

GIG HARBOR CITY COUNCIL MEETING OF AUGUST 9, 2004

PRESENT: Mayor Gretchen Wilbert, Councilmembers Ekberg, Franich, Conan, Dick and Ruffo.

ABSENT: Councilmembers Picinich and Young.

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE:

PUBLIC HEARING: Moratorium on Development within the Height Restriction Area. John Vodopich, Community Development Director, explained that on July 12, 2004 the city adopted Ordinance 965 which imposed an immediate moratorium on the acceptance of development applications within the height restriction area of the city. He stated that this immediate enactment was provided for in state law. The Mayor asked if anyone would like to speak. There were no speakers and the Mayor closed the public hearing at 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 July 26, 2004.
2. Correspondence: a) Letter from Mayor Bill Barsma, City of Tacoma b) Harbor Heights Playscape Report c) Letter from Mayor Wiltse, Normandy Park d) Letter from Sara Curnow, Kitsap Regional Coordinating Council e) Letter from Stan Finkelstein, AWC
3. Request for Street Name – Harbor Hill Drive.
4. Olympic Drive / 56th Street Improvement Project – Right of Way Acquisition.
5. Change Order No. 1 – Well No. 6 Sand Repack Project.
6. Approval of Payment of Bills for August 9, 2004:
Checks #44708 through #44827 in the amount of \$327,106.94.
7. Approval of Payroll for the month of July:
Checks #3321 through #3377 direct deposit entries in the amount of \$280,759.29.

MOTION: Move to approve the Consent Agenda as presented.
Ruffo / Ekberg – unanimously approved.

OLD BUSINESS:

1. Continuation of Moratorium on Development within the Height Restriction Area. John Vodopich, Community Development Director, explained that Council must deliberate and decide whether or not to continue the moratorium for a period for up to six months, then if they wish to do so, identify findings of fact that would support the continuation of the moratorium. He said that staff has recommended that if the Council decides to continue the moratorium, that staff would like to add several types of permits to the list of exempted permits located in the staff memorandum. Mr. Vodopich further stated that the items that would be added to the list of exemptions from the moratorium would include sign permits, demolition permits, marinas without upland buildings and any building permits that would

be associated with development applications which were deemed complete by the city before the effective date of the ordinance, which was July 12, 2004.

Councilmember Ruffo asked Mr. Vodopich which specific developments would be exempt. Mr. Vodopich responded with the Timberland Bank drive-up window, the Bayview Office Building located at the Bayview Marina, the Sunshine Marina, and the Babich Fuel Dock.

Councilmember Franich asked for a brief description of the Sunshine Marina project. City Attorney Carol Morris explained that at this time we should not be discussing a project that currently is being processed by the city. She stated that it would be okay to ask why this project may be subject to the moratorium. Councilmember Franich then asked why the Sunshine Marina project is subject to the moratorium. Mr. Vodopich responded that the verbiage in the moratorium precluded the acceptance of any development applications that were not deemed complete by the effective date of the ordinance. He further stated that while the permit review of the marina project could go forward, the issuance of any subsequent building permits would be subject to the development moratorium. Mr. Vodopich explained that is why the staff, in part, is recommending adding the list of exempted building permits that were associated with applications that were already deemed complete. Councilmember Franich asked if there were any upland buildings associated with this project. Mr. Vodopich responded no.

MOTION: Move to continue the moratorium on development as so listed with the exemptions and modifications as highlighted by Mr. Vodopich.
Ruffo / Ekberg –

Mayor Wilbert asked if it would be possible to exclude numbers 5 and 6 on the list of exemptions and still keep the moratorium in place.

Mr. Vodopich stated that the City Attorney reminded him that the purpose of the public hearing was to establish findings of fact that would justify the continued existence of the moratorium. He asked Council to deliberate and pontificate on the reasons why they feel this moratorium should be continued.

Councilmember Dick asked Mr. Vodopich how Council could deliberate this issue if they didn't have a draft or proposed findings to aid them in justifying the continuation of the moratorium. Mr. Vodopich explained that the agenda packet contained the ordinance adopted on July 12, 2004.

Councilmember Ruffo asked if Mr. Vodopich was suggesting that Council continue the actual ordinance with the recommended modifications. Ms. Morris responded that as Council adopted the last moratorium for water, the Council made findings of facts consistent with their determination that the moratorium should be in place. She explained that what is being asked of Council is to deliberate and explain their rationale for the maintenance for the moratorium so it can be put in the findings of fact conclusions, and asked if Council would like staff to draft up findings and conclusions and present them in draft form. Councilmember Dick stated that without any public testimony, Council is reliant

solely upon the facts that staff has presented. Ms. Morris stated that this moratorium isn't necessarily imposed based upon facts from the staff, but it was her belief that it is based upon the information received during the Council work sessions for the Building Size Analysis.

Councilmember Ruffo asked if there were any impacts to the moratorium if Council adopts the modifications of exemptions as highlighted. Mr. Vodopich responded that he believed so. Councilmember Ruffo asked what is the effect of having the moratorium if everything is exempted, adding that he didn't think that there was any substance to it.

Councilmember Ekberg stated the he believed the findings of fact to be well documented in the title of the ordinance itself and until the code review was finished this would prevent anything new from coming in that would not benefit the community.

