

RESOLUTION NO. 742

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH THE QUADRANT CORPORATION AND UNITED WESTERN DEVELOPMENT, INCORPORATED.

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, the Developer has a fee simple or other substantial beneficial interest in the real property located north of the intersection of Borgen Boulevard and Harbor Hill Drive, Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, the Developer has obtained approval of a 120 lot preliminary plat and intends to develop seven model homes prior to recording of the final plat; and

WHEREAS, on February 25, 2008, the City Council held a public hearing on the Development Agreement during a regular public meeting and voted to approve the Development Agreement attached hereto as Exhibit A; Now, Therefore,

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

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with The Quadrant Corporation and United Western Development LLC.

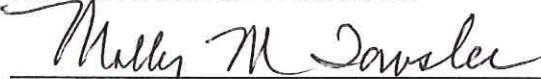
Section 2. The City Council hereby directs the Planning Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 25th day of February, 2008.

APPROVED:


MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:


CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY:


CAROL A. MORRIS

FILED WITH THE CITY CLERK: 02/20/08
PASSED BY THE CITY COUNCIL: 02/25/08
RESOLUTION NO. 742

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR,
THE QUADRANT CORPORATION AND UNITED WESTERN
DEVELOPMENT, INCORPORATED, FOR THE
GIG HARBOR ESTATES DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this 25 day of February, 2008, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," the Quadrant Corporation, a corporation organized under the laws of the State of Washington, hereinafter the "Homebuilder," and United Western Development, Incorporated, a corporation organized under the laws of the State of Washington, hereinafter the "Owner."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, local governments may also enter into a development agreement for real property outside its boundaries as part of a proposed annexation or service agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between these parties (hereinafter the "Development Agreement"), relates to the development known as Gig Harbor Estates, which is identified as assessor parcel number 0222303002 (hereinafter the "Subject Property"); and

WHEREAS, the following events have occurred in the processing of the Owner's development application:

a) By Ordinance No. 1051, the City amended the City's Comprehensive Plan land use designation for the Property to Planned Community Development Residential Medium;

b) By Ordinance No. 1102, the City amended the City's Zoning Ordinance to rezone the property to Planned Community Development Medium Density Residential subject to various conditions;

c) The City entered into a development agreement with Don Huber on July 10, 2006 and a Supplemental Development Agreement with Don Huber on May 14, 2007, for the purposes of developing the Subject Property.

d) By Hearing Examiner's decision No. SUB 05-1126, approved a 120 lot preliminary plat, for the Gig Harbor Estates, a copy of which is attached hereto.

WHEREAS, Homebuilder asserts the contractual right to purchase finished residential lots on the Subject Property from Owner; and

WHEREAS, state law prohibits the sale, transfer or advertisement for sale or transfer of any lot in a preliminary plat before the final plat is recorded (RCW 58.17.200); and

WHEREAS, if performance of an offer to sell, lease or otherwise transfer land is expressly conditioned on the recording of a final plat for the lot in an agreement, state law is not violated (RCW 58.17.205); and

WHEREAS, the Owner seeks to enter into this Development Agreement for the construction of a limited number of model homes on the property within Gig Harbor Estates, as advertisement for the development, and in order to comply with law; and

WHEREAS, after a public hearing on February 25, 2008, the City Council authorized the Mayor by Resolution to sign this Development Agreement with Homebuilder and Owner;

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Project.* The Project is the development and use of the Subject Property located north of the intersection of Borgen Boulevard and Harbor Hill Drive, consisting of 19.32 acres in the City of Gig Harbor. The Preliminary Plat Approval describes the Project as 120 residential units.

Section 2. *The Subject Property.* The Subject Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. *Definitions.* As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

a) "Adopting Resolution" means the Resolution which approves this Development Agreement, as required by RCW 36.70B.200.

b) "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

c) "Council" means the duly elected legislative body governing the City of Gig Harbor.

d) "Design Manual" means the Gig Harbor Design Manual, as adopted by the City.

e) "Director" means the City's Planning Director

f) "Effective Date" means the effective date of the Adopting Resolution.

g) "Existing Land Use Regulations" means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopted ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, the Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, parking regulations, and building standards. Existing Land Use Regulations do not include non-land use regulations, which includes taxes and impact fees.

h) "Project" means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 4. *Exhibits.* Exhibits to this Agreement are as follows:

a) Exhibit A – legal description of the Subject Property.

b) Exhibit B - Hearing Examiner's decision No. SUB 05-1126

c) Exhibit C – Site plan, dated 12/20/07 showing the location of proposed model homes

d) Exhibit D - Supplemental Development Agreement dated May 14, 2007

Section 5. *Parties to Development Agreement.* The parties to this Agreement are:

a) The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.

b) The Owner is a private enterprise which owns the Subject Property in fee, and whose principal office is located at P.O. Box 64160, Tacoma, Washington 98464.

c) The Homebuilder is a private enterprise asserting the contractual right to purchase finished lots on the Subject Property, and prior to such purchase to construct model homes on the Subject Property, and whose principal office is located at 14725 SE 36th Street, Bellevue, Washington 98006.

Section 6. *Project is a Private Undertaking.* It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. *Term of Agreement.* This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement, and shall continue in force for a period of five years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Homebuilder.

Section 8. *Vested Rights of Homebuilder and Owner.* Homebuilder and Owner shall have all vested rights as provided by law or the preliminary plat approval.

Section 9. Further Discretionary Actions. Homebuilder and Owner acknowledge that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 10. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 19.12 of the Gig Harbor Municipal Code.

C. All traffic mitigation fees shall be paid as set forth in Section 12 of the Supplemental Development Agreement dated May 14, 2007, as it may be amended.

Section 11. Phasing of Development. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to allow Homebuilder to construct model homes on the Subject Property prior to approval and recording of the final plat for the Project. Therefore, the parties agree that Owner or Homebuilder shall be entitled to construct model homes on the Subject Property in accordance with the following terms and conditions;

A. The Owner or Homebuilder may submit building permit applications for up to seven lots in the preliminary plat, prior to recording of the final plat. Prior to issuance of building permits for the model homes, the following requirements must be satisfied:

i. Building permit applications for the seven model homes will only be accepted for the seven lots as specifically identified in Exhibit C attached hereto and incorporated herein.

ii. Retention/detention facilities that serve the model home lots shall be constructed in accordance with the engineered drawings approved by the City of Gig Harbor.

iii. Construction of road improvements necessary to provide safe public access to the model homes from Borgen Boulevard shall be completed. The road improvements shall consist of subgrade, curb and gutter, sidewalk and first lift of asphalt in the final roadway alignment, from Borgen Boulevard to the furthest proposed model home shown in Exhibit C – “Site Plan 12-20-07 showing the location of model homes”.

These improvements shall be in accordance with the engineered drawings approved by the City for permit EN-07-0079 HARBOR ESTATES, and within the following minimum limits: Harbor Hill Drive – STA 11+00 to 13+00; and Estates Circle – STA 29+00 to approximately 34+20 at the intersection with Harbor Hill Drive centerline – match STA 10+00 other direction, and STA 10+00 to 10+50.

iv. Water and sewer shall be installed to each lot proposed for model homes.

v. All proposed streets serving the model homes shall be adequately marked with street signs.

vi. All impact fees for model homes shall be paid prior to the issuance of a building permit for the model homes.

vii. Fire protection features including access, hydrants, and fire flow must be provided in accordance with GHMC Chapter 15.16 and the approved civil plans prior to any combustible construction on any lot within the development. Such fire protection features may be installed in a phased manner provided that they are in place and approved as prescribed by code for each individual parcel within the plat prior to issuance of a building permit for said parcel.

viii. Traffic mitigation fees for all model homes shall be paid per Section 12 of the Supplemental Development Agreement dated May 14, 2007, attached as Exhibit D to this agreement, as it may be amended.

