

## **GIG HARBOR CITY COUNCIL MEETING OF AUGUST 28, 2006**

**PRESENT:** Councilmembers Ekberg, Young, Franich, Conan, Dick, Payne, Kadzik and Mayor Hunter.

**CALL TO ORDER:** 7:02 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 the City Council Meeting of August 14, 2006.
2. Correspondence / Proclamations: Payroll Week.
3. Tacoma/Pierce County YMCA - Stormwater Facilities Maintenance Agreement.
4. Olympic Drive/56<sup>th</sup> Street Roadway Improvement Project – Permanent Right-of-way Easement Agreement.
5. MultiCare – Sanitary Sewer Facilities Easement and Maintenance Agreement.
6. Mallards Landing - Sanitary Sewer Facilities Easement and Maintenance Agreement & Stormwater Facilities Maintenance Agreement.
7. Liquor License Assumption: Olympic Drive Mart.
8. Liquor License Applications: Gourmet Essentials; Kelly's Café and Espresso.
9. Payment of Bills for August 28 2006.  
Checks #51250 through #51368 in the amount of \$327,483.57.

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

### **OLD BUSINESS:**

1. Harbor Hill (OPG Properties) Water Tank - Quit Claim Deed. Mark Hoppen, City Administrator, explained that this concerns access to a water tank in which ownership has already been conveyed to the city. He said that the Gig Harbor North Pre-annexation Agreement has a provision that states that the owner agrees to convey to the city any type of water facilities or roadways constructed upon the city's acceptance of the infrastructure at no additional cost to the city and in a form approved by the city attorney. He continued to explain that an agreement pertaining to telecommunications devices attached to the water tank is something over and above the language in the pre-annexation agreement. He pointed out that the City Attorney has concerns with gift of public funds issues and also about granting rights in perpetuity.

Councilmember Young asked Carol Morris if she had reviewed the case law provided by OPG in their proposal. Ms. Morris responded that she had. She said that her concern is that if Council were to allow this right, it would set a negative precedent. She said that she is unaware of any other city in Washington that allows telecommunications facilities to be leased and the profit going to a private entity. She added that the State

Auditor now has the capability to audit cities for compliance with law, and this could become an issue.

Councilmember Young followed up by explaining that proper consideration for a contract involves an exchange of value. The pre-annexation agreement identified that in exchange for the infrastructure, the city agreed to annex the property and facilitate development. He then asked if there was a problem if the Quit Claim Deed was not signed.

Ms. Morris responded that this is just one way to convey the access rights to the city in order to avoid paying taxes on the underlying property. OPG could also grant an easement to the city.

Jon Rose – Olympic Property Group, 19245 10<sup>th</sup> Ave. NE, Poulsbo, Washington. Mr. Rose said that their attorney forwarded similar cases, then asked why these cases aren't relevant. He addressed the "gift of public funds" issue; setting precedent for a proliferation of cell towers; the issue of proper consideration; and finally, Council entering into agreements that carry over into future terms. He said that he isn't asking for a franchise right, just the right to have a telecommunications facility that would not diminish the city's ability to own or operate the water tank. He stressed that this would allow two uses of a single structure rather than building a separate tower. He again asked for a response to the information that they were asked to provide by Council at the last meeting.

Councilmember Dick clarified that the pre-annexation agreement provides that the owners will give both the property and water infrastructure to the city with no conditions in exchange for the ability to develop. To grant an additional right to retain revenue from the property is a valuable right which is not included in the pre-annexation agreement and would constitute a gift of public funds. He said that it is not within the Council's discretion to change the agreement now. He added that encumbering a central infrastructure would be a management nightmare. That is why the city has a uniform method of accepting such infrastructure.

Steve Misiurak, City Engineer, said that the city has a letter of agreement that allows access to the valve cluster on the tank property.

Carol Morris pointed out that the pre-annexation agreement grants the city the tank and all appurtenances for the city's use of the tank. She said that there could be no argument that the city doesn't have access of the tank whether or not there is an easement. The quit claim deed was suggested to save OPG from having to pay taxes on the property under the tank. She said that an easement to allow the city access to the facility would be acceptable.

