

Gig Harbor City Council Meeting



**January 14, 2002
7:00 p.m.**

**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
January 14, 2002 - 7:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

PUBLIC HEARING: Annexing Property Adjacent to Public Works Shop.

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 Meetings of December 10, 2001.
2. Proclamations/Correspondence: a) Martin Luther King Day b) Committee to Preserve Pierce Transit c) PCRC - Call for Nominations d) AWC, I-695 Funding.
3. Municipal Court Judge Contract.
4. Communications Maintenance Agreement.
5. Development Grant Agreement Acceptance - Dept. of Community, Trade & Economic Development.
6. Art for Gig Harbor Civic Center - Consultant Services Contracts.
7. Liquor License Renewals: Harbor Arco AM/PM; Gourmet Essentials; Harbor Inn Restaurant; El Pueblito Restaurant; Market Express.
8. Approval of Payment of Bills for December 24, 2001.
Checks #3765 through #34896 in the amount of \$1,848,095.99.
9. Approval of Payment of Bills for January 14, 2002.
Checks #34897 through #35075 in the amount of \$877,577.89.
10. Approval of Payroll for the month of December.
Checks #1184 through #1238 in the amount of \$191,866.08.

OLD BUSINESS:

1. Closed Record Appeal of Hearing Examiner's Decision - Denton Bed & Breakfast.
2. Second Reading of Ordinance - Annexing Property Adjacent to Public Works Shop.
3. Second Reading of Ordinance - Official Zoning Map Change - Peninsula School District Rezone, Prentice Avenue.
4. Second Reading of Ordinance - School Impact Fees.
5. Authorization for the Use of Uniforms and Hold Harmless / Indemnity Agreement.

NEW BUSINESS:

1. Notice of Intention to Annex - Northwest Gig Harbor Employment Center.
2. First Reading of Ordinance - Water Rate Increase.
3. First Reading of Ordinance - Sewer Rate Increase.
4. Equipping Well No. 6 - Contract Award.

STAFF REPORTS:

1. GHPD - November and December Stats.
2. John Vodopich, Director of Community Development - Update on Gig Harbor Sportsman Club.

PUBLIC COMMENT:

COUNCIL COMMENTS / MAYOR'S REPORT:

EXECUTIVE SESSION: For the purpose of discussing property acquisition per RCW 42.3 1.110(b).

ADJOURN:

DRAFT

GIG HARBOR CITY COUNCIL MEETING OF DECEMBER 10, 2001

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

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE

PUBLIC HEARINGS:

1. Official Zoning Map Change – Peninsula School District Rezone on Rosedale Street.
Mayor Wilbert opened the public hearing on the Peninsula School District Rezone on Rosedale Street at 7:02 p.m. John Vodopich, Planning Director, reported that the rezone, changing the current zoning of Single-Family Residential (R-1) to Public Institutional (PI) for the Gig Harbor High School, was approved by the city's Hearing Examiner on October 17, 2001. The action was not appealed, however, a public hearing is still required. There were no questions or comments and the Mayor closed the public hearing at 7:04 p.m.

2. Official Zoning Map Change – Peninsula School District Rezone on Prentice Avenue.
Mayor Wilbert opened the public hearing on the Peninsula School District Rezone on Prentice Street at 7:04 p.m. Mr. Vodopich explained that, similar to the public hearing just held, this is a change to the city's official zoning map from the current zoning of Single-Family Residential (R-1) to Public Institutional (PI) for the Harbor Ridge Middle School. The rezone was approved by the city's Hearing Examiner on November 14, 2001. There were no questions or comments and the Mayor closed the public hearing at 7:05 p.m.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meetings of November 26, 2001.
2. Proclamations/Correspondence: Update from AWC.
3. Tourism Marketing Director Contract.
4. Purchase Authorization - Fencing Materials.
5. Interlocal Agreement - Law Enforcement Support Agency.
6. Interlocal/Mutual Aid Agreement - Traffic Safety Emphasis Control.
7. Consultant Services Contract - Archaeological Services Donkey Creek Park - LAAS Ltd.
8. Consultant Services Contract -Appraisal of Scofield Property - Strickland Heischman & Hoss Inc.
9. Consultant Services Contract - Environmental Assessment Level I Survey - Nowicki and Associates.
10. Liquor License Renewals: The Green Turtle, Marco's Restaurant.
11. Approval of Payment of Bills for December 10, 2001.
Checks #34634 through #34764 in the amount of \$239,708.98.

Mayor Wilbert granted a request by Councilmember Picinich to remove Item #5, Interlocal Agreement – Law Enforcement Support Agency, from the consent agenda and move it to Item #5 under old business. She also granted a request by Councilmember Franich to remove Item #3, Tourism Marketing Director Contract, from the consent agenda to placed under old business as Item #6.

MOTION: Move to approve the Consent Agenda as amended.
Picinich/Young - unanimously approved.

OLD BUSINESS:

1. Second Reading of Ordinance - Vacation of a Portion of Erickson Street. Carol Morris, Legal Counsel, explained that they were not ready for the second reading of this ordinance as the attorney for the Spinnaker Ridge Homeowners Association was still working on obtaining more background information to present to Council.

MOTION: Move to table the second reading of ordinance until the next regular Council meeting.
Picinich/Owel - unanimously approved.

2. Closed Record Appeal of Hearing Examiner's Decision - Denton Bed & Breakfast. Mayor Wilbert read the guidelines for a closed record appeal process. As part of the process, the Mayor asked if any member of the Council had engaged in communication with opponents or proponents regarding this issue outside of the public hearing process.

Councilmember Franich indicated that he was contacted by the appellant, Dr. Greg Hoeksema, who urged him to visit and view the Denton property. Councilmember Franich visited the property and, while doing so, met the applicant, Mr. Denton. He also received a message from Paul, the owner of the hair salon across the street from the Denton property, but did not return his phone call.

Councilmember Owel also received a call from Dr. Hoeksema. She advised him that it was alright for him to call, but she could not discuss the issue with him and would have to make their conversation a matter of record at the closed record appeal. Dr. Hoeksema said he merely wanted to request that she visit and view the Denton property.

Councilmember Dick received a similar call from Dr. Hoeksema and he, too, informed the appellant that he could not discuss the issue with him. Dr. Hoeksema said he did not want to convey any information to the councilmember, but only wanted to encourage him to drive by the premises. Councilmember Dick also received a call from a neighbor across the street from the Dentons who wanted to discuss the matter, but Councilmember Dick explained his inability to do so.

Councilmember Picinich received a similar call from Dr. Hoeksema. The councilmember's only comment was that he had already visited the premises following the earlier presentation of this issue.

Councilmember Ekberg received a similar message from Dr. Hoeksema. Additionally, he received a call from a female resident on Peacock Hill who wanted to discuss the issue. Councilmember Ekberg informed the woman that he was unable to discuss the matter with her and directed her to contact the Planning Department with any questions.

Councilmember Young received a similar call from Dr. Hoeksema, and from Paul, the owner of the hair salon across the street from the Denton property. Councilmember Young advised them of his inability to discuss the matter with them.

Mayor Wilbert also received a call from a neighbor of the Dentons. She provided them with a copy of the information on this subject included in the December 10, 2001 city council packet.

Carol Morris asked the Council if any of these conversations affected their ability to remain impartial. Councilmembers stated they did not.

Mayor Wilbert asked Council if any member could obtain financial benefit or suffer a financial loss as a result of the outcome of this hearing. Councilmembers replied they could not.

The Mayor then asked if any member of the public objected to her participation in the closed record hearing or who objects to the participation of any other member of the Council. There were no stated objections.

The Mayor then administered an oath to the appellant(s) and applicant(s) to tell the truth in the proceedings.

Pat Iolavera, Senior Planner, presented a summary of the staff report, reporting on the basic history and facts of the appeal. It was also pointed out that staff recommends Council uphold the hearing examiner's decision on the Conditional Use Permit (CUP) and front yard variance. Ms. Iolavera then presented illustrations and aerial photos of the Denton property and surrounding area, and answered questions from Council regarding the exhibits.

Mayor Wilbert invited the appellants and applicants to speak, limiting each to five minutes. The time limit was extended to 15 minutes at the request of Councilmember Dick.

Greg Hoeksema – 9105 Peacock Hill Avenue. Dr. Greg Hoeksema thanked Council for the opportunity to present his appeal. He also mentioned that he was accompanied by several other area residents who are unable to speak at this proceeding, but who are also concerned about this issue.

Dr. Hoeksema began his presentation by directing Council's attention to page two of the staff report, in particular, the withdrawal of the application from the Design Review Board (DRB) and reassignment to the Hearing Examiner. He cited staff report's reference to GHMC 17.98.060(A)

as their reason for the reassignment, but claimed that staff curtailed their reference prematurely. Dr. Hoeksema went on to read GHMC 17.98.060 in full and ended by stating that it is unclear to him why this issue was withdrawn from the DRB contrary to the GHMC.

Councilmember Dick asked if the appeal addressed that question. Dr. Hoeksema at first stated that it did, but later retracted that statement and said if the question could be saved, he would present an argument further on which would offer an explanation.

Dr. Hoeksema then directed Council's attention to the second paragraph on page three of the staff report which states "In interpreting the City of Gig Harbor Design Manual, the **bold and underlined** portions are specific requirements that allow for administrative review by staff, the normal text following bold and underline portions are the general requirements which the DRB uses as guidance, though they may waive specific requirements if a superior design is offered." Dr. Hoeksema pointed out, rather, that the general requirements include all bold and underlined text in the document whereas the city just stated that it was the bold and underlined that were considered the specifics. Specific standards include the more detailed text which immediately follows general requirements. The purpose for this differentiation is to provide two options for design review which are as follows. First, the one addressing administrative approval which was done in this case. Design review for projects or portions of projects which conform to specific standards may be approved administratively by the planning staff. However, the DRB option refers to the creative approach to design by providing a more flexible review standard than the administrative approval process allows. The DRB is authorized to waive specific requirements if it finds that an alternative design represents an equivalent or superior design or the alternative design meets the intent of the general requirement. To best determine the general requirement's intent, the DRB shall consider the specific requirements as appropriate examples of compliance. Therefore, Dr. Hoeksema stated, the regular review process was not followed and now Council must consider all the germane codes and design regulations that are part and parcel to conditional use and variance permit requests. He said he believes this examination will lead to conclude that the Denton project does not meet the specific requirements of the Design Manual, the general requirements of the Design Manual, nor the intent of the city's very own Comprehensive Plan.

Dr. Hoeksema proceeded specifically to Appeal Issue 1. He said the Dentons' plan calls for a garage inconsistent with the specific limitation in the Design Manual not to exceed 24 x 24 feet. In fact, he maintains, the total square feet of the garage footprint is 146% larger than the specific limitation in the Gig Harbor Design Manual. Dr. Hoeksema stated that proper interpretation on page 90 of the Design Manual allows for administrative review only if the specific standard "not to exceed 24 x 24 feet" and the additional requirement that the garage "is placed at least 6 feet behind the house" are met. Dr. Hoeksema stated the Dentons' plan contradicts both of these specific standards. He said the DRB should have been given the opportunity to review this design, but since they were not, it is now incumbent upon Council to represent the interests of the public, enforce the requirements of the Design Manual and preserve the spirit of the downtown historic areas.

Dr. Hoeksema then addressed Appeal Issue 2 which concerns specific design features and preservation, renovation and restoration of historic structures as detailed on pages 85-98 of the Design Manual. He said he found the staff response to Appeal Issue 2 interesting and quoted

from pages four and five of the staff report. He referred specifically to the following phrases: "Historic homes are also characterized by front porches placed near the street", "To preserve views and also to allow structures with basic historic proportions, the following standards shall be observed", and finally, "Additions to historic buildings must be stepped from the original structure so that the original design remains prominent and discernable." Dr. Hoeksema stated that this additional text supports his argument. He said he also takes issue with staffs' argument on page 5 that "the addition is centered at the front, and does not encroach into the side yard setbacks, thus preserving the majority of the views." Although there is no encroachment on the side yard setback, he maintains there is dramatic encroachment on the side yard view corridor. Furthermore, he said, the structure will encroach 17 feet into the front setback and will significantly compromise the public's enjoyment of the view corridors as they walk, bike and jog along Harborview Drive.

Dr. Hoeksema believes the staff report's argument that the proposed design de-emphasizes the garage is inconsistent with the reality of the project. He said that to demonstrate this, he took some photographs of the construction the Dentons had done despite the fact that the appeals process was ongoing. Dr. Hoeksema said he was glad the Dentons chose to ignore the city planner's letter to them dated November 7th, warning them that "construction undertaken prior to the expiration of the appeal deadline is undertaken at the applicant property owners' own risk and that work performed after an appeal has been received is also undertaken at the applicant property owners' own risk." He said the work performed so far makes it clear "the rather dramatic impact this imposing garage will have on view corridors as well as the general character ambience of one of the most beautiful stretches of waterfront view property left around the harbor." Dr. Hoeksema wanted to present these photos in an attempt to illustrate his point. Councilmember Dick reminded the appellant that he is prohibited from presenting new evidence at a closed record appeal. Dr. Hoeksema responded by quoting Title 19.06.005 of the Administration of Development Regulations, Procedure for Closed Record Decision and Appeal, which allows for new information to be presented if the evidence unknown to the parties at the time of the hearing could not reasonably have been discovered by the parties and is necessary for a just resolution of the appeal. Dr. Hoeksema argued that these photos did not exist at the time and should be allowed and considered.

Carol Morris recommended the photos not be considered because Dr. Hoeksema had an opportunity to let the Council know he was planning to introduce new evidence at the time he filed the appeal, but he did not. Also, she said the applicants had no knowledge that the information was going to be presented and no opportunity to rebut the new information. According to Ms. Morris, allowing the photos would prejudice the applicant.

The question was raised as to why the information did not exist at the time of the appeal. Dr. Hoeksema replied that at the time of appeal, construction had not yet begun on the project. He said the Dentons chose to "flaunt" their permit and begin construction anyway. Dr. Hoeksema said it was his own phone call to the planning department that alerted them to the construction.

Carol Morris pointed out that it is not a violation of the code for the Dentons to proceed on their application. They were issued a building permit and they chose to proceed at their own risk. She explained that the Dentons were not flaunting their permit, but made a business decision to

proceed with construction. Ms. Morris again recommended that Council not consider these photos because, logically, the construction and photos of the construction would not be available at the time of the hearing because the permit had not yet been issued.

Councilmember Dick spoke in favor of not considering the photos. He pointed out that elevations already exist of the project and as long as the construction is following the proposed elevations, there should be no need for further illustrations. Councilmember Dick advised against raising yet another issue that will keep them from deciding the one already before them.

Councilmember Franich stated that he wants to be able to view only what is legal for them to do so.

Dr. Hoeksema disagreed with Ms. Morris and again claimed that the GHMC allows for the introduction of the photos and will demonstrate, in a way that elevations cannot, how the view would be obstructed by this project.

Ms. Morris pointed out to Council that the appellant's presentation has proceeded for 20 minutes and equal time will need to be allowed for the applicant. She also stated that the portion of the GHMC to which Dr. Hoeksema is referring is not applicable to the issue at hand and she reiterated her objection to the photos being introduced.

Mayor Wilbert granted additional time to the appellant.

Dr. Hoeksema then proceeded to Appeal Issue 3, stating that the proposed design of the Denton project does not respect the natural topography of the lot. He quoted the staff report's response which claims this requirement does not apply to this case, but nevertheless, the design is, in fact, respectful to the topography of the lot. Dr. Hoeksema restated that he had photos to present to Council so they could consider whether they felt it was respectful to the topography of the lot. However, since the photographs are not being allowed as evidence, against the advice of his legal counsel, Dr. Hoeksema asked Council to rely on their memories of the property and to ask themselves whether they felt it was respectful.

Councilmember Dick asked the appellant to use the elevations to illustrate his point, but Dr. Hoeksema said the elevations were not sufficiently detailed. Furthermore, he said he had not seen these elevations prior to tonight's meeting. Ms. Iolavera stated that these elevations have always been a part of the file and reduced versions were part of the Hearing Examiner's meeting.

Dr. Hoeksema disputed that despite staff's "incorrect" statement that this design requirement does not apply in this case, paragraph 6 of the Single Family Housing Design section of the Design Manual states "houses shall be designed to fit natural slopes rather than forcing the slope to fit a particular house design. Avoid cuts and fills beyond the foundation wall by developing designs which compliment and take advantage of the natural topography. Sloped lots may require terraced yards with multi-level houses designed to follow the slopes."

Dr. Hoeksema then addressed Appeal Issue 4. He said there had been no notice given of the "shadow structure" erected by the Dentons at the request of the DRB and, therefore, no

opportunity for review and public comment. Dr. Hoeksema also stated there was no explanation given at the hearing before the examiner clarifying that the DRB was no longer involved in the approval process. He said the first time this argument was presented was in the staff report dated November 20th and that every conversation he had with the Planning Department prior to the hearing indicated that the Denton project would still go before the DRB for their consideration.

Regarding Appeal Issue 5, Dr. Hoeksema said his argument stands as stated, with note taken of his typographical error of the proper reference section of the GHMC. He went on to say that "the staff response would have us believe that the Comprehensive Plan and the Gig Harbor Design Manual are separate and distinct entities that do not intersect in their intent or purpose." Dr. Hoeksema stated that the Comprehensive Plan is not a stand alone document, but rather, has an active relationship with other plans and programs, specifically, the Design Manual. Furthermore, he said there was no factual evidence presented before the Hearing Examiner regarding modern precedent. In fact, it is those very same structures cited by the Dentons at the hearing that compel the City of Gig Harbor to adopt the strict design standards to prevent further erosion of the heart and soul of our quaint historical fishing village, and it is those same requirements that should compel Council to overturn the decision granting the variance. Dr. Hoeksema summarized his point by saying that a garage footprint that occupies 65% of a 1,300 square foot historic craftsman home on the waterfront does not meet the Design Review Manual's requirement for appropriate proportion and sizing of a garage structure to that historic building.

On Appeal Issue 6, Dr. Hoeksema reiterated his argument and said he is unclear what staff meant in their report response. He also stated that he told the Hearing Examiner he had no objection to the CUP for the bed & breakfast, unless the approval of the CUP was a quid pro quo for the approval of the variance. Dr. Hoeksema said the Examiner told him that was not the case and indicated that the CUP and variance would be considered separately and distinctly. Nonetheless, Dr. Hoeksema maintains the Examiner's decision linked the two inextricably and, in fact, the necessity for the garage structure is only driven by the need for expanded parking to accommodate the CUP.

Dr. Hoeksema concluded by asking Council to turn their attention to the specific requirements which must be met for a variance to be granted. He said the variance cannot compromise the intent of the Comprehensive Plan and its referenced regulatory documents including the Gig Harbor Design Manual. Dr. Hoeksema argued that the specific requirements which have not been met as described above include paragraphs B-2, B-3, B-4, B-5 and B-6 of the GHMC 17.66.030. He further pointed out that the variance request does meet the requirements of the single paragraph B-1.

Dr. Hoeksema expressed the importance of Council's duty as public servants to fulfill the wishes of the public so eloquently delineated in the Comprehensive Plan and the Gig Harbor Design Manual. He then asked Council to override the decision of the Hearing Examiner who admitted at the very end of the hearing that he had never heard of and was not aware of the existence of the Gig Harbor Design Manual. Dr. Hoeksema also stated that he is not opposed to a small, two-bedroom bed and breakfast at this location, one that would not be so flagrantly in violation of

everything this city and city council is supposed to be about. Dr. Hoeksema then answered questions from Council on the location of his home.

Steve and Janis Denton – 9017 N. Harborview Drive. Mrs. Denton offered to give information on whatever issues Council desired, but questioned the relevancy of the appellant's points. She said they did not want to spend time on issues not considered relevant by Council. Mrs. Denton stated that they followed the process as it was explained to them, doing their best to meet each requirement, and suggested that Pat Iolavera might be better able to respond to any technical questions. Mr. Denton presented an aerial photo of the area which had been part of the Hearing Examiner's record and there was some discussion of the property adjacent to the Dentons and the proximity of those structures to the right-of-way. Mrs. Denton expressed their desire and willingness to maintain their new home as a historical structure. She added that the size of the garage should not be an issue because other neighboring garages are even larger. Mrs. Denton also pointed out that they could have built on the south side of their home and obstructed the main view corridor, and said she does not believe their proposed project would obstruct Dr. Hoeksema's view because of the height of his property. Mrs. Denton also commended the city for their handling of the application and appeal process. The Dentons then offered to answer any questions. There were no questions from Council.

Pat Iolavera answered a question from Council relating to the size of the proposed garage. First, she explained that Dr. Hoeksema did not appeal the DRB decision, where almost all of the issues in his appeal refer to. She went on to explain that the only issues before Council tonight are the variance and CUP, which have very different criteria, and whether or not the Hearing Examiner erred in approving this project based on those criteria. The issue of the garage size is a Design Review Manual issue and the question of garages situated behind the house is not at issue tonight. The Denton project was taken from the DRB on the variance issue because the code allows the Design Manual to supersede the zoning code except that it must go before the Hearing Examiner when height or setback variances are effected. Ms. Iolavera said the project was only pulled from the DRB when it was discovered the DRB did not legally have the power to make this decision, but rather, needed to be heard before a higher hearing body.

Dr. Hoeksema wanted to respond to what he said was a misrepresentation, but was told that he would need to wait until the appropriate time.

Ms. Iolavera stated that the appellant is asking to overturn the Hearing Examiner's decision based on DRB criteria when, in fact, the Hearing Examiner is only considering the CUP and variance based on criteria found at 17.66.030(b), specifically, that the proposed variance does not amount to a rezone nor authorize any use not allowed in the district.

Councilmember Owel asked for clarification on the reason for the Hearing Examiner's references to the DRB in his decision. Ms. Iolavera and Ms. Morris pointed out that when there is a conflict between the zoning code and the Design Review Manual, the Design Review Manual controls.

Councilmember Franich asked Ms. Iolavera to confirm whether this project was ever reviewed by the DRB. Ms. Iolavera stated that the project went to the DRB on one issue (though it was

originally thought that two issues would be reviewed). She explained that the Dentons wanted to raise their house three feet and still be within the height limits, but when you raise the house three feet, there is another section in the Design Manual that brought one wall plane above a 27 foot maximum height limit. When you have a house that is on a slope, you can go up 16 feet from the highest point in the setback, and then out and down. But when you finally come down to the ground, the highest point cannot exceed 27 feet. By raising their house, the wall plane would reach 30 feet. The DRB determined that this is not inconsistent with their goals and the reason that section of the DRB was originally written had to do with houses that come to 40-50 feet. Ms. Iolavera further explained that staff interpreted all other issues administratively (as they do with the vast majority of these issues), such as whether the project respects the natural topography of the lot. Staff determined that this project definitely does respect the natural topography. These issues were not brought before the DRB because they were reviewed administratively and determined to be well within the standards used when making these analyses.

Councilmember Ekberg pointed out that Council was not here tonight to discuss the merits of planning's administrative review under the Design Review Manual. This is a process to look solely at the CUP and variance issues.

Councilmember Dick asked whether one condition for granting a variance is that the reason for the variance is something beyond the applicant's control. Mr. Vodopich responded by directing Council's attention to page 7, paragraph (c) of the Hearing Examiner's decision, where the Hearing Examiner specifically states the "special conditions and circumstances do not result from the actions of the applicant", but are due to the "size, shape and topography" of the property. Councilmember Dick questioned whether the size of the property was not within the applicant's control. He asked was it not within their control to decide how many bedrooms and how many extra parking spaces would be needed. Ms. Iolavera stated that she considered the CUP and the variance as separate issues. Aside from the CUP, Ms. Iolavera said she considered whether the applicants could have a variance that goes into the setback and asked herself what was a reasonable use of the land. Councilmember Dick said he believes the size of the garage is within their control. Ms. Iolavera responded that it is her understanding the retaining wall for the garage is in the same location as for the current parking, but the difference is that now the Dentons want to build in that space. Ms. Morris interjected that the variance cannot be contingent upon whether a CUP has been granted. Councilmember Dick pointed out that the two are not inconsistent because the number of bedrooms of the bed and breakfast dictates the number of parking spaces needed. Ms. Morris responded by directing Council's attention to page 8 of the Hearing Examiner's decision which sites other nearby property owners who have obtained more severe variances than what is being requested by the Dentons. Therefore, she asked, why should the CUP be a consideration. Ms. Morris reiterated that Council is here to decide if the Hearing Examiner correctly considered whether this proposed project meets the required criteria. Her recommendation to Council was to go through the criteria considered by the Hearing Examiner and determine whether there is substantial evidence in the record to support the Hearing Examiner's decision. Councilmember Dick stated that he is taking those criteria into account when he suggests the Hearing Examiner may not have considered whether the size, and not just topography, is under the control of the applicant. He said the Examiner did not discuss whether having 2, 4 or 6 bedrooms was in control of the applicant and whether that

supports his conclusion that the size is not in the applicant's control. Ms. Morris responded by saying that what the Hearing Examiner looked at was the code criteria. There is nothing in the code criteria that suggests looking at the CUP requested and determining whether or not the factors in the CUP meet the variance criteria. The variance criteria are specific to those factors considered by the Hearing Examiner and that is all he considered. Ms. Morris explained that the Hearing Examiner did not look at additional bedrooms because he was not required to.

The Mayor asked whether it was possible to make a motion to have this issue considered by the DRB, returned to the Hearing Examiner with a recommendation by the DRB for his consideration, and allow new evidence to be submitted to the Hearing Examiner. Mr. Vodopich stated that the DRB has no authority under the municipal code to review a CUP or a front yard setback variance and these issues could not be returned to them for consideration.

Councilmember Young asked if this garage would be consistent with a single family residence. Ms. Iolavera stated that the garage is a common size nowadays; many homes have two and three car garages. Councilmember Young responded that, in this instance, there is a precedent, and in order to allow for the Dentons' enjoyment of their property, like other properties nearby, Council should allow the CUP and variance. Councilman Young added that it may be a good idea to consider some of the points raised by Dr. Hoeksema when the time comes to review the Design Review Manual, but now is not the appropriate time.

Councilmember Franich said that Council should be considering what is best for the community. He said Council spends a great deal of time drafting a Design Review Manual, and for the Hearing Examiner or staff to decide contrary to these standards, makes it difficult to enforce the standards that the Design Review Manual is meant to protect.

The Mayor granted the appellant and applicant five minutes each to respond. Dr. Hoeksema began by agreeing with Councilmember Franich that staff continues to try to separate the variance request, the Comprehensive Plan and Gig Harbor Design Manual, which he said cannot be done. He said Council is not here only to consider the variance and the front setback. Dr. Hoeksema said the Hearing Examiner did not separate the two; his decision was littered with references to the Gig Harbor Design Manual. He also maintained that there are many violations, inconsistencies and contradictions between the Dentons' proposed plan and the very specific intent of the Comprehensive Plan and the Design Manual. Mr. Hoeksema said he appreciates and understands the argument that Councilmember Young presented about the garage. He said he is not trying to deny the Dentons a garage, but this isn't just any house. The Dentons knowingly and willingly purchased a home in the most restricted area in Gig Harbor, the waterfront historical district. Mr. Hoeksema stated that it should be a false expectation to buy a 1,300 square foot home in the waterfront historical district and expect to build a three car garage with a house addition above it directly contradictory to the Design Manual. He said if Council grants the variance based on that logic, they will emasculate both the Comprehensive Plan and the Design Manual and render them worthless documents. He continued by saying the municipal code regarding variances refers to the Comprehensive Plan which says that the city absolutely relies on things like the waterfront landscape and the Design Manual and many other documents to give it teeth. Dr. Hoeksema stated the Dentons could build a small garage appropriately scaled to their home and not encroach on the variance. He said they could have a two bedroom

bed and breakfast with a small two car garage and a couple of extra parking spaces completely below ground level which would not block any view corridors and would be completely consistent with the specific guidelines of the Design Manual and Comprehensive Plan. Under those circumstances, it would have been appropriate for administrative review of this case. Dr. Hoeksema argued, however, that this case demands review by the DRB. He encouraged the Mayor to put her motion back on the table saying that it is a very appropriate response to this case. He requested one last time to present the photographs and indicated again that the plans which were admitted tonight were not presented at the Hearing Examiner and the taped record of the Hearing Examiner will show that the Examiner labeled every piece of evidence that was presented and considered in his decision.

The applicants then began their response. Mrs. Denton explained that they had been through the DRB and the variance process, and are here to decide how close they can come to the road. She stated that all they are asking for is less than what their neighbors already have. Mrs. Denton said that, according to page 13 in the Design Review Manual, the DRB prefers that properties be more or less in line with each other, within 20%, and they are only asking for what the Design Manual permits. Mr. Denton referred to page 12 which defines North Harborview, the street where their property is located, as a parkway. He said this should never have come to a variance issue. Mr. Denton explained that before they bought the house, they had someone from the Planning Department visit the property. The Dentons said they told the staff person what they wanted to do with the property and the staff person said it would be no problem. Mr. Denton added that they really did their homework prior to buying the property, but admitted they made a mistake of not recording in their notes the particular information given to them by staff. However, Mr. Denton said the variance cannot be denied. He said that for Council to deny the variance would mean to throw out pages 12 and 13 of the Design Manual. Mrs. Denton added that it has been a very extensive process which started May 15, 2001, with their first application for the CUP. She said if Council has to make changes in the future, then that is a different issue, but they have gone through all the criteria, the process, and designed the house as best they could according to the Design Manual. Mrs. Denton said they appreciated the Council's time. Mr. Denton added that, contrary to Dr. Hoeksema, the plans were present at the Hearing Examiner's meeting.

Councilmember Owel asked Ms. Iolavera to clarify page 7 of the Hearing Examiner's decision regarding the issue of variances granted in the same area and to identify which properties they are referring to. Councilmember Owel asked if it was a fact or an assumption that other projects developed in that area have been given a variance. Ms. Morris answered by directing Council's attention to the last paragraph on page 8 of the Hearing Examiner's decision where he describes at least one similar lot in the WR district which is built within one foot of the property line and several others that have been built within 3-5 feet of the property line. Councilmembers Owel and Dick asked whether these were the result of a variance or whether they were built prior to regulations. Ms. Iolavera responded that this is exactly the reason, as referred to on page 13 of the Design Manual, for parkways to have an average setback. She explained that on prominent streets, they want to acknowledge the fact that properties have been developed over different time periods, and want to average what is being done now rather than hold to some contemporary standard which doesn't respect the history of the private parcels. In terms of

variances, however, Ms. Iolavera stated she did not have knowledge of how many properties actually have variances.

There were no further questions and the Mayor closed the oral argument at 8:55 p.m. The Council proceeded to deliberations. Councilmember Ekberg acknowledged that this is a very confusing issue with seemingly conflicting regulations, but thinks it needs to be boiled down to the simple matter that Council has been requested to hear an appeal of the Hearing Examiner's decision on the CUP and the variance. Councilmember Ekberg pointed out that Council has looked at the record, listened to the testimony and he has not found anything which shows the Hearing Examiner erred in making his decisions. Therefore, he recommended a motion to uphold the Hearing Examiner's decisions on both the CUP and the variance.

MOTION: Move that we uphold the Hearing Examiner's decision.
Ekberg/Young -

Councilmember Young stated that he appreciates what Dr. Hoeksema is trying to show regarding the Design Review, but added that Council is only here to rule on whether the Hearing Examiner erred in granting a variance and CUP. To him, the variance issue is fairly clear because he would allow the same thing for a home. Councilmember Young said he does not find the project inconsistent with the area and the particulars of the property make it impossible to put a garage anywhere else. He said he was inclined not to overturn the Hearing Examiner's decision. Also, he said he did not hear many arguments on whether there should be a CUP granted for a bed and breakfast.

Councilmember Dick agreed with Councilmember Young that the CUP does not seem to be the issue over which conflict is arising, but rather over the variance. Again he asked whether a variance for a garage was being requested so that a reasonable use could be made of the property. Councilmember Dick said a large garage ought to entitle a person to a variance, but if someone wants a larger use, and it is that decision which then requires an extension into the setback, then that is a different issue. He reviewed the elevations and stated that if the property were only a single-family residence or a smaller bed and breakfast, then a smaller garage would be sufficient and the applicant would not need to extend a broader garage into the setback.

Councilmember Young asked Council whether they would deny the variance if it was simply a three car garage. Councilmember Dick responded that if every historic structure along the water were allowed to build a three car garage between the structure and the street, we would not have an historic district. Councilmember Young said he would agree if you could see the garage above grade, but in this case you cannot, and so he does not see how that would destroy the historic district. Furthermore, Councilmember Young pointed out, if you don't allow it, and it's decided it's easier to get the parking spaces by knocking down the building, then how is the historic district preserved. He said it seems like additional consideration for a variance should be given to preserve the historical buildings, but if some allowance isn't made for differentiation in the historic district, and applicants are forced to stick to standards and keep this functional obsolescence, then an incentive will be created to take away those buildings that we're trying to preserve. Councilmember Young added that if the applicant tries to preserve the area and make it modern at the same time, they should be encouraged to do so.

Councilmember Ekberg reiterated that he was looking to see if the Hearing Examiner erred in his consideration of the four criteria. Councilmember Dick said the only criterion important to him at this time is whether the size is in the control of the applicant. Councilmember Ekberg said that, in theory, all variances could be considered in control of the applicant. Councilmember Dick asked then how to give meaning to that phrase. Councilmember Young responded that it needs to be such that the applicant didn't create a situation where they then had to apply for a variance.

MOTION: Move that we uphold the Hearing Examiner's decision.
Ekberg/Young – roll call vote results:

Ekberg, yes. Young, yes. Franich, no. Owel, no, Dick, no. Picinich, no.
The motion failed, four to two.

Councilmember Ekberg requested a five minute recess. Ms. Morris stated that she also would like a recess in order to speak to each councilmember individually. The Mayor granted the recess.

Mayor Wilbert declared Council back in session at 9:27 p.m.

Councilmember Owel, for purposes of reconsideration and for purposes of discussion, made the following motion:

MOTION: Move that we reconsider the previous motion.
Owel/Ekberg – roll call vote results:

Ekberg, yes. Young, yes. Franich, no. Owel, yes. Dick, no. Picinich, no.
The motion was tied, three to three.

Mayor Wilbert voted no.
The motion failed four to three.

Councilmember Owel called for the orders of the day. Councilmember Young posed the question of whether or not a motion is necessary to overturn the Hearing Examiner's decision or if voting not to affirm it is sufficient. Ms. Morris pointed out that if Council wants to reverse the Hearing Examiner's decision, Council will need to make findings and conclusions, and will have to provide support for that decision. The normal process for this, she explained, would be to go through each of the appeal issues and describe the manner in which Council believes the hearing examiner's decision was in error. Normally, deliberations would take place at the present meeting, and findings and conclusions would be brought back later.

Mayor Wilbert suggested that a motion be made to have the project reconsidered by the DRB and that the recommendation of the DRB be taken back to the Hearing Examiner along with any new evidence. Ms. Morris advised that our code does not allow for this to be remanded back to

the Hearing Examiner or the DRB. A decision must be made tonight or a continuance for deliberations must be made.

Councilmember Dick offered to draft findings and conclusions and make a motion to present them at the next meeting.

MOTION: Move for a continuance of the presentation of findings until the next meeting on January 14, 2002.
Dick/Picinich – unanimously approved.

3. Second Reading of Ordinance – Official Zoning Map Change – Peninsula School District Rezone, Rosedale Street. Mr. Vodopich explained that this is the second reading of an ordinance to officially change the zoning map enacting the Hearing Examiner's decision to rezone the Peninsula School District's Gig Harbor High School property from Single-Family Residential (R-1) to Public Institutional (PI).

MOTION: Move to approve Ordinance No. 895.
Picinich/Owel – unanimously approved.

4. Second Reading of Ordinance – Providing for Extension of LID No. 99-1 Bond Anticipation Note. Dave Rodenbach, Finance Director, explained that this Bond Anticipation Note will expire on December 19, 2001. The interest rate on the existing note is 4.93% and the current offer made to us at this time is 2.2%. He noted some recent minor changes to the ordinance included in the council packet and offered to answer questions. There were no questions.

MOTION: Move to approve Ordinance No. 896.
Dick/Picinich – unanimously approved.

5. Interlocal Agreement – Law Enforcement Support Agency. Councilmember Picinich asked that this item be removed from the consent agenda and considered here under old business. His stated his concern was regarding the cost of the system, but added that Police Chief Mitch Barker had subsequently answered his questions, and he is now ready to consider the item.

MOTION: Move to accept the Interlocal Agreement – Law Enforcement Support Agency
Picinich/Ekberg –

Councilmember Franich inquired about the possibility of making changes to the indemnification clause, Section I of the agreement. Ms. Morris explained that she has attempted in the past to negotiate a new indemnification clause, but Pierce County and the other parties to the agreement have refused to consider any changes. The Council must decide whether they want to execute the agreement as it stands. Councilmember Young commented that even though there are problems with this clause, it is in the city's interest to have an agreement. He recommended approving the current agreement, but encouraged counsel to continue to pursue negotiations on that clause.

MOTION: Move to accept the Interlocal Agreement – Law Enforcement Support Agency.
Picinich/Ekberg – Councilmembers Ekberg, Young, Franich, Owel and Picinich voted in favor. Councilmember Dick abstained.

6. Tourism Marketing Director Contract. Councilmember Franich asked that this item be removed from the consent agenda and considered here under old business. He explained that, during his election campaign, he mailed approximately 450 surveys to primarily single-family residences. A question on the survey relating tourism asked whether the city's policy should promote more tourism, promote less tourism, or remain about the same. Councilmember Franich described the results as follows: 28% favored more tourism, 19% favored less tourism, 52% said about the same. According the residents he has spoken to, most recognize that tourism will be a part of our community, but that the best policy would be to let it happen naturally, and not foster policies to promote it artificially. Councilmember Franich stated that advocates of tourism talk about the "revenue" tourism generates, but he does not believe the revenue is substantial, and expressed interest in seeing numbers which reflect the amount of revenue the core businesses bring in. Mr. Rodenbach responded that he could obtain a generalized number for him. Mayor Wilbert added that the term of this contract is for one year and will be reviewed again before continuing. Councilmember Franich further added that a lot of people, including himself, feel that the benefits derived from aggressively promoting tourism do not outweigh the negative impacts on the residents in the core area of Gig Harbor. He encouraged Council to reevaluate the whole issue of the hotel-motel tax fund and the newly created tourism strategic plan in light of the desires of these citizens. Councilmember Young made the point that this contract has already been planned and budgeted for 2002 and should be approved; however, he agreed that it's important to consider the impact to the residents and suggested revisiting this larger issue of the hotel-motel tax fund at the next Council retreat or budget session. Councilmember Ekberg agreed that the residents' desires should be considered. He added, however, that one aspect he appreciates about this particular contract is that it brings the tourism director directly under the city's direction and control, and he believes the contract should be entered into.

MOTION: Move to accept the Tourism Marketing Director Contract.
Ekberg/Young – Councilmembers Ekberg, Young, Owel, Picinich, and Dick voted in favor. Councilmember Franich opposed.

NEW BUSINESS:

1. First Reading of Ordinance – Annexing Property Adjacent to Public Works Shop. Mr. Vodopich explained that the city is the real property owner of approximately 5.34 acres located immediately adjacent and to the south of the existing city shop. The city intends to use this property for municipal purposes in the expansion of the shop as the need arises. The Revised Code of Washington provides for the annexation of municipally owned property outside of city limits through the adoption of an ordinance. This item will return for a second reading at the next meeting.

2. First Reading of Ordinance – Official Zoning Map Change – Peninsula School District Rezone, Prentice Avenue. Mr. Vodopich presented this first reading of an ordinance for the rezone of the Peninsula School District's Harbor Ridge Middle School from its present Single-Family Residential (R-1) zoning to Public Institutional (PI), and recommended its adoption at the second reading at the January 14, 2002 city council meeting. Mr. Vodopich explained that this rezone is being done simply to rectify a zoning inconsistency.

3. Resolution Authorizing Amendments to the Pierce County Countywide Planning Policies. Mr. Vodopich stated that the purpose of this resolution is to authorize amendments to the Pierce County Countywide Planning Policies. The amendments address issues related to the enactment of the endangered species act and amendments to the joint planning policy language. They have previously been approved by the Pierce County Regional Council, on which the Mayor sits, and the Pierce County Growth Management Coordinating Committee, on which Mr. Vodopich sits. Mr. Vodopich recommends approval of the resolution.

MOTION: Move to approve passage of Resolution 579.
Dick/Picinich – unanimously approved.

4. New Street Name Request – Magnolia Lane. Mr. Vodopich presented this request by Mr. Beardsley to name the new private street Magnolia Lane. He added that this name is from the historical names list and recommended its approval by Council.

MOTION: Move to approve street name of Magnolia Lane as requested by Mr. Beardsly.
Picinich/Ekberg – unanimously approved.

STAFF REPORT:

Mr. Vodopich reported on the progress of the Avalon Woods development and the Gig Harbor Sportsmans Club development. With regards to Avalon Woods, Mr. Vodopich stated that he received a phone call from the plant manager at Nu Health Medical indicating that he has approval to enclose the compressor located at the back of the building and will do so within the next couple of weeks. Mr. Vodopich said he would keep Council updated on this issue.

Secondly, with regards to the Gig Harbor Sportsman Club, Mr. Vodopich reported his progress obtaining both noise and safety evaluations as directed by Council at the November 26th meeting. Gerald Graham, a Range Technical Advisor with the National Rifle Association, could provide a configuration, use and operation evaluation for approximately \$200 - \$300.

Additionally, Mr. Vodopich provided preliminary cost estimates from two firms qualified to perform noise evaluations. The firm of Michael R. Yantis Associates could provide a basic evaluation of noise levels for approximately \$3,550 - \$4,300. BRC Acoustics proposed a more detailed analysis at an approximate cost of \$9,950 plus expenses. Mr. Vodopich recommended that Council determine a maximum amount they would be willing to spend on an acoustical study and he will have the firms prepare scopes of work based on that amount. Council discussed the differences between the two proposals. Ms. Morris stated that she had worked

with the Yantis firm in the past and found their services acceptable. She also suggested that staff have the firms include options on sound baffling and predictions on sound level reductions as part of their proposals.

Dan Cook – Gig Harbor resident. Mr. Cook informed council that he has the records of the Yantis sound study which was done several years back and would be willing to provide a copy to council. Councilmember Ekberg thanked Mr. Cook and stated that the report might be useful as a basis for comparison. Mr. Cook said that he would provide the information at the January 14th council meeting.

