

GIG HARBOR CITY COUNCIL MEETING OF MAY 12, 2003

PRESENT: Councilmembers Ekberg, Young, Franich, Owel, Picinich, and Ruffo. Councilmember Dick acted as Mayor Pro Tem in Mayor Wilbert's absence.

CALL TO ORDER: 7:04 p.m.

PLEDGE OF ALLEGIANCE

CONSENT AGENDA:

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.

1. Approval of the Minutes of City Council Meeting of April 28, 2003.
2. Correspondence / Proclamations: a) Kinship Caregiver Day b) Tourism Week
c) Maritime Gig Teen Dance
3. Appointment to the Planning Commission.
4. Appointment to the Lodging Tax Advisory Committee.
5. Shoreline Inventory Consultant Services Contract.
6. Skansie / 72nd Street Waterline Project Bid Award.
7. Skansie / 72nd Street Waterline - Construction Survey Consultant Services Contract.
8. Skansie / 72nd Street Waterline - Geotechnical Materials Testing Consultant Services Contract.
9. Burnham Drive Curb and Gutter Contract Authorization.
10. Shurgard Reservoir Tank Repainting Project – Amendment No. 1 to Consultant Services Contract.
11. Remote Monitoring and Telemetry System - Contract Authorization.
12. Approval of Payment of Bills for May 12, 2003.
Checks #40011 through #40145 in the amount of \$336,678.13.
13. Approval of Payroll for the month of April:
Checks #2492 through #2544, and direct deposit entries, in the amount of \$234,377,78.

MOTION: Move to approve the consent agenda as presented.
Ruffo / Picinich – six voted in favor. Councilmember Franich abstained.

OLD BUSINESS:

1. Second Reading of Ordinance – Moorage Fees. Mark Hoppen, City Administrator, explained that Council could choose to eliminate moorage fees as a risk management tool, or allow them to remain as a revenue source. He stressed that significant staff time can be involved in a claim filed against the city, and that he agreed with the city attorney's recommendation to eliminate the fees. He said that Councilmember Franich had a memo stating an opposing position.

Councilmember Franich explained that he met with Fred Crumley, Risk Manager for Association of Washington Cities, who inspected the dock. Mr. Crumley found the

facility to be in excellent condition. After the inspection, Councilmember Franich spoke with another representative from AWC who told him that barring a catastrophic incident at the dock, the city's insurance premiums would not be affected. He said he thought the city should continue to collect the fees as a revenue source. He said that in the ten years that the dock has been in place, no claims have been filed, and with the growing popularity of the facility revenues will increase. He suggested increasing the fees to collect even more.

Councilmember Picinich said that he was in favor of increasing the fees. He asked about potential revenue and if staff has other duties at the dock other than collecting fees.

Councilmember Young said that he agreed that the threat of litigation was not that great. He added that he is not in favor of raising the fees, but that user fees are important to prevent abuse of the dock and would help offset the cost of upkeep. He said it was unfair to ask the taxpayers to pick up the entire tab, as the city should participate in park funding. He said that there are other ways to avoid costly litigation by pressing for tort reform.

Councilmember Ekberg said that eliminating the fee is an inexpensive risk management tool that could help to avoid a nuisance suit and save on staff time. He said that it is an insurance premium well spent. He said that the fee could be reinstated at a later date, adding that he was in favor of this management tactic.

Councilmember Ruffo said that it is a sound business decision and that the revenue gained by 25 cents per foot is not worth the risk. Councilmember Franich suggested raising the fee to 50 cents. Councilmember Ruffo said that some point, risk is equal to the reward, but not at 25 cents.

Councilmember Dick said that risk management is important, but to eliminate this revenue source is a judgment call. He said that if the cost of legal defense is born by the insurance pool, and the policy will not be cancelled or the premiums increased if the fees are not eliminated, then the decision becomes internal, such as the issue of staff time. He said that you couldn't govern the way the city does business by risk limitation. He said that if a loss occurs, the risk might be minimized by this type of proposal in the future.

Councilmember Ekberg pointed out that this was not being recommended by staff to keep insurance rates from increasing, but to protect the city from minimal type losses and the associated cost of staff time.

Councilmember Ruffo said that if the city was in the marina business, it would be different, but at this time, the dock is not a real revenue source. He said that tort reform will take forever, and the city cannot rely upon that.

Councilmember Franich said that no one can quantify how much staff time might be

involved in a claim, and so it's not worth giving up the revenue.

Councilmember Young recommended that if the fees are eliminated, that some sort of time restriction be imposed on the dock to prevent abuse.

Councilmember Owel said that she was not convinced that recreational immunity would prevent someone from suing. Carol Morris explained that it wouldn't prevent the suit from being filed, but it would allow the city attorney to file a motion for summary judgment. She continued to explain that the statute doesn't allow for a negligence claim, and described how a claim would be dismissed under this recreational immunity statute. She stressed that if the city doesn't charge a fee, and provides notice of latent hazards, a claim would be dismissed on summary judgment. Carol offered to provide copies of the cases that have been interpreted under the recreational immunity statute for Council's review.

Councilmember Picinich said that in regards to the behavior of the boaters, he thought there would be more trouble if the fees were eliminated. He said he would vote against this ordinance.

MOTION: I move that we take the city attorney's recommendation and pass Ordinance No. 930 eliminating the moorage fees at the city dock.
Ekberg / Ruffo -

Councilmember Ruffo stressed that in business you always assess risk verses reward. He said that there is a latent risk involved with charging fees, and that putting the city at risk for \$14,000 is irresponsible, adding that it would only take one claim. He said that there are other ways to obtain revenue for the city that don't have the same level of risk.

