

## **GIG HARBOR CITY COUNCIL MEETING OF MARCH 13, 2006**

**PRESENT:** Councilmembers Ekberg, Young, Franich, Conan, Dick, Payne, Kadzik and Mayor Hunter.

**CALL TO ORDER:** 7:02 p.m.

**PLEDGE OF ALLEGIANCE:**

### **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 February 27, 2006.
2. Proclamation: American Red Cross Month.
3. Amendment to Agreement for Emergency Management Services.
4. Legal Services Agreement.
5. Phase 2 Environmental Site Assessment for the Scofield Property – Consultant Services Contract.
6. Olympic Drive and 56<sup>th</sup> Street Improvement Project – Easement Agreements.
7. MultiCare Health System - Storm Water Facilities Agreement and Restrictive Covenant.
8. Eddon Boat Demolition Project – Change Order No. 1.
9. Sewer Outfall Extension Final Design and Permitting – Consultant Contract Amendment.
10. Liquor License Renewals: Farmer's Market; Green Turtle; Brix 25.
11. Payment of Bills for March 13, 2006.  
Checks #49689 through #49825 in the amount of \$312,253.00.
12. Approval of Payroll for the month of February:  
Checks #4139 through #4171 and direct deposit entries in the amount of \$259,074.79.

**MOTION:** Move to adopt the consent Agenda as presented.  
Ekberg / Franich – unanimously approved.

### **OLD BUSINESS:**

1. Second Reading of Ordinance – Amendment to Building Code Advisory Board Membership Requirements. Dick Bower, Building Official and Fire Marshal, offered to answer questions regarding this ordinance that would remove the residency requirement for members of the Building Code Advisory Board.

**MOTION:** Move to adopt Ordinance No. 1035 as presented.  
Kadzik / Payne - unanimously approved.

**NEW BUSINESS:**

1. Public Hearing and Resolution Accepting the Resource Properties Annexation Petition. John Vodopich presented the background information on this annexation of approximately 9 acres of property located on Peacock Hill.

Mayor Hunter opened the public hearing at 7:10 p.m. and asked for public comment.

Dave Robertson – Peacock Hill. Mr. Robertson explained that he lives on the neighboring property to the proposed annexation. He said that he is also representing Pat LeBlanc and Ken Hemley, other neighbors. He said that they have no quarrel with the annexation, but expressed concern that they will be forced to hook into the sewer line at some future date. He said that they would like something written into the annexation that would give them some reassurance that if forced against their will to hook up that there would be some financial compensation.

There were no further comments and the public hearing closed at 7:12 p.m.

**MOTION:** Move to adopt Resolution 661 accepting the annexation petition for the Resource Properties Annexation and further refer it to the Pierce County Boundary Review Board for consideration.  
Young / Franich – unanimously approved.

2. Public Hearing and Resolution for Utility Extension Capacity Agreement – Canterwood. John Vodopich presented the information on this request for 10 ERUs of sewer service for the Canterwood Professional Business Park located in Phase 2 of Division Eleven of Canterwood. He explained that the approximately 25,000 s.f. office building has already been constructed and that staff recommends approval of the contract.

Mayor Hunter opened the public hearing at 7:15 p.m. and asked for public comment.

Eva Jacobsen – PO Box 2314, Gig Harbor. Ms. Jacobsen commented that she is pleased with staff and the Community Development Committee for getting this before Council for approval. She offered to answer any questions that Council may have.

There were no further public comments and the public hearing was closed at 7:17 p.m.

**MOTION:** Move to approve the applicant's request for an exception to conformance with the City zoning requirements for applications for sewer service for one office building on Lot 1 of the Canterwood Division Eleven Phase 2 Business Park, as provided for in Gig Harbor Municipal Code Section 13.34.060 (J).  
Young / Payne – unanimously approved.

**MOTION:** Move to approve Resolution No. 662 authorizing the execution of the Utility Extension Agreement with the Canterwood Development Company.  
Young / Conan – unanimously approved.

