sign revision

Photo modified by staff to show face change option on existing sign.

DNS

Minutes from October 16, 2003 Planning Commission

Administrative Interpretation – Non-conforming sign provisions

Inventory of Existing signs that exceed height limits

ORDINANCE NO. ____

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

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

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

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

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

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

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

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

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

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

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

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

GHMC 17.80.130 Nonconforming signs.

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

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

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

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

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

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

1. The sign is abandoned;

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

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

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

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

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

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

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

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

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

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

1. Signs Attached to Buildings.

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

2. Freestanding Signs.

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

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

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

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of October, 2003.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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

ORDINANCE NO. ____

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

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

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

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

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

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

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

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

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

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

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

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

GHMC 17.80.130 Nonconforming signs.

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

1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign installation, and a valid permit for such sign exists; or
2. The sign was erected prior to January 1, 1992.

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

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

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

1. The sign is abandoned;
2. The sign is damaged in excess of 50 percent of its replacement value, unless said destruction is the result of vandalism or intentional destruction or removal by someone not authorized by the sign owner;
3. The owner seeks to change the sign structure supporting, holding, or surrounding the sign, other than minor maintenance or repair, except that changes to the sign structure supporting, holding, or surrounding a nonconforming pole sign may be made, without bringing the legal nonconforming pole sign into compliance with this chapter and without removal, if:

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

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

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

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

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

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

1. Signs Attached to Buildings.

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

2. Freestanding Signs.

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

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

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of October, 2003.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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

ORDINANCE NO. ____

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

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

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

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

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

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

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

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

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

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

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

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

GHMC 17.80.130 Nonconforming signs.

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

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

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

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

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

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

1. The sign is abandoned;

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

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

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

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

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

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

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

1. Signs Attached to Buildings.

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

2. Freestanding Signs.

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

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

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of October, 2003.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

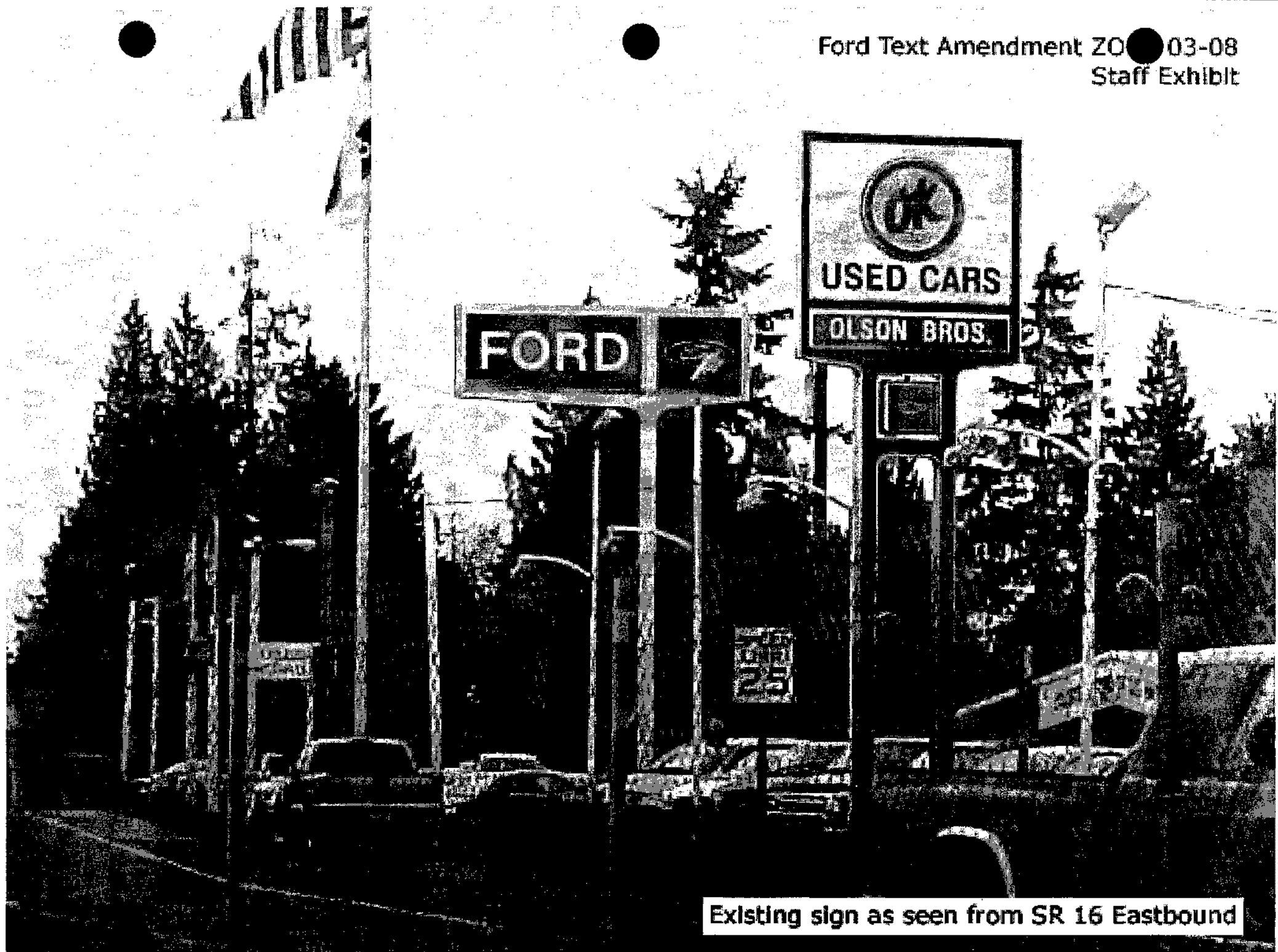
ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

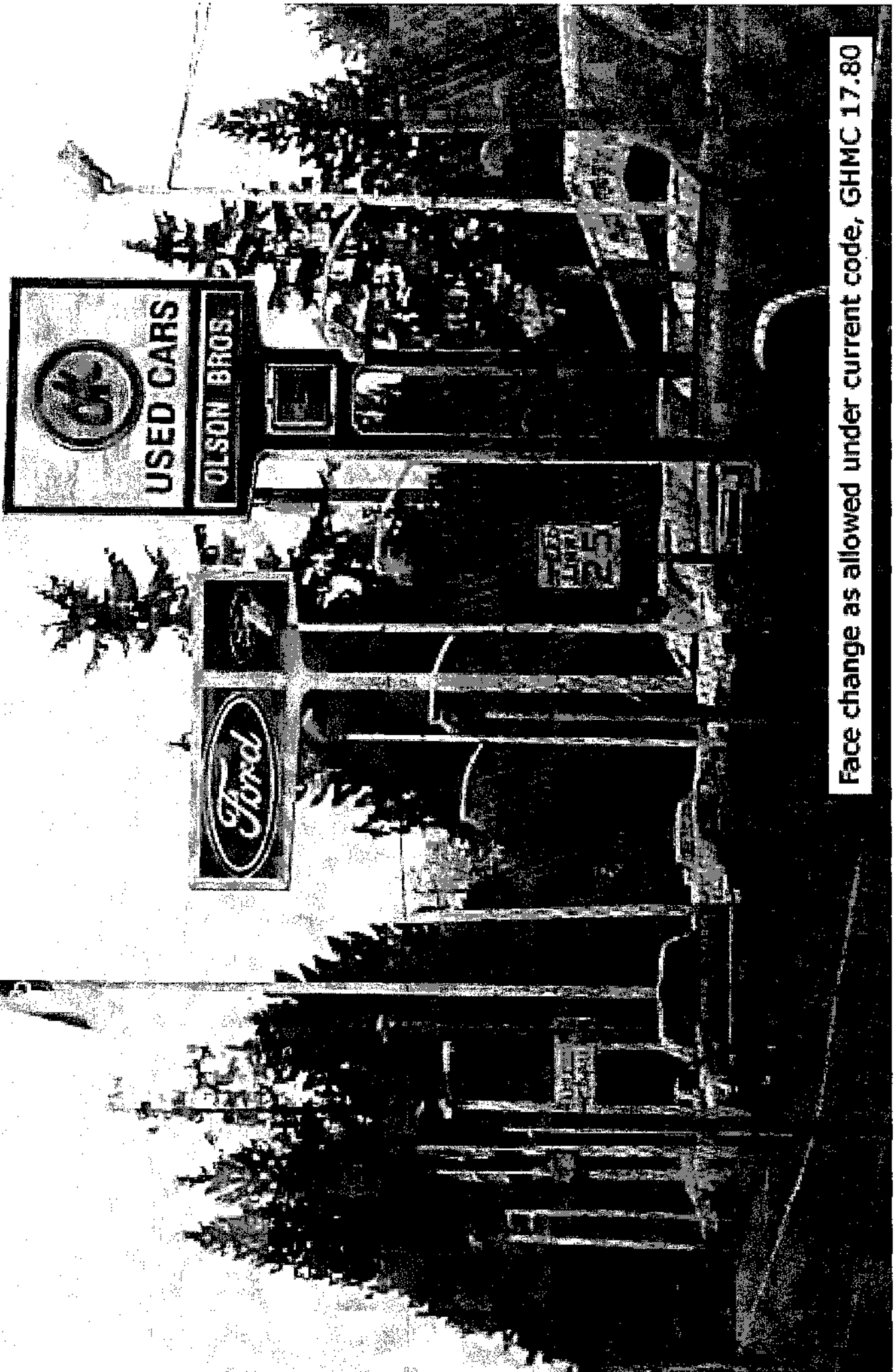
FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: _____



Existing sign as seen from SR 16 Eastbound



Sign proposed by Ford



Face change as allowed under current code, GHMC 17.80



'THE MARITIME CITY'

COMMUNITY DEVELOPMENT DEPARTMENT
3510 GRANDVIEW STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-6170 • WWW.CITYOFGIGHARBOR.NET

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

Environmental Review Application No.: SEPA #03-24

Parcel Number: No parcel number – Proposal is not site-specific

Action: Proposed Amendments to GHMC Chapter 17.80 – Sign Code

Proposal: Proposed Amendments to Gig Harbor Municipal Code Section 17.80.130 – nonconforming signs. Proposal would allow for structural changes to legal nonconforming signs

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

Proponent: Richard Settle of Foster Pepper and Shefelman (1111 3rd Avenue Suite 3400, Seattle WA 98101) on behalf of Courtesy Ford, located at 5404 Point Fosdick Drive.

Lead Agency: City of Gig Harbor

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

[x] This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for at least 14 days from the date of below. **Comments must be submitted by September 17, 2003.**

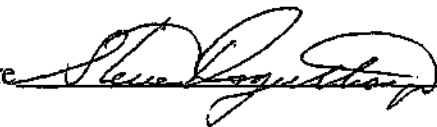
Any interested person may appeal the adequacy of this final threshold determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Title 18.04 of the Gig

Harbor Municipal Code if a written request for appeal is received within fourteen (14) days of the date of this notice, or September 17, 2003, which ever is later. The written appeal must be submitted with a filing fee of one hundred dollars (\$150).

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

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

Signature



Date:

Aug 27, 03

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
Thursday, October 16, 2003
Gig Harbor Civic Center**

PRESENT: Commissioners Carol Johnson, Paul Conan, Kathy Franklin, Dick Allen, and Commissioner Bruce Gair served as Chairman. Staff present: Steve Osguthorpe, Rob White, Kristin Riebli and Diane Gagnon. Theresa Malich-Mueller and Chairman Paul Kadzik were absent.

CALL TO ORDER: 6:03 p.m.

NEW BUSINESS:

Zoning Code Text Amendment – (ZONE 03-17) Proposal to amend GHMC Section 17.68.070 to delete the reference to signs in the nonconforming use chapter.

Associate Planner Kristin Riebli read her staff report of October 9, 2003 outlining the proposed changes, stating that they were drafted in order to alleviate confusion as the code currently references non-conforming signs in two different sections of the code. She further stated that the current proposal is to delete the reference in 17.68.070 and retain the regulations in 17.80.

Commissioner Bruce Gair asked about the status of the previous text amendment application regarding non-conforming signs. Planning Manager Steve Osguthorpe replied that the application would now go before the City Council along with a report of the action taken by the Planning Commission at their meeting of October 2nd, 2003.

Discussion followed on the proposed amendments and the fact that having non-conforming signs referenced in only one section would perhaps keep confusion to a minimum and alleviate the need for more administrative interpretations. Planning Manager Steve Osguthorpe stated that a correct interpretation of the code requires an understanding of statutory construction (e.g., the last section to be adopted prevails). He said that this is usually not understood by the general public and that the proposed amendments would eliminate any future confusion over this section of the code.

There being no further discussion on this item the Planning Commission decided to hold a public hearing on this issue at it's next meeting on November 6, 2003.

Before moving on to the next item on the agenda Commissioner Gair asked for an update on the Harbor Cove applications. Associate Planner Kristin Riebli reported that they had applied for two boundary line adjustments and a shoreline substantial development permit for a bulkhead. Additionally Ms. Riebli stated that she anticipated their next application would be for a short plat of one of the larger lots.

Zoning Code Text Amendment (ZONE 03-12) – Proposal to add a new GHMC Chapter 17.05 to address the calculation of density in residential zones. Amend GHMC Section 17.04.030, 17.89.100 and 17.90.090 and repeal GHMC 17.04.128

Senior Planner Rob White outlined his staff report of October 9, 2003. Mr. White reported that this amendment was similar to the previous item in that it is being proposed in order to alleviate confusion and duplicity in the code. He further outlined the proposed changes.

Commissioner Allen asked if setbacks would be excluded from net buildable area.

Planning Manager Steve Osguthorpe further clarified that the changes would not apply to one house on one lot as net buildable land is only used for calculating density. He further stated that it was not the intent to include setbacks. As listed on page 3, the areas excluded from the area calculations are related more to sensitive areas and public streets.