B. In addition to the foregoing requirements, each residential building permit application for a model home shall include the following submittals:

i. Building plot plans showing the locations of the proposed model homes with distances indicated from the proposed final plat lot lines.

ii. Overall site plan showing the temporary improvements specific to the model homes such as the location of signage, flags, banners, fencing, landscaping, and impervious surfaces such as parking areas and sidewalks.

C. A certificate of occupancy shall not be granted for any of the model homes until the final plat has been recorded. However, the applicant may request final inspection and temporary occupancy for model homes prior to final plat recording, provided:

i. The Owner and Homebuilder have complied with applicable state law with regard to any agreements to transfer, sell or lease property within the preliminary plat prior to final plat recording.

ii. All Building and Fire Safety requirements have been met to the satisfaction of the City's Building Official and Fire Marshal.

iii. Driveway approaches for each model home requesting occupancy have been installed.

iv. Repairs to the roadway improvements have been completed as necessary due to damage as a result of model home construction.

v. Completion of miscellaneous utility work as necessary to minimize potential for damage to vehicles or tripping hazards.

vi. Completion of miscellaneous work to provide access for maintenance or operation of underground utilities.

D. Prior to final plat approval, Homebuilder shall submit two copies of a plot plan delineating the as-built location of the model home on the lot. The corners of the lot shall be set by a registered professional land surveyor prior to commencement of construction.

E. The model homes and all associated improvements, including any parking lot, shall be removed within six months of the following events:

- i. Preliminary plat approval has expired and no extension has been granted, and
- ii. the Project is denied final plat approval.

Section 13. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Homebuilder not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Homebuilder not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Homebuilder charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Homebuilder to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 14. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Homebuilder and Owner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

Section 15. Termination. This Agreement shall expire and/or terminate as provided below:

A. This Agreement shall expire and be of no further force and effect if the Owner or Homebuilder does not submit building permit applications within 90 days of the date of the Resolution Approving this development Agreement. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

B. This Agreement shall terminate upon the expiration of the term identified in Section 7 or when the final plat for the Subject Property has been recorded, which ever first occurs, and all of the Owner and Homebuilder's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated.

Section 16. Effect upon Termination on Homebuilder and Owner Obligations. Termination of this Agreement or any portion thereof shall not affect any of the Homebuilder's or Owner's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 17. Effects upon Termination on City. Upon any termination of this Agreement as to the Owner and Homebuilder of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 18. Assignment and Assumption. The Owner and Homebuilder shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Owner and Homebuilder shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

Section 19. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Homebuilder, Owner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of the Owner and Homebuilder contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 20. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see*, RCW 36.70B.200). However, nothing in this

Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property five years from the anniversary date of the Effective Date of this Agreement.

Section 21. Releases. Owner, Homebuilder, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 22. Notices. Notices, demands, correspondence to the City and Homebuilder and Owner shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 23. Reimbursement for Agreement Expenses of the City. Homebuilder and Owner agree to reimburse the City for actual expenses incurred over and above fees paid by Homebuilder or Owner as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. This development agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the Project are paid to the City. Upon payment of all expenses, the Homebuilder or Owner may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Homebuilder or Owner.

Section 24. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 25. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Owner, Homebuilder and/or Landowner(s). In such event, Owner, Homebuilder and/or such

Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Owner, Homebuilder and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 26. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 27. Indemnification. The Owner and Homebuilder shall indemnify, defend and hold the City, its elected officials, officers, employees and agents (the "City Parties") harmless from and against any material claim, loss, liability and expense, including attorneys' fees and court costs (collectively "Claims") incurred by the City on account of (a) claims by persons or entities other than the Owner and Homebuilder arising out of or in connection with the Owner and/or Homebuilder's performance under this Development Agreement; and (b) claims resulting from or arising directly or indirectly, in whole or in part, out of the City's decision to allow model homes to be constructed on the property owned by the Owner and/or Homebuilder, prior to final plat approval. The foregoing indemnity shall not extend to those matters arising out of the negligence or intentional misconduct of the City Parties. Notwithstanding any language to the contrary in this Agreement, Homebuilder and/or Owner agree to indemnify, defend and hold the City, its elected officials, officers, employees and agents harmless from and against any and all claims, liabilities, losses, penalties, costs and expenses (including attorneys' and consultants' fees and costs) that the City may incur, or have asserted against it as a result of Owner and/or Homebuilder's breach of this Agreement.

Section 28. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

HOMEBUILDER:

THE QUADRANT CORPORATION

By Gregory D. Moore
Its Vice President

OWNER:

UNITED WESTERN DEVELOPMENT,
INCORPORATED

By [Signature]
Its Owner

CITY OF GIG HARBOR

By [Signature]
Its Mayor

ATTEST:

By Melby Javala
City Clerk

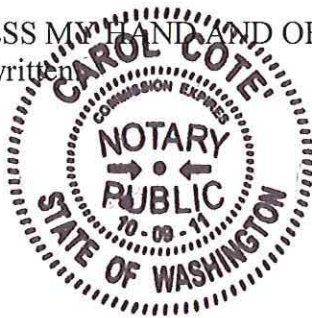
APPROVED AS TO FORM:

By [Signature]
City Attorney

STATE OF WASHINGTON)
)ss.
COUNTY OF PIERCE)

On this 15th day of FEBRUARY, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared DONALD HUBER, to me known to be the President of UNITED WESTERN DEVELOPMENT, INCORPORATED, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said the limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of said limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.



Carol Cote
Name CAROL COTE
NOTARY PUBLIC in and for the
State of Washington, residing at
GIG HARBOR
My commission expires 10-9-2011.

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this 14th day of FEBRUARY, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared GREGORY D. MOORE, to me known to be the VICE PRESIDENT of THE QUADRANT CORPORATION, a Washington corporation, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of said corporation.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.



Debra L. Laukeman
Name DEBRA L. LAUKEMAN
NOTARY PUBLIC in and for the
State of Washington, residing at
LACEY, WA
My commission expires 12-09-11.

STATE OF WASHINGTON)
)ss.
COUNTY OF PIERCE)

On this 25 day of February, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, personally appeared Charles L. Hunter, to me known to be the Mayor of the City of Gig Harbor, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument on behalf of said municipal corporation.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.



Molly M Towslee
Name Molly M. Towslee
NOTARY PUBLIC in and for the
State of Washington, residing at
Gig Harbor
My commission expires 12/2/2011.

EXHIBIT A

LEGAL DESCRIPTION

THE EAST HALF OF THE SOUTHWEST QUARTER OF THE
SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 22 NORTH,
RANGE 2 EAST OF W.M., IN PIERCE COUNTY, WASHINGTON.

EXHIBIT 'B'
DECISION OF THE HEARING EXAMINER
CITY OF GIG HARBOR

In the Matter of the Application of

Gig Harbor LLC

For a Rezone and Preliminary Plat
Approval

REZ 06-1361 & SUB 05-1126

RECEIVED
CITY OF GIG HARBOR

MAY 30 2007

Background

COMMUNITY
DEVELOPMENT

Gig Harbor Estates, L.L.C., applied for a site-specific rezone from RLD to RMD and 120-lot subdivision for property in the 4000 block of Borgen Boulevard.

An open record public hearing was held on May 16, 2007. The exhibits listed at the end of this decision were admitted. The Community Development Department was represented by Cliff Johnson, Associate Planner, and the Applicant was represented by Carl Halsan, agent.

For the purpose of this decision, all section numbers refer to the Gig Harbor Municipal Code, unless otherwise indicated.

Based upon consideration of all the information in the record, including that presented at the public hearing, the following shall constitute the findings, conclusions and decision of the Hearing Examiner in this matter.

