

RESOLUTION NO. 699

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH OLYMPIC DRIVE LAND LLC.

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 Olympic Mixed Use Development Project located on 4.80 acres at 5225/5275 Olympic Drive has been required to make a pro rata share contribution toward the cost for intersection improvements and signal installation of 38th Ave. and 56th Street as a condition of SEPA approval. The mitigation of adverse impacts is a requirement of Modified Mitigated Determination of Nonsignificance (MDNS), SEPA 05-160, dated April 5, 2006. The amount of the pro rata share is Five Thousand Eight Hundred Ninety Nine and 51/100 Dollars (\$5,899.51) and

WHEREAS, on January 22, 2007, 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 applicant Harbor Estates LLC.

Section 2. The City Council hereby directs the Community Development 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.

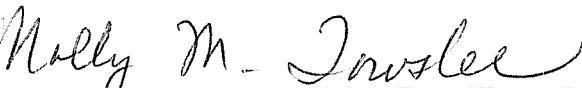
PASSED by the City Council this 22nd day of January 2007.

APPROVED:



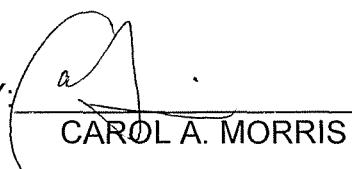
MAYOR, CHARLES L. HUNTER

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: 01/17/07
PASSED BY THE CITY COUNCIL: 01/22/07
RESOLUTION NO. 699

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND OLYMPIC DRIVE LAND, LLC, FOR
STREET IMPROVEMENT MONETARY CONTRIBUTIONS**

THIS DEVELOPMENT AGREEMENT is made and entered into this 22 day of January, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Olympic Drive Land, LLC, 2727 Hollycroft, Suite 410, Gig Harbor, WA 98335, a limited liability corporation, 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, the Developer has received a permit or approval from the City, and as a condition of such permit/approval, is required to either construct or make monetary contributions toward construction of an identified transportation improvement; and

WHEREAS, the City agrees to accept such monetary contribution; and

WHEREAS, on January 22, 2006, the City Council held a public hearing on this Development Agreement, and authorized the Mayor to sign this Development Agreement with the Developer; 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 4.80 acres, located at 5225/5275 Olympic Drive, in the City of Gig Harbor. The mitigation of adverse impacts is a requirement the Modified Mitigated Determination of Nonsignificance (MDNS), SEPA 05-160, dated April 5, 2006.

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

Section 3. The Street Improvements. The Developer has been required to make a pro-rata share contribution toward the cost for intersection improvements and signal installation of 38th Avenue and 56th Street, as a condition of SEPA approval, Exhibit B, attached hereto and incorporated herein by this reference.

Section 4. Developer's Monetary Contribution to Public Improvement Financing.

a) The Developer has agreed to satisfy the condition in the permit/approval described above by paying the Developer's pro-rata share of the cost of the construction of the transportation improvements required by mitigation #2 of the MDNS (attached as Exhibit B)

to the City. The amount of the pro rata share is Five Thousand Eight Hundred Ninety Nine and 51/100 Dollars (\$5,899.51). The City agrees to accept such payment towards the construction of the transportation improvements in accordance with this Agreement.

b) The City shall hold the Developer's payment in a reserve account. The payment may only be expended by the City to fund the transportation improvements shown in Exhibit B, attached hereto, or a transportation project which includes the transportation improvements shown in Exhibit B.

c) The City agrees that if the payment is not expended as set forth above within five years after the Effective Date of the Adopting Resolution, any payment not so expended shall be refunded by the City with interest to the Developer. The interest shall be calculated at the rate applied to judgments to the property owners of record at the time of the refund; PROVIDED, HOWEVER, that if the payment is not expended by the City within five years due to delay attributable to the Developer, the payment shall be refunded without interest.

Section 5. Effective Date and Termination. This Agreement shall commence upon the date it is executed by both parties, and shall continue in force for a period of five years or until the street improvement identified in Exhibit B, page 8 of 10 is actually constructed , whichever comes first. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect.

