

GIG HARBOR CITY COUNCIL MEETING OF OCTOBER 22, 2001

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

CALL TO ORDER: 7:02 p.m.

PLEDGE OF ALLEGIANCE

PRESENTATION: Special Olympics Presentation to GHPD.

Gordon Wohlfeil, representative for the Special Olympics, said that this was the third year that he has had the privilege to honor the Gig Harbor Police Department for raising funds for the Special Olympics. He added that Gig Harbor has been at the top in Washington State Agencies, and has raised over \$10,000. He presented letters of appreciation to Officer Fred Douglas, Chief Barker, and said he also had one for Sergeant Scott Emmett, who could not be present. He then presented Chief Barker with the 2001 Special Olympics Hall of Fame Sponsor Award. Chief Barker credited the whole department for participating in the fund-raising efforts, and then presented Gordon with the first check for next year.

PUBLIC HEARINGS: 2002 Revenue Sources.

Mayor Wilbert opened the public hearing at 7:09 p.m. and introduced Dave Rodenbach, Finance Director. Mr. Rodenbach explained that this was the annual hearing on the revenue sources for the General Fund. He said that the city had received the highest credit rating in the state for a city of its size. He gave an overview of the 2002 projections, adding that the General Fund Ending Fund Balance assumes the sale of the current City Hall and Bogue Building. He offered to answer questions.

There were no questions or comments, and the Mayor closed the public hearing at 7:10 p.m.

CONSENT AGENDA:

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

1. Approval of the Minutes of City Council Meeting of October 8, 2001.
2. Correspondence/Proclamation:
3. Hold Harmless Agreement - Pierce Transit.
4. Easement Agreement - 54th Avenue Business Park.
5. Easement Agreement - Northharbor Business Park.
6. Easement Agreement - Hollycroft, LLC.
7. Maintenance Agreement - Copiers.
8. Approval of Payment of Bills for October 22, 2001.
Checks #34194 through #34342 in the amount of \$785,690.75.

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

OLD BUSINESS:

1. Resolution - Initiate Procedure to Vacate a Portion of Erickson Street. Mark Hoppen explained that this Resolution sets Tuesday, November 13th for a public hearing on this issue.

MOTION: Move to adopt Resolution No. 574.
Picinich/Ruffo - a roll call vote was taken with the following results.

Councilmembers Ekberg, no. Young, yes. Pasin, no. Owel, yes. Dick, no. Picinich, yes.
Ruffo, yes. The motion was approved four to three.

2. Agreement for Use and Maintenance - Sunshine. Carol Morris, Legal Counsel, explained that she had revised the agreement to incorporate the Council's proposed changes. She said that additional changes had been requested by Mark Holcomb, the representative for the Sunshine Property Management, but too late to incorporate into the packet. She said that a separate copy of Sunshine's agreement had been distributed by e-mail. She gave a summary of the changes that she had made to the agreement.

Mr. Holcomb spoke on behalf of Sunshine Property Management. He said that it was his understanding that the comments at the last meeting were not mandates, but discussion. He added that he believed that there were to be two agreements presented because he had made changes to the version sent to him by Ms. Morris. He clarified that the contractors for the project were pushing for a completion date of November 9th, requiring that this agreement be finalized at this meeting. He went over the changes that he had made to Carol's agreement, explaining that his primary concern is the definition of "high-intensity," asking that this be clarified by the Hearing Examiner rather than what was added by Ms. Morris. He said that Sunshine proposed that there be no payment requirement pending this clarification from the Hearing Examiner, and if a partnership was defined to share costs, these cost would accrue as of the date of the occupancy permit. He said that he reinserted paragraph 3.2 from the original version, because if the city would not be able to help with the closing of the gate, they did not want to be obligated to contractually hire someone to do so. He said that the Hearing Examiner had not stated a specific time, and he thought it should be left up to further discussion. The last revision he addressed was to paragraph 6, explaining that he could not attach documentation to the agreement per Carol's language, as the meeting with Pierce County had not yet been scheduled, so he deleted this sentence.

