

**CITY OF GIG HARBOR
RESOLUTION NO. 398**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR ACCEPTING THE ANNEXATION PETITION FOR THE AREA KNOWN AS THE GIG HARBOR INTERCHANGE (ANX 91-07) AND AS SUBMITTED BY PETITIONERS JAMES TALLMAN, ET.AL., AND ENTERS AN INTENT TO APPROVE AND REFERRING THE PETITION TO THE PIERCE COUNTY BOUNDARY REVIEW BOARD.

WHEREAS, on July 31, 1991, a petition for annexation of approximately 150 acres was submitted for the property; and,

WHEREAS, the petition which has been certified by the City Administrator as legally sufficient containing the signatures of not less than 60% of the owners of assessed evaluation and the legal description of the subject property are attached to this resolution as exhibit "A" and made a part hereto; and,

WHEREAS, such annexation proposal is within the Urban Area Boundary as defined in the Urban Area Agreement of September, 1987, between Pierce County and the City of Gig Harbor; and,

WHEREAS, such annexation proposal is within the future potential annexation area as defined by the City of Gig Harbor; and,

WHEREAS, on the 23rd of October, 1991, the City Council met with the initiating party during regular session of the Council; and,

WHEREAS, at that time the Council set forth the requirements placed on the petitioner wishing to annex as follows:

1. Assumption by the property owners their portion of the City of Gig Harbor's indebtedness;
2. The area shall be zoned as per the attached Exhibit "C".

WHEREAS, on May 18, 1992 a determination of non-significance was issued for the proposal, based upon a review of the environmental documents submitted by the petitioner, in accordance with the City of Gig Harbor Environmental Policy Ordinance, Title 18 of the Gig Harbor Municipal Code; and,

WHEREAS, at a public hearing of November 9th, 1992, the City Council considered the recommendation of the City Planning Commission on preannexation zoning for the area; and,

WHEREAS, following the public hearing on November 9, the City Council remanded the preannexation zoning to the Planning Commission for the development of a contract zoning

agreement which would consider the following:

1. That they specifically address screening and buffers, not only between the properties, but also to properties across the street towards the waterfall business and any future development there.
2. That they specifically address development and ownership of the wetlands as it relates to wetlands directly and to how wetlands might be developed into a park.
3. Place emphasis on one and two, then establish uses for the parcels in the annexation.

WHEREAS, the Planning Commission, at open public meetings held on December 15, 1992; February 2, February 16, February 23, and March 2, 1993, recommended approval of the petition subject to certain conditions, including the execution and recording of an agreement with the City pertaining to the preannexation zoning of the property; imposing certain use and development restrictions in order to ameliorate the adverse impact of unrestricted use and development of property in the RB-2 zone; and

WHEREAS, the City Council, at a public hearing on November 8 and December 13 considered the concomitant agreement as recommended by the Planning Commission and, in consideration of testimony offered at the public hearings, does hereby declare its intent to authorize and approve said annexation, and to accept same as a part of the City of Gig Harbor; and,

WHEREAS, the City Council finds that the portion of the property to be annexed within the interchange area north of Wollochet Drive contains site characteristics and natural environmental constraints that make it unique and worthy of special land use considerations as reflected in the performance standards in the pre-annexation zoning concomitant agreement; and

WHEREAS, the City Council shall comply with the procedural requirements of RCW 35A.14 to the conclusion of this annexation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

Section 1. The City Council of the City of Gig Harbor does hereby declare its intent to authorize and approve the annexation and to accept the subject property as part of the City of Gig Harbor with the following requirements:

1. Assumption by the property owners their portion of the City of Gig Harbor's indebtedness.
2. The development of the land within the annexation area shall be consistent

with the zoning concomitant agreement, which is attached as exhibit "B" and which shall be filed as a covenant with the land so affected by the agreement.

