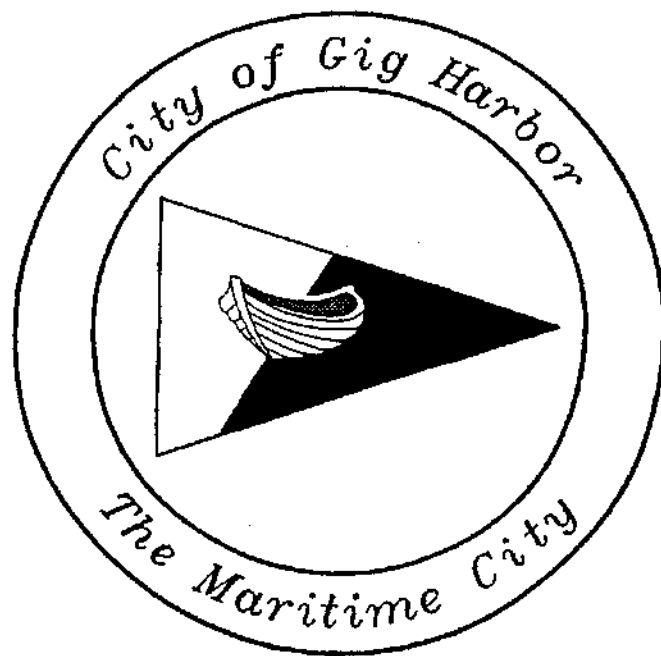


Gig Harbor City Council Meeting



**May 22, 2000
7:00 p.m.**

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING

May 22, 2000 - 7:00 p.m.

CALL TO ORDER:

PUBLIC HEARING: Closed Record Appeal of Issuance of Conditional Use Permit for Poseidon's Delicatessen.

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 May 8 and May 11, 2000.
2. Correspondence / Proclamations: None.
3. East-West Roadway Project Materials Testing - Consultant Services Agreement.
4. Approval of Payment of Bills for May 22, 2000:
Checks #25071 through #25200 for \$354,186.62.
5. Approval of Payroll for the Month of April: \$205,762.43.
6. Liquor License Change of Location: Water to Wine.
7. Liquor License Assumption: Mike's Chevron (Market Express)

OLD BUSINESS:

1. Economic Impacts of the Proposed Narrows Bridge Project.

NEW BUSINESS:

1. Closed Record Appeal of Issuance of Conditional Use Permit for Poseidon's Delicatessen.
2. Habitat Analysis of Donkey Creek Consultant Services Agreement - Applied Environmental Services.
3. McGraw Water Extension.
4. Resolution - Declaration of Surplus Property.
5. East-West Road Construction Project - Bid Award.

PUBLIC COMMENT/DISCUSSION:

COUNCIL COMMENTS / MAYOR'S REPORT:

STAFF REPORTS:

Chief Mitch Barker - GHPD April Statistics.

ANNOUNCEMENT OF OTHER MEETINGS:

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(i) and property acquisition per RCW 42.30.110(b). Action may be taken after the session.

ADJOURN:

DRAFT

GIG HARBOR CITY COUNCIL MEETING OF MAY 8, 2000

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

SPECIAL PRESENTATION - 6:45 p.m.: Mayor Wilbert explained that there is a great deal of interest and support to create a Boys & Girls Club in Gig Harbor. She introduced Jeremy Rubin, President of the Student Body of Foss High School, and active member of the Pierce County Boys & Girls Club, who was elected "Youth of the Year" by the Washington State Boys & Girls Club. Jeremy gave a presentation on how the Boys & Girls Club of Pierce County has affected his life and helped him to become a successful young adult.

CALL TO ORDER: 7:05 p.m.

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 April 24, 2000.
2. Correspondence / Proclamations:
 - a. Proclamation - Auxiliary 2809 Fraternal Order of Eagles.
 - b. Proclamation - Gig Harbor Tourism Week.
 - c. Proclamation - Relatives Raising Children Day.
 - d. My Home Town - AT & T Cable Services.
 - e. Thank you letter to Chief Mitch Barker - Gig Harbor High School.
3. Construction Survey Services Consultant Services Contract - East/West Road Project.
4. Materials Testing Services - Consultant Services Contract - Pt. Fosdick Improvement Project.
5. Purchase Authorization - Prefabricated Building.
6. Approval of Payment of Bills for May 8, 2000:
Checks #24988 through #25070 for \$196,779.98.

MOTION: Move approval of the Consent Agenda as presented.
Young/Robinson - unanimously approved.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. **Sewer Outfall Presentation.** David Skinner, Public Works Director introduced the consultant team who gave a presentation on the wastewater outfall relocation and the associated costs of upgrading the Treatment Plant verses relocating the outfall. The consultants each made a presentation in their respective fields.

Jeff Howard - EarthTech, Inc. - Project Manager. Mr. Howard gave a history of the discharge into the harbor. He said that due to high water quality standards, it would be necessary to either relocate the outfall outside the harbor or upgrade the treatment plant to meet these standards. He discussed the estimated cost of both solutions. He said that extending the outfall outside the harbor would constitute a savings of approximately 1.5 million dollars, while improving the water quality in the Harbor.

Bill Fox - Cosmopolitan, Inc. Mr. Fox gave a report on the water quality studies of the Harbor since 1986. He said that he had been involved with the testing from 1997 through 1999, and that during that time, the water quality standards in the harbor had consistently been met, with occasional exceptions. He described the trend for ammonia and nitrogen increases, and added that this would be alleviated with the extension of the outfall outside the harbor. He described the best possible routes for extending the pipeline and added that the city could solve many problems by extending the outfall.

Kristian Guttormsen, EarthTech, Inc. Mr. Guttormsen reported on the improvements to the Wastewater Treatment Plant showing the citing of additional facilities on the property.

Andy Wones, Jones & Stokes Associates. Mr. Wones gave an overview of the estimated project schedule including coordination with all the appropriate governmental agencies. He added that an important part of the permitting process is the Endangered Species Act.

Dave Skinner thanked the consultants for sharing their information and explaining the issues facing the city. He complimented them on the aggressiveness of the project schedule and asked Councilmembers for direction on how they wished to proceed.

2. Resolution Authorizing Application for Funding Assistance - Scofield Tidelands Property. Dave Skinner explained that this resolution to show commitment to the project, which was a requirement to apply for an IAC Grant to provide 50% of the cost of acquisition of the tidelands. He explained that the remaining 50% of the cost would be sought through a Department of Natural Resources grant or other grants. He said that no city funds would be used.

John Meyer - Peninsula Neighborhood Association. Mr. Meyers spoke in favor of acquiring the tidelands to be used as an educational, wildlife estuary park. He urged Council to approve the effort to begin the process.

John Holmaas. Mr. Holmaas also spoke in favor of efforts to acquire the property. He said it would be an adjunct to the parks plan and helpful to the Borgen site and Historical Society site.

Mayor Wilbert read letters from Marilyn Tagert, Tagert's Dive Shop, and Chris Erlich, Executive Director of the Historical Society, both speaking in favor of obtaining this property.

MOTION: Move to adopt Resolution No. 551 as presented.
Robinson/Young - unanimously approved.

3. Hotel-Motel Tax Report - Chamber Projects. Mayor Wilbert introduced Marie Sullivan, Executive Director of the Chamber of Commerce to give this report. Ms. Sullivan gave an overview of how the \$56,000 share of the hotel/motel taxes that had been designated to the Chamber had been spent. She passed out examples of brochures and directories and explained that as the lead agency for tourism, the Chamber is in their second year of a three-year marketing plan. She shared the new Gig Harbor Tourism logo, designed by Jim Tagney. She asked for information on copyrighting the logo to prevent inappropriate use and to collect royalties. She then introduced Lorene Lund, Media Relations, who gave a report on the press kit that had been developed as well as upcoming events to promote tourism.

Ms. Sullivan then passed out a financial statement itemizing expenditures of the hotel/motel tax funding and explained that they would like to request an additional mid-year funding allocation for this year. Mayor Wilbert said that Council would take it under consideration.

4. Habitat Analysis for Donkey Creek Consultant Service Contract - Applied Engineering. Mr. Hoppen explained that this agenda item would return at the next meeting.
5. Moritz Outside Utility Request - Water and Sewer. Mr. Hoppen explained that this is the fourth time this request had come before Council, begin approved in various measures. He explained that the property was located across from the City Park at Crescent Creek, and that there is an existing duplex served by city water and sewer. He said that this request was for an additional six units to be served and staff recommended approval.

MOTION: Move to authorize the execution of the Utility Extension Capacity Agreement with Chris Moritz as presented.
Dick/Owel - unanimously approved.

6. Ordinance - Proposed Moratorium on the Acceptance of Development Applications for PUDs and PRDs. Carol Morris, Legal Counsel, explained that this was not on the agenda but an informational packet was before Council. She said that this was an item that the statutes do not require advanced public notice in order to prevent rushed applications for PUDs or PRDs during the time that the city considers imposing a moratorium. She said the issue before Council was whether or not they wished to impose a moratorium until the city considers an amendment or repeal of the existing regulations. She described the process to develop an ordinance to be submitted to the Planning Commission for hearings to gather information and come back to the Council with a recommendation to the City Council for action. She said that the process could take less than six months, but that this time limit is authorized by statute. At the end of the six-month period, Council could request more time, but another public hearing would be required within 60 days to sustain the moratorium. She requested that Council set a date for a public hearing to adopt

findings, facts and conclusions to keep the moratorium in place. A date of June 12, 2000 was scheduled for a public hearing.

MOTION: Move to adopt Ordinance No. 843, setting a date of June 12, 2000 for the public hearing.

Picinich/Ekberg - unanimously approved.

PUBLIC COMMENT/DISCUSSION:

Mayor Wilbert introduced Ruthie Reinert, Tacoma-Pierce County Convention & Visitor Bureau. Ms. Reinert thanked Council for adopting the proclamation on behalf of tourism. She gave a brief report on the role of tourism and the benefit to Gig Harbor and Pierce County.

Mayor Wilbert then introduced Colonel John Custer, the city's liaison with Ft. Lewis with the Community Connections program. Col. Custer explained that the military has a major impact on the vicinity, therefore they have a responsibility to foster a relationship with the surrounding communities. He said that he was fortunate to be chosen as the liaison for the Gig Harbor area and offered his assistance to the community in any way that he could be of help.

Shirley Tomasi - Cultural Arts Commission. Ms. Tomasi said that she was excited to hear the arts mentioned so many times throughout the evening. She spoke favorably about the efforts to acquire the Scofield Tideflats property and suggested the possibility of an *Arts in the Park* program to be located there. She discussed upcoming events and how the Arts Commission had utilized their portion of the hotel/motel taxes. She gave a report on the involvement of local youth in the programs and the Ad Hoc Committee for the Borgen Property. She thanked the Mayor for facilitating this process.

Marie Sullivan - Chamber of Commerce. Ms. Sullivan again addressed the logo issue. She said it was created with city hotel/motel tax funds to promote tourism. She said that her concern was unauthorized use of the logo and asked for direction on how to protect the logo and possibilities to get royalties. She said she would like to use the logo for the Chamber's letterhead but was unsure if that would be appropriate, as city funds were used. Councilmember Dick asked the city attorney to explore what would be an appropriate use of the logo and how this could best be handled.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Picinich said that he had attended the Peninsula Historical Society's Spring Banquet, and added that it is amazing what has been accomplished toward financing the new museum. He then talked about the donation of the Shenandoah and Borgen Property and what a wonderful destination Gig Harbor is becoming.

Mayor's Report - Update on the Borgen Property. Mayor Wilbert said that when the doors were removed from the building, the original Austin-Erickson Construction Company façade was exposed. She said that the focus of the Ad Hoc Committee was the Donkey Creek salmon habitat, education and restoration of the open space.

STAFF REPORTS: None.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Special City Council Meeting - 3:00 p.m. Wednesday, May 11th at City Hall.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(i) and property acquisition per RCW 42.30.110(b). Action may be taken after the session.

MOTION: Move to adjourn to Executive Session at 9:12 p.m. for approximately fifty minutes for the purpose of discussing potential and pending litigation. Picinich/Owel - unanimously approved.

MOTION: Move to return to regular session at 10:00 p.m. Picinich/Owel - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 10:00 p.m. Robinson/Picinich - unanimously approved.

Cassette recorder utilized.
Tape 571 Both Sides.
Tape 572 Both Sides.
Tape 573 Side A 000 - 232.

Mayor

City Clerk

DRAFT

SPECIAL GIG HARBOR CITY COUNCIL MEETING OF MAY 11, 2000

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

CALL TO ORDER: 3:11 p.m.

APPROVAL OF MINUTES:

MOTION: Move to approve the minutes of the Special City Council Meeting of May 3, 2000.
Picinich/Owel - unanimously approved.

OLD BUSINESS:

Resolution - Final Decision on SUB 98-01 - Harborwest Subdivision. Mayor Wilbert explained that this was a meeting of the Council to adopt the findings of facts for the final decision on the application of the Harborwest Subdivision. 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 meeting. She then asked if Councilmembers had any ex parte communication in regards to this issue. Hearing none, she proceeding with the meeting.

Carol Morris, Legal Counsel, explained that the resolution before Council had been drafted to incorporate Council's decision. She asked that Councilmembers spend some time going through each section to determine whether the recommendation incorporates their decision and recommend any changes.

MOTION: Move the adoption of Resolution No. 552.
Dick/Picinich -

Councilmember Dick began going through the document section-by-section and asking for comments beginning with page 10, Item A in the Findings. He said that this section was self-explanatory and recited the specific parts of the record in which Council had expressed concern. The Mayor asked if there were any suggestions or corrections to Section A - Dimensions of Private Streets. There were no comments, and they continued to Section B - Private Utilities. There were no comments on this section and they continued to Section C - Emergency Vehicle Access on Private Streets, Generally. Again, there were no comments on Section C and they moved on to Section D - Enforcement of Parking Restrictions on Private Roads.

Councilmember Dick said that this section addressed an important factor in his concerns of private roads and whether they were of a superior design. He continued to say that the section recites some of the covenants and limitations on private roads and added that the city could not

enforce restrictions that are contracts between private parties. Councilmember Ruffo asked for clarification and Carol Morris cited Section 1 in Article 5 of the draft Covenants, Exhibit 90. She said that this was the only reference to this issue that she could find in the record, and it was true that the city could not enforce these covenants. There were no further comments, and they proceeded to Section E - Southern Access.

Councilmember Dick said that this lengthy section recites the evidence addressing the necessity for fire access, referencing the Uniform Fire Code and Pierce County Development Standards. He said that pages 12 and 13 address the access onto 54th Avenue and the enforcement action regarding crossing the wetland. He said that the final paragraph states that the Council finds no evidence in the record to demonstrate that the applicant has corrected the violation or received the necessary permits in order to construct a public street. He continued to explain that the Hearing Examiner's attempt to deal with this issue was by phasing the project and conditioning the first phase to be designed to generate less than 500 vehicle trips per day. The Hearing Examiner otherwise assumed construction of the road to 54th was to be completed later, and only required the applicants to eventually supply a copy of the 404 permit from the Corp of Engineers or Department of Ecology and the hydraulic permit from the Washington Department of Fish and Wildlife. Councilmember Dick said that this section accurately recites the state of the record, which is important because of the problem with regard to 54th. He said that he couldn't find adequate provision for roads or access in the record, especially if the road to 54th could not be built. There were no further comments on this section, and Council continued to Section E - Requirement for findings of Superior Design and Direct Tangible Benefits.

Councilmember Dick said that this was discussed at length during the closed record hearing in terms of "superior design" from Subsection 2, of Section 17.90.040, and in terms of when a private road is permitted as opposed to the normal public roads in a PUD. He continued to say that there was discussion about direct tangible benefits, a phrase from subsection 3 of that same code. He said that this Section F adequately cites what was in the record. They continued to Section F - Hearing Examiner's Findings and Conclusions relating to Private Street.

Councilmember Dick said that this section is just a recitation of the exhibits and there were no further comments. They continued to Conclusions, Item A - Hearing Examiner Decision Does Not Meet Standards for Legal Sufficiency.

Councilmember Dick said that this sets forth a standard from an applicable case, Weyerhauser vs. Pierce County. In the second paragraph, it begins to recite the concerns that had been raised at the last meeting. He continued to give an overview of the list of citations regarding whether the criteria for private roads had been met; whether a direct or tangible benefit had been provided; whether the underlying zone for impervious surface coverage was satisfied; and whether adequate provisions for streets had been made. Councilmember Dick asked Carol Morris if reference to the excessive impervious ground cover had been made in the findings section. She cited where in the document this information had been included. She added that there was no discussion in the record to accurately describe the manner in which impervious ground coverage was calculated and that there was a discrepancy in the record. She added that there was no substantial evidence that this issue had been discussed by the Hearing Examiner or that his findings conformed to the zoning code standards. She continued to say that the only

record is in the SEPA expanded checklist, where it states that impervious surface coverage is 18%, and then later, in the appellant's statement that says their computer analysis shows a low of 45.5% and a high of 52.3 % impervious surface coverage per lot. She said that she did not find in the record an analysis by staff to refute that information, or an explanation in the manner in which it was calculated.

Councilmember Dick said that he did not disagree that there is insufficient evidence of record showing that the requirement for impervious surface was met. He then asked if it would be appropriate to make a factual finding of that information.

Councilmember Owel said that there was reference to this issue in the minutes of the previous meeting and asked if that would be sufficient to reference. Ms. Morris said that the issue on whether the impervious surface requirements had been met was also raised at a previous meeting. She added that the applicant was allowed to submit additional rebuttal to demonstrate that it did or did not meet the requirements, and read a portion of the letter dated April 17, 2000 to Mayor and Council from Carl Halsan. This letter said, "The development would have significantly less impervious cover than what was purported by the appellant's computer analysis. The project is required to meet the adopted standard for impervious coverage." Ms. Morris continued to say that there is no statement by the applicant that the plan meets the requirement, just that when the plat is approved and built, it will meet the impervious surface requirements. She said that her recommendation to Council is to find that the evidence doesn't show that there has been a finding by the Hearing Examiner that impervious surface requirements have been met, which is a specific requirement of the subdivision act for a development to meet the zoning code requirements before it can be approved.

Councilmember Owel asked if the extensive commentary on this issue in the minutes of May 3, 2000, would be appropriate to be included in the findings. Councilmember Dick asked that a finding be inserted that would recite the failure by the applicant to identify any portion of the record to rebut the conclusion by Mr. Dale that there is insufficient evidence of record to support the finding of the Hearing Examiner. Ms. Morris said that she wanted Council to be clear that they are not basing their decision on the testimony of Mr. Dale in the closed record hearing, but upon the evidence submitted to the Hearing Examiner. Ms. Morris was directed to work on the language to be included in the findings section and Councilmembers continued discussion on the Conclusions, Section D - Rezone Criteria in Mount Vernon case.

Councilmember Dick said that this section recited the requirements of the Mount Vernon case that was discussed in the earlier closed record hearing, and its applicability to this case. He said that the last paragraph speaks to the concern that the record does not demonstrate that provisions have changed since the original zoning. He said that rezones, including a PUD, can occur, and one criterion to allow this is a showing of a significant change of circumstances. He added that this application had not provided this criterion. There were no further comments on this section.

Carol Morris suggested language to be inserted in the findings section as requested by Council. She asked for a short break to do a rewrite on the document to be considered before passing the resolution.

The Mayor announced a recess at 3:54 p.m. The meeting reconvened at 4:14 p.m. and the following motions were made.

MOTION: Move to amend the resolution by copying the first paragraph and the first sentence of the second paragraph of Section C - Impervious Surface Coverage, on page 21, and inserting this language into the findings section, adding a new subsection on page 16, H - Impervious Surface Ground Coverage.
Dick/Owel - unanimously approved.

MOTION: Move to amend the second paragraph on page 22, inserting the language "The Council reviewed the plat map, the expanded SEPA checklist submitted by the applicant, in which the impervious surface coverage was listed as 18%, the information submitted by appellants Peter Dale and Northcreek Homeowners showing a low of 45.5% and a high of 42.3% impervious surface coverage, and the information submitted by the applicant to refute the appellant's claims on this issue. The Council concludes that the applicant has not met its burden to demonstrate that this particular requirement has been met. If this Zoning Code requirement has not been satisfied, the Council concludes that the necessary finding under GHMC 16.05.003 cannot be made, namely, that the proposed subdivision is not in conformity with all the applicable provisions of the Zoning Code.
Dick/Owel - unanimously approved.

