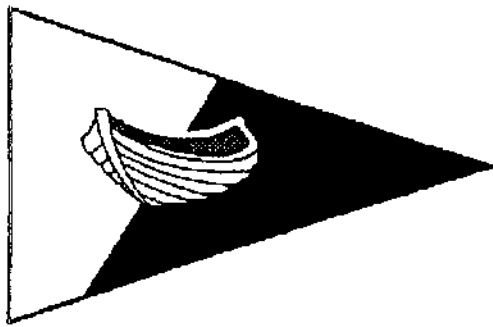


**GIG HARBOR
CITY COUNCIL MEETING**



APRIL 25, 1994

7:00 P.M., CITY HALL COUNCIL CHAMBERS

**AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
APRIL 25, 1994**

PUBLIC HEARING: None scheduled.

PUBLIC COMMENT/DISCUSSION:

CALL TO ORDER:

APPROVAL OF MINUTES:

CORRESPONDENCE:

OLD BUSINESS:

1. Eden Systems Contract.

NEW BUSINESS:

1. First Reading - Definition of Telephone Services Ordinance.
2. First Reading - Marine Ordinance.
3. Appeal of Hearing Examiner Decision - Monique DeMartin - VAR 94-05.
4. Liquor License Renewals - Stockmarket and Thriftway.

STAFF REPORTS:

1. East/ West Road.
2. Quarterly Finance Report.

MAYOR'S REPORT: None scheduled.

COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

APPROVAL OF BILLS:

EXECUTIVE SESSION: None scheduled.

ADJOURN:

REGULAR GIG HARBOR CITY COUNCIL MEETING OF APRIL 11, 1994

PRESENT: Councilmembers Platt, Stevens Taylor, Ekberg, Markovich, Picinich and Mayor Wilbert.

PUBLIC HEARING:

New City Code Ordinance. Mayor Wilbert opened the Public Hearing for this ordinance adopting a new city code. No public comment was heard, the Public Hearing was closed at 7:05 p.m.

PUBLIC COMMENT / DISCUSSION: None.

CALL TO ORDER: 7:05 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of the last council meeting as submitted.
Picinich / Ekberg - unanimously approved.

CORRESPONDENCE:

1. **Selection of AWC Delegates.** Mayor Wilbert asked if any Councilmembers would be interested in acting as a voting delegate for the City of Gig Harbor at the upcoming AWC Conference in Spokane. Councilmember Stevens Taylor volunteered.
2. **Washington State Department of Transportation.** Mayor Wilbert announced that the City of Gig Harbor, through the experience and knowledge of the City Engineer, Ben Yazici, had been granted Limited Certification Acceptance status for administration of Federal-aid projects on a WSDOT project-by-project approval basis. Mr. Yazici explained that this status would allow more control over the projects within city limits. Mr. Yazici was congratulated for his efforts in this endeavor.

OLD BUSINESS:

1. **Second Reading - Ordinance Adopting New City Code.** Mark Hoppen introduced the second reading of this ordinance.

MOTION: Move to adopt Ordinance #668 adopting a new city code.
Markovich / Stevens Taylor - unanimously approved.

2. **Second Reading - Commute Trip Reduction Ordinance and Resolution - Interlocal Agreement.** Mark Hoppen presented the ordinance and resolution adopting an interlocal agreement to reduce single occupancy vehicle trips in an attempt to reduce traffic congestion, air pollution and energy consumption.

MOTION: Move adoption of Ordinance #669.

Markovich / Stevens Taylor - unanimously approved.

MOTION: Move adoption of Resolution #415 to approve the Interlocal Agreement with Pierce County to support Ordinance #669.
Markovich / Picinich - unanimously approved.

NEW BUSINESS:

1. Contract for Indigent Defense Services. Mark Hoppen presented the contract with Pierce County for indigent defense services and explained there are no changes in the terms of the contract. He added that this service is used frequently.

MOTION: Move approval for a contract for Indigent Defense Service for a maximum expenditure of \$15,750 per year.
Picinich / Platt - unanimously approved.

2. Transpo Contract Amendment. Ben Yazici explained that due to unforeseen circumstances, Transpo Group has asked for an additional 100 days to complete the Comprehensive Transportation Plan. He added this would not cause a problem in meeting our internal deadlines for the Growth Management Act, and would not alter the original contract amount of \$44,790. Councilmembers voiced concern that the company would not be able to meet their future deadlines and asked legal counsel to draft language to be added to the contract requiring progress reports to be submitted along with invoices, a \$300 per day penalty clause for failure to meet the deadline, and a liquidated damages clause.

MOTION: Move we approve the time extension to the Transpo Group contract with additional language regarding progress reports, \$300 per day penalty, and liquidated clause to be drafted by legal counsel.
Picinich / Stevens Taylor - unanimously approved.

3. Sanitary Sewer and Storm System T.V. Inspection Contract. Ben Yazici explained that the city had budgeted \$9,750 for television inspections on various utility lines. He added that these inspections would detect any potential problems with the lines and enable for repairs to be done before significant damage occurs to the system. The low bidder for the project is Gelco at \$10,012.31 which is approximately \$250 more than budgeted, but that funds are available.

MOTION: Move to authorize the Public Works Director to hire Gelco to complete the television inspection of the storm drainage and sanitary sewer utilities for a total price of \$10,012.31 which includes Washington State Sales Tax.
Stevens Taylor / Ekberg - unanimously approved.

4. Authorization to Purchase Utility Truck. Ben Yazici requested council to authorize the purchase of a utility truck for \$30,144.49.

MOTION: Move to authorize the Public Works Department to proceed with the purchase of the utility truck for a cost not to exceed \$30,344.59.
Stevens Taylor / Ekberg - unanimously approved.

5. Liquor License Application - Captain's Terrace. No action taken.

DEPARTMENT DIRECTORS' REPORTS:

Police Department - Chief Denny Richards presented the latest report figures and answered council questions.

MAYOR'S REPORT:

Emergency Preparedness Update. Mayor Wilbert announced that the week of April 11th through the 17th has been declared Earthquake Awareness by Governor Lowry. She added that city employees had just completed a course in Basic First Aid and CPR certification. A handbook for emergency procedures for city employees is in the final stages of development.

COUNCIL COMMENTS:

Councilmember Stevens Taylor said she appreciated the article in the Peninsula Gateway regarding the new police reserve officers. She also thanked Mayor Wilbert for her comments during the follow-up meeting on the East/West Road last Monday. She added that the Pierce County Council Subcommittee Chairman did an excellent job in terms of fairness and how the meeting was run.

Councilmember Stevens Taylor also spoke about last years AWC Conference. She stated she felt it was outstanding and encouraged the department heads as well as councilmembers to attend.

ANNOUNCEMENT OF OTHER MEETINGS:

Gig Harbor Planning Commission Open House Forums - April 12th, April, 26th, and the 17th of May.

Retreat for Councilmembers and Department Heads - June 6th, at North by Northwest from 1:00 p.m. to 7:00 p.m.

APPROVAL OF BILLS:

MOTION: To approve Bill Vouchers #12035 through #12105, in the amount of \$43,974.70.
Platt/Stevens Taylor - unanimously approved.

APPROVAL OF PAYROLL:

MOTION: To approve Payroll Warrants #9898 through #9709 in the amount of \$164,205.77.
Platt/Stevens Taylor - unanimously approved.

EXECUTIVE SESSION:

MOTION: Move we adjourn to Executive Session for approximately 25 minutes to discuss legal matters.
Stevens Taylor / Platt - unanimously approved.

