

**Regular City Council Meeting
Tuesday, March 2, 2010, 6:00 p.m.
City Hall – Council Chambers**

CALL TO ORDER Mayor Slowik called the meeting to order at 6:00 p.m.

INVOCATION Tim Geist, Bible Baptist Church

ROLL CALL

Jim Slowik, Mayor	Paul Schmidt, City Administrator
Seven Members of the Council,	Margery Hite, City Attorney
Rick AlMBERG	Doug Merriman, Finance Director
James M. Campbell	Steve Powers, Development Services Director
Scott Dudley	Ethan Spoo, Senior Planner
Jim Palmer	Cathy Rosen, Public Works Director
Beth Munns	Eric Johnston, City Engineer
Danny Paggao, Mayor Pro Tem	Rich Tyhuis, P. Works Operations Manager – Streets, Water, Utilities
Bob Severns	Rick Wallace, Chief of Police
	Mark Soptich, Fire Chief
	Mike McIntyre, Senior Services Director
	Renée Recker, Executive Assistant to the Mayor

Gerry Oliver, Civil Service Commissioner, was also in attendance.

MOTION: Councilmember Campbell made a motion to defer recognition of Rhonda Severns' and Butch Reinstra's 30 years of City service to the next Council meeting (March 23, 2010). The motion was seconded by Councilmember Severns and carried unanimously.

MINUTES

February 16, 2010 Regular Meeting

Councilmember AlMBERG asked that agenda packet page 4 (minutes page 2) be corrected to show 80%/30% in the last sentence rather than 80%/50%. Councilmember Dudley asked that the date for blood donations on page 10 of the agenda packet (minutes page 8) be corrected to March 1, 2010.

MOTION: Councilmember Campbell moved to approve the minutes of the 2/16/10 regular meeting as corrected, and the minutes of the 2/18/10 special meeting. The motion was seconded by Councilmember Severns and carried unanimously.

NON-ACTION COUNCIL ITEMS

Proclamation – St. Patrick's Day

Mayor Pro Tem Paggao read this proclamation and presented it to Helen Chatfield-Weeks. This year marks the 37th Annual Irish Wildlife Parade in Oak Harbor. Dinner will follow at the Oak Harbor Yacht Club, and everyone is invited to participate in St. Patrick's Day events on March 17th.

Public Comments

Gerry Oliver, 947 NW Prow. Mr. Oliver talked about the ribbon cutting at On Frostad Pond and invited City Council to participate. Habitat for Humanity will be building three homes in this development and Mr. Oliver thought that the full development might represent affordable housing options for the community.

Mel Vance, P.O. Box 2882. Mr. Vance addressed his 2/2/10 Council meeting comments concerning Garry oaks and critical areas. He asked that the critical areas ordinance be reconsidered to encourage native plantings and layered plantings. Mr. Vance also talked about recent and severe pruning of Garry oaks off of Midway and asked if City staff could check these oaks.

With no other comments coming forth, Mayor Slowik closed public comments at 6:15 p.m.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

- A. Noise Permit – Kiwanis, Community Easter Sunrise Service
- B. Purchase – 2010 Radio Read Water Meters
- C. Approval of Accounts Payable Vouchers

MOTION: Councilmember Palmer moved to approve Consent Agenda Items A, B, and C with Item C paying accounts payable check numbers 140541 – 140543 in the amount of \$41,943.15, accounts payable check numbers 140544 – 140673 in the amount of \$412,210.57, payroll check numbers 93594 – 93651 in the amount of \$942,023.71, and payroll check numbers 93652 – 93687 in the amount of \$3,913.48. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing – Sub-Division Code Amendments

Development Services Director Steve Powers asked that a 2/18/10 letter from Cory Ertel, SICBA, be added to the record (attached to these minutes as Exhibit A). The City Council opened a public hearing on the proposed amendments on February 2, 2010 which has remained open for this evening's meeting. The agenda bill summarizes and responds to those questions and items raised by Council at that meeting: narrow streets, fencing around stormwater ponds, street patterns and crime, and planned residential development – affordable housing density bonus. Agenda packet pages 77 and 78 addressed the ratio change: For every ~~two~~ (2) one unit of affordable housing provided, applicants are allowed ~~one~~ (1) five (5) additional units of market-rate housing. The bottom of page 77 and top of page 78 showed how the density bonus is calculated. This evening's final presentation represents two years worth of work.

