

GIG HARBOR CITY COUNCIL MEETING

JANUARY 14, 1991

AGENDA
GIG HARBOR CITY COUNCIL MEETING
January 14, 1991

PUBLIC COMMENT/DISCUSSIONS

CALL TO ORDER:

PUBLIC HEARINGS:

APPEALS:

1. Appeal of Hearing Examiner's Decision: Ellsworth\Turnbull
(Administrative Appeal 90-03)

APPROVAL OF MINUTES:

CORRESPONDENCE:

ACTION ITEMS:

OLD BUSINESS:

1. Veto of Ordinance 594 (Zoning and Mapping Designations)
2. Addendum to Contract: Incarceration
of City Prisoners - Kitsap County/
City of Gig Harbor
3. 1991 Salary Schedule Adjustment
- 3.4. Personnel - Addition of a Maintenance Worker

NEW BUSINESS:

1. Solid Waste Interlocal Agreement
2. Hearing Examiner Recommendation -- SPR 90-11/VAR 90-14
(Dan and Sharon Snuffin)
3. Appeal of Hearing Examiner's Decision:
Variance 90-07 (Western Clinic)
4. Adoption of the State Building Codes (UBC)
5. Appointment of members to the City of Gig
Harbor Building Code Advisory Board
6. City Attorney Agreement - Ogden, Murphy & Wallace
7. Request for Expansion of Sewer Service - KOA
Campground

8. Sidewalks Construction Requirements - Discussion of Policy
9. Personnel Policies
10. Lease Agreement - WIC Program *(not completed)*

DEPARTMENT MANAGERS' REPORTS:

1. Police Report
2. Public Works - Report

MAYOR'S REPORT:

COMMITTEE REPORTS:

ANNOUNCEMENT OF OTHER MEETINGS:

APPROVAL OF PAYROLL:

APPROVAL OF BILLS:

EXECUTIVE SESSION:

1. Carpenter Claim
2. Personnel Matter - Karin Ashabraner

*(Life insurance -
Dental, vision benefits)*

ADJOURN:



City of Gig Harbor. The "Maritime City."

3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: RAY GILMORE
SUBJ.: APPEAL OF HEARING EXAMINER'S DECISION
--ADMINISTRATIVE APPEAL 90-03 (ROBERT
ELLSWORTH/MIKE THORNHILL)
DATE: JANUARY 11, 1991

Attached for your consideration are pertinent documents relative to an appeal of the Hearing Examiner's decision on case AA 90-03, filed by Messrs. Ellsworth and Thornhill. The Hearing Examiner upheld city staff's assessment of civil penalties in the amount of \$2,800 and the ordered removal of a floating dock placed by the Appellants, in violation of the State Shoreline Management Act/City Shoreline Master Program, the City Zoning code and the City Building Code.

The Examiner issued a decision on the Appellants' administrative appeal on September 18, 1990. A request for reconsideration on this matter before the Examiner was denied on October 10, 1990.

Appeals of the Hearing Examiner's decision is to be based upon the record established at the Hearing Examiner meeting. Both sides in an appeal are each allowed a maximum of fifteen minutes total to present their respective case to the City Council.

Attachments

October 23, 1990

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OCT 23 1990

CITY OF GIG HARBOR

Mr. Ray Gilmore
Planning Director
City of Gig Harbor
3105 Judson Street
P.O. Box 145
Gig Harbor, WA 98335

Re: Appeal of Hearing Examiner's Decision on
Administrative Appeal No. 90-03, Robert Ellsworth
and Mike Thornhill Appellants

Dear Mr. Gilmore:

This letter is a formal appeal to the Gig Harbor City Council requesting review of the decision of the Hearing Examiner rendered on Administrative Appeal No. 90-03, Robert Ellsworth and Mike Thornhill, Appellants.

Without waiver of Appellants' rights to make other or more specific arguments on appeal, Appellants request that the City Council reverse the decision of the Hearing Examiner for the following reasons:

1. That the decision and order of the Hearing Examiner is based upon statutes, ordinances, and regulations which are unconstitutional as applied to Appellants.
2. That the decision and order of the Hearing Examiner is based upon erroneous interpretation and application of the law.
3. That the decision and order of the Hearing Examiner is not supported by evidence that is substantial when viewed in light of the whole record.
4. That the decision and order of the Hearing Examiner is arbitrary.

If you have any questions or further requirements in this regard, please call.

Sincerely,
NICK L. MARKOVICH, P.C.



Nick L. Markovich

NLM/mlf: 510.005
cc: Mr. Bob Ellsworth
Mr. Mike Thornhill

OGDEN
MURPHY
WALLACE ATTORNEYS AT LAW

Seattle Office:
2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-1686

(206) 447-7000
FAX: (206) 447-0215

RECEIVED

OCT 05 90

October 4, 1990

Mr. Ronald McConnell, Hearing Examiner
City of Gig Harbor
3105 Judson Street
P. O. Box 145
Gig Harbor, WA 98335

John D. Wallace
Douglas E. Albright
Lee Corkran
Wayne D. Fanka
Larry C. Martin
Robert G. Andre*
Michael G. Wickstead
Robert A. Kiesz
Steven A. Reisler
W. Scott Snyder
Christopher A. Washington
James E. Haney
Phillip C. Raymond

Counsel to the Firm
John J. O'Donnell

Of Counsel
James A. Murphy

Retired
Raymond D. Ogden, Jr.

R. Miller Adams
Carol D. Bernasconi
Rosemary P. Bordenway
Robert T. Dollinger
David A. Ellenhorn
Kathleen C. Healy
William F. Joyce
Deanne C. Kopkus
Kent C. Meyer
Chun Yun Peng*
Theresa A. Rozzano
Thomas W. Sexton III
Gil Sparks
Karen Sutherland
Cletus M. Weber
Karen M. Wiggum
Charles D. Zimmerman

*Admitted D.C. & Kansas Bars Only

Re: Robert Ellsworth and Mike Thornhill

Dear Mr. McConnell:

This letter is in response to the request for reconsideration made by the appellants. My response will be numbered in accordance with the letter dated October 1, 1990 from Mr. Markovich, attorney for the appellants. As a general matter, it should be noted that none of the arguments made by Mr. Markovich are new but were made at the time of the original hearing. Therefore, the City will not spend a great deal of time in responding to these old arguments.

1. Appellants argue that the Glomar Shaft is a vessel. The City conceded at the hearing that the Glomar Shaft was a documented vessel under Coast Guard Regulations. However, the fact that something is a vessel does not mean it cannot be defined in another way. In other words, a "building" may also be a "structure" or an "apartment" or any number of other specialized definitions. Thus, while the Glomar Shaft is a vessel, it is also a "structure."
2. The City's point was that the structure in question here is being used as a dock. It is true we cannot peer into the minds of Mr. Ellsworth and Thornhill directly. We can, however, draw certain conclusions from the fact that the structure is designed as a dock, looks like a dock and functions as a dock. If truly a rose by any other name is a rose, so this structure whether it be called

Mr. Ronald McConnell
October 4, 1990
Page 2

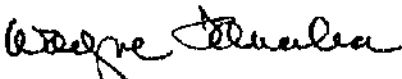
a vessel, the Glomar Shaft, a widget, still falls within the definition of a dock and should be treated and regulated as such. Direct proof of the specific intent of the owner is therefore not necessary but may be inferred from their actions.