To clarify the record further, Councilmember Dick made the following motion:

MOTION: Move to amend the sentence that became the last subparagraph in the findings beginning "However, a computer analysis performed by..." to read "However, information submitted to the Hearing Examiner by the appellants Peter Dale and Northcreek Homeowners," deleting the words "computer analysis performed" and substituting the words "information was submitted to the Hearing Examiner."
Dick/Owel - unanimously approved.

Councilmember Dick asked Councilmember Ruffo if the findings address his concerns and the decision that had been made. Councilmember Ruffo said that after reading the resolution, it was clear that there are major issues with this application, but that because the Comprehensive Plan requires this type of project, he believes that something must be done to facilitate the process. He said that he remained troubled, because of his style of problem solving. He said that the applicant owns a piece of property, was paying taxes, and therefore has a right to develop. He said that this was a major issue, and that he needed to rethink how to deal with an issue of this type in the future.

Councilmember Dick said that he agreed with these concerns, as well as the fact that affordable housing did need to be provided. He asked if there was anything that should be corrected in the findings of this resolution to reflect the decisions being made. Councilmember Ruffo replied

that there was nothing that could be done specifically in this case, but that he felt a responsibility to do something in the future.

Councilmember Dick said that he was satisfied that these findings as amended, accurately reflect the record and the law. He called for the question on the original motion.

ORIGINAL MOTION: Move adoption of Resolution No. 552 as amended.
Dick/Owel - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 4:30 p.m.
Owel/Dick - unanimously approved.

Cassette recorder utilized.
Tape 573 Side A 233 - end.
Tape 573 Side B 000 - end.
Tape 574 Side A 000 - 089.

Mayor

City Clerk



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR
SUBJECT: CONSULTANT SERVICES CONTRACT
EAST-WEST ROADWAY PROJECT - MATERIALS TESTING
DATE: MAY 15, 2000

INTRODUCTION/BACKGROUND

Materials testing assistance is necessary for the East-West Roadway Improvement Project to ensure that materials used in the project meet the requirements of the plans and specifications.

After reviewing the Consultant Services Roster and evaluation of materials submitted for review, the materials testing firm of General Testing Laboratories, Inc. was selected as the most qualified to perform the work. Their selection was based on their understanding of the work, and extensive testing experience.

Council approval of the Consultant Services Contract is being requested.

POLICY CONSIDERATIONS

General Testing Laboratories, Inc., is able to meet all of the City's standard insurance provisions for professional services contracts.

FISCAL CONSIDERATIONS

This work was anticipated in the approved 2000 Budget.

RECOMMENDATION

I recommend that the Council authorize execution of the Consultant Services Contract with General Testing Laboratories, Inc., for materials testing services for the Point Fosdick Drive Improvement Project in an amount not to exceed forty-six thousand four hundred eighty-eight dollars and no cents (\$46,488.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GENERAL TESTING LABORATORIES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and General Testing Laboratories, Inc., a corporation organized under the laws of the State of Washington, located and doing business at 18970 Third Avenue, P.O. Box 1586, Poulsbo, Washington 98370 (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the construction engineering of the East-West Roadway Project, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated May 10, 2000, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Forty-five thousand thirty-two dollars and no cents (\$45,032.00) for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. PROVIDED, HOWEVER, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within

fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by December 31, 2000; provided however, that additional time shall be granted by the City for excusable days or extra work.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to one consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as

modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000 claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. It is the intent of this contract for the Consultant's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30-days in advance of any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Public Works Director's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT
Bob Arnold
General Testing Laboratories, Inc.
PO Box 1586
Poulsbo, Washington 98370
(360) 779-9196

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8145

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 2000.

CONSULTANT
By: 
Its Principal

CITY OF GIG HARBOR
By: _____
Mayor

Notices to be sent to:
CONSULTANT
Bob Arnold
General Testing Laboratories, Inc.
PO Box 1586
Poulsbo, Washington 98370
(360) 779-9196

David R. Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335
(253) 851-8145

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

GENERAL TESTING LABORATORIES, INC.
18970 Third Ave NE P.O. Box 1586
Poulsbo, WA 98370
360-779-9196 Toll Free 888-898-8378 Fax 360-779-4320

May 10, 2000

City of Gig Harbor
3195 Hudson Street
Gig Harbor, WA 98335

Attn: Steve Misiurak

RE: Testing & Inspection of East West Roadway Project

Exhibit A
Scope of Services
May 10, 2000

General Testing Laboratories, Inc. (GTL) respectfully submits this proposal to provide construction inspection and materials testing services during construction of the East West Road Project.

Services for this project will be provide by GTL out of our Poulsbo, Washington office on an as-needed basis. It is anticipated that field and laboratory services will be required for earthwork, asphalt and concrete related construction activities. Our field personnel will provide verbal results following completion of field sampling and testing, and will submit written daily reports prior to leaving the site. All field and laboratory reports will be reviewed by our project manager and distributed as directed.

Proposed unit rates for the services most likely to be required are summarized below. Our 2000 *Schedule of Charges* and rates for other laboratory tests (Exhibit B) are proposed for any additional services requested and as the terms of our agreement.

City of Gig Harbor
Page Two

As per your request, we have prepared an estimate for the testing and inspection of the above named project. As always, on these projects our services are dependent upon the contractors scheduling and performance, but a rough estimate is broken down as follows:

Exhibit B

Soils

20 Proctors at \$145.00 each	\$ 2,900.00
20 Sieve Analysis at \$85.00 each	1,700.00
50 Days Nuclear Gauge rental at \$60.00 per day	3,000.00
50 Site Visits at 4 hours each at \$34.00/hr. (Tech Time)	<u>6,800.00</u>
Total	11,700.00

Asphalt

4 Rice Tests at \$65.00 each	260.00
10 Extraction/Gradation at \$135.00	1,350.00
60 Day Nuclear Gauge rental at \$60.00/day	3,600.00
40 Site Visits of 4 hours at \$34.00/hr. (Tech Time)	<u>5,440.00</u>
Total	10,650.00

Concrete

35 Site Visits at 4 hours each at \$34.00/hr. (Tech Time)	4,760.00
100 Cylinders at \$12.00 each	<u>1,200.00</u>
Total	5,960.00

Structural Steel

20 Site Visits at 4 hours each at \$45.00/hr	3,600.00
--	----------

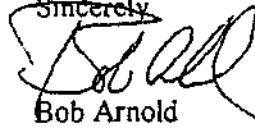
Miscellaneous

Mileage - 195 round trips at 80 miles each at \$0.315 a mile	4,914.00
Sample Pick-up - 50 trips at 2 hours each at \$34.00 an hour	3,400.00
Report Review - 20 hours at \$65.00 an hour	1,300.00
Clerical - 20 hours at \$35.00 an hour	<u>700.00</u>
Total	<u>10,353</u>
Total	40,937.00

Supplemental on-Call Services=10% of Estimated Consultant Services Fees	<u>4,095.00</u>
---	-----------------

Total Estimate **45,032.00**

If you have any questions feel free to give me a call at (360) 779-9196.

Sincerely

 Bob Arnold
 Technical Director

BA/be



RECEIVED

MAY 11 2000

STATE OF WASHINGTON

WASHINGTON STATE LIQUOR CONTROL BOARD CITY OF GIG HARBOR
3000 Pacific Ave SE • PO Box 43075 • Olympia WA 98504-3075 • (360) 664-1600

May 5, 2000

CRAIG C NELSEN ENTERPRISES LLC
3028 HARBORVIEW DR
GIG HARBORVIW DR WA 98335-1962

Re: WATER TO WINE
3028 HARBORVIEW DR
GIG HARBOR, WA 98335-1962
License No. 082542-2F
UBI No. 601 918 728 001 0002

Prior License No. 081567-2F

Your application for change of location has been approved for the following:

BEER/WINE SPECIALTY SHOP

This license is valid through December 31, 2000.

Please post this letter as your temporary operating permit. If you do not receive your Master License with liquor endorsements in 15 days, contact Master License Service at 360-664-1400.

The conditions of your original liquor license also apply to the license at your new location.

LESTER C. DALRYMPLE, Supervisor
Licensing Services

Lou M Vasquez
Liquor License Investigator
(360)664-1633

X091136

cc:City of Gig Harbor
Bremerton Enforcement
Liquor Agent McFerran
File





RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
(360) 664-1600

TO: CITY OF GIG HARBOR

DATE: 5/11/00

CORRECTED

RECEIVED

RE: ASSUMPTION
From EUREKA MANAGEMENT GROUP, INC.
Dba MARKET EXPRESS

MAY 15 2000

APPLICANTS:
SODHI CO., INC. CITY OF GIG HARBOR

SINGH, MAKHAN
1960-01-09 616-05-6192

License: 072786 - 2F County: 27

Tradenname: MIKE'S CHEVRON
Address: 5006 PT FOSDICK DR NW
GIG HARBOR WA 98335-1715

Phone No.: 253) 851-5335

Privileges Applied For:
GROCERY STORE - BEER/WINE

As required by RCW 66.24.010(8), you are notified that application has been made to the Washington State Liquor Control Board for a license to conduct business. If return of this notice is not received in this office within 20 DAYS from the date above, it will be assumed that you have no objection to the issuance of the license. If additional time is required you must submit a written request for an extension of up to 20 days. An extension of more than 20 days will be approved only under extraordinary circumstances.

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. Do you approve of applicant ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you approve of location ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? | <input type="checkbox"/> | <input type="checkbox"/> |

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND GIG HARBOR CITY COUNCIL
FROM: PATRICIA IOLAVERA, INTERIM PLANNING DIRECTOR
SUBJECT: CLOSED RECORD APPEAL – POSEIDON'S (CUP 99-05)
DATE: MAY 18, 2000

INTRODUCTION

An appeal has been received of the Hearing Examiner's decision on a conditional use permit. Such appeals are handled through the closed record appeal process in Gig Harbor Municipal Code chapter 19.06. The procedure at the meeting is described in the attached document entitled "Closed Record Appeal Hearings."

BACKGROUND

On October 21, 1999, property owner Robert Philpott submitted an application for a Conditional Use Permit for a delicatessen. Staff recommended approval of the Conditional Use Permit with the condition that Mr. Philpott limit the number of seats provided to 18 (exclusive of 3 benches previously approved as site furnishings) which was agreed to by Mr. Philpott. Furthermore, Mr. Philpott has agreed in writing to voluntarily provide a public access amenity by allowing access to the scenic vantage point on his deck and by providing public benches at that location.

The Hearing Examiner held a public hearing on the application on March 15, 2000. The Hearing Examiner makes the final decision on Conditional Use Permits, and he approved the Permit with the condition that the number of seats be fixed at 18.

On April 25, 2000 the City received an appeal of the Conditional Use Permit from Stanley Stearns, who owns the property immediately adjacent to Mr. Philpott's.

ADMINISTRATIVE RECORD

The entire administrative record is available for the council at the Planning and Building Department Office. The following documents have been attached to the Council packet for your convenience: (1) the Staff Report (March 9, 2000); (2) City Attorney's brief (April 6, 2000); (3) Hearing Examiner's decision (April 11, 2000); (4) Memo from the Fire Marshal (March 8, 2000); (5) Appeal Statement from Stanley Stearns (April 25, 2000), Letter from Stanley Stearns (May 16, 2000).

APPEAL ISSUES

The appellant has identified the following appeal issues, which were raised at the Hearing Examiner's open record hearing and addressed in the Hearing Examiner's decision:

1. Pizza Parlors are prohibited in the Waterfront Millville Zoning District.

Staff Response:

Applicable Zoning Code provision: Delicatessens are allowed through a conditional use permit in the Waterfront Millville Zoning District, but restaurants are not permitted. GHMC Section 17.48.030. The requirements for Conditional Use Permits are at GHMC Section 17.64.040.

General Response: The only evidence in the record to support appellant's conclusion that Mr. Philpott will be operating a pizza parlor is the presence of a conveyor toaster oven for baking pizza or sandwiches. Staff believes that the fact that Mr. Philpott will be using a conveyor toaster oven for these purposes does not convert a delicatessen into a pizza parlor. The appellant has frequently characterized the delicatessen as a restaurant, and is now recycling that argument by recharacterizing it as a pizza parlor.

Reference in Record: Staff addressed this issue at page 7, paragraph 2 of the Staff Report and concluded that the delicatessen was not a restaurant. The Hearing Examiner addressed this issue at page 4 in his decision.

2. The Examiner cannot impose conditions on a Conditional Use Permit.

Staff Response:

Applicable Zoning Code provision: The following appears in GHMC Section 17.64.030:

In considering whether to grant conditional uses, the hearing examiner shall be satisfied that the minimum standards set for uses specified in this title will be met. In addition, the examiner shall consider the criteria listed in this section and the standards as set forth in this chapter. The examiner may require the applicant to submit whatever reasonable evidence may be needed and may stipulate additional conditions to protect the public interest. The burden of proof rests with the applicant.

The following appears in GHMC Section 17.64.020:

... C. Granting or Denial. The decision may include special restrictions or conditions deemed necessary or desirable in furthering the intent of the ordinance pertaining to the proposed development.

D. Conditions. The conditions may: (1) Stipulate the exact location of uses or structures as a means of minimizing hazards or property damage; (2) require special structural features, equipment or site treatment; (3) increase requirements, standards or criteria over the minimum established by this title.

Reference in Record: This argument was addressed in the City Attorneys' brief, page 4, section 3. The Hearing Examiner addressed this issue at page 5 of his decision.

3. The parking requirements were improperly calculated.

Applicable Code Provisions. 17.48.070 and 17.72.030.

General Staff Response. The appellant argues that the parking calculations were incorrect, based on the City Staff's determination of square footage in the original Staff Report. That Staff Report was withdrawn, partly in response to new information which affected the square footage and subsequent parking calculations. The Hearing Examiner did not base his decision on this withdrawn Staff Report, and the City Council should not consider it.

The Staff Report of March 9, 2000 correctly interprets the parking based on square footage, excluding the Harbor Peddler because it is an existing nonconforming use. The Fire Marshall also reviewed the drawings with Patricia Iolavera and determined that there was no need under the Uniform Fire Code for the applicant to dedicate a parking space for the fire lane.

References in Administrative Record: Staff Report dated March 9, 2000, page 7, section 4, letter to Peter Darrah from Steve Bowman, Building Official, dated November 8, 1985, which confirms the presence of a retail operation at this same location for the last 15 years; Hearing Examiner's decision at page 5.

4. The Code requires that parking be calculated on seating capacity, not seats.

Applicable Code Provision. 17.72.030(K)

General Staff Response: Staff conditioned approval upon a limitation on seating, which was to be provided in accordance with the available parking. This was determined to be 18 seats because there were 6 parking places available to serve this purpose and one parking space is required for every 3 seats ($6 \times 3 = 18$).

References in Administrative Record: Memo from Steve Bowman to Patricia Iolavera dated March 8, 2000, outlining the method for determining the seating capacity; Staff Report dated March 9, 2000, Section III, number 4, page 8, final paragraph.

5. The City has failed to conduct any environmental review, which violates SEPA.

Applicable Code Provision. 18.04

General Staff Response. This is a false statement. The applicant submitted a SEPA checklist to the City on October 13, 1995 in relation to his application for a marine fuel facility and all the physical structures and improvements on the site. The City's SEPA Responsible Official issued a Mitigated Determination of Non Significance on November 20, 1995. At 18.04.080 the GHMC adopted by reference WAC 197-11-800 Categorical Exemptions. WAC 197-11-800 (6) Minor Land Use Decisions, exempts minor land use decisions. This request for a

conditional use permit is such a minor land use decision. The traffic analysis in the original SEPA decision was reviewed and it was determined that the requested CUP would not change the impact. These documents are in the record and available for review.

References in Administrative Record: City Attorney's brief, page 4; Hearing Examiner's decision pages 2 and 5.

MAY 1 2000

**BUCK &
GORDON LLP**

F 902 WATERFRONT PLACE • 1011 WESTERN AVENUE
SEATTLE, WASHINGTON 98104-1097
(206) 382-9540 • FACSIMILE (206) 626-0675

ATTORNEYS AT LAW

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WILLIAM H. BLOCK, P.S.
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BRENT CARSON
JAY P. DERR
JOEL M. GORDON
AMY L. KOSTERLITZ
KEITH E. MOXON
SAMUEL W. PLAUCHÉ
ADRIENNE E. QUINN
JEFF WEBER

OF COUNSEL
ALIZA C. ALLEN
KITTERIDGE OLDHAM

PROJECT MANAGERS
BRADLEY J.S. LILJEQUIST, AICP
ANNA MARIE NELSON

COMMUNITY RELATIONS
MARGARET E. POTTER

May 15, 2000

Gig Harbor City Council
3105 Judson St.
Gig Harbor, WA 98335

Re: May 22 Appeal Hearing - Conditional Use Permit No. 99-05

Dear City Council Members:

We represent Mr. Robert Philpott, the applicant for a conditional use permit to operate a delicatessen within a marine convenience store located at 3313 Harborview Drive.

The proposed delicatessen is the final phase of a multi-use marine facility that was approved by the City Council on November 24, 1997 (Resolution No. 507). That approval authorized construction of a dock that included a marine fueling facility, reconstruction of waterfront office and retail spaces, reconstruction of an upland retail building, and construction of a parking lot. The Council's prior approval of the site plan and shoreline permit for this project expressly required that "[a]ny future tenancy of all of the commercial/office buildings shall meet permitted or conditional use requirements of the zoning code, per section 17.48.020 and .030." Site Plan Condition of Approval No. 8, Resolution No. 507, November 24, 1997.

The proposed delicatessen is specifically allowed in the Waterfront Millville zone as a conditional use. The proposed delicatessen meets applicable zoning code requirements. No alcoholic beverages will be sold or served ⁱⁿ the delicatessen or within the marine convenience store. The delicatessen will operate "without a grille or deep-fat fryer" as required by GHMC 17.04.268, and will operate only between the hours of 7:00 a.m. to 7:00 p.m. as required by GHMC 17.48.035.

Following a public hearing on March 15, 2000, the Hearing Examiner issued a final decision approving the conditional use permit for the proposed delicatessen on April 11, 2000.

Only one condition was imposed. The Hearing Examiner imposed a seating limit of "18 seats and an appropriate number of accompanying tables," excluding the three perimeter benches requested by the City as a public amenity. This maximum seating limit of 18 seats was used to calculate required parking for the delicatessen under GHMC 17.72.030(K): "one off-street parking space for every three seats based upon the maximum seating capacity as determined by the provisions of the Uniform Building Code." Applying this ratio, the delicatessen is required to provide 6 parking spaces for the maximum 18 seats. Mr. Philpott has agreed to meet this parking requirement.

The Hearing Examiner's decision approving the conditional use permit for the delicatessen was appealed by Charles Klinge on behalf of Gig Harbor Marina, Inc., a Texas corporation doing business as Arabella's Landing Marina. Mr. Stanley Stearns is the President of Gig Harbor Marina, Inc. Arabella's/Stearns' appeal is based on five alleged errors in the Hearing Examiner's decision. As set forth below, each of Arabella's five grounds for the appeal is without merit.

1. The Proposed Delicatessen is not a "Pizza Parlor"

Arabella's apparently believes that merely calling the delicatessen a "pizza parlor" should result in a denial of the conditional use permit. However, Mr. Philpott is not proposing a pizza parlor. Moreover, any incidental sale of pizza by the slice or even an occasional whole pizza will not convert this delicatessen into a "pizza parlor" or a "restaurant" any more than selling a cup of coffee would turn it into a coffeehouse. The delicatessen is not a restaurant. The delicatessen will have no interior seating or tables, all orders will be take-out, no restaurant meals will be served, and the hours of operation will be limited. There is no legal or factual basis for Arabella's claim that the proposed delicatessen is either a "pizza parlor" or a "restaurant." The delicatessen as proposed meets all City definitions and requirements for a delicatessen. Arabella's arguments to the contrary are without merit.

