

GIG HARBOR CITY COUNCIL MEETING OF MARCH 27, 2006

PRESENT: Councilmembers Young, Franich, Conan, Dick, Payne, and Kadzik. Councilmember Ekberg acted as Mayor Pro Tem in Mayor Hunter's absence.

CALL TO ORDER: 7:04 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 March 13, 2006.
2. Eddon Boat Demolition Project – Environmental Sampling and Abatement Contract(s).
3. 2006 NPDES Permit Water Quality Monitoring Program – Consultant Services Contract.
4. Sanitary Sewer Facilities Easement and Maintenance Agreement – Canterwood Business Park.
5. Community Economic Revitalization Board Job Development Grant – Contingency Agreement.
6. Interagency Agreement for Combined Business License Services.
7. Liquor License Assumption – Brix 25 Restaurant.
8. Payment of Bills for March 27, 2006.
Checks #49826 through #49946 in the amount of \$368,836.66.

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

OLD BUSINESS:

1. Second Reading of Ordinance – Amending Critical Areas Regulation as Required by State Statute. Jennifer Sitts, Senior Planner, noted that there have been no changes to the ordinance since the last meeting. She explained that if Council chooses to pass the ordinance, the city would be in compliance with the Growth Management Act and would be allowed to submit a CERB Grant for five million dollars for transportation improvements in the Gig Harbor North / Borgen Boulevard interchange. Ms. Sitts described the two options in the code that would allow a property owner a variance from these critical areas regulations in case a property was severely constrained.

Doug Sorenson – 9409 North Harborview Drive. Mr. Sorenson passed out photos and a map of his property. He then thanked Councilmember Payne and Eric Mendenhall, Planning Assistant, for visiting his site and explaining the ramifications of the regulations on the property. The proposed 150 foot buffer for Category 2 wetlands makes his property subject to the variance option in the reasonable use criteria of the ordinance. He described his property and how the buffers and setbacks would apply. He continued to say that neither the options described by Ms. Sitts would guarantee he could construct a single family residence on his property. Since the property is unique, as it is the last undeveloped waterfront parcel on North Harborview Drive, he suggested that the city consider exempting his property from the proposed 150' buffer or that a

resolution be adopted stating that his property shall receive special consideration due to the unique characteristics and location.

Councilmember Dick asked if there was any scientific basis to justify such an action. Mr. Sorenson said that the city attorney would have to be consulted. He added that he was sure that there are laws to allow such a resolution as there are variances for height and other things. How it applies to wetlands would be up to the attorney.

MOTION: Move to adopt Ordinance No. 1036 as presented.
Dick / Young -

Councilmember Young responded to the concerns voiced by Mr. Sorenson. He said that he agreed that there are properties in town that may be significantly restrained by wetland buffers, but that why the reasonable use exception was included. He gave a brief overview of the process. He explained that the city cannot exempt a particular property from an ordinance, but there can be methods of deviation from the standards if necessary. He then said that any changes to the ordinance would have to be justified by scientific information, which cannot be done on a case-by-case basis. This has to be left up to staff and the Hearing Examiner.

RESTATED MOTION: Move to adopt Ordinance No. 1036 as presented.
Dick / Young - unanimously approved.

2. Second 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.

MOTION: Move to adopt Ordinance No. 1037 as presented.
Young / Conan - unanimously approved.

NEW BUSINESS:

1. Street Vacation Request – Wheeler Avenue (Barta). John Vodopich, Community Development Director, presented this petition to vacate a portion of Wheeler Street that abuts the residence at 9476 Wheeler Street. This area falls under the non-user statute of 1891, however, there are questions regarding ownership. He recommended that prior to adopting a resolution setting a public hearing date, that the matter be further researched by staff and legal counsel.

Councilmember Dick agreed that the matter needed to be explored further to gather the relevant facts regarding public use since 1905. He suggested that historical photos may be helpful.