Councilmember Dick asked when must Council adopt a resolution, in order for the current moratorium to continue. Ms. Morris said September 10, 2004. She explained that the ordinance describes the procedure for a moratorium and why a moratorium should be put into effect to prevent the submission of applications while you are working on development regulations. She said that the findings of fact that Council needs to establish for the maintenance of the moratorium relate more to the substance of the moratorium for building sizes than to the subject matter of the moratorium. She stated that if Council would like to reschedule the hearing, staff could draft proposed findings of fact, as there was still time before the September 10th deadline. At that time, Council could review the proposed findings of fact and adopt them at the next hearing.

Councilmember Dick asked the staff to bring back a proposal with at least enough information that can be supported and considered in an appropriate session.

Councilmember Dick stated that he didn't think that a new motion was needed. He said that he would like to direct staff to bring back to Council an appropriate draft set of findings which can be discussed to determine whether they are appropriate or whether other findings need to be considered to maintain the current moratorium.

Ms. Morris suggested that Council move to continue the hearing to a date certain before September 10th and direct the staff to come back with the draft findings of fact and conclusions. She stated that what staff will do is go back to the work study session and get the language and discussions from this session in order to draft up the findings of fact.

AMENDED MOTION: Move to continue the hearing on this to a date certain before September 10th and direct the staff to come back with the draft findings of fact and conclusions.
Dick / Ruffo – unanimously approved

Mr. Vodopich stated that this date would be the August 23, 2004 meeting. The Mayor asked if the public had an opportunity to see these exemptions in the beginning and stated that they will have an opportunity to review this information prior to the next meeting.

2. Harbor Cove Settlement Agreement. City Attorney Carol Morris explained to Council that the proposed settlement agreement would allow the city to issue a revised MDNS. She stated that the revised MDNS once issued would follow the city's current procedures for public comment and public appeal. Ms. Morris made a recommendation to Council to execute this agreement.

Jake Bujacich – 3607 Ross Avenue. Mr. Bujacich stated that his concerns were in regards to when the property is developed in terms of setback requirements and variances on such narrow lot sizes. He asked the Council to hold this decision over for further study.

Bill Fogerty – 3614 Butler Drive. Mr. Fogerty said that he understood that the property being discussed was zoned RB1. Council advised Mr. Fogerty that he was incorrect, the property is zoned Waterfront Commercial (WC). He stated that he agreed with what Mr. Bujacich had said and asked Council to hold their decision over for further study. He also was in favor of floating a bond to buy this property and relocating the Historical Society at this site. He also suggested that the city consider a parking structure downtown that could be placed on the same bond issue. Mr. Fogerty stressed the need for more parking for public events to reduce the impacts for those residents that live on the waterfront. He summarized by saying that we need the Historical Society downtown in a location that people can find and the need to preserve the open space at the Eddon Boat building site.

Erik Peavy – 7315 Forest Glen Court. Mr. Peavy stated that he was reacting primarily to the boat yard being used a residential property. He discussed the charm and character of the many towns and cities that he has visited. He asked Council to think about what they envision Gig Harbor to become. Mr. Peavy explained that some towns are able to keep with these aesthetics by allowing only the interiors to be re-done and maintaining the integrity of the outside of the buildings. He was in favor of a band stand at Skansie Brothers Park. He stated that if all the little areas of charm are taken away then all Gig Harbor will be is a little town on the edge of a harbor.

Linda Gair – 9301 North Harborview Drive. Ms. Gair stated that Council needed to look at this settlement agreement carefully. She was not in favor of demolition being part of the list of exemptions on the proposed development moratorium ordinance. She didn't think that anything should be done on the Eddon Boat building site until the Ecology report is in. Ms. Gair further stated that this is a highly polluted site and has heard little discussion about it. She asked that Council preserve the waterfront history and fishing.

John McMillan – 9816 Jacobsen Lane. Mr. McMillan asked Council to reject any settlement agreement that facilitates the demolition of the historic Eddon Boatyard. He stated that the waterfront is already loaded with single-use development in the form of condos and marinas. He said that it was time that we stop destroying our historic shoreline. He read from the Shoreline Master Program and pointed out the guidelines that supported the preservation of the boating, fishing and tourist industries. Mr. McMillan proposed a real working waterfront complete with a restored boatyard, family based education boat building programs, a heritage site, the Shenandoah display, a museum, a

park, municipal parking and a waterfront boardwalk the full length of the property. He was strongly in favor of saving the Eddon Boatyard.

Lynn Lewis – 11707 16th Avenue NW. Lynn Lewis' written statement was forwarded to the Assistant City Clerk for the record.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton addressed Council and said that she loves Gig Harbor and is committed to preserving the scale and character of Gig Harbor. She stated that the purchase of the Skansie Park was a landmark decision and the Eddon Boatyard and Council's position now is another. She stated that the Council could not deny the demolition permit outright but Council could demand that the goals set out by the Comprehensive and Shoreline Master Plans are upheld. Ms. Stanton said that the City Manager commented that the Shoreline Master Program did not include direct regulatory language to implement these statements. Ms. Stanton questioned that if the city does not have regulatory language to support the subject documents, then why don't they and whose job is it to ensure that we do. She further stated that certified local government status was approved over a year ago in order to create historic preservation ordinances and nothing has been done. She further stated that project by project, Gig Harbor is losing a little more character. Ms. Stanton pointed out that the citizens need the kind of leadership that understands how to make this happen and stressed that we need a more transparent process that puts the community first. She discussed five ways that decisions are made. Ms. Stanton asked Council to delay their decision to allow time for critical evaluation of the meeting's public comments before approving the settlement agreement.

