

No. 36811-1-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

CITY OF GIG HARBOR,

Appellant,

v.

**NORTH PACIFIC DESIGN, INC., and HUNT SKANSIE LAND,
LLC,**

Respondents.

RESPONDENTS' BRIEF

Alexander W. Mackie, WSBA No. 6404
Kathleen M. O'Sullivan, WSBA No. 27850
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

Attorneys for Respondents
North Pacific Design, Inc., and
Hunt Skansie Land, LLC

FILED
COURT OF APPEALS
DIVISION II
08 MAR 31 PM 3:41
STATE OF WASHINGTON
B. J. DEPUTY

TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. ASSIGNMENT OF ERROR	3
III. COUNTERSTATEMENT OF ISSUES	3
IV. COUNTERSTATEMENT OF THE CASE	4
A. Background Facts Regarding the Proposed Development	4
B. Proceedings Before the Hearing Examiner	7
C. Proceedings Before the Superior Court	10
V. ARGUMENT	12
A. Standard of Review.....	12
B. The Hearing Examiner Correctly and Concurrently Read the RB-2 Zoning Ordinance and the PRD Ordinance, Which Do Not Conflict.....	13
1. Rules of Construction of Statutes and Municipal Codes	13
2. The Hearing Examiner Did Not Commit an Error in Process in Allowing the Conditional Use Permit and PRD Process to Be Used Concurrently to Approve a Single-Family Project in the RB-2 Zone that Did Not Exceed the 12-Unit Per Acre Maximum	14
3. The PRD Ordinance's "Density Bonus" Provision Is Inapplicable to Applications to Increase Density to a Density Permitted in the Underlying Zone.....	18
4. The Proposed Residential Density Is Not Inconsistent with the Comprehensive Plan.....	22
5. Under the Code, a Rezone Is Not Required to Process Skansie Park as a PRD.....	24

TABLE OF CONTENTS
(continued)

	Page
C. The Hearing Examiner's Decision Is Neither an Erroneous Application of the Law to the Facts Nor an Erroneous Interpretation of the Law	31
1. There Was No Error in "Harmonizing" the RB-2 and PRD Provisions Because They Do Not Conflict	31
2. The Hearing Examiner Did Not Ignore the Language of GHMC 17.89.100	33
D. The Hearing Examiner Erred in Equating the Perimeter Setback with the "Required Yards" that Must Be Excluded from the Calculation of Open Space.....	34
1. The Perimeter Setback Is Not a "Required Yard" Because It Is Not on a "Lot".....	37
2. Related Provisions of the Code Confirm that There Is a Distinction Between "Required Yards" and "Setbacks".....	39
3. The PRD Chapter Merely Incorporates the Setback Distance from That of Required Yards – It Does Not Create "Yards" in Conflict with the Code	40
VI. CONCLUSION.....	42

TABLE OF AUTHORITIES

	Page
Cases	
<i>Christensen v. Ellsworth</i> , 162 Wn.2d 365, 173 P.3d 228 (2007).....	36
<i>City of Seattle v. Williams</i> , 128 Wn.2d 341, 908 P.2d 359 (1995).....	37
<i>Cobra Roofing Servs., Inc. v. State Dep't of Labor & Indus.</i> , 157 Wn.2d 90, 135 P.3d 913 (2006).....	36
<i>Emwright v. King County</i> , 96 Wn.2d 538, 637 P.2d 656 (1981).....	34
<i>Ford Motor Co. v. City of Seattle, Executive Services Department</i> , 160 Wn.2d 32, 156 P.3d 185 (2007).....	12
<i>Isla Verde Int'l Holdings, Inc. v. City of Camas</i> , 146 Wn.2d 740, 49 P.3d 867 (2002).....	12
<i>Johnson v. City of Mount Vernon</i> , 37 Wn. App. 214, 679 P.2d 405 (1984).....	30
<i>Judd v. American Tel. & Tel. Co.</i> , 152 Wn.2d 195, 95 P.3d 337 (2004).....	14
<i>Kenart & Associates v. Skagit County</i> , 37 Wn. App. 295, 680 P.2d 439 (1984).....	30
<i>Lakeside Indus. v. Thurston County</i> , 118 Wn. App. 886, 83 P.3d 433 (2004).....	24
<i>Lutz v. Longview</i> , 83 Wn.2d 566, 520 P.2d 1374 (1974).....	passim
<i>Maranatha Mining v. Pierce County</i> , 59 Wn. App. 795, 801 P.2d 985 (1990).....	7
<i>Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Assocs.</i> , 151 Wn.2d 279, 87 P.3d 1176 (2004).....	12
<i>Preserve Our Islands v. Shorelines Hearings Bd.</i> , 133 Wn. App. 503, 137 P.3d 31 (2006).....	32
<i>Schofield v. Spokane County</i> , 96 Wn. App. 581, 980 P.2d 277 (1999).....	30
<i>State v. Pacific Health Center, Inc.</i> , 135 Wn. App. 149, 143 P.3d 618 (2006).....	32
<i>United States v. Hoffman</i> , 154 Wn.2d 730, 116 P.3d 999 (2005).....	36
<i>Western Telepage, Inc. v. City of Tacoma</i> , 140 Wn.2d 599, 998 P.2d 884 (2000).....	13
<i>Wiggers v. County of Skagit</i> , 23 Wn. App. 207, 596 P.2d 1345 (1979).....	26, 29, 30
<i>Wright v. Miller</i> , 93 Wn. App. 189, 963 P.2d 934 (1998).....	14

TABLE OF AUTHORITIES
(continued)

	Page
Statutes	
RCW 35A.63	28
RCW 36.70B	23, 42
RCW 36.70C	1, 12
Regulations and Rules	
RAP 10.4(c).....	4
Other Authorities	
American Heritage College Dictionary (3d ed. 1997).....	31
VI WASHINGTON REAL PROPERTY DESKBOOK, § 90.5(2) (3d ed. 1996)	29
Gig Harbor Municipal Code	
GHMC 17.01	34
GHMC 17.04	passim
GHMC 17.05	11
GHMC 17.14	19, 31
GHMC 17.20	11
GHMC 17.24	11
GHMC 17.30	passim
GHMC 17.59	2
GHMC 17.64	passim
GHMC 17.78	40
GHMC 17.89	passim

I. INTRODUCTION

This case involves the approval by the Gig Harbor Hearing Examiner ("Hearing Examiner") of the preliminary plat, including a conditional use permit and Planned Residential Development ("PRD") approval, for the project known as The Courtyards at Skansie Park ("Skansie Park"), and the appeal of that decision by the City Council of Gig Harbor under the Land Use Petition Act (Chapter 36.70C RCW). Skansie Park is a project involving the development of 174 single-family residential lots on 18.8 acres or approximately 9.25 units per acre. The applicant for plat approval and the property owner, respectively, were respondents North Pacific Design, Inc., and Hunt Skansie Land LLC, (collectively referred to as "North Pacific Design").

The appeal addresses two primary issues, referred to here as the "density appeal" and the "open space appeal." The density appeal involves interpretation of the Gig Harbor Municipal Code ("Code") provisions governing the project including:

- the zoning ordinance, Residential and Business District 2 (RB-2) (Chapter 17.30 GHMC), which allows single-family residential density of between 8 and 12 units per acre through a conditional use process;

- the conditional use approval provisions of Chapter 17.64 GHMC, which identifies specific public interest criteria that must be met if a conditional use is to be approved; and
- the Planned Residential Development criteria of Chapter 17.89 GHMC, which provides the process and standards for varying lot sizes and dimensions necessary to achieve the increased permitted densities.

The open space appeal addresses a single technical requirement as to the proper measure of open space acres in a PRD, and particularly whether a frontage "setback" on an open space tract creates a required "yard" that may not be included in open space under the terms of Chapter 17.89 GHMC.

The Hearing Examiner ruled in favor of North Pacific Design on the density issue and in favor of the City on the open space issue. On cross appeals to superior court, the court ruled in favor of North Pacific Design on both the density and the open space issues.

The City appealed. The City asks the Court to reverse the decision of the Hearing Examiner on the density issue in an argument that fails to give effect to all the relevant provisions in the City's land use development codes. The City also asks the Court to affirm the Hearing Examiner on the open space issue by creating a "yard" where one has never before existed.

North Pacific Design asks the Court to follow the standard guidelines for the interpretation of municipal codes, to read the provisions harmoniously, and to give meaning to all terms in the Code. North Pacific Design respectfully asks the Court to affirm the decision of the superior court in its entirety, to reverse the Hearing Examiner's condition regarding the open space calculation, and to otherwise affirm the decision of the Hearing Examiner.

II. ASSIGNMENT OF ERROR

North Pacific Design asserts no errors by the superior court. North Pacific Design asserts that the Hearing Examiner erred in imposing condition no. 6, which required a revision of the plat to recalculate the amount of open space.

III. COUNTERSTATEMENT OF ISSUES

1. Did the Hearing Examiner correctly approve North Pacific Design's application for a single-family detached subdivision at below the 12 dwelling units per acre maximum permitted in the RB-2 zoning ordinance, and to vary the lot size, yard setbacks, and other RB-2 development standards as permitted under the PRD ordinances to achieve the allowed density, as upheld by the superior court below?

2. Did the Hearing Examiner err regarding the calculation of required open space in the plat by erroneously equating the required "setbacks" with required "yards," as reversed by the superior court below?

IV. COUNTERSTATEMENT OF THE CASE¹

A. Background Facts Regarding the Proposed Development

North Pacific Design, Inc. is the applicant for the preliminary plat and conditional use permit at issue. Exh. 45, AR 142. Hunt Skansie Land LLC is the owner of the property the applicant seeks to develop. *Id.* The Skansie Park project is a PRD of 174 lots on approximately 18.8 acres located on the northeast corner of Hunt Street and Skansie Avenue in Gig Harbor.² Exh. 45, AR 148; Exam'r Decis. 9.

The request before the Hearing Examiner included a conditional use permit application to achieve the maximum density of dwelling units per acre in the RB-2 zone, and used the PRD provisions of GHMC to achieve the setback, lot area, lot width, and lot coverage necessary for single-family development at the requested density. Exam'r Decis. 9, ¶ 1;

¹ The Exhibits to the Hearing Examiner's decision are referenced as "Exh. __," and the pages within the individual exhibits are referenced as "Exh. __, AR __" using the page numbers of the Administrative Record as transmitted to the superior court. The transcript of the hearing before the Hearing Examiner is referenced as "Tr. __." The Hearing Examiner's decision, located at Exh. 90, AR 1177-1215, is referenced as "Exam'r Decis. __." The Verbatim Report of Proceedings containing the superior court's oral decision is referenced as "RP."

² Pursuant to RAP 10.4(c), various depictions of the Skansie Park PRD are attached as Appendix A to this brief, AR 574-75; all cited portions of the Gig Harbor Municipal Code are attached as Appendix B.

11, ¶ 15. All of the development would be single-family homes with garages. *Id.* The applicant proposed retaining a wetland and its buffer on site and proposed building three neighborhood parks, as well as building walking trails and providing for other open space. *Id.* 9, ¶ 1; 10, ¶ 8. Homes adjacent to the wetland would be set back 100 feet. AR 508-09. Other homes would be set back from 25 to 40 feet. *Id.* No building lots would be located on the perimeter of Skansie Park; rather, all of the 174 lots would be accessed via internal roads. *Id.*

The development site is located in property zoned Resident and Business District (RB-2), and is subject to additional restrictions imposed by a Concomitant Zoning Agreement adopted by the City Council when the property was annexed into the City. Exam'r Decis. 9, ¶¶ 2, 4. For example, the RB-2 zone permits multifamily development, *see* GHMC 17.30.010, whereas the Concomitant Zoning Agreement does not, Exh. 2, AR 46. The RB-2 zone is intended for a mix of "medium density" residential uses with certain business uses. GHMC 17.30.010. According to the City of Gig Harbor Comprehensive Plan ("Comprehensive Plan"), urban residential "moderate density" is four to 12 dwelling units per acre.

Exam'r Decis. 10, ¶ 7 (citing City of Gig Harbor Comprehensive Plan, Goal 2.3 at 2-3 (Dec. 2004)).³

The Comprehensive Plan for land use includes Goal 2.3, to "Promote Community Diversity and Distinction and Increase Housing Opportunities." Exam'r Decis. 10, ¶ 6. This goal, the Hearing Examiner explained, states an intent to "[p]rovide for a range of residential densities which would accommodate the City's 2022 residential growth target of 10,800 within a broad variety of housing types and tenures." *Id.* (quoting Comprehensive Plan Goal 2.3 at 2-7). Goal 2.3 discusses the implementation of a zoning plan "which allocates residential development based upon a maximum density as opposed to a minimum lot size in order to encourage optimum design techniques suitable to the land and its natural features." Comprehensive Plan, Goal 2.3.4 at 2-8.

The Code requires that common open space shall comprise at least 30 percent of any PRD. GHMC 17.89.110.A. For the 18.8 acre site, North Pacific Design proposed setting aside 5.66 acres of common open space, i.e., more than the minimum 30 percent. Exh. 68, AR 575. Part of the proposed common open space is the 25 to 40 foot buffer area that surrounds the entire plat. Exh. 68, AR 578.

³ The City of Gig Harbor Comprehensive Plan is available online at <http://www.cityofgigharbor.net/pdfs/2004%20Comp%20Plan.pdf>.

The City planning staff recommended approval of the application, with conditions, in a 43-page report dated December 6, 2006. Exh. 1, AR 1-43. After explaining its analysis, the City planning staff concluded as follows: "Staff finds as mitigated, the proposal is consistent with the Comprehensive Plan, Zoning Code, and Design Manual, [and] the public interest will be served by the subdivision and dedication." *Id.* at 36.⁴ The only condition of relevance here is that the City planning staff recommended revising the plat to recalculate the open space area. *Id.* at 38.

B. Proceedings Before the Hearing Examiner

On December 13, 2006, the Hearing Examiner held an open public meeting on North Pacific Design's application. Exam'r Decis. 1. Twenty-two witnesses testified at the hearing. *Id.* at 8-9. The City emphasizes the number of citizens who testified in opposition to the applications,⁵ but fails to mention those who testified in support, including the project architect, the City Engineer, and the City planner who presented the City Staff Report recommending approval of the application.

⁴ It is significant to note that the Mitigated Determination of Nonsignificance found environmental impacts fully mitigated with the required conditions. Exh. 4, AR 79. The MDNS was not appealed and the case before the Court does not involve environmental impacts, simply code interpretation.

⁵ The City's point is of no legal moment. Courts have long held that public opposition, without more, is not a proper basis for denial of a permit. *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 805, 801 P.2d 985 (1990).

At the hearing, the City Attorney for the first time raised an objection regarding the density of the proposed development, an argument the City further explained in a letter dated December 19, 2006. Exh. 74, AR 925-929. The City argued that two provisions of the Code (the RB-2 provision and the PRD provision) were "conflicting" regarding density increases, and that the PRD provision "should control." *Id.* at 927-928. On January 5, 2007, North Pacific Design responded to the City's December 19 letter, and explained that there was no conflict within the Code and that the provisions could be read concurrently. Exh. 87, AR 1037-1040.

On January 24, 2006, the Hearing Examiner issued a 39-page decision approving North Pacific Design's application for the Skansie Park PRD with conditions. Exh. 90, AR 177-1218. In examining the criteria required for a conditional use permit under GHMC 17.64.040, the Hearing Examiner found that the neighbors' concerns regarding the project were unwarranted. For example, the Hearing Examiner noted that the "Building Official/Fire Marshall has reviewed the proposed plat with respect to fire apparatus access, fire separation, and fire hydrant location and has determined that the proposed plat, as conditioned, would meet these requirements." Exam'r Decis. 13-4. Similarly, the Hearing Examiner rejected concerns about traffic by citing evidence from the City: "the City

carefully considered AM traffic counts in reaching its decision to recommend preliminary plat approval." *Id.* at 4. The Hearing Examiner rejected concerns about water, sewer, and groundwater because the "application complies with applicable Public Works Standards." *Id.* at 13.

Of relevance to the density issue on appeal, the Hearing Examiner rejected the City's argument that "the PRD ordinance effectively nullifies the RB-2 conditional use standards with respect to density calculations, and that the PRD application constitutes a rezone." Exam'r Decis. 11, ¶ 11. Accepting North Pacific Design's interpretation of the Code, the Hearing Examiner was "persuaded that the two code sections should be read together" and because the "PRD application does not seek density greater than that conditionally permitted in the underlying RB-2 zone . . . the PRD application cannot constitute a rezone." *Id.*, ¶ 12. The Hearing Examiner further noted that the "City Council has expressly permitted that density in the RB-2 zone, with a conditional use permit." *Id.* Accordingly, the Hearing Examiner approved the conditional use permit and the preliminary plat.

In approving the application, the Hearing Examiner also adopted the City planning staff's interpretation as to the calculation of the required amount of open space. Exam'r Decis. 16, ¶ 20. The Hearing Examiner reached this decision because he read GHMC 17.89.110.A as "indicat[ing]

that required yards may not be used for open space calculations." *Id.* at 17, ¶ 28. Based on this interpretation, the Hearing Examiner conditioned approval of Skansie Park on North Pacific Design revising the plat to provide for the required 30 percent open space set-aside in a manner that does not include the first 20 feet of setbacks around the structures located on the perimeter of the plat. *Id.* If performed, this condition would force North Pacific Design to redesign Skansie Park to provide an additional 20 feet of buffer in certain places, reducing the number of buildable lots from 174 to 160. *Compare* Exh. 68, AR 575 *with* Exh. 68, AR 819.

C. Proceedings Before the Superior Court

Without challenging any of the factual findings of the Hearing Examiner, the City filed a land use petition challenging the Hearing Examiner's approval of the Skansie Park PRD. North Pacific Design filed a land use petition seeking review and reversal of the Hearing Examiner's conclusion regarding the open space calculation.

Following briefing by the parties and a review of the record, the superior court ruled in favor of North Pacific Design on all issues. RP 1-15 (oral ruling); CP 199-203 (written order). The superior court concurred with the Hearing Examiner's interpretation of the Gig Harbor Municipal Code on the density issue and affirmed the Examiner's decision to approve the preliminary plat and conditional use permit. RP at 6-9.

The court noted that the "RB-2 density provisions should be read together with the PRD provisions and not as mutually exclusive, which the City urges this court to do." RP at 6. The court further noted that GHMC 17.30.050.G, the RB-2 density provision, "expressly allows for 12 dwelling units per acre as a conditional use." *Id.* The superior court rejected the City's argument that GHMC 17.05.020, governing PRDs, precluded such an increase in density because North Pacific Design "was not seeking to increase density above and beyond the maximum number of units allowed in an RB-2 zone." *Id.* at 7.

