

GIG HARBOR CITY COUNCIL MEETING OF NOVEMBER 13, 2006

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

CALL TO ORDER: 6:33 p.m.

EXECUTIVE SESSION: For the purpose of discussing labor negotiations per RCW 42.30.140(4)(b).

MOTION: Move to adjourn to Executive Session for approximately 30 minutes at 6:34 p.m. in order to discuss labor negotiations per RCW 42.30.140(4)(b). Franich / Ekberg – unanimously approved.

MOTION: Move to return to regular session at 7:03 p.m. Franich / Conan – unanimously approved.

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 October 23, and Special City Council Meeting of October 30, 2006.
2. Correspondence / Proclamations: 1) Letter from DBWRA 2) Declaration of Emergency.
3. Resolution No. 690 – Wheeler Avenue Street Vacation – Barta.
4. Resolution No. 691– Rust Street Vacation – Beck.
5. Holiday Treelighting Contract Authorization.
6. Sanitary Sewer Facilities Easement and Maintenance Agreement – Harbor Crossing - Little Boat North Inc.
7. Stormwater Facilities Maintenance Agreement and Restrictive Covenant – Olympic Mixed Use Development – Olympic Drive Land LLC.
8. Stormwater Facilities Maintenance Agreement and Restrictive Covenant – Wilhelmson Short Plat – R-Anderson LLC.
9. Purchase Authorization – Dissolved Oxygen Analyzer.
10. Liquor License Application: Hot Iron Grill
11. Approval of Payment of Bills for November 13, 2006:
Checks #51861 through #52027 in the amount of \$377,442.99.
12. Approval of Payroll for the month of October:
Checks #4458 through #4488 and direct deposit entries in the amount of \$262,561.64.

Councilmember Franich asked that items number three and four be moved to New Business.

MOTION: Move to approve the Consent Agenda as amended. Ekberg / Franich – unanimously approved.

OLD BUSINESS:

1. Second Reading of Ordinance - 2006 Property Tax Levy. David Rodenbach, Finance Director, presented this ordinance that sets the 2006 Property Tax Levy for collection in 2006.

MOTION: Move that the city forego collecting the 1% property tax levy for this year.
Franich / Conan –

Councilmember Young asked how much this would remove from the budget. David Rodenbach responded that it would be approximately \$15,000.00.

Councilmember Franich spoke in favor of removing the levy as a show of good faith in these times of escalating property taxes. He said the projected revenues are up and \$15,000 will not cause the city to be unable to build a project.

Councilmember Conan agreed that this is more of a good faith effort. The \$15,000 wouldn't make a huge impact, even though we could obviously use it. It also won't make a huge impact in the average taxpayer's pocketbook, but it's a gesture of good faith that we don't always have to collect everything that we need.

Councilmember Ekberg said that the \$15,000 may be symbolic, but doesn't necessarily do anything about the property tax issues. He said that this not something that he can support.

Councilmember Kadzik said that this amounts to one cent per thousand per household, and although symbolic, it is futile. He said that he would not support this motion.

Councilmember Dick said that he also will not support this motion. He voiced his concern that the city would be unable to accumulate enough for the repair and construction of roads. He said that the property tax rate is probably way too low and it doesn't make sense to say we don't have enough money to develop our roads, but then to say we need to make a gesture.

Councilmember Franich said that during the recent budget process, money got spent on things like flower baskets and Christmas lights, and that this money could have gone toward road projects. He also mentioned the proposed split in paying the Marketing Director's salary from the 90/10 split to one where the city pays 25% of the salary for duties that are not tourism related. He said that denying the levy increase is more than just a gesture.

RESTATED MOTION: Move that the city forego collecting the 1% property tax levy.
Franich / Conan – a roll call vote was taken.

Ekberg – no; Young – yes; Franich – yes; Conan – yes; Dick – no; Payne – yes; Kadzik – no.

The motion to amend the ordinance passed four to three.

MOTION: Move to adopt Ordinance No. 1058 as amended to forgo the 1% property tax increase.
Young / Conan - unanimously approved.

2. Second Reading of Ordinance – Relating to Annexation and Zoning – McCormick Ridge LLC (ANX 04-04). John Vodopich, Community Development Director, explained that this ordinance annexes approximately 38 acres located west of Canterwood Boulevard and establishes zoning.

MOTION: Move to adopt Ordinance No. 1059.
Ekberg / Payne - unanimously approved.

3. Second Reading of Ordinance – Changing the Meeting Time of the Regular City Council Meetings. John Vodopich presented this ordinance that would change the regular meeting time of Council Meetings from 7 p.m. to 6 p.m.

Councilmember Franich mentioned that the main concern is to not hinder public input. He said that the majority of the citizens come to the meetings rarely, and when they do, it is for a specific reason. He said that he doesn't believe this will be a hardship on allowing public participation.

