

**RESOLUTION NO. 575**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, RENDERING THE FINAL DECISION OF THE CITY, APPROVING AN AMENDMENT TO THE FINAL PLAT OF MALLARD'S LANDING (SUB 00-01) AND THE CONCOMITANT ZONING AGREEMENT FOR TALLMAN ANNEXATION (ANX 91-07), FOR PROPERTY IN THE GENERAL VICINITY OF WOLLOCHET DRIVE N.W., 46<sup>th</sup> STREET N.W., HUNT STREET, AND 72<sup>nd</sup> STREET N.W., GIG HARBOR, WASHINGTON.**

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WHEREAS, applicant, Talmo, Inc. submitted a request for an amendment to the Final Plat of Mallard's Landing (hereinafter the "Plat") and the Concomitant Zoning Agreement for Tallman Annexation (ANX 91-07) (hereinafter the "Agreement"), which amendments would affect property in the general vicinity of Wollochet Drive N.W., 46<sup>th</sup> Street N.W., Hunt Street, and 72<sup>nd</sup> Street N.W., in Gig Harbor, Washington; and

WHEREAS, the City Responsible SEPA Official issued a Determination of Non-Significance (DNS) for the applications on September 14, 2001; and

WHEREAS, an amendment was requested to the Agreement to change the minimum roof pitch from 4/12 for property in the Plat located north and south of Wollochet Drive to instead require that the applicant follow the City's adopted Design Review Manual; and

WHEREAS, because the approved plat included the language of the Agreement, an amendment to the Agreement would also require amendment of the Plat; and

WHEREAS, the City Council held a consolidated open public hearing on the applications on August 13, 2001; Now, Therefore

**THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Consolidated Open Record Hearing.**

A. Notice. The open record hearing before the Gig Harbor City Council was convened on August 13, 2001. All required public notice of the closed record hearing was provided.

**B. Appearance of Fairness.**

All members of the Council and the Mayor were asked to disclose any ex parte contacts with opponents or proponents of the development, appearance of fairness or conflict of interest matters. The following disclosure was made:

Jim Pasin. Councilmember Pasin stated that he knew the architect on the project. The City Attorney stated that this would not alone require that Councilmember Pasin recuse himself from participation in the hearing. She then asked him whether he believed he could render an impartial decision in this matter, and he said yes.

The members of the public were asked whether anyone had any objection to participation by the Mayor or any Councilmember in this matter. After hearing all of the above, no one objected.

Section 2. Record for the Consolidated Open Record Hearing. The following documents were entered into the record for the Consolidated Open Record Hearing on the applications:

<b>Exhibit No.</b>	<b>Date</b>	<b>Description</b>
1.	August 8, 2001	Request for modification of the Tallman Concomitant Agreement and the Plat of Mallard's Landing.
2.	June 17, 1994	Concomitant Zoning Agreement for Tallman Annexation (ANX 91-07).
3.	August 13, 2001	Draft First Amendment to Concomitant Zoning Agreement for Tallman Annexation (ANX 91-07).

Section 3. Witnesses. Scott Wagner testified at the consolidated open record hearing. Mr. Wagner stated that the amendment was requested for the purpose of conforming to the City's Design Review Manual. He stated that the change would provide a better result for both parties.

Mr. Wagner also stated that he had a concern regarding the need for Section 3 of the proposed First Amendment to the Concomitant Agreement. He wanted an explanation for the statement that the First Amendment and Agreement applied to "build out" of the project. Mr. Wagner stated that a similar provision had not been included in the Agreement and questioned whether Section 3 of the First Amendment was needed.

The City Attorney explained that since the Agreement was executed by the parties, RCW 36.70B.180 was adopted by the Washington State Legislature. That statute (adopted in 1995), provided, in pertinent part, that:

A development agreement and the development standards in the agreement govern during the term of the agreement, or for all or that part of the build-out period specified in the agreement, and may not be subject to an amendment to a zoning

ordinance or development standard or regulation or new zoning ordinance or development standard or regulation adopted after the effective date of the agreement.

The above statute would allow the Agreement and First Amendment to be applied to the build out of the plat, but any redevelopment (if the structures are torn down, for example) would have to conform to the City's regulations in place at the time of redevelopment. State law also addresses the expiration of a final plat (RCW 58.17.170).

**Section 5. Standard of Review in Consolidated Open Record Hearings.**

**Amendment to the Concomitant Agreement.** There are few regulations applicable to amendment of a concomitant (or development) agreement. "A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW (the Growth Management Act). RCW 36.70B.160. "A development agreement shall be consistent with the applicable policies and goals of the City of Gig Harbor comprehensive plan and applicable development regulations." Gig Harbor Municipal Code ("GHMC") Section 19.08.010(B).

**Amendment to the Final Plat.** "The plat alteration may be approved or denied after a written determination is made whether the public use will be served by the alteration of the subdivision." GHMC 16.07.004.

**Section 5. Analysis of Approval Criteria to Applications.** The only change requested by the applicant is to conform to the City's existing Design Review Manual. Through the adoption of the Design Review Manual, the City has made a decision that the regulations in the Manual are consistent with the public use and all other zoning considerations (health, safety and welfare).

By removing the specific requirement that a minimum 4/12 roof pitch be maintained and by substituting the current standards in the Design Review Manual, the proposed development will be more consistent with current policy, city code and development constructed after adoption of the Manual. Furthermore, the amendment would provide for a building design that is superior to one that would be guided by the requirements listed in the original conditions of the Agreement and Plat.

**Section 6. Final Decision.** The City Council finds that the proposed amendments to the Plat and Agreement serve the public use and are consistent with existing development regulations and policies.

**Section 7. Implementation of Final Decision.** The applicant is directed to produce a revised drawing of the approved alteration of the Plat, consistent with the requirements of GHMC Section 16.06.001(C). The Mayor is hereby authorized to execute the amended Plat, which, after recording with the Pierce County Auditor, shall become the lawful Plat of the property. Once recorded, two reproducible copies of the Plat shall be filed with the City, one with the Director of the Department of Planning and Building Services and one with the Director of the Department of Public Works, at the expense of the applicant.

The Mayor is hereby authorized to execute the First Amendment to Concomitant Zoning Agreement for Tallman Annexation. The First Amendment shall be recorded with the Pierce County Auditor, and copies of the First Amendment shall be filed as described above.

RESOLVED by the City Council this 22<sup>nd</sup> day of October 2001.

APPROVED:

  
MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

  
CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;  
OFFICE OF THE CITY ATTORNEY:

BY: \_\_\_\_\_

FILED WITH THE CITY CLERK: 10/15/01  
PASSED BY THE CITY COUNCIL: 10/22/01  
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