The superior court also identified other provisions of the Code – not cited in the parties' briefing below – that supported the court's interpretation of the Code. GHMC 17.20.040.G (for R-2 zones) and GHMC 17.24.050.G (for R-3 zones) set the maximum density for those zones, but allow the density to be increased through the PRD process pursuant to Chapter 17.89 GHMC. RP at 8. The court noted the "direct contrast" in the language of those Code provisions with 17.30.050.G, which expressly permitted an increase of density "as a conditional use" and did not provide for increasing density through the PRD process. *Id.*

On the issue of the required calculation of open space, the superior court reversed the Hearing Examiner. The court concluded that "[b]ased on the plain language of the ordinances, the exclusion from the common

open space calculation includes only the required yards for each of the perimeter lots, not the required setbacks for the perimeter lots." *Id.* at 12.

The City appealed the superior court's decision. CP 196-203.

V. ARGUMENT

A. Standard of Review

In reviewing a land use decision, the Court stands in the same position as the superior court and limits its review to the record before the Hearing Examiner. *Pinecrest Homeowners Ass'n v. Glen A. Cloninger & Assocs.*, 151 Wn.2d 279, 288, 87 P.3d 1176 (2004).

The party seeking relief from the land use decision bears the burden of establishing that the Hearing Examiner "failed to follow a prescribed process," that his decision is an "erroneous interpretation of the law," or that it was a "clearly erroneous application of the law to the facts." RCW 36.70C.130(1)(a), (b), (d); *Pinecrest Homeowners Ass'n*, 151 Wn.2d at 288.

Statutory construction is a question of law reviewed de novo under the error of law standard, *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751, 49 P.3d 867 (2002). The Court applies the same rules of construction to municipal ordinances as it applies to state statutes. *Ford Motor Co. v. City of Seattle, Executive Servs. Dep't*, 160 Wn.2d 32, 41, 156 P.3d 185 (2007), *cert. denied*, 128 S.Ct. 1224 (2008). Because

neither the City nor North Pacific Design challenges any of the factual findings of the Hearing Examiner, the only issues on appeal are issues of law.

B. The Hearing Examiner Correctly and Concurrently Read the RB-2 Zoning Ordinance and the PRD Ordinance, Which Do Not Conflict.

1. Rules of Construction of Statutes and Municipal Codes

The "first rule" of statutory interpretation is that the Court should assume that the Legislature (or the City Council, when construing municipal codes) means exactly what it says. *W. Telepage, Inc. v. City of Tacoma Dept. of Fin.*, 140 Wn.2d 599, 609, 998 P.2d 884 (2000). The City flouts this rule in asking this Court to ignore the plain language of GHMC 17.30.050.G, which permits a density of up to "12 dwelling units per acre . . . as a conditional use" in an RB-2 zone, and to ignore the plain language of GHMC 17.89.100.A, which limits density increases to 30 percent but only where an applicant seeks to increase density "over that permitted in the underlying zone." These key provisions do not conflict; they may be read together without one having to "control" the other.

The City's interpretation of the Code is meritless, as it asks the Court to assume that the City Council did not mean what it wrote and to give no effect to the provisions of the Code quoted in the above paragraph. As the Washington Supreme Court has repeatedly explained, "all words in

a statute should be given effect," and in order to give those words effect, the court often must read together various statutory provisions in order to make sense of any particular provision. *Judd v. Am. Tel. & Tel. Co.*, 152 Wn.2d 195, 203, 95 P.3d 337 (2004).

North Pacific Design agrees with those portions of the City's brief in which it explains these rules of statutory construction, particularly its explanation that statutes relating to the same subject matter that are not in conflict should be read in such a way as to "give meaning and effect to each." City's Br. at 37 (quoting *Wright v. Miller*, 93 Wn. App. 189, 198, 963 P.2d 934 (1998)). Ironically, the City argued to the Hearing Examiner that the relevant Code provisions conflicted and that the PRD provision controlled. Now the City contends that the Code provisions may be harmonized, but that the City should prevail whether or not the Code provisions conflict.

2. The Hearing Examiner Did Not Commit an Error in Process in Allowing the Conditional Use Permit and PRD Process to Be Used Concurrently to Approve a Single-Family Project in the RB-2 Zone that Did Not Exceed the 12-Unit Per Acre Maximum.

The Hearing Examiner and the superior court correctly interpreted three sets of regulations in approving the application for Skansie Park: the RB-2 zoning ordinance (Chapter 17.30 GHMC), the conditional use standards (Chapter 17.64 GHMC), and the PRD provisions (Chapter 17.89

GHMC). When read as a whole, these provisions of the Code provide that an applicant in the RB-2 zone may apply for single-family residential development at a density of a little over 3.6 units per acre without varying lot size, up to 8 units per acre by varying lot size, and up to 12 units per acre by varying lot size and satisfying the standards for grant of a conditional use permit.⁶

The Code makes clear that residential uses are allowed in the RB-2 zone. GHMC 17.30.010 states:

The RB-2 district is intended to provide a mix of medium density residential uses with certain specified business, personal and professional services. It is intended to serve as a transitional buffer between high intensity commercial areas and lower intensity residential areas.

The RB-2 zone ordinance goes on to provide the "permitted" uses, including a density of up to 8 dwelling units per acre, as well as a "conditional use" of up to 12 dwelling units per acre. GHMC 17.30.050.G.⁷ The City defines "conditional use" in the Code's general "Definitions" section:

⁶ GHMC 17.30.050.A provides for a minimum lot area of 12,000 square feet. GHMC 17.30.050.G provides for "[eight] dwelling units per acre permitted outright; 12 dwelling units per acre allowed as a conditional use." An acre is 43,560 square feet, <http://en.wikipedia.org/wiki/Acre>, so 12,000-square-foot lots would result in only about 3.6 dwelling units per acre.

⁷ As the superior court noted, neither the R-2 nor R-3 zones allow increased density as a "conditional use," but only allow density to be increased through the PRD process. See RP at 8 (citing GHMC 17.20.040.G and 17.24.050.G). The difference in Code language must have meaning.

"Conditional use" means a use listed among those classified in any given zone but permitted only after a public hearing by the city and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same district.

GHMC 17.04.260. The standards for granting a conditional use are detailed in another Code section, which provides:

Each determination granting or denying a conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions are met:

A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;

B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;

C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;

D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and other such features as are required by this title or as needed in the opinion of the examiner . . .

GHMC 17.64.040. City planning staff and the Hearing Examiner found that the North Pacific Design application satisfied these criteria. *See* Exh. 1, AR at 9-12 (City Staff Report); *see also* Exam'r Decis. 12-17. On appeal, the City does not challenge compliance with the conditional use criteria.

The final Code provision of relevance is Chapter 17.89 GHMC, the PRD ordinance. Chapter 17.89 GHMC provides a mechanism for varying the lot size, which was followed by the applicant, recommended for approval by the City planning staff,⁸ and upheld by the Hearing Examiner and the superior court. The PRD ordinance also provides for an applicant to exceed the allowed density by 30% if additional "bonuses" are provided (e.g., providing additional open space and preserving scenic vistas and natural features). However, because North Pacific Design applied for a density specifically permitted by the City Council in the RB-2 zone, the Hearing Examiner recognized, as explained below, that this "density bonus" provision was inapplicable.

In sum, North Pacific Design has not engaged in any inappropriate "mixing and matching" of Code provisions and the City candidly admits it found no case law in support of that argument. City's Br. at 31. Rather, as the City planning staff, the Hearing Examiner, and the superior court

⁸ With the exception of the definition of "yard," which is addressed below at V.D.

found, North Pacific Design's proposal was consistent with the underlying zone (GHMC 17.30.050) and with the PRD provisions (GHMC 17.89.050).

3. The PRD Ordinance's "Density Bonus" Provision Is Inapplicable to Applications to Increase Density to a Density Permitted in the Underlying Zone.

The density bonus argument involves the interpretation of two sections of the PRD ordinance (GHMC 17.89.050 and 17.89.100), and the Hearing Examiner's ruling that a "density bonus" was not sought for the Skansie Park plat.

The Code specifically provides for allowed uses in the PRD zone to include "primary, accessory and conditional uses permitted in the underlying zoning district." GHMC 17.89.050.A. The Code allows requests for "[other] residential . . . uses" with a "rezone application." GHMC 17.89.050.B. The Code then provides that if the PRD applicant requests "additional density," such additional density is limited to 30 percent and must provide the additional benefits outlined in GHMC 17.89.100. The City is asking the Court to ignore the language of GHMC 17.89.050.A (that primary, accessory, and conditional uses are "permitted" within a PRD), and rule that density allowed as a conditional use must be considered "*other . . . residential uses*" under GHMC 17.89.050.B and a "*density bonus*" under GHMC 17.89.100

The City argues that the Hearing Examiner and superior court failed to follow a prescribed process because they "allowed [North Pacific Design] to increase density in a PRD in violation of GHMC 17.89.100.A, which is [the] *exclusive* method for increasing density in a PRD." City's Br. at 20 (emphasis added). The City argues about what the Code "expressly" and "exclusively" provides without quoting from the relevant provision. GHMC 17.89.100 ("Density bonus") provides that "[t]he density may be increased in a PRD *over that permitted in the underlying zone* but only if: (1) consistent with the underlying comprehensive plan designation for the property; and (2) the density increase will not exceed 30 percent over the density allowed in the underlying zone." GHMC 17.89.100.A (emphasis added). Here, North Pacific Design sought approval to increase the density to at most 11.75 single-family units per acre,⁹ a density that is expressly permitted in the underlying RB-2 zone as a conditional use. GHMC 17.30.050.G ("12 dwelling units per acre allowed as a conditional use").¹⁰

⁹ In terms of the net buildable area, the Hearing Examiner noted that the proposed density was 11.75 dwelling units per acre. Exam'r Decis. 11, ¶14. Taking the development as a whole (174 units on 18.8 acres), the proposed total density is closer to 9.25 units per acre.

¹⁰ The City also argues that density is not a "use" of the property, noting that there is no density listed as a "use" in the land use matrix for the RB-2 District. GHMC 17.14.020. But the Code expressly provides that "[t]o determine whether a particular use is allowed in a particular zoning district and location, all relevant regulations must also be consulted in addition to this matrix." GHMC 17.14.010. The City's argument ignores the plain language of the specific regulation regarding the RB-2 zone, which provides that

The City's argument that the Hearing Examiner erred rests on the false premise that North Pacific Design sought approval of a density "*over that permitted*" in the underlying zone. But North Pacific Design did not seek approval for 14 units per acre or some other amount beyond that permitted in the underlying zone. It sought approval for less than the 12 units per acre permitted, and that is what the Hearing Examiner granted, Exam'r Decis. 11, ¶ 12 ("[T]he PRD application does not seek density greater than that conditionally permitted in the underlying RB-2 zone."). This is precisely why the superior court affirmed the Hearing Examiner's decision. RP at 6 ("[T]he applicant in this case was not seeking to increase density above and beyond the maximum number of dwelling units allowed in an RB-2 zone.").

What the City repeatedly characterizes as the "exclusive" or "sole" method for increasing density in a PRD, *e.g.*, City Br. at 20, 34, is actually the exclusive method for increasing density in a PRD to a density in excess of that permitted in the underlying zone. Under the express language of the Code, GHMC 17.89.100.B's density bonus requirements (which require a developer to provide additional open space and other public amenities) do not apply to an application to increase density to an amount "permitted in the underlying zone." GHMC 17.89.100.A. In other

"12 dwelling units per acre [are] allowed as a conditional *use*." GHMC 17.30.050.G. (emphasis added).

words, these requirements do not apply here, where North Pacific Design sought a conditional use permit that would not exceed the maximum density permitted in the underlying RB-2 zone.

Because the City's interpretation of GHMC 17.89.100.A is flawed in ignoring that North Pacific Design did not seek to increase density "over that permitted in the underlying zone," the City's related argument regarding the requirements for proposals to develop land in a density greater than that permitted in the underlying zone is irrelevant. City's Br. at 29-31. Specifically, the City argues that the criteria in GHMC 17.89.100.B are applicable here and that the density increase should not have been approved if the density was inconsistent with the underlying comprehensive plan designation, if it proposed an increase of more than 30 percent over the density allowed in the underlying zone, or if the proposal did not include the provision of certain public amenities listed in GHMC 17.89.100.B. But those provisions apply "only if" the proposal would increase density "over that permitted in the underlying zone." GHMC 17.89.100.A. Because there is no proposal here to exceed the density permitted in the underlying zone, these latter provisions of GHMC 17.89.100.B are simply inapplicable.¹¹

¹¹ If the City were correct that the City intended to prohibit density increases of over 30 percent in a PRD to the minimum lot size in the underlying zone, it would render meaningless the designation of 8 units per acre as a matter of right and up to 12 units per

4. The Proposed Residential Density Is Not Inconsistent with the Comprehensive Plan

The City claims that the plat approval violates the Comprehensive Plan. But such argument cannot withstand scrutiny under the facts of this case. It is true that the City Comprehensive Plan identifies the general area in which Skansie Park is located as Employment Center. Exam'r Decis. 9; *see also* Comprehensive Plan, Land Use Map at 151. But a city planning under the Growth Management Act (GMA, Chapter 36.70A RCW) has wide discretion as to how to achieve its comprehensive plan goals. RCW 36.70A.3201.¹²

Thus, while the Comprehensive Plan land use map identified the overall area as an Employment Center, it remained within the City's discretion to elect to place a "transitional zone" between the more intensely developed core and the lower density residential zones that abutted the district. The RB-2 zone specifically provides as much:

acre allowed by conditional use permit. (12,000 square feet is about 3.6 units per acre; an increase of 30 percent would permit only about 4.6 units per acre). Likewise, if you begin with the permitted 8 units per acre as the base density and add 30 percent density, the result is only 10.4 units per acre. The 12 units per acre expressly permitted as a conditional use in the RB-2 zone could not be achieved under the City's reading.

¹² RCW 36.70A.3201 provides:

Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

"The RB-2 district is intended to provide a mix of medium density residential uses with certain specified business, personal and professional services. It is intended to serve as a transitional buffer between high intensity commercial areas and lower intensity residential areas." GHMC 17.30.010.

The zoning code adopted by the City is required to be consistent with the Comprehensive Plan. RCW 36.70A.040(3)(d). But when a zoning ordinance is adopted, it is presumed valid, *see* RCW 36.70A.320(1), unless and until it is demonstrated to be clearly erroneous through an appeal to the Western Washington Growth Management Hearings Board, RCW 36.70A.320(3). No such appeals were ever filed for the sections in question, so it is a bit late for the City to be complaining that no residential development could occur in the area the Comprehensive Plan labels Employment Center, but that the City zoned as RB-2.

The fact that the City's zoning choice was not challenged ends the discussion as to whether the uses permitted in the RB-2 zone are consistent with the Comprehensive Plan. Once a development regulation is adopted by a City, the uses allowed under the zone are conclusive on such issues as the uses allowed on the property. RCW 36.70B.030(2)(a),.040(2).

Further, Washington courts have held that a specific zoning ordinance will prevail over an inconsistent comprehensive plan. *See, e.g., Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 894, 83 P.3d 433 (2004). The *Lakeside* case summarized the rule as follows:

Because a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts concerning a proposed use are resolved in favor of the more specific regulations. Thus, to the extent the comprehensive plan prohibits a use that the zoning code permits, the use is permitted.

Id. at 894-95 (citation omitted).

Consistency with the Comprehensive Plan is a criteria for approval for "excess density" under GHMC 17.89.100, but residential single-family uses up to 12 units per acre are permitted in the RB-2 zone and the RB-2 zone is the presumptively valid transitional land use zone implementing the Comprehensive Plan. Even here, in a provision for excess density not applicable to Skansie Park, the City's argument is simply wrong and provides no basis for relief.

5. Under the Code, a Rezone Is Not Required to Process Skansie Park as a PRD.

The City asserts that the legal effect of approving a PRD is an action of "rezoning" from the underlying zone (the RB-2 zone) to the PRD zone, so that North Pacific Design was required to submit a rezone

application in order for the Skansie Park project to be approved. City's Br. at 25. The fundamental flaw with the City's argument, however, is that it ignores the language of the Code's PRD provision, which specifies when a rezone application is required in the City. The PRD provision provides:

The following uses are permitted in a PRD:

- A. Those primary, accessory and conditional uses permitted in the underlying zoning district;
- B. Other residential and low impact retail uses may be located within the PRD, *if a rezone application is submitted* concurrently with the preliminary PRD application, and all of the following criteria are satisfied, in addition to the rezone criteria in Chapter 17.100 GHMC . . .

GHMC 17.89.050 (emphasis added).¹³

Accordingly, under the Code, a rezone application is required *only* if the property owner seeks to use the property for a use not "permitted in the underlying zoning district" under the provisions of GHMC 17.89.050.A. Where the City Council has expressly provided in the Code that no rezone application is required for a property owner who seeks to develop a PRD for uses permitted in the underlying zoning district, the Court may not superimpose on developers a requirement to the contrary. To do so would violate the canons of statutory interpretation: it would

¹³ The PRD provision elsewhere provides: "If the PRD requires a rezone(s), such rezone(s) shall be approved before or concurrently with the PRD . . . approval." GHMC 17.89.070.C. If every PRD were a "rezone," this language would be meaningless.

ignore the directive to assume that the City Council meant what it wrote, and instead would assume that subsection A of 17.89.050 was meaningless. The Hearing Examiner wisely rejected the City's argument that a rezone is required here. *See Exam'r Decis. 11.* ("Here, the PRD application does not seek density greater than that conditionally permitted in the underlying RB-2 zone. As such, the PRD application cannot constitute a rezone"). This Court should affirm that decision.

The City contends on appeal, as it argued below, that all PRDs must be treated as a request for a rezone, apparently without regard to the specific language in the Code. The City's argument is taken from cases that have made the general statement, "[t]he legal effect of approving a planned unit development is an act of rezoning." City's Br. at 25 (quoting *Wiggers v. County of Skagit*, 23 Wn. App. 207, 596 P.2d 1345 (1979)). This language originated in a very different factual setting first articulated in the Washington Supreme Court's decision in *Lutz v. City of Longview*, 83 Wn.2d 566, 567, 520 P.2d 1374 (1974), when planned unit developments ("PUDs") were "a relatively new concept in planning," *Id.* at 568-69.¹⁴

In *Lutz*, the property owner applied for a PUD for permission to erect two large multi-story, 28-unit buildings in a tract classified as a low

¹⁴ The cases refer to PUDs and PRDs without distinction on this topic.

density single-family residential zone. *Id.* at 567, 569. The court noted that "[t]he change in permitted use is obvious." *Id.* at 569. As a result, the court asked the question, "What is the legal nature and effect of the act of imposing a PUD upon a specific parcel of land?" *Id.* at 568. Given the existing zoning of the specific parcel of land before it, the court concluded that the PUD proposed for multi-story, multi-unit buildings in the Longview single-family zone "is an act of rezoning which must be done by the city council because the council's zoning power comes from the statute and that is what the statute requires." *Id.* at 568-69.

