

ORDINANCE NO. 1114

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO PROCESSING OF PROJECT PERMIT APPLICATIONS, ESTABLISHING AN ALTERNATIVE, TEMPORARY PROCEDURE FOR PROCESSING PROJECT PERMIT APPLICATIONS WITHOUT SEWER CONCURRENCY WHILE THE CITY CONSTRUCTS THE NECESSARY IMPROVEMENTS TO THE WASTE WATER TREATMENT PLANT, ALLOWING APPLICANTS TO CHOOSE SUCH ALTERNATIVE PROCESSING THROUGH THE EXECUTION OF A CONTRACT WITH THE CITY, WHICH, AMONG OTHER PROVISIONS, WAIVES THE DEADLINES FOR A FINAL DECISION, RELEASES THE CITY FROM ANY LIABILITY OR DAMAGES RESULTING FROM THE APPLICANT'S DECISION TO CHOOSE THE ALTERNATIVE PROCESS, ALLOWING SUCH ALTERNATIVE APPLICATIONS TO EXPIRE ON MAY 31, 2010, IF THE CITY HAS NOT ANNOUNCED THE ACCEPTANCE OF THE IMPROVEMENTS TO THE WASTE WATER TREATMENT PLANT EXPANDING SEWER CAPACITY; ESTABLISHING A DEADLINE OF May 31, 2008 FOR THE PROCEDURE TO EXPIRE, ADDING A NEW SECTION 19.02.035 TO THE GIG HARBOR MUNCIPAL CODE.

WHEREAS, the City has adopted a concurrency ordinance for water, sewer and transportation; and

WHEREAS, the City's concurrency ordinance allows for the administrative denial of any application for a water, sewer or concurrency certificate, if there is no available capacity; and

WHEREAS, the City's engineering consultants, the Cosmopolitan Engineering Group Inc., issued a memo dated June 8, 2007, on the status of the City's Waste Water Treatment Plant, stating that the WWTP is at its maximum capacity for the maximum month and peak day flows; and

WHEREAS, a Technical Memorandum was prepared, submitted and approved by the Department of Ecology (DOE) on September 23, 2007, which summarized the current WWTP deficiencies and provided an outline of the necessary plant improvements; and

WHEREAS, the lack of capacity prevents the City from approving and reserving sewer concurrency certificates for certain comprehensive plan amendments, project permit applications or utility extension agreements; and

WHEREAS, the City is currently working on the necessary improvements to the WWTP that will provide more operational capacity; and

WHEREAS, completion of the improvements that will provide additional capacity is scheduled for late 2009, but the City cannot predict the exact date that additional capacity will be available; and

WHEREAS, the City Council desires to establish an alternative processing procedure that will allow processing of project permit applications, so that applications will be ready for a final decision (either for an administrative decision or to be scheduled for a hearing before the Hearing Examiner) when the capacity is available; and

WHEREAS, this alternative procedure will ensure that there is not a large backlog of applications to be processed when the capacity is available, and the City will not be required to hire additional planners on a temporary basis in order to meet statutory and ordinance deadlines for a final decision; and

WHEREAS, developers will likely choose this alternative procedure because it will allow vesting of applications (only those applications that are subject to the vested rights doctrine) under the City's codes in place at the time of submission of a complete application, as long as the application conforms to the City's codes; and

WHEREAS, the alternative procedure will not allow vesting under SEPA, so that any environmental issues will be examined to initiate processing and then re-examined prior to the final decision; and

WHEREAS, in order for the City to process applications under this alternative procedure, developers must waive the statutory and ordinance deadlines for a final decision; and

WHEREAS, such waiver must appear in a contract between the applicants and the City, and the developers must also agree to release and covenant not to sue the City for all liability and damages that may occur as a result of the developer's decision to choose the alternative processing procedure; and

WHEREAS, the City's SEPA Responsible Official issued a threshold determination of non-significance for this Ordinance on November 21, 2007; and

WHEREAS, the City Council held a public hearing and considered this Ordinance during its regular City Council meeting of November 26, 2007;
NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
ORDAINS AS FOLLOWS:

Section 1. A new Section 19.02.035 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

19.02.035 Alternative Project Permit Processing without Concurrency.

A. Notice to Applicants of Alternative Procedure in Determination of Complete Application. Beginning on January 1, 2008, and ending on May 31, 2010, the City shall include the following language in every Notice of Complete Application for every building permit, preliminary plat, short plat, binding site plan, planned unit development, planned residential development, conditional use, variance, shoreline substantial development, shoreline conditional use, shoreline variance, site plan, or any other permit/approval for which a sewer concurrency certificate is required:

As an alternative to the standard project permit processing, an applicant may choose to have this application processed under the temporary procedure entitled 'Alternative Project Permit Processing without Concurrency,' as set forth in Gig Harbor Municipal Code Section 19.02.035. A copy of this procedure is attached. Please let us know if you would like your application processed under this alternative procedure. If you do not choose to have your application processed under the alternative method, your application for a sewer concurrency certificate will be processed immediately. At present, there is no available capacity in the City's Waste Water Treatment Plant, and it is likely that any application for concurrency in the Waste Water Treatment Plant will be denied. If your underlying project permit application requires sewer availability in the City's Waste Water Treatment Plant, it is likely that it will be denied as well. Denied applications are subject to the appeal provisions of GHMC Section 19.06.007.