Findings

1. Gig Harbor Estates, L.L.C. ("Applicant") requested a site-specific rezone of 19.32 acres in the 4000 block of Borgen Boulevard, Assessor's Parcel No. 0222303002, from Planned Community Development Low Density Residential (RLD) district to Planned Community Development Medium Density Residential (RMD) district. In 2005, the Applicant applied for approval of a preliminary plat, the Gig Harbor Estates Subdivision, with 77 lots but then amended the application, after the Comprehensive Plan was amended, to subdivide the property into 126 lots, public and private roads, two storm water tracts, and a park. The plat has now been revised and proposes 120 lots. [Testimony of Halsan; Exhibit 1]
2. The subject site is on the north side of Borgen Boulevard and is zoned RLD. To the east is vacant land in RMD district, PCD-C zoned with an approved commercial site plan (Harbor Hill Business Park) to the south across Borgen, residential development zoned RMD and PCD-BP vacant land to the west, and the single-family developed Canterwood subdivision, a Master Planned Community, to the north in unincorporated Pierce County.

3. The City Council amended the Comprehensive Plan in 2006 to designate the subject site Planned Community Development-Residential Medium. The Comprehensive Plan states that the intent of the designation is "to facilitate high quality affordable housing, a greater range of lifestyles and income levels; provides for the efficient delivery of public services and to increase residents' accessibility to employment, transportation and shopping; and serves as a buffer and transition area between more intensively developed areas and lower density residential areas." Comprehensive Plan, p.2-5. RMD is the only zoning that can implement the PCD-RMD designation.
4. The RLD zone allows density of four dwelling units per gross acre and RMD allows density of up to eight dwelling units with a minimum base of five dwelling units per acre.
5. The site has rolling hills sloping to the south toward Borgen Boulevard with slopes described variously as 5-15 percent [Exhibit 7] and 15-25 percent [Exhibit 1]. There are no critical areas on or adjacent to the site. The site is not located within the 100-year flood plain. [Exhibit 1 & 6]
6. Access to the site is available from Borgen Boulevard.
7. The City issued a SEPA Determination of Significance (DS) and Adoption of Existing Environmental Document City of Gig Harbor 2005 Comprehensive Plan Amendments Final Supplemental EIS dated 4/5/06 on March 21, 2007, for the rezone and a Mitigated Determination of Non-significance (MDNS) on March 28, 2007, for the preliminary plat. No appeals of the environmental determinations were filed during the respective appeal periods.
8. The Community Development Department ("Department") issued an Administrative Decision finding on April 2, 2007 that with certain conditions the proposed preliminary plat would meet the applicable standards in the Design Manual. This decision was not appealed. The conditions addressed installation of tree protection fencing, fencing within the ponds, and measures to preserve trees within the perimeter buffer area. [Exhibit 18]
9. The 120 lots would range in size from 2,482 to 11,789 square feet for single-family residences, for an average density of 7.5 dwelling units per net acre. There would also be 16,964 square feet of park area.
10. The Applicant proposes development with single-family residences. The structures would provide setbacks that conform to the requirements of Section 17.99.290(A) for single family development in the RMD district. Building heights are not specified on the plat but would be limited to 45 feet per Section 17.21.040(B).
11. The preliminary plat provides a 25 ft. wide landscape buffer along the east perimeter and approximately one third of the western perimeter starting at the southern boundary. A 10 ft. wide buffer is shown on the remainder of the western boundary and along the northern boundary separating the subject property from the Canterwood subdivision. Though Section 17.21.040 in the RMD chapter refers to the requirements of Section 17.28.060, which requires a minimum 25-foot buffer along perimeters of a residential plat, it specifically provides that buffers adjacent to a

similar use or zone which includes a platted buffer of equal or greater width "shall" be reduced to 10 feet. No landscaped buffer is currently shown on the southern perimeter.

12. The Canterwood Homeowners Association and individual homeowners in the subdivision contend that the reduction in landscaped buffer does not apply because an RMD residential plat is not a similar use or zone to single-family development in the MPC (Master Planned Community) county zone. [Exhibits 19 & 23; Testimony of Callin, Tanner, Scott, Allen]

13. The preliminary plat shows that 10 of the 12 lots bordering the Canterwood subdivision would have a 25 ft. setback from the northern property line. The two corner lots would have less.

14. The long period for newly planted trees in the buffer to grow to a size that provides screening is a concern to the neighbors. [Testimony of Tanner]

15. The residences in the Canterwood subdivision are on lots approximately 2 acres in size. [Testimony of Allen]

16. There is also concern about retaining walls elevating the new residences above the property in the Canterwood subdivision. [Testimony of Tanner] The preliminary grading plans show retaining walls along the east and west boundaries. The maximum wall height would be less than 6 ft. [Testimony of Smith]

17. The subject property is in the City of Gig Harbor water service area. The City granted a Water Capacity Reservation Certificate for a total of 39,878 gallons per day which is sufficient for 126 single family residences. [Exhibit 11; Testimony of Langhelm] The City Engineer recommended a condition on the plat regarding payment of a water latecomers fee in accordance with the proposed Harbor Hill Water Tank and Mainline Extension Latecomer Agreement. [Exhibit 14]

18. The subject property is to be served by the City of Gig Harbor's sanitary sewer. The parcel is included in Basin C-2 of the planned sanitary sewer system. A Sewer Capacity Reservation Certificate for 29,106 gallons per day, enough for 126 single-family residences and one landscaping meter, was granted by the City. [Exhibit 13]

19. The Applicant proposes to connect to the City's storm water system via an existing storm sewer line that ultimately drains to a regional storm pond located to the south of the project, designed to accommodate drainage from the proposed plat. On-site, the stormwater from streets, sidewalks and driveways would be collected in catch basins connected by storm pipes which would carry it to the detention facilities on-site. The two facilities would provide detention and basic water quality treatment and be sized to meet City standards. The handling of roof and footing drainage has not been specified and must be addressed. Storm water treatment and development proposed for the site would be required to meet the requirements of the City's Stormwater Design Manual. [Exhibits 7, 13 & 14]

20. The Building Official/Fire Marshal reviewed the proposal and concluded that it appeared to provide fire hydrant locations in compliance with the requirements of IFC appendix C but recommended a condition to insure they are operational prior to combustible construction. The information was not sufficient to determine if fire

flow requirements are met so a condition to assure that is necessary. Provisions for fire access were found to be generally satisfactory but fire lane markings should be required for alleys and roads with less than 26 feet of drivable surface. [Exhibit 15]

21. The 2005 Comprehensive Plan Amendments Final Supplemental EIS (FSEIS) addressed transportation impacts expected from development of the subject site with 121 dwelling units. It recognized that the road system is out of capacity at key intersections in North Gig Harbor with development projects in the pipeline and currently committed improvements. [Exhibit 9, p. 48] The calculated trip generation for development of the subject site would be 122 PM peak hour trips, 47 more than would be generated by development allowed under the current zoning. The impact on design solutions in the NGH Traffic Mitigation Plan was deemed to be small, but because it would increase traffic, the SEIS said that the site should bear a proportionate responsibility for capacity improvements. [Exhibit 9, p. 62] A series of capacity and other improvements are detailed.

22. The FSEIS describes a necessary future roadway connection, L-3, to provide access east of the plat and north of and parallel to Borgen Boulevard. The City Engineer recommended that a condition requiring that the design of the plat accommodate providing that portion of L-3 that is located within the boundary of the plat, the access be dedicated, and the owner be responsible for construction L-3 in a manner that allows for a future roadway to connect to the plat from the east. [Exhibits 13 & 14]

23. A Development Agreement between the City and the Applicant was entered into on July 10, 2006, describing the manner and timing of the performance of mitigation described in the FSEIS and requiring the developer to pay for a share of the improvements described in that agreement. A Subsequent Agreement for Financial Contribution was executed on May 15, 2007, providing for the payment of \$15,939.25 as a condition of obtaining a residential building permit for a single-family home on each lot within the plat for transportation mitigation, subject to possible credit for reserve capacity now held. [Exhibit 22]

24. Notice of the proposed action and hearing on May 16th was published on April 25, 2007. A prior notice of the SEPA determination for the rezone indicated that the hearing would be held April 18th and caused some confusion. [Exhibit 23] Notice of the proposed action and new hearing date was mailed to property owners within 300 feet of the subject site and to interested persons on April 20, 2007 and posted on the site on May 2, 2007.