Termination shall not affect any of the Developer's obligations to comply with the terms and conditions of this Agreement, or any applicable zoning code(s) or subdivision map or other land use permits or approvals granted with respect to the Subject Property, any other conditions of the Project, which are specified as continuing after the termination of this Agreement, nor shall it affect the Developer's (or Landowner's) obligations to pay assessments, liens, fees or taxes.

Section 6. 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.

Section 7. 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).

Section 8. 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 set forth below. Notice to the City shall be to the attention of both the Community Development Director and the City Attorney. Notices to the Developer or any subsequent purchasers of the property described in Exhibit A shall be required to be given by the City only for those purchasers 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, correspondence or refunds.

Section 9. 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 10. 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:

OWNER/DEVELOPER:

By *Er*
Its MANAGING MEMBER
Print Name: GORDON RUSH

Developer OLYMPIC DRIVE LAND, LLC
Address: 2727 Hollycroft St., #410
GIG HARBOR, WA 98335
Phone: (253) 858-3636

CITY OF GIG HARBOR

By *Dale J. Huth*
Its Mayor

ATTEST:

By *Molly Towslee*
City Clerk

By *QJ*
City Attorney

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 GORDON RUSH 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 MANAGING MEMBER of OLYMPIC DRIVE LAND, LLC Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 11/17/06



Cyrena Westenhaver
CYRENA WESTENHAYER
(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:
GIG HARBOR, WA
My Commission expires: 7/17/2010

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Charles 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: 1-22-07

Molly Towslee

Molly Towslee
(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
Property Legal Description

LOT 4 OF BOUNDARY ADJUSTMENT RECORDED UNDER RECORDING NUMBER 20010418594, IN PIERCE COUNTY, WASHINGTON, EXCEPT THEREFROM THAT PORTION LYING NORTH AND WEST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT W OF SAID SHORT PLAT: THENCE NORTH 88°45'45" WEST, ALONG THE NORTH LINE OF SAID LOT 4, A DISTANCE OF 321.18 FEET TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED LINE:

THENCE SOUTH 01°18'58" WEST A DISTANCE OF 30.00 FEET; THENCE NORTH 88°45'15" WEST A DISTANCE OF 78.56 FEET TO THE EASTERLY RIGHT OF WAY MARGIN OF OLYMPIC DRIVE NW AND THE TERMINUS OF THE HEREIN DESCRIBED LINE.

Exhibit B

Modified Mitigated Determination of Nonsignificance (MDNS) SEPA 05-160



COMMUNITY DEVELOPMENT DEPARTMENT

Modified Mitigated Determination of Nonsignificance (MDNS) W.A.C. 197-11-355

Environmental Review Application No.: SEPA 05-160

Parcel Number: 0221177046

Action: Conditional Use, Site Plan and Design Review Approval

Proposal: The proposal is for a mixed use development incorporating 10 town house and 50 row house residential units and 23,832 square feet of new retail space. Site has an existing 17,869 square foot medical office building.

Location: 5225/5275 Olympic Drive

Proponent: North Pacific Design Inc., 2727 Hollycroft Street Suite 410, Gig Harbor WA 98335, (253) 858-8204

Lead Agency: City of Gig Harbor

The lead agency for this proposal has determined that the proposed development will not have a probable significant adverse impact on the environment, provided that mitigation is imposed as identified in the following section. No additional mitigation measures will be required under SEPA beyond those stated herein.

~~This Modified MDNS has been issued to remove traffic impact fees which are already required by other applicable development regulations and to clarify required SEPA mitigation based on revised comments from the Engineering Department.~~

INCORPORATION BY REFERENCE:

The following documents contain information, studies and analysis that have been used in the review of this proposal and are hereby incorporated into this threshold determination by reference:

1. Olympic Retail/Condominiums Transportation Impact Analysis, City of Gig Harbor, WA. Prepared for Thair Jorgenson, Rush Construction, Revised December 2005, Prepared by The Heath & Associates Inc.

This document analyzes the impacts of traffic related to the proposed

Exhibit B

Modified Mitigated Determination of Nonsignificance (MDNS) SEPA 05-160

development.

