

GIG HARBOR CITY COUNCIL MEETING OF JUNE 27, 2005

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

CALL TO ORDER: 7:01 p.m.

PLEDGE OF ALLEGIANCE

PUBLIC HEARING: Adoption of Ordinance 1003 – Establishment of a Moratorium on the Acceptance of Applications for New Development of Non-Residential Structures or Certain Types of Re-Development on Non-Residential Structures in the Waterfront Millville Zone for a Period of Two Months.

The public hearing opened at 7:04 p.m. and John Vodopich, Community Development Director, presented the background information. He explained that at the conclusion of the public hearing, if Council wishes to continue the moratorium for two months they would need to deliberate, and then state the justification and rationale for the continuation. Staff would then draft an ordinance in support of continuation to be brought back at the first meeting in July.

Dennis Reynolds - Davis, Wright, Tremain, 1501 4th Ave. Ste 2600, Seattle. Mr. Reynolds spoke in opposition of the adoption of Ordinance No. 1003 on behalf of a number of marina operators and owners including Gig Harbor Marina and Arabella's Landing. He passed out his written comments. He said that the concern with the moratorium involves a recent case he handled. The City of Bainbridge Island sought to adopt a moratorium on development in areas regulated by the Shoreline Management Act. The Court of Appeals Division II upheld a decision to strike down the moratorium stating that the Shoreline Management Act trumps the Growth Management Act and zoning. The Shoreline Management Act does not provide for the use of a moratorium. A substantial portion of the Millville area falls under the Shoreline Management Act jurisdiction, and so Mr. Reynolds asked Council to take this under advisement. He said that this is a new decision and may have been overlooked by staff or the city attorney.

Councilmember Ekberg asked Mr. Reynolds the length of the Bainbridge Island moratorium. Mr. Reynolds responded that it was extended in a series of emergency actions for several years and after the Superior Court decision, a limited portion of the moratorium was kept in place. He added that he is not contesting the length of the proposed moratorium, but the authority to adopt it.

Councilmember Dick asked Mr. Reynolds if his position is that under no circumstance does the city have the authority to adopt a moratorium on anything in the Shoreline Management Act areas. Mr. Reynolds said that this is a correct view of the case. He said that the ordinance would have to be crafted as not to prohibit the filing of development permits in the areas regulated by the Shoreline Management Act.

Peter Katich – 3509 Ross Avenue. Mr. Katich said that he has seen many changes in this historic area, and that the city should be commended for directing growth to the areas that can handle it, and for protecting the fishing village that has grown up around the Millville Plat. He said that with the rising land values, and the growing demand for large residential and commercial structures along the waterfront, the city must take quick action to protect the character of this area. He said that the comprehensive plan contains goals and policies to address protection of unique residential areas such as Millville and the Growth Management Act requires that local government comprehensive plans and development regulations be consistent. Adopting the emergency moratorium will allow the city adequate time to revise the zoning regulations in a manner consistent with these goals. He strongly encouraged Council to adopt the ordinance imposing a moratorium. Mr. Katich said that he is familiar with the recent case cited by Mr. Reynolds, Biggers v. Bainbrige Island. He added that it is a mischaracterization to say that the court ruled that the Shoreline Management Act trumps the Growth Management Act and that he believed that what the court found in that case, which is on appeal before the State Supreme Court, is that the Shoreline Management Act does not contain the same provisions for the imposition of a moratoria that the Growth Management Act has. His understanding of the Gig Harbor regulatory scheme is that you have an underlying zoning district as well as a shoreline designation that applies. He encourage the city attorney to look at the city's regulatory scheme as opposed to the Bainbridge Island case, as there may be distinctions between the two that would allow the city to move forward without problem.

Jill Guernsey – 3224 Shyleen Street. Ms. Guernsey said that the Planning Commission has been asked to draft an ordinance to determine how building sizes are to be measured in the Waterfront Millville Zone. She said that Chairman of the Planning Commission, Dick Allen, and she agreed it would be appropriate to give Council a brief status report and encourage anyone interested to attend the upcoming meeting on this ordinance. Ms. Guernsey continued to explain that both concepts of footprint and gross floor area have been reviewed, and the preferred concept is the gross floor area standard. The Commission has also addressed how this relates to garage structures, and gone a step further to tackle the issue of residential building size in all three waterfront zones. The Planning Commission hopes to bring a recommendation to Council after holding a public hearing. The other concern is non-conforming structures and the inability to rebuild if destroyed by a catastrophe. The Planning Commission is working on an ordinance that would allow someone to rebuild within a reasonable period of time. All these things should come together and be brought to Council for adoption around the same time.

