

## MINUTES OF GIG HARBOR CITY COUNCIL MEETING – May 29, 2012

**PRESENT:** Councilmembers Ekberg, Guernsey, Perrow, Payne, and Kadzik and Mayor Hunter. Councilmember Young joined the meeting after the Consent Agenda action.

**CALL TO ORDER:** 5:30 p.m.

### **PLEDGE OF ALLEGIANCE:**

### **CONSENT AGENDA:**

1. Approval of City Council Minutes May 14, 2012.
2. Receive and File: a) Council Retreat Minutes May 11, 2012;
3. Liquor License Action: a) Assumption: Finholm's Grocery & Deli; b) Added Privilege Red Rooster Café.
4. Appointment to Parks Commission.
5. Correspondence / Proclamation: Pierce Transit Proposed Amendments to Bylaws.
6. Skansie House Electrical Engineering Contract.
7. Skansie House Mechanical Engineering Contract.
8. Wheeler Street End Record of Survey - Consultant Services Contract/David Evans and Associates, Inc.
9. Approval of Supervisors Guild Collective Bargaining Agreement.
10. Pt. Fosdick Square (Safeway) – Termination of Obligations Relating to Outdated Agreements.
11. Eddon Boat Beach – Consultant Services Contract / Grette Associates.
12. Approval of Payment of Bills May 29, 2012: Checks #69715 through #69804 in the amount of \$504,168.25.
13. Approval of Payroll for May: Checks #6491 through #6505 and direct deposit transactions in the total amount of \$324,300.58.

Councilmember Perrow asked that the minutes of the City Council Meeting of May 14, 2012 be amended to show that he abstained from voting on the Consent Agenda.

Mayor Hunter introduced Rhana Lovrovich, new member of the Parks Commission.

**MOTION:** Move to adopt the Consent Agenda with the proposed amendment to the minutes.  
**Ekberg / Payne** – unanimously approved.

### **PRESENTATIONS:**

GHPD Employee of the Year Awards. Chief Davis presented several awards for outstanding service during 2011. He asked each person to come forward as he presented a brief synopsis of why the person was chosen to receive the award. He awarded the following: 2011 Officer of the Year – Fred Douglas; 2011 Top D.U.I. Arrests - Chet Dennis; 2011 Support Staff of the Year – Debra Eason; 2011 C.O.P.S.

Volunteer of the Year - Phil Regnart; 2011 Unit Award - C.O.P.S. Program. Volunteers Dennis Schaumann and Phil Regnart accepted the award; and 2011 Explorer Scout of the Year - Kevin Hayward.

**OLD BUSINESS:** None scheduled.

**NEW BUSINESS:**

1. Open Record Appeal Hearing – Appeal of SEPA Threshold Determination for Shoreline Master Program. Mayor Hunter announced that Attorney Scott Snyder would be acting as the Hearing Officer during these proceedings. He announced a short recess so that Mr. Snyder could be seated.

The meeting resumed at 5:50 p.m. Mr. Snyder introduced himself and explained his role as Hearing Officer to assist the City Council in conducting the open record hearing for the appeal filed by Robert Frisbie; APP-12-0001.

Hearing Officer Snyder asked that in accordance with the Appearance of Fairness Doctrine if any City Councilmembers had participated in any ex parte communication regarding this appeal since it was filed on April 23, 2012. A roll call of the six present Councilmembers disclosed that there had been none. It was also explained that the Mayor was present but does not have a vote, nor will he be participating.

When asked if there were any objections to any one of the Councilmembers participating, Robert Frisbie, Appellant, and City Attorney Angela Belbeck responded that they had no objections. Hearing Officer Snyder gave a brief overview of the order of presentation. Mr. Frisbie, and Senior Planner, Peter Katich were then sworn in. Mr. Katich was asked to begin with his introduction.

Senior Planner Peter Katich explained that he is the Project Manager for the update of the city's Shoreline Master Program and responsible for preparing the SEPA Checklist and associated Supplemental Sheet for Non-project Actions. He presented the background for issuance of the Determination of Non-Significance for the proposed comprehensive amendments to the shoreline master program, which was appealed by Mr. Frisbie on April 25, 2012. When asked, he clarified that the appeal was filed in a timely manner.

Hearing Officer Snyder addressed both the appellant and city attorney to determine if there were any jurisdictional issues with Council hearing the appeal or issues regarding the SEPA process or procedure. Both responded "no." Mr. Frisbie was then asked to proceed with his presentation.

Robert Frisbie said that his sole intent in filing the appeal is to get the City to expand the Checklist to include several items in order to identify alternatives to these items and recommendations for mitigation measures that would ultimately be considered for incorporation into the final shoreline management program. He explained that he believes that the Checklist could be expanded using city staff in one to two weeks. Mr.