Mayor Slowik opened the continued public hearing at 6:20 p.m.

Mel Vance, P.O. Box 2882. Mr. Vance restated his position on stormwater ponds and fencing (fencing should be required and not optional), use of rain gardens in planting strips, and asked that revisions be set aside for affordable housing and housing densities – form a comprehensive housing plan that encourages affordable housing. Breaking even is not an incentive and developers are better off donating land to agencies like Habitat for Humanity. Take some time on the affordable housing issue for both the community and developers. Mr. Vance

complimented Mr. Powers and staff for this presentation and years of work on the Sub-Division Code Amendments.

With no other comments coming forth, Mayor Slowik closed the public hearing at 6:25 p.m.

Council Comments

Discussion followed about the 2/15/10 SICBA letter which was added to the record of Council's 2/16/10 Council meeting and the three issues it presented, stormwater management (the public hearing is continued to Council's May 4, 2010 meeting), and how Title 21 now provides sections which will allow for easier amendment to just a part of the chapter, if needed. Chapter 19.31 is also easier to review. In response to Mr. Vance's comments, it was noted that the bonus of five additional market rate units for every one affordable unit in the project is a good formula for promoting affordable housing. Councilmember Alberg stated that, since he is in construction development, he wanted to note that he did not solicit SICBA for their letters, but it was nice to see their recognition of affordable housing issues. Discussion continued about narrow street design and parking, parking signs, fencing styles if used around stormwater ponds, the aesthetic of open space, the 3:1 threshold for determining when fences are required, and the future of affordable housing. Council thanked Mr. Powers and staff for their work on this project and the understandable presentations.

MOTION: Councilmember Alberg moved to close the public hearing; the motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Alberg moved to adopt the draft ordinance with amendments to Chapter 19.31, Planned Residential Developments. The motion was seconded by Councilmember Munns and carried unanimously.

MOTION: Councilmember Alberg moved to adopt the draft ordinance with amendments to Title 21, Subdivisions. The motion was seconded by Councilmember Palmer and carried unanimously.

MOTION: Councilmember Alberg moved to adopt the resolution approving the Subdivision Design Manual. The motion was seconded by Councilmember Palmer and carried unanimously.

Developer's Reimbursement Agreement (Latecomer's Agreement) – Palm Funeral Home
Councilmember Dudley had questions about recusing himself (appearance of fairness since he knows the applicant). City Attorney Hite noted that this is preliminary approval for design only of a latecomer's agreement and not quasi judicial at this point. Councilmember Dudley did not recuse. City Engineer Eric Johnston presented this agenda bill which requested and recommended preliminary approval of a developer's reimbursement agreement for extension of City sewer associated with the Palm Funeral Home project. The preliminary approval is limited to the design of the improvements and does not cover the cost or the apportionment of those costs. The Palm Funeral Home project, located on NE 16th Avenue, received short plat and site plan approval from the City in June 2009. The project includes the construction of a new funeral home and site development improvements for a second, vacant parcel created with the approved short plat. The project proponent has completed the necessary application forms for the developer's reimbursement agreement. The project is eligible for the reimbursement agreement.

Mayor Slowik called for public comments but there were none.

Council Comments

Discussion followed about the process for informing surrounding properties, that the agreement is recorded and runs with the property (not the individual owner), how costs are assessed or appropriated, and that the typical time limit, per Revised Code of Washington, is fifteen years but the time limit is also at Council's discretion. OHMC requirements for sewer extensions were also clarified.

MOTION: Councilmember Severns moved to authorize the Mayor to sign the preliminary approval, for design only, of a latecomer's agreement for the Palm Funeral Home sewer extension. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing, Quasi-Judicial Proceeding, and Fourth Quarter Report – Elements Nightclub

City Attorney Hite explained the appearance of fairness and quasi-judicial procedure beginning with ex parte communications. As stated in RCW 42.36.060:

During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

- Places on the record the substance of any written or oral ex parte communication concerning the decision of the action; and
- Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding.