Senior Planner Rob White read the new Section 17.05, discussion was held and the following changes were made:

17.05.030 Calculations, Paragraph A. Delete floodways, flood plains and native growth protection easements.

Delete Paragraph B pertaining to surface water retention areas. When developed as an amenity, these are given a density bonus in the PRD section. Nonetheless, they are a typical part of the site development for all subdivisions. The commission reasoned that by deducting them from the density calculations, there is an overall density reduction in both PRD's and standard subdivisions.

The remaining changes to 17.89 and 17.90 were all formatting changes. There being no further discussion on this item the Planning Commission decided to hold a public hearing on this issue at it's next meeting on November 6, 2003.

OTHER BUSINESS

The Commission asked for an update on current building projects within the City. Senior Planner Rob White gave an update on several projects and Planning Manager Steve Osguthorpe gave a brief update on the Building Size Workshop coming up on October 23rd. Mr. Osguthorpe also discussed the Planning Commission's lack of a motion at the October 2nd hearing on Courtesy Ford's proposed sign code amendments. He said that typically the Commission would make a motion to either recommend approval or recommend denial of a proposed amendment. He said that he assumed, based upon the Commission's discussion of the proposed amendments, that the Commission did not make a motion on the proposal because they were not supportive of the changes. He said that he intended to inform the City Council that the Commission's lack of motion reflected their general lack of support for the changes. He asked the Commission if this was a correct assumption. They indicated that it was.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of October 2, 2003 as presented.

Johnson/Conan – unanimously approved.

NEXT REGULAR MEETING:

November 6th	Worksession and Public Hearing
November 20 th	Worksession

ADJOURN:

MOTION: Move to adjourn at 7:20 p.m.
Conan/Johnson – unanimously approved

CD recorder utilized:
Disc #1 Tracks 1-3

**CITY OF GIG HARBOR
PLANNING & BUILDING MANAGER INTERPRETATION**

Name of Applicant: Gig Harbor Ford
5304 Pt. Fosdick Drive N.W.
Gig Harbor, WA 98335

Application: Letter dated April 9, 2003 from Richard Settle,
Foster Pepper & Shefelman PLLC to
Carol Morris, City Attorney

Subject: Request for Interpretation of GHMC
Sections 17.68.070 and 17.68.130

I. Facts.

A. Existing Non-conformities. The Gig Harbor Ford property currently has two legally non-conforming pole signs. These pole signs are nonconforming because: (1) the internally illuminated graphics exceed 21 inches in height (GHMC Section 17.80.060(G)(2)(c)); (2) the background of the sign faces illuminate (GHMC Section 17.80.060(G)(2)(c)); (3) total height exceeds eight feet (GHMC Section 17.80.090(A)(2), although the City has no exact height measurement of the existing signs; (4) the sign faces exceed maximum size allowed under GHMC Section 17.80.090(A)(4); (5) density exceeds the one free-standing sign per street frontage allowed under GHMC Section 17.80.090(A)(6); and (7) no landscaping is provided at the base of the signs (GHMC Section 17.80.090(A)(7).

B. Proposed Changes to Existing Non-conforming Signs. The sign permit applications submitted by Gig Harbor Ford show the following changes: (1) replacement of the existing sign cabinets with new, slightly smaller internally illuminated cabinets; (2) placement of a grey shroud with a blue stripe around the existing poles; and (3) sign #1 will be 36 feet, 8-1/2 inches tall and sign #2 will be 19 feet, 6-9/16ths inches tall.

C. Staff's Analysis of Proposed Changes under City's Sign Code. In a letter to Bill Boad of the Gig Harbor Ford from Kristen Riebli, Associate Planner, dated December 31, 2002, the proposed changes do not conform to the City's Sign Code for the following reasons: (1) the internally illuminated graphics exceed 21 inches in height (GHMC Section 17.80.060(G)(2)(c)); (2) the background of the sign faces illuminate (GHMC Section 17.80.060(G)(2)(c)); (3) proposed height of signs #1 and #2 well exceed height limit of eight feet (GHMC Section 17.80.090(A)(4)); (4) density exceeds the one free-standing sign per street frontage allowed under GHMC Section 17.80.090(A)(6); and (5) no landscaping is provided at the base of the signs as required by GHMC 17.80.090(A)(7). The proposed placement of a grey shroud with a blue strip around the

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May 28, 2003

existing poles is considered signage under GHMC Section 17.80.030(49) “sign area,” and therefore exceeds the maximum allowable sign area under Section 17.80.090(A)(4).

D. Applicant’s Summary of the Proposed Changes to the Signs. “The proposed modifications would reduce the height and area of the signs and would employ an oval sign face and shroud around the existing poles to widen the sign base, making their appearances more similar to monument signs that the code presently requires and less like pole signs.” (Letter from Richard Settle to Carol Morris, City Attorney, April 9, 2003, p. 1.)

E. Request for Interpretation. The applicant requests that the City interpret GHMC Section 17.68.070 (“Any change that decreases the nonconformity to the requirements of this title shall be permitted”) in light of GHMC Section 17.68.130(C) and (D)(3). According to the applicant, these code provisions should be interpreted as follows:

GHMC 17.80.130.C must be interpreted to mean that ‘changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials and illumination’ UNLESS the changes to the sign face and graphics would decrease the sign’s nonconformity with current sign regulations.

... GHMC 17.80.130.D.3 must be interpreted to mean that ‘a legal nonconforming sign shall be brought into compliance with the requirements of this chapter or shall be removed if: 3. The owner seeks to change the sign structure supporting, holding or surrounding the sign other than minor maintenance or repair’ UNLESS such changes to the sign structure would decrease the sign’s nonconformity with current sign regulations.

(Copies of the relevant code provisions are attached hereto. The actual ordinances were analyzed for the purpose of this interpretation, so a portion of Ordinance No. 573, adopted in 1990 (GHMC Section 17.68.070) and Ordinance No. 788, adopted in 1998 (GHMC Section 17.68.130), have been reviewed.

II. Analysis.

A. General Rules of Statutory Construction. Municipal ordinances are the equivalent of statutes, so they are evaluated under the same rules of construction. *Faben Point Neighbors v. City of Mercer Island*, 102 Wn. App. 775, 11 P.3d 322 (2000). When

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interpreting statutes, the words in the statutes are given their plain meaning. *City of Lakewood v. Pierce County*, 106 Wn. App. 63, 71, 23 P.3d 1 (2001). Nontechnical terms are given their dictionary meanings. *Lakewood, supra*, 106 Wn. App. at 71. If the statutory language is ambiguous, we resort to the tools of statutory construction to ascertain and give effect to the legislature's intent and purpose. *Id.* A statute is ambiguous when it is fairly susceptible to two or more reasonable interpretations. *Sacred Heart Medical Center v. Dept. of Revenue*, 88 Wn. App. 632, 636 946 P.2d 409 (1997).

Where two statutes are in apparent conflict, we reconcile them, if possible, so that each may be given effect. *King v. Dept. of Soc. & Health Services*, 110 Wn.2d 793, 977, 756 P.2d 1303 (1988). Statutes must be read together to achieve a "harmonious total statutory scheme . . . which maintains the integrity of the respective statutes." *State v. O'Neill*, 103 Wn.2d 853, 862, 700 P.2d 711 (1985). Where statutes relating to the same subject are adopted by the legislature at different times, we must consider the entire sequence of statutes relating to the subject:

since legislative policies do change; and in ascertaining legislative purpose, we will read together statutes which stand in *pari materia* as constituting a unified whole, to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes.

O'Neill, supra, 103 Wn.2d at 717.

Where an agency is charged with the administration and enforcement of a statute, the agency's interpretation of an ambiguous statute is accorded great weight in determining legislative intent. *Waste Management of Seattle, Inc. v. Utilities and Transportation Comm'n.*, 123 Wn.2d 621, 629, 869 P.2d 1034 (1994). This rule only applies if the law being interpreted is ambiguous. *Hoberg v. Bellevue*, 76 Wn.App. 357, 359, 884 P.2d 1339 (1994); *McTavish v. Bellevue*, 89 Wn.App. 561, 565, 949 P.2d 837 (1998).

B. Application of General Rules to Gig Harbor Code. The applicant argues that the two code provisions (GHMC Section 17.68.070 and GHMC 17.80.030) must be harmonized because they govern the same subject matter. ("Statutes which stand in *pari materia* are to be read together as constituting a unified whole to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes." *Personal Restraint of Yim*, 139 Wn.2d 581, 592, 989 P.2d 512 (1999).)

However, we do not employ the rules of statutory construction unless the ordinance is ambiguous. *City of Lakewood v. Pierce County*, 106 Wn.2d 63, 71, 23 P.3d 1 (2001). The first question to be answered then, is whether GHMC Section 17.68.070 is ambiguous:

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

The applicant apparently believes that the second sentence is ambiguous, because it argues that the rules of statutory interpretation, such as the doctrine of *pari materia*, apply to this situation, requiring a “harmonious” interpretation of it with the provisions of a separate section in a different chapter in the Zoning Code. As stated by the courts:

When a statute is ambiguous, we must attempt to determine the intent of the Legislature. In determining legislative intent, we are required to look at the entire statute, rather than the single phrase at issue.

Vashon Island v. Boundary Review Board, 127 Wn.2d 759, 771, 903 P.2d 953 (1995). Thus, an interpretation of Section 17.68.070 must necessarily include both sentences in Section 17.68.070. After all, the second sentence of Section 17.68.070 does not even mention signs, and considering the second sentence as independent of the first sentence eliminates any application of it to signs.

Next, we must address whether GHMC Section 17.68.070 must be harmonized with GHMC Section 17.80.130(C) and (D) or whether they conflict. Chapter 17.68 GHMC addresses general nonconformities such as nonconforming uses and structures. Only one provision in chapter 17.68 GHMC addresses signs, and that is GHMC Section 17.68.070. The first sentence in this provision specifically prohibits changes in nonconforming signs. (“If the characteristics of a use such as signs, . . . in relation to specific uses of land, structures or premises are not in accordance with this Title, **no change** that increases the nonconformity with such requirements shall be made in such characteristics of use.”) This presents a clear conflict with 17.80.130, because the latter **allows changes** and describes the circumstances under which changes may be made to legal nonconforming signs. (“Changes to the sign face and sign graphics may be made to a legally nonconforming sign except that such changes must conform to this code as to colors, sign graphics, materials and illumination. A permit for such changes must be obtained.” GHMC Section 17.80.130(C).)

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The second sentence in GHMC Section 17.68.070 (“Any change that decreases the nonconformity to the requirements of this Title shall be permitted”) also conflicts with GHMC Section 17.80.040, because it appears to allow “changes” to nonconforming signs that are not conforming to the existing Sign Code (chapter 17.80 GHMC) without a permit, in violation of GHMC Section 17.80.040(A). The applicant argues that “any change” could mean a change that does not conform to the existing Sign Code, as long as it is a “decrease” in the nonconformity. Therefore, the applicant contends that an owner of a legally nonconforming sign could – without a sign permit -- modify, alter or change some aspect of the sign to decrease the nonconformity, even if it means that the modification, alteration or change violates the existing code. (A permit could not issue if the application does not conform to the code.)

There is an obvious conflict in a code provision that specifically and clearly states “no change” may be made in legally nonconforming signs and another provision, adopted eight years later, allowing changes to be made in legally nonconforming signs. In addition, a code provision allowing any type of a change to a legally nonconforming sign, as long as it reduces a nonconformity is inconsistent with another code provision, adopted eight years later, prohibiting any changes to a legally nonconforming sign unless a permit is obtained. A permit will not issue unless the application conforms to the existing code. (See, GHMC Section 17.80.130(B), which provides that any sign must be brought into conformance with the requirements of chapter 17.80 GHMC, unless the sign was erected prior to 1992 or was lawfully erected pursuant to a valid permit.)

Following the general rules of statutory construction, we first attempt to reconcile the conflicting statutes, so that each may be given effect. *City of Lakewood v. Pierce County*, 106 Wash. App. 63, 71, 23 P.3d 1 (2001). “Statutes must be read together to achieve a “harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.” *Lakewood*, 106 Wash. App. at 71. It does not appear reasonable that the City Council would have intended to allow property owners to make modifications or alterations to legally nonconforming signs without permits or compliance with code, especially in light of the extensive regulations on signs in chapter 17.80 GHMC. “Zoning ordinances should be given a reasonable construction and application in order to serve their purpose and scope . . . and any unreasonable construction must be rejected.” *Wiggers v. Skagit County*, 23 Wn. App. 207, 212, 596 P.2d 1345 (1979). “General rules of statutory construction instruct that: a statute is to be interpreted in a manner that is consistent with its underlying purpose; unlikely, absurd or strained results are to be avoided; . . .” *State v. CGS Job Center*, 117 Wn.2d 493, 816 P.2d 725 (1991).

Furthermore, the courts have consistently recognized that nonconforming uses and structures are subject to subsequently enacted reasonable police power regulations, such as permitting requirements. *Rhod-A-Zalea & 35th, Inc. v. Snohomish County*, 136 Wn.2d

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1, 11, 959 P.2d 1024 (1998). Where the imposition of the ordinance would have the effect of terminating the use, courts have held ordinances invalid (*Rhod-A-Zalea*, 136 Wn.2d at 13), this is not the case here.

In addition, the general rules of statutory interpretation require that preference be given to the later adopted statute, and to the more specific statute if the two statutes appear to conflict. *State v. Stackhouse*, 88 Wn. App. 963, 947 P.2d 777 (1997). *State v. Becker*, 59 Wn. App. 848, 801 P.2d 1015 (1990) (“Provisions of a more recent specific statute prevail in a conflict with a more general predecessor. This rule applies only if the statutes deal with the same subject matter and the conflict cannot be harmonized.”)

