

## **GIG HARBOR CITY COUNCIL MEETING OF OCTOBER 8, 2001**

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

**CALL TO ORDER:** 7:03 p.m.

Mayor Wilbert explained that after the Pledge of Allegiance, she wanted to play a song that had been written by a local artist, Lorraine Hart, in tribute to the families of the fallen firefighters in New York as a result of the events of September 11<sup>th</sup>. The song, "Shoulder to Shoulder" was sung by Lorraine, with backup music performed by friends, and was intended to be sent to the families along with a scrapbook of sentiments from anyone wishing to send their message. Mayor Wilbert added that a scrapbook was going to be in the Conference Room and invited anyone who wished to add his or her thoughts.

### **PLEDGE OF ALLEGIANCE**

After the audience recited the Pledge of Allegiance, the song by Lorraine Hart was played, and Mayor Wilbert introduced Lorraine and her husband, Matthew.

### **LIFESAVING AWARD:**

Chief Mitch Barker said that he was honored to present the departmental Lifesaving Award to Lt. William Colberg. He read the accommodation that was given to Lt. Colberg and Lt. Wes Tucker, Sumner, for their lifesaving efforts in reviving a woman in cardiac arrest during the Western Washington Fair, and presented Lt. Colberg with the Lifesaving Award.

**PUBLIC HEARINGS:** Erickson Street.

Mayor Wilbert opened the Public Hearing on Erickson Street at 7:15 p.m. Mark Hoppen gave a history of Erickson Street and the gate.

John Gorow - 6887 Mainsail Lane. Mr. Gorow explained that he is the president of the Spinnaker Ridge Community Association. He asked that the letter he handed out at the August meeting become part of the public record, and passed out an addendum to that letter. He outlined the Association's concerns regarding the safety of their neighborhood, the essence of their request to allow the gate on Erickson to remain. He compared this neighborhood to others within city limits to illustrate such issues as traffic conditions, common areas, and street construction. He stressed that there are no other public streets in a neighborhood that bisect a common area in which residents had been required to pay the upkeep. He added that the recent complaints regarding the gate stemmed from the inconvenience from the recent construction on Kimball Drive, which is now completed, and that the continued closure of Erickson would not constitute a public health and safety issue. He explained that the Association had met with the Fire Marshal

regarding safety options, and offered to meet again with the city and Fire Department officials to discuss the issue further. He added that the Association would accept the option of vacating the street, pointing out that the city did not incur any expense to construct the street, and that the code allowed for a vacation of a street at no cost. He concluded by asking Councilmembers to remember that they were not being asked to close an open street, but to open a dead-end street of 15 years.

Diana Sanford - 6846 Windlass Lane. Ms. Sanford said that Spinnaker Ridge was a wonderful neighborhood, and that she bought property there because of that. She added that the gate keeps it a neighborhood, and without the gate it would become just a bunch of houses.

James Reardon - 3171 Soundview Court. Mr. Reardon said that he thought it would be unfair to open the street after fifteen years, adding that it would change the character of the neighborhood.

Donald Weil - 4026 No. Waterview, Tacoma. Mr. Weil said that he represented someone at 3334 Erickson, Apt. #6. Mr. Weil talked about the audience being well-organized and "stacked." He compared the discussion about the gate with recent dialogue regarding the Narrows Bridge and the location of large grocery stores. He said that in the past, the citizens were separated east from west, adding that in today's world, that this separation was inappropriate and that the gate separating the neighborhoods represents walls, walls which should come down. He advised the Council to listen to the expertise of the city engineer and other safety personnel. He talked about the different neighborhoods, adding that each has taxpayers that have the right to a rapid emergency response time. He suggested that the Councilmember who lives in Spinnaker Ridge should not vote on the issue as it appears to be a conflict of interest, and that the city consult their with the attorney regarding any liability issues with emergency response time if the gate were to remain closed.

Patricia Smith - 9804 41<sup>st</sup> Ave. Ms. Smith said that she support the residents in Spinnaker Ridge. She said that she was tired of people in Gig Harbor being put down for having the privileges that they have worked hard to achieve. She said that the residents have lived for fifteen years with a gate, and that they have the right to have the kind of neighborhood they have worked toward. She concluded that it would be unsafe to have emergency vehicles going through the area with the current pedestrian traffic.

There were no further comments, and the Mayor closed the public hearing at 7:51 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 Meetings of September 24, 2001.
2. Correspondence/Proclamations:
3. Assigned Counsel Agreement.
4. Liquor License Renewals:  
Central 76; Fred Meyer Marketplace; Harvester Restaurant; Uddenberg's Thriftway;  
Water to Wine.