3. Public Hearing for Development Agreement with Donkey Creek Holdings LLC.

John Vodopich presented the information on this resolution to accept a proposed development agreement for a wetland mitigation plan that would allow the proponent to reduce the required Category I buffer from 100 ft. to 75 ft. He said that Eric Mendenhall, Associate Planner, was present to answer any technical questions.

Eric Mendenhall, Assistant Planner, clarified that the applicant wanted to increase the buffer's performance and its function. Right now the buffer area doesn't have functioning vegetation, and so the proponent is proposing to reduce the buffer requirement but plant the area to increase the function and filter system for the wetland. He added that without a site visit he could not label the category wetland.

Councilmember Payne asked the duration that the proponent will be held responsible for the development of the wetland as it will take a few years for the vegetation to be established. Mr. Mendenhall responded that there is a three-year performance bond to ensure that the vegetation is established. This is monitored by the city.

Councilmember Franich asked if the contingency plan mentioned in the development agreement is also for a three-year period. John Vodopich responded that there is a three-year period in which the city monitors the successfulness of the mitigation plan. At the end of the three-year period if it is deemed successful, and the city accepts the mitigation, the agreement and contingency plan expire. He then explained the procedure if the contingency plan has to be activated and that the plan was prepared by a Wetland Biologist in conjunction with the city code.

Councilmember Kadzik asked for clarification on monitoring and if the city has the expertise to do so. Eric Mendenhall responded that he will be a Certified Wetlands Scientist and Biologist in April.

Mayor Hunter opened the public hearing at 7:25 p.m. and asked for public comment. There were no public comments and the public hearing was closed at 7:25 p.m.

**MOTION:** Move to adopt Resolution No. 663 relating to a development agreement with Donkey Creek Holdings LLC for proposed wetland mitigation.  
Payne / Conan – unanimously approved.

4. Public Hearing and First Reading of Ordinance – Amending Critical Areas Regulation as Required by State Statute. Jennifer Sitts, Senior Planner, presented the background on this ordinance amending critical areas regulations. She explained that this has been amended per Council direction to have the Community Development

Committee take into consideration the comments from the Department of Ecology. The committee asked staff to look at Best Available Science in order to have a defensible critical areas ordinance. After research, staff found that the DOE recommendation for buffer sizes was the Best Available Science available. Cities that have tried to vary from these standards have had their ordinances forwarded to the Growth Management Hearing's Board and found to not be in compliance with the Best Available Science.

The Community Development Community then directed staff to modify the November version of the ordinance to incorporate DOE's recommendations, allowing as much flexibility, site specific analysis, and mitigation as possible. Ms. Sitts described how the ordinance would amend the city code and how it would apply to buffers.

Councilmember Young asked for clarification on how this affects density calculations. Ms. Sitts responded that net density calculation only removes the actual wetland area, not the buffer area. An increase in buffer would not affect the number of lots on a parcel, but it may affect the configuration or size. She continued to explain that the wetland and the wetland buffers for commercial projects are included in impervious areas. Buildable lands capacity is based on gross acreage.

Councilmember Ekberg asked for review of wetlands and where they come into contact with the shoreline. Ms. Sitts said that at the recommendation of DOE, this ordinance removes the exemption of properties governed by the Shoreline Master Program. If a property is within the Shoreline Master Program, it will also have to comply with the critical areas ordinance. There are some estuarine wetlands along our bay that previously were strictly protected under the critical fish and wildlife habitat area. Now they fall into the wetland category as well. She added that required buffers for Category 1, high impact estuarine areas are 200 feet. That could be reduced to 110-150 feet if mitigation measures are employed.

Mayor Hunter thanked Jennifer Sitts, Eric Mendenhall, and the Community Development Committee for the hard work on this. He opened the public hearing at 7:34 p.m. and asked for public comment.

Doug Sorenson – 9409 North Harborview Drive. Mr. Sorensen recommended that Councilmembers understand this document well enough to explain it to him before signing. He said that this is the first time he has heard about the categories, plus the uses, plus the habitat score that equals a formula which determines the buffer. He said that his other concern is the possible reduction of the buffer by 25%, which used to be 70%, then went to 50%, back to 55% and now is 25%. Basically, this is no reduction. Most wetlands in the city are Category 2. If the city decided it wants to pursue, he said he would be willing to offer his property as an example. He said that he has already had biologists map and flag his property so that the city could send out a biologist, along with Councilmember Payne, to determine the impact and ramification of this ordinance. This way you can see what you are getting into.