Lutz is distinguishable because here, as explained above, the Code permitted a density of up to 12 units per acre as a conditional use in the underlying zone. There would be no change in permitted use, let alone such an "obvious" change that would warrant a rezone. *Lutz* is also distinguishable because the Gig Harbor Municipal Code expressly distinguishes between projects involving PRDs that require a rezone and those that do not. Those involving "primary, accessory, and conditional uses permitted in the underlying zoning district," GHMC 17.89.050.A, do not require a rezone application, whereas developers of "other residential . . . uses" are specifically directed to submit a rezone application, GHMC 17.89.050.B. General language from *Lutz* or any of the other cases cited by the City – all involving codes or laws from places other than Gig

Harbor – cannot trump the specific distinction between GHMC 17.89.050.A and 17.89.050.B.

The City also emphasizes the *Lutz* court's conclusion that "it is an act of rezoning" while ignoring the court's explanation of *why* it was an act of rezoning: because "that is what the statute requires." 83 Wn.2d at 568-69. What the statute requires, the Court went on to explain, is that "[o]nly the legislative body is empowered to adopt a zoning map and ordinance." *Id.* at 570 (citing RCW 35A.63.100). Here, the Code does not require a zoning change because the underlying RB-2 zone permits up to a 12-unit per acre density, which is less than that sought by North Pacific Design.

The distinction reflected in Sections A and B of GHMC 17.89.050 reflects the one articulated by commentators who sought to explain the difference between PRD provisions warranting a rezone and those that do not.

Because a PUD has no single definition, use caution in applying the statements in one case when analyzing a different situation involving a different local ordinance. For example, if a local PUD ordinance allows the establishment of uses on a parcel of property which would otherwise not be permitted by the underlying zoning, that ordinance would fit the model established by the court in *Lutz*. However, *in some instances a PUD ordinance does not authorize the establishment of a use that is not already permitted in the underlying zone. In those instances a PUD is little more than a regulatory technique that provides*

some flexibility with respect to siting regulations, such as lot dimensions or building setbacks, and a more thorough review of a project . . . There is no reason why a local government or a court should treat such a PUD as a rezone.

6 WASHINGTON REAL PROPERTY DESKBOOK § 90.5(2), cmt. at 90-16 (3d ed. 1996) (emphasis added).

This is not a case like *Lutz* where the local PUD ordinance allows the establishment of uses on a parcel of property "not already permitted in the underlying zone" *Id.* Rather, the PRD provisions here provide the administrative guidelines to govern the review of a request for residential density in the RB-2 zone between the 3.6 units per acre allowed with required minimum lot sizes, the 8 units per acre allowed by adjusting the minimum lot and yard requirements through the PRD process, and the 12 units per acre allowed by adjusting the minimum lot size and yard requirements through the PRD process and meeting the additional requirements of the conditional use process.

Lutz and the other cases cited in the City's Brief at pages 25-28 do not support the proposition that a rezone is required under all circumstances where a PRD is used. For example, *Wiggers v. County of Skagit*, 23 Wn. App. 207, 596 P.2d 1345 (1979), is another case of "obvious" change of use requiring a rezone. In an area zoned residential, the developer proposed a 20-division project that included six acres of

commercial and condominium developments plus over 100 campsites. *Id.* at 209. Similarly, *Schofield v. Spokane County*, 96 Wn. App. 581, 583, 980 P.2d 277 (1999), involved an "obvious" change in permitted use because a developer proposed to rezone land from general agricultural to semi-rural residential to construct 10 residential homes on lots as small as 1.13 acres in this formerly agricultural zone. *Id.*¹⁵

Though the City attempts to use these cases expansively, they dealt with fundamentally different code provisions, allowed changes that were materially different from those reasonably expected from a reading of the underlying code, and involved changes of such significance that only a legislative determination was allowed to put the change in place. In that regard, the fact patterns in the cases relied on by the City are distinguishable from the facts here, where North Pacific Design applied to use the PRD process to achieve a use of the land that was specifically permitted in the underlying RB-2 zone.

¹⁵ Further, in *Kenart & Associates v. Skagit County*, 37 Wn. App. 295, 680 P.2d 439 (1984), and in *Johnson v. City of Mount Vernon*, 37 Wn. App. 214, 679 P.2d 405 (1984), the court did not "hold" that a request for approval of a PUD is treated as a request for a rezone. In *Kenart*, the issue was whether the Board of County Commissioners' decision to deny the PUD application (for increased density and for inclusion of a gravel mine in a residential reserve zone) was supported by factual findings based on evidence in the record. 37 Wn. App. at 302-03. The Court's holding was to reverse and remand to the Board for further hearing and clarification of those factual findings. *Id.* at 303. Moreover, the developer in *Kenart* was seeking to increase density over that permitted in the underlying zone and to include a gravel mine in that residential zone. *Id.* at 298. *Johnson* similarly involved an underlying zone that made no provision for the increased density sought by the developer. 37 Wn. App. at 218.

In Gig Harbor, the RB-2 zone already permits single-family density up to 12 units per acre, which is why the Hearing Examiner rejected the City's argument that a rezone was required. The Supreme Court stated in *Lutz* that "[o]bviously the state has vested the authority to zone and rezone solely in the city council." 83 Wn.2d at 570. In Gig Harbor, the legislative decision to allow 12 units per acre and the review criteria by which such density is to be achieved have already been spelled out. The underlying zone (RB-2), the conditional use criteria, the PRD process, and the criteria for primary, accessory, and conditional uses are laid out in the Code. *See generally* Ch. 17.30 GHMC (RB-2 zone); Ch. 17.14 GHMC (permitted uses in each zone); Ch. 17.64 GHMC (conditional use criteria); Ch. 17.89 GHMC (PRD process). Where the Gig Harbor City Council chose to require a rezone application for certain PRDs, but not those where the property owner proposes a use permitted in the underlying zone, the Court may not second-guess that decision, as to do so would usurp the authority of the City Council.

C. The Hearing Examiner's Decision Is Neither an Erroneous Application of the Law to the Facts Nor an Erroneous Interpretation of the Law.

1. There Was No Error in "Harmonizing" the RB-2 and PRD Provisions Because They Do Not Conflict.

To "harmonize" means to "be or come into agreement." *The American Heritage College Dictionary*, 620 (3d ed. 1997). The City

argues that one can only "harmonize" provisions if one provision is ambiguous, but this argument is not supported by legal authority and is not correct. Courts harmonize legislative enactments by reading all related provisions first and only then look to see whether ambiguity exists. *See, e.g., Preserve Our Islands v. Shorelines Hearings Bd.*, 133 Wn. App. 503, 519, 137 P.3d 31 (2006), *review denied*, 162 Wn.2d 1008 (2008); *State v. Pac. Health Ctr., Inc.*, 135 Wn. App. 149, 159, 143 P.3d 618 (2006).

The City then regurgitates its argument that the "sole" method to increase density in a PRD is through the density bonus requirements in GHMC 17.89.100.A, which North Pacific Design responded to above, *supra*, V.B.3, noting that the City ignores the PRD provision that a "conditional use" is a "permitted use" and rezone requirements apply only to developments that seek to increase density "over that permitted in the underlying zone." GHMC 17.89.100.A and .050.B.

North Pacific Design agrees with the City that there is no ambiguity in GHMC 17.89.100. Because there is no ambiguity, the Hearing Examiner need not have identified any ambiguity. The Hearing Examiner did not disregard the words "but only if" repeatedly quoted by the City, *see City's Br.* at 37; they simply do not apply here, as explained above.

2. The Hearing Examiner Did Not Ignore the Language of GHMC 17.89.100.

The City argues that the Hearing Examiner "totally ignore[ed] all of GHMC 17.89.100" (the PRD provision), and approved the conditional use permit for additional density "without observing the 30 percent limitation on density, the prohibition on additional density because of the property's comprehensive plan designation or NPD's failure to provide additional amenities." City's Br. at 36. The fatal flaw in the City's arguments recognized by the Hearing Examiner is that a request to achieve 12 units per acre in the RB-2 zone is a request to achieve a "permitted density," so provisions about "increased density" are simply not applicable. The City's argument here is a re-hash of arguments made by the City earlier in its brief to which North Pacific Design responded above, *supra*, V.B.3. The City planning staff, the Hearing Examiner, and the superior court did not "throw out" GHMC 17.89.100; instead, they carefully followed the language of GHMC 17.89.100.A, which contains the density bonus requirements the City invokes here, but which apply only where a developer seeks to increase density "over that permitted in the underlying zone."

The Hearing Examiner carefully gave effect to both the RB-2 provisions and the PRD provisions, and the Court should reject the City's

attempt to extend the density "bonus" requirements that have no applicability here.¹⁶ Though the City has attempted to manufacture a conflict, it does so without giving consideration to all of the language of GHMC 17.89.100 and GHMC 17.30.050. The City's conclusion simply is not supported by the language of the Code.

D. The Hearing Examiner Erred in Equating the Perimeter Setback with the "Required Yards" that Must Be Excluded from the Calculation of Open Space

GHMC 17.89.110.A requires Skansie Park to designate at least 30 percent of the gross area of the PRD as common open space. The calculation of this open space area may not include "public or private streets, driveways, parking areas *or the required yards for buildings or structures . . .*" GHMC 17.89.110.A (emphasis added). It is undisputed that Skansie Park's designated open space does not include streets, driveways, or parking areas. The sole issue is whether Skansie Park has included "required yards" as part of its open space calculation.

The Hearing Examiner mistakenly sought to delete dedicated open space from the 30 percent requirement in GHMC 17.89.060.A that

¹⁶ The City cites GHMC 17.01.060 to assert that the PRD density provision must control over the RB-2 density provision because the City asserts that the PRD provision is "more restrictive" and more recent. However, this provision of the Code requires that there be an actual conflict among Code provisions. As explained above, there is no conflict and the Court may give effect to both. *See Emwright v. King County*, 96 Wn.2d 538, 543, 637 P.2d 656 (1981) (related provisions should be harmonized whenever possible so as to give effect to both).

structures located on the perimeter of the PRD be "set back in accordance with the front yard setbacks of the underlying zone." The error of law is that only required yards must be excluded from open space and a permitted setback, standing alone, does not create a "required yard" for exclusion purposes. The exclusion was erroneous and was properly reversed by the superior court.

In evaluating the Hearing Examiner's error, the Court should consider that the Code separately defines the terms "setback," "yard," and "lot" and give effect to all of those definitions. The terms are not interchangeable. The Hearing Examiner's decision did not give effect to the definitions of these terms in the Code and as a result misapplied the Code provisions at issue to the facts of this case.

The superior court, reversing the Hearing Examiner's interpretation, correctly concluded that under the plain language of the Code, the exclusion from the open space calculation includes only the required yards for each of the perimeter lots, not the required setbacks for the perimeter lots. The Court should likewise conclude that the Hearing Examiner erred on the open space issue.

Determination of the open space question is a matter of statutory interpretation. "Where statutory language is plain and unambiguous,

courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency." *United States v. Hoffman*, 154 Wn.2d 730, 737, 116 P.3d 999 (2005) (internal quotations and citations omitted). The mere fact that different interpretations are possible does not make a statute or municipal code provision ambiguous. *Id.*

A court's primary objective in interpreting a statute is to determine the legislature's intent, giving effect "to that plain meaning as an expression of legislative intent." *Christensen v. Ellsworth*, 162 Wn.2d 365, 372-73, 173 P.3d 228 (2007) (internal quotations and citations omitted). "Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id.* at 373. Where a term is defined in the statutory provision, the Court must use that definition and give it effect. *See, e.g., Cobra Roofing Servs., Inc. v. State Dep't of Labor & Indus.*, 157 Wn.2d 90, 101, 135 P.3d 913 (2006); *Hoffman*, 154 Wn.2d at 741 ("It is an axiom of statutory interpretation that where a term is defined we will use that definition."). Though the City argues that the Code is "clear" on the open space issue, it does so without discussing the separate and distinct definitions of the terms it uses interchangeably to support its argument. *See, e.g., City's Br.*

at 49. Nonetheless, statutory construction demands that where, as here, different terms are used, the differences are to be given meaning so that no term is rendered mere surplusage. *City of Seattle v. Williams*, 128 Wn.2d 341, 348-49, 908 P.2d 359 (1995). A review of the applicable terms shows the Hearing Examiner failed to follow the specific terms of the City Code in excluding perimeter open space from the 30 percent calculation.

1. The Perimeter Setback Is Not a "Required Yard" Because It Is Not on a "Lot"

The Code defines a "yard" as a "required open space that is on the same *lot* with the principal use and is unoccupied or unobstructed by any portion of a structure." GHMC 17.04.880 (emphasis added). This definition conforms with the common understanding of a yard as the unimproved land adjacent to a residence and part of that residence's own property. The Code goes on to define the term "lot" as "an area of land that is described by . . . recorded plat and is to be used, developed or built upon as a single unit of land." GHMC 17.04.450. Here, Skansie Park contains 174 developable building "lots." Exh. 68, AR at 574.

Under the Code, a required component of any "yard" is that it be located on a building "lot." The Skansie Park PRD proposes 174 individual building "lots" within the PRD for single-family residences and

their accompanying "yards." Exh. 68, AR at 696 (Skansie Park Preliminary Plat).

The City Staff Report and the Hearing Examiner recognized that Skansie Park proposed 174 "lots," as that term is used in the Code. *See* Exh. 1, AR at 1 (describing Skansie Park as a "174-lot residential preliminary plat"); *see also* Exam'r Decis. 1, 9.

In this case, the 25-foot perimeter setback extends from the outside boundary of the lots to the boundary of the perimeter. *See* Exh. 68, AR at 575. The setback does not extend into any lot.¹⁷ Indeed, none of Skansie Park's designated common open space falls within any portion of the 174 buildable lots or the yards attendant to those lots. *See id.*

The only "yards" created by the Skansie Park PRD are those yards attached to one of the proposed 174 residential lots. In contrast to the 174 residential lots, the entire Skansie Park PRD is surrounded by a dedicated open space "tract." *See* Exh. 68, AR at 696; *see also* GHMC 17.04.800 (defining a "tract" as a "parcel of land in single ownership that has not been subdivided into lots"). As depicted on the preliminary plat, the

¹⁷ It is possible that in some cases the perimeter setback would run through a "required yard," and be correctly excluded from an open space calculation. For example, in a PRD in which the lot boundaries ran along the perimeter of the PRD, the residence would be required to be set back 20 feet from the perimeter line. The setback would then be contained within the lot and would be part of the "required yard." This is not the case in Skansie Park, where none of the lots is on the PRD's perimeter.

perimeter dedicated open space tract is an entirely separate tract separate from the individual lots, and contains no residential structures. *Id.*

2. Related Provisions of the Code Confirm that There Is a Distinction Between "Required Yards" and "Setbacks"

The City's interpretation of the Code necessarily and erroneously equates a "yard," as defined by the Code and as explained above, with a "setback." But even a cursory reading of the Code makes clear that the two terms cannot be synonymous.

The Code defines a "setback" as "the distance between the building line and the nearest boundary to the site *or* lot, measured at right angles to the boundary." GHMC 17.04.720 (emphasis added). Unlike a "yard," a "setback" may be from either the boundary line of a site or a lot. In other words, the Code's definition of the term "setback" is expressly *not* limited to lots or yards, but also includes setbacks from "site" boundaries. Here, it is undisputed that the 20 feet the Hearing Examiner held must be excluded from the open space calculation extends beyond, rather than within, the "lot" boundaries and into the designated common open space "tract."¹⁸ The required "setbacks" cannot be properly considered "yards" as they extend beyond the boundary of the individual buildable lots and therefore

¹⁸ GHMC 17.04.800 defines a "tract" as a "parcel of land in single ownership that has not been subdivided into lots in conformance with the applicable laws of the state, county or city." Under this definition, the common open space buffer area is a tract as opposed to a developable or buildable lot.

do not meet the Code's definition of a "yard." GHMC 17.04.880 ("required open space that is on the same lot with the principal use and is unoccupied or unobstructed by any portion of a structure"). The required setback from the perimeter of the site is just that – a setback from the site boundary, not a required "yard."

Requiring a "setback" does not equate to creating a "yard" under the Code. Since the Code provides different definitions for each term, both must be given effect. Notably, in other portions of the Code, the City specifically recognizes the distinction between "required yards" and "setback area[s]." *See, e.g.*, GHMC 17.78.060.A.1 (in establishing landscaping requirements, "[t]he required width of perimeter areas to be landscaped shall be at least the depth of the required yard or setback area").

3. The PRD Chapter Merely Incorporates the Setback Distance from That of Required Yards – It Does Not Create "Yards" in Conflict with the Code

The Hearing Examiner's decision on this issue was based on misreading a separate setback provision governing the determination of the distance of required perimeter setbacks. The PRD chapter provides that, while the performance standards of the RB-2 district may be varied in a PRD, "[s]tructures located on the perimeter of the PRD shall be set back in accordance with the front yard setbacks of the underlying zone."

GHMC 17.89.060.A.2. The Hearing Examiner misread this provision to equate the "setbacks" required in GHMC 17.89.060.A.2 with "required yards for buildings or structures" in GHMC 17.89.110.A.

As a result, the Hearing Examiner erroneously concluded that the perimeter setbacks could not be included in the open space calculation for the project. Exam'r Decis. 17. The superior court, however, correctly recognized that the term "yard" was "noticeably missing" from the setback requirement, which applies to the perimeter, not the "perimeter yard." RP at 11.

GHMC 17.89.060.A does not equate the perimeter "setback" with a "yard," as the terms are separately defined. GHMC 17.89.060.A merely looks to the underlying zone to establish the required perimeter setback *distance*.

The PRD perimeter setback requirement, which is separate and distinct from the yard requirement, requires that all perimeter structures be set back from the perimeter of the PRD in accordance with the "front yard" setback of the underlying zone, here 20 feet. GHMC 17.30.050. There is no dispute that all of the perimeter lots of Skansie Park are set back from the perimeter at least 20 feet.

The Hearing Examiner nonetheless concluded that the open space calculation must be revised so that it "does not include the required 20 foot

yards around the perimeter of the plat." Exam'r Decis. 33 (emphasis added). In its brief the City makes the same mistake, referring to the "perimeter yard setback area" without addressing the definitions of "yard" or "setback" in the Code. City's Br. at 49. However, the 20-foot distance borrowed from the RB-2 zone does not change the character of the setback or create any excludable "required yards." The City's interpretation (accepted by the Hearing Examiner) ignores the applicable Code definitions and is therefore erroneous. Under the Code, "setbacks" and "yards" have distinct definitions and are not interchangeable.