MOTION: Move to go back to regular session.
Stevens Taylor / Platt - unanimously approved.

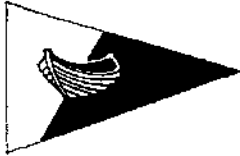
ADJOURN:

MOTION: To adjourn at 9:05 p.m.
Platt / Stevens Taylor - unanimously approved.

Cassette recorder utilized.
Tape 347 Side B 021 - end.
Tape 348 Side A 000 - end.
Tape 348 Side B 000 - 163.

Mayor

City Administrator



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: EDEN SYSTEMS CONTRACT
DATE: APRIL 19, 1994

INTRODUCTION/BACKGROUND

The Eden Systems contract submitted by the city to Eden Systems for software financial support services in the amount of \$3675 was returned by Eden Systems because the company has adopted a policy which prohibits the company from signing contracts that deviate from their standard agreement. In the past, the company did not have such a policy.

POLICY CONSIDERATIONS

The difference between the contract we submitted and the original excludes the following:

- 1) the requirement that Eden Systems maintain insurance against losses and damages arising from its fault or negligence;
- 2) the requirement for the proration of the contract if the contract is terminated midway through the term;
- 3) the requirement that Eden Systems indemnify the city against liability to third parties; and
- 4) the requirement for localized venue.

Eden Systems carries its own liability coverage. If we terminate this contract midway through the year, then our resultant costs will include labor time and purchase fees for new software and its installation, as well as additional time for the attendant learning curve. Such costs would exceed by many times any potential proration of the contract. The city's indemnification, while always desirable, is not a response to any significant risk. Moreover, the likelihood of needing any particular venue is remote.

FISCAL CONSIDERATIONS

This software contract is calculated as a percentage of our original purchase price for the Eden System software. Since we bought into the system some years ago at a relatively lower price than many current users, we pay a lower yearly fee than many cities do for similar services from Eden Systems. This system is not inexpensive, but it is competitive for like services.

RECOMMENDATION

Staff recommends approval of the standard form contract. Eden System's standardization of service is one reason that the company's service is increasingly superior to its competitors. It is not surprising that the company is seeking to reduce its contracting costs through standardization, thereby focusing its labor on service. Of course, this is also a measure of the demand for company services and the stability of the company.



Eden Systems, Inc.

SOFTWARE SOLUTIONS FOR GOVERNMENT

RECEIVED

APR 20 1994

CITY OF GIG HARBOR, WA

April 19, 1994

Mark E. Hoppen
City Administrator
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

Dear Mark:

At your request I am writing this letter to explain Eden's policy of standardized support agreements and Gig Harbor's current status pertaining to software support.

Standard Policy for Support Agreements

Standardizing the support function results from two sources of pressure: 1) Urging on the part of the ESUG (Eden Systems User Group) to install version control and regular updates; and 2) An internal need to tighten up a loose management style which did not mix well with our growing customer base and sophisticated support task.

The standard policy does provide for two options for support. For those customers not requiring regular updates we have a basic plan which is a bit less expensive but maintains a static software product from time of licensing.

For those desiring regular distribution of software updates we offer the SSS (Software Subscription Service) which is a bit more expensive (18% vs 15% for basic support). Most Eden customers are opting for this plan.

The first regular distribution of updates under the SSS program are detailed in the accompanying document and is a significant result of our standardization of programs and support mechanism.

Our goal is to continue to provide the same high standard of support to each of our customers, the terms of which are detailed in our standard support agreement. We choose not to keep the looser style of the past which included negotiating changes to the standard agreement.

Gig Harbor's Current Support Status

You have expressed a desire to opt for the SSS (distributed updates) program. This program requires a data file conversion and initial update to bring you up to date

suitable for ongoing update. SSS requires annual payment of 18% of the software license fees.

Because we did not know whether or not you would opt for the SSS program back in the latter part of 1993 we billed only for the Basic support program, which you paid. That was 15% of the software license fees.

Since then, the City decided to opt for the SSS program and Eden performed the conversion and initial update mentioned above. ~~Normally we would bill for the additional 3% now but I am willing to waive that charge (\$735) for 1994 in the interest of getting the decision to execute the standard support agreement behind us both.~~

Now the only thing facing us is the City's decision to execute the standard support agreement. If you decide to do so, we will deposit the support check we are holding in the amount of \$3675.00 and will cover you under the SSS program for 1994.

I have notified Jeff Green, Manager of Customer Support to continue supporting you without an executed support agreement through the end of April. This should give you ample time to consider execution of the standard agreement.

If you decide not to execute the standard support agreement, I will assume you want the support check returned and may opt to reconsider the support options in the future.

This new, standardized support policy has been received well by our customers. Although there have been questions specific to the program coverage, we have not negotiated any changes to the agreement.

It is important for us to keep the support and all our services on a standardized basis to make the overall task a manageable one for both Eden and its customers. I feel the support program is an affordable, useful and fair offering.

Support based on 18% of license fees is industry standard for this type of support plan. Our average response time is well under 2 hours for all types of calls which is below industry standard.

Although I admit to prejudice, both prospective and current customers claim our packages are the most powerful, functional products for local government that can be found. I hope you feel the same and we can get past this support issue.

Respectfully,



Dennis L. Salts
(800) 343-3827

Eden Systems, Inc.

SOFTWARE SOLUTIONS FOR GOVERNMENT

Eden Systems, Inc. Support Agreement - 1994
January 1, 1994

Customer Name: City of Gig Harbor

Customer Address: 3105 Judson

City/St/Zip: Gig Harbor, WA 98335

This Support Agreement is made and entered into by and between Eden Systems, Inc.; 5015 Tieton Drive; Yakima, Washington 98908, hereinafter "EDEN" and the agency named above, hereinafter "CUSTOMER".

WHEREAS, EDEN and CUSTOMER have entered into certain Eden Systems, Inc. License Agreements under which CUSTOMER obtained a non-exclusive, nontransferable license to use certain computer software in object code form and related user documentation hereinafter "THE SYSTEM" on certain terms and conditions;

WHEREAS, EDEN has the source code and other support documentation for THE SYSTEM in its possession and EDEN desires to make and offer to CUSTOMER the maintenance modifications, enhancements and new releases provided for herein; and

WHEREAS, EDEN desires to offer CUSTOMER certain services with respect to THE SYSTEM on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions - For the purpose of this Agreement, the following definitions shall apply:

1.1 "The System". The computer software described in Exhibit A of the License Agreement(s), including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent releases) to the extent offered to CUSTOMER under this agreement or the License Agreement.

1.2 "Agreement Term". An initial period of one (1) year or less, commencing on the first day following CUSTOMER acceptance that applies to THE SYSTEM pursuant to the Licensing Agreement and ending on the last day of the fiscal year for which the support is provided. Thereafter the Agreement Term shall automatically renew for successive periods of one year each unless and until terminated pursuant to Section 6 hereof. In no event, however, shall the Agreement Term extend beyond the prescribed term of the License Agreement.

1.3 "Error". Any failure of THE SYSTEM to conform in all material respects to the documentation for THE SYSTEM published from time to time by EDEN. However, any nonconformity resulting from CUSTOMER's use or improper use of THE SYSTEM or combining or merging THE SYSTEM with any hardware or software not supplied by EDEN shall not be considered an Error.

1.4 "Error Correction". Either a software modification or addition that, when made or added to THE SYSTEM, establishes material conformity of THE SYSTEM to the functional specifications, or a procedure or routine that, when observed in the regular

operation of THE SYSTEM, eliminates the practical adverse effect on CUSTOMER of such conformity.