Councilmember Dick explained that the recommended buffers in this ordinance are a result of criticism from DOE that the city's previous efforts were not supported by Best Available Science. He said that the city has to justify and support any deviation from the recommended standards that came from DOE.

Mr. Sorenson asked if Council had asked DOE if the current buffers work and why we need new science to justify wider buffers. Let them provide the answers. He said that in his case the impact of the larger buffers will put him behind Harborview Street in order to build.

Councilmember Dick said that this doesn't bring us the science to support a more thoughtful approach. The difficulty is coming up with the science to justify it. The news is full of stories about the declining salmon population in the estuarine areas and is an indication that what is being done currently is not sufficient. This tends to support the science being used by DOE and we should think twice about deviating from these standards to prevent further degradation.

Mr. Sorensen asked if the salmon runs have decreased on Crescent Creek, adding that this is a question to ask the state. What determines an appropriate sized buffer? What makes a 50 foot buffer any better than 51 feet? He said that science is supposed to be exact.

Del Stutz – PO Box 274, Gig Harbor. Mr. Stutz said that he has four properties within Gig Harbor that are impacted. He said that in the past he has met with the Department of Ecology because of his petroleum business, adding said that he hopes the City Council understands the regulations better that he does. He said he has property on what used to be Donkey Creek but is has changed and he now has a new creek called North Creek. The primary source of the water in this creek is from the stormwater runoff through the culverts built when Highway 16 was constructed. Twenty years ago he was approached by Vernon Young, a member of the "Save the Creeks" organization, who told him that after a rain storm, runoff from his property muddied Donkey Creek and the fish hatchery. Actually, the wash out occurred from the old Gig Harbor Sand and Gravel Company.

Mayor Hunter urged Mr. Stutz to complete his statement. Mr. Stutz then urged Council not to pass this ordinance tonight.

Rachael Villa – 8309 52<sup>nd</sup> St. NW, Gig Harbor. Ms. Villa submitted written testimony from Marian Berejikian, Executive Director of Friends of Pierce County, which supports the passage of the critical areas ordinance with the recommendations from the Department of Ecology. She said that this is a very complex issue.

There were no further public comments and the public hearing was closed at 7:45 p.m.

Councilmember Young agreed that people should be allowed more time to review the document. He responded that the Community Development Committee struggled with

a justification for reducing the buffers from what is recommended by DOE. The legislature requires that jurisdictions base their buffering requirements on Best Available Science and the Department of Ecology has issued options that they believe meets this criteria. If a jurisdiction chooses to deviate from the recommended buffers, they must justify the action. The cities that have attempted to deviate from these standards have been told by the Growth Management Act that they do not comply with the Best Available Science rule. Councilmember Young continued to explain that DOE has said that reducing a buffer by more than 25% severely impinges upon the productivity of the wetland and the animals living in the habitat, and that no mitigation can justify the action. He continued to say that Council has to be able to back up any decision with real science, and so far, the Community Development Committee can not find any studies to support deviation from the DOE recommendation. Any information that would allow deviation would be appreciated. He said that if a buffer is so large as to prevent property use, there are procedures to follow that he would be happy to share.

Councilmember Dick added that Alternative #3 in the ordinance allows for deviation on a case by case basis if scientific evidence is provided to justify the action. It is an expensive and difficult process, but designed to allow modifications.

Councilmember Payne said that he personally investigated this issue and believes that this proposal offers the greatest flexibility and is more focused on site-specific conditions as opposed to a broad brush. He said that this isn't the perfect answer, but it is one that can be defended. He encouraged further public comment.

#### 5. First Reading of Ordinance – Clarifying the Requirements for Sewer Hook-ups.

Mark Hoppen, City Administrator, presented this ordinance that will allow a few parcels platted prior to 1990 to install septic drainfields rather than connecting to city sewer. Previously, the city did not have the mechanism to allow these parcels to do so, adding that this ordinance proposes a conservative approach to allow use of the property. Mr. Hoppen pointed out that new construction has to connect and an existing house would have to connect in the instance of an LID or a health issue. Newly annexed areas are treated the same as existing houses and any exceptions would be reviewed by the City Engineer.