2. The Hearing Examiner's Condition Related to Maximum Seating Is Proper

Arabella's next complains that "the Hearing Examiner has no authority to approve the [conditional use permit] with a condition designed to ensure that parking requirements are met."

First, this argument misstates the law. In fact, the Hearing Examiner is expressly authorized to impose "special restrictions or conditions deemed necessary or desirable in furthering the intent of the ordinance pertaining to the proposed development." GHMC 17.64.020(C). The Hearing Examiner properly imposed a maximum seating condition on the delicatessen to ensure full compliance with the parking requirements of the zoning code.

Second, Arabella's claims that a Court of Appeals ruling on Mr. Stearns' unsuccessful attempt to obtain a conditional use permit for his private yacht club proposal should be applied to the delicatessen. This argument is based on a flagrant disregard of the relevant facts. A careful review of the record of the Stearns/Arabella's project shows that the Court of Appeals decision did

not in fact deprive the Hearing Examiner of authority to impose conditions related to parking on a conditional use permit. In ruling on Stearns/Arabella's private yacht club proposal in September of 1995, the Hearing Examiner found that the Stearns/Arabella's site was not of an adequate size to accommodate parking required under the Zoning Code for all of the uses proposed. The code required 92 parking spaces. Stearns/Arabella's proposed only 62 spaces. Both the Hearing Examiner and the City Council agreed that a conditional use permit could not be granted for the Stearns/Arabella's project as proposed because it did not meet code requirements for parking.

With respect to the delicatessen conditional use permit, Mr. Philpott is not seeking to obtain approval for a conditional use that fails to meet parking requirements. The requested conditional use approval for the delicatessen is based on full compliance with parking code requirements for the proposed use. The Court of Appeals decision cited by Arabella's simply affirms that a conditional use permit cannot be granted unless parking requirements are met. The Arabella's project did not meet required parking standards. The proposed delicatessen will fully comply with the City of Gig Harbor's parking requirements. Arabella's contentions regarding this issue are without merit.

3. The City and the Hearing Examiner Correctly Calculated Required Parking

All of Arabella's arguments on this issue are frivolous. Arabella's only citation to the record in support of its argument regarding on parking calculations is to Exhibit 1, the Staff Report dated February 16, 2000. However, this Staff Report was withdrawn and was superceded by the Staff Report dated March 9, 2000. The Hearing Examiner correctly ruled that the original Staff Report had been withdrawn and that he was "not going to pay any attention to the first [February 16, 2000] Staff Report." Hearing Transcript at p. 64, line 20. Arabella's did not appeal this ruling by the Hearing Examiner.

The March 9, 2000 Staff Report correctly sets forth the City's calculation of parking required for all other uses on this site:

New retail (lower level of Harbor Peddler)	869.75 square feet
New office areas:	
lower level	418.00 square feet
upper level	<u>522.50 square feet</u>
Total:	1,810.25 (6 parking spaces based on one space per 300 square feet)

The City and the Hearing Examiner correctly determined that 6 parking spaces are required for these other uses on the site. The City and the Hearing Examiner also correctly determined that the Harbor Peddler retail use is a pre-existing, nonconforming use under GHMC 17.68.070(G) and that this pre-existing use is exempt from the parking requirements because it is not being expanded.

The key issue regarding parking is the number of parking spaces need to serve the delicatessen. The City and the Hearing Examiner correctly determined that 6 parking spaces would fully comply with the zoning code requirements, based on a maximum seating limit of 18 seats for the delicatessen. Thus, the total parking required for the delicatessen and other uses on the site equals the capacity of the existing 12-space parking lot on the Philpott property.

Arabella's presented no evidence to support its contention that one of the 12 parking spaces on the site "must be marked in red as a fire lane." This appears to be another example of Mr. Stearns belief that the consequences of his failure to meet City code requirements must be visited upon all other Gig Harbor residents, whether or not the facts are similar. Mr. Stearns not only failed to present evidence of what fire lane marking was required at Arabella's, he failed to present any evidence that a similar situation exists on the Philpott property.

Finally, Arabella's argument that a previous site plan approval for 11 spaces is somehow permanently binding upon the property owner and the City is frivolous. First, the applicant is agreeing to provide 12 parking spaces for all uses on the site, instead of the previous 11 spaces agreed to. Would Arabella's prefer that Mr. Philpott provide 11 rather than 12 parking spaces? Second, Arabella's argument rests on measurements contained in the first Staff Report that was withdrawn and is not part of the record relied upon by the Hearing Examiner.

4. The Hearing Examiner's Decision Was Correctly Based on Seating Capacity

Arabella's fourth argument is based on a misrepresentation of the record and the zoning code. Arabella's asserts: "The Fire Marshal determined that the maximum seating capacity of the deck area is 52 [sic] persons." Attachment 7, Staff Report dated March 9, 2000. In fact, the Fire Marshal's memo dated March 8, 2000 stated: "The occupant load of the deck use as defined is therefore 53 persons." (emphasis added). This distinction (maximum seating capacity versus maximum occupant load) is important because the zoning code requires that parking shall be required at the ratio of "one off-street parking space for every three seats based on the maximum seating capacity as determined by the provisions of the Uniform Building Code." (emphasis added). The City and Hearing Examiner properly applied this zoning code requirement by requiring 6 parking spaces for the maximum seating capacity of 18 seats.

5. The Hearing Examiner Correctly Found No Violation of SEPA

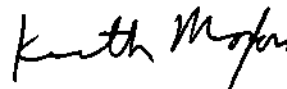
Arabella's final attempt to create controversy out of thin air is the allegation that the City has violated the State Environmental Policy Act (SEPA) "because the City has failed to conduct any environmental review at all." This is a flagrantly frivolous allegation. The record clearly shows that a SEPA checklist for this multi-use facility was submitted on October 13, 1995. The City issued a Determination of Non-Significance (DNS) on November 20, 1995. This SEPA determination was not appealed. The DNS clearly described "retail services" within the project description. There is

no authority for Arabella's contention that the failure to describe specific types of retail services with particularity nullifies a SEPA determination. Moreover, Arabella's has failed to introduce any evidence of any environmental impacts that were not considered by City in 1995. Arabella's suggestion that parking and traffic impacts were not considered is frivolous in light of the traffic study that was submitted with the SEPA checklist. Arabella's propensity to disregard clear evidence of the City's proper SEPA review is typical of its approach in this appeal and other litigation against the City. There is no basis in fact or law for its allegations regarding SEPA.

Conclusion

The City and the Hearing Examiner carefully reviewed this proposed delicatessen and found it to be consistent with all applicable requirements of the zoning code. The Hearing Examiner's decision approving a conditional use permit for this delicatessen should be affirmed.

Very truly yours,



Keith E. Moxon

KEM:wbc

cc: Pat Iolavera
Carol Morris

MAY 1 2000

GROEN STEPHENS & KLINGE LLP

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RICHARD M. STEPHENS
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ALSO ADMITTED IN
ALASKA, OREGON &
CALIFORNIA

May 16, 2000

COPY

City Council
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

**Re: Appeal by Arabella's Landing Marina of Poseidon's/Philpott Pizza Parlor
Conditional Use Permit Application 99-05**

Dear City Council:

On behalf of Arabella's Landing Marina, I appealed the decision of the hearing examiner on the above referenced conditional use permit approved by the Hearing Examiner. We received notice that the City Council has scheduled a closed record appeal hearing in this matter for May 22, 2000.

We have reviewed our options under GHMC Chapter 19.06 for closed record appeals. Arabella's Landing Marina will stand on the appeal statement dated April 25, 2000, and will present no additional written or oral argument. The code specifically states that during the appeal hearing parties to the appeal "may present written and/or oral arguments to the council." GHMC 19.06.005(A)(1). Thus, additional argument is clearly optional and Arabella's Landing Marina chooses to make no further argument beyond what has already been stated.

I am copying City Attorney Carol Morris with this letter and invite her to contact me if she has any questions. Please send me a copy of your written decision. Thank you.

Sincerely,

Groen Stephens & Klinge LLP

Charles A. Klinge
CHARLES A. KLINGE

cc: Keith E. Moxon, for Applicant
Carol A. Morris, City Attorney
Mary Kay High, for Maxine Ross
✓ Patricia Iolavera, for Planning Department

Stearns (Philpott)\City Council ltr.doc

rcpt # 40470 \$ 120.00

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ALSO ADMITTED IN
ALASKA, OREGON &
CALIFORNIA

April 25, 2000

APR 25 2000

PL. BLDG. BUILDING

Planning Director
Department of Planning & Building Services
City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335

**Re: Appeal by Arabella's Landing Marina of Poseidon's/Philpott Pizza Parlor
Conditional Use Permit Application 99-05**

Dear Planning Director:

On behalf of Arabella's Landing Marina, I appeal the decision of the hearing examiner on the above referenced conditional use permit approved by the Hearing Examiner which among other matters illegally authorizes operation of a pizza parlor restaurant in the Waterfront Millville Zoning District.

a. Appellant's Name, Address, and Phone:

Arabella's Landing Marina a dba of Gig Harbor Marina, Inc.
c/o Charles A. Klinge, Groen Stephens & Klinge LLP
2101 112th Ave. NE Suite 110
Bellevue, WA 98004-2944

b. Appellant's Standing: Charles A. Klinge is listed as a party of record in the hearing examiner decision. I was specifically representing, and appeared on behalf of, Arabella's Landing Marina a dba of Gig Harbor Marina, Inc.

c. Identify Application: Applicant Robert Philpott, Conditional Use Permit Application 99-05.

d. Appellant's Statement of Grounds

Pizza Parlors are Prohibited in Waterfront Millville Zoning District

Robert Philpott admitted on the record that he intends to sell pizza at this so-called delicatessen. Sale of pizza means only one thing—a pizza parlor which is clearly a restaurant under any reasonable interpretation of the Gig Harbor Municipal Code (GHMC). Restaurants are not permitted in this location which is within the Waterfront Millville zoning district either outright or conditionally. Compare GHMC 17.48.020, .030 with 17.50.020. The City has in the past jealously guarded the uses in the Waterfront Millville district and specifically adopted the no restaurant provision in response to

rumors or plans to develop a restaurant in this area. Mr. Philpott is trying to do through the backdoor—by proposing a deli involving preparation of sandwiches, precisely what he cannot legally do in this zoning district—open a pizza parlor.

The Philpott application also misrepresents the intent of this proposal in the application materials which is a violation of GHMC 17.07.002(C)(2). Philpott's counsel represented that the deli would involve "preparing sandwiches" (Hearing Ex. 5). Yet, Staff observed a commercial conveyor oven, dough presses, and a Silesia High Speed Grille at the site (Ex. 1 at p. 8) which are all representative of a restaurant, not a deli. Philpott even testified that he intends to sell pizza while he is promoting the restaurant to the public as having pizza, pasta, and other casual foods including cinnamon buns. Ex. 36. A pizza parlor is a restaurant by any interpretation, so even based on Philpott's testimony the application must be denied because the application is for a sandwich shop and Philpott intends to open a restaurant. The planned espresso maker (Ex. 28a) makes the project a coffee house requiring notice of a separate CUP per 17.48.030.

The Examiner Cannot Grant The CUP With A Condition Related To Parking

The law in Gig Harbor is that the Hearing Examiner has no authority to approve the CUP with a condition designed to ensure that parking requirements are met. The City Council held this in Resolution No. 456, (Hearing Ex. 20/5) at p. 11 in relation to Arabella's Landing Marina Yacht Club proposal (rejected by the City, decision upheld by the courts).

In the Court of Appeals, the City defended the City Council determination. Arabella's Landing (Stearns in the decision) argued that the City code specifically authorized conditions, including imposing conditions requiring site plan changes, to ensure compliance with parking requirements. See GHMC 17.04.260 and 17.64.020(C). This argument is restated correctly in the Court of Appeals decision at pages 18-19 of the Slip Opinion (Hearing Ex. 20/6). The Court of Appeals ruled against Arabella's Landing finding that: "While this provision [GHMC 17.64.020(C)] seems to explicitly provide for granting conditional-use permits subject to conditions, what the code gives with one provision it takes away with the next." *Id.* at 18. The Court of Appeals went on to hold that "the conditional-use permit could not be issued with a condition related to parking." *Id.* at 19 (citing GHMC 17.64.040(D)). The Supreme Court denied review so this ruling is final. The Philpott CUP application cannot be approved with conditions related to parking or any other matter listed in 17.64.040(D). The Examiner's ruled just the opposite which is a ruling contrary to law.

Parking Requirements Were Determined Improperly

The Examiner previously approved the project with 11 parking spaces for office/retail based on 3,150 square feet of office/retail based on the same conclusion. Hearing Ex. 20/3, HE Decision SDP 95-06 dated February 21, 1996 at pp. 5, 15. Yet, the Examiner changed the site plan approval to 6 spaces, concluded that the deli would require 6 spaces, and apparently accepted that the site contained 12 spaces. Staff measured the actual construction in square feet as follows:

Harbor Peddler	1012.66	Ex. 1 at 8
New Retail (basement of Harbor Peddler)	869.75	Ex. 1 at 8, Ex. 4 at 8
New Offices Bottom	418.00	Ex. 1 at 8, Ex. 4 at 8

New Offices Top	522.50	Ex. 1 at 8, Ex. 4 at 8
Deli/Store	993.79	Ex. 1 at 8, Ex. 4 at 8
Total	3816.70	

Arabella's Landing has already challenged in court the issue that this total floor area far exceeds the approved site plan for 3,150 square feet and far exceeds the maximum gross floor area limit of 3,500 square foot limit for Waterfront Millville Zoning District. GHMC 17.48.040.¹

The project only provides 11 parking spaces as the purported 12th space must be marked red as a fire lane in the same manner required by the City for Arabella's Landing just this last January. The reason is that a car in the space blocks access to the fire suppression system for the fuel dock. Testimony of Arabella's Landing Marina planner Gareth Roe. The Examiner asked Planning Director Ray Gilmore to address this issue and he agreed to do so, but the City Attorney ignored the issue in her response and the Examiner failed to decide whether the 12th space was valid.

The actual construction as measured by Staff results in a need of 12.7 parking spaces (3816.70/300) which rounds to 13. GHMC 17.72.030(E) and (M). Yet, based on the staff recommendation, the Examiner ignored the 11 space requirement of the site plan approval and the Examiner followed the Staff Report in excluding the Harbor Peddler retail space in parking calculations. The only explanation for the exclusion was that no change in use was planned for the Harbor Peddler building. But that explanation completely ignores that the site plan approval by the City Council (adopting the Examiner's decisions) required 11 parking spaces for the uses on site *including the Harbor Peddler building*. How can the Examiner reject a City Council approved site plan requiring 11 parking spaces? The Examiner also followed Staff's recommendation to exclude of the Deli/Store building for parking and just count parking spaces for seats. Philpott represented in Hearing Exhibit 5 that "a fraction of the store's business may involve preparing sandwiches," with the rest being retail sales. If only a fraction of store's business is the deli, then there is no basis to exclude the Deli/Store building from parking calculations for retail use that was already included in the 11 parking spaces approved by the site plan.

The Code Requires Parking Based on Seating Capacity Not Seats

As noted above, the new Staff Report assumes that the City could reasonably police the number of seats, and on that basis recommends a restriction of seating for 18 people. This approach violates the code parking requirements of GHMC Chapter 17.72. The requirement for restaurants and other eating establishments requires parking spaced based on "maximum seating capacity as determined by the provisions of the Uniform Building Code." GHMC 17.72.030(K). Clearly, the City Council previously decided that policing by seat count was impossible and required parking based solely on maximum seating capacity. The Fire Marshal determined that the maximum seating capacity of the deck area is 52 persons, and staff concluded that the parking requirement for that use is 12 additional spaces.

¹ As noted to the Examiner, Arabella's Landing Marina specifically reserves all rights to have the Superior Court in the pending lawsuit decide the legality of all issues raised in that lawsuit. Without waiving those rights, Arabella's Landing Marina seeks to participate in this proceeding on a limited basis to present material evidence and argument relevant to the decision on the Conditional Use Permit Application.

Again, the same approach, parking based on maximum seating capacity, was applied to the Yacht Club Proposal for Arabella's Landing Marina. The City has made an interpretation of this provision through the memo of Mr. Bowman and the requirement is for 12 parking spaces for 53 seats. Ex. 4 at 9. If anything, this use with takeout food and a convenience store will create a greater parking need than a restaurant.

The City Has Failed to Conduct Any Environmental Review in Violation of SEPA

The proposed Conditional Use Permit (CUP) project violates the State Environmental Policy Act (SEPA) because the City has failed to conduct any environmental review at all. No environmental checklist was submitted for the CUP application and no threshold determination was made as required by GHMC Chapter 18. No categorical exemption applies. At a minimum, the decision should be reversed and await SEPA review and a new hearing. SEPA review and a threshold determination are required for conditional use permits. Settle, *The Washington State Environmental Policy Act*, § 11(b), at p. 63-64 (citing *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356 (1995) and *Johnston v. Grays Harbor County Board of Adjustment*, 14 Wn. App. 378 (1978)). The lack of parking will create traffic and parking problems on Harborview Drive which are exactly the type of issues that should be addressed during environmental review. See Ex. 18.

The Examiner's decision finds that SEPA review occurred based on a Determination of Non-Significance issued over four years ago on December 5, 1995. However, that DNS was based on an environmental checklist which said nothing about a delicatessen, restaurant, or any similar conditional use, and the site plan and shoreline permit were approved as retail sales. No mention was made of any intent to open a delicatessen until mid-1999, and no mention was made that a pizza parlor restaurant was planned until the hearing on March 15, 2000. SEPA review cannot occur four years before uses are even contemplated.

e. Relief Sought: Reverse the Hearing Examiner and deny the application.

f. Statement of Accuracy: I have read the appeal and believe the contents to be true.

Sincerely,

Groen Stephens & Klinge LLP


CHARLES A. KLINGE

cc: Keith E. Moxon, for Applicant
Carol A. Morris, City Attorney
Mary Kay High, for Maxine Ross



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

NOTICE OF DECISION
City of Gig Harbor Hearing Examiner

Date of Application: October 21, 1999

Date of Notice of Completion of Application: November 17, 1999

Date of Notice of Public Hearing: March 2, 2000

Applicant: Robert Philpott, 3313 Harborview Drive, Gig Harbor

Project Location: 3313 Harborview Drive, Gig Harbor

Project Description: Application for Conditional Use Permit (CUP 99-04) to allow a delicatessen in the marine convenience store located in the Waterfront Millville district at 3313 Harborview Drive.

Project Permits required: Conditional Use Permit and Building Permit

Type of Environmental Documents Filed: N/A

PUBLIC HEARING DATE March 15, 2000

DATE OF DECISION April 11, 2000

FINAL DECISION Approved with conditions (per Hearing Examiners report)

The Hearing Examiner's decision on the above stated application is final. An appeal of the Hearing Examiner's decision must be in accordance with section 19.06.004 of the Gig Harbor Municipal Code. Only parties of record have standing to appeal the hearing body's decision. **An appeal of the hearing body's decision must be filed within 10 working days following issuance of the hearing body's written decision.** Appeals may be delivered to the planning department by mail, personal delivery or by fax before 5:00 p.m. on the last business day of the appeal period.

Appeals shall be in writing, be accompanied by an appeal fee, and contain the following information:

- Appellant's name, address and phone number;
- Appellant's statement describing his or her standing to appeal;
- Identification of the application which is the subject of the appeal;
- Appellant's statement of grounds for appeal and the facts upon which the appeal is based;
- The relief sought, including the specific nature and extent;
- A statement that the appellant has read the appeal and believes the contents to be true, followed by the appellant's signature.

APR 12 2000

PLANNING AND BUILDING
SERVICES

CITY OF GIG HARBOR
HEARING EXAMINER
FINDINGS, CONCLUSIONS AND DECISION

APPLICANT: Robert Philpott
CASE NO.: CUP 99-05
LOCATION: 3313 Harborview Drive
APPLICATION: Conditional Use Permit to allow a delicatessen in the marine convenience store located in the Waterfront Millville District at 3313 Harborview Drive.