Mary Manning – 9816 Jacobsen Lane (on behalf of Guy Hoppen). Ms. Manning spoke on behalf of Guy Hoppen who was in Alaska, and read his letter aloud.

Chuck Hunter – 8829 Franklin Avenue. Mr. Hunter summarized the letter that he had recently forwarded to Council. He stated that the community has a tremendous chance to save the real character of Gig Harbor. He said that the Historical Preservationist Report was very compelling as it explained what the activities had been on this property for the last one hundred years and the Thunderbird sailing vessel development there. He stated that there has not been any public forum and everything has taken place either in executive session or at staff meetings on this subject. He pointed out that the Historical Report was generated in April, and throughout all the meetings that have transpired, this has never come out in the building size ordinance when there was the proposed change of zone. He said that he felt that this project does not meet the Comprehensive and Shoreline Management Plan(s) and asked Council to get an independent person to review this. He asked Council to take a critical look at the permit application for this project and stated that the Council has no obligation to make the project pencil out for the developer by way of variances and concessions.

Roseanne Sachson – 3502 Harborview Drive. Ms. Sachson said that she had attended all of the workshops and stated that it was repeated from the community to hold on and don't make any moves without thinking about a vision for the city. She further stated that we still hadn't come up with that. She questioned how this item is being listed on the agenda.

She stated that she had not seen it on last meeting's agenda and asked that the city come up with some consistency in a name, i.e. Harbor Cove / Eddon Boat Building.

Councilmember Ekberg stated that the agenda is completed by the Thursday before the Monday meeting and the article that Ms. Sachson referred to was an advertisement that the city had nothing to do with. He understood the confusion that Ms. Sachson was speaking about, and said that often times a project picks up a local name versus the applicant's name, which is usually the way the project is listed. Ms. Sachson asked Council to listen to the applause and support from those in the audience and stated that this support speaks volumes. She asked Council to stop, listen and look at this and come up with the best way to make Gig Harbor what we want it to be and said that there have been great suggestions offered.

Ann Erren – 11221 35th Avenue Court. Ms. Erren identified herself as a psychologist and stated the Council has the ability to affect the quality of life in Gig Harbor. She stated the importance of having the best possible atmosphere that we can with all that is going on in the world. She said that Gig Harbor is a haven for peace and history, the rooted ness of this and how much this means to people. She asked that Council preserve the quality of life in Gig Harbor.

Scott Wagner – PO Box 492. Mr. Wagner spoke briefly and asked Council what is it that we are trying to protect and save in our city. He stated that this issue is exactly what everyone's efforts have been for – to save things like this. He further asked Council to do whatever they could in their power to keep this building standing as it is very important to the community.

Robert Windskill – current tenant of the Harbor Cove Group. Mr. Windskill explained that he has been involved with the Eddon Boat Shop for the past twenty-two years. He has recently taken over the tenancy from the Harbor Cove group. He explained that the Harbor Cove group purchased this property last year for 1.2 million dollars and pointed out that this property has been for sale for about eighteen years and once the group decided to clear the lots after much engineering and site work clean up, no one from the community has spoken up until now. He further stated that this now will cost the city and the Historical Society a substantial amount of money if it is purchased from the group. He stated that after this subject has come up, he is amazed at how many people come down to see the Eddon boat shop and discuss numerous ideas for the site. He stated that his personal opinion was that the developers are anxious to tear down the rest of the buildings to spur on a decision from the city. He discussed the possibilities of the property and hoped that it can be made part of the ambiance of the city for the future, a chance for the town to grow responsibly. He also spoke about the serious public support.

Chip Cherry – 2907 Harborview Drive. Mr. Cherry identified himself as a boat builder. He stated that the building should stand and discussed the one hundred year history of boat building, which he said cannot be thrown away, as it is an important part of the city's heritage.

Jeff Bailey, Bailey and Associates – 7700 Pioneer Way. Mr. Bailey identified himself as a consultant to the Harbor Cove property owners. He stated that this issue is one of process, product and vision. He thanked the city staff for conducting themselves in a very professional manner and sticking to the technical and legal points at hand while negotiating a very fair agreement. He further stated that under the process issue, what was before the Council was an opportunity to sign an agreement that allows a revised MDNS to be issued. Mr. Bailey explained that an MDNS for this property has already been issued and challenged on demolition action only. He further stated that the issue before Council was whether or not they would allow a revised MDNS to be issued, and secondly it would provide a public comment period with a right to speak and challenge any revised MDNS that was issued. He suggested Council approve the agreement, as it allows for public input and input from the Harbor Cove Board.

Denny Lang – 305 34th Avenue NW. Mr. Lang asked for a straw poll as whom would support putting the breaks on. He stated that he didn't think it was too late to put the breaks on this issue. Mr. Lang said that this site is one of the last remaining vestiges of the old harbor and called it a "jewel" of the harbor. He stated that more study, more debate, and more vision are required to take a hard look at the long term benefits for the city rather than the short term benefits. He encouraged the city to slow down a bit and to be receptive.

