

AGENDA
City Council Special Meeting
June 28, 2021 – 5:00 p.m.

Due to public health concerns, this meeting will be held remotely. You may access the meeting by dialing (253) 215-8782 and entering the Meeting ID 932 1605 6382 or through Zoom at: <https://zoom.us/j/93216056382>

CALL TO ORDER/ROLL CALL

EXECUTIVE SESSION

For the purpose of discussing pending litigation per RCW 42.10.110 (1)(i).
Action may be taken after the session.

Documents:

[R-1215_Village Amendment_062821.pdf](#)

ADJOURN

Americans with Disabilities (ADA) accommodations provided upon request. Those requiring special accommodations please contact the City Clerk at (253) 853-7613 at least 24 hours prior to the meeting.

RESOLUTION NO. 1215

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING; AUTHORIZING THE EXECUTION OF AMENDMENT NO. 1 TO THE DEVELOPMENT AGREEMENT WITH HARBOR HILL LLC ON 18.56 ACRES AT THE SOUTHEAST CORNER OF HARBOR HILL DRIVE AND BORGEN BOULEVARD, LEGALLY DESCRIBED AS PARCEL A, CITY OF GIG HARBOR BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NUMBER 210303155007, IN THE CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON

WHEREAS, RCW 36.70B.170 authorizes a local government and a person having ownership or control of real property within its jurisdiction to enter into a development agreement; and

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

WHEREAS, the Village at Harbor Hill Development Agreement was adopted by City Council on December 22, 2016 for the real property known as Lot 6 of the Harbor Hill Business Park and identified as tax parcel No. 4002470061; and

WHEREAS, the Developer retains fee simple or other substantial beneficial interest in the real property totaling 18.56 acres at the southeast corner of Harbor Hill Drive and Borgen Boulevard (Lot 6 of the Business Park at Harbor Hill) in the City of Gig Harbor, Pierce County, Washington, which is legally described as Parcel A, City of Gig Harbor Boundary Line Adjustment recorded under Auditor's File Number 210303155007, Pierce County, Washington; and

WHEREAS, on June 14, 2021, the City Council held a public hearing on the proposed amendment (the Development Agreement Amendment) to the Village at Harbor Hill Development Agreement; and

WHEREAS, the City's SEPA Responsible Official previously issued a Mitigated Determination of Non-Significance and Adoption of Existing Environmental Documents (MDNS) on September 14, 2017 for the Development Agreement and has determined that no changes in the mitigation required by the MDNS are needed for the Development Agreement Amendment; and

WHEREAS, on June 28, 2021, after considering the application, the staff report and all public testimony presented, City Council approved the Development Agreement Amendment attached hereto as Exhibit A;

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

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement Amendment with Harbor Hill LLC, attached hereto as Exhibit A.

Section 2. The City Council hereby directs the Community Development Director to record the Development Agreement Amendment against the Property at the cost of the applicant, pursuant to RCW 36.708.190, on or immediately following the effective date of the Development Agreement Amendment.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 28th day of June, 2021.

APPROVED:

Kit Kuhn
Mayor

ATTEST:

Joshua Stecker
Interim City Clerk

EXHIBIT A

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GIG HARBOR AND HARBOR HILL LLC FOR THE VILLAGE AT HARBOR HILL DEVELOPMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BETWEEN THE CITY OF GIG HARBOR AND HARBOR HILL LLC FOR THE VILLAGE AT HARBOR HILL DEVELOPMENT (this “**Amendment**”) is made by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the “**City**”), and HARBOR HILL LLC, a Washington limited liability company (“**Developer**”). The City and Harbor Hill are referred to herein individually as a “**Party**” and collectively as the “**Parties**.” Any term not defined herein shall have the meaning given to it in the Development Agreement (as defined below).