Because incorporating and applying a distance requirement for setbacks in this fashion does not create excludable yards, the Hearing Examiner's conclusion to the contrary should be reversed and the superior court's affirmed.

VI. CONCLUSION

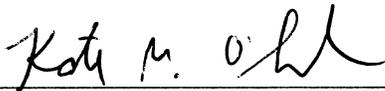
The legal issues presented in this appeal are strictly those involving the interpretation of the Gig Harbor Municipal Code. The superior court got this interpretation right on both issues. Our state's Legislature has clearly provided that where development regulations permit a specific use or density, these regulations are "determinative" for the body reviewing the project application. RCW 36.70B.030. These regulations are determinative in order to provide certainty and predictability, and to avoid

permit decisions based solely on public opinion and political pressure. In this case, the Court should give effect to the plain language of the Code's development regulations, which will result in approving the preliminary plat and conditional use permit for the Skansie Park residential subdivision.

For the foregoing reasons, North Pacific Design respectfully asks the Court to reverse the Hearing Examiner's condition of approval requiring a revised open space calculation, and to otherwise affirm the decision of the Hearing Examiner.

DATED: March 31, 2008

PERKINS COIE LLP

By: 
Alexander W. Mackie, WSBA No. 6404
Kathleen M. O'Sullivan, WSBA No. 27850
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Respondents North Pacific Design,
Inc. and Hunt Skansie Land, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that, on March 31, 2008, she caused to be served on the person(s) listed below in the manner shown:

RESPONDENTS' BRIEF.

Carol A. Morris,
Law Office of Carol A. Morris, PC
P.O. Box 948
Seabeck, WA
98380-0948

Attorney for Appellant

Sean K. Howe
Cairncross & Hempelmann
524 Second Avenue, Suite 500
Seattle, WA 98104

Attorney for Intervenor Bennett
Development, Inc.

- United States Mail, First Class
- By Messenger
- By Facsimile
- By eFiling

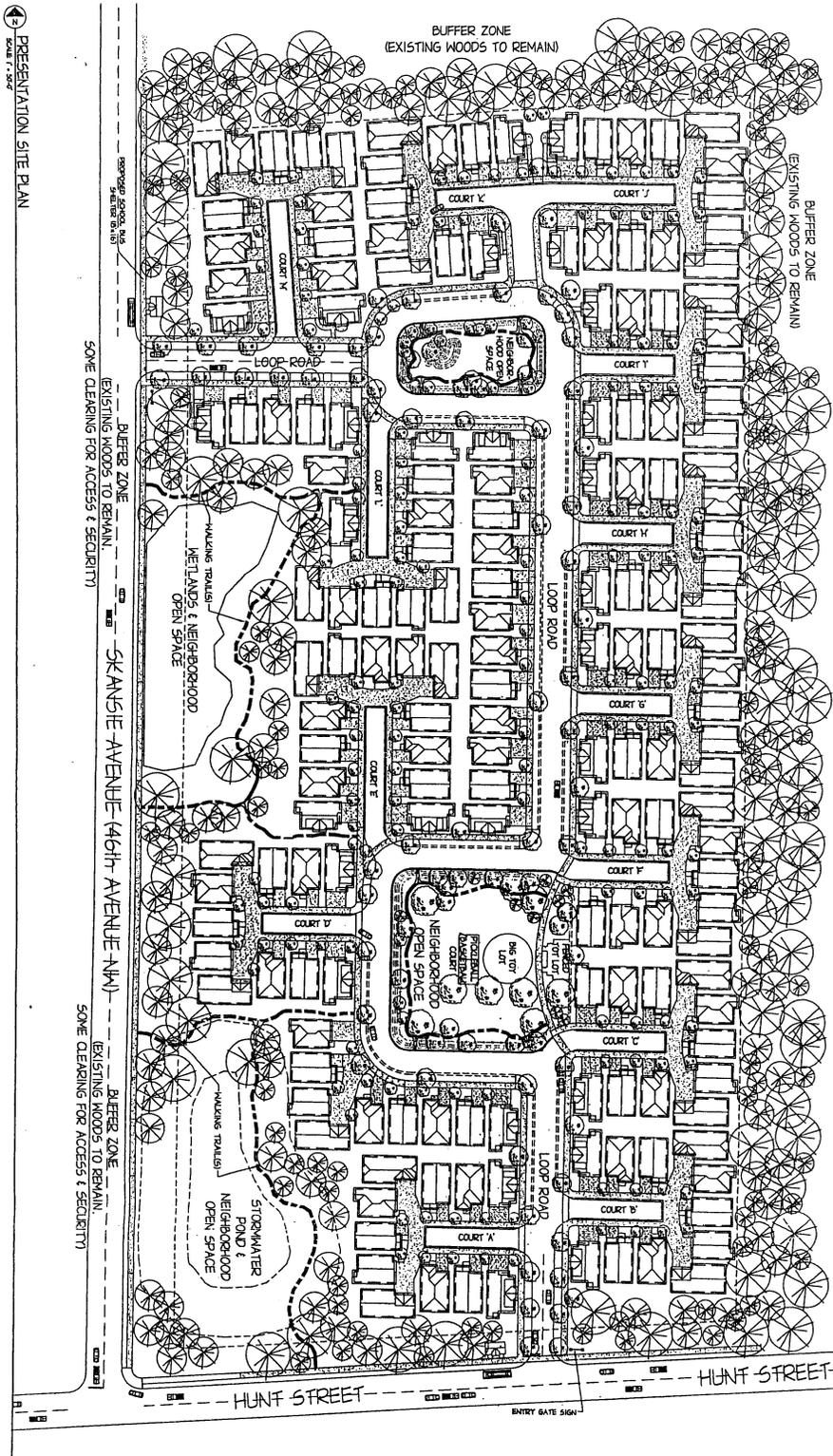
FILED
COURT OF APPEALS
DIVISION II
08 MAR 31 PM 3:42
STATE OF WASHINGTON
BY _____
DEPUTY

Dated at Seattle, Washington, this 31st day of March, 2008.



Sharon Sundmark

APPENDIX A



4 PRESENTATION SITE PLAN
2006.09.02

GH 000574

A-1
OF SHEETS

PRESENTATION
SITE PLAN
2006.09.02

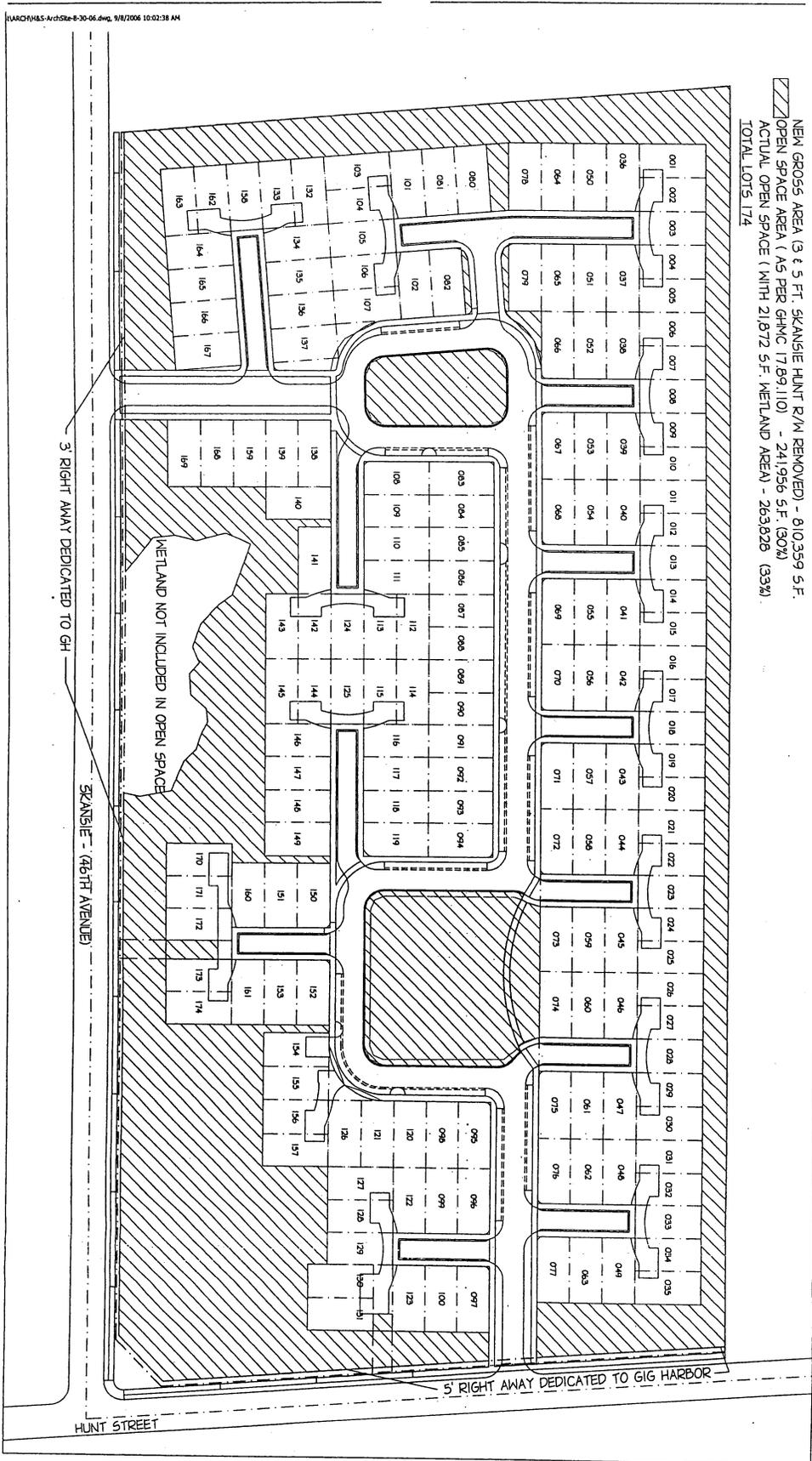
NO.	DATE	BY	REVISIONS
01	09/02/06	GH	20 SET SUBMITTAL
02	09/02/06	GH	30 SET SUBMITTAL
03	09/02/06	GH	30 SET SUBMITTAL
04	09/02/06	GH	30 SET SUBMITTAL
05	09/02/06	GH	30 SET SUBMITTAL
06	09/02/06	GH	30 SET SUBMITTAL
07	09/02/06	GH	30 SET SUBMITTAL
08	09/02/06	GH	30 SET SUBMITTAL
09	09/02/06	GH	30 SET SUBMITTAL
10	09/02/06	GH	30 SET SUBMITTAL
11	09/02/06	GH	30 SET SUBMITTAL
12	09/02/06	GH	30 SET SUBMITTAL
13	09/02/06	GH	30 SET SUBMITTAL
14	09/02/06	GH	30 SET SUBMITTAL
15	09/02/06	GH	30 SET SUBMITTAL
16	09/02/06	GH	30 SET SUBMITTAL
17	09/02/06	GH	30 SET SUBMITTAL
18	09/02/06	GH	30 SET SUBMITTAL
19	09/02/06	GH	30 SET SUBMITTAL
20	09/02/06	GH	30 SET SUBMITTAL
21	09/02/06	GH	30 SET SUBMITTAL
22	09/02/06	GH	30 SET SUBMITTAL
23	09/02/06	GH	30 SET SUBMITTAL
24	09/02/06	GH	30 SET SUBMITTAL
25	09/02/06	GH	30 SET SUBMITTAL
26	09/02/06	GH	30 SET SUBMITTAL
27	09/02/06	GH	30 SET SUBMITTAL
28	09/02/06	GH	30 SET SUBMITTAL
29	09/02/06	GH	30 SET SUBMITTAL
30	09/02/06	GH	30 SET SUBMITTAL

Hunt & Skansie Residential Project
Preliminary Site & Architecture
PRELIMINARY SCHEMATICS
 Gig Harbor WA 98335

Architect
 Engineering
 Planning
 (253) 838-4204
 Park Place East
 Suite 410
 Gig Harbor
 WA 98335



NEM GROSS AREA (3 & 5 FT. SKANSIE HUNT R/W REMOVED) - 810,399 S.F.
 OPEN SPACE AREA (AS PER GHMC 1789.110) - 241,956 S.F. (30%)
 ACTUAL OPEN SPACE (WITH 21872 S.F. WETLAND AREA) - 263,828 (33%)
 TOTAL LOTS 174



NORTH
 SITE PLAN

GH 000575

NORTH PACIFIC DESIGN
 INCORPORATED
 Architecture
 Engineering
 Planning

Paul Rennie Lead
 727 1st Street
 Suite 410
 Gig Harbor
 WA 98335
 (253) 884-8204

The Courtyards at Skansie Park
Exhibit A 174 LOTS
SITE PLAN OPEN SPACE
Gig Harbor WA 98335

COPYRIGHT 2006
 NORTH PACIFIC DESIGN
 DESIGNED BY: FISHER
 DRAWN BY:

NO.	DATE	BY
01	07.27.06	BR
02	08.01.06	BR

REVISIONS
 JOB NO. 04-124

SEPT. 06



APPENDIX B

Chapter 17.01 GENERAL PROVISIONS

Sections:

<u>17.01.010</u>	Title.
<u>17.01.020</u>	Purpose.
<u>17.01.030</u>	Conformity with regulations required.
<u>17.01.040</u>	Public uses.
<u>17.01.050</u>	Interpretation and application of provisions.
<u>17.01.060</u>	Conflict with other regulations.
<u>17.01.070</u>	<i>Repealed.</i>
<u>17.01.080</u>	Conformance required – Fence or shrub height.
<u>17.01.090</u>	Construction trailers – Temporary uses.
<u>17.01.100</u>	Exceptions to minimum lot area.

17.01.010 Title.

This title shall be known and cited as the “Zoning Ordinance of the City of Gig Harbor, Washington,” as passed and adopted by Ordinance 573, approved on February 26, 1990. (Ord. 573 § 2, 1990).

17.01.020 Purpose.

A. The purpose of this title is to regulate the use of land and improvements by districts in accordance with the city comprehensive plan. These zoning regulations are designed to provide for orderly development, to lessen street congestion, to promote fire safety and public order, to protect the public health and general welfare, to prevent overcrowding, and to stimulate the systematic development of transportation, water, sewer, schools, parks, storm drainage and other public facilities.

B. It is further intended that any financial responsibility of the developer for work to be done on city streets, bounding in close proximity to and/or giving access to the development, which arises out of the provisions of this chapter, be made the subject of a contractual agreement between the developer and the city, and that such contractual agreement shall contain provisions to effectuate other sections of this chapter. (Ord. 573 § 2, 1990).

17.01.030 Conformity with regulations required.

No building or land within the city of shall hereafter be occupied or used and no building or part thereof shall be erected, moved or altered unless in conformity with applicable provisions specified in this title. (Ord. 573 § 2, 1990).

17.01.040 Public uses.

A. Approval Required to Insure Conformity. To insure that public uses and structures conform to the general community pattern and to the regulations governing private uses and development, agencies of the federal government, the state of Washington and its political subdivisions, including the city of Gig Harbor, shall submit plans and receive approvals in conformity with the regulations outlined herein when any activity covered by this title is contemplated in the city. (Ord. 605 § 2, 1991; Ord. 573 § 2, 1990).

17.01.050 Interpretation and application of provisions.

The provisions of this title shall be the minimum regulations and shall apply uniformly within each district and each class or kind of building, structure, land or water area, except as hereinafter specifically provided. (Ord. 573 § 2, 1990).

17.01.060 Conflict with other regulations.

Whenever the regulations of this title are at variance with the requirements of any other lawfully adopted rule or regulation or ordinance of the city, then the most restrictive of these provisions, or the

provision imposing the highest standards as the case may be, shall apply. (Ord. 573 § 2, 1990).

17.01.070 Public notice.

Repealed by Ord. 702. (Ord. 652 § 3, 1993; Ord. 573 § 2, 1990).

17.01.080 Conformance required – Fence or shrub height.

A. In order to maintain and preserve safe vision purposes on all corner lots, there shall be no fences, shrubs or other physical obstructions within 20 feet of the apex of the property corner at the intersecting streets, higher than 36 inches above the existing grade.

B. On interior lots a fence not exceeding six feet in height above the existing grade may be located anywhere from the front yard setback line to the rear property line. Within the front yard, a fence not exceeding three feet in height may be constructed to the side yard property lines with provisions for safe vision clearance where a driveway intersects the fronting street.

C. Fences shall not be constructed of plywood or composition sheeting. (Ord. 702 § 3, 1996; Ord. 667 § 2, 1994; Ord. 652 § 2, 1993; Ord. 109A § 3, 1968. Formerly 17.08.010).

17.01.090 Construction trailers – Temporary uses.

A. Applications for the temporary use of construction trailers are Type 1 project permit applications as defined under GHMC Title 19 and shall be processed accordingly. These permits are available for those who are in the process of constructing a building or buildings, which shall be subject to renewal, to locate a construction trailer or similar portable office on the building lot during the course of construction of the building or buildings. Such permit shall not be issued until after a building permit has been obtained.

B. Construction trailers or portable offices may be used as caretaker's quarters at various job sites which are controlled by other permits of limited time duration. All other types of caretaker quarters must meet the requirements for dwellings.

C. Construction trailers or portable offices used for temporary uses must have an approval on sewage disposal system, water supply, and electrical connection.

D. A temporary use permit may be issued by the planning/building department for a period not to exceed one year; provided, the department, for good cause shown, may renew the permit for an additional six-month period, at which time the temporary use (construction trailer or portable office) and all appurtenances thereto shall be removed from the property.

E. As a condition to the issuance of a temporary permit under the provisions of this section, the owner shall deposit in trust with the city, in cash or its equivalent, an amount as established under the City's Fee Schedule Resolution, to be deposited in a special fund created by this chapter and identified as the "construction trailer or portable office deposit fund," and shall enter into an agreement with the city. Such agreement shall provide, at a minimum, as follows:

1. The applicant agrees to pay to the city all fees, costs, and/or expenses, legal or otherwise, which the city may incur in causing the removal of the construction trailer or portable office, and all its appurtenances left in place beyond the time period approved by the city or used or installed in violation of the ordinances of the city;

2. The applicant agrees that all such fees, costs and/or expenses incurred by the city shall be deducted from the deposit;

3. The applicant agrees to pay to the city such fees, costs, and/or expenses incurred by the city which are in excess of the deposit;

4. The city agrees to refund the deposit at the time of expiration of the permit, in total; provided the city does not incur such fees, costs, and/or expenses, or shall refund the remainder of the deposit after deduction of such fees, costs, and/or expenses; and

5. The city agrees to provide to the applicant a complete and accurate accounting of all such fees, costs, and/or expenses, if any, incurred by the city.

F. A temporary use permit will be issued by the planning/building department. The fee imposed for the permit is in addition to all other required permits for electrical, plumbing and sewage disposal systems. (Ord. 702 § 5, 1996).