Barry Margolese – 108 S. Jackson, Suite 300, Seattle. Mr. Margolese identified himself as the development manager for the Harbor Cove group. He explained that the concept for this property was discussed with the administration and staff fairly early on. He further stated that they looked at the zoning of this property, which was zoned Waterfront Commercial. He said that this zoning and the Comprehensive Plan allows residential development of this property. As a result, he explained, they started the process for how to plan development of this property, considered what steps needed to be taken, and have worked with city staff to achieve these steps. He reminded everyone that once someone purchases property there are expenses, explaining that the Harbor Cove group is paying real estate taxes, mortgage interest, and utilities on this property. Mr. Margolese also stated that they have followed the process and followed the laws of the City of Gig Harbor to get to this point. He said that they have negotiated with city staff and the City attorney, who recommends that Council sign this agreement. He strongly suggested that Council sign this agreement. He suggested that in order to do what is right, Council should follow the city's own regulations and laws which suggest that this is a fair and just agreement. He also added that if there is a debate, there will be a process for an appeal so that the Hearing Examiner can review these issues. Mr. Margolese encouraged the Council to hear the recommendation of the City Attorney and staff and move ahead with the agreement.

Ms. Morris responded to some of the comments from the public. She addressed the question regarding whether the settlement agreement addressed future permits or development on the site. She said that this does not. She explained that the property owner has submitted a demolition permit application for the property. The city staff issued a mitigated determination of non significance, meaning that the city has made a

determination that there are not going to be significant adverse environmental impacts on the property that warrant the preparation of an environmental impact statement. The MDNS that was issued by staff contains conditions that would be imposed on the demolition permit. Ms. Morris continued that this decision is not whether the application will be approved or denied; it is the staff's decision whether or not there are significant adverse environmental impacts on the property associated with the demolition permit that would require the preparation of an environmental impact statement. She further clarified that the MDNS contains certain conditions that would be imposed on the demolition permit if it issues. She clarified that when the original MDNS was issued the public could have appealed it. Ms. Morris continued to explain that when the property owners appealed certain conditions, staff met with them to work out a settlement agreement that does not avoid any process or procedure in the city's codes. She explained that the agreement allows for a revised MDNS that would again allow all the members of the public to comment and to appeal it just as there was the opportunity to appeal the first MDNS. Ms. Morris stated again that no process has been avoided by this, stressing that it does not approve or deny the demolition permit.

Ms. Morris continued to explain that the issue before the Council is whether or not to sign the settlement agreement. She said that if the Council does not wish to sign the settlement agreement or if they would like to hold off for further study, the applicant does not need to wait, because they have a pending application and the city is mandated by law to process that application within a certain time period. If the applicant wishes to withdraw right now, the existing MDNS would be applicable, their appeal would then proceed, and the city would be required to defend the existing MDNS. She pointed out that this would not come before the public, but it would go before the Hearing Examiner and his decision would be based on law, not based on what would be best for the property. She further explained that this is because the property owner has submitted a demolition permit and this is what is being acted upon at this time.

Ms. Morris said that someone commented that the city should wait for the Department of Ecology to suggest what the action should be taken on the hazardous waste on the site. Ms. Morris responded that the city cannot impose additional conditions relating to hazardous waste clean-ups, as they are regulations that are enforced by the DOE and state law. She further explained that DOE has been notified and is aware of the hazardous waste on the site. She said that this is all the city can do as the city is preempted by law from adopting hazardous waste clean-up regulations.

Ms. Morris continued to address the comments that this settlement agreement somehow weakened the city's authority to enforce its codes or that the city was not going to enforce the Shoreline Master Program. Ms. Morris referred everyone to the revised MDNS, exhibit A, page 2, Other Regulations, that states the proposed project is subject to the provisions of the Shoreline Master Program, the Gig Harbor Municipal Code, the Uniform Building Code, and the Stormwater Drainage Design Manual.

Ms. Morris commented on the statement that the public has not had the opportunity to comment on this issue. Ms. Morris responded that the public had an opportunity to appeal the MDNS, but a timely appeal had not occurred.

Ms. Morris responded to the comment that the city should require that all permits be approved before demolition occurs. She said that if there are conditions in the city code that allow that to take place, then that can be imposed as a condition. She stressed that is not what is before the Council at this meeting. She said that the Council does not have to sign the settlement agreement, as it is the staff's recommendation for the resolution of the appeal.

MOTION: Move to table any action on this tonight and instruct the staff to explore any options where the city might be able to acquire this property.
Ekberg / Ruffo – unanimously approved.

Councilmember Ekberg commented that he has heard a real concern and desire by the community to view this property as anything other than private ownership. He asked staff to see if there was any possible way that the city can come to an agreement under a bond issue to make an effort to acquire it. Councilmember Ekberg stated that this was the only way that he could see to make this happen.

Ms. Morris pointed out that the city cannot prevent this permit to be processed. Someone from the audience asked why not and Ms. Morris stated that state law requires us to process a permit that has been submitted to completion, to a final decision, and there is a statute for when it has to issue. She clarified that when an application is submitted to the city, the city has to process it and issue a final decision within a certain time period.

Mayor Wilbert said that she wanted to exempt demolition in a previous program. Councilmember Dick explained that there is a requirement for the processing of an existing permit application and asked what this was. Ms. Morris answered and said that a demolition permit would normally have to issue in 120 days. Councilmember Dick then asked when the 120 days would expire on this application, as Council needed to know the time in which they must take mandatory action and whether it would allow time to discuss other options that might better serve both the city and the property owner.