RECITALS

A. WHEREAS, the Parties entered into that certain Development Agreement Between the City of Gig Harbor and Harbor Hill LLC for the Village at Harbor Hill Development, which was executed by the Parties as of November 28, 2017 and recorded in the public records of Pierce County, Washington, under Auditor’s File No. 201712010740 (the “**Development Agreement**”).

B. WHEREAS, the City previously issued several land use and development approvals for the commercial portions of the Village at Harbor Hill development (the “**Project**”) pursuant to the terms of the Development Agreement, including City approvals of Major Site Plan Review (Permit No. PL-SPR-17-007), Design Review (Permit No. PL-DR-16-0226), Binding Site Plan (Permit No. PL-BSP-17-0002) and Alternative Landscaping Plan (PL-ALP-18-004) for the Project. These approvals, future amendments thereto, and other land use and development approvals issued in connection with the Project are collectively referred to herein as the “**Project Approvals**.”

C. WHEREAS, a dispute arose between the City and Developer regarding the application of City Council Ordinance 1401 (as codified in Gig Harbor Municipal Code Chapter 19.12) to future development of the Project (the “**Dispute**”).

D. WHEREAS, the Parties agreed to settle the Dispute pursuant to the terms of that certain Village at Harbor Hill Settlement Agreement effective August 25, 2020 (as amended on December 28, 2020, the “**Settlement Agreement**”).

E. WHEREAS, the Parties desire to amend the Development Agreement to incorporate and implement the terms of the Settlement Agreement with respect to the ongoing development of the Project, and further amend the Development Agreement on the terms and conditions set forth in this Amendment.

F. WHEREAS, the City Council has considered this Amendment at a duly noticed

public hearing held on June 14, 2021 and has formally approved this Amendment and the statutory authorization set forth in RCW 36.70B.170.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Development Agreement is hereby amended as follows:

1. Project Development Capacities. Section 8.E. of the Development Agreement is hereby deleted and replaced with the following:

The Developer has reserved with the City, for the benefit of the Property, water service capacity for 94 ERUs within the Property, sewer service capacity for 96 ERUs within the Property, and transportation capacity for 684 peak hour vehicle trips within the Property, as evidenced by capacity reservation certificates issued by the City to the Developer (the “Capacity Reservation Certificates”).

So long as the Project is developed in substantial conformity with the currently-approved Master Site Plan, including a grocery store, a shopping center, and any residential uses developed in conformity with the provisions of Exhibit E attached hereto, the general “Shopping Center” trip generation rate (ITE Land Use Code 820) shall be used to calculate total trips for all buildings and uses developed within the Property, instead of the actual uses proposed for each individual building. Notwithstanding the foregoing, the standard ITE trip generation rate for any restaurant, coffee shop, or residential use developed on the Property shall be used to calculate trips for any such use developed within the Property. The actual number of new net trips shall be calculated consistent with the most current ITE methodology available at the time the Developer applies for permits pursuant to GHMC 19.12.110, with standard pass-by rate deductions applied to the uses developed within the Property. The internal capture rate reduction shall be set at 30% and will be applied to the total trips for the applicable uses developed within the Property. The \$5,071 per-trip impact fee rate established by Ordinance 1401 will apply to the total number of trips, once calculated consistent with this Subsection 8.E.

2. Residential Uses. The Development Agreement is hereby amended to add a new Section 8.H. as follows:

In addition to the uses permitted pursuant to this Section and listed in Exhibit E hereto, residential uses shall be permitted in and on the portions of the Property currently zoned PCD-NB under the Code (the “**Residential Use**”).

Tract”), subject to compliance with the Development Standards applicable to residential development in said zone and subject to application for and approval of required permits. The general location of the Residential Use Tract is depicted and highlighted for reference in the Preliminary Site Plan attached as Exhibit A-1 to this Amendment. The precise location of the Residential Use Tract shall be determined as provided in GHMC 17.12.050.