1.5 "Enhancement". Any modification or addition that, when made or added to THE SYSTEM, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by EDEN as minor or major, depending on EDEN's assessment of their value and of the function added to THE SYSTEM preexisting.

1.6 "Normal Working Hours". The hours between 8AM and 5PM local time on the days Monday through Friday, excluding regularly scheduled holidays of EDEN.

1.7 "Releases". New versions of THE SYSTEM, which new versions may include both Error Corrections and Enhancements determined by EDEN.

2. Scope of Service

2.1 During the Agreement Term, EDEN shall render support, services and products to be determined by CUSTOMER's choices for same exercised on Exhibit A. Such support, services and products will be provided by EDEN during Normal Working Hours.

3. Fees and Charges

3.1 CUSTOMER shall pay EDEN its fees and charges based on the rate schedule and fees set forth in Exhibit A hereto attached. EDEN reserves the right to change its rate schedule at the beginning of each Agreement Term, provided that no such fees and change will be effective until at least 90 days after EDEN has given CUSTOMER written notice of such change. Such written notice may be in the form of a statement in EDEN's newsletter.

3.2 CUSTOMER shall reimburse EDEN for travel expenses including but not limited to such things as transportation, lodging, meals and telephone expenses incurred by EDEN in rendering services to CUSTOMER under this agreement.

3.3 CUSTOMER shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware necessary to operate THE SYSTEM and to obtain from EDEN the services called for according to EDEN's then existing policy.

4. Proprietary Rights

4.1 To the extent that EDEN may provide CUSTOMER with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works prepared by EDEN (collectively, "Vendor Programs"), CUSTOMER may (1) install one copy of the Vendor Programs, in the most current form provided by EDEN, in CUSTOMER's own facility; (2) use such Vendor Program(s) in connection with THE SYSTEM, and in a manner consistent with the requirements of the License Agreement, for purposes of serving CUSTOMER's internal business needs; and (3) make one copy of Vendor Programs in machine-readable form for nonproductive backup purposes only. CUSTOMER may not use, copy, or modify the Vendor Programs, or make any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by EDEN.

4.2 The Vendor Programs are and shall remain the sole property of EDEN, regardless of whether CUSTOMER, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid EDEN for the use of the work product. CUSTOMER shall from time to time take any further action and execute and deliver any further instrument, including documents of assignment or acknowledgment, that EDEN may reasonably request in order to establish and perfect its exclusive ownership rights in such works. CUSTOMER shall not assert any right, title, or interest in such works, except for the non-exclusive right of use granted to CUSTOMER at the time of its delivery or on-site development.

Eden Systems, Inc. Support Agreement - 1994
Exhibit A - Support Program/Rate Schedule

Rate Schedule - EDEN's hourly rate for all types of services from January 1, 1994 through December 31, 1994 is \$90.

Support Program - EDEN records indicate the support and product coverage chosen by your agency (indicated by check marks) is as follows for the Agreement Term:

Basic:	\$3675.00
SSS:	\$
Tax on SSS:	\$
Total:	\$3675.00

Standard Support Program (Basic)

- a. EDEN shall maintain a program control center capable of receiving by telephone, operator reports of system irregularities;
- b. EDEN shall maintain a telephone hotline that allows CUSTOMER to report system problems and seek assistance in use of THE SYSTEM;
- c. EDEN shall maintain a trained staff capable of rendering the services set forth in this Agreement;
- d. EDEN shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to EDEN in accordance with EDEN's standard reporting procedures. Following completion of the Error Correction, EDEN shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and EDEN shall include the Error Correction responsible for correcting Errors in any version of THE SYSTEM other than the most recent Release of THE SYSTEM, provided that EDEN shall continue to support prior Releases superseded by recent Releases for a reasonable period sufficient to allow CUSTOMER to implement the newest Release, not to exceed 60 days.
- e. EDEN shall consider and evaluate the development of modifications for the specific use of CUSTOMER and shall respond to CUSTOMER's requests for additional services pertaining to THE SYSTEM (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to by EDEN and CUSTOMER and transacted on an EDEN AFPS (Authorization For Professional Services).

Software Subscription Service (SSS) - In addition to items a-e above:

- f. EDEN may, from time to time, issue new Releases of THE SYSTEM to its customers. A new Release may contain Error Corrections, minor Enhancements, and major Enhancements if EDEN so elects. EDEN shall provide CUSTOMER with one copy of each new Release, without additional charge. EDEN shall provide reasonable assistance to help CUSTOMER install and operate each new Release, provided that such assistance, if required to be provided at CUSTOMER's facility, shall be subject to the supplemental charges set forth in this Exhibit.
- g. EDEN may, from time to time, offer major Enhancements to its customers generally for an additional charge. To the extent that EDEN offers such Enhancements, it shall allow CUSTOMER to license each Enhancement for 25% discount off the retail list price or fair market value if retail list price is not fixed.
- h. Subject to space availability, CUSTOMER may enroll its employees in EDEN's training classes, held at EDEN's facilities in Seattle, Washington or Macon, Georgia, for regular or advanced training.

5. Disclaimer of Warranty and Limitation of Liability

5.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EDEN EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES CONCERNING THE SYSTEM OR THE SERVICES TO BE RENDERED HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Termination

6.1 This Agreement may be terminated as follows:

- a. Upon the termination of the License Agreement; or
- b. Upon the expiration of the then current term of this Agreement, provided that at least 60 days' prior written notice is given to the other party; or
- c. Upon 60 days' prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

7. Miscellaneous

7.1 Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. The parties agree that this is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

7.2 This Agreement and the parties' obligations hereunder shall be governed, construed, and enforced in accordance with the laws of the State of Washington.

7.3 In the event that any provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.

7.4 Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party, except to a successor of all or substantially all of its business and properties.

7.5 The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional right that such party may hold under this Agreement.

CUSTOMER SIGNATURE:

CUSTOMER NAME:

CUSTOMER TITLE:

DATE SIGNED:



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: ORDINANCE TO FURTHER DEFINE TELEPHONE BUSINESS
DATE: APRIL 20, 1994

INTRODUCTION/BACKGROUND

Currently, the Gig Harbor Municipal Code does not define cellular telephone services as subject to business tax. Additionally, telephone services are soon highly likely to diversify in a ways not previously considered as phone services. Legal counsel has recommended that we explicitly provide for the inclusion of these services through ordinance in the the business license section of our code.

RECOMMENDATION

This is the first reading of this ordinance.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO THE CITY'S UTILITIES BUSINESS TAX, ADDING THE DEFINITION OF "TELEPHONE BUSINESS" CONSISTENT WITH STATE LAW; AMENDING THE GIG HARBOR MUNICIPAL CODE 3.16.020.

