

GIG HARBOR CITY COUNCIL MEETING OF JULY 9, 2001

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

CALL TO ORDER: 7:02 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 25, 2001.
2. Correspondence/Proclamations:
 - a) Letter from Walt Smith regarding FISH.
3. Judson Street/Stanch Avenue Storm Sewer Design Consultant Services Contract.
4. Approval of Payment of Bills for July 9, 2001.
Checks #33259 through #33388 in the amount of \$273,171.99
5. Approval of Payroll for the month of June:
Checks #808 through #874 in the amount of \$191,387.69.

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

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Appeal of Hearing Examiner's Decision - Henderson Bay Alternative School. Mayor Wilbert explained that the purpose of this hearing was for the City Council to make a final decision on the appeal of the Coalition to Save the Field on the Conditional Use Permit and Site Plan Approval for the Henderson Bay Alternative School application. She presented the rules for this closed record hearing. Mayor Wilbert asked if any Councilmembers wished to reveal any ex parte oral or written communications on this matter, or to disclose any potential appearance of fairness issues, or if any member of the audience had any appearance of fairness challenges to any of the Councilmembers or Mayor.

Councilmember Young disclosed that he had received e-mail correspondence from Jim Jung, asking if he was for or against ballfields being taken away, but it was not specific to this project. When he responded, he explained that he could not discuss this project, as it would be ex parte communication. He said that he had just today received another e-mail complaining about a letter from Jill Guernsey, which he gave to the Planning Department.

Councilmember Dick explained that two persons had communicated with him similarly to Councilmember Young, and before the Hearing Examiner's hearings. When he inquired about

which project was in question, and found out that an application had been filed, he informed them of his inability to discuss the issue.

Councilmember Picinich said that he had not had any communication with any parties or the school district, but that he thought he should recuse himself from participating in the proceedings because he is an employee of Peninsula School District. He left the Council Chambers at this time.

Councilmember Jim Pasin explained that he had also spoken to Jim Jung, but not in any detail about this project. He said he also has a working relationship with Teresa Malich, a teacher from Henderson Bay, and they have talked about the need for a location for the school, but a specific site was not discussed.

Councilmember Marilyn Owel said that she had received a copy of a letter from Shyla Starr, and also had conversations with Teresa Malich about the need for a site, but long before anything had been decided.

Councilmember Ekberg disclosed that his wife is an employee of the Peninsula School District. He did not feel it would affect his decision in the matter, but he would abide by any ruling that he not participate.

Mayor Wilbert then asked if any Councilmember would gain financially or suffer financial loss as a result of the outcome of this hearing. There was no response to this query. Mayor Wilbert explained that she had not had any ex parte communication on this issue, nor would she be affected financially by a decision on this appeal. She then asked if any Councilmember felt that they could not hear this appeal in a fair or objective manner. There was no response to this query and she continued to ask if any member of the public objected to her participation, or the participation of any Councilmember, in this hearing.

She then asked the representatives who were going to speak on the project to take an oath of honesty in any testimony that may be given. Jill Guernsey, representing Peninsula School District #401, and Ms. Henderson, representing the Coalition to Save the Field, both stood and answered affirmatively to the oath.

John Vodopich, Planning Director, gave an overview of the appeal of the Conditional Use Permit granted by the city's Hearing Examiner to relocate the Henderson Bay Alternative High School to the Gig Harbor High School/Discovery Elementary School site. He explained that this application had gone through site plan review, design review, and three public hearings before the Hearing Examiner. He said that Ron McConnell, the Hearing Examiner, had issued a decision and shortly thereafter, the Coalition to Save the Field submitted an appeal of his decision. He said that the appeal was now before Council for consideration.

Barbara Henderson - Smith, Alling, Lane Attorneys, 1102 Broadway Plaza, Tacoma. Ms. Henderson explained that she represented the Coalition to Save the Field, a non-profit community parent organization with the goal to protect the existing Discovery Elementary

Playfield. She gave a history of the site and the growth of the existing high school and elementary school facilities since 1980, adding that current use of the site is beyond the intended capacity. She stressed that this case is not about a crisis to relocate an alternative high school next to an elementary school, but a land use decision that will have far-reaching, future consequences due to the "shoe-horning" of the additional facilities on an already crowded site.