3. The City's position is that the codes must be enforced as they stand and that if there are other situations in the City which would require similar enforcement, so be it. The fact that there may or may not be other violations does not excuse this particular violation.
4. The appellants have not shown nor can they show how they have been harmed by the Hearing Examiner's failure to render a decision within the time period specified in the code. In fact, it can be argued that the City is the only one who has been adversely impacted since the appellants have been afforded the opportunity to maintain their illegal structure for a longer period of time.

For the above reasons, the City would urge the Examiner to adhere to his original decision. We would also request that this decision on the motion be made promptly so that the City does not suffer any further detriment.

Respectfully submitted,

OGDEN MURPHY WALLACE



Wayne D. Tanaka

WDT/tw
cc: Mike Wilson
WDT02233L;0008.150.010

LAW OFFICES OF NICK L. MARKOVICH, P.C.

4227 Burnham Drive
P.O. Box 1938
Gig Harbor, Washington 98335
(206) 851-2091
Fax (206) 851-8481

RECEIVED
OCT 1, 1990
CITY OF GIG HARBOR

October 1, 1990

Mr. Ronald McConnell, Hearing Examiner
City of Gig Harbor
3105 Judson Street
P.O. box 145
Gig Harbor, WA 98335

Re: Request for Reconsideration
Administrative Appeal No. 90-03
Robert Ellsworth & Mike Thornhill, Appellants

Dear Mr. McConnell:

This letter constitutes a formal request for reconsideration of your decision dated September 18, 1990, and forwarded by the City of Gig Harbor under cover dated September 21, 1990. This request for reconsideration is made on behalf of Appellants, Robert Ellsworth and Mike Thornhill. For the purpose of clarity, the following is written in third person narrative form.

1. The Hearing Examiner concludes that the City of Gig Harbor may lawfully regulate the construction and use of docks and other structures on the shorelines of the City. Appellants do not contest this conclusion. However, the terms "structure" and "dock" are defined under the provisions of the zoning code, and those definitions are clearly inapplicable in this case. Appellant's vessel, Glomar Shaft, is a vessel of registered length, breadth and tonnage pursuant to Coast Guard regulations. The City's zoning code does not define a "vessel", and consequently, common definitions of the term are applicable. The vessel is not permanently fixed to the shoreline, is mobile, and capable of navigation. Under all common definitions of the term, the Glomar Shaft is a vessel.

2. The City attempts to regulate this vessel under inapplicable provisions of the code by arguing that the configuration of the vessel and the intent of the Appellants in its use brings it within the definition of a dock. The City's logic fails in this attempt.

The fact that the vessel is configured differently than other vessels, or that its configuration facilitates boarding and de-boarding, does not make it any less a vessel. There are many

other large vessels moored in Gig Harbor Bay of varying configurations, and to which other craft are rafted. Under the logic applied by the City in this case, those other vessels are also docks or structures. It is obvious that such logic leads to an absurd result.


The City argues, and the Hearing Examiner concludes, that the intent of Appellants in using the vessel is controlling in this case. This logic also fails. Intent is not an element in application of the zoning codes. The definitions contained in the codes must be read in an objective sense, so as to provide predictability and notice to all who would follow the code. To include specific intent as an element in enforcement of code provisions necessitates that enforcement is subjective and arbitrary. In any event, there is no evidence in the record as to the specific intent of the parties, and any conclusion regarding intent can be derived only through speculation. The fact that Appellants have applied to extend their dock through the Site Plan Approval Process infers nothing more than Appellants desire to improve their moorage facilities in compliance with applicable code provisions.

3. There is no question that the zoning codes of the City of Gig Harbor do not deal with regulation of the rafting of vessels at approved moorage facilities. The City's position in this case is to attempt to regulate the rafting of vessels by applying subjective criteria not otherwise authorized in the Gig Harbor code provisions. To allow enforcement under such circumstances will set a serious precedent, subjecting all waterfront property owners to the arbitrary imposition of fines, penalties and injunction.

4. Appellants further argue that this matter should be dismissed as a result of the failure of the Hearing Examiner to render a decision on the administrative appeal within the time periods required under section 17.10.140 of the zoning code of the City of Gig Harbor.

Appellants request that the Hearing Examiner reconsider his decision in this case, and that the charges brought by the City of Gig Harbor attempting to impose administrative fines and penalties, and to enjoin lawful moorage of Respondents' vessels, be dismissed with prejudice.

Respectfully submitted,
NICK L. MARKOVICH, P.C.



Nick L. Markovich
Attorney for Appellants

NLM/mlf: 510.003
cc: Mr. Robert Ellsworth
Mr. Mike Thornhill
Mr. Wayne Tanaka

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CITY OF GIG HARBOR
HEARING EXAMINER RESPONSE TO
REQUEST FOR RECONSIDERATION ON ADMINISTRATIVE
APPEAL NO. 90-03, ROBERT ELLSWORTH AND MIKE THORNHILL, APPELLANTS

I. FINDINGS:

A. Nick Markovich, attorney for the appellants, has requested reconsideration of my September 18, 1990 decision on Administrative Appeal No. 90-03.

B. The Markovich letter (Reconsideration Exhibit A) raises four points upon which Mr. Markovich argues the Examiner should reconsider his decision or dismiss the matter.

C. Wayne Tanaka, attorney for the City, submitted a response to Mr. Markovich's letter (Reconsideration Exhibit B). In his letter, Mr. Tanaka indicates that he believes no new arguments were made by Mr. Markovich. He also indicates that with respect to timing of the decision it was the City, not the appellant who was adversely impacted.

II. CONCLUSIONS:


A. No new information was provided in the request for reconsideration. The arguments presented in paragraphs numbered 1 through 3 in Reconsideration Exhibit A. are restatements of Mr. Markovich's arguments.

B. Mr. Tanaka's responses in Reconsideration Exhibit B accurately reflect the conclusions of the Examiner in this matter.

III. DECISION:

After reconsideration based upon the reconsideration exhibits and the foregoing findings of fact and conclusions, the decision dated September 18, 1990 on Administrative Appeal 90-03 remains unchanged.

Dated this 10th day of October 1990.


Ron McConnell
Hearing Examiner

APPEAL OF EXAMINER'S DECISION:

Any party who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Gig Harbor Planning Director within fourteen (14) days from the date the final decision of the Examiner is rendered, requesting a review of such decision.

Such appeal shall be upon the record, established and made at the hearing held by the Examiner. Whenever a decision of the Examiner is reviewed by the City Council pursuant to this section, other parties of record may submit written memoranda in support of their position. In addition, the Council shall allow each side no more than fifteen minutes of oral presentation. However, no new evidence or testimony shall be presented to the council during such oral presentation. The City Council shall accept, modify or reject any findings or conclusions, or remand the decisions of the Examiner for conclusions, or remand the decisions of the Examiner for further hearing; provided that any decision of the City Council shall be based on the record of the hearing conducted by the Examiner; however, the Council may publicly request additional information of the appellant and the Examiner at its discretion.

Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a review shall be held by the City Council. Such review shall be held in accordance with appeal procedures adopted by the City Council by resolution. If the Examiner has recommended approval of the proposal, such recommendation shall be considered by the City Council at the same time as the consideration of the appeal.