17.01.100 Exceptions to minimum lot area.

A lot which does not satisfy the minimum lot area requirements of the applicable zone may be developed as a separate building site, according to the following:

A. Combination of Legally Nonconforming Lots. A property owner of two or more lots that are legally nonconforming as to lot area may request that the lots be combined into one larger lot, even if the resulting lot does not satisfy the existing lot area requirements in the underlying zone, as long as the director determines that the property owner has submitted sufficient evidence to demonstrate that the original lots are legally nonconforming. In addition, the lot combination shall satisfy the requirements of and be processed according to the procedures in Chapter 16.03 GHMC, with the exception of GHMC 16.03.003(B). This section does not apply in any overlay district to allow the combination of any lots created through the mixed use overlay district (MUD), a planned unit development (PUD) or planned residential district (PRD).

B. Dedication of Property to the Public. That portion of a lot remaining after dedication or sale of a portion of the lot to the city or state for street or highway purposes shall be a separate building site, as long as the area of the remaining lot is at least 3,000 square feet. (Ord. 1106 § 2, 2007).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

<u>17.04.873</u>	Vehicle wash.
<u>17.04.875</u>	Warehouse/warehousing.
<u>17.04.877</u>	Waterfront view corridor.
<u>17.04.878</u>	Repealed.
<u>17.04.880</u>	Yard.
<u>17.04.890</u>	Yard, front.
<u>17.04.900</u>	Yard, rear.
<u>17.04.910</u>	Yard, side.

17.04.010 General interpretation.

For the purposes of this title, certain usages and words herein shall be interpreted as follows:

- A. Words used in the present tense include the future tense;
- B. The singular number includes the plural;
- C. The word "person" includes a legal entity as well as an individual;
- D. The word "lot" includes the words plot, parcel and tract;
- E. The word "shall" signifies a requirement;
- F. The words "used" and "occupy" as applied to any building or land include the words intended, arranged, or designed to be used or occupied;
- G. The word "may" signifies permission and desire;
- H. Where a definition for a word or term is not found in this section, the definition of the word or term as found in the latest edition of Webster's Dictionary shall apply. (Ord. 703 § 26, 1996; Ord. 573 § 2, 1990).

17.04.015 Accessory apartment.

"Accessory apartment" means a residential unit of up to 600 square feet with a functional kitchen, bath, and outside entrance attached to or on the same parcel as a single-family residence in a residential zone. Accessory apartments shall be under the same ownership as the primary residential unit with the owner living on-site in either unit. Accessory apartments shall not be condominiumized or otherwise sold separately. (Ord. 1046 § 1, 2006; Ord. 629 § 1, 1992).

17.04.017 Accessory uses and structures.

"Accessory uses and structures" means caretaker dwelling units associated with nonresidential uses, residential garages, sheds, similar outbuildings associated with the principal residential uses on the site and temporary buildings for and during construction. (Ord. 1046 § 2, 2006).

17.04.020 Administrative official.

"Administrative official" means a municipal official appointed by the mayor to administer and enforce this title and all other laws, statutes, rules and regulations applicable within the city. (Ord. 573 § 2, 1990).

17.04.021 Adult arcade.

"Adult arcade" means a commercial establishment containing individual viewing areas or booths where, for any form of consideration, including a membership fee, one or more still or motion picture projectors, slide projectors, or other similar image producing machines are used to show films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas. (Ord. 743 § 3, 1996).

17.04.022 Adult cabaret.

"Adult cabaret" means a nightclub, bar, restaurant, tavern, or other similar commercial establishment, whether or not alcoholic beverages are served, that regularly features adult entertainment. (Ord. 743 § 4, 1996).

17.04.023 Adult entertainment.

"Adult entertainment" means:

- A. Any exhibition, performance or dance conducted in an adult entertainment facility where such

“Comprehensive plan” means the planning document as defined in RCW 36.70A.030(4). (Ord. 703 § 3, 1996; Ord. 573 § 2, 1990).

17.04.255 Computer assembly plants.

“Computer assembly plants” means those uses which are classified as industry group 357 in the Standard Industrial Classification Manual (SICM), 1987 edition or as amended. (Ord. 724 § 3, 1996).

17.04.260 Conditional use.

“Conditional use” means a use listed among those classified in any given zone but permitted only after a public hearing by the city and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same district. (Ord. 703 § 4, 1996; Ord. 573 § 2, 1990).

17.04.261 Contractor’s yard.

“Contractor’s yard” is an outdoor storage area used for the storage of equipment or machinery typically used in the construction trades industry. (Ord. 752 § 1, 1997).

17.04.262 Courier services.

“Courier services” means those uses which are classified as group 4215 in the Standard Industrial Classification Manual (SICM), 1987 edition or as amended. (Ord. 724 § 4, 1996).

17.04.264 Day care provider, family.

“Family day care provider” means a state-licensed day care provider as defined in RCW 74.15.020 who regularly provides day care for not more than 12 children in the provider’s home in the family living quarters. (Ord. 1046 § 10, 2006; Ord. 703 § 5, 1996; Ord. 573 § 2, 1990).

17.04.265 Coffee house.

“Coffee house” means a restaurant 1 use that serves primarily coffee, tea and other nonalcoholic beverages. (Ord. 1046 § 11, 2006; Ord. 598 § 3, 1991).

17.04.268 Delicatessen.

Repealed by Ord. 1046. (Ord. 598 § 3, 1991).

17.04.269 Dense vegetative screen.

A “dense vegetative screen” consists of a physical buffer which is opaque to a height of six feet and broken to a height of 20 feet. Screening may be achieved through any one or a combination of the following methods:

- A. A solid row of evergreen trees or shrubs.
- B. A solid row of evergreen trees or shrubs planted on an earthen berm.
- C. A combination of trees and shrubs and fencing where the amount of fencing does not exceed 50 percent of the lineal distance of the side to be buffered. Ground cover plants which are capable of providing complete ground coverage within three years of planting shall also be provided. (Ord. 652 § 1, 1993).

17.04.270 Detached buildings.

“Detached building” means a building surrounded on all sides by open space and not connected to another building or structure except by utilities. (Ord. 573 § 2, 1990).

17.04.271 Director.

“Director” means the director of the department of community development or his/her designated representative. (Ord. 703 § 6, 1996).

17.04.272 Developed property.

“Developed property” means a lot or parcel of land upon which a building/buildings is/are located, but which contains insufficient area to be capable of further subdivision in accordance with the Gig Harbor

and may include conference facilities. (Ord. 1046 § 34, 2006).

17.04.450 Lot.

“Lot” means an area of land that is described by metes and bounds or recorded plat and is to be used, developed or built upon as a single unit of land. (Ord. 573 § 2, 1990).

17.04.455 Lot of record.

“Lot of record” means a lot, tract or parcel which is defined by a deed recorded as a valid lot in a recorded subdivision with the county auditor and assigned a tax number. (Ord. 703 § 12, 1996; Ord. 573 § 2, 1990).

17.04.460 Lot area.

“Lot area” means all the area within the boundaries of a lot excluding rights-of-way, etc. (see GHMC 17.04.080). (Ord. 573 § 2, 1990).

17.04.470 Lot, corner.

“Corner lot” means a lot situated at the junction of and bordering on two intersecting public rights-of-way. On a corner lot, the front lot line is the shorter lot line adjacent to a public street; the longer lot line adjacent to a public street is a side lot line. (Ord. 573 § 2, 1990).

17.04.480 Lot, depth of.

“Depth of lot” means the average distance from the front lot line to the rear lot line measured horizontally from the midpoint of the front lot line to the midpoint of the rear lot line. (Ord. 573 § 2, 1990).

17.04.490 Lot, interior.

“Interior lot” means any lot other than a corner lot. (Ord. 573 § 2, 1990).

17.04.500 Lot line.

“Lot line” means a portion of the boundary of a lot dividing it from other lots or parcels of land. (Ord. 573 § 2, 1990).

17.04.510 Lot line, front.

“Front lot line” of an interior lot means the lot line adjacent to a public street or the total line first crossed when gaining access to the lot from a public street. See GHMC 17.04.470 for the definition of the front lot line of a corner lot. (Ord. 573 § 2, 1990).

17.04.520 Lot line, rear.

“Rear lot line” means the lot line opposite and most distant from the front lot line, and in the case of an irregularly, triangularly or triangular-shaped lot, the rear lot line will be determined by the planning director. (Ord. 573 § 2, 1990).

17.04.530 Lot line, side.

“Side lot line” means any lot line that is not the front lot line or the rear lot line. (Ord. 573 § 2, 1990).

17.04.540 Lot, through.

“Through lot” means an interior lot fronting on two streets. A through lot has two front lot lines and no rear lot line. (Ord. 573 § 2, 1990).

17.04.542 Lot width.

“Lot width” means the horizontal dimension of the front lot line or, in an irregularly shaped lot, the horizontal dimension across the lot at the building setback line. (Ord. 1046 § 35, 2006; Ord. 573 § 2, 1990. Formerly 17.04.550).

17.04.544 Low impact retail.

“Low impact retail” means retail uses that are compatible with, and targeted to, local residential

designed and erected for receiving telecommunication signals. A small satellite dish antenna is defined as having a diameter of one meter or less and located within any zoning district or two meters or less within commercial and employment districts. A large satellite dish antenna is defined as having a diameter of greater than one meter in diameter in any residential zone or two meters in diameter in commercial and employment districts. (Ord. 1046 § 67, 2006; Ord. 771 § 7, 1997; Ord. 573 § 2, 1990. Formerly 17.04.710).

17.04.716 School, higher educational.

“Higher educational school” means a public or private postsecondary educational facility. (Ord. 1046 § 70, 2006).

17.04.717 School, primary.

“Primary school” means a public or private Washington State accredited K – 8 school, including accessory playgrounds and athletic fields. (Ord. 1046 § 71, 2006).

17.04.718 School, secondary.

“Secondary school” means a public or private Washington State accredited 9 – 12 school, including athletic fields. (Ord. 1046 § 72, 2006).

17.04.719 School, vocational/trade.

“Vocational/trade school” means a public or private educational facility teaching skills that prepare students for jobs in a trade or occupation. (Ord. 1046 § 73, 2006).

17.04.720 Setback, building.

“Building setback” means the distance between the building line and the nearest boundary to the site or lot, measured at right angles to the boundary. (Ord. 573 § 2, 1990).

17.04.725 Sexually oriented materials.

“Sexually oriented materials” means any books, magazines, periodicals or other printed materials, or any photographs, films, motion pictures, video cassettes, slides, or other visual representations that are distinguished or characterized by a predominant emphasis on matters depicting, describing, or simulating any specified sexual activities or any specified anatomical areas. (Ord. 743 § 12, 1996).

17.04.730 Sign.

“Sign” means any device, flag, light, figure, picture, letter, work, message, symbol, plaque, poster or building face that is visible from outside the lot on which it is located and that is designed to inform or attract the attention of the public through visual communication, excluding murals or architectural designs that do not advertise a business, product or service. Signs are subject to all regulations specified in Chapter 17.80 GHMC. (Ord. 573 § 2, 1990).

17.04.740 Sign area.

“Sign area” means the entire area within a single, continuous perimeter enclosing the extreme limits of a sign but excluding any structural elements not forming an integral part of the display. (Ord. 573 § 2, 1990).

17.04.742 Special uses.

“Special uses” are uses permitted under Chapter 17.65 GHMC that are permitted or conditionally permitted in the underlying zone, but which are temporary and infrequent in nature, lasting seven days or less and occurring not more than twice in any calendar year by any given applicant or at any given site. Special uses include events or promotions which occur outdoors or in temporary structures, often siting in fields, plazas or parking areas. (Ord. 953 § 1, 2004).

17.04.745 Specified anatomical areas.

“Specified anatomical areas” means and includes any of the following:

A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

17.04.770 Structure.

“Structure” means a combination of materials that is constructed or erected, either on or under the ground, or that is attached to something having a permanent location on the ground, excluding residential fences, retaining walls, rockeries and similar improvements of a minor character the construction of which is not regulated by the building code of the city. (Ord. 573 § 2, 1990).

17.04.780 Studio apartment.

“Studio apartment” means an apartment with one main living space, a kitchen, a bathroom, and does not have a separate bedroom. (Ord. 783, 1998).

17.04.790 Tank farm.

“Tank farm” means a lot that has one or more tanks, the aggregate volume of which is 10,000 gallons or more, and that contain something other than water. (Ord. 573 § 2, 1990).

17.04.795 Tavern.

“Tavern” means an establishment that serves alcoholic beverages as its primary use. (Ord. 1046 § 74, 2006).

17.04.800 Tract.

“Tract” means a parcel of land in single ownership that has not been subdivided into lots in conformance with the applicable laws of the state, county or city. (Ord. 573 § 2, 1990).

17.04.805 Tree.

A “tree” shall mean any living woody plant characterized by one main stem or trunk and many branches, and which has a minimum diameter of six inches as measured 54 inches above the ground. (Ord. 752 § 4, 1997).

17.04.830 Travel trailer.

“Travel trailer” means a motor vehicle or portable vehicular structure that is capable of being towed on the highways by a motor vehicle, is designed or intended for casual or short-term human occupancy for travel, recreational or vacation uses, and is identified by a model number, serial number, or vehicle registration number. (Ord. 573 § 2, 1990).

17.04.835 Truck garden.

“Truck garden” means a farm producing vegetables for sale. (Ord. 573 § 2, 1990).

17.04.837 Undeveloped property.

“Undeveloped property” means a lot or parcel of land upon which no building exists, and which may or may not be of sufficient area so as to be capable of subdivision. (Ord. 703 § 23, 1996).

17.04.840 Use.

“Use” means how land or a building is arranged, designed, occupied or maintained. (Ord. 573 § 2, 1990).

17.04.850 Use, principal.

“Principal use” means the primary use of land or a building as distinguished from a secondary or minor use. (Ord. 573 § 2, 1990).

17.04.860 Utilities.

“Utilities” includes public or private domestic water systems, storm and sanitary sewer systems, electric distribution systems, telephone systems, and water storage facilities, excluding wireless communication facilities. (Ord. 1046 § 76, 2006).

17.04.870 Variance.

“Variance” means a relaxation of the requirements of this title with respect to building setback, building height, the size of signs, coverage or parking (but not with respect to use) approved by the city as a Type III permit application. (Ord. 703 § 24, 1996; Ord. 573 § 2, 1990).

17.04.873 Vehicle wash.

“Vehicle wash” means an area of land and/or a structure used principally for the cleaning, washing, polishing, or waxing of motor vehicles. (Ord. 1046 § 78, 2006).

17.04.875 Warehouse/warehousing.

“Warehouse” or “warehousing” means the storage of goods, products or materials for commercial or industrial facilities within a fully enclosed structure. (Ord. 703 § 25, 1996).

17.04.877 Waterfront view corridor.

“Waterfront view corridor” includes all parcels located between the shoreline of Gig Harbor Bay and either Harborview Drive or North Harborview Drive, excluding parcels located north of or abutting Rust Street (originally named Walnut Street) as shown on the original Artena Addition plat recorded on August 23, 1890. (Ord. 995 § 2, 2005).

17.04.878 Yacht club.

Repealed by Ord. 1066. (Ord. 1046 § 79, 2006).

17.04.880 Yard.

“Yard” means a required open space that is on the same lot with the principal use and is unoccupied or unobstructed by any portion of a structure; provided however, that paved terraces, fences, walls, poles, posts, ornaments, furniture and other customary yard accessories may be permitted in any yard subject to height limitations and requirements limiting the obstruction of visibility at intersections. (Ord. 573 § 2, 1990).

17.04.890 Yard, front.

“Front yard” means a yard extending the full length of the front lot line and its depth is measured horizontally at right angles to the front lot line from midpoint of the front lot line to the midpoint of the front building line, except roof eaves, bump-out windows and decks/balconies may encroach up to a maximum of 18 inches into the yard. (Ord. 601 § 1, 1991; Ord. 573 § 2, 1990).

17.04.900 Yard, rear.

“Rear yard” means a yard extending the full length of the rear lot line and its depth is measured horizontally at right angles to the rear lot line from midpoint of the rear lot line to midpoint of the rear building line, except roof eaves, bump-out windows and decks/balconies may encroach up to a maximum of 18 inches into the yard. (Ord. 601 § 1, 1991; Ord. 573 § 2, 1990).

17.04.910 Yard, side.

“Side yard” means a yard extending from the front yard to the rear yard and its depth is measured horizontally at right angles to the side lot line from the midpoint of the side lot line to the midpoint of the side building line except roof eaves, bump-out windows and decks/balconies may extend up to 18 inches into the yard. (Ord. 601 § 1, 1991; Ord. 573 § 2, 1990).

¹

Code reviser's note: Ordinance 995 adds the definition of “habitable space” as GHMC [17.04.409](#) and the definition of “hedge” as GHMC [17.04.408](#). They have been editorially renumbered to preserve alphabetization.

Chapter 17.05 DENSITY IN RESIDENTIAL ZONES

Sections:

- 17.05.010 Purpose.
- 17.05.020 Requirements.
- 17.05.030 Calculations.
- 17.05.035 Density rounding.
- 17.05.040 Exclusions.

17.05.010 Purpose.

The density requirement helps to maintain a consistent and compatible land use pattern in Gig Harbor's residential neighborhoods. Other purposes of this requirement are to serve the planned housing needs of the city's residential population and prevent public nuisances that result from a lack of open space and the overutilization of public facilities. (Ord. 951 § 3, 2004).

17.05.020 Requirements.

The allowed density, as shown for each residential zone in this title, represents the maximum number of dwelling units that may occupy an acre of land. This maximum number of units may be exceeded only through participation in the planned residential development process (PRD, Chapter 17.89 GHMC). (Ord. 951 § 3, 2004).

17.05.030 Calculations.

When determining the allowed density for any given lot in the city, the net buildable land area of the site is used. Net buildable land area, for the purpose of determining the allowed dwelling units for a site, shall be calculated by subtracting areas where building is prohibited or subject to significant restrictions from the gross lot area. The area remaining after these exclusions from the gross lot area represents the net buildable land area. The following shall be deducted from the gross lot area to determine net buildable land area:

- A. Sensitive areas including: Type I, II, III and IV wetlands, ravine sidewalls, and bluffs.
- B. Public rights-of-way, private streets and access corridors; except as excluded under GHMC

17.05.040.

C. Tidelands. The area of waterfront lots is considered to be the area landward of the line of the ordinary high water mark, regardless of the extent of ownership, or the area landward of the ordinary high water mark along streams. (Ord. 951 § 3, 2004).

17.05.035 Density rounding.

The allowable number of dwelling units for any given lot of the city shall be calculated by multiplying the net buildable land area by the allowed density in dwelling units/acre. The result of this calculation shall equal the number of dwelling units permitted. If a calculation results in a fractional dwelling unit, the fractional dwelling unit shall be rounded to the nearest whole number. Less than one-half shall be rounded down. Greater than or equal to one-half shall be rounded up.