Councilmember Franich asked how long it would take to obtain the necessary information. Carol Morris, City Attorney, responded that although she had received some information, the request by Councilmember Dick for further facts will require more

time. Councilmember Dick offered his assistance in determining the necessary information and sources required to address the issue.

Councilmember Young asked for clarification on whether the use would have to be vehicular only or if pedestrian use would apply. He also asked if the street were vacated under this statute if it would preclude further public use.

Carol Morris, City Attorney, explained the two ways to vacate a street; one, the non-user statute and two, the street-vacation statute. If the city is unable to establish the facts sufficient for a non-user statute, then it should be determined whether the site qualifies under the city's street-vacation criteria. She further clarified that the use would not have to be limited to vehicular use. A street is a public way that has to be traveled by the public, which can be defined as vehicular or pedestrian.

Doug Sorenson – 9409 North Harborview Drive. Mr. Sorenson said that Wheeler Street is part of the City of Ardena, which was platted in 1912, adding that he is unsure how the 1905 Non-user Statute would affect this property. He said that later, an ordinance was written addressing street-ends that end in the water, and again, he said he was unsure how this affects the property in question. Mr. Sorenson talked about the past 34 years that he has lived across, and used Wheeler Street. He said that the Puyallup Fishing Tribe uses this annually to remove the Chum Salmon by truck. The boaters use it to retrieve their boats that blow into this end of the harbor. Kids and families walk over from the City Park, and have been doing this the entire time he has lived there. Cars drive down to the end to see the spectacular view, and friends of the Creighton's use this road as public access when they come to visit. Mr. Sorenson asked Council to consider this seriously, adding that he was on the Council when the site was set-aside to be developed as a viewing place for all residents of Gig Harbor.

Councilmember Dick asked if during the time Mr. Sorenson had lived there, if public access had been barred. Mr. Sorenson replied "never." He continued to say that the Wheeler Street sign has been up for more than ten years.

Maureen Barta – owns property at 9508 Wheeler Street. Ms. Barta explained that the piece of water at the end of Wheeler has been weeded up since she bought the property and no one has ever driven a car past the point where Wheeler and Rust Street meet because there is no way to drive down. People don't walk down in those bushes because it's been at least 8 feet of weeds since she bought the property. She said that people drive down to Rust where her mailbox is located and proceed to drive into her back yard and turn around on Wheeler, but do not drive through on the piece that she is asking to have vacated. She stressed that this has not been improved and she has not found any pictures that show anything going down to the water from that point since she bought the property. She again said that people go into her yard when they go down to the water, but not on Wheeler. She clarified that she has owned the property for six years.

Denae Creighton. Ms. Creighton said that she doesn't have an address because the street on which her house is located was vacated by the city against her request. This street has been the access to the Creighton's property since 1949. The street was occupied prior to that by the house that Maureen Barta owns, a little matching house owned by Paul Conan's Grandparents, and the Creighton's house. Prior to that two brothers from Norway owned the homes. She continued to describe the other surrounding houses including the property Doug Sorenson owns. She said that her husband voiced objection to the vacation at the public hearing because it land-locks the property and diminishes the value greatly. They have no legal access to their property and they don't know what their address is. The fire department doesn't have any way to get to their home if they don't know where it is. It exists on the map now because it's been there a long time, but if it's not in use, she hopes that the fire department is aware that they are there. At the hearing, when her husband voiced his objection, it didn't seem to matter to anyone. They voted on it at a hearing, not a City Council meeting, which she understood to be for discussion only. When her husband talked to Mr. Hoppen afterwards he was told that it was done and was up to them to negotiate easements with the neighbor, Mrs. Barta. This puts neighbor against neighbor and so they have no legal access to their property. Her husband then reminded Mr. Hoppen of the sewer line running through the property and that there has to be a 15 foot easement for repair.