Councilmember Kadzik said that he has both financial and philosophical concerns with this. There is value to placing a telecommunications facility on this site, and the city has unexpected expenses that arise on a regular basis. Leasing out this facility could help

offset some of these unexpected expenses. Philosophically, the city enters into agreements all the time for property owners to improve the city's infrastructure in exchange for the right to develop.

Councilmember Young added that to grant OPG the right to retain the ability to gain revenue from a telecommunications facility on this site doesn't sound like anything that the city can do.

**MOTION:** Move for Council to ask OPG to delete the condition to the Quit Claim Deed, and provide the city with a Quit Claim Deed that merely transfers whatever interest OPG has in the property to the City. Ekberg / Kadzik – unanimously approved.

**NEW BUSINESS:**

1. Public Hearing and Resolution – Adoption of Six-Year TIP. Steve Misiurak, City Engineer, presented a brief introduction to this resolution adopting the city's Six-Year Transportation Improvement Program.

The Mayor opened the public hearing at 7:25 p.m.

Glen Van Dyne – 3322 44<sup>th</sup> St. Ct. NW. Mr. Van Dyne said he was representing the residents of Quiet Forest Park, Merrill Gardens, and Manor Care who walk to the nearby library, medical facility, and shopping areas. He said that the absence of sidewalks creates a critical safety issue and asked that this project be placed closer to the top of the list of priorities. He said that they also request the edge of 45<sup>th</sup> to be delineated with markers to prevent drivers from coming onto the lawn area. Mr. Van Dyne added that they have been working with city staff for a temporary solution.

Harris Steameson – 3309 45<sup>th</sup> Street. Mr. Steameson said that there has been a heavy influx of cars parking on the street which causes pedestrians to walk in the middle of the road. He also asked for consideration to move this project up on the TIP list.

Gretchen Wilbert – 8825 No. Harborview Drive. Ms. Wilbert spoke in favor of this issue, as pedestrian movement is very important.

Councilmember Ekberg said that parents lived at Merrill Gardens for a short time, adding he is very aware of the situation on this street. He explained that the numbering system doesn't necessarily mean the order in which a project will be completed. He said that this will be discussed in the upcoming budget process.

Councilmembers Young and Franich both added that the numbering doesn't indicate the timing of the project and agreed that this is a priority and will be discussed during the upcoming budget meetings.

Mayor Hunter closed the public hearing at 7:32 p.m.

Councilmember Kadzik asked that in the future, it would be helpful to have a key to the information in the project list in order to better understand the headings. Steve Misiurak said that he would provide a legend / key as a follow-up to this meeting.

Councilmember Young asked for clarification on the prioritization of the projects. Mr. Misiurak responded that the status column shows that all these projects are in the planning phase. The prioritization number doesn't have any importance other than labeling. He added that there are plans this year to do the preliminary in-house design on the 45<sup>th</sup> Street Sidewalk Improvements. He said that there are options to address the safety issues on a preliminary basis and someone from Engineering could take a look and come up with a plan.

**MOTION:** Move to adopt Resolution No. 685 adopting the Six-Year TIP for 2007-2012.  
Payne / Ekberg – unanimously approved.

2. Public Hearing – Street Vacation / Bujacich Road and 54<sup>th</sup> Avenue – Harbor Reach Estates. John Vodopich presented this request for a street vacation for a piece of property located off Bujacich and 54<sup>th</sup>. He explained that there is an existing waterline that goes through this section of property, and the property has been identified in the 2006 Comp Plan Amendments Final FEIS as being appropriate for an improved north/south arterial connection. He said that because of this, staff is recommending denial of the street vacation request.

Mayor Hunter opened the public hearing at 7:46 p.m. No one signed up to speak and the hearing closed.

**MOTION:** Move to deny the application for request for vacation of right of way.  
Young / Payne – unanimously approved.

3. Resolution – Amending the 2006 Personnel Regulations. John Vodopich presented this resolution that would implement the ability to negotiate leave accrual rates, which has become an issue during the last few recruitment processes. This amendment would allow the city to negotiate a higher range of accrual rate for vacation time. The various guilds have been afforded an opportunity to comment. None have been received.

Councilmember Franich commented that it is hard for him to understand why it is so difficult to attract qualified people to come to work for such a great city.

Councilmember Dick said that it is important to have the capability to offer this in order to attract qualified, experienced employees. He said that this proposed amendment has merit.

