

## SPECIAL GIG HARBOR CITY COUNCIL MEETING OF MAY 3, 2000

**PRESENT:** Councilmembers Owel, Dick, Picinich, Ruffo and Mayor Wilbert.  
Councilmembers Ekberg, Young and Robinson were absent.

**CALL TO ORDER:** 6:11 p.m.

### **OLD BUSINESS:**

1. Appeal of the Hearing Examiner's Decision - Harborwest Subdivision. Mayor Wilbert explained that this was a continuation of the deliberations for the Council to consider the pertinent facts, applicable law and to make a final decision on the application of Harborwest Subdivision. She stated that the Appearance of Fairness Doctrine requires that this hearing be fair, in form, substance and appearance, and asked if anyone in the audience objected to her participation as Mayor, or to any Councilmember's participation in the hearing. She then asked if Councilmembers had any ex parte communication in regards to this issue. All four Councilmembers said that they had received correspondence at home from Nick Natiello, dated May 1, 2000, and Northcreek Homeowners Association, dated April 26<sup>th</sup> and 28<sup>th</sup>. Some members had read the correspondence, others had not. Carol Morris, Legal Council, explained that because the correspondence had been reviewed by some of the Councilmembers, it would be necessary to include a letter submitted by Carl Halsan, dated May 2nd, as a rebuttal to the letter submitted by Northcreek Homeowners. She passed a copy of the letter to the Councilmembers to be added to the record.

Mayor Wilbert asked if any member of the Council felt that they could not fairly hear or be objective on this case, would gain any financial benefit or suffer loss as a result of the outcome of the hearing. All Councilmember responded that they could fairly hear the case, and the deliberations were continued.

Councilmember Dick explained that he had spent considerable time reviewing the records and that he had identified his concerns. He began by addressing impervious ground coverage. He said that the Gig Harbor Municipal Code Section 17.16.060(f) dealing with R-1 zoning provides for a maximum impervious ground coverage of 40%. He said that the evidence of record from appellant Mr. Dale, exhibit 96 - pages 2 and 3, states that the impervious ground coverage on the project ranges from 1799 s.f. to 2199 s.f., depending on the type of lot, which is between 43.3% and 52% impervious coverage for the average 4200 s.f. lot. He said that there are two other references to impervious ground cover in the record. The first reference is in the Environmental Checklist, which had a conclusion of 18% with no facts or supporting documents, and then later in the testimony by the applicant's expert, who testified that if impervious coverage was over 40% then something would be removed to comply. He added that the 18% and 40% figures do not bear any rational relationship to each other. He gave an overview of the calculations and added that the significance of these figures is that if you consider the total pervious surface and divide by the total square footage of the entire project, you arrive at 52.7% pervious surface or

47.3% impervious. He said that the conclusion is that both per lot and total impervious surface significantly exceed the 40% limit, which is not subject to a variance in the PUD.

He then addressed his concerns about the roads. He cited Section 17.90.040(a) of the municipal code stating that that public roads are the norm in a PUD, but that private roads can be used if three conditions are met. He said he did not find anything in the record showing that use of private roads in this development is superior to public roads, which is a condition in subsection 3 requiring a direct and tangible public benefit. He said that he could not find evidence to support the Hearing Examiner's conclusion that these conditions had been met while approving private roads within the development. There was discussion on the definition of tangible and whether this application met the intent. He concluded that he was most concerned with these issues and that he would defer discussion on any remaining issues.

Mayor Wilbert asked if other Councilmembers if they had comments on these issues.

Councilmember Picinich said that he had concerns on the roads and agreed with Councilmember Dick's comments. He said that he was also concerned with the safety factor of the roads with the limited ingress and egress to the south side of the project.

Councilmember Ruffo said that the issue of 40% limitation of impervious surfaces is a clear standard, and he asked if in fact, this project does exceed this standard. He said that opinions had been stated, but he wanted to know for certain what that number was, as it is so clear in the law. He said that he felt that Mr. Halsan had addressed the other issues that had arisen, and that he was comfortable with the Hearing Examiner's decision on those other concerns. He said that the one issue that remained unresolved is impervious surfaces.

Councilmember Owel said that the impervious coverage is an issue that concerns her as well, and that she accepted Councilmember Dick's methodology for computing the figures. She added that she did not think the Hearing Examiner adequately supported the contention that the parks and recreation fee be reduced. She said that the open space is a trade-off for higher density, but does not obviate the necessity for a parks and recreation fee and recommended that these fees be reinstated to the full amount of \$761.07 per dwelling unit.

Councilmember Ruffo asked for direction from Legal Counsel on the appropriate protocol to address these issues.

Carol Morris, Legal Counsel, explained that this appeal is unusual because materials had been received from both the appellants and the applicant after the hearing was closed. She said that the materials from Mr. Halsan presented a response to the issue of impervious surface and the methodology to use to assess the coverage. She added that if the information is not contained in the previous record or in these latest materials, the appellant cannot be asked to state what the actual impervious coverage is, as that would be new evidence. She added that Council should look at the submitted materials and to ask again for additional references to the record to where that information might appear.