Ms. Henderson continued to discuss the reduction of the field size and how it could affect physical education curriculums, emergency evacuation, and safety of the children during recess. She then discussed why the proposal is contrary to the city's Comprehensive Plan by reducing the available open areas for community use. She cited the reasons why the proposal did not meet the review criteria of the city's code used to determine the granting of a Conditional Use Permit. She added that the proposal would replace an existing use, which is outright permitted, with a conditional use.

Ms. Henderson talked about the state's size requirements for school facilities and said that the Hearing Examiner erred when he included the track location in his calculations because this property is owned by Pierce County, not the school district. She discussed the difference in the type of play area being replaced with the new Ft. Discovery.

Ms. Henderson said that the site is too small to accommodate the proposed use, and discussed an option to move the project further to the north. She said that the Council has the discretion to make a determination due to the lack of standards and requested that the Conditional Use Permit be denied, or in the absence of an outright denial, that mitigations be imposed. She then listed the four conditions requested by the appellant to be imposed.

Councilmember Young asked for clarification of the statements made by Ms. Henderson that a conditional use would be replacing an existing, permitted use, and what was being calculated by the Hearing Examiner when he erred by including the track area. Ms. Henderson explained that when you have an existing, outright permitted use, it is important that a conditional use proposal meet all the criteria before approval. She continued to explain that the calculation in question was directed at what State standards would consider to be too small for ballfields. Councilmember Young asked if there was a precedent of a city using state statutes to determine a land use case. Ms. Henderson replied that she could not cite a case, but jurisdictions often look to other authorities as guidance.

Councilmember Dick said that the duty of the Hearing Examiner is to weigh all the information gathered from public hearings and staff. He asked Ms. Henderson if it were not true that Council's function is to determine whether or not the decision is baseless due to lack of substantial evidence. Ms. Henderson replied that the standards in a closed record hearing would be whether or not Council determines that substantial evidence supports the Examiner's decision. She added that it is the appellant's contention that the criteria for a conditional use permit has not been met, and that Council can review the evidence and agree. Councilmember Dick stressed that the Council's decision is limited to whether enough evidence was submitted for a decision to be made.

A short recess was called at 8:10 p.m. The meeting resumed at 8:18 p.m. with a presentation from the representative from Peninsula School District.

Jill Guernsey - Peninsula School District Boardmember. Ms. Guernsey introduced Betty Ringlee, President of the School Board; Jill Johnson, School Boardmember; Jim Coolican, Superintendent; and Marsha Harris, Deputy Superintendent. Ms. Guernsey agreed that this is a land use case, adding that it is the role of the Hearings Examiner to determine the facts. She said that the Hearing Examiner had been presented with extensive testimony and found that there was substantial evidence to support the school district's position. She gave an overview of the existing play areas, gymnasiums, and athletic fields, and described how the proposed project modified an existing field, and added additional play area. She addressed the conditional use permit criteria, stressing that the existing use is a school and will continue to be a school.

Ms. Guernsey said that the basis of this appeal was not the loss of community fields, but the placing of an alternative school next to an elementary school. She stressed that the Hearing Examiner had applied the law correctly, and that it is time to move forward with the project. She added that the students could be good neighbors.

Councilmember Young asked about ADA access to the ballfields. Ms. Guernsey said that the school district was currently working with the city on this issue.

Councilmember Dick asked for clarification on minimum requirements for school fields. Ms. Guernsey said that there are no minimum requirements and that the fields will be available for all students.

John Vodopich reminded Council that the city is required to approve a project that is consistent with the development regulations adopted under the state's Growth Management Act, and in the absence of applicable regulations, the Comprehensive Plan is used as a guide. He said that the Hearing Examiner had correctly determined that the application was reviewed under the correct criteria for approval. He added that none of the issues raised by the appellant citing the Comprehensive Plan are applicable, and that nothing in the record provides authority for the city to impose the conditions suggested by the appellants in regards to the size of the playfields. He added that the project meets the city's new parking standards. He concluded that he and the City Attorney recommend that Council uphold the Hearing Examiner's decision.