25. The Department of Ecology provided comment on appropriate measures to protect water quality. [Exhibit 16]

26. The site is served by a Pierce Transit route on Borgen Boulevard. Pierce Transit did not request that the Applicant provide any transit facilities or improvements.

27. The subdivision would be in the Peninsula School District. The District had no comment on the subdivision. Section 19.12.050(B) does require school impact fees be imposed on residential development which will serve to mitigate impact from the demand created by the new development.

28. The Applicant seeks modification of several of the conditions recommended by the Department. The Applicant asks that proposed condition No. 3 be revised to allow the temporary fencing installed to protect trees during construction remain until permanent fencing is installed as each home site is developed. The Department had no objection but directed the Applicant to the requirements for the temporary construction fencing to protect trees in Section 17.99.240. The Applicant would like proposed condition No. 9 to refer to the written agreement; the requirements of No. 11 to apply "to the extent not already completed"; and No. 13 to refer only to the Gig Harbor standards and Stormwater Design Manual because of conflicting requirements with the Department of Ecology's Stormwater Management Manual for Western Washington. City representatives agreed to the changes to No. 11 and No. 13. [Testimony of Halsan, Smith, Appleton]

29. Section 17.100.035 set out the criteria that must be satisfied for approval of a proposed amendment to the zoning district map:

- A. The application for the zoning district map amendment must be consistent with and further the goals, policies and objectives of the comprehensive plan;
- B. The application for the zoning district amendment must further or bear a substantial relationship to the public health, safety and general welfare;
- C. No substantial detrimental effect will be caused by the granting of the application for the amendment; and
- D. The proponents of the application have the burden of proof in demonstrating that conditions have changed since the original zoning or original designation for the property on the zoning district map.

30. The criteria that must be considered by the hearing examiner in reviewing a preliminary plat are listed in Section 16.05.003:

- A. Whether the preliminary plat conforms to Chapter 16.08GHMC, General requirements for subdivision approval;
- B. If appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- C. Whether the public interest will be served by the subdivision and dedication.

31. Section 17.14.020 is a land use matrix that identifies the uses permitted in each zoning district. Under "Uses" are listed single-family dwelling, duplex dwelling, triplex dwelling, fourplex dwelling, multifamily dwelling, and others. Single family dwelling uses are shown as permitted in R-1, RLD, R-2, RMD, RB-1, RB-2, B-1, PCD-C, WR, WM, WC, PCD-NB and MUD.

Conclusions

1. The Hearing Examiner has the authority to approve make site-specific rezones pursuant to Sections 17.100.010 and 19.01.003.
2. The Hearing Examiner has the authority to approve preliminary plats pursuant to Section 16.05.002.
3. The notice of public hearing provided complied with the requirements of Section 19.03.003.

REZONE

4. In amending the Comprehensive Plan to designate the site as Planned Community Development Residential Medium, the City Council determined that the site was intended for densities of 8 to 16 dwelling units per acre. The requested rezone would be consistent with the intent of the Comprehensive Plan designation and is necessary to implement the Comprehensive Plan.
5. The public health, safety and general welfare were considered by the City Council when it considered and passed the amendment to the Comprehensive Plan to provide for the denser development that will be allowed under the RMD zoning. Measures to mitigate the impacts of that increased density were imposed in the MDNS and have been proposed for the preliminary plat approval in the FSEIS. The Development Agreement and subsequent agreement for financial contribution aid in the implementation of the transportation mitigation. That the zoning district amendment bears a substantial relationship to the public health, safety and general welfare is clear.
6. The extensive mitigation required in earlier approvals and agreements and to be required in connection with the subdivision assure that the granting of the rezone will not cause substantial detrimental effect.
7. The amendment to the Comprehensive Plan to designate the site for RMD represents a material change in conditions warranting the rezone of the site to be consistent with, and implement, the designation.
8. The criteria for zoning district map amendment are satisfied and the rezone to RMD should be approved.

SUBDIVISION

9. The findings above show that the proposed subdivision is in conformity with the Comprehensive Plan and applicable zoning ordinance provisions. Though one witness addressed perceived inconsistencies with provisions of the Comprehensive Plan, the Examiner was unable to conclude there were inconsistencies.
10. The proposed park and landscape buffers, plus the two stormwater detention ponds, included in the plat provide adequate open space and park land. With the proposed conditions of approval, the subdivision makes appropriate provision for access, public streets, alleys, sidewalks, stormwater drainage, sanitary sewage, water and schools. Compliance with all City requirements and the conditions imposed on the subdivision assures that there are provisions for the public health and safety.


11. The desire for a full 25-foot buffer to separate the proposed subdivision from the neighboring subdivision is understandable. The use of "shall be reduced" in Section 17.21.040(B)(5) leaves the City no discretion to establish a greater requirement through conditions if the use and zones are "similar". The "use" proposed is single-family residential and, as shown in the Land Use Matrix, Section 17.14.020, remains that use across the zones. That greater density is allowed in other zones does not alter the use definition. That the legislative body used the word "similar" instead of "the same" is also instructive. The Examiner cannot conclude on this record that the zones are not similar.

12. Because the proposed plat is consistent with the intent of the Comprehensive Plan for the zone, conforms to Zoning Code standards, and it will meet Public Works Standards, it is concluded that the subdivision will serve the public interest.

Decision

The Rezone of the subject site from RLD to RMD is granted. The preliminary plat for a 120-lot subdivision is approved subject to the conditions listed in Appendix A.

Entered this 29th day of May, 2007.


Margaret Klockars
Hearing Examiner

Concerning Further Review

Parties of record may appeal the decision of the hearing examiner on the site-specific rezone to the City Council by filing an appeal within 10 working days of the date of this decision. Please see Section 19.06.004 of the Gig Harbor Municipal Code for details.

There is no administrative appeal of the hearing examiner's decision on the preliminary plat. A request for reconsideration may be filed according to the procedures set forth in Ordinance No. 1073. If a request for reconsideration is filed, this may affect the deadline for filing judicial appeal (see Ord.1073 and Chapter 36.70c RCW). Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

Parties of Record

Don Huber
Gig Harbor Estates, L.L.C.
PO Box 64160
Tacoma, WA 98464

Carl Halsan
PO Box 492

Gig Harbor, WA 98335

Cliff Johnson, Associate Planner
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Ann Callin
11609 Sorrel Run NW
Gig Harbor, WA 98332

Russell Tanner
4502 126th St. Ct. NW
Gig Harbor, WA 98332

William Scott
4506 N. Foxglove Dr. NW
Gig Harbor, WA 98332

Brandon Smith
5009 Pacific Hwy. E.

Fife, WA 98424

Doug Allen
11714 Hunter Lane NW
Gig Harbor, WA 98332

Eric Nelson
4423 Pt. Fosdick NW Suite 302
Gig Harbor, WA 98335

Canterwood Homeowners Association
4026 Canterwood Drive NW, Suite A
Gig Harbor, WA 98332

Exhibits Admitted

- 1) Staff Report by Cliff Johnson, Associate Planner, dated May 9, 2007
- 2) Preliminary Plat Application, received November 28, 2005
- 3) Design Review Application, received November 28, 2005
- 4) Rezone Application, received August 01, 2006
- 5) Preliminary plat plans, received April 30, 2007
- 6) Wetland Analysis Report, by Habitat Technologies, dated August 27, 2004
- 7) Preliminary Drainage and Erosion Control Report, by Brandon Smith, PE, PacWest Engineering, dated November 18, 2005
- 8) Borgen Subdivision Development Traffic Impact Analysis, by PacWest Engineering, dated June 2005
- 9) City of Gig Harbor 2005 Comprehensive Plan Amendments FSEIS, 4/5/06
- 10) Mitigated Determination of Nonsignificance, issued March 28, 2007
- 11) Determination of Significance and Adoption of Existing Environmental Document, dated March 21, 2007
- 12) SEPA comments from Emily Appleton, Senior Engineer, 1/18/07
- 13) SEPA Comments from Emily Appleton, Senior Engineer, 3/27/07 (including Resolution 667)
- 14) Preliminary Plat Comments from Emily Appleton, Senior Engineer, 3/4/07
- 15) Comments from Dick Bower, Building Official/Fire Marshal, 3/15/07
- 16) SEPA comments received by the Wash. St. Dept. of Ecology, 4/11/07
- 17) Affidavit of posting, dated May 2, 2007
- 18) DRB Administrative Decision by Eric Mendenhall, dated April 2, 2007
- 19) Letter from Canterwood Homeowners Association, dated April 24, 2007
- 20) SEPA checklist dated February 15, 2007 for the proposed rezone
- 21) SEPA checklist dated August 01, 2006 for the proposed preliminary plat
- 22) Staff Report-Supplement, dated 5/16/07
- 23) Letter from Russell Tanner received 5/16/07
- 24) Copy of small aerial photograph
- 25) Aerial Photograph