2. Memo from Jeff Langhjem PE, Associate Engineer, City of Gig Harbor, dated February 24, 2006, addressed to Kristin Moerler, Associate Planner, City of Gig Harbor.

This document provides comments on the Heath & Associates Traffic Study (referenced above) and related traffic impacts to the proposed development, and specifies needed traffic mitigation.

3. Memo from Jeff Langhjem PE, Associate Engineer, City of Gig Harbor, dated April 5, 2006, addressed to Kristin Moerler, Associate Planner, City of Gig Harbor.

This document provides revised comments on the Heath & Associates Traffic Study (referenced above) and related traffic impacts to the proposed development, and specifies needed traffic mitigation.

MITIGATION OF ADVERSE IMPACTS

In addition to compliance with adopted development standards, required mitigation will include the following:

The intent of the environmental review is to identify, evaluate, and require or implement, where required by the State Environmental Policy Act (SEPA) reasonable alternatives that would mitigate adverse effects of proposed development on the environment if compliance with the City of Gig Harbor Public Works Standards cannot fully mitigate the impacts.

Off-site environmental impacts were evaluated by the City of Gig Harbor. Evaluations of impacts were not received from Pierce County or Washington State Department of Transportation (WSDOT). Based on the referenced project documents, City staff is recommending the following conditions to mitigate significant off-site environmental impacts from the proposed development:

1. **Mitigation:** As mitigation for the Olympic Mixed Use Development, the City of Gig Harbor is conditioning SEPA approval for the Olympic Mixed Use Development and the Gig Harbor Retirement Residence on both applicants working collaboratively to design and construct intersection and traffic signal improvements at the intersection of Olympic Drive and 50th Street Court. Colson & Colson Construction Company is currently requesting approval for the Gig Harbor Retirement Residence located off 50th Street Court west of Olympic Drive. These improvements shall be in accordance with the City of Gig Harbor Public Works Standards and the approved final City construction drawings for the 56th Street NW and Olympic Drive NW Street Improvement Project (CSP 0133). These improvements include, but are not limited to, the complete signalization system, all cement concrete crosswalks and curb, gutter sidewalk, and ramps,

Exhibit B

Modified Mitigated Determination of Nonsignificance (MDNS) SEPA 05-160

and roadway repair proposed at the intersection. The drawings shall be reviewed and approved by the City of Gig Harbor prior to beginning construction. These improvements shall be completed prior to the City of Gig Harbor issuing the certificate of building occupancy.

The applicant shall be required to post a construction bond in the amount of 125% of the estimated construction costs for the intersection and traffic signal improvements at 50th Street Court and Olympic Drive. This bond shall be posted prior to final civil review and plan approval by the City.

2. **Mitigation:** The applicant shall be required to pay a pro-rata share of the cost for intersection improvements and signal installation at the intersection of 38th Avenue and 56th Street. The estimated cost for the intersection improvements and signal installation is \$246,160. The applicant's pro-rata share shall be \$5,899.51 and paid to the City of Gig Harbor prior to final civil review and plan approval by the City. A "Development Agreement for Street Improvement Monetary Contributions" provided on City forms shall be executed by the applicant prior to payment of the pro-rata share.

The City of Gig Harbor SEPA Responsible Official has determined that all environmental impacts associated with this proposal can be mitigated under existing City development standards and under the additional mitigation measures outlined herein. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

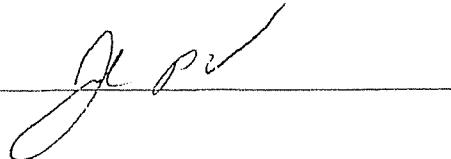
This MDNS is issued under WAC 197-11-355. The lead agency will not act on this proposal for at least 14 days from the date below, or by the date comments are due, which ever is longer. Comments must be submitted by April 5, 2006.

Any interested person may appeal the adequacy of this final threshold determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Title 18.04 of the Gig Harbor Municipal Code if a written request for appeal is received by **April 19, 2006**. The written appeal must be submitted with a filing fee of one hundred dollars (\$150).

SEPA Responsible Official: John Vodopich AICP
Position Title: Community Development Director Phone: 851-6170

Address: City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA. 98335

Signature



4/5/06