Councilmember Ruffo asked Ms. Morris if it made a difference whether the settlement agreement is signed at this meeting. He thought that the developer had the ability to move forward anyway. Ms. Morris said the reason that the staff has come before Council and suggested that they sign the settlement agreement is because the agreement provides a better option to the city than the existing MDNS. She stated that she wanted to make clear that this is not a situation where Council is in control of what will occur because the applicant can withdraw their agreement.

Councilmember Ruffo then asked if there was any scenario where the property owners could proceed and have the Eddon Boat Building demolished. Ms. Morris explained that the property owner could decide that he did not want to negotiate with the city and proceed

to have the demolition permit issued. Ms. Morris stated that the appeal will occur first because the MDNS is on appeal by the property owner. This is a step in the process of the demolition permit. She further explained that after this occurs, then the decision will be made if it is consistent with the city's development regulations and then the final decision on the demolition permit will issue. She further stated that if the property owner decides not to negotiate with the city for the purchase of the property, the demolition permit may be approved. Ms. Morris stated that if it is approved, the property owner can proceed with the demolition. Mayor Wilbert asked if the Hearing Examiner that makes the decision. Ms. Morris replied that it is the Hearing Examiner that makes the decision on the appeal.

Councilmember Ruffo asked for clarification on whether it would help the public stop the demolition of the Eddon Boat building if Council signs the settlement agreement. Ms. Morris replied that it gives the public an additional opportunity to appeal because the appeal period for the existing MDNS has expired. If this revised MDNS issues, there will be a comment period and anyone can comment and anyone can appeal if they meet the city's code requirement, which would allow the ability to appeal the MDNS, and when the demolition permit issues or is denied, this can be appealed as well.

Councilmember Ruffo suggested that the staff talk to the property owners and determine whether there is an option to purchase this property. Councilmember Dick stated that Councilmember Ekberg's motion allows the city the flexibility to explore this option and not squander any valuable right. He further stated that the staff could make some inquiries and find out whether there are options that would work for the developer that would not require the demolition and would better serve the public. He was interested in knowing this information for the next meeting in order to proceed with an appropriate decision.

Ms. Morris restated that signing the settlement agreement may not preserve the status quo because the applicant can withdraw his agreement to sign the settlement agreement. If the application does this, the existing MDNS will stand, there will be no opportunity for the public to appeal the MDNS, and the public will only be allowed to appeal the issuance of the demolition permit.

Mr. Osguthorpe stated that the agreement is not whether to demolish or not to demolish. He explained that what is before the Council is what mitigation the city can impose in terms of the demolition. Mr. Osguthorpe further explained that the city does not have any provisions in the code to prevent demolition. The city has tried to identify ways to address demolition in terms of mitigation, the degree to which it will provide the most benefit to the city. Mr. Osguthorpe further explained that the mitigation proposed in the MDNS was the most that the city could require under this application and the settlement agreement preserves the intent of this.

Councilmember Ekberg clarified that the settlement agreement provides greater public input and gives the staff an opportunity to explore purchase options. Ms. Morris added that the benefit to the city would be that appeal that has been filed by the property owner would be resolved to the best possible solution.

Councilmember Franich asked if the new MDNS would require the property owner to do an environmental impact statement. Ms. Morris stated that it would not. Councilmember Franich stated that he thought that it would be a good idea to table this to provide an additional two weeks to review the public input and testimony.

Councilmember Ruffo asked Ms. Morris if Council could ask the developer's representative if he would maintain the status quo for the next two weeks while Council gave this issue more thought. Ms. Morris stated that Council could ask the developer's representative to come forward and tell you if he would allow additional time to the Council to sign the settlement agreement or if he would withdraw during this period of time. Councilmember Ruffo stated that he would like to do this. Mayor Wilbert asked Mr. Margoese to approach the podium. Mr. Margoese addressed the Council and Mayor and responded that the settlement agreement is in everyone's best interest and urged the Council to consider the advice that they have received from the staff and City Attorney and sign the agreement at this meeting. He stated that otherwise, his group will need to counsel with their attorney and make a decision regarding their next step. He restated that they are paying taxes and interest on the property and intend on this process moving forward. Mr. Margoese further responded to the question of waiting two more weeks and said he was not sure that this could be done.

Councilmember Dick addressed Mr. Margoese and asked if the city might be able to make a proposal without the demolition of the Eddon Boat Building that would still achieve their purposes. Mr. Margoese stated that his group would be available to discuss any and all ideas, however he is not of the mind to allow the process to stop. He further stressed that he urged the process to continue.

Mr. Osguthorpe outlined the end result(s) of every scenario:

1. Scenario 1 - If the city does not sign the settlement agreement, and the applicant chooses, he can move forward with the appeal.
2. Scenario 2 – If the applicant prevails on the appeal, then the city will issue the demolition permit without any mitigation.
3. Scenario 3 – If the applicant does not prevail on the appeal, then the conditions of mitigation of the current MDNS will stand.
4. Scenario 4 – If the settlement agreement is executed, there will be an opportunity for appeal.

Mr. Osguthorpe further explained that there are no provisions in the code to deny a demolition permit. He stated that all that is being addressed is the mitigation that will be required in conjunction with the demolition permit, as well as maximize the mitigation that will be achieved, adding that the settlement agreement does this.