SUMMARY OF RECOMMENDATION AND DECISION:

Staff Recommendation: Approve with a condition

Hearing Examiner Decision: Approve with a condition

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 Philpott conditional use permit application was opened at 5:00p.m, February 23, 2000, in the City Hall, Gig Harbor, Washington, and was immediately continued to March 15, 2000. The hearing was reopened at 5:18 p.m., March 15, 2000 and closed for oral testimony/legal argument at 7:40 p.m. The hearing was held open administratively until close of business on April 3, 2000, and then continued to close of business on April 6, 2000. Participants at the public hearing and the exhibits offered and entered are listed in this report. A verbatim recording of the hearing is available in the Planning Department.

Correspondence was sent by both Charles Klinge and Keith Moxon following the close of the hearing. Since neither piece of correspondence was timely filed; neither piece of correspondence was considered in the preparation of this report.

HEARING TESTIMONY/LEGAL ARGUMENT:

The following persons offered testimony/legal argument at the public hearing:

From the City:

Pat Iolavera, Associate Planner

From the Applicant:

Keith Moxon, attorney for the applicant
Robert Philpott, applicant

From the Community:

Bruce Rogers, manager of Murphy's Landing
Terry Burton, boater with boat at West Shore Marina
Charles Klinge, attorney for Arabella's Landing
Mardella Rowland, manager of Arabella's Landing
Ralph Vasen, boater with boat at Arabella's Landing
Garath Roe, planning consultant for Arabella's Landing
Mary Kay High, attorney for Maxine Ross

CORRESPONDENCE:

The following correspondence was received from members of the general public.

Joe Davis (Exhibit 18) in opposition
Michael Bianco (Exhibit 23) in support
Candice Schuman (Exhibit 24) in support
Mark Guerreo (Exhibit 25) in support

FINDINGS, CONCLUSIONS AND DECISION:

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

A. FINDINGS:

1. The information contained in Section II of the revised Planning Staff Advisory Report (Exhibit 4) 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 Planning Department.
2. Robert Philpott (hereinafter "Philpott") submitted an application for a Conditional Use Permit to allow a delicatessen in a marine convenience store located at 3313 Harborview Drive, in the area zoned "Waterfront Millville" in Gig Harbor, Washington.
3. In 1997, the City approved a site plan, shoreline substantial development and shoreline conditional use permits for the property, and for construction of a marine fuel and multi-use facility with a parking lot on the upland portion of the site (Resolution No. 507 of the City of Gig Harbor, dated 11/27/97). SEPA review was performed on that project and a Declaration of Nonsignificance was issued on 11/20/95.

4. At this time, substantial construction has occurred under the permits and approvals described in #3 above, however, said construction had not received final approval from the City at the time of the hearing on the instant case.
5. Adjacent property owners Maxine Ross and Arabella's Landing have filed lawsuits against Philpott. The lawsuits allege that the construction of the property and its operation is "proceeding in violation of City of Gig Harbor ordinances and prior approvals." (Pierce County Superior Court No. 99-2-09968-6, Second Amended Complaint.
6. Philpott has requested approval of a Conditional Use Permit to allow a delicatessen with seating to be outside on the deck to serve 32 patrons. Philpott and his attorney indicated Philpott will:
 - a. Commit 6 parking spaces for use by the delicatessen,
 - b. Provide signs for the six spaces for 1 or 2 hour parking to insure turnover,
 - c. Monitor and survey customers to insure there will be enough parking, and
 - d. Not sell alcoholic beverages in conjunction with the delicatessen.(See Exhibits 21 and 40)
7. Nearby residents and/or property owners raised several issues relative to the instant application (see Exhibits 18, 19, 20, 38, and 39). Those issues include:
 - a. Does the pending litigation affect the Hearing Examiner's jurisdiction to act this request for a conditional use permit?
 - b. Has the City complied with the State Environmental Policy Act (SEPA)?
 - c. Has City staff interpreted the parking requirements for the Philpott project consistent with other applications?
 - d. Does the Hearing Examiner have authority under the CUP criteria to find that the application meets the code parking requirements and to impose a condition to monitor compliance with the code?
 - e. Did the City staff correctly determine that because the Philpott project does not involve any moorage, no moorage parking was required?
8. Two boaters and an adjacent business owner wrote letters in support of the application (See Exhibits 23, 24, and 25).
9. The City recommended approval of the Conditional Use Permit, with a condition that seating be limited to 18 patrons (see Exhibit 4). The City Attorney and the Associate

Planner also responded to issues raised by one of the neighboring property owners (see Exhibits 45 and 46).

B. CONCLUSIONS:

1. The conclusions prepared by the Planning Staff and contained in Section III of the revised Planning Staff's Advisory Report (Exhibit 4) accurately set forth a portion of the conclusions of the Hearing Examiner and by this reference is adopted as a portion of the Hearing Examiner's conclusions, except as otherwise modified in this report. A copy of said report is available in the Planning Department.
2. A conditional use is a use that has been legislatively determined to be allowed within a given zone if appropriate conditions can be imposed to ensure its compatibility with those used which are permitted as a matter of right within that zone. A conditional use thus carries a fairly heavy assumption of acceptability within the zone it includes. In consideration of any conditional use permit application, the Examiner is required to consider the degree of compatibility which would exist between the use and its particular surroundings and may impose such conditions as are necessary to ensure compatibility. If compatibility can be ensured, then the permit should be approved.
3. A delicatessen is a use that is conditionally permitted in the Waterfront Millville zone district in which the subject property is located (see GHMC 17.48.030).
4. If approved, as conditioned below, the use will not adversely affect the established character of the surrounding neighborhood. The structures and dock on the Philpott property (including the building proposed to house the delicatessen) are architecturally and esthetically compatible with the existing architectural vernacular and character of the Millville Waterfront area. The scale, use of materials, color scheme and detailing of the building in which the delicatessen will be located all meet or exceed the goals of the City of Gig Harbor Design Manual. The delicatessen will offer a convenience to the boating community, and it will not be injurious to the character of the surrounding neighborhood, nor will be injurious to the property or improvements in the vicinity or zone in which the property is located.
5. The proposed use is properly located, especially since it is a part of a marine convenience store associated with a fueling and pumping facility that will serve boaters who visit Gig Harbor Bay. Staff indicated in Exhibit 4 that as of the date of the hearing, there had been no complaints regarding another nearby delicatessen with limited parking (Suzanne's Deli and Bakery) which is located approximately one block away. Also, according to

Exhibit 4, the City of Gig Harbor Public Works Department has determined that the original proposal for a fueling dock and multiple use facility would have a very minimal impact on traffic and the addition of a delicatessen should not alter that determination.

6. The provision of a total of 12 off-street parking spaces on site is believed to be adequate to provide for the combined retail and office uses on the site, including the 18 seats (with tables) recommended by staff for the delicatessen. The Examiner concurs with staff that the delicatessen should be limited in size (to 18 seats instead of the 32 seats requested) due to the general shortage of parking in the immediate area.
7. The City's brief (Exhibit 46) effectively addresses the principal issues raised by Arabella's Landing and Ms. Maxine Ross:
 - a. No authority has been cited for Arabella's argument that the Hearing Examiner should deny the CUP or delay the hearing simply because of the Superior Court lawsuit filed.
 - b. The City has complied with the requirements of SEPA. A DNS issued by the City and attached to the Applicant's Supplemental Hearing Brief, as Exhibit B is believed to sufficiently cover the impacts associated with the "marine fueling and multi-use facility" that was proposed and reviewed through the SEPA process. The proposed delicatessen is considered to be included in the "multi-use facility" that was identified in the environmental checklist.
 - c. The parking issue in this case is significantly different from the Gig Harbor Marina Case cited by both Ross and Arabella's. The uses proposed in that case were different from the uses proposed here. In that case, a parking variance was requested and denied, which left the proposed use (a yacht club) with inadequate parking. The Court determined that without adequate parking the Conditional Use Permit could not be approved. No parking variance has been requested in this case, and staff has determined (and the Examiner concurs) that parking requirements for the proposed delicatessen (as conditioned with limited seating) will be met with the parking provided on site. Furthermore, the Gig Harbor Marina case does not deprive the Examiner of authority to impose conditions related to parking on a Conditional Use Permit. In fact, the Hearing Examiner is expressly authorized to impose "special restrictions or conditions deemed necessary or desirable in furthering the intent of the ordinance pertaining to the proposed development." GHMC 17.64.020(C).

- d. The Examiner believes that Staff correctly determined that no parking was required for moorage because moorage, including transient moorage, is not permitted.

C. DECISION:

Based upon the foregoing findings of fact and conclusions, the requested conditional use permit is approved, subject to the following condition:

1. The tables and chairs serving the delicatessen (and excluding the three perimeter benches previously allowed as general public amenities) shall be limited to 18 seats and an appropriate number of accompanying tables.

Dated this 11th day of April 2000.



Ron McConnell
Hearing Examiner

APPEAL OF EXAMINER'S DECISION:

Any party of record who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Gig Harbor Planning Department within (14) calendar days from the date the final decision of the Examiner is rendered.

Such appeal shall be submitted in accordance with Chapter 19.06 GHMC.

EXHIBITS:

The following exhibits were offered and entered into the record:

1. Planning staff report, dated 2/16/00
2. Notice of withdrawal of staff report and recommendation, dated 2/18/00
3. Request for continuance from Keith Moxon, dated 2/22/00
4. Planning staff report, dated 3/9/00
5. Letter from Alexandra Smith, dated 6/11/00
6. Letter from Alexandra Smith, dated 7/27/00
7. Department of Public Works project review and comment, dated 10/26/00
8. Letter from Keith Moxon, dated 2/14/00
9. Letter from Charles Klinge, dated 2/23/00
10. Memo from Keith Moxon, dated 3/3/00

11. Letter from Keith Moxon, dated 3/8/00
12. Memo from Steve Bowman, dated 3/8/00
13. Drawing of C-Store area
14. Drawing of Deli Prep area
15. Gig Harbor Resolution #507
16. Site plan, dated 4/13/98
17. As built drawing, dated 10/25/99
18. Letter from Joe Davis, dated 3/15/00
19. Letter from Charles Klinge, dated 3/15/00, with attachments
20. Hearing materials 1 through 9 from Arabella's Landing
21. Hearing brief from Keith Moxon, with attachments A-D
22. Hearing outline submitted by the applicant
23. Letter from Michael Bianco, dated 3/14/00
24. Letter from Candice Schuman, dated 3/14/00
25. Letter of from Mark Guerreo, dated 3/15/00
26. Minutes of five City Council meetings, dated 5/13/96, 9/23/96, 10/14/96, 2/10/97, & 11/24/97
27. Site Plan, dated 9/27/95
28. C-Store Area floor plan, with equipment list
29. Sheet E1.1 from plan
30. Floor plan/dock plan
31. Building elevations
32. Video submitted by the applicant
33. Restaurant/deli parking chart
34. 3 photos of fueling docks
 - 34-1. Breakwater Marina
 - 34-2. Des Moines Marina
 - 34-3. Shilshole Marina
35. 5 photo sheets of the subject site and area
 - 35-1. Shore from fueling dock
 - 35-2. Fueling dock
 - 35-3. Site buildings and fueling dock
 - 35-4. Decks and fueling dock
 - 35-5. Enlarged photo of decks and fueling dock
36. Excerpt from Waggoner Cruising Guide
37. Architectural drawings of floor areas
38. Letter from Mary Kay High, dated 3/22/00
39. Letter from Charles Klinge, dated 3/22/00
40. Applicant's supplemental hearing brief, dated 3/27/00, with attachments
41. Declaration of Robert Philpott, dated 3/27/00
42. Letter from Carol Morris, dated 4/3/00
43. Memo from Keith Moxon, dated 4/3/00
44. Memo from Ron McConnell, dated 4/4/00
45. Brief of the City of Gig Harbor, dated 4/6/00, with attachments A - C
46. Declaration of Patricia Iolavera in support of Brief of City of Gig Harbor, dated 4/6/00

PARTIES OF RECORD:

Robert Philpott
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Gig Harbor, WA 98335

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Seattle, WA 98104

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Terry Burton
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Bellevue, WA 98004

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Candice Schuman
Harbor Peddler, Inc.
3313 Harborview Drive
Gig Harbor, WA 98335

Mark Gurerro
No address given

Planning Department
City Attorney

APR 10 2000

PLANNING

BEFORE THE HEARING EXAMINER
OF THE CITY OF GIG HARBOR

In the Matter of Philpott)	No. CUP 99-05
Conditional Use Application)	
for Delicatessen (Poseidon's))	BRIEF OF CITY OF GIG HARBOR

I. Introduction.

This brief of the City of Gig Harbor (hereinafter the "City"), responds to issues raised in the letter dated March 15, 2000 to Ray Gilmore, Gig Harbor Planning Director, from Charles Klinge, attorney for Arabella's Landing Marina (hereinafter "Arabellas").

II. Facts.

1. Robert Philpott (hereinafter "Philpott") submitted an application for a Conditional Use Permit ("CUP") to allow a delicatessen in a marine convenience store located at 3313 Harborview Drive, in the area zoned "Waterfront Millville" in Gig Harbor, Washington.

2. In 1997, the City approved a site plan, shoreline substantial development and shoreline conditional use permits for the property, for the construction of a fuel dock and development of a parking lot on the upland portion of the site. (Resolution No. 507 of the City of Gig Harbor, dated 11-27-97.) SEPA was performed on the project, and a Declaration of Nonsignificance issued on November 20, 1995.

3. At this time, construction under the permits and approvals described in No. 2 above has not received final approval from the City.

4. Arabellas and the adjacent property owner Maxine Ross filed a lawsuit against Philpott and the City, alleging that the construction on the property and its operation is "proceeding in violation of City of

BRIEF OF CITY OF GIG HARBOR

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1 Gig Harbor ordinances and prior approvals.” (Pierce County Superior Court No. 99-2-09968-6, Second
2 Amended Complaint, p. 1-2.)

3 **III. Issues Presented.**

- 4 A. Does the pending litigation affect the Hearing Examiner’s jurisdiction to act on
5 Philpott’s conditional use permit application? **No.**
- 6 B. Has the City complied with the State Environmental Policy Act (“SEPA”)? **Yes.**
- 7 C. Has City staff interpreted the parking requirements for the Philpott project
8 consistent with other applications? **Yes.**
- 9 D. Does the Hearing Examiner have authority under the CUP criteria to find that the
10 application meets the code parking requirements and to impose a condition to
11 monitor compliance with the code? **Yes.**
- 12 E. Did the City staff correctly determine that because the Philpott project does not
13 involve any moorage, no moorage parking was required? **Yes.**

14 **IV. Argument.**

- 15 A. No authority has been cited for Arabella’s argument that the Hearing Examiner should deny
16 the CUP or delay the hearing, simply because of the Superior Court lawsuit.

17 Arabellas asks the Hearing Examiner to be aware that the City “notified the Court that the City is
18 pursuing an enforcement action against Philpott for pumping gasoline in violation of a stop work order
19 from the City.” Attached to this brief as Exhibit A is a copy of the citation issued to Philpott regarding this
20 fire code violation, as well as a Citation Report dated December 14, 1999. These documents clearly show
21 that this fire code violation was pursued in the Gig Harbor Municipal Court, and relate to the portion of
22 the project not at issue in this hearing for the Philpott CUP.

23 Arabellas notes that the “first Staff Report in this proceeding noted the project’s current failure to
24 comply with landscaping and parking requirements.” As stated above, the City has not issued its final
25 approval for the project under the earlier permits. Normally, the City does not initiate a code enforcement
26 action prior to final approval of issued permits, the City merely requires that the applicant conform his/her
27 construction to the approved permit in order to obtain final approval. Declaration of Patricia Iolavera in
28 Support of City’s Brief. The City initiated an enforcement action for the gasoline fueling operation prior
to final approval because it involved a fire code violation that presented a threat to public health and safety

1 until corrective measures were taken.

2 Arabellas argues that "the Examiner has no basis to examine the review criteria and other
3 requirements for CUPs at GHMC Chapter 17.64 when the Examiner is in no position to know whether the
4 City or the courts will allow the existing uses on the site." Thus, Arabellas suggests that the application
5 must be denied or the hearing delayed indefinitely until the "issues are finally resolved."

6 Arabellas believes that all it needs to do in order to completely stop all development on the Philpott
7 property was to file a lawsuit against Philpott and the City, and then attempt to persuade the City to
8 indefinitely delay hearings on any subsequent approvals. The Hearing Examiner should be aware that
9 Arabella's reference to a requested delay until "final resolution" of these issues means until the time that
10 the Superior Court case is appealed all the way to the U.S. Supreme Court.

11 However, the City's decision on the 1997 Philpott applications is final, and cannot be reconsidered
12 by the Hearing Examiner in this proceeding. The doctrine of res judicata bars the resurrection of the same
13 claim in a subsequent action. Davidson v. Kitsap County, 86 Wn. App. 673, 937 P.2d 1309 (1997). The
14 courts have also found that "an appeal does not suspend or negate the res judicata aspects of a judgment
15 entered after trial in the superior courts," and "the same is true of a noninterlocutory order entered after a
16 quasi-judicial administrative fact-finding hearing." LeJeune v. Clallum County, 64 Wn. App. 257, 823
17 P.2d 1144 (1992). In short, a noninterlocutory administrative order "becomes final for res judicata
18 purposes at the beginning, not at the end, of the appellate process, although res judicata can still be
19 defeated by later rulings on appeal." LeJeune, 64 Wn. App. at 266.

20 Thus, the City's 1997 permit approvals are final, and the Hearing Examiner should not
21 reconsider compliance of the previously granted permits with the City's codes in this proceeding.
22 Philpott is a party to the Superior Court action, and is fully aware of the possibility that the lawsuit may
23 affect the 1997 approvals granted by the City. At this point, there is no stay in place, and there is no
24 authority for Arabella's request that the City postpone action on the Philpott CUP to allow Arabellas to
25 appeal the Superior Court action to the U.S. Supreme Court, simply because Arabellas argues that "the
26 pending lawsuit raises some issues that may be addressed in this proceeding." If Philpott chooses to
27 proceed under the 1997 permits or this CUP (if granted), he bears the risk that a later appeal may affect
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1 the project.

2 B. The City complied with SEPA.

3 There is absolutely no explanation for Arabella's unfounded claim that "the City has failed to
4 conduct any environmental review at all." The DNS issued by the City is attached to the Applicant's
5 Supplemental Hearing Brief on Parking and Transient Moorage Issues as Exhibit B.

6 If Arabellas believes that the Philpott CUP is likely to have significant adverse environmental
7 impacts not addressed in the DNS, it must specifically state what those impacts are, and why the City's
8 DNS is inadequate. WAC 197-11-340. The only issue here appears to be a lack of research into the
9 CUP file.

10 C. Arabellas misconstrues the Hearing Examiner's authority relating to conditional
11 approvals.

12 Arabellas believes that the Philpott CUP is similar to Arabella's previous application, which
13 was denied by the City and affirmed by the Court of Appeals in Gig Harbor Marina, et al. v. City of
14 Gig Harbor, 94 Wn. App. 789, 973 P.2d 1081 (1999). The portion of the opinion referred to by
15 Arabellas is contained in its unpublished portion. (A copy of the entire opinion is attached hereto as
16 Exhibit B, and the unpublished portion begins on p. 12.)

17 The unpublished opinion presents completely different circumstances. In the unpublished
18 decision, the Hearing Examiner approved a CUP, even though he found that "the yacht club for which
19 the conditional use permit is required should only be approved if adequate parking can be provided.
20 Therefore, the site plan will need to be revised to provide adequate parking for the yacht club."
21 (Hearing Examiner decision, SPR 94-05, CUP 94-06, VAR 95-08, attached hereto as Exhibit C.) The
22 project did not have adequate parking, and was accompanied by a request for a variance from the
23 parking requirements. (Id., p. 8.) However, the Hearing Examiner denied the parking variance and
24 recommended that the site plan be denied because it did not meet the parking requirements. (Id.)
25 On appeal to the City Council, the CUP was denied because the Hearing Examiner was required, as
26 part of the findings necessary to approve a CUP, to make a specific finding that: "the site is of
27 sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking,
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1 landscaping and other features as are required by this title or as needed in the opinion of the examiner.”
2 GHMC Section 17.64.040(D). The Court of Appeals agreed with the City’s argument that if the
3 Hearing Examiner did not find that there was adequate parking as required by the code, the Hearing
4 Examiner could not approve the CUP with a condition that “adequate parking be provided.”

