

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – June 11, 2012

PRESENT: Councilmembers Ekberg, Guernsey, Perrow, Payne, and Kadzik and Mayor Hunter. Councilmember Young joined the meeting at 6:37 p.m.

CALL TO ORDER: 5:33 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes May 29, 2012.
2. Liquor License Action: a) Special Occasion – GH Historic Waterfront Association; b) New Application – State Liquor Store #150; c) Renewals: The Keeping Room, Hunan Garden Restaurant, Kinza Teriyaki, and Spiro's Bella Notte.
3. Agreement Tacoma Pierce County Health Department – 2012 Natural Yard Care Workshops.
4. Sehmel Right-turn Improvements – Consultant Services Contract/Lochner and Associates, Inc.
5. WWTP Landscape Maintenance Contract.
6. Twawelkax Trail Wetland Survey – Consultant Services Contract / Sitts & Hill.
7. Resolution No. 902 Adopting Findings of Fact for Denial of Appeal of Threshold Determination for Shoreline Master Program.
8. Cushman Trail Project – Local Agency Standard Consultant Agreement / H.W. Lochner, Inc.
9. WWTP Buffer Monitoring - Year One / Consultant Services Contract / Grette.
10. Approval of Payment of Bills: Jun 11, 2012: Checks #69805 through #69900 in the amount of \$522,950.92.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Payne – unanimously approved with Councilmember Malich abstaining from the vote on Item No. 7.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. First Reading of Ordinance - Hospital Benefit Zone (HBZ) 30-year Project List. Finance Director David Rodenbach introduced this ordinance that will amend the project list to allow the city to maximize the HBZ annual match benefit. He explained that the public hearing will be held at the June 25th meeting and offered to answer questions.

2. Public Hearing – Shoreline Master Program Update. Mayor Hunter announced that due to the number of people signed up to speak, the testimony would be limited to three minutes each. He introduced Planning Director Tom Dolan.

Planning Director Dolan gave a brief introduction asking people to keep in mind that if someone has already presented a concern, then all they need to say is they concur; the Council recognizes the issue.

Senior Planner Peter Katich explained that he is the Project Manager for the Shoreline Master Program Update and presented background information and an overview of the process. He addressed Council questions before introducing Harris Atkins.

Harris Atkins, Chair of the Planning Commission, gave a brief explanation of the lengthy process that the Planning Commission has gone through to review the draft SMP plan. Mr. Atkins recognized that the process was successful due to the input by the following: members of the community; Kim Van Zwalenburg from the Department of Ecology; Carol Holmaas, representing the Pierce County Stakeholders group; members of the Planning Commission; and the Planning Staff.

Mayor Hunter opened the public hearing and reminded the speakers to give their name and address, and to limit testimony to three minutes.

Heather McFarlane – PO Box 541, Burley, WA. Ms. McFarlane, Chair of the Friends of the Burley Lagoon, voiced concern with the proposed regulations that appear to favor major expansion to industrial aquaculture in their fragile lagoon. She described what has been happening since Taylor Shellfish has taken over the lease for shellfish operations at that location, and said they disagree with the proposed categorizing of Burley Lagoon as “Marine Deepwater” in Chapter 7 of the proposed update. Ms. McFarlane submitted a written statement for the record.

Dennis Reynolds – 200 Winslow Way West Ste 380, Bainbridge Island, WA. Mr. Reynolds, on behalf of Gig Harbor Marina, commended the efforts of the Planning Commission and Staff. He explained that his detailed comments have been submitted for the record and that he would summarize the points of concern that remain. He stressed the difficulty in keeping a balance between property rights and the protection of the aquatic environment. He said that there is a need to better define the designated critical areas for fish and wildlife conservation; you need a better job of impact analysis of the cause and effect; and you don’t need to regulate the built environment. He addressed Council questions.