WHEREAS, subsection 3.16.020 of the Gig Harbor Municipal Code defines terms used within this chapter for purposes of utility taxes; and

WHEREAS, the original intent of said definitions was to enable the collection of all taxable business revenues; and

WHEREAS, the state amended its definitions of a "telephone business" and "competitive telephone business" (RCW 82.04.065) for tax purposes, as a result of deregulation of certain telephone-related services and to determine the applicability of the tax regulations to cellular phone service; and

WHEREAS, the definitions contained in Chapter 3.16 of the Gig Harbor Municipal Code have not been similarly amended;

NOW, THEREFORE, the City Council of the City of Gig Harbor, Washington, DO ORDAIN as follows:

Section 1. Section 3.16.020 of the Gig Harbor Municipal Code is hereby amended to read as follows:

3.16.020 Definitions. In construing the provisions of this chapter, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

- D. "Business, telephone" means the business of providing access to a local telephone network, local network telephone switching service, toll service, cellular phone or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. This includes interstate service, and includes toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. It further includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations. "Competitive telephone service" means the providing of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

Section 2 - Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3 - Effective date. This ordinance, being an ordinance authorizing the levy or collection of taxes, is not subject to initiative or referendum, and shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST:

Mark E. Hoppen
City Administrator/Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

Filed with City Clerk: 4/18/94
Passed by City Council:
Date Published:
Date Effective:



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145

GIG HARBOR, WASHINGTON 98335

(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: MARINE ORDINANCE, FIRST READING
DATE: APRIL 21, 1994

INTRODUCTION/BACKGROUND

Attached is a copy of a proposed marine ordinance to authorize through city ordinance the marine enforcement activities on City of Gig Harbor jurisdictional waters. Chapter 88.12 RCW, recently updated by the State, covers the vast majority of marine situations which our officers will encounter, and is adopted by reference. Other issues referenced in the attached ordinance are issues peculiar to our waterfront and bay. Among those issues are: rules of the road, four knot speed limit, prohibition of aircraft, prohibition of skiing and jet skis, limitations on mooring buoys, prohibition of residential floating homes and houseboats, and standards for penalties.

RECOMMENDATION

This is the first reading of the ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REGULATING USE OF THE HARBOR WATERS WITHIN THE JURISDICTION OF THE CITY, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, ADOPTING CHAPTER 88.12 RCW AND CHAPTER 352-60 WAC BY REFERENCE, REPEALING CHAPTER 8.24 AND ADDING A NEW CHAPTER 8.24 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, in the exercise of its police power, the City of Gig Harbor may assume control over all waters within its jurisdictional limits, and regulate the use thereof; and

WHEREAS, chapter 88.12 RCW relating to the regulation of recreational vessels has recently been amended to allow enforcement by local law enforcement officers; and

WHEREAS, chapter 8.24 of the Gig Harbor Municipal Code on the subject of motorboat regulation has become outdated;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 8.24 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Chapter 8.24 is added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 8.24

HARBOR CODE

Sections:

- 8.24.020 Application.**
- 8.24.040 Definitions.**
- 8.24.060 Harbor Warden.**
- 8.24.080 Rules of the Road.**
- 8.24.100 Chapter 88.12 RCW Adopted by Reference.**
- 8.24.100 Chapter 352-60 Adopted by Reference.**
- 8.24.140 Speed Regulations.**
- 8.24.160 Aircraft Prohibited.**
- 8.24.180 Jet Skiing Prohibited.**
- 8.24.200 Mooring Buoys.**
- 8.24.220 Residential Use of Floating Homes and Houseboats Prohibited.**

8.24.240 Penalties.

8.24.020. Application. The provisions of this chapter shall be applicable to all vessels and watercraft operating in the harbor of the City. The provisions of this chapter shall be construed to supplement United States laws, state laws and regulations, when not expressly inconsistent therewith in the City's harbor.

8.24.040. Definitions. RCW 88.12.010, "Definitions," as the same now exists or may hereafter be amended, is hereby adopted by reference, and the definitions set forth therein shall apply throughout this chapter.

8.24.060. Harbor Warden. This chapter shall be enforced by the police chief, who shall be designated the Harbor Warden. It shall be the duty of the Harbor Warden, and his/her authorized designees, to:

- A) enforce the ordinances and regulations of the City upon the waters of the harbor and adjacent lands thereto, when the harbor is affected;
- B) to maintain patrols in the harbor for the protection of life and property, including, but not limited to, the removal and disposition of oil pollution, drifting debris and nuisances from the waters of the harbor;
- C) to investigate and report upon marine and maritime accidents in the harbor;
- D) to perform all necessary functions in connection with search and rescue in the harbor;
- E) to promulgate rules and regulations governing the use of the navigable portions of waterways; to issue permits for movement of unseaworthy craft and anchoring or moorage of vessels or watercraft in anchorage areas; and to charge for all such permits the fee established by the City; and
- F) to remove, impound or sell any vessel, watercraft or obstruction anchored or moored in violation of this chapter deemed a public nuisance or a hazard to navigation or operated or afloat under conditions deemed unsafe for water transportation.

8.24.080. Rules of the Road. Except as otherwise specified in this chapter, vessels shall be subject to the Coast Guard Rules for Navigation for Inland Waters as contained in the Code of Federal Regulations, Title 33, Part 80, and Coast Guard Publication C6169, promulgated by the United States Coast Guard, as such rules are now or may hereafter be amended or adopted. Vessels engaged in a sanctioned or authorized race, log race, regatta or similar event, shall be subject to the applicable rules for such events, including, but not limited to, differing right-of-way rules.

8.24.100. Chapter 88.12 RCW Adopted by Reference. Chapter 88.12 RCW, "Regulation of Recreational Vessels," as the same now exists or may hereafter be amended, is hereby adopted by reference.

8.24.120. Chapter 352-60 WAC Adopted by Reference. Chapter 352-60 WAC, "Boating Safety," as the same now exists or may be hereafter amended, is hereby adopted by reference.

8.24.140. Speed regulations. Within the waters of the City's harbor, it shall be unlawful for any person to operate a vessel at a speed in excess of four (4) nautical miles per hour. Nothing in this section shall be construed as exempting any person from liability caused by wake action from operation of any vessel in the City's harbor.

8.24.160. Aircraft Prohibited. Within the waters of the City's harbor, it shall be unlawful for any person to operate any aircraft, or to take off or land any aircraft on such waters, except in emergency situations.

8.24.160. Jet skiing, Water Skiing Prohibited. Within the City's harbor, it shall be unlawful for any person to water ski, jet ski or operate any personal watercraft.

8.24.180. Mooring Buoys. Mooring buoys are prohibited in the City's harbor where such buoys will interfere with customarily traveled routes for vessels. No more than one buoy will be allowed for each ownership of waterfront residences adjacent to the City's harbor. The City's permission to install a mooring buoy shall not exempt a person from obtaining any and all necessary permits or permissions required by other governmental authorities.

8.24.200. Residential Use of Floating Homes or Houseboats in Harbor Prohibited. It shall be unlawful to use a floating home or houseboat for residential purposes within the City's harbor. For the purpose of this chapter, a floating home or houseboat is defined as a single-family dwelling unit constructed on a float, not designed or primarily used as a vessel, and which is moored, anchored or otherwise secured in the water.

8.24.220. Penalty. A violation of Sections 8.24.080, 8.24.200, 8.24.140, 8.24.160, 8.14.180, and 8.24.200 shall be an infraction under Chapter 7.84 RCW.

Section 2. Statutes and Washington Administrative Codes Filed with City Clerk. As required by RCW 35A.12.140, a copy of chapter 88.12 RCW and chapter 352-60 WAC, as adopted by reference in this ordinance, shall be filed with the City Clerk, authenticated and recorded by the City Clerk.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

Gretchen A. Wilbert, Mayor

ATTEST/AUTHENTICATED:

MARK E. HOPPEN
City Administrator/Clerk

**APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:**

BY _____

Filed With City Clerk: 4/20/94
Passed by City Council:
Date Published:
Date Effective:

SUMMARY OF ORDINANCE NO. _____

of the City of Gig Harbor, Washington

On the ____ day of _____, 1994, the City Council of the City of Gig Harbor, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, REGULATING USE OF THE HARBOR WATERS WITHIN THE JURISDICTION OF THE CITY, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, ADOPTING CHAPTER 88.12 RCW AND CHAPTER 352-60 WAC BY REFERENCE, REPEALING CHAPTER 8.24 AND ADDING A NEW CHAPTER 8.24 TO THE GIG HARBOR MUNICIPAL CODE.