Should the Developer elect to establish residential uses or structures in the Project at any time during the Development Period, the following terms and conditions shall apply:

1. The Developer shall propose an updated location and layout for “Building N” and the surrounding uses and parking areas (currently shown on the site plans attached to the Development Agreement), which shall be subject to the City’s administrative review and approval as an amendment to the Project Approvals.
2. No permit shall be issued for construction of any residence on the Residential Use Tract until Phase 1 of the Project, as depicted on the modified Construction Phasing Plan approved by the City on September 25, 2018, is complete.
3. At least ten percent (10%) of any residential units developed on the Residential Use Tract will be affordable to households with incomes at or below seventy percent (70%) of the average median income for Pierce County, as adjusted periodically. In the event that affordable housing is developed on the Property, the Parties agree to jointly utilize a governmental entity, such as the Pierce County Housing Authority, to help oversee the development and ongoing use of any such affordable housing units.

3. **Streetlights.** The Development Agreement is hereby amended to add a new **Section 8.I.** as follows:

H. Developer will replace any City streetlight removed as a result of Project construction with a streetlight meeting the City’s streetlight standards existing on the date of execution of the Settlement Agreement. Harbor Hill will make a one-time cash payment to the City of \$60,000, which the City may use in its discretion to re-lamp, repair, or replace any other streetlights in or near the Property at the City’s sole cost and expense (the “**Streetlight Payment**”). With the exception of the work expressly described in this **Subsection 8.H.**, Developer shall have no further responsibility to install streetlights in or near the Property during its buildout of the Project. Developer will pay the Streetlight Payment at the time of the City’s final issuance of a building permit for the first building to be constructed on the Property pursuant to the Project Approvals (as they may be amended in the

future).

4. Rectangular Rapid Flash Beacons (“RRFBs”).

A. Exhibit J to the Development Agreement is hereby deleted and replaced with Exhibit J-1 attached hereto.

B. Section 13.C of the Development Agreement is hereby amended to add the following:

In addition to completing the above-described work, Developer will make a one-time cash payment to the City of \$470,000, which the City may use in its discretion to install RRFBs and make ADA improvement in or near the Property, or for other City purposes, at the City’s sole cost and expense (the “**RRFB Payment**”). Developer will make the RRFP Payment at the time of the City’s final issuance of a building permit for the first building to be constructed on the Property pursuant to the Project Approvals. With exception the work expressly described in this Subsection 13.C, Developer shall have no responsibility to install RRFBs in or near the Property during its buildout of the Project.

5. Reaffirmation of the Development Agreement; Future Cooperation. The Parties reaffirm and incorporate herein the terms and conditions of the Development Agreement, except as amended or modified in this Amendment. In the event of a conflict between the terms of the Development Agreement and the terms of this Amendment, this Amendment shall control. The Parties agree that the Developer will draft and request, and the City will timely review and process, any amendments or revisions to the Project Approvals that are reasonably necessary to give effect to the terms of the Settlement Agreement or this Amendment. The Parties further agree to cooperate in the implementation of the terms set forth in this Amendment and the Settlement Agreement; provided, however, Sections 24 and 26, which provide for cost reimbursement, defense, and indemnity obligations with respect to the initial Development Agreement, shall not apply to this Amendment or the Settlement Agreement.

6. Counterparts. This Amendment may be executed in one or more separate counterparts (including by electronic signature [such as DocuSign], email, scanned .pdf document or facsimile delivery), and all of the counterparts shall constitute one and the same agreement.

The Parties have executed this Amendment and agreed to the terms above on the last date set forth below (the “**Effective Date**”).

(Remainder of page intentionally left blank.)

