

SPECIAL GIG HARBOR CITY COUNCIL MEETING OF MARCH 23, 2000

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

CALL TO ORDER: 6:04 p.m.

NEW BUSINESS:

1. Appeal of the Hearing Examiner's Decision - Harborwest Subdivision. Mayor Wilbert explained that this was a closed record hearing and appeal procedure for the Council to consider the pertinent facts, applicable law and to make a final decision on the application of Harborwest Subdivision - SUB 98-01, the Huber/McGowan Development. She continued to explain that this was an application for a preliminary plat of a 149-lot subdivision located south of Rosedale Street and west of Schoolhouse Road. She then opened the hearing and asked for cooperation in following the hearing procedures, which she read aloud, allowing only the applicant and appellants to present fifteen minutes of oral argument based upon the evidence already presented during the open public record hearings. She stressed that no new evidence could be presented.

She stated that the Appearance of Fairness Doctrine requires that this hearing be fair, in form, substance and appearance, and asked if anyone in the audience objected to her participation as Mayor, or to any Councilmember's participation in the hearing.

William Lynn - PO Box 1157, Tacoma, representing the Applicant. Mr. Lynn explained that the doctrine not only requires actually fairness but appearance of fairness, and expressed his concern that Councilmember Robinson was a member and perhaps a Board Member of the Peninsula Neighborhood Association, one of the appellants. He said on that basis, that they request that he not participate in these proceedings under the Appearance of Fairness Doctrine.

Mayor Wilbert said that Councilmember Robinson indicated that he was not longer a member of the Board of PNA. She then asked if there was anyone else who wishes to object.

Robert Mack, Smith Ollie & Blaine, representing the Peninsula Neighborhood Association. Mr. Mack asked if other parties would have an opportunity to respond to Mr. Lynn's objection. Carol Morris, the city's Legal Counsel, replied in the affirmative. Mr. Mack continued to say he had received a letter from Mr. Lynn yesterday afternoon and a call from Ms. Morris advising him of the objection of Councilmember Robinson's former membership on the Board of the Peninsula Neighborhood Association. He said that he had reviewed the case which Ms. Morris cited, and said that the issue was not whether or not the person was on the board but if the person was a member. He said that the Mayor and other Councilmembers are also members of the Neighborhood Association and the objection would also attach to them. He added that it does raise an issue given the broad membership of their organization and that they have not had an

opportunity to respond to fully. He added that if Mr. Lynn insists on the objection, it raises a concern that other Councilmembers could sit on this matter.

Mayor Wilbert asked if any other members wished to disclose past membership in the organization. Carol Morris asked that Council disclose any conflict of interest or appearance of fairness issues rather than narrowing it specifically to PNA membership. Mayor Wilbert polled the Councilmembers with the following results.

Councilmember Steve Ekberg explained that he would recuse himself from the proceedings as he has clients who are both property owners in the proposed development and appellants to the project. He then left the room.

Councilmember Derek Young said that he had received correspondence from appellant, Nicholas Natiello, which are on record in the Planning Department, most of which were over a year ago.

Councilmember Mark Robinson explained that he was previously a member of the PNA Board of Directors, however, had recused himself from any discussion or contact with respect to this issue. He added that he didn't even realize they had filed an appeal until the city told him. He said he specifically has had not contact with them in regards to this issue and resigned from the board three weeks ago. He said that his only knowledge of the project prior to the packet he received from the city was during his campaigning, when he door belled in adjacent neighborhoods and people told him what they thought. He said he is still a current member.

Mayor Wilbert said that she had been a member of PNA in the past. She said she had not had any ex parte communication. Carol Morris asked that she disclose that she had received written communication from Nicholas Natiello, which she did.

Councilmember Marilyn Owel read a prepared memorandum for the record stating her membership in several local organizations, including PNA. She added that she is not active in PNA, however, her dues are current. She said that she had also received the correspondence from Mr. Natiello, and on March 6th, she received a call from him and immediately told him she could not discuss the issue of Harborwest. He asked if she had read a letter in the Gateway he submitted and explained that he didn't always pick on staff. They then talked about their boating hobbies.

