

GIG HARBOR CITY COUNCIL MEETING OF APRIL 10, 2000

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

CALL TO ORDER: 6:06 p.m.

PUBLIC HEARING:

Condemnation of Property - Pump Station No. 3. Mayor Wilbert opened the public hearing on this item and asked David Skinner, Public Works Director, to give a presentation. Mr. Skinner explained that the city's NPDES permit required a new pump station to handle the increased load for the Wastewater Treatment Plant, and that he had requested a time extension to fulfill this requirement. He gave a history of the attempt to find a location for the new pump station, emphasizing that this property is the only feasible choice. Carol Morris, Legal Counsel, advised the Council that the hearing was to receive testimony to assist them in making a decision on whether the actual use of the property was for public use, whether public interest required the condemnation for public use, and finally, the amount of property described in the ordinance is necessary to accomplish the public purpose.

Councilmember Dick asked if the expediency of the action was due to the legal dispute of the ownership of the property. Ms. Morris explained that the dilemma was that the city was willing to negotiate with property owners, and some owners are willing to sell, but there is a dispute to the ownership as shown by the title report. She added that condemnation would clear the title and the money would be deposited in the registry of the court and anyone with a claim on the property would petition the court for release of the funds. Councilmember Picinich pointed out that due to the time restrictions, this was an appropriate action to meet the permit deadlines. Ms. Morris agreed and added that the property was up for sale, and that the city needed to move quickly.

Tom Krilich - 524 Tacoma Ave. South - Mr. Krilich explained that he was speaking on behalf of Nick Skansi and the estate of Tony Skansi, who are going to be the owners of a portion of the property being condemned. He gave a brief explanation of the dispute on the ownership of the property. He said that his client disagrees that this property is the one most suited for the pump station. He added that the city had been aware of the contaminated soils by fuel leakage from the nearby gas station since 1995, which was plenty of time to have the 76 Station clean it up rather than finding other property. He then cited the alternate sites of the Borgen Property, and the Hoppen/Scofield Property. He concluded that the city should use property that it already owned or the other sites mentioned, and should not pass the ordinance to condemn this property.

There were no further public comments, and Mayor Wilbert closed the public hearing on this issue at 6:15 p.m.

Appeal of Hearing Examiner's Decision - Harborwest Development. Councilmember Ekberg recused himself and left the Council Chambers at this time. Mayor Wilbert opened the public

hearing on this item at 6:15 and explained that this was a closed record hearing and appeal procedure for the Council to consider the pertinent facts, applicable law and to make a final decision on the application of Harborwest Subdivision - SUB 98-01, the Huber/McGowan Development continued from the March 23rd Special Council Meeting. She gave a brief history of the application asked for cooperation in following the hearing procedures, which she read aloud, allowing only the applicant and appellants to present fifteen minutes of oral argument based upon the evidence already presented during the open public record hearings. She stressed that no new evidence could be presented. She added that the oral presentation would be limited to fifteen minutes, asking the speakers to identify themselves for the public record.

She stated that the Appearance of Fairness Doctrine requires that this hearing be fair, in form, substance and appearance, and asked if anyone in the audience objected to her participation as Mayor, or to any Councilmember's participation in the hearing. There was no response to this query from the Public. She then asked Council for their ex parte communication. Councilmember Young explained that he had recently found out that he works with one of the property owners and recused himself from the proceedings. He then left the chambers.

Mayor Wilbert explained that Councilmember Robinson had called her earlier in the day and indicated that he would not be present for the hearing.

Ray Gilmore, Planning Director, explained that previous to the hearing that Council had received a substantial packet of information including staff reports on the preliminary plat, appeal of the mitigated determination of non-significance under SEPA, the Hearing Examiner's Findings and Conclusions, appeals statements from the three appellants and the applicant. He gave an overview of the project and the hearings that had been held. He added that Title 19 of the Municipal Code allowed one open record hearing before the city Hearing Examiner, and that it was the Hearing Examiner's decision that was being appealed to Council. He reiterated that this was a closed record hearing and new testimony would not be allowed. He listed the four appeals that had been submitted from Northcreek Homeowners Associations, The Peninsula Neighborhood Association, Nicholas Natiello, and the applicants, Huber-McGowan. He said that the matrix in the packet had been recently amended and reflected the issues of the appeal. He said that an extensive transcript of the hearings had been prepared and made available to all parties of record and Councilmembers. He advised Council that it was their option to either affirm, modify, or reverse the decision of the Hearing Examiner or upon written agreement by the applicant, to waive the statutory prohibition against holding more than one open record hearing and remand it to the Hearing Examiner.

