

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 to 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(I).

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.

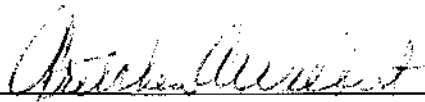
MOTION: Move to return to regular session at 11:09 p.m.
Owel/Picinich - unanimously approved.

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.

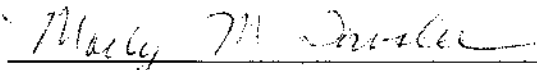
ADJOURN:

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



Mandy M. Drouler
City Clerk