Daniel Swain – 7707 Goodman Drive NW. Mr. Swain said the plan is fundamentally flawed; property owners have hired legal help and this will only be the beginning of legal disputes that confront shoreline property owners. He stressed that these rules and regulations are forever with no defined measure of effectiveness and no way to eliminate them if they are not. He described the regulations as a “feel good document” that accomplishes little for the environment. He stressed that two items must be corrected: first, reference to non-conforming must be eliminated to be consistent with state law. Second, he urged the City Council to correct the discrepancy between the designation of properties in the north and those cabins outside the mouth of the harbor

that are identified as low intensity. Mr. Swain submitted his written comments for the record.

Carolyn Celestino – 13224 Purdy Drive. Ms. Celestino voiced concern over the impact of the regulations on her and her neighbors. She asked for clarification on “mean high tide” and whether this can change during winter storms and how that affects the 10 foot setback requirements. Her second question was clarification on the regulation limiting temporary structures near the shoreline and what that allows. She said she is interested in learning more about property rights.

Laura Hendricks – 6723 Sunset View Drive. Ms. Hendricks, explained that she is a resident of Henderson Bay and Chair of the Sierra Club Marine Assistance Campaign, passed out copies of photos and spoke about their concerns with the expanded aquaculture provisions. She said that the upland regulations restrictions are being tightened to protect the shoreline, tidelands, and wildlife, but provisions are being made for an industry that will destroy these very things. She discussed the photos of geoduck development tubes, fencing of tidelands, massive amounts of plastic PVC, rusty rebar, and oyster bags from Totten Inlet; what she described as examples of what will happen if this industry is allowed in Henderson Bay. She continued to describe the effects to the bay if this industrial use is allowed, and urged the city to stand behind the citizens to keep Gig Harbor pristine and not allow this industry come into Henderson Bay.

Dorothy Walker – 3608 Forest Beach Drive. Ms. Walker spoke about the aquaculture regulations, saying that the plan talks about protecting public access, public views, and wildlife, but the section on geoducks and what it allows will destroy these things. She talked about kayaking on Henderson Bay and said she doesn’t want the access and views restricted by mussel barges, PVC pipes, and flotsam and jetsam floating around. She said that she understands that the property owners don’t own the tidelands, but the regulations would allow someone who leases the tidelands to raise geoducks to restrict public access to the beach and could leave her stranded in her kayak until high tide.

John Barline – 1301 ‘A’ Street, Tacoma. Mr. Barline commended the effort on this plan but said that there is a flaw in the lack of flexibility. He acknowledged that it would be difficult to determine in advance all potential situations, then went on to say that Gig Harbor has a tremendous waterfront with a fantastic history, and the nature of its waterfront character is its non-conformity. He said what is needed is the flexibility to allow a desirable project that doesn’t conform to the rules to move forward. He said that this happens a lot when ecology is involved. He talked about “land-banking” in which the property owner would deposit a sum that would be applied to another area in the city such as Donkey Creek, and which would allow the project to go forward.

Alexander Wilson – 12914 Purdy Drive NW. Mr. Wilson said his property overlooks Henderson Bay and he shares the same concerns voiced by Ms. Hendricks and Mr. Barline. He said that the elected officials have a responsibility and whichever way it goes you will have to live with the decision. He said there are a lot fish in Burley Lagoon and he wonders if anything is being put in place to protect them. Mr. Wilson stressed

that Henderson Bay has unmatched beauty that people come from all over to see, and so he looks to the council to do the right thing and to make sure it lasts a long time.

Jim & Etta Hill – 13112 Purdy Drive NW. The Hills asked if they are correct that the city does not have authority to enforce the current Shoreline Management Program on Henderson Bay. He said that they would appreciate the city's support of the enhancement of the natural environment on Henderson Bay, but if the city has no authority, then perhaps there is another forum for the citizens to address their concerns.

Councilmember Guernsey replied that permits obtained outside city limits, in the Urban Growth Area are issued by Pierce County. Councilmember Payne explained that if the city brings the area into the city limits, then our Shoreline Master Program would become the law for that area and so the citizens have a vested interest in the city's plan.

Mr. Hill responded that if the city continues to annex the unincorporated areas, it's in the city's best interest to try and influence Pierce County's plan to maintain strict development similar to what they are in Gig Harbor because ultimately you will have to live with the results of what Pierce County adopts now.