PUBLIC COMMENT:

None.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert summarized her report where she thanked Pierce Transit for completing the Park & Ride on Kimball, mentioned a desire to have conversations with surrounding towns on Town Around buses, and promoted the idea of water taxis and requisite need for landings and on land transportation systems.

Councilmember Ekberg mentioned that he and Councilmember Young visited the City of Lakewood's opening of their new city hall. He said they enjoyed the opening and got some new ideas for our own new civic center.

ANNOUNCEMENT OF OTHER MEETINGS:

None.

EXECUTIVE SESSION: For the purpose of discussing pending and potential litigation per RCW 42.3 1.110(f).

MOTION: Move to adjourn to Executive Session at 10:07 p.m. for approximately forty-five minutes to discuss potential litigation.
Picinich/Dick - unanimously approved.

MOTION: Move to return to regular session at 10:52 p.m.
Owel/Picinich - unanimously approved.

MOTION: Move to adjourn to Executive Session at 10:53 p.m. for approximately fifteen minutes to discuss potential litigation.
Owel/Picinich - unanimously approved.

MOTION: Move to return to regular session at 11:09 p.m.
Owel/Picinich - unanimously approved.

Councilmember Dick asked to get any required advice as quickly as possible and schedule a special session soon after a review of the issue. Mayor Wilbert suggested a meeting the following Monday, December 17th. Mr. Hoppen agreed that Monday would work.

ADJOURN:

MOTION: Move to adjourn at 11:10 p.m.
Owel/Picinich - unanimously approved.

Cassette recorder utilized
Tape 637 - Side B 000 - end.
Tape 638 - Both Sides.
Tape 639 - Both Sides.
Tape 640 - Side A 000 - end.
Tape 640 - Side B Blank
Tape 641 - Side A 000 - 012

Gretchen A. Wilbert, Mayor

City Clerk

GARY LOCKE
Governor



RECEIVED

DEC 3 - 2001

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

CITY OF GIG HARBOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

November 15, 2001

Gretchen Wilbert
Mayor
City Of Gig Harbor
3105 Judson St
Gig Harbor, WA 98335-5136

Dear: Gretchen

Last year, I called upon the citizens of our state to honor Dr. Martin Luther King, Jr. by devoting his holiday in January to community service. I was pleased with the response I received.

On Monday, January 21, 2002, our state and nation will pay tribute to Dr. King, and once again, I am calling upon our citizens to celebrate his birthday by making it "a day on, not a day off."

At the heart of Dr. King's philosophy was the concept of service. He stated, "*Life's persistent and most urgent question is, 'What are you doing for others?'*" He believed a person's worth should not be measured by his or her color, culture or class, but rather by his or her commitment to making a better life for all.

In keeping with Dr. King's mission, I am asking state agencies to partner with my office again in encouraging their staff to celebrate the holiday as a day of service. I invite you to do the same. With your participation, this can be a day for employees, students, and families throughout our state to work together on projects that will benefit others. Let us put our ideals into action by taking part in school and community events to create a legacy for future generations.

Service to others is a bond that unites us. Please join me in making the Dr. Martin Luther King, Jr. holiday "a day on, not a day off." *Remember, celebrate, and act.*"

If you would like further information, please contact Ahndrea Blue, of my executive policy staff, at (360) 902-0652.

Sincerely,

Gary Locke
Governor



Committee to Preserve Pierce Transit

December 28, 2001

Dear Friend *Mayor*

RECEIVED

JAN 7 2002

CITY OF GIG HARBOR

For over 20 years, Pierce Transit has provided transit service throughout our region. Last year, the agency provided more than 14 million passenger trips, reducing traffic congestion across the county. We need to continue this track record of success.

We also need your help. A measure has been placed on the February 5, 2002 ballot to increase the sales tax in Pierce County by 0.3% — or three cents on a ten-dollar purchase — to replace funding lost when the State Legislature eliminated the Motor Vehicle Excise Tax in response to Initiative 695. Passage of this ballot measure will allow Pierce Transit to continue meeting the needs of an expanding ridership population by providing direct transit services and contracting with the private sector for construction, equipment, professional services and supplies.

If rejected, there will be no additional funding for Pierce Transit, and beginning in 2003, the agency will be forced to cut local bus service by 40 to 45% and reduce all budget categories dramatically. This will also result in millions of dollars of lost federal matching funds.

To run a successful campaign, the **Committee to Preserve Pierce Transit needs your financial support.** As you know, it will cost money to get our message out to voters across the county with yard signs and mailings.

It is time to preserve our transit system. Please consider a campaign contribution of \$500, \$250, \$100, \$50 or whatever you can afford to support our victory in February.

Sincerely,

Tim Strege

Tim Strege
Campaign Chair

P.S. To save money for voter contact the campaign did not print remittance envelopes. Please make your check payable to **Committee to Preserve Pierce Transit** and **mail it in TODAY** to our **Campaign Treasurer at 519 S. "G" St., Tacoma, WA 98405. Thank you!**

**Pierce County Regional Council
2401 South 35th Street, Room 228
Tacoma, Washington 98409
(253) 798-3726**

RECEIVED
JAN 4 2002
CITY OF GIG HARBOR

January 2, 2002

Mayor Gretchen Wilbert
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Dear Mayor Wilbert:

The Board for the Zoo/Trek Authority (ZTA) has an opening for representation from the Pierce County Regional Council (PCRC). This representative is to be elected by the twenty cities and towns within the ZTA boundary. Metro Parks is requesting your cooperation in the nomination and selection of a representative to fill this at-large position. Accordingly, we ask that you please present this item at your next Council meeting for action.

As information, this representative will fill a vacancy in Position 1 and fulfill the second year of a two-year term. Thereafter, each term shall be for three years.

In accordance with the interlocal agreement, nominees must be an elected official from cities and towns, other than Tacoma, representing at least 60% of the combined populations of those cities. The following election procedure will be followed:

1. If your council wishes to submit a nomination, the enclosed nomination form must be submitted to Toni Fairbanks, Pierce County Regional Council Clerk, no later than **5 p.m. on Friday, January 25, 2002**. You may fax the nomination form to the clerk at 253-798-3680.
2. On **January 28, 2002**, a ballot listing the prospective nominee will be mailed to the twenty town and city councils. Your council will have until **5 p.m. on February 22, 2002**, to return your ballot to the Clerk of the PCRC.
3. A **certified copy** of the council resolution or motion must accompany all ballots. The Clerk of the PCRC shall count the ballots and announce the results. The appointed individual must have received the approval of cities and towns "representing at least 60% of the combined populations of those cities" in Pierce County, other than Tacoma.

Nomination Letter
January 2, 2002
Page 2

4. In the event that no candidate obtains the required percentage, the top two names will be resubmitted for reconsideration. The ballot procedure will be repeated until a candidate is selected by a plurality vote.

5. **Each city and/or town may vote for a candidate for Position 1. Nominations for Position 1 must be from cities of less than 5,000 population.** If at the close of nominations, no candidate has been nominated, that nomination will remain open for an additional 7 days and be available to any elected city or town official (excluding Tacoma).

There is a need for immediate attention to this issue. I wish to express my appreciation for your prompt cooperation.

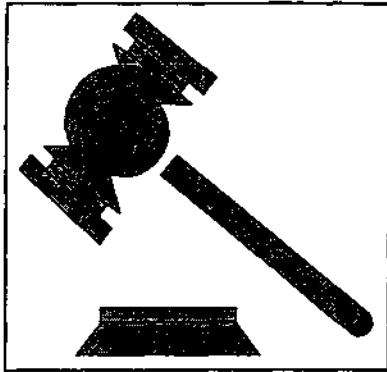
Sincerely,



Toni Fairbanks
Clerk, Pierce County Regional Council

Enclosure

cc: Linda Bird, President, Pierce County Regional Council



NOMINATION FORM

The town/city of _____ wishes to nominate
Councilmember _____ to serve as a member
of the Zoo/Trek Authority Board, representing the following towns and cities of the Pierce
Council Regional Council:

Auburn	Lakewood
Bonney Lake	Milton
Buckley	Orting
Carbonado	Puyallup
Dupont	Roy
Eatonville	Ruston
Edgewood	South Prairie
Fife	Steilacoom
Fircrest	Sumner
Gig Harbor	University Place
Wilkeson	

Date: _____ By: _____

**This form must be received by Clerk of the Pierce County Regional Council by
5 p.m., Friday, January 25, 2002. You may fax this form to (253) 798-3680.**

AWC

ASSOCIATION OF
WASHINGTON CITIES

1076 Franklin St. SE
Olympia, WA 98501-1346

Phone: 360-753-4137

Toll Free: 1-800-562-8981


Fax: 360-753-0149

Website: www.awcnet.org

December 21, 2001

Gretchen Wilbert
Mayor
City of Gig Harbor
3105 Judson St
Gig Harbor, WA 98335

RECEIVED
DEC 31 2001
CITY OF GIG HARBOR


Dear Mayor Wilbert:

On behalf of the Association of Washington Cities' (AWC) Board of Directors, I would like to take this opportunity to thank you for assisting AWC this year. Your efforts were critical in obtaining I-695 replacement funds. We now need your help to ensure the Legislature keeps their commitment and allocates the 2nd half of these monies. The state budget problems are significant and legislators are reviewing all allocations including our I-695 monies. Please contact your legislators before they leave for Olympia and remind them of the importance to local governments of I-695 funding. Now is not the time to reduce public safety funding.

AWC has recently adopted our 2002 Budget. This budget will allow us to continue our technical assistance programs and embark on some new programs during the coming year. We will be developing tools that help you communicate with your citizens as we attempt to restore and build constituency trust in local governments.

Enclosed is the invoice for your city's/town's service fee to AWC for the 2002 calendar year. Payment outlined in the invoice will enable AWC to provide the services you need. Please return one copy of the invoice with payment by January 31, 2002.

If you have any questions regarding this invoice or services available from AWC, please feel free to contact me or Jim Justin at (360) 753-4137 or toll-free (800) 562-8981. Thank you again for your assistance this past year. We look forward to working with you and your colleagues during the coming year.

Sincerely,



Stan Finkelstein
AWC Executive Director

Enclosure: 2002 Service Fee Invoice

cc: Molly Towslee, City Clerk
Mark Hoppen, City Administrator

INVOICE

12/19/01

Association of Washington Cities (AWC)

1076 Franklin St SE

Olympia WA 98501

(360) 753-4137

Toll Free (800) 562-8981

Fax (360) 753-0149

In Account With:

Gretchen Wilbert

Mayor

City of Gig Harbor

3105 Judson St

Gig Harbor, WA 98335

The Association of Washington Cities is the official organization of cities and towns in Washington state, established to aid local governments in the solution of common problems. Each city paying the annual service fee is a member and has an equal voice in the determination of the Association's policy.

2001 Population 6,485 x Rate 0.5041

(population per Office of Financial Management)

2002 Service Fee..... **\$3,269.09**

Please make check payable to the Association of Washington Cities, and return this invoice with payment by **January 31, 2002**. If you have any questions regarding this invoice, please call (360) 753-4137.

Total Due: \$3,269.09

IRS # 91-6000045



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: EMPLOYMENT AGREEMENT FOR MUNICIPAL JUDGE
DATE: JANUARY 7, 2001

INFORMATION/BACKGROUND

The employment agreement for the position of municipal court judge is up for renewal for a four year term. The attached agreement, except for the compensation amount and term dates and signature block dates, was reviewed previously by the City Attorney and approved previously by the City Council.

POLICY CONSIDERATIONS

The agreement as presented will be in effect for the statutory term of four years, from January 1, 2002, through December 31, 2005.

FISCAL CONSIDERATIONS

The compensation amount is \$2000 monthly.

RECOMMENDATION

Staff recommends that Council motion to authorize the Mayor to sign the agreement as presented on behalf of the city.

**MUNICIPAL COURT JUDGE
EMPLOYMENT AGREEMENT**

THE PARTIES

The parties to this agreement are as follows: Michael A. Dunn, hereinafter referred to as "Judge," and the City of Gig Harbor, Washington, hereinafter referred to as the "City."

PURPOSE

The purpose of this agreement is to set forth the terms of the agreement between the parties whereby the City appoints a municipal court judge at an established compensation level and the Judge agrees to perform the municipal court judge duties as provided by state statute and city ordinance.

AGREEMENT

The parties hereto agree as follows:

- A. Performance of Duties. The Judge shall at all times faithfully, and to the best of his ability and experience, perform all of the duties that are required of him pursuant to the expressed and implicit terms of this agreement and pursuant to the rules of professional ethics. The provisions of chapter 3.50 RCW and the Gig Harbor Municipal Code section creating the municipal court are incorporated into the agreement as fully as if set forth therein.
- B. Compensation. The City shall compensate the Judge for conducting municipal court cases for the City of Gig Harbor as follows:
1. The monthly salary shall be ~~\$1700~~ \$2000 for general administrative time, jury and non-jury trials and hearings, occasional in-custody arraignments, regular Tuesday court calendars, and related activities not specified herein.
 2. Mileage incurred by the Judge shall not be reimbursed by the City.
 3. Long distance telephone expenses shall be documented and reimbursed by the City to a limit of \$15 per month.
 4. The City will annually budget up to fifteen (15) hours of judicial training for the Judge.

The judge shall submit monthly payment invoices to the City after such services have been performed. The City shall pay the full amount of the invoice within thirty (30) days of the receipt.

- C. Liability Insurance. The City shall provide and maintain public officials liability insurance covering the Judge for the discharge of his official duties at limits consistent with levels of coverage maintained for other city public officials and employees.
- D. Judge Pro Tem. In the event of a judicial conflict or disqualification, or when in the discretion of the Judge the use of a Judge Pro Tem is required, the Judge may assign cases to a Judge Pro Tem. The Judge shall propose candidates for the position of Judge Pro Tem to the Mayor with a brief explanation of the need for the employment of the Judge Pro Tem, who shall be members of good standing of the Washington State Bar Association, and subject to confirmation by the Mayor. Salary of Judges Pro Tem shall be paid by the Judge when Judges Pro Tem are employed for reasons other than a judicial conflict or disqualification of the Judge.
- E. Employment Conditions. The employment relation of the Judge and Judges Pro Tem shall be governed by this Agreement. The Judge and Judges Pro Tem are independent contractors and shall provide professional services to the City pursuant to this Agreement. Neither the Judge nor the Judges Pro Tem are employees of the City, and each shall be responsible for paying federal income tax and other taxes, fees, or other charges imposed by law upon independent contractors from the compensation paid to them by the City. Neither the Judge nor the Judges Pro Tem shall be entitled to any benefits provided to City employees and shall specifically not be entitled to sick leave, vacation, unemployment insurance, worker's compensation, overtime, compensatory time or any other benefit not specifically addressed and provided for in this agreement. The Judge and Judges Pro Tem shall be solely and entirely responsible for their acts during the performance of this Agreement. The Judge and Judges Pro Tem shall be subject to the rules of conduct of the relevant personnel policies of the City and the Code of Judicial Conduct. Judges Pro Tem shall be paid at the rate of sixty dollars (\$60) per hour.

In addition, it is recognized that the Judge and Judges Pro Tem will provide work and services for other clients in their independent law practices. The Judge and Judges Pro Tem agree not to perform such services for other clients where a conflict of interest or ethical violation as defined in the rules of professional conduct for attorneys may exist.

- F. Indemnification. The Judge is a public official of the City of Gig Harbor. The Judge agrees to indemnify, defend and hold the City harmless for any and all claims or liabilities of any nature for any acts of the Judge that are outside of the scope of his official duties as described herein.
- G. Term. This agreement shall commence on ~~January 26, 1999~~, January 1, 2002 and terminate on ~~December 31, 2001~~, December 31, 2005 unless terminated as provided in this section and section H. If the City chooses to appoint or reappoint the municipal court

judge, such appointment or reappointment shall take place on or before December 1, ~~2004~~ 2005. This agreement may be terminated by the Judge providing a sixty (60) day written notice of termination to the city. The City may remove the Judge from office only as provided in RCW 3.50.095 (as it now exists or may be amended in the future); PROVIDED THAT, the city may decide at any time after execution of this Agreement, to terminate the municipal court as provided in chapter 3.50 RCW and eliminate the position of municipal court judge. Both parties specifically agree that elimination of the position of municipal court judge does not constitute "removal" of the judge from office, and does not trigger RCW 3.50.095 (as it now exists or may be amended in the future). PROVIDED FURTHER, that if the position of municipal court judge becomes full-time as defined in RCW 3.50.055, and the City is required to fill the position by election, the City may also terminate this Agreement by providing the Judge at least sixty (60) days written notice.

- H. Nonexclusive Contract. This shall be a nonexclusive contract. The City reserves the right to appoint additional judges, to contract for additional court services in the future, or to terminate this agreement for the purpose of filling the position by election (as required by RCW 3.50.055). Nothing herein shall be interpreted to prohibit such future appointment, or restrict the City's decision to increase the position to full-time, which could trigger the provisions of RCW 3.50.055. Nothing in this Agreement shall guarantee renewal of this Agreement, its level of payment, nor the level of cases forwarded to the Judge for future years, regardless of whether the Judge shall be within the terms of his appointment. In the event of such future appointments, the City reserves the right to renegotiate any and all provisions of this Agreement for future contract terms.
- I. Resolution of Disputes. Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City, and the City shall determine the term or provision's true intent or meaning. If any dispute arises between the City and the Judge which cannot be resolved by the City's determination in a reasonable period of time, or if the Judge does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be with the Pierce County Superior Court, in Pierce County, Washington. The prevailing party shall be reimbursed by the other party for its costs, expenses and reasonable attorneys fees incurred in any litigation arising out of the enforcement of this Agreement.
- J. Integration. The written provisions and terms of this Agreement shall supersede all prior verbal statements of any officer or representative of the City, or any prior agreements between the parties and such statement or prior agreements shall not be effective or be construed as entering into, forming a part of, or altering this Agreement in any way. The entire agreement between the parties is contained in this Agreement document.
- K. Severability. In the event that any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in full force and effect.

L. Notice. Notice given pursuant to this Agreement shall be given in writing to the parties as follows:

Judge: Michael A. Dunn
585 Bethel Ave., Suite 204
Port Orchard, WA 98366

City: City Administrator
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

This contract contains the complete agreement concerning the employment arrangement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties.

No waiver or modification of this agreement shall be valid unless in writing and duly executed by both parties. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed to be a waiver or relinquishment of said Agreement provision, and the same shall remain in full force and effect.

DATED this _____ day of January, ~~1999~~ 2002.

CITY OF GIG HARBOR

Gretchen A. Wilbert, Mayor

Michael A. Dunn, Municipal Court Judge

ATTEST:

Molly M. Towslee, City Clerk



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER
SUBJECT: COMMUNICATIONS MAINTENANCE CONTRACT
DATE: JANUARY 5, 2002

INFORMATION/BACKGROUND

The Police Department and Public Works Department have used the services of the Pierce County radio shop for communications maintenance for a number of years. This is a year-to-year contract and requires renewal to continue. The renewal date was January 1, 2002. The County was late in sending out the renewal contracts so there has been a delay in presenting these copies.

FISCAL IMPACTS

The rates quoted in the submitted contracts were used in our budget planning for 2002.

RECOMMENDATION

The Police and Public Works Departments recommend that the Council authorize the Mayor to renew the contract with Pierce County for communications maintenance services for 2002.

AGREEMENT FOR COMMUNICATIONS MAINTENANCE PROGRAM

AGREEMENT made January 1, 2002, between PIERCE COUNTY, herein referred to as "County", and CITY OF GIG HARBOR referred to as GIG HARBOR.

SECTION I. THE PARTIES

This is a communications maintenance and installation program contract between GIG HARBOR and PIERCE COUNTY.

SECTION II. TERM OF AGREEMENT - TERMINATION

This agreement shall commence as of January 1, 2002 and terminate on December 31, 2002. Either party may terminate this agreement upon thirty (30) days written notice.

SECTION III. OBLIGATIONS OF COUNTY

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

SECTION IV. FEES

GIG HARBOR Shall reimburse the County for its services described above, at the rate of Ninety (\$90.00) Dollars per hour from 7:30 a.m. through 3:00 p.m., plus time and one-half or double time adjustments required by law, where performed outside these hours as authorized by GIG HARBOR. In addition, the County shall be reimbursed its cost plus 20% for all materials and parts provided by County, except that prior written authorization by GIG HARBOR shall be required for materials or parts in excess of Five Hundred (\$500) Dollars. Payment shall be made by GIG HARBOR within thirty (30) days of presentation of invoice, listing time, parts and materials by the County.

SECTION V. INDEMNITY

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

SECTION VI. ASSIGNABILITY

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

SECTION VII. GOVERNING LAW


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

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

CITY OF GIG HARBOR

PIERCE COUNTY

BY: _____
Authorized Signatory


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



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC
DEVELOPMENT GRANT AGREEMENT ACCEPTANCE
DATE: JANUARY 14, 2002

INFORMATION/BACKGROUND

An objective of the Planning and Building Services Department for 2002 is to review and revise as necessary the City's critical area regulations found in Title 18 of the Gig Harbor Municipal Code. The Washington State Growth Management Act (GMA) also requires such review and revision no later than September 2002 (R.C.W. 36.70A.130)

Patricia Iolavera has been successful in applying for and receiving a Planning Grant from the Washington State Department of Community, Trade and Economic Development in the amount of \$15,750.00 to assist the City in this task. The City Attorney has been given a copy of the agreement for review.

RECOMMENDATION

I recommend that the City Council move to accept the Intergovernmental Agreement with the Washington State Department of Community, Trade and Economic Development, Contract No. s0263000-070 and authorize the Mayor's signature on said document.

CITY OF GIG HARBOR
JAN 03 2001

**INTERGOVERNMENTAL AGREEMENT
WASHINGTON STATE
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT**

CONTRACT NUMBER: s02-63000-070

This AGREEMENT, entered into by and between the City of Gig Harbor (hereinafter referred to as the GRANTEE) and the Washington State Department of Community, Trade and Economic Development (hereinafter referred to as the DEPARTMENT), WITNESSES THAT:

WHEREAS, the DEPARTMENT has the statutory authority under RCW 43.330.050(5) to cooperate with and provide assistance to local governments and local agencies serving the communities of the state for the purpose of aiding orderly, productive, and coordinated development of the state; and

WHEREAS, the DEPARTMENT also has the responsibility to administer programs and projects assigned to the DEPARTMENT by the Governor or the Washington State Legislature; and

WHEREAS, the DEPARTMENT has the statutory responsibility under RCW 36.70A.190(1) to establish a program of financial assistance and incentives to counties, cities, and towns to encourage and facilitate the adoption and implementation of comprehensive plans and development regulations throughout the state; and

WHEREAS, the DEPARTMENT desires to engage the GRANTEE to perform certain tasks as hereinafter specified.

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1. FUNDING
The total funds to be disbursed to the GRANTEE, for the agreement period shall not exceed fifteen thousand seven hundred fifty dollars (\$15,750).
2. AGREEMENT PERIOD
The effective date of this AGREEMENT shall be July 1, 2001. The termination date shall be June 30, 2003.
3. SERVICE PROVISIONS
Funds provided to the GRANTEE under this AGREEMENT shall be used solely for activities undertaken to fulfill the mandates required by the Growth Management Act to implement the GRANTEE'S growth management strategy as described in ATTACHMENT: SCOPE OF WORK, which, by this reference, is made a part of this AGREEMENT.

4. DISBURSEMENT/REIMBURSEMENT PROVISIONS

The GRANTEE shall submit an invoice voucher (Form A-19) to the DEPARTMENT upon signing this AGREEMENT for an amount equal to no more than seven thousand eight hundred seventy-five dollars (\$7,875). On or after July 1, 2002, and upon completion of that portion of the scope of work to that date, the GRANTEE shall submit an invoice voucher to the DEPARTMENT for an amount equal to no more than five thousand five hundred twelve dollars (\$5,512). Upon completion of the entire scope of work, no earlier than July 1, 2002, and no later than the expiration of this AGREEMENT, the GRANTEE shall submit an invoice voucher to the DEPARTMENT for an amount equal to no more than two thousand three hundred sixty-two dollars (\$2,362). Any funds apportioned to be distributed by the terms of this AGREEMENT and not requested by the GRANTEE, or, if requested and not approved for distribution by the DEPARTMENT, shall be forfeited by the GRANTEE.

5. NONASSIGNABILITY

Neither this agreement, nor any claim arising under this agreement shall be transferred or assigned by the GRANTEE. PROVIDED that, in order to establish a review and evaluation program pursuant to RCW 36.70A.215, the GRANTEE may consult, coordinate, and contract with the cities and towns within the county serviced by this AGREEMENT and may contract for the personal services of consultants.

6. RECORDS AND DOCUMENTS

The GRANTEE shall maintain books, records, documents and other evidence of accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by law, rule, regulation, or contract. The GRANTEE will retain all books, records, documents, and other materials relevant to this AGREEMENT for six years from the date of final payment, and make them available for inspection by persons authorized under this provision.

7. RIGHT OF INSPECTION

The GRANTEE shall provide right of access to its facilities to the DEPARTMENT, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this AGREEMENT.

8. NONDISCRIMINATION

During the performance of this AGREEMENT, the GRANTEE shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act.

In the event of the GRANTEE noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this AGREEMENT may be rescinded,

canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further AGREEMENTS with the DEPARTMENT. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the DISPUTES procedure set forth here in.

9. GRANTEE NOT EMPLOYEE OF THE DEPARTMENT

The GRANTEE and his/her employees or agents performing under this AGREEMENT are not employees or agents of the DEPARTMENT. The GRANTEE will not hold himself/herself out as nor claim to be an office or employee of the DEPARTMENT or of the state of Washington by reason thereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW or Chapter 28B.16 RCW.

10. AGREEMENT AMENDMENTS

The DEPARTMENT and the GRANTEE may, from time to time, request changes to this AGREEMENT. Any such changes that are mutually agreed upon by the DEPARTMENT and the GRANTEE shall be incorporated herein by written amendment to this AGREEMENT. It is mutually agreed and understood that no alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, shall not be binding.

AGREEMENT amendments shall not be made which result in an extension of the CONTRACT period beyond June 30, 2002.

11. DISPUTES

Except as otherwise provided in this AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the GRANTEE and a third party mutually agreed by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

12. TERMINATION OF AGREEMENT

If, through any cause, the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this AGREEMENT, or if the GRANTEE shall violate any of its covenants, agreements or stipulations of this AGREEMENT, the DEPARTMENT shall thereupon have the right to terminate this AGREEMENT and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after written notice describing such default or violation is received by the GRANTEE's representative.

Notwithstanding any provisions of this AGREEMENT, either party may terminate this AGREEMENT by providing written notice of such termination, specifying the effective

date thereof, at least thirty (30) days prior to such date. Reimbursement for services performed by the GRANTEE, and not otherwise paid for by the DEPARTMENT prior to the effective date of such termination, shall be as the DEPARTMENT reasonably determines.

In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this AGREEMENT and prior to normal completion, the DEPARTMENT may unilaterally reduce the scope of work and budget or terminate this AGREEMENT.

15. SPECIAL PROVISION

The DEPARTMENT'S failure to insist upon the strict performance of any provision of this AGREEMENT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this AGREEMENT.

16. HOLD HARMLESS

It is understood and agreed that this AGREEMENT is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this AGREEMENT. Each party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other party harmless from any such liability. In the case of negligence of both the DEPARTMENT and the GRANTEE, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party.

This indemnification clause shall also apply to any and all causes of action arising out of the performance of work activities under this AGREEMENT by a consultant through a personal services contract with the GRANTEE as permitted by paragraph 7 herein. Each contract between the GRANTEE and such consultant for services or activities utilizing funds provided in whole or in part by this AGREEMENT shall include a provision that the DEPARTMENT and the state of Washington are not liable for damages or claims from damages arising from any such consultant's performance.

17. GOVERNING LAW AND VENUE

The AGREEMENT shall be construed and enforced in accordance with, and the laws of the State of Washington hereof shall govern the validity and performance. Venue of any suit between the parties arising out of this AGREEMENT shall be the superior court of Thurston County, Washington.

18. SEVERABILITY

In the event any term or condition of this AGREEMENT or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms,

conditions, and applications of this AGREEMENT which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this AGREEMENT are declared severable.

19. REDUCTION IN FUNDS

The DEPARTMENT may unilaterally terminate all or part of this AGREEMENT, or may reduce its scope of work or budget under this AGREEMENT, if there is a reduction of funds by the source of those funds, and if such funds are the basis for this AGREEMENT.

20. RECAPTURE OF FUNDS

In the event that the GRANTEE fails to expend state funds in accordance with state law or the provisions of this AGREEMENT, the DEPARTMENT reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance.

Such right of recapture shall exist for a period not to exceed six (6) years following termination of the AGREEMENT. Repayment by the GRANTEE of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its cost thereof, including reasonable attorney's fees.

21. ACKNOWLEDGEMENT OF STATE FUNDING

A. The GRANTEE shall provide all project-related press releases to the DEPARTMENT. Press releases shall identify the DEPARTMENT as a project financier.

B. Publication such as reports and pamphlets which are developed totally or in part with funds provided under this Agreement shall give credit to the funding source by including the following: "Funds made available through the Washington State Department of Community, Trade and Economic Development."

22. OWNERSHIP OF PROJECT MATERIALS

A. All finished or unfinished documents, data, studies, surveys, drawings, models, photographs, films, duplicating plates, computer disks and reports prepared by the GRANTEE under this Agreement shall be works for hire under U.S. copyright law. The DEPARTMENT may duplicate, use, and disclose in any manner and for any purpose whatsoever, all materials prepared under this Agreement.

B. The GRANTEE must have prior approval of the DEPARTMENT to produce patents, copyrights, patent rights, inventions, original books, manuals, films, or other patentable or copyrightable materials, in whole or in part with funds received under this Agreement. The DEPARTMENT reserves the right to determine whether protection of inventions of discover shall be disposed of and administered in order to protect the public interest. Before the GRANTEE copyrights any materials

produced with funds under this Agreement, the DEPARTMENT reserves the right to negotiate a reasonable royalty fee and agreement.

23. ENTIRE AGREEMENT

This AGREEMENT including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the parties within.

24. ADMINISTRATION

A. The DEPARTMENT'S representative shall be
Ike Nwankwo, (360) 725-3056

B. The GRANTEE'S representative shall be
Pat Iolavera, (253) 851-4278

IN WITNESS WHEREOF, the DEPARTMENT and the GRANTEE have executed this AGREEMENT as of the date and year written below:

DEPARTMENT OF COMMUNITY, TRADE
AND ECONOMIC DEVELOPMENT

CITY OF GIG HARBOR

By: _____
Steve Wells, Director
Local Government Division

By: _____
Title: _____

Date: _____

Date: _____

Federal Tax Identification Number

Approved as to Form

Melissa Burke-Cain
Assistant Attorney General

November 30, 2001
Date

**ATTACHMENT: SCOPE OF WORK
CITY OF GIG HARBOR
CONTRACT s02-63000-070**

The GRANTEE is responsible for the preparation of all contract deliverables set forth below. The process and product shall be substantially consistent with the GRANTEE's grant application submitted to the Department for this round of funding and with the requirements of the Growth Management Act. Deliverables will be provided to the Department in electronic format wherever possible. At the Department's or the GRANTEE's request, deliverables may be provided in paper format. All draft ordinances and resolutions developed by the GRANTEE in the completion of this AGREEMENT shall be submitted to the DEPARTMENT at least sixty day prior to adoption. All ordinances and resolutions adopted by the GRANTEE in the completion of this AGREEMENT shall be submitted to the DEPARTMENT per RCW 36.70A.106.

Project Description: Revise the City of Gig Harbor Municipal Code (GHMC) 18.08 -- Wetland Management Regulations to be incorporated as part of GHMC 18.12 -- Critical Areas, and review both for integration of best available science using the draft *Citations of the Best Available Science for Designating and Protecting Critical Areas; July 2001*. This effort will lead to more effective protection of environmentally sensitive resources and correct specific weakness identified in the current wetland regulations.

Milestones:

1. Research model wetland ordinances available from Washington Department of Ecology, as well as those from environmentally progressive jurisdictions with substantial natural science resources. Discuss with their respective staffs the perceived strengths and weaknesses.
2. Review model wetland ordinances for incorporation of best available science as outlined in the drafted *Citations* document
3. Review GHMC 18.12 -- Critical Areas, for integration of best available science, identify areas of weakness.
4. Conduct further research to identify Critical Area Ordinances (CAO) that may recently have been developed to better incorporate the science detailed in the *Citations* document.
5. Draft a new CAO that incorporates wetland regulations and which works well in concert with the draft Shorelines Master Program currently being written.
6. Begin public hearing process before Planning Commission and City Council.

Deliverables:

1. Draft of new Critical Areas Ordinance incorporating wetland regulations.

Resources:

Salaries / Benefits	Approximately \$15,000.00
Contracts	Consultant approximately \$20,000.00
Goods and Services	
Travel	
Other (explain)	
TOTAL	

Status Reports: Brief status report on or about March 15, 2002 indicating progress-to-date and describing how the FY 2002 work items will be completed by June 15, 2002; a report on or about January 15, 2003, only if the GRANTEE has not completed the project.

Close-out-Report: Brief report (500 words or less) describing project accomplishments when project as specified in the scope of work is completed but no later than June 1, 2003.

Activities to Date	Grant Money	Local Money	In-Kind	Total
Salaries and Benefits		\$1280.00		\$1280.00
Contracts				
Goods and Services				
Travel				
Total				



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: RECOMMENDATION FOR ART - GH CIVIC CENTER
DATE: JANUARY 7, 2001

INFORMATION/BACKGROUND

The Gig Harbor Arts Commission published a "Call For Artists" in August, 2001, requesting proposals for permanent art installations for the new Civic Center. Preference was given to artwork that paid homage to the heritage of Gig Harbor.

At the November meeting, Council approved three projects: Gary Jackson's stainless steel sculpture will mount over council chamber's entry doors; Doug Fillbach's etched glass, burnished steel and wood border will be used as the Community Development countertops; and Lavonne and George Hoivik's 6-foot (diameter) exterior bronze compass in relief will be placed in the center of the exterior plaza at the entrance of the Civic Center.

Attached are the contracts to allow for the construction and installation of these three projects.

FISCAL CONSIDERATION:

The total of all three projects is \$63,200, which has been included in the 2002 budget.

RECOMMENDATION:

Staff recommends that the City Council authorize the Mayor to sign the attached contracts for artwork by Gary Jackson, Doug Fillbach and the Hoiviks in the total amount of \$63,200, which includes installation and tax.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GARY JACKSON**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Gary Jackson, a sole proprietor organized under the laws of the State of Washington, located and doing business at 8450 Willock Road SE, Olalla, Washington 98359 (hereinafter the "Artist").

RECITALS

WHEREAS, the City desires that the Artist perform the services necessary to create and place a piece of artwork in the new City Civic Center campus; and

WHEREAS, the Artist agrees to perform the services more specifically described in the Scope of Services which is attached hereto as Exhibit A, and to provide the City with a piece of artwork as described therein; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

Section 1. Retention of Artist.

The City hereby retains the Artist to perform the work and services herein described, and the Artist agrees to provide a piece of artwork to the City, as described in Exhibits A and B. Exhibit A is a drawing and description of the proposed artwork to be provided to the City by the Artist under this Agreement. Exhibit B shall set forth the details relating to the payment schedule.

Section 2. Scope of Work.

A. The Artist shall provide the City with the artwork by performing all services and work on or before the deadlines established in this Agreement, for the design, fabrication, transportation and installation of the artwork at the City Civic Center site.

B. The Artist shall determine the artistic expression, scope, design, size, material, texture, color and location of the artwork within the guidelines set forth by the project's advisory panel, approved by the City and as described in Exhibit A.

C. A drawing and description of the proposed artwork is attached to this Agreement as Exhibit A.

D. The City may request revisions to the artwork for practical (non-aesthetic reasons) beyond the scope of the proposal. The City recognizes that additional fees may be charged for additional services provided by the Artist that are not included herein (or in any of the Exhibits).

Section 3. Execution of Work.

- A. The Artist shall install the artwork at the specific location designated by the City in Exhibit A.
- B. The Artist shall complete the fabrication and installation of the artwork in substantial conformity with Exhibit A.
- C. The Artist reserves the right to make minor changes to the artwork as deemed aesthetically and structurally necessary. The Artist shall present any significant changes, such as (1) changes in scope, design, color, size, material or texture of the artwork; (2) change of location on the site; or (3) changes in preparation or maintenance of the artwork, to the City for review and approval. Any revisions submitted by the Artist and approved in writing by the City shall, be incorporated in this Agreement.
- D. Any revisions proposed by the City or decisions rendered by the City affecting the site or artwork shall be promptly submitted to the Artist for review.
- E. The Artist shall install the completed artwork at the Gig Harbor Civil Center construction site located adjacent to Grandview Forest Park on Grandview Avenue, Gig Harbor Washington.
- F. The Artist shall, as part of the Artwork, fabricate and install an identification plaque including the Artist's name(s), title of artwork and date of acquisition. The City shall be consulted and shall approve any additional information on the identification plaque. The City may request that the Artist prepare and present to the City a drawing of the identification plaque before it is installed. All costs associated with the identification plaque as set forth in this paragraph shall be included in the amount to be paid to the Artist under this Agreement.

Section 4. Time Schedule.

- A. The Artist shall commence work on the artwork on the date of execution of this Agreement by both parties, and shall complete the Artwork, including all phases on or before June 30, 2002.
- B. It shall be the responsibility of the Artist to contact the City during all phases of the work and make any necessary arrangements pertaining to this Agreement, such as transportation, etc.
- C. In the event that the Artwork is completed in advance of the time provided in the schedule for installation, the Artist shall notify the City and request permission for early installation. The City may or may not agree to early installation, depending upon the construction schedule of the Civic Center. If the City does not allow early installation, the Artist shall bear all costs relating to storage, transportation to any storage site, and insurance for the Artwork until installation.
- D. In the event that the City requests that the Artist delay installation of the Artwork, the City shall pay any additional costs incurred by the Artist relating to storage, transportation and insurance.

Section 5. Review of Work in Progress.

The City or its representatives shall have the right, at reasonable times, to view the Artwork during the fabrication and installation. The Artist shall submit written progress reports (if requested by the City) to the City, so that the City can determine the completion of the phases of the Artwork, as set out in Section 7, Payment.

Section 6. Delivery and Installation.

A. The Artist shall notify the City when fabrication of the Artwork is completed and is ready for delivery and installation by the Artist at the Civic Center site.

B. The Artist shall deliver and install the completed Artwork at the Civic Center site on or before May 31, 2002.

Section 7. Payment.

A. The City shall pay the Artist eighteen thousand seven hundred dollars (\$18,700) for completed work and/or services related to this Agreement and the Artwork, only as provided hereunder. Such payment shall be full compensation for the Artwork, including all work and services described in this Agreement, and any Exhibits attached hereto. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. This amount includes all applicable sales/use tax, and all other costs contemplated in this Agreement, such as transportation, insurance, etc.

B. The City shall make progress payments to the Artist, after verification of completion of each of the phases of the work, as set forth in Exhibit B. In order to receive payment, the Artist shall notify the City of the completion of a particular phase through the submission of an invoice. The City shall determine whether a particular phase is complete, and if it is complete, the City shall pay the invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Artist of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Final payment will be made after the City determines that the Artwork is complete, and following a 30-day lien period, which shall begin on the date of substantial completion of installation of the entire Artwork in the designated location. In order to obtain final payment, the Artist shall provide the City with the Artist's resume, an artist specification sheet, technical description of the Artwork, and the Artist's maintenance recommendations for the Artwork, together with any other documents required under chapter 60.28 RCW.

D. The Artist shall be responsible to pay all fees, materials, supplies, equipment, labor of assistants, communications between the Artist and the City, studio space, travel, sustenance,

transportation, storage, rentals and installation necessary to fulfill the requirements of this Agreement.

Section 9. Warranty as Original, Prohibitions on Copies of Artwork.

The Artist acknowledges that the City has commissioned the Artwork for the purpose of installing an original piece of art in the City's Civic Center. The Artist warrants that the Artwork is solely the result of the artistic effort of the Artist, is unique and original, has not been accepted for sale elsewhere, is free and clear of any liens from any source, and does not infringe upon any copyright. The Artist further warrants that neither the Artist nor any person working under the direction and control of the Artist shall duplicate or copy the Artwork, or offer copies of the Artwork for sale to any other person or entity.

Section 10. Relationship of Parties.

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Artist is customarily engaged in an independently established trade or profession that encompasses the specific service or artwork provided to the City hereunder, no agent, employee, representative or sub-consultant of the Artist shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Artist is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Artist. The Artist will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors and artists to perform the same or similar work that the Artist performs hereunder.

Section 11. Assignment, Transfer, Subcontracting.

A. Neither the City nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other party.

B. The Artist may subcontract portions of the Artwork at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Artwork and that such work is carried out under the personal supervision of the Artist.

Section 12. Termination

A. Termination of Agreement. The City may terminate this Agreement with or without cause at any time prior to the completion of the work described herein. Termination shall be effective immediately upon the Artist's receipt of the City's written notice or on such date stated in the City's notice, whichever is later. Such notice shall be delivered to the Artist in person or by certified mail.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Artist to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount set forth in Section 7 above. After termination, the City may take possession of the Artwork and all supplies and materials in the Artist's possession which were paid for by the City pursuant to this Agreement. Upon termination, the City may hire another Artist to take over the work and prosecute the same to completion, by contract or otherwise.

Section 13. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Artist, its sub-contractors, or any person acting on behalf of such Artist or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

Section 14. Indemnification.

The Artist shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Artist's work when completed shall not be grounds to avoid any of these covenants of indemnification. In addition, the Artist shall indemnify and defend the City in any suit or claims for infringements of copyrights and patents rights, and shall hold the City harmless from loss on account thereof.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE ARTIST'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE ARTIST'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE ARTIST'S EMPLOYEES DIRECTLY AGAINST THE ARTIST.

The provisions of this section shall survive the expiration or termination of this Agreement.

Section 14. Artist's Warranties.

The Artist warrants that the installed Artwork shall be as depicted in Exhibit A herein, and that the Artwork will be free from defects or other faults in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork. The Artist further warrants that reasonable maintenance of the Artwork will not require

procedures substantially in excess of those described in the maintenance recommendations provided by the Artist to the City.