Frisbie continued with each item to identify his reasons for concern with the draft SMP, his conclusions, and recommendations for expanding the Checklist to address his concerns. At the conclusion of his presentation, Mr. Frisbie said that addressing these issues through an expanded Checklist could happen quickly, considering the number of time the staff and Planning Commission members have stated that all of the new regulations are supported by White and Technical papers. If answers are not quickly forthcoming, Mr. Frisbie suggested that Council determine whether these papers meet the minimum industry standard or if they are based on someone's "wish list." Mr. Frisbie then said that his letter is stamped with his registered Washington Professional Engineers' Stamp because he feels strongly that he can back up everything he has said. He stressed that not one of the White or Technical papers has any kind of professional stamp because the author doesn't want to be held responsible.

Hearing Officer Snyder asked if there were any objections to entering Mr. Frisbie's submitted exhibits into the record; there were none. Mr. Snyder explained that each Councilmember would have an opportunity to ask questions of Mr. Frisbie. He began with the City Attorney.

Ms. Belbeck addressed a reference made by Mr. Frisbie to RCW 43.21C.030, asking if he understands that this RCW refers to an Environmental Impact Statement and not a threshold determination. Mr. Frisbie responded that yes, he did understand.

Councilmember Kadzik asked Mr. Frisbie to explain why the soft armory failed at the Narrows Park seawall. Mr. Frisbie responded that soft armoring doesn't have the ability to withstand the weather or dissipate the energy of the wave action. When asked if this type of wave action would be a problem in Gig Harbor Bay, Mr. Frisbie referred to the storm of December, 1982 that did so much damage in Puget Sound. He said that this type of storm would pull out soft armoring. He then said that an expanded Checklist could list this type of storm that could occur every 20 years, and talk about the associated cost. He added that beach erosion would be more prevalent in areas such as Henderson Bay where you have wakes.

Councilmember Payne asked Mr. Frisbie if he had a recommendation for a threshold for marina size before they should be required to install a pumpout facility. Mr. Frisbie responded that you would have to run the waste load calculations in the harbor in order to make that determination. He talked about the extension the outfall outside the harbor then said that the biggest load would come from septic systems on the east side of the harbor and the large raccoon and goose population.

Councilmember Guernsey asked if Mr. Frisbie thought the state's checklist is inadequate because it doesn't ask questions in the areas he has identified. Mr. Frisbie responded that you could use this checklist, and just "shuffle the information" into the existing questions and categories. She asked if there is any authority to expand the checklist as he is suggesting. He said no, but there are a number of issues that have been ignored in the checklist so the answers are inadequate. Councilmember Guernsey asked if he is saying the Determination of Nonsignificance by the responsible official is

inadequate. He responded “that is correct.” She continued to ask if he is saying the proposed Shoreline Master Regulations as proposed create a potential, significant, adverse environmental impact. He responded that until you complete the checklist and look at the alternatives you don’t know. Once you finish the SEPA review, he said that you would know the mitigation and how to design of the Shoreline Master Program. He stressed that he does not believe an Environmental Impact Statement should be required.

Councilmember Guernsey then asked for clarification on his reference to commercial fishing moorage and the question of why they are not required to provide pumpout stations and public access. He responded he suspects the commercial fishing boats contribute as much to the waste load in the harbor as his marina. He explained that if you require him to install a pumpout, then you should require it of the commercial fishing industry; if he is required to provide public access, then they should have to provide it as well.

Hearing Officer Snyder asked Mr. Frisbie to clarify whether he agrees that this is not an appeal of the Shoreline Management Plan, that the legislative issues will be addressed at a later date, and what is being discussing is the environmental basis for which the regulations will be reviewed. Mr. Frisbie agreed.

Hearing Officer Snyder continued to say that case law contained in the briefing indicates that economic considerations are not within the zone of interest protected by SEPA and cost benefit analysis is not required under SEPA. He asked Mr. Frisbie if he has anything that would authorize the Council to address the cost benefit issues that he has raised. Mr. Frisbie responded that he did not.

There were no further Council questions and staff was asked to present the city’s information. City Attorney Angela Belbeck introduced Senior Planner Peter Katich and entered the Declaration of Planning Director Tom Dolan into the record.

Hearing Officer Snyder clarified that the Council Packet on the web and given to Council would be considered as Exhibit 1, Mr. Frisbie’s handout would be Exhibit 2, and the Declaration of Tom Dolan would be Exhibit 3. There were no objections to the Exhibits.