Councilmember Dick asked which street she is referring to. Ms. Creighton responded Rust Street. Their garage and shop open onto Rust Street and now they only have access to their property from another property they own on Vernhardson. If they want to sell the upper house, this section of property goes with the house as a side yard setback.

Councilmember Dick asked for further clarification on the portion of Wheeler Street toward the water from Rust Street. He asked if she had knowledge of its use during the time she has lived there or prior. Ms. Creighton said that Wheeler Street has always been the only access to Rust Street. She said that she has seen kids down there building bonfires and some times you see people parked there. You used to see a lot of people go down to fish or get shellfish in the bay. Not so often anymore.

Chuck Meacham – 9509 Wheeler Avenue. Mr. Meacham said that his property is just about where the dock is located abutting Wheeler Street. He said that they are new residents and are unfamiliar with the legal aspect of vacating streets. He requested that if the city decides to vacate the tip of Wheeler, he would be interested in getting half, if appropriate.

MOTION: Move to table this matter until staff can gather facts to determine whether further action on vacation is appropriate.
Dick / Franich – unanimously approved.

Councilmember Young addressed the concerns voiced by Ms. Creighton. He described the difference between a street vacation and the non-user statute process. He said that

in the non-user cases, the street has never been used as a city street but it does not mean that other residents haven't used it as a private driveway. What Mr. Hoppen was trying to explain that if there has been an unwritten agreement allowing access to others properties, the owners of the vacated street are compelled to grant an access easement. The city has no right of possession of this property and therefore has not taken away anyone's access by vacating that portion of Rust Street.

Mayor Pro Tem Ekberg explained that before Council takes any action on a vacation request, a date is set for a public hearing and notice is set. If this continues it will be the next step.

Councilmember Dick addressed the comments regarding Rust Street. When this vacation came before Council, these issues had to have been discussed. He said that he recalls the city did not vacate this street, but simply acknowledged that Rust Street had been vacated by operation of law. He asked legal counsel whether this action indicated that the city vacated any public use that had occurred since 1905 through adverse possession. Ms. Morris responded that it did not. All the vacation did was remove the cloud from the title that existed because of the old platting. Anything that has occurred since that time is something that the property owner could establish through a quiet title action if they believe they have a prescriptive easement or adverse possession.

2. First Reading of Ordinance – Hardy Rezone. John Vodopich presented this ordinance that would implement a site-specific rezone approved by the city's Hearing Examiner. This will return for a second reading at the next meeting.

3. First Reading of Ordinance – Amendment to GHMC Adopting Updated State Amendments to the Building, Fire, Mechanical, and Energy Codes. Dick Bower, Building Official / Fire Marshal, explained that this a housekeeping ordinance formally adopting the state enacted amendments to the International Building, Fire and Mechanical Codes and the State Energy Code.

Councilmember Payne asked if there any revisions of note. Mr. Bower responded that the majority of the revisions have to do with things like economizers in air conditioning units. There is nothing that affects structural construction. He further explained that the city attorney feels it best to formally adopt the amendments. This will return for a second reading at the next meeting.

4. Request for Building Inspector FTE. Mark Hoppen, City Administrator, explained that a part-time inspector position had been improved in the 2006 Budget. After an effort to recruit, it has become apparent that there is no market for a part-time position. He recommended a full-time hire as the only means to obtain competent help.

Councilmember Franich asked if it is a matter of pay. Mr. Hoppen explained that it is not a matter of salary, but a matter of qualifications and the security of a full-time position. There are so many full-time inspector jobs available that no one wants to apply for part-

time. Councilmember Franich said that this is an unfortunate rationale to hire a full-time employee that will be with us forever.

Councilmember Young said that although unhappy about the change, it sounds like there is little choice.

MOTION: Move that staff bring back a request for a 2006 Budget adjustment for the immediate hiring of a full-time building inspector.
Young / Payne – unanimously approved.