If either party recognizes faults or defects in the Artwork, it shall be brought to the immediate attention of the Artist. The Artist shall be responsible to correct any defects or faults in the Artwork that are brought to the Artist's attention within the warranty period of one (1) year after the date of installation at the Civic Center site and final payment. This warranty shall apply only to the Artwork or the portion of the Artwork completed and installed by the Artist.

If any defects or faults appear during the warranty period, the Artist shall repair or replace the defects(s) at the Artist's sole cost and expense. The Artist shall not be responsible for any damage to the Artwork which is caused by the City, third parties or acts of God.

Section 15. Ownership of the Artwork.

All ownership, rights, title and interest in the Artwork shall pass to the City upon the City's final payment to the Artist, or upon termination, as set forth herein. All drawings, specifications and models of the Artwork, including all preliminary studies, shall be the property of the City following the City's final payment or termination, as set forth herein.

Section 16. Repairs and Maintenance.

A. The City recognizes that regular maintenance of the Artwork is essential to the integrity of the Artwork. The City shall reasonably assure that the Artwork is properly maintained and protected, taking into account the written instructions and recommendations of the Artist, and shall reasonably protect and maintain the Artwork against deterioration with time and abuse of vandals.

B. The City shall be responsible for making all necessary repairs or restoration of the Artwork, except as provided under the Artist's Warranty herein. However, the City's responsibility for repairs and restoration of the Artwork is, by law, contingent upon receipt of adequate appropriations for this purpose.

C. Where possible, the Artist shall be consulted as to his/her recommendations regarding repairs and restorations of the Artwork, during the lifetime of the Artist. To the extent practical and in accordance with accepted principles of conservation, the Artist may be given the opportunity to accomplish repairs and restorations and shall be paid a reasonable fee for such services, if utilized.

Section 17. Insurance

A. The Artist shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or sub-contractors, and including damage to the Artwork until the date the City accepts (in writing) the installed Artwork at the Civic Center site. The responsibility for and risk of

damage to or loss of the Artwork during fabrication, transportation, and installation up to the date of the City's written acceptance shall be solely that of the Artist.

B. Before beginning work on the Artwork described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of insurance coverage to satisfy the requirements of this Agreement.

C. The Artist is responsible for the payment of any deductible or self-insured retention that is required by any of the Artist's insurance. If the City is required to contribute to the deductible under any of the Artist's insurance policies, the Artist shall immediately reimburse the City the full amount of the deductible.

D. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.

E. It is the intent of this Agreement for the Artist's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City.

F. The Artist shall request from his/her insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Artist's coverage.

Section 18. City's Right of Inspection

Even though the Artist is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Artist agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Artist's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

Section 19. Work Performed at the Artist's Risk

The Artist shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Artist's own risk, and the Artist shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Artist for use in connection with the work.

Section 20. Non-Waiver of Breach

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

Section 21. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Finance Director and the City shall determine the term or provision's true intent or meaning. The City Finance Director shall also decide all questions that may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Artist under any of the provisions of this Agreement that cannot be resolved by the City Finance Director's determination in a reasonable time, or if the Artist does not agree with the City's decision on the disputed matter, then appeal of this determination shall be made to the City Administrator. If the dispute is not resolved after appeal to the City Administrator, then jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

Section 22. Written Notice

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

ARTIST

Gary Jackson
8450 Willock Rd. SE
Olalla, Washington 98539-9607
(253) 857-7003

CITY OF GIG HARBOR

David Rodenbach
Finance Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8136

Section 23. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Artist.

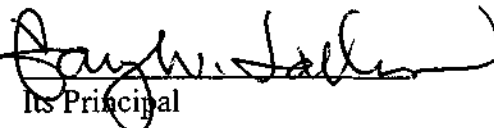
Section 24. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

Section 25. Severability.

If any provision of this Agreement or any provision of the Exhibits to this Agreement are found by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision. To this end, the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2002.

ARTIST
By:  Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:

ARTIST
Gary Jackson
8450 Willock Rd. SE
Olalla, Washington 98539-9607
(253) 857-7003

CITY OF GIG HARBOR
David Rodenbach
Finance Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8136

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: 1-9-02



Molly M Towslee

Molly M. Towslee
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Gig Harbor
My Commission expires: 12/2/03

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

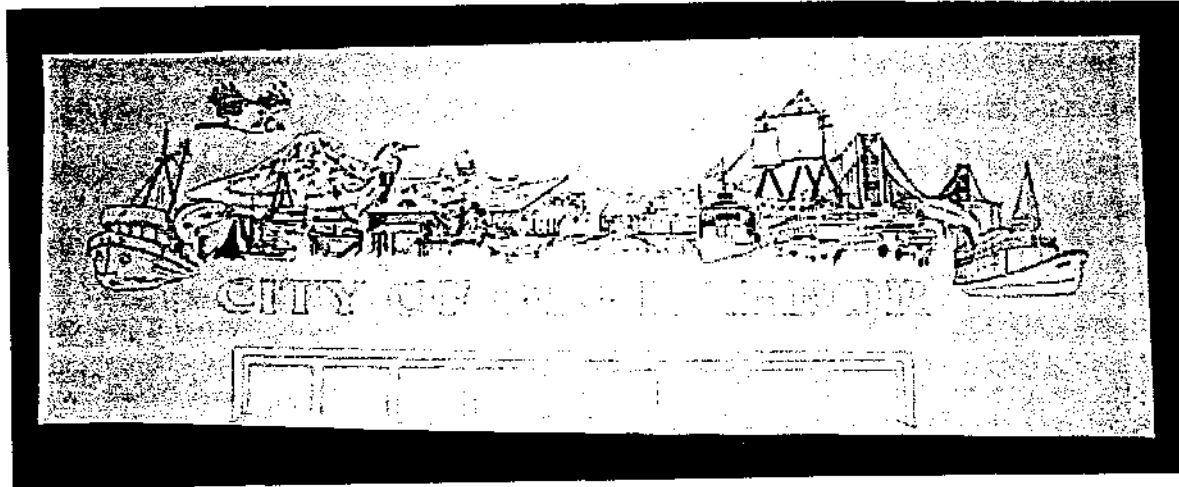
Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit 'A'

Scope of Services



Gary Jackson's stainless steel sculpture will mount over council chamber's entry doors and combines a variety of recognizable features that represent Gig Harbor's historic landmarks, industry and architecture. The use of stainless steel is consistent with the architect's proposed interior materials. Fee: \$ 18,700 (includes sales tax.)

Exhibit B

Payment Schedule

Payments will be made upon a percentage of completion basis as set forth below:

- (1) Payment of \$4,768.73 upon completion of final design
- (2) Payment of \$3,814.99 upon completion of 50% fabrication
- (3) Payment of \$3,814.99 upon completion of fabrication
- (4) Payment of \$5,436.35 upon installation of Artwork at the site
- (5) Payment of 5% \$864.94 **upon completion of 30-day lien** period following completion of the project and receipt of the requirements in Section 7, paragraph C.

The total payment for the Artwork shall be an amount not to exceed seventeen thousand two hundred ninety eight dollars and seventy-nine cents (\$17,298.79) plus sales/use tax of one thousand four hundred one dollars and twenty-one cents (\$1,401.21) for a total payment of eighteen thousand seven hundred dollars (\$18,700).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
DOUG FILLBACH**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Doug Fillbach, a sole proprietor organized under the laws of the State of Washington, located and doing business at 125 Raft Island Drive West, Gig Harbor, Washington 98335 (hereinafter the "Artist").

RECITALS

WHEREAS, the City desires that the Artist perform the services necessary to create and place a piece of artwork in the new City Civic Center campus; and

WHEREAS, the Artist agrees to perform the services more specifically described in the Scope of Services which is attached hereto as Exhibit A, and to provide the City with a piece of artwork as described therein; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

Section 1. Retention of Artist.

The City hereby retains the Artist to perform the work and services herein described, and the Artist agrees to provide a piece of artwork to the City, as described in Exhibits A and B. Exhibit A is a drawing and description of the proposed artwork to be provided to the City by the Artist under this Agreement. Exhibit B shall set forth the details relating to the payment schedule.

Section 2. Scope of Work.

A. The Artist shall provide the City with the artwork by performing all services and work on or before the deadlines established in this Agreement, for the design, fabrication, transportation and installation of the artwork at the City Civic Center site.

B. The Artist shall determine the artistic expression, scope, design, size, material, texture, color and location of the artwork within the guidelines set forth by the project's advisory panel, approved by the City and as described in Exhibit A.

C. A drawing and description of the proposed artwork is attached to this Agreement as Exhibit A.

D. The City may request revisions to the artwork for practical (non-aesthetic reasons) beyond the scope of the proposal. The City recognizes that additional fees may be charged for additional services provided by the Artist that are not included herein (or in any of the Exhibits).

Section 3. Execution of Work.

- A. The Artist shall install the artwork at the specific location designated by the City in Exhibit A.
- B. The Artist shall complete the fabrication and installation of the artwork in substantial conformity with Exhibit A.
- C. The Artist reserves the right to make minor changes to the artwork as deemed aesthetically and structurally necessary. The Artist shall present any significant changes, such as (1) changes in scope, design, color, size, material or texture of the artwork; (2) change of location on the site; or (3) changes in preparation or maintenance of the artwork, to the City for review and approval. Any revisions submitted by the Artist and approved in writing by the City shall, be incorporated in this Agreement.
- D. Any revisions proposed by the City or decisions rendered by the City affecting the site or artwork shall be promptly submitted to the Artist for review.
- E. The Artist shall install the completed artwork at the Gig Harbor Civil Center construction site located adjacent to Grandview Forest Park on Grandview Avenue, Gig Harbor Washington.
- F. The Artist shall, as part of the Artwork, fabricate and install an identification plaque including the Artist's name(s), title of artwork and date of acquisition. The City shall be consulted and shall approve any additional information on the identification plaque. The City may request that the Artist prepare and present to the City a drawing of the identification plaque before it is installed. All costs associated with the identification plaque as set forth in this paragraph shall be included in the amount to be paid to the Artist under this Agreement.

Section 4. Time Schedule.

- A. The Artist shall commence work on the artwork on the date of execution of this Agreement by both parties, and shall complete the Artwork, including all phases on or before May 31, 2002.
- B. It shall be the responsibility of the Artist to contact the City during all phases of the work and make any necessary arrangements pertaining to this Agreement, such as transportation, etc.
- C. In the event that the Artwork is completed in advance of the time provided in the schedule for installation, the Artist shall notify the City and request permission for early installation. The City may or may not agree to early installation, depending upon the construction schedule of the Civic Center. If the City does not allow early installation, the Artist shall bear all costs relating to storage, transportation to any storage site, and insurance for the Artwork until installation.
- D. In the event that the City requests that the Artist delay installation of the Artwork, the City shall pay any additional costs incurred by the Artist relating to storage, transportation and insurance.

Section 5. Review of Work in Progress.

The City or its representatives shall have the right, at reasonable times, to view the Artwork during the fabrication and installation. The Artist shall submit written progress reports (if requested by the City) to the City, so that the City can determine the completion of the phases of the Artwork, as set out in Section 7, Payment.

Section 6. Delivery and Installation.

A. The Artist shall notify the City when fabrication of the Artwork is completed and is ready for delivery and installation by the Artist at the Civic Center site.

B. The Artist shall deliver and install the completed Artwork at the Civic Center site on or before May 31, 2002.

Section 7. Payment.

A. The City shall pay the Artist twenty five thousand dollars (\$25,000) for completed work and/or services related to this Agreement and the Artwork, only as provided hereunder. Such payment shall be full compensation for the Artwork, including all work and services described in this Agreement, and any Exhibits attached hereto. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. This amount includes all applicable sales/use tax, and all other costs contemplated in this Agreement, such as transportation, insurance, etc.

B. The City shall make progress payments to the Artist, after verification of completion of each of the phases of the work, as set forth in Exhibit B. In order to receive payment, the Artist shall notify the City of the completion of a particular phase through the submission of an invoice. The City shall determine whether a particular phase is complete, and if it is complete, the City shall pay the invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Artist of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Final payment will be made after the City determines that the Artwork is complete, and following a 30-day lien period, which shall begin on the date of substantial completion of installation of the entire Artwork in the designated location. In order to obtain final payment, the Artist shall provide the City with the Artist's resume, an artist specification sheet, technical description of the Artwork, and the Artist's maintenance recommendations for the Artwork, together with any other documents required under chapter 60.28 RCW.

D. The Artist shall be responsible to pay all fees, materials, supplies, equipment, labor of assistants, communications between the Artist and the City, studio space, travel, sustenance, transportation, storage, rentals and installation necessary to fulfill the requirements of this Agreement.

Section 9. Warranty as Original, Prohibitions on Copies of Artwork.

The Artist acknowledges that the City has commissioned the Artwork for the purpose of installing an original piece of art in the City's Civic Center. The Artist warrants that the Artwork is solely the result of the artistic effort of the Artist, is unique and original, has not been accepted for sale elsewhere, is free and clear of any liens from any source, and does not infringe upon any copyright. The Artist further warrants that neither the Artist nor any person working under the direction and control of the Artist shall duplicate or copy the Artwork, or offer copies of the Artwork for sale to any other person or entity.

Section 10. Relationship of Parties.

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Artist is customarily engaged in an independently established trade or profession that encompasses the specific service or artwork provided to the City hereunder, no agent, employee, representative or sub-consultant of the Artist shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Artist is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Artist. The Artist will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors and artists to perform the same or similar work that the Artist performs hereunder.

Section 11. Assignment, Transfer, Subcontracting.

A. Neither the City nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other party.

B. The Artist may subcontract portions of the Artwork at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Artwork and that such work is carried out under the personal supervision of the Artist.

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A. Termination of Agreement. The City may terminate this Agreement with or without cause at any time prior to the completion of the work described herein. Termination shall be effective immediately upon the Artist's receipt of the City's written notice or on such date stated in the City's notice, whichever is later. Such notice shall be delivered to the Artist in person or by certified mail.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Artist to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount set forth in Section 7 above. After termination, the City may take possession of the Artwork and all supplies and materials in the Artist's possession which were paid for by the City pursuant to this Agreement. Upon termination, the City may hire another Artist to take over the work and prosecute the same to completion, by contract or otherwise.

Section 13. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Artist, its sub-contractors, or any person acting on behalf of such Artist or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

Section 14. Indemnification.

The Artist shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Artist's work when completed shall not be grounds to avoid any of these covenants of indemnification. In addition, the Artist shall indemnify and defend the City in any suit or claims for infringements of copyrights and patents rights, and shall hold the City harmless from loss on account thereof.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE ARTIST'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE ARTIST'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE ARTIST'S EMPLOYEES DIRECTLY AGAINST THE ARTIST.

The provisions of this section shall survive the expiration or termination of this Agreement.

Section 14. Artist's Warranties.

The Artist warrants that the installed Artwork shall be as depicted in Exhibit A herein, and that the Artwork will be free from defects or other faults in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork. The Artist further warrants that reasonable maintenance of the Artwork will not require

procedures substantially in excess of those described in the maintenance recommendations provided by the Artist to the City.

If either party recognizes faults or defects in the Artwork, it shall be brought to the immediate attention of the Artist. The Artist shall be responsible to correct any defects or faults in the Artwork that are brought to the Artist's attention within the warranty period of one (1) year after the date of installation at the Civic Center site and final payment. This warranty shall apply only to the Artwork or the portion of the Artwork completed and installed by the Artist.

If any defects or faults appear during the warranty period, the Artist shall repair or replace the defects(s) at the Artist's sole cost and expense. The Artist shall not be responsible for any damage to the Artwork which is caused by the City, third parties or acts of God.

Section 15. Ownership of the Artwork.

All ownership, rights, title and interest in the Artwork shall pass to the City upon the City's final payment to the Artist, or upon termination, as set forth herein. All drawings, specifications and models of the Artwork, including all preliminary studies, shall be the property of the City following the City's final payment or termination, as set forth herein.

Section 16. Repairs and Maintenance.

A. The City recognizes that regular maintenance of the Artwork is essential to the integrity of the Artwork. The City shall reasonably assure that the Artwork is properly maintained and protected, taking into account the written instructions and recommendations of the Artist, and shall reasonably protect and maintain the Artwork against deterioration with time and abuse of vandals.

B. The City shall be responsible for making all necessary repairs or restoration of the Artwork, except as provided under the Artist's Warranty herein. However, the City's responsibility for repairs and restoration of the Artwork is, by law, contingent upon receipt of adequate appropriations for this purpose.

C. Where possible, the Artist shall be consulted as to his/her recommendations regarding repairs and restorations of the Artwork, during the lifetime of the Artist. To the extent practical and in accordance with accepted principles of conservation, the Artist may be given the opportunity to accomplish repairs and restorations and shall be paid a reasonable fee for such services, if utilized.

Section 17. Insurance

A. The Artist shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or sub-contractors, and including damage to the Artwork until the date the City accepts (in writing) the installed Artwork at the Civic Center site. The responsibility for and risk of

damage to or loss of the Artwork during fabrication, transportation, and installation up to the date of the City's written acceptance shall be solely that of the Artist.

B. Other tradespersons, vendors and visitors to the Gig Harbor Civic Center job site are responsible and liable for any damage to the artwork they cause until the time the City of Gig Harbor takes ownership of described artwork and final payment is received by the artist.

C. Before beginning work on the Artwork described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of insurance coverage to satisfy the requirements of this Agreement.

D. The Artist is responsible for the payment of any deductible or self-insured retention that is required by any of the Artist's insurance. If the City is required to contribute to the deductible under any of the Artist's insurance policies, the Artist shall immediately reimburse the City the full amount of the deductible.

E. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.

F. It is the intent of this Agreement for the Artist's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City.

G. The Artist shall request from his/her insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Artist's coverage.

Section 18. City's Right of Inspection

Even though the Artist is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Artist agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Artist's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

Section 19. Work Performed at the Artist's Risk

The Artist shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Artist's own risk, and the Artist shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Artist for use in connection with the work.

Section 20. Non-Waiver of Breach

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

Section 21. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Finance Director and the City shall determine the term or provision's true intent or meaning. The City Finance Director shall also decide all questions that may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Artist under any of the provisions of this Agreement that cannot be resolved by the City Finance Director's determination in a reasonable time, or if the Artist does not agree with the City's decision on the disputed matter, then appeal of this determination shall be made to the City Administrator. If the dispute is not resolved after appeal to the City Administrator, then jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

Section 22. Written Notice

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

ARTIST
Doug Fillbach
125 Raft Island West
Gig Harbor, Washington 98335
(253) 265-2575

CITY OF GIG HARBOR
David Rodenbach
Finance Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8136

Section 23. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Artist.

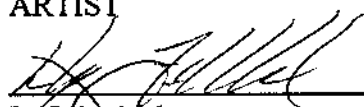
Section 24. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

Section 25. Severability.

If any provision of this Agreement or any provision of the Exhibits to this Agreement are found by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision. To this end, the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2002.

ARTIST
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:

ARTIST
Doug Fillbach
125 Raft Island West
Gig Harbor, Washington 98335
(253) 265-2575

CITY OF GIG HARBOR
David Rodenbach
Finance Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8136

APPROVED AS TO FORM:

ATTEST:

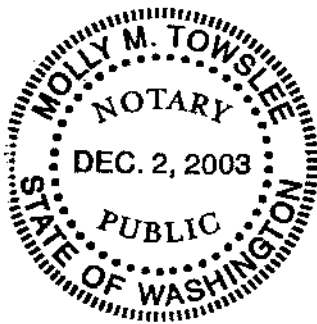
City Attorney

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: 1/10/02



Molly M Towslee

Molly M Towslee

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Gig Harbor
My Commission expires: 12/2/03

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: _____

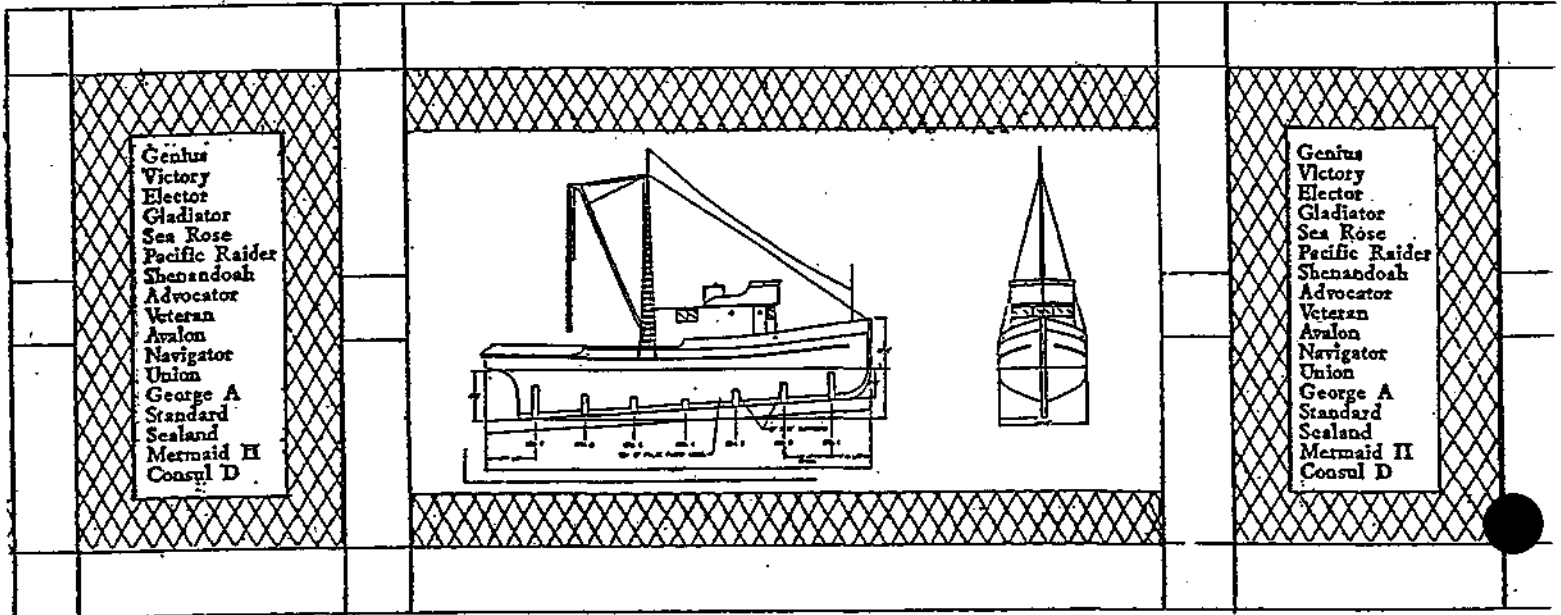
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit 'A'

Scope of Services



Doug Fillbach's etched glass, burnished steel and wood border was designed for the Planning and Public Works Department's countertops. Consistent with the function of that department, his design integrates boat-building plan profiles of commercial fishing boats and pleasure craft. It also incorporates the names of fishing vessels from Gig Harbor's fleet from the past and present. Fee: \$25,000 (includes sales tax.)

Exhibit B

Payment Schedule

Payments will be made upon a percentage of completion basis as set forth below:

- (1) Payment of \$5,960.14 upon completion of final design
- (2) Payment of \$5,960.14 upon completion of 50% fabrication
- (3) Payment of \$5,960.14 upon completion of fabrication
- (4) Payment of \$5,963.23 upon installation of Artwork at the site
- (5) Payment of 5% \$1,156.35 **upon completion of 30-day lien period** following completion of the project and receipt of the requirements in Section 7, paragraph C.

The total payment for the Artwork shall be an amount not to exceed twenty three thousand one hundred twenty six dollars and seventy-three cents (\$23,126.73) plus sales/use tax of one thousand eight hundred seventy three dollars and twenty-seven cents (\$1,873.27) for a total payment of twenty five thousand dollars (\$25,000).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
LAVONNE HOIVIK**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and Lavonne Hoivik, a sole proprietor organized under the laws of the State of Washington, located and doing business at 3402 North Union Avenue, Tacoma, Washington 98407 (hereinafter the "Artist").

RECITALS

WHEREAS, the City desires that the Artist perform the services necessary to create and place a piece of artwork in the new City Civic Center campus; and

WHEREAS, the Artist agrees to perform the services more specifically described in the Scope of Services which is attached hereto as Exhibit A, and to provide the City with a piece of artwork as described therein; and

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

Section 1. Retention of Artist.

The City hereby retains the Artist to perform the work and services herein described, and the Artist agrees to provide a piece of artwork to the City, as described in Exhibits A and B. Exhibit A is a drawing and description of the proposed artwork to be provided to the City by the Artist under this Agreement. Exhibit B shall set forth the details relating to the payment schedule.

Section 2. Scope of Work.

A. The Artist shall provide the City with the artwork by performing all services and work on or before the deadlines established in this Agreement, for the design, fabrication, transportation and installation of the artwork at the City Civic Center site.

B. The Artist shall determine the artistic expression, scope, design, size, material, texture, color and location of the artwork within the guidelines set forth by the project's advisory panel, approved by the City and as described in Exhibit A.

C. A drawing and description of the proposed artwork is attached to this Agreement as Exhibit A.

D. The City may request revisions to the artwork for practical (non-aesthetic reasons) beyond the scope of the proposal. The City recognizes that additional fees may be charged for additional services provided by the Artist that are not included herein (or in any of the Exhibits).

Section 3. Execution of Work.

- A. The Artist shall install the artwork at the specific location designated by the City in Exhibit A.
- B. The Artist shall complete the fabrication and installation of the artwork in substantial conformity with Exhibit A.
- C. The Artist reserves the right to make minor changes to the artwork as deemed aesthetically and structurally necessary. The Artist shall present any significant changes, such as (1) changes in scope, design, color, size, material or texture of the artwork; (2) change of location on the site; or (3) changes in preparation or maintenance of the artwork, to the City for review and approval. Any revisions submitted by the Artist and approved in writing by the City shall, be incorporated in this Agreement.
- D. Any revisions proposed by the City or decisions rendered by the City affecting the site or artwork shall be promptly submitted to the Artist for review.
- E. The Artist shall install the completed artwork at the Gig Harbor Civil Center construction site located adjacent to Grandview Forest Park on Grandview Avenue, Gig Harbor Washington.
- F. The Artist shall, as part of the Artwork, fabricate and install an identification plaque including the Artist's name(s), title of artwork and date of acquisition. The City shall be consulted and shall approve any additional information on the identification plaque. The City may request that the Artist prepare and present to the City a drawing of the identification plaque before it is installed. All costs associated with the identification plaque as set forth in this paragraph shall be included in the amount to be paid to the Artist under this Agreement.

Section 4. Time Schedule.

- A. The Artist shall commence work on the artwork on the date of execution of this Agreement by both parties, and shall complete the Artwork, including all phases on or before May 31, 2002.
- B. It shall be the responsibility of the Artist to contact the City during all phases of the work and make any necessary arrangements pertaining to this Agreement, such as transportation, etc.
- C. In the event that the Artwork is completed in advance of the time provided in the schedule for installation, the Artist shall notify the City and request permission for early installation. The City may or may not agree to early installation, depending upon the construction schedule of the Civic Center. If the City does not allow early installation, the Artist shall bear all costs relating to storage, transportation to any storage site, and insurance for the Artwork until installation.
- D. In the event that the City requests that the Artist delay installation of the Artwork, the City shall pay any additional costs incurred by the Artist relating to storage, transportation and insurance.

Section 5. Review of Work in Progress.

The City or its representatives shall have the right, at reasonable times, to view the Artwork during the fabrication and installation. The Artist shall submit written progress reports (if requested by the City) to the City, so that the City can determine the completion of the phases of the Artwork, as set out in Section 7, Payment.

Section 6. Delivery and Installation.

A. The Artist shall notify the City when fabrication of the Artwork is completed and is ready for delivery and installation by the Artist at the Civic Center site.

B. The Artist shall deliver and install the completed Artwork at the Civic Center site on or before May 31, 2002.

Section 7. Payment.

A. The City shall pay the Artist nineteen thousand five hundred dollars (\$19,500) for completed work and/or services related to this Agreement and the Artwork, only as provided hereunder. Such payment shall be full compensation for the Artwork, including all work and services described in this Agreement, and any Exhibits attached hereto. This is the maximum amount to be paid under this Agreement, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. This amount includes all applicable sales/use tax, and all other costs contemplated in this Agreement, such as transportation, insurance, etc.

B. The City shall make progress payments to the Artist, after verification of completion of each of the phases of the work, as set forth in Exhibit B. In order to receive payment, the Artist shall notify the City of the completion of a particular phase through the submission of an invoice. The City shall determine whether a particular phase is complete, and if it is complete, the City shall pay the invoice within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Artist of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

C. Final payment will be made after the City determines that the Artwork is complete, and following a 30-day lien period, which shall begin on the date of substantial completion of installation of the entire Artwork in the designated location. In order to obtain final payment, the Artist shall provide the City with the Artist's resume, an artist specification sheet, technical description of the Artwork, and the Artist's maintenance recommendations for the Artwork, together with any other documents required under chapter 60.28 RCW.

D. The Artist shall be responsible to pay all fees, materials, supplies, equipment, labor of assistants, communications between the Artist and the City, studio space, travel, sustenance,

transportation, storage, rentals and installation necessary to fulfill the requirements of this Agreement.

Section 9. Warranty as Original, Prohibitions on Copies of Artwork.

The Artist acknowledges that the City has commissioned the Artwork for the purpose of installing an original piece of art in the City's Civic Center. The Artist warrants that the Artwork is solely the result of the artistic effort of the Artist, is unique and original, has not been accepted for sale elsewhere, is free and clear of any liens from any source, and does not infringe upon any copyright. The Artist further warrants that neither the Artist nor any person working under the direction and control of the Artist shall duplicate or copy the Artwork, or offer copies of the Artwork for sale to any other person or entity.

Section 10. Relationship of Parties.

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Artist is customarily engaged in an independently established trade or profession that encompasses the specific service or artwork provided to the City hereunder, no agent, employee, representative or sub-consultant of the Artist shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Artist is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Artist. The Artist will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors and artists to perform the same or similar work that the Artist performs hereunder.

Section 11. Assignment, Transfer, Subcontracting.

A. Neither the City nor the Artist shall assign or transfer an interest in this Agreement without the prior written consent of the other party.

B. The Artist may subcontract portions of the Artwork at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Artwork and that such work is carried out under the personal supervision of the Artist.

Section 12. Termination

A. Termination of Agreement. The City may terminate this Agreement with or without cause at any time prior to the completion of the work described herein. Termination shall be effective immediately upon the Artist's receipt of the City's written notice or on such date stated in the City's notice, whichever is later. Such notice shall be delivered to the Artist in person or by certified mail.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Artist to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount set forth in Section 7 above. After termination, the City may take possession of the Artwork and all supplies and materials in the Artist's possession which were paid for by the City pursuant to this Agreement. Upon termination, the City may hire another Artist to take over the work and prosecute the same to completion, by contract or otherwise.

Section 13. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Artist, its sub-contractors, or any person acting on behalf of such Artist or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

Section 14. Indemnification.

The Artist shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Artist's work when completed shall not be grounds to avoid any of these covenants of indemnification. In addition, the Artist shall indemnify and defend the City in any suit or claims for infringements of copyrights and patents rights, and shall hold the City harmless from loss on account thereof.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE ARTIST'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE ARTIST'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE ARTIST'S EMPLOYEES DIRECTLY AGAINST THE ARTIST.

The provisions of this section shall survive the expiration or termination of this Agreement.

Section 14. Artist's Warranties.

The Artist warrants that the installed Artwork shall be as depicted in Exhibit A herein, and that the Artwork will be free from defects or other faults in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork. The Artist further warrants that reasonable maintenance of the Artwork will not require

procedures substantially in excess of those described in the maintenance recommendations provided by the Artist to the City.

If either party recognizes faults or defects in the Artwork, it shall be brought to the immediate attention of the Artist. The Artist shall be responsible to correct any defects or faults in the Artwork that are brought to the Artist's attention within the warranty period of one (1) year after the date of installation at the Civic Center site and final payment. This warranty shall apply only to the Artwork or the portion of the Artwork completed and installed by the Artist.

If any defects or faults appear during the warranty period, the Artist shall repair or replace the defects(s) at the Artist's sole cost and expense. The Artist shall not be responsible for any damage to the Artwork which is caused by the City, third parties or acts of God.

Section 15. Ownership of the Artwork.

All ownership, rights, title and interest in the Artwork shall pass to the City upon the City's final payment to the Artist, or upon termination, as set forth herein. All drawings, specifications and models of the Artwork, including all preliminary studies, shall be the property of the City following the City's final payment or termination, as set forth herein.

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B. The City shall be responsible for making all necessary repairs or restoration of the Artwork, except as provided under the Artist's Warranty herein. However, the City's responsibility for repairs and restoration of the Artwork is, by law, contingent upon receipt of adequate appropriations for this purpose.

C. Where possible, the Artist shall be consulted as to his/her recommendations regarding repairs and restorations of the Artwork, during the lifetime of the Artist. To the extent practical and in accordance with accepted principles of conservation, the Artist may be given the opportunity to accomplish repairs and restorations and shall be paid a reasonable fee for such services, if utilized.

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A. The Artist shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Artist's own work including the work of the Artist's agents, representatives, employees, sub-consultants or sub-contractors, and including damage to the Artwork until the date the City accepts (in writing) the installed Artwork at the Civic Center site. The responsibility for and risk of

damage to or loss of the Artwork during fabrication, transportation, and installation up to the date of the City's written acceptance shall be solely that of the Artist.

B. Before beginning work on the Artwork described in this Agreement, the Artist shall provide evidence, in the form of a Certificate of Insurance, of insurance coverage to satisfy the requirements of this Agreement.

C. The Artist is responsible for the payment of any deductible or self-insured retention that is required by any of the Artist's insurance. If the City is required to contribute to the deductible under any of the Artist's insurance policies, the Artist shall immediately reimburse the City the full amount of the deductible.

D. The City reserves the right to receive a certified and complete copy of all of the Artist's insurance policies.

E. It is the intent of this Agreement for the Artist's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City.

F. The Artist shall request from his/her insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Artist's coverage.

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Even though the Artist is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Artist agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Artist's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

Section 19. Work Performed at the Artist's Risk

The Artist shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Artist's own risk, and the Artist shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Artist for use in connection with the work.

Section 20. Non-Waiver of Breach

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

Section 21. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Finance Director and the City shall determine the term or provision's true intent or meaning. The City Finance Director shall also decide all questions that may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Artist under any of the provisions of this Agreement that cannot be resolved by the City Finance Director's determination in a reasonable time, or if the Artist does not agree with the City's decision on the disputed matter, then appeal of this determination shall be made to the City Administrator. If the dispute is not resolved after appeal to the City Administrator, then jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

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

ARTIST

Lavonne Hoivik
3402 North Union Ave.
Tacoma, Washington 98407
(253) 761-3187

CITY OF GIG HARBOR

David Rodenbach
Finance Director
City of Gig Harbor
3105 Judson Street

Gig Harbor, Washington 98335
(253) 851-8136

Section 23. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Artist.

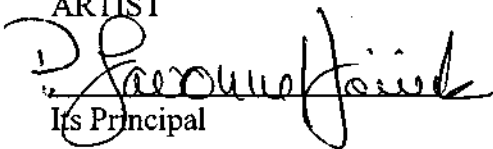
Section 24. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

Section 25. Severability.

If any provision of this Agreement or any provision of the Exhibits to this Agreement are found by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions of this Agreement which can be given effect without the invalid or unconstitutional provision. To this end, the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day
of _____, 2002.

ARTIST
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
ARTIST
Lavonne Hoivik
3402 North Union Ave.
Tacoma, Washington 98407
(253) 761-3187

David Rodenbach
Finance Director
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8145

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

Dated: 1/8/02



Molly M Towslee

Molly M. Towslee
(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Gig Harbor
My Commission expires: 12/2/03

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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

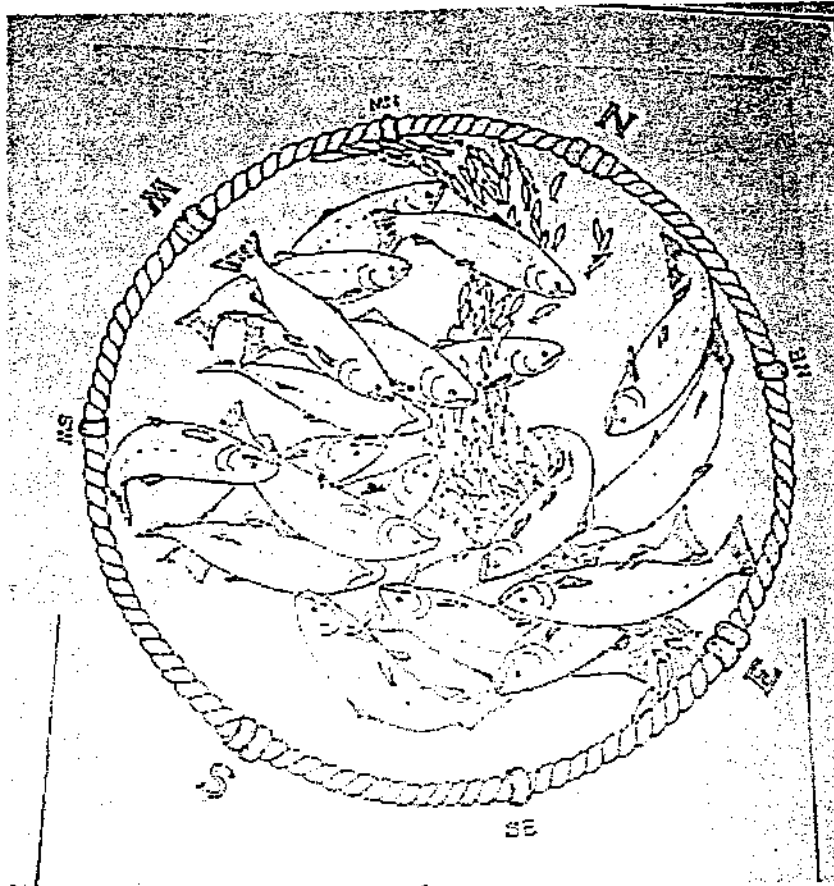
Dated: _____

(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:

My Commission expires: _____

Exhibit A

Scope of Services



Lavonne and George Hoivik created a 6-foot (diameter) exterior bronze compass in relief for placement in the center of the exterior plaza at the entrance of the Civic Center. The salmon detail celebrates our historic maritime industry and it is functional for viewing from any direction. Fee: \$19,500 (includes sales tax.)

Exhibit B

Payment Schedule

Payments will be made upon a percentage of completion basis as set forth below:

- (1) Payment of \$4,649.51 upon completion of final design
- (2) Payment of \$4,649.51 upon completion of 50% fabrication
- (3) Payment of \$4,649.51 upon completion of fabrication
- (4) Payment of \$4,649.51 upon installation of Artwork at the site
- (5) Payment of 5% \$901.96 **upon completion of 30-day lien** period following completion of the project and receipt of the requirements in Section 7, paragraph C.

The total payment for the Artwork shall be an amount not to exceed eighteen thousand thirty eight dollars and eighty five cents (\$18,038.85) plus sales/use tax of one thousand four hundred sixty one dollars and sixteen cents (\$1,461.15) for a total payment of nineteen thousand five hundred dollars (\$19,500).

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20020331

	LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1	PARK, JOHN M PARK, WAN CHA	HARBOR ARCO AM/PM MART 5119 OLYMPIC DR W GIG HARBOR WA 98335 0000	080805	GROCERY STORE - BEER/WINE
2	GOURMET ESSENTIALS, INCORPORAT	GOURMET ESSENTIALS 5500 OLYMPIC DR NW #I-102 GIG HARBOR WA 98335 0000	078110	GROCERY STORE - BEER/WINE
3	DROHAN CORPORATION	HARBOR INN RESTAURANT 3111 HARBORVIEW DR GIG HARBOR WA 98335 0000	359834	SPIRITS/BR/WN REST LOUNGE +

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 1/03/02

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 20020430

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 LA FAMILIA LOPEZ, INC.	EL PUEBLITO FAMILY MEXICAN RESTAURANT 3226 HARBORVIEW DR STE 7 GIG HARBOR WA 98332 2182	358890	SPIRITS/BR/WN REST LOUNGE +
2 EUREKA MANAGEMENT GROUP, INC.	MARKET EXPRESS 5006 PT FOSDICK DR NW GIG HARBOR WA 98335 0000	072786	GROCERY STORE - BEER/WINE

RECEIVED
JAN 7 2002
CITY OF GIG HARBOR



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
CAROL A. MORRIS, CITY ATTORNEY
SUBJECT: CLOSED RECORD APPEAL – DENTON BED AND BREAKFAST –
CONDITIONAL USE PERMIT (CUP 01-05) & VARICANCE (VAR 01-07)
DATE: JANUARY 14, 2002

BACKGROUND

Here is a chronology of events relating to the Council action in this appeal:

November 26, 2001: The closed record appeal was scheduled to be heard on this date. However, Mr. Hoeksema asked for a continuance of the closed record appeal because he could not attend. The Council granted a continuance for Mr. Hoeksema's convenience.

December 10, 2001: The Council opened the closed record appeal hearing and heard arguments from both Mr. Hoeksema and the Denton's. The closed record hearing was closed to further argument from the appellant and applicants. One Council member made a motion to affirm the decision of the hearing examiner. This motion was seconded, but failed for lack of votes. A motion was made to reconsider, this motion was seconded, but failed for lack of votes. The Council voted to continue their deliberations in a special session on December 17, 2001.

December 14, 2001: The attorneys for Greg Hoeksema, wrote directly to the Mayor and City Council, requesting a continuance from December 17, 2001 until the City Council's meeting of January 14, 2002. This request for a continuance was apparently based on the mistaken belief that Mr. Hoeksema would be able to provide additional argument to the Council, and that Mr. Hoeksema's attorneys would prepare for and attend this meeting. Because Mr. Hoeksema's attorneys were unavailable for the December 17, 2001 meeting, they requested a continuance until January 14, 2002. Mr. Hoeksema's attorneys were informed on December 14, 2001 that no additional argument would be accepted by the City Council, the Council would only engage in deliberations, and because the attorneys did not need to attend the meeting, a continuance was unnecessary.

December 17, 2001: The attorney for the Denton's requested that the Council continue their deliberations until the January 14, 2002 Council meeting. In light of the fact that all parties were interested in a continuance (including the only party who could claim prejudice as a result of a delay), the Council's deliberations were continued until January 14, 2002 Council meeting.