3. The area shall be zoned as per the attached exhibit "C" and designated as within the height overlay district, subject to the City of Gig Harbor Zoning Code, Title 17 of the Gig Harbor Municipal Code.
4. The wetlands and buffers as described in the attached exhibit "D" shall be established as a open space/conservation easement, developed as a public park and dedicated to the City of Gig Harbor.
5. Prior to adoption of the annexation by the City of Gig Harbor, the petitioners shall prepare a traffic impact study to assess transportation impacts on Wollochet Drive from Hunt Street to the interchange, the interchange area, Hunt Street, 46th Street NW and 72nd Street Nw. The traffic study shall be based upon the land use as approved by the City Council per this resolution and as adopted by Pierce County. The traffic study shall be presented to the city for consideration and approval prior to adoption, by ordinance, of the annexation.

Section 2. The City Clerk of the City of Gig Harbor hereby declares the annexation petition contiguous with the boundaries of the City of Gig Harbor and said property which is more particularly described in the petition which is marked Exhibit "A" and which is made a part hereto.

The City Council does refer the petition and petitioner to the Pierce County Boundary Review Board for approval of the annexation and the City Council shall not take any further action on the annexation proposal until such time the Pierce County Boundary Review Board has completed its review of the notice of intent to annex.

PASSED AND APPROVED, at the regularly scheduled City Council meeting of the 13th day of December , 1993.

Gretchen Wilbert, Mayor

ATTEST:

Mark E. Hoppen, City Administrator

Filed with City Clerk: 12/10/93

Passed by City Council: 12/13/93

Exhibit "A"

Legal Description of Annexation Area

(to be submitted with signed agreement prior to Council adoption of resolution)

After recording with the Pierce County Auditor, return to:
Planning Director
City of Gig Harbor
P.O. Box 145
Gig Harbor, Washington 98335

Exhibit "B"

**CONCOMITANT ZONING AGREEMENT
FOR TALLMAN ANNEXATION (ANX 91-07)**

THIS AGREEMENT, executed this date in favor of the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and by the undersigned owners of the within-described property (herein called "Owners"):

W I T N E S S E T H:

WHEREAS, the Owners are persons owning a fee simple and/or having a substantial beneficial interest in the real property comprised of one hundred twenty (120) acres and legally described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property" hereinafter); and

WHEREAS, a petition (No. 91-07) has been filed to annex the property, and requesting pre-annexation zoning, pursuant to chapter 35A.14 RCW; and

WHEREAS, the City Council conducted a public hearing on November 9, 1992 on the petition to annex and preannexation zoning, and directed the City Planning Commission to develop and recommend a preannexation zoning agreement; and

WHEREAS, the Planning Commission, at open public meetings held on December 15, 1992; February 2, February 16, February 23, and March 2, 1993, recommended approval of the petition subject to certain conditions, including the execution and recording of an agreement with the City pertaining to the preannexation zoning of the property; imposing certain use and development restrictions in order to ameliorate the adverse impact of unrestricted use and development of property in the RB-2 zone;

NOW, THEREFORE, the Owners hereby covenant, bargain and agree on behalf of themselves, their heirs, successors and assigns as follows:

Section 1. Conditions. If the Property is rezoned to RB-2 zone, development of the Property shall be accomplished in accordance with the following conditions and restrictions:

- A. Plans and Surveys. The Owners agree to submit a site plan to the City for approval prior to the clearing of any lot, tract or parcel on the Property. In addition, a tree survey for required buffers on the property shall also be submitted to the City in order to document the nature and composition of the existing vegetation on the Property.
- B. Buffers. The Owners agree to provide the following buffers on the Property, and to depict such buffers in the site plan submitted for the City's approval:
 - 1. A forty (40) foot dense vegetative screen buffer is required on all boundaries with single family uses.
 - 2. Along SR-16, a buffer shall be placed twenty-five feet (25') wide. Existing vegetation shall be retained as much as possible.
 - 3. No mechanical or electrical equipment shall be visible from any public

right of way or adjacent residence. Dumpsters shall be screened from view.

C. Land Use Restrictions North of Wollochet Drive. In addition to any other applicable requirements of the Gig Harbor Municipal Code, the following land use restrictions shall apply to the area of the Property north of Wollochet Drive.