Councilmember Picinich asked what timeframe is being considered for rebuilding. Ms. Guernsey said that there still needs to be a public hearing, but the recommendation is one-year, with two, one-year extensions for good cause.

Carol Morris, City Attorney, advised Council that she has reviewed the Biggers' case, which involves the City of Bainbridge Island's imposition of a moratorium as they were delaying action on their Shoreline Management Program updates, not their zoning code.

Gig Harbor is imposing a moratorium on property that is in the shoreline jurisdiction, but is considering amendments to the zoning code. The city's Shoreline Master Program does not regulate things such as building size. To say that the city could never impose a moratorium on properties in the shoreline area is a distortion of the Biggers' case. She advised Council that the Biggers' case does not affect Council's decision on the moratorium.

Councilmember Young asked for further clarification. Ms. Morris explained that the zoning code applies to property in the shoreline jurisdiction, and the Shoreline Master Program is an overlay that you consider in conjunction with the zoning code to regulate property. The Shoreline Master Program contains general regulations and policies that are not as specific as the zoning code; the most restrictive applies. The zoning code regulates such things as setbacks, height and building size, whereas the Shoreline Master Program has generalized policies in regards to use and how marinas should be built. She stressed that the city has the authority under the Growth Management Act to impose a moratorium under the zoning code on any property in the city.

There were no further comments and the public hearing closed at 7:19 p.m.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meeting of June 13, 2005.
2. Correspondence / Proclamations: CenturyTel Day.
3. Reappointment to Design Review Board.
4. Reappointment to Planning Commission.
5. Temporary Construction Easements for 56th Street / Olympic Drive Improvement Project.
6. Liquor License Assumption (amended): Gig Harbor Chevron.
7. Liquor License Assumption: Gig Harbor Gasoline LLC dba Central 76.
8. Approval of Payment of Bills for June 27, 2005:
Checks #47427 through #47549 in the amount of \$374,298.63.

MOTION: Move to approve the Consent Agenda as presented.
Picinich / Franich – unanimously approved.

OLD BUSINESS:

1. Adoption of Ordinance 1003 – Establishment of a Moratorium on the Acceptance of Applications for New Development of Non-Residential Structures or Certain Types of Re-Development on Non-Residential Structures in the Waterfront Millville Zone for a Period of Two Months. John Vodopich said that after consideration of the public testimony and the response from the City Attorney, it would be appropriate for the Council to consider whether or not they want to express findings in support of continuation of the moratorium or direct staff to draft an ordinance to terminate the emergency moratorium.

MOTION: Move to establish the moratorium on acceptance of applications for new development on non-residential structures or certain types of re-development on non-residential structures in the WM Zone for a period of two months.
Picinich / Franich –

Councilmember Franich said that when he became aware that size is based on gross floor area in the Waterfront Millville zone he thought it would be important for the Planning Commission to review the language to ensure consistency with city policy. In reviewing the Comprehensive Plan objective 3.1 and 3.2 to develop guidelines which promote compatible development within designated areas, it is important to consider building standards which are consistent with historic designs. Not calculating garage space in the gross floor area could create a contradiction to this objective. He said that he would support the moratorium.

Councilmember Ekberg agreed with the comments made by Councilmember Franich. He said that it was good to hear that the Planning Commission is addressing the issues, adding that he hoped that the two-month period would be adequate.

RESTATED MOTION: Move to establish the moratorium on acceptance of applications for new development on non-residential structures or certain types of re-development on non-residential structures in the WM Zone for a period of two months.
Picinich / Franich – unanimously approved.

2. Second Reading of Ordinance - Amendment to Ordinance 712 - Adopting the Access Manual. John Vodopich explained that the city code has adopted several technical documents by reference to assist the engineering staff. This ordinance amends the code to update these references.

Councilmember Franich asked what kinds of changes could be expected from adopting references to these manuals. Gus Garcia, Associate Engineer, explained that older versions of these technical manuals are already in use, and then cited examples in which the new manuals may apply to justify location of certain entrances as they relate to arterial intersections and ingress/egress on main city roads. He said that engineering guidelines and principals evolve as people learn from mistakes or new regulations come about.

MOTION: Move to adopt Ordinance No.1005 as presented.
Ekberg / Conan – unanimously approved.