December 17, 2001: The attorneys for Mr. Hoeksema wrote directly to the Mayor and City Council, claiming that the Council violated the Appearance of Fairness doctrine. The City Attorney responded by letter dated December 17, 2001. In the letter, the City Attorney noted that the Appearance of Fairness doctrine prohibited ex parte contacts between opponents and proponents of the project and the decision makers. RCW 42.36.060. This meant that the letters written by Mr. Hoeksema's attorneys to the Mayor and City Council violated the doctrine. To "cure" this violation, the City Attorney provided a copy of the letter to the Denton's attorney on December 17, 2001.

The attorneys for Mr. Hoeksema also alleged that the City Council's individual discussions with the City Attorney violated the appearance of fairness doctrine. This allegation was unsupported by any statute, ordinance or case law. Because the City Attorney is not an opponent or proponent of the project, her communications with individual Councilmembers does not violate the Appearance of Fairness doctrine. As an example of the acceptability of this procedure in similar contexts, RCW 34.05.455 allows quasi-judicial decision makers governed by the Administrative Procedures Act to communicate with legal counsel and staff.

ACTION

At the January 14, 2002 Council meeting, the Council will continue their deliberations on the Denton appeal. The Council may make a motion to affirm, reverse or modify the hearing examiner's decision. If the Mayor or Council believes that any of these motions would be out of order as a result of the motions made at the December 10, 2001 meeting, a vote could be taken to suspend the rules. After deliberations and a vote, the Council should direct City staff to prepare findings of fact and conclusions to incorporate its decision, to be presented at the next Council meeting.

The standard of review in this closed record appeal is set forth in GHMC § 19.06.005(A). "Closed record appeals shall be on the record established at the hearing before the hearing examiner." The Council has "appellate jurisdiction" only, meaning that the Council is required to review the evidence before the hearing examiner to determine whether his decision was supported by substantial evidence. The Council does not substitute its judgment for the hearing examiner and/or conduct a de novo review of the evidence.

RECOMMENDATION

The Community Development Director and City Attorney recommend that the Council dismiss the appeal filed by Mr. Hoeksema and affirm the Hearing Examiner's decision of October 3, 2001, granting conditional use permit (CUP 01-05) and variance (01-07).



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND GIG HARBOR CITY COUNCIL
FROM: *PA* PATRICIA IOLAVERA, SENIOR PLANNER
SUBJECT: CLOSED RECORD APPEAL - DENTON BED AND BREAKFAST
CONDITIONAL USE PERMIT AND FRONT YARD SETBACK
VARIANCE (CUP 01-05 AND VAR 01-07)
DATE: NOVEMBER 26, 2001

INTRODUCTION

A timely appeal has been received of the Hearing Examiner's decision on a conditional use permit to operate a bed and breakfast in a single-family home, and a front yard setback variance to allow construction of a garage and front entrance. The applicants will continue to reside at this address. Such appeals are handled through the closed record appeal process outlined in Gig Harbor Municipal Code chapter 19.06.

BACKGROUND

On May 29, 2001, Steve and Janis Denton submitted an application for a Conditional Use Permit for a bed and breakfast located at 9017 N. Harborview (near Peacock Hill) on the waterside of the street, just north of Anthony's Shorline Restaurant and across from a hair salon. The home is a craftsman style house on a shallow lot that sits substantially below the street. The traditional porch of the home faces the water. Currently, parking is provided between the street and the house, is accessed via a drive that curves down off the street. The Dentons are proposing to construct a two story addition including a lower story garage in the location of their existing parking area, which will require a front yard setback variance. The upper story will be a few steps down from the street and create a new entrance to the home, which currently turns it's back to the street. The conditional use permit is for the operation of a bed and breakfast, and the variance is for the required front yard setback.

The Gig Harbor Municipal Code (GHMC) defines a Bed and Breakfast as "a single-family residence which provides overnight lodging for guests and which is limited to five guest rooms" (17.04.103).

The City of Gig Harbor Design Manual (GHDM) has certain requirements for height that exceed the normal zoning performance standards. The Dentons wanted to raise their house to replace the foundation and create a usable basement, and in doing so a single wall plane would reach 30 feet, although the overall structure did not exceed the height limit. The GHDM requires structures to "Incorporate characteristic roof lines and massing into residential structures" on page 85. This requirement forbids any part of the structure from exceeding 27 feet in height. The DRB approved the portion of the submitted design on August 20, 2001 (DRB 01-09), that would

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allow the existing structure to be raised on it's foundation creating one wall plane of 30 feet. There was no appeal of the DRB decision. This decision was independent of the application for a conditional use permit or variance.

GHMC section 17.98.020 states "In those cases where the GHDM is found to be in conflict with performance standards of the zoning code, the standards in the GHDM shall prevail".

Staff determined that only the request to exceed the 27' limitation for a single plane would be decided by the DRB, since the code in question was exclusively regulated in the GHDM. Initially it was determined that the DRB might also decide the front yard setback variance, but that issue was later withdrawn from the DRB and reassigned to the Hearing Examiner since the zoning code sets limitations for setbacks (see GHMC 17.98.060(A) above. The issue had briefly come before the DRB who requested the Dentons erect a "shadow structure" so that they could see how the building would appear in the setback. The issue was withdrawn from the DRB prior to their next meeting, but not before the Dentons had erected the "shadow structure".

The reasoning for moving the decision to the Hearing Examiner is as follows. GHMC section 17.98.060(A) (regarding design variances) states "Variances from the requirements of the GHDM may be granted by the DRB as a Type II application, except that variances affecting height and setbacks which exceed the limitations established in GHMC 17.66.020(A) must be reviewed by the Hearing Examiner as per the Type III general variance procedures established in GHMC 17.66.030." Under the zoning code for Waterfront Residential (WR) the front yard setback is 20 feet. The GHDM establishes a setback for garages at 26 feet. Since the request was to place the structure inside the 20 foot limitation under the zoning code, we deferred to the higher decision making authority. However, the Hearing Examiner did consider the requirements of the GHDM in making his determination on the setback variance.

The Hearing Examiner held a public hearing on the CUP and Variance applications on September 11, 2001, utilizing the criteria for approval of conditional use permits at GHMC 17.64 and variance criteria at GHMC 17.66, and issued a final decision granting the CUP and variance with certain conditions, on October 3, 2001. Planning staff recommended approval of the Conditional Use Permit (CUP 01-05) for the Bed and Breakfast, and of the front yard setback variance (VAR 01-07). On October 17, 2001, the City received a timely appeal of the Conditional Use Permit from Greg Hoeksema, a resident of the neighborhood.

Note: An error on the zoning map led to misidentification of the triangular property across the street from the Dentons, on the northwest corner of the intersection of Peacock Hill and North Harborview, as Low Density Residential (R-1) instead of the correct zoning of Residential Business 1 (RB-1).

ADMINISTRATIVE RECORD

The entire administrative record is available for review by the Council at the Planning and Building Department Office. The following documents have been attached to the Council packet for your convenience: (1) the Staff Report (September 11, 2001); (2) Hearing Examiner's decision (October 3, 2001); (3) A letter from the Dentons (August 27, 2001); (4) Appeal Statement from Greg Hoeksema (October 17, 2001); and (5) Response from Dentons is expected

to be included on in your packet, but was not yet received at this writing (November 20, 2001).

APPEAL ISSUES

Dr. Hoeksema's appeal is enclosed. His appeal details how the proposal by the Denton's exceeds the requirements of the City of Gig Harbor GHDM. The Denton's have requested a variance from the setback requirements precisely because their proposal does exceed the requirements of the zoning code and GHDM. Staff, the Hearing Examiner, and now the council must consider the specific criteria for a conditional use permit, the specific criteria for a front set back variance, and whether this application adequately meets those criteria, rather than examine individual regulations to determine if they have been exceeded.

The appellant has recited a particular section of the code, and then stated that the Denton plan is "clearly" in "direct conflict". According to GHMC Section 19.06.004(4)(d), the appellants statement must include: "appellant's statement of grounds for appeal and the facts upon which the appeal is based with specific references to facts in the record." There are few facts given by the appellant to indicated the basis for this appeal issue. The Council is not required to "guess" at what the appellant could mean by asserting that the plan is in "direct conflict".

This memo will first reiterate how the Denton's application meets these two sets of criteria, then briefly comment on Dr. Hoeksema's appeal.

CONDITIONAL USE PERMIT

Taking first the conditional use permit, the City of Gig Harbor Municipal Code sets the following criteria.

17.64.040 – Review Criteria

Each determination granting or denying a conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions are met:

- A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;*
- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;*
- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;*
- D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.*

The Hearing Examiner began his analysis of this issue on page 3 of his decision. The first criterion, is indisputably satisfied by the application. A Bed and Breakfast is listed as a conditional use in the Waterfront Residential district at 17.46.030(C).

The second criterion requires that the proposed conditional use "*not be detrimental to the public health, safety, comfort, convenience and general welfare, nor adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located*". Staff concurs with the Hearing Examiner's determination on pages 3 and 4 of his decision, that no evidence has been presented to suggest that a Bed and Breakfast would be detrimental to the safety, comfort, convenience or general welfare. The Hearing Examiner points out that the location on the waterfront, and proximity to the commercial activity center (Head of the Bay Activity Center) is well suited for such a development. He also notes that this proposal will preserve an existing historic home in the historic district, acknowledges the addition, and concludes that it will serve to maintain the existing character. Staff concurs. Then Denton's are not applying for a demolition permit and constructing a more contemporary house, which would have significant impacts on the character of the neighborhood. Further, a bed and breakfast will allow members of the general population greater access to the shore by creating a lodging opportunity on the waterfront, rather than an exclusively private single family home.

The Hearing Examiner on page 4 of his decision addresses the third criterion to "*that the proposed use is properly located in relation to other land uses and transportation facilities in the vicinity; and that the use can adequately be served...*". Staff concurs with the Hearing Examiner's analysis that proximity to the business district, the waterfront and existing uses will increase the public's enjoyment of the waterfront. He notes that the use will increase traffic by perhaps 4 cars (for the 4 rooms), but that the increase will be minimal and that the plan provides for off street parking in excess for what is required.

Finally, the Hearing Examiner determined that the fourth criterion was met because the site is "*of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, landscaping and other such features as are required.*" GHMC 17.72.030 requires 1.25 parking places per room for the B&B and an additional 2 places for the Dentons as residents of their single family home. Seven spaces are required and eight are provided. The examiner notes that other than the requirement for a variance for the front yard setback, all other elements can be satisfied.

Staff supports the Hearing Examiner's decision to approve the conditional use permit subject to the conditions set out on pages 9 and 10 of his final decision.

VARIANCE REQUEST

The variance request must satisfy the following criteria for approval:

GHMC Section 17.66.030(B) states that variances may be granted only if the applicant can successfully demonstrate that all of the following criteria can be met:

A. *The proposed variance will not amount to a rezone nor authorize any use not*

allowed in the district.

- B. There are special conditions and circumstances applicable to the property such as size, shape, topography or location, not applicable to land in the same district and that literal interpretation of the provisions of this ordinance would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this ordinance.*
- C. That the special circumstances and conditions do not result from the actions of the applicant.*
- D. The granting of the variance will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and zone.*
- E. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated.*
- F. The variance is the minimum variance that will make possible the reasonable use of the land.*

The Hearing Examiner discusses his analysis of the variance criteria on pages 3 through 9 of his decision. Again the first criterion is clearly met in that the proposal to extend the addition into the setback by 17 feet "*will not amount to a rezone nor authorize any use not allowed in the district*". The Hearing Examiner correctly points out that the addition does not create a new use and that a bed and breakfast is allowed as a conditional use in the WR zone. (Note: page 82 of the GHDM to set garage 26 feet from street intending to place the garage behind the house and discourage home design that makes the garage a dominating visual element along the streets. The zoning code in the WR district requires a 20 foot setback, which would extend the house 11 feet into the setback).

The second criterion addresses whether "*special conditions or circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to land in the same district and that literal interpretation of the provision of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the district*". The Hearing Examiner points out on page 6 of his decision that the Denton's property slopes toward the Bay (retaining walls at the street drop the property significantly, then the parcel slopes at about 20 – 30% toward the water, though the house takes up much of the grade). He also discusses the variability of waterfront parcels (in hearing the depth of the lot was discussed) in terms of size and shape. There is no place for a garage on the waterside of the Denton home, nor would one be desirable from an urban design standpoint. The Hearing Examiner also notes that a garage is a commonly enjoyed use in almost all contemporary residential developments, let alone in the neighborhood in question. The Hearing Examiner also notes that the GHDM provides for such situations "where it is not possible to locate garages behind the house" (page 83 of GHDM).

The Hearing Examiner considered Dr. Hoeksema's contention that other properties face the same "special conditions and circumstance", but noted that many of the houses along this street have dealt with these circumstances by building in the setback. Dr. Hoeksema's claim that allowing this variance would set a modern precedent was rejected as the Hearing Examiner concluded that

modern precedent had already been set prior to submission of this application.

Additionally, in reviewing the GHDM for this appeal, staff would add the following code in order further substantiate the requested variance. On page 12 of the GHDM, North Harborview/Vernhardson (All of North Harborview Drive and extending to City Park along Vernhardson Street) is identified as a Parkway. The Denton's property is located on this Parkway. On page 13 the following requirement is set.

Parkway Standards – Parcel development: The following standards apply to all parcels having frontage on designated parkways.

1. *Maintain established parkway setbacks.*

Parkway setbacks shall be within 20% of the average of established setbacks on both sides of the subject parcel. Where there is no existing development, the code-required setback shall be considered the established setback.

Utilizing the above section of the GHDM, the Dentons could actually be required by the GHDM to come even further into the zoning setback than what they are proposing.

On the third criterion, page 7 of the Hearing Examiner's decision, he discusses whether the "special conditions and circumstances do not result from the actions of the applicant". The examiner determined that the criterion does not require "due diligence" in purchasing a property that would not require a variance, but rather refers back to "special conditions and circumstances applicable to the property such as size, shape, topography or location...".

The fourth criterion requires that the variance will "not confer a special privilege that is denied other lands in the same district." On page 7 the Hearing Examiner reiterated that the variance will "serve to treat the Denton's property in much the same manner as other, similarly situated property in the WR district has been treated".

The fifth criterion requires a finding that "the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated." The Hearing Examiner discusses the fact that the addition will "impact the view in some respects and from some angles", but notes that it still meets the height requirements. Staff would add that the view is most seriously impacted from an angle as one walks down the side walk, and would argue that the placement of the addition directly in front of the house, rather than in the side yards, minimizes the impact. The Hearing Examiner goes on to point out how the proposal will improve the landscaping, and that there already exists a retaining wall in the location of the proposed garage structure. Finally, as he points out, there is no substantiating evidence in the record, for Dr. Hoeksema's argument that granting the variance will result in a decrease in his property value.

The sixth and final criterion requires the Hearing Examiner to make a finding that "The variance is the minimum variance that will make possible the reasonable use of the land." The Hearing Examiner's analysis is found on pages 8 and 9 of his decision. The analysis points out that Dr. Hoeksema offered "cogent testimony" that the ownership of a "beautiful house at the head of the bay, even without a variance and a conditional use permit" constitutes "reasonable use" of the

land; and the Mr. Denton responded that it should be considered to be reasonable to have a garage and parking on this property, similar to that afforded to other nearby properties, especially when no on-street parking exists on N. Harborview Drive in that area.

The Hearing Examiner determined that following Dr. Hoeksema's logic any variance would be a virtual impossibility. He states "The City Council, however, has specifically authorized a bed and breakfast as a conditional use in the WR District, and has specifically authorized the use of the variance procedure for conditional uses within that zone. If the City Council had intended the interpretation urged by Dr. Hoeksema, it easily could have done so." He also points out that the Denton's will be 9 feet from the front set back, and other properties in the WR zone are within 1 - 5' of the property line. As this memo points out, the Parkway standards requirements of the GHDM would actually require an average setback based on the existing setbacks in the area. Staff supports the Hearing Examiner's finding that the variance requested

STAFF RESPONSE TO APPELLANTS COMPLAINT

The appellant makes allegations that the Dentons should have known that they would need a CUP in order to operate a bed and breakfast at the time they purchased their property. This is not an allegation that the Hearing Examiner erred in reviewing the criteria for a CUP and issuing approval. Furthermore, the fact that property is located in a zone allowing certain uses by the CUP process only means that the Dentons could, at any point in time, make application for a CUP. The City does not require that the Dentons obtain a variance from the underlying zoning before the CUP is approved, so the appellant has misinterpreted the law in his assumption that the Hearing Examiner erred by finding that the Dentons should have known that the CUP was subject to the criteria in the code relating to variances.

While staff feels the arguments above properly address the criteria for approval of a conditional use permit and variance, the following comments address the document provided by the appellant, and which largely address the GHDM. In interpreting the GHDM, the **bold and underlined** portions are specific requirements that allow for administrative review by staff, the normal text following bold and underlined portions, are the general requirements which the DRB uses as guidance, though they may waive specific requirements if a superior design is offered). Please reference the appellant's complaint for his exact wording.

Staff Response to appeal issue 1:

This reference is a subsection of a specific requirement that actually is an incentive more than a requirement, in other words, the applicants must consider this requirement. The GHDM does not otherwise regulate the size of garages. Staff would respond that by putting the garage below grade and making the top house present more of an entrance to the street, the project improves conformance with portions of the manual found in other sections. (see page 91).

Consider incentives to locate residential garages behind the house. To encourage garages in back yards, garages may be located in the defined side and rear yards provided they meet the following criteria for special exceptions.

Staff Response to appeal issue 2:

It is important to read the entire section of the GHDM being quoted by the appellant. It references the architecture of Millville. It is taken from the intent section on page 85.

Massing and Setbacks:

One of the most characteristic design features of Gig Harbor's historic area is the small scale and simple mass of the older houses. These homes are of modest widths, being deeper than they are wide, and include steep pitched roofs with the narrow ends of the roofs facing the street. Historic homes are also characterized by front porches placed near the street. Garages are set back of the main structures so that the emphasis from the street is on human habitation rather than vehicular enclosure.

Staff Response to appeal issue 3:

The requirement being quoted applies only to commercial and multifamily development (see page 61 where this section begins). Nonetheless, the Dentons design has done exactly what is described in the remaining text under this requirement. They are avoiding cut and fill, proposing terraced parking with a lower level garage, and they are following the slope of their lot.

Staff Response to appeal issue 4:

The proposed project **does not exceed the actual height limits** in this district. The design went before the board because an existing wall plane exceeded the 27 foot limit for a single wall plane. The DRB was then asked to review the structure for the setback variance. At that time, the DRB asked the Dentons to go home, and put up a framework to demarcate where the addition would be within the setback, so they could look at that issue. There is no specific requirement to use demarcation and a mailing for setback variances. While this structure was in place, a staff reviewed the code regarding design variances and determined that the variance would have to go before the Hearing Examiner instead of the Design Review Board. At that time the entire issue was aborted. Staff feels that procedures were adequately followed under the circumstances, in that there was no requirement to demarcate on a variance, and further that the hearing body that required the procedure withdrew as the hearing body.

Staff Response to appeal issue 5:

The appellant references his prior arguments (Appeal Issues 1 – 4) as evidence of not addressing the Comprehensive Plan, however, the referenced arguments cite the GHDM, not the Comprehensive Plan. The Hearing Examiner has addressed the criteria for a general variance under 17.66.030 and has made his findings and approved this variance request. I refer Council to his decision, and staff's respective findings in support of approval of the variance.

Additionally, in reviewing the GHDM for this appeal, staff would add the following code in order further substantiate the requested variance. On page 12 of the GHDM, North Harborview/Vernhardson (All of North Harborview Drive and extending to City Park along Vernhardson Street) is identified as a Parkway. The Denton's property is located on this Parkway. On page 13 the following requirement is set.

Staff Response to appeal issue 6:

Staff continues to maintain that the steep slope of this parcel, coupled with the shallow depth, bordering on the tide lands, constrain the opportunities for a garage. The proposed garage offers what staff believes are design improvements in accordance with the GHDM.

RECOMMENDATION:

The appeal does not include any allegations that the Hearing Examiner erred by issuing the Conditional Use Permit (other than the appellant's misinterpretation of the code regarding variances). Therefore, the Staff recommends that the City Council find that the Hearing Examiner's decision is final and affirmed.

As to the appeal of the variance, the Staff recommends that the Council make the following findings:

- A. Appeal Issue No. 1: The Hearing Examiner's decision is correct, because the appellant is alleging error as to a desired, not a mandatory standard.
- B. Appeal Issue No. 2: The appellant has not met his burden to demonstrate that the Hearing Examiner erred, nor has the appellant set forth any facts or described the particular variance criterion that he believes was misapplied by the Hearing Examiner.
- C. Appeal Issue No. 3: The appellant has not met his burden to demonstrate that the Hearing Examiner erred, nor has the appellant set forth any facts or described the particular variance criterion that he believes was misapplied by the Hearing Examiner.
- D. Appeal Issue No. 4: The appellant has not met his burden to demonstrate that the Hearing Examiner erred, nor has the appellant set forth any facts or described the particular variance criterion that he believes was misapplied by the Hearing Examiner. The Hearing Examiner was not required to consider statements made by individual Design Review Board members when determining whether or not the variance criteria have been met in a particular application. The Hearing Examiner is required to consider the code criteria and the applicable facts, which was done in this instance.
- E. Appeal Issue No. 5: The appellant has not met his burden to demonstrate that the Hearing Examiner erred. The appellant has not cited any portion of the Comprehensive Plan that is not supported by the findings of the Hearing Examiner. The Comprehensive Plan policies were considered in the development of the Development Regulations in Title 17 and in the Design Manual. These regulations support the policies of the Comprehensive Plan.
- F. Appeal Issue No. 6: The appellant has not met his burden to demonstrate that the Hearing Examiner erred. In this particular appeal issue, the appellant has misinterpreted the variance criteria, and applied it to the granting of a conditional use permit. Nothing requires an applicant to satisfy the variance criteria in order to obtain a conditional use permit. Therefore, the Hearing Examiner's decision is correct.

**STAFF REPORT AND RECOMMENDATION
TO THE CITY OF GIG HARBOR HEARING EXAMINER**

CONDITIONAL USE PERMIT CUP 01-05 AND VARIANCE VAR 01-07
September 11, 2001

PART 1 – GENERAL INFORMATION

- A. **APPLICANT:** Janis and Steve Denton,
9017 N. Harborview
Gig Harbor, WA 98332
- B. **OWNER** Janis and Steve Denton,
9017 N. Harborview
Gig Harbor, WA 98332
- C. **AGENT** Janis and Steve Denton,
9017 N. Harborview
Gig Harbor, WA 98332
- D. **PROJECT DESCRIPTION/BACKGROUND INFORMATION**
Application for a Conditional Use Permit (CUP 01-05) to
allow a Bed and Breakfast in a single family home in the
Waterfront Residential District at 9017 N. Harborview.
- E. **PROPERTY DESCRIPTION**
- 1) **Location**
- a) **Address:** 9017 N. Harborview, Gig Harbor, WA
- b) **Legal:**
- c) **Tax Parcel Number:** 2260000731
- 2) **Site Area/Acreage** Parcel size .21 acres
- 3) **General Physical Characteristics:**
- i. **Soil Type:** Harstine gravelly sandy loam
- ii. **Slope:** 5 – 20%

- iii. Drainage: toward bay.
- iv. Vegetation: domestic vegetation

F. SURROUNDING LAND USE/ZONING:

- i. Site: WR – Waterfront Residential
- ii. West: WR – Waterfront Residential
- iii. East: DB – WR – Waterfront Residential
- iv. North: R-1 Residential (Hair Salon)
- v. South: Gig Harbor Bay

G. UTILITIES/STREET ACCESS: The parcel is served by City sewer and water and is accessed from North Harborview Drive – a public street.

H. PUBLIC NOTICE

Public notice was provided as required pursuant to Section 19.03.003 as follows:

- Publication of legal notice in the Peninsula Gateway newspaper on July 27, 2001
- Continued to time and place specific by Hearing Examiner Wednesday, August 15.
- Mailed to property owners of record within three hundred feet of the site on August 24, 2001.
- Posted on site by the applicant.

PART II: PROJECT ANALYSIS

A. AGENCY REVIEW /COMMENTS

1) Public Comments Received:

No written comments were received. Mr. And Mrs. Sherman, 9021 N. Harborview Dr., and Mr. Greg Hoeksema, 9105 Peacock Hill Avenue, have requested to be listed as parties of record.

B. CONSISTENCY WITH APPLICABLE LAND USE POLICIES AND CODES

1) City of Gig Harbor Comprehensive Plan:

Goal: Increase local economic opportunities.

10) Provide reasonable guidelines and standards for the siting of home-based businesses (home occupations) in residential neighborhoods. Insure that home-based businesses do not alter or impact the residential character of neighborhoods.

Goal: Identify, preserve, and develop appropriate waterfront architecture.

2) City of Gig Harbor Zoning Code (Title 17 GHMC)

The City of Gig Harbor Zoning Code includes the following relevant sections.

A. 17.04 Definitions:

17.04.103 – “Bed and Breakfast” means a single-family residence which provides overnight lodging for guests and which is limited to five guest rooms.

B. 17.46 Waterfront Residential (WR)

17.46.010 – Intent

This district recognizes those areas of the shoreline that are characterized by single-family residences. It is intended that development occur that is respectful of the shoreline and surrounding properties while permitting a limited mix of residential structure types.

17.46.030 – Conditional Uses

Subject to the requirements, standards and procedures for conditional uses set forth in Chapter 17.64 GHMC, the following uses may be permitted in a waterfront residential district:

...C. Bed and breakfast establishments.

17.46.040 Development standards

A minimum lot area for new subdivisions is not specified. The minimum lot requirements are as follows:

...C. Minimum Front Yard 20'
D. Minimum Side Yard 10'

17.46.070 – Parking and loading facilities

In a waterfront residential district, parking and loading facilities on private property shall be provided in connection with any permitted or conditional use as specified in Chapter 17.72 GHMC.

C. 17.64 – Conditional Uses

17.64.040 – Review Criteria

Each determination granting or denying a conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions are met:

- A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;
- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;
- D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

D. 17.66 – Variances, Interpretations, Appeals

17.66.010 Intent. This chapter is intended to provide review procedures and criteria for those special situations where the dimensional, bulk or spacing provisions of this title may be relaxed. Variances are not intended to be used as a means of circumventing individually inconvenient regulations.

17.66.030 General Variances.

B. Before any variance can be granted the, the examiner shall make findings of fact setting forth and showing that the following circumstances exist:

1. The proposed variance will not amount to a rezone nor authorize any use not allowed in the district;
2. Special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to other land in the same district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

3. The special conditions and circumstances do not result from the actions of the applicant;
4. Granting of the variance requested will not confer a special privilege that is denied other lands in the same district;
5. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;
6. The hearing examiner shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land;
7. The decision of the hearing examiner shall be final. Appeals of the examiner's decision may be made to the city council in accordance with the appeal procedures established under GHMC 17.10.160.

E. 17.72 – Off-Street Parking and Loading Requirements

17.72.030 – Number of off-street parking spaces required.

N. For hotels and motels, one and one-quarter off-street parking spaces for each room to rent.

S. For any other use not specifically mentioned or provided for, the planning director shall determine the standards to be applied for parking using as a guide the uses listed above that most closely resemble the uses proposed;

3) City of Gig Harbor Shoreline Master Plan

3.13 Parking

Policies:

- 1) Parking facilities should not extend over the surface of Gig Harbor, nor interfere with any views to or from the water's surface.
- 2) ...
- 3) Parking facilities should be appropriately screened, landscaped, and maintained so as not to have detrimental aesthetic effects on their surroundings.
- 4) Surface drainage from parking facilities should not adversely affect the water quality of Gig Harbor.
- 5) Parking lot surfaces should be constructed to minimize erosion and siltation of materials into Gig Harbor Bay.
- 6) Common parking areas are encouraged between uses.

Regulations:

- 1) Parking facilities shall be designed, screened, and landscaped in accordance with the landscaping standards for the underlying zoning district to minimize adverse effects on the shoreline area of the City of Gig Harbor.
- 2) Pedestrian access walkways shall be provided between upland parking areas and the site which they serve.

3.15 – Residential Development

Residential Development consists of the construction of single and multiple-family residences, including the act of subdividing property. Single-family residences on individual lots are exempt from obtaining a Shoreline Substantial Development Permit, but are nonetheless required to meet the following policies and regulations.

7) City of Gig Harbor Design Manual

PART III: FINDINGS AND CONCLUSIONS

1. The Denton's have a single family, craftsman style home in the Waterfront Residential (WR) district. They have applied for a conditional use permit (CUP) for a bed and breakfast, and a variance (VAR) to allow them to construct a garage that extends 11' into the required 20' setback from the road that will allow them to construct a 3-car garage with rooms above. Those rooms include a B&B room, a family guest room, and a bonus room nearest the street. An entrance is proposed from the bonus room, into the house.
2. The project is within the allowed 40% impervious surfaces.
3. A Shoreline Substantial Development Permit Exemption has been issued by the Director of Planning and Building Services.
4. **Conditional Use Permits** must meet the following requirements:
 - A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;

A Bed and Breakfast is a conditional use in the WR zoning district.

- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare,

will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;

This use will not be detrimental to the public health, safety, comfort, convenience and general welfare and will have no impact on the established character of the surrounding neighborhood. The proposed use will have the effect of preserving an existing craftsman style home along the waterfront, which is part of the historic district as defined in the City of Gig Harbor Design Manual.

- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;

The proposed use is separated from on of the main commercial districts by two houses and a condominium complex. There is a hair salon in the R-1 zoned house across the street. This is an excellent location for a Bed and Breakfast as it is on the water and will increase public enjoyment of our shorelines, and provide tourists with accommodations from which they may walk to the attractions along the Gig Harbor Waterfron.

- D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

The proposal is for a 4-unit B&B in a single family home. Assuming two parking places for the home and five for the B&B at $1.25 \times 4 = 5$, total parking requirements are 7 spaces. The proponents plans show 8 parking spaces. However, the space labled "Parking 4" is only 72 SF which does not meet the requirements of the Gig Harbor Municipal Code (8x18' per 17.72.020) and therefore cannot be permitted. A landscaping plan must be provided showing that the parking will be properly landscaped, and the parking spots are properly lined and of sufficient size

- 4) The applicants have requested an 11 foot variance on the 20' required front yard setback to accommodate a three car garage with rooms above. Their proposal meets the requirements for a variance in the following ways:

- a. The proposed variance will not amount to a rezone nor authorize any use not allowed in the district;

Though this application involves a conditional use permit for a use conditionally allowed in the zone, the variance has little to do with that issue. Staff believes it does not amount to a rezone nor will the setback variance authorize any use not allowed in the district.

- b. Special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to other land in the same district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

The lot slopes steeply toward the waterfront. While the Design Review Manual requires garages to be in the rear of the house, it is not appropriate, nor is there room to place a house, on the waterfront side of this property. A garage is a commonly enjoyed use in almost all contemporary residential developments, and one enjoyed by many neighbors in the area.

- c. The special conditions and circumstances do not result from the actions of the applicant;

The slope, the waterfront location, and the size of the parcel are not conditions or circumstances resulting from the actions of the applicant.

- d. Granting of the variance requested will not confer a special privilege that is denied other lands in the same district;

Other properties along North Harborview share some of the same constraints. Some have lots that can accommodate a garage 20 feet from the street, others are non-conforming and have built in the 20' setback, most have garages.

- e. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;

The view of the water will not be obstructed by this garage. It is not over the height restriction for the area. The character of the community will be largely maintained, if they can provide landscape screening of the parking on the street. The Denton's are currently utilizing the area to be constructed upon as parking, and a retaining wall exists in the approximate location of the outer wall of the

proposed addition. There is sufficient visual clearance for all parking stalls approved except "Parking 4" which is also inadequate in size. However, there are 7 other parking places being provided that will adequately serve the project.

PART IV: STAFF RECOMMENDATION

Based upon the findings and conclusions in Part III of this report, staff recommends that application for **CONDITIONAL USE PERMIT CUP 01-05** be Approved subject to the following condition:

1. That the Hearing Examiner approves the variance for parking associated with the applicants building permit so that adequate parking may be provided.

Based upon the findings and conclusions in Part III of this report, staff recommends that application for **VARIANCE VAR 01-07** be Approved subject to the following conditions:

1. A Landscaping plan be submitted for all areas adjacent to parking, and that provides screening for the parking along the sidewalk.
2. That Parking 4 is eliminated from the drawings.
3. That no additional parking will be provided in the current concrete right-of-way adjacent to the side walk.
4. That pedestrian access be provide through the parking areas to the street on both the drive way and upper parking areas in colored and textured concrete.
5. That the storm water/drainage be designed to protect the water quality of Gig Harbor Bay, and reviewed and approved by public works.
6. That erosion control per the City of Gig Harbor Public Works Standards will be in place during construction and a plan to that effect be submitted in writing and approved by staff.


Patricia Lolavera
Senior Planner


Date

Attachments: Zoning Map of area
 Aerial Photo of area

May 29, 2001 letter from Denton
July 13, 2001 letter from Denton
August 27, 2001 letter from Denton
Sheet of 4 photos provided by Denton
Six 11x17 photos of neighborhood provided by Denton

May 29, 2001

Department of Planning and Building
City of Gig Harbor
3125 Judson Street
Gig Harbor, WA 98335

Please review this application for a conditional use permit for a 4 bedroom Bed and Breakfast establishment at 9017 North Harborview Drive, Gig Harbor.

- 1) Zoning for the location is W-R and allows a Bed and Breakfast of up to 5 rooms.
- 2) A Bed and Breakfast establishment would be in keeping with the neighborhood since it is across the street from a Hair Salon and very close to shops and restaurants. The character and charm of this old fisherman's home will be enhanced with the addition of a garage and an attractive entry.
- 3) This location is within walking distance to existing shops and restaurants and would be a lovely place for visitors to come and enjoy Gig Harbor. With 5 guest parking spots onsite, as well as 3 for the owners, it would not place any strain on public facilities or streets.
- 4) The site plan shows parking with extensive use of grass blocks to minimize the use of concrete and maintain the pervious/impervious land standards. There is attractive landscaping around the house to enhance the street appeal, and around the yard to maintain privacy for the neighbors.

Thank you for your consideration of this request.

Janis and Steve Denton
9017 North Harborview Drive
Gig Harbor, WA 98332
Phone 226-4248

July 13, 2001

City of Gig Harbor
Planning and Building Services
3125 Judson Street
Gig Harbor, WA 98335

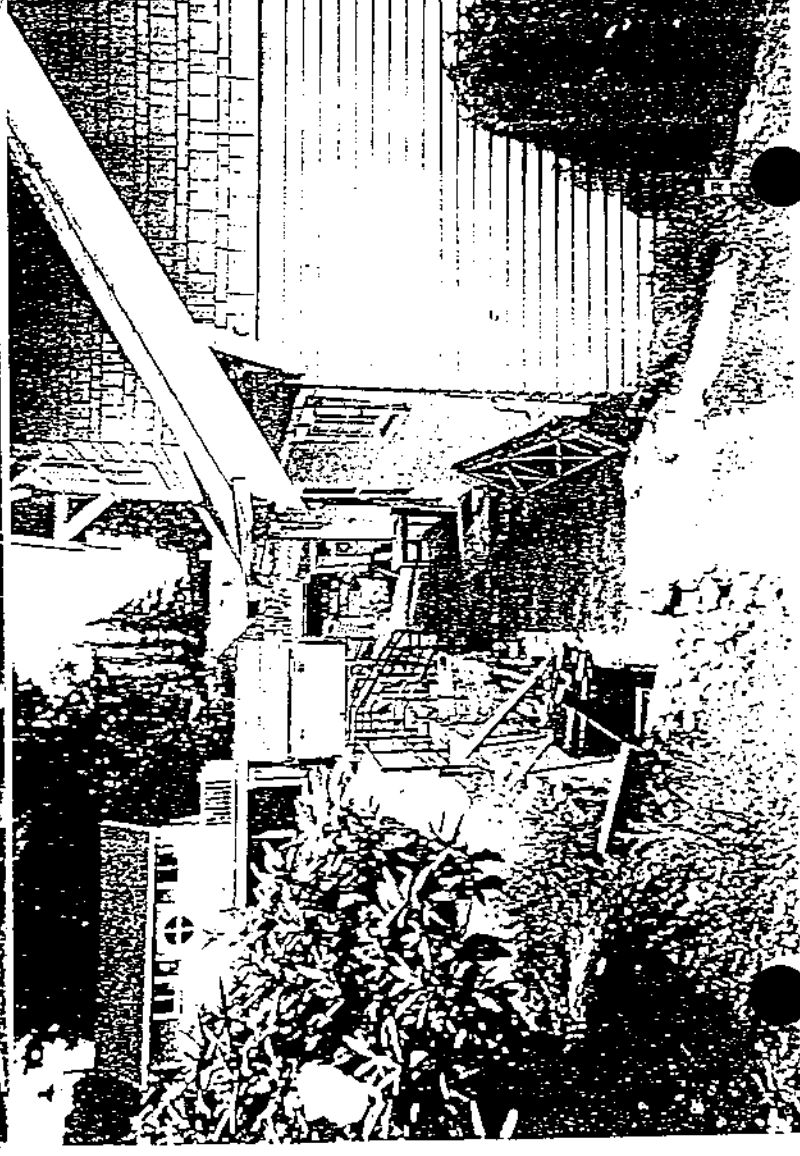
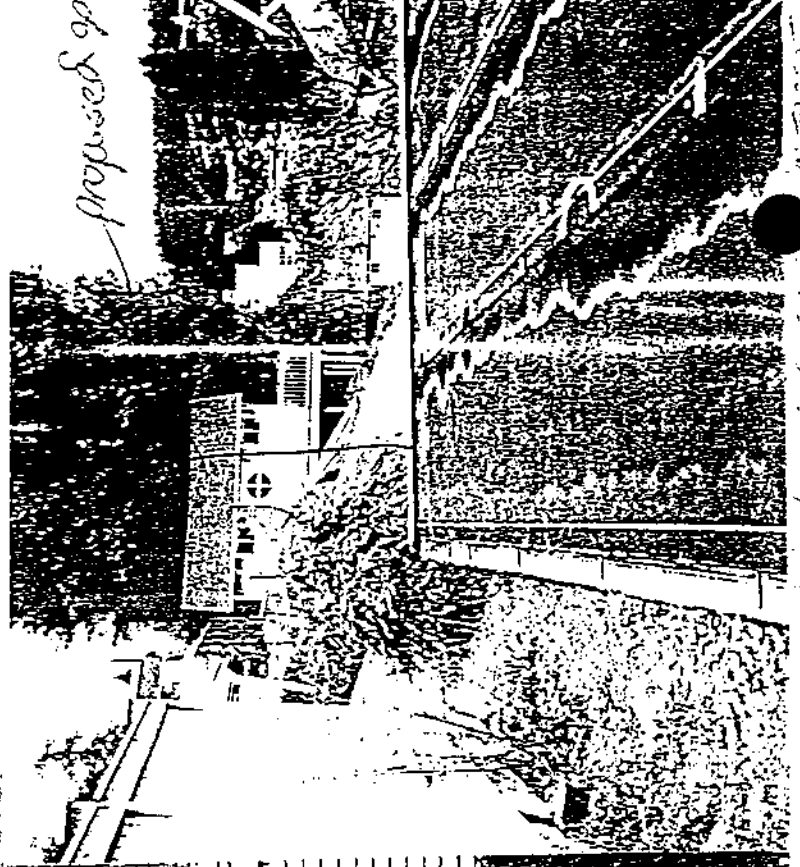
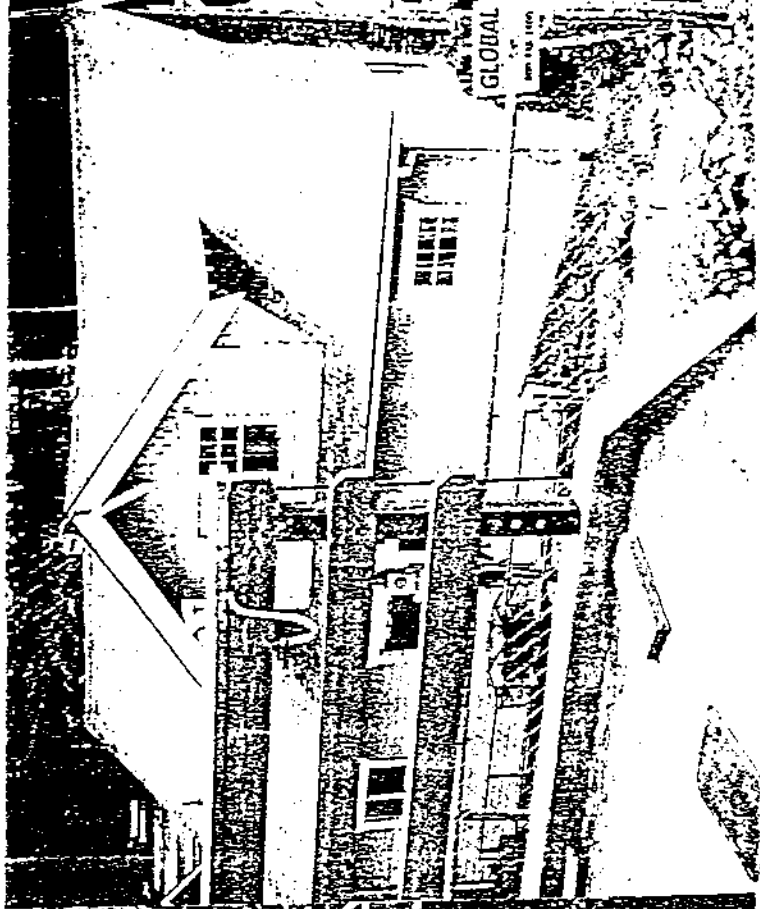
Re: Variance Request for;

- 1) Garage to be situated in front of house.
- 2) Height above the overall 27' allowance but within the height allowance determined by setbacks and Historic district standards of 18'.

1. This variance complies with existing use and zoning.
2. The property does not allow for the garage to be located behind the house because of the waterfront location.
3. Both adjacent neighbors have garages in front of their houses and close to the road. (see attached photos)
4. Same as above.
5. The garage will be below street level with a second story in keeping with the character of the house. This is what will be most visible to the public.

Thank you for your consideration of this variance request.