John Vodopich explained that this issue was scheduled for the November 14th meeting, per the information that Mr. Holcomb shared at the last meeting of a Thanksgiving move-in date. Mr. Holcomb explained that November 9th is when the contractors would like an occupancy permit. Mr. Vodopich explained that this would not be before the Hearing Examiner before the November 9th date, and that there would be a ten-day period for the Hearing Examiner to issue a decision.

Carol Morris addressed the concern about the definition of "high-intensity" explaining that she used the dictionary definition, which is what a court would do in interpreting a contract. Mr. Holcomb commented that it had been the property owner's position that reference to high intensity meant any public use other than the 70 or so employees, as was discussed before the hearing. He said that the decision by the Hearing Examiner was generic purposefully to allow the parties to work out the details, and was not intended to be the *Webster Dictionary* definition.

Councilmembers questioned whether the public should be responsible to pay for the maintenance of an area that was provided to the public by the property owner in return for value or benefit.

Mr. Holcomb explained that if there were 2,500 people a month using the space, as opposed to the 70, the intent was that any cost over the basic maintenance would be shared with the city. He continued to explain that the PUD process was not required for project approval, but was pursued because of the uniqueness of the design and to provide the flexibility to allow greater variety and diversity. John Vodopich added that after reviewing the staff report and Hearing Examiner decision, he concurred with Mr. Holcomb that the PUD was not necessary for the project. He said that a statement in the staff report says that the project as proposed would meet all the requirements of the Waterfront Commercial zoning district. The two deviations were eight fewer parking spaces with a ridesharing program, and a minor height variance for one trellis. He said that the applicant would only have been required to provide approximately 3,300 square feet of common area, and the Shoreline Master Program, water view or access to the water. He said that it appears that there is over 30,400 square feet of public space provided, over ten times the required amount.

Carol Morris explained that the requirements of the Shoreline Master Program was the issue, not the PUD, and that other permits have been granted under the provisions of the SMP where applicants have been required to provide shoreline access and shoreline viewing areas without a contract with the city for maintenance. She said that this is the first time that the Hearing Examiner has placed a condition of approval that an agreement be entered into between the property owner and the city. Carol then paraphrased the condition from the Hearing Examiner Decision that the Russell Family Foundation would prepare a written agreement providing for basic maintenance for the scenic view overlook, addressing special terms in the event that the scenic view overlook becomes a high-intensity public use, and outlining their right to request assistance from the City of Gig Harbor. She added that this condition did not include the garden area, nor require that the city provide them with any assistance, it just outlined the process for the applicant to ask.

Carol continued to clarify that the Hearing Examiner's decision requires that an agreement be in place before the issuance of an Occupancy Permit, and that the issue before Council is the content of the agreement until the intent could be clarified by the Hearing Examiner. She added that the definition she proposed would serve until a decision was made.

Jack Darragh - 3620 40th St. Ct. Mr. Darragh said that the issue is not about the gardens or viewing area, but one of giving away public money to a private entity. He voiced concerns over several issues in the agreement. He concluded that the public had the view before the project was

built and that the city should not pay money to view what was there before. He added that every effort should be made to minimize the effects of the building.

Mr. Holcomb responded that these comments reinforce that the history of the property was unknown. He passed out a copy of the Northbay project and described the 16-foot tall retail, office, condo project, which was approved. He explained the charitable intent of the Russell Family adding that the PUD process was pursued because of the flexibility and the desire for a workable solution. He added that the city's statute states that a common area needs to be maintained by the private owner association or by a public entity. He said that it was these two aspects of the code that led to the partnership, and that the difficulty is determining an equitable sharing of costs. He said that the family is amenable to holding off for a year to determine the public use of the space before coming to an agreement.

Carol Morris responded to many of the comments made by Mr. Darragh. She offered to contact Seattle for examples of how they deal with public plazas and return with a recommendation to the Hearing Examiner.