Ms. Hite then asked each Council Member to state, for the record, what ex parte contacts they have had, whether written or oral, concerning Elements Nightclub. Councilmember Dudley stated that he had talked with one condominium owner who had a long list of issues regarding noise complaints; specifically, noise at closing time, and loud, boisterous activities.

Councilmember Almborg had no ex parte contacts since the original hearing. Councilmembers Campbell, Munns, Paggao, Palmer, and Severns had no ex parte contacts. Elements owner, Mike Kummerfeldt was invited to rebut ex parte contacts but he chose to hold comments at this point in the meeting.

Ms. Hite continued to the appearance of fairness questions which were individually asked of each Council Member:

1. Do you have knowledge of having conducted business with either the proponents or opponents of this project?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
2. Do you have either a pecuniary or a non-pecuniary interest in the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
3. Do you know whether or not your employer has a financial interest in the land or area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
4. Do you live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	Has partial interest in a commercial building within 300 feet, but no conflict.
5. Do you have any special knowledge about the substance of the merits of this proceeding which would or could cause you to prejudge the outcome of this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
6. Do you believe that you cannot sit and hear this matter fairly and impartially, both as to the respective positions of the proponents and the opponents in this proceeding?	Mr. Almberg	Mr. Campbell	Mr. Dudley	Ms. Munns	Mr. Paggao	Mr. Palmer	Mr. Severns
	No	No	No	No	No	No	No
7. Is there any member of the audience who because of the "Appearance of Fairness Doctrine" wishes to disqualify any member of the Council from hearing this matter? If so, please state the name of the Council Member and the reason or reasons why you believe that Council Member should be disqualified.							
No audience members came forward.							

City Attorney Hite noted that no conflicts were identified.

Chief of Police Rick Wallace presented 2009 fourth quarter report. This quarter showed a significant reduction in the number of calls for police service to Elements Nightclub with a total of ten calls for police service. Five of those calls have no significant bearing on this issue and should not be viewed as having a negative connotation towards the nightclub as these types of calls for police service could occur at any business or private residence. The remaining five calls for service do pertain to the license conditions and are described as follows:

Assault Complaints (Inside the business)

(1) Complaint Taken – Female victim assaulted by female suspect. The officers were unable to locate the suspect.

Disorderly Conduct Complaints (2 total – 1 occurred in the business, the other was unfounded)

(1) Settled by Contact – Employees called regarding a customer who was refusing to leave. Subject left prior to officers' arrival.

(1) Unfounded – Anonymous call reporting disorderly subject at location. Officer could not find any type of disturbance or problem.

DUI – (In the area of the business)

(1) Arrest – Employee reported a possible DUI leaving location. Driver located and arrested.

Minor Frequenting Tavern – (Inside the business)

(1) Unfounded – Anonymous phone report of minors in the business. Officers were unable to locate any minors inside.

Mayor Slowik opened the public hearing at 7:03 p.m.

Mike Kummerfeldt, Owner of Elements Nightclub. Mr. Kummerfeldt asked if the licensing condition to have four security guards in the parking lot until 4:00 a.m. could be revised. The parking lot is cleared by 2:00 a.m. with the exception of casino patrons' activity between 2:00 a.m. and 4:00 a.m. When the parking lot is empty, it is pointless to pay four security guards to remain in the lot. Ten to twelve employees remain on-duty inside for casino activity and could tend to any problems in the lot after 2:00 a.m. Mr. Kummerfeldt suggested eliminating the four parking lot security guards at 2:15 a.m. instead of 4:00 a.m.

Mel Vance, P.O. 2882. Mr. Vance felt that Elements had complied with more conditions than other nightclubs in town and they had consistently taken steps to remedy any problems.

With no other comments coming forth, Mayor Slowik closed the public hearing at 7:07 p.m.

Council Comments

Discussion followed about the number of parking lot security guards and if Chief Wallace would support a reduction in parking lot security after 2:15 a.m. Chief Wallace would support a modification but suggested 2:30 a.m. rather than 2:15 a.m. He also noted that some of the staff on-duty inside for the casino's activity are security personnel. Discussion continued about the differences between nightclubs and that Elements has the larger number of customers, is a busy nightclub, has effectively met the conditions of their nightclub license, and mitigated the effects of their problems. Discussion continued about Councilmember Dudley's ex parte contact and if they are permanent residents, if the complaints were about vehicles or disorderly conduct and the exact nature of the noise activity. They are not full-time residents, and a

neighbor had made calls on their behalf. Discussion followed about the reduced calls for police service noting that one of the calls was from Elements staff knowing that it would show on this quarterly report; they did the right thing.