Janis and Steve Denton
9017 N. Harborview Drive
Gig Harbor, WA 98332
Phone: 226-4248



Steve & Janis Denton
9017 North Harborview Drive
Gig Harbor, WA 98332

Date: August 27, 2001
To: City of Gig Harbor
From: Steve Denton, homeowner
Subject: Setbacks of neighbors

The following is a list of neighbors on our street with homes or garages that appear to be within the required twenty foot setback from the property line on the street. I have identified the properties by house number and estimated the distance that the structures are from the property line.

In our case, we are requesting to increase the height of our existing retaining wall that now defines our parking area. When back filled, this wall will provide three additional parking spots on the street and make up one wall of our garage. It currently stands about eleven feet from the property line. Because this wall and parking area are already existing and well below street level, we feel that the impact on the street and neighborhood will be minimal.

<u>House number</u>	<u>Approximate set back*</u>
9009	3'
9017 (our house)	11' requested
9021	2' over the property line
9109	12' to garage and 5' to wall of garage
9113	1'
9125	12' to carport
9301	10'
9303	5'
9307	5'
9315	3'

* These dimensions were estimated from the sidewalk and were not done with a tape measure.

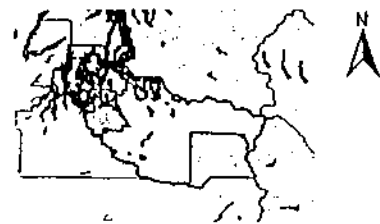
Steve Denton

Denton House

MAP LEGEND

~ Roads - All*

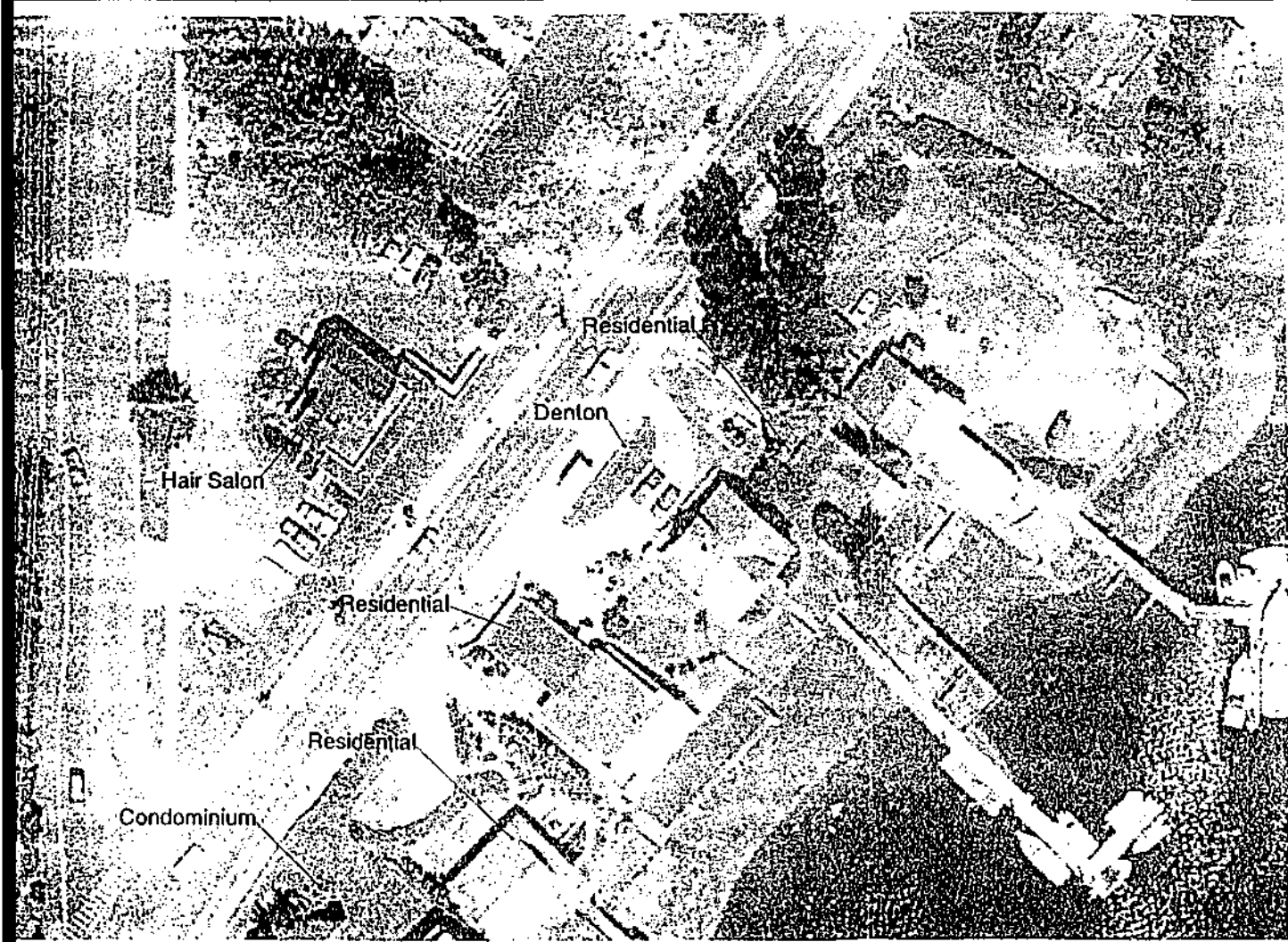
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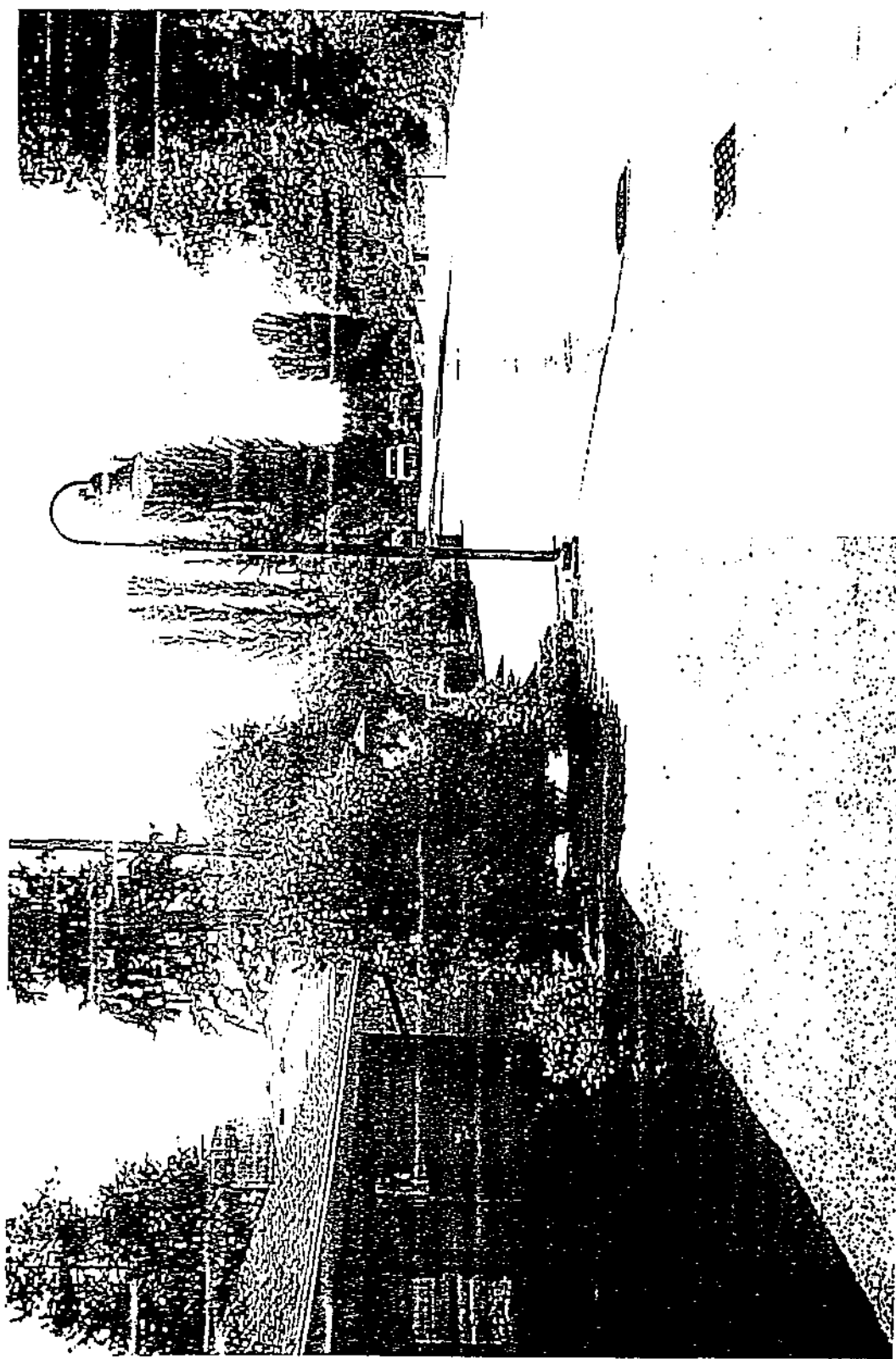


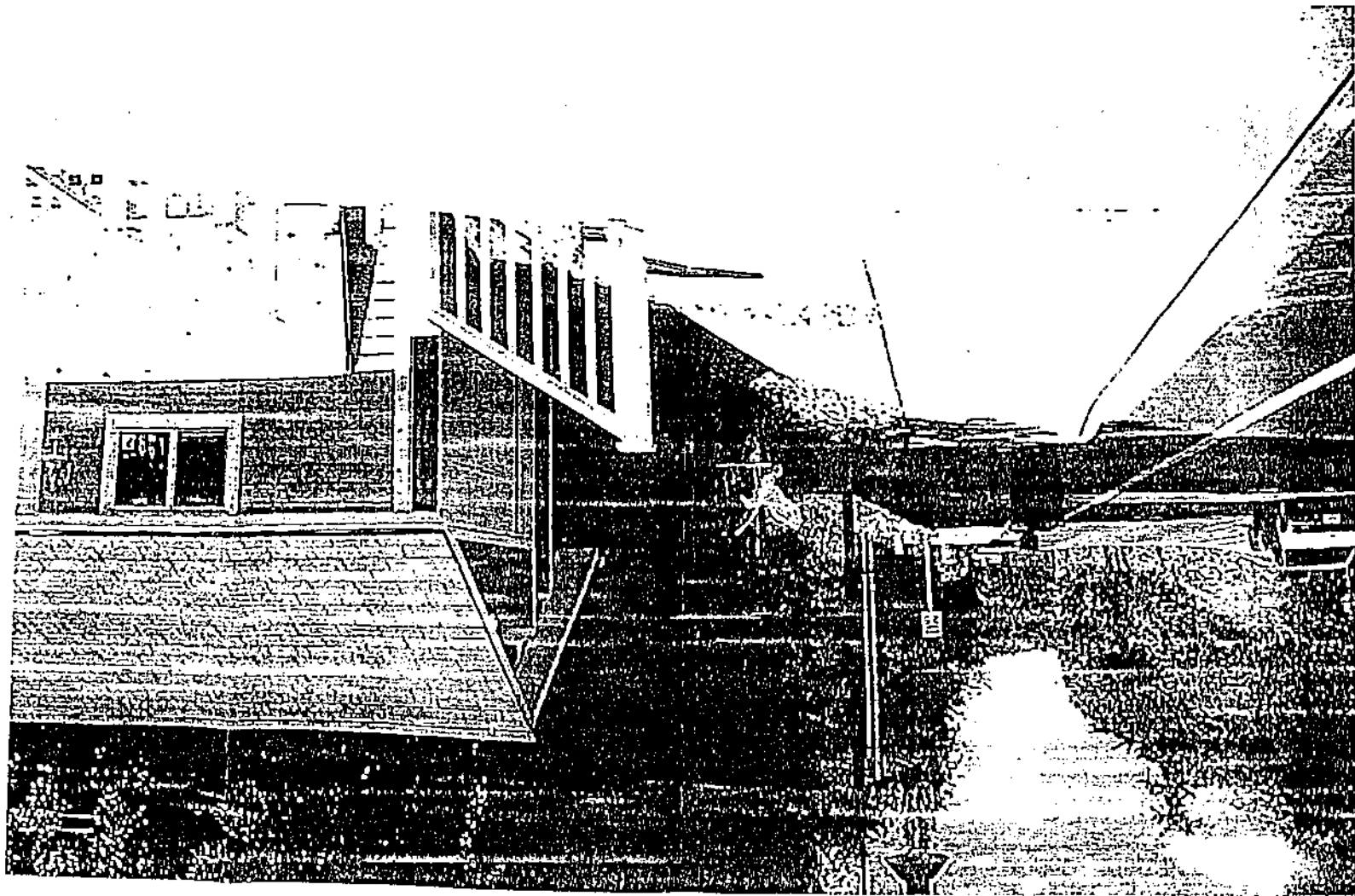
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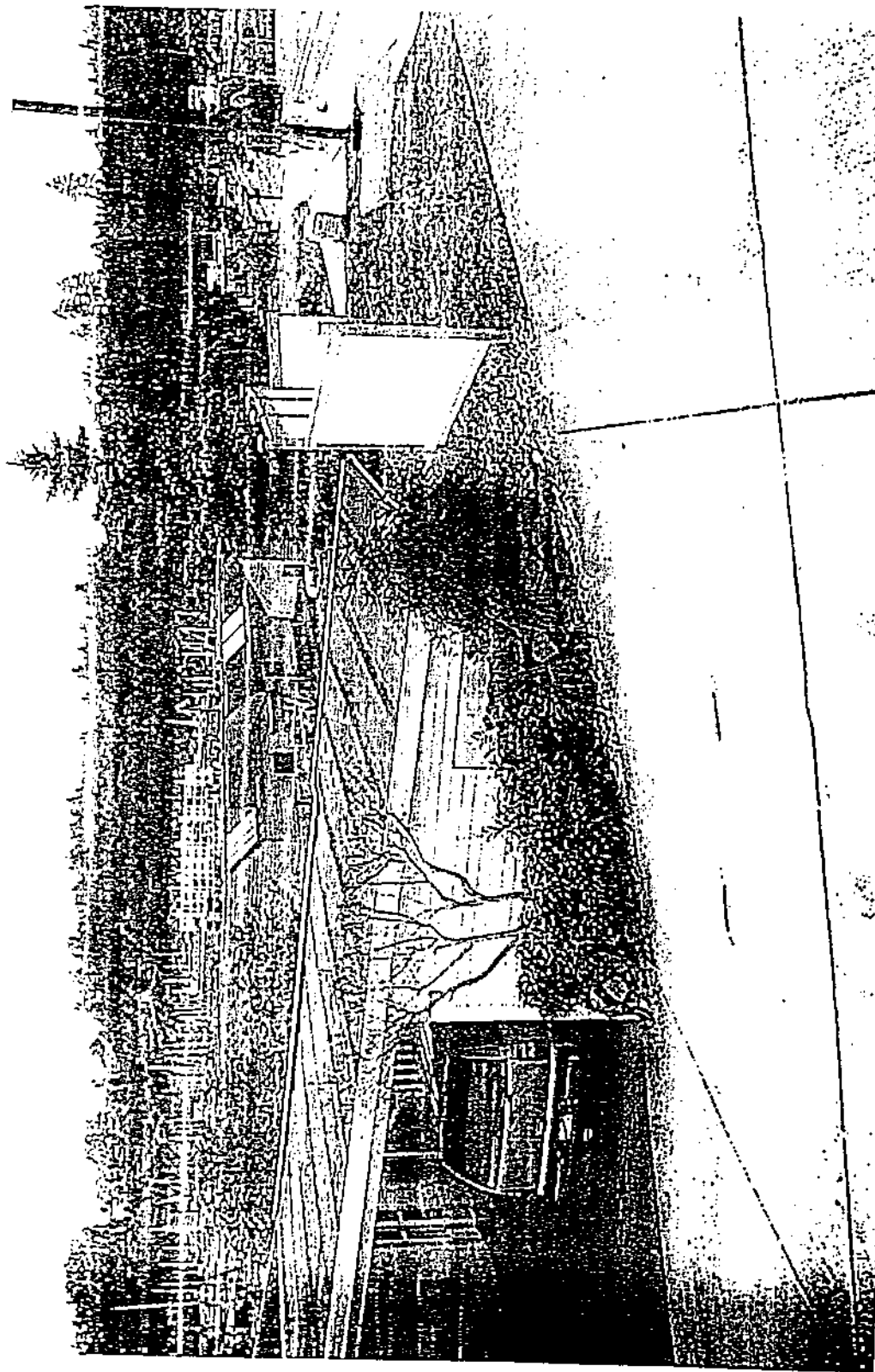


Pierce County
Geographic Information Services



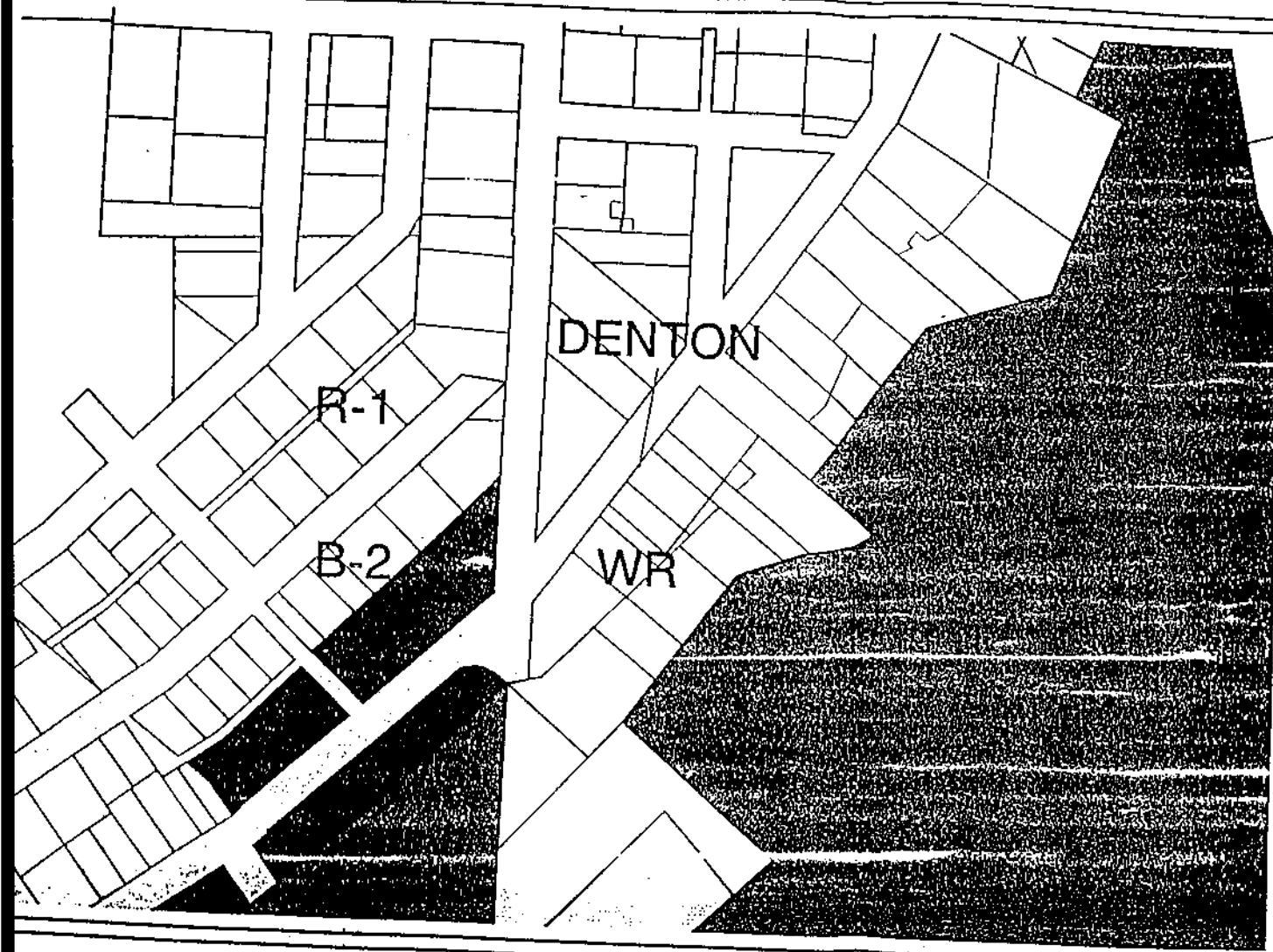



























NEIGHBOR TO EAST

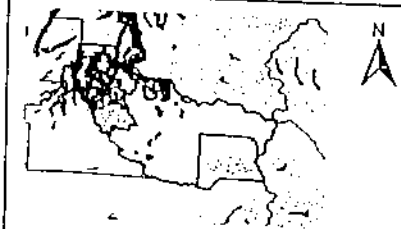
Denton Zoning



MAP LEGEND

-  Tax Parcels*
-  Zoning.shp
-  B1
-  B2
-  C1
-  R1
-  R2
-  R3
-  RB1
-  RB2
-  WC
-  WM
-  WR
-  P1
-  DB
-  PCD-RLD
-  PCD-BP
-  PCD-C
-  PCD-RMD
-  NB
-  Split Zone

Scale 1:2277



9:51 Sep 13, 2001



Pierce County
Geographic Information Services

LEAVE EXISTING

PHONE 265-5551

SIDEWALK

Total lot

70 x 122 = 8540

% coverage = 3416

Structures:

House 1300

Garage 768

Storage 72

Entries - Front 82

Basement 36

Grass strips @ 50%

Parking 1 = 244 ÷ 2 = 122

Parking 2 = 144 ÷ 2 = 72

Parking 3 = 144 ÷ 2 = 72

Parking 4

Grass strip 4 x 18

2 Grass black strips

2 x 18 x 2 = 72 ÷ 2 = 36

Parking 5

concrete included

in driveway

Driveway 825

Total coverage 5305

(CONCRETE) RIGHT OF WAY - (CONCRETE)

PROPERTY LINE

Parking 2
Landscaping area
Parking 4

Parking 5
(included in 825)

Garage
(32' x 24')
768 sq

Landscaping

Driveway
825 sq

Plantings

House (38' x 34')
1300 sq

Storage
(6' x 12')
72 sq

Garden

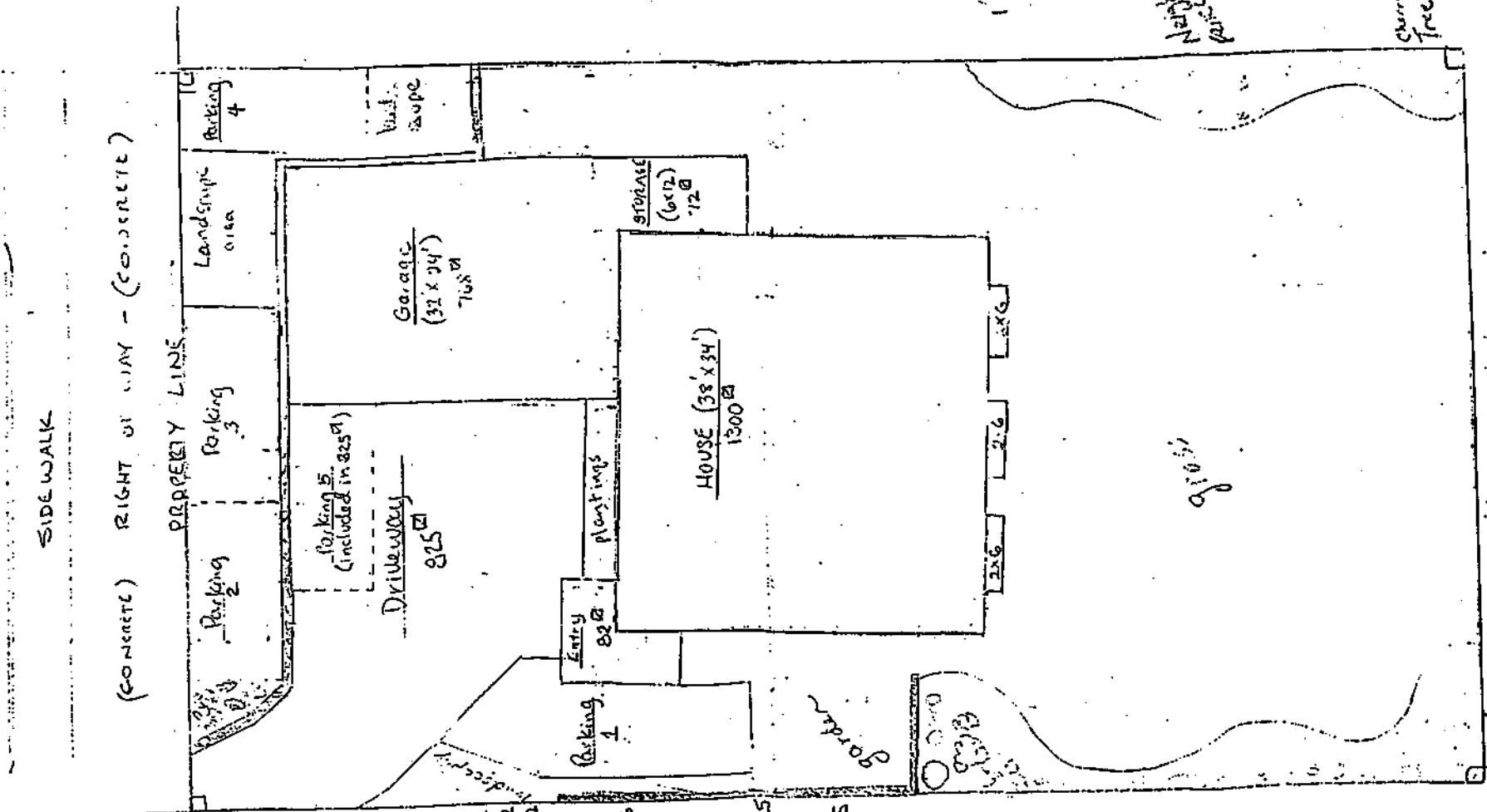
Grass strip

Neighbors

Cherry Tree

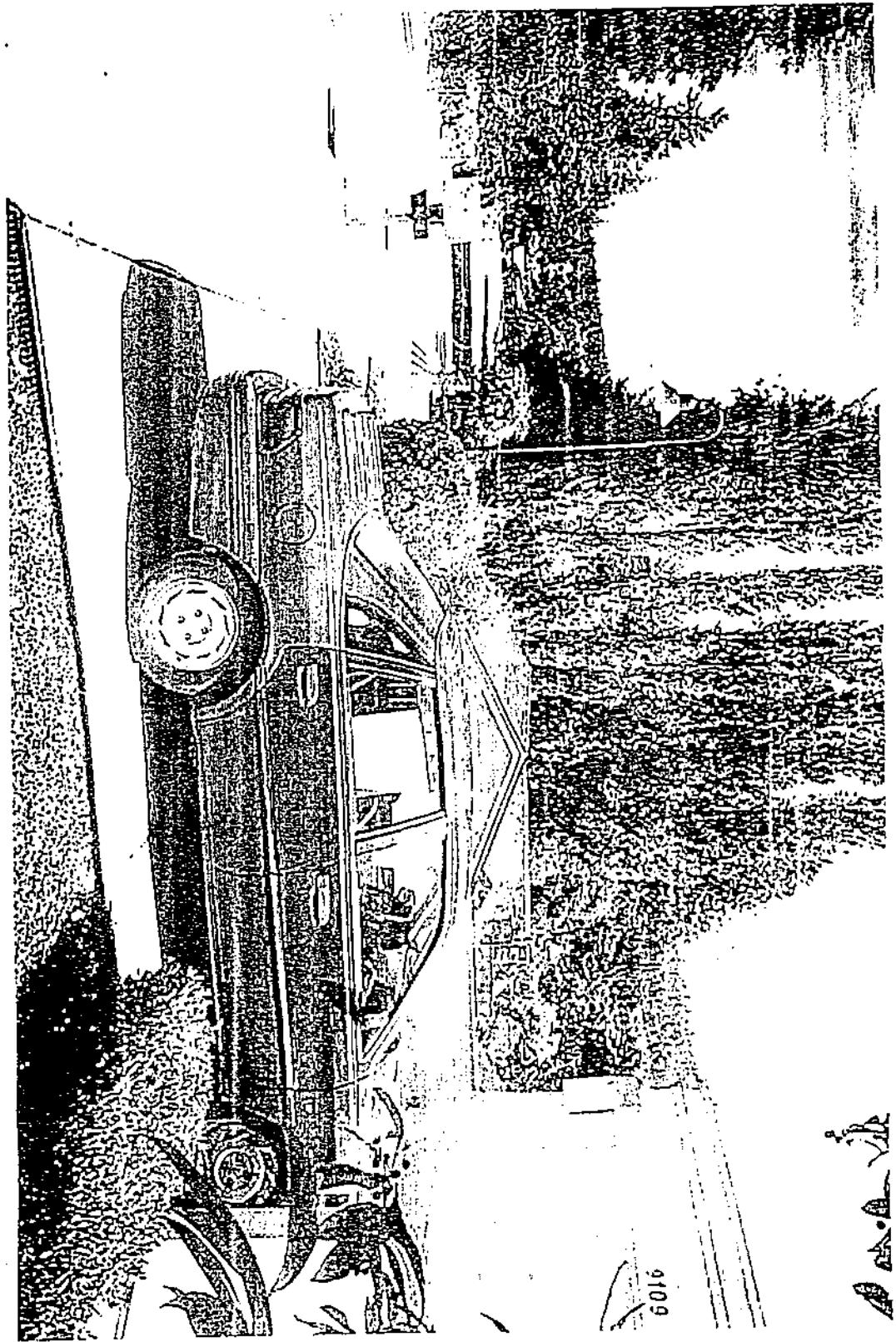
1010

182





DENTON RESIDENCE



9109



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BEFORE THE HEARING EXAMINER
FOR THE CITY OF GIG HARBOR

In Re: the Application of Janis and Steve
Denton,

CUP 01-05 & VAR 01-07

FINDINGS, CONCLUSIONS
AND DECISION

I. SUMMARY OF DECISION

The applications for a conditional use permit to allow a Bed and Breakfast in a single family home in the Waterfront Residential District, and for a setback variance to construct a garage, at 9017 N. Harborview Drive within Gig Harbor, are GRANTED, subject to conditions.

II. SUMMARY OF PROCEDURE

A. Hearing. An open record hearing was held in the City of Gig Harbor on September 19, 2001.

B. Exhibits.

The City of Gig Harbor submitted the following exhibits:

- 1. Staff Report dated September 11, 2001 (including a last page which is a hand-drawn "plot plan"), which included:
 - a. A zoning map of the area;
 - b. An aerial photo of the area;
 - c. A letter dated May 29, 2001 from the Dentons to the City regarding a request for a conditional use permit;
 - d. A letter dated July 13, 2001 from the Dentons to the City regarding a request for a variance;

- 1 e. A letter dated August 27, 2001 from the Dentons to the City
2 regarding setbacks of neighboring properties;
3 f. One page of four color copied photographs of the subject site
4 provided by the Dentons;
5 g. Six 11 x 17 photographs of the neighborhood provided by the
6 Dentons; and
7 h. A copy of the City's determination of non-significance under
8 SEPA, dated September 14, 2001, regarding the conditional use permit application.

9 The Applicants submitted the following exhibits:

- 10 2. A front elevation of the proposed garage structure with landscaping; and
11 3. A larger version of Exhibit 1.b., with handwritten notations depicting
12 the locations of the sites depicted in Exhibit 1.g.

13 C. Pleadings. In addition, the Hearing Examiner considered the following:

- 14 1. None.

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

- 16 1. The Staff Report was presented by Pat Iolavera, Senior Planner;
17 2. Steve and Janis Denton spoke on behalf of the applicant; and
18 3. Dr. Greg Hoeksema spoke in opposition to the variance application.

19 III. FINDINGS

20 1. In general, this matter involves applications submitted by Steve and Janis
21 Denton for both a conditional use permit to locate a four unit Bed and Breakfast in an
22 existing single family home within the Waterfront Residential ("WR") District, and for
23 a variance to allow the construction of a garage seventeen feet into the required 26 foot
24 front yard setback¹ from the road. The garage is proposed to sit below street level, and

25 ¹During the hearing, the parties discussed the garage in terms of an eleven foot
encroachment into a twenty foot setback. Although a 20 foot front yard setback does
exist in the WR District under GHMC 17.46.040, the Design Manual imposes a 26 foot
front yard setback for garages in the WR District. See, Design Manual at 82, 89. In the
event of conflict between the zoning code and the Design Manual, the Manual controls.
GHMC 17.98.020. The extent of the encroachment, however, is immaterial to the

1 will include an upper story featuring "a Bed and Breakfast room, a family guest room,
2 and a bonus room nearest the street." Ex. 1, at 6. An entrance to the existing house is
3 proposed from the bonus room. Id.

4 2. Notice of these applications was published in the Peninsula Gateway on July
5 27, 2001, was mailed to property owners within 300 feet of the site on August 24, 2001,
6 and was posted on the site by the applicant.

7 3. The City's SEPA Responsible Official issued a determination of non-
8 significance on September 14, 2001. No SEPA appeals were filed.

9 4. The Dentons own the waterfront home located at 9017 N. Harborview Drive
10 within the City of Gig Harbor. Their property is zoned WR, and is approximately .21
11 acres in size. The properties to the east and west of their property are also zoned WR,
12 while the property to the north across N. Harborview Drive is zoned R-1 Residential, and
13 includes on that site a commercial hair salon. Gig Harbor Bay lies immediately to the
14 south of the Dentons' property.

15 5. According to the Dentons, nine other homes along N. Harborview Drive have
16 either houses or garages that are set back from the front property line between one and
17 twelve feet. Exs. 1.e., 1.g., and 3.

18 6. Turning first to the application for a conditional use permit, GHMC 17.64.040
19 requires the examiner to consider and to make written findings on the following criteria:

20 a. That the use for which the conditional use permit is applied for is
21 specified by this title as being conditionally permitted within, and is consistent with the
22 description and purpose of the zoning district in which the property is located.

23 • A Bed and Breakfast is a conditional use in the WR zoning district.
24 GHMC 17.46.030.

25 b. That the granting of such conditional use permit will not be detrimental
to the public health, safety, comfort, convenience and general welfare, will not adversely
affect the established character of the surrounding neighborhood, and will not be injurious
to the property or improvements in such vicinity and/or zone in which the property is
located.

• There is no evidence in this record to suggest that a bed and breakfast
establishment at this location would be detrimental to the public health, safety, comfort,

examiner's decision on the variance application.

1 convenience or general welfare. Given its proximity to the waterfront tourist attractions
2 and the adjoining Waterfront Commercial District, this site is well suited for such an
3 establishment.

4 The established character of the surrounding neighborhood is an important
5 asset to the City and its waterfront districts. The proposed use will have the effect of
6 preserving an existing craftsman style home along the waterfront, which is part of the
7 Historic District as defined in the City of Gig Harbor Design Manual. Id., at 85; Ex. 1
8 at 7. Although the proposed garage/bed and breakfast will also have the effect of
9 expanding the existing historic structure, the applicants' plans (and the City's applicable
10 development regulations) will serve to ensure that the proposed addition maintains the
11 character of the surrounding neighborhood.

12 c. That the proposed use is properly located in relation to the other land
13 uses and to transportation and service facilities in the vicinity; and further, that the use
14 can be adequately served by such public facilities and street capacities without placing an
15 undue burden on such facilities and streets.

16 • The proposed use is separated from one of the main commercial districts
17 by two houses and a condominium complex. A hair salon operates in the R-1 zoned
18 house almost directly across the street. This location is on the waterfront, is within
19 walking distance of shops, restaurants, and other downtown attractions, and will increase
20 public enjoyment of the Gig Harbor waterfront. Guests who drive personal vehicles to
21 this location will increase the strain on City streets, but the impact will be small and the
22 proposal provides for off-street parking in excess of that required by applicable regulation.
23 See, (d), below.

24 d. That the site is of sufficient size to accommodate the proposed use and
25 all yards, open spaces, walls and fences, parking, landscaping and other such features as
are required by this title or as needed in the opinion of the examiner.

• The proposal is for a 4-unit B&B in a single family home. Under
GHMC 17.46.070, in the WR District, parking and loading facilities must be provided as
set forth in GHMC 17.72. Under GHMC 17.72.030(S), the planning director considered
GHMC 17.72.030(A) and (B) regarding parking requirements for single family and
multiple family dwellings, and then required 1.25 off-street parking spaces for each of the
four rooms of the proposed bed and breakfast, and two more parking spaces for the
existing single family residence.

The examiner adopts the planning director's decision on parking, and finds
that a total of 7 off-street parking spaces are required. The Dentons' plans show a total
of eight parking spaces. Ex. 1, last page. Initially, Staff believed that the space labeled
"Parking 4" was only 72 square feet which would not meet the requirements of the

1 GHMC 17.72.020(C) (8' x 18'). At the hearing, Ms. Iolavera testified that the square
2 footage requirement was in fact satisfied, but also indicated that Public Works approval
3 would be necessary for appropriate entry and exit sight distances and other safety issues.

4 Other than the front yard (which is the subject of the variance application,
5 discussed below), no other setback nor other development regulation issues are apparent.
6 The Dentons submitted a proposed landscaping drawing, which is to be distinguished from
7 a landscaping plan subject to City review and approval, which indicates that landscaping
8 concerns and code requirements can be satisfied. See, e.g., Design Manual, at 43.

9 7. As set forth above, the examiner finds that the application for a conditional use
10 permit to build the proposed garage and four unit bed and breakfast satisfies all of the
11 review criteria required by GHMC 17.64.040.

12 8. Turning next to the issue of the front yard setback variance application, the
13 examiner reviewed and considered numerous sections of the Gig Harbor Municipal Code
14 in reaching this decision. Under GHMC 17.98.030, the City's Design Manual applies to
15 these applications as they involve defined "outdoor proposals." As previously mentioned,
16 the Dentons' property lies in the WR District. Accordingly, it is also within the Historic
17 District, since the Historic District includes "all Waterfront Districts." Design Manual,
18 at 85.

19 9. Under the performance standards of the zoning code for the WR District, the
20 minimum front yard setback is 20 feet. GHMC 17.46.040. Under the Design Manual,
21 however, the front yard setback for a garage is 26 feet, under both single family housing
22 design standards and the Historic District design standards. Design Manual, at 82, 89.
23 Admittedly, the top story of the proposed garage has the trappings of a house, which
24 would require only a 20 foot setback even under the Design Manual. The primary
25 structure, however, is clearly a garage. Although both single family and duplex dwellings
are allowed in the WR District (GHMC 17.46.020(A)), the proposed bed and breakfast
establishment is reviewed under the single family guidelines. Under the code, a "bed and
breakfast" is a "single family residence" which provides overnight lodging for guests.
GHMC 17.04.103.

10. In case of conflict between the performance standards of the zoning code and
the Design Manual, the Design Manual controls. GHMC 17.98.020. Here, then, the
examiner is considering a variance application to permit the garage structure to intrude
seventeen feet into the otherwise required 26 foot front yard setback.

11. In considering the variance application, GHMC 17.66.030 requires the
examiner to consider and make written findings on the following criteria:

a. The proposed variance will not amount to a rezone nor authorize any

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use not allowed in the district.

• The variance application clearly does not amount to a rezone, nor will a front yard setback variance authorize any use not allowed in the district. As discussed above, a bed and breakfast establishment is allowed as a conditional use in the WR District. The applicants have satisfied this review criterion.

b. Special conditions and circumstances exist which are peculiar to the land such as size, shape, topography or location, not applicable to other land in the same district and that literal interpretation of the provisions of this title would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title.

• Like some, but not all, other lots along N. Harborview Drive in the WR District, the Dentons' lot slopes toward the waterfront. The lots in the WR District are of many different shapes and sizes. Ex. 1.a. Some have front garages, others do not. Some have no garages. Many other similar properties in the WR District, however, also have front garages within the setback. Ex. 1.g.

While the Design Manual indicates a preference to locate garages in the rear of the house (Id., at 82), no room exists to place a garage (and associated sideyard driveway) between the existing house and the waterfront. Equally obvious, a garage near the water would run contrary to many other provisions of the Design Manual, comprehensive plan, and other development regulations.

The Design Manual also provides for situations, like this one, "where it is not possible to locate garages behind the house." Id., at 83. In those cases, the Design Manual requires that the garage be "de-emphasized" and that preference be given to "design elements." Id.

A garage is a commonly enjoyed use in almost all contemporary residential developments, specifically including many other residential uses within the WR District. Exs. 1.e., 1.g.

Although Dr. Hoeksema correctly notes that other properties in the WR District are burdened by the same "special conditions and circumstances" as the Dentons' property, those other properties have virtually all been developed within the front setback as well. Dr. Hoeksema eloquently urges against the creation of a "modern precedent" allowing garages and other structures within the front yard setback in the WR District. On this record, however, the modern precedent had already been set prior to submission of this application, consistent with applicable development regulations, to allow front yard structures in certain cases. The applicants have satisfied this review criterion.

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c. The special conditions and circumstances do not result from the actions of the applicant.

• Mr. Denton candidly testified that he was unaware of the front yard setback requirement and that he "didn't do enough research" when he and Mrs. Denton purchased the property in June 2001. This criterion, however, refers to "special conditions and circumstances . . . such as size, shape, and topography," and not to a buyer's due diligence prior to closing a purchase. The slope, the waterfront location, the size and other topographical features of the parcel are not conditions or circumstances resulting from the actions of the applicant. Rather, they are conditions applicable to other lots in the area, many of which have been developed similarly to that proposed by the Dentons. The applicants have satisfied this review criterion.

d. Granting of the variance requested will not confer a special privilege that is denied other lands in the same district.

• As discussed under sub-section (b), above, granting this variance will serve to treat the Dentons' property in much the same manner as other, similarly situated property in the WR District has been treated. Granting of the variance will not confer a special privilege denied to other lands. The applicants have satisfied this review criterion.

e. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

• As proposed, the garage itself will be substantially, if not entirely, below street grade. The top floor which will house the bed and breakfast room and other rooms, however, will be above street grade. Admittedly, if approved, this top floor will impact the view of the water in some respects and from some angles. The structure will not eliminate the water view in any permanent sense and, as proposed, the structure complies with the height restriction for the WR District.²

The character of the community will be largely maintained, especially given the condition to provide landscape screening of the parking to the City's satisfaction. The Dentons currently use much of the area proposed to be constructed upon as parking. Ex. 1.g., second sheet. A retaining wall currently exists in the approximate location of the outer wall of the proposed garage structure. Id.; Testimony of Mr. Denton. As proposed, that existing wall will be built up vertically and will serve as the outer wall for the proposed garage structure. The area between that wall and the existing right of way will

²The Design Review Board allowed a minor height variance by decision dated August 20, 2001.