MOTION: Move we authorize the approval of the agreement drafted by Carol Morris with the following amendments:

1. Paragraph 5.1.2, use the language from Mr. Holcomb substituting the words "prior to" for "pending."
2. Delete paragraph 6 of Ms. Morris' draft, maintain the status quo.
3. In section 3.2, leave as recommended by Carol Morris.

Dick/Young - six Councilmembers voted in favor. Councilmember Pasin voted no.

3. Resolution - Modification of Concomitant Agreement/Tallman and Alteration of Plat for Mallard's Landing. John Vodopich gave an overview of the previous request from Scott Wagner to modify conditions in the Concomitant Agreement associated with the Tallman Annexation and to amend the Plat of Mallard's Landing. He said that the resolution before Council for approval would approve these amendments. He answered Councilmember's questions about the properties affected by these amendments and Mark Hoppen gave a history of the original agreement.

MOTION: Move to adopt Resolution No. 575.
Young/Ruffo - unanimously approved.

NEW BUSINESS:

1. First Reading of Ordinance - 2002 Property Tax Levy. David Rodenbach presented this first reading of an ordinance setting the 2001 property tax levy for collection in 2002. He explained that the levy anticipates the passage of I-747, which would limit property taxes, but would not hinder the budget. He gave an overview of the financial points and offered to answer questions. This will return for a second reading at the next meeting.

Jack Darragh - 3620 40th St. Ct. Mr. Darragh said that I-747 would become law 30 days after the November 6th election, and asked if it would affect the passing of the budget. Mr. Rodenbach responded that it would not.

2. Resolution - Purchase Authorization for Play Toy. Mark Hoppen presented this request to reject the two bids that had been received for the Play Toy, and to declare the structure for the equipment to be limited to a sole source, waiving competitive bidding requirements to purchase. He explained that two bids had been received; one of the two bids was for a totally different system, which did not meet the specifications in the bid documents; and the other was over the budgeted amount. He explained that the funds were available to purchase the equipment and recommended approval of the resolution. He answered questions regarding the equipment and the associated cost.

MOTION: Move to adopt Resolution No. 576 declaring the purchase of a Play Toy Structure to be limited to a sole source for the purchase and authorize the purchase from Cascade Recreation, for their bid proposal amount of thirty-six thousand forty-three dollars and seventy cents (\$36,043.70), including sales tax.
Ekberg/Ruffo - Six voted in favor. Councilmember Pasin voted no.

STAFF REPORTS:

1. GHPD - September Stats. Chief Barker gave a brief overview of the statistics. He explained that one of their new officers had been called back to active duty for a two-year activation. He reported on the efforts taken since the last Council meeting in regards to the stray bullet in Avalon Woods. He explained that he had met with representatives from the Sportsman Club, and a Sergeant from the department walked the perimeter to check the fence. A report on the deficiencies in the fence were passed on to the representatives. He reported that the final measurements from the state lab would be done and a report coming as soon as possible. He then addressed questions and comments about the Sportsman Club, and about the increase in traffic calls.

2. Finance Department - Third Quarter Financial Report. David Rodenbach gave a brief overview of the report and offered to answer questions.

Councilmember Pasin asked if the Budget Worksessions could be moved to another time to accommodate Election Day. Mark Hoppen explained that because they had been publicly advertised are subject to a strict schedule for adoption of the budget, it may not be feasible.

PUBLIC COMMENTS:

Bruce Rodgers - 2400 No. Harborview Drive. Mr. Rogers thanked Council for getting his neighborhood street chip sealed and sidewalks installed. He requested that street lighting be included in the 2002 budget.