Councilmember Guernsey encouraged Mr. Hill and other residents to stay involved with Pierce County as they go through the process to update their plan.

Councilmember Young joined the meeting at 6:37 p.m.

Senior Planner Peter Katich commented that there are seven parcels along Henderson Bay that fall within city limits, and the RCWs allow the city to extend its jurisdiction to the center of the body of water that abuts these properties. He stressed that it would be in the residents' best interest to participate in the Pierce County process because that plan will be the one in effect until such time that the area is annexed into the city. He responded to the questions about whether the Council will adopt a plan similar to Gig Harbor's by saying the county has its own consultants, staff, and citizen groups involved and so there may be a different outcome.

Ron Lopp – 12722 Purdy Drive NW. Mr. Lopp said that Donkey Creek is not an aquaculture development and so he can't figure out why it's included in the proposed draft. He also said he can't figure out why Gooch Creek or McCormick Creek at the shoreline north of Henderson Bay is under consideration, and Purdy Creek at the south end is recommended to be upzoned to Urban Conservancy when they are both fragile areas; McCormick Creek is one of the most underdeveloped natural shoreline around. Mr. Lopp addressed the comment that the plan lacks flexibility by saying that he's never seen a proposed plan with so much flexibility; there is nothing mandatory in there and because of the Conditional Use Permit provision, it doesn't prohibit anything. He said he would work on a list of deficiencies, adding that the draft plan is a good start but shouldn't be adopted until finished.

Mayor Hunter called for a five minute break at 6:47 p.m. The meeting reconvened at 6:55 p.m.

David Boe – 705 Pacific Avenue, Tacoma. Mr. Boe summarized the concerns submitted in his letter by saying that the goals and the proposed regulations of the draft plan do not meet; specifically regarding the vegetation conservation buffer and how it's applied. He explained that he prepared an overlay of the proposed buffers, along with the existing zone code requirements, on an existing piece of waterfront commercial property. He said that results in conjunction with the building size limitations, result in a maximum 6,000 square foot building footprint. This would not incentivize commercial development, and the Waterfront Commercial would become residential over time. He asked Council to take the time to test the regulations on real sites to determine if it meets the goal of both the Comprehensive Plan and the Shoreline Master Program.

Jo Jensen – 11022 56th Street, Gig Harbor. Ms. Jensen explained the difficulty they have experienced to protect their land and the water while remodeling a cabin on Burley Lagoon located 35 feet from the water and 50 feet from a salmon spawning stream. She said it is disturbing to find out that people now will be allowed to do pretty much anything in front of her cabin when they have had to meet so many restrictions. She said that people chose to come here for Gig Harbor's image; they come and take pictures of the oyster farming with its shells. She stressed that plastic tubing and netting is not appealing and although it's not the city jurisdiction today, what happens affects the big picture. This could result in the loss of their land, the tax base, and reduce the value of property. She asked for Council support.

Janey Aiken – PO Box 206 / 15012 Sherman Drive, Burley. Ms. Aiken explained that her family has lived on Burley Lagoon for 28 years and during this time the Western Oyster Company has farmed oysters and clams the old fashioned way; that's been fine and the residents can live with that. In March, 2012 Taylor Shellfish leased the tidelands and expanded the shellfish operation. This expansion has the potential to destroy Burley Lagoon and negatively affect the two creeks, Purdy Creek / Burley Creek that are salmon bearing streams. Ms. Aiken explained that modern shellfish farming includes clearing the beaches of sea stars, red rock crabs, cockles, horse clams, moon snails, and other creatures that people love to see but are determined to be "pests" to the shellfish. She also said that modern shellfish farming adds acres of clam wraps which is nettings over clam bags. She asked for the city to protect the native species and shoreline environment.