Example: One and one-half acres times three du/acre equals four and one-half (rounded to five dwelling units). (Ord. 972 § 1, 2004).

17.05.040 Exclusions.

The following shall not be deducted from the gross lot area when calculating net buildable land area:

- A. Required setbacks;
- B. Buffers and screening required by design manual standards;
- C. Buffers and screening required by zoning performance standards;
- D. Alleys; and

E. Wetland buffers. (Ord. 951 § 3, 2004).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

Chapter 17.14 LAND USE MATRIX

Sections:

- 17.14.010 Interpretation of land use matrix.
- 17.14.020 Land use matrix.

17.14.010 Interpretation of land use matrix.

- A. The land use matrix in this chapter identifies uses permitted in each individual zoning district. The zoning district is located on the vertical column and the use is located on the horizontal row of this matrix.
- B. If a dash appears in the box at the intersection of the column and the row, the use is not permitted in that district.
- C. If the letter "P" appears in the box at the intersection of the column and the row, the use is permitted in that district.
- D. If the letter "C" appears in the box at the intersection of the column and the row, the use is conditionally permitted subject to the conditional use permit review procedures and criteria specified in Chapter 17.64 GHMC.
- E. If a footnote appears in the box at the intersection of the column and the row, the use may be permitted subject to the appropriate review process indicated above and the specific conditions indicated by the corresponding footnote.
- F. All applicable requirements shall govern a use whether or not they are cross-referenced in the matrix. To determine whether a particular use is allowed in a particular zoning district and location, all relevant regulations must also be consulted in addition to this matrix. (Ord. 1045 § 1, 2006).

17.14.020 Land use matrix.

Uses	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-20	PCD-C	ED ¹⁸	WR	WMI	WC	BP	PCD	NB	MUD
Dwelling, single-family	-	P	P	P	P	C	P	P	C	p ¹⁴	C	C	p ¹⁴	-	P	P	P	-	p ¹⁴		P
Dwelling, duplex	-	-	-	P	P	P	-	P	C	p ¹⁴	C	C	p ¹⁴	-	P	P	P	-	p ¹⁴		P
Dwelling, triplex	-	-	-	-	P	P	-	P	C	p ¹⁴	C	C	p ¹⁴	-	-	C ¹⁷	P	-	p ¹⁴		P
Dwelling, fourplex	-	-	-	-	P	P	-	P	C	p ¹⁴	C	C	p ¹⁴	-	-	C ¹⁷	P	-	p ¹⁴		P
Dwelling, multiple-family	-	-	-	-	P	P ⁶	-	P	C	p ¹⁴	C	C	p ¹⁴	-	-	-	-	-	p ¹⁴		P
Accessory apartment ¹	-	C	P	-	P	-	C	C	C	p ¹⁴	C	C	p ¹⁴	-	-	-	P	-	p ¹⁴		P

- 18 Planned unit developments (PUDs) are conditionally permitted in the ED district.
- 19 Commercial parking lots in the WC district shall be related to shoreline uses.
- 20 Junkyards, auto wrecking yards and garbage dumps are not allowed in the C-1 district.
- 21 Clubs in the WM district shall not serve alcoholic beverages and shall not operate a grill or deep-fat fryer.
(Ord. 1066 § 3, 2007; Ord. 1045 § 1, 2006).

TOC < >

This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.
Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.
City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

Chapter 17.20 MEDIUM-DENSITY RESIDENTIAL (R-2)

Sections:

- 17.20.010 Intent.
- 17.20.020 Permitted uses.
- 17.20.030 Conditional uses.
- 17.20.040 Development standards.
- 17.20.060 Maximum height of structures.
- 17.20.070 Design.

17.20.010 Intent.

An R-2 district is intended to allow for a moderate density of land use that is greater than is permitted in an R-1 district but less than is permitted in an R-3 district, where suitable facilities such as streets, water, sewer and storm drainage are available. An R-2 district provides a transition between a higher density residential district in order to preserve the primarily residential character of existing lower density residential areas. (Ord. 710 § 9, 1996; Ord. 573 § 2, 1990).

17.20.020 Permitted uses.

Refer to Chapter 17.14 GHMC for uses permitted in the R-2 district. (Ord. 1045 § 15, 2006).

17.20.030 Conditional uses.

Refer to Chapter 17.14 GHMC for uses conditionally permitted in the R-2 district. (Ord. 1045 § 17, 2006).

17.20.040 Development standards.

In an R-2 district, the minimum requirements are as follows:

	Single-Family and Duplex Dwellings	Other Residential and Nonresidential
A. Minimum lot area for short plats ¹	7,000 sq. ft./dwelling unit	
B. Minimum lot width ¹	50'	50'
C. Minimum front yard ^{2, 4}	House: 20' Porch: 12' Garage: 26'	25'
D. Minimum side yard ^{4, 5}	8'	7'
E. Minimum rear yard ^{4, 5}	30'	25'
F. Maximum site coverage	40% of the total lot area	
G. Maximum density ³	6 dwelling units/acre	

¹A minimum lot area is not specified for subdivisions of five or more lots. The minimum lot width shall be 0.7 percent of the lot area, in lineal feet.

²In the case of a corner lot, the owner of such lot may elect any property line abutting on a street as the front property line; provided, such choice does not impair corner vision clearance for vehicles and shall not be detrimental to adjacent properties as determined by the planning and public works directors.

The other property line abutting a street shall be deemed the side property line. An undersized lot or parcel shall qualify as a building site if such lot is a lot of record.

3A maximum density of up to 7.8 dwelling units per acre may be permitted within a planned residential development, pursuant to Chapter 17.89 GHMC.

4Development in the historic district shall comply with the setbacks defined in GHMC 17.99.310 and 17.99.320.

5Garages accessory to single-family and duplex dwellings may be located in the defined side and rear yards, provided they conform to the criteria in GHMC 17.99.490(A)(1). (Ord. 1085 § 4, 2007; Ord. 710 § 12, 1996; Ord. 573 § 2, 1990. Formerly 17.20.050).

17.20.060 Maximum height of structures.

In an R-2 district, all buildings and structures shall not exceed 35 feet, except as provided for under Chapter 17.62 GHMC, Height Restriction Area, and as provided for under GHMC 17.99.390(A)(3), 17.99.510(A)(2) and 17.99.510(B). (Ord. 975 § 26, 2004; Ord. 710 § 14, 1996; Ord. 573 § 2, 1990).

17.20.070 Design.

All structures shall conform to the design standards defined for single-family dwellings as provided in GHMC 17.99.490. Nonresidential development shall conform to all nonresidential design standards defined in Chapter 17.99 GHMC. (Ord. 975 § 27, 2004).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

Chapter 17.24 MULTIPLE-FAMILY RESIDENTIAL (R-3)

Sections:

<u>17.24.010</u>	Intent.
<u>17.24.020</u>	Permitted uses.
<u>17.24.030</u>	Conditional uses.
<u>17.24.040</u>	Site plans.
<u>17.24.050</u>	Development standards.
<u>17.24.060</u>	Maximum height of structures.
<u>17.24.070</u>	Design.

17.24.010 Intent.

An R-3 district is intended to provide areas suitable for multiple-family dwellings and to serve as a buffer and transition between more intensively developed areas and residential properties of a lower density. An R-3 district is suitable in areas which are served by municipal services and in areas readily accessible to freeway access. (Ord. 573 § 2, 1990).

17.24.020 Permitted uses.

Refer to Chapter 17.14 GHMC for uses permitted in the R-3 district. (Ord. 1045 § 23, 2006).

17.24.030 Conditional uses.

Refer to Chapter 17.14 GHMC for uses conditionally permitted in the R-3 district. (Ord. 1045 § 25, 2006).

17.24.040 Site plans.

Before a building permit will be issued in an R-3 district, the site plan review process as specified in Chapter 17.96 GHMC shall be followed. (Ord. 573 § 2, 1990).

17.24.050 Development standards.

In an R-3 district, the minimum lot requirements are as follows:

	Single-Family and Duplex Dwellings	Other Residential and Nonresidential
A. Minimum lot area for short plats ¹	5,400 sq. ft./dwelling unit	
B. Minimum lot width ¹	50'	50'
C. Minimum front yard ²	House: 20' Porch: 12' Garage: 26'	20'
D. Minimum side yard ⁴	8'	7'
E. Minimum rear yard ⁴	30'	25'
F. Maximum site coverage	60% of the total lot area	
G. Maximum density ³	8 dwelling units/acre	

¹A minimum lot area is not specified for subdivisions of five or more lots. The minimum lot width shall

be 0.7 percent of the lot area, in lineal feet.

2In the case of a corner lot, the owner of such lot may elect any property line abutting on a street as the front property line; provided, such choice does not impair corner vision clearance for vehicles and shall not be detrimental to adjacent properties as determined by the planning and public works directors.

3A maximum density of up to 10.4 dwelling units per acre may be permitted within a planned residential development, pursuant to Chapter 17.89 GHMC.

4Garages accessory to single-family and duplex dwellings may be located in the defined side and rear yards, provided they conform to the criteria in GHMC 17.99.490(A)(1). (Ord. 1085 § 6, 2007; Ord. 710 § 17, 1996; Ord. 573 § 2, 1990).

17.24.060 Maximum height of structures.

In an R-3 district, all buildings and structures shall not exceed 35 feet in height except as provided for under Chapter 17.62 GHMC, Height Restriction Area, and as provided under GHMC 17.99.510(A)(2) and 17.99.510(B). (Ord. 975 § 29, 2004; Ord. 710 § 18, 1996; Ord. 573 § 2, 1990).

17.24.070 Design.

All single-family and duplex structures shall conform to the design standards defined for single-family development in Chapter 17.99 GHMC. All multifamily and nonresidential development shall conform to all applicable design standards of Chapter 17.99 GHMC. (Ord. 975 § 30, 2004).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

Chapter 17.30 RESIDENTIAL AND BUSINESS DISTRICT (RB-2)

Sections:

<u>17.30.010</u>	Intent.
<u>17.30.020</u>	Permitted uses.
<u>17.30.030</u>	Conditional uses.
<u>17.30.040</u>	Site plans.
<u>17.30.050</u>	Development standards.
<u>17.30.060</u>	Site coverage.
<u>17.30.070</u>	Maximum building height.
<u>17.30.080</u>	Parking.
<u>17.30.090</u>	Signs.
<u>17.30.100</u>	Loading.
<u>17.30.110</u>	Performance standards.

17.30.010 Intent.

The RB-2 district is intended to provide a mix of medium density residential uses with certain specified business, personal and professional services. It is intended to serve as a transitional buffer between high intensity commercial areas and lower intensity residential areas. The RB-2 zone is similar in construction to the RB-1 zone while allowing a higher percentage of impervious coverage and multifamily residential development. Furthermore, the RB-2 zone would serve to minimize impacts to adjacent residential uses by limiting general operational impacts of a use to that portion of the site between the structure(s) and the fronting road. (Ord. 554 § 1A, 1989).

17.30.020 Permitted uses.

Refer to Chapter 17.14 GHMC for uses permitted in the RB-2 district. (Ord. 1045 § 32, 2006).

17.30.030 Conditional uses.

Refer to Chapter 17.14 GHMC for uses permitted in the RB-2 district. (Ord. 1045 § 34, 2006).

17.30.040 Site plans.

Prior to the issuance of a building permit in the RB-2 district, the site plan review process specified under this title shall be completed to the satisfaction of the city. (Ord. 554 § 1D, 1989).

17.30.050 Development standards.

In an RB-2 district, development standards shall be satisfied for all new and redeveloped uses:

	Single- Family and Duplex Dwellings	Other Residential and Nonresidential
A. Minimum lot area	12,000 sq. ft.	12,000 sq. ft.
B. Minimum lot width	70'	70'
C. Front yard setback	House: 20' Porch: 12' Garage: 26'	20'
D. Side yard setback ¹	8'	8'

E. Rear yard setback¹

30'

15'

F. Any nonresidential yard abutting an existing residential use or zone: 40 feet with dense vegetative screening. Easements not having dense vegetative screening are not included;

G. Maximum density: Eight dwelling units per acre permitted outright; 12 dwelling units per acre allowed as a conditional use.

¹Garages accessory to single-family and duplex dwellings may be located in the defined side and rear yards, provided they conform to the criteria in GHMC 17.99.490(A)(1).
(Ord. 1085 § 8, 2007; Ord. 954 § 3, 2004; Ord. 710 § 26, 1996; Ord. 554 § 1E, 1989).

17.30.060 Site coverage.

Impervious site coverage in an RB-2 district shall be limited as follows:

A. Fifty-five percent site coverage is permitted outright.

B. Seventy percent site coverage is conditionally allowed, subject to the following:

1. For every one percent increase in site coverage, an additional 0.5 feet of buffer shall be provided between the use and adjacent single-family residential use or zone;

2. Increased buffering shall consist of one of the following:

a. Undisturbed native vegetation which meets the definition of a dense vegetative screen,

b. Appropriate landscape vegetation consisting of a mixture of coniferous and broadleaf evergreen species with minimum planting height of six feet and capable of providing a dense vegetative screen within three years of planting,

c. As an alternative to paragraph b of this subdivision, the opaque portion of the screen may consist of a weather-resistant wood fence of six feet in height, constructed along the property line.

C. Buffer vegetation shall be maintained for the life of the project. Dead, diseased or dying vegetation may be removed; provided, that replanting of vegetation of a like or similar species in size and area coverage shall be accomplished within six months from removal. (Ord. 554 § 1F, 1989).

17.30.070 Maximum building height.

In an RB-2 district, all buildings and structures shall not exceed 35 feet except as provided for under Chapter 17.62 GHMC, Height Restriction Area, and as provided under GHMC 17.99.390(A)(3) and 17.99.510(A)(2) and (B). (Ord. 975 § 35, 2004; Ord. 710 § 27, 1996; Ord. 554 § 1G, 1989).

17.30.080 Parking.

In an RB-2 district, parking on private property shall be provided in connection with any permitted or conditional use as specified in Chapter 17.72 GHMC. Where the parcel abuts a residential use or zone, parking and vehicle access areas shall be located between the fronting road and the structure(s); provided, that where site characteristics or design preclude locating parking and access as described, that an additional 10 feet of buffering shall be required. (Ord. 554 § 1H, 1989).

17.30.090 Signs.

In an RB-2 district, signs may be allowed in conjunction with any permitted use and are subject to the provisions of Chapter 17.80 GHMC. (Ord. 554 § 1I, 1989).

17.30.100 Loading.

In an RB-2 district, off-street loading facilities shall be provided in accordance with the provisions of Chapter 17.72 GHMC. (Ord. 554 § 1J, 1989).

17.30.110 Performance standards.

In an RB-2 district, performance standards are as follows:

A. Exterior Mechanical Devices. Air conditioners, heating, cooling and ventilating equipment, pumps and heaters and all other mechanical devices shall be screened.

B. Landscaping. Landscaping is required and shall be installed in conformance with Chapter 17.78 GHMC and/or by conditions of approval of discretionary applications required by this title; such

landscaping shall be maintained in a neat manner. In no event shall such landscaped areas be used for storage of materials or parking of vehicles.

C. Outdoor Storage of Materials. The outdoor storage of materials, including but not limited to lumber, auto parts, household appliances, pipes, drums, machinery or furniture, is permitted as an incidental or accessory activity of a permitted use or the principal feature of a conditional use. Such storage shall be screened by a wall, fence, landscaping or structure from surrounding properties and streets.

D. Outdoor Lighting. Outdoor lighting shall conform to the standards of GHMC 17.99.350 and 17.99.460. Such lighting shall be shielded so that the direct illumination shall be confined to the property boundaries of the light source. Ground-mounted floodlighting or light projection above the horizontal plane is prohibited between midnight and sunrise. Temporary outdoor lighting intended to advertise a temporary promotional event shall be exempt from this requirement.

E. Trash Receptacles. Trash receptacles shall be screened from view. Screening shall be complementary to building design and materials.

F. Design. Development in the RB-2 district shall conform to the design and development standards contained in Chapter 17.99 GHMC. (Ord. 1086 § 16, 2007; Ord. 975 § 36, 2004; Ord. 710 § 28, 1996; Ord. 554 § 1K, 1989).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

Chapter 17.59

PLANNED COMMUNITY DEVELOPMENT TRANSFER OF DENSITY CREDITS OPTION

Sections:

- 17.59.010 Intent.
- 17.59.020 Applicability.
- 17.59.030 Procedure.

17.59.010 Intent.

The intent of the density credit transfer option is to permit greater flexibility in the allocation of residential density within a planned community development designation without exceeding the maximum density buildout as planned for. The density transfer credit option may provide for higher densities in areas posing the fewest environmental constraints and which also have available access to public transportation. To this end, desired goals of the density credit transfer option are to:

- A. Protect areas identified as having environmentally sensitive areas or features by minimizing or avoiding impacts associated with residential development.
- B. Supply quality affordable housing while providing access opportunities to local employment areas.
- C. Promote more efficient provision of public services.
- D. Locate higher density residential development in areas which are capable of supporting more intense uses. (Ord. 747 § 6, 1997).

17.59.020 Applicability.

A. Density credit transfers are limited to the planned community designation and the mixed use designation of the city of Gig Harbor comprehensive plan (Nov., 1994). Density credit transfers may be applied from one residential district to another residential district. A density credit consists of one residential dwelling unit.

B. Property which is constrained by critical areas or wetlands as defined under the Gig Harbor Municipal Code shall receive full density credit for those portions of the site which are undevelopable.

C. Density credits may be transferred in whole or in fractions. Development rights associated with a density credit are considered real property and are subject to any legal requirements as applicable to other real property. (Ord. 747 § 6, 1997).

17.59.030 Procedure.

A. An owner of real property within the planned community district residential low or residential medium may apply for a density credit transfer either as a donor or receiver of the density credit. A donor relinquishes density from property under the donor's ownership to the receiver's property. The receiver of density credits may apply the increased density to land under the receiver's ownership, consistent with the city of Gig Harbor comprehensive plan and the city zoning code. The following process applies to the transfer and receipt of density credits:

1. The applicant must submit documentation to the city which provides the following:
 - a. The location, site area and specific development right(s) permitted under the comprehensive plan and zoning code which the property owner proposes to transfer, the base density, inclusive of previously transferred density, and the resultant change in density on the donor's property.
 - b. The location and site area of the land to which the density credit is transferred to, including the projected density credit resulting from the transfer, the base density and the resultant change in density on the receiver's property.

B. Upon receipt of the completed application for density credit transfer, the planning/building department shall review the density credit transfer proposal to assure that it is consistent with the planned community development district designation to which it applies and the general density as

stated.