Councilmember Ruffo asked for clarification on the role that Council was to take in this appeal. Carol Morris explained that Council was not to reweigh the evidence, but to determine whether or not there was substantial evidence to support the Hearing Examiner's decision.

John Vodopich assured Councilmember Young that the project had been reviewed by the Public Works Department in regards to traffic concerns. Ms. Guernsey added that the school district is contributing \$30,000 in traffic impact fees for the project.

Councilmember Ruffo asked that the Peninsula School District work with the appellant toward a workable solution. Ms. Guernsey said that they would continue to do this.

Ms. Henderson reinforced that the appellant did not feel that there was sufficient evidence to show that the site was large enough; a position supported by one of the conditions imposed by the Hearing Examiner limiting the occupancy of the building to 150 students.

Mayor Wilbert asked if there were any further questions by Council. There were none, and she advised everyone that Council reserves the right to reopen this hearing at a later time if needed. She then closed the oral argument portion of the hearing.

Councilmember Ekberg said that the issue seems to be between the Coalition and the school district, not between the Coalition and the city. He made the following motion.

MOTION: Move that Council affirm the decision of the Hearing Examiner.
Ekberg/Ruffo -

Councilmember Ruffo agreed with Councilmember Ekberg. Councilmember Young voiced his frustration with the District's decision to place the Alternative School at this site which he attributed to poor planning, but agreed that the Hearing Examiner had not erred in his decision.

Councilmember Dick said that he shared the concerns that had been expressed, and agreed that playfields should be encouraged. He affirmed that there were no errors on the Hearing Examiner's findings, and then asked that all parties continue to work together for future expansion of fields.

RESTATED MOTION: Move that Council affirm the decision of the Hearing Examiner.
Ekberg/Ruffo - unanimously approved.

Councilmember Picinich returned to the Council Chambers at this time.

2. First Reading of Ordinance - Issuance and Sale of Water/Sewer Revenue Bond Anticipation Note. David Rodenbach explained that this bond anticipation note was for the construction of Pump Station 3A. He gave an overview of the terms of the 3-year bond and answered questions. This will return for a second reading at the next meeting when the final interest rate is set.

STAFF REPORTS: None scheduled.

PUBLIC COMMENTS: None.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert requested a motion to include an alternative to the park use at Borgen Park for an Interpretive Center to house an Environmental Research Library.

Councilmember Ekberg said that there had been a great deal of public input on the park. He added that Brennen and Associates, who are highly capable, had been hired to make

recommendations, and should be allowed to do so without direction from Council. Councilmember Ruffo said that a motion for an alternative would be usurping the responsibility of the sub-committee and that they should be allowed to do their work. Councilmembers agreed that it would be inappropriate to give direction at this point, and recommended that staff remain neutral.

Councilmember Dick voiced concerns on the public notice requirements for the public meetings on the park. John Vodopich explained what had occurred at the last meeting, and assured Councilmembers that any future meetings would be better noticed.

ANNOUNCEMENT OF OTHER MEETINGS:

City Council Retreat - Monday, July 16th, 12:00 p.m. at Murphy's Landing.


EXECUTIVE SESSION:

Carol Morris, Legal Counsel, explained that she had placed information in the Councilmember's box and that an Executive Session was not needed.

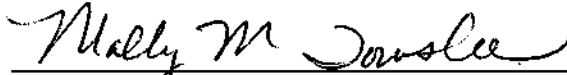
ADJOURN:

MOTION: Move to adjourn at 9:18 p.m.
Young/Ekberg - unanimously approved.

Cassette recorder utilized.
Tape 620 - Side A 345 - end.
Tape 621 - Both Sides.
Tape 622 - Side A 000 -363.



Gretchen A. Wilbert, Mayor



City Clerk