City Attorney Hite asked Mr. Kummerfeldt if he now had any comments about ex parte contacts. Mr. Kummerfeldt responded that Elements is in the downtown district and, if compared to other bars/nightclubs' assaults, DUIs, and problems, Elements for its size is far below other establishments in calls for PD service. We are trying to control noise and its impact on neighbors and there is no safer club to go to than Elements.

Chief Wallace was asked to respond to Mr. Kummerfeldt's statement and, with reference to Lava Lounge's calls for PD service, did concur and noted that Elements is a larger club.

FIRST MOTION: (verbatim) **Councilmember Munns moved that the security requirement for Elements, four people in the parking lot, go until 2:30 a.m. in the morning and then the staff would handle the security after that, as needed, until 4:00 a.m. for the second closing. The motion was seconded by Councilmember Palmer and carried unanimously.**

SECOND MOTION: (verbatim) **Councilmember Munns moved to have an annual report provided upon renewal of their license. The motion was seconded by Councilmember Campbell.**

Discussion followed regarding the presentation date for an annual report, the benefit of a quarterly report, business licensing renewal notification which begins in December of each year, and whether this would trigger a duplicate report for 2010.

AMENDMENT TO THE SECOND

MOTION: **Councilmember Severns moved to amend the motion for the annual report to begin with 2011 licensing. The motion was seconded by Councilmember Almberg.**

Discussion followed regarding quarterly reports and whether they would then need to continue through 2010.

VOTE ON THE AMENDMENT TO THE SECOND

MOTION: **Councilmembers Almberg, Campbell, Dudley, Munns, Paggao, and Severns voted in favor of the motion. Councilmember Palmer opposed. The amendment to the second motion carried.**

Discussion continued with confirmation that the next report would be in conjunction with 2011's licensing and not reported quarterly through 2010.

VOTE ON THE SECOND

MOTION: Councilmembers Almberg, Campbell, Dudley, Munns, Paggao, and Severns voted in favor of the motion. Councilmember Palmer opposed. The second motion carried.

Mayor Slowik thanked Chief Wallace for the time it has taken to prepare quarterly reports. He also complimented Mr. Kummerfeldt on his efforts and results toward controlling these issues.

Break

Mayor Slowik called for a five-minute break at 7:30 p.m. and the meeting reconvened at 7:35 p.m.

Public Hearing and Final Consideration – Speed Limit Ordinance

City Engineer Eric Johnston presented this agenda bill for final consideration of proposed changes to Chapter 10.08 of the Oak Harbor Municipal Code related to speed limits. The changes are largely related to changes in city limit boundaries resulting from annexations over the last several years. Also included is a reduction of the speed limit along Heller Street and N Oak Harbor Street for consistency and safety. Mr. Johnston also talked about the three Es of traffic engineering: Enforcement, Education, Engineering. These changes will enhance compliance and help Oak Harbor's Police Department through a consistent approach to speed limits. The speed limit signs on Heller Street and Oak Harbor Street will be revised in accordance with the standards contained in the Manual on Uniform Traffic Control Devices as required by Washington State Law. Staff will coordinate with law enforcement agencies and Island County Public Works staff on the appropriate sign revisions.

Mr. Johnston also talked about two other items:

1. Crosswalks on Heller Road – the City and Oak Harbor School District are moving toward an improved crosswalk near the intersection of Heller Road and 8th Avenue which is grant-funded and will see activity in the next year. This will be an enhanced crosswalk.
2. Speed limits on SR-20 – The Secretary of Transportation is responsible for state route speed limits but the City works together with the State Department of Transportation. Mr. Johnston was pleased to report that WSDOT has agreed to review speed limits within City limits over the next several months.

Mayor Slowik opened the public hearing at 7:45 p.m.

Mel Vance, P.O. Box 2882. Mr. Vance spoke in support of the speed limit change and suggested dropping the speed limit further if a crosswalk is established at 8th. Mr. Vance would like to see the City work with the state to