Councilmember Young said that it's a matter of fairness of who has to pay. There are many risky activities that the city assumes a level of responsibility, such as building sidewalks, but it continues to do so. He said that one year of a staff member's time spent on a lawsuit is still less that what could be collected in ten years in moorage fees.

Councilmember Franich called for the question.

RESTATED MOTION: I move that we take the city's recommendation and pass Ordinance No. 930 eliminating the moorage fees.
Ekberg / Ruffo – a roll call vote was taken.

Ekberg – yes; Young – no; Franich – no; Dick – no; Owel – yes; Picinich – no; Ruffo – yes.

The motion failed, four to three.

NEW BUSINESS:

1. Certified Local Government Program. Megan Duvall, Coordinator from the Washington State Office of Archaeology and Historic Preservation, presented information on the benefits of becoming a Certified Local Government. She described the financial and technical assistance available to preserve historic properties and the steps involved for a city to become certified. She talked about the special tax valuation, which is the main incentive for property owners to make improvements.

Megan then answered Council's questions. Mark Hoppen and Lita Dawn Stanton were asked to work with Megan to draft an ordinance to bring back for consideration.

2. First Reading of Ordinance – Adoption of the Park, Recreation & Open Space Plan. John Vodopich, Director of Community Development, presented the background for the development of this portion of the Comprehensive Plan.

Councilmember Owel requested that the minutes from the meetings when the ferry landing was discussed could be included in the next packet, as it provides additional background.

Nick Tarabochia – 8021 Shirley Avenue. Mr. Tarabochia voiced concern with the recommendation for the Harborview Ferry Landing included in the plan. He said that he has been working with the city on a design for a viewpoint, and that three issues remain with the residents; one, that there be no beach access; two, no formal park design, only a viewpoint; and three, that the area be kept under local control with no state or federal funding. He asked that any reference in the plan to a "trailhead" or "trails and staircases" be eliminated to prevent any future misconception of the purpose of the site. He finalized by talking about the liability of someone becoming stranded and trapped by high tides.

Councilmember Owel said that she recalled the discussion that occurred last fall, which included concerns that an elaborate concept was undesirable. Councilmember Picinich requested that a copy of the plans for the next meeting.

Councilmembers and staff discussed the time constraints for passing this last element of the Comprehensive Plan in order to apply for IAC Grant funding. Staff assured Council that these changes could be made before the second reading, and that the plan can be amended annually after adoption.

Nick said that the Ferry Landing is a special place to him, and asked if there could be a spot to commemorate Bill Chains and Carl Jacobsen, his friends that lost their lives as a result of the Vietnam War.

Scott Wagner – 6502 27th Ave. NW. Mr. Wagner requested that rather than just eliminating the reference to beach access and trails as suggested by Nick, that

language be included to clearly define that there will be no beach access or trails located there.

STAFF REPORTS:

GHPD – March Stats. No verbal report given.

PUBLIC COMMENT:

Jim Pasin – 2710 39th Street. Mr. Pasin talked about the economic impact to the Westside Business District if the Department of Transportation and the Tacoma - Narrows Constructors move their offices to the site by the concrete batch plant. He described the project and talked about the negative impacts that would occur as a result of the temporary facility.

Mr. Pasin said that the city has protected the scenic view of Highway 16 and now a large area is going to be unnecessarily clear-cut. He talked about the appearance of indifference to other large vendors if the City doesn't take an active role in encouraging the businesses to stay within city limits.

He said that PNA, the neighborhoods, Terry Lee and Pat Lantz are joining forces to block or to modify the project, and asked Council to think about what they wanted to do.

Councilmember Dick asked if the Pierce County land-use rules would apply on this property. Mr. Pasin said that a site plan had been approved for an office park on the property, but added that he didn't believe that clear-cutting the property was included in the original approval.

Councilmember Owel said that the Federal Scenic Highways Vista Act might come into play for this project and offered to look into it.

Councilmember Ruffo asked why they had not considered the space across the highway. Mr. Pasin explained that there were issues with Fisherman's Village that the state and TNC decided could not be resolved.

Councilmember Young said that Pierce County cannot permit projects in the right of way of Highway 16 and that it would take a legislative act to exempt the project from local zoning regulations. After discussion, Councilmembers agreed that all the facts should be obtained before any action is taken, and directed staff to speak with Linea Laird, WSDOT, and Terry Lee, Pierce County Representative, to get the different viewpoints and to bring back a recommendation.

Mr. Pasin recommended that a city representative attend the meeting scheduled for May 19th with Terry Lee and the WSDOT representatives.

COUNCIL COMMENTS / MAYOR'S REPORT:

Councilmember Ruffo asked staff to do a market study on appropriate moorage fees.

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

MOTION: Move to adjourn to Executive Session for approximately five minutes to discuss potential litigation at 8:54 p.m.
Franich / Owel - unanimously approved.

MOTION: Move to return to regular session at 9:00 p.m.
Franich / Young - unanimously approved.

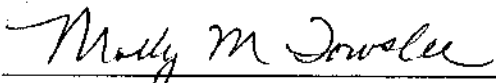
ADJOURN:

MOTION: Move to adjourn at 9:00 p.m.
Picinich / Ruffo - unanimously approved.

CD recorder utilized:
Disc #1 Tracks 1 - 7
Disc #2 Tracks 1 - 8



Gretchen Wilbert, Mayor



Molly M. Dowdle
City Clerk