Councilmembers further discussed the issue of impervious coverage and how to calculate the amount. Ms. Morris stressed that it is the applicant's burden to demonstrate that their application meets the city's code and that the materials that have been submitted should have done that. She continued to advise Council that they needed to decide whether the applicant had demonstrated that the impervious coverage was calculated on gross acreage or on a lot by lot basis. She said that if it were determined that the coverage was over the allowed 40%, then Council needed to decide whether it was significantly enough that the plat should be denied, or if it were not, whether the plat could be conditioned to comply with the code.

Councilmember Ruffo said that this was his original approach to affirm the Hearing Examiner with the exception of imposing another condition that the plat must meet the 40% limitation on impervious coverage. Councilmember Dick said that there was more than one concern in regards to this application, and that the private road issue wasn't something that could be conditioned to approval. He said that assuming he is correct in his analysis that there is no substantial evidence to support the Hearing Examiner, the only option was to deny the application to allow for another application with appropriate development of this property. There was continued discussion on the road issue and the definition of "tangible."

Councilmember Picinich said that he wanted to see a decision made at this meeting. He added that there are valid concerns with this application, and again mentioned the secondary access. Ms. Morris advised him that in order to find that the Hearing Examiner was incorrect in his decision on this issue, it would have to be demonstrated that there wasn't substantial evidence in the record to support that the southerly access was not necessary. Steve Bowman, Planning Building Official, was asked about a recommendation for a southerly access for emergency reasons.

Councilmember Dick stated as a point of order, it is important that any information should be related to where in the record it could be found to make a distinction between expert testimony and factual evidence. Mr. Bowman said that on page 17 of the Hearing Examiner's Decision, the first seven items address the southern access issue. He added that his concerns regarding access had been addressed through memorandums, which were part of the record to the Hearing Examiner. Ms. Morris explained that the appellants were challenging this issue, and so Councilmembers could consider their appeal statement and what was information was referenced, and figure out if there was substantial evidence to deny the Hearing Examiner's decision. She suggested that a five-minute break would be helpful to review the memorandums that Mr. Bowman had referenced and she would make copies of the April 17<sup>th</sup> memo from Carl Halsan for review.

**MOTION:** Move to take a break to review the record.  
Ruffo/Dick - unanimously approved.

The session reconvened at 7:30 p.m.

Ms. Morris passed out copies of documents dated April 17, 2000 from Carl Halsan; pages 13, 14, and 15 of 41 pages of the March 23, 2000 Staff Report by Ray Gilmore; a memo dated March

23, 1999 to Ray Gilmore from Steve Bowman; and a letter to Steve Bowman from Penny Hulse, Pierce County Fire District #5 dated May 12, 1998.

Councilmember Dick began by referencing the portion of the staff report of March 23, 2000, pages 12 through 15. He said that the documents did address some of the issues of private roads and the three conditions set forth in the ordinance. He said that discussions under sections two or three did not address the question of whether the private road design is better than public road design. He said that the documents state that the overall project is intended to provide open space as a trade-off for clustering in the development, allowing for flexibility in street design, but it doesn't address the concern of tangible public benefit. He concluded that the Hearing Examiner erred with respect to the approval of private roads meeting the requirements of the code Section 17.90.040(a) as well as violating the impervious ground cover elements. He said that although it would be desirable, the materials submitted did not substantiate the need for a southerly access. He made the following motion.

**MOTION:** Move to reverse the Hearing Examiner and disapprove the planned unit development pursuant to these appeals because of the following: Number one, the impervious ground cover both on lots and overall exceeds the maximum permitted, and the attendant adverse environmental impact that that increased impervious ground cover would entail. Number two, that the Hearing Examiner erred in that the private road conditions of 17.90.040(a) subsection two and three, are not supported by substantial evidence of the record, so private roads are not available under the subdivision as planned. Number three, variances under 17.90.010 of density and setbacks are not available if adverse environmental impacts exist and excessive impervious ground cover is adverse as a matter of law. The remaining issues are rendered moot by this decision and have not been addressed.  
Dick/Owel -

Councilmember Ruffo asked if these issues could be dealt with by making them conditions of the Hearing Examiner's Decision. Councilmember Dick asked for clarification on how this could be done. He added that conditional approval would not address the remaining issues that are rendered mute by the first two issues.

The vote was taken with the following results:

Councilmembers Dick, Owel and Picinich voted in favor. Councilmember Ruffo voted against the motion. The motion carried.

Ms. Morris explained that since the final decision had been made, the applicant had an appeal period and advised Councilmembers not to discuss this issue until 21 days from the issuance of the final decision, which would be brought back in resolution form incorporating the decision. Councilmember discussed a meeting date of Thursday, May 11<sup>th</sup> at 3:00 p.m. to consider this resolution.

**ADJOURN:**

**MOTION:** Move to adjourn at 8:45 p.m.  
Owel/Picinich - unanimously approved.

Cassette recorder utilized.  
Tape 569 Side B 000 - end.  
Tape 570 Side A 000 - end.  
Tape 570 Side B 000 - 142.

  
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Mayor

  
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City Clerk