MOTION: Move to adopt Ordinance No. 1060.
Franich / Ekberg -

Councilmember Young mentioned the benefit to staff and the meetings ending earlier, but for the working person, it may create a hardship and he doesn't want to further discourage people from attending the meetings.

Councilmember Payne said that he shared many of the same concerns, however, since it can be reversed, he would be willing to give it a try.

RESTATED MOTION: Move to adopt Ordinance No. 1060.
Franich / Ekberg – five voted in favor. Councilmembers Young and Dick voted no.

NEW BUSINESS:

1. Public Hearing - Resolution for Harbor Hill Development Application (postponed from last meeting.) Mayor Hunter said that the purpose of the hearing is for the City Council to consider the pertinent facts, applicable law and to make a final decision on the application of the Harbor Hill LLC for a Development Agreement for the development of the residual parcels at the Costco shopping center in the Gig Harbor North Area.

Mayor Hunter opened the public hearing at 7:16 p.m. and asked cooperation in the following procedure, which he read into the record.

“Everyone present will be given an opportunity to be heard. The City Clerk will make a tape recording of the proceedings. Therefore, when you address the Council, begin by stating your name and address. Speak slowly and clearly. Only one person will be allowed to speak at a time.

The Appearance of Fairness Doctrine requires that this hearing be fair, in form, substance and appearance. The hearing must not only be fair, it also must appear to be fair. Therefore, I would like to ask whether any member of this decision making body has engaged in communication with opponents or proponents regarding this issue outside of the public hearing process? “

Councilmember Payne responded that he had contact with the Project Manager, John Chadwell, and on 9-27, he met with Mr. Chadwell to discuss the Harbor Hill Project in general, and to discuss the specifics of the Development Agreement and Cash Set-Aside. He said that in addition, he had a telephone conversation with Mr. Chadwell on the 29th, with similar discussion on the Cash Set-Aside Agreement.

Councilmember Ekberg said that he also had a meeting in his office with John Chadwell and John Rose near the end of September. They disclosed that their application had already been ruled upon by the Hearing Examiner and continued to discuss their concerns over the lengthy time it was taking to get a Development Agreement. He said that he had one follow-up conversation with Mr. Chadwell a few days later.

Carol Morris, City Attorney, asked Councilmembers Payne and Ekberg if these contacts would prevent them from acting impartially on the application. Both responded no.

Mayor Hunter then asked if any member of the Council would obtain any financial benefit or suffer a financial loss as a result of the outcome of this hearing. No one responded to the query.

Mayor Hunter asked if any member of the Council believes that he cannot hear and consider this application in a fair and objective manner. Again, there was no response.

Mayor Hunter then asked if anyone in the audience objects to his participation or to any other Councilmember’s participation as a decision maker in this hearing. No one came forward to respond.

John Vodopich presented the staff report. He explained that this had been postponed from the October 23rd meeting in order for the City Attorney to respond to comments from the applicant’s attorney. He said that Carol Morris has prepared a response to the most recent submittal, which is included in the agenda packet.

Carol Morris gave an overview of her memo to Council regarding the Harbor Hill draft Development Agreement. Ms. Morris recommended that Council vote to approve the Development Agreement with her suggested changes, after the Cash Set-Aside is

executed and deposited in a financial institution to show record that the security has been posted before the Development Agreement is signed. She further recommended that Council not adopt the agreement with \$150,000.00 as security, adding that Council should set the amount as high as possible to ensure that this doesn't become "the cost of doing business in Gig Harbor" for complying with this particular code.

Ms. Morris continued to overview her comments on the Development Agreement, and in particular, the language added by the Developer to Section 10, page 6 "The Security Deposit shall represent the entire liability of the Developer and the Landowner for any default under Section 9 of this Agreement." She stressed that this should be removed, as the city must have the ability to enforce the agreement in court and to impose penalties under the zoning code.

Ms. Morris concluded by saying that these changes need to be made, and an amended version could be brought back if Council agrees. Otherwise, Council could approve the agreement conditioned upon the Cash Set-aside being executed and posted first.

John Rose – President of Olympic Property Group – 19245 10th Ave. NE, Poulsbo, WA 98370. Mr. Rose said that for the record, there has been no sale and that they could supply a current title report, per the recommendation by Carol Morris. He passed out an exhibit illustrating the site plan allowed by the Design Manual, and the alternative design that places the Costco Store to the back of the property. He gave the background for the need for a Development Agreement. He said that they are focusing on two issues; the substance of the agreement, and the process that it took to get to this point.

Mr. Rose commented that it has taken five months to get to this point. He said that due to scarce resources, most time and attention should be focused on the biggest areas of risk. He said that the big risk here is the desire to put Costco in the back, asking if this is risk enough to be worth five months time. He said that the Design Review process, although not fun, was good. The DRB pushed the OPG Design Team to come up with a superior plan. He added that some of the suggestions made by the DRB, such as the timing issues, are beyond their authority, but, by in large, he feels that they received fair treatment. The site plan really got worked over, and the city was well served by the process.