Bob Frisbie – 9720 Woodworth Avenue. Mr. Frisbie said he agreed with Dennis Reynolds on the lack of cause and effect in the White papers. He also agreed with David Boe about the need to test the regulations on real-life property. He summarized the points in his letter to Council: 1) Have the entire SMP footnoted to the technical / white papers so you can go back to the information to determine how it was used to develop the regulation; 2) Do away with soft armoring requirement; it doesn't work; 3) don't allow adaptive reuse of netsheds due to enforcement issues and tsunami threat; 4) Individual property rights on public access; 5) Do away with setbacks from the

ordinary high water mark – live with what you have; 6) Impervious lot coverage – what is the reason? 7) Specifics on sanitary pumpout – no cause and effect cited, and you haven't taken the other contaminants into consideration; 8) Commercial fishing - with the exception of parking, whatever is required of a marina property owner should be required from the commercial fishermen; their income is far greater.

Councilmember Young explained that the Department of Ecology required shoreline setbacks. He asked Mr. Frisbie if he knew of any authority that would allow the city not to have them. Mr. Frisbie responded by asking what authority DOE has to require the setbacks. He said that he has been asking this for thirty months and his questions go unanswered. The plan adopted in 1994 eliminated the setbacks from high water, so what has changed? Councilmember Young then asked if the city should ignore the DOE comments. Mr. Frisbie said the city should say that the setbacks don't apply for the City of Gig Harbor and let them explain why it's necessary. He said that in his opinion, the setbacks are there for no other reason than for public access; for people to cross your property.

Irene Hanley – 7815 Goodman Dr. NW. Ms. Hanley explained that you cannot use the terminology “non-conforming uses” since SB 5154 and SB 5083 passed in May, 2011. She said she understands comments made by Mr. Boe about “real-life circumstances.” She used her property on a bluff overlooking Colvos Passage as an example, explaining that if they were to follow the 100' and 50' setback requirements, their house would be back so far it wouldn't have a view, but they would still be required to pay the view property taxes. She said that you must take the lay of the land and the topography into consideration; you can't just expect everyone to conform. Ms. Hanley said that you need to look into this because you are taking away the use of the property, adding that it makes it difficult to sell your property.

Bob Paradise – 4109 62nd Street NW. Mr. Paradise explained that he windsurfs, kayaks, and is a scuba diver, and talked about the incompatibility of aquaculture in Henderson Bay with recreational users. He said that Henderson Bay is a premier site for windsurfing; they used to hold an April Fools regatta but because of the commercial geoduck aquaculture twelve years ago, they couldn't ensure the safety of the windsurfers and it was cancelled. He talked about efforts to promote both regional and national windsurfing events, but the hazards have prevented this. He mentioned several things he has witnessed as a result of the aquaculture farming: several windsurfers injured and equipment damaged from hitting debris; Purdy Boat ramp monopolized by commercial vehicles; Purdy Bridge damaged by barge; the beach is used for staging areas and kids play around the equipment; swimmer entangled in netting and could have drowned; kayakers quit using bay due to fear of impalement from rebar; 800 foot of rope tangled in his boat propeller; and beach littered with piles of debris. He said that the operators' standard response is “you can't prove it came from my operation.” Mr. Paradise voiced appreciation for the opportunity to speak.

Melinda Stewart – 2813 and 2811 Harborview Drive. Ms. Stewart said that they have two cabins built in the 1920's; both built right on the bulkhead with no setbacks. She

explained that she has been part of this process since the beginning, adding that Peter Katich and Michael Fisher have been very helpful by listening to her concerns. She pointed out two things that she is thankful for: 1) the Protection of Rights Provision in Chapter 6; and 2) Provisions for hardship on unusual properties which allows you to rebuild on the same footprint. She commended the city then said that the test will be if something happens; but with these changes she is hopeful.

Brad Newell – 8314 131st St. NW. Mr. Newell voiced concern with the environment, provided documents showing the location of eelgrass and herring spawn in Henderson Bay and Burley Lagoon. He gave an overview of how the number of herring spawn has increased per biologist surveys performed in 2008 (496 tons), 2009 (125 tons), 2010 (500 tons), and 2011 (711 tons). Mr. Newell explained that millions of gallons of water flush in and out of Burley Lagoon twice every day and the current moves an abundance of nutrients. He stressed that commercial aquaculture has resulted in an increase in the number of people in the lagoon and asked that Council take this information into consideration when they make a decision.