8.24.220. Penalty. A violation of Sections 8.24.080, 8.24.200, 8.24.140, 8.24.160, 8.14.180, and 8.24.200 shall be an infraction under Chapter 7.84 RCW.

The full text of this Ordinance will be mailed upon request.

DATED this ____ day of _____, 1994.

CITY ADMINISTRATOR, MARK HOPPEN



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

MEMORANDUM

TO: Mayor Wilbert and City Council

FROM: Planning Staff *JD.*

DATE: April 25, 1994

RE: Appeal of Hearing Examiner's Decision - VAR 94-05 - Monique DeMartin

Background Information

Monique DeMartin owns a modest sized rambler at 7017 Stanich Avenue. The home, which sits on a .92 acre lot, was built in the fifties to early sixties. It includes a single-wide carport which was a common feature when the house was built. Garages were considered somewhat of a luxury then; especially if they were attached to the house, but garages have since become an expected feature of newer homes.

The home originally had a view of Puget Sound and when Mrs. DeMartin purchased the house she was assured by her real estate agent that no more development could occur to block her view because the single family lot to the east was already developed. However, the lot was later short platted, allowing another residence which blocked most of the view from her single level house. This development occurred while Mrs. DeMartin was out of the Country.

Request

In an effort to recapture the view lost to the development to the east and to enclose the existing carport into a double car garage, Mrs. DeMartin requested a side yard variance of 4 feet (allowing development within 4 feet of the property line) and a height variance of 4 feet 8 inches, allowing construction of a second floor master suite above the garage.

Hearing Examiner Action

On March 30, 1994 the Hearing Examiner denied the variance request upon finding that there are other alternatives for developing the garage and master suite. For example, the Examiner believed that an attached garage could be built forward of the house with the

carport being enclosed for the Master bedroom suite. This option would not achieve the view Mrs. DeMartin hopes to gain, but the lack or loss of a view is not identified as a hardship in the variance criteria of Section 17.66 of the zoning code. The Examiner's decision was consistent with the Staff's recommendation to deny the variances.

Appeal

Mrs. DeMartin filed a timely appeal of the Examiner's decision, stating that the variances were denied despite the fact that both of her neighbors who might be affected by the variances were present at the Public Hearing and were completely supportive of her building plans and the variances. A copy of Mrs. DeMartin's appeal letter, the Staff Report to the Hearing Examiner and the Hearing Examiner's report and decision are attached for the Council's consideration. The Staff has also prepared a draft resolution to uphold the Examiner's decision.

According to Section 17.10.160, the applicant has 15 minutes for oral presentation. However, no new evidence or testimony may be presented to the Council during oral presentation. The decision of the City Council shall be based on the record of the hearing conducted by the examiner. The City Council shall accept, modify or reject any findings or conclusions, or remand the decisions of the examiner for further hearing. The Council may publicly request additional information of the appellant and the examiner at its discretion.

Telephone:(206)-858-7334

April 7, 1994
Monique DeMartin
7017 Stanich Avenue
Gig Harbor, WA 98335

Mr. Steve Osguthorpe
Associate Planner
City of Gig Harbor
Post Office Box 145
Gig Harbor, WA 98335

Re: VAR 94-05
Appeal to the Gig Harbor
City Council

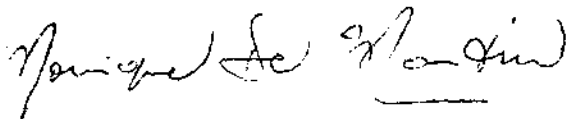
Dear Mr. Osguthorpe:

Thank you for your letter of April 1, 1994 advising me that the setback and height variance for the addition to my house which was designed by my Architect (Dean C. Lamb, AIA) has been denied by the Hearing Examiner in spite of the fact that both of my neighbors who could be affected in any way by my variance request were present at the Public Hearing on the matter and completely supportive of my building plans and the variance which I had applied for with the Planning Department.

You also state in your letter to me that I may appeal the Hearing Examiner's decision to the City Council within 14 days of his decision (April 14, 1994) by submitting a request to you in writing accompanied by a \$50.00 appeal fee.

This letter serves as my official appeal to the Gig Harbor City Council. Please find enclosed my check for the \$50.00 appeal fee. I look forward to meeting with the City Council to discuss my variance request with them and will be accompanied to the meeting by my Architect, my Interior Design Specialist, and my Gig Harbor neighbors. Please let me know when this appeal meeting can be scheduled. Thank you.

Sincerely,



Monique DeMartin
Property Owner

**CITY OF GIG HARBOR
HEARING EXAMINER
FINDINGS CONCLUSIONS AND DECISION**

APPLICANT: Monique De Martin
CASE NO.: VAR 94-05
LOCATION: 7017 Stanich Ave.
APPLICATION: Request for a side yard and height variance.

SUMMARY OF RECOMMENDATION AND DECISION:

Staff Recommendation:	Deny
Hearing Examiner Decision:	Deny

PUBLIC HEARING:

After reviewing the official file which included the Community Development Staff Advisory Report; and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the De Martin application was opened at 5:02 pm, March 16, 1994, in the City Hall, Gig Harbor, Washington, and closed at 5:27 pm. Participants at the public hearing and the exhibits offered and entered are listed in the minutes of the meeting. A verbatim recording of the hearing is available in the Planning Department.

FINDINGS CONCLUSIONS AND DECISION:

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

I. FINDINGS:

- A. The information contained in Sections I through VII of the Community Development Staff Advisory Report (Hearing Examiner Exhibit A) is found by the Hearing Examiner to be supported by the evidence presented during the hearing and by this reference is adopted as a part of the Hearing Examiner's findings of fact. A copy of said report is available in the Community Development Department.
- B. The subject property is mostly flat or gently sloping, is rectangular in shape and is approximately 37,000 square feet in size. The existing house is situated on the eastern portion of the site. The existing carport is located 14' 8" from the north property line. The proposal is to replace the existing one-car carport with a two-car garage which would be approximately 1,100 square feet in size. The proposed garage would be located 4 feet from the north property line (8' is required). The proposal also includes a master bedroom suite. The bedroom would be built above the garage. The second story addition would require a

height variance of 4' 8". The total addition appears to be about 2,200 square feet in size. It is unclear from the submittal if the entire first floor will be used as a garage or if there will also be living space on the first floor addition. (Please see the preliminary site plan which is an attachment to Exhibit A).

- C. The applicant and her architect indicated that the setback variance is desired to allow the construction of an attached two car garage to replace the existing one-car carport. The height variance is sought in order to recapture the view which was enjoyed from her house before the house to the east was built. The applicant's written request is found in Section V of the staff report (Exhibit A). The request indicated that due to recurring back problems, and for safety, security and disability considerations, it is necessary to add a double car enclosed garage and master bedroom attached to the existing home. The applicant contended in the written statement that for a variety of reasons the new garage can only be physically attached to the house at the site of the existing carport.
- D. Two neighbor couples attended the hearing and spoke in favor of the request for both the setback and the height variances. They indicated that if the applicant is allowed to build the garage and bedroom as proposed some trees would be removed and/or trimmed and their views would also be enhanced.