Mr. Rose continued to explain that the issue before Council is a simple issue about the condition for an incentive for the developer to complete the project. Even though this is beyond the DRB's authority, in the interest of give and take, they will agree to it. He then said that what they have been "wrangling" over are not legal issues, but policy issues. He said that his Project Manager will describe the project and then their attorney will go over the agreement. He said that he hopes that we can get somewhere tonight, as this has taken a long time.

John Chadwell – Olympic Property Group – 4423 Pt. Fosdick Drive. Mr. Chadwell gave an overview of the proposal to place Costco at the back of the property and the smaller, retail buildings at the frontage. He said that the Design Review Board proposed that the

first two buildings be completed within twelve months of the Costco foundation and the remaining three within two years. Staff asked that they not clear any of the pad areas until the Development Agreement was approved which they agreed to do. Another recommendation has come forward to leave the trees until ready to build. They agree with this with one caveat. He said that they agreed with the DRB to the timing with the agreement in place for some sort of damages to be paid and in exchange for this, they would like to be allowed to clear and grade the whole area all at one time once the building permits are pulled for the first building. It would be too complicated to try and build just one at a time. Mr. Chadwell concluded by explaining that they have proposed an extended timeline of six-months in order to accommodate the separate clearing and grading of the site.

Marko de Sa e Silva – Attorney, Davis Wright Tremain – 1051 Fourth Ave #2600, Seattle, 98101. Mr. de Sa e Silva gave an overview of the recommendations from staff that had been incorporated into the Hearing Examiner’s Decision of August 1, 2006. He then went over the differences in the form of Development Agreement that he proposed as opposed to that of the city attorney. He stressed that the most significant difference is if the developer defaults in performance and forfeits the security deposit to the city, then the city has no further remedies. The reason that they included this language is because the Hearing Examiner advised them to do so in the form of “liquidated damages.” Another difference is a graduated schedule for penalties. He said that they are asking that the penalties do not begin to accrue until after a 30-day cure period and they would like the graduated schedule of liquidated damages. The third difference is the timing of the Cash Set-Aside. He proposes that the Development Agreement be signed before his client places the security deposit in the bank. He voiced concern with placing \$150,000 in the bank without any control over it. He said that he is at least asking for a deadline for the Development Agreement to be executed if the security deposit must be deposited first.

Mr. de Sa e Silva handed out red-lined versions of the Development Agreement and Cash Set-Aside showing changes they made since the October 2nd version. He then went through the changes.

Councilmember Young asked if the proposed language in Section 10 means that the city cannot enforce compliance of the city code and terms of the agreement. Mr. de Sa e Silva responded “no.” He said that the Hearing Examiner asked for liquidated damages, which meant a certain penalty if the developer does not comply with the schedule. Given the amount, it is their belief that this is more than sufficient for a superior design.

Councilmember Young asked if the city cannot enforce the code or design, then what would stop the developer from paying the \$150,000 and then not performing.

Jon Rose responded that this doesn’t stop the city from enforcing the rest of the things such as changing out materials, or not following the height ordinance. The city can still enforce all those things.

Mr. de Sa e Silva clarified that this is only with respect to the timing of construction on the residual parcels. If the developer fails to meet the deadlines, \$150,000 is paid to the city.

Councilmember Young stressed that the city cannot, under any circumstances, forfeit the ability to enforce specific performance. You must still meet all terms of the city code.

Councilmember Dick said that the problem is if the developer forfeits the security deposit and then doesn't build to the "superior plan," then the city is left holding the bag under this analysis. This proposed agreement doesn't specify that it only relates to the timing of construction.

Mr. de Sa e Silva said again that they asked for liquidated damages because that's what the Hearing Examiner said in his decision, and that he understands that Council may negotiate something different. He then responded to the comment by the city attorney that \$150,000 is too low. He said that they feel it is too high for such a superior design, and there is no fairness in the developer paying this amount for being 28 days late. He suggested giving the city all of its remedies to compel specific performance with a *fair penalty* if the deadline is missed. He stressed that a fair amount would be enough to create an incentive, adding that \$150,000 is excessive.

Councilmember Ekberg responded that it is only a superior design as long as the buildings are built as designed. The city has to look at whether they get built at all. Mr. de Sa e Silva said he thinks it fair if the city wants to reserve the broad range of remedies to make sure this gets built, but with a fair penalty for missing the completion date. He proceeded to go through the rest of the revisions to the Development Agreement and the Cash Set Aside.

Mr. de Sa e Silva urged Council not to delay a decision on this, offering to allow the Council to continue with the other agenda items while he made amendments to the document to be brought back later in the meeting.

Councilmember Young voiced concern with the comment that \$150,000 is unfair. He said that he has no comparative, and asked for an estimated market value of the property in order to determine what would be a fair number to be a sufficient incentive. He said that if the money to be gained by delaying construction outweighs the amount of the security deposit, then it becomes the "price of doing business."