Don Hanson – 12706 Burnham Drive. Mr. Hanson said that his property is directly affected by the aquaculture, and commented that only 10-15% of Henderson Bay is in city limits. He stressed that it is inconceivable that the city would allow an industrial type of aquaculture in front of private residents. He said he has seen the pictures of what happened in Thurston County; it's a garbage dump. He said that the tide goes out approximately 100-150 yards and if a geoduck farm is allowed it would stretch 150 yards times whatever width is there. He said he is a wind surfer also and it's very dangerous to have to walk over the steel bars, and to not have access to the shoreline. He encouraged Council not to allow the industrial use of aquaculture in a residential area. He mentioned that he submitted a two-page letter of comments for the record.

Laurie Peterson – 15114 Sherman Dr. NW. Ms. Peterson, who lives on the uplands of Burley Lagoon, explained the purpose of the original Shoreline Management Act was to prevent damage to the natural environment, protect the natural character of the Washington shorelines, and to promote public access and provide opportunities to enjoy views and recreational activities. She said that as a lay person, she can't adequately decipher the real and permanent consequences of these updated proposals, but wished to share her concerns. She said that she is confused by the contradictions and cross purpose of many of the requirements: 1) Soft armoring is required in order to protect salmon habitat but geoduck harvesting is located in the direct path of this same habitat; 2) Liquefying the tidelands during geoduck harvesting is allowed when the process kills the existing natural wildlife; killing many to get to one is contradictory and unconscionable; and 3) Allow the fragile estuary to be commercialized beyond its current level when it's already too polluted for shellfish harvest. Ms. Peterson stressed that at the same time the upward regulations are being tightened, they are being loosened seaward for private interest. Industrialized commercial harvesting for geoducks and mussels will affect the very environment that the regulations are supposed to preserve and protect. Allowing extensive shellfish farming doesn't make sense if there is fidelity to the goals established by the SMP in the 70's. She said that

Gig Harbor is a magnificent place with precious tidelands and we all are stewards; the city has profound influence on what will happen. She finalized by saying the intent of the plan remains the same: prevent damage to the natural environment; protect the natural character of the shorelines, and promote public access and recreational activities.

Marty Grey – 6804 149th St. Ct. NW. Ms. Grey acknowledged that Gig Harbor doesn't have control over Burley Lagoon or most of Henderson Bay, but said she hopes that the city will have some influence over Pierce County. She said she has lived on Burley Lagoon for 15 years and shared her background. She explained that she understands government function and when it's in trouble of being overwhelmed by misguided regulations. She described the numerous sustainability projects with the Department of Correction and compared that with what will happen if Burley Lagoon is destroyed. She said that if you don't want this in the harbor, they sure don't want it in Henderson Bay or Burley Lagoon. Ms. Grey talked about her and the neighbor's grandchildren kayaking and exploring the shoreline and asked the city to please back them.

Wis Macomson – 6110 88th Ave. NE, Olympia. Mr. Macomson explained that what happens in Totten Inlet affects his property on Johnson Point 18 miles away. He stressed that if aquaculture occurs in Henderson Bay and Burley Lagoon, it will degrade the marine environment. He described the harvesting operations on both sides of his beach, adding that nothing lives on the beach since the operation went in. He said that the city has an opportunity to affect the quality of life, but in order to do so, you have to institute regulations on what happens on an industrial scale. Mr. Macomson said he understands that the aquaculture industry likes to paint an image of a family farm but the better comparison is a feed lot. He said that if the images that have been presented are not enough, to contact him and arrange a time to see first-hand the affects of this farming before any decisions are made. He asked Council to think long and hard before you pass these regulations as proposed.

Mayor Hunter announced that there were no other names on the sign-up sheet and asked if anyone else would like to speak.

Scott Wagner – 11024 54th St. NW. Mr. Wagner explained that he is here to request help to correct the zoning for his building located on a small piece of property next to Peninsula High School. He said that it was previously rezoned educational making the tenant a non-conforming use. He said he is working with Pierce County and wonders if during the process of adopting the SMP this piece could be kept mixed-commercial use designation. He said he would check with staff next week.