II. CONCLUSIONS:

- A. The conclusions prepared by the Community Development Staff and contained in Section VIII of the Community Development Staff's Advisory Report accurately set forth a portion of the conclusions of the Hearing Examiner and by this reference are adopted as a portion of the Hearing Examiner's conclusions except conclusion E which is not adopted. A copy of said report is available in the Planning Department.
- B. While it is unfortunate that the applicant's physical condition appears to be one of the major reasons for the request as it is presented, a personal hardship does not entitle an applicant to a zoning variance. A variance affects what can occur on the property irrespective of who the owners might be now or in the future, and the variance must be based on a special circumstance which is specifically related to the property.

In this case, if an 8 foot setback is maintained, a 17 or 18 foot wide master bedroom could be added to the north side of the existing house and a two-car garage could be constructed to the west and either be directly attached to the master bedroom or attached to the house by a breezeway or an enclosed walkway. The bedroom or breezeway/walkway could be situated so a 22 foot wide (or wider) garage could be constructed in front of the house without the need for either a setback or height variance. The garage could be located far

enough forward of the existing house so that the area between the house and the garage could take on a courtyard effect. Another alternative would be to have a single car garage located 8 feet from the north property line combined with a single car carport to the south of the garage under the same roof.

If the entire structure were to be built on one level, the applicant would not be able to recapture the view that would have been possible by constructing a second story master bedroom, however, no height variance would be necessary. Also, the entire single story addition should be able to meet the applicant's accessibility needs.

- C. Due to the location of the subject house relative to the houses on the surrounding properties I do not believe the proposal, as submitted, would be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated. This belief is supported by the testimony in support of the application which was submitted by the two neighbors who would be most directly affected by the proposal.
- D. Variances are not intended to be used as a means of circumventing individually inconvenient regulations (Section 17.66.010 of the Gig Harbor Zoning Code). That intent is the basis for the seven (7) criteria spelled out in Section 17.66.030.B of the code. All seven of the criteria need to be met before a variance can be granted.

In this case, there are no special conditions and circumstances which are peculiar to the land, but rather the special circumstances do result from the desires of the applicant.

Therefore Sections 17.66.030.B.3 and 17.66.030.B.4 have not been met and the requested variances should not be granted.

III. DECISION:

Based upon the foregoing findings of fact and conclusions, the requested side yard and height variances are denied.

Dated this 30th day of March, 1994.



Ron McConnell
Hearing Examiner

RECONSIDERATION:

Any aggrieved person feeling that the decision of the Examiner is based on erroneous procedures, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the Examiner within ten (10) days of the date the decision is rendered. This request shall set forth the specific errors of new information relied upon by such appellant, and the Examiner may, after review of the record, take further action as he or she deems proper.

APPEAL OF EXAMINER'S DECISION:

Any party who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Gig Harbor Planning Director within (14) days from the date the final decision of the Examiner is rendered, requesting a review of such decision.

Such appeal shall be upon the record, established and made at the hearing held by the Examiner. Whenever a decision of the Examiner is reviewed by the City Council pursuant to this section, other parties of record may submit written memoranda in support of their position. In addition, the Council shall allow each side no more than fifteen minutes of oral presentation. However, no new evidence or testimony shall be presented to the Council during such oral presentation. The City Council shall accept, modify or reject any findings or conclusions, or remand the decisions of the Examiner for conclusions, or remand the decisions of the Examiner for further hearing; provided that any decision of the City Council shall be based on the record of the hearing conducted by the Examiner; however, the Council may publicly request additional information of the appellant and the Examiner at its discretion.

Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a review shall be held by the City Council. Such review shall be held in accordance with appeal procedures adopted by the City Council by resolution. If the Examiner has recommended approval of the proposal, such recommendation shall be considered by the City Council at the same time as the consideration of the appeal.

Further action by the Examiner shall be within thirty (30) days of the reconsideration request.

**MINUTES OF THE MARCH 16TH, 1994
HEARING ON THE DE MARTIN
APPLICATION**

Ron McConnell was the Hearing Examiner for this matter. Participating in the hearing was: Steve Osguthorpe, representing the City of Gig Harbor; Dean Lamb, representing the applicant; Monique De Martin, the applicant; and neighbors Brooks Cumbie and Richard Booker.

The following exhibits were offered and entered into the record:

- A. Community Development Staff Report
- B. Tree Trimming and Removal Plan

PARTIES OF RECORD:

- Monique De Martin
7017 Stanich Ave.
Gig Harbor, WA 98335

- Dean Lamb, AIA
7304-97th Ave. SW
Tacoma, WA 98494

- Janet Perry
7026 Pioneer Way
Gig Harbor, WA 98335

- Brooks and Mary Cumbie
7025 Stanich Ave.
Gig Harbor, WA 98335

- Richard Booker
7024 Secor Pl.
Gig Harbor, WA 98335



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

**GIG HARBOR COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT**

TO: Hearing Examiner
FROM: Planning Staff
DATE: March 16, 1994

RE: VAR 94-05 - Monique De Martin -- Side yard Variance at 7017 Stanich Avenue

I. GENERAL INFORMATION

APPLICANT: Monique De Martin
7017 Stanich Avenue
Gig Harbor, WA 98335

OWNER: (same)

AGENT: Dean C. Lamb, AIA
7304 97th Ave. S.W.
Tacoma, WA 98498

II. PROPERTY DESCRIPTION

1. **Location:** 7017 Stanich Avenue
Assessor's parcel ;#02-21-08-3-045
2. **Site Area/Acreage:** .92 acres
3. **Natural Site Characteristics:**
 - i. **Soil Type:** Harstine gravelly sandy loam
 - ii. **Slope:** gentle slope toward the east
 - iii. **Drainage:** easterly toward rear of property
 - iv. **Vegetation:** primarily wooded with douglas fir and forest undercover. The area near the house is domestic landscaping.

4. **Zoning:**
 - i. **Subject parcel:** R-1 (single family)
 - ii. **Adjacent zoning and land use:**
 - North: R-1
 - South: R-1
 - East: R-1
 - West: R-1
5. **Utilities/road access:** The property is serviced by City sewer and water and is accessed off of Stanich Avenue, a City right-of-way.

III. **APPLICABLE LAND-USE POLICIES/CODES**

1. **Comprehensive Plan:** The comprehensive Plan designates this area as low urban residential.
2. **Zoning Ordinance:** The zoning code states the following development standards for the R-1 zone:
 - A. Minimum lot area - 12,000 sq.ft.
 - B. Minimum lot width - 70 ft.
 - C. Minimum front yard setback - 25 ft.
 - D. Minimum rear yard setback - 30 ft.
 - E. Minimum side yard setback - 8 ft.
 - F. Maximum impervious lot coverage - 40%
 - G. Minimum street frontage - 20 ft.

The maximum height of structures shall be 16 feet.

Variances may be granted only if the applicant can successfully demonstrate that all of the following criteria can be met:

- A) The proposed variance will not amount to a rezone nor authorize any use not allowed in the district.
- B) There are special conditions and circumstances applicable to the property such as size, shape, topography or location, not applicable to land in the same district and that literal interpretation of the provisions of this ordinance would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this ordinance.
- C) That the special circumstances and conditions do not result from the actions of the applicant.

- D) The granting of the variance will not constitute a grant of special privilege inconsistent with limitation upon other properties in the vicinity and zone.
- E) That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the property is situated.
- F) The variance is the minimum variance that will make possible the reasonable use of the land.

IV. BACKGROUND INFORMATION: The subject site is one of the few remaining larger residential lots in the area, being shy of one acre. The lot includes a modest sized single family residence with a carport on the north side of the house. The house appears to have been built in the late fifties or early sixties when single carports were a common feature of homes. Many of the surrounding homes on this block also have carports rather than garages. The carport is 14 feet 8 inches from north property line. It looks as though the house was located to suit the as-built design with no thought to expand the carport in the future.