Mr. de Sa e Silva said that the focus should be on the relationship of the amount of the deposit and the harm that the city would suffer if this deadline is not met. Councilmember Young stressed that this amount is to force compliance and in order to do so, there has to be significant enough pain.

Mr. de Sa e Silva said that if the amount wasn't significant pain, they would not have made this big an issue of it, and would not have risked their credibility over this fundamental issue which they feel is out of proportion to the harm caused. He said that

in his mind, somewhere between \$25,000 and \$50,000 would be sufficient to cause pain if the city retains its other rights.

Councilmember Young then asked to incorporate language for future owners to understand that this is for liquidated damages, but they still have to comply with all city codes. Carol Morris, City Attorney, said that number 11 of her memo proposes this language.

Councilmember Dick said that one easy remedy is that the Cash Set-Aside Agreement and Development Agreement be signed at the same time. He voiced concern that the liquidated damages language is so narrowly written that it implies that the city would have no further remedy other than the \$150,000. He said that he understands that this isn't the intent and past dealings have been fine, but another owner may have a different agenda. He suggested adding language that gives the city appropriate remedy. He added that he views the \$150,000 as security for doing these things, not liquidated damages. He said that the language that the city attorney has suggested is appropriate.

Mr. de Sa e Silva agreed to the idea that both parties sign at the same time. He also said that the concept that the sum of money is security for performance and available for the city to draw on for attorney's fees and civil penalties is reasonable.

Councilmember Young suggested finishing up the public hearing and going on with the rest of the agenda and coming back to this at the end of the meeting.

Mayor Hunter invited comments from the public. He said that in fairness to all in attendance, each person will be given an opportunity to address the Council for an initial period not to exceed three minutes. If more time is needed, it will be made available after everyone has had a chance to speak.

Jeff Hogan – 5129 Buena Vista Drive, Edgewood, Washington. Mr. Hogan explained that he is potential purchaser of the residual parcels and has been involved for the past three years. He said that the Development Agreement is a result of not wanting the trees cut until the buildings are ready to go. Now a timeline of 30 months to have all the buildings constructed has been added, he said. He stressed that it would be hard to do them all at the same time. Mr. Hogan then said that the buildings have already been approved and won't change in look without going back to the Hearing Examiner. He asked if there is a flood and they cannot finish within the deadline if they forfeit the \$150,000. He suggested that we shouldn't focus on the penalty but the final product, which has already been decided. He said that staff has okayed the plans, and now the attorneys are negotiating numbers, with the city attorney saying that the amount isn't enough. He asked Council to consider that the attorney doesn't normally set the fees.

Carol Morris responded to the comment about the flooding, that she told the developer's attorney that they could come to Council and ask for an amendment to the deadline and Council would be reasonable if there was an Act of God or other circumstances beyond

their control. She then addressed the other comments made by the developer's attorney.

Ms. Morris explained that the Hearing Examiner has no authority to amend the city code. There is an existing procedure in place for development agreements for phased developments, in a form to be approved by the city attorney. She said that the Hearing Examiner assumes that the city will use a form with standard contract language requiring code conformance, with penalties to be assessed as set forth in the zoning code. She stressed that this language was in every version of the agreement that was sent to the developer's attorney. Ms. Morris then said that the Hearing Examiner did not suggest a graduated penalty provision. She addressed the execution of the Cash Set Aside, explaining that she has no problem with the Mayor signing the Development Agreement as long as there is assurance that the money is deposited in a financial institution, adding that a provision that the Development Agreement is signed so many days after the money is deposited is fine.

Mayor Hunter closed the public hearing at 8:29 p.m., adding that Council reserves the right to re-open the hearing at a later time.

2. Public Hearing and Resolution – Hansen Annexation ANX 16-1313. John Vodopich presented the background information on this resolution accepting the annexation petition for the Hansen Annexation.

Mayor Hunter opened the public hearing at 8:30 p.m.

Eva Jacobsen – 5808 Reid Drive. Ms. Jacobsen urged Council to approve this annexation. She explained that the legal description has been modified to include the entire portion of Skansie Avenue contained in the proposed annexation.

There were no further public comments and the public hearing closed.

MOTION: Move to adopt Resolution No. 692 accepting the Hansen Annexation. Payne / Young – unanimously approved.

3. Tideland Easement – Peter Stanley. John Vodopich gave a brief background on this request for a tideland easement for a period of 20 years. He said that the map illustrates that portion of Soundview Drive extends out into the water to the inner harbor line. The portion of the Tide's Tavern deck and storage shed is 440 square feet and the Floating Dock that encroaches over city-owned tidelands is estimated to be 34 square feet. He explained that the city attorney has proposed a lease agreement with a fee rather than an easement. The current lease rate paid by Mr. Stanley for his other tidelands is \$.46 per square foot. He recommended that the City Attorney draft a lease agreement to be brought back for ratification.