HARBOR HILL LLC,
a Washington limited liability company

By:_____

Name: Jon Rose

Its: Vice President

Date:_____

CITY OF GIG HARBOR,
a Washington municipal corporation

By:_____

Name: Kit Kuhn

Its: Mayor

Date:_____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Jim Haney, Attorney for the City

STATE OF WASHINGTON)
) ss.
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that JON ROSE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President of Harbor Hill LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

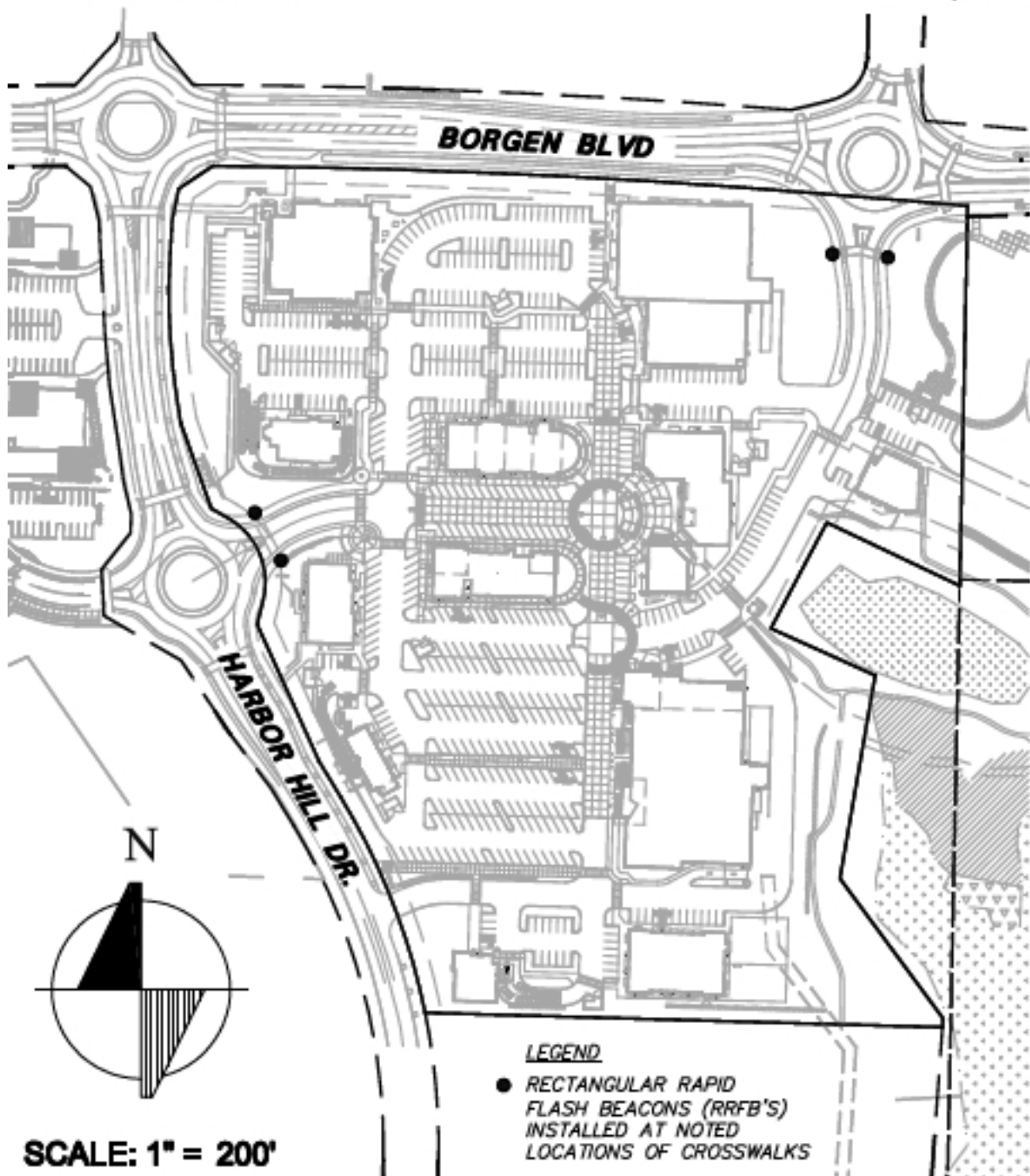
Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