Appendix A

Conditions of Approval SUB 05-1126

1. A 25 foot landscaped buffer, per GHMC 17.78.060(B) shall be provided along the southern boundary of the plat, bordering Borgen Boulevard. Civil plans submitted for review shall include this buffer.
2. All perimeter landscaping buffers shall be vegetated to meet GHMC 17.78.060 standards, including the retention of all significant vegetation within the buffer and additional plantings as necessary to create a dense vegetative screen as defined under GHMC 17.78.060. A landscape plan shall be submitted with civil plans. This requirement shall be met prior to approval of the final plat.
3. Buffers shall be fenced to protect the buffer from the residential use of the plat. Protective barricade must be installed to protect significant vegetation to be retained prior to any grading. Permanent buffer fencing shall be installed prior to final inspection for each single family residence.
4. All public roads within the plat shall be designated as public and all alleys shall be labeled as private on the final plat drawings.
5. As shown on the preliminary plat design, the plat shall accommodate providing that portion of L-3 that is located within the boundary of the plat. The owner shall be responsible for constructing L-3 and the plat is a manner that allows for a future roadway to connect to the plat from the east in accordance with the City of Gig Harbor 2005 Comprehensive Plan Amendment FSEIS dated April 5, 2006.
6. The applicant shall provide information on how roof and footing drainage will be managed for the individual lots on civil plans.
7. The on-site water systems shall be designed and installed to provide the required flows as prescribed under IFC Appendix Chapter B.
8. Fire lane locations and details and their manner of marking demonstrating compliance with City standards shall be submitted prior to approval of the civil plans.
9. The applicant shall pay a water latecomers fee payment in accordance with the proposed Harbor Hill Water Tank and Mainline Extension Latecomer Agreement. The application for this agreement has been submitted by

OPG Properties, LLC, to the City of Gig Harbor City Engineer for review and submission to City Council. The proposed water latecomers fee payment for the Harbor Estates Plan site is estimated to be approximately \$190,000 according to the submitted latecomers agreement. Upon approval by City Council, the applicant shall pay the water latecomers fee in accordance with the latecomers agreement.

11. The applicant shall design and construct half width frontage improvements along Borgen Boulevard across the entire property frontage, to the extent not already completed. The improvements shall include curb, gutter, sidewalk, planter strip, and street lights in accordance with the City of Gig Harbor Public Works Standards and shall be completed prior to issuance of the first certificate of occupancy within the plat.
12. A final record drawing and a final record survey of the proposed development shall be provided after the City accepts the construction improvements shown on the civil plans but prior to the certificate of occupancy for any buildings located on the site.
13. The proposed water and sewer utility designs, stormwater facility designs, and roadway designs shall conform to the requirements of the City Public Works Standards and the City Stormwater Design Manual. These Standards also address specific City design requirements such as restoration of the City right of way and traffic control.
14. Erosion shall be controlled throughout the construction of the project per the approved plans, City Public Works Standards, and City Stormwater Design Manual.
15. City forces may remove any traffic control device constructed within the City right of way not approved by this division. Any liability incurred by the City due to non-conformance by the applicant shall be transferred to the applicant.
16. A road encroachment permit shall be acquired from the City prior to any construction within City right of way, including utility work, improvements to the curb, gutter, and sidewalk, roadway shoulders and ditches, and installation of culverts. All work within the City right of way shall conform to the City Standards. These standards address specific design requirements such as restoration of the City right of way and traffic control.
17. A stabilized construction entrance shall be installed prior to vehicles leaving the site. The City inspector shall determine the required length.

18. Permanent survey control monuments shall be placed to establish all public street centerlines, intersections, angle points, curves, subdivision boundaries and other points of control. Permanent survey control monuments shall be installed in accordance with the City Standards. At completion, a record of survey shall be provided to the City.
19. Construction of required improvements shall comply with the terms of the "Development Agreement by and between the City of Gig Harbor and Harbor Estates LLC, for a Comprehensive Plan Amendment/Residential Subdivision," dated July 10, 2006, Resolution 677, passed by the Gig Harbor City Council on July 10, 2006.
20. This approval does not relieve the Permittee from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Permittee.
21. Increased storm water runoff from the road(s), building, driveway and parking areas shall be retained/detained on site and shall not be directed to City infrastructure.
22. If private roadways are proposed then provisions shall be made for the roads and easements to be open at all times for emergency and public service vehicle use.
23. The final site plan shall note or delineate the following:
 - a. "WARNING: City of Gig Harbor has no responsibility to build, improve, maintain or otherwise service private roadways or driveways within, or providing access to, property described in this site."
 - b. "Where seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted."
 - c. Storage requirements for runoff from buildings and parking surfaces shall be shown on individual building lots, including drywell sizing or storm drain connection points.
 - d. "This site plan is subject to stormwater maintenance agreement recorded under Auditor's file number (enter AFN here)."
 - e. "Stormwater/Drainage easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on this site plan. No encroachment will be placed within the easements shown on the site plan that may

damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the property owner(s) or it's heirs or assigns, as noted under the stormwater maintenance agreement for the site."

24. Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes as a quitclaim deed to the said donee(s) grantee(s) for his/her/their use for the purpose intended by the donor(s) or grantor(s).
25. Since the plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual(s), religious society(ies) or to any corporation, public or private, as shown on the plat, and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.
26. Any dedication filed for record shall be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

DECLARATION OF MAILING

I certify that on the 29th day of May 2007, I sent by first class mail, postage paid, a copy of the Decision in the matter of the Application of Gig Harbor LLC for a site-specific rezone and Preliminary Plat Approval to each of the following persons at the address listed.

Nancy Meyer
11606 Hunter Lane NW
Gig Harbor, WA 98332

Jean Webster
11610 Hunter Lane NW
Gig Harbor, WA 98332

Mary Stockton
11601 Sorrel Run NW
Gig Harbor, WA 983

Ann Callin
11609 Sorrell Run NW
Gig Harbor, WA 98332

Janet and Pete Fones
11713 51st Ct. NW
Gig Harbor, WA 98332

Russell Tanner
4502 126th St. Ct. NW
Gig Harbor, WA 983

Bill Scott
4506 N. Foxglove Dr. NW
Gig Harbor, WA 98332

Doug Allen
11714 Hunter Lane NW
Gig Harbor, WA 98332

Jarrod Fauren
8120 Freedom Ln. NW
Lacey, WA 98516

Don Huber
Gig Harbor Estates LLC
PO Box 64160
Tacoma, WA 98464

Carl Halsan
PO Box 492
Gig Harbor, WA 98335

Cliff Johnson
City of Gig Harbor
3510 Grandview St.
Gig Harbor, WA 983

Eric Nelson
4423 Pt. Fosdick NW Ste. 302
Gig Harbor, WA 98335

Canterwood Homeowners Assn.
4026 Canterwood Dr. SW Ste. A
Gig Harbor, WA 98332

Brandon Smith
5009 Pacific Hwy E.
Fife, WA 98424

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 29th day of May 2007, at Seattle, Washington.