Councilmember Dick said that an important provision in the old agreement is that it has a one-year termination clause. He then said that \$.46 has zero relationship to the fair value of that dock and we shouldn't give public use for less than fair value.

John Vodopich said that DNR uses a complicated formula based on the assessed value of the upland property.

MOTION: Move to direct the City Attorney to negotiate a lease with Mr. Stanley and bring it back at the next possible meeting.
Young / Ekberg – unanimously approved.

4. “Road Map” for Interchange Improvements on SR-16 – Contract Amendment. Steve Misiurak, City Engineer, presented this contract amendment for the interchange improvements on SR-16. The Department of Transportation has requested additional information and work products associated with the effort to get the single-point urban interchange. He explained that the expenditure is funded by FHS, OPG and the city.

Councilmember Franich voiced concern with the vague language in the contract. Councilmember Payne agreed, and suggested that the contractor clarify the language.

MOTION: Move to approve the consultant services contract with David Evans and Associates, Inc., for the “Road Map” for interchange improvements on SR-16 in the amount not-to-exceed Twenty-one Thousand Eight Hundred Fifty-three Dollars (\$21,853.00).
Ekberg / Payne – unanimously approved.

5. Burnham/Borgen/SR-16 Corridor Improvement Project – Contract Authorization for Professional Engineering Services. Steve Misiurak presented the background information for this contract to design the roadway improvements identified in the 2005 Final Supplemental Environmental Impact Statement. He said that this is funded by Franciscan Health Systems. He explained that we are using the WSDOT Standard Consultant Agreement rather than the city's in anticipation of federal grant funding.

Councilmember Payne asked if Mr. Kuenkle, Franciscan's Project Manager, had an opportunity to review the materials. Mr. Misiurak responded that FHS representatives attend the workshop to go over the work items and they were in agreement.

Councilmember Franich said that this is a prime example of bureaucracy gone totally crazy when you have to spend 1.5 million and you don't get an inch of pavement laid. He said that he wishes somebody could come up with an answer on how to get some of these regulations changed so that this money could be used a lot more effectively than paying a consultant.

MOTION: Move to approve the consultant services contract with David Evans and Associates, Inc. for professional services associated with the design and permitting for the corridor improvements in the amount not-

to-exceed One Million, Five Hundred Twelve Thousand, One Hundred Sixty Dollars, and Seventy-six Cents (\$1,512,160.76).
Young / Conan – unanimously approved.

6. Resolution No. 690 – Wheeler Avenue Street Vacation – Barta. Councilmember Franich said that even though these resolutions are just setting dates for public hearings for these street vacations, as a matter of practice in the past, we haven't had resolutions on the consent agenda and that is why he requested taking them off.

Clerk Towslee responded that when something routine that doesn't require discussion such as setting a hearing date, staff places it on the consent agenda in order to save time.

Councilmember Dick said that he doesn't feel it is appropriate to set a public hearing date because this property cannot be considered for vacation because it is a street end and touches water. If the property owner establishes that this has never been open to the public, it is a separate issue, but not one in which the city has discretion. The state has taken away this discretion.

Councilmember Young said that although he doesn't disagree, it wouldn't hurt to have a public hearing and bring up these issues at that time. Carol Morris recommended that Council follow the code and process the vacation.

MOTION: Move to adopt Resolution No. 690 setting a public hearing date for the Wheeler Avenue street vacation.
Ekberg / Young – six voted in favor. Councilmember Dick voted no.

7. Resolution No. 691– Rust Street Vacation – Beck. No discussion on this agenda item.

MOTION: Move to adopt Resolution No. 691 setting a public hearing date for the Rust Street vacation.
Young / Ekberg – six voted in favor. Councilmember Dick voted no.

John Vodopich clarified that the public notice would be amended to reflect the 6:00 p.m. starting time for the Council Meetings just adopted.

Councilmember Young then recommended that the new meeting time become effective after the first of the year.

MOTION: Move to reconsider Ordinance 1060.
Franich / Payne – unanimously approved.

MOTION: Move to amend the effective date of Ordinance 1060 so that it becomes effective on January 1, 2007.

Franich / Conan – five voted in favor. Councilmembers Young and Dick voted no.

6. Public Hearing and First Reading of Ordinance – 2007 Proposed Budget. David Rodenbach, Finance Director, gave an overview of the highlights of the 2007 Budget.

Mayor Hunter opened the public hearing at 9:00 p.m.

Jack Bujacich – 3607 Ross Avenue. Mr. Bujacich said that he has a hard time understanding the Council wanting to give back \$15,000 in property tax levy dollars when we are trying to build a hospital and the road system when the county, the state, and everyone else is scraping the bottom of the pot. It is a minor amount to the taxpayers, but this money could pay for consulting fees or other needs for the overall, and it is hard to go a meeting and ask the county and state for money to build these roads. He finalized by saying that you may look good in the newspaper, but to him, you look bad.