Councilmember Kadzik asked for clarification on how you treat a failing septic system that could be rebuilt. Mr. Hoppen responded that if the Health Department indicates that the septic system has failed and the sewer system is available, they will be required to connect, but if the sewer is not available, they will not.

Councilmember Young said that he thought that this ordinance would include pre-GMA lots. Mr. Hoppen explained that the reason for that is because it requires too much analysis and is the subject of a Comprehensive Sewer Plan update. He added that the Sewer Comp Plan update is scheduled for this year.

David Robertson - Peacock Hill. Mr. Robertson said that this ordinance fits in with his concerns regarding the annexation next to his property. He asked for clarification of how a LID is formed.

Mr. Hoppen responded that with respect to the properties on Peacock Hill, the most likely future is either the developer will extend the sewer and the neighbors can hook up when they want; or he will form a latecomer's agreement and the neighboring properties would have to pay a pro-rated share of the line when they connect. Under either scenario, neighbors could avoid hooking up. The LID is a formal, fiscal mechanism used to recoup the debt of running the infrastructure, which is expensive and only done for large projects.

Randy Boss – no address given. Mr. Boss explained that he is under contract on lots that are covered by this proposed ordinance. He asked for clarification on the requirements for new construction to hook up to sewer, especially if the sewer is five miles away. He also asked for the criteria used by the Engineer to determine exceptions.

Mr. Hoppen responded that these issues are not addressed in this ordinance, but would be considered in the update to the Sewer Comprehensive Plan. These issues are complicated because they involve revenues of the system and how the city would finance the sewer.

Mr. Boss said that he would like clarification on whether the lots in Sunnybrae could or would be required to hook to the sewer line on Hunt Street, a couple miles away, when there is another line across the street. He said that it seems it would be to the city's advantage to require these lots to hook into the city sewer across the street rather than 3-4 miles around the corner. He said that he would like to know if he has the ability to either hook to sewer or to qualify for the exception.

Mr. Hoppen explained that the sewer line across from the Sunnybrae Addition is a pressure line and there may be a practical reason for not allowing someone to hook into that system. It's not without precedent, but may require a significant backflow device. He referred Mr. Boss to contact Steve Misiurak, City Engineer.

6. Eddon Boatyard Program Selection. Mayor Hunter said that the Gig Harbor's Community Boat Shop proposal most clearly meets the intent of the Land Acquisition Bond and recommended that Council issue a letter of intent to forward to Guy Hoppen to work on the details.

Councilmember Franich agreed that this proposal is a good fit for the location. He said that a couple of items that really need to be addressed are the cost of the improvements as it relates to the level of activity proposed. He said that he is concerned with the long-term cost.

Councilmember Ekberg pointed out that the second phase is where all these issues will be addressed. The initial phase is just to find a fitting use for the facility.

Councilmember Franich also said that in relation to the existing dock, it will need to be rebuilt and he hopes that will be structurally engineered to support a commercial truck loaded with a fishing net. This site may not be the solution to a Maritime Pier, but it could facilitate some basic needs.

Councilmember Kadzik said that he had only seen one proposal and wondered if he had missed the others. Councilmember Ekberg explained that Mayor Wilbert appointed an Ad Hoc committee to hold a public hearing. The recommendations that came from that were forwarded to the Mayor. The only formal application submitted that pinpointed what we were advertising for was for the Gig Harbor's Community Boat Shop. Councilmember Franich's letter was received in-between and included as an important aspect in planning. He gave an overview of some of the other ancillary proposals.

Councilmember Young recommended that Councilmember Franich join the Ad Hoc Committee as he has obvious interest. The Mayor concurred.

Councilmember Payne asked about the Bantry Bay Program. Mayor Hunter explained that this proposal is for the Sea Scouts.

**MOTION:** Move that Council issue a letter of intent to Gig Harbor Community Boat Shop as represented by Guy Hoppen.  
Kadzik / Payne – unanimously approved.