5. Approval of Payment of Bills for October 8, 2001.  
Checks #34053 through #34193 in the amount of \$376,632.77.
6. Approval of Payroll for the month of September:  
Checks #1011 through #1070 in the amount of \$196,461.96. Check #979 in the amount of \$740.05 from the August payroll was omitted in error and is listed in addition to the September payroll figure.

**MOTION:** Move to approve the Consent Agenda as presented.  
Picinich/Ekberg - unanimously approved.

**OLD BUSINESS:**

1. Erickson Street. Mark Hoppen explained that this would be the time to resolve this issue, as this was the third time that it had come up since he has worked for the city. Councilmember Ruffo asked if there had been any problem for the community regarding emergency response time in the last fifteen years that the gate had been in place. Mark Hoppen responded that he was unaware of any problem.

Councilmember Owel asked for clarification regarding her ability to vote on the issue. Carol explained that because this was a legislative matter, not a quasi-judicial, the Appearance of Fairness Doctrine would not come into play, and Councilmember Owel, as a resident of Spinnaker Ridge, would not have to recuse herself.

Councilmembers discussed the options. One option would allow the gate to remain and initiate the vacation of the portion of the street from McDonald Avenue to Soundview Drive, requiring the installation of a remote-actuated gate in the place of the current gate. Another option would open the gate to through traffic with improvements at the intersection of McDonald and Erickson. Councilmember Picinich said he wished to make a motion to allow the street to remain closed, and to initiate the vacation process.

Councilmember Dick added that unless Council agreed that the street should be opened, nothing need to be done and the street could remain as it is, without the requirement for vacating the street.

Councilmember Ruffo said that people who purchased homes in that community did so in reliance of how the neighborhood was configured, nothing in the record shows that the gate is detrimental to the community, and that any decision should protect what currently exists.

Councilmember Owel clarified that because the Spinnaker Ridge community expends so much in the maintenance of the area, including the city right-of-way, there is a dramatic difference in appearance. She discussed the neighborhood covenants, and the impact upon those covenants if the road were to be opened to through traffic. She said that if vacation were allowed, it would not mean that the public would not be welcome in the same basis that they are now for pedestrian and bicycle traffic, and that Spinnaker Ridge did not wish to become a "gated community." She said that vacation would address a lower impact of use of the streets in the neighborhood.

Councilmember Young pointed out that vacation of the street would put the maintenance responsibility upon the neighborhood, not the city. He then talked about the fact that Spinnaker Ridge was the only private, planned development with a public street through the common area. He said it would be his preference to vacate the street so that the residents could choose their own fate.

Councilmember Pasin recommended that a gate be designed to allow passage by emergency vehicles and to leave the street public. He said that vacation of the street would not allow for long-term flexibility of having the street available.

Councilmember Ekberg said he was not in favor of vacating the street. He explained that it is not a dead-end street or cul de sac, but a city street with a gate, adding that it should not have been gated sixteen years ago. He said that there are no unique situations, such as steepness of road, driveway or pedestrian access that do not exist on other city streets. He said that vacating the street would not solve the problem, but opening the street would give the citizens an opportunity for more traffic choices. He said that he would not be in favor of opening the street until a cost estimate could be obtained to install a traffic circle and pedestrian improvements.

Carol Morris, Legal Counsel, advised Council that a motion this evening would not be to vacate the street, but to initiate the vacation process, as the criteria for vacating would need to be addressed. Councilmember Young said like to see what the improvements to open the road would cost as a comparison for the final decision. Carol explained that this would be one of the factors that needed to be addressed in the vacation process. She added that a recommendation would have to come from the Public Works Director for what needs the city might have for the street in the future for the record.

Mayor Wilbert said she was originally in favor of opening the street, but after hearing the discussions, she thought it was a safety issue and that the gate should remain. Councilmember Picinich made the following motion.

**MOTION:** Move to direct staff to come back at the next meeting with a resolution to initiate the process to vacate Erickson Street from McDonald Street to Soundview pursuant to Gig Harbor Municipal Code 12.14.018(D), change the name of the street and install a remote-activated gate, and to stress that it will remain open to pedestrian traffic.  
Picinich/Owel -

Carol Morris clarified that the city could retain easements through the vacation process to allow pedestrian passage, and to require an opticon gate.

Councilmember Dick spoke against the motion, adding that it would not be wise to vacate the street. He said that the public should be allowed to use the street regularly, and important to retain the use of the street for the future. There was further discussion on what could happen in the future that would indicate opening the street to through traffic.