1. **Zoning Designation.** RB-2.
2. **Permitted Uses.** All uses otherwise permitted in a RB-2 zone shall be allowed, with the exception of multi-family dwellings.
3. **Conditional Uses.** All other conditional uses that may be applied for in a RB-2 zone may be permitted if the applicable criteria are met, with the exception of mini-warehousing. In addition, food stores and delicatessens may also be conditionally allowed, provided that:
 - (a) they are situated on the street level of nursing home(s), retirement center(s) or office building(s);
 - (b) they do not exceed a total of eight hundred (800) square feet in area;
 - (c) they do not contain any outside sales, storage or drive-in service;
 - (e) their hours of operation are limited to sixteen (16) hours per day.
4. **Signage.** Signage shall not be oriented toward the freeway; however

signage may be oriented toward Wollochet Drive N.W., 46th Street N.W., Hunt Street, 72nd Street NW and any private roadway within this district.

5. **Design.** Minimum roof pitch shall be 4/12.
6. **Impervious Coverage.** Maximum impervious coverage shall be sixty percent (60%) per site, which shall include buffers, but exclude wetlands.
7. **Outdoor Lighting.** Outdoor lighting shall be provided on the property only in accordance with GHMC Section 17.28.090(D).

D. Land Use Restrictions South of Wollochet Drive. In addition to any other applicable regulations of the Gig Harbor Municipal Code, the following land use restrictions shall apply to the Property south of Wollochet Drive.

1. **Zoning Designation.** RB-2.
2. **Permitted Uses.** All uses otherwise permitted in a RB-2 zone shall be permitted on the Property, with the exception of multi-family dwellings. In addition, nurseries and landscaping services shall be permitted outright on the Property.
3. **Conditional Uses.** All other conditional uses that may be applied for in a RB-2 zone may be permitted if the applicable criteria are met. In addition, the following uses may also be conditionally allowed:
 - a) Wholesale and Retail Sales where the business is conducted entirely within an enclosed structure;

- b) Restaurants with associated lounges;
 - c) Gasoline Service Stations;
 - d) Food Stores and delicatessens, provided that:
 - (1) they are situated on the street level of nursing home(s), retirement center(s) or office building(s);
 - (2) they do not exceed a total of eight hundred (800) square feet;
 - (3) they do not contain outside sales, storage or drive-in service;
 - (4) their hours of operation are limited to sixteen hours per day.
4. **Signage.** Signage shall be oriented so that it does not directly face SR-16, however, signage may be directly oriented toward Wollochet Drive N.W. or 38th Street N.W. and any private roadway within this district.
5. **Design.** Minimum roof pitch for all non-residential uses shall be 4/12. No mechanical or electrical equipment shall be visible from any public right of way or adjacent residence. Dumpsters shall be screened from view.
6. **Impervious Coverage.** Maximum impervious coverage is sixty percent (60%) per site, including buffers but excluding wetlands.
7. **Outdoor Lighting.** Outdoor lighting shall be provided on the Property

only in accordance with GHMC Section 17.28.090(D).

E. Development of Wetlands on the Property.

1. **Wetland buffers.** The wetlands identified on the site as a Class III (Pierce County) wetlands shall be subject to a minimum fifty (50) foot buffer along the perimeters of the wetland, as designated in the Wetland Mitigation Plan approved by Pierce County. Wollochet Creek, which is a Type 3 water course as identified under the Department of Natural Resources Stream Typing Maps, shall be subject to a minimum buffer of thirty-five feet as measured from ordinary high water, per the City of Gig Harbor Wetland Management Ordinance. The wetland and its associated buffer shall be identified and established as a conservation easement as a covenant running with the Property.
2. **Wetland Use.** The use of the wetlands and wetland buffers shall be limited to the following:
 - (a) Wells and necessary appurtenances as per Section 18.08.120 of the GHMC.
 - (b) Impervious trails and associated viewing platforms as per Section 18.08.120 of the GHMC. The development of a impervious trail along the perimeter of the wetland and within the buffer shall be developed as each adjoining parcel is developed.