7. Appointment to the Design Review Board. Mayor Hunter presented this recommendation for the appointment.

**MOTION:** Move to appoint Victoria Blackwell to complete the remainder of the term on the Design Review Board that expires July 2007.  
Young / Franich - unanimously approved.

**STAFF REPORT:**

1. Lita Dawn Stanton, Historic Registry Coordinator – Historic Registry Listing – Eddon Boatyard. No verbal report given.
2. Chief Mike Davis – GHPD February Stats. No verbal report given.

**PUBLIC COMMENT:** None.

**COUNCIL COMMENTS:**

Councilmember Payne recommended that a comparison rate-study be done because our City Attorney is paid at a lower rate than other like municipalities. He asked that a recommendation be brought back for an increase to the salary for City Attorney. He



emphasized that this isn't as much a pay increase to the current city attorney as it is an increase to the position; but she would have the benefit. He said that his concern is that our current rate of pay is extraordinarily low and he thinks that the city should be competitive with other jurisdictions. He said that if the Council decides to follow through with a RFQ process at some point, this will allow the city to be more prepared.

Councilmember Young said that there is no city attorney pay-scale because this is a contract position. Councilmember Payne said that he is suggesting an amendment to the employment contract. Councilmember Young then said we could bring back a salary survey, mentioning the contract for an attorney to provide personnel approved on the consent agenda. Councilmember Payne agreed that it would be enlightening for the rest of the Council to see this information.

Councilmember Franich said it would be fine to get a rate comparison, but it is not Council's job to set what the city attorney should charge. Council is in charge of the community's purse strings and he has a hard time understanding why this should be done without the City Attorney coming forward with a request.

Councilmember Young pointed out that the City Attorney suggested that she bring on someone to work with personnel issues and add to the hours we would have an attorney available here. One of the reasons that this person would not be available is due to the low rates charged. It may result in a cost savings if we use the other firm frequently.

Councilmember Franich said that if we decide to raise the city attorney fees, maybe we need to have more than one attorney that is doing different things. If we pay the existing attorney a higher rate to do something that can be done by someone without her expertise, then this needs to be considered.

Carol Morris, City Attorney, pointed out that in the contract approved tonight for personnel services with Scott Snyder, he charges \$195.00 an hour. This should give an idea of how much the city pays for city attorney services that she is not performing.

Councilmember Young asked if Ms. Morris uses a paralegal. She responded that she does not. She said that if Council wants a breakdown of her services they should also consider what other comparable cities pay for attorney services to determine if we are getting the best services for the money.

Councilmember Payne interjected that this is what he hopes to accomplish. Councilmember Franich said that he would like to see a proposal from the City Attorney for what she would like to charge in conjunction with the rate study.

Councilmember Young pointed out that not all cities have the same caseload. Mayor Hunter said that if we are going to open this up we should move forward with the RFQ.

Mayor Hunter then reported that he received a petition of 600 signatures requesting the removal of the roundabout at 36<sup>th</sup> and Pt. Fosdick. He said that he ask the City Engineering Department to go out and report on how the roundabout is operating. This report will come to Council later.

**ANNOUNCEMENT OF OTHER MEETINGS:**

Gig Harbor Peninsula Historical Society Open House – Thursday, March 16<sup>th</sup> at 6:00 p.m.

Mayor Hunter announced that he would be absent for the next Council Meeting of March 27<sup>th</sup>, and that Councilmember Ekberg would act as Mayor Pro Tem.

**EXECUTIVE SESSION:** For the purpose of discussing potential litigation per RCW 42.30.110(1)(i).


**MOTION:** Move to adjourn to executive session at 8:30 p.m. for approximately ten minutes to discuss potential litigation per RCW 42.30.110(1)(i).  
Franich / Dick – unanimously approved.

**MOTION:** Move to return to regular session at 8:40 p.m.  
Franich / Young – unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 8:41 p.m.  
Franich / Young – unanimously approved.

CD recorder utilized:  
Disk #1 Tracks 1 – 25  
Disk #2 Tracks 1.

  
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Steven K. Ekberg, Mayor Pro Tem

  
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Molly M. Towslee, City Clerk