5. Traffic Safety Emphasis Interlocal Agreement. Mike Davis, Chief of Police, presented this agreement that allows the Gig Harbor Police Officers to participate in the Tacoma/Pierce County Task Force on Alcohol/Driving with several other agencies. He mentioned that Carol Morris, City Attorney, has concerns regarding the liability of having a supervisory from another jurisdiction directing the activities of our officers to do something perhaps illegal or unethical. He explained that the nature of the job of police officer is saturated with liability, and when our officers enter into another jurisdiction, they are essentially independent businessmen representing the City of Gig Harbor; they follow our policies and procedures. When in another jurisdictions, those serving as supervisors act only as coordinators to set out the perimeters and to explain the paperwork. Chief Davis explained that he is very comfortable knowing the benefits far outweigh the perceived risk.

Mayor Pro Tem Ekberg asked the frequency and number of officers involved in the DUI Task Force. Chief Davis responded that there are approximately 20 emphasis patrols in Pierce County per year. We have one rotational officer that participates in about $\frac{3}{4}$ of those. It is funded through grants from the Washington Traffic Safety Commission.

Councilmember Payne asked if it impacts coverage when an officer participates. Chief Davis responded that an officer is only allowed to participate when there is enough coverage on a shift to compensate. He said that Gig Harbor has participated in the program for at least ten years. He added that he is currently the chairman of the DUI Task Force and very aware of the duties, workings and the agreements between the agencies.

Councilmember Franich asked who would be in control of the officers out on a DUI Task Force Patrol. Chief Davis explained that if there was a critical incident, the jurisdiction's supervisor would immediately take over and direct the activities of the event. The normal course of events in the emphasis patrol doesn't require this level of supervision. Councilmember Franich said that he would support the agreement, but also has liability concerns.

Mayor Pro Tem Ekberg asked how the exposure would be different than in any instance when the officers assist another jurisdiction. Chief Davis explained that the Washington Mutual Aid Police Officers' Act 10.90.93 is the legislation that supports this action. In the

instance of the DUI Task Force, there is an agreement that lays out the operations and procedures that further supports the WMAPOA.

Councilmember Kadzik asked how many officers are involved in an emphasis patrol. Chief Davis responded that usually there are 15-30 total officers.

Carol Morris pointed out that this agreement doesn't follow the Washington Mutual Aid Powers Act and that is where her concerns lie. The MPPA says that when there is a supervisory directing the officers, that these supervising officer and his jurisdiction has the liability for the action unless there is an agreement that allocates the liability differently. The Traffic Safety Emphasis Interlocal Agreement allocates the responsibility and liability to the participating agency.

Councilmember Dick agreed that the Police Powers Act assumes responsibility and liability, but it is common to change this by other agreement. One of the reasons someone would chose to change this is when you have many people helping, it is difficult for the supervising agency to know how well the officers are trained. Under those circumstances, the jurisdictions decide that each jurisdiction bears the liability for their own employees. Both models work and both are appropriate. Councilmember Dick then said that he feels more comfortable with this model because we control it. We train the officers and bear the liability even when they are helping another agency. Unless all the other agencies are willing to rewrite the agreement, this is a better allocation of risk.

Chief Davis responded that this agreement has been in effect for many years, and none of the other agencies are willing to make changes.

Carol Morris pointed out that she would be remiss if she didn't remind Council that this is an issue under the city's insurance coverage. There could be an issue whether AWC Insurance would cover the officer's liability under this agreement. Councilmember Dick said that he could anticipate that we are covered because other cities would not have signed in if they couldn't have coverage, but then agreed that it should be checked.

Chief Davis said that he will contact AWC to check coverage and bring this back at the next meeting.

Councilmember Young said that the city acted without a written agreement for several years, and he recommended not changing the terms of the agreement because of the concern that other agencies may not be as well-trained as ours. He said that he trusts our officers to take the appropriate action.