In sum, Section 17.68.070 has no application to signs, given that the conflict cannot be reasonably “harmonized,” and the City later adopted a more specific ordinance addressing nonconforming signs. It should be noted that chapter 17.68 GHMC addresses nonconformities in general, with the following explanation of “nonconforming:”

Within the zoning districts established by this Title or any amendment that may later be adopted, there may exist lots, structures, uses of land and structures, and characteristics of use that were lawful before the effective date of the applicable regulations, but that would be prohibited, regulated or restricted under the terms of chapter 17.04 of this Title or a future amendment thereof. This Chapter 17.68 is intended to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further intended that nonconformities shall not be enlarged upon, expanded, extended or be used as grounds for adding other structures or uses prohibited elsewhere in the same District.

GHMC Section 17.68.010. Signs are not “prohibited, regulated or restricted under the terms of chapter 17.04 of Title 17.” Chapter 17.04 GHMC is the definition section of the Zoning Code, which includes the following definition of “nonconformity:”

‘Nonconformity’ means any lot, structure, use of land, use of structure or characteristics of use that does not conform to the terms of this title or its future amendments, but that was lawful before the effective date of the ordinance codified in this title or its future amendments.

GHMC Section 17.04.620. This is the definition of general “nonconformities” was adopted in 1990, and does not apply to non-conforming signs. The City has adopted a definition of nonconforming signs in GHMC Section 17.80.130(A), which is:

A sign is legally nonconforming if it is out of conformance with this code, and: 1. The sign was lawfully erected in compliance with the applicable sign ordinance of the city or county which was effective at the time of sign

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installation, and a valid permit for such sign exists; or 2. The sign was erected prior to January 1, 1992.

The definition of “sign” in chapter 17.04 GHMC is:

Sign means any device, flag, light, figure, picture, letter, work, message, symbol, plaque, poster or building face that is visible from outside the lot on which it is located and that is designed to inform or attract the attention of the public through visual communication, excluding murals or architectural designs that do not advertise a business, product or service.
Signs are subject to all regulations specified in Chapter 17.80 GHMC.

GHMC Section 17.04.730 (emphasis added). The above definition of “sign,” adopted in 1990 confirms the City Council’s intent that all signs be subject to the regulations in chapter 17.80 GHMC, not chapter 17.68 GHMC. It is also significant that the City has adopted a specific definition of a nonconforming sign that is different from the general definition of “nonconformity,” indicating that the City Council intended that nonconforming signs be recognized and treated differently, as provided in chapter 17.80GHMC. “Moreover, where a statutory amendment is inconsistent with unamended portions of a statute, the amended portions control.” *State v. Stackhouse*, 88 Wn. App. 963, 969, 947 P.2d 777 (1997). Here, chapter 17.68 on general nonconformities has not been amended since 1990, yet the sign code provisions on nonconforming signs was amended in 1998. Therefore, the provisions of chapter 17.80 GHMC control all aspects of sign regulation, including changes, modifications or alterations to legally nonconforming signs.

Nonconformities are “uniformly disfavored” and the Washington courts have repeatedly acknowledged the desirability of eliminating them. *See, Ackerley Communications, Inc. v. City of Seattle*, 92 Wn.2d 905, 920, 602 P.2d 1177 (1979) (“It is a valid exercise of the City’s police power to terminate certain land uses which it deems adverse to the public health and welfare within a reasonable amortization period.”); *Keller v. City of Bellingham*, 92 Wn.2d 726, 739-31, 600 P.2d 1276 (1979)(“the severity of limitations in phasing out [nonconforming uses] is within the discretion of the legislative body of the city.”); *Bartz v. Board of Adjustment*, 80 Wn.2d 209, 217, 492 P.2d 1374 (1972); (“phasing out a nonconforming use is . . . the desirable policy of zoning legislation” and is “within the discretion of the legislative body of the city or county.”); *State v. Thomasson*, 61 Wn.2d 425, 427, 378 P.2d 441 (1963) (“there are conditions under which a nonconforming use may be constitutionally terminated”); *State ex rel. Miller v. Cain*, 40 Wn.2d 216, 221, 242 P.2d 505 (1952) (“it was not and is not contemplated that preexisting nonconforming uses are to be perpetual.”). “Thus, it is clear that local governments have the authority to preserve, regulate and even, within constitutional limitations, terminate nonconforming uses.” *Rhod-A-Zalea*, 136 Wn.2d at 9.

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Commentators also agree that "nonconforming uses limit the effectiveness of land use controls, imperil the success of community plans and injure property values." *Rhod-A-Zalea*, 136 Wn.2d at 9; citing R. Settle, *Washington Land Use*, Section 2.7(d).

In recognition of the above, the City of Gig Harbor also "disfavors" nonconformities and has adopted chapter 17.68 "to permit these nonconformities to continue until they are removed but not to encourage their perpetuation." GHMC Section 17.68.010(A). In addition, GHMC Section 17.68.010(B) provides that: "A nonconforming use of land . . . shall not be extended or enlarged after passage of the ordinance codified in this chapter . . ." The Sign Code mirrors this intent to ensure that nonconforming signs are eventually eliminated. See, GHMC Section 17.80.130(D), which provides that "a legal nonconforming sign shall be brought into compliance with this ordinance or shall be removed" if it is abandoned, damaged beyond a certain extent, identified changes take place in the tenant space or the building to which the sign applies is demolished.

Given the above, GHMC Section 17.68.030(C) and (D) cannot be broadly interpreted to mean that **any change** to a non-conforming sign must be allowed. If such changes allow replacement of an existing, old nonconforming sign with a new, slightly less nonconforming sign, the result is the installation of a new nonconforming sign with a substantially extended life. Taking the applicant's argument to its logical conclusion, the reduction in nonconformity might be so slight as to not even be discernable to the naked eye. Yet, if any fractional and indiscernible reduction in the nonconformity is enough to justify a new sign every time the owner wishes to make changes, eventual full compliance with the City Sign Code (anticipating eventual removal of non-conforming signs) will never be achieved.

The applicant also argues that GHMC Sections 17.80.130(C) and (D) should be harmonized with GHMC Section 17.68.070 to be interpreted to mean that "the specified changes in circumstances trigger the obligation to comply with current sign regulations UNLESS the changes would decrease the sign's nonconformity with current regulations" because it would "avoid transgression of constitutional limitations." (Letter from Richard Settle, p. 5.) According to the applicant: "Given the circumstances of the proposed changes in the sign at Gig Harbor Ford, there would be a strong claim that an interpretation of the sign ordinance that would deny such changes would violate the substantive due process limitations of the federal and state constitutions." (*Id.*) However, the above interpretation of GHMC Sections 17.80.130(C) and (D) merely requires that a property owner with a legally nonconforming sign must follow all existing code requirements in order to make any alterations, modifications or changes to the sign. It does not "deny such changes."

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The applicant contends that “denial of permission to make such changes would not be reasonably necessary to serve the public interest and would be unduly oppressive.” At this point, the City has not denied any application for changes, alterations or modifications to the legally nonconforming sign. This interpretation merely determines that GHMC Section 17.68.070 does not apply to signs, and that chapter 17.80 GHMC applies to signs. Chapter 17.80 GHMC also has a procedure for sign variances, which has not been exhausted. Therefore, any allegation that the City has denied permission to make any changes to a legally nonconforming sign is premature because applications for a sign modification and/or variance have not been denied.

III. Conclusion.

The City’s Zoning Code chapter (Chapter 17.68 GHMC) on nonconformities does not apply to signs, and GHMC Section 17.68.070 does not apply to nonconforming signs. Signs are regulated in the Zoning Code in chapter 17.80 GHMC. Any changes, alterations or modifications to legally nonconforming signs must conform to chapter 17.80 GHMC and GHMC Sections 17.80.130(C) and (D), as applicable.

Dated: May 28, 2003


Steve Osguthorpe, Planning & Building Manager

SEPA Threshold Decision: Exempt

Procedures for Administrative Appeal: As provided in GHMC Section 17.66.050(B), an appeal may be filed of this Interpretation to the Hearing Examiner within 20 days of the date of issuance.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation. RCW 36.70B.130. A copy of this Interpretation shall be provided to the Pierce County Assessor’s Office.

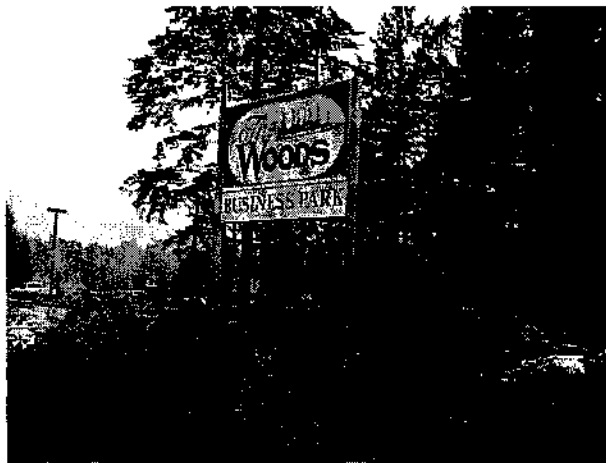
A copy of this Interpretation shall be provided to:

Bill Boad
Capitol Sign and Awning
P.O. Box 8106
Lacey WA 98509

Richard Settle
Foster Pepper & Shefelman PLLC
1111 Third Avenue
Suite 3400
Seattle, WA 98101-3299

Existing Signs that Exceed Height Limits — Sign Area 1

Ford Txt Amend 03-08



Existing Signs that Exceed Height Limits —Sign Area 1

Ford Txt Amend 03-08



Existing Signs that Exceed Height Limits — Sign Area 1

Ford Txt Amend 03-08



Existing Signs that Exceed Height Limits — Sign Area 1

Ford Txt Amend 03-08



Existing Signs that Exceed Height Limits —Sign Area 1

Ford Txt Amend 03-08



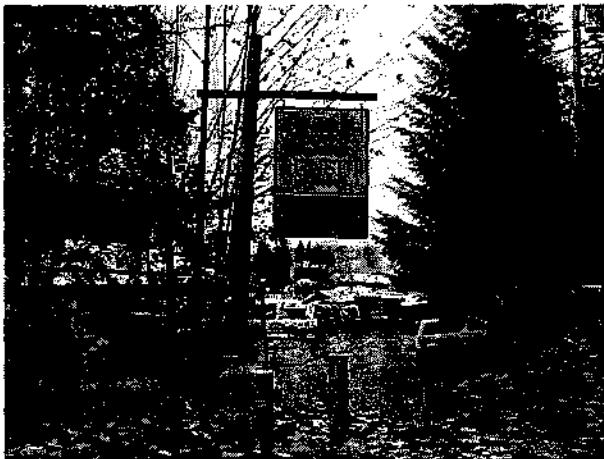
Existing Signs that Exceed Height Limits — Sign Area 2

Ford Txt Amend 03-08



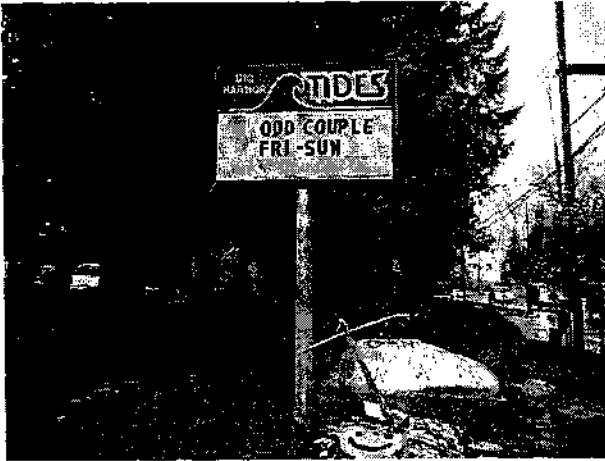
Existing Signs that Exceed Height Limits — Sign Area 2

Ford Txt Amend 03-08



Existing Signs that Exceed Height Limits —Sign Area 2

Ford Txt Amend 03-08



The photos in this document were taken on November 17 and 18, 2003,
by Kristin Riebli, Associate Planner.

Business	Sign District	Street
Rainer Pacific	1	56th
The Great Car Wash	1	Kimball
The Woods Business Park	1	Kimball
Gig Harbor Cinemas 3	1	Olympic
Harvester Restaurant	1	Olympic
QFC	1	Olympic
Olympic Village (2)	1	Olympic/SR-16
Pacific Northwest Bank	1	Pioneer
Shell	1	Pioneer
Inn at Gig Harbor	1	Pt Fosdick
4700 Pt Fosdick	1	Pt Fosdick
Courtesy Ford --entrance	1	Pt Fosdick
Courtesy Ford --Primary Pole	1	Pt Fosdick
Courtesy Ford --Truck Center	1	Pt Fosdick
Courtesy Ford --Used Car Pole	1	Pt Fosdick
Dairy Queen	1	Pt Fosdick
Gig Harbor Motor Inn	1	Pt Fosdick
Harbor Retail Center	1	Pt Fosdick
Key Bank	1	Pt Fosdick
Lumbermen's	1	Pt Fosdick
Olson Bro. Chevrolet --OK Used Car	1	Pt Fosdick
Olson Bro. Chevrolet --Parts and Service	1	Pt Fosdick
Olson Bro. Chevrolet --Primary Pole	1	Pt Fosdick
Pt Fosdick Square	1	Pt Fosdick
Safeway	1	Pt Fosdick
76 Station	1	Soundview
Harbor Heights	1	Stinson
Burton Park Readerboard	2	38th
Gig Harbor RV Resort	2	Burnham
76 Station	2	Harborview
Beach Basket	2	Harborview
Harbor Inn	2	Harborview
Mostly Books	2	Harborview
Sunset Yacht	2	Harborview
Tides	2	Harborview
Key Bank	2	Judson
Rent a Boat	2	North Harborview
Harbor Center	2	Pioneer
Sharon's Consignment Shop	2	Pioneer
Gig Harbor High School	2	Rosedale
St Nicholas Church	2	Rosedale

Total number of legally existing signs counted in staff survey which exceed the height limits of the Sign Code--42



ADMINISTRATION

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MHA*
SUBJECT: PENINSULA RECREATION CENTER FIELD DEVELOPMENT AT GHHS
DATE: NOVEMBER 18, 2003

INFORMATION/BACKGROUND

A meeting was held on November 10, 2003, at the Peninsula School District office to attempt to resolve the course of the artificial turf field project at Gig Harbor High School. Two issues require resolution.