There were no further comments and the public hearing closed at 9:03 p.m.

Councilmember Young recommended adding an additional \$25,000 to the base rate for the lobbyist to capture federal dollars for our road projects and gave the background for his reasoning. Councilmember Conan clarified that \$25,000 had already been added to the draft budget after the budget worksessions.

Councilmember Franich brought up the Mayor's need for administrative help. During the worksessions, a vote was made to remove the proposed position that passed 4 to 3. He said that he thinks it is important and said that there has been talk that this position would not be filled until the City Administrator is hired and some time, possibly 30 days, is allowed for him or her to analyze the situation to determine whether the position will be filled. He said that he would like to identify this as a goal or objective in the 2007 Budget in order to be able to provide funding.

Councilmember Ekberg said that we could do a budget amendment or Councilmember Franich could propose language for an amendment at the second reading. He then said that he too had amendments to consider at the second reading. One is to add another full-time police officer half-way through the year to focus on traffic enforcement. The other consideration is in regards to the increase the salary range on the Tourism / Marketing Director to be par with the Director of Operations, Fire Marshal, City Engineer and Planning Director. He said that a range move of 38% is too high for that position, and considers it to be more in line with the City Clerk or City Planner Range.

Councilmember Young responded to Councilmember Franich. He explained that the budget is a policy document rather than a financial instrument. The objectives and goals are instructions to staff. If you are going to add an objective to hire a position then come back with a budget amendment, you are instructing staff to do so. He said unless Council wants to add the position to the budget, this may not be the right tool.

Councilmember Franich said that he thinks that the position should be budgeted and filled. He is taking this approach because that seems to be a way that the other Councilmembers can “get their arms around,” adding that he will work out the language. He then addressed the comments by Councilmember Ekberg. He said that the Marketing Director’s salary has been funded with 90% coming from the Hotel/Motel Tax and 10% coming from the General Fund. This budget proposes a 75/25 split. He said that he had received the memo from Lauren Lund that supports the argument for the switch, but he thinks we should keep with the 90/10 split and ask ourselves if someone we are paying this amount of money should be planning parties or doing other minor things that can be done by an Administrative Assistant.

Councilmember Dick responded to this by saying that if a position is added back into the budget, the job description needs to be shared with the Employee Guild to give them an opportunity to comment.

Councilmember Franich said he would speak to Scott Snyder, City Personnel Attorney, to remedy this concern.

Clerk Towslee referenced a memo she sent to Council requesting an amendment to the webpage updates for the Gig Harbor Arts Commission. Councilmembers supported the recommendation to change the wording as proposed.

There were no further comments and Mayor Hunter said that this would be back for a second reading at the next meeting.

STAFF REPORT:

1. Davis, Chief of Police – October Report. Chief Davis asked if Council had any questions on the report.

Councilmember Payne commented his appreciation at seeing more calls to the Skatepark. He said it is good to have tighter monitoring of the area.

PUBLIC COMMENT:

Scott Wagner PO Box 492, Gig Harbor. Mr. Wagner gave a presentation on the efforts made by the Shoreacres Water System in an effort to have the city take over the system. He said that after all had been done and all the money had been spent, he received a letter of decision from John Vodopich that said that the city would not accept the system. He said that he is looking for an explanation for why the system is being rejected and would like a decision that they would be able to complete the task. Mr. Wagner pointed out that there was a water operating objective in the 2006 Budget to negotiate an equitable transfer of the Shoreacres Water System to the city water utility because Council thought it was in the city’s interest to take over the system. He described the system, including all the things that have been done to date to bring it up to city standards.

Councilmember Young commented that he participated in the discussions. He said that there is no authority for the Council Operations Committee to act on behalf of the city, but that they should make recommendations to the Council. In this case, it was an oversight that the letter of denial was sent. He suggested that the information be compiled by both Mr. Wagner and staff and brought back to the full Council for consideration at the next meeting. Councilmember Franich, who also serves on the Operations Committee, talked about some of the issues that were discussed such as bringing some of the other things up to city standards. He agreed that bringing it back to Council would be the best approach.

Mr. Wagner said that no other major water company would be asked to contact their members to ask if they agreed to an LID to install sidewalks, sewers, and other infrastructure. They would only deal with the water infrastructure. He stressed that he is representing a water system and cannot negotiate LIDs.

Councilmember Ekberg apologized that the response that Mr. Wagner received wasn't as detailed as he would have liked. He said that he too was on the committee, and economically, it just didn't look viable to the city to accept the system. However, the rest of the council did not have an opportunity to review the information and apologized for that. He then said that he is sorry that Scott is no longer on the Planning Commission and thanked him for his past service.

Mr. Wagner asked for clarification on the next step. Councilmember Young suggested a report from staff and information from the Shoreacres Water System to be given to Council to review.

Councilmember Ekberg clarified that if Council concurs that it merits further discussion, then it will come back as an agenda item. If they concur with the Community Development Committee, then it probably won't be an agenda item.