1 then be backfilled, resulting in additional off-street parking and landscaping at street level.
2 Ex. 1, last sheet; Testimony of Mr. Denton.

3 Although Dr. Hoeksema argues that the granting of this variance will result
4 in a decrease in his property value, there is no evidence in this record to support a finding
5 that construction of the proposed bed and breakfast within the confines of applicable City
6 development regulations would lead to such a result. The applicants have satisfied this
7 review criterion.

8 f. The hearing examiner shall further make a finding that the reasons set
9 forth in the application justify the granting of the variance, and that the variance is the
10 minimum variance that will make possible the reasonable use of the land.

11 • As set forth above, the examiner finds that the reasons set forth in the
12 application, taken together with the testimony and exhibits received at the public hearing,
13 justify granting the variance request. The first clause of this final review criterion is
14 accordingly satisfied.

15 The second clause of this final review criterion requires the examiner to
16 make a finding that the variance requested is the "minimum" necessary to make possible
17 the reasonable use of the land. In this regard, Dr. Hoeksema offers cogent testimony that
18 the ownership of a "beautiful home, at the head of the bay, even without a variance and
19 a conditional use permit" constitutes "reasonable use" of the land. Mr. Denton responds
20 that it should be considered reasonable to have a garage and parking on this property,
21 similar to that afforded to other nearby properties, especially when no on-street parking
22 exists on N. Harborview Drive in that area.

23 Dr. Hoeksema makes a compelling argument, but the examiner is required
24 to give meaning to every pronouncement of the City Council. Reduced to basics, Dr.
25 Hoeksema argues that, under this provision, the variance should be denied because the
Dentons are able to make "reasonable use" of their property even without the requested
variance and conditional use permit. If that were the case, then a variance would be a
virtual impossibility. The City Council, however, has specifically authorized a bed and
breakfast as a conditional use in the WR District, and has specifically authorized the use
of the variance procedure for conditional uses within that zone. If the City Council had
intended the interpretation urged by Dr. Hoeksema, it easily could have said so.

Finally, regardless of whether the front yard setback is 20 feet or 26 feet,
the Dentons clearly propose to build within about nine feet of the property line. From
the record, it is clear that the owner of at least one similar lot in the WR District has built
within one foot of the property line, and several others have built within three to five feet
of the property line. Ex. 1.e. The Dentons do not propose to build that close to the
property line, and no other evidence exists in the record to indicate that nine feet from the

1 property line fails to satisfy this criterion.

2 Accordingly, and on this record, the examiner will also find that the
3 variance requested is the minimum variance that will make possible the reasonable use of
4 the land in question, thereby satisfying the second clause of this final review criterion.

5 IV. CONCLUSIONS

6 A. Jurisdiction. The examiner has jurisdiction to rule on variance applications
7 pursuant to GHMC 17.66.030 and to rule on conditional use permit applications pursuant
8 to GHMC 17.64.040. See, GHMC 19.01.003.

9 B. Criteria for Review. The criteria for the examiner to consider in deciding on
10 a variance application are set forth at GHMC 17.66.030(B). The review criteria for a
11 conditional use permit are set forth at GHMC 17.64.040.

12 C. Conclusions Based on Findings. The examiner adopts and incorporates the
13 findings set forth above, and accordingly concludes that all of the criteria necessary to
14 grant the requested variance and conditional use permit, as set forth in GHMC
15 17.66.030(B) and GHMC 17.64.040, respectively, have been satisfied.

16 V. DECISION

17 Based on the above findings and conclusions, Conditional Use Permit Application
18 CUP 01-05 relating to a conditional use permit for a bed and breakfast establishment at
19 9017 N. Harborview Drive within Gig Harbor, is GRANTED, subject to the following
20 conditions:

21 1. The bed and breakfast establishment shall be limited to not more than four
22 units;

23 2. At least 7 off-street parking spaces shall be provided, including two within the
24 garage, as shown on the "plot plan" attached as the last page of Ex. 1. If the applicants
25 provide "Parking 4," as shown on the "plot plan" attached as the last page of Exhibit 1,
use of that space for parking shall be subject to the prior review and approval of the City
for appropriate sight distances and other traffic safety features;

3. A landscaping plan shall be submitted, subject to the review and approval of
the City, showing that the parking will be properly landscaped, and the parking spots are
properly lined and of sufficient size. The landscaping plan shall include, but not be
limited to, appropriate screening for the street level parking along the sidewalk;

4. Pedestrian access shall be provided through the parking areas to the street on

1 both the driveway and upper parking areas, with such pedestrian access delineated in
2 colored and textured concrete (or substitute material acceptable to the City), subject to the
3 review and approval of the City;

4 5. Any construction activity shall comply with all other applicable Gig Harbor
5 development regulations, including but not limited to erosion control and storm water
6 runoff and detention. No construction activity shall commence prior to the City's review
7 and approval of an erosion control plan; and

8 6. All conditions of approval for the associated variance shall also be considered
9 conditions of approval for this conditional use permit.

10 Based on the above findings and conclusions, Variance Application VAR 01-07
11 relating to a front yard setback variance for the proposed garage structure at 9017 N.
12 Harborview Drive within Gig Harbor, is GRANTED, subject to the following conditions:

13 1. No part of the garage structure may encroach closer than nine feet from the
14 front property line; and

15 2. All conditions of approval for the associated conditional use permit shall also
16 be considered conditions of approval for this variance.

17 VI. PARTIES OF RECORD

18 1. Greg Hoeksema
19 9105 Peacock Hill Avenue
20 Gig Harbor, Washington 98332

21 2. Mike and Beverly Sherman
22 9021 N. Harborview Drive
23 Gig Harbor, Washington 98332

24 VII. APPEAL OF EXAMINER'S DECISION

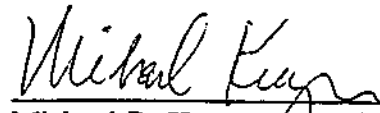
25 Any party of record desiring to appeal the examiner's decision may do so within
10 working days of the issuance of the decision (excluding the date of the decision), by
filing an appeal with the Director of Planning and Building Services. Any such appeal

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must comply with the provisions of GHMC 19.06.

DATED this 3 day of October, 2001.

KENYON DORNAY MARSHALL, PLLC


Michael R. Kenyon, Hearing Examiner

Steve & Janis Denton

9017 North Harborview Drive
Gig Harbor, WA 98332

Date: August 27, 2001
To: City of Gig Harbor
From: Steve Denton, homeowner
Subject: Setbacks of neighbors

The following is a list of neighbors on our street with homes or garages that appear to be within the required twenty foot setback from the property line on the street. I have identified the properties by house number and estimated the distance that the structures are from the property line.

In our case, we are requesting to increase the height of our existing retaining wall that now defines our parking area. When back filled, this wall will provide three additional parking spots on the street and make up one wall of our garage. It currently stands about eleven feet from the property line. Because this wall and parking area are already existing and well below street level, we feel that the impact on the street and neighborhood will be minimal.

<u>House number</u>	<u>Approximate set back*</u>
9009	3'
9017 (our house)	11' requested 2' over the property line
9021	12' to garage and 5' to wall of garage
9109	1'
9113	12' to carport
9125	10'
9301	5'
9303	5'
9307	3'
9315	

* These dimensions were estimated from the sidewalk and were not done with a tape measure.

Steve Denton

Appeal of Hearing Examiner's ruling re: ~~Janis~~ and Steve Denton CUP 01-05
& VAR 01-07

Appellant: Greg W Hoeksema
9105 Peacock Hill Ave
Gig Harbor, WA 98332

Standing: Appealed as Party of Record at the Public Hearing

Statement of Appeal:

1. Page 90 of the GHDM indicates that garages should not exceed 24X24 feet. The proposed Denton plan exceeds this limitation.
2. Page 85 of the GHDM states "One of the most characteristic design features of Gig Harbor's historic area is the small scale and simple mass of the older houses... Garages are set back of the main structure so that the emphasis is on human habitation rather than vehicular enclosure. These elements of design have been reversed on newer homes... The front porch has largely been replaced by front garages, with the garage often appearing larger than the house. These trends have significantly altered the visual character of the view basin and have decreased the width of view corridors between homes." Further, page 98 of GHDM states "Historic structures in the Historic District of Gig Harbor make a significant and important contribution to the visual character of the harbor basin...(to) preserve integrity of original structure's form, historic structures may not be 'buried' behind additions and alterations." Clearly, the Denton's plan requiring the variance is in direct conflict with all of these very specific, unambiguous design restrictions.
3. The proposed design does not respect the natural topography of the lot.
4. The planning department required the Denton's to place sticks and strings to permit an accurate assessment of the impact of the proposed garage. However, at no time while they were erected was there any public notification posted regarding the date of the hearing for the variance request, which is inconsistent with the usual requirements for public notification. Furthermore, as indicated by Ms Linda Gair in enclosure (1), "the view corridors are completely blocked off. One of the goals of the Design Review is to prevent this from happening. Views are public assets and should not be traded or replaced by 'better design' ideas... As I see it the goal of requested variances has to do with maximizing the commercial potetial of this residence—not better design."
5. The hearing examiner acknowledged on page four of his decision that "The established character of the surrounding neighborhood is an important asset to the City and its waterfront districts." However, I aver that he erroneously concluded that "the applicant's plans... will serve to ensure that the proposed addition maintains the character of the surrounding neighborhood." As outlined in 1 through 4 above, the plan is not consistent with either the specifics or spirit of the comprehensive plan and absolutely will change the character of one of the most beautiful blocks of water view corridors surrounding the harbor. In this regard,

the Dentons did not meet the requirements of section 17.66.020 of the GHMC that states "the variance will not compromise the intent of the comprehensive plan nor be inconsistent with goals, policies and objectives of the comprehensive plan." The hearing examiner stated on page 6 that I "correctly noted that other properties in the WR District are burdened by the same 'special conditions and circumstances' as the Dentons' property." A specific requirement to be met for a variance to be granted is for the Denton's to have such limitations "not applicable to other land in the same district..." Furthermore, he agreed with my "eloquent" argument against setting a modern precedent allowing garages within the front setback in the WR district. He erroneously concluded without fact that "on this record, however, the modern precedent had already been set prior to submission of this application" and that "the applicants have satisfied this review criterion." There was no evidence presented at the hearing to support this conclusion, and in fact, I am not aware that any variance has been granted for an obtrusive, oversized garage structure that encroaches 17 feet into the required setback in the immediate area since the adoption of the City of Gig Harbor Design Manual on August 26, 1996.

6. The Dentons purchased their property in June 2001. They testified at the hearing that they should have done more research about their plans prior to their purchase. Again, GHMC 17.66.020 states "the need for the variance is not the result of the deliberate actions of the applicant or property owner." The lack of due diligence on the part of the Dentons is a result of their own action vis-à-vis the need for a variance to support their request for a conditional use permit to use their property as a bed and breakfast. GHMC requires that granting of a variance "is the minimum variance that will make possible the reasonable use of the land." Without the conditional use permit or the variance, the Dentons already have reasonable use of the land as a single family home, and may have room for an unobtrusive single car garage built to scale of the home and not in violation of the GHDM and not requiring a variance. The hearing examiner erroneously concluded that this criterion had been met.

Relief Sought: Overturn the decision of the hearing examiner that granted approval of CUP 01-05 and VAR 01-07 and specifically disallow any encroachment of a garage structure into the setback.

I have read the above appeal and believe its contents to be true.


Greg Hoeksema

10/17/01



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: SECOND READING OF AN ORDINANCE ANNEXING PROPERTY
OWNED BY THE CITY LOCATED IMMEDIATELY ADJACENT TO
AND SOUTH OF THE EXISTING CITY OF GIG HARBOR PUBLIC
WORKS SHOP
DATE: JANUARY 14, 2002

INFORMATION/BACKGROUND

The City of Gig Harbor is the owner of real property consisting of approximately 5.34 acres that is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street. The City fully intends to utilize this property for municipal purposes associated with the Public Works Shop. The Revised Code of Washington allows a City to annex territory outside of its limits for any municipal purpose, by a majority vote of the Council provided that the territory is owned by the City (R.C.W. 35A.14.300). An Ordinance annexing the subject property is necessary to complete the annexation process. The first reading was held on December 10, 2001 with the public hearing and second reading held on January 14, 2002. To date, the Council has received no public testimony, either written or oral, regarding this matter.

POLICY CONSIDERATIONS

None.

FISCAL IMPACT

None.

RECOMMENDATION

I recommend that the Council approve the Ordinance annexing approximately 5.34 acres that is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street following the second reading.

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

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, PROVIDING THE CITY COUNCIL'S ANNEXATION OF ONE PARCEL OF PROPERTY LOCATED IMMEDIATELY ADJACENT TO AND SOUTH OF THE EXISTING CITY OF GIG HARBOR PUBLIC WORKS SHOP LOCATED AT 5118 89th STREET AND ADOPTION OF ZONING REGULATIONS FOR THE ANNEXATION AREA.

WHEREAS, the City of Gig Harbor is the owner of real property consisting of approximately 5.34 acres described in Exhibit A and further identified in Exhibit B, which is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street; and

WHEREAS, it is the intent of the City of Gig Harbor that this property, as described in Exhibit A, will be used for municipal purposes; and

WHEREAS, the Revised Code of Washington provides for the annexation of territory outside of its limits for any municipal purpose, by a majority vote of the Council if the territory is owned by the City (R.C.W. 35A.14.300); and

WHEREAS, the property described in Exhibit A to be annexed is within the Urban Growth Area as established by Pierce County and included in the Comprehensive Plans of both the County and the City of Gig Harbor; and

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in November, 1994, established a land use map designation for this area as Public/Institutional, along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed Public-Institutional (PI) zoning of the property described in Exhibit A is consistent with the City of Gig Harbor Comprehensive Land Use Plan designation as Public/Institutional; and

WHEREAS, review of property being annexed for municipal purposes which is contiguous to the City by the Boundary Review Board is not necessary pursuant to R.C.W. 35A.14.220 and R.C.W. 36.93.090;

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of December 10, 2001;

WHEREAS, the City Council held a public hearing and further considered this Ordinance during its regular City Council meeting of January 14, 2002; now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:

Section 1. The Gig Harbor City Council hereby approves the annexation of one parcel of real property consisting of approximately 5.34 acres described in Exhibit A and further identified in Exhibit B, attached hereto, which is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street, as part of the City of Gig Harbor. All property within the area described in Exhibit A shall be zoned as Public Institutional (PI) in accordance with the Gig Harbor Municipal Code, Title 17.

Section 2. The Gig Harbor City Clerk hereby declares the property described in Exhibit A, which is the subject of the annexation petition, to be contiguous with the boundaries of the City of Gig Harbor.

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.

ORDAINED by the City Council this _____ day of _____ 2002.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____

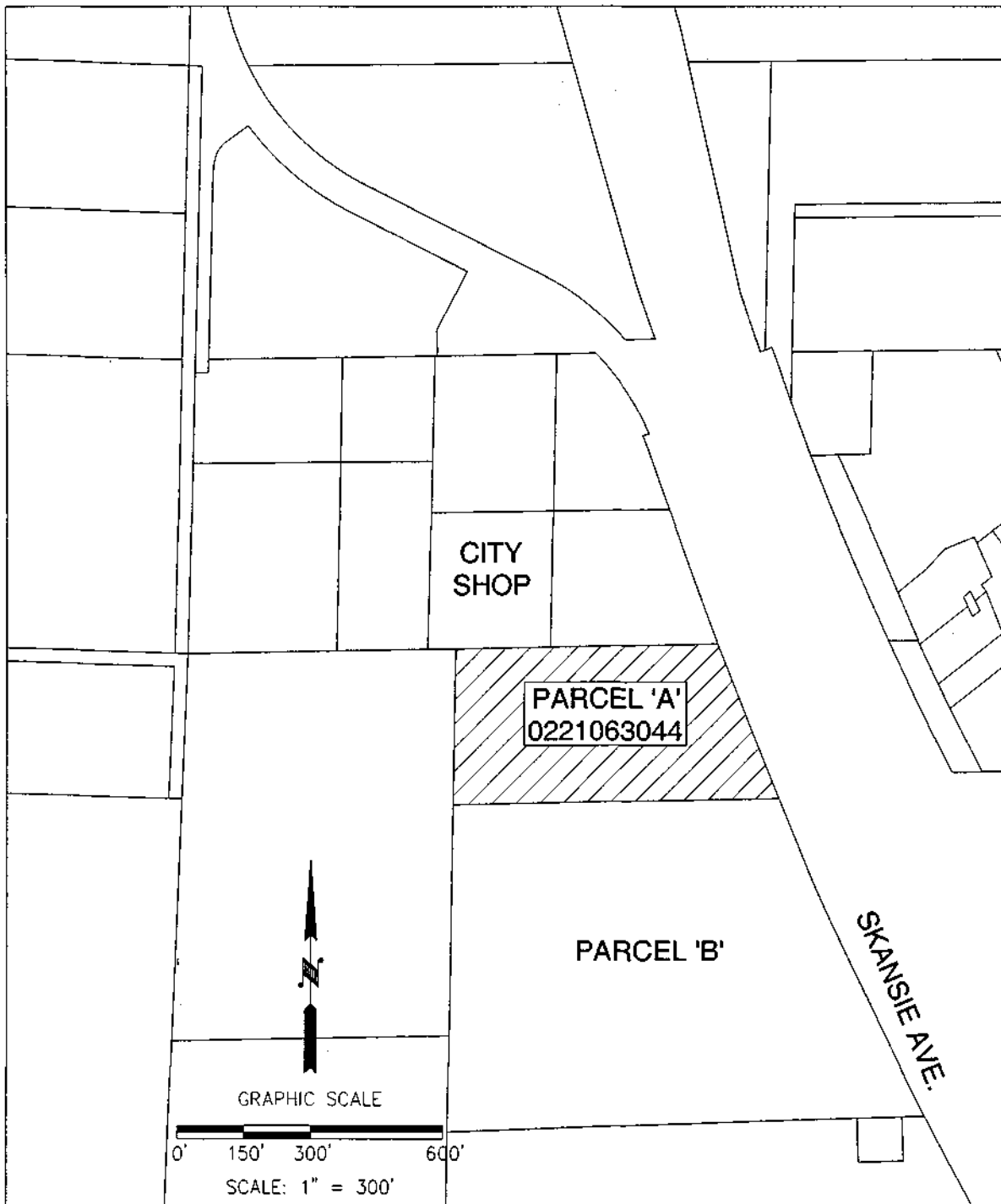
FILED WITH THE CITY CLERK: 11/21/01
PASSED BY THE CITY COUNCIL:
ORDINANCE NO.

Exhibit A
Property Legal Description
Parcel 'A' No. 0221063044

LEGAL DESCRIPTION PARCEL 'A'

THE NORTH 350.55 FEET OF THE FOLLOWING PARCEL COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON; THENCE SOUTH 89 DEGREES 59 MINUTES 30 SECONDS EAST, ON THE SOUTH LINE OF SAID SUBDIVISION 670.00 FEET; THENCE NORTH 01 DEGREES 49 MINUTES 17 SECONDS EAST, 1530.77 FEET TO A POINT 605 FEET EAST OF THE WEST LINE OF SAID SUBDIVISION, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 04 DEGREES 11 MINUTES 25 SECONDS EAST PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION TO THE INTERSECTION WITH THE WEST LINE OF SAID SUBDIVISION TO THE INTERSECTION WITH THE NORTH LINE OF SAID SUBDIVISION; THENCE NORTH 89 DEGREES 00 MINUTES 30 SECONDS WEST ON THE NORTH LINE OF SAID SUBDIVISION TO THE WESTERLY RIGHT OF WAY OF SKANSIE STREET; THENCE SOUTHEASTERLY ON SAID WESTERLY RIGHT OF WAY LINE TO THE INTERSECTION WITH A LINE PARALLEL WITH AND 1530.00 FEET NORTH OF THE SOUTH LINE OF SAID SUBDIVISION; THENCE NORTH 89 DEGREES 59 MINUTES 30 SECONDS WEST ON SAID PARALLEL LINE 1092.01 FEET TO THE POINT OF BEGINNING.

**Exhibit B
Vicinity Map**



**PARCEL 'A' LOCATION MAP
EXHIBIT "B"**

FILE: EXHIBIT B-CITY SHOP

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

On January 14, 2002, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, PROVIDING THE CITY COUNCIL'S ANNEXATION OF ONE PARCEL OF PROPERTY LOCATED IMMEDIATELY ADJACENT TO AND SOUTH OF THE EXISTING CITY OF GIG HARBOR PUBLIC WORKS SHOP LOCATED AT 5118 89th STREET AND ADOPTION OF ZONING REGULATIONS FOR THE ANNEXATION AREA.

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

APPROVED by the City Council at their meeting of _____, 2002.

MOLLY TOWSLEE, CITY CLERK



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: OFFICIAL ZONING MAP CHANGE
PENINSULA SCHOOL DISTRICT REZONE (REZ 01-03)
DATE: JANUARY 14, 2002

INFORMATION/BACKGROUND

The Peninsula School District #401 submitted a site-specific rezone request for approximately twelve (12) acres located at 9010 Prentice Avenue (Harbor Ridge Middle School) from Single-Family Residential (R-1) to Public Institutional (PI) (REZ 01-03). The City Hearing Examiner held a public hearing on November 14, 2001 and issued a written decision approving the rezone as requested on November 20, 2001. This decision was not appealed to the City Council and is therefore considered to be final pursuant to Title 19 of the Gig Harbor Municipal Code. The City Council held the first reading and a public hearing on this matter at the December 10, 2001 meeting. To date, the Council has received no public testimony, either written or oral, regarding this matter.

POLICY ISSUES

Title 19 of the Gig Harbor Municipal Code indicates that site-specific rezones requests are to be processed as Type III permit application, reviewed by the Hearing Examiner whose decision is final unless appealed to Council. Given that the November 20, 2001 Hearing Examiner decision was not appealed, it is now appropriate for Council to consider an Ordinance directing that the official zoning map be amended to reflect this approval.

FISCAL IMPACT

None.

RECOMMENDATION

I recommend the adoption of this Ordinance by the City Council following the second reading.

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, REZONING CERTAIN REAL PROPERTY
LOCATED AT 9010 PRENTICE AVENUE (HARBOR RIDGE
MIDDLE SCHOOL) FROM THE PRESENT SINGLE-FAMILY
RESIDENTIAL (R-1) ZONING DESIGNATION TO A PUBLIC-
INSTITUTIONAL (PI) ZONING DESIGNATION.**

WHEREAS, the Peninsula School District #401 submitted a site specific rezone request for approximately twelve (12) acres located at 9010 Prentice Avenue (Harbor Ridge Middle School) from Single-Family Residential (R-1) to Public Institutional (PI) (REZ 01-03); and

WHEREAS; Title 19 of the Gig Harbor Municipal Code indicates that site specific rezones requests are to be processed as Type III permit applications; and

WHEREAS, the City Hearing Examiner held a public hearing on this site specific rezone request on November 14, 2001; and

WHEREAS, the City Hearing Examiner issued a written decision approving the requested site specific rezone of this property from Single-Family Residential (R-1) to Public Institutional (PI) on November 20, 2001; and

WHEREAS, The November 20, 2001 Hearing Examiner decision was not appealed to the City Council and is therefore considered to be final pursuant to Title 19 of the Gig Harbor Municipal Code; and

WHEREAS, The City of Gig Harbor responsible SEPA Official has reviewed the rezone request and issued a determination of non-significance (DNS) on September 14, 2001. The issuance of a DNS for this project was not appealed; and

WHEREAS, the City Council held a public hearing on this Ordinance during its regular City Council meeting of December 10, 2001;

WHEREAS, the City Council further considered this Ordinance during its regular City Council meeting of January 14, 2002; Now, Therefore,

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

Section 1. The real property located at 9010 Prentice Avenue (Harbor Ridge Middle School), consisting of one (1) tax parcel zoned Single Family Residential (R1) (Tax Parcel ID number 0221061100) owned by the Peninsula School District #410, and legally described in Exhibit A, attached hereto and fully incorporated herein by this reference, shall be rezoned to the zoning classification of Public Institutional (PI). The Director of Planning and Building Services 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 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. 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 Council and approved by the Mayor of the City of Gig Harbor
this 14th day of January 2002.

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: 12/03/01
PASSED BY THE CITY COUNCIL: //02
PUBLISHED: //02
EFFECTIVE DATE: //02
ORDINANCE NO.

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY REFERENCED IN SECTION 1 CONSISTING
OF ONE (1) PARCEL OWNED BY THE PENINSULA SCHOOL DISTRICT #401.

1. Tax Parcel ID number 0221061100

Beginning at the Northwest corner of Government Lot 1 in Section 6, Township 21 North, Range 2 East of the Willamette Meridian; thence South 00 degrees 43 minutes, East 220.36 feet; thence North 82 degrees 41 minutes, East 60.4 feet; thence South 52 degrees 54 minutes, East 300.61 feet; thence South 52 degrees 16 minutes, East 102.33 feet; thence North 45 degrees 06 minutes, East 324.64 feet; thence South 46 degrees 17 minutes, East 112.72 feet; thence North 43 degrees 43 minutes, East 95.46 feet; thence North 03 degrees 18 minutes, West 279.08 feet to the North line of said subdivision; thence South 86 degrees 42 minutes, West 745.1 feet to the point of beginning; except the West 60 feet for the road;

Also the South half of the Southwest quarter of the Northeast quarter of the Northeast quarter of Section 6, Township 21 North, Range 2 East of the Willamette Meridian;

Also Tract 'A' of Fullers Addition, according to plat recorded in Volume 11 of Plats at page 60, records of the Pierce County Auditor

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

On January 14, 2002, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REZONING CERTAIN REAL PROPERTY LOCATED AT 9010 PRENTICE AVENUE (HARBOR RIDGE MIDDLE SCHOOL) FROM THE PRESENT SINGLE-FAMILY RESIDENTIAL (R-1) ZONING DESIGNATION TO A PUBLIC INSTITUTIONAL (PI) ZONING DESIGNATION.

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

APPROVED by the City Council at their meeting of January 14, 2002.

MOLLY TOWSLEE, CITY CLERK



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: SECOND READING OF AN ORDINANCE ANNEXING PROPERTY
OWNED BY THE CITY LOCATED IMMEDIATELY ADJACENT TO
AND SOUTH OF THE EXISTING CITY OF GIG HARBOR PUBLIC
WORKS SHOP
DATE: JANUARY 14, 2002

INFORMATION/BACKGROUND

The City of Gig Harbor is the owner of real property consisting of approximately 5.34 acres that is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street. The City fully intends to utilize this property for municipal purposes associated with the Public Works Shop. The Revised Code of Washington allows a City to annex territory outside of its limits for any municipal purpose, by a majority vote of the Council provided that the territory is owned by the City (R.C.W. 35A.14.300). An Ordinance annexing the subject property is necessary to complete the annexation process. The first reading was held on December 10, 2001 with the public hearing and second reading held on January 14, 2002. To date, the Council has received no public testimony, either written or oral, regarding this matter.

POLICY CONSIDERATIONS

None.

FISCAL IMPACT

None.

RECOMMENDATION

I recommend that the Council approve the Ordinance annexing approximately 5.34 acres that is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street following the second reading.

CITY OF GIG HARBOR
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, PROVIDING THE CITY COUNCIL'S ANNEXATION OF ONE PARCEL OF PROPERTY LOCATED IMMEDIATELY ADJACENT TO AND SOUTH OF THE EXISTING CITY OF GIG HARBOR PUBLIC WORKS SHOP LOCATED AT 5118 89th STREET AND ADOPTION OF ZONING REGULATIONS FOR THE ANNEXATION AREA.

WHEREAS, the City of Gig Harbor is the owner of real property consisting of approximately 5.34 acres described in Exhibit A and further identified in Exhibit B, which is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street; and

WHEREAS, it is the intent of the City of Gig Harbor that this property, as described in Exhibit A, will be used for municipal purposes; and

WHEREAS, the Revised Code of Washington provides for the annexation of territory outside of its limits for any municipal purpose, by a majority vote of the Council if the territory is owned by the City (R.C.W. 35A.14.300); and

WHEREAS, the property described in Exhibit A to be annexed is within the Urban Growth Area as established by Pierce County and included in the Comprehensive Plans of both the County and the City of Gig Harbor; and

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in November, 1994, established a land use map designation for this area as Public/Institutional, along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed Public-Institutional (PI) zoning of the property described in Exhibit A is consistent with the City of Gig Harbor Comprehensive Land Use Plan designation as Public/Institutional; and

WHEREAS, review of property being annexed for municipal purposes which is contiguous to the City by the Boundary Review Board is not necessary pursuant to R.C.W. 35A.14.220 and R.C.W. 36.93.090;

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of December 10, 2001;

WHEREAS, the City Council held a public hearing and further considered this Ordinance during its regular City Council meeting of January 14, 2002; now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:

Section 1. The Gig Harbor City Council hereby approves the annexation of one parcel of real property consisting of approximately 5.34 acres described in Exhibit A and further identified in Exhibit B, attached hereto, which is immediately adjacent to and south of the existing City of Gig Harbor Public Works Shop located at 5118 89th Street, as part of the City of Gig Harbor. All property within the area described in Exhibit A shall be zoned as Public Institutional (PI) in accordance with the Gig Harbor Municipal Code, Title 17.

Section 2. The Gig Harbor City Clerk hereby declares the property described in Exhibit A, which is the subject of the annexation petition, to be contiguous with the boundaries of the City of Gig Harbor.

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.

ORDAINED by the City Council this _____ day of _____ 2002.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____

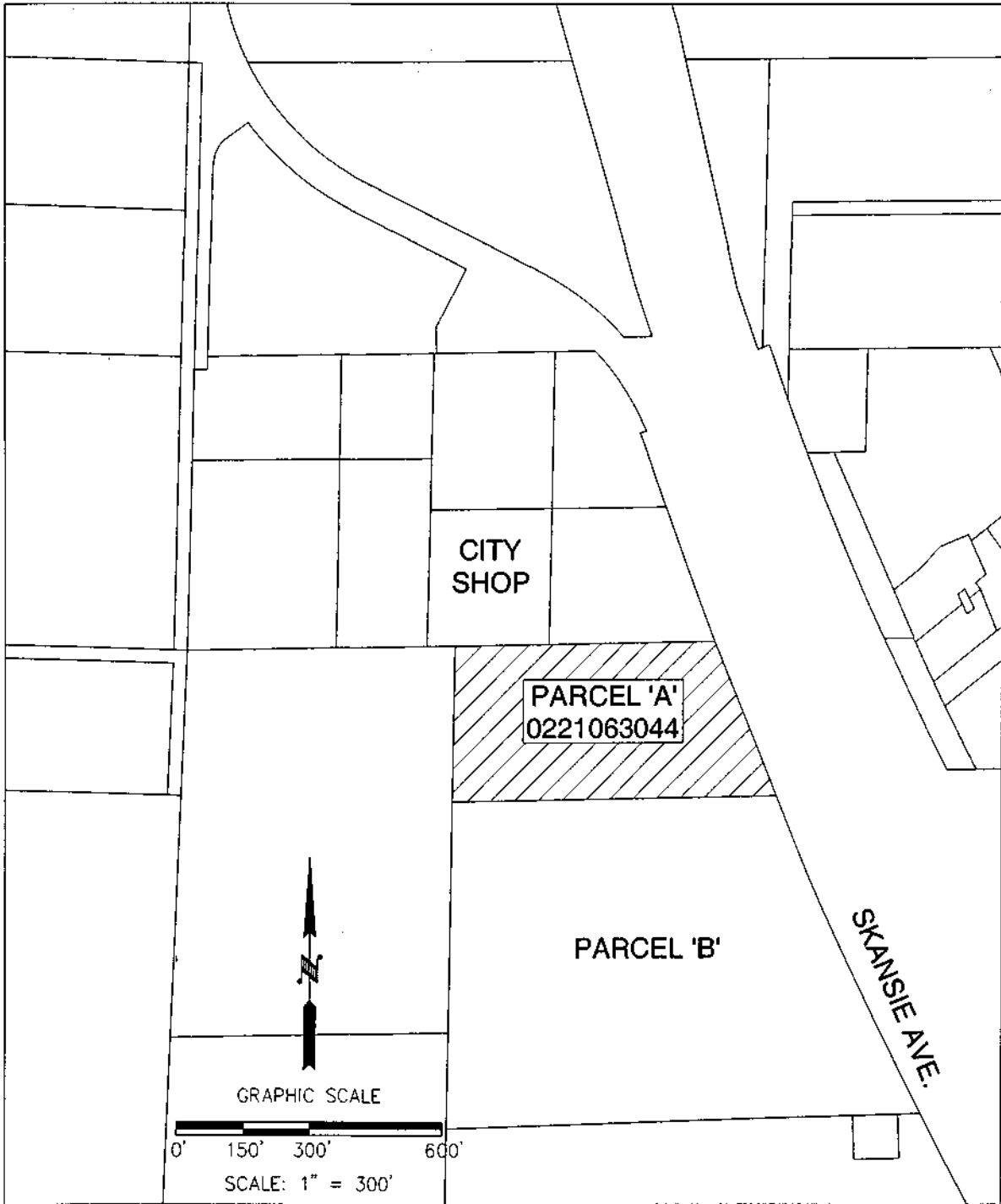
FILED WITH THE CITY CLERK: 11/21/01
PASSED BY THE CITY COUNCIL:
ORDINANCE NO.

Exhibit A
Property Legal Description
Parcel 'A' No. 0221063044

LEGAL DESCRIPTION PARCEL 'A'

THE NORTH 350.55 FEET OF THE FOLLOWING PARCEL COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST, WILLAMETTE MERIDIAN, PIERCE COUNTY, WASHINGTON; THENCE SOUTH 89 DEGREES 59 MINUTES 30 SECONDS EAST, ON THE SOUTH LINE OF SAID SUBDIVISION 670.00 FEET; THENCE NORTH 01 DEGREES 49 MINUTES 17 SECONDS EAST, 1530.77 FEET TO A POINT 605 FEET EAST OF THE WEST LINE OF SAID SUBDIVISION, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 04 DEGREES 11 MINUTES 25 SECONDS EAST PARALLEL WITH THE WEST LINE OF SAID SUBDIVISION TO THE INTERSECTION WITH THE WEST LINE OF SAID SUBDIVISION TO THE INTERSECTION WITH THE NORTH LINE OF SAID SUBDIVISION; THENCE NORTH 89 DEGREES 00 MINUTES '30 SECONDS WEST ON THE NORTH LINE OF SAID SUBDIVISION TO THE WESTERLY RIGHT OF WAY OF SKANSIE STREET; THENCE SOUTHEASTERLY ON SAID WESTERLY RIGHT OF WAY LINE TO THE INTERSECTION WITH A LINE PARALLEL WITH AND 1530.00 FEET NORTH OF THE SOUTH LINE OF SAID SUBDIVISION; THENCE NORTH 89 DEGREES 59 MINUTES 30 SECONDS WEST ON DAID PARALLEL LINE 1092.01 FEET TO THE POINT OF BEGINNING.

**Exhibit B
Vicinity Map**



**PARCEL 'A' LOCATION MAP
EXHIBIT "B"**

FILE: EXHIBIT B-CITY SHOP

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

On January 14, 2002, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, PROVIDING THE CITY COUNCIL'S ANNEXATION OF ONE PARCEL OF PROPERTY LOCATED IMMEDIATELY ADJACENT TO AND SOUTH OF THE EXISTING CITY OF GIG HARBOR PUBLIC WORKS SHOP LOCATED AT 5118 89th STREET AND ADOPTION OF ZONING REGULATIONS FOR THE ANNEXATION AREA.

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

APPROVED by the City Council at their meeting of _____, 2002.

MOLLY TOWSLEE, CITY CLERK



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: OFFICIAL ZONING MAP CHANGE
PENINSULA SCHOOL DISTRICT REZONE (REZ 01-03)
DATE: JANUARY 14, 2002

INFORMATION/BACKGROUND

The Peninsula School District #401 submitted a site-specific rezone request for approximately twelve (12) acres located at 9010 Prentice Avenue (Harbor Ridge Middle School) from Single-Family Residential (R-1) to Public Institutional (PI) (REZ 01-03). The City Hearing Examiner held a public hearing on November 14, 2001 and issued a written decision approving the rezone as requested on November 20, 2001. This decision was not appealed to the City Council and is therefore considered to be final pursuant to Title 19 of the Gig Harbor Municipal Code. The City Council held the first reading and a public hearing on this matter at the December 10, 2001 meeting. To date, the Council has received no public testimony, either written or oral, regarding this matter.

POLICY ISSUES

Title 19 of the Gig Harbor Municipal Code indicates that site-specific rezones requests are to be processed as Type III permit application, reviewed by the Hearing Examiner whose decision is final unless appealed to Council. Given that the November 20, 2001 Hearing Examiner decision was not appealed, it is now appropriate for Council to consider an Ordinance directing that the official zoning map be amended to reflect this approval.

FISCAL IMPACT

None.

RECOMMENDATION

I recommend the adoption of this Ordinance by the City Council following the second reading.

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF GIG HARBOR,
WASHINGTON, REZONING CERTAIN REAL PROPERTY
LOCATED AT 9010 PRENTICE AVENUE (HARBOR RIDGE
MIDDLE SCHOOL) FROM THE PRESENT SINGLE-FAMILY
RESIDENTIAL (R-1) ZONING DESIGNATION TO A PUBLIC-
INSTITUTIONAL (PI) ZONING DESIGNATION.**

WHEREAS, the Peninsula School District #401 submitted a site specific rezone request for approximately twelve (12) acres located at 9010 Prentice Avenue (Harbor Ridge Middle School) from Single-Family Residential (R-1) to Public Institutional (PI) (REZ 01-03); and

WHEREAS; Title 19 of the Gig Harbor Municipal Code indicates that site specific rezones requests are to be processed as Type III permit applications; and

WHEREAS, the City Hearing Examiner held a public hearing on this site specific rezone request on November 14, 2001; and

WHEREAS, the City Hearing Examiner issued a written decision approving the requested site specific rezone of this property from Single-Family Residential (R-1) to Public Institutional (PI) on November 20, 2001; and

WHEREAS, The November 20, 2001 Hearing Examiner decision was not appealed to the City Council and is therefore considered to be final pursuant to Title 19 of the Gig Harbor Municipal Code; and

WHEREAS, The City of Gig Harbor responsible SEPA Official has reviewed the rezone request and issued a determination of non-significance (DNS) on September 14, 2001. The issuance of a DNS for this project was not appealed; and

WHEREAS, the City Council held a public hearing on this Ordinance during its regular City Council meeting of December 10, 2001;

WHEREAS, the City Council further considered this Ordinance during its regular City Council meeting of January 14, 2002; Now, Therefore,

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

Section 1. The real property located at 9010 Prentice Avenue (Harbor Ridge Middle School), consisting of one (1) tax parcel zoned Single Family Residential (R1) (Tax Parcel ID number 0221061100) owned by the Peninsula School District #410, and legally described in Exhibit A, attached hereto and fully incorporated herein by this reference, shall be rezoned to the zoning classification of Public Institutional (PI). The Director of Planning and Building Services 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 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. 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 Council and approved by the Mayor of the City of Gig Harbor
this 14th day of January 2002.

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: 12/03/01
PASSED BY THE CITY COUNCIL: //02
PUBLISHED: //02
EFFECTIVE DATE: //02
ORDINANCE NO.

✓

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY REFERENCED IN SECTION 1 CONSISTING
OF ONE (1) PARCEL OWNED BY THE PENINSULA SCHOOL DISTRICT #401.

1. Tax Parcel ID number 0221061100

Beginning at the Northwest corner of Government Lot 1 in Section 6, Township 21 North, Range 2 East of the Willamette Meridian; thence South 00 degrees 43 minutes, East 220.36 feet; thence North 82 degrees 41 minutes, East 60.4 feet; thence South 52 degrees 54 minutes, East 300.61 feet; thence South 52 degrees 16 minutes, East 102.33 feet; thence North 45 degrees 06 minutes, East 324.64 feet; thence South 46 degrees 17 minutes, East 112.72 feet; thence North 43 degrees 43 minutes, East 95.46 feet; thence North 03 degrees 18 minutes, West 279.08 feet to the North line of said subdivision; thence South 86 degrees 42 minutes, West 745.1 feet to the point of beginning; except the West 60 feet for the road;

Also the South half of the Southwest quarter of the Northeast quarter of the Northeast quarter of Section 6, Township 21 North, Range 2 East of the Willamette Meridian;

Also Tract 'A' of Fullers Addition, according to plat recorded in Volume 11 of Plats at page 60, records of the Pierce County Auditor

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

On January 14, 2002, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. the main points of which are summarized by its title as follows:

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON,
REZONING CERTAIN REAL PROPERTY LOCATED AT 9010 PRENTICE
AVENUE (HARBOR RIDGE MIDDLE SCHOOL) FROM THE PRESENT
SINGLE-FAMILY RESIDENTIAL (R-1) ZONING DESIGNATION TO A
PUBLIC INSTITUTIONAL (PI) ZONING DESIGNATION.**

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

APPROVED by the City Council at their meeting of January 14, 2002.

MOLLY TOWSLEE, CITY CLERK



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: SCHOOL IMPACT FEES
DATE: JANUARY 7, 2001

INFORMATION/BACKGROUND

The attached ordinance was to return to Council at the January 14th meeting. As yet, city and school district representatives have not met. A meeting is tentatively scheduled for January 18.

RECOMMENDATION

Staff recommends that this ordinance be tabled until a Council Meeting following city and school district interaction. Staff does not recommend tabling to a date certain.

DRAFT – October 22, 2001

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S IMPACT FEE REGULATIONS TO ALLOW FOR THE IMPOSITION OF SCHOOL IMPACT FEES BY THE CITY ON DEVELOPMENT, THE COLLECTION, MANAGEMENT, USE AND APPEAL OF SUCH FEES BY THE SCHOOL DISTRICT, ALL OF WHICH WILL BECOME OPERATIVE AT THE TIME THE CITY COUNCIL ADOPTS A FEE SCHEDULE FOR SCHOOL IMPACT FEES, ADDING A NEW DEFINITION FOR "SCHOOL FACILITIES," AMENDING THE IMPACT FEE CHAPTER TO ELIMINATE ANY VESTING OF IMPACT FEES, PURSUANT TO A RECENT COURT DECISION, MAKING OTHER MINOR CHANGES TO CORRECT TYPOGRAPHICAL ERRORS; AMENDING GIG HARBOR CODE SECTIONS 19.14.010; 19.12.010; 19.12.050, 19.12.070, 19.12.080, 19.12.090, 19.12.100, 19.12.110, 19.12.120, 19.12.130, 19.12.150, 19.12.170.