Margaret Klockars

EXHIBIT 'C'

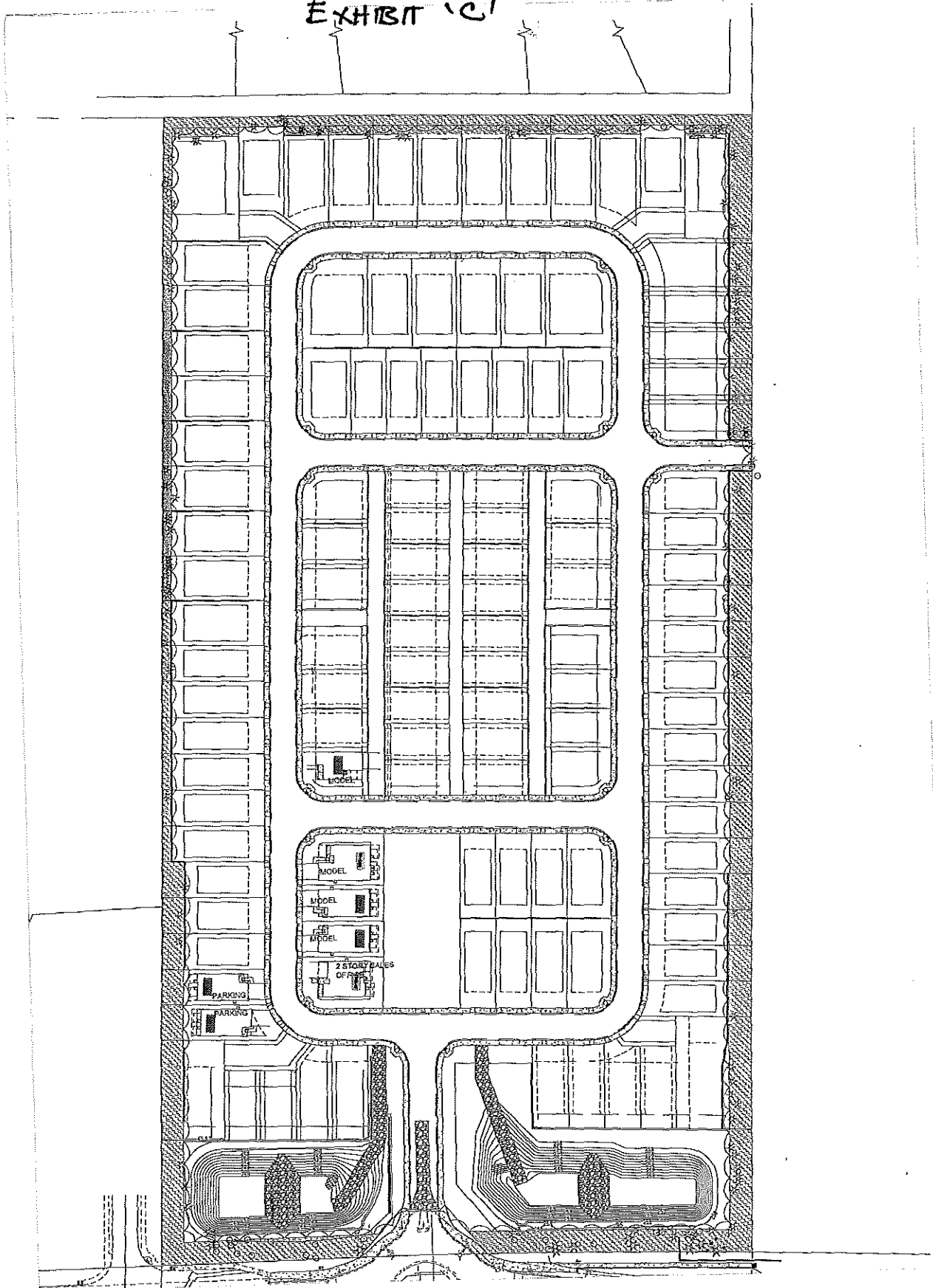


Exhibit "D"
SUPPLEMENTAL DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND HARBOR ESTATES LLC, FOR THE
GIG HARBOR ESTATES DEVELOPMENT

THIS SUPPLEMENTAL DEVELOPMENT AGREEMENT is made and entered into this 14 day of May, 2007, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and HARBOR ESTATES, an LLC organized under the laws of the State of WASHINGTON, hereinafter the "Developer."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, local governments may also enter into a development agreement for real property outside its boundaries as part of a proposed annexation or service agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this Supplemental Development Agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Supplemental Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the "Development Agreement"), relates to the development known as **GIG HARBOR ESTATES**, which is located at: **4000 BORGES BOULEVARD** (hereinafter the "Property"); and

WHEREAS, the City and Developer are parties to a Development Agreement dated July 10, 2006 concerning the Property; and

WHEREAS, the July 10th Development Agreement requires the Developer to pay for a share of certain Transportation Mitigation Improvements as described in that agreement; and

WHEREAS, Section 10.B. of that Development Agreement required a subsequent agreement addressing details of Developer's payment obligation that had not been finalized at the time that agreement was signed; and

WHEREAS, the City and Developer have reached agreement on those details and wish to supplement the July 10, 2006 Development Agreement as set forth below;

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Project.* The Project is the development and use of the Property, consisting of 19.32 acres in the City of Gig Harbor. The **PRELIMINARY PLAT** will describe the Project as **A 120 LOT SINGLE FAMILY HOME SUBDIVISION**.

Section 2. *The Subject Property.* The Project site is legally described in Exhibit "A", attached hereto and incorporated herein by this reference.

Section 3. *Supplemental Development Agreement.* This agreement supplements and clarifies the Development Agreement between the parties dated July 10, 2006, and the two agreements are to be harmonized. To the extent of any conflict between the agreements concerning the payment for Traffic Mitigation Improvements, the terms of this Agreement shall prevail.

Section 4. *Definitions.* As used in this Supplemental Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

a) "Adopting Ordinance" means the Ordinance which approves this Supplemental Development Agreement, as required by RCW 36.70B.200.

b) "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

c) "Council" means the duly elected legislative body governing the City of Gig Harbor.

d) "Development Agreement" means the Development Agreement between the parties dated July 10, 2006.

e) "Director" means the City's Community Development Director or Director of Planning and Building.

f) "Effective Date" means the effective date of the Adopting Ordinance.

g) "Existing Land Use Regulations" means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees.

h) "Landowner" or is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 6 of this Agreement.

i) "Plat" refers to the subdivision of the Project site approved by the City.

j) "Project" means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

Section 5. Exhibits. Exhibits to this Agreement are as follows:

- a) Exhibit A – legal description of the Subject Property.
- b) Exhibit B- map of subject property.
- c) Exhibit C - map depicting the traffic mitigation and the proportionate share of traffic mitigation for which the pro rata share will be paid by the Developer under the Development Agreement and the Supplemental Agreement.

Section 6. Parties to Supplemental Development Agreement. The parties to this Supplemental Development Agreement are:

a) The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.

b) The "Developer" or Owner is a private enterprise which owns the Subject Property in fee, and whose mailing address is **PO BOX 64160, TACOMA, WA 98464.**

c) The "Landowner." From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 7. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 8. Term of Agreement. This Agreement shall commence upon the effective date of the Adopting Ordinance approving this Agreement, and shall continue in force for a period of three years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 9. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Subject Property shall be those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

Section 10. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code, and shall not require an amendment to this Agreement.

Section 11. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 12. Developer's Obligation for Traffic Mitigation Improvements.

A. As a condition of obtaining a residential building permit for a single-family home on each lot within the Plat, the Developer shall initially pay the sum of \$15,939.25 for the TRANSPORTATION MITIGATION IMPROVEMENTS described in the Development Agreement. If the payments for all 120 lots in the Plat have not been paid by a date two years from the date the first building permit for a home in the Plat is issued, the Developer shall upon request from the City, pay the amount due for each of the remaining lots for which payment has not previously been made. These funds paid by the Developer shall be retained by the City in a set aside account to be used for the design and construction of the Transportation Mitigation Improvements.