John Vodopich asked Mr. Wagner to submit any materials by next Tuesday due to the holiday schedule or it will slip to the December 11th meeting.

Councilmember Kadzik asked about timing issues. Mr. Wagner responded that he plans to resign from the Board and wants to quickly get to the point that he can do so. The other Councilmembers thanked Scott for his service on the Planning Commission.

Jack Bujacich - 3607 Ross Avenue. Mr. Bujacich gave the history of the Shoreacres Water System. He said that they installed a metered system and bought water from the city. Part of the agreement was to revert the first 660 feet of line back to the city. When the uplands were developed and the city wanted to hook and extend this line, the Shoreacres Water Company wouldn't allow it. Rather than a court battle, the developers ran a parallel line down Soundview. Shoreacres was getting water at a lower rate than city residents, but chose to drill their own well, rather than pay an

increase in fees. They were unsuccessful and had to pay the additional city fees. The answer to the problem is a petition to annex to the city.

Mike Shipman – 6516 27th Ave. NW. Mr. Shipman, a homeowner and voter in the Shoreacres Water System, presented comparative information on what they pay for water. He said that the issue of water is critical and why Scott and the other homeowners are frustrated. He asked that the city take some responsibility to help them, which is all that they are asking. He then said that half the people on the system are in city limits, and voters.

Councilmember Young explained that when you run a water system as a municipality, it is run as a business separate from the general tax base. He said that it is inappropriate to mix funds. The difficulty for the Shoreacres Water System is that not everyone lives in the city, and so all non-residents pay 50% more. One avenue that has been pursued is annexation so that the roads and other infrastructure can also be addressed. He said he sympathizes and would like to keep pursuing it, but there are obstacles that are not simple to solve.

COUNCIL COMMENTS / MAYOR’S REPORT: None.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Gig Harbor North Traffic Options Committee Meeting, November 15th at 9:00 a.m. in Community Room B.
2. Operations and Public projects Committee Meeting, November 16th at 3:00 p.m. in the Operations/Engineering Conference Room.

Carol Morris said that she has made handwritten changes to the Harbor Hill Development Agreement and Cash Set Aside Agreement, and said that she could make copies to distribute for discussion. Councilmember Ekberg asked for a brief recess.

A recess was called at 9:42 p.m. At this time, Councilmember Franich left the meeting.

The meeting reconvened at 10:00 p.m.

Marko de Sa e Silva asked to reopen the Public Hearing as he said that he would like to present a revised version of both agreements that addresses the concerns raised during the public hearing.

Councilmember Young suggested going through the agreement without the public hearing. Mr. de Sa e Silva passed out his version.

Carol Morris said that she hasn’t seen what he is passing out, and the changes may not have been made to the version in the packet. Councilmembers agreed to go through the agreements, using the city attorney’s version as the base, and discuss the amendments.

Ms. Morris suggested going through her amended version, then after that, Mr. de Sa e Silva could make additional comments.

Ms. Morris then gave an overview of the changes that she made to the document, beginning with the Cash Set Aside. She stressed that the Cash Set Aside isn't signed by the Mayor, and this is the form that she is going to approve, suggesting that no further changes be made.

Councilmembers discussed the concern of when to sign the Development Agreement and deposit the Cash Set Aside. Councilmembers decided that both documents should be signed while the money is being deposited to address concerns on both sides. Carol Morris and Mr. de Sa e Silva both agreed that this is acceptable.

Ms. Morris then moved on to the amendments to the Development Agreement. She said she added language requiring a title report to clarify that they still own the property prior to execution.

Jennifer Kester, Senior Planner, addressed a comment by Mr. de Sa e Silva on Section 9, Subsection A, that the last phrase had been changed to allow parcels to be cleared when the first building permit is pulled. She said she wanted to clarify that this is a substantive change. Councilmember Kadzik responded that Mr. de Sa e Silva explained the reasoning.

Ms. Morris continued with her amendments to section 10 to allow the agreements to be signed at the same time at the bank. She asked if Council wished to leave the security amount at \$150,000. After discussion, it was agreed to leave it as is and Ms. Morris continued with her amendments.

Mr. de Sa e Silva said that they accept the changes to Sections 11. He addressed Section 10, saying that their redraft would allow the City all remedies allowed by law, and the security deposit for the city to use for attorney's fees and other damages. He said that they left the amount at \$150,000, but still struggle with the fairness issue. He said that they deleted the schedule of fines. He asked that we only take the part of it that is fair.

Councilmember Dick said the city would have to do a fact-finding and litigation process to actually determine damages. He added that perhaps the pay-out schedule does have merit.

Carol Morris interjected that there is a misunderstanding. She read the changes she made to Section 11, and clarified that the city would be asking for specific performance, and to enforce the city's codes and / or to obtain penalties and costs as provided in the code. She said that those penalties are \$50 a day and there is nothing there that says the city is going after Harbor Hill for damages.