5 The revised City Staff Report (dated March 9, 2000), demonstrates that the parking standards in
6 the code have been met. (See, pp. 7-10.) Any “conditions” imposed on the CUP as recommended in
7 the Staff Report do not relate to the manner in which the applicant will provide the required parking.
8 Adequate parking is provided, the condition recommended by staff relate to monitoring compliance
9 with parking requirements. Argument in support of the City staff’s analysis of the parking requirements
10 and how they have been met is provided in Applicant’s Supplemental Hearing Brief on Parking and
11 Transient Moorage Issues. The City agrees with this argument.

12 D. Staff correctly determined that no parking was required for moorage because moorage is
13 not permitted.

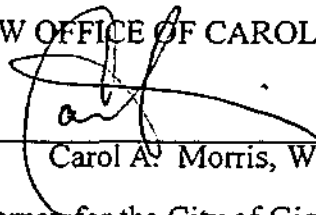
14 Arabellas makes the absurd argument that additional parking should be provided for moorage
15 that is not even permitted under the prior approvals granted to Philpott. This argument is made even
16 though Arabellas admits that it is “challenging in court the operation of these moorage slips as a
17 violation of City Council Resolution No. 507.” Apparently, Arabellas would like the Hearing
18 Examiner to require that parking be provided for an illegal use, so that Arabellas can bolster their
19 argument in Superior Court that the City sanctioned an illegal use by requiring that parking be provided
20 to accommodate it. The Hearing Examiner should disregard this argument.

21 **Conclusion.**

22 The City respectfully requests that the Hearing Examiner find that all issues raised by Arabellas
23 in the letter of March 15, 2000 are without merit.
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DATED this 6th day of April, 2000.

LAW OFFICE OF CAROL A. MORRIS, P.C.

By 
Carol A. Morris, WSBA #19241

Attorney for the City of Gig Harbor

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BEFORE THE HEARING EXAMINER
OF THE CITY OF GIG HARBOR

In the Matter of Philpott)	No. CUP 99-05
Conditional Use Application)	
for Delicatessen (Poseidon's))	DECLARATION OF PATRICIA IOLAVERA
)	IN SUPPORT OF BRIEF OF CITY OF GIG
)	HARBOR
)	

I, PATRICIA IOLAVERA, declare as follows:

1. I am an Associate Planner for the City of Gig Harbor.
2. Carol Morris, City Attorney, asked me to describe the manner in which the City enforces code requirements on permitted developments prior to issuance of the City's final approval.
3. After the permit is granted, inspections are made of the property to ensure code compliance and compliance with the permit. The regularity of the inspections depends on the nature of the development and the particular codes involved.

If the City inspector finds that the condition of the property is not in compliance with the code or the permit, the City will notify the permit holder, in person or in writing. The permit holder is informed that the City's final inspection cannot be performed and final approval cannot be given until the property is in compliance with the permit.

The timing of construction and the applicability of this procedure is dictated by the permit. For example, a Conditional Use Permit expires after one year. Therefore, if the permit holder begins construction under the permits granted by the City, but does not comply with the codes while the permit is still active, the City will initiate the procedure described above. If the permit has expired and the

DECLARATION OF PATRICIA
IOLAVERA

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1 applicant has not complied with the permit terms, the City may initiate a code enforcement action.

2 I declare under penalty of perjury under the laws of the State of Washington that the above is true
3 and correct.

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Date and Place of Signing

PATRICIA IOLAVERA

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DECLARATION OF PATRICIA
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City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

**STAFF REPORT AND RECOMMENDATION
TO THE CITY OF GIG HARBOR HEARING EXAMINER**

CUP 99-05 – POSEIDON'S
March 9, 2000

PART 1 – GENERAL INFORMATION

- A. APPLICANT: Mr. Robert Philpott
3313 Harborview Drive
Gig Harbor, WA 98335
- B. OWNER (same)
- C. AGENT Mr. Keith Moxon
Buck and Gordon LLP
902 Waterfront Place
1101 Western Avenue
Seattle, WA 98104
- D. PROJECT DESCRIPTION/BACKGROUND INFORMATION
Application for a Conditional Use Permit (CUP 99-05) to allow a delicatessen, inside the marine convenience store located in the Waterfront Millville District at 3313 Harborview Drive. The seating for diners is proposed to be outside on the deck and will serve 32 patrons. The marine convenience store replaces the net shed on an over-water deck, and is linked by a gang way to docks that include a marine fueling station previously approved.
- E. PROPERTY DESCRIPTION
- 1) Location
- a) Address: 3313 Harborview Dr., Gig Harbor, WA 98335
- b) Legal:
- c) Tax Parcel Number: 597000-002-0
- 2) Site Area/Acreage 14,700 square feet

3) General Physical Characteristics:

- i. Soil Type: Harstine gravelly sandy loam
- ii. Slope: Up to 18%
- iii. Drainage: northeasterly toward bay.
- iv. Vegetation: domestic vegetation; marine related vegetation at and waterward of ordinary high water mark (OHWM).

F. SURROUNDING LAND USE/ZONING:

- i. Site: WM – Waterfront Millville
- ii. Northwest: WM
- iii. Southwest: R-1 – Single family
- iv. Northeast: Gig Harbor Bay
- v. Southeast: WM

G. UTILITIES/STREET ACCESS: The parcel is served by City sewer and water and is accessed from Harborview Drive – a public street.

H. PUBLIC NOTICE

Public notice was provided as required pursuant to Section 19.03.003 as + 6 follows:

- Publication of legal notice in the Peninsula Gateway newspaper on March 2, 2000.
- Mailed to property owners of record within three hundred feet of the site on March 2, 2000.
- Posted on site at two locations by the applicant on March 4, 2000.

PART II: PROJECT ANALYSIS

A. AGENCY REVIEW /COMMENTS

1) Public Comments Received:

No public comments were received in response to the announcements of this request for a Conditional Use Permit.

B. CONSISTENCY WITH APPLICABLE LAND USE POLICIES AND CODES

1) City of Gig Harbor Comprehensive Plan:

The Comprehensive Plan (1994) contains the following policies relevant to commercial development on the waterfront:

a. **Community Design Element:**

Goal: Assure that new commercial and residential projects include an active interface between the public and private realms.

Create outdoor "people" spaces. Require new commercial development to have outdoor "people" spaces incorporated into its design.

Examples of appropriate people spaces include the following:

- (a) **Plazas or common areas.**
- (b) Pocket parks.
- (c) Covered walkways and colonnades which incorporate seating areas.

Goal: Develop the waterfront as a place of outdoor people activity.

Encourage limited types of outdoor activities along the commercial waterfront zones including:

- (a) **Outdoor dining**
- (b) Entertainment activities
- (c) Play areas for children
- (d) Civic events and gatherings

c. **Shoreline Management**

Goal: Mixed Use Waterfront

Retain a mixed use waterfront including those fishing, boating, tourist and residential uses which provide the shoreline unique appeal.

8. **Commercial uses**

Encourage development of water-oriented commercial uses in waterfront locations which can be provided adequate and unobtrusive supporting services and improvements, including parking. Require commercial developments to provide public facilities and access to shoreline beaches, docks, walkways, and other facilities including views and vistas.

Goal: Quality Urban Development

Define and enforce the highest quality standards concerning present and future land use developments within the waterfront areas.

11. Access and visibility
Create an accessible and visible waterfront and shoreline including the development of public beaches, fishing and boating docks, picnic and passive overlooks and viewpoints. **Require private developments to provide equivalent access and visibility to the tenants and users of new private developments, to users of the waterway and to the public at large.**
12. Amenities
Require waterfront developments to provide amenities commensurate with the project's enjoyment of the natural, public resource including where desirable, additional docks, paths or walks, overlooks, picnic and seating areas, fishing piers or areas, overlooks and viewpoints.

2) City of Gig Harbor Zoning Code (Title 17 GHMC)

The City of Gig Harbor Zoning Code includes the following relevant sections.

A. 17.04 Definitions:

17.04.268 – Delicatessen.

"Delicatessen" means an establishment serving food and non-alcoholic beverages that operates without a grille or deep-fat fryer.

B. 17.48 Waterfront Millville (WM)

17.48.010 – Intent

It is the intent of this district to provide a wide range of uses and activities on the shoreline of Gig Harbor located within the area between Rosedale Street and Stinson Avenue. This district serves primarily as a medium intensity, mixed use waterfront district with an emphasis on medium-density residential, marine-dependent and marine-related uses. Uses which enhance the historic fishing village atmosphere and which are harmonious with surrounding residential areas are encouraged.

17.48.030 – Conditional Uses

Subject to the standards and procedures for conditional uses as set forth in Chapter 17.64 GHMC, the following uses may be authorized in this district:

E. Delicatessens;

17.48.035 – Hours of Operation

The following uses shall be limited to operating between the hours of 7:00 a.m. to 7:00 p.m. daily:

- A. Sales
- B. Delicatessens
- C. Boat construction
- D. Coffee houses.

17.48.070 – Parking and loading facilities

Parking and loading facilities on private property shall be provided in accordance with the requirements of Chapter 17.72 GHMC, except that where there are properties serving multiple uses, **parking shall be provided for the combined total of the individual uses.**

C. 17.64 – Conditional Uses

17.64.040 – Review Criteria

Each determination granting or denying a conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions are met:

- A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;
- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;
- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;
- D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, **parking**, landscaping and other

such features as are required by this title or as needed in the opinion of the examiner.

D. 17.72 – Off-Street Parking and Loading Requirements

17.72.030 – Number of off-street parking spaces required.

- E. For **business, professional and governmental offices, one off-street parking space for every 300 square feet of floor area;**
- K. For **restaurants, bars, cafeterias, and other eating and drinking establishments, one off-street parking space for every three seats** based upon the maximum seating capacity as determined by the provisions of the Uniform Building Code;
- M. For **retail sales, stores, personal service establishments, shoe repair establishments, barber and beauty shops, etc, one off-street parking spaces for every 300 square feet of floor area;**
- S. For any other use not specifically mentioned or provided for, the planning director shall determine the standards to be applied for parking using as a guide the uses listed above that most closely resemble the uses proposed;

E. 9.34 – Crimes Relating to Public Peace

9.34.020 – A.

(4) The creation of frequent, repetitive continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably interfere with the peace, comfort and repose of owners or possessors of real property, such as sounds from audio equipment, musical instruments, band sessions, or social gatherings;

(6) Sound from audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than 30 feet from the source, unless it occurs within a multifamily unit such as a duplex apartment or condominium, in which case it shall be a disturbance if it is clearly audible to a neighbor, and disturbs his/her peace as described in subsection 4 above.

PART III: FINDINGS AND CONCLUSIONS

1. Mr. Philpott has provided a speaker system on premises which will be hooked up to the phone system in the store/deli, and office areas so these phones can be used as part of the PA system from any phone on the facility. The system will allow communications regarding safety and security on site. It may also provide music. There is no zoning regulation at issue in providing this amenity. However, staff notes that the system will be subject to normal enforcement procedures under Chapter 9.34 GHMC.
2. The project at 3313 Harborview Drive has been described by the applicant as providing marine related sales through a marine convenience store that includes a food preparation area. This type facility would fall under the definition of "delicatessen" provided in 17.04.268. ("Delicatessen" means an establishment serving food and non-alcoholic beverages that operates without a grille or deep-fat fryer.) As the delicatessen and marine convenience store are located in the same spaces, sales of alcohol in the marine convenience store was considered by staff to present a conflict with the definition of delicatessen. Applicants attorney has addressed the issue of alcohol sales in an e-mail to the associate planner dated March 3, 2000, in which he stated that Mr. Philpott has agreed not to sell beer or wine on the premises resolving any conflict with the definition of a delicatessen. (See file for a copy of his e-mail.)
3. Mr. Philpott's development is voluntarily providing a public access amenity by allowing access to the scenic vantage point presented on his deck.
4. The only remaining issue relates to the provision of adequate off-street parking.

Parking was factored in accordance with the requirements of 17.48.070 (except that where there are properties serving multiple uses, **parking shall be provided for the combined total of the individual uses.**)

The majority of the uses are either retail or business (see 17.72). There is large deck area extending from the delicatessen, over the water, and looking across Gig Harbor Bay. Mr. Philpott intends to provide seating on the deck, for the use and enjoyment of 32 people while patronizing his delicatessen. The provision of this type of seating would typically require application of parking standard 17.72.030(K).

Staff measured the dimensions of the businesses on site in order to resolve conflicting reports of the square footage of the buildings on the site and to accurately ascertain parking requirements. (No parking spaces are required for moorage at the dock as there is no transient moorage allowed, and the upper floor of existing retail is exempt as there is no change in use planned.) The measurements result in the following figures:

a. New Retail (in the basement of the Harbor Peddler building)	Bottom:	869.75 sq. feet.
b. New Offices	Bottom:	418.00 sq. feet.
	Top:	<u>522.50 sq. feet</u>
	TOTAL:	1,810.25 sq. feet
c. Deli/Marine Store (excluding exterior bathrooms and utility area.)		<u>788.06 sq. feet</u>

Uses for buildings a and b above are retail, or business. Calculations for off-street parking requirements for retail use (marine convenience store) under 17.72.030(M) and business use under 17.72.030(E), which require 1 parking space per 300 square feet. Therefore, $1810.25 \text{ sq. ft.} \div 300 \text{ sq. ft.} = 6.03$, which when rounded to the nearest whole number would require 6 parking spaces.

There are 12 parking places currently provided for the combined uses being introduced by this project. Thus there are six parking places remaining to address the needs of the delicatessen/marine store.

Parking as it relates to the delicatessen and marine convenience store was determined under 17.72.030(K), which requires 1 parking place per 3 seats "based upon the maximum seating capacity as determined by the provisions of the Uniform Building Code".

The applicant has proposed 800 square feet of deck area be used in calculating capacity which City staff finds to be an acceptable figure. Steve Bowman, Building Official and Fire Marshal, used this figure to calculate the seating capacity according to the UBC as is directed under 17.72.030(K). His calculations result in maximum capacity of 52 persons. (Please see his attached memorandum outlining his findings.) Using the

Fire Marshal's figure of 53 seats, then 18 parking spaces would be required. Again, 6 parking spaces are currently available, and an additional 12 parking spaces would be necessary to serve the maximum capacity of 53 seats.

Mr. Philpott is proposing placement of 8 tables (with four seats each, equaling only 32 seats) on the deck, to accommodate marine convenience store customers, fuel dock customers, and members of the general public who would be allowed to have access to the deck area (32 seats would require 11 parking places.)

As already discussed, Mr. Philpott has provided enough parking for 18 seats (6 parking spaces.) The difference between the available parking and that necessary to accommodate 32 seats is 5 parking spaces ($11 - 6 = 5$). **It is the lack of these five parking places that is at the heart of the problem.**

6. Conditional Use Permits must meet the following requirements:

- A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;

Staff Comment:

A delicatessen is conditionally allowed under Title 17.48.030. Since Mr. Philpott will not be selling beer and wine, and will not have a grill his business does meet the definition.

- B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, **will not adversely affect the established character** of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;

Staff Comment:

Review of the design manual and visits to the site reveal that the structures and docks are architecturally and esthetically compatible with the existing architectural vernacular and character of the Millville Waterfront. The scale of the buildings, the use of materials, the color schemes and detailing all meet or

exceed the goals of the City of Gig Harbor design manual. The service being provided will offer a convenience to the boating community, and will not be injurious to the property or improvement in this zone.

- C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;

Staff Comment:

The delicatessen is properly located, particularly as it is part of a marine convenience store associated with a fueling and pumping facility that will be serving the boaters who visit Gig Harbor Bay. There have to date been no complaints regarding Suzanne's Deli and Bakery, which is located approximate 1 block away. The City of Gig Harbor Public Works department determined that the original proposal for a fueling dock and multiple use facility would have very minimal impact on traffic. Further the Public Works Department determined that the addition of a delicatessen as a conditional use does not alter that opinion (see attachments).

- D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, **parking**, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

Staff Comment:

The provision of 12 off-street parking spaces is adequate to provide for the combined retail and office uses on site, as well as for 18 seats (with tables) for the delicatessen.

PART IV: STAFF RECOMMENDATION

Based upon the findings and conclusions in Part III of this report, staff recommends that application CUP 99-05 be Approved subject to the following condition:

1. The tables and chairs serving the delicatessen (and excluding the three perimeter benches previously allowed as general public amenities) shall be limited to 18 seats and an appropriate number of accompanying tables.



Patricia Iolavera
Associate Planner


3.9.2000

Date



City of Gig Harbor. The "Maritime City"

DEPARTMENT OF PLANNING & BUILDING SERVICES
3125 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-4278

TO: Patricia Iolavera, Associate Planner
FROM: Steve Bowman, Building Official/Fire Marshal 
DATE: March 8, 2000
RE: Philpott/Poseidon's - CUP 99-05

This letter responds to comments made by Mr. Keith E. Moxon in his letter of March 8, 2000, relative to the subject project.

Mr. Moxon rightly interprets the intent and purpose of the Uniform Building Code (UBC) to establish an occupant load. Table 10-A, 1997 UBC is used to determine an occupant load factor which is used to determine the allowable occupant load of a building or area. Mr. Moxon also, correctly interprets the intent of Section 1003.2.2.2.4, 1997 UBC when he states: "Under this section, the occupant load for an outdoor area such as the deck in question "shall be assigned by the building official in accordance with [its] anticipated use.""

The Building Official/Fire Marshal of the City of Gig Harbor hereby establishes the occupant load of the deck based on the use area established. Since "Mr. Philpott suggests that using an area of approximately 800 square feet would reflect a reasonable area of the deck that would actually be available for seating and standing by marine convenience store and fuel dock customers and the general public." and the occupant load factor of 15 square feet per person is used by this office to determine the occupant load for dining areas, the occupant load of the deck is $800/15 = 53$ persons.

The use of tables and chairs to establish an occupant load would not be appropriate in this case since the tables and chairs are not fixed. Such as in fixed benches as defined in Section 1003.2.2.2.3, 1997 UBC.

The occupant load of the deck use as defined is therefore 53 persons.

CITY OF GIG HARBOR

November 8, 1985

Peter Darrah
P.O. Box 31
Gig Harbor, WA 98335

RE: Business License for MacIntosh Navigation and Barge
Co. Shop at 3311 Harborview Drive

Dear Mr. Darrah,


City departments have reviewed your business license application and approved the use of the old Scandia Shop for sales of furniture, household items, marine and nautical equipment and artifacts. However, the inclusion of barges would affect the use of your existing marina and is not approved through the issuance of this business license.

Retail use of the building previously used as Scandia Gift Shop is allowed only as a continuation of a non-conforming use.

The issuance of this business license does not validate the present use of a storage building as an office or the continuation of an electrical contractor's shop as commented upon in preceding correspondence.

If you have any questions, please do not hesitate to call.

Sincerely,



Steven H. Bowman
Building Official/Fire Marshal
City of Gig Harbor

SHB/kla



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: PATRICIA IOLAVERA *PI*
INTERIM DIRECTOR, PLANNING AND BUILDING
SUBJECT: CONSULTANT SERVICES AGREEMENT - APPLIED
ENVIRONMENTAL SERVICES, HABITAT ANALYSIS OF DONKEY
CREEK FOR POTENTIAL LISTINGS UNDER ESA
DATE: APRIL 6, 2000

INTRODUCTION/BACKGROUND

Donkey Creek and Crescent Creek have been identified by federal and state agencies as being accessible to three species of fish which have been listed as threatened, or are proposed for listings under the Endangered Species Act (Chinook Salmon, Bull Trout, and Coho Salmon). The City of Gig Harbor has jurisdiction over only a few hundred feet of Crescent Creek. However, a significant portion of Donkey Creek falls inside the City's jurisdiction.