Dave O'Dell - 4110 97th St. Ct NW. Mr. O'Dell, Avalon Woods, thanked Chief Barker for the update. He said that he was confused about what he heard about the Russell Foundation being a charitable foundation, asking for a tax exemption, and then asking for assistance to pay for the maintenance. He added that he had a difficult time with that. He then offered any assistance to the Council in getting the noise ordinance modified to improve the quality of life in his neighborhood. Councilmember Ruffo suggested that he follow up with Chief Barker and participate in discussions to determine the most appropriate action. He then spoke of the compressor noise coming from Northharbor Business Park.

Mark Schaeffer - Avalon Woods. Mr. Schaeffer voiced his appreciation for the cooperation from the city. He said that he researched the noise and reported on his findings. He asked that the city update their noise ordinance and modify the operating hours for activities that create noise to be stopped earlier in the evening.

Dick Dadisman - 4206 97th St. Mr. Dadisman, President of Avalon Woods, thanked staff and Council for the efforts to help. He also offered the assistance of their Safety Committee, adding that they are ready to help.

Bob Scaduto - 9710 43rd Avenue NW. Mr. Scaduto reminded everyone not to lose focus on the issue of life safety. He said that the neighbors can live with the noise, but do not want to live in fear of being hit by a stray round.

Bruce Gair - 9301 North Harborview Drive. Mr. Gair addressed the traffic studies and Grandview Street being raised from #16 to #2 on the Six-year plan. He said that he had heard that Grandview was being improved to provide an alternate route to reduce the downtown traffic. He recommended a new traffic study as the downtown traffic has been reduced since the opening of Borgen Boulevard, and that the upgrade to Grandview was not necessary. He closed by asking for additional enforcement in his neighborhood. Mark Hoppen explained that there was no plan to make Grandview an alternate route, and that the decision to upgrade this street was for repairs alone.

Jack Darragh - 3620 40th St. Ct. Mr. Darragh said that he had heard more thanks and offers of help at this meeting than he had heard during all his years on the school board. He explained how gratifying this was.

Doug Nesbitt - 4205 99th St. Ct. Mr. Nesbitt explained that Avalon Woods was a great place other than the noise from the gun club. He stressed that this is the time to act, and that if Council wanted to hear more thanks, they should limit the noise to 9 p.m.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Picinich spoke in favor of supporting the effort to upgrade the Peninsula School District athletic fields. Mark Hoppen gave a history of past efforts for joint parks planning. He agreed to draft a resolution to be brought back at the next meeting for consideration.

Mayor Wilbert gave a brief report of the success of the recent Cultural Arts Commission events, the Bella Luka Dancers and the Quilt Festival.

ANNOUNCEMENT OF OTHER MEETINGS:

Budget Worksessions: Monday, November 5th and Tuesday, November 6th at 6:30 p.m.

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

MOTION: Move to adjourn at 9:20 p.m. to Executive Session for approximately 30 minutes to discuss pending litigation.
Owel/Ruffo - unanimously approved.

MOTION: Move to return to regular session at 9:50 p.m.
Ruffo/Picinich - unanimously approved.

MOTION: Move to return to Executive Session for an additional thirty minutes.
Owel/Ekberg - unanimously approved.

MOTION: Move to return to regular session at 10:20 p.m.
Owel/Dick - unanimously approved.


MOTION: Move to authorize the attorney to make a settlement offer.
Ekberg/Ruffo - the results of the roll-call vote are as follows:

Councilmembers Ekberg, yes; Young, no; Pasin, no; Owel, yes; Dick, yes; Picinich, no; and Ruffo, yes. The motion carried four to three.

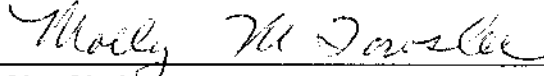
ADJOURN:

MOTION: Move to adjourn at 10:25 p.m.
Ekberg/Owel - unanimously approved.

Cassette recorder utilized.
Tape 630 - Side A 200 - end.
Tape 630 - Side B 000 - end.
Tape 631 - Both sides.
Tape 632 - Side A 000 - 395.



Gretchen A. Wilbert, Mayor



Molly M. Dowd
City Clerk