Mr. de Sa e Silva responded that the city has the right to sue for damages unless the agreement says differently. Ms. Morris said that if this is the issue, then there is no reason we couldn't add language to say that we wouldn't be suing for damages, because the security deposit is that damage. He then asked what kind of fact finding was done to come up with the amount. Councilmember Dick said that you make your best estimate as to what the delays would cost.

Mr. de Sa e Silva asked if language could be added to clarify what Ms. Morris has stated.

Councilmember Ekberg said that his concern is that the property is cleared and then nothing gets built. Mr. de Sa e Silva said that the city has the right to typical remedies and then has added another \$150,000 if you are 28 days late. He said that he doesn't understand this high amount. He said that he has heard from a few of the Councilmembers and asked if anyone else feel otherwise about this amount.

Councilmember Young said that he cannot do any fact finding without knowing the fair market value of the property. Mr. de Sa e Silva responded that the two concepts are unrelated, but the value is significantly less than ten million dollars. He stressed that this should not govern a decision.

John Vodopich interjected that the city could tie the performance to the issuance of the Certificate of Occupancy of the primary structure. This was done with the Target / Albertson's / Home Depot developments. All the Hearing Examiner said was a "binding commitment."

Mr. de Sa e Silva said that would be unfair as Costco is not part of their development, and that isn't what the Hearing Examiner asked for. Ms. Morris stressed that the Hearing Examiner had no jurisdiction over the development agreement. Mr. de Sa e Silva said that the City Council is the highest authority, adding that the Hearing Examiner works for the council. He said that they are trying to be faithful to what was asked for.

Councilmember Young asked for clarification on the problem with Section 11. Carol Morris explained that the language is there to state the existing authority. The reason for a development agreement is because they are not complying with the code due to the phasing aspect. She said she doesn't have a problem adding language that the city wouldn't sue for damages, because we can still get penalties per the code and specific performance. This isn't a question of what is fair, because the city has to enforce the code.

Mr. de Sa e Silva asked for an amendment to Section 11 in which the city would waive the right to make a claim for money damages, which the city attorney agreed to. The other issue is in Section 10, and he asked that the \$150,000 be viewed as a security deposit in which the city could take fees rather than a completely forfeited amount. He

asked the city attorney to clarify her revised version for what would happen in the event that the developer defaults.

Ms. Morris said that the security deposit in the cash set aside would be forfeited and then the city could sue to specifically enforce the agreement and because non-compliance would be a violation of the city zoning code, penalties would begin to accrue from the date of non-compliance until they comply. They would have to pay that amount over and above the security deposit. She warned about setting precedent for future phased development and other agreements that allow developers to use cash set asides.

Mr. de Sa e Silva said the fundamental difference in their version, is that the security deposit isn't forfeited, but becomes a bank account for the city to draw upon.

Councilmember Kadzik clarified that the developer want the money to pay expenses and the city wants it to be a penalty. Councilmember Dick said that it isn't supposed to be a penalty but is intended to be an estimate of damages, which doesn't have to be precise if difficult to compute. He said the estimate of liquidated damages for delay makes some sense because neither party has to expect a lawsuit to figure it out. This works better if it is clear that these are estimates of what the damage the city will suffer from the delay.

Mr. de Sa e Silva said he will assume that no City Councilmember supports their alternative. Councilmember Young said that he could not agree to it tonight and would need a more elaborate explanation as to why it makes more sense.

Mr. de Sa e Silva said that they are going to drop that request and offer support for the city attorney's version with the one change discussed in Section 11 clarifying that the city doesn't pursue money damages for default except for collection of the security deposit.

Carol Morris offered language to page 7, Subsection B, add "The city shall not have the ability to sue for money damages for delay under this agreement in excess of the security deposit in this cash set aside." In the next sentence cross out "in addition" and add "however, the city may institute legal proceedings..." She asked if this was acceptable.

Mr. de Sa e Silva said that this is acceptable to Harbor Hill. He then asked to have the agreement approved tonight.

Councilmembers responded that they want to see the agreement in final form before adoption, and would be willing to hold a special meeting in order to approve the agreements. A meeting was scheduled for Wednesday, December 13th at 5:30 p.m.

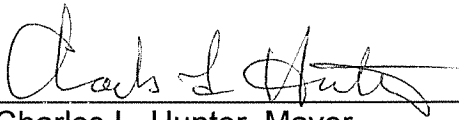
EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

Carol Morris explained that she was going to present an update on pending litigation, but it wasn't necessary. No Executive Session was held.

ADJOURN:

MOTION: Move to adjourn at 10:45 p.m.
Conan / Payne – unanimously approved.

CD recorder utilized:
Disk # 1 Tracks 1 – 27
Disk # 2 Tracks 1 – 30
Disk # 3 Tracks 1 - 19



Charles L. Hunter, Mayor



Molly M. Towslee, City Clerk