Councilmember Ruffo stated that he thought that the original motion should be withdrawn. Ms. Morris read from page 4 of the settlement agreement that outlines when the comments should be submitted. She further read from the last page of the agreement regarding the appeal process.

MOTION: Move to authorize Mayor Wilbert to sign the settlement agreement as written.
Ruffo / Ekberg –

The Mayor thanked the developer for being present to have heard the discussion and intent of the community. She further stated that she hoped they would be cooperative in helping the city obtain its objectives as stated.

Councilmember Dick stated that although it is true that the public will have additional appeal rights, they can't practically exercise them. He said that it isn't a practical remedy; rather, it is an appropriate legal remedy. Councilmember Dick stated that this will facilitate the demolition, adding that he was in favor of the original motion that suggested working with the developer to try and acquire the property. He expressed his disappointment and then discussed the difficulties associated with the appeal process.

There was further discussion between Council on this issue. Councilmember Dick expressed his feelings of failure on this issue, stating that he believes the city needs to follow the rules, and not merely wished that they had. He said that if historic structures add value to the community, then an appropriate system must be devised to protect these structures. He explained that Council has been discussing crafting an ordinance for at least six years, but had not followed through. He said that the city should be able to work with a developer to honor their legitimate rights and the rights of other property owners, as well as follow the rules, and come up with a project that will serve the public and serve the legitimate rights of the developer.

AMENDED MOTION: Move to authorize Mayor Wilber to sign the settlement agreement as written and work with the developer to make every effort to either purchase the property or somehow save the Eddon Boat building.
Ruffo / Ekberg – Four voted in favor. Councilmember Dick voted no.
The motion carried four to one.

NEW BUSINESS:

1. Introduction of Ordinance – Amending the Design Manual. Steve Osguthorpe, Building and Planning Manager, presented information and background on the proposed ordinance for the revision of the Design Manual. He explained that the proposal is to update the manual and incorporate it as a new chapter in the Gig Harbor Municipal Code. He stated that the existing design manual was adopted in 1996 and has not been amended since that time.

Mr. Osguthorpe outlined the proposed changes as follows:

1. Revise the format to make the manual more user-friendly.
2. Correct the inconsistencies and errors in the existing manual.
3. Address design issues that were not fully addressed in the original manual.
4. Clarify standards by providing more specific and definitive language.
5. Provide additional design options.
6. Define and provide design exemptions for industrial buildings.

7. Identify parkways, activity centers and newly annexed areas since the adoption of the original design manual.
8. Enlarge the historic district boundaries to include parcels on both sides of streets that currently define the historic district.

Mr. Osguthorpe stated that there were numerous work sessions between the Design Review Board and the Planning Commission. The Planning Commission held a public hearing on the proposed amendments. Mr. Osguthorpe said that there were two sections that the City Attorney advised to not include in the update which are all standards pertaining to right-of-way development and the standards that pertain to onsite common areas.

Councilmember Ekberg suggested that there be 1-2 work study sessions to discuss the amendments. Councilmember Dick inquired about the common areas and asked if this covered design issues that might occur through the use of the condominium ownership device. Mr. Osguthorpe replied no. There was further discussion and clarification in relation to residential versus commercial and binding site plans.

Councilmember Franich stated that he had many issues and concerns and was in favor of workshops as a venue to address his concerns.

Jim Pasin – 3208 50th Street Court. Mr. Pasin stated that he was prepared to make comment about a number of issues and agreed to withhold his issues until the work sessions. He expressed some broad concerns about the process. He also suggested that public works follows the same rules as the development community. Mr. Pasin encouraged Council to review the manual for its practicality.

Mr. Osguthorpe said that he had received a letter from Mr. Paul Kadzik, Planning Commission Chair, whereby he expressed his concerns regarding the process issue. He asked that Council review the process issue after the adoption of the Design Manual.

Wade Perrow – 9119 North Harborview Drive. Mr. Perrow thanked the members of the Design Review Board for their countless hours of dedication. Mr. Perrow supported the need for the proposed work session to work through any issues.

Councilmember Ruffo asked Mr. Perrow what was needed in the development community, besides having a strong Design Review Manual and a strong Design Review Board to help achieve the integrity of the city. Mr. Perrow summarized by stating that much depends on early involvement and having a community with diversity. Mr. Perrow also spoke about having the end in mind in terms of flexibility and working together with the Design Review Board about meeting the design goals of the city. He spoke of the manual having more flexibility and gave an example of building a hospital.

Councilmember Franich said that while flexibility is important for diversity, it is also important to have some predictability on what is going to be built in the neighborhoods, stressing that balance is vital. Councilmember Franich stressed that he would like to know

what mechanism in the Design Manual is going to protect the community from another large building showing up, and wants this question addressed in the work sessions.

Mayor Wilbert stated that the city used to measure from the highest point of the footprint of the project. She said that now we are going to the highest point of the height of the property and stated that this may add another component to the height concerns in the community. Mayor Wilbert recommended that she would like to see this changed back to the highest point of the footprint rather than the highest point of the setback. Mr. Osguthorpe stated that the current proposed provision aligns the city closer to this recommendation and can be discussed more fully in the work sessions.

