

**CITY OF GIG HARBOR
RESOLUTION #520**

WHEREAS, Scott Wagner, Talmo Inc., has requested site plan approval and conditional use approval to construct a 70,000 square foot building and an associated parking structure at 6712 38th Avenue; and,

WHEREAS, the recorded short plat of the site shows a 15-foot wide drainage easement that runs behind and through the proposed location of the parking structure; and,

WHEREAS, the planning and building staff informed that applicant that a structure cannot be built over an easement; and,

WHEREAS, the proposed development plans indicate a parking structure over the drainage easement shown on the recorded short plat; and,

WHEREAS, the proposed drainage plans for the development included a storm sewer line through the drainage easement below the proposed parking structure and also a detention system beneath the proposed parking structure; and,

WHEREAS, RCW Section 64.04.175 states that, "Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated easement provides for an alternative method or methods to extinguish or alter the easement."; and,

WHEREAS, the staff recommended approval of the proposed development subject, in part, to the condition that the storm detention system and storm main not be permitted under the parking structure; and,

WHEREAS, the Hearing Examiner conducted a public hearing on the proposed development on April 15, 1998 to accept public testimony on the proposed development; and,

WHEREAS, the Hearing Examiner approved the requested site plan (SPR 98-01) and conditional use permit (CUP 98-02) subject to conditions, including condition #7 which states that a storm detention system and storm main is not permitted under the parking structure; and,

WHEREAS, Section 19.06 of the Gig Harbor Municipal Code establishes procedures for closed record appeals of the Hearing Examiner's decision, and,

WHEREAS, the applicant submitted a timely appeal (dated May 11, 1998) of the Hearing Examiner's condition of approval #7 requesting that this condition of approval be removed from the requirements; and,

WHEREAS, the City Council considered the appeal by Scott Wagner at its regularly scheduled meeting of June 22, 1998;

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

Section 1. **Site Plan, Conditional Use Permit.** The City Council hereby adopts by reference the findings and conclusions of the Hearing Examiner on the Memory Lanes site plan as contained in his decision dated April 28, 1998, and upholds all conditions of approval stated in his decision, **except** condition #7.

Section 2. **Appeal**

A. Findings. The City Council considered the record in this matter, the appeal submitted by the applicant, Mr. Wagner, and the recommendations of staff. The appellant argues that the condition of approval #7 should be removed from the Hearing Examiner's decision. The Council makes the following findings:

1. The proposed structure cannot be built over an easement.
2. An easement may be formally extinguished under the provisions of RCW 64.04.175.
3. Any detention systems or storm water mains below a structure must conform to the Uniform Plumbing Code and Public Works Standards as per Section 101.4.1.1.2 of the Uniform Plumbing Code.
4. A detention system and storm sewer main should not be placed below a structure unless it can be demonstrated that the system and sewer main can be maintained and/or repaired if necessary;

B. Conclusions. The City Council concludes that for the proposed parking structure to be built in the proposed location and for the storm detention system and storm main to be built under the structure, the easement shown on the short plat must be extinguished or relocated; the storm detention system and storm main must conform to the Uniform Plumbing Code and to all Public Works

standards; and the applicant must demonstrate that the system can be maintained and/or repaired when necessary.

C. Decision. Condition of approval #7 as stated in the Hearing Examiner's decision dated April 28, 1998 is hereby amended to read as follows:

The building shall not be built over the drainage easement shown on the plat. However, the applicant may extinguish the existing easement by written document recorded against the property and install the storm detention system and storm drain underground in a location not proposed to be underneath any permanent structure. The parking structure may only be built in the location proposed by the applicant in the plans dated January 16, 1998 if: (1) The storm detention system and storm main are constructed and permitted pursuant to the Uniform Plumbing and Building Codes and (2) the applicant can demonstrate to satisfaction of the City that the detention system and storm main can be maintained and repaired (if necessary), as required by an approved storm drainage plan for the property.

PASSED by the City Council of the City of Gig Harbor, Washington, and approved by its Mayor at a regular meeting of the Council held on this 22nd day of June, 1998.

Gretchen A. Wilbert, Mayor

ATTEST:

Molly Towslee, City Clerk

Filed with City Clerk: 6/18/98

Passed by City Council: 6/22/98