B. The per lot payment set forth above was calculated by taking the 18.57% share of the Traffic Mitigation Improvement cost assigned to Harbor Estates in the Development Agreement, multiplying by the current cost estimate by the City Engineer

for the Traffic Mitigation Improvements (\$10,300,000) and dividing by the 120 lots ($18.57\% \times \$10,300,000 = \$1,912,710 / 120 = \$15,939.25$ per lot). As noted in Exhibit E to the Development Agreement, Developer currently holds reserve capacity for 48 Peak PM Trips (50 lots) and Developer is entitled to a credit for the capacity it holds, reducing its share of the Transportation Mitigation Improvement costs set forth above and also set forth in Exhibit E to the Development Agreement. To account for the possibility that the actual costs of design and construction of the Traffic Mitigation Improvements may exceed the estimate set forth above, the parties have provided in this Supplemental Development Agreement for payment of the entire estimated amount without considering Developer's credit. Upon completion of the Traffic Mitigation Improvements, and acceptance thereof by the City, the City shall prepare an accounting of the actual cost of design and construction. The accounting shall also take into account any funds received by the City for the Traffic Mitigation Improvements from the CERB Grant (as discussed in the Development Agreement) and/or from other sources. If Developer's share of the actual costs, taking into account the credit and these other adjustments is less than what Developer has paid, Developer shall be entitled to reimbursement of the difference from the City within 30 days following completion of the accounting. If Developer's share is more than the amount it has paid, it shall remit the balance owing within 30 days after invoice from the City.

Section 13. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 19.12 of the Gig Harbor Municipal Code.

Section 14. Phasing of Development. The parties acknowledge that the most efficient and economic development of the Subject Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Subject Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project shall be constructed according to the following schedule:

A. **Street Improvements.**

NO PHASING IS PROPOSED

B. **Potable Water and Fire Flow Facilities.**

NO PHASING IS PROPOSED

C. Sewer Facilities.

NO PHASING IS PROPOSED

D. Utilities.

NO PHASING IS PROPOSED

E. Parks and Open Space.

NO PHASING IS PROPOSED

Section 15. Dedication of Public Lands. Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within ninety (90) days of the Effective Date of this Agreement. Dedication shall be considered by the City in the following schedule:

A. Parks. With regard to parks within the Subject Property, **NO PUBLIC PARKS WILL BE PROPOSED.**

B. Rights-Of-Way. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

Section 16. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Supplemental Development Agreement and the Code.

Section 17. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

Section 18. Termination. This Agreement shall expire and/or terminate as provided below:

A. This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development.

B. This Agreement shall terminate upon the expiration of the term identified in Section 8 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit or any non-residential building and the lot or parcel upon which such residence or building is located, when it has been approved by the City for occupancy.

Section 19. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 20. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 21. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action.

Section 22. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the

Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 23. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (*see*, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Supplemental Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property five years from the anniversary date of the Effective Date of this Agreement.

Section 24. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 25. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 6. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 26. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff and consultant costs not otherwise included within application fees. This Supplemental Development Agreement shall not take effect until the fees provided for in this section, as well as any processing fees owed to the City for the PLAT project are paid to the City. Upon payment of all expenses, the Developer may request written acknowledgement of all fees. Such payment of all fees shall be paid, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer.

Section 27. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 28. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 29. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Supplemental Development Agreement by any party in default hereof.

Section 30. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Supplemental Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:
HARBOR ESTATES, LLC

CITY OF GIG HARBOR

By 

By 

Its Mayor

Its Mayor

Print Name: Donald B. Huber

Developer

Address: P.O. Box 64160 Tacoma WA 98469

Phone: 253-564-6069

ATTEST:

By Molly M. Lovell
City Clerk

APPROVED AS TO FORM:

By [Signature]
City Attorney

CITY OF GIG HARBOR

By Paul I. Hutton
Its Mayor

City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
Attn: Community Development Director

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Donald G. Huber is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the

Manager of Harbor Estates, LLC Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5-10-2007

Patricia M. McCallie

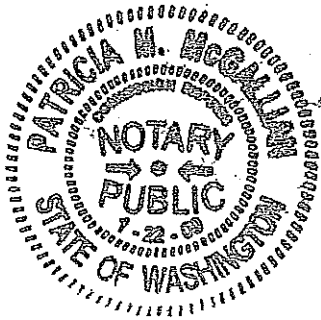
Patricia M. McCallie

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Kitap County

My Commission expires: 1-22-2009



STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Charles L. Hunter is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5-15-07

Molly M Towselee

Molly M. Towselee

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Gig Harbor
My Commission expires: 12/2/07

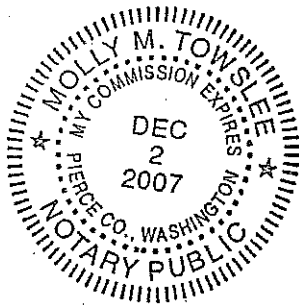


EXHIBIT "A"

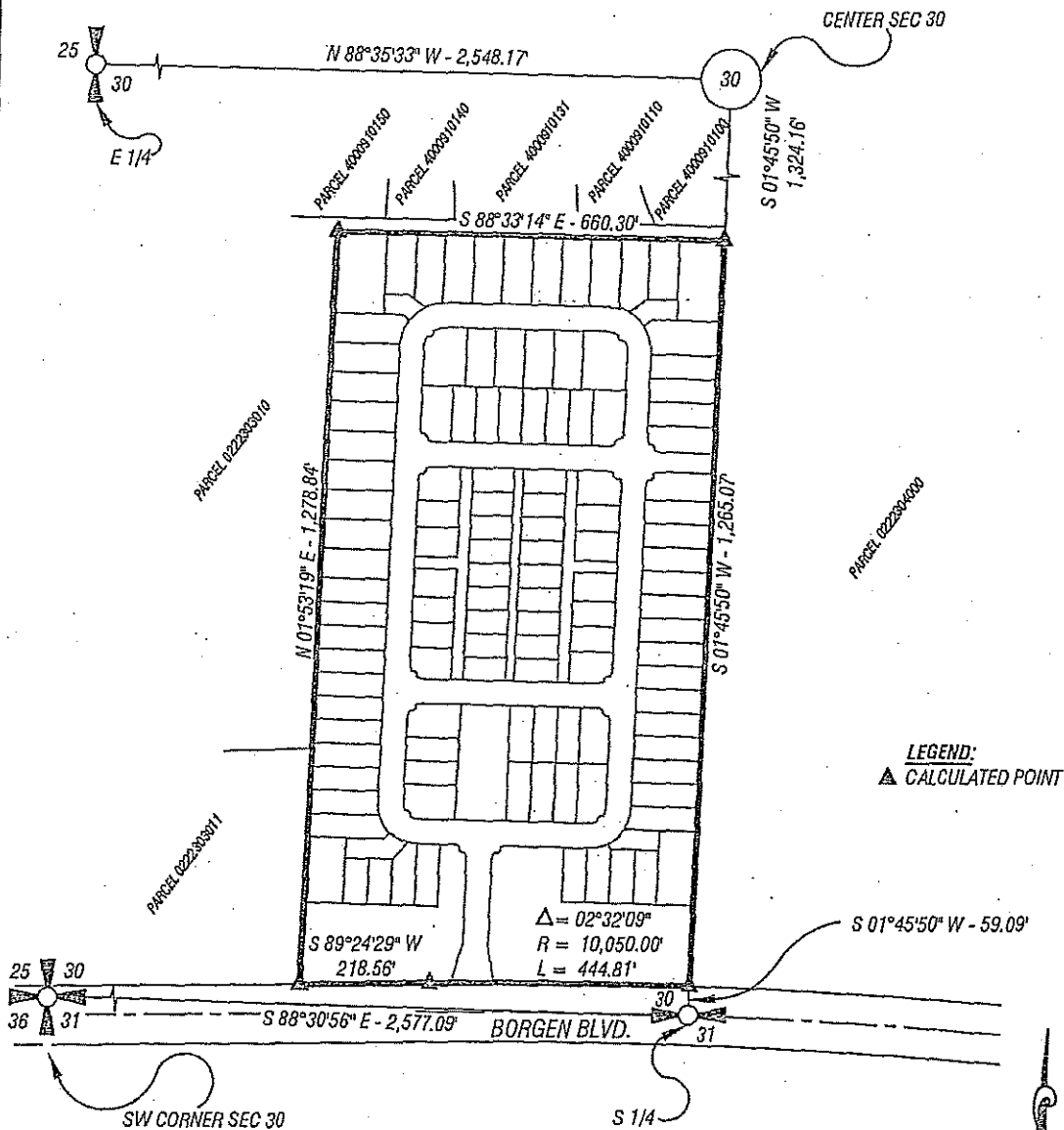
Legal Description

Tax Parcel #02-22-30-3-002

The East half of the Southeast Quarter of the Southwest Quarter of Section 30,
Township 22 North, Range 2 East of the Willamette Meridian; except Borgen
Boulevard deeded to the City of Gig Harbor through AFN 2000-07-13-0671.