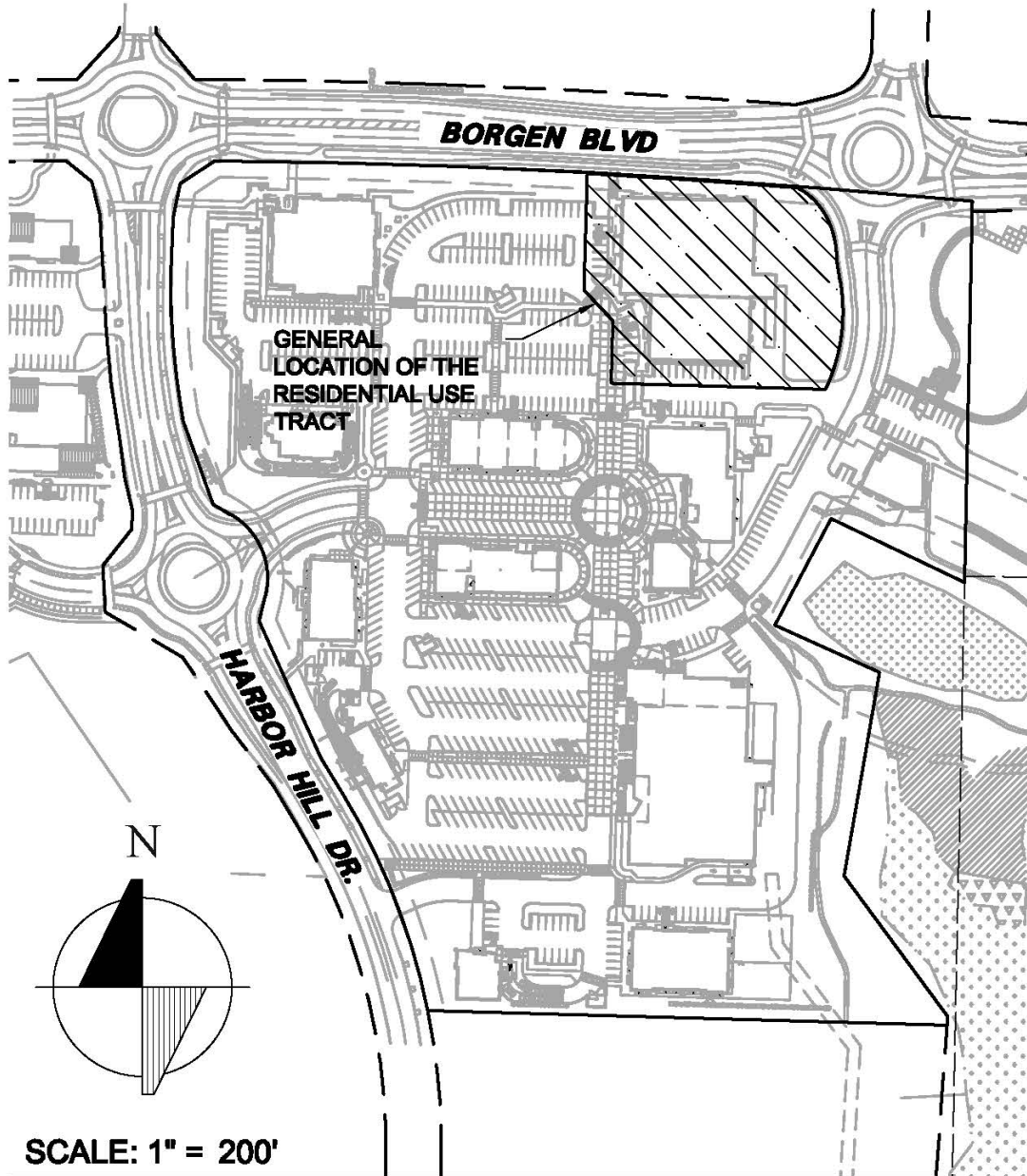
I certify that I know or have satisfactory evidence that Kit Kuhn is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor, to be the free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

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____



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