POLICY ISSUES

A professional scientific analysis is necessary to determine which of these species may potentially establish themselves in these streams, and to inventory the physical conditions on the Donkey Creek that will require conservation or restoration. These are likely to include obstructions to passage, inputs of sediments from storm water systems, and other disturbances. In addition the report will identify positive attributes, such as vegetation and buffers that we will be required to protect.

The report will also serve two other functions. First, it will establish the City's intent to be supportive in meeting its responsibilities under the Endangered Species Act. This will help the National Marine Fisheries Service and US Fish and Wildlife understand that the City has begun a good faith effort to implement the 4(d) rules. Secondly, the City should have a scientific foundation to rely upon before integrating federal requirements into our development regulations.

Additionally, the City's plans for the Borgen Property will be circumscribed by the upcoming requirements under the 4(d) rule as Donkey Creek runs directly through that property. Any nexus with federal permits or money will require compliance under Section 7 of the Endangered Species Act. This could arise if federally generated funds for park development, transportation, or culvert replacement become available, or if any federal permit is required. Section 7 requires habitat plans which would require such an analysis. Finally, in order to comply with the 4(d) requirements for monitoring and adaptive management, baseline conditions must be established.

Applied Environmental Services, a firm on the City's Small Works Roster was selected in accordance with our policies and procedures relating to the Small Works Roster and has submitted a scope of work for a study which addresses the objectives stated above.

FISCAL IMPACT

Sufficient funds are budgeted for the accomplishment of this task.

RECOMMENDATION

Staff recommends approval of the Consultant Services Agreement in an amount not to exceed \$15,638.13.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
APPLIED ENVIRONMENTAL SERVICES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and **Applied Environmental Services, Inc.**, a corporation organized under the laws of the State of Washington, located and doing business at **1550 Woodridge Drive SE, Port Orchard, Washington 98366** (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is facing the imminent regulatory impacts of the listing of the Bull Trout and Chinook Salmon as threatened under the Endangered Species Act (ESA), because the Coho are almost certain to be proposed for a similar listing next year, and whereas, the North Creek (also known as Donkey Creek) has been included in the habitat range maps of the National Marine Fisheries Service and the United States Fish and Wildlife Service; and

WHEREAS the City's plans for the Borgen Property, and for the Scofield tidelands will be circumscribed by the upcoming requirements under the 4(d) rule as Donkey Creek runs directly through that property and;

WHEREAS any nexus with federal permits or money in the North Creek corridor will trigger compliance under Section 7 of the Endangered Species Act and which requires a habitat conservation plan; and in order to comply with the 4(d) requirements for monitoring and adaptive management necessitating establishment of baseline environmental conditions and;

WHEREAS accurate scientific documentation will be needed as the City responds to the required amendments to local policies and regulations and as a legal foundation for those and other actions the City may be required to undertake,

WHEREAS, the City desires that the Consultant perform services necessary to provide the following consultation services for the purposes of assisting the City in meeting it's responsibilities under the ESA;

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated **April 5, 2000**, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, and are incorporated by this reference as if fully set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed **fifteen thousand six hundred thirty-eight dollars and thirteen cents (\$15,638.13)** for the services described in Section I herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. **PROVIDED, HOWEVER**, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**; unless the parties agree to a modification of this Contract, pursuant to Section XVIII herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

III. Relationship of Parties

The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or

sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

IV. Duration of Work

The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed shall be completed by **July 31, 2000**; provided however, that additional time not to exceed 45 days, shall be granted by the City for excusable delays or extra work. Progress reports, in the form of written memos, should be submitted to the Director of Planning and Building Services on June 30, and July 15, 2000.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to the consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the

presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, agents and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CONSULTANT'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY THE CONSULTANT'S EMPLOYEES DIRECTLY AGAINST THE CONSULTANT.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. Insurance

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, sub-consultants or sub-contractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000 claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies.

E. It is the intent of this contract for the Consultant's insurance to be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage in respect to the City. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that written notification will be given to the City of Gig Harbor at least 30 days in advance of any cancellation, suspension or material change in the Consultant's coverage as required by this section.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in

the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. City's Right of Inspection

Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. Work Performed at the Consultant's Risk

The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

XIV. Non-Waiver of Breach

The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

XV. Resolution of Disputes and Governing Law

Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Planning Director and the City shall determine the term or provision's true intent or meaning. The City Planning Director shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Planning Director's determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington or federal district court. The non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT
Wayne S. Wright
Applied Environmental Services, Inc.
1550 Woodridge Drive SE
Port Orchard, Washington 98366

Patricia Iolavera
Interim Planning Director
City of Gig Harbor
3125 Judson Street
Gig Harbor, Washington 98335

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 20__.

The City of Gig Harbor

By: _____
Its Principal

By: _____
Mayor

Notices to be sent to:
CONSULTANT
Lisa Berntsen Stephens
Wayne S. Wright
Applied Environmental Services, Inc.
1550 Woodridge Drive SE
Port Orchard, Washington 98366

Dave Skinner, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

Gig Harbor City Attorney

ATTEST:

Gig Harbor City Clerk

APPLIED
ENVIRONMENTAL
SERVICES, INC.

Wednesday, April 5, 2000

City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Attention: Patricia Iolavera

Subject: Donkey Creek Fisheries Habitat Assessment

Dear Patricia:

Thank you for requesting this proposal from Applied Environmental Services, Inc. (AES) to investigate the environmental conditions related to the Donkey Creek drainage in the vicinity of Gig Harbor. As we discussed over the telephone, the initial study area was to focus on the Gig Harbor Urban Growth Boundary but it has now been expanded to extend upstream as far as the SR 16/Burnham Drive interchange, or until the stream ceases to exist. We have made the assumption that Gig Harbor will obtain landowner permission for AES access to sites not currently owned by the city. We also make the assumption that any public involvement or public relations work will be completed by the city. We also have limited meeting time to preserve as much budget to complete the field and reporting effort. AES understands that the City of Gig Harbor wishes to use the results of this habitat assessment in developing a basin management plan.

We have prepared the following scope of work to describe the level of effort AES will provide to the project regarding the fisheries habitat investigation. The tasks reflect our discussions and general knowledge of the area.

Task 1. Literature Review

AES will conduct a literature review of available data and reports relative to the fish use of Donkey Creek in Gig Harbor and Pierce County jurisdictions. Our literature search will include contacting the Washington State Department of Fish & Wildlife (WDFW), Pierce County, US Army Corps of Engineers, Washington Department of Ecology (Ecology), Tribes and other agencies as appropriate. We will seek information about stream surveys, spawner counts, habitat enhancement projects, water flow measurements, and general environmental investigations. AES will summarize the information we collect into a matrix table and brief text description.

Task 2. Fisheries Habitat Assessment

AES will perform a stream assessment of Donkey Creek from the stream outlet in Gig Harbor to approximately the SR 16 interchange at Burnham Drive. The focus of our investigation will be to document fish use and available habitat. We will use a variety of methods to complete this task. We will target our habitat assessment to the Timber, Fish & Wildlife (TFW) habitat protocol commonly used in Puget Sound. This method defines individual stream reaches and collects physical data within each reach. Stream structure (pools, riffles, glides, large woody debris) and substrate conditions will be measured and evaluated. AES will tag each reach with metal labels placed on trees as much as possible. Four field days are planned to complete this effort. AES biologists will assess the stream

page 1

1550 Woodridge Dr. SE

Port Orchard, WA 98366

(360) 769-8400 fax (360) 769-8700

habitats. We will make reference to any obvious stream impact locations and photograph these areas. We will not be able to quantify the extent of the observed impact nor the cause of the impact under this scope of work. Added effort will be needed to return to the impact area(s) to further investigate cause and extent of impact.

The survey will involve videotaping the stream segments and describing the habitat availability along with potential observations of fish. We will use a small seine to sample pools and other habitats likely to have fish present. We will not collect any specimens for preservation. Once we identify the species, we will release any fish caught unharmed. AES may need to obtain a sampling permit from WDFW to use the seine. The videotape will be narrated in the field and will include our overall assessment of fish use and presence.

Task 3. Reporting

AES will present our results in a concise report that describes our methods, presents our technical data, compares our observations to the literature review and provides conclusions about fish use and habitat availability. We will include the videotape reference and the videotape as an appendix. Still photos will also be included as appropriate. Our report will provide a summary description of each stream reach studied. The overall stream structure and habitat available within each reach will be identified. The report will contain a brief section describing noted impact areas and areas that would benefit from enhancement or added protection. We will also include a short discussion about the small hatchery operation and possible impacts or adjustments that may benefit Donkey Creek.

After completion of the draft report and internal review process, AES will provide an advance copy to the client for review and comment. After AES receives client comment, we will prepare the final report for your use in land use planning and stream management.

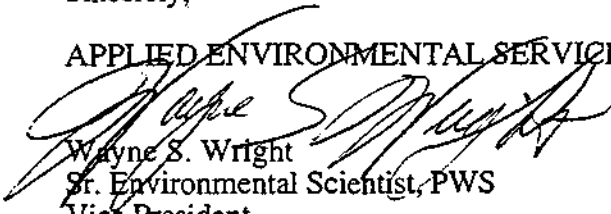
Schedule & Budget

It is our understanding that the fisheries assessment is to be completed as soon as possible. We have estimated the cost of labor and equipment needed to complete the scope of work described above. The estimated total contract amount is \$15,638.13 including labor and materials. The attached cost estimating sheet was prepared to itemize our predicted costs and project budget.

Thank you once again for including AES in this project. We look forward to working with the City of Gig Harbor. If you have any questions, please call. We will schedule this work upon receipt of your contract and notice to proceed.

Sincerely,

APPLIED ENVIRONMENTAL SERVICES, INC.



Wayne S. Wright
Sr. Environmental Scientist, PWS
Vice President

attachment

page 2

**Applied Environmental Services, Inc.
Project Estimating Sheet**

Project Name: Donkey Creek Fish Habitat Survey
 Client: City of Gig Harbor
 Date: 5-Apr-00

Labor Cost Estimate

Task Description	Sr. Env. Sci.	Env. Sci.	Env. Tech.	Clerical	Task Subtotal
Literature Search	8		16		\$1,520.00
Fisheries Habitat Assessment	32		32		\$4,480.00
Draft Report Preparation	40		16		\$4,400.00
Final Report	20		8		\$2,200.00
Project Administration	24			16	\$2,560.00
Total Hours	124	0	72	16	
Hourly Rate	\$90.00	\$70.00	\$50.00	\$25.00	
Labor Cost	\$11,160.00	\$0.00	\$3,600.00	\$400.00	

Total Labor Cost \$15,160.00

Non-Labor Cost Estimate

Item Description	Units	Unit Cost	Item Total
Photocopying	250	\$0.15	\$37.50
Mileage	125	\$0.33	\$40.63
Maps & Air Photos	1	\$100.00	\$100.00
Facismile	50	\$1.00	\$50.00
Supplies	1	\$250.00	\$250.00
Boat - Marine		\$500.00	\$0.00
Dive Equipment (per day)		\$75.00	\$0.00

Total Non-Labor Cost \$478.13

Total Project Cost Estimate \$15,638.13



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: MCGRAW WATER EXTENSION
DATE: MAY 15, 2000

INFORMATION/BACKGROUND

Mr. Rod McGraw is requesting a single family residential water connection for his property at 2802 96th St. NW. This parcel is within the city's water service area and within the urban growth boundary, but outside of the current city limits. The city already provides water to parcels in this immediate area outside the city limits.

POLICY CONSIDERATIONS

The attached contract binds the property to R-1 development standards and conforms to GHMC 13.34.

FISCAL CONSIDERATIONS

The water system hook-up fee and meter charge for this location is \$2410.

RECOMMENDATION

Staff recommends approval of the connection.

UTILITY EXTENSION, CAPACITY AGREEMENT
AND AGREEMENT WAIVING RIGHT TO PROTEST LID

THIS AGREEMENT is entered into on this ___ day of _____, 2000, between the City of Gig Harbor, Washington, hereinafter referred to as the "City", and Rod McGraw, hereinafter referred to as "the Owner".

WHEREAS, the Owner is the owner of certain real property located in Pierce County which is legally described below and as set forth in Exhibit "A" attached hereto and incorporated herein by this reference as though set forth in full, and

WHEREAS, the Owner's property is not currently within the City limits of the City, and

WHEREAS, the Owner desires to connect to the City water and sewer utility system, hereinafter referred to as "the utility" and is willing to allow connection only upon certain terms and conditions in accordance with Title 13 of the Gig Harbor Municipal code, as now enacted or hereinafter amended, NOW, THEREFORE,

FOR AND IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties agree as follows:

1. Warranty of Title. The Owner warrants that he/she is the Owner of the property describe below and is authorized to enter into this Agreement.

2. Extension Authorized. The City hereby authorizes the Owner to extend service to Owner's property from the existing utility lines on 96th Street NW at the following location:

*2802 96th Street NW
Parcel Number 0221051054
As legally identified in Exhibit 'A'*

3. Costs. Owner will pay all costs of designing, engineering and constructing the extension. All construction shall be done to City standards and according to plans approved by the City's Public Works Director. Any and all costs incurred by the City in reviewing plans and inspecting construction shall be paid for by the Owner.

4. Water Capacity Commitment. The City agrees to reserve to the Owner this capacity for a period of ___ months ending on _____; provided however, that the City retains the authority to temporarily suspend such capacity where necessary to protect public health and safety, or where required to comply with the City's NPDES permit, or any other permits required by any agency with jurisdiction, and provided this agreement is signed and payment for water capacity commitments is received within 45 days after City Council approval of extending water capacity to the Owner's property. Water capacity shall not be committed beyond a three year period.

5. Capacity Commitment Payment. The Owner agrees to pay the City the sum of \$ 500 for water to reserve the above specified time in accordance with the schedule set forth below.

Commitment period	Percent (%) of Connection Fees
One year	Five percent (5%)
Two years	Ten percent (10%)
Three years	Fifteen percent (15%)

In no event, however, shall the Owner pay the City less than five hundred dollars (\$500) for commitment for water service capacity. In the event the Owner has not made connection to the City's utility system by the date set forth above, such capacity commitments shall expire and the Owner shall forfeit one hundred percent (100%) of these capacity commitment payments to cover the City's administrative and related expenses.

In the event the Pierce County Boundary Review Board should not approve extension of the City's water system prior to the extension of the commitment period, the Owner shall be entitled to a full refund (without interest) from the City of the capacity agreement.

6. Extension of Commitment Period. In the event the Owner chooses to permanently reserve water capacity by paying the entire connection fee before the expiration date set forth above, the Owner shall be responsible for paying the city's monthly water base charge.

7. Permits - Easements. Owner shall secure and obtain, at Owner's sole cost and expense any necessary permits, easements and licenses to construct the extension, including, but not limited to, all necessary easements, excavation permits, street use permits, or other permits required by state, county and city governmental departments including the Pierce County Public Works Department, Pierce County Environmental Health Department, State Department of Ecology, Pierce County Boundary Review Board, and City of Gig Harbor Public Works Department.

8. Turn Over of Capital Facilities. If the extension of utility service to Owner's property involves the construction of water or sewer main lines, pump stations, wells, and/or other city required capital facilities, the Owner agrees if required by the City to turn over and dedicate such facilities to the City, at no cost, upon the completion of construction and approval and acceptance of the same by the City. As a prerequisite to such turn over and acceptance, the Owner will furnish to the City the following:

- A. As built plans or drawings in a form acceptable to the City Public Works Department;
- B. Any necessary easements, permits or licenses for the continued operation, maintenance, repair or reconstruction of such facilities by the City, in a form approved by the City Attorney;
- C. A bill of sale in a form approved by the City Attorney; and
- D. A bond or other suitable security in a form approved by the City Attorney and in an amount approved by the City Public Works Director, ensuring that the facilities will remain free from defects in workmanship and materials for a period of 2 year(s).

9. **Connection Charges.** The Owner agrees to pay the connection charges, in addition to any costs of construction as a condition of connecting to the City utility system at the rate schedules applicable at the time the Owner requests to actually connect his property to the system. Any commitment payment that has not been forfeited shall be applied to the City's connection charges. Should the Owner not initially connect 100% of the Water Capacity Commitment, the Capacity Commitment payment shall be credited on a pro-rated percentage basis to the connection charges as they are levied.

10. **Service Charges.** In addition to the charges for connection, the Owner agrees to pay for utility service rendered according to the rates for services applicable to properties outside the city limits as such rates exist, which is presently at 150% the rate charged to customers inside city limits, or as they may be hereafter amended or modified.

11. **Annexation.** Owner understands that annexation of the property described on Exhibit "A" to the City will result in the following consequences:

- A. Pierce County ordinances, resolutions, rules and regulations will cease to apply to the property upon the effective date of annexation;
- B. City of Gig Harbor ordinances, resolutions, rules and regulations will begin to apply to the property upon the effective date of annexation;
- C. Governmental services, such as police, fire and utility service, will be provided to the property by the City of Gig Harbor upon the effective date of annexation;
- D. The property may be required to assume all or any portion of the existing City of Gig Harbor indebtedness, and property tax rates and assessments applicable to the property may be different from those applicable prior to the effective date of annexation;
- E. Zoning and land use regulations applicable to the property after annexation may be different from those applicable to the property prior to annexation; and

- F. All or any portion of the property may be annexed and the property may be annexed in conjunction with, or at the same time as, other property in the vicinity.

With full knowledge and understanding of these consequences of annexation and with full knowledge and understanding of Owner's decision to forego opposition to annexation of the property to the City of Gig Harbor, Owner agrees to sign a petition for annexation to the City of the property described on Exhibit A as provided in RCW 35.14.120, as it now exists or as it may hereafter be amended, at such time as the Owner is requested by the City to do so. The Owner also agrees and appoints the Mayor of the City as Owner's attorney-in-fact to execute an annexation petition on Owner's behalf in the event that Owner shall fail or refuse to do so and agrees that such signature shall constitute full authority from the Owner for annexation as if Owner had signed the petition himself. Owner further agrees not to litigate, challenge or in any manner contest, annexation to the City. This Agreement shall be deemed to be continuing, and if Owner's property is not annexed for whatever reason, including a decision by the City not to annex, Owner agrees to sign any and all subsequent petitions for annexations. In the event that any property described on Exhibit "A" is subdivided into smaller lots, the purchasers of each subdivided lot shall be bound by the provisions of this paragraph.

12. Land Use. The Owner agrees that any development or redevelopment of the property described on Exhibit "A" shall meet the following conditions after execution of Agreement:

- A. The use of the property will be restricted to uses allowed in the following City Comprehensive Plan designation at the time of development or redevelopment: **R-1**.
- B. The development or redevelopment of the property shall comply with all requirements of the City Comprehensive Land Use Plan, Zoning Code, Design Review Guidelines, Building Regulations, and City Public Works Standards for similar zoned development or redevelopment in effect in the City at the time of such development or redevelopment. The intent of this section is that future annexation of the property to the City of Gig Harbor shall result in a development which does conform to City standards.

13. Liens. The Owner understands and agrees that delinquent payments under this agreement shall constitute a lien upon the above described property. If the extension is for sewer service, the lien shall be as provided in RCW 35.67.200, and shall be enforced in accordance with RCW 35.67.220 through RCW 35.67.280, all as now enacted or hereafter amended. If the extension is for water service, the lien shall be as provided in RCW 35.21.290 and enforced as provided in RCW 35.21.300, all as currently enacted or hereafter amended.

14. Termination for Non-Compliance. In the event Owner fails to comply with any term or condition of this Agreement, the City shall have the right to terminate utility service to the Owner's property in addition to any other remedies available to it.

15. Waiver of Right to Protest LID. Owner acknowledges that the entire property legally

described in Exhibit "A" would be specially benefited by the following improvements (specify):

none

Owner agrees to sign a petition for the formation of an LID or ULID for the specified improvements at such time as one is circulated and Owner hereby appoints the Mayor of the City as his attorney-in-fact to sign such a petition in the event Owner fails or refuses to do so.