POLICY CONSIDERATIONS

One issue is that current city standards do not allow light standards over 35 feet in height and that the field proposal under any lighting scenario absolutely requires most lights as high as 60+ feet and on a few standards 80+ feet. Staff is forwarding a proposal for a textual amendment to the zoning code to allow these field light heights. This proposal will ultimately come to Council for review and possible approval.

The second issue is what kind of light fixture is best suited for the field in terms of functionality and in terms of light-throw off the property. Three scenarios have been discussed: a flood light scheme, a flood light and shoebox mixed lighting scheme, and a 100% shoebox lighting scheme. Flood lights were what Pierce County budgeted in their application and design. Flood lights (pointed away from Gig Harbor Bay) with shoebox lights were discussed as a compromise solution. Shoebox lighting, a patented, high-end approach to light containment, was assessed and feasible but not budgeted because the approach was adjudged too expensive by Pierce County. **The staff position is that the highest degree of light containment is desirable because citizens expect the least available disruption from a light source that under all scenarios will be visible to some degree from the Gig Harbor Bay basin.**

Consequently, the staff policy recommendation is for shoebox field lighting standards, the high quality solution. Unfortunately, this high standard of care costs \$300,000 more than the county has budgeted for the project, which is budgeted at over \$2 million.

FISCAL CONSIDERATIONS

The school district, with a 4% fund balance or less, is absolutely unable to contribute to this difference. Terry Lee, representing the county, has offered \$120,000 to make up the difference. If the City Council offers a similar amount, \$120,000, and if the contractor downgrades the underlying field surface from porous asphalt to gravel - a savings of \$60,000 from the contract total, then the \$300,000 difference in project cost can be bridged.

The city's 2004 Park Development Fund 109 is budgeted such that it can just barely allocate the \$120K. I recommend that the City Council authorize this budget allotment for the most significant active recreational amenity yet planned within city limits. This regional park improvement to the Peninsula Athletic Complex is identified in the current *City of Gig Harbor Parks, Recreation, and Open Space Capital Facility Program 2000-2006*. Furthermore, I think that the City Council should divert an additional \$60,000 from the planned 2004 allocation to the Property Acquisition Fund 301 to develop porous asphalt surfacing under the artificial surface. It seems a reasonable investment to generate a first-cabin facility. [As you will recall, Fund 301 is a capital development fund that anticipates this kind of expenditure, although the fund is identified for acquisition.]

Peninsula Recreation Supervisor Jeremy Bubnick will manage all recreational activities on this field. The Peninsula Recreation Supervisor works on behalf of city recreational interests through the interlocal agreement with Pierce County and the Peninsula School District.

RECOMMENDATION

I recommend that Council approve the attached resolution to budget \$180,000 for the purposes of development of the Peninsula Recreation Center artificial field complex at Gig Harbor High School. \$120,000 will be allocated from the 2004 Parks Development Fund and \$60,000 will be allocated from the Property Acquisition Fund for the purpose of installing a porous asphalt base instead of a gravel base on the playing surface.

**CITY OF GIG HARBOR
RESOLUTION NO.**

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

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

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

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

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AS FOLLOWS:

Section 1. Lighting. The City Administrator is authorized and directed to present to the City of Gig Harbor City Council an interlocal agreement with Pierce County for the purpose of completing the development and installation of shoebox lighting for the Peninsula Recreation Center multi-use field turf facility at Gig Harbor High School in an amount not to exceed \$120,000.

Section 2. Field Surface Base. The City Administrator is authorized and directed to present to the City of Gig Harbor City Council an interlocal agreement with Pierce County for the purpose of completing the installation of a porous asphalt field base for the Peninsula Recreation Center multi-use field turf facility at Gig Harbor High School in an amount not to exceed \$60,000.

Section 3. 2004 Budget Allocation. The not-to-exceed lighting cost expenditure of \$120,000 will be allocated from the City of Gig Harbor 2004 Park Development Fund 109. The not-to-exceed porous asphalt base cost expenditure of \$60,000 will be allocated from the City of Gig Harbor 2004 Property Acquisition Fund 301.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR
this ____ day of _____, 2003.

APPROVED:

GRETCHEN A. WILBERT, MAYOR

ATTEST/AUTHENTICATED:

MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 11/24/03
PASSED BY THE CITY COUNCIL: 11/ /03
RESOLUTION NO.



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCILMEMBERS

FROM: STEVE OSGUTHORPE, AICP *S.O.*
PLANNING & BUILDING MANAGER

SUBJECT: FIRST READING OF ORDINANCE – HOLLYCROFT REZONE -
REZ 00- 01

DATE: NOVEMBER 24, 2003

INTRODUCTION/BACKGROUND

During the early part of 2001, Hollycroft LLC submitted a request to rezone two parcels totaling 2.4 acres from B-1 to RB-2. The B-1 zone imposes a maximum building size limit of 5,000 square feet and does not allow professional office. The purpose of the rezone was to allow construction of two (two-story) office buildings of 34,000 square feet each for professional office use.

The rezone was approved by the hearing examiner on March 29, 2001. However, because of staff oversight, an ordinance adopting the rezone was never forwarded to the City Council to make it effective. This oversight was only recently discovered, and prior to this discovery permits were issued under the assumption that the rezone process had been completed. Moreover, the owner and developer of the property proceeded with the expectation of a certificate of occupancy being issued by the end of December 2003. The staff is therefore trying to expedite completion of the rezone in an attempt to meet the owner's deadline.

To effectuate the rezone, it must now be adopted by ordinance. A draft ordinance approving the rezone, along with a copy of the Hearing Examiner's decision, is 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 Commercial/Business. Page 9 of the Land Use Element of the Comp Plan states that this land use designation

provides for "primarily retail and wholesale facilities, including service and sales. Where appropriate, mixed-use (residential with commercial) may be permitted through a planned unit development process. Commercial/business activities consist of the following: Retail sales and services; business and professional offices; and mini-warehousing."

b. Zoning Code:

Permitted and conditional uses in the proposed RB-2 designation are defined in Sections 17.30.020 and 17.30.030. Professional offices and personal services are among the more intensive permitted uses in the zone.

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.

c. Design Manual:

The proposed RB-2 designation would be a more intense zone than the abutting R-1 & R-3 residential zones. Accordingly, the transition zone standards defined on pages 24 – 26 of the Design Manual would apply. The transition zone standards are intended to assure compatibility between unlike uses through buffering and/or innovative design techniques that ensure compatibility in mass, scale and architecture and that provide a higher level of parking lot design.

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 in the RB-2 zone would generate additional jobs within the City.

RECOMMENDATION

This is a first reading only and requires no action. The staff will be recommending that the Council adopt the ordinance at the second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, REZONING 2.4 ACRES FROM B-1 (NEIGHBORHOOD COMMERCIAL) ZONING DISTRICT TO A RB-2 (RESIDENTIAL AND BUSINESS) ZONING DISTRICT, LOCATED AT 2727 HOLLYCROFT STREET, ASSESSOR'S PARCEL NUMBERS 7580000513 & 7580000514.

WHEREAS, Hollycroft LLC/North Pacific Design owns two contiguous parcels located at 2727 Hollycroft Street, ASSESSOR'S PARCEL NUMBERS 7580000513 & 7580000514; and

WHEREAS, The land use designation of the subject parcels, as defined in the City's comprehensive plan, is commercial/business; and

WHEREAS, RCW 36.70A.545 requires consistency between comprehensive plans and development regulations; and

WHEREAS, the commercial/business comprehensive plan land use designation anticipates professional offices or businesses; and

WHEREAS, Hollycroft LLC/North Pacific Design submitted an application for a rezone of both properties from B-1 (neighborhood commercial) to RB-2 (residential business), which allows professional offices as a permitted use; and

WHEREAS, a SEPA threshold mitigated determination of non-significance (MDNS) for the proposed rezone was issued on January 24, 2001; 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 March 21, 2001; and

WHEREAS, the Hearing Examiner approved the proposed rezone in his decision dated March 29, 2001; 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 December 8, 2003;

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

Section 1. The real property located at 2727 Hollycroft Street, ASSESSOR'S PARCEL NUMBERS 7580000513 & 7580000514, legally described as Lot 1 and Lot 2 of Short Plat 80-297 in the SW ¼, of the NE ¼ of Section 17, Township 21 North, Range 2 East, W.M., situated in Pierce County, Washington, as shown on Exhibit "A", is hereby rezoned from B-1 (neighborhood commercial) to RB-2 (residential business).

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 _____, 2003.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

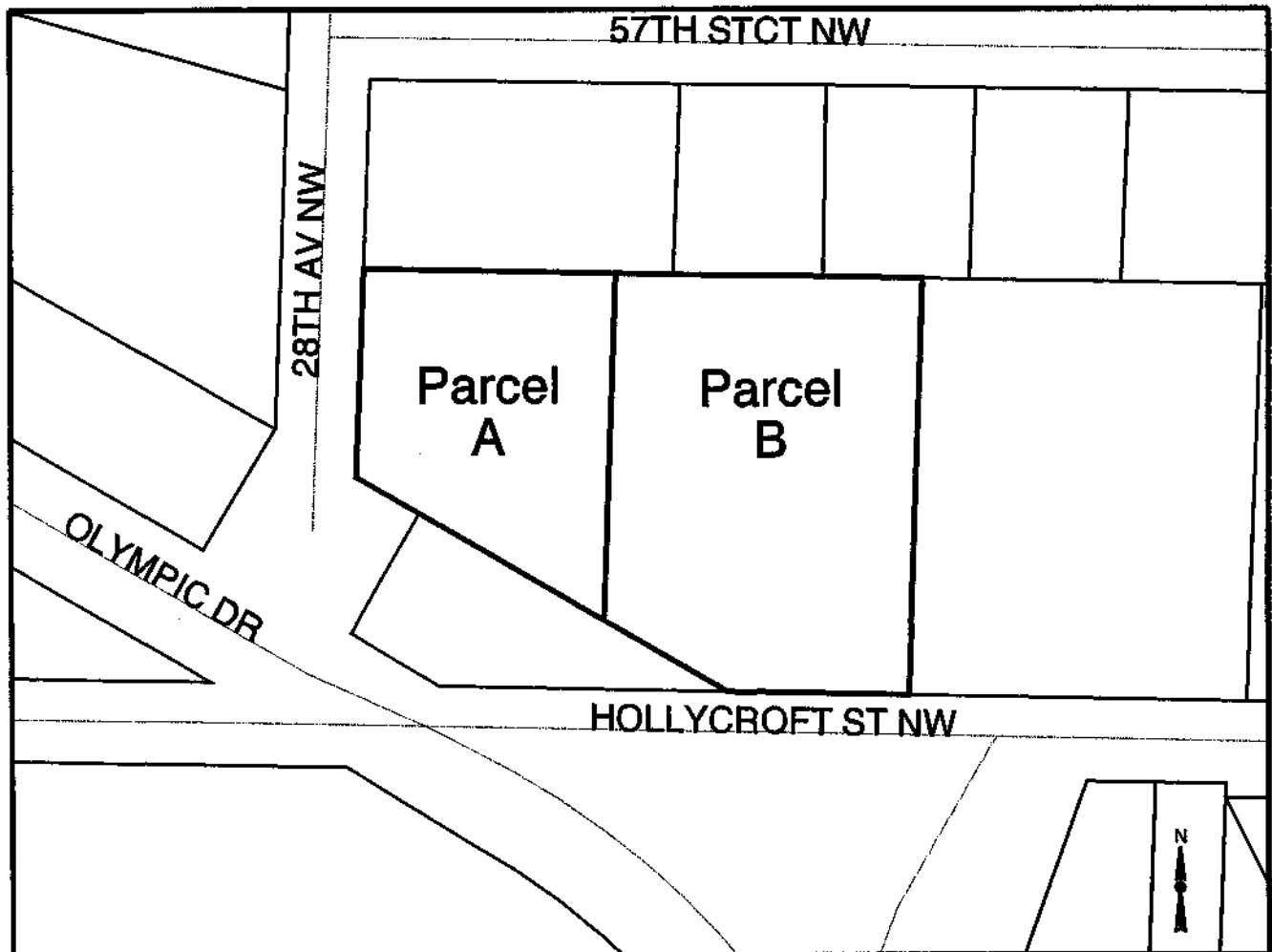
APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

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

Exhibit "A"

Ordinance _____



Parcel A:
ATR Parcel #7580000513

Parcel B:
ATR Parcel #7580000514

Parcel A and B Address:
2727 Hollycroft Street

Parcel A and B Legal Description:
Lot 1 and Lot 2 of Short Plat 80-297 in the SW $\frac{1}{4}$, of the NE $\frac{1}{4}$ of Section 17,
Township 21 North, Range 2 East, W.M., situated in Pierce County, Washington.

□

**CITY OF GIG HARBOR
HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION**

CITY OF GIG HARBOR
PLANNING AND BUILDING
MAR 20 2001

APPLICANT: Hollycroft, LLC/North Pacific Design

CASE NO.: SPR 00-08/REZ 00-01/DRB 00-14/CUP 01-01

LOCATION: NE Corner of Hollycroft, 28th Avenue NW, and Olympic Drive (to be addressed as 2727 Hollycroft Street)

APPLICATION: Rezone two parcels totaling 2.4 acres from B-1 (General Business 1) to RB-2 (Residential Business 2), and construct two (two-story) office buildings of 34,000 square feet each, with underground parking garage. One of the intended tenants is a commercial fitness center requiring a Conditional Use Permit. The majority of the area of these parcels is inside the City of Gig Harbor, but a small portion – where parking will be located, is inside Pierce County. The applicants are proposing annexation of that portion of the property into the City of Gig Harbor. The applicant is seeking site development permits from Pierce County for that portion of the project inside the County.