This parcel abuts Richard and Karen Booker's parcel on the north. The Booker's received a variance in January 1992 to allow an expansion of their house to within 4 feet of the De Martin's property. A building permit was issued for the Booker expansion in June 1993 and will expire in June 1994 if construction does not commence. The Staff was not supportive of the Booker variance and recommended that it be denied.

V. REQUEST/PROJECT DESCRIPTION:

The current request is for a side yard variance of 4 feet to allow conversion of the existing carport into a double car garage. The garage would therefore be within 8 feet of the Booker's addition. The proposal also includes a second floor addition above the garage which will require a height variance of 4 feet 8 inches. The applicant has submitted the following statement (shown in italics) in support of the variances:

Monique De Martin "has recently moved back into her house which she has rented for a number of years. Now in retirement her family plans to permanently reside in their Gig Harbor house. The house was constructed over thirty years ago, and does not meet the family's current needs nor current neighborhood aesthetic standards. Due to recurring back

problems, and for safety, security and disability considerations, it is necessary to add a double-car enclosed garage and master bedroom attached to the existing house.

Although the existing lot is quite large by size, it is long and narrow: approximately 100 feet wide by 370 feet long. The current house is quite modest in size, appearance, and site coverage; approximately 1540 square feet on the main floor, with a partially finished basement. The lot coverage of all improvements is only 5 percent. Unfortunately, the existing house is sited with its long dimension, 52 feet, across the width of the lot (see enclosed site plan survey). There is an existing 26-foot setback on the north side (not including the existing single car carport) where a 2-car attached garage and 2nd floor addition is proposed to replace the carport. The south side has an existing setback of 22.2 feet.

To meet the homeowner's accessibility needs, the new garage can only be physically attached to the house at the site of the existing carport. It cannot be built anywhere within the existing house footprint due to a full basement. It cannot be built in front of the existing house or entry without blocking emergency egress windows from bedrooms or the main fire exit. It cannot be attached on the south side for a number of reasons; the 22-foot width required for the new garage would require a zero lot setback. This south side location would also require extensive remodeling in the house, and new paving and vehicle access would have to be accomplished across existing forested areas since the existing driveway parallels the north property line. Obviously it cannot be built in the rear yard because it is not accessible to vehicles.

We are proposing the 2-car garage and master bedroom addition in the only feasible location: to the north which would require a 4-foot projection into the required sideyard 8-foot setback width. There are 5 trees in the vicinity of the addition which would have to be removed, and this could open up views for several houses to the north. If allowed the variance for the 2-car garage and master bedroom addition, the homeowners are committed to staying in their existing house and to preserving the mature stand of trees and natural habitat occupying approximately 1/2-acre of the western lot. This will effectively remove the lot from the opportunity for higher density development which is occurring to the south.

Gig Harbor's zoning ordinances are intended to preserve and protect neighborhoods, but not necessarily to prevent an individual homeowner's right to careful and thoughtful improvements to her property to adjust to changing lifestyle needs. We ask for your consideration for a zoning variance to allow a 4-foot projection into the required north sideyard setback of 8-feet., and to allow a height of 20'-8", or 4'-8" above the 16-foot height allowance for this R-1 zone.

In specific reference to Section 17.66 of the zoning code, the owner offers the following comments:

A) Every house in the neighborhood has a two-car garage, and many of the existing structures belonging to neighbors are closer to the property lines than our request for variance. Our request is merely enlarging an existing one-carport structure to a two-car garage which puts it closer to the property line than the standard 8-foot setback. The proposed variance will certainly not amount to a rezone nor authorize any use not allowed in this R-1 district. It will become a one family house with a two-car garage and a master bedroom and bath for the use of the owner only.

B) This property has a forested area between the house and Stanich Avenue which is a beautiful and environmentally sound addition to the neighborhood. Mrs. De Martin does not want to build a detached garage that would infringe on that forested area for two reasons: The first is her security when she arrives home in the evening after dark. The primary reason for the proposed new two-car garage is so she can have accessibility directly into the garage with her car using an automatic door opener and then be able to enter the house from the garage. This she feels will add a great deal to her physical security and mobility requirements, and the second reason for the attached rather than a detached garage is to maintain the integrity of the existing yard and forested area. If this variance is denied it will deprive Mrs. De Martin, the property owner and resident, of rights commonly enjoyed by most of the other property owners in the district: the security of an attached two-car garage with an automatic door opener.

C) Mrs. De Martin initially purchased her house with its one-carport attached structure with the intention of enlarging and enclosing the carport into a two-car garage when she made it her permanent residence. Many structures in the neighborhood are built close to or on the line (sometimes over as is a neighbor's two-car garage bordering on the front part of her property). Approval of this variance will not create special circumstances nor conditions.

D) An examination of the neighborhood and the variance requested by Mrs. De Martin will reveal that the granting of the variance she is requesting will not constitute a grant of any special privilege to her that is inconsistent with limitations upon other properties in the vicinity and zone.

E) The granting of this variance will not be materially detrimental to the public welfare, nor injurious to the property or improvements in the vicinity and zone, but will rather materially improve it in both appearance and assessed property values.

F) Any structure less than a full scale two-car garage on the property would not make reasonable use of the land. Mrs. De Martin is requesting the minimum variance necessary to construct a two-car garage as an attached structure to her house so she can enter the house directly from the garage. A one car garage is not a logical solution because she has two different vehicles. A detached garage will not meet her accessibility and security needs in retirement.

We are confident that with careful attention to architectural design and site planning, the proposed variance for a 2-car garage/master bedroom addition will:

- 1. Provide the homeowner with her long-term ADA accessibility needs.*
- 2. Enhance existing neighbor views from homes to the north by selective tree removal.*
- 3. Improve the existing neighborhood aesthetics by exterior improvements to the existing 30-year old house.*
- 4. Preserve open space and forest land in a highly developing area.*
- 5. Provide the homeowner with an equitable use of property comparable with the 4 other immediately adjacent homeowners on Stanich who currently have attached 2-car garages or carports.*
- 6. Prevent higher level development because the owner will not have to sell the property unless denied the right for these improvements.*
- 7. Have no appreciable impact on City setback or height requirements, which have been revised through the variance process for other adjacent neighbors."*

VI. PUBLIC NOTICE: The property was posted and legal notice sent to property owners within 300 feet and to the Peninsula Gateway for publication. As of March 7, 1994, the Staff has received no formal public input on this request.

VII. ANALYSIS: The Staff has had a difficult time identifying site specific hardships which would justify a variance. This is a large parcel and, while the Staff appreciates the applicant's desire to retain the natural features of the site and recognizes the challenges of expanding an existing structure, it

appears that there is room within the current setbacks to allow for expansion consistent with the objectives stated by the applicant. These are more specifically addressed as follows:

Retain natural features of site. There are already some large areas of the site which could be utilized for expansions which would not require removal of additional trees or vegetation. The parking area in front of the house is well suited for a double-car garage. It would require little grading and no clearing of existing vegetation. Moreover, it would provide reasonable access to the front door of the house without modifying the existing floor plan. This option would actually retain more of existing vegetation than the proposed plan because it does not require removal of the trees on the south side of the house. The Staff is not sure how removal of these trees will enhance views of adjacent property owners as stated by the applicant. They do not appear to be in any view corridor.