**RESTATED MOTION:** Move to direct staff to come back at the next meeting with a resolution to initiate the process to vacate Erickson Street from McDonald Street to Soundview pursuant to Gig Harbor Municipal Code 12.14.018(D), change the name of the street and install a remote-activated gate, and to stress that it will remain open to pedestrian traffic.

Picinich/Owel - a roll call vote was taken (twice) with the following results:

Councilmembers Ekberg, no. Young, yes. Pasin, no. Owel, yes. Dick, no. Picinich, yes. Ruffo, yes. The motion was approved four to three.

Councilmember Young pointed out that this was not the final decision of the Council, and that it would return at the next meeting. Councilmember Ruffo asked if the gate were to remain closed until a final decision was made. It was agreed that the gate would remain closed until the resolution returned at the next meeting.

Mayor Wilbert announced a short recess of the meeting at 8:29 p.m. The meeting reconvened at 8:39 p.m.

**NEW BUSINESS:**

1. Agreement for Use and Maintenance - Sunshine. Carol Morris explained that the Hearing Examiner approval of the Sunshine Project and the shoreline substantial permit for this project required public access areas to be provided by the developer. She added that two such areas were provided, and that the Hearing Examiner provisions required an agreement with the city to pay for costs related to high-intensity use of the public areas to be in place prior to issuance of the occupancy permit. She said that whether or not the garden area was to be included in this agreement, and the definition of "high-intensity use" was being brought back before the Hearing Examiner. She said that because the occupancy permit could not be issued until an agreement was in place, the agreement before Council for approval was for a period of approximately one year until the final decision was made, and also to allow the city to determine what the associated costs might be.

Councilmembers discussed the conditions of the agreement and the terms of the development approval. Carol explained that other PUDs do not have a maintenance agreement attached to them, and read the Hearing Examiners provisions requiring the agreement. Mark Hoppen clarified that the figure of \$15,000 came from an estimate of square footage maintenance costs for other public parks. Carol gave a time-line for a decision from the Hearing Examiner, adding that the length and the amount of the agreement could be adjusted accordingly, but until a definition of "high-intensity use" could be determined, it would be difficult to outline the process for the project owners to come forward with a request for assistance.

Councilmembers voiced concern on several terms in the agreement. Carol addressed the termination of the agreement, offering to amend the language to clarify that it would terminate if the parties have not entered into another agreement within a designated time. She then responded to the language regarding the city cooperating to obtain the necessary approvals for exemption

from property taxes, explaining that this language could be stricken from a short-term agreement, then addressed in a future document. Carol then spoke to the concern of city liability in the responsibility of closing the main gate at dusk. She said that she had originally stricken the language, but that the project representatives were interested in keeping it in. She said that she agreed with the potential liability, and a decision to remove the language. She then offered to add language to the last paragraph in section 7 to clarify what payment is required.

Mark Holcomb - Representative for the Sunshine Property Management LLC and the Russell Family Foundation. Mr. Holcomb explained that due to the uniqueness of the project, there is no precedent for this type of agreement. He gave a history of how the agreement came about, describing the areas that are designated to be open to the public. He spoke to the issue of the closing of the gate at dusk, which is a condition of approval from the Design Review Board. He said that during the summer, when it stays light longer in the evening, they would not have staff available to close the gate at a later time, limiting the public.

Mr. Holcomb then addressed the dollar amount, adding that the brevity on the Hearing Examiner's part was to allow flexibility. He said that the family looks at the project as a partnership with the city, stressing that the open space provided is ten times the amount normally required in a project as a result. He talked about the significant amount of people that have been estimated to use the scenic overlook, adding that this same partnership would allow the city and Sunshine group to share the burden of upkeep. He said that the \$15,000 figure came from staff through several meetings.

Mr. Holcomb explained that the property tax language was for the opportunity to explore options with the county for the possible reduction of property taxes in exchange for open space. He said that he was amenable to striking the language in the second sentence where Gig Harbor agrees to cooperate and execute the necessary documents for approval.

Mr. Holcomb addressed termination language for the agreement, stating that the family wishes to complete the process as soon as possible, but he was concerned with unanticipated delays, and being left without an occupancy permit. He then spoke to concern regarding who was responsible for the public areas. He explained that the intent of the multiple thresholds for cleaning was to address all aspects of usage, as the level of use would dictate the need for clean up.

Councilmember Ekberg asked why the city should pay \$15,000 toward upkeep of the open area when the facility was not yet open and "high-intensity use" had yet to be defined, and in addition, the project received value for providing the open space. Mr. Holcomb explained that this should come back on an annual basis to determine the actual cost in upkeep and adjustment to the agreement. He said that this was just a temporary version to obtain the occupancy permit and that the final agreement could contain language regarding an annual review and adjustment to come up with an equitable way to share the cost.