WHEREAS, the City has adopted impact fees for parks and transportation facilities in chapter 19.12 of the Gig Harbor Municipal Code; and

WHEREAS, the City may adopt impact fees to address the impact on school facilities caused by new development, pursuant to RCW 82.02.050 through 82.02.100; and

WHEREAS, the City's SEPA Responsible Official issued a determination that the adoption of this ordinance is exempt from SEPA under WAC 197-11-800(20); and

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

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of _____. Now, Therefore,

DRAFT – October 22, 2001

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

Section 1. A new definition is hereby added to Section 19.14.010 of the Gig Harbor Municipal Code:

19.14.010 Definitions. The following words and terms shall have the following meanings for the purpose of chapter 19.10 and 19.12, the concurrency and impact fee chapters, ordinance, unless the context clearly appears otherwise. Terms otherwise not defined herein shall be given the meaning set forth in RCW 82.02.090, or given their usual and customary meaning:

* * *

()¹ “School facilities” means capital facilities owned or operated by governmental entities, such as the Peninsula School District.

* * *

Section 2. Section 19.12.010 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.010. Authority and purpose.

A. This chapter is enacted pursuant to the City’s police powers, the Growth Management Act as codified in chapter 36.70A RCW, the impact fee statutes as codified in RCW 82.02.050 through 82.02.100 ~~chapter 82.02 of the Revised Code of Washington (RCW)~~ chapter 58.17 RCW relating to platting and subdivisions, and the State Environmental Policy Act (SEPA), chapter 43.21C RCW.

B. The purpose of this chapter is to:

1. Develop a program consistent with the Gig Harbor parks, open space and recreation plan, six year road plan and the City’s comprehensive plan (parks and transportation elements), and capital improvement plan, for joint public and private financing of park and transportation facility improvements necessitated in whole or in part by development in the City. With regard to school facilities, to develop a program for joint public and private financing of school facilities consistent with the capital improvement plan of the School District, as such facilities are necessitated in whole or in part by development in

¹ The definition will be given a number by the City’s code reviser corresponding to its alphabetical place in Section 19.14.010.

DRAFT – October 22, 2001

the City;

2. Ensure adequate levels of service in public facilities within the city;
3. Create a mechanism to charge and collect fees to ensure that all new development bears its proportionate share of the capital costs of off-site parks, school and transportation facilities reasonably related to new development, in order to maintain adopted levels of park service, maintain adopted levels of service on the city's transportation facilities, and to ensure the availability of adequate school facilities at the time of development for school facilities;
4. Ensure that the city pays its fair share of the capital costs of parks and transportation facilities necessitated by public use of the parks and roadway system, and ensure that the school district pays its fair share of the capital costs of school facilities necessitated by public use of the school facilities;
5. Ensure fair collection and administration of such impact fees.

C. The provisions of this chapter shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety and welfare.

Section 3. Section 19.12.050 of the Gig Harbor Municipal Code is hereby amended to

read as follows:

19.12.050 Imposition of Impact Fees.

A. The approving authority is hereby authorized to impose impact fees on new development.

B. Impact fees may be required pursuant to the impact fee schedule adopted through the process described herein, or mitigation may be provided through: (1) the purchase, installation and/or improvement of park, school and transportation facilities pursuant to GHMC 19.12.080(C); or (2) the dedication of land pursuant to GHMC 19.12.080(C).

C. Impact fees:

1. Shall only be imposed for park, school and transportation facilities that are reasonably related to the impacts of development;
2. Shall not exceed a proportionate share of the costs of park, school and transportation facilities that are reasonably related to new development;
3. Shall be used for park, school and transportation facilities that will reasonably benefit the new development;
4. Shall not be used to correct existing deficiencies;
5. Shall not be imposed to mitigate the same off-site park, school and transportation facility impacts that are being mitigated pursuant to any other law;
6. Shall not be collected for improvements to state/county park and transportation facilities unless the state/county requests such improvements and an agreement to collect such fees has been executed between the state/county and the city;

DRAFT – October 22, 2001

7. Shall not be collected for improvements to park, school and transportation facilities in other municipalities or school districts, unless the affected municipality or school district requests ~~such improvement that such impact fees be collected on behalf of the affected municipality or school district~~, and an interlocal agreement has been executed between the city and the affected municipality or school district for the collection of such fees;

8. Shall not be collected for any development approved prior to the date of adoption of the ordinance codified in this chapter unless changes or modifications in the development requiring city approval are subsequently proposed which result in greater direct impacts on park, school and transportation facilities than were considered when the development was first approved;

9. Shall be collected only once for each development, unless changes or modifications to the development are proposed which result in greater direct impacts on park, school and/or transportation facilities than were considered when the development was first permitted;

10. May be imposed for system improvement costs previously incurred by the city, to the extent that new growth and development will be served by previously constructed improvements, and provided, that such fee shall not be imposed to make up for any system improvement deficiencies; and

11. Shall be imposed for park and school facilities on residential development.

Section 4. Section 19.12.070 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.070 Fee schedules and establishment of service area.

A. Impact fee schedules setting forth the amount of the impact fees to be paid by developers are listed in Appendix B for roads and Appendix C for parks, and Appendix D for schools, attached to the ordinance codified in this chapter and incorporated herein by this reference.¹

B. For the purpose of this chapter, the entire city shall be considered one service area.

Section 5. Section 19.12.080 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.080 Calculation of Impact Fees.

A. The Public Works Director shall calculate the impact fees set forth in Appendices B and C, more specifically described in the Gig Harbor six-year road plan and the parks, open space and recreation plan. The City Council shall have

¹ NOTE: There is no Appendix D. The City will not collect impact fees for schools under this chapter until Appendix D is adopted by ordinance.

DRAFT – October 22, 2001

the final decision on the calculation of the impact fees set forth in Appendix D. These calculations shall:

1. Determine the standard fee for similar types of development, which shall be reasonably related to each development's proportionate share of the cost of the projects described in Appendix A, and for parks shall be calculated as set forth in Appendix C, and for schools shall be as provided in the School District's capital facilities plan;

2. Reduces the proportionate share by applying the benefit factors described in this section;

B. In calculating proportionate share, the following factors will be considered: ~~director shall:~~

1. Identify all park, school and transportation facilities that will be impacted by users from each development;

2. Identify when the capacity of a park, school or transportation facility has been fully utilized;

3. Update the data as often as practicable, but at least annually;

4. Estimate the cost of constructing the projects in Appendix A for roads as of the time they are placed on the list, and the cost of maintaining the City's level of park service as shown on Appendix ~~D~~ C, and the costs relating to the construction of new schools in Appendix D, and then update the costs estimates at least annually, considering the:

a. Availability of other means of funding park, school and transportation facilities;

b. Cost of existing park, school and transportation facility improvements;

c. Methods by which park, school and transportation facility improvements were financed;

5. Update the fee collected against a project which has already been completed, through an advancement of city funds, at a rate, determined annually, which is equivalent to the City or School District's return on investments.

C. The director or the School District shall reduce the calculated proportionate share for a particular development by giving credit for the following benefit factors:

1. The purchase, installation and/or improvement of park, school and transportation facilities, if;

a. The facilities are located on land owned by the city, Pierce County, a school district or a special district; and

b. A designated public owner is responsible for permanent, continuing maintenance and operation of the facilities; and

c. The Director or the School District determines that the facilities correspond to the type(s) of park, school and transportation facilities being impacted by the development as determined pursuant to this chapter; and

d. The Director determines, after consultation with the county, school district or special purpose district, as applicable, and an analysis of

DRAFT – October 22, 2001

supply and demand data, the parks, open space and recreation plan, the six year road plan and any applicable Pierce County park and transportation plan, that the proposed park and transportation facility improvements better meet the city's need for park and transportation facilities than would payment of funds to mitigate the park and transportation impacts of the development.

2. The credit against the impact fee shall be equal to the fair market value of the purchase, installation and/or improvement.

3. Any applicable benefit factors, as described in RCW 82.02.060, that are demonstrated by the applicant not to have been included in the calculation of the impact fee.

4. A developer of a planned residential development or mobile home park may receive credit only for park and transportation facilities provided in addition to those normally required under SEPA for such developments pursuant to chapter 18.04 GHMC.

5. When the Director has agreed to a developer's proposal to satisfy some or all of the impact fee through the purchase, installation and/or improvement of park and transportation facilities, the developer shall prepare and submit a facility improvement plan to the Director for approval prior to recordation of a plat or short plat for subdivisions, and prior to issuance of a building permit for all other developments.

6. In the determination of credit toward the impact fee, the Director or the School District shall also consider the extent to which the proposed dedication or conveyance meets the following criteria:

- a. The land should result in an integral element of the Gig Harbor park/road system;
- b. The land is suitable for future park, school and/or transportation facilities;
- c. The land is of an appropriate size and of an acceptable configuration;
- d. The land has public access via a public street or an easement of an equivalent width and accessibility;
- e. The land is located in or near areas designated by the city, school district or county on land use plans for park, school, trail or recreation purposes;
- f. The land provides linkage between Pierce County and/or other publicly owned recreation or transportation properties;
- g. The land has been surveyed or adequately marked with survey monuments, or otherwise readily distinguishable from adjacent privately owned property;
- h. The land has no known physical problems associated with it, such as the presence of hazardous waste, drainage, erosion or flooding problems which the Director or School District determines would cause inordinate demands on public resources for maintenance and operation;
- i. The land has no known safety hazards;
- j. The developer is able to provide documentation, as

DRAFT – October 22, 2001

nearly as practicable, of the land's compliance with the criteria of this subsection, and of clear title; and

k. The developer is able to provide and fund a long-term method, acceptable to the Director or School District in the case of schools, for the management and maintenance of the land, if applicable.

7. The amount of credit determined pursuant to this subsection shall be credited proportionately among all of the units in the development, and the impact fee for which each unit for which a permit or approval is applied shall be reduced accordingly.

8. Applicants may not request that an impact fee credit be provided for a proposed development based on taxes, user fees, assessments, improvements, payments or other benefit factors applicable to property that is not included within the proposed development.

9. Applicants shall receive credit against the impact fee equal to the amount of an LID assessment paid for transportation-related facilities identified by the Director as increasing transportation system capacity.

Section 6. Section 19.12.090 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.090 Variation from impact fee schedule.

If a developer submits information demonstrating a significant difference between the age, social activity or interest characteristics of the population of a proposed subdivision or development and the data used to calculate the impact fee schedule, the Director or the School District in the case of school impact fees, may allow a special calculation of the impact fee requirements for the subdivision or development to be prepared by the developer's consultant, at the developer's cost; provided, however, that the Director or the School District in the case of school impact fees shall have prior approval of the qualifications and methodology of the developer's consultant in making such calculation, and any time period mandated by statute or ordinance for the approving authority's decision on the subdivision or development shall not include the time spent in preparing the special calculation. Whether the Director or the School District in the case of school impact fees accepts the date provided by the special calculation shall be at the Director's or the School District's discretion.

Section 7. Section 19.12.100 of the Gig Harbor Municipal Code shall be amended to read as follows:

19.12.100 Payment of fees.

A. All developers shall pay an impact fee in accordance with the provisions of this chapter at the time that the applicable development permit is ready for issuance.

DRAFT – October 22, 2001

~~1. Vested Permits. The fee paid shall be the amount in effect as of the date that the city determines that the applicable development permit is complete, as long as at least one development permit for the project is of the type that vests under the City's ordinances or state law.~~ 2. ~~Non Vested Permits. If a developer submits an application for a development permit that does not vest under the city's ordinances or state law, then~~
The fee paid by the developer shall be the amount in effect as of the date of the permit issuance.

~~3. Plats. The amount of the impact fee shall be the amount established at the time the preliminary plat or short plat applications are determined to be complete by the city only if: (i) the approval of the preliminary plat has not expired; (ii) at the very latest, the developer has submitted a complete building permit application for all construction in the plat within five years of the anniversary date of the short plat or final plat.~~

B. The impact fee, as initially calculated for a development permit, shall be recalculated at the time of issuance if the development is modified or conditioned in such a way as to alter park, school or transportation impacts for the development.

C. A developer may obtain a preliminary determination of the impact fee before application for the development permit by providing the Director with the information needed for processing, however, such preliminary determination of the fee is not binding, and may be modified at the time an actual permit issues.

Section 8. Section 19.12.110 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.110 Time of payment of impact fees.

A. Payment of any required impact fees calculated as set forth in GHMC 19.12.100(A)(3) shall be made prior to the issuance of a building permit. If the impact fee is not paid at final approval, this shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the final plat.

B. When a subdivision or development is conditioned upon the dedication of land, or the purchase, installation or improvement of park and transportation facilities, a final plat or short plat shall not be recorded, and a building permit shall not be issued for other development until:

1. The Director has determined in writing that the land to be dedicated is shown on the face of the final plat or short plat, or a deed conveying the land to the city, Pierce County, a school district or special purpose district, as appropriate, as been recorded with the Pierce County auditor; and

2. The Director has determined in writing, after consultation with the designated public owner responsible for permanent, continuing maintenance and operation of the facilities, that the developer has satisfactorily undertaken or guaranteed to undertake in a manner acceptable to the Director, any required

DRAFT – October 22, 2001

purchase, installation or improvement of school, park or transportation facilities.

Section 9. Section 19.12.120 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.120 Project List.

A. The School District shall perform the activities described in this section for which the City Director of Public Works is responsible, reviewing all comparable capital facilities plans and documentation held by the District, including Appendix D¹ and provide all information required herein to the City Council on an annual basis. The Director of Public Works shall annually review the city's parks, open space and recreation plan, the six year parks improvement plan, the six year road plan and the projects listed in Appendices A and B and shall:

1. Identify each project in the comprehensive plan that is growth-related and the proportion of each such project that is growth-related;
2. Forecast the total money available from taxes and other public sources for park, school and transportation improvements for the next six years;
3. Update the population, building activity and demand and supply data for park, schools and transportation facilities and the impact fee schedule for the next six-year period;
4. Calculate the amount of impact fees already paid;
5. Identify those comprehensive plan projects that have been or are being built but whose performance capacity has not been fully utilized;

B. The Director and the School District shall use this information to prepare an annual draft amendment to the fee schedule in Appendices A and D, which shall comprise:

1. The projects on the comprehensive plan that are growth related and that should be funded with forecast public moneys and the impact fees already paid;
2. The projects already built or funded pursuant to this chapter whose performance capacity has not been fully utilized.

C. The Council, at the same time that it adopts the annual budget and appropriates funds for capital improvement projects, shall by separate ordinance establish the annual project list by adopting, with or without modification, the Director's or the School District's draft amendment.

D. Once a project is placed on Appendix A, or if the City amends its level of park service in Appendix D, or if the City adopts a fee schedule for school impact fees, a fee shall be imposed on every development ~~that impacts the project~~ until the City repeals the fee schedule for school impact fees or the project is removed from the list by one of the following means:

1. The council by ordinance removes the project from Appendix A

¹ The District will be required to perform these activities if the City adopts Appendix D to this ordinance.

DRAFT – October 22, 2001

and/or D, in which case the fees already collected will be refunded if necessary to ensure that impact fees remain reasonably related to the park and transportation impacts of development that have paid an impact fee; provided that a refund shall not be necessary if the council transfers the fees to the budget of another project that the council determines will mitigate essentially the same park and transportation impacts; or

2. The capacity created by the project has been fully utilized, in which case the director shall remove the project from the project list.

Section 10. Section 19.12.130 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.130 Funding of projects.

A. An impact fee trust and agency fund is hereby created for parks and transportation fees. The School District shall be responsible for the creation of its own impact fee trust and agency fund, and shall be solely responsible for the deposit of fees in such fund, and the use/refund of such fees. The Director shall be the manager of the City's fund. The City shall place park and transportation impact fees in appropriate deposit accounts within the impact fee fund.

B. School impact fees shall be paid directly to the School District. The parks and transportation impact fees paid to the City shall be held and disbursed as follows:

1. The fees collected for each project shall be placed in a deposit account within the impact fee fund;

2. When the council appropriates capital improvement project (CIP) funds for a project on the project list, the fees held in the impact fee fund shall be transferred to the CIP fund. The non-impact fee moneys appropriated for the project shall comprise both the public share of the project cost and an advancement of that portion of the private share that has not yet been collected in impact fees;

3. The first money spent by the director on a project after a council appropriation shall be deemed to be the fees from the impact fee fund;

4. Fees collected after a project has been fully funded by means of one or more council appropriations shall constitute reimbursement to the city of the funds advanced for the private share of the project. The public monies made available by such reimbursement shall be used to pay the public share of other projects.

* * *

D. The School District and the Director shall prepare an annual report on the impact fee accounts showing the source and amount of all monies collected, earned or received and projects that were financed in whole or in part by impact fees.

DRAFT – October 22, 2001

Section 11. Section 19.12.150 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.150 Refunds.

A. A developer may request and shall receive a refund from either the City (for parks and transportation impact fees) or the School District (for school impact fees) when the developer does not proceed with the development activity for which impact fees were paid, and the developer shows that no impact has resulted.

B. In the event that impact fees must be refunded for any reason, they shall be refunded by the collecting entity with interest earned to the owners as they appear of record with the Pierce County Assessor at the time of the refund.

* * *

Section 12. Section 19.12.170 of the Gig Harbor Municipal Code is hereby amended to read as follows:

19.12.170 Appeals.

A. Appeals of School Impact Fees. Appeals of the School Impact Fee or any decision made by the School District pursuant to this chapter shall be filed with the School District. The School District shall make the final decision on any appeal regarding the impact fee to be paid to the District for any individual development.

B. Decision by Director. The director shall issue a written decision on the impact fee amount as described in this chapter.

C. Reconsideration by Director.

1. In order to appeal request reconsideration of the Director's decision, the developer shall make a written request to the Director for a meeting to review the fee amount, together with a written request for reconsideration. The request for reconsideration shall state in detail the grounds for the request.

2. The Director shall consider any studies and data submitted by the developer seeking to adjust the amount of the fee. The Director shall issue a written decision on reconsideration within 10 working days of the director's receipt of the request for reconsideration or the meeting with the developer, whichever is later.

D. Appeal of Decision on Reconsideration to Hearing Examiner. A developer may appeal the amount of the impact fee established in the director's decision on reconsideration to the hearing examiner, who shall conduct a public hearing on the appeal.

1. An appeal of the impact fee as established by the director's

DRAFT – October 22, 2001

decision on reconsideration may be filed without appealing the underlying permit. This procedure is exempt from the project permit processing requirements in Chapters 19.01-19.06, pursuant to RCW 36.70B.140. If the developer files an appeal of the underlying permit and the impact fee, the City may consolidate the appeals.

2. The developer shall bear the burden of proving:

a. That the Director committed error in calculating the developer's proportionate share, as determined by an individual fee calculation, or, if relevant, as set forth in the impact fee schedule, or in granting credit for the benefit factors; or

b. That the director based his determination upon incorrect data.

3. An appeal of the Director's decision on reconsideration must be filed with the planning department within 14 calendar days of that decision.

E. Appeals of Hearing Examiner's Decision. Appeals from the decision of the hearing examiner shall be to the City council, pursuant to the provisions of 19.05 06 GHMC.

Section 13. 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 14. 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 Council and approved by the Mayor of the City of Gig Harbor
this __th day of _____, 2002.

CITY OF GIG HARBOR

GRETCHEN WILBERT, MAYOR

DRAFT – October 22, 2001
ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____
CAROL A. MORRIS

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

SUMMARY OF ORDINANCE NO. ____

of the City of Gig Harbor, Washington

On _____, 2002, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the main points of which are summarized by its title as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CITY'S IMPACT FEE REGULATIONS TO ALLOW FOR THE IMPOSITION OF SCHOOL IMPACT FEES BY THE CITY, THE COLLECTION, APPEALS, MANAGEMENT AND USE OF SCHOOL IMPACT FEES BY THE SCHOOL DISTRICT, ALL OF WHICH WILL BECOME OPERATIVE AT THE TIME THE CITY COUNCIL ADOPTS A FEE SCHEDULE FOR SCHOOL IMPACT FEES, ADDING A NEW DEFINITION FOR "SCHOOL FACILITIES," AMENDING THE IMPACT FEE CHAPTER TO ELIMINATE ANY VESTING OF IMPACT FEES, PURSUANT TO A RECENT COURT DECISION, MAKING OTHER MINOR CHANGES TO CORRECT TYPOGRAPHICAL ERRORS, AMENDING GIG HARBOR MUNICIPAL CODE SECTIONS 19.14.010; 19.12.010; 19.12.050, 19.12.070; 19.12.080; 19.12.100; 19.12.110; 19.12.120; 19.12.130; 19.12.150; AND 19.12.170.

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

APPROVED by the City Council at their meeting of _____, 2002.

MOLLY TOWSLEE, CITY CLERK



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER MB
**SUBJECT: AUTHORIZATION FOR THE USE OF UNIFORMS AND HOLD
HARMLESS AND INDEMNITY AGREEMENT**
DATE: JANUARY 4, 2002

INFORMATION/BACKGROUND

On occasion we receive requests to have police officers work in security functions at various events or work sites. These generally are limited to traffic control and sports functions. Since this is a non-duty function, the hours are coordinated by the Police Officers' Guild. While working at these functions, the officers are employed by a third party. All work events must be approved by the Chief and must serve a public safety function. In many cases the off duty officer's presence serves as a deterrent to problems and thereby eliminates the need for an on duty officer to respond or deal with problems related to the special event. In this way, having an off duty officer, compensated by a third party, is a benefit to the city's public safety purpose.

In 1999 I asked our legal counsel specializing in employment matters, Scott Snyder, to review our current/past practices in this area. He drafted the agreement which we have used since that time to clarify the various roles of those participating in off duty work, and provide better protection for the city regarding *claims related to work hours and similar concerns*.

Since the original signing, we have added and deleted officers on our staff and the agreement needs to be updated. An updated copy of the original agreement was presented to Council in late 2001 in order to add new names to the agreement and delete the names of personnel no longer with the department. Questions arose at that meeting regarding the agreement and Carol Morris was asked to review the agreement.

The attached agreement shows the changes as outlined by Carol. The issue of indemnification and the ability of the Guild to provide legal representation to the City have not been resolved. However, the main focus of this agreement was to assure that we did not have FLSA claims regarding the off duty officers' working hours.

FISCAL IMPACTS

There are no fiscal impacts related to this agreement.

RECOMMENDATION

The Police Department recommends that the Council authorize the Mayor to approve the attached agreement.

**AUTHORIZATION FOR THE USE OF UNIFORMS AND
HOLD HARMLESS AND INDEMNITY
AGREEMENT**

WHEREAS, the Police Officers' Guild of Gig Harbor wishes to provide employment opportunities for its members as well as reserve officers with private employers in the community in order to provide, such services as direction of traffic for construction companies; and

WHEREAS, the Guild has requested permission for the City to use regular officers' and reserve officers' uniforms while providing such services; and

WHEREAS, the City finds it to be in the public interest to permit the use of its uniforms in certain limited situation so long as it is clear that the officers are not in the employ of the City and that the reserve officers remain volunteers to the City, and that both are employed solely through the private party under the auspices of the Guild;

NOW, THEREFORE, the Police Officers' Guild of Gig Harbor (hereinafter "Guild"), the City of Gig Harbor (hereinafter "City") and the undersigned regular and reserve officers do enter into this agreement in consideration of the mutual promises contained herein and the mutual benefits to be derived:

1. USE OF UNIFORM

In consideration of the hold harmless and indemnity agreement provided below; the City of Gig Harbor permits the wearing of police uniforms by officers and reserve officers employed through the Guild for the provision of traffic control for construction sites and other similar services (hereinafter "Guild Assignments"). The use of the City's uniform shall be limited to those generic situations pre-approved by the Chief through the Guild.

2. EMPLOYMENT/VOLUNTEER STATUS

The use of the City's uniform shall not imply any employment status for regular City police officers during Guild assignments or anything other than a volunteer status for the City's reserve officers. The guild shall be solely responsible for the coordination of employment by the third parties and for arranging payment to the officers or reserve officers through the third party. Nothing herein shall be interpreted to imply an employment relationship with the City during the performance of such services.

3. GUILD COORDINATION

The guild shall coordinate all such employment, pre-approving generic employment situations through the Chief. The City shall have no responsibility and bear no costs for any wage, salary or employee benefit, which arises from or out of the provision of services to third parties through the Guild. In consideration of the City's permission to use police uniforms in situations approved by the Chief, the Guild makes the hold harmless and indemnity agreement contained in paragraph 4 below.

4. HOLD HARMLESS AND INDEMNITY

The Guild and its members, both collectively and individually, promise to hold harmless and indemnify and covenant not to sue the City of Gig Harbor, its officers, agents and employees, for any and all loss, damage, claims, demands or liability on account of injury or damage to third parties, the Guild, or any of its members, regardless of the nature of such losses, damages, claims demands or liability. This indemnification shall be provided to the full extent permitted by law, and shall apply regardless of whether such loss, damage, claims, demands or liability was caused by the negligence or intentional acts of the Guild or its members from any and all liability of any kind or nature arising from or out of connected with the Guild's coordination of services by individual members to third parties, or regardless of whether such losses, damages, claims, demands or liability arise from or are connected with the employment of members of third parties. This promise to hold harmless and indemnify and covenant not to sue includes, but is not limited to any and all employee related costs such as wages, salaries, overtime claims, employee benefits, disability, and worker's compensation insurance, as well as the cost of defense by counsel of the City's choosing, reasonable expert witness fees, court costs, and all other claim-related expenses.

5. OFFICER/RESERVE OFFICER ACKNOWLEDGMENT

I, the undersigned reserve officer or officer, understand and agree that services performed for a third party and coordinated by the Guild pursuant to this Agreement are performed for such third parties and the Guild and that no employment status of any kind or nature shall be implied with respect to the City during the performance of Guild assignments.

The officers and reserve officers acknowledge, agree and understand that his/her services are performed for such third parties and that nothing herein nor in the provision of services, shall be interpreted to be a part of their regular employment for police officers or, with respect to reserve officers, impact their volunteer status. In consideration of the City approved uniform use in employment by third parties under the procedures set forth in this Agreement, the officer or reserve officer promises to hold harmless, indemnify and covenants not to sue the City, all as set forth in Section 4 herein, and also ~~specifically waives and releases the City from any liability arising from or out of such employment and~~ acknowledges the following:

- 5.1 For officers, pursuant to the Department of Labor regulations and the Fair Labor Standards Act and Union contract, work hours spent in Guild assignments are reasonably believed by the officer, the City and the Guild to be outside of the officer's normal work day and therefore not subject to the Fair Labor Standards Act or Union contract, hours of work and overtime provisions.
- 5.2 With respect to reserve officers, he/she acknowledges and agrees that hours worked through the Guild for third party employers does not impact and is separate and apart from their volunteer status with the City of Gig Harbor and waives and relinquishes any claim of any employment status which he or she could assert based upon Guild assignments.

6. RESERVATION OF RIGHTS

The City or the Chief reserves the right to terminate this Agreement, withdraw the City's approval of the use of a uniform or to withdraw "pre-approval" of any "generic situation" allowing the use of a uniform(s), in the event a member submits a claim for wages or benefits to the City for employment with a third party, by an employee or when in the sole discretion of the City or the Chief, such termination or withdrawal is necessary to protect the best interests of the City.

DATED this _____ of January, 200__.

CITY OF GIG HARBOR

GIG HARBOR POLICE
OFFICERS' GUILD

By: _____
Mayor

Guild Representative

ATTEST:

Molly Towslee, City Clerk

Officer Name (Signature) (print name)

Date: _____

Officer Name (Signature) (print name)

Date: _____

Officer Name (Signature) (print name)

Date: _____

Officer Name (Signature) (print name)

Date: _____

Officer Name (Signature) (print name)

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Date: _____

Officer Name (Signature) (print name)

Date: _____

Officer Name (Signature) (print name)

Date: _____

Officer Name (Signature) (print name)

Date: _____



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: NOTICE OF INTENTION TO COMMENCE ANNEXATION
PROCEEDINGS – NORTHWEST GIG HARBOR EMPLOYMENT
CENTER (ANX 01-03)
DATE: JANUARY 14, 2002

INFORMATION/BACKGROUND

The City has received a 'Notice of Intention to Commence Annexation Proceedings' from property owners of more than the required ten percent (10%) assessed valuation of approximately two hundred (200) acres of property located within the City's Urban Growth Area (UGA). The property in question is located west of Highway 16, north of the existing City limits and south of the Purdy Women's Correctional Facility. The letter of request and vicinity map is attached for your consideration. This request was filed on December 4, 2001.

The Council is required to meet with the initiating parties within sixty (60) days of the filing of the request to determine whether the City would accept, reject, or geographically modify the proposed annexation, whether it shall require the simultaneous adoption of a proposed zoning regulation, and whether it shall require the assumption of all or of any portion of existing city indebtedness by the area to be annexed (R.C.W. 35A.14.120.).

RECOMMENDATION

Staff recommends that the Council set the date of January 28, 2002 for a meeting with the initiating parties of a notice of intent to commence annexation of the approximately two hundred (200) acres of property located within the City's Urban Growth Area (UGA) west of Highway 16, north of the existing City limits and south of the Purdy Women's Correctional Facility.



TOUCHSTONE CORPORATION

December 4, 2001

Mr. Mark Hoppen
City Manager
City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Re: Annexation Petition - Northwest Gig Harbor Employment Center Area

Dear Mr. Hoppen:

On behalf of the property owners in the Northwest Gig Harbor Employment Center area, enclosed are the Annexation Petitions covering 65% of the current assessed valuation. These parcels are all within the City's UGA and are all zoned Employment Center in the Comprehensive Plan's for both Gig Harbor and Pierce County.

Following the City of Gig Harbor Annexation Process - 60% Petition Method outline provided, the necessary information is provided as either an enclosure or narrative as follows:

1. The geographical limit: North boundary is Bujacich Drive (South of the Women's State Prison); East boundary is SR-16; West boundary is the UGA established by Gig Harbor's Plan; South boundary is contiguous to the City of Gig Harbor. Assessor's parcel map enclosed.
2. Assessor's "Real Property Listing" for all parcels enclosed.
3. Petition (Notice of Intent to Annex): all signed petitions enclosed.
4. City Council consideration for annexation to the City. As a statement of the commitment of the property owners, we are including requirements for 5 and 6..
5. Petitions covering 65% of the assessed valuation are inclosed. The property is within the City of Gig Harbor's UGA and is zoned Employment Center (EC). The petitioners agree to the assumption of their pro-rata share of bonded indebtedness.
 - A. Total assessed valuation for the entire area is \$4,826,200
 - B. Total assessed valuation of signed petitions is \$3,138,500 or 65%

6. A. 8 1/2" X 11" vicinity maps enclosed.

B. Pierce County Assessor's parcel map defining the boundary of the annexation area enclosed.

C. Legal description of the boundary of the annexation area enclosed.

D. We assume a SEPA environmental checklist will not be required as these properties are all within the Gig Harbor's UGA boundary.

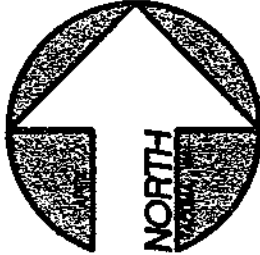
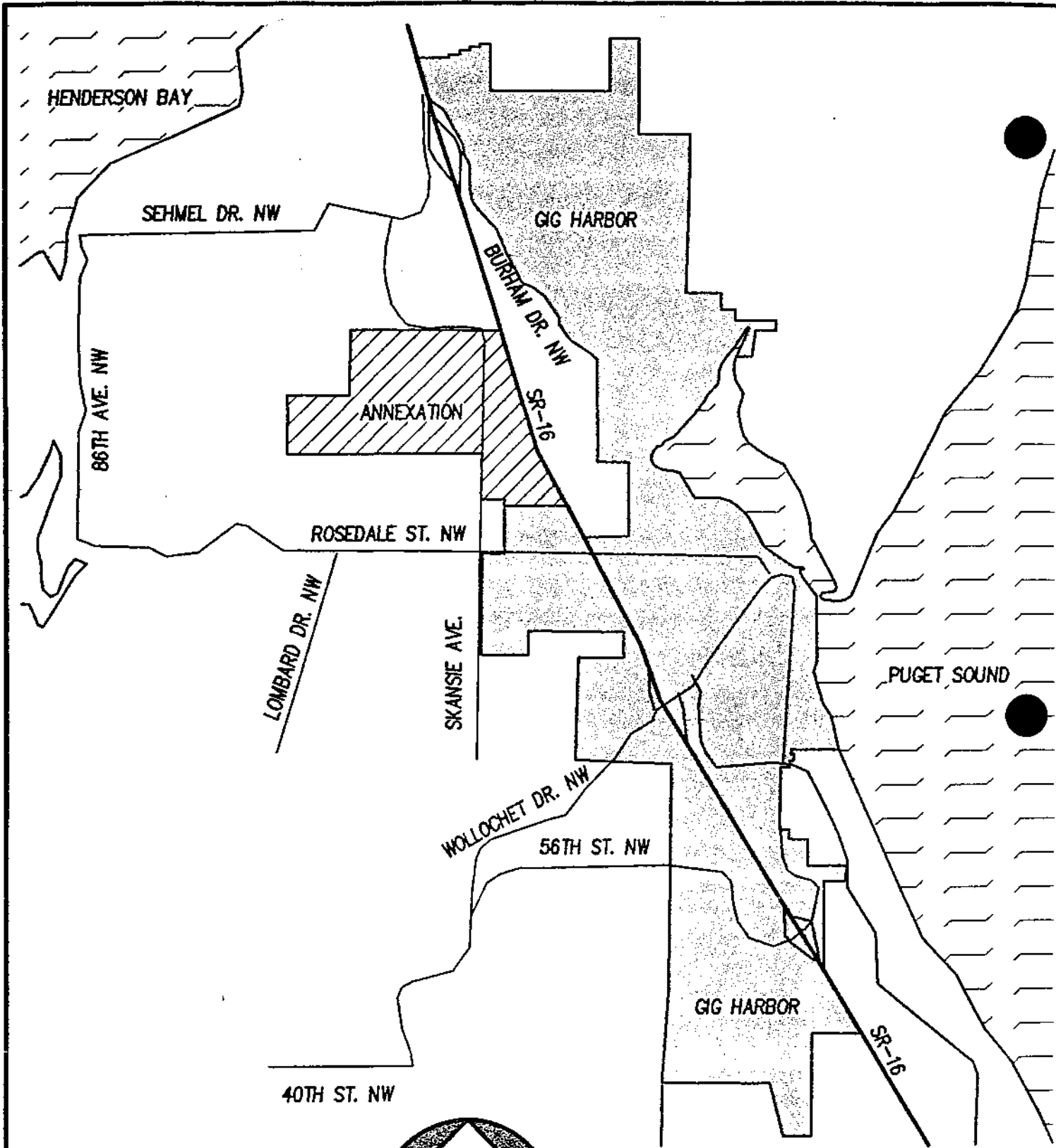
On behalf of the property owners, we look forward to moving forward with the City on the annexation of this area. If you should have any questions, please give me a call at (206) 727-2394.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Howe". The signature is written in a cursive, flowing style with a large initial "D" and "H".

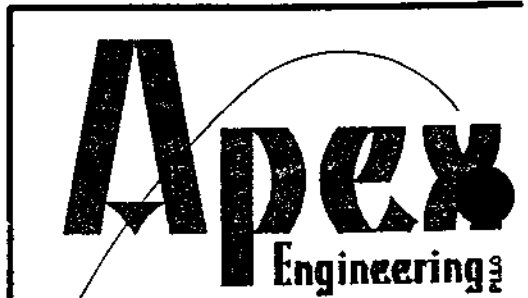
Douglas Howe

cc: Mike Scannell



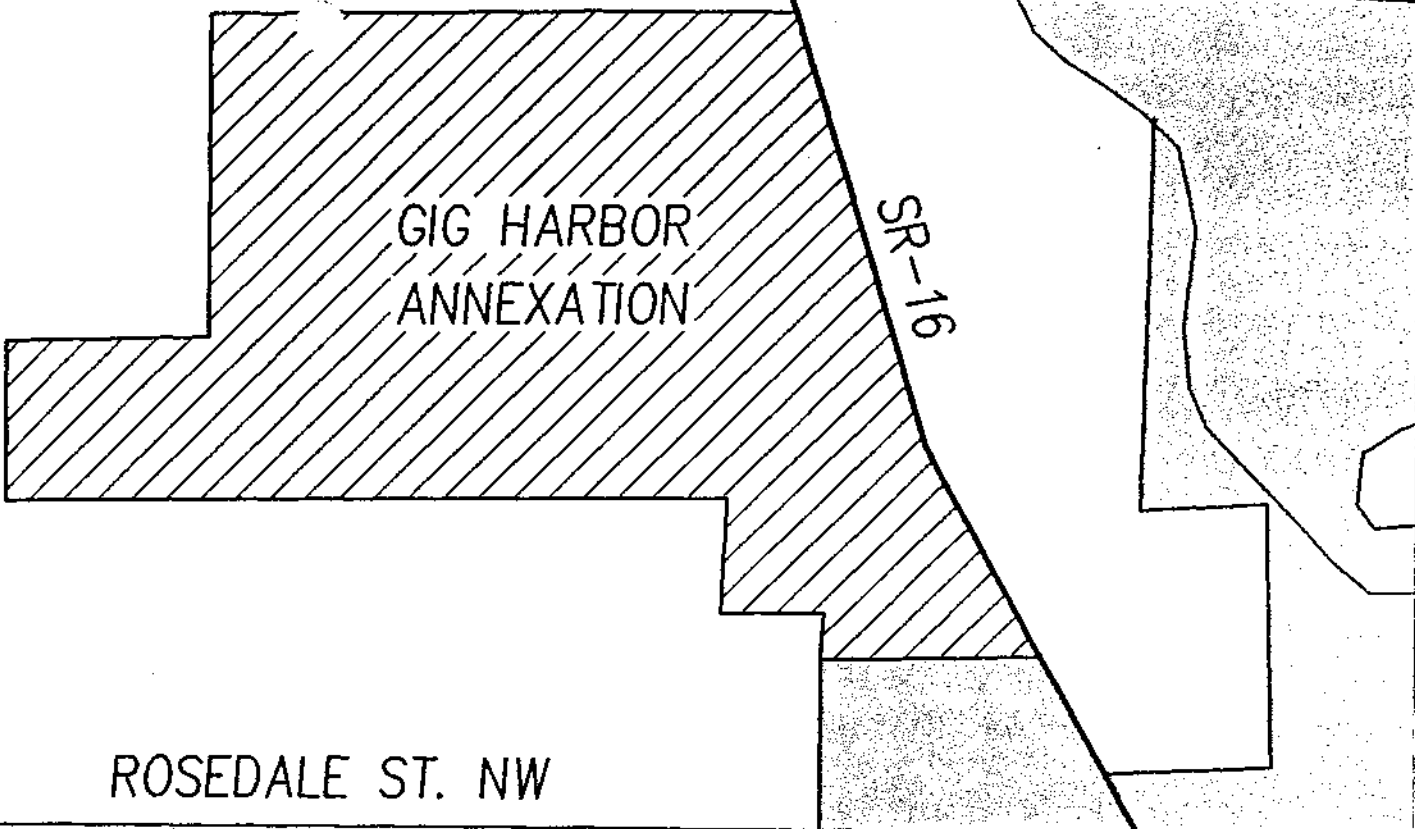
VICINITY MAP

1" = 1/3 MILE



2601 South 35th, Suite 200
 Tacoma, Washington 98409-7479
 (253) 473-4494 FAX: (253) 473-0599

27705

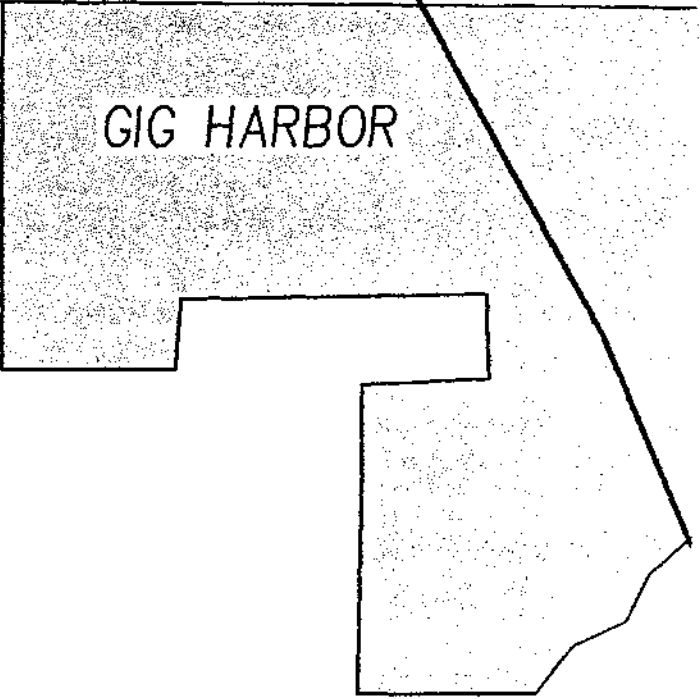


GIG HARBOR
ANNEXATION

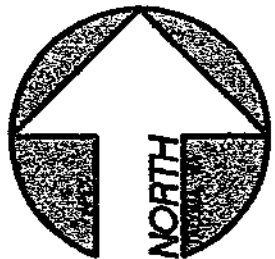
SR-16

ROSEDALE ST. NW

LOMBARD DR. NW



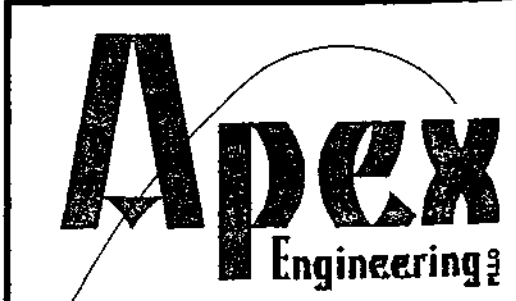
GIG HARBOR



VICINITY MAP

1" = 1/4 MILE

27703



2601 South 35th, Suite 200
Tacoma, Washington 98409-7479
(253) 473-4494 FAX: (253) 473-0599



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR DR
DATE: JANUARY 8, 2002
SUBJECT: FIRST READING OF ORDINANCE INCREASING MONTHLY WATER RATES.