Carol Morris explained that the record is closed and that no new exhibits would be accepted. She added that she would like the record to reflect that she had received letters on the appearance of fairness doctrine that were not considered by the Hearing Examiner. She listed the names and dates of the correspondence. At this time, Mayor Wilbert opened the hearing to the applicant and appellants.

William Lynn - PO Box 1157, Tacoma. Mr. Lynn talked about the school impact fees, giving an explanation of the three offers that had been made to address these issues. He continued to say that the Council is acting in a different role as judges on this issue and would have to accept the

Hearing Examiner's Findings and Facts as the person who actually heard the testimony during the hearings. He finalized by saying that there was conflicting evidence on every issue and if the other appellants could point to a finding that isn't supported by evidence, he would be surprised.

Carl Halsen - PO Box 1447, Gig Harbor. Mr. Halsen, Project Manager for Harborwest, addressed their appeal issues. He said that condition number 38 requiring a 55-foot buffer on the northeast perimeter was unnecessary due to the existing 60-foot access easement. He then spoke about the exclusion of a condition to allow four model homes to be built prior to final plat approval. He addressed the justification for approval of the project and stressed how much scrutiny the project had undergone. He concluded by talking about the state's Growth Management Act and the requirement to stop wasteful development. He attempted to submit written arguments to the Council.

Carol Morris again stressed that no written material would be allowed, as it was a closed record appeal with no new evidence to be accepted.

Nicholas Natiello - 5802 Hunt Street. Mr. Natiello asked for clarification of Ms. Morris' comment that if oral testimony was given, then written presentation could not be distributed to Council. Ms. Morris again stated that no written would be submitted to Council, and they would not hear any new testimony. Mr. Natiello said that Mr. Gilmore's memo stated that written and oral argument could be submitted to Council. Ms. Morris said that the appeal issues were to be presented to the Council previously.

Matthew Erlich - 6910 79th St. NW. Mr. Erlich read Mr. Natiello's prepared statement by request of the appellant, Mr. Natiello. The lengthy statement addressed his concerns about the fish in his pond on his 32 acres south of the proposed project. He gave a background of his credentials and past experience with control of development. He addressed the project density, underlying zoning issues, appearance of fairness issues with the Project Manger, traffic, and fire safety. He concluded by stating that the Council should not approve Harborwest as the Hearing Examiner erred with respect to density, rezone and fire safety.

Steve Brown, 7525 Pioneer. Mr. Brown, attorney for the Northcreek Homeowners Association, gave a description of the Northcreek neighborhood and the condition of its roads. He talked about the concerns with the traffic impacts of this proposed subdivision and gave examples of how their streets would be affected by the increased traffic. He then addressed the density of the project claiming the increase of 3.5 units per acre constitutes a rezone. He requested that the Hearing Examiner's decision be reversed and as a condition of approval of the project, that the proponent be required to make 76th a public road and bring it up to standards and to reduce the density be limited to 3 units per acre. He added that he had his argument in written form and said that under Gig Harbor Code 19.06.005, he should be allowed to present written or oral arguments to Council and it should be appropriate for all appellants to be able to present their briefs stating their arguments and legal citations that don't introduce new evidence.

Councilmember's asked for clarification on the easements for 76th and who was allowed to utilize that street and who maintained the road.

Nick Natiello. Mr. Natiello said that the Municipal Code gave him the right to present his written comment as a an appellant, adding that he had spend a great deal of time preparing the material. He mentioned Mr. Gilmore's memo also quotes the codes provision to allow oral and written comment.

Carol Morris explained that the reason that Council should not accept any additional written material is because a decision needed to be made at this time, and there wasn't sufficient time to review the materials for new evidence. She said that an opportunity had been given for this material to be submitted prior to the hearing. Councilmember Picinich said that he would like a make a statement to not accept any written materials, but asked for direction from other Councilmembers. Councilmember Owel asked to continue the public hearing.