SUMMARY OF RECOMMENDATION AND DECISION:

Staff Recommendation: Approve with conditions

Hearing Examiner Decision: Approve with conditions

PUBLIC HEARING:

After reviewing the official file, which included the Community Development Staff Advisory Report, and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the Hollycroft application was opened at 5:13 p.m., March 21, 2001, in the City Hall, Gig Harbor, Washington, and closed at 6:03 p.m. Participants at the public hearing and the exhibits offered and entered are listed in this report. A verbatim recording of the hearing is available in the Planning Department.

HEARING TESTIMONY:

The following is a summary of the testimony offered at the public hearing:

From the City:

Pat Iolavera, Senior Planner, reviewed the staff advisory report and entered it into the record as Exhibit A. She also modified recommended condition 17 of the staff advisory report.

From the Applicant:

Thair Jorgensen, Agent for the Applicant, reviewed the proposal and said the access will be provided from Hollycroft and only emergency access will be provided from 28th Avenue NW. He explained that the current B-1 zoning is not practical because the purpose for the B-1 zone is to provide for shopping facilities and the site has no access to Soundview Drive. The applicant is proposing the site be rezoned to RB-2, and the applicant is proposing two 34,000 square foot office buildings on the site with 40-foot landscape buffers along the adjacent single-family residential properties. He also noted that the proposed park would be integrated with the Cushman Trail. He concurred with the conditions of approval recommended by staff.

From the Community:

Mary Ellen Sand said she lives across the street and is concerned about how the landscaping will look. She said neighbors were promised a buffer from the adjacent development and it has not been installed as promised. She said she is also concerned about traffic relative to the twelve parking spaces being provided for the trail.

Peter Norman said he thinks the proposal will be an attractive complement to Gig Harbor and recommended that it be approved.

Trisha Dolge said she is concerned about traffic accessing the park property via 28th Avenue NW. She said she works nights and sleeps days so she is also concerned about construction noise and construction traffic on 28th NW. She also noted that she has had storm drainage problems and she doesn't want this proposal to make them worse. She also questioned how the cul-de-sac would be lighted. Otherwise, she said she likes the proposal.

Steve Tyson said he lives next to the property to be annexed and is concerned about possible environmental impacts from the proposal, especially storm water runoff. He said his basement is dry now and he wants it to remain that way. He noted that if the proposed storm water detention facility fails he is directly downstream and he wants to be protected. He said he has no problem with the buffer, but would like to see the weeds, etc. removed.

Response from the Applicant:

Thair Jorgensen responded that existing vegetation along 37th Ave. Ct. NW does have scrub trees and brush that will be removed and that new landscaping will be installed. He said the twelve parking spaces to be provided at the cul-de-sac will be provided as a public amenity and the spaces were requested by the County Park Department. He said storm detention will be constructed in accordance with City requirements and will be located under the parking area.

Response from the City:

Pat Iolavera responded that all landscaping and buffering would be reviewed as part of design review. She also noted that the Cushman Trail is a County project and is located in the Tacoma City Light power line right-of-way, which the City has no control over. She noted that the proposed trailhead park was volunteered by the applicant and was not required by the

City. She said an emergency access gate will be required at 28th Avenue NW and she said that lighting in the cul-de-sac would be installed in accordance with Public Works standards. She also noted that construction access would be limited to Hollycroft Street.

FINDINGS, CONCLUSIONS AND DECISION:

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

A. FINDINGS AND CONCLUSIONS:

1. The information contained in Section of the Planning Staff Advisory Report (Hearing Examiner Exhibit A) is found by the Hearing Examiner to be supported by the evidence presented during the hearing and by this reference is adopted as a part of the Hearing Examiner's findings of fact. A copy of said report is available in the Department of Planning and Building Services.
2. Issues raised at the hearing such as adequacy of buffering and stormwater control will be addressed in depth by staff as part of design review.
3. If approved as conditioned below, the request for a rezone will comply with the provisions of GHMC 17.100, the request for a conditional use permit will comply with the provisions of GHMC 17.64.040, and the site plan will comply with the provisions of GHMC 17.96.030.
4. Design review will be conducted at a later time, but prior to issuance of building permits.

B. DECISION:

Based upon the foregoing findings of fact and conclusions, the requested site plan, conditional use permit and rezone are approved subject to the following conditions being met prior to issuance of building permits:

1. Design and construction of a storm water detention, water quality treatment, conveyance and discharge system conforming to the City Public Works Standards and Department of Ecology standards for water quantity and quality control together with a storm water report prepared by a licensed engineer detailing the storm water analysis for the site design.
2. A plan shall be required addressing current Department of Ecology standards for temporary erosion and sedimentation control. These measures shall be in place prior to commencing any construction activities, and shall remain in effect during construction.
3. The driveway access off 28th Ave. NW shall be for emergency purposes only. This access point shall be gated and locked for access by the fire department per their standards.
4. Hollycroft Street shall be the primary means of access to and from the site for construction traffic.

5. The bulb at the end of 28th Ave. NW will have parking at the cul de sac for trail access purposes as directed by the Director of Public Works.
6. The plans shall show the City sanitary sewer main and easement crossing the Tacoma Power property southwest of the site.
7. Sidewalk and planting strip shall be required along the 28th Ave. NW frontage.
8. Streetlights shall be installed per City standards along the Hollycroft Street frontage.
9. An agreement for use of the above ground parking lot by trail users shall be entered upon between the applicant and the City prior to issuance of building permits.
10. An agreement assigning the maintenance of the trailhead park to the applicant must be provided by the applicant and approved by the City of Gig Harbor prior to issuance of building permits.
11. All frontage improvement shall require performance and maintenance bonding.
12. Easements for any work done in the Tacoma Power property shall be shown on the plans and recorded copies submitted to the City.
13. The boundary between the City and Pierce County shall be shown on the plans.
14. Any work done in the County shall require Pierce county approvals and the applicants shall submit copies of all permits as required and issued by agencies of jurisdiction as prerequisite to construction plan approval by the City. The project must receive development approval for Parcel C from Pierce County, and that approval must conform to the site plan approved by the City of Gig Harbor and which has received Design Review approval by the City of Gig Harbor before building permits will be issued for this site.
15. Any utilities crossing property lines shall require easements and mutual maintenance agreements.
16. The water main in 28th Ave. NW must be shown correctly on the plans.
17. If the water main across the property is to be dedicated to the City, an easement shall be recorded. If the water main is to remain private, DDCVs shall be placed at the property lines. The DDCVs shall be placed in easements dedicated to the City.
18. The final landscape plans for the building permit shall reflect the landscape plan submitted for design review AND shall meet the minimum requirements of GHMC 17.78.
19. The applicant has chosen not to survey significant vegetation and shall be required to accommodate significant vegetation as required by GHMC 17.78, including relocation of proposed improved areas as needed. Staff shall verify and establish limits of disturbance prior to issuance of clearing and grading permits. All construction drawings shall be updated to show revised limits of disturbance if additional significant vegetation is discovered during field inspections by staff. Plan specs shall include details of tree

protection and shall be detailed on both the landscape sheet and grading and drainage sheets.

20. The applicant will remove invasive species from the buffers and replace with suitable native plants.
21. All plans for building permit and site development shall be subject to final design review prior to issuance of any further permits. Design Review and approval must conclude within 90 days of the issuance of the Decision of the Hearing Examiner, or the site plan will expire.
22. Plans for the Design of the Cushman Trailhead Park shall receive Design Review approval from the City of Gig Harbor prior to construction of the park, and in consideration of the requirements of Tacoma Public Utilities, but shall not be required within the 90-day period described in item 20 above.
23. Applicants will provide a Site Analysis Report per the Critical Areas Ordinance, section 18.12.050(2) and all project construction shall implement all recommended requirements of that report.
24. Traffic and water concurrency reservation certificates must be provided.
25. Applicant must submit an engineer's calculations and water availability letter on the fire flow systems per the comments of Steve Bowman's October, 19, 2000 memo.
26. Applicant must show on the plans, proposed location of FDC & PIV to allow review of Fire Department equipment setup areas, the north side of the building near the proposed hydrant, recommend by Pierce County Fire District Five should be used unless the applicant can show sufficient cause to use an alternate and that alternate is acceptable to the PCFD5.
27. Hydrant locations must be changed per October 30, 2000 comment letter from Pierce County Fire District Five. If easements cannot be obtained from the appropriate jurisdiction, an alternate location/system approved by the City Fire Marshal may be approved.

Dated this 29th day of March 2001.



Ron McConnell, FAICP
Hearing Examiner

APPEAL OF EXAMINER'S DECISION:

Any party of record who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Gig Harbor Planning Department within (14) calendar days from the date the final decision of the Examiner is rendered.

Such appeal shall be submitted in accordance with Chapter 19.06 GHMC.

EXHIBITS:

The following exhibits were offered and entered into the record:

- A. Department of Planning and Building Services Staff Report, dated 3/15/01, with attachments
- B. Photo of a model of the proposed building
- C. Highlighted copy of the overall site plan
- D. Aerial showing surrounding land use and zoning
- E. Aerial view of the site and surrounding area showing the Cushman trail.

PARTIES OF RECORD:

Thair Jorgensen & Pat Allen
Hollycroft, LLC/North Pacific Design
5715 Wollochet Dr. NW, Suite 2A
Gig Harbor, WA 98335

Mary Ellen Sand
2709 57th St. Ct. NW
Gig Harbor, WA 98335

Peter Norman
6911 Soundview Drive
Gig Harbor, WA 98335

Trisha Dolge
2509 57th St. Ct. NW
Gig Harbor, WA 98335

Steve Tyson
2610 57th St. Ct. NE NW
Gig Harbor, WA 98335

Claudia Peters
8201 26th Ave. NW
Gig Harbor, WA 98335

Mary Urback
Attorney at Law
12417 12th Street East
Edgewood, WA 98372

Gordon Rush
Rush Construction
5715 Wollochet Drive NW
Gig Harbor, WA 98335

Thad Glassy
Transmission and Distribution Supervisor
Construction Engineering
Tacoma Power
3628 South 35th Street
Tacoma, WA 98409-3192

Dale Severson, P.E.
Development Services Engineer
WSDOT, Olympic Region
PO Box 47440
Tumwater, WA 98504-7440

Penny Hulse
Prevention Division Chief
Pierce County Fire District Five
10222 Bujacich Road NW
Gig Harbor, WA 98335

Department of Planning and Building
Services
Department of Public Works

Thair Jorgensen & Pat Allen
Hollycroft, LLC/North Pacific
Design
5 Wollochet Dr NW, Suite 2A
Gig Harbor, WA 98335

Mary Ellen Sand
2709 57th St Ct NW
Gig Harbor, WA 98335

Peter Norman
6911 Soundview Dr
Gig Harbor, WA 98335

Trisha Dolge
2509 57th St Ct NW
Gig Harbor, WA 98335

Steve Tyson
2610 57th St Ct NW
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COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: KRISTIN RIEBLI
ASSOCIATE PLANNER *KRL*
SUBJECT: PUBLIC HEARING AND FIRST READING OF ORDINANCE AMENDING
GHMC SECTION 17.68.070 TO DELETE THE REFERENCE TO SIGNS
IN THE NONCONFORMING USE CHAPTER. ZONING TEXT
AMENDMENT #03-17
DATE: NOVEMBER 24, 2003

INFORMATION/BACKGROUND

Attached for the Council's consideration and for public hearing is an ordinance amending GHMC Section 17.68.070 which pertains to nonconforming parking, loading, signs and other characteristics of use. The proposed amendment eliminates the reference to signs in order to clarify and ensure that nonconforming signs are regulated under the nonconforming sign provisions of the sign code (GHMC section 17.80.130, Nonconforming signs).

Last November, Courtesy Ford made a sign application to make structural alterations to two of their existing freestanding signs relying on GHMC section 17.68.070, which states that "any change that decreases the nonconformity to the requirements of this title shall be permitted." Staff determined that GHMC section 17.80.130, which provides strict standards for changes to nonconforming signs, was the applicable section of code to review the proposed changes under. Ford requested an official interpretation of the code on April 9, 2003 and staff responded on May 28, 2003 affirming staff's determination that GHMC section 17.80.130 was the relevant section of code for the review of the proposed changes (this interpretation has been included as an attachment to the Ford text amendment staff report, part of the November 24, 2003 council packet). Ford has responded with an appeal of that determination and also a text amendment that would allow the proposed changes. Staff has proposed this text amendment to eliminate the confusion Ford has gone through for future applicants.

In the 1996, when the City adopted a revised sign code, a provision was included which required the amortization of all existing nonconforming signs within two to five years. The amortization clause was intensely unpopular with business and property owners who had made substantial investments into their existing signs. City Council amended the sign code in 1998, removing the amortization clause and adopting strict nonconforming sign provisions. These provisions provide strict standards for the retention and alteration of nonconforming signs. The intent at that time was to allow property owners who had made substantial investments into their signs a way to retain

those existing signs for the life of the sign, with the expectation that nonconforming signs would eventually become obsolete and be removed due to business changes, poor maintenance, or site redevelopment. It was an oversight that GHMC Section 17.68.070 was not amended at that time. This amendment is therefore proposed as a simple "housekeeping" matter.

The Planning Commission held a public hearing on the proposed amendments on November 6, 2003. There was no public comment at the hearing. The Planning Commission voted unanimously to recommend approval of the proposed amendment. A draft copy of the November 6, 2003 Planning Commission Minutes is attached. These minutes are anticipated to be adopted at the next regular Planning Commission meeting on November 20, 2003. Final minutes will be provided for the second reading.

POLICY CONSIDERATIONS

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

ENVIRONMENTAL ANALYSIS

A SEPA threshold Determination of Nonsignificance (DNS) was issued for the proposed amendments on October 14, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on October 22, 2003. The deadline for appealing the determination was November 5, 2003. No appeals have been filed and, to date, no public comments have been submitted. The public was allowed to comment on the SEPA determination at the public hearing before the Planning Commission. A copy of the DNS is attached for your consideration.