Councilmember Kadzik agreed. He explained that when he sat in on the interview process for Planning Director, there were two excellent candidates looking at the

position as a lateral move, not a move up. He said that we need to respect the level of professionalism that has been demonstrated in these candidates.

**MOTION:** Move to adopt Resolution No. 686.  
Ekberg / Kadzik – unanimously approved.

4. Eddon Boat Aquatic Lease Survey – Consultant Services Contract. John Vodopich explained that the city is interested in leasing the Department of Natural Resources Aquatic Lands in front of the Eddon Boat site. He said that the first step is to determine which lands are available, and to provide a survey from a licensed surveyor as required by DNR.

Mr. Vodopich responded to Council's questions regarding the timing of the survey because it was not a budgeted item.

Councilmember Young stressed that he would prefer to postpone this until next year if there are no pressing issues. After further discussion on the timeliness of the survey, a motion was made.

**MOTION:** Move to authorize the execution of the Consultant Service Contract with Prism Surveying in the amount not to exceed eleven thousand, three hundred, and fifty dollars (\$11,350.00).  
Ekberg / Payne – six voted in favor. Councilmember Young voted no.

5. Planning Director Starting Pay Rate. John Vodopich presented this request to hire a new Planning Director at the top of the pay range given his years of experience and current salary. He clarified that a salary range adjustment for this position is not anticipated in the 2007 budget.

Councilmember Franich voiced concern that this will set precedent.

Councilmember Payne said that Mr. Dolan is highly qualified and that it is time to fill the vacant position. He said that resources in municipal field are strained, and so the city has to be competitive in order to attract qualified people.

Councilmember Kadzik agreed, saying that investing in good personnel is very important. He said that in the private sector, it would be unacceptable to have a position like this vacant for so long.

**MOTION:** Move to approve the starting monthly salary point of \$6,857.00 for Mr. Tom Dolan.  
Payne / Kadzik – six voted in favor. Councilmember Franich voted no.

Mr. Vodopich thanked Council for the approval of the two changes that are related to filling the Planning Director position. He added that Mr. Dolan has a starting date of

September 18<sup>th</sup>. Mayor Hunter praised staff for the tremendous job they have done over the past several months.

**STAFF REPORT:**

1. John Vodopich, Community Development Director – Tacoma Narrows Bridge Traffic. Mr. Vodopich said that at the last meeting he was directed to contact the State Department of Transportation to inquire about options to help alleviate some of the traffic congestion on the bridge. He explained that Claudia Cornish, Tacoma Narrows Bridge Communications Manger, informed him that traffic concerns are foremost on their minds. She told him that they have concerns with wind load if any sort of screening material is used. Ms. Cornish said that they have put up reader boards urging the public to maintain their speed and will continue to monitor the matter.

Councilmember Franich stressed the seriousness of the issue and said that more needs to be done. John Vodopich offered to pass on the contact information to allow Councilmember Franich to contact WSDOT to discuss other solutions.

2. John Vodopich, Community Development Director – Gig Harbor Peninsula Historical Society. Mr. Vodopich said that the Operations and Public Projects Committee has met to discuss the museum project. He gave an overview of the information that has been passed along to Jennifer Kilmer following their meeting. One recommendation is to obtain an appraisal of the property. He said that he received a quote of \$9000 to provide appraisals for the two parcels from Strickland Heischman & Hoss. Another firm had been contacted, but he had not yet received a quote.

Councilmember Dick voiced concern that what the Historical Society wants the city to purchase has yet to be determined, and so a valid appraisal is not possible.

Councilmembers and staff discussed what portion of the property is being considered and the potential use. Mr. Vodopich said that he has asked the Historical Society for a graphic delineation of what they want the city to purchase to compare with the Brinnon report on Donkey Creek to see if there is sufficient room to daylight the creek.

Councilmember Payne asked if previous studies or appraisals might have the information that we are looking for without having to spend additional money.

Councilmember Young pointed out that land is only worth what you can build on it. If the property that the Historical Society is asking the city to purchase is required to remain open space, it has a much lower value. The city would be doing them a favor by taking it off their hands.