Roseanne Sachson – 3502 Harborview Drive. Ms. Sachson spoke about the need for a vision for the city that would be helpful in filling all of the needs of the manual both for the Design Review Board and the Planning Commission. She stated that she didn't think that it is that far away from something that the Council and Mayor could achieve by just taking what they have been hearing and what the history of the town is. Ms. Sachson encouraged Council not to rush on something like this because of the massive amount of work that has gone into amending the Design Manual. She pointed out that the one thing that the Design Manual does not state is each particular site will come up with its own needs and each time these discussions will need to be well thought out. She further stated that Council needs to look at a time frame that makes sense for a project to move forward so that we don't run into something like this, whereby the passage of the settlement agreement will cause the community to go against the Council. She asked Council to come up with a realistic time frame that is both workable for the developer and the city.

Dale Pinney, First Western Development – 1359 Shoreline. Mr. Pinney expressed his concerns in regards to the process. He stated that he had taken two projects through the Design Review Board and said that it is an iterative process of trying to determine what was best for the project, the site, and what goals are to be met. He gave an example of a 6-ft. wall requirement which would not leave the Design Review Board the ability to approve that change even though they unanimously agreed that this was the best thing for the project. Mr. Pinney pointed out that this would go before the Hearing Examiner, who would look at the code and ask if the four requirements have been met to get a variance, adding that the four requirements are generally very difficult to meet. He stated that what works now is that the Design Review Process is under the umbrella of site plan review which is an administrative decision that could be appealed. The DRB currently has the ability to mold the project and come up with a package that meets the vision of the manual. Mr. Pinney suggested a change to the Design Manual's proposed wall requirement. He stressed that how the manual states the goals makes a big difference when the DRB does not have the right or authority to change the specific requirements. He stated that getting a variance is very expensive and difficult and a low percentage business. His concern is that with the proposed changes, he could very easily see a large project needing twenty variances, which could cause a developer to say why bother, it's just not worth it. Mr. Pinney said that the goal should be to avoid the need for variances. He summarized that the most important issue was the process and where this design review fits in the approval sequence.

Councilmember Ekberg asked how do you balance the certainty in a neighborhood whereby a wall cannot be built more than 6-ft. with the ability to deviate from this. Mr. Pinney suggested that some middle ground should be considered as there is no perfect scenario. Mr. Pinney stated that he would not have a problem with the manual having a 6-ft. requirement but stated that the DRB needs to have the ability to accept a percentage deviation from this requirement to provide flexibility in the process.

Mr. Osguthorpe said that clarification is needed on this issue. He stated that the existing manual has fairly vague language in terms of the administrative process; as there is no number. Mr. Osguthorpe explained that the one thing that he has strived for in the existing Design Manual was to provide a dual process. One, where an applicant could come in with certainty and know what was required to get a permit and get approved administratively by the staff within the 120 day turnaround time. He further stated that the specific requirements of the Design Manual achieve this goal. Mr. Osguthorpe said that in this particular situation, there is no number, so all that staff knows is that they are supposed to respect the natural topography which could vary from 6-ft., 10-ft, or 20-ft. Mr. Osguthorpe stated that in order to take away this ambiguity, at least in the administrative process, a number was given but this does not change in any way the process before the DRB. He further explained that in almost every situation they have removed numbers in terms of the general requirement that the DRB would consider. The requirement of the DRB is to maintain the natural topography, and if they see a project that meets that intent, the Hearing Examiner would be basing his final decision on their recommendation, using the same criteria that the DRB used.

David Boe – 705 Pacific Avenue, Tacoma. Mr. Boe said that he had dealt with design manuals up and down the Puget Sound and west coast. He stated that this was a basic fundamental decision – does the city want to be rules based or principal based? He further stated that a process that is principal based allows for creativity and the ability to look at historic buildings and do things creatively that follows a principal. He further explained that rules tend to state what one can't do.

2. Introduction of Ordinance – Amending Chapters in Title 17 to Ensure Consistency with the Design Manual. Steve Osguthorpe, Building and Planning Manager, presented information and background on the proposed ordinance. He stated that when the original and existing Design Manual had been adopted, it was recognized at that time that there were a number of inconsistencies that were created between the Design Manual and the zoning code. He explained that in order to address this, a provision was included in Chapter 17.98 that states that if there are contradictions between the Design Manual standards and those in the zoning code, then the design standards will prevail. He further explained that in the past, this has created a lot of confusion for the public who has a tendency to first look at the zoning standards, and think that those are what need to be followed. This update provides the opportunity to go through the entire zoning code and eliminate any inconsistencies between the two, and will cross reference chapters and the Design Manual.

Councilmember Ruffo asked Mr. Osguthorpe if this will be also discussed in the upcoming work sessions. Mr. Osguthorpe responded yes.

Councilmember Ekberg suggested and it was agreed that two work sessions will be held on Monday, August 30th and Monday, September 20th, 6:00 – 8:00 p.m.

STAFF REPORTS:

1. GHPD – July Stats. No verbal was given. The Mayor commended Chief Davis for his attendance at the Council meetings and thanked him for his comprehensive staff reports.

PUBLIC COMMENT:

Jake Bujacich – 3607 Ross Ave. Mr. Bujacich expressed concern about the how the city determines non-significance. He spoke of the Eddon Boat building, the contamination and the removal of a bulk head. He expressed his difficulty understanding how the city came up with this determination on this piece of property.