FISCAL IMPACTS

There are no anticipated fiscal impacts to the City.

RECOMMENDATION

The staff recommends that the City Council conduct the public hearing. This is first reading of the ordinance only. No additional action will be taken during this meeting. **The staff recommends that the Council approve the proposed ordinance at the second reading.** The second reading of this ordinance will be placed on the December 22, 2003 agenda, to allow the State the required 60 day comment period before final action. The comment period will expire on December 14, 2003.

Attachments

Proposed Ordinance
DNS

November 19, 2003

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

November 19, 2003

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

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

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

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

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

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

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

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

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

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction,

November 19, 2003

such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 2003.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

November 19, 2003

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



COMMUNITY DEVELOPMENT DEPARTMENT

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

Environmental Review Application No.: SEPA #03-39

Parcel Number: No parcel number – Proposal is not site-specific

Action: Proposed Amendments to GHMC section 17.68.070, Nonconforming parking, loading, signs and other characteristics of use

Proposal: The City is proposing to amend GHMC section 17.68.070, Nonconforming parking, loading, signs and other characteristics of use, to eliminate the reference to signs. This amendment is intended to clarify and ensure that nonconforming signs are regulated under GHMC section 17.80.130, Nonconforming signs

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

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

Lead Agency: City of Gig Harbor

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

[x] This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for at least 14 days from the date of below. **Comments must be submitted by November 5, 2003.**

Any interested person may appeal the adequacy of this final threshold determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Title 18.04 of the Gig Harbor Municipal Code if a written request for appeal is received within fourteen (14) days of the date of this notice, or November 5, 2003, which ever is later. The written appeal must be submitted with a filing fee of one hundred dollars (\$150).

Responsible Official: Steve Osguthorpe

Position Title: Planning & Building Manager **Phone:** 851-6170

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

Signature  **Date:** 10-14-03



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCILMEMBERS
FROM: ROB WHITE, SENIOR PLANNER
SUBJECT: PUBLIC HEARING AND FIRST READING OF ORDINANCE -
CALCULATION OF DENSITY IN RESIDENTIAL ZONES
DATE: NOVEMBER 24, 2003

INFORMATION/BACKGROUND

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

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

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

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

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

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

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

POLICY CONSIDERATIONS

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

ENVIRONMENTAL ANALYSIS

A SEPA threshold Determination of Non-significance (DNS) was issued for the proposed amendments on October 15, 2003. Notice of the SEPA threshold determination was sent to agencies with jurisdiction and was published in the Peninsula Gateway on October 15, 2003. A copy of the DNS is attached for your consideration.

FISCAL IMPACTS

There are no adverse fiscal impacts associated with this amendment.

RECOMMENDATION

The staff recommends that the City Council adopt the ordinance as proposed at the second reading.

ORDINANCE NO. _____

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. CHAPTER 17.05 DENSITY IN RESIDENTIAL ZONES

17.05.010 Purpose

17.05.020 Requirements

17.05.030 Calculations

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

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

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

A. Sensitive areas and associated buffers where development is prohibited or restricted shall include including: Class II, III and IV Landslide Hazard Areas; Type I, II, III and IV wetlands; and Critical fish and wildlife habitat areas; ravine sidewalls, and bluffs; and lands required to be maintained in open space .

B. Public rights-of-way, private streets and access corridors; except as excluded under 17.05.040, with the exception of private alleys, parks and open space that are dedicated or otherwise held in common, and above-ground public facilities shall also be excluded from the net buildable area.

C. Tidelands. The area of waterfront lots is considered to be the area landward of the line of the ordinary high

water mark, regardless of the extent of ownership, or the area landward of the ordinary high water mark along streams. ~~Tidelands are excluded from the gross area to determine the buildable area.~~

17.05.040 Exclusions. The following shall not be deducted from the gross site ~~area of a site~~ when calculating net buildable land area:

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

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

17.89.040 Contents of a complete PRD application.

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

* * *

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

* * *

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

17.89.100 Density Bonus.

A. The density may be increased in a PRD over that permitted in the underlying zone but only if: (A-1) consistent with the underlying comprehensive plan designation for the property; and (B-2) the density increase will not exceed 30 percent over the density allowed in the underlying zone. Density calculations shall

be made as set forth in chapter 17.05 GHMC. Based on net buildable land

B. Density bonuses may be allowed only as follows:

A-1. Open Space.

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

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

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

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

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

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

17.90.040 Contents of a complete preliminary PUD application.

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

* * *

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

* * *

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

17.90.090 Maximum gross floor area bonus.

A. The maximum gross floor area of the PUD may be increased over that permitted in the underlying zone as provided in this section, but only if: (A-1) consistent with the underlying comprehensive plan designation for the property; and (B-2) the increase will not exceed 25 percent additional gross floor area, over that allowed in the underlying zone, except in the General Business District (B-2) it shall be up to 50 percent, and in Commercial District (C-1) it shall be 30 percent. Such calculations shall be made as set forth in chapter 17.05 GHMC. ~~On net buildable land.~~

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

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

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

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

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

4-(d) Provision of a Desirable Urban Amenity.

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

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

Section 8. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 9. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this ___ day of _____, 2003.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 1/21/03
PASSED BY THE CITY COUNCIL:
DATE PUBLISHED:
DATE EFFECTIVE:

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

On _____, 2003, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the summary of text of which is as follows:

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

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

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

APPROVED by the City Council at their regular meeting of _____, 2003.

BY: _____
Molly M. Towslee, City Clerk

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session and Public Hearing
Thursday, November 6, 2003
Gig Harbor Civic Center**

PRESENT: Commissioners Carol Johnson, Paul Conan, Kathy Franklin, Dick Allen, Theresa Malich, Bruce Gair, and Chairman Paul Kadzik.
Staff present: Steve Osguthorpe, Rob White, Kristin Riebli and Diane Gagnon.

CALL TO ORDER: 6:00 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of October 16, 2003 as presented.
Franklin/Johnson -- unanimously approved.

NEW BUSINESS

Zoning Code Text Amendment -- (ZONE 03-10) Proposal to amend GHMC Section 17.28 and 17.30 to add single-family residences and accessory apartments in the RB-1 and RB-2 zones (ZONE 03-10).

Senior Planner Rob White read his staff report of October 30, 2003. He then gave a brief overview of the applicants proposed changes and stated that the lack of a provision for single family residential units in the Residential/Business zones appeared to be an oversight as the Comprehensive Plan specifically states that the purpose of this zone is to be a mix of residential and business.

Commissioner Johnson stated that it did indeed appear as if this was an oversight. Chairman Kadzik agreed and stated that since the purpose of the zone was to be a mix of residential and business it only made sense to allow the residential uses.

Commissioner Allen pointed out that in 17.30.050 (F) it states that "Any yard abutting an existing residential use or zone: 40 feet with dense vegetative screening." He stated that this buffer should not apply to residential. Mr. Osguthorpe proposed that the words "any non-residential" be inserted prior to the word "yard" to further clarify this requirement. It was agreed by consensus that this change should be made.

There being no further discussion it was agreed to bring this item back for Public Hearing at the Planning Commission Meeting of December 4, 2003 and

Chairman Paul Kadzik closed the Work-Study Session portion of the meeting at 6:10 p.m.

A 50-minute recess was held prior the Public Hearing at which time Chairman Paul Kadzik had to leave the meeting.

PUBLIC HEARING

Acting Chairman Bruce Gair opened the Public Hearing at 7:00 p.m.

Proposed Amendments to GHMC Chapter 17.68.070 (ZONE 03-17) – Proposal to delete the reference to signs in the nonconforming use chapter of the Gig Harbor Municipal Code.

Associate Planner Kristin Riebli read her staff report of October 30, 2003 outlining the proposed changes, stating that they were drafted in order to alleviate confusion as the code currently references non-conforming signs in two different sections of the code. She further stated that the current proposal is to delete the reference in 17.68.070 and retain the regulations in 17.80.

Acting Chairman Bruce Gair asked if there was anyone in the audience who wished to speak on this matter, there being none he then closed the Public Hearing on this item at 7:05 p.m.

MOTION: Move to accept the staff recommendation to amend GHMC Chapter 17.68.070.
Johnson/Malich – unanimously approved

PUBLIC HEARING

Acting Chairman Bruce Gair opened the Public Hearing at 7:06 p.m.

Proposed Amendment to add GHMC Chapter 17.05 (ZONE 03-12) – Proposal to add a new Chapter 17.05 to address the calculation of density in residential zones and amend GHMC Section 17.04.030, 17.89.100 and 17.90.090 and repeal 17.04.128.

Senior Planner Rob White read his staff report and outlined the proposed changes in the draft ordinance. A new proposed ordinance was distributed to Planning Commission and was made available to the public present, which further clarified the proposed changes. Mr. White went through the new ordinance pointing out those items that had been modified. He stated that the terms "gross site area" and "net buildable land area" had been used uniformly throughout the document to provide continuity. Mr. White further pointed out that the Commission had received written input from the Master Builders Association and the Olympic Property Group. Some of the comments were

directed toward how we calculate buildable lands and Mr. White pointed out that we were only clarifying existing requirements at this time, not proposing to change how we calculate buildable lands.

Scott Wagner, Talmo, P.O. Box 492, Gig Harbor WA 98335 – Mr. Wagner acknowledged that his comments may also apply to how the city calculates buildable lands but stated that he did feel they were pertinent at this time. He handed out a letter outlining his comments to the Planning Commission. Mr. Wagner went on to state that he felt that wetlands should be included in the calculation of buildable lands in order to encourage the use of them as an amenity. Excluding them from the calculation only encourages developers to dry up a wetland and we should be encouraging good environmental practices. He said that his current commercial project, Mallard's Landing has wetland trails and park facilities because he was allowed to develop the wetlands as an amenity. Mr. Wagner stated that he felt residential projects should be treated the same way as the Growth Management Act states that residential density should be in the urban areas.

Brian Callahan, 4206 29th Ave., Gig Harbor WA 98332 – Mr. Callahan stated that wetlands are protected by the required buffers and that the city should not penalize a developer for developing rationally. Mr. Callahan then read from the Pierce County Code and proposed that the Planning Commission recommend similar language. He then displayed a drawing of what could happen if a 100-foot wetland buffer were imposed and then to have that amount also removed from the buildable land leaving only a small area to develop.

There being no further comments Acting Chairman Bruce Gair closed the Public Hearing at 7:35 p.m.

Commissioner Franklin inquired as to what precludes a developer from getting rid of wetlands and Senior Planner Rob White answered that it is against the law.

Commissioner Allen asked if setbacks aren't excluded from the net buildable lands calculation, why are buffers excluded, as they seem similar.

Planning Manager Steve Osguthorpe gave a hypothetical situation where there are no wetlands and there is a consistent development pattern of 3-4 dwelling units per acre. When wetlands are present and both the wetlands and required buffers are included in the buildable land calculation, then the development pattern around the wetland differs from surrounding land use patterns because allowable density is condensed into a tighter pattern around the wetland. This tighter development pattern may be viewed by some people to be incompatible with the looser density patterns on surrounding sites. Mr. Osguthorpe also stated that this tighter density pattern around wetlands could result in increased impacts to the wetlands. He also responded to comments from those individuals who believed that the exclusions in the City's net buildable lands definition results in

density that is too low. He stated that their concerns might be more directly addressed by proposing an actual increase in allowable density rather than trying to address their concerns through an amendment to the definition of net buildable lands.

Commissioner Gair commented that the fact that the County allows density to be calculated on gross land area rather than net land area does not make him want to change our regulations. He asked if these changes proposed would make development more restrictive than current regulations. Planning Manager Steve Osguthorpe replied that the proposed changes do not change how we calculate density.

Commissioner Johnson stated that if the Commission felt it was necessary we could address the density issue at another time.

MOTION: Move to accept the staff recommendation of proposed addition of GHMC Chapter 17.05 and associated changes. Johnson/Franklin – unanimously approved.

NEXT REGULAR MEETING:

November 20 th	Work session
December 4 th	Work session and Public Hearing

ADJOURN:

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

CD recorder utilized:

Disc #1 Tracks 1-2
Disc #2 Track 1



"THE MARITIME CITY"

COMMUNITY DEVELOPMENT DEPARTMENT
3510 GRANDVIEW STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-6170 • WWW.CITYOFGIGHARBOR.NET

INTEGRATED SEPA/GMA PROCESS NOTICE

TO:

- Pierce County Planning and Land Services
- Washington Department of Ecology, Environmental Review/SEPA Register
- Washington Department of Ecology, GMA Coordinator
- Washington Office of Community Development, Attn. Ike Nwankwo
- Washington Office of Community Development, Attn. David Anderson
- Washington State Department of Transportation
- Washington State Department of Fish and Wildlife
- Washington State Department of Natural Resources
- Puyallup Tribal Fisheries
- Squamish Tribal Council
- Squaxin Island Indian Tribe
- Pierce County Fire District Number 5
- Parks and Recreation Commission
- Interagency Commission on Outdoor Recreation
- Washington State Department of Social and Health Services
- Washington State Department of Health, Division of Drinking

Water

- Puget Sound Water Quality Action Team
- Washington State Department of Corrections
- Puget Sound Regional Council

FROM: City of Gig Harbor, Department of Community Development

DATE: October 13, 2003

SUBJ: SEPA #03-35 & Comp Plan #03-12 - Proposed addition of GHMC 17.05 Density Calculation.

Pursuant to WAC 197-11-232, notice of an integrated SEPA/GMA PROCESS is hereby given for the following proposal:

PROPOSAL:

The applicant proposes to add chapter 17.05 to the Gig Harbor Municipal Code to provide a consistent method for determining net buildable land for use in calculating allowed maximum residential density in all zones.