MOTION: Move to table this to the next meeting and staff bring back an answer to the insurance coverage issue.
Dick / Franich – unanimously approved.

6. Bid Award – Briarwood Pedestrian Street Improvement Project – Phase 1. John Vodopich presented this bid award for improvements along Briarwood Lane between Point Fosdick and 33rd Avenue. The bids were in excess of the budgeted amount, however, sufficient funds are available in the street/utility fund. He addressed questions on the project and recommended approval.

MOTION: Move to authorize the award and execution of the contract for this project to Pape & Sons Construction, Inc. as the lowest responsible bidder, for their quotation proposal in the not-to-exceed amount of \$131,239.50.
Conan / Payne – unanimously approved.

STAFF REPORT:

1. Friends of the Parks Commission Progress Report. Councilmember Payne pointed out that the Commission is asking for direction from Council regarding clearing of the property. Staff advised that this was already budgeted for June of this year. Mayor Pro Tem Ekberg asked that staff transmit this information to the Commission.

2. Mark Hoppen, City Administrator – St. Anthony Hospital Update. Mr. Hoppen noted that the final Supplemental Environmental Impact Statement is due the end of this week. The Planning Commission work-study session will be held April 6th, and the hearing will be held April 20th. This will enable the ordinance to come before Council in May. He continued to explain that HB 2670 was signed by the Governor and provides the potential for funding relating to the development of the hospital and other infrastructure in that area. He said that the Mayor, the Finance Director and he met with the state revenue folks, as well as the bonding representative from Bank of America to gain insight and determine an outline of the earliest time action could be taken.

In order to use HB 2670, there would have to be a history of sales tax receipts established over and above the baseline calendar year, 2007, that most likely would be three years in duration. It will take time to use this bill, but projects can be identified beforehand. He said that in August, Council could expect to see a draft ordinance that identifies potential projects consistent with the Comprehensive Plan elements augmenting the development of the hospital and other infrastructure in the Gig Harbor North area. The near future task is to conduct discussions with the city's Bond Counsel about the viability of the bill and how it relates to the capacity to sell such revenue bonds.

Councilmember Dick asked for clarification on the baseline year. Mr. Hoppen responded that the year that the sales tax assessment begins is 2007. Other trends may factor in the sale of bonds, such as a strong sales tax history. This will be explored before the August discussion.

Councilmember Young said that he believed that the baseline can begin in August of 2006. Mr. Hoppen said that he doesn't believe that this is the case. Councilmember Dick said that he wants to begin gathering the facts as soon as possible.

PUBLIC COMMENT: None.

COUNCIL COMMENTS:

Councilmember Young made the following motion.

MOTION: Move to direct staff to prepare a recommendation to forward to the Planning Commission to address the conflicting sections in the city code pointed out by Wade Perrow and for the Planning Commission bring back a recommendation for Council consideration.
Young / Conan – unanimously approved.

EXECUTIVE SESSION: For the purpose of discussing property acquisition per RCW 42.30.110(1)(b).

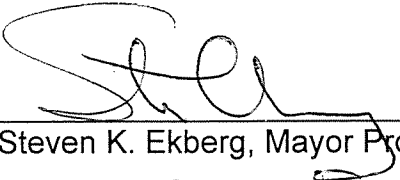
MOTION: Move to adjourn to executive session at 8:20 p.m. for approximately fifteen minutes to discuss property acquisition per RCW 42.30.110(1)(b).
Franich / Conan – unanimously approved.

MOTION: Move to return to regular session at 8:34 p.m.
Franich / Conan – unanimously approved.

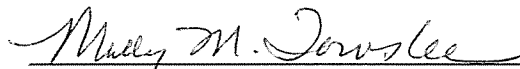
ADJOURN:

MOTION: Move to adjourn at 8:35 p.m.
Franich / Young – unanimously approved.

CD recorder utilized:
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Steven K. Ekberg, Mayor Pro Tem



Molly M. Towslee, City Clerk