Robert Mack - 1102 Broadway Plaza. Mr. Mack, attorney for the Peninsula Neighborhood Association, said that he interprets the GHMC Chapter 19 the same as Mr. Brown. He said that PNA has several issues on appeal, but addressed their concerns about land use density and the wetlands. He talked about the Growth Management Act and that it states that you don't have to allow growth that is inconsistent with the character of the related neighborhoods, that the environment should be protected through the Comprehensive Plan. He said that this PUD application does not require the acceptance of a higher density zone. He discussed the dispute on the types of wetlands located on the property and their designated categories adding that there is adequate evidence in the record to show the wetlands are of a higher classification than the Examiner found. He continued that PNA maintains that there are inadequate provisions provided for protection of the stream on-site and in the wetlands. He concluded by saying that they would like to see greater requirements including buffers.

Mayor Wilbert asked if staff had any comments.

Dave Skinner, Public Works Director, addressed the statement by Mr. Brown's that the sole access to the North Creek Estates development was on 76th, adding that they also have access to the north through the Harbor Heights development, a public roadway.

Carol Morris explained that Council was acting as an appellant body, and cannot substitute judgment for the Hearing Examiner, but can modify or reverse the Hearing Examiner if it was determined there was insufficient evidence to support the Hearing Examiner's decision.

Ray Gilmore gave a brief overview of pedestrian access.

Councilmember Dick spoke of his concern that people believed that oral and written testimony would be allowed to be presented. Ms. Morris read the section of the code referring to this issue and said that there had to be a cut-off date for submission of materials to allow staff to review for new evidence. She said if materials were submitted, a decision could not be made this evening, and suggested that if materials were to be allowed, that it be announced that this would be the deadline and no additional material be allowed. Councilmember Owel suggested that this be addressed under the agenda item in Old Business and the public hearing be continued.

Bill Lynn. Mr. Lynn said that the Hearing Examiner had heard all the testimony and that there are findings on the adequacy of the roads, fire access and all other points that have been debated. He advised Council to review the staff report that addresses the city's own Comprehensive Plan on several issues. He concluded by saying that 70% of the lots in the project have the right to use 76th street, sharing the easement and responsibility for maintenance. He said that it is a private issue, not for the city to decide. He said that alternate means of access were provided in the project to address the other 30% of the parcels that do not have easement right to 76th.

There were no other comments and Mayor Wilbert advised the audience that Council reserves the right to reopen the hearing later tonight or at a continued hearing if needed, and closed the public hearing at 7:50 p.m. She then called a five-minute recess.

When the session reconvened, Councilmembers Ekberg and Young returned to the Council Chambers.

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 March 27, 2000.
2. Correspondence / Proclamations:
 - a. Proclamation - Earth Day.
 - b. Letter to Eagle Scout, Travis Leland.
3. Approval of Payment of Bills for April 10, 2000:
Checks #24765 through #24873 for \$280,431.28.
4. Liquor License Application - Water to Wine.

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

OLD BUSINESS:

1. Second Reading of Ordinance - Condemnation of an Easement for Location of Pump Station No. 3. David Skinner responded to some of the comments heard in the public hearing earlier. He addressed the issue of the alternative sites and explained why each site was not suitable to locate the pump station. He answered Council's questions and explained that the Consultant, Earthtech Engineers, was hired to determine the best course of action and best site, and this was determined for a number of reasons. Carol Morris gave a history of the contaminated soils adjacent to one of the sites mentioned. She then answered questions on the condemnation process.

MOTION: Move to adopt Ordinance No. 840 as presented.
Picinich/Young - unanimously approved.

2. Appeal of Hearing Examiner Decision - Harborwest Development. Councilmembers Ekberg and Young recused themselves and left the Council Chambers. Mr. Gilmore advised Council of their options. Councilmember Ruffo asked if the hearing were to be continued if the written testimony would be allowed. Ms. Morris explained that because

it is a closed record hearing, the only testimony that would be admitted is argument, and Council was not required to accept any written materials. She recommended that if written materials were accepted at this point, that time be allowed to review the materials to make sure that no new evidence was being submitted. Councilmember Dick said that he was troubled that several of the appellants came with the understanding that written and oral argument would be allowed. Carol Morris advised that March 31st was the 60 day cutoff for a decision to be made, but she saw no problem with continuing discussion to the next meeting if a decision were made at that time with no further delays.

MOTION: Move we authorize only those written arguments brought tonight by the appellants to be presented to the City Attorney to review for new material, and that they be brought back with a report for consideration at the next meeting, and that the discussion and decision be continued to the next regular meeting to begin at 6:00 p.m.
Dick/Owel - unanimously approved.