B. Choosing Alternative Processing. Once an application has been determined complete and the applicant has chosen alternative processing without concurrency, the property owner will

be asked to sign a contract with the City, allowing processing to proceed. This contract may not be signed by an agent for the property owner. A copy of this contract is attached to this Ordinance as Exhibit A, and will include, but not be limited to, the following requirements:

1. The property owner must waive any right to a final decision on the project permit application or concurrency determination by the dates established in the City code or in state law;
2. The property owner must release and covenant not to sue the City for any damages or liability that may be suffered by the applicant/property owner, developer or any third party as a result of the applicant's decision to choose this alternative processing procedure without concurrency, or as a result of the City's processing of the application under this procedure;
3. The property owner must agree to the City's processing of the application up to the point where a final decision must be made, and no farther, until the expiration date established herein. If the City still does not have any capacity in the Waste Water Treatment Plant by that time, the property owner must agree that the application is null, void and of no further effect unless both parties agree to an extension;
4. The parties to the agreement must acknowledge that while the City will extend the vested rights doctrine to certain applications, up to the expiration date established herein, the City will not extend the vested rights doctrine to permits that do not vest under state or local law, and no applications will be vested under the State Environmental Policy Act (SEPA);
5. The property owner must acknowledge that the City's processing of applications subject to the vested rights doctrine will proceed under the codes in place at the time the complete application has been submitted (with the exception of SEPA), (except for those codes that are specifically adopted to be retroactive);
6. The property owner must agree to pay all applicable processing fees, which may include a double fee for any SEPA review or review based on SEPA, including but not limited to evaluations for traffic concurrency;

7. The property owner must agree to a contract expiration date of May 31, 2010, and if the City has not announced that the Waste Water Treatment Plant has available capacity by that date, the application will be null and void, and the property owner will be required to re-submit his/her application to begin the process anew, without any refund in fees.

C. Execution of Contract. Every contract executed by the property owner shall be presented to the City Administrator. The City Council hereby authorizes the City Administrator to sign the contract attached hereto as Exhibit A on behalf of the City.

D. Alternative Processing without Concurrency. After contract execution, the City shall begin processing the application up to the point where a final decision must be made. In the case of a permit/approval that becomes final when a staff decision is made, the staff shall only write a draft report. In the case of a permit/approval that becomes final when a hearing examiner decision is made, the staff report shall also be in draft form, and the application shall not be scheduled for a hearing to the hearing examiner. For the SEPA threshold decision, see below.

E. Double-stage SEPA processing. The City's processing of the application under SEPA shall proceed as set forth in the City's codes and state law, except that no threshold decision shall issue. While the staff may prepare a draft threshold decision and even receive comments from the public/applicant on such draft, the threshold decision *shall not issue for comment/appeal by the public under this procedure, until the City announces that the Waste Water Treatment Plant has available capacity, but not later than May 31, 2010*, unless the City has not accepted the improvements for the Waste Water Treatment Plant which will provide available capacity by that date. There shall be no vesting of any regulations under SEPA.

F. Fees. The applicant shall pay the applicable project permit processing fees. In addition, if the City is required to issue a draft SEPA decision in order to ensure continued processing of an application, the applicant shall pay an additional fee for a second SEPA threshold decision (that would issue after May 31, 2010, as provided above).

G. Order of Processing. The City shall process the applications in the order established by readiness for a final decision. In other words, once the staff has performed the last step in the process prior to the final decision or the hearing on the final

decision, the application will be placed on the list. The applications on the list will be held until the City announces the acceptance of the Waste Water Treatment Plant which will provide available capacity, but not later than May 31, 2010. At that point, the staff will issue the necessary final decisions or schedule the applications for hearing on the final decision. If no announcement has been made by May 31, 2010, the applications will be null, void and of no further effect.

H. Re-application. If the City does not accept the improvements to the Waste Water Treatment Plant that will provide available capacity on or before May 31, 2010, and the applications that have been processed under this temporary, alternative procedure have been determined null, void and of no further effect, the applicants may submit new applications once the City announces that sewer capacity is available. The provisions of GHMC Section 19.06.007 shall not prevent reapplication of applications that have been determined invalid.

I. Utility Extension Agreements and Comprehensive Plan Amendments. This procedure is not available for utility extension agreements or comprehensive plan amendments.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, clause or phrase of this Ordinance.

Section 3. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this 26th day of November, 2007.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 11/17/07
PASSED BY THE CITY COUNCIL: 11/26/07
PUBLISHED: 12/5/07
EFFECTIVE DATE: 12/10/07
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