NOTICE OF SEPA THRESHOLD DETERMINATION: 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 has therefore been issued for this proposal. A copy of the DNS is enclosed for your review.

COMMENT DEADLINE:

The City of Gig Harbor will not act on this proposal for at least 60 days from the date of issuance of this notice. If your agency has any comments on this proposal, please send them to Rob White, Senior Planner, City of Gig Harbor, Department of Planning and Building, 3125 Judson Street, Gig Harbor, Washington, 98335.

Agency comments must be received by no later than December 12, 2003 for consideration. This period is for agency comments only. It is not a public comment period.

SEPA APPEAL DEADLINE:

The deadline for appealing the SEPA threshold determination, as stated on the enclosed DNS, is November 5, 2003.

PUBLIC HEARING DATE:

A public hearing before the Planning Commission on this proposal is expected to be held in November, 2003. If you have any questions on this proposal, you may contact Rob White, Senior Planner at (253) 851-6170, between the hours of 8:30 am to 5:00 pm, Monday through Friday.

Thank you for your interest.



Master Builders Association of Pierce County

November 6, 2003

Paul Kadzik, Chair
Gig Harbor Planning Commission
c/o Rob White, Senior Planner
3510 Grandview St.
Gig Harbor, WA 98335

RECEIVED
CITY OF GIG HARBOR
NOV 05 2003
COMMUNITY
DEVELOPMENT

Dear Chairman Kadzik and members of the Planning Commission:

Included herein please find comments regarding the proposed adoption of GHMC Chapter 17.05, "Density in Residential Zones." On behalf of the Master Builders Association of Pierce County (MBA), thank you for the opportunity to submit comment on this important issue.

Under the proposed language for GHMC Chapter 17.05, net density would be calculated as follows:

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

A. Sensitive areas where development is prohibited or restricted shall be excluded from the net buildable area. These sensitive areas shall include: Class II, III and IV Landslide Hazard Areas; Type I, II, III and IV wetlands; Class I through IV streams; sensitive area buffers; and lands required to be maintained in open space.

B. Public rights-of-way, private streets and access corridors; with the exception of private alleys, parks and open space that are dedicated or otherwise held in common, and above-ground public facilities shall also be excluded from the net buildable area.

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

17.05.040 Exclusions. The following shall not be deducted from the gross area of a site when calculating net buildable area:

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

MBA hereby requests that the Planning Commission reject the proposed language and request that staff redraft the net density calculation sections of the proposed ordinance.

The Growth Management Act explicitly states that cities must provide sufficient capacity for growth:

RCW 36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development.

Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.

Should a county or city adopt land use zones or regulations that remove significant portions of property from density calculations, the jurisdiction runs the risk of not providing sufficient land capacity as required by law. In addition, the density permitted on the buildable property must be high enough to allow for truly "urban" development to occur. The method by which net density is calculated is crucial in ensuring that sufficient land capacity is provided for development, because it will determine how much of the gross acreage within the city's urban area is actually buildable.

Recent Growth Management Hearings Board Decisions Regarding Urban Densities

In a recent decision, the Central Puget Sound Growth Management Hearings Board (CPSGMHB) reaffirmed that in urban areas, the minimum density for residential development should be four (4) units per acre. Attached please find a copy of CPSGMHB Case No. 02-3-0010, *MBA et al v. Pierce County, Final Decision and Order* (February 4, 2003), and *Order Finding Partial Noncompliance and Continuing Invalidity* (September 4, 2003.) As stated in the Final Decision and Order:

In one of its earlier UGA cases, the Board explained the significance of including lands within an UGA as urban lands.

[Designation of an urban growth area generally establishes certainty that:] the development of the land within it will be urban in nature; this land will ultimately be provided with adequate urban facilities and services within the planning horizon [*i.e.*, twenty years]; and the land will eventually be developed at urban densities and intensities.

Johnson, et al., v. King County (Johnson II), CPSGMHB Case No. 97-3-0002, Final Decision and Order, (July 23, 1997), at 10.

These certainties apply to all land areas within an UGA, whether the land is: an existing city; incorporated as a new city; annexed to an existing city, or it remains in the unincorporated urban area of a County. Land within a UGA, including the PSMCP area, reflects the jurisdiction's commitment and assurance that it will develop with urban uses, at urban densities and intensities, and it will ultimately be provided with urban facilities and services. The duty of a County as a local government to accommodate urban growth within its UGA is the same as the duty of a City to accommodate urban growth within its city limits.¹

¹ The Board described this duty in some detail in two previous cases involving cities. In a case involving the City of Woodinville, the Board held:

[T]he Act creates an affirmative duty for cities to accommodate the growth that is allocated to them by the county. This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient land use densities and intensities to accommodate any population and/or employment that is allocated; and (2) a capital facilities element that ensures that, over the twenty-year life of the plan, needed public facilities and services will be available and provided throughout the jurisdiction's UGA.

Therefore, any opportunity to *perpetuate* an "historic low-density residential" development pattern, in the Parkland Spanaway Midland area, ended in 1994 when the County included the area within the UGA. Consequently, the PSMCP and implementing regulations must provide for appropriate urban densities.

(*MBA et al. v Pierce County* at 8. Emphasis in bold added.) The Board continued:

As discussed at length *supra*, urban densities that fall below the generally accepted urban density of 4 du/acre may be appropriate when such lower densities are intended to support the protection and preservation of large, complex, high value environmentally sensitive or critical areas. As the County admits, this is not the basis for the SF zone designation. Instead, the County argues that the SF zone designation was intended to maintain consistency with, and implement, a prior Plan land use designation that permitted a range of densities [MSF from 2-6 du/acre]. Co. Response 1, at 35-40. The Board is not persuaded by the County's reasoning.

* * *

Since the SF zone designation is not justified, is not guided by, and does not comply with Goal 1 and 2 [of the Growth Management Act], the Board rejects the County's argument that the SF zone designation is necessary to maintain consistency with, and implement, a pre-existing land use designation.

(*MBA et al. v Pierce County* at 15. Emphasis in bold added.)

Gig Harbor Must Develop at Urban Densities

Thus, as clearly stated by the Growth Management Hearings Board, the City of Gig Harbor has a duty to ensure its zoning and regulations allow for the densification intended under the Growth Management Act, and four (4) units per acre is the recognized minimum urban density. Disregarding the existence of Gig Harbor's Single Family Residential (R-1) zone for the moment (which in and of itself is troubling due to its maximum allowed density of three

Hensley v. City of Woodinville, CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25, 1997), at 9. (Footnote omitted.) In a case involving the City of Redmond, the Board held:

The GMA requirement to "ensure neighborhood vitality and character" is neither a mandate, nor an excuse, to freeze neighborhood densities at their pre-GMA levels. The Act clearly contemplates that infill development and increased residential densities are desirable in areas where service capacity already exists, *i.e.*, in urban areas — while also requiring that such growth be accommodated in such a way as to "ensure neighborhood vitality and character."

Benaroya v. City of Redmond, CPSGMHB Case No. 95-3-0072, Final Decision and Order, (Mar. 25, 1996), at 21.

(3) units per acre), the proposed net density calculation language in draft GHMC Chapter 17.05 would make it more difficult, and in some cases impossible, to reach the minimum urban density within Gig Harbor's other residential zones – especially when the calculation would be coupled with the development standards already included in the Gig Harbor Municipal Code. The net density definition must be changed before adoption in GHMC Chapter 17.05 to allow for urban development in the city.

Development activity is already prohibited in sensitive areas and their buffers. The intent is to protect recognized sensitive areas, and this is accomplished through designating those areas as non-buildable. However, to *also* eliminate this acreage in the calculation of net density goes too far – it will result in sub-urban and even rural densities within the city limits, it will deny property owners the right to enjoy their land and develop it in a reasonable, "urban" manner, and it will put Gig Harbor at risk for violation of state law.

In addition, to remove wetlands from the calculation of net density on lots in Gig Harbor will result in many lots becoming unbuildable – certainly for many lots, to their underlying zoning densities and uses, and in some cases, altogether.

Further, to eliminate areas to be protected as open space from the calculation of net densities also goes too far. These areas will, by definition, be kept open, and are protected from development. Under the GMA, the rest of the property in the city *should* be developed at urban densities high enough to accommodate growth in the most efficient manner possible and reduce the eventual need to expand the city's urban growth boundary.

MBA requests that Chapter 17.05 be amended as follows:

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

A. Sensitive areas[.] where development is prohibited or restricted shall be excluded from the net buildable area. These sensitive areas shall include: Class II, III and IV Landslide Hazard Areas; Type I, II, III and IV wetlands; and Class I through IV streams; sensitive area buffers; and lands required to be maintained in open space.

B. Public rights-of-way, private streets and access corridors; with the exception of private alleys, parks and open space that are dedicated or otherwise held in common, and above-ground public facilities shall also be excluded from the net buildable area.

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

17.05.040 Exclusions. The following shall not be deducted from the gross area of a site when calculating net buildable area:

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

Thank you for your consideration of these comments. Please feel free to contact me with any questions or comments.

Sincerely,



Tiffany Speir
Government Affairs Director

Enc.

Cc: Bruce Gair, Vice-Chair, Planning Commission
Dick Allen, Planning Commission
Paul Conan, Planning Commission
Kathy Franklin, Planning Commission
Carol Ann Johnson, Planning Commission

Theresa Malich, Planning Commission
John Vodopich, Community Development Director
Gretchen Wilbert, Mayor

Scott Wagner
PO Box 492
Gig Harbor, WA 98335

To: City of Gig Harbor Planning Commission
From: Scott Wagner
Date: November 6, 2003
RE: Density Calculations

After review of the Draft Ordinance and Rob White's Staff Report dated October 30, 2003, concerning the calculation of density in residential zones, I have become very concerned.

With several minor changes to the Draft Ordinance, I believe it can be a much better document that more closely follows the mandates of the Growth Management Act, and better serves the citizens of Gig Harbor.

By taking away a property owners ability to use wetlands and wetland buffers in their calculation of density, two negative things happen. One, urban densities become unachievable in areas planned for urban densities, making land prices too high for the average family. Two, developers receive great benefit by minimizing and even destroying wetlands, which will happen.

I suggest that Chapter 17.05 be amended as follows:

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

A. ~~Sensitive areas[,] where development is prohibited or restricted shall be excluded from the net buildable area. These are~~ Sensitive areas shall include: Class II, III and IV Landslide Hazard Areas; ~~Type I, II, III and IV wetlands;~~ and Class I through IV streams; ~~sensitive area buffers; and lands required to be maintained in open space.~~

B. ~~Public rights-of-way, private streets and access corridors; with the exception of private alleys, parks and open space that~~

~~are dedicated or otherwise held in common~~, and above-ground public facilities shall also be excluded from the net buildable area.

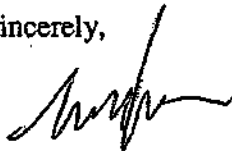
C. Tidelands. The area of waterfront lots is considered to be the area landward of the line of the ordinary high water mark, regardless of the extent of ownership, or the area landward of the ordinary high water mark along streams. Tidelands are excluded from the gross area to determine the buildable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

17.05.040 Exclusions. The following shall not be deducted from the gross area of a site when calculating net buildable area:

- A. Required setbacks;
- B. Buffers and screening required by Design Manual standards;
- C. Buffers and screening required by zoning performance standards;
- D. Alleys;
- E. Type I, II, III, and IV wetlands and associated buffers.

I believe these changes will help protect wetlands and buffers by not hurting land owners, and will help keep the cost of lots lower, helping the average family. Thanks for your consideration. I can make my self available to discuss this issue in detail at any time.

Sincerely,



Scott Wagner



A Pope Resources Company

November 6, 2003

Gig Harbor Planning Commission
3510 Grandview
Gig Harbor, WA 98335

Re: Proposed Amendment to add GHMC Chapter 17.05 (Zone 03-12)

Planning Commission Members:

As property owners in Gig Harbor, we are concerned about the impacts of the proposed ordinance concerning the calculation of allowable density in residential zones. We have the following concerns:

- Historically, when wetlands regulations were adopted in Washington State, one of the ways to ameliorate the negative impacts to property owners was to allow for density transfer from the newly protected wetland areas and buffers to the "buildable" portions of the property. To the best of our knowledge most, if not all, of western Washington communities do not subtract wetlands, buffers, roads, storm ponds, parks, open space and other features when calculating gross density. We don't believe there are any circumstances particular to Gig Harbor that would preclude the same treatment.
- We are concerned that it will be difficult, if not impossible, to meet the population objectives of the Growth Management Act as we believe the Buildable Lands Analysis bases population objectives on gross acreage of residential land. If the density's are based on net buildable area as proposed, it would significantly reduce the amount of population that could be accommodated within the Urban Growth Boundary.
- When our property was annexed into the City and the PCD district was created, the allowable densities were based on gross acreage. A driving principal was to work with the physical attributes of the land and still allow the same density to be achieved. One of the outcomes of this principal was the lack of a minimum lot size within the PCD district. The proposed ordinance would result in a significant down-zoning of the residential property within this area.



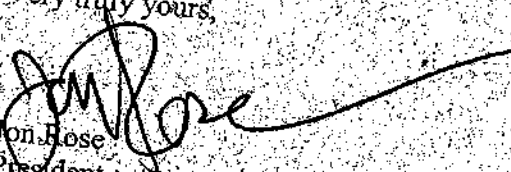
— Olympic Property Group —
19245 Tenth Avenue Northeast, Poulsbo, WA 98370-7456
(360) 697-6626 • Seattle: (206) 292-0517 • Fax: (360) 697-1156



Gig Harbor Planning Commission
November 6, 2003
Page 2

Thank you for hearing our concerns, and we would be happy to discuss our thoughts with you in greater detail.