With full understanding of Owner's right to protest formation of an LID or ULID to construct such improvements pursuant to RCW 35.43.180, Owner agrees to participate in any such LID or ULID and to waive his right to protest formation of the same. Owner shall retain the right to contest the method of calculating any assessment and the amount thereof, and shall further retain the right to appeal the decision of the City Council affirming the final assessment roll to the superior court. Notwithstanding any other provisions of this Agreement, this waiver of the right to protest shall only be valid for a period of ten (10) years from the date this Agreement is signed by the Owner.

16. **Specific Enforcement.** In addition to any other remedy provided by law or this Agreement, the terms of this Agreement may be specifically enforced by a court of competent jurisdiction.

17. **Covenant.** This agreement shall be recorded with the Pierce County Auditor and shall constitute a covenant running with the land described on Exhibit "A", and shall be binding on the Owner, his/her heirs, successors and assigns. All costs of recording this Agreement with the Pierce County Auditor shall be borne by the Owner.

18. **Attorney's Fees.** In any suit or action seeking to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to any other remedy provided by law or this agreement.

19. **Severability.** If any provision of this Agreement or its application to any circumstance is held invalid, the remainder of the Agreement or the application to other circumstances shall not be affected.

DATED this _____ day of _____, 2000.

CITY OF GIG HARBOR

Mayor Gretchen Wilbert

OWNER

Name:

Title:

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires

STATE OF WASHINGTON)
)ss:
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Gretchen A. Wilbert, and Molly Towslee, are the persons who appeared before me, and said persons acknowledged that they signed this instrument, on oath stated that they are authorized to execute the instrument and acknowledged it as the Mayor and City Clerk of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:

Signature

NOTARY PUBLIC for the State
of Washington, residing at

My commission expires

EXHIBIT A

The North Half of the North Half of the Northwest quarter of the Northwest quarter of Section 5, Township 21 North, Range 2 East of the W.M.

Except the West 462 feet, thereof.

And except 96th Street NW (West Passage County Road).

Situate in the County of Pierce, State of Washington.

4/26/00

TO: GIG HARBOR CITY COUNCIL

WE ARE REQUESTING WATER HOOK-UP TO GIG HARBOR CITY
WATER FOR A SINGLE FAMILY RESIDENCE.

THE PROPERTY ADDRESS IS 2802 96TH ST. NW; PARCEL NUMBER
0221051054.

ENCLOSED IS A PLAT MAP SHOWING 8" AC LINE TRAVERSING
THE GRAVEL ROAD ALONG OUR PROPERTY LINE.

THANK YOU!!

ROD MCGRAW
PAULA MEYER

13212 MUIR DR. NW
GIG HARBOR, WA 98332

(253) 851-5865

WATER STORAGE TANK

11" AL

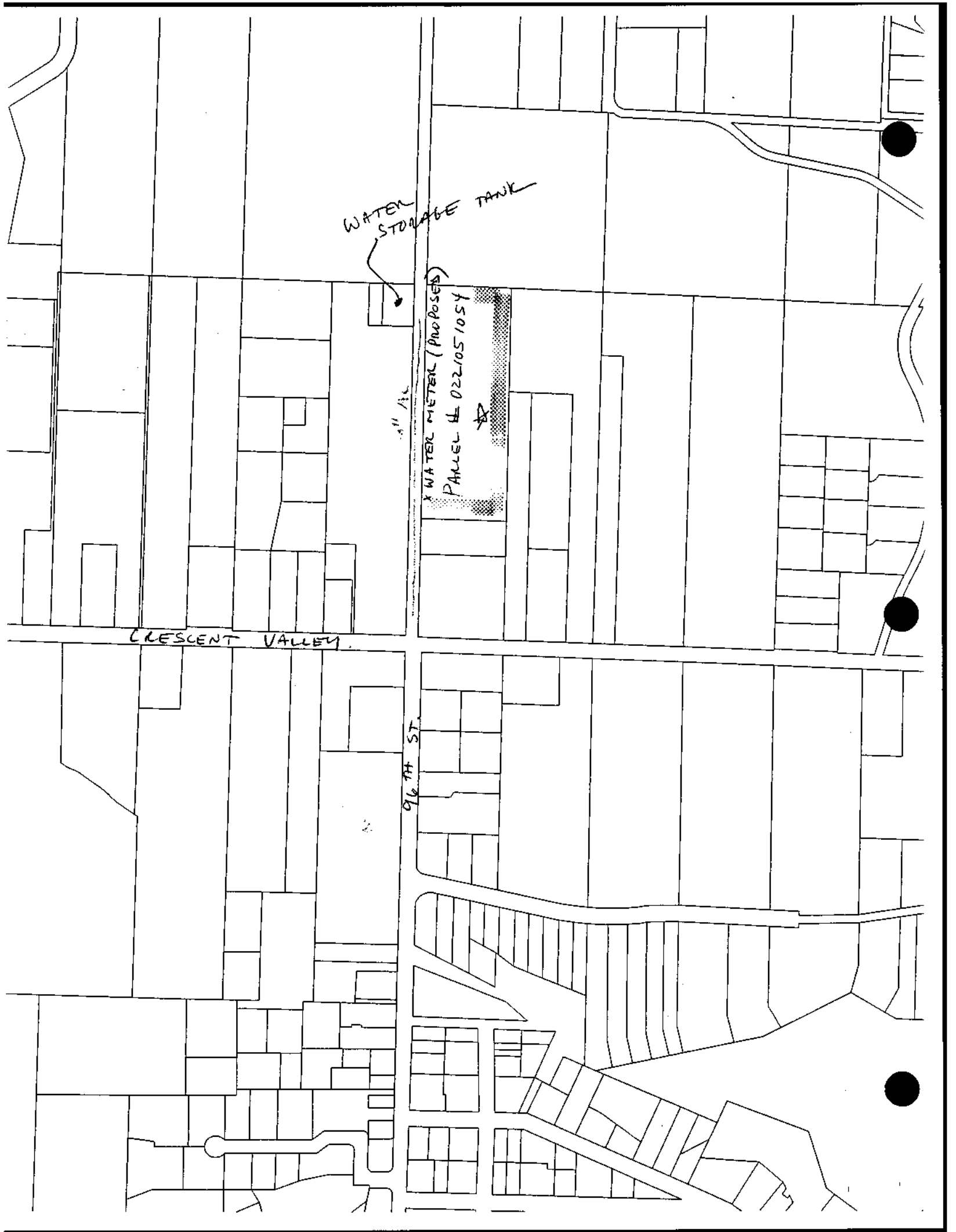
X WATER METER (PROPOSED)

PARALLEL # 0221051054

*

CRESCENT VALLEY

96TH ST





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 831-8136

CITY OF GIG HARBOR - UTILITIES SERVICE APPLICATION

Application No. _____, Parcel No. 0221051054, Date 4/26/80

Applicant For Mubrow / Paula Meyer, Phone # 851-5365

Mailing Address 1322 Muir Dr NW Gig Harbor, WA 98332

STORM WATER CALCULATION:

Impervious Area (Sq.Ft.)	Calculation	Units

Connection/Service ADDRESS OR LOCATION: 2802 96th St NW
 Subdivision _____, Lot No. _____
 Date of Hook-Up _____, Meter No. _____, Size _____, Rate _____
 Account No. _____, Meter Location _____

WATER SYSTEM HOOK-UP & METER INSTALLATION CHARGES:

	Meter Size	Capacity Factor(s)	Hook-Up Fee (Inside City Limits)	Hook-Up Fee (Outside City)	Meter Charge	Total Fees
✓	3/4"	1	\$1,305.00	\$1,960.00	\$450.00	\$ 2410
	1"	1.67	\$2,175.00	\$3,260.00	\$555.00	\$
	1-1/2"	3.33	\$4,350.00	\$6,525.00	(2) \$1,130.00	\$
	2"	5.33	\$6,960.00	\$10,440.00	(2) \$1,260.00	\$
	Over 2"	(3)	(3)\$	(3)\$	(3) \$	\$

WATER SYSTEM HOOK-UP & METER INSTALLATION CHARGE: \$ 2410 .00

OTHER CHARGES: (See Note 2)

Street Boring	\$ 10.00 / Foot		\$
Open Street Cut	\$ 20.00 / Foot		\$

Notes: (1) If project is outside the city limits, the hook-up fee is (1.5) times that shown above.
 (2) Time & Material Plus 10% (3) Negotiable

BASIC SEWER SYSTEM CONNECTION FEE:

Zone A	Zone B, C, D	Other	# Of ERU'S *	Total Fee
\$ 755.00	\$ 1,855.00	\$ 2,605.00	_____	\$ _____ .00

* Equivalent Residential Unit Calculation for non-residential service:

_____ (_____ ERU's per _____) X (_____) = _____
 Class of Service Conversion rate for appropriate unit (sq. ft., seats, students, etc.) Number of units Equivalent ERU's

SPECIAL CHARGES:

Check (X)	Type of Fee (1)	Fee
	Encroachment Permit Application & Fee	\$ 15.00
	Sewer Stub Inspection Fee	\$ 125.00
	House Stub Inspection Fee (\$25 in city / \$37.50 out)	\$
	As-Built Plans Fee (Refundable)	\$ 150.00
	Late Comers Agreement Fee	\$

Note: (1) Single Family Residence only (See Public Works Department for Multi-Family and Commercial)

TOTAL SEWER SYSTEM FEES PAID:

\$ _____

TOTAL FEES PAID WITH THIS APPLICATION:

\$ _____

Application is hereby made by the undersigned property owner or his agent for all water and/or sewer service required or used for any purpose at the above property address for which I agree to pay in advance and in accordance with existing ordinances and regulations of the city. Following estimated charges, the exact charges will be determined and are payable immediately upon completion of the installation.

I further agree that all rates and charges for water, sewer and/or storm service to the above property shall be paid in accordance with the existing ordinances and regulations of the city or any ordinances or regulations adopted hereafter. I agree to comply with the water, sewer and storm drainage service existing ordinances/regulations of the city or any such ordinances/regulations adopted hereafter.

I understand that the city will use all reasonable effort to maintain uninterrupted service, but reserves the right to terminate the water and/or sewer service at any time without notice for repairs, extensions, non payment of rates or any other appropriate reason and assumes no liability for any damage as a result of interruption of service from any cause whatsoever.

I understand that the city shall maintain ownership in such water meters installed by the city and the city shall be responsible for providing reasonable and normal maintenance to such meters. Damage to meters, boxes, and fittings will be repaired by the city's public works department. The cost of such repair work shall be borne by the contractor or the owner of the property.

Rodney S. McConna 5-1-00
 _____ Applicant's Signature Date

TO BE COMPLETED BY STAFF ONLY:

Receipt No.	Fees Paid	Date	Received By

REVIEWED BY:

Building Official	P.W. Inspector	P.W. Supervisor	Finance Technician

DUPLICATE RECEIPT DUPLICATE RECEIPT

=====

CITY OF GIG HARBOR
3105 JUDSON STREET
GIG HARBOR WA 98335
TEL (253) 851-8136

=====

THE "MARITIME CITY"

=====

REG-RECEIPT:01-0022937 C:May 01 2000
CASHIER ID:H 4:03 pm A:May 01 2000

=====

1060 ADMIN FEE-FILING \$100.00
P MEYER/ADMIN FILING FEE-WATER

TOTAL DUE \$100.00

RECEIVED FROM:
MEYER, PAULA A.

CHECK: \$100.00

TOTAL TENDERED \$100.00

CHANGE DUE \$0.00

=====

HAVE A NICE DAY

=====

DUPLICATE RECEIPT DUPLICATE RECEIPT



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR
SUBJECT: DECLARATION OF SURPLUS PROPERTY
DATE: MAY 18, 2000

INTRODUCTION/BACKGROUND

The City purchased the Borgen property in November 1999. Various items within the buildings located on the property have been determined to be non-usable to the City's present or future needs. These and other items of City property proposed for declaration as surplus are set forth in the attached resolution.

FISCAL CONSIDERATIONS

Monies received for the surplus items will be used to offset the costs for future expenses associated with the Borgen property.

RECOMMENDATION

Staff recommends that Council move and approve the attached resolution declaring the specified item surplus and eligible for sale.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF GIG HARBOR
DECLARING CITY EQUIPMENT SURPLUS AND ELIGIBLE
FOR SALE.**

WHEREAS, the Gig Harbor City Council has determined that city-owned equipment is surplus to the City's equipment needs and has been or is in need of being replaced with new equipment; and

WHEREAS, the City may declare such equipment surplus and eligible for sale;

NOW, THEREFORE, the City Council of the City of Gig Harbor hereby resolves as follows.

To declare as surplus:

EQUIPMENT	
ITEM #	ITEM DESCRIPTION
1	Front Counter (131" X 41-1/2" X 24-1/2")
2	Display Case (75" x 78" x 30-1/2")
3	Display Cabinet (36" x 50-1/4" x 13-1/4")
4	Display Case (98-1/2" x 80-1/2" x 30-3/4")
5	Display Case w/ shelves (99" x 79-1/2 x 30-1/2)
6	Display Wooden Rack (43-1/4" x 24" x 4-1/2")
7	Chalk Board w/ stand
8	Display Shelves (64-1/2" x 46" x 35")
9	Display Shelves (42-1/2" x 44" x 27-1/2")
10	Display Board w/ bottom shelf (36-1/2" 55-1/4" x 16-1/2")
11	Display Board w/ bottom shelf (36-1/4" x 55" x 16-1/2")
12	5-shelf Metal Display (24" x 50" x 17")
13	6-shelf Metal Display (24" x 54" x 17")
14	Paint Display
15	(10) Shelves (11-1/2" x 36")
16	(4) Shelves (7-1/2" x 34-1/2")
17	(3) Shelves (11-1/2" x 34")
18	(4) Shelves (36" x 13")
19	(5) Shelves (37-1/2" x 16-1/4")
20	(4) Shelves (88-1/2" 14")
21	(5) Shelves (37-1/2" x 16-1/4")
21	(10) Shelves (32" x 9-1/2")
22	(7) Shelves (14-1/2" x 16-1/2")

SURPLUS ITEMS

Page 2

23	Display Cabinet (36" x 91-1/2" x 18")
24	(2) Sliding Glass Doors (8° x 6°)
25	(2) Roll up Metal Doors (10° x 7°)

EQUIPMENT		SERIAL / ID NUMBER	MODEL INFO.
26	Gateway 2000 Hard Drive	00571	1234046
27	Monitor	00572	TB9E49048
28	Key Pad		90102133
29	Gateway Computer -- P4	00511	P4D-33 / 2249092

PASSED ON THIS _____ day of May, 2000.

APPROVED:

MAYOR GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 5/17/99
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: DAVID R. SKINNER, P.E., PUBLIC WORKS DIRECTOR
SUBJECT: EAST - WEST ROAD (BORGEN BLVD.) CONSTRUCTION PROJECT
(CSP NO. 9801) - BID AWARD
DATE: MAY 17, 2000

INTRODUCTION/BACKGROUND

A budgeted item for 2000 is the construction of the East West Roadway (Borgen Blvd.). This project will construct a roundabout connecting the proposed East-West Road, Canterwood Boulevard, Burnham Drive, the northbound ramps to and from SR-16, and the Swede Hill (Burnham Drive) over-crossing of SR-16. The remaining portion of this project (east of the roundabout to Peacock Hill Avenue) will provide two 14-foot travel lanes, with curb, gutter, planter strip, and sidewalk along the south side of the eastbound lane. Additional improvements will include channelization, stormwater detention and water quality facilities, wetland mitigation, and provisions for future lighting and underground utilities.

In response to an advertisement for bids to construct the project, ten bid proposals were received as summarized below:

TYDICO, INC.	\$2,867,365.50	FUJI INDUSTRIES INC.	\$2,271,676.85
WAGNER DEVELOPMENT	\$2,713,490.05	ACTIVE CONSTRUCTION	\$2,282,217.47
PAPE & SONS, INC.	\$2,428,577.10	CECCANTI, INC.	\$2,221,852.60
STAN PALMER CONST., INC.	\$2,478,409.00	ROBISON CONSTRUCTION INC.	\$2,296,357.00
GOODFELLOW BROS., INC.	\$2,572,022.75	TUCCI & SONS, INC.	\$2,157,163.50

The lowest bid proposal received was from Tucci & Sons, Inc., in the amount of two million one hundred fifty-seven thousand one hundred sixty-three dollars and fifty cents (\$2,157,163.50). This project is a public street improvement and the City will not pay State of Washington sales tax for road, storm, and water improvements. Any state sales tax required is included in the unit bid prices.

ISSUES/FISCAL IMPACT

The low bid is below the Engineer's estimate. This work was anticipated in the approved 2000 Budget. The project will be financed through combined sources from Pierce County, a Local Improvement District and the City of Gig Harbor.

RECOMMENDATION

I recommend Council authorize award and execution of the contract for the East-West Road (Borgen Blvd.) Construction Improvement Project (CSP No. 9806) to Tucci & Sons, Inc., as the lowest responsible bidder, for their bid proposal amount of two million one hundred fifty-seven thousand one hundred sixty-three dollars and fifty cents (\$2,157,163.50).

EAST – WEST ROADWAY PROJECT
CSP- 9801

CONTRACT

THIS AGREEMENT, made and entered into, this ____ day of _____, 2000, by and between the City of Gig Harbor, a Charter Code city in the State of Washington, hereinafter called the "City", and Tucci and Sons, Inc., hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools, and equipment necessary to complete the construction of approximately 1.1 miles of a new roadway, which will provide two 14-foot travel lanes, planter strip, and sidewalk along the south side of the eastbound lane. The contract also provides for construction of a single lane roundabout and the connecting approach legs, which include approximately 2,200 linear feet of improvements. Additional improvements will include channelization, two stormwater detention and water quality facilities, construction of two wetland mitigation sites, illumination, crosswalk lighting systems, temporary illumination, erosion control, retaining walls, underground utilities, landscaping, roadside and wetland planting, and other work, and shall perform any changes in the work, all in full compliance with the contract documents entitled "East-West Roadway Project, CSP. 9801," which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said contract documents, including the schedule of prices in the "Proposal," the sum Two million one hundred fifty-seven thousand one hundred sixty-three dollars and fifty cents (\$2,157,163.50), subject to the provisions of the Contract Documents, the Special Provisions, and the Standard Specifications.
2. Work shall commence and contract time shall begin on the first working day following the tenth (10th) calendar day after the date the City executes the Contract, or the date specified in the Notice to Proceed issued by the City's Public Works Director, whichever is later. All physical contract work shall be completed within one-hundred and fifty (150)-working days.
3. The Contractor agrees to pay the City the sum of \$ 2,157.00 per day for each and every day all work remains uncompleted after expiration of the specified time, as liquidated damages.
4. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
5. The term "Contract Documents" shall mean and refer to the following: "Invitation to Bidders," "Bid Proposal," "Addenda" if any, "Specifications," "Plans," "Contract," "Performance Bond," "Maintenance Bond," "Payment Bond," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "1998

CONTRACT: East – West Roadway Project, CSP-9801

Standard Specifications for Road, Bridge, and Municipal Construction," including the American Public Works Association (APWA) Supplement to Division 1.

6. The City agrees to pay the Contractor for materials furnished and work performed in the manner and at such times as set forth in the Contract Documents.
7. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, assigns, agents, subcontractors, and employees, does hereby agree to the full performance of all of the covenants herein contained upon the part of the Contractor.
8. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed the day and year first hereinabove written:

CITY of GIG HARBOR:

CONTRACTOR:

Gretchen A. Wilbert, Mayor
City of Gig Harbor
Date: _____

Print Name: _____
Print Title: _____
Date: _____

ATTEST:

City Clerk

APPROVED FOR FORM:

City Attorney



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MITCH BARKER, CHIEF OF POLICE *MB*
SUBJECT: APRIL INFORMATION FROM PD
DATE: MAY 15, 2000

The April 2000 activity statistics are attached for your review.

The Reserves logged 237 volunteer hours in April. We have completed our review process for new reserves and will be adding one new reserve in the next two months.

The Marine Services Unit totaled 11 hours in April. This was divided between maintenance and administrative time. The boat will be placed back in service for the boating season around May 18th. We will again provide an increased presence on the water for the Memorial Day weekend.

Four officers combined to provide about 35 hours of bicycle patrol in April. This was spent on general patrol as well as work performed around Gig harbor High School.