Councilmember Ekberg then voiced concerns on the liability of the gate issue and having the city crew go upon private property to clean. Mr. Holcomb said that those details need to be defined.

He said that the target date to occupy would be around Thanksgiving and staff was asked if a decision could be obtained prior to that date. It was determined to the scheduling of the Hearing Examiner meetings, an interim agreement would be required. Council further discussed the issue of the amount for maintenance, and Carol Morris was directed bring back the amended agreement at the next meeting for discussion and approval. Mr. Holcomb agreed that this timeline would meet their needs, but requested that Ron McConnell be allowed to make the decision because he was the Hearing Examiner who sat in on the hearings. Carol Morris did not recommend that Council agree to this request.

Linda Gair - 9301 No. Harborview Drive. Ms. Gair explained that she was a resident and downtown business owner, and that from day one, the Downtown Waterfront Association has asked the question on how the public would be allowed to use the public space. She said that they have never received a firm committal or cooperation from the Russell Foundation for the hardships that have been placed upon the retail community during construction. She added that the project owners are now asking for the city to pay for the maintenance of this public space, adjacent to a huge building that will generate little to no revenue for the city, and asking for property tax exemptions. She recommended that Council take a closer look at this issue in order to not be "railroaded."

2. Subgrantee Agreement for Earthquake Mitigation - Pierce County Dept. of Community Service. David Brereton, Interim Public Works Director, presented this agreement to provide reimbursement for the work performed in connection with the earthquake of February 28<sup>th</sup>. He recommended approval of the agreement.

**MOTION:** Move to authorize execution of the Subgrantee Agreement for Earthquake Mitigation in the amount not to exceed three thousand dollars.  
Young/Ruffo - unanimously approved.

3. Consultant Services Contract Amendment - John Tevis. David Brereton explained that this was an amendment to an existing contract with Mr. Tevis, the Construction Inspector for the East-West Roadway, to allow continuity for the completion of four remaining items.

**MOTION:** Move to authorize execution of the Amendment to Consultant Services Contract with John Tevis, P.E., for inspection services for the East-West Roadway Project in an amount not to exceed Eleven thousand six hundred sixty-one dollars and no cents (\$11,661.00.)  
Young/Picinich - unanimously approved.

#### **STAFF REPORTS:**

Update on Donkey Creek Project. John Vodopich gave a quick update on the progress of the Donkey Creek Park Project. He explained that there have been two open houses and two meetings with the Stakeholders group, which has resulted in three general options. An final open house will be held in early November to present a master plan. He added that the SEPA process is 90% complete, and they anticipate Phase II of the project to begin next summer, which would

not include any construction that would involve the stream, and Phase III, consisting of work in the stream, will take place in the summer of 2003.

Councilmember Dick asked about the status of obtaining the Scofield Tidelands property. John Vodopich explained that the city had just received the Aquatic Lands Enhancement Act grant for the purchase of the property. He added that another appraisal was being sought, and that Pat Iolavera and Carol Morris were dealing with this issue.

### **PUBLIC COMMENTS:**

Dick Dadisman - 4206 97<sup>th</sup> St. Ct. NW. Mr. Dadisman explained that he is the President of the Avalon Woods Homeowners Association. He referred to his letter to Councilmembers outlining the neighborhood concerns regarding a recent incident where a shotgun slug passed by a neighbor's head, lodging in the side of his house. He said that he had been told that the police investigation was ongoing. He said that the neighbors believe that the slug originated from the Sportsman Club, and that the homeowners in Avalon Woods are extremely concerned with the life safety issues surrounding the close proximity of the Sportsman Club. He asked that the city expedite their investigation efforts, as the homeowners were afraid to let their children play outside, or to walk their dogs. He suggested that the city close the gun club until it could be guaranteed that the operation was safe.

Mark Schaeffer - 9913 41<sup>st</sup> Ave. NW. Mr. Schaeffer said that he was a homeowner and father, and that he was concerned. He said that the gun club had outlived its usefulness and the barriers that used to exist have disappeared through development. He said that it is illegal to shoot guns in the city limits for safety reasons. He said that Avalon Woods has public streets and that the city is liable for what happens. He talked about the common area facing the gun club and the safety concerns.

Dave O'Dell - 4110 97<sup>th</sup> St. Ct. NW. Mr. O'Dell said he considered this a severe situation, and asked what the Councilmembers had done to address this. He asked why the investigation was taking so long.

Chief Barker explained that there was an on-going investigation, and he would just be speculating if he were to respond at this point. He added that the State Patrol ballistics expert assigned to the investigation was on vacation. He said that he had been in contact with the managers of the Sportsman Club.