Very truly yours,



Jon Rose
President
Olympic Property Group

cc: Mark Hoppen
John P. Vodopich
Carol A. Morris



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DICK J. BOWER, CBO *DS*
BUILDING OFFICIAL / FIRE MARSHAL
SUBJECT: RESOLUTION TO RE-APPOINTMENT BUILDING CODE ADVISORY BOARD (BCAB) MEMBERS
DATE: NOV. 24, 2003

BACKGROUND

Gig Harbor Municipal Code Chapter 15.02 provides for the appointment of a six member Building Code Advisory Board to hear administrative appeals; review and make recommendations on new codes and ordinance revisions; and provide interpretations of GHMC Title 15.

Appointed by the mayor and approved by the city council, members are appointed to 4 year terms. In 2003, the terms of Charles Hunter, Kenneth Snodgrass, and Jeff Stroud expire. All three members have agreed to serve on the board for another four year term.

FISCAL IMPACT

Service on the BCAB is voluntary. BCAB meetings are held in the evenings. The fiscal impact of the BCAB involves occasional staff overtime when meetings are necessary and has been anticipated in the 2004 budget.

RECOMMENDATION

Staff recommends adoption of the resolution to reappoint Charles Hunter, Kenneth Snodgrass, and Jeff Stroud to four year terms on the Building Code Advisory Board.

RESOLUTION NO.

WHEREAS, the Gig Harbor City Council on December 7, 1987 adopted Ordinance #526 which established the Building Code Advisory Board; and

WHEREAS, the Gig Harbor City Council on September 27, 1993 adopted Ordinance #649 which modified Ordinance #526; and

WHEREAS, the Gig Harbor City Council has adopted in Ordinances #526 & 649 guidelines for the appointment of Building Code Advisory Board members; and,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Gig Harbor, Washington:

The following persons shall be re-appointed to serve another four-year term as members of the Building Code Advisory Board for the designated term beginning on January 1, 2004:

Charles Hunter
Kenneth Snodgrass
Jeff Stroud

PASSED this 24th day of November, 2003.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly Towslee, City Clerk

Filed with city clerk: 11/21/03
Passed by city council: 11/24/03



COMMUNITY DEVELOPMENT DEPARTMENT

TO: MAYOR WILBERT AND CITY COUNCILMEMBER'S
FROM: JOHN P. VODOPICH, AICP
COMMUNITY DEVELOPMENT DIRECTOR
SUBJECT: NOTICE OF INTENTION TO COMMENCE ANNEXATION
PROCEEDINGS – MICHAELSON REQUEST (ANX 03-06)
DATE: NOVEMBER 24, 2003

INFORMATION/BACKGROUND

The City has received a 'Notice of Intention to Commence Annexation Proceedings' for approximately 8.6 acres of property located east of 27th Avenue Northwest and north of 64th Street within the City's Urban Growth Area (UGA). Property owners of more than the required ten percent (10%) of the acreage for which annexation is sought signed this request. The pre-annexation zoning for the area is Single-Family Residential (R-1).

Pursuant to the process for annexations by code cities in Pierce County, a copy of the proposed legal description was sent to the Clerk of the Boundary Review Board for review and comment on October 14, 2003. A recommended revision to the legal description dated November 6, 2003 was received from the Pierce County Boundary Review Board on November 10, 2003.

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

The Council is required to meet with the initiating parties within sixty (60) days of the filing of the request to commence annexation proceedings to determine the following:

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

Notice of the November 24, 2003 Council meeting was sent to property owners of record within and around the area proposed for annexation on November 10, 2003.

If accepted, the process will then move forward with the circulation of a formal petition for annexation. The petition must be signed by the owners of a majority of the acreage and a majority of the registered voters residing in the area considered for annexation.

POLICY CONSIDERATIONS

The City of Gig Harbor Building Official/Fire Marshal reviewed the proposal and noted that the annexation will bring additional land under City review for future building. This has the potential to minimally increase workload for plan reviews, permitting and inspections. The existing roads in the area do not appear to meet City requirements for fire department vehicle access and turnarounds. These are existing conditions and any future development in the area should be required to improve emergency vehicle access to the greatest extent feasible. Fire hydrants are provided on many of the roads accessing the property however, spacing of hydrants and flow is unknown. Again, this is an existing situation but should be assessed and improved; if necessary, when and if future construction takes place.

The City Engineer noted that pursuant to GHMC 13.28.100, property owners will be required to conform to the Comprehensive Sewer Plan.

The City Administrator, Chief of Police, and Pierce County Fire District #5 had no comment on the annexation as proposed.

The Boundary Review Board is guided by RCW 36.93.180 in making decisions on proposed annexations and is directed to attempt to achieve stated objectives. These objectives are worthy of consideration by the Council and are as follows:

RCW 36.93.180

Objectives of boundary review board.

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

- (1) Preservation of natural neighborhoods and communities;

Comment: The proposed annexation area is developed residentially with single-family dwellings.

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

Comment: The proposed annexation is bounded by 27th Avenue Northwest to the west, the existing City limits to the north and Puget Sound to the east.

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

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

- (4) Prevention of abnormally irregular boundaries;

Comment: The proposed annexation would not create abnormally irregular boundaries.

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

Comment: Not applicable with regards to this proposed annexation.

(6) Dissolution of inactive special purpose districts;

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

(7) Adjustment of impractical boundaries;

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

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

Comment: The proposed annexation is of an unincorporated area with lot sizes ranging from 0.14 to 1.89 acres in size. The area is developed with eight (8) single-family residential units. The proposed annexation area is within the City's Urban Growth Boundary and is planned for urban levels of development.

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

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

FISCAL CONSIDERATIONS

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

RECOMMENDATION

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

1. The City shall require that the property owner(s) assume all of the existing indebtedness of the area being annexed;
2. The City shall require that the legal description be revised to reflect the November 6, 2003 recommendations of the Pierce County Boundary Review Board; &
3. The City will require the simultaneous adoption of Single-Family Residential (R-1) zoning for the proposed area in substantial compliance with the Comprehensive Plan as adopted by City of Gig Harbor Ordinance No. 686.

ANX 03-06

**NOTICE OF INTENTION TO COMMENCE ANNEXATION
PROCEEDINGS**

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

RECEIVED
CITY OF GIG HARBOR
OCT 13 2003
COMMUNITY
DEVELOPMENT

Dear Mayor and City Council:

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

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

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

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

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

RECEIVED
 CITY OF SIOUX FALLS
 OCT 18 2003
 COMMUNITY DEVELOPMENT

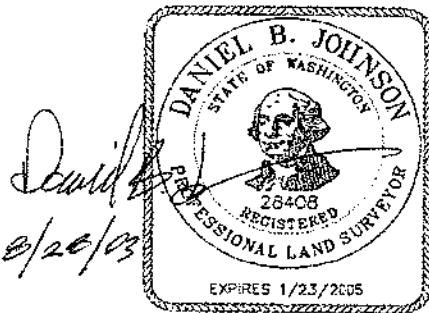
Resident/Owner Signature	Printed Name	Address & Tax Parcel Number	Date Signed
<i>Robert B. Kerley</i>	Robert B. Kerley	6515 27th Ave NW	9/16/03
<i>Sandra Kerley</i>	Sandra Kerley	R02-21-08-4074	9-10-03
<i>Daniel Bailey</i>	DANIEL BAILEY	6421 27th Avenue	10/6/03
<i>Ann C. Bailey</i>	Ann Bailey	R02-21-08-3010	10/6/03
<i>Conrad E. Schick</i>	Conrad E. Schick	6519 27th Avenue	10/6/03
<i>Scott Wagner</i>	SCOTT WAGNER	R02-21-08-4069	10/10/3
<i>Suzanne Wagner</i>	SUZANNE WAGNER	6507 27th Avenue NW	10/10/3
<i>Scott Wagner</i>	SCOTT WAGNER	R02-21-08-4148	10/10/3
<i>Suzanne Wagner</i>	SUZANNE WAGNER	6507 27th Avenue NW	10/10/3
<i>Gene E. Michaelson</i>	GENE E. MICHAELSON	R02-21-08-4149	10/10/3
<i>Jayne M. Michaelson</i>	JAYNE M. MICHAELSON	6511 27th Ave NW	10/10/03

LEGAL DESCRIPTION
of
PROPOSED ANNEXATION TO GIG HARBOR
for
Jayne Michaelson

RECEIVED
COUNTY OF PIERCE
OCT 13 2003
COMMUNITY DEVELOPMENT

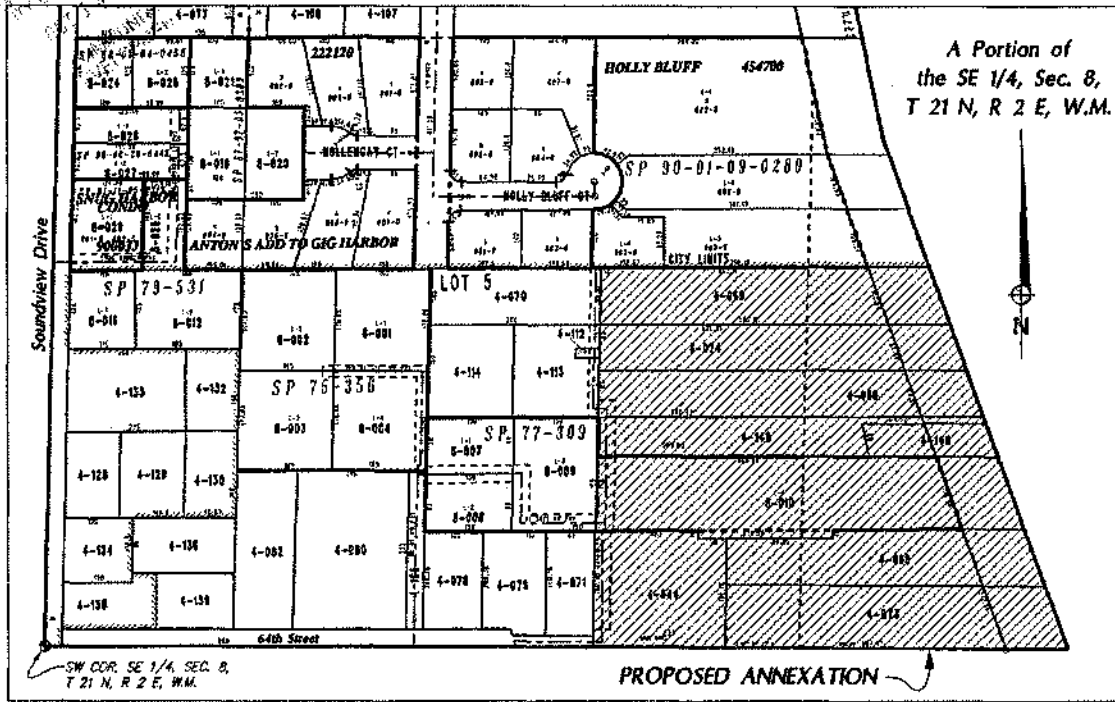
A parcel of land in the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M., in Pierce County, Washington, described as follows:

Commencing at the Southwest Corner of the Southeast Quarter of Section 8, Township 21 North, Range 2 East, W.M., in Pierce County, Washington; thence S 88°48'46" E along the south line of said Southeast Quarter, 960 feet to the TRUE POINT OF BEGINNING; thence N 2°27'47" E, parallel with the west line of said Southeast Quarter, 660.00 feet; thence S 88°48'46" E, 471.64 feet, more or less, to the Government Meander Line; thence S 19°03'41" E, along said Meander Line, 703.30 feet to the south line of said Southeast Quarter; thence N 88°48'46" W, along said south line, 729.74 feet to the True Point of Beginning. TOGETHER with tidelands abutting.



RECEIVED
CITY OF GIG HARBOR
JAN 2 2006

CITY OF GIG HARBOR ANNEXATION MAP

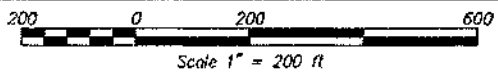


A Portion of
the SE 1/4, Sec. 8,
T 21 N, R 2 E, W.M.



SW COR. SE 1/4, SEC. 8,
T 21 N, R 2 E, W.M.

PROPOSED ANNEXATION





Pierce County

Boundary Review Board

2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7156 • FAX (253) 798-3660

November 6, 2003

RECEIVED
NOV 10 2003
CLERK'S OFFICE

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

Re: Proposed Annexation to Gig Harbor for Jayne Michaelson

Dear Mr. Vodopich:

Review of the legal description for the above proposal has been completed. It is recommended that the legal be revised as follows:

Beginning on Line 5:
... line of said Southeast Quarter, 660.00 feet, more or less, to the south line of Pierce
County Short Plat 90-01-09-0280; thence S 88°48'46" E, 471.64 feet, ...

This revision is based on the description for parcel 0221084069 calculating to a distance of 658.66 feet, less than the 660.00 listed in the legal description.

Sincerely,

Tomi Fairbanks
Chief Clerk



100% RECYCLED PAPER



TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: EXTENSION OF CLOSING DATE – HIFIC SIX ASSOCIATES
DATE: NOVEMBER 10, 2003

INFORMATION/BACKGROUND

The attached document extends the closing date on the HIFIC Six Associates property to December 15, 2003.

RECOMMENDATION

I recommend a motion to approve the extension.

ADDENDUM/AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated JUNE 10, 2003
between VIPIC SIX ASSOCIATES ("Seller")
and CITY OF GIG HARBOR ("Buyer")
concerning: PIERCE COUNTY TAX PARCELS 02 2117 1047 & 02 21 17 3049 ("the Property").

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS:

BUYERS AND SELLERS AGREE TO EXTEND THE CLOSING DATE TO NOT LATER THAN DECEMBER 15, 2003.

ALL OTHER TERMS AND CONDITIONS TO REMAIN.

[Signature]
[Signature]
[Signature]
Nicholas E. Proderick
[Signature]
[Signature]

AGENT (COMPANY) PREMIER NW PROPERTIES BY: ROB MITCHELL

ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged.

Initials: BUYER: _____ Date: _____ SELLER: _____ Date: _____
BUYER: _____ Date: _____ SELLER: _____ Date: _____