Councilmember Bob Dick said that also received the correspondence from Nicholas Natiello as all Councilmembers had. He said that he had not read anything since the appeal had been filed, and confined himself to the record. He said that he has not spoken to the appellants or the applicants about any issues.

Councilmember John Picinich said that he attends the yearly PNA Auction, but has not had any contact with any of the parties except the correspondence from Nicholas Natiello.

Councilmember Frank Ruffo said that he has had no ex parte communication with anyone on the matter and that he is not a member of the PNA. He said he was willing, able and ready to rule on this matter.

Mayor Wilbert asked if there were any additional objections to any of the Councilmembers or herself sitting on this appeal. Hearing no response she polled each Councilmember to see if they wished to have Councilmember Robinson recuse himself from the proceedings. She asked the following question: "Do you believe that Councilmember Robinson, because of this objection from the public, should recuse himself from this hearing?" The response was as follows.

Councilmember Ruffo: affirmative. Councilmember Picinich: affirmative. Councilmember Dick: yes. Councilmember Owel: yes. Councilmember Young: yes.

Mayor Wilbert announced that it was unanimous to request that Councilmember Robinson recuse himself and that she asked that he honor that request. Councilmember Robinson asked Carol Morris to better define the extent to where the Appearance of Fairness Doctrine applies to interested versus disinterested people. Ms. Morris explained that the standard is that this hearing has to be fair and has to appear to be fair. She said that although it may not answer the question, the issue is there is an appellant claiming that Councilmember Robinson has an appearance of fairness problem, an assertion with which she agreed. She continued to state that if this case were presented to a court, the decision would be invalidated if Councilmember Robinson decided to sit. She recommended that he step down as a result without any further briefing or discussion, given the fact he was being challenged by an appellant, creating a risk for litigation, invalidating any decision that may be made at this hearing.

Mayor Wilbert again asked Councilmember Robinson to recuse himself without any further discussion. The Mayor then called a ten minute recess at 6:23 p.m.

The meeting resumed at 6:30 p.m. and the Mayor Wilbert asked Councilmember Robinson to recuse himself, and explained that if he did not wish to do so, she would entertain a motion to postpone the hearing to a later date.

MOTION: Move to continue this hearing and set the date at Council's convenience.
Picinich/

Ms. Morris said that Mr. Mack might raise an objection to Councilmember's participation if they were members of PNA, so she requested a disclosure of each member's involvement with PNA. Councilmember Young said he was never a member, was only involved briefly, but never paid dues. Mayor Wilbert said she had been a member for ten to fifteen years, but had never attended a meeting, just paid the dues. Councilmember Owel explained that she had been a member of PNA for two or three years as a believer of community organizations with an educational mission. She said that she had occasionally favored some of their positions, but does not attend their regular meetings. She said that she has only attended their issues meetings on the bridge, including the one in the Council Chambers last week. Councilmember Dick said that he has not been a member of PNA or contributed to it. Councilmember Picinich says he is a big contributor at their November auction, but is not a member. Councilmember Ruffo said that he is not a member and has not contributed.

Mr. Mack said that he was not going to raise an objection, and what he had addressed with Ms. Morris was the issue that Mr. Lynn only objects to one member of the Council. Ms. Morris said that he would have an opportunity to raise an objection at the next meeting as Council had already made the decision that Councilmember Robinson should step down. Mr. Mack asked that Councilmembers read what the State Supreme Court said the law was in regards to this issue in the next few weeks. He added that he had no objections to any Councilmembers sitting on the appeal. He said that his concern was that an objection had been raised against one Councilmember, when others have a similar status.

Mayor Wilbert restated the motion with an April 10th date, and Councilmember Ruffo seconded it. She then asked if the appellants agreed to this date.

Mr. Lynn explained that Mr. Huber had been in this process for four years and that he did not understand why the process could not proceed at this point. Mayor Wilbert explained that there was a motion on the table and asked for the vote. Councilmember Young called for the question.

MOTION: Move to continue this hearing and set the date for April 10th.
Picinich/Ruffo - unanimously approved.


ADJOURN:

MOTION: Move to adjourn at 6:37 p.m.

Cassette recorder utilized.
Tape 562 Side A 000 - 323



Mayor



City Clerk