3. Second Reading of Ordinance – Amendment to GHMC 17.98 Design Review Standards and Review. Rob White, Planning Manager, presented this ordinance that would allow the Design Review Board an opportunity to hold design review pre-application meetings and encourages DRB members to provide input on all non-residential, multi-family, and planned residential development.

Councilmember Franich asked for clarification of the term “public projects.”

Carol Morris explained that her recommendation was not to add “public projects” but to consider amendments to subsection “d.” so that it ends after the word “replacement” and the next line would become a separate section that reads “The DRB members may independently review the application, which will be available at the Community Development Department. Individual DRB members may submit written comments to the director within two weeks beyond the date of notice of application. If individual DRB members identify design elements that they believe do not comply with the specific requirements of the Design Manual, they may advise the director in writing of this advisory opinion.” This amendment addresses the question that the board might be able to vote and make a decision to process a project rather than allow it to be processed administratively.

The next paragraph would be a new subsection 3 that would help to clarify that whether or not a project complies with the manual is not being determined at the time the decision is made for how the project will be processed.

John Vodopich addressed the question regarding “public projects” explaining that this meant projects such as the Cushman Trail and the public restroom at Hollycroft.

Councilmember Franich then asked if there was a way for Council to become the arbitrator if the DRB disagreed with the administrator’s decision. Carol Morris explained that an appeal process would have to be developed. The concern is state law that only allows for one open-record hearing and one closed-record appeal, plus the requirement to issue a decision within 120 days. An appeal process could lengthen the time to process the application and perhaps lead to damages.

Councilmember Franich asked if anyone has signed the waiver to go beyond the 120 days. Mr. Vodopich responded that whenever a project goes before the DRB, they sign a waiver to the 120 day requirement.

Councilmember Young clarified that the concern is forcing an applicant to go beyond the 120 day period. He said that if a disagreement between the DRB members and administrative decisions happens on a consistent basis, then the code or the staff process needs to be changed.

Councilmember Ekberg agreed that if the language suggested by Ms. Morris is adopted and Council is kept apprised of the activity, any problems could be addressed.

John Vodopich further explained that Council is automatically a party of record to every Hearing Examiner decision and would have the choice to appeal an administrative decision.

Councilmember Franich said that any time that Council could arbitrate something rather than the Hearing Examiner, it is a community service.

Carol Morris recommended bringing back the ordinance for a third reading with the proposed changes.

MOTION: Move to direct staff to bring back for a third reading with the amendments to 17.98.050 recommended by the city attorney. Ekberg / Picinich – unanimously approved.

4. Proposed Annexation - Wright (ANX 04-02) – Public Meeting. John Vodopich presented information on this effort to annex approximately 8-1/2 acres located at the intersection of Hunt and Skansie Avenue. The pre-annexation zoning for the subject property is single family residential R-1. He said that in February, Council agreed to amend the boundaries of the proposed annexation, as Mr. Wright could not obtain the signatures of the adjoining properties. Mr. Vodopich recommended that Council accept the notice of intent to begin annexation and to authorize the circulation of the petition subject to certain criteria.

No one came forward to speak on this annexation.

MOTION: Move to authorize the circulation of the petition to annex the property subject to any conditions outlined in the staff memo. Young / Ekberg – unanimously approved.

NEW BUSINESS: None scheduled.

STAFF REPORT:

Steve Misiurak, City Engineer: a) Transportation Issues b) Pt. Fosdick / 36th Roundabout Public Meeting. No verbal report given.

PUBLIC COMMENT: None.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor's Report – Planning for a Livable Community in 2006 and Beyond. The Mayor asked Council to review the report, adding that the items will be on the agenda for the Council Retreat.

Councilmember Young gave a quick overview of his attendance at the AWC Conference. He commented favorably on Gig Harbor's financial position, as last year two cities had to have emergency relief from the state to meet payroll. He suggested writing to the legislature to encourage permanent funding sources for those cities that cannot grow out of the problem. He then reported that there was quite a bit of attention on Oregon's Referendum 37 which makes any land use action that reduces the value of

a property a takings. He said that he expects a similar initiative to be filed in Washington.


ANNOUNCEMENT OF OTHER MEETINGS:

Council Retreat – August 8, 2005. Civic Center Community Rooms A & B at 12:00 noon.

ADJOURN:

MOTION: Move to adjourn at 7:48 p.m.
Franich / Ekberg – unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 – 25.



Gretchen A. Wilbert, Mayor



Molly Towslee, City Clerk