Senior Planner Peter Katich began by providing the background of the relationship between the State Shoreline Management Act, Shoreline Master Program Guidelines, and the City’s Shoreline Management Program. He explained that Gig Harbor’s Draft Shoreline Master Program has been developed to comply with the Master Program Guidelines and requirements of the state. Mr. Katich presented several examples of regulatory provisions contained in the city’s master program that are supported by science and designed to support this theme of environmental protection. He noted that no existing, legally established development within the City of Gig Harbor’s jurisdiction would be required to retrofit their property or to comply with these new requirements; they would continue to be a legally, non-conforming development.

Mr. Katich continued to explain that Mr. Frisbie's SEPA appeal outlines his opposition to several of the regulations and protection measures that he previously identified and were addressed during the Planning Commission's public comment period and public hearing on the draft shoreline master program. Several revisions were made to the program based on these comments while no action was taken on other issues.

Mr. Katich pointed out that in this appeal, Mr. Frisbie has not referenced any specific environmental elements that would be adversely impacted by the adoption of the shoreline master program; a requirement for an appeal of a SEPA threshold determination. But instead, he has challenged the city to address the benefits of proposed regulatory approaches by resubmitting issues that are more appropriately addressed during the upcoming public hearing on the Shoreline Master Program.

Mr. Katich stressed that the city and the Responsible Official have thoroughly reviewed the master program and its proposed regulations for potential significant impacts to the sensitive shoreline ecological functions, and has concluded that the adoption of the shoreline master program will not have a probable, significant adverse impact on the environment. Therefore, the City Council should find that the determination of non-significance was issued properly and the appeal should be denied. He added that a proper forum to address any concerns and objections to the draft shoreline master program is at the scheduled public hearing on June 11, 2012 City Council meeting.

Hearing Officer Snyder entered the overheads used during Mr. Katich's presentation as Exhibit 4. He then asked if Mr. Frisbie had any questions for Mr. Katich.

Mr. Frisbie asked Mr. Katich if he had the information on the issues he discussed including the flooding caused by a tsunami, the waste load in the harbor, and erosion at the Narrows Park. He then asked Mr. Katich to clarify whether these are issues that fall under the SEPA Checklist categories. Mr. Katich responded that in the appeal, no specific reference had been made to any elements in the checklist making it difficult to understand the nature of the comments and their consistency with SEPA. Mr. Katich then said that the city does have the information that was submitted during the Planning Commission process, but the Planning Commission elected not to act upon it. He stressed that the burden is on the appellant to show that the adoption of these regulations will have a probably adverse effect on the environment.

Hearing Officer Snyder asked each Councilmember if they had questions.

Councilmember Young asked for clarification on the checklist reference to any natural environmental impacts as it relates to noise. Mr. Katich said that the SEPA standards are inclusive of people, animals, habitat, and structures, and applies to anything in the built and natural environment. Councilmember Young then asked if the SEPA determination is an analysis of the impact of the plan itself, meaning that for flooding or tsunami to qualify, the plan itself would have to increase the frequency and severity of a tsunami. Mr. Katich responded that this is correct.

Councilmember Guernsey asked if Mr. Katich thinks it appropriate to “stuff” these various issues into the city’s responses to the checklist. Mr. Katich responded that he doesn’t think it would be appropriate and it would be inconsistent with law. He said that as he understands it, the appellant’s issues include a request for a cost benefit analysis, an economic impact analysis, an analysis on the effect of individual property rights, and a whole range of concerns for Council to consider, but not in a SEPA context.

Councilmember Kadzik asked if he is correct that Mr. Frisbie’s concerns are best brought to the public hearing forum. Mr. Katich responded that this is correct.

When asked, Ms. Belbeck said that there is no further presentation from the city. Hearing Officer Snyder said Mr. Frisbie has ten minutes for a rebuttal.

Mr. Frisbie summarized by saying that Council has to determine whether the items he listed have been addressed; adding that from his standpoint, they have not. He said that this is a small, close knit community and several people have been here a long time; so you have to ask the question of how long it takes to expand the checklist. He said that it won’t take long and it will provide you with the information to start thinking about how you want the final shoreline master program to look. He said he’d like Council to vote his way.

Hearing Officer Snyder closed the public hearing at 7:35 p.m. and said he would proceed with council deliberation. He noted that anything said by Ms. Belbeck or him is not evidence; he is here to assist; not to vote or to direct.

Councilmember Ekberg said that he listened and read through Mr. Frisbie’s comments; while he brings up important issues, nothing was shown that they significantly and adversely impact the environment, which is the issue in front of Council. He said that economic issues are better addressed at the future public hearing on the shoreline master plan, and that he is convinced that the Responsible Authority ruled correctly.

Councilmember Young concurred, stressing that the State Environmental Protection Act was designed to protect the environment. He said that the proposed shoreline plan is to increase these protections, and the SEPA checklist is designed to look for things that are detrimental to the environment. The appellant appears to be asking to remove current regulations or loosen those being proposed, and although some of these issues are good points, it’s not something that can be done under the SEPA process. He concluded by saying he struggles to find any reason to overturn the SEPA Responsible Official’s determination.