John McDonald – 14410 Sherman Drive. Mr. McDonald asked for a show of hands in the audience of how many were present due to concerns with aquaculture and asked Council to be aware of all problems that will emanate from the area around the Purdy Commercial spot, by the old oyster mounds where Taylor Shellfish is going to base their operation. He said that they are all stakeholders and passionate about saving the tidelands. He asked Council to please address these concerns with commercial shellfish farming.

Councilmember Ekberg recommended that staff address the primary areas of concerns heard this evening and come back with recommendations. He described his fifty-year personal experience with aquaculture on property at the mouth of Minter Creek. He explained that Minterbrook Oysters has been harvesting there for years; but it is totally different than the new type of shellfish farming that the state is promoting and at odds with our shoreline plan. He said he would be interested in staff's input.

Delores Brown – 12622 Burnham Drive NW. Ms. Brown submitted a letter and photo of oyster bags along her beach which she described as 2 foot square with fine-mesh netting and they weigh eight pounds. She explained that there are seven of them, and it galls her that she has to carry up the garbage from this million dollar industry.

Irene Hanley shouted out that Senate Bill 5083 was replaced by SB 5451 so you don't have to read both.

Planning Director Tom Dolan said that staff and the city attorney are recommending keeping the public record open for another seven days until June 18th at 5:00 p.m. to allow additional written testimony.

Mayor Hunter closed the public hearing at 7:43 p.m.

Councilmember Malich asked for clarification of the process from this point. Mayor Hunter said there would be another public hearing at the first reading. Mr. Dolan clarified that there is no requirement for an additional public hearing and staff is not proposing one. He said the ordinance to adopt the plan will have a first and second reading in September.

Councilmembers discussed the need for an additional public hearing and decided to wait until staff comes back with recommendations to address the concerns voiced tonight. If no substantial changes are made, then another public hearing is not necessary.

STAFF REPORT:

City Administrator Denny Richards complimented what he described as "an incredible staff." He recognized the following as examples: The sizable work on the SMP plan by Tom Dolan and Peter Katich; the articles about Gig Harbor in the Smithsonian and LA Times as a result of Laureen Lund and Karen Scott; the favorable article in the News Tribune regarding the compliance with the open records laws exhibited by our Municipal Court; and full-funding for the Cushman Trail Extension as a result of the hard work by Emily Appleton.

PUBLIC COMMENT: None.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Malich asked if there would be public input on the Cushman Trail. Denny Richards said there would be discussion on what type of bridges would be used.

Councilmember Young apologized for joining the meeting late, explaining that the Pierce Transit Boundary meeting ran late. He said there will be a ballot measure for .3% sales tax in November. If this does not pass, the question will be whether or not we have public transit. Gig Harbor would lose service and most outlying communities would retain some service. He described the efforts to work through changes in the system and asked that any suggestions or comments be forwarded to him.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Downtown Planning and Vision Committee: Tue. Jun 12th at 4:00 p.m.
2. Finance / Safety Committee: Mon. Jun 18th CANCELLED
3. Operations and Public Projects: Thu. Jun 14th at 3:00 p.m.
4. Boards and Commission Candidate Review: Mon. Jun 25th at 4:30 p.m.
5. Downtown Planning and Vision Open House: Wed. Jun 27th at 4:00 p.m.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i) and property acquisition per RCW 42.30.110(1)(b). Mayor Hunter, City Councilmembers, City Administrator Denny Richards, Planning Director Tom Dolan, and City Attorney Angela Belbeck were in attendance. It was announced that action may be taken after the session.


MOTION: Move to adjourn to Executive Session at 7:52 p.m. for approximately 40 minutes for the purpose of discussing pending litigation per RCW 42.30.110(1)(i) and property acquisition per RCW 42.30.110(1)(b).
Payne / Perrow – unanimously approved.

MOTION: Move to return to regular session at 8:30 p.m.
Payne / Kadzik – unanimously approved.


ADJOURN:

MOTION: Move to adjourn at 8:30 p.m.
Payne / Kadzik – unanimously approved.

CD recorder utilized: Tracks 1002 – 1044



Charles L. Hunter, Mayor



Molly Towslee, City Clerk