C. Upon approval of the planning department and the city attorney, the applicant/property owner shall file with the Pierce County auditor a legally sufficient document which effectively accomplishes the following:

1. A covenant on the lands affected by the density credit transfer which contains deed restrictions reflecting the transfer and its resultant conditions to private ownership and future development of the land.

2. A deed for the development rights so affected shall be assigned an assessor's tax parcel number, including a legal description of the real property from which density credits are to be donated from and a legal description of the real property to which such density credits are to be transferred to.

A copy of the executed legal instrument, bearing the Pierce County auditor's file number, shall be provided to the planning department and the city attorney prior to the issuance of any development permit for the affected properties.

Density credit transfers are exempt from the permit processing procedures in GHMC Title 19 and are processed simultaneous with any Type III permit application. (Ord. 747 § 6, 1997).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

Chapter 17.64 CONDITIONAL USES

Sections:

- 17.64.010 Intent.
- 17.64.015 Complete application.
- 17.64.020 Procedure.
- 17.64.030 General conditions.
- 17.64.040 Review criteria.
- 17.64.045 Review criteria for accessory apartments.
- 17.64.046 Conditional use permits for review criteria for wireless communication facilities.
- 17.64.050 Expiration.
- 17.64.060 Transfer of a conditional use permit.
- 17.64.070 Revocation of a conditional use permit.
- 17.64.080 Repealed.
- 17.64.090 Repealed.

17.64.010 Intent.

Certain uses, because of their unusual size, infrequent occurrence, special requirements, possible safety hazards or detrimental effect on surrounding properties, are classified as conditional uses. These uses may be allowed in certain use districts by a conditional use permit granted by the hearing examiner, subject to the procedures established in Chapter 17.10 GHMC. (Ord. 573 § 2, 1990).

17.64.015 Complete application.

An application for a conditional use permit is considered complete upon submittal of the information as required under GHMC 17.96.050(B) through (D) and (L), including the written statement of justification for granting the variance pursuant to the requirements of GHMC 17.64.040. This is in addition to the application requirements of GHMC 19.02.002 for a Type III application. Seven copies of all information required shall be submitted along with the processing fee. (Ord. 725 § 8, 1996; Ord. 710 § 63, 1996).

17.64.020 Procedure.

Any use that requires a conditional use permit shall be processed in accordance with the following procedures:

A. Application. An application for a conditional use permit may be filed by the property owner, lessee of the property with more than a month-to-month tenancy or authorized agent of the property owner. The application shall be submitted in writing and be accompanied by the required plans and data. These applications shall be submitted to the planning department for transmittal to the hearing examiner with analysis and recommendation.

B. Investigation. The planning director shall make an investigation to determine whether a proposed conditional use would be in accordance with the comprehensive plan and this chapter, whether the use would be injurious to the public health, safety or welfare, and whether the use would be detrimental to other properties in the vicinity.

C. Granting or Denial. The decision may include special restrictions or conditions deemed necessary or desirable in furthering the intent of the ordinance pertaining to the proposed development.

D. Conditions. The conditions may:

1. Stipulate the exact location of uses or structures as a means of minimizing hazards or property damage;
2. Require special structural features, equipment or site treatment;
3. Increase requirements, standards or criteria over the minimum established by this title. (Ord. 573 § 2, 1990).

17.64.030 General conditions.

In considering whether to grant conditional uses, the hearing examiner shall be satisfied that the minimum standards set for uses specified in this title will be met. In addition, the examiner shall consider the criteria listed in this section and the standards as set forth in this chapter. The examiner may require the applicant to submit whatever reasonable evidence may be needed and may stipulate additional conditions to protect the public interest. The burden of proof rests with the applicant. (Ord. 573 § 2, 1990).

17.64.040 Review criteria.

Each determination granting or denying a conditional use permit shall be supported by written findings of fact showing specifically wherein all of the following conditions are met:

A. That the use which the conditional use permit is applied for is specified by this title as being conditionally permitted within, and is consistent with the description and purpose of the zone district in which the property is located;

B. That the granting of such conditional use permit will not be detrimental to the public health, safety, comfort, convenience and general welfare, will not adversely affect the established character of the surrounding neighborhood, and will not be injurious to the property or improvements in such vicinity and/or zone in which the property is located;

C. That the proposed use is properly located in relation to the other land uses and to transportation and service facilities in the vicinity; and further, that the use can be adequately served by such public facilities and street capacities without placing an undue burden on such facilities and streets;

D. That the site is of sufficient size to accommodate the proposed use and all yards, open spaces, walls and fences, parking, loading, landscaping and other such features as are required by this title or as needed in the opinion of the examiner.

For wireless communication facilities the criteria in GHMC 17.64.046 shall apply. (Ord. 771 § 15, 1997; Ord. 573 § 2, 1990).

17.64.045 Review criteria for accessory apartments.

When reviewing a conditional use request for an accessory apartment, the hearing examiner shall consider the following guidelines:

A. The required parking space for the accessory apartment is placed behind the primary structure or is paved with grass-block pavers to avoid an expansive area of hard surface;

B. The accessory apartment is attached to or placed at least six feet behind the primary structure;

C. The design of the accessory apartment is incorporated into the primary unit's design with matching materials, colors, window style and roof design;

D. The entrance to the accessory apartment is oriented away from the view of the street or is designed to appear as a secondary entrance to the primary unit (e.g., garage entrance or service porch entrance);

E. Utilities for the accessory apartment shall be metered separate from the primary dwelling unit;

F. The accessory apartment and the primary unit conforms to all other building and zoning code requirements. (Ord. 710 § 64, 1996).

17.64.046 Conditional use permits for review criteria for wireless communication facilities.

A. Type of Permit. Applications for conditional use permits for wireless communications and broadcast and relay towers shall be processed as a Type III permit.

B. Criteria for Approval. Applications for conditional use permits for wireless communication facilities may be approved if the applicant demonstrates all of the following:

1. That there will be no injury to the neighborhood or other detriment to the public welfare;

2. That there is a need for the proposed tower to be located in or adjacent to the residential area, and which shall include documentation on the procedures involved in the site selection and an evaluation of alternative sites and existing facilities on which the proposed facility could be located or co-located;

3. The feasibility of future consolidated use of the proposed facility or co-location with other public utility facilities;

4. The facility shall be designed to be as least intrusive as practicable, including, but not limited to, the

exterior treatment of the facility so as to be harmonious with the character of the surrounding neighborhood, the use of landscaping and privacy screening to buffer the facility and activities on the site from surrounding properties and that any equipment that is not enclosed shall be designed and located on the site to minimize impacts related to noise, light and glare onto surrounding properties. (Ord. 771 § 16, 1997).

17.64.050 Expiration.

Any conditional use permit granted by the hearing examiner shall expire if not exercised within one year of the date of approval. If a use or activity authorized by such permit is abandoned or discontinued for a continuous period of one year, it may not be reestablished unless authorized in accordance with the provisions of this chapter. A request for extension of the one-year time limit may be considered by the hearing examiner, providing that the request is in writing and is received no less than 30 days prior to the expiration date. No additional extensions shall be granted. An extension shall be valid for a period not to exceed one year. (Ord. 573 § 2, 1990).

17.64.060 Transfer of a conditional use permit.

A conditional use permit shall be transferable; provided, that the transferee complies with the conditions of the permit. If at any time the conditional use no longer complies with the conditions of the permit, the owner shall be declared in violation of this title and shall be subject to its penalties. (Ord. 573 § 2, 1990).

17.64.070 Revocation of a conditional use permit.

Following a public hearing by the hearing examiner, a conditional use permit may be revoked for one or more of the following reasons:

- A. That the approval was obtained by fraud or that erroneous information was presented by the applicant;
- B. That the use for which approval was granted has not been exercised;
- C. That use is being exercised contrary to the conditions of approval, or in violation of any statute, ordinance, law or regulation. (Ord. 573 § 2, 1990).

17.64.080 Appeal of the examiner's decision on a conditional use permit.

Repealed by Ord. 796. (Ord. 573 § 2, 1990).

17.64.090 General criteria.

Repealed by Ord. 710. (Ord. 573 § 2, 1990).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com

Chapter 17.78 LANDSCAPING AND SCREENING

Sections:

- 17.78.010 Intent.
- 17.78.020 Applicability.
- 17.78.030 Landscape plans.
- 17.78.040 Overlapping requirements.
- 17.78.045 General provisions.
- 17.78.050 Preservation of significant trees and native vegetation.
- 17.78.060 Requirements for residential landscaping.
- 17.78.070 Requirements for nonresidential uses.
- 17.78.080 Parking lot and service area landscaping and screening.
- 17.78.090 Screening/buffering from SR-16, Tacoma Power Cushman transmission line property and SR-16 interchanges.
- 17.78.095 Waterfront view corridor landscaping.
- 17.78.100 Alternative landscaping plans.
- 17.78.105 Phased projects.
- 17.78.110 Performance assurance.
- 17.78.120 Maintenance.

17.78.010 Intent.

The intent of this chapter is to establish standards for landscaping and screening, to maintain or replace existing vegetation, provide physical and visual buffers between differing land uses, lessen environmental and improve aesthetic impacts of development and to enhance the overall appearance of the city. Notwithstanding any other provision of this chapter, trees and shrubs planted pursuant to the provisions of this chapter shall be types and ultimate sizes at maturity that will not impair scenic vistas. (Ord. 573 § 2, 1990).

17.78.020 Applicability.

The standards as required by this chapter shall apply to all uses of land which are subject to site plan review, to the construction or location of any multifamily structure of three or more attached dwelling units and to any new subdivision plat. (Ord. 710 § 75, 1996; Ord. 652 § 5, 1993; Ord. 573 § 2, 1990).

17.78.030 Landscape plans.

A plan of the proposed landscaping and screening shall be incorporated into plans submitted for site plan review or projects which require hearing examiner review. The plans shall be drawn to scale and contain the following, in addition to the significant vegetation plan and tree retention plan required by GHMC 17.98.040:

- A. Parking and vehicle use areas, driveways and walkways;
- B. Buildings or structures, existing and proposed;
- C. All proposed new landscaping. Landscape plan shall include the location, species, diameter or size of materials using both botanical and common names. Drawings shall reflect the ultimate size of plant materials. Alternatively, a schematic landscape plan can be submitted showing planting zones. Each planting zone shall include typical shrub and groundcover species and typical size and spacing at planting. All landscape plans shall include the location, species, and diameter or size of all proposed trees;
- D. Schematic irrigation plan showing irrigation zones and proposed irrigation techniques within each zone or a xeriscape plan as set forth in GHMC 17.78.045(B);
- E. Identification of tree protection techniques. (Ord. 1093 § 1, 2007; Ord. 573 § 2, 1990).

17.78.040 Overlapping requirements.

In the event of a conflict between the standards for individual uses and other general requirements of this chapter, the more stringent shall apply. Determination of the appropriate standards shall be made by the planning director. (Ord. 573 § 2, 1990).

17.78.045 General provisions.

A. Plant Compatibility. All new plantings must be of a type which will thrive amid existing vegetation without killing or overtaking it. Incompatible plants which require different planting environments or microclimates shall not be mixed. Haphazard mixture of textures, colors and plant types should be avoided. Invasive, nuisance plants on the noxious weed list (state and Pierce County) are prohibited.

B. Irrigation. Planting areas with nursery stock or transplanted vegetation shall include an automatic mechanical irrigation system designed for full coverage of the planting area. Exceptions may be granted for xeriscape plans which require little or no supplemental irrigation. Xeriscape plans shall be prepared by a licensed landscape architect and shall be approved by the planning director.

C. Wall Coverage. Blank walls shall include a narrow planting area, where feasible, with shrubs or vines (espaliers) giving coverage to the wall.

D. Preservation of Significant Views. Views and vistas from public rights-of-way shall be considered when determining placement of vegetation. While it is not the intent to avoid all trees in the foreground of a view, consideration should be given to the expected height of tree and how they might be located to "frame" the view. (Ord. 1086 § 4, 2007).

17.78.050 Preservation of significant trees and native vegetation.

A. Retention. In the required perimeter landscaping area, applicants shall retain all significant vegetation as defined in GHMC 17.99.590. The city encourages retention of trees on the remaining portions of the project sites as well.

If the grade level adjoining a tree to be retained is to be altered to a degree that would endanger the viability of a tree or trees, then the applicant shall construct a dry rock wall or rock well around the tree. The diameter of this wall or well must be capable of protecting the tree. Proof of professional design may be required.

B. Encroachment into Drip Line. No construction activities shall take place within the drip line of a tree to be retained without extra precautions as recommended by a certified arborist. The applicant may install impervious or compactible surface within the area defined by the drip line if it is demonstrated by a qualified arborist that such activities will not endanger the tree or trees. (See the definition of "drip line" in GHMC 17.99.590.)

C. Other Existing Vegetation. Retention of other existing vegetation for landscaping is strongly encouraged; however, it must be equal to or better than available nursery stock.

D. Areas of native vegetation which are designated as landscape or buffer areas, or which are otherwise retained under the provisions of Chapter 17.99 GHMC, shall be subject to a 10-foot-wide no-construction zone and shall be protected by a barricade as defined in subsection E of this section. Clearing, grading or contour alteration is not permitted within this no-construction area unless a qualified arborist provides written documentation that proposed construction activity within the 10-foot setback will not harm existing vegetation within the designated landscape or buffer area.

E. Tree Protection Barricade. All significant vegetation to be retained must be protected during construction by installation of a protective barricade. This will require preliminary identification of the proposed area of disturbance for staff inspection and approval, then installation of a protective barricade before major excavation with heavy equipment begins. The barricade must be made of cylindrical steel posts or four-inch by four-inch wood posts with chain link fence attached. Fence posts shall be eight feet on center connected with two-inch by four-inch top rails or equivalent support system. Fence height must be a minimum of four feet high. (Ord. 1086 § 5, 2007; Ord. 975 § 67, 2004; Ord. 710 § 76, 1996; Ord. 573 § 2, 1990).

17.78.060 Requirements for residential landscaping.

A. Perimeter Areas.

1. Notwithstanding other regulations found in this chapter, perimeter areas shall be landscaped. The required width of perimeter areas to be landscaped shall be at least the depth of the required yard or setback area. Areas to be landscaped shall be covered with live plant materials which will ultimately cover 75 percent of the ground area, within three years. One deciduous tree a minimum of two-inch caliper or one six-foot evergreen or three shrubs which should attain a height of three and one-half feet within three years shall be provided for every 500 square feet of the area to be landscaped.

2. A minimum of 40 percent of the required plantings shall be evergreen trees a minimum of six feet in height for properties located within the boundaries of the height overlay district referenced in Chapter 17.62 GHMC. Trees shall be of a species that will ultimately grow to the height of the planned building. In the selection of trees and shrubs, consideration should be given to overall aesthetic impacts at maturity.

B. Buffer Areas. All residential plats shall have a minimum 25-foot buffer consisting of a dense vegetated screen, shall be required along the perimeters of the plat, and the buffer shall be established as a covenant on the final plat. The screening may be achieved through any one or a combination of the following methods:

1. A solid row of evergreen trees or shrubs;
2. A solid row of evergreen trees and shrubs planted on an earthen berm;
3. A combination of trees or shrubs and fencing where the amount of fence does not exceed 50 percent of the lineal distance of the side to be buffered as well as other plant materials, planted so that the ground will be covered within three years;
4. Use of existing native vegetation which meets the definition of dense vegetative screen.

C. Parking Areas. Parking areas shall be landscaped subject to the standards for parking lots found in GHMC 17.78.080. (Ord. 1086 § 6, 2007; Ord. 975 § 68, 2004; Ord. 652 § 6, 1993; Ord. 573 § 2, 1990).

17.78.070 Requirements for nonresidential uses.

A. Perimeter Areas.

1. Notwithstanding other regulations found in this chapter, perimeter areas shall be landscaped. The required width of perimeter areas to be landscaped shall be the required yard or setback area or a total area equivalent to the required yards. Areas to be landscaped shall be covered with live plant materials which will ultimately cover 75 percent of the ground area within three years. One deciduous tree of a minimum of two-inch caliper or one six-foot-high evergreen tree or three shrubs which will attain a height of three and one-half feet within three years shall be provided for every 300 square feet of area to be landscaped.

2. A minimum of 40 percent of the required plantings shall be evergreen trees a minimum of six feet in height. For properties located within the boundaries of the height overlay district referenced in Chapter 17.62 GHMC, trees shall be of a species that will ultimately grow to the height of the planned building.

B. Buffer Areas. Where a development subject to these standards is contiguous to a residential zoning district, the zone transition standards of GHMC 17.99.180 shall be met. Where a nonresidential development abuts a residential development in the same zone, then that required perimeter area shall be landscaped the full width of the setback areas as follows:

1. A solid screen of evergreen trees or shrubs;
2. A solid screen of evergreen trees and shrubs planted on an earthen berm an average of three feet high along its midline;
3. A combination of trees or shrubs and fencing where the amount of fence does not exceed 50 percent of the lineal distance of the side to be buffered as well as other plant materials, planted so that the ground will be covered within three years.

C. Areas Without Setbacks.

1. In those areas where there is no required front yard setback or where buildings are built to the property line, development subject to this chapter shall provide street trees at an interval of one every 20 feet or planter boxes at the same interval or some combination of trees and boxes, or an alternative.

2. Street trees shall be a minimum caliper of two inches and be a species approved by the city and installed to city standards. Planter boxes shall be maintained by the property owners and shall be of a type approved by the city.

Chapter 17.89 PLANNED RESIDENTIAL DEVELOPMENT ZONE (PRD)

Sections:

- 17.89.010 Intent of the planned residential zone ("PRD").
- 17.89.020 Where PRDs are permitted and acceptable parcel characteristics.
- 17.89.030 Permit application procedures.
- 17.89.040 Contents of complete PRD application.
- 17.89.050 Types of uses permitted.
- 17.89.060 Development and design standards.
- 17.89.070 Criteria for approval of preliminary PRD application.
- 17.89.080 Criteria for approval of final PRD application.
- 17.89.090 Roads.
- 17.89.100 Density bonus.
- 17.89.110 Open space.
- 17.89.120 Minor and major amendments of the final plan.

17.89.010 Intent of the planned residential zone ("PRD").

The intent of the PRD zone is to allow opportunity for more creative and imaginative residential projects than generally possible under strict application of the zoning regulations in order that such projects shall provide substantial additional benefit to the general community. It is further intended to preserve unique or sensitive physical features, such as steep slopes, public views, retention of natural vegetation and to provide more open space and recreational amenities, for residents of the development and the general public, than would be available under conventional land development practices. Additionally, it is intended to promote more economical and efficient use of land and a unified design concept for residential development. (Ord. 867 § 1, 2001; Ord. 573 § 2, 1990).