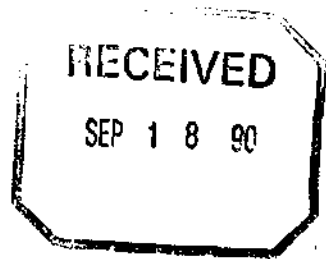
Further action by the Examiner shall be within thirty (30) days of the reconsideration request.

RECONSIDERATION EXHIBITS:

- A. Letter from Nick L. Markovich, dated October 1, 1990.
- B. Letter from Wayne Tanaka, dated October 4, 1990.

PARTIES OF RECORD:

- Robert Ellsworth and Mike Thornhill
5720 144th Ave. N.W.
Gig Harbor, WA 98335
- Nick L. Markovich
4227 Burnham Dr.
Gig Harbor, WA 98335
- Wayne Tanaka
Ogden Murphy Wallace
2100 Westlake Center Tower
1601 5th Ave.
Seattle, WA 98101-1686
- Robert Puratich
P.O. Box 1223
Gig Harbor, WA 98335
- Jake Bujacich
3607 Ross St.
Gig Harbor, WA 98335



CITY OF GIG HARBOR
HEARING EXAMINER DECISION

ON THE

ROBERT ELLSWORTH/MIKE THORNHILL APPEAL

OF CIVIL PENALTY,

ADMINISTRATIVE APPEAL 90-03

APPELLANTS: Robert Ellsworth and Mike Thornhill

BACKGROUND:

1. This appeal was filed in response to the City's assessment of civil penalties issued to the appellants, Robert Ellsworth and Mike Thornhill. The City assessed civil penalties on the amount of \$2,800 for the installation of a moorage float at the Stanich Dock at the end of Dorotich Street.
2. The appellants contend that the structure is not a floating dock, but is a documented vessel. Therefore, the appellants contend that the City's zoning, building and shoreline management codes are not applicable.
3. The issues to be determined by the Hearing Examiner are:
 - a. whether the City's codes do apply, and
 - b. whether the monetary penalties assessed by the City (\$50 per day for violation of the City zoning code and building code and a civil penalty of \$1,000 for violation of the Shoreline Management Act, for a total of \$2,800) are valid.

PUBLIC HEARING:

After reviewing the official file which included the Planning Staff Advisory Report, the Hearing Examiner conducted a public hearing on the application. The hearing on the Ellsworth/Thornhill appeal was opened at 5:00 p.m., July 18, 1990, in City Hall, Gig Harbor, Washington, and closed at 5:45 p.m. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Planning Department.

FINDINGS CONCLUSIONS AND DECISION:

I. FINDINGS:

- A. The appellants were contacted by the City of Gig Harbor Planning Director on March 28, 1990 that the installation of the subject moorage float had not been authorized by the City and was a violation of the City's zoning code, building code and shoreline master program.

On March 28, 1990, the appellants were directed to remove the float by no later than April 10, 1990 (Exhibit C).

One of the appellants responded to the City's directive by stating the float was a documented vessel (Exhibit J).

City staff reinspected the moorage float on April 12, 1990 and following that inspection issued a second notice of violation (Exhibit D).

The appellants responded to the City's second notice on April 30, 1990. They indicated again that the barge was a documented U.S. vessel and that it has been issued a number by the U.S. Coast Guard. They also indicated that once they have met the parking requirements for expansion of their dock facility they would remove the barge moored at their dock and proceed with their expansion plans (Exhibit I).

On May 3, 1990 the City staff again reinspected the moorage facility and issued an official notice of violation and civil penalty order (Exhibit E).

On May 17, 1990 the appellants appealed the City's notice of violation stating they were confident the City has absolutely no jurisdiction over vessel type or use (Exhibit F).

- B. At the public hearing, the appellants' attorney argued that the subject float was a documented vessel and submitted Exhibits N and O to support his claim. He argued that no violation of the Uniform Building Code occurred because the Uniform Building Code does not apply to a vessel. He also argued that the zoning code does not define vessel, float or moorage float although it does define dock. He said that the subject barge is not a dock, but rather is a vessel and therefore parking can't be required under the zoning code. He also argued that development of the shoreline occurred, therefore, no Shoreline Substantial Development Permit is required. He said the City could regulate vessels, but has not legally done it yet. He said the City would have to regulate through an ordinance adopted as part of a public process and that has not occurred.

He argued that the burden of proof is on the City to show that a violation has occurred and the City can't do that. Therefore, the case should be dismissed.

- C. The City Attorney responded by stating that he didn't dispute that the barge is a documented vessel. He said that just means certain things can be done in accordance with Coast Guard regulations. He said it does not mean anything in this case.

He argued that the use made of the barge is the issue. In this case, he said the barge is used as a moorage facility. Moorage is a place to tie up a boat or a vessel and the City can and does regulate moorage. He argued that the codes cited by the City staff had been violated because of how the barge is used.

- D. The appellants' attorney argued that the use of this facility is not regulated anymore than the City can regulate the use of a sailboat or a 16-foot runabout. He said a 16-foot runabout could also be used to raft to and could be therefore viewed as moorage. He said the City must have a formal method of enforcement of the zoning code. He concluded by saying this is not a project or a development as defined by the Shoreline Management Act and there is no showing that it is a substantial development.
- E. City staff entered seven photographs of the subject barge into the record at the hearing (Exhibit M). Staff also submitted a written report to the Hearing Examiner on this case (Exhibit A). The staff report summarized the action prior to the hearing; reviewed the codes which were alleged to be violated; indicated that the appellants have a Shoreline Substantial Development Permit application pending which has been tabled until off-street parking can be provided; and recommended that the full penalty of \$2,800 be assessed and recommended that the float be removed no later than 30 days from the date of this Examiner's decision on the appeal.
- F. Two letters were received from neighboring property owners on this matter (Exhibits K and L). Both letters expressed concern about allowing the barge which in turn would accommodate new moorage before additional parking is secured.
- G. The terms "floating dock", "moorage float", "documented vessel" and "barge" were all used by the various parties in this case to refer to the same thing. The term "barge" will be used by the Examiner in the remainder of this report.

II. CONCLUSIONS:

- A. The City of Gig Harbor Code provisions which deal with shoreline protection and regulate the construction and use of docks and other structures on the shoreline are a lawful exercise of the City.
- B. The timing of the installation of the barge after the appellant's dock application was tabled due to lack of parking, and the use to which it was put establish that the appellants' intent was that the barge be used in a manner consistent with what a dock would be used for.

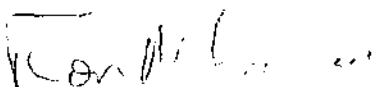
The photos which were entered into the record (Exhibit M) clearly show that the subject barge is being utilized in a manner akin to a dock. It was tied up in a manner in which boats could be moored alongside and people could step directly onto it.