- (b) The placement of underground utilities, other utilities and access roads as per Section 18.08.120 of the GHMC.
3. **Parking areas.** A parking area sufficient to accommodate a minimum of eight (8) vehicles shall be developed in proximity to the wetlands. The parking area shall be clearly identified as "**Public Parking, Trail Access.**"
4. **Plans.** The plan titled Park Development Plan from Pac Tech Engineering and drawn to the scale of 1" = 50' and sealed on October 14, 1993, shall be recorded with this Agreement in the records of the Pierce County Auditor as a covenant running with the Property. A copy of the documents and proof of recording shall be submitted to the City prior to the submission of any application for development permits in the affected area of the Property.
5. **Park Dedication.** The development of the park facilities shall be done in a phased manner by the respective property owner as each property is developed. Upon completion of the park, the facility will be dedicated to the city. It is acknowledged that the property, or portions of the property in the annexation area will be sold, and that the terms and conditions of this Agreement shall be binding upon the successive owners of the property. The owner of any portion of property designated in this Agreement as the future City park shall, at the same time as he or she develops the property, construct and install the

necessary park facilities described herein. However, even if such property is not developed, each owner must construct and install the park facilities on that portion of the park located on his or her property so that completion and dedication of the park to the City occurs not later than _____. The City shall have the right to require dedication of the unimproved park property at any time prior to _____, and to thereafter install the necessary facilities for completion.

- F. Transportation. Prior to adoption of the annexation by the City of Gig Harbor, the petitioners shall prepare a traffic impact study to assess transportation impacts on Wollochet Drive from Hunt Street to the interchange, the interchange area, Hunt Street, 46th Street NW and 72nd Street NW. The traffic study shall be based upon the land use as approved by the City Council per this resolution and as adopted by Pierce County. The traffic study shall be presented to the city for consideration and approval prior to adoption, by ordinance, of the annexation.

Section 2. Binding Effect of Agreement. This Agreement shall be recorded in the records of the Pierce County Auditor, and the covenants hereof shall be deemed to attach to and run with the Property and shall be binding upon the Owners, their heirs, successors and assigns, and shall apply to the Owners of after-acquired title to the Property.

Section 3. Owners' Payment of Costs and Fees. The Owners shall pay all costs of preparation and recording of this Agreement, together with all reasonable costs incurred by the City, including the City's Attorneys' fees.

Section 4. Amendment. This Agreement may be amended or modified by agreement between the Owners and the City; Provided, that such amended agreement shall be approved by the legislative authority of the City by ordinance.

Section 5. Police Power. Nothing in this Agreement shall prevent the City Council from making such further amendment to its Comprehensive Plan, Zoning Ordinances or any other City code or ordinance as the City deems necessary in the public interest. Nothing in this Agreement is intended to authorize any use or dimension not otherwise permitted in the RB-2 zone, except as permitted by this agreement.

Section 6. Benefit of Covenant. This Agreement is made for the benefit of the City, and the City may institute and prosecute any proceeding at law or in equity to enforce this Agreement. If the City prevails in such proceeding, it shall be entitled to recover all costs and fees, including reasonable attorneys' fees.

Section 7. Payment of Costs and Recording Fees. The Owners agree to pay all costs of recording this Agreement and its Exhibits, together with all reasonable costs incurred by the City in the preparation of this Agreement, including the City Attorneys' fees.

Section 8. Severability. It is further expressly agreed that in the event any covenant or condition or restriction hereinabove contained or any portion thereof is invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition, or restriction hereinabove contained; PROVIDED, however, that in the event that any section, paragraph, sentence, term or clause of this Agreement is found to conflict with applicable law, the City shall have the right to unilaterally modify this Agreement in order to ensure accomplishment of its purposes.

EXECUTED this _____ day of _____, 1994.

OWNERS:

TALMO CORPORATION

By _____
Its _____

(address)

By _____
Its _____

(address)

By _____
Its _____

(address)

By _____
Its _____

(address)

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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

Dated: _____

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My appointment expires _____

Exhibit "C"

City of Gig Harbor Proposed Zoning
ANX 91-07 (Gig Harbor Interchange)

Exhibit "D"

Park Development Plan