David Jepson - 9810 43<sup>rd</sup> Ave NW. Mr. Jepson said he was also concerned with living on the west side of Avalon Woods and look into the business park and the gun club. He said he has two children. He said that in addition to the safety issue, the noise from the club is unbearable on a Tuesday or Thursday during a tournament. He explained that this has become a serious quality of life issue with a number of citizens, but he does not get the sense that it is a priority with the city. He said that it would be in the best interest of the police to wind up the investigation due to credibility issues. He then addressed the problems associated with the North Harbor Business



Park. He described the noise from compressors, trucks backing up early in the morning, and lights from the gun club, all creating a quality of life issue.

Tracey Tedesco - 9810 41<sup>st</sup> Ave NW. Ms. Tedesco shared that her two small children's fear of gunfire had increased since the September 11<sup>th</sup> terrorist attacks. She added that she has stopped her children from riding their bikes and using the sport court until the investigation is concluded. She recommended that the Sportsman Club build an indoor facility to prevent any future incidents.

Mayor Wilbert suggested that the Public Safety Committee of Councilmembers could address the issue and report back.

Mark Schaeffer. Mr. Schaeffer advised the Council that the gun club was not completely fenced or posted as a danger. He said that they had a mentally handicapped adult in the neighborhood and feared for his safety.

Don Bennett - 9713 37<sup>th</sup> Ave NW. Mr. Bennett said that he is very concerned with the safety aspect of his neighborhood. He said that he has never experienced an open gun club in a populated area in any other place he has lived.

Councilmembers briefly discussed the increased activity at the Sportsman Club and the options available. Carol Morris was requested to obtain information on standards for gun clubs to review. Councilmember Young said that he had spoken to several citizens as well as staff, and said that no steps should be taken until the conclusion of the investigation. He added that at that time he would be making recommendations to address these concerns. Councilmembers agreed that it was a priority to get together with the neighbors and work this through. Carol said that an ordinance could be passed at the next meeting to require a fence, then enforce it. John Vodopich explained that during his tenure as the Kitsap County Planning Department, the National Rifle Association range standards were adopted. He said he would check into this for consideration.

Mr. Dadisman thanked council for their action on the fence issues, then suggested that immediate action be taken to close those positions within the club where the potential for firing upon the neighborhood could occur. Mr. O'Dell reminded Council that the residents would fight at the ballot box.

Shirley Tomasi - 11107 Hallstrom Drive NW. Ms. Tomasi, Executive Director of the Cultural Arts Commission, passed out information on the Fisherman's Memorial. She gave a report on the fund-raising activities and invited Council to attend the Vela Luka dancers on Saturday evening. She suggested the possibility of city funds being set aside to continue the process, with any overage to be given back to the city to cover maintenance.

Laura Petroka - Tacoma. Ms. Petroka explained that her boyfriend, John Ancich Jr., recently passed away. She added that he was very passionate about the Fisherman's Memorial project, and the belief that the fishing heritage was a large part of the Gig Harbor charm. She encouraged participation in the funding of the project.

**COUNCIL COMMENTS / MAYOR'S REPORT:**

Mayor Wilbert talked about a letter from Steven Misiurak, City Engineer, thanking everyone involved with the East-West Roadway project.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. City Councilmembers Public Forum - Wednesday, October 10<sup>th</sup> at City Hall.
2. Albertson's Ribbon Cutting Ceremony - 9:00 Wednesday morning. Target's Open House, 5 to 9 pm Tuesday.

**EXECUTIVE SESSION:** For the purpose of discussing pending litigation per RCW 42.3 1.110(i).

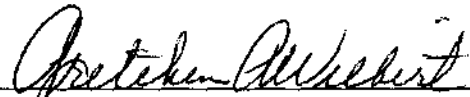
**MOTION:** Move to adjourn at 10:25 p.m. to Executive Session for approximately five minutes to discuss pending litigation.  
Young/Owel - unanimously approved.

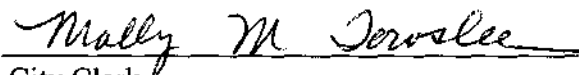
**MOTION:** Move to return to regular session at 10:30 p.m.  
Pasin/Owel - unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 10:30 p.m.  
Picinich/Ruffo - unanimously approved.

Cassette recorder utilized.  
Tape 627 - Side A 146 - end.  
Tape 627 - Side B 000 - end.  
Tape 628 - Both Sides.  
Tape 629 - Both Sides.  
Tape 630 - Side A 000 - 197.

  
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Gretchen A. Wilbert, Mayor

  
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City Clerk