INTRODUCTION

This is the first reading of an ordinance increasing monthly water service rates. Rates were last increased February 1, 1994. The City has pledged to purchasers of the 1994 Water And Sewer Revenue And Refunding Bonds to adjust water system rates when necessary to provide for maintenance and operations and debt service.

BACKGROUND

The 2002 water budget is based upon a 5% rate increase. It is necessary to increase the sewer service rates to reflect the increased costs of maintenance and operations since 1994. The City contemplated this increases in 1999 for 2000 operations, however, due to the uncertainty created by Initiative 695, the increase was delayed. As a result expenses exceeded revenues and a portion of fund balance was needed to sustain operations.

FINANCIAL

Currently, the single-family sewer rate for 1000 CF for one month is \$27.50. With the proposed 5 percent increase this rate would increase to \$28.88. This increase is expected to provide an additional \$32,000 in revenues.

The attached comparison shows that the proposed City water rates compare favorably with other local water companies.

RECOMMENDATION

Staff recommends adoption of this ordinance after a second reading.

2002 Water Rates

City of Gig Harbor (includes rate increase)

Base rate	\$	7.97	
Per 100 cubic feet		1.19	
Average single family usage per month/1000 cubic feet			\$ 19.87

Rainier View Water Company

Base rate (includes 5 cubic feet)		17.21	
Per 100 cubic feet		0.78	
Average single family usage per month/1000 cubic feet			\$ 21.10

Peninsula Light Water Company

Base rate		15.00	
Per 100 cubic feet		0.80	
Average single family usage per month/1000 cubic feet			\$ 23.00

City of Port Orchard

Base rate (includes 668 cf): \$15:00		15.00	
Per 134 cubic feet (1,000 – 50,000 cf)		0.22	
Average single family usage per month/1000 cubic feet			\$ 15.55

City of Poulsbo

Base rate		14.50	
Per 100 cubic feet		0.75	
Average single family usage per month/1000 cubic feet			\$ 22.00

Washington Water Company

Base rate		11.50	
Per 100 cf – up to 400 cf		0.90	
Per 100 cf – 401 cf through 1400 cf		1.08	
Average single family usage per month/1000 cubic feet			\$ 21.58

Harbor Springs

Flat monthly rate – unmetered			\$ 44.85
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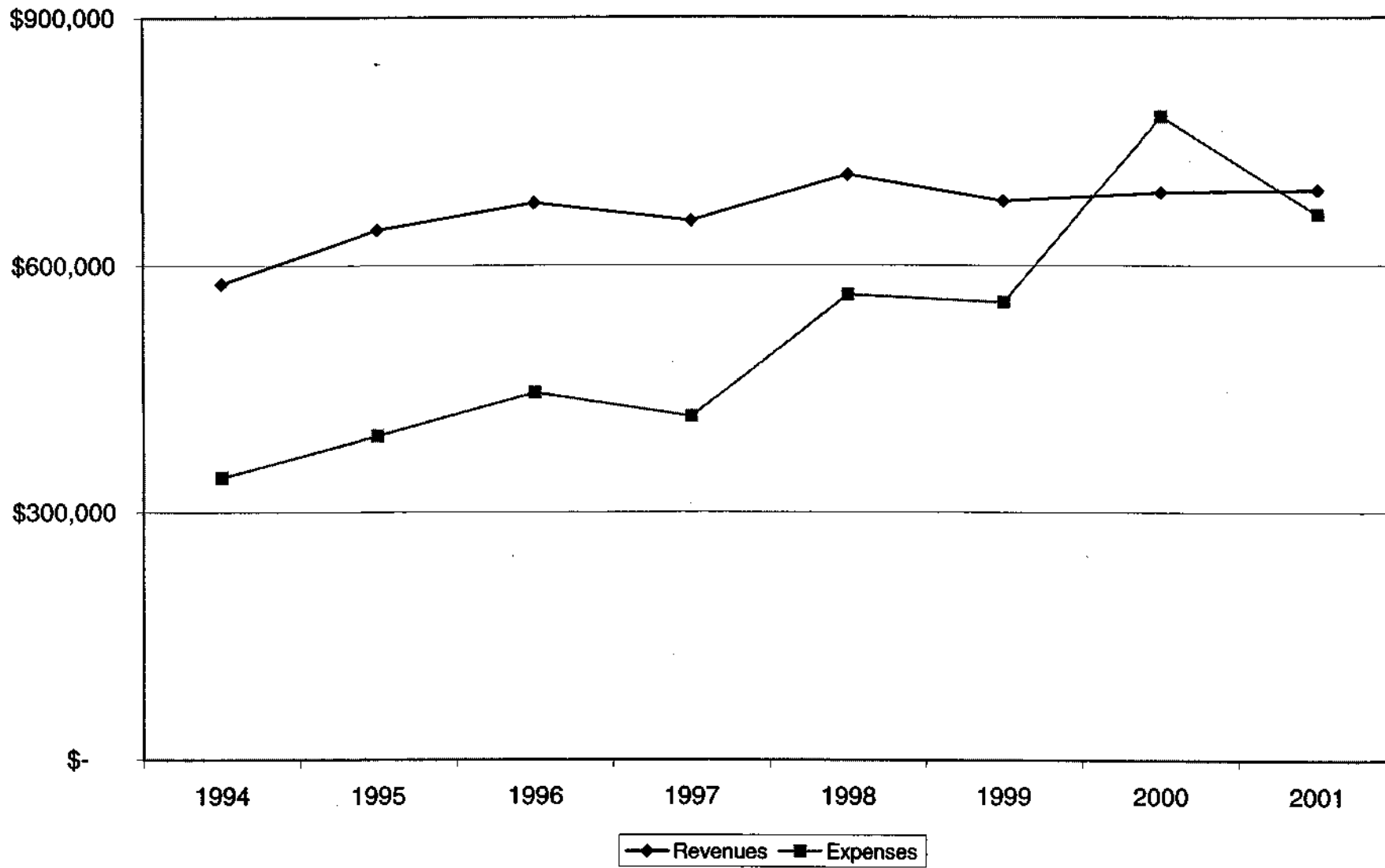
Stroh's Water Company

Base rate		17.75	
Per 100 cubic feet		0.65	
Average single family usage per month/1000 cubic feet			\$ 21.00

Kitsap County PUD

Base rate		14.25	
Per 100 cubic feet		0.78	
Average single family usage per month/1000 cubic feet	\$	-	\$ 22.05

Water Revenues and Expenses



**CITY OF GIG HARBOR
ORDINANCE NO.**

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON CHANGING THE MONTHLY WATER SERVICE RATE TO BE PAID TO THE CITY BY OWNERS OF PROPERTY WITHIN THE CITY FOR THE PROVISION OF WATER SERVICES, AMENDING GIG HARBOR CODE SECTIONS 13.02.220, 13.04.010, 13.04.020 AND 13.04.070 AND REPEALING GIG HARBOR CODE SECTIONS 13.02.195 AND 13.04.015, TO BE EFFECTIVE BEGINNING FEBRUARY 1, 2002.

WHEREAS, it is necessary to raise water service rates and charges to meet the increasing cost of providing water services;

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, **DO ORDAIN AS FOLLOWS:**

Section 1. Section 13.02.195 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. Section 13.02.220 of the Gig Harbor Municipal Code is hereby amended as follows:

13.02.220 Turning on water after it is shut off. It is unlawful for the owner or occupant of the premises to turn on the water, or suffer or cause it to be turned on, after it has been shut off or locked at the curbcock by the city. A charge of ~~\$15.00~~ \$25.00 shall be made to turn the water back on.

Section 3. Section 13.04.010 of the Gig Harbor Municipal Code is hereby amended as follows:

13.04.010 Water Rates.

The monthly water service rates shall be set at the following amounts:

<u>Customer Class/Meter</u>	<u>Customer Base Charge (per meter/month)</u>		<u>Commodity Charge (per ccf)</u>	
Residential	\$7.59	<u>\$7.97</u>	\$1.13	<u>1.19</u>
Multi-residential				
5/8" & 3/4"	12.94	13.59	1.13	<u>1.19</u>
1"	21.98	23.08	1.13	<u>1.19</u>
1-1/2"	42.97	45.12	1.13	<u>1.19</u>
2"	68.77	72.21	1.13	<u>1.19</u>
3"	129.25	135.72	1.13	<u>1.19</u>
4"	214.96	225.71	1.13	<u>1.19</u>

Commercial/Schools			
5/8" & 3/4"	9.11	9.57	1.13 <u>1.19</u>
1"	15.18	12.94	1.13 <u>1.19</u>
1-1/2"	30.36	31.88	1.13 <u>1.19</u>
2"	47.52	49.90	1.13 <u>1.19</u>
3"	91.08	95.64	1.13 <u>1.19</u>
4"	151.80	159.39	1.13 <u>1.19</u>

Section 4. Section 13.04.015 of the Gig Harbor Municipal Code is hereby repealed.

Section 5. Section 13.04.020 of the Gig Harbor Municipal Code is hereby amended as follows:

13.04.020 Nonmetered residential uses.

Until a water meter has been installed to measure water consumed by a residential unit or a multiple-residential building, the water service charge applicable to such unmetered unit shall be ~~\$22.35~~ \$23.47 per month per unit.

Section 6. Section 13.04.070 of the Gig Harbor Municipal Code is hereby amended as follows:

13.04.070 Special charges.

The city shall impose the following special service charges:

<u>Service</u>	<u>Charge</u>
Meter installation:	
3/4" meter	\$300.00 <u>\$486.00</u>
1" meter	\$350.00 <u>\$567.00</u>
Over 1" meter	Time and materials, plus 10% administrative fee
Street crossings:	
Improved streets,	\$10.00 <u>\$16.20</u> per foot
Unimproved streets	\$1.00 <u>\$1.62</u> per foot

* * *

Section 7. This ordinance shall be in full force and take effect February 1, 2002 which shall be at least five (5) days after its publication of an approved summary consisting of the title.

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 ___ day of January, 2002.

Water Rate Ordinance #
Page 3

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST:

Molly Towslee
City Clerk

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



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: DAVID RODENBACH, FINANCE DIRECTOR DR
DATE: JANUARY 7, 2002
SUBJECT: FIRST READING OF ORDINANCE INCREASING MONTHLY SEWER RATES.

INTRODUCTION

This is the first reading of an ordinance increasing monthly sewer service rates. Rates were last increased February 1, 1999. The City has pledged to purchasers of the 1994 Water And Sewer Revenue And Refunding Bonds to adjust sewer system rates when necessary to provide for maintenance and operations and debt service.

BACKGROUND

The 2002 sewer budget is based upon a 5% rate increase. It is necessary to increase the sewer service rates to reflect the increased costs of providing sewage collection and treatment.

FINANCIAL

Currently, the single-family sewer rate for 1000 CF for one month is \$27.50. With the proposed 5 percent increase this rate would increase to \$28.88. This increase will provide an additional \$47,000 in revenues.

RECOMMENDATION

Staff recommends adoption of this ordinance after a second reading.

**CITY OF GIG HARBOR
ORDINANCE NO.**

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON CHANGING THE MONTHLY SEWER SERVICE RATE TO BE PAID TO THE CITY BY OWNERS OF PROPERTY WITHIN THE CITY FOR THE PROVISION OF SEWER SERVICES, AMENDING GIG HARBOR CODE SECTIONS 13.32.010, 13.32.015, 13.32.020, AND 13.32.025, TO BE EFFECTIVE BEGINNING FEBRUARY 1, 2002.

WHEREAS, it is necessary to raise sewer service rates and charges to meet the increasing cost of providing sewage collection and treatment services;

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, **DO ORDAIN AS FOLLOWS:**

Section 1. Section 13.32.010 of the Gig Harbor Municipal Code is hereby amended as follows:

13.32.10 Sewer Rates.

A. The monthly sewer service rate shall be set at the following amounts:

Customer Class	Customer Base Charge (per month)	Commodity Charge (per ccf)	Minimum Charge (per month)
Residential	\$5.10 <u>\$5.36</u>	\$2.24 <u>\$2.36</u>	\$16.28 <u>\$17.10</u>
Multi-Family Residential (per living unit)	3.04 <u>3.16</u>	2.24 <u>2.36</u>	11.95 <u>12.55</u>
Commercial/School (per billing unit)	9.55 <u>10.03</u>	2.24 <u>2.36</u>	16.26 <u>17.08</u>

* * *

Section 2. Section 13.32.015 of the Gig Harbor Municipal Code is hereby amended as follows:

13.32.015 Sewer Rates – Community Systems. The monthly sewer service rates for community systems shall be set at the following amounts:

Customer Class	Monthly Charge
Penn Thicket System	\$124.05/system <u>\$130.26/system</u>
Shore Crest System	\$16.98/living unit <u>\$17.83/system</u>

Section 3. Section 13.32.020 of the Gig Harbor Municipal Code is hereby amended as follows:

13.32.020 Non-metered uses. Until a water meter has been installed to measure water flow by a residential unit, multi-residential building, or commercial facility, the sewer service charge for each unmetered unit/facility shall be as follows:

<u>Nonmetered Customer Class</u>	<u>Monthly Charge</u>	
Residential	\$20.75/unit	<u>\$21.79/unit</u>
Multifamily residential	16.43/living unit	<u>17.26/living unit</u>
Commercial	43.10/billing unit	<u>45.26/billing unit</u>

Section 4. Section 13.32.025 of the Gig Harbor Municipal Code is hereby amended as follows:

13.32.025 Sewer Rates – Community systems using flow meters.

<u>Customer Class</u>	<u>Customer Base Charge (per month)</u>	<u>Commodity Charge (per ccf)</u>	<u>Minimum Charge (per month)</u>
Residential	\$5.10 <u>\$5.36</u>	\$2.24 <u>\$2.36</u>	\$20.75 <u>\$21.79</u>
Multi-Family Residential	3.01 <u>3.16</u>	2.24 <u>2.36</u>	16.53 <u>17.36</u>
Commercial	9.55 <u>10.03</u>	2.24 <u>2.36</u>	43.10 <u>45.26</u>

Section 5. This ordinance shall be in full force and take effect February 1, 2001 which shall be at least five (5) days after its publication of an approved summary consisting of the title.

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 ____ day of January, 2001.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST:

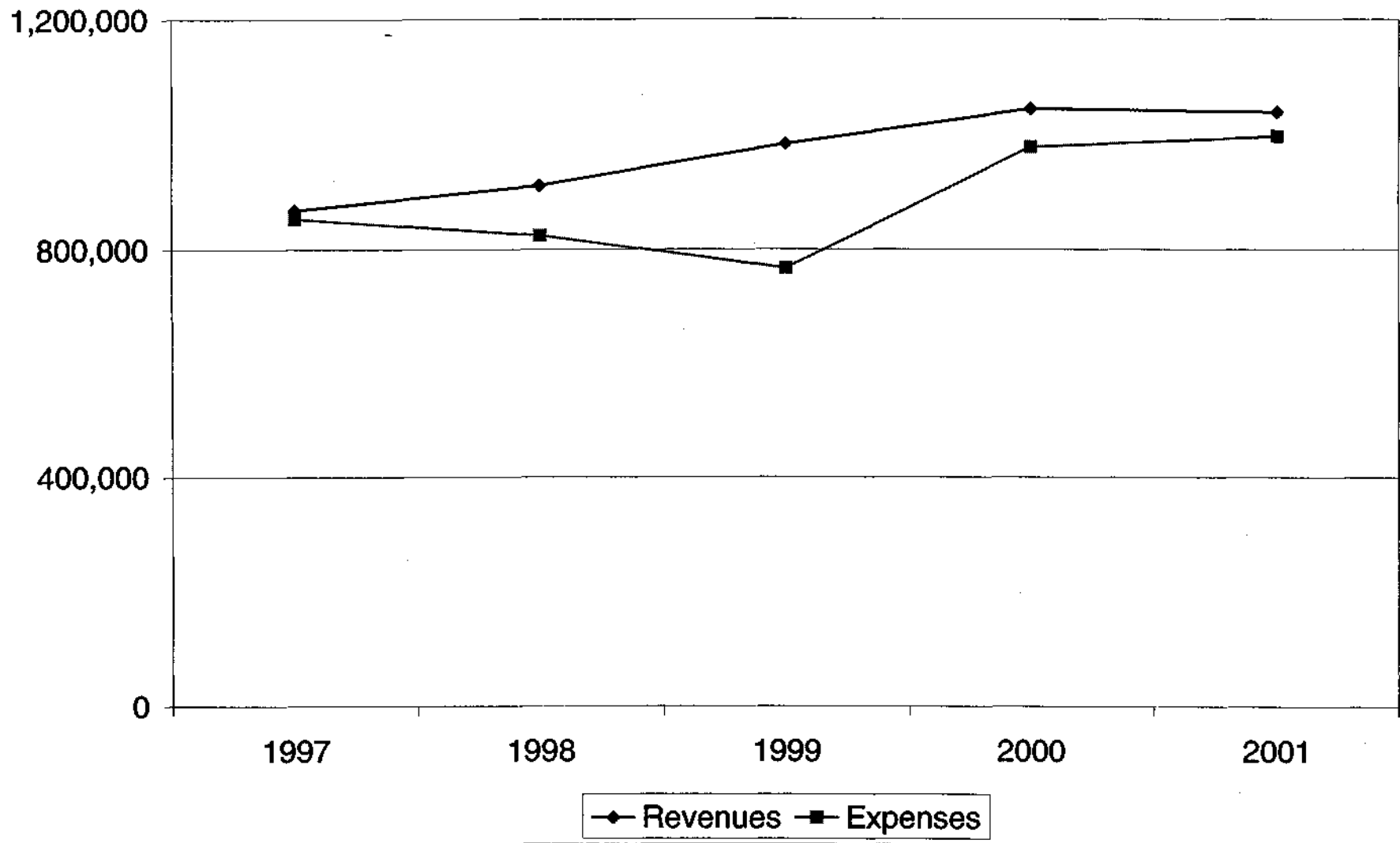
Molly Towslee

Sewer Rate Ordinance #
Page 3

City Clerk

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

Sewer Revenues and Expenses





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: EQUIPPING WELL NO. 6, CWP - 0006
- BID AWARD
DATE: JANUARY 14, 2002

INTRODUCTION/BACKGROUND

A 2001 budget objective in the City's water department was to complete the water supply and distribution system improvements and modifications to the existing well house. This includes the installation of a submersible pump and pitless well adaptor; and all associated mechanical and electrical components and appurtenances. This work is needed to develop an additional water supply capable of pumping 1,000 gpm into the City's distribution system. The City has submitted an application to obtain additional primary water rights for this well to provide water service to future customers as identified in the City's Comprehensive Water Plan.

In response to an advertisement for bids, eight bid proposals were received as summarized below:

1	PAPE AND SONS CONSTRUCTION, INC.	\$228,263.96	5	STOUDER GENERAL CONSTRUCTION, LLC	\$244,357.89
2	BABBITT CONSTRUCTION, INC.	\$233,326.28	6	WESTERN ENGINEERING CONSTRUCTORS, INC..	\$245,082.16
3	HISEY CONSTRUCTION, INC.	\$235,712.05	7	VLS CONSTRUCTION, INC.	\$261,691.72
4	WASHINGTON WATER.	\$238,356.05	8	HOLT DRILLING, INC.	\$274,595.62

The lowest responsible bid proposal received was from Pape and Sons Construction, Inc., in the amount of Two hundred twenty-eight thousand two hundred sixty-three dollars and ninety-six cents (\$228,263.96), including State of Washington sales tax.

ISSUES/FISCAL IMPACT

The low bid is under the City Engineer's estimate of \$243,970.89. This project was identified as an objective in the water operating fund of the 2001 Annual Budget.

RECOMMENDATION

Staff recommends that Council authorize award and execution of the contract for the Equipping Well No. 6 Project (CWP-0006) to Pape and Sons Construction, Inc., as the lowest responsible bidder, for their bid proposal amount of Two hundred twenty-eight thousand two hundred sixty-three dollars and ninety-six cents (\$228,263.96).



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER, CHIEF OF POLICE *MB*
SUBJECT: NOVEMBER INFORMATION FROM PD
DATE: DECEMBER 14, 2001

The November activity statistics are attached for your review. You will notice a significant decline in the percentage of increase in Criminal Traffic tickets from the last report. I have been asked why this category had been so high this year and was not able to explain it until now. The answer is that we had bad data entered several months back. This caused the ensuing months to keep increasing. When we went back through the data, we found the mistake and corrected it.

The Reserves volunteered 104.5 hours in November. Their duties included patrol and court transports. We will have a new officer heading up the Reserve program for 2002. We will also be more actively recruiting new officers to the program.

The Marine Services Unit was not active in November and had just one hour of administrative time.



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

GIG HARBOR POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

NOVEMBER 2001

	<u>Nov</u> <u>2001</u>	<u>YTD</u> <u>2001</u>	<u>YTD</u> <u>2000</u>	<u>%Change</u>
CALLS FOR SERVICE	491	5170	4673	+11%
CRIMINAL TRAFFIC	9	173	154	+12%
TRAFFIC INFRACTIONS	65	734	734	0
DUI ARRESTS	7	99	68	+45%
FELONY ARRESTS	2	57	59	-3%
MISDEMEANOR ARRESTS	11	200	256	-22%
WARRANT ARRESTS	8	58	54	-7%
CASE REPORTS	96	1268	1244	+1.9%
REPORTABLE VEHICLE ACCIDENTS	19	250	197	+26%



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER, CHIEF OF POLICE
SUBJECT: DECEMBER INFORMATION FROM PD
DATE: JANUARY 8, 2002

The December activity statistics are attached for your review. We will begin working on the 2001 year end report and try to have it available by the end of February.

The Reserves volunteered 113 hours in December. Their duties included patrol and court transports. Officer Welch is now the Reserve coordinator and we are actively recruiting for the program.

The Marine Services Unit was in service for 11 hours in December. This was divided between 7 patrol hours, 3 hours of maintenance and one hour of administrative time. The unit responded to one dispatched call and one boating complaint. The boat was in service for the Lighted Boat Parade and also the Special People's Cruise. The boat has been pulled from the water for the winter.

We used 12 hours of bicycle patrol time in December. This was primarily to augment increased foot patrols in the business areas of the city during the holiday season.



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

GIG HARBOR POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

DECEMBER 2001

	<u>Dec</u> <u>2001</u>	<u>YTD</u> <u>2001</u>	<u>YTD</u> <u>2000</u>	<u>%Change</u>
CALLS FOR SERVICE	506	5676	5052	+12%
CRIMINAL TRAFFIC	6	179	181	-1%
TRAFFIC INFRACTIONS	41	775	768	+1%
DUI ARRESTS	4	103	88	+17%
FELONY ARRESTS	3	60	64	-6%
MISDEMEANOR ARRESTS	19	219	270	-18%
WARRANT ARRESTS	4	62	56	+11%
CASE REPORTS	103	1371	1362	+7%
REPORTABLE VEHICLE ACCIDENTS	15	265	219	+21%



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: JOHN P. VODOPICH, AICP
DIRECTOR, COMMUNITY DEVELOPMENT
SUBJECT: UPDATE - GIG HARBOR SPORTSMANS CLUB
DATE: JANUARY 14, 2002

BACKGROUND – HIRING OF EXPERTS

At the December 10, 2001 Council meeting, I was asked to get a more detailed scope of work from the two acoustical engineering firms I had been in contact with regarding the evaluation of noise issues related to the shooting activities at the Gig Harbor Sportsman's Club. I have received additional information from BRC Acoustics, which I have enclosed for your review. I have not received any additional information from the firm of Michael R. Yantis Associates, Inc. so I have enclosed their original proposal for your consideration. Both appear to be more than qualified to conduct a basic analysis of noise conditions in the vicinity of Avalon Woods.

BRC Acoustics proposes a fee of \$4,100.00 plus expenses and Michael R. Yantis Associates, Inc. proposes a range of \$2,700.00 for basic sound measurements and reporting up to \$4,300.00 for additional measurements and attendance at meetings.

Following the December 10, 2001 Council meeting, I formally requested an analysis of the Gig Harbor Sportsman's Club through the National Rifle Association's (NRA) Range Technical Advisor program. Mr. Doug Tenzler, President of the Gig Harbor Sportsman's Club contacted me on January 4, 2002 and indicated that in order to process our request the NRA would need a letter of concurrence from the Club. Mr. Tenzler was going to write such a letter at his earliest convenience.

RECOMMENDATION

I recommend that the Council determine a maximum amount that would be acceptable to expend on a noise evaluation of the Gig Harbor Sportsman's Club and then select one of the aforementioned acoustical engineering firms to conduct the study.

PUBLIC COMMENT

The Council has received two letters from residents within the Canterwood Development regarding the Gig Harbor Sportsman's Club. Correspondence from Mr. Phipps dated December 14, 2001 and from Mr. Buchanan dated December 16, 2001 has been enclosed for your consideration.



CITY OF GIG HARBOR
DEC 21 2001

December 28, 2001

Mr. John P. Vodopich, AICP
City of Gig Harbor Planning and Building Services
3125 Judson Street
Gig Harbor, Washington 98335

Regarding: Gig Harbor Sportsman's Club Noise Study
Supplement to Proposal

Dear Mr. Vodopich:

In response to your request, we are pleased to submit additional information to supplement our proposal dated December 5, 2001 for a noise study pertaining to the Gig Harbor Sportsman's Club.

The tasks listed in BRC's scope of work submitted on December 5 are intended for two purposes:

I. Characterize existing conditions at receivers in the vicinity of the site

The assessment of existing conditions is to be accomplished by measuring existing sound levels at the Avalon Woods property line during time periods with and without activities at the shooting range and reporting an evaluation of the measured sound levels with respect to applicable noise limits and guidelines. BRC's report will be aimed at informing the Gig Harbor City Council's decision regarding conditions or regulations to be imposed on sound produced at the Sportsman's Club.

The proposed fee for the portion of the scope of work addressing existing conditions is \$4,110.00 plus associated expenses.

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or 800/843-4524

Fax 206/270-8690

www.brcacoustics.cc

Mr. John P. Vodopich
December 28, 2001

BRUCK RICHARDS CHAUDIERE INC.

II. Provide recommendations for reducing sound levels produced by shooting-range activities and received at the residences

The selection of effective noise-control measures will require first an analysis of the mitigation measures already in place at the facility and of the relative contributions of the various firing ranges to the existing sound levels at the property line. Based on the findings of the analysis, BRC will issue recommendations for reducing sound levels from the Club activities determined to be principal contributors to sound levels experienced at the residential property lines. The report will include quantitative predictions of the extent of noise reduction to be expected from noise-mitigation measures.

The proposed fee for this portion of the scope of work is \$5,840.00 plus associated expenses.

We hope that this letter provides you the information necessary to respond to questions by the Gig Harbor City Council. Please call if you have any additional questions.

Sincerely yours,

Ioana Park

Ioana Park, P.E.
Senior Acoustical Consultant



BRUCK RICHARDS CHAUDIERE INC.

December 5, 2001

Mr. John P. Vodopich, AICP
City of Gig Harbor Planning and Building Services
3125 Judson Street
Gig Harbor, Washington 98335

Regarding: Gig Harbor Sportsman's Club
Proposal for Noise Study

Dear Mr. Vodopich:

In response to your request, we are pleased to submit this proposal to prepare a noise study pertaining to the Gig Harbor Sportsman's Club. The scope of acoustical services has been prepared in response to the Gig Harbor City Attorney's recommendations. Furthermore, this proposal has been informed by BRC's familiarity with the Club layout from previous site visits.

We propose to conduct the following tasks:

1. Measure sound levels at a minimum of two noise-sensitive properties in the vicinity of the site during shooting activities at the Sportsman's Club. Simultaneously measure sound levels at a reference distance from the shooter in order to correlate the sound levels received at neighboring properties with the characteristics of firearm noise sources. This task will require coordination with members of the Sportsman's Club.
2. Monitor existing sound levels continuously for at least 24 hours at the two noise-sensitive properties in the vicinity of the site in order to characterize the environment during hours without Club activities.
3. Establish criteria for appropriate sound levels at the nearest noise-sensitive receivers in order to meet applicable noise regulations and to minimize environmental noise impacts. The criteria will be based on Pierce County noise limits and on Environmental Protection Agency (EPA) guidelines for evaluating noise impacts.

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*Tel. 206/270-8910
Or 800/843-4524
Fax 206/270-8690*

*Brc@brcacoustics.co
www.brcacoustics.co*

4. Evaluate the sound levels produced by current activities at the Sportsman's Club with respect to applicable noise criteria. The evaluation will take into consideration the measured sound levels and a description of current Club activities, to the extent that it is provided by the Club.
5. Model the propagation of shooting range sound to the nearest noise-sensitive receivers taking into account sound attenuation by distance, noise barrier effects caused by natural topography or by man-made barriers, sound absorption by intervening ground and atmosphere, and other atmospheric effects. In order to conduct the modeling, we will require topographical maps for the site showing features of the facility, nearby noise-sensitive receivers, and intervening terrain.

The purpose of the noise modeling will be to quantify the effect of existing and potential future noise mitigation measures such as berms, enclosures, or baffling affecting individual firing ranges.

6. Submit a report of our findings and recommendations.

Our proposed fee for the tasks outlined above will be \$9,950.00 plus associated expenses. It is anticipated that project expenses will include mileage to the site, meals during trips to the site, and costs of maps and photographs. Expenses will be charged at cost plus 10 percent.

We will be available to participate at design meetings, informational meetings with the public, and public hearings as requested. These services will be billed at current hourly rates plus expenses.

We consider the contents of this proposal to be privileged information, and therefore not to be disclosed outside of your office (with the exception of the Owner/Client).

Please call if you have any questions or if there are other issues you wish to discuss. We look forward to working with you.

Sincerely yours,

Ioana Park, P.E.
Senior Acoustical Consultant

Vodopich, John (Gig Harbor)

From: Michael Yantis [michaely@yantist.com]
Sent: Monday, December 03, 2001 9:45 PM
To: 'Vodopich, John (Gig Harbor)'
Cc: Tracie Ferguson
Subject: RE: Acoustical Study

Importance: High

Mr. Vodopich, we would be glad to help. Previously, we conducted measurements of noise levels produced by the gun club and received by residential properties in the neighborhood. I doubt that we still have our files from the previous work - we normally keep files for about 7 years. If we need the data, hopefully we can use the report information. I don't think we even have a copy of the previous report.

Assuming we would take new measurements, our estimated fees would be as follows:

Measurements - \$1200 for first measurement, \$750 for each additional.
(One measurement consists of potentially several measurement locations, but measured during the same trip to the site.)
Reporting and telephone coordination - \$1500.
Attendance at meetings with you or your staff - \$350 per meeting.
Attendance at public meetings - \$500 per meeting.

± 3,550 - 4,30

I hope this helps. I am calculating our fees based on one of our acoustician's rate with significant experience regarding environmental noise issues. Tracie Ferguson is the acoustician I would recommend - her rate is \$85/hr. I would help only in quality control reviews in our office. If I need to be present during meetings, etc., our fees would increase by the number of my hours at \$150/hr. If my time is desired, we should work out how much time to allow in the initial contracting.

Please call if you have any questions or if we can provide additional information.

Best regards,
Michael
Michael R. Yantis Associates, Inc.
michaely@yantist.com
(206) 583-0465 x22

-----Original Message-----

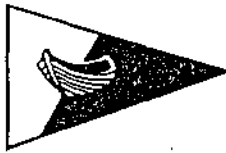
From: Vodopich, John (Gig Harbor) [mailto:VodopichJ@LESA.NET]
Sent: Monday, December 03, 2001 2:00 PM
To: 'michaely@yantist.com'
Subject: Acoustical Study

Mr. Yantis,

The City of Gig Harbor is in the process of evaluating the noise impacts of the Gig Harbor Sportsman's Club (shooting range) upon adjacent

residential
developments. I have recently found a May 1991 study that you did for
the
Northharbor Business Campus which is located between the residences and
the
Sportsman's club. The City is interested in conducting a new acoustical
study at the property line of the residential plat. I would be
interested
in hearing from you if you are interested in such a study and what a
ball
park cost would be. I look forward to hearing from you.

John P. Vodopich, AICP
Director, Planning & Building Services
City of Gig Harbor
3125 Judson Street
Gig Harbor, WA 98335
(253) 851-4278
(253) 858-6408 Fax
vodopichj@lesa.net



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

December 14, 2001

NRA Range Department
11250 Waples Mill Road
Fairfax, VA 22030

RE: RTTA Assistance, Gig Harbor Sportsman's Club (GHSC)

The City of Gig Harbor, Washington would like to initiate a request for NRA Range Technical Team Advisor (RTTA) assistance in evaluating the present configuration of the Gig Harbor Sportsman's Club which is located within the incorporated limits of the City.

As outlined in the NRA's Range Technical Team brochure, I am providing the following information:

1. Range Information

Mailing address: Gig Harbor Sportsman's Club (GHSC)
9721 Burnham Drive NW
Gig Harbor, WA 98332
Phone numbers: (253) 858-9023 – Day/Evening
Fax number: None
Physical location: 9721 Burnham Drive NW
Gig Harbor, Washington
NRA affiliation #: B2165

2. Contact person:

John P. Vodopich, AICP
Director, Planning & Building Services
City of Gig Harbor
3125 Judson Street
Gig Harbor WA 98335
(253) 851-4278 -- Day
(253) 858-6408 – Fax
vodopichj@lesa.net - E-mail

3. Specific type of assistance required.

The City of Gig Harbor is requesting an evaluation of physical configuration, use, and operation of the range. Specifically, are the range's current practices consistent with nationally accepted safety standards? Is the range configuration

and physical characteristics consistent with nationally accepted standards? Are any changes needed to ensure or increase safety? Using a draft of an ordinance for the regulation of outdoor shooting ranges provided by the City, would the range satisfy the standards, or would changes have to be made? Are there any changes that could be made to the physical configuration of the range to increase safety, such as enclosing the passageway between the firing points and targets? Can trenches be installed to protect users (or neighbors) from errant bullets?

4. Does the range have a copy of the NRA Range Source Book?

Yes.

5. Does the range have bylaws, range rules, and regulations?

Yes.

If an outdoor range, do you have a topographic map, tax map, and aerial photographs of the range property and the surrounding area?

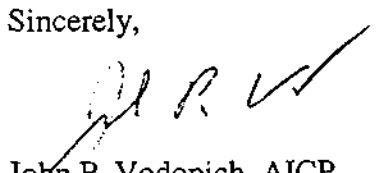
The Gig harbor Sportsman's Club is an outdoor range and the City of Gig Harbor has access to these materials.

6. Statement attesting range understands the cost recovery and expense reimbursement policy.

The City of Gig Harbor understands the cost recovery and expense reimbursement policy and agrees to such policy.

I look forward to hearing form the NRA Range Technical Team with regards to this evaluation. Please feel free to contact me, I can be contacted by telephone at (253) 851-4278 or by E-mail at vodopichj@lesa.net.

Sincerely,



John P. Vodopich, AICP
Director, Planning & Building Services

Cc: Mayor Wilbert
City Council Members
Mark Hoppen, City Administrator

December 14, 2001

Gig Harbor City Council
Gig Harbor, WA 98335

Re: Ltr. to Council from Canterwood Homeowners Assoc.

Dear Council Members:

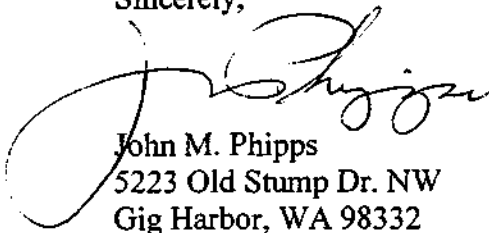
In November you received a letter from Lynn Zatkan, then president of the Canterwood Homeowners Association regarding their total support of the current action being taken by Avalon Woods Homeowners Association to force the closure of the Gig Harbor Sportsman Club. This letter supposedly indicated that all of the Canterwood residents supported this proposed closure.

Please be advised that this cannot be further from the truth. No poll was taken of Canterwood membership regarding this closure. In fact, many members of Canterwood are current members or at least frequently use and enjoy this facility. I, myself, joined this facility in 1998 when we moved here from Boston. It has been a continued source of enjoyment for me and my son who frequently comes down from Bellevue to shoot with me. I have always found that this club and facility have been operated in a professional manner with utmost safety coming first. As a side note the theory that a shotgun slug can travel the distance claimed by Avalon Woods is absolutely ridiculous. Someone should be monitoring what goes on in the firebreak under the hi-voltage transmission lines.

The folks buying in Avalon Woods knew what was in the vicinity. My sister and husband did not buy there because of the warning contained in the listing so it was buyer beware!

If you are going to notify Canterwood HOA if and when a hearing comes up then lets also get a front page notice in both the Gateway and the Morning News Tribune.

Sincerely,



John M. Phipps
5223 Old Stump Dr. NW
Gig Harbor, WA 98332

Cc: Becky Buchanan
Max Applegate

RECEIVED

DEC 17 2001

CITY OF GIG HARBOR

CITY OF GIG HARBOR
DEC 17 2001

RECEIVED

DEC 19 2001

CITY OF GIG HARBOR

William J. Buchanan
4614 131 ST. CT. NW
Gig Harbor, WA 98332

Dec. 16, 2001

Gig Harbor City Council
Gig Harbor, WA

CITY OF GIG HARBOR
DEC 17 2001

Dear Council Members,

On November 11, the president of the Canterwood Homeowners Association, Lynn Zatzkin, wrote you expressing her support for the Avalon Woods Homeowners quest to severely control or shut down the Gig Harbor Sportsman's Club. It's important for the Gig Harbor City Council to understand that Mrs. Zatzkin, though president of our homeowners association, does not represent the membership at large in this issue. She never polled the membership, nor informed them in any way, before deciding on her own (she, and perhaps two board-of-directors) to support it. While she is certainly entitled to express her opinion to you as an individual, I believe that by using her position as president of our association to add the weight of this entire community to that opinion, she violated our trust and misrepresented herself to you.

Had Mrs. Zatzkin polled the Canterwood membership, she may have been surprised to find that many of us are members of the Sportsman's Club, that a few of us are trained range officers there, myself included, and that many others use the club frequently.

Council members, by now you are all painfully familiar with all the issues regarding the Sportsman's Club and Avalon Woods. The issue is noise, period; but in their attempt to close the club they have become aware that the noise issue just won't hold muster in the courts, as a neighbor's lawn mower is far more noisy, so they've attempted to introduce safety and pollution issues. As a range officer at the club, I can assure you that safety is our primary concern, and we address the issue *every day*. As for lead pollution of ground water, test your water. It's a non issue.

I'd like to extend an invitation to Mrs. Zatzkin and any Gig Harbor Council members who would like to tour the Sportsman's Club and satisfy their concerns. I'd be happy to take the time to let you examine the facilities for yourselves; after all, education is the best answer for any concerns you may have. Please call on me.

Sincerely,



William J. Buchanan
phone: 253-858-7594

cc: Lynn Zatzkin
Max Applegate
John Phipps
George Flaherty
Mark Greene
Ross Whitney

HEMLEY'S SEPTIC TANK CLEANING INC.

◆◆◆
P.O. Box 388 ◆ GIG HARBOR, WA. 98335
Phone 253-851-3432 ◆ Fax 253-851-2749

RECEIVED
JAN 28 2002
CITY OF GIG HARBOR

Gig Harbor City Council
City Of Gig Harbor
Gig Harbor, WA.

02/28/02

Greetings,

I, Randy Oxier, Vice President of, and representing Hemley's Septic Tank Cleaning Incorporated located at 9303-54th avenue northwest, formally request that the Gig Harbor City Council take into consideration our request to have our property excluded from the proposed annexation, and recommend that the City Council reject the annexation (ANX 01-03) of the Northwest Gig Harbor Employment Center. Pierce County is taking good care of our needs for services.

Respectfully submitted,



Randy Oxier
Hemley's Septic Tank Cleaning Inc.

Gig Harbor Police Department

Case 01-0884

Reckless Endangerment

- 8/30/01 Initial report of shotgun slug striking house. 9916 41st Avenue
8:20 p.m. Evidence collected at the scene includes a damaged shotgun slug covered with a white, powdery substance, thought to be corrosion.
- 9/24 Analysis received from WSP crime lab. Results: 12 gauge rifled shotgun slug. The white powdery material was not corrosion, but is an unknown-type lead-based substance. Crime Analyst estimates typical distance achieved by similar slug would be 600 yards.
- 10/1/01 A field analysis was conducted by Detective Busey utilizing GPS. All shooting positions at Gig Harbor Sportsman's Club are between 580-600 yards from point of contact with house. Shooting positions 1-3 are obscured from the impacted house. Shooting positions 6-7 were not in use the night of 8/30/01. Shooting position 4 was utilized by Sportsman's Club members for a competition ("Meat Shooters"). Shooting position 5 was utilized by youth shooting group from Peninsula High School Trap Club.
- Gig Harbor Sportsman's Club has provided a list of persons competing with the "Meat Shooters" group on 8/30/01. They have had several meetings to discuss the issue and no member has any information or observations pertinent to this investigation.
- 10/23/01 WSP Crime Lab personnel meet at site to perform initial scene inspection. The purpose of this meeting is to familiarize themselves with the scene and determine equipment necessary for complete analysis.
- 10/30/01 Detective Busey interviewed Peninsula High School Trap Club advisor. The advisor was not present the night of 8/30/01, however he will interview all of the students involved. He later reported that none of the club members had knowledge of the incident.
- 11/12/01 WSP Crime Lab declines to commit use of "Total Station" (GPS graphing instrument) for investigation unless a valid suspect can be identified.
- 11/19/01 Detective Busey interviewed all of the Peninsula High School Trap Club members. None of the students had information regarding the incident. Many of the trap club members did not have the capability to shoot 12-gauge slugs.
- 11/01 Crime Analyst requested to perform further tests on the slug. The slug was forwarded to the Crime Lab.
- 12/01 Crime analyst performed trajectory tests at the Yuma Proving Grounds in Yuma, Arizona. These tests will graph a Doppler image of the slug at various shooting angles to determine range.
- 12/28/01 Contact was made with Crime Analyst to check progress of testing. A laboratory in Ventura, CA is interpreting the data generated. The Forensic Scientist compiling the results estimates that the data will be made available at the "end of January at the earliest."

No suspect(s) have been identified in this case. This investigation pends receipt of data generated by the WSP Crime Lab.