EXHIBIT "B"

A PORTION OF THE SOUTHEAST 1/4 OF THE SW 1/4 OF SECTION 30, TOWNSHIP 22 NORTH,
RANGE 2 EAST OF THE WILLAMETTE MERIDIAN,
PIERCE COUNTY, WASHINGTON



PARCEL # 0222303002
AREA = 19.28 ACRES



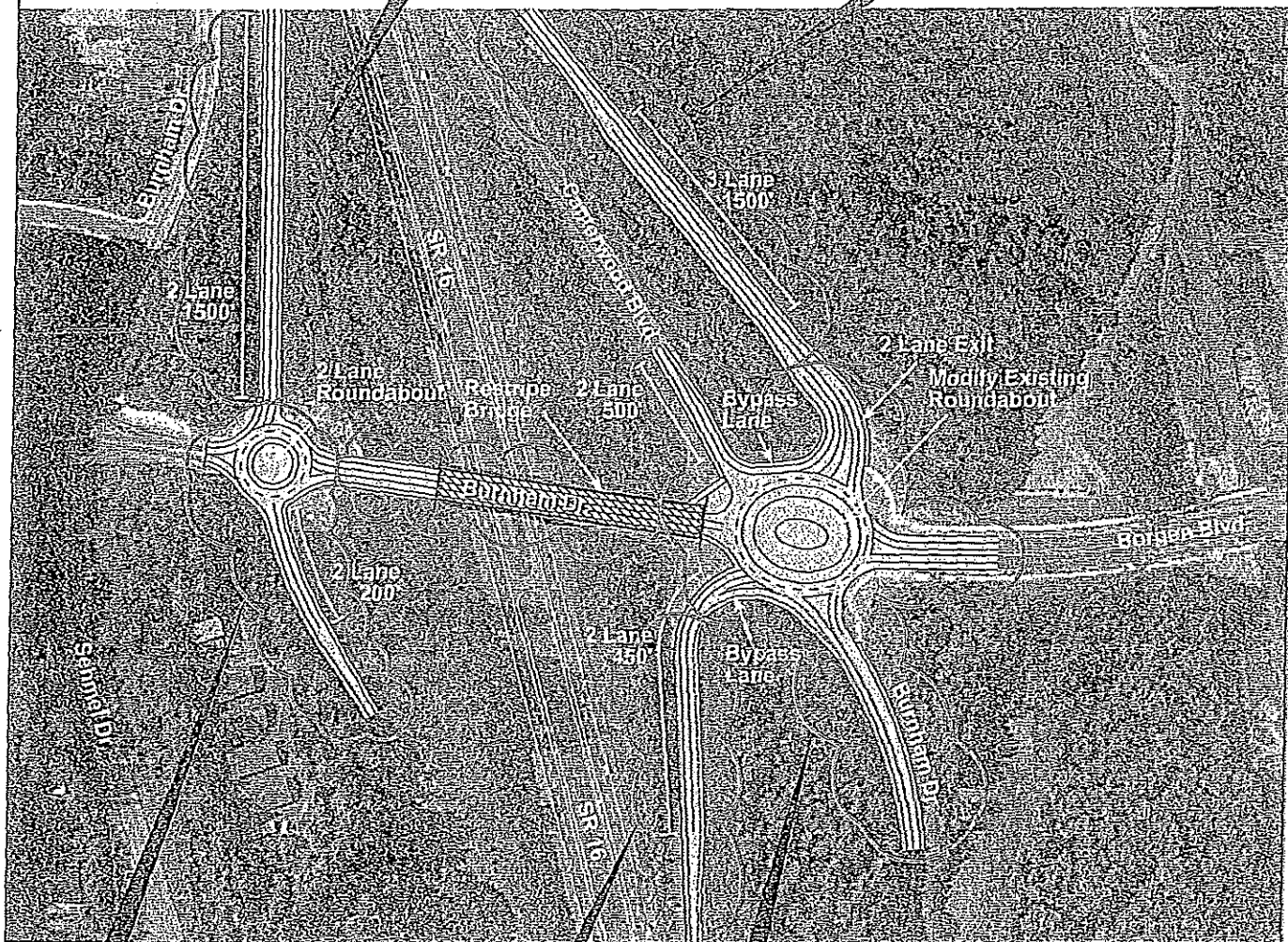
PacWest Engineering, LLC
5009 PACIFIC HIGHWAY EAST, UNIT 9-0
FIFE, WA 98424
Phone (253) 926-3400
Fax (253) 926-3402

DWG: EXHIBIT.DWG
DATE: APRIL 2007
PROJECT: 05-629

NOT TO SCALE

\$ 464,250
EB Off-ramp Widening

\$ 241,410
Canterwood Blvd. Widening



\$ 408,540
State Roundabout
Expansion to 2 Lanes,
and EB On-ramp Widening

\$ 167,130
WB Off-ramp
Widening

\$ 631,380
Borgen Roundabout,
WB On-ramp Widening
and Bypass Lanes



Harbor Estates LLC	
Map Depiction of Pro Rata Share	
Supplemental Development Agreement	
City of Gig Harbor	
Gig Harbor Estates	
May 2007	Exhibit C

CITY OF GIG HARBOR
RESOLUTION NO. 710

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE THE DEVELOPMENT AGREEMENT BETWEEN HARBOR ESTATES LLC AND THE CITY OF GIG HARBOR FOR THE PAYMENT OF THE DEVELOPER'S PRO RATA SHARE CONTRIBUTION TOWARDS THE GIG HARBOR NORTH INTERCHANGE IMPROVEMENTS.

WHEREAS, the City and the Developer Harbor Estates LLC entered into a Development Agreement as part of a comprehensive plan amendment on July 10, 2006; and

WHEREAS, the Development Agreement required that Harbor Estates LLC pay its pro rata share of certain Transportation Mitigation Improvements for the Gig Harbor North Interchange; and

WHEREAS, the attached Supplemental Development Agreement identifies the pro rata share payment to be made by Harbor Estates LLC; and

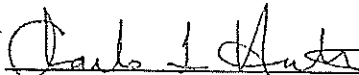
WHEREAS, on May 14, 2007, the Gig Harbor City Council held a public hearing on this Supplemental Development Agreement during its regular city council meeting; Now, Therefore,

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

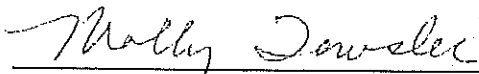
Section 1. The Gig Harbor City Council hereby authorizes the Mayor to execute the Supplemental Development Agreement attached to this Resolution.

RESOLVED by the City Council this 14th day of May, 2007.

APPROVED:


Charles L. Hunter, Mayor

ATTEST/AUTHENTICATED:


Molly M. Towslee, City Clerk

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
Carol A. Morris

Filed with the City Clerk: 5/11/07
Passed by the City Council: 5/14/07
Resolution No. 710