City of Gig Harbor Police Dept.
3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-2236

GIG HARBOR POLICE DEPARTMENT

MONTHLY ACTIVITY REPORT

April 2000

	<u>APR</u> <u>2000</u>	<u>YTD</u> <u>2000</u>	<u>YTD</u> <u>1999</u>	<u>% chg to</u>
CALLS FOR SERVICE	438	1568	1521	+ 3
CRIMINAL TRAFFIC	11	74	83	- 10
TRAFFIC INFRACTIONS	63	306	373	- 17
DUI ARRESTS	8	31	19	+ 63
FELONY ARRESTS	14	34	16	+ 112
MISDEMEANOR ARRESTS	23	98	101	- 2
WARRANT ARRESTS	7	24	41	- 41
CASE REPORTS	122	474	398	+ 19
REPORTABLE VEHICLE ACCIDENTS	18	81	61	+ 32

MBA Master Builders Association of Pierce County

June 8, 2000

Mayor Gretchen Wilbert and City Council
City of Gig Harbor
3105 Judson St.
Gig Harbor, WA 98335

Dear Mayor and Council Members:

This letter is to address the current emergency moratorium that has been placed on Planned Unit Development (PUD) and Planned Residential Development (PRD) applications in the City of Gig Harbor.

I would like to thank Pat Iolavera, Interim Planning Director, Council Members Frank Ruffo and Derek Young, and City Administrator Mark Hoppen for their participation in dialogue with the Gig Harbor Chamber of Commerce concerning this issue. Attendees at the meetings hosted by the Chamber were able to hear explanations as to why the emergency moratorium was imposed in May as well as the city's intent to examine and redraft the ordinances in question (located at Chapters 17.89 and 17.90 of the Gig Harbor Municipal Code (GHMC)) as quickly as possible.

As explained at the Chamber meetings, the emergency moratorium was put in place to prevent applications for either PUD's or PRD's to be submitted under the current ordinances. In particular, the ordinances were explained to be vague and lacking in guidance for city staff as they performed administrative decisions regarding land use applications. If there is a need to update the ordinances in order to make the PUD and PRD application process clearer and more predictable for all parties involved, we fully support the city staff's efforts to do so as quickly as possible.

Moratoriums on any type of development application are detrimental to the economy of a jurisdiction, and can have "ripple effects" due to the public perception that the city is "unfriendly." Moratoriums can cause a break in any economic momentum that has begun. MBA opposes development moratoriums in any event due to the immediate detrimental effect they have on the livelihoods of anyone employed in the homebuilding industry and the longer-term effects they have on homebuyers. Moratoriums interrupt the availability of buildable land for development. This in turn causes a decrease in productivity and the number of homes on the market. With a smaller supply of land comes higher prices, and the homebuyer ultimately suffers due to the increase prices a builder must pay to build a home.

If you decide to extend the PUD/PRD moratorium beyond June 12, please impose internal deadlines on the ordinance review process so the moratorium can be lifted as quickly as possible. There are apparently several specific items needing clarification in the regulations which can be handled efficiently in a short amount of time (e.g., whether wetlands should be included as open space in the determination of buildable land use within the application.) Date

specific scheduling for staff to prepare information for the planning commission, for the planning commission to develop a recommended new version of the regulations, and for the future City Council consideration of any recommended changes can all be set out in advance.

Under RCW 35.63.200, the time limit for an emergency moratorium is six months; please schedule all necessary action so that the new ordinance can be enacted by the City Council before November 8th. MBA staff and members will participate in any planning commission and City Council efforts to update the ordinances, and we look forward to adopting a new PUD/PRD process that will work for everyone.

Thank you for your consideration of these comments.

Sincerely,



Lyle Fox
2000 Legislative Strategy Committee Chair

Cc: Bob Dick, Council Member
Steve Eckberg, Council Member
Marilyn Owel, Council Member
John Picinich, Council Member
Mark Robinson, Council Member
Frank Ruffo, Council Member
Derek Young, Council Member
Mark Hoppen, City Administrator
Pat Iolavera, Interim City Planning Director
Carol Morris, City Attorney

**John W. Holmaas
Gig Harbor Peninsula Historical Society
Gig Harbor, WA 99335**

RECEIVED

JUN 12 2000

CITY OF GIG HARBOR

Mayor Wilbert and City Council Members
City of Gig Harbor

Dear Mayor and Council Members:

I request that you instruct the City Attorney and Planning Department to work with the Gig Harbor Peninsula Historical Society to accomplish a land use designation or agreement which will allow our intended use.

Our intended use includes:

Height of 35' or greater to allow for "Shenandoah" to be in an enclosed atrium
Great hall for 300+ people with Catering Kitchen
Coffee shop (880') and Museum Store
Classrooms and the Museum Exhibit

Land use history:

1998 ... GHPHS did a feasibility study (enclosed) which suggested a PUD in R1 zone (Steve O.)

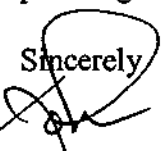
1999 ... Ray Gilmore considered amending the comprehensive plan and modifying the Public Institution zoning classification to accomplish our goal.

2000 ... Pat Iolavera has meet with us on several occasions to consider how to handle the Land Use situation.

On Friday, Chris Erlich, Carl Halsan and I met with Pat Iolavera to again consider our options. Our joint conclusion was that it might be best to create a special land use designation which would allow our intended use. And then create a contractual land use agreement to assure the City and Neighbors that whatever zone is adopted will accomplish only the intended goals.

I trust that you will implement our request immediately allowing us to continue our site planning and preliminary drawings this summer and fall.

Sincerely


John W. Holmaas
061001

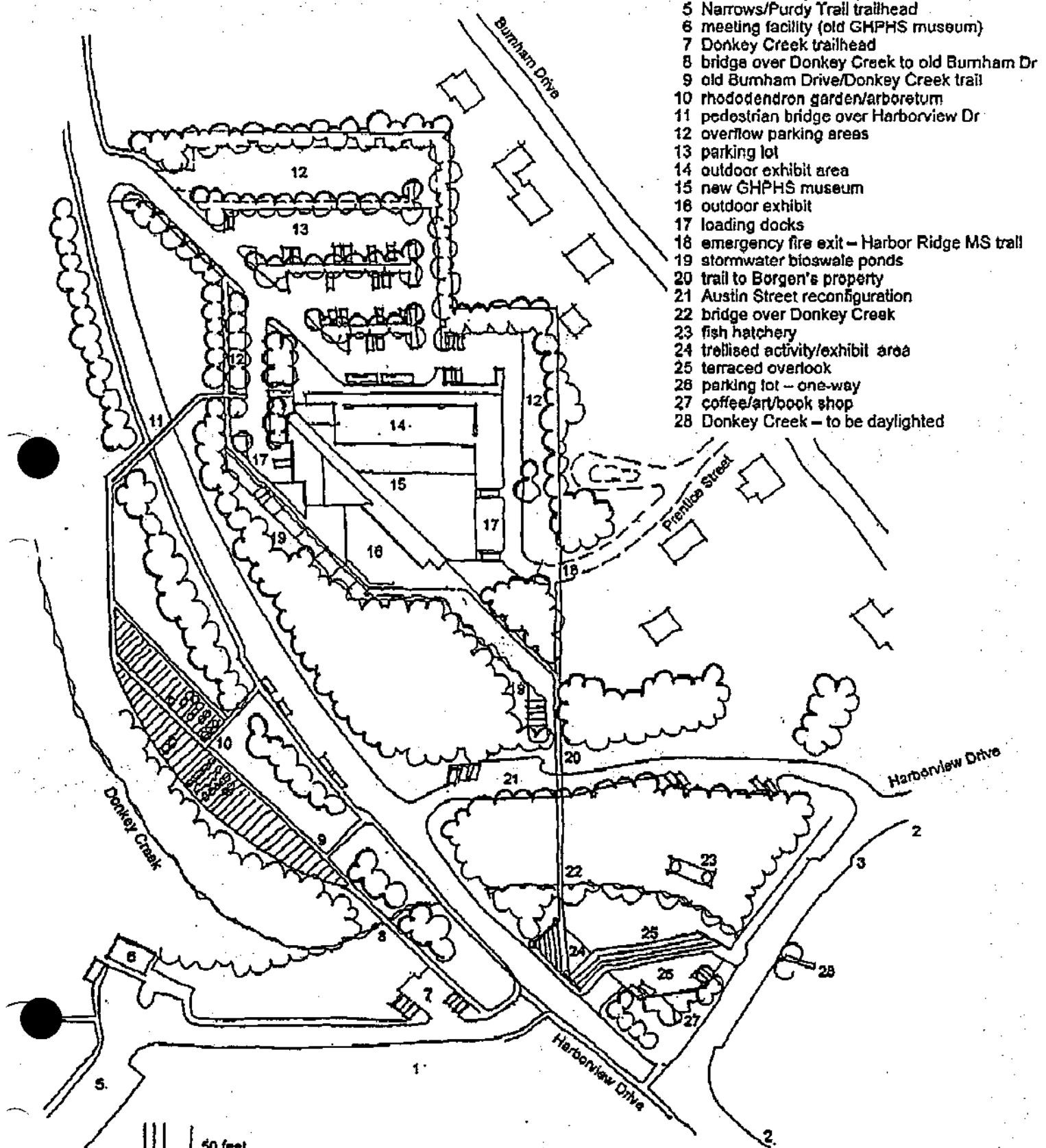
GPHS Museum/Borgen's

Existing improvements

- 1 wastewater treatment plant (WWTP)
- 2 Harborview Trail
- 3 Harborview /Donkey Creek overlook

Proposed improvements

- 4 Narrows/Purdy Trail (Cushman Trail)
- 5 Narrows/Purdy Trail trailhead
- 6 meeting facility (old GPHS museum)
- 7 Donkey Creek trailhead
- 8 bridge over Donkey Creek to old Burnham Dr
- 9 old Burnham Drive/Donkey Creek trail
- 10 rhododendron garden/arboretum
- 11 pedestrian bridge over Harborview Dr
- 12 overflow parking areas
- 13 parking lot
- 14 outdoor exhibit area
- 15 new GPHS museum
- 16 outdoor exhibit
- 17 loading docks
- 18 emergency fire exit - Harbor Ridge MS trail
- 19 stormwater bioswale ponds
- 20 trail to Borgen's property
- 21 Austin Street reconfiguration
- 22 bridge over Donkey Creek
- 23 fish hatchery
- 24 trellised activity/exhibit area
- 25 terraced overlook
- 26 parking lot - one-way
- 27 coffee/art/book shop
- 28 Donkey Creek - to be daylighted



Final Site Feasibility Report
Gig Harbor Peninsula Historical Society
March, 1998

Report to: Board of Trustees, GHPHS

Subject Property: Babbitt 4.23 acres

Committee: Mark Hoppen, Chuck Hunter, Glen Stenbak, John Holmaas
Met four times to consider with the City of Gig Harbor land use and infrastructure implications for the site and it's intended uses.

City of Gig Harbor Comments:

See attached letter dated March 3, 1998

Land Use: GHPHS will have to go through a PUD application to obtain adequate height, bulk and land use approval for proposed uses on the site.

Conceptual Site Plan: Was prepared by Stan Hanson, Lita Dawn Stanton, Chuck Hunter, and Charlynn Wingard. The proposal is not in concert with item #13 of the City of Gig Harbor comments. Site plan proposed 40' buffer to residential neighbors.

Off Site Infrastructure:

Fire flow is unavailable now ... will require a 12" line along North Harborview. City will require curbs, gutter, sidewalks along North Harborview in a boulevard fashion. Storm water will have to meet Fish and Wildlife standards prior to discharge into Donkey Creek.

It was hoped that the City would commit to accommodating these items as soon as possible when in compliance with their comprehensive plans and within their budget allocations. However, no such assurance was given.

On Site Infrastructure:

The major on site infrastructure cost will be pre-treatment of the storm water prior to discharge. Most likely a 200' bio-filtration swale will be required.

Demolition of house:

Pierce County Fire District #5 has been asked to demo the house as a controled burn training exercise for their fire fighters. The application is in process but may take another 3-4 months for approval and then wait until weather permits to burn. GHPHS will have to dispose of debris remaining after the burn.

Value for Intended Use:

Intended use being future GHPHS museum and supporting facilities which includes a shopping list of items ... see attached GHPHS goals.

The site can accomplish these items as a PUD approach but would not be permitted outright under R 1 zoning.

Location, size, topog, and ease of access make this site nearly perfect for the GHPHS's future heritage center.

Alternative Use for site:

Most probable two uses would be some type of detached single family PUD or adult home subdivision (mini retirement homes).

Environmental Audit:

The site failed the Phase I Environmental Audit due to greater than permitted quantities of lead, arsenic, DDT and Diesel oil under a small outbuilding. The outbuilding was removed and the contaminated soils were disposed of at an authorized location by the seller. A Phase II letter will be forthcoming.

Title Report: Indicated that the fence lines were not located on the property lines. There is/was a lien against the property for prior surveying costs ... will be satisfied at closing. Probate proceedings and succession taxes questions that will be cleared at closing.

Conclusion and Recommendation:

Although there are unknown costs for off site infrastructure and the intended use of the site is not permitted outright under current zoning, it is our conclusion that the site has the potential of accomplishing GHPHS goals. We recommend the acquisition.

Respectfully Submitted

Mark Hoppen
032208

Chuck Hunter

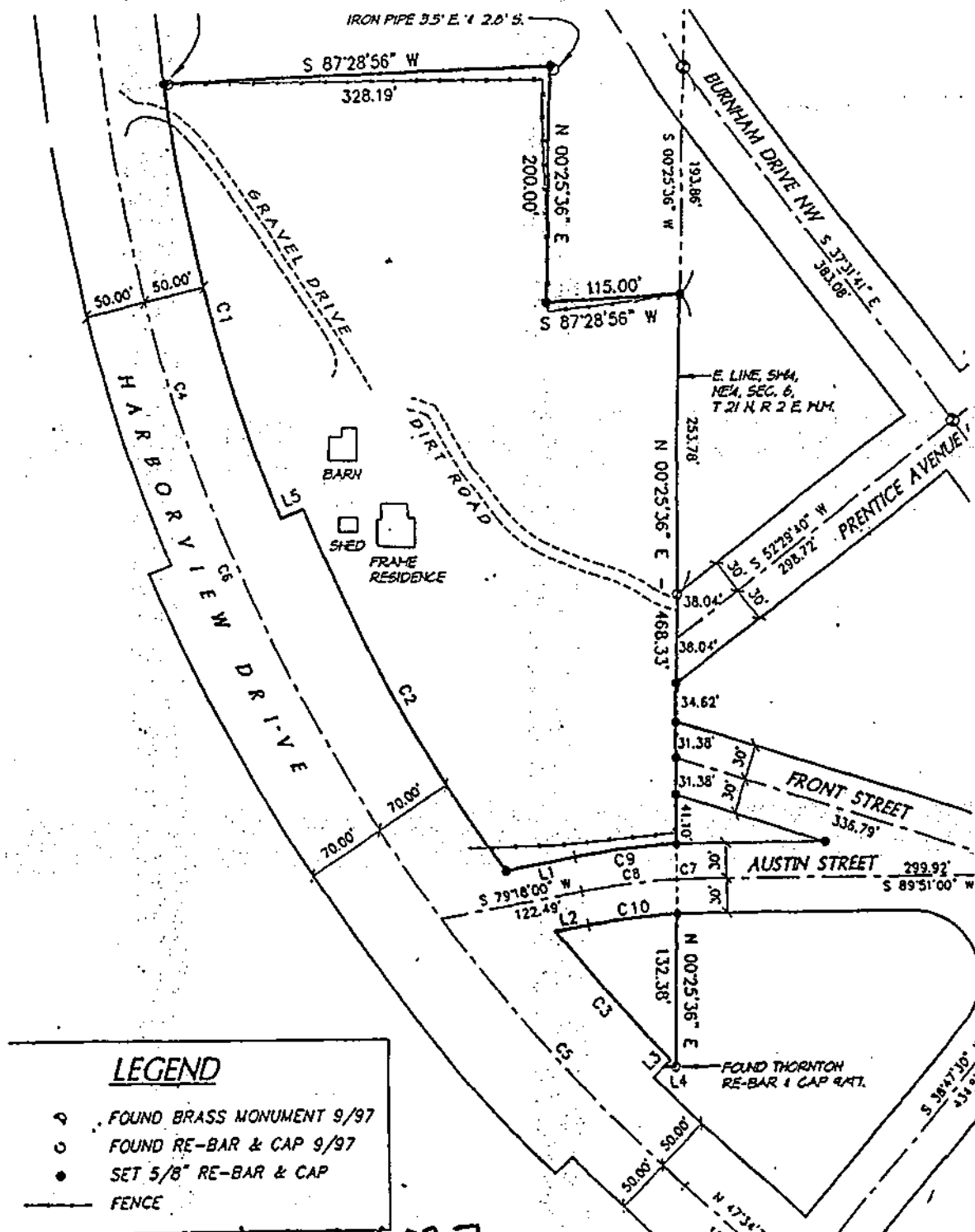
Glen Stenbak

John Holmaas

Enclosures: City of Gig Harbor comments
GHPHS goal page
Environment Audit
Title report

Beginning at a point 633 feet South of the Northeast corner of the Southwest quarter of the Northeast quarter of SECTION 6, TOWNSHIP 21 NORTH, RANGE 2 EAST of the W.M., in Pierce County, Washington; thence West parallel with the North line of said subdivision, 115 feet; thence North 200 feet; thence West parallel with the North line of subdivision, 300 feet, more or less, to the Easterly boundary line of State Road No. 14; thence Southeasterly along said Easterly boundary line of said State Road, 800 feet, more or less, to a point where boundary line intersects the East line of the said Southwest quarter of the Northeast quarter; thence North along the East line of said Southwest quarter of the Northeast quarter to the point of beginning.

EXCEPT State and County Roads.



**memo**

To: Chris Erlich, Gig Harbor Peninsula Historical Society
From: Mark Hoppen, City Administrator *MH*
Date: March 3, 1998
Subject: Initial Review of GHP Historical Society Site Plan

Planning staff, including Building Inspector/Fire Marshall Steve Bowman, Director of Planning Ray Gilmore, Assistant Planning Director Steve Osguthorpe, and Public Works Director Wes Hill, as well as City Administrator Mark Hoppen met during the afternoon of March 2, 1998, to discuss the site development proposal forwarded by the Gig Harbor Peninsula Historical Society for the Babbit property.

While the plan in review was introductory and incomplete, some initial observations could be made by staff present:

- 1) Fireflow considerations will require a 12" waterline on Harborview Drive unless an intertie is complete between the downtown water system and 96th Street, in which case at least an 8" waterline would be required. It is unlikely that the city will extend this waterline without development participation.
- 2) As shown, buildings on the site require 40' separation *or* require fireflow adequate for the square footage as if the proposed building were one building *or* require fire walls to code.
- 3) The trail to Austin Street is inconsistent with the requirements of the topography and should terminate at Austin Street on the eastern instead of the western end of the property.
- 4) The project will need to comply with ADA requirements with respect to the trail and to stairs. It is not clear whether or not the site as shown can do so.
- 5) Two story buildings will require elevators.
- 6) Although detention need not be on-site, best management practices will need to be observed for storm drainage.

- 7) Since the project is within 300' of Donkey Creek, the project will need to comply with the city's critical areas ordinance and with the requirements of the Department of Fish and Wildlife.
- 8) Fire lanes are not sufficiently articulated, especially from Prentice.
- 9) This project is zoned as R-1 (low density residential). Consequently, the project should be presented as a Planned Unit Development.
- 10) The project will need to be presented to the Design Review Board, a process which currently is not part of the city's fee structure, and is resultingly free of cost to the applicant.
- 11) The parking lots as proposed may interfere with city street easement rights on Harborview Drive.
- 12) The project does not show space for adequate buffering to Harborview Drive. A tree survey will be required.
- 13) The staff suggests that the site plan be reconsidered in terms of design review considerations. Design review guidelines encourage placement of structures close to street frontages. It might be possible for a two-story building to have lower level access on Harborview Drive. Such reconfiguration might augment space allocation on the property, while better meeting design considerations.