Councilmember Ekberg and Young returned to the Council Chambers at this time.

NEW BUSINESS:

1. Resolution - Amendment to Interlocal Agreement that Created the Pierce County Regional Council. Mayor Wilbert presented this resolution adopting the recommended amendments to the interlocal agreement that created the Pierce County Regional Council. She added that she was the representative for this assembly, with Councilmember Young acting as the alternate.

MOTION: Move to adopt Resolution No. 550 authorizing amendments to the Interlocal Agreement that created the Pierce County Regional Council.
Owel/Ruffo - unanimously approved.

2. Addendum to Expert Witness Contract. Jeff Taraday, Legal Counsel, explained that addendum was necessary to continue the services of Halsan Frey Associated.

MOTION: Move to authorize the execution of the addendum to extend the maximum amount to permit the expert witness to continue.
Dick/Ruffo - unanimously approved.

3. Wastewater Outfall and NPDES Support Studies - Consultant Services Contract. David Skinner presented this contract required to satisfy the year 2000 conditions and requirements of the NPDES permit. He gave an overview of the scope of services and answered questions.

MOTION: Move to authorize execution of the Consultant Services Contract with Cosmopolitan Engineering Group in the amount of \$30,240.00.
Picinich/Young - unanimously approved.

4. First Reading of Ordinance - Accepting a Donation from Peninsula Neighborhood Association for the Borgen Property. Dave Rodenbach, Finance Director, explained that fifty dollars had been received from the Peninsula Neighborhood Association to be used toward the cost of a statue or plaque commemorating George Borgen. He added that this would return at the next meeting for adoption.

PUBLIC COMMENT/DISCUSSION:

Jim Pasin - 2710 39th St. NW. Mr. Pasin explained that he had been contacted by the Washington State Film Industry asking if the City of Gig Harbor had ordinances or regulations that address film making within the city. He gave a brief description of how the film industry had benefited the Cle Elum / Roslyn area and requested that Council consider passing an ordinance that would facilitate this endeavor here. Councilmember Dick recommended that he bring back some suggested language to be considered.

COUNCIL COMMENTS / MAYOR'S REPORT:

Mayor Wilbert announced that she was calling a Special Council Meeting for this Wednesday, April 13th, to address any Environmental Impact Statement Narrows Bridge issues. She added that the meeting would begin at 6:00 p.m., as there has been a great deal of local interest to discuss any options the city may have to address the EIS.

Councilmember Ekberg said that he had attended the Local Involvement Meeting for the Narrows Bridge and one of the things that arose was lack of citizen input on the design. He added that he had suggested that a survey similar to the one the city used for the parks plan be utilized.

STAFF REPORTS:

Dave Skinner, Public Works Director, reported that the Wastewater Treatment Plant had gone two weeks without a complaint on the odor. He gave an update of the process. He said that he would be making a presentation on the outfall at the May 8th Council Meeting.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Special City Council Meeting - 6:00 p.m. Wednesday, April 12th at City Hall.
2. Special Presentation to the City Council - Boys & Girls Club: May 8th at 6:45 p.m. before the regular meeting.

EXECUTIVE SESSION: For the purpose of discussing potential and pending litigation per RCW 42.30.110(i) and property acquisition per RCW 42.30.110(b). Action may be taken after the session.

MOTION: Move to adjourn to Executive Session at 8:40 p.m. for approximately 45 minutes for the purpose of discussing potential and pending litigation. Picinich/Young - unanimously approved.

MOTION: Move to return to regular session at 9:20 and extend the Executive Session for another ten minutes.
Young/Ruffo - unanimously approved.

MOTION: Move to return to regular session at 9:30 p.m.
Picinich/Robinson - unanimously approved.

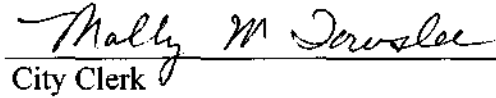
ADJOURN:

MOTION: Move to adjourn at 9:30 p.m.
Picinich/Young - unanimously approved.

Cassette recorder utilized.
Tape 565 Side A 320 - end.
Tape 565 Side B 000 - end.
Tape 566 Both Sides.
Tape 567 Side A 000 - end.
Tape 567 Side B 000 - 242.



Mayor



City Clerk