Lita Dawn Stanton – 111 Raft Island. Ms. Stanton thanked Councilmember Dick for his vote of no in regards to the settlement agreement. She said that she was under the impression that the MDNS requirement had to do with documenting the Eddon Boat building with pictures, how in depth those pictures are, and how the city is going to keep it as a historical record. She further stated that this is what the MDNS required. She said that by voting in favor of the settlement agreement, it leaves the community to appeal the City Council's decision in front of the Hearing Examiner. She stated that this didn't have to do with the substance of the MDNS as much as it had to do with the public's position when it comes to the appeal process. She stated that that she thought the Council made a mistake.

Scott Wagner – PO Box 492. Mr. Wagner requested Council to direct the staff and the City Attorney to figure out a way to stop the demolition of the Eddon Boat building. He asked if there is a way to rezone or put it on historic preservation. He said that in the event that the negotiations can't fairly purchase the property he asked the Council to think carefully about who will represent the city in the negotiations and what direction will be given to successfully complete this.

Chuck Hunter – 8829 Franklin Avenue. Mr. Hunter spoke about the developer's representative's statements at this meeting and his discussions with the administration. Mr. Hunter stated that he didn't think that it was the administration who was supposed to be making the decisions; rather he stated he thought it was the staff. He suggested that Council should look into this. Mr. Hunter expressed his concerns and stated that he thought this decision zipped through and was a fishy deal.

John McMillian – 9816 Jacobsen Lane. Mr. McMillian directed his question to City Attorney Carol Morris. He asked Ms. Morris if she could promise the community that the Eddon Boat building will not be demolished.

Ms. Morris responded that she gives legal advice to the city. She stated that she cannot promise that it will or won't be demolished. She further explained that the property owner has submitted a demolition permit and suggested that he talk to the property owner as to whether or not they will demolish it. Mr. McMillian asked how the demolition of this building could be in the best interest of the community. Ms. Morris stated that she gives legal advice and does not make decisions about what is in the best interest of the city. Mr. McMillian stated that the community just needs to be assured that the building won't get demolished. Mr. McMillian stated that he wanted this question to go on the record. Councilmember Ruffo stated that they cannot change the law. Mr. McMillian said that this is a serious situation and worth a law suit. Mr. Hoppen responded that there is only one way to remedy this situation and that is to buy the property.

Roseanne Sachson – 3502 Harborview Drive. Ms. Sachson directed her comment to Mr. Hoppen. She said that Mr. Hoppen stated that there is only one way. She asked how did the city acquire Wilkinson Farm? Councilmember Dick responded that in that unfortunate circumstance the city had saved the money. She suggested a phone call to the property owners, as it may behoove them to know that the city is trying to work out a solution so that they don't risk losing their investment and maybe make a small profit.

Councilmember Dick stated that he believed what was needed was an historic preservation ordinance that decides what is historic enough to be kept and how to keep it. Councilmember Ruffo asked why don't we direct staff to do this. Councilmember Dick stated that he thought that this had been requested in the past, but it hadn't been followed up on. He stressed the importance of having such an ordinance in case Council is faced with this situation again.

Councilmember Ekberg asked for clarification on whether historic preservation should be voluntary or mandatory. Councilmember Dick explained that the ordinance must include some mandatory elements, but then other things can be preserved through appropriate incentives.

Mayor Wilbert asked that a preservation policy be proposed and it be brought to Council. Mr. Osguthorpe stated that he has drafted an ordinance that would adopt certified local government status for the city and would create a review board as a certified local government. Mr. Osguthorpe further explained that his intent was to use the Design Review Board to redefine the DRB membership requirements to be expanded to use them as the review body. He stated that it would then be the responsibility of the review body, in conjunction with historic preservationists, to make recommendations to the Council on matters of historic preservation. The certified local government option does not in of itself mandate anything. It simply creates a mechanism to address historical preservation to administer funds that come down from the state to certified local governments. It would then be the certified local government who would then make the recommendations. Mr. Osguthorpe stated that there are very few jurisdictions nationwide that have actual prohibitions on historic structures. He described the process in which a local jurisdiction can impose a waiting period so that a sign can be placed on a property. By doing this

people would know that the property was being proposed for demolition, and would give time for someone to buy the property and/or move the structure.

Ms. Morris spoke about a very strict ordinance with the City of Seattle that she had worked on that was building specific. She explained that there is a board that goes out and identifies certain properties or buildings that are to be designated as historic. She said that once this occurred, even if the property owner did not agree, it would be designated as such and then the property owner would be limited in what they could do with the building. Councilmember Ekberg asked if there was a compensation clause in this ordinance. Ms. Morris stated that the law has changed significantly since she worked on this and offered to draft something if Council wished.

Councilmembers said that they would like to review both the draft voluntary ordinance that Lita Dawn Stanton had submitted and a mandatory ordinance.

COUNCIL COMMENTS / MAYOR'S REPORT:

Gig Harbor Peninsula Community Center. No verbal report given.

ANNOUNCEMENT OF OTHER MEETINGS: None.


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

MOTION: Move to adjourn to Executive Session to discuss property acquisition per RCW 42.30.110(1)(b) for approximately fifteen minutes at 10:00 p.m.
Ekberg / Ruffo – unanimously approved.

MOTION: Move to return to regular session at 10:18 p.m.
Ekberg / Conan – unanimously approved.

MOTION: Move to adjourn at 10:18 p.m.
Ekberg / Conan - unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 – 24.
Disk #2 Tracks 1 - 5.
Dish #3 Tracks 1 - 9.



Gretchen Wilbert, Mayor



Maureen Whitaker, Assistant City Clerk