17.89.020 Where PRDs are permitted and acceptable parcel characteristics.

A. PRDs may be permitted in all districts zoned residential; the Waterfront Millville (WM) and Waterfront Residential (WR) zones.

B. PRDs shall not be allowed on any parcels less than two acres in size, excluding tidelands, unless one of the following findings are made, in addition to the criteria for preliminary PRD approval in this chapter:

1. An unusual physical, natural resource or topographical feature of importance exists on the site or in the neighborhood which can be conserved and still leave the applicant reasonable use of the land by the use of a PRD; or
2. The property or its neighborhood has an historical character of importance to the community that will be protected by use of a PRD. (Ord. 867 § 2, 2001; Ord. 710 § 82, 1996; Ord. 573 § 2, 1990).

17.89.030 Permit application procedures.

A. Type of Permit. A preliminary PRD application shall be processed according to the procedures set forth in GHMC Title 19 for Type III-A project permit applications. Final PRD applications shall be processed according to the procedures in GHMC Title 19 for Type III-A project permit applications.

B. Expiration of PRD. Within five years of the date of the preliminary PRD approval, an application shall be submitted for final PRD approval, otherwise, the preliminary PRD approval shall expire. Building construction on the project must commence within 12 months from the date of the final approval; otherwise, preliminary PRD approval becomes null and void.

C. Concurrent Applications. Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat shall be processed simultaneously with a PRD, to the extent that procedural requirements allow simultaneous processing. If an applicant requests that a preliminary PRD application be processed prior to the time a preliminary plat application is submitted, the preliminary PRD application

shall not be considered to be vested, i.e., such application shall not be considered under the subdivision, zoning or other land use control ordinances in effect at the time the fully completed application for a preliminary PRD has been submitted to the city.

D. Phasing. If a proposed PRD is to be developed in phases, the entire PRD shall be portrayed in the preliminary PRD application, and each phase shall individually receive final PRD approval within the time periods established in subsection B of this section.

E. Design Review. The applicant shall submit an application for design review approval concurrent with the preliminary PRD application. The hearing examiner shall be present at the design review board hearings as necessary to ensure coordination of decisionmakers as allowed under GHMC 19.01.002(C).

F. Extensions. Knowledge of the expiration date and initiation of a request for an extension of time is the responsibility of the applicant. Requests for an extension of time must be submitted to the planning department at least 30 days prior to the expiration of PRD approval. The planning department shall schedule the request for extension for public hearing before the hearing examiner. One extension is the maximum to be granted and it shall be for no more than one year and the PRD may be subject to any new or amended regulations, requirements, policies or standards which are adopted after the original date of approval, unless 50 percent or more of the on-site work has been completed. (Ord. 867 § 3, 2001; Ord. 710 § 83, 1996; Ord. 573 § 2, 1990).

17.89.040 Contents of complete PRD application.

A. In addition to the applicable requirements of GHMC 19.02.002, a complete application for preliminary PRD shall consist of the following information:

1. An environmental checklist or impact statement, as may be applicable, pursuant to GHMC Title 18;

2. The title and location of the proposed development, together with the names, addresses and telephone numbers of the recorded owners of the land and the applicant, and if applicable, the name, address and telephone number of any architect, planner, designer or engineer responsible for the preparation of the plan, and of any authorized representative of the applicant;

3. A written description addressing the scope of the project, gross acreage, the nature and size in gross floor area of each use and the total amount of land in square feet to be covered by impervious surfaces;

4. A vicinity map showing site boundaries and existing roads and accesses within and bounding the site, as well as adjacent parcels and uses;

5. A topographic map delineating contours, existing and proposed, at two-foot intervals and which locates and classifies existing streams, wetlands, steep slopes and other natural features and/or critical areas;

6. Plans drawn to a scale no smaller than one inch equals 30 feet showing the proposed location and size of proposed uses, buildings, buffer areas, yards, open spaces and landscaped areas;

7. A circulation plan drawn to a scale acceptable to the public works director illustrating all access points for the site and the proposed size and location of driveways, streets and roads that have immediate impact on public rights-of-way;

8. Utility, drainage and stormwater runoff plans;

9. A plan of all proposed landscaping including buffers and screening to be used as well as identification of areas of significant vegetation proposed to be retained;

10. A statement explaining how the proposed PRD is consistent with and implements the city of Gig Harbor comprehensive plan, the designation under the comprehensive plan, current zone classification, and desired zone classification;

11. A narrative describing how the proposed PRD provides substantial additional benefit to the citizens of the city of Gig Harbor (the benefit accruing as a result of implementation of the PRD process as opposed to following the development standards of the underlying zone) and how it is proposed the additional amenities and benefits should apply to the percentage of additional density and/or height being requested;

12. A map of the area, with area proposed for rezone outlined in red; and

13. Two sets of mailing labels for all property owners whose parcels are within 300 feet of any border of the subject property, as provided by the Pierce County auditor's office.

B. In addition to the applicable requirements of GHMC 19.02.002, a complete application for final PRD approval shall consist of the following information:

1. Two sets of mailing labels for all property owners whose parcels are within 300 feet of any border of the subject property, as provided by the Pierce County auditor's office;
2. A complete application for design review as required under GHMC 17.98.040. (Ord. 951 § 4, 2004; Ord. 867 § 4, 2001; Ord. 573 § 2, 1990).

17.89.050 Types of uses permitted.

The following uses are permitted in a PRD:

- A. Those primary, accessory and conditional uses permitted in the underlying zoning district;
- B. Other residential and low impact retail uses may be located within the PRD, if a rezone application is submitted concurrently with the preliminary PRD application, and all of the following criteria are satisfied, in addition to the rezone criteria in Chapter 17.100 GHMC:
 1. Such uses constitute 10 percent or less of the proposed project;
 2. Such uses are an integral component of the planned residential development;
 3. Such uses are compatible with any existing residential uses; and
 4. Such uses are consistent with the Gig Harbor comprehensive plan. (Ord. 867 § 5, 2001; Ord. 573 § 2, 1990).

17.89.060 Development and design standards.

A. The performance standards of the underlying zoning district may be varied in a PRD, subject to the criteria in this chapter, only as follows:

1. Lot Area and Lot Width. Lot area and width requirements may be reduced where the site plan is such that light, air and privacy are provided. Cluster housing is supported.
2. Setbacks. Structures located on the perimeter of the PRD shall be set back in accordance with the front yard setbacks of the underlying zone.
3. Impervious Surface Coverage. Impervious surface coverage of individual parcels may exceed the percentage of impervious surface coverage allowed in the underlying zone; provided, that overall impervious surface coverage of the PRD does not exceed the percentage permitted by the underlying zone.
4. Height. Building height may exceed the maximum permitted by code; provided, that the design protects the views and privacy of properties inside and outside of the project but in no case shall the maximum height exceed 35 feet in R-1 and R-2 districts. Variances from the height limits as provided in the City Height Restriction Area Map, as adopted by Chapter 17.62 GHMC, shall not be allowed. For perimeter buildings exceeding the maximum height of the underlying zone, the distance between such buildings and the perimeter of the PRD shall not be less than the front yard setback of the underlying zone plus five feet for each foot of excess height.

B. The performance standards which may not be modified or altered in a PRD are:

1. Shoreline regulations when the property is located in an area under the jurisdiction of the Gig Harbor shoreline master program;
2. Standards pertaining to development in environmentally sensitive areas;
3. Regulations pertaining to nonconforming uses;
4. Standards pertaining to screening around outdoor storage areas;
5. Total coverage by impervious surface coverage; and
6. Height restrictions as identified on the adopted City of Gig Harbor Height Restriction Area Map and shoreline master program. (Ord. 867 § 6, 2001; Ord. 573 § 2, 1990).

17.89.070 Criteria for approval of preliminary PRD application.

A. Applicants for a preliminary PRD application shall demonstrate that, with the exception of the sections of the code from which the applicant intends to vary (as allowed by GHMC 17.89.060), the proposed PRD satisfies all applicable code requirements, and is compatible with surrounding properties. In addition, applicants must make the following showing:

1. Landscaping and site plans showing the location of proposed open space or parks, road layout and proposed buffering of buildings, parking, integrated pedestrian circulation, loading and storage areas,

all approved under the design review process;

2. Identification of unique characteristics of the subject property proposed to be retained and how those characteristics qualify for density and/or height bonus under GHMC 17.89.100;

3. Identification of unique characteristics of the proposed use(s) and how those characteristics qualify for density and/or height bonus;

4. The proposed relationship and arrangement of buildings and open spaces as they relate to various uses within or adjacent to the PRD approved under the design review process;

5. Measures proposed to mitigate visual impact of the PRD upon the surrounding area and approved under the design review process;

6. Identification of any extraordinary public improvements proposed for acceptance of ownership by the city in connection with the planned development and that qualify for the density and/or height bonus under GHMC 17.89.100;

7. Identification of any unique natural features of the property proposed for acceptance of ownership by the city for preservation, and that qualify for the density and/or height bonus under GHMC 17.89.100;

8. Identification of any unique historic or cultural features of the property and surrounding neighborhood proposed for acceptance of ownership by the city for preservation and that qualify for density and/or height bonus; and

9. Identification of any proposed recreational opportunities in excess of those normally required of a subdivision and a description of how they qualify for density and/or height bonus.

B. In addition to the above, the PRD may only be approved if the city finds that all of the following criteria are satisfied:

1. The director of public works and the decisionmaker finds that the site access, proposed on-site circulation and off-street parking meet all public works standards and makes adequate provision for roads, streets, alleys and other public ways. Streets and sidewalks, existing and proposed, must be suitable and adequate to carry anticipated traffic within the proposed PRD and in the vicinity of the PRD;

2. The director of public works and the decisionmaker finds that the PRD makes adequate provision for all public utilities, including, but not limited to, water, sewer and stormwater drainage. Water, sewer and stormwater facilities, existing and proposed, must be suitable and adequate to provide service within the proposed PRD and in the vicinity of the PRD;

3. The PRD is consistent with the comprehensive plan;

4. The PRD accomplishes, by the use of permitted flexibility and variation in design, a development that is better than that resulting from traditional development, and benefiting the general public as well as the residents of the PRD. Net benefit to the city may be demonstrated by one or more of the following:

a. Placement, type or reduced bulk of structures, or

b. Interconnected usable open space, or

c. Recreational facilities, or

d. Other public facilities, or

e. Conservation of natural features, or

f. Aesthetic features and harmonious design, or

g. Energy efficient site design or building features;

5. The PRD results in no greater burden on present and projected public utilities and services than would result from traditional development;

6. The fire marshal and the decisionmaker find that adequate provision has been made for fire protection;

7. The perimeter of the PRD is compatible with the existing land use or property that abuts or is directly across the street from the subject property. Compatibility includes but is not limited to size, scale, mass and architectural design;

8. One or more major circulation point(s) functionally connected to a public right-of-way as required by the director of public works, or the fire marshal, or any other appropriate decisionmaker;

9. Open space within the PRD is an integrated part of the project rather than an isolated element of the PRD and is accessible to the general public;

10. The design is compatible with and responds to the existing or intended character,

appearance, quality of development and physical characteristics of the subject property and immediate vicinity;

11. Each phase of the proposed PRD, as it is planned to be completed, contains the required parking spaces, open space, roads, recreation space, utilities and utility area and landscaping necessary for creating and sustaining a desirable and stable environment.

C. If the PRD requires a rezone(s), such rezone(s) shall be approved before or concurrently with the PRD is approval. (Ord. 867 § 7, 2001; Ord. 710 § 84, 1996; Ord. 573 § 2, 1990).

17.89.080 Criteria for approval of final PRD application.

A. Applicants for a final PRD application shall demonstrate that all of the following criteria have been satisfied:

1. All features and amenities identified in the preliminary PRD have been constructed and/or are retained or improved;

2. The city public works director has documented that all conditions imposed on the preliminary PRD requiring public works department approval have been constructed or improved to the satisfaction of the director;

3. The city fire marshal has documented that all conditions imposed on the preliminary PRD requiring fire code approval have been constructed (or per the fire marshal's discretion will be constructed pursuant to a subsequent permit) to the satisfaction of the fire marshal;

4. The city planning director has documented that all conditions imposed on the preliminary PRD requiring planning department approval have been constructed to the satisfaction of the director;

5. Findings must be made that the preliminary PRD (and/or preliminary plat) conforms to all terms of preliminary PRD approval, and that the PRD meets the requirements of this chapter and all other applicable codes and state laws.

B. The applicant shall provide a bond or other financial assurance acceptable to the hearing examiner to ensure that any improvements made in the common open space will be completed. The city shall release the bond or financial assurance when the improvements have been completed in accordance with the preliminary PRD.

C. As a condition of approval of the final PRD, and before any permits are issued for the property, the applicant shall submit to the city any covenants, deeds and/or homeowners' association bylaws, or other documents guaranteeing maintenance, construction and common fee ownership, if applicable, of open space, community facilities, and all other commonly owned and operated property. These documents shall be reviewed and approved as to form by the city attorney to ensure that they comply with the requirements of this chapter prior to final PRD approval. Such documents and conveyances shall be recorded with the county auditor as a condition of any final PRD approval. (Ord. 867 § 8, 2001; Ord. 573 § 2, 1990).

17.89.090 Roads.

All roads shall be consistent with the adopted policies and standards of the city of Gig Harbor public works construction standards for public roads. (Ord. 867 § 9, 2001; Ord. 573 § 2, 1990).

17.89.100 Density bonus.

A. The density may be increased in a PRD over that permitted in the underlying zone but only if: (1) consistent with the underlying comprehensive plan designation for the property; and (2) the density increase will not exceed 30 percent over the density allowed in the underlying zone. Density calculations shall be made as set forth in Chapter 17.05 GHMC.

B. Density bonuses may be allowed only as follows:

1. Open Space.

a. Satisfaction of the standards in GHMC 17.89.110 for open space; and

b. Provision of open space exceeding by at least 30 percent of the minimum required by the design review manual or the existing zoning code (whichever is greater); or at least 30 percent more than the level of service standards for open space and active recreational areas in the capital facilities element of the adopted Gig Harbor comprehensive plan: 10 percent increase;

2. Preservation of Natural Features. Preservation of a desirable natural feature that would not

otherwise be preserved such as, but not limited to, an unregulated wetland, stream corridor, unique geological feature, substantial over story vegetation: 10 percent increase;

3. Preservation of Scenic Vistas. Preservation of a scenic vista corridor(s) within and off-site and accessible to the general public rather than private property owners: 10 percent increase;

4. Design of Stormwater Treatment System as Amenity. A stormwater treatment (retention/detention) facility is also designed as a visually aesthetic and physically accessible amenity for the enjoyment of the public: 10 percent increase. (Ord. 951 § 5, 2004; Ord. 867 § 10, 2001; Ord. 573 § 2, 1990).

17.89.110 Open space.

In order to be approved, a preliminary PRD application must demonstrate that all of the following performance standards are satisfied:

A. Common open space shall comprise at least 30 percent of the gross area of the PRD, and shall be used as a recreational, park or environmental amenity for collective enjoyment by occupants of the development. Common open space shall not include public or private streets, driveways, parking areas or the required yards for buildings or structures; provided, however, that up to 30 percent of the required open space may be composed of open space on contiguous privately owned properties reserved by easement or covenant to assure that the open space will be permanent.

B. No naturally submerged lands on site will be counted as open space unless explicitly allowed under GHMC 17.89.100, Density bonus.

C. At least 50 percent of the common open space area must be usable for active or passive recreation, and which is also not utilized as a utility improvement or structure.

D. Common open space may contain such structures and improvements as are necessary and appropriate for the out-of-doors enjoyment of the residents of the PRD.

E. Common open space associated with density bonus must be freely accessible to the general public, identified on the face of the plat, and clearly identified by on-site signage.

F. All common open space must be unique to the project, and may only be credited a single time and to a single project. Such open space may also include a proportionate contribution that is a portion of a city-approved off-site mitigation.

G. Land shown in the final development plan as common open space, and landscaping and/or planting contained therein, shall be permanently maintained by and conveyed to one of the following:

1. An association of owners shall be formed and continued for the purpose of maintaining the common open space. The association shall be created as an association of owners under the laws of the state and shall adopt and propose articles of incorporation or association and bylaws, and adopt and improve a declaration of covenants and restrictions on the common open space that are acceptable to the city in providing for the continuing care of the space. No common open space may be put to a use not specified in the final development plan unless the final development plan is first amended to permit the use. No change of use may be considered as a waiver of any of the covenants limiting the use of common open space area, and all rights to enforce these covenants against any use permitted are expressly reserved to the city as well as the owners.

2. A public agency which agrees to maintain the common open space and any buildings, structures or other improvements, which have been placed upon it.

H. Common open space shall be suitably improved for its intended use, except when it contains natural features worthy of preservation which may be left unimproved. The buildings, structures and improvements to be permitted in the common open space are those appropriate to the uses which are authorized for the common open space. (Ord. 867 § 11, 2001; Ord. 573 § 2, 1990).

17.89.120 Minor and major amendments of the final plan.

A. Minor Amendments.

1. A minor amendment to the final PRD is a Type I permit application and shall be processed as provided in GHMC Title 19.

2. Minor amendments are those which may affect the precise dimensions or siting of building (i.e., lot coverage, height, setbacks) but which do not affect the basic character or arrangement and number of buildings approved in the final PRD, nor the density of the development or the amount and quality of

open space and landscaping.

3. In addition to the permit application requirements set forth in GHMC 19.02.002, a complete application for a minor amendment shall consist of the following:

a. All plan sheets or pages, or document sheets or pages which reflect changes proposed, or that are affected by such changes.

B. Major Amendments.

1. Major amendments are Type III-A permit applications and shall be processed in accordance with GHMC Title 19.

2. Major amendments are those which substantially change the character, basic design, density, open space or other requirements and conditions of the site plan.

3. In addition to the permit application requirements set forth in GHMC 19.02.002, a complete application for a major amendment shall consist of the following:

a. A complete application packet as required under GHMC 17.96.050.

b. A complete application packet as required by GHMC 17.98.040 and the design manual.

c. An amended environmental checklist, and addendums to all environmental documents affected by the proposed change including the traffic impact analysis.

C. Concurrent Processing of Applications. A minor PRD application may be processed concurrent with a building permit application. If an application for a major amendment is submitted, no building or other permit associated with such major PRD amendment shall issue until all review proceedings required under GHMC Title 19 for a major PRD amendment are completed and all necessary approvals obtained. (Ord. 867 § 13, 2001; Ord. 710 § 86, 1996; Ord. 573 § 2, 1990. Formerly 17.89.130).



This page of the Gig Harbor Municipal Code is current through Ordinance 1125, passed March 10, 2008.

Disclaimer: The City Clerk's Office has the official version of the Gig Harbor Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: www.gigharborguide.com

Code Publishing Company
Voice: (206) 527-6831
Fax: (206) 527-8411
Email: cpc@codepublishing.com