Have an attached garage for security The Staff understands the applicant's desire for an attached garage for security reasons. Driving up to a dark house hidden behind the trees may indeed cause feelings of uneasiness. An attached garage is possible within the setbacks but it will require some compromises. Some alternatives might include an attached 1 1/2 car garage, a tandem double car garage, or a single attached garage plus a single (or larger) detached garage in front of the house. Finally, vehicular access to the back side of the house is possible from the south side of the property where Stanich Avenue dead-ends. There may be opportunity for a garage on the back side with this access. Each option seems reasonable although personal preferences may exclude any or all of them.

Expand living space. The applicant has not specifically addressed the requested height variance in terms of the code's variance criteria. The Staff assumes that the intent is to gain extra living space, but there are a couple of options for expanding living space without the need for a height variance. The applicant has not stated why an addition could not be built on the back side of the house behind the proposed garage. A second option may include a detached garage (common to many homes) with the existing carport area enclosed and enlarged for additional living space. Either option would be more in keeping with the applicants stated objective to assure long-term ADA accessibility needs because it would eliminate the need for stairs.

Additional Staff and/or agency comments are as follows:

1. Building Official/Fire Marshall: The driveway must address turn-around if over 150 feet to the roadway. A 12 foot minimum driveway width is required. (If this requirement cannot be met with the existing driveway, it is possible to get fire access from the

south side of the property where Stanich Avenue dead-ends. This may require some improvement of the right-of-way to assure required access.)

2. Public Works: (comments not solicited)
3. SEPA Responsible Official: The requested variance is exempt from SEPA review as per WAC 197-11-800 (iii).

VIII. FINDINGS AND CONCLUSIONS

Based upon a site inspection and the analysis contained in Part VII of this report, the Staff finds as follows:

- A) That the proposed variance will not amount to a rezone nor authorize any use not allowed in the district.
- B) That there are no special conditions and circumstances applicable to the property such as size, shape, topography or location, not applicable to land in the same district and that a literal interpretation of the provisions of this ordinance would not deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this ordinance. The property is actually better situated to be developed within the required setbacks than other parcels in the R-1 zone due to its large size and gentle slope.
- C) That the special circumstances and conditions described by the applicant are more the result of personal preferences than any site specific hardship.
- D) The granting of the variance will constitute a grant of special privilege inconsistent with limitation upon other properties in the vicinity and zone as most properties in the immediate area have been developed with either detached garages or attached carports, and none of the houses in the immediate area have received a height variance.
- E) The granting of the variance will bring the De Martin residence within 8 feet of the Booker residence if both additions are developed, making them inconsistent with typical setbacks in the R-1 zone and therefore detrimental to the established character and development patterns of the R-1 zone.
- F) The variance is not the minimum variance that will make possible the reasonable use of the land as there are a number of alternatives

to expand the living space and build a double-car garage which have not been explored.

IX. RECOMMENDATION Based upon the above findings and conclusions, the Staff recommends that the requested height and setback variances be denied.

Project Planner: Steve Osguthorpe, Associate Planner

A handwritten signature in cursive script, appearing to read "Steve Osguthorpe", written over a horizontal line.

Date: March 8, 1994

Attention:

Enclosed is a listing of liquor licensees presently operating establishments in your jurisdiction whose licenses expire on JUNE 30, 1994. Applications for renewal of these licenses for the upcoming year are at this time being forwarded to the current operators.

As provided in law, before the Washington State Liquor Control Board shall issue a license, notice regarding the application must be provided the chief executive officer of the incorporated city or town or the board of county commissioners if the location is outside the boundaries of an incorporated city or town.

Your comments and recommendations regarding the approval or disapproval for the enclosed listed licensees would be appreciated. If no response is received, it will be assumed that you have no objection to the reissuance of the license to the applicants and locations listed. In the event of disapproval of the applicant or the location or both, please identify by location and file number and submit a statement of all facts upon which such objections are based (please see RCW 66.24.010(8)). If you disapprove then the Board shall contemplate issuing said license, let us know if you desire a hearing before final action is taken.

In the event of an administrative hearing, you or your representative will be expected to present evidence in support of your objections to the renewal of the liquor license. The applicant would presumably want to present evidence in opposition to the objections and in support of the application. The final determination whether to grant or deny the license would be made by the Board after reviewing the record of the administrative hearing.

If applications for new licenses are received for persons other than those specified on the enclosed notices, or applications for transfer of licenses are received by the Board between now and JUNE 30, 1994, your office will be notified on an individual case basis.

Your continued assistance and cooperation in these licensing matters is greatly appreciated by the Liquor Control Board.

LESTER C. DALRYMPLE, Supervisor
License Division
Enclosures

MAYOR OF GIG HARBOR
P.O. BOX 145
GIG HARBOR

WA 983350145

RECEIVED

APR 7 1994

C090080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 4/04/94

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
FOR EXPIRATION DATE OF 6/30/94

	LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	CLASSES
1	KEITH UDDENBERG, INC.	KEITH UDDENBERG THRIFTWAY 3110 JUDSON AVE GIG HARBOR WA 98335 0000	362719	E F
2	KEITH UDDENBERG, INC.	STOCK MARKET FOODS #332 5500 OLYMPIC DR BLDG B GIG HARBOR WA 98335 0000	076448	E F



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: MARK HOPPEN, CITY ADMINISTRATOR *MH*
SUBJECT: EAST/WEST ROAD
DATE: APRIL 20, 1994

INTRODUCTION/BACKGROUND

The final meeting for the establishment of the road from Swede Hill to Peacock Hill has been set by the County Council. Four of the seven County Council members should be committed to the 112th street option, which has been preferred for years by the City of Gig Harbor. Since nothing is ever certain, the more City residents that show up for the meeting, the better.

FISCAL CONSIDERATIONS

Effective traffic routing from the Seacliff/Point Richmond area to Peacock Hill should be feasible with the 112th Street connection. A working connection will reduce traffic on city streets, which will save dollars for the City of Gig Harbor taxpayer.

RECOMMENDATION

The presence of supporters for the 112th Street connection would help to ensure the current course. I would encourage all elected officials to be at this meeting.



Pierce County

Office of the County Council

930 Tacoma Avenue South, Room 1045
Tacoma, Washington 98402-2176
(206) 591-7777
FAX (206) 591-7509
1-800-992-2456

RECEIVED

APR 19 1994

CITY OF TACOMA HARBOR

PIERCE COUNTY COUNCIL PUBLIC MEETING NOTICE

PROPOSAL NO. 94-17S, AN ORDINANCE OF THE PIERCE COUNTY COUNCIL ESTABLISHING A NEW COUNTY ARTERIAL ROAD CONNECTING BURNHAM DRIVE NORTHWEST (STATE ROUTE 16/SWEDE HILL INTERCHANGE) TO PEACOCK HILL AVENUE NORTHWEST, SAID ROAD BEING LOCATED IN SECTIONS 30 AND 31, TOWNSHIP 22 NORTH, RANGE 2 EAST, W.M., AND IN SECTION 36, TOWNSHIP 22 NORTH, RANGE 1 EAST, W.M.

(East-West Road)

MEETING DATE: Tuesday, May 10, 1994

TIME: 4 p.m.

PLACE: County Council Chambers, Room 1045
County-City Building
930 Tacoma Avenue South
Tacoma, Washington

CONTACT: Patrick Baughman, Program Development/Public Works, 591-3157, or Tom Weber, Council Resource Staff, at 591-6067.

This proposal is scheduled for final consideration at this meeting. The Council encourages public participation. Public testimony will be taken. Written comments are welcome as well.

Dated: April 15, 1994

NOTE: It would be helpful if you come to the meeting a little early to allow time for signing-in.