Councilmember Kadzik suggested that the information already in possession on the square footage and purchase price of the Borgen Corner Property will help to determine a baseline value. Councilmember Young said that these properties were buildable, and therefore would have a totally different value than the property currently in question.

Mr. Vodopich was directed to obtain another quote for an appraisal to present to Council for consideration.

3. Carol Morris, City Attorney – Administrative Appeal Procedures. Ms. Morris explained that at this time, Council receives copies of the Hearing Examiner's decisions after the fact. She recommended changing the procedure so that Council could appeal these decisions to itself.

When asked for the downside of such a change, she responded that Council would have to be sure that the appeal is based on information in the administrative record, and that no new issues are raised. Council would be required to hold an administrative appeal hearing to develop findings of fact and conclusions. She warned that an important issue is ex parte communications. Council would not be able to talk to any opponents or proponents of any project from the time of the Hearing Examiner's decision until 21 days after Council has made a decision.

Ms. Morris continued to explain that there would be a significant advantage for Council to make sure that the code is enforced when the Hearing Examiner has made an obviously erroneous decision.

Councilmember Young commented that the restricted communication can create a stressful situation because the public expects to be able to discuss projects with their Councilmembers.

Councilmember Kadzik asked if Council could talk about a project before the Hearing Examiner has made a decision. Ms. Morris stressed that Council should not be having any discussions on any project while an application is pending.

Councilmember Franich said that he supports the ability for Council to appeal a Hearing Examiner's decision.

Ms. Morris said that if directed to draft an ordinance, she would schedule a training session on how to hold a closed record hearing and the Appearance of Fairness Doctrine.

**MOTION:** Move to direct the City Attorney to create an ordinance to allow the Hearing Examiner's decision to be appealed by the City Council.  
Kadzik /

Councilmember Franich said that he would like the option to be able to appeal all decisions whether Hearing Examiner or Administrative. Councilmember Kadzik said that he would amend his motion to reflect this change.

Ms. Morris asked which administrative decisions should be included. Councilmember Franich requested a comprehensive list of decisions that could be considered. She

offered to bring back a grid of all possible decisions for Council to decide which ones to include in the appeal process.

**RESTATED MOTION:** Move to direct the City Attorney to create an ordinance to allow all decisions, whether Hearing Examiner or Administrative to be appealed by the City Council.  
Kadzik / Young – unanimously approved.

**PUBLIC COMMENT:**

Gretchen Wilbert 8825 No. Harborview Drive. Ms. Wilbert suggested that there are existing appraisals for the Museum property in question. She said that she and Mark Hoppen talked about opening up Donkey Creek for years to let the salmon go up the creek. She also said that she would like the Historical Society to consider donating the property in the event that the city would consider budgeting for the renovation of the Skansie House, the Hoppen House, and the Wilkinson Family Home. This way the history of fishing, farming and agriculture can be told. She said that people love the historic markers around town, and they would also love to go into the Skansie House. She recommended a docent to give the history of each facility and volunteered to serve as such.

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

Councilmember Franich said that this is an important meeting as it is the last meeting for Mark Hoppen. He extended his gratitude to Mark for all that he had taught him over the past 5-6 years. He added that Mark had done great things for the city and wished him the best in the future. Councilmember Young agreed.

**ANNOUNCEMENT OF OTHER MEETINGS:**

Pierce County Council - September 12th - 5:30 p.m. - Council Chambers.

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

**MOTION:** Move to adjourn to Executive Session for approximately 20 minutes at 8:46 p.m. in order to discuss pending litigation per RCW 42.30.110(1)(i).  
Franich / Conan – unanimously approved.

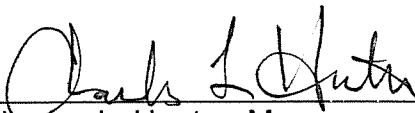
**MOTION:** Move to return to regular session at 9:07 p.m.  
Kadzik / Franich – unanimously approved.

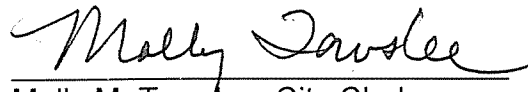
**ADJOURN:**

**MOTION:** Move to adjourn at 9:08 p.m.  
Franich / Ekberg – unanimously approved.



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Charles L. Hunter, Mayor

  
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Molly M. Towslee, City Clerk