Councilmember Guernsey noted that this is a SEPA Appeal of the DNS by the city’s SEPA Responsible Official, and as she understands the law, the agency has to make a determination of whether the proposed shoreline master plan itself has a probable significant adverse impact on the environment. She explained that the checklist is to help the Responsible Official make a determination, and in her review of the checklist and supplemental information, she found it to be quite extensive. She said that the Responsible Official was correct in determining that the proposed master plan does not have a

significant adverse impact on the environment. She then said that the appellant has the burden of proof as set forth in the Gig Harbor Municipal Code and also the law in many jurisdictions. She explained that the standard of review is clearly erroneous, which is a significant burden to overcome, especially when the Responsible Official's threshold determination must be accorded substantial weight.

Councilmember Guernsey continued to explain that the seven categories raised by the appellant do not relate to the potential or probable significant adverse environmental impacts; they are in essence, his judgment or his opinion based on research he has done as to whether or not the policies should be adopted. This is different than proving that the DNS was inappropriate, she added. If the determination was inappropriate then a Determination of Significance should be issued and an Environmental Impact Statement prepared; but this is clearly not what the appellant thought should occur. As Mr. Katich indicated, economics and a cost benefit analysis are not within the zone of interest protected by SEPA. In conclusion, Councilmember Guernsey said that the Responsible Official's decision was appropriate and should be upheld.

Councilmember Perrow voiced appreciation for raising the issue of equitable application of regulations, saying he looked forward to addressing them at a later time. He said that he thinks the checklist is adequate.

Councilmember Payne said that in review of the elements of the checklist he does not see an issue that has been raised that is within the zone of interest related to SEPA. He added that the issues raised will have an appropriate time to be discussed, but as far as this hearing and the appeal before Council, he sees no probable adverse impact on the environment based upon the decision made by the Responsible Official.

Councilmember Kadzik said he had little to add, but was glad we had the opportunity to be exposed to these issues. He said that he looks forward to the public hearing, but doesn't think that this was the correct forum. He agreed with the other Councilmembers.

**MOTION:** Move to deny the appeal in this matter.  
**Guernsey / Young** – unanimously approved.

Hearing Officer Scott Snyder announced that he would prepare the findings of fact and conclusions for presentation at the next regular council meeting of June 11th.

Mr. Frisbie thanked Council for their time. The Mayor called a brief recess at 7:44 p.m.

The meeting began again at 7:52 p.m.

**STAFF REPORT:**

City Administrator Denny Richards commented how nice it was for the Chief to recognize his staff. He added that the Public Works Crew is doing a fine job of "polishing the town" for

the upcoming weekend events, citing these as good examples of what a great staff the city has employed.

**PUBLIC COMMENT:** None.

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

Mayor Hunter reported that we are taking another look at redesigning Lift Station No. 4 to move it further to the north, reduce the scale, and to make it more suitable for the location at Jerisich Park.

Councilmember Young explained that Pierce County Council has formed an advisory board for the Flood Control District and is looking for input on filling the Peninsula seat by June 4th. He asked if any Councilmembers were interested in serving on the board. Councilmember Payne said he would think about it and get back before the fourth. Council agreed to give Mayor Hunter the authority to forward any forthcoming recommendations to the Pierce County Council.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Planning/Building Committee: Mon. Jun 4 at 5:15 p.m.
2. Parks Commission: Wed. Jun 6 at 5:30 p.m.
3. Operations Committee: Thu. Jun 14 at 3:00 p.m.

**EXECUTIVE SESSION:** For the purpose of discussing pending litigation per RCW 42.30.110(1)(i). No property acquisition discussion to occur. Mayor Hunter, City Councilmembers, City Administrator Denny Richards, and City Attorney Angela Belbeck were in attendance. It was announced that action may be taken after the session.

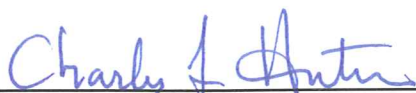
**MOTION:** Move to adjourn to Executive Session at 7:58 p.m. for approximately 20 minutes for the purpose of discussing pending litigation per RCW 42.30.110(1)(i).  
**Kadzik / Payne** – unanimously approved.

**MOTION:** Move to return to regular session at 8:15 p.m.  
**Payne / Kadzik** – unanimously approved.

**ADJOURN:**

**MOTION:** Move to adjourn at 8:15 p.m.  
**Payne / Kadzik** – unanimously approved.

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Charles L. Hunter, Mayor

  
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Molly Towslee, City Clerk