- C. Under the City of Gig Harbor zoning code, parking must be provided for moorage facilities. It is clear that the intent in this case is to use the barge for moorage, however, parking was not provided. The fact that the barge is a documented vessel is irrelevant in this case because the barge is clearly intended to be used for moorage and not as a vessel. The barge is a waterfront structure, and a dock under the facts in this specific case and is not permitted unless all relevant sections of the City codes are met.
- D. The appellants should be enjoined from using any barge or structure attached to their property as a dock, or waterfront structure without a valid permit.
- E. The monetary penalties assessed by the City are reasonable and should be assessed. In addition, the subject barge should be removed within thirty (30) days from the date of this decision.
- F. Nothing in this report should be interpreted to enjoin the appellants from providing moorage facilities in a legal manner.
- G. The Examiner believes there is a similarity between this case and a shoreline case on Mercer Island. The Mercer Island case, Mercer Island vs Hoschek, was heard in King County Superior Court (No. 88-2-00269-0) and the decision was issued on March 12, 1990. In that case the judge determined that a pontoon boat was being used as a dock and required that it be removed.

III. DECISION:

Based upon the foregoing findings of fact and conclusions, the appeal filed by Robert Ellsworth and Mike Thornhill is hereby DENIED. The City codes do apply and monetary penalties assessed by the City of Gig Harbor (\$50 per day for violation of the City zoning code and building code and a civil penalty for violation of the Shoreline Management Act, for a total of \$2,800) shall continue to be assessed. In addition, the subject barge shall be removed from the Stanich Dock no more than thirty (30) days from the date of this decision.

Dated this 18th day of September, 1990



Ron McConnell
Hearing Examiner

RECONSIDERATION:

Any aggrieved person feeling that the decision of the Examiner is based on erroneous procedures, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing, may make a written request for reconsideration by the Examiner within ten (10) days of the date the decision is rendered. This request shall set forth the specific errors or new information relied upon by such appellant, and the Examiner may, after review of the record, take further action as he or she deems proper.

APPEAL OF EXAMINER'S DECISION:

Any party who feels aggrieved by the Examiner's decision may submit an appeal in writing to the Gig Harbor Planning Director within fourteen (14) days from the date the final decision of the Examiner is rendered, requesting a review of such decision.

Such appeal shall be upon the record, established and made at the hearing held by the Examiner. Whenever a decision of the Examiner is reviewed by the City Council pursuant to this section, other parties of record may submit written memoranda in support of their position. In addition, the Council shall allow each side no more than fifteen minutes of oral presentation. However, no new evidence or testimony shall be presented to the Council during such oral presentation. The City Council shall accept, modify or reject any findings or conclusions, or remand the decisions of the Examiner for conclusions, or remand the decisions of the Examiner for further hearing; provided that any decision of the City Council shall be based on the record of the hearing conducted by the Examiner; however, the Council may publicly request additional information of the appellant and the Examiner at its discretion.

Upon such written appeal being filed within the time period allotted and upon payment of fees as required, a review shall be held by the City Council. Such review shall be held in accordance with appeal procedures adopted by the City Council by resolution. If the Examiner has recommended approval of the proposal, such recommendation shall be considered by the City Council at the same time as the consideration of the appeal.

Further action by the Examiner shall be within thirty (30) days of the reconsideration request.

PARTIES OF RECORD:

- Robert Ellsworth and Mike Thornhill
5720 - 144th Ave. N.W.
Gig Harbor, WA 98335
- Nick L. Markovich
4227 Burnham Drive
P.O. Box 1938
Gig Harbor, WA 98335
- Wayne Tanaka
Ogden Murphy Wallace
2100 Westlake Center Tower
1601 Fifth Avenue
Seattle, WA 98101-1686
- Robert Puratich
P.O. Box 1223
Gig Harbor, WA 98335
- Jake Bujacich
3607 Ross St.
Gig Harbor, WA 98335

MINUTES OF THE JULY 18, 1990
HEARING ON THE
ELLSWORTH/THORNHILL APPEAL

Ronald L. McConnell was the Hearing Examiner for this matter. Participating in the hearing were: Ray Gilmore and Wayne Tanaka, representing the City of Gig Harbor; and Nick Markovich, representing the appellants.

The following exhibits were offered and entered into the record:

- A. Planning Staff's Advisory Report.
- B. Letter from Nick Markovich, dated June 19, 1990.
- C. Letter from Ray Gilmore, dated March 28, 1990.
- D. Pre-Civil Penalty Notice, dated April 13, 1990.
- E. Notice of Violation, Civil Penalty Order, dated May 3, 1990.
- F. Letter from Bob Ellsworth and Mike Thornhill, dated May 17, 1990.
- G. Letter to Bob Ellsworth from Ray Gilmore, dated May 23, 1990.
- H. Letter to Judith Bendor from Ray Gilmore, dated May 23, 1990.
- I. Letter from Bob Ellsworth and Mike Thornhill, dated April 30, 1990.
- J. Letter from Robert Ellsworth, dated March 29, 1990.
- K. Letter from Robert Puratic, dated April 3, 1990.
- L. Letter from Jake Bujacich, received July 17, 1990.
- M. Seven photos submitted by City staff.
- N. Letter from Joseph T. Lewis, dated June 6, 1990.
- O. Tonnage Certificate, dated June 5, 1990.

REGULAR GIG HARBOR CITY COUNCIL MEETING OF DECEMBER 10, 1990

PRESENT: Mayor Wilbert, Councilmembers English, Frisbie, Perrow. Councilmember Davis arrived late. Councilmember Hoppen absent.

CALL TO ORDER: 7:08 p.m.

PUBLIC COMMENT/DISCUSSION:
No citizens addressed the council.

PUBLIC HEARINGS:

1. Recommendation on Zoning Map and Zoning code Amendments. Ray Gilmore, Planning Director, gave an overview of the supplemental information provided the council by staff. The public hearing was opened. Jack Bujacich addressed the height increase to 28 feet and downzoning the area with the WRM district. (Sammie Davis arrived during discussion.) Sandy Anderson commended Councilmember Frisbie for working with all the people involved in the neighborhood and considering scale, historical effects and protecting the existing residential uses. (Dick Allen addressed removing the current uses from the current "Waterfront" zone.) John Kerr addressed height requirements. Paul Kadzik spoke in favor of the compromise solution presented by Councilmember Frisbie. Bob Ellsworth spoke in favor of maintaining the current "Waterfront" zone. Tomi Smith addressed the compromise proposal. John Knox addressed zoning of his property on Soundview to R-3 to allow for maintenance of trees rather than the R-2 which is proposed. Jim Richardson spoke to the idea of remaining flexible as the actual uses of properties are proposed. Public hearing was closed at 7:44 p.m.

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MOTION: To adopt "Waterfront Millville", as revised, and amend #26 on the map to reflect the revised WM district.
Frisbie/English

AMENDMENT TO MOTION: To add the wording "to preserve historic character, uses and architecture and be sensitive to nearby uses.
English/. Motion died for lack of a second.

AMENDMENT TO MOTION: To return the 28 foot height alternative to the Planning Commission to be returned at the Feb. 8 meeting. English. Motion died for lack of a second.

MOTION: To amend #5 to B-2, #6 to B-2, #7 to B-2 North of Neel Court and RB-2 South of Neel Court and the property that is developed as Telephone Utilities Office Building. Perrow/Davis. Approved by a vote of 3-1 with English voting against

MOTION: To amend the wedge on the easterly side of #5 to be designated as R-2. Frisbie/Davis. Approved by a vote of 4 - 0.

MOTION: To amend #10 to maintain the current zoning as R-1. Frisbie/English. Approved by a vote of 3 - 1, with Davis voting against.

MOTION: To amend #12 to retain the Northwest parcel zoning designation at R-2 versus moving it to R-3. Frisbie/English. Approved by a vote of 4 - 0.

MOTION: To amend #15 to maintain zoning as RB-1. Frisbie/English. Approved by a vote of 2 - 2 with Frisbie and English in favor of the motion and Davis and Perrow against. Mayor voted in favor of the motion.

MOTION: To amend #19 to reflect the area North of No. Harborview, between Burnham and Finholm's Grocery as R-1. Frisbie/English. Approved by a vote of 4-0.

MOTION: To amend #20 to maintain zoning as RB-1. Frisbie/Davis. Approved by a vote of 3 - 0, with Perrow abstaining from voting.

MOTION: To amend #21, where the Eagles Hall is located to B-2. Davis/Frisbie. Approved by a vote of 2 - 1,

with English voting against and Perrow abstaining from voting.

MOTION: To amend #25 to maintain zoning as R-1 and referral to Planning Commission to investigate how to address non-conforming use when requesting a change in out-ward appearance of structure for recommendation to council.
Frisbie/Davis. Approved by a vote of 3 - 1 with Perrow voting against.

MOTION: To add a designation for the property behind the Gateway, to the rear lot property line of the lots West of Hill Avenue, to be zoned R-1.
Frisbie/ Motion withdrawn.

MOTION: To add a designation to the area North of Grandview and East of Stinson (Ancich property) to be zoned RB-1.
Frisbie/Davis. Approved by a vote of 4 - 0.

MOTION: To include the term "dense" within the Sections 17.32.060, 17.32.070 and 17.32.050.
Frisbie/Davis. Approved with a vote of 4-0.

MOTION: To adopt Ordinance No. 594, as amended.
Davis/English. Approved by a vote of 4 - 0.

MINUTES:

MOTION: To accept the minutes of the November 26, 1990 council meeting as presented.
Frisbie/Davis. Approved with a vote of 4 - 0.

CORRESPONDENCE:

1. Picture of USS California, presented to the city.

OLD BUSINESS:

1. Hearing Examiner report and recommendation on Rosewood Business Park - 2nd reading.

Mr. Gilmore reviewed the application for rezone and

site plan and the hearing examiner's recommended conditions for approval and presented the architectural rendition of the project.

MOTION: To accept the Hearing Examiner recommendation in Resolution #298.
Davis/English. Approved by a vote of 4 - 0.

MOTION: To deny RZ89-01 which was filed on 5/24/89.
Frisbie/Davis. Approved by a vote of 4 - 0.

2. 1990 Budget Emergency Ordinance - 2nd Reading. Mike Wilson, City Administrator, explained the addition of \$4,000 in the Police Department budget. The Mayor opened the hearing to the public and called for comments. There were no comments, the hearing was closed.

MOTION: To adopt Ordinance No. 595 approving the Budget Emergency.
Frisbie/Davis. Approved 4 - 0.

3. 1991 Property Tax Levy Ordinance - 2nd Reading. Mr. Wilson addressed the changes in the property tax values which have changed the amount of tax revenues available through the levy.

MOTION: To adopt Ordinance No. 596 and set the property tax levies for 1991.
Davis/English.

AMENDMENT TO MOTION: To add an additional .10/1000 to the excess property tax levy on 1987 sewer bond redemption general obligation.
Frisbie/English. Approved by a vote of 3 - 1, with Davis voting against.

4. Public Works Budget and Project Discussion. Mr. Wilson addressed the problem of a shortfall in funds caused by removal of \$53,000 from the public works budgets due to the City Council's elimination of the two maintenance workers from the city budget. Ben Yazici, Public Works Director, explained the projects that were to be included in the 1991 maintenance plan and the costs of contracting out projects.

Approved of [unclear] [unclear] it is before the [unclear]

MOTION: To reinstate \$53,000 in the Public Works departments in order to provide funds for contract work.
Frisbie/Perrow. Approved by a vote of 4-0.

5. 1991 City Budget - Salary Schedule.

MOTION: To pull the salary schedule from the table.
Davis/English.

AMENDMENT TO MOTION: To increase the ranges of the positions listed on the salary schedule from City Administrator to and including Administrative Assistant, the Maintenance Worker and Laborer by 5%, to set the ranges for the Planning Assistant and Engineering Technician at the same level as the Administrative Assistant, to set the ranges for the positions of Court Clerk to and including Utility Clerk at a maximum of \$1,920, and to set the positions of Office Clerk to and including Police/Court Assistant Clerk to a maximum of 1,750.
Frisbie/English.

AMENDMENT TO MOTION: To increase the ranges of the positions listed on the salary schedule from City Administrator to and including Administrative Assistant by 6%.
Davis/Frisbie. Approved by a vote of 2 - 2 with Davis and English voting for the motion and Frisbie and Perrow voting against. Mayor voted against the motion.

Approved the amended motion by a vote of 3 - 1 with English voting against.

6. 1991 Police Guild Agreement and Salary Adjustment. Mr. Wilson explained the changes to the agreement.

MOTION: To approve the agreement with changes to the salary schedules as previously approved.
Davis/English. Approved by a vote of 4 - 0.

7. Name For City Park. Mr. Wilson addressed the proposed list of names suggested.

MOTION: To approve the name "City Park" for the park on Vernhardson Street.
Perrow/English. Approved by a vote of 4 - 0.

8. DOT-State Participating Agreement. Mr. Yazici explained the need for this agreement.

MOTION: To approve agreement and to authorize the Mayor to sign the agreement.
Frisbie/Davis. Approved by a vote of 4 - 0.

9. Liquor License - Firefighter's Association. No action was taken.

NEW BUSINESS:

1. Request for Consideration to Annex (10% Petition) - David Frick, Reid Road/Rushmore. Mr. Gilmore explained the petition.

MOTION: To accept the 10% Annexation petition.
Perrow/Davis. Approved by a vote of 4 - 0.

2. Hearing Examiner report and recommendation on Seaview Estates Preliminary Plat. Mr. Gilmore spoke of the Hearing Examiner's recommendation.

MOTION: To adopt Resolution No. 299 accepting the Hearing Examiner's recommendations with the conditions that were included.
English/Davis. Approved with a vote of 4 - 0

3. 1991 Software Support and Service Agreement with EDEN Systems.

MOTION: To approve the agreement and to authorize the Mayor to sign said agreement.
Frisbie/Davis. Approved by a vote of 4 - 0.

DEPARTMENT MANAGERS' REPORTS:

1. Police Department. Monthly Statistics.

APPROVAL OF BILLS:

MOTION: To approve warrants #6515 through #6603 in the amount of \$95,981.83.

EXECUTIVE SESSION:

MOTION: To move to executive session to discuss the negotiations for the Ancich Property.
Frisbie/Davis. Approved by a vote of 4 - 0.

ADJOURN:

MOTION: To adjourn made at 11:27 p.m.
Frisbie/Davis. Approved by a vote of 4 - 0.



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3105 JUDSON STREET • P.O. BOX 145
GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: COUNCILMEMBERS
FROM: MAYOR GRETCHEN WILBERT *GW*
RE: PLANNING COMMISSION MEETING OF JANUARY 8, 1991
DATE: JANUARY 11, 1991

On Tuesday, January 8, at 7:00 PM, the Planning Commission convened at my request to review the issues surrounding the Waterfront Millville zone. Six commissioners were in attendance. Commissioner Gary Kuzinski was absent.

Former Mayor, Jake Bujacich, and Mr. Nick Tarabochia, Sr. joined with the commissioners in a very enlightening discussion. I'm pleased to report that during the 1 hour and 40 minute meeting, differences were reconciled through the discussions as discovery of a common goal emerged. Many misconceptions and misunderstandings were put to rest. A conclusion was reached for the group to work together to bring about a WM zone that incorporates the best of WM, WRM, and the present W-1.

The Planning Commission has scheduled two work sessions to accomplish the task. Mr. Bujacich has indicated his willingness to work with the Planning Commission at the first meeting Tuesday, January 15. He will be out of town for the second meeting scheduled for Tuesday, January ~~22~~²¹. Both meetings will be held at 7:00 PM in the conference room at city hall. All meetings are open to the public.

ACTION REQUESTED:

To Sustain the Mayor's Veto of Ordinance 594.

I hereby respectfully request council to sustain my veto of the zoning and mapping ordinance, for the following reasons:

1. To allow due process review of the proposed W-M zone. First reading before council: February ~~22~~²¹; second reading and public hearing: February ~~21~~²⁵;
2. To provide public review of the map with zoning designations as approved by council.

Councilmembers
Planning Commission Meeting of January 8, 1991
Page 2
January 11, 1991

Staff indicates there is no reason to rush through the process at this time. I feel this issue is so important and we have all put in so many years to come to this point, it would be too bad to drop the ball before we reach our goal.

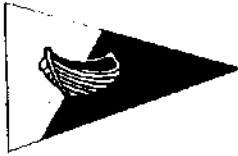
I realize also that the above plan opens up the entire zoning ordinance and map for review. Chair will encourage comments to be limited to new testimony. You can anticipate the Rosedale/SR16 area and the proposed map designations in that area to generate further discussion for your consideration. No other areas of concern have come to my attention.

It's thrilling to see democracy at work. I commend the efforts of the Planning Commission and Councilman Frisbie for their dedication to good participatory government.

Keeping in mind all that has transpired these past weeks, I urge you to sustain my veto at this time. Following due process, I will join with you in encouraging an enthusiastic passage of the proposed changes in our zoning-mapping ordinance.

My thanks to you all.

cc: Planning Commission
Ray Gilmore, Planning Director
Jake Bujacich



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GIG HARBOR, WASHINGTON 98335

(206) 851-8136

TO : CITY COUNCIL MEMBERS
PLANNING COMMISSIONERS
MICHAEL R. WILSON, CITY ADMINISTRATOR
RAY GILMORE, PLANNING DIRECTOR

FROM: MAYOR GRETCHEN WILBERT

RE : ORDINANCE 594, ZONING CHANGES AND MAPPING
DESIGNATIONS

DATE: DECEMBER 20, 1990

Late Tuesday afternoon, December 18, a copy of the zoning changes along with the new waterfront Millville text created by Councilman Frisbie and approved by a 3-1 vote by Council was placed on my desk for review and a signature. A decision had to be made by Thursday, December 20. As I read through the text, I wondered if what I was reading was what you had passed on December 10. This 48-hour window (along with deteriorating weather conditions) did not afford enough time for me to get this very important document to you for review.

It is important to me that Council members have an opportunity to review the ordinance language on the printed page before it becomes law. I want to make sure that what actually is printed is what was intended by Council.

Under the circumstances, I could see no alternative but to veto the ordinance at this time.

As I was deliberating my decision, other factors seemed to lend credence to a veto decision:

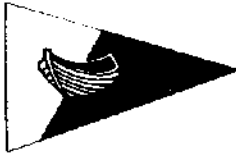
1. The newly created WM was not served by due process before the Planning Commission as were all other zones.
2. Substantive changes were made in moving from WRM to WM.
3. Printed copies of the proposed WM were not available to the general public before being adopted by Council.

4. The ordinance as printed had not been reviewed by legal counsel.

5. The "making of the map" was moving ahead but had not been printed for review.

Considering all of the above, it became clear I had no alternative but to veto the ordinance.

My plans for reviewing and adopting the zoning and mapping ordinance will follow in a separate memo.



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TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MICHAEL R. WILSON, CITY ADMINISTRATOR
RE: KITSAP COUNTY JAIL CONTRACT
DATE: JANUARY 10, 1991

You will find attached a copy of a new contract with Kitsap County for the incarceration of persons confined in their jail facilities by the City of Gig Harbor. We primarily use Kitsap County on short-term incarcerations.

This agreement reflects a 5% increase in the daily incarceration fee for Kitsap County's services in 1991. The fee has gone from \$40 per inmate day to \$42 per day. Despite the fact that this daily rate is higher than Pierce County's rate, unlike Pierce County, Kitsap County does not charge a booking fee.

Attachment

Booking fee - \$56 - } Pierce County
Daily fee - \$32 - }

KITSAP COUNTY/CITY OF GIG HARBOR

ADDENDUM TO CONTRACT FOR

INCARCERATION OF CITY PRISONERS

WHEREAS, KITSAP COUNTY, a municipal corporation organized under the laws of the State of Washington (hereinafter referred to as County) and the CITY OF GIG HARBOR (hereinafter referred to as City), have entered into a contract on April 17, 1989 for the services provided under the contract; and

WHEREAS, the COUNTY and CITY desire to enter into an addendum reflecting the intentions of both parties; now, therefore,

IN CONSIDERATION of the mutual covenants contained herein, it is hereby agreed as follows:

Section 3 is amended as follows:

Section 3. Payment: For those persons delivered to County by City pursuant to Section 1, City shall pay County forty-two dollars (\$42.00) per person confined for each twenty-four (24) hour period of confinement or portions, thereof.

Section 13 is amended as follows:

Section 13. Term of Contract: The terms of this contract shall be for one (1) year, beginning on January 1, 1991 and ending on December 31, 1991, unless sooner terminated by the parties set forth in Section 14.

DATED this _____ day of _____, 1990.

CITY OF GIG HARBOR

MAYOR

DATED this _____ day of _____, 1990.

KITSAP COUNTY SHERIFF'S OFFICE

PAT L. JONES, Sheriff

DATED this _____ day of _____, 1990.

BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON

CHAIRMAN

COMMISSIONER

COMMISSIONER

ATTESTED:

CLERK OF THE BOARD



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GIG HARBOR, WASHINGTON 98335
(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MICHAEL R. WILSON, CITY ADMINISTRATOR
SUBJECT: 1991 SALARY SCHEDULE
DATE: DECEMBER 11, 1990

It would be an understatement to say I was disappointed in the decision of the city council to not adopt the salary survey for the city employees. If I wasn't disappointed I wouldn't be performing my job by providing the support I should be for the city staff.

We currently have a talented, capable, and dedicated crew assembled for the city. I will continue to work in keeping our city from turning into a training ground for public employees and settling for just "mediocre" employees. Providing competitive wages is one of the most important aspects of attracting and retaining quality employees, but now with the changes to the 1991 salary ranges some of these positions will no longer be competitive in terms of being able to attract quality candidates for vacancies that may occur (particularly the finance officer and building official positions). For example, although the salary range for the public works director position has been relatively competitive, when we sought candidates to fill Tom's vacancy, there had only one real "quality" candidate that we interviewed for the position (Ben). We had three other quality engineers who had applied (among other candidates who met the minimum qualifications), but they later withdrew from contention, primarily because they were making more money with their present employers. If Ben had not applied or accepted the position, I would have readvertised for the vacancy. I am certain that should we lose some of these people in these positions, we will need to raise the salary ranges to attract quality candidates.

We will accept the changes the city council imposed on the employee's salaries and continue to do the best job possible in serving the city. There are, however, four positions significantly affected by your decisions on the salary range Monday evening for which I ask your reconsideration. Those positions include the court clerk, engineering technician, finance officer, and building official.

Relative to the court clerk, the salary range was increased by only 3.5% when you grouped that position in with the other clerk positions. This amounts to 1.5% less than the 5% cost-of-living which was the minimum the other positions

Mayor Wilbert and City Council
Page two

received. Since this salary adjustment does not even keep pace with the cost-of-living, the newly-imposed salary range is not only inequitable, but actually amounts to a salary decrease. This position has traditionally been paid at 5% above the other clerks' positions due to the special skill and training needed to perform the responsibilities of the position. This difference in the salary range (5% above the other clerk positions) is supported by the "complete" salary survey. Unlike the other clerk positions, the court clerk operates a department (as a para-professional) relatively independent of direct supervision and also develops the department's budget. I would, therefore, like you to reconsider your decision and change the top of the court clerk's salary range from \$1,920 to \$2,020.

With respect to the engineering technician position, we simply will not be able to attract qualified candidates (including possible in-house candidates) with any degree of experience at a salary level which is only slightly above 4%, what we pay a "laborer" position, and 16% below a "maintenance worker" position. I am recommending you change the top of the range to the proposed amount of \$2,440.

The other two positions profoundly affected by the 1991 salary schedule are the two professional positions whose salary ranges were frozen two years ago: finance officer and building official. With the 5% cost-of-living adjustment and no correction in those salary ranges, the finance officer will remain 13% below the market and the building official will remain 9% below the market. Three "comparable" cities have recently advertised for finance officers (see attached job announcements from Poulsbo, Enumclaw and Fircrest). We do not even come close to competing with these cities on the basis of salary (our finance officer position is 25% below the average of these three cities). Please reconsider these two positions 1991 salary ranges by raising the top of the finance officer position by at least 10% to \$3,360 and building official by at least 5% to \$2,900.

Thank you for your attention to this matter.



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GIG HARBOR, WASHINGTON 98335

(206) 831-3136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MICHAEL R. WILSON, CITY ADMINISTRATOR
RE: STAFF INCREASE - MAINTENANCE WORKER
DATE: JANUARY 11, 1991

At the last city council meeting, we discussed the impact to the public works operation as a result of the deletion of the two requested maintenance workers from the 1991 budget. The discussion with the City Council concluded with the matter being referred to the Public Works Committee for further examination.

On December 24, the Public Works Committee met to determine the benefits and need for retaining one of these new maintenance worker positions in the 1991 budget. Ben demonstrated that there is a minimum 32 hours of "non-contract" work within the public works operations (principally in the sewer/utility area), to just keep up with normal maintenance of our infrastructure (see attached). Since the discussion, we have now received confirmation of the completion of two annexations totalling in excess of 75 acres [REDACTED] (increase in size of the city), placing more workload in the public works operation.

This additional position is a high priority and is recommended for your approval.

Attachment



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TO: MAYOR WILBERT AND CITY COUNCIL
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This additional position is a high priority and is recommended for your approval.

Attachment

MAINTENANCE WORKER

Under the supervision and control of the Public Works Supervisor and within the framework of local laws and policies established by the city council, the incumbent will accomplish the following specific tasks and other tasks as required.

<u>TASKS</u>	<u>HOURS\WEEK</u>
1) Water valving program	4 hours
2) Maintenance of sewer lift stations; and,	16 hours
3) Site utility inspection	<u>12 hours</u>
TOTAL	38 hours

In addition, the incumbent is expected to engage in a wide variety of tasks such as maintenance and repair of watermains and services; sewer mains and services; cleaning roadside ditches, culverts and catch basins, repairing streets and sidewalks, and to fill in as a laborer when required.



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GIG HARBOR, WASHINGTON 98335

(206) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: BEN YAZICI, PUBLIC WORKS DIRECTOR
RE: TACOMA-PIERCE COUNTY SOLID WASTE MANAGEMENT
PLAN - INTERLOCAL AGREEMENT
DATE: JANUARY 11, 1991

In June of 1990, the city council passed a resolution to adopt the Tacoma-Pierce County Solid Waste Management Plan. Since then, the county has amended the plan's draft waste reduction and recycling chapters. The attached resolution primarily establishes and coordinates the county/city review process for the amended plan.

The plan amendments include a complete rewrite of the waste reduction and recycling chapters, to bring them into conformance with legislation which amended solid waste planning requirements for waste reduction recycling programs. Ms. Shelly Sharrad, Senior Planner, from Pierce County will be present at the council meeting to review the amendments with you and/or answer any questions you might have with regard to development and implementation of the plan.

As outlined in Exhibit A, the adoption of the resolution would obligate the city to hold a public meeting and a public hearing between now and March 1, 1991 to review the plan and forward the comments to the county.

RECOMMENDATION:

Staff recommends a council motion to adopt the attached resolution to establish and coordinate the county/city review process for the Tacoma/Pierce County Solid Waste Management Plan.

Attachment

CITY OF GIG HARBOR

RESOLUTION NO.

A RESOLUTION OF THE GIG HARBOR CITY COUNCIL APPROVING A CITY-COUNTY INTER-LOCAL AGREEMENT FOR SOLID WASTE PLANNING AND ADOPTION OF AMENDMENTS TO THE TACOMA-PIERCE COUNTY SOLID WASTE MANAGEMENT PLAN.

WHEREAS, the City of Gig Harbor has authority to engage in solid waste management planning pursuant to RCW Chapters 35.67 and 70.95; and,

WHEREAS, the County has authority to engage in solid waste management planning pursuant to RCW Chapters 36.58 and 70.95; and,

WHEREAS, both parties have by ordinance adopted the Tacoma-Pierce County Solid Waste Management Plan; and,

WHEREAS, there is a need for further solid waste management planning by Pierce County and its cities and towns, in conjunction with the Department of Ecology of the State of Washington; and,

WHEREAS, the City of Gig Harbor and Pierce County have proposed a City-County Interlocal Agreement for Solid Waste Planning and a Timeline for the Adoption of Amendments to the Tacoma-Pierce County Solid Waste Management Plan; and,

WHEREAS, a Timeline for the adoption of amendments to the Plan is mandated by the Department of Ecology of the State of Washington,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Gig Harbor:

Section 1. The City-Council Solid Waste Interlocal Agreement, attached hereto as Exhibit "A", which is incorporated by reference herein, is hereby APPROVED.

PASSED this 14th day of January, 1991.

Gretchen Wilbert, Mayor

ATTEST:

Michael R. Wilson
City Administrator/Clerk

Filed with City Clerk: 1/11/91
Passed by City Council: 1/14/91

SOLID WASTE INTERLOCAL AGREEMENT

THIS AGREEMENT, made and entered into between Pierce County, a political subdivision of the State of Washington and a municipal corporation, hereinafter referred to as the "County," and the City, a municipal corporation, hereinafter referred to as the "City".

I. Authorization. This agreement has been authorized by the body of each contracting party that is authorized to enter into public contracts. The authorizing resolutions of the contracting parties are listed on Appendix "1" attached hereto and incorporated by reference herein.

II. Purpose. The purpose of this agreement is to establish the respective responsibility of the contracting parties to adopt plan amendments to the Tacoma-Pierce County Solid Waste Management Plan regarding the planning and implementation of waste reduction and recycling programs pursuant to RCW 70.95.080 and .090. This Agreement is entered into in the spirit of continuing cooperative management of solid waste in Pierce County pursuant to RCW chapter 39.34 and as agreed to by the City in its adoption of the Tacoma-Pierce County Solid Waste Management Plan in that certain resolution that is referenced in Appendix "1" attached hereto and incorporated by reference herein. It is the intent of the parties to work cooperatively to establish waste reduction and recycling priorities by July 1, 1991 to meet the scheduling timeline imposed by statute, and to support the Plan's goal to reach fifty percent (50%) recycling by 1995.

III. Approval. This Agreement shall be submitted to the Department of Ecology of the State of Washington along with the Preliminary Draft Plan Amendments on January 1, 1991 for their review and approval processes which should be completed by May, 1991.

IV. Obligations of Pierce County

A. Provision of Draft. Pierce County agrees to provide to the City and to the Department of Ecology by January 1, 1991, the Preliminary Draft Plan Amendments for waste reduction and recycling programs for their review and approval. The Plan Amendments will include any description provided by the City of its planned or adopted waste reduction and recycling goals, programs, and implementation dates for the programs; or a description of the City's timelines and processes to plan and to adopt waste reduction and recycling programs.

The Plan Amendments will also include:

1. Descriptions of the County's adopted curbside residential recycling collection program which has been developed in cooperation with the franchised garbage haulers and offered to the City as a model program.

2. Descriptions of other County recycling programs, including the public informational and educational programs, in-house recycling and other waste reduction programs, and the data collection program which has been established to evaluate the percentages and amounts of recycling achieved by all jurisdictions of Pierce County. The County will continue to make information about these programs and educational materials available to the City upon request.

3. New Programs. The County agrees to design and implement, in cooperation with the franchised haulers, model recycling collection programs for multi-family residences and yard waste. These programs will be designed with the needs of all county citizens in mind and will be in keeping with the WUTC Cost Assessment Guidelines of the Washington Utilities and Transportation Commission and the Guidelines of the Department of Ecology of the State of Washington (WDOE). The County will provide the model programs for the City to review and approve. Where applicable, the County will request that the City adopt the programs or to develop similar equivalent program alternatives in keeping with the Guidelines of the Department of Ecology of the State of Washington (WDOE).

4. The County will develop a planning process to develop commercial recycling programs and to collect household hazardous waste.

B. Public Comment Period. The County agrees to conduct a public comment period on the Preliminary Plan Amendments during January and February, 1991. The County will hold public meetings and hearings to gather comment on the Plan Amendments in preparation for the submission of comments to the Department of Ecology of the State of Washington (WDOE) during March, 1991. The County will include any comments received from the City Council.

C. Public Hearings. After completion of the review of the Preliminary Plan Amendments by the Department of Ecology of the State of Washington (WDOE), the County will hold public hearings to adopt the Final Plan Amendments which will incorporate the concerns of the Department of Ecology (WDOE), if any. These hearings will be scheduled during May and June of 1991 or within sixty (60) days after the receipt of comments from the Department of Ecology for incorporation into the Plan. The County will provide copies of the Final Plan Amendments to the City for the conduct of public hearings for the final adoption of the Plan during May, 1991, or within sixty (60) days after receiving the comments of the Department of Ecology (WDOE).

V. Obligations of the City.

A. Submission of Plans. The City agrees to submit to the County by October 31, 1990, either a description of its adopted waste reduction and recycling programs, or the timelines of the City for planning the programs and the processes it will take to adopt and implement said programs.

1. Curbside Residential Recycling Program. In keeping with the guidelines of the Department of Ecology (WDOE), the City's plans will include, at a minimum, a curbside residential recycling collection program or an equivalent alternative, and a written commitment to review and to adopt the County's multi-family and yard waste collection programs or to plan equivalent alternatives in keeping with the Guidelines of the Department of Ecology (WDOE).

2. Source Separated Materials. As is legislatively mandated in RCW section 70.95.110, the City will agree to begin implementation of the programs to collect source separated materials no later than one year following the adoption and approval of the Plan Amendments and to have these programs fully implemented within two years of approval.

3. Data Collection Program. If the City chooses to adopt residential source-separation programs or yard waste collection programs that are different from the model programs offered by the County and the franchised haulers, then the City expressly agrees to implement a data collection program to track the percentage of recyclables and yard waste removed from the County

waste stream and to report this to the County.

4. Other Programs. The City's programs may also include procurement policies, educational programs, and other relevant recycling programs specific to the community and in keeping with the Guidelines of the Department of Ecology and may be coordinated with any of the educational and informational programs of the County.

B. Public Comment. The City agrees to hold public meetings to gather public comment on the Preliminary Plan Amendments during January and February, 1991, and to transmit comments from the City Council to the County by March 1, 1991, to be transmitted by the County to the Department of Ecology of the State of Washington (WDOE) for review by the Department (WDOE).

C. Public Hearings. After completion of the review of the Preliminary Plan Amendments by the Department of Ecology (WDOE), the City will hold public hearings to adopt the final Plan Amendments which will incorporate the concerns of the Department of Ecology (WDOE), if any. These hearings will be scheduled during May and June of 1991, or within sixty (60) days after the receipt of comments from the Department of Ecology (WDOE) for incorporation into the Plan.

VI. General Conditions.

Integration. This Agreement, including its Exhibits, represents the entire understanding of the County and the Cities as to those matters contained herein. This Agreement may not be modified or altered except in writing signed by authorized representatives of the contracting parties.

Successors and Assigns. This agreement is binding upon the heirs, successors and assigns of the parties hereto, including successor municipalities and other successor local governmental entities.

Jurisdiction, Venue and Choice of Law. This agreement shall be administered and interpreted under the laws, ordinances and regulations of the United States, the State of Washington, the County of Pierce, and of its cities and towns that have contracted herein. Jurisdiction of litigation arising from this agreement, if any, shall be in the courts of the State of Washington. Venue shall be in the superior court of Pierce County. Disputes not resolved between parties shall be resolved by application to the courts of the State of Washington.

Assignment. None of the contracting parties may assign any right hereunder without the written consent of the other parties. Any attempted assignment without such written consent shall be void.

Severability. In the event that any portion of this contract is determined to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof.

Entire Agreement. This written agreement represents the entire agreement between the parties and supercedes any prior oral statements, discussions, or understanding between the parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

Time of the Essence. Time is of the essence of this agreement. The time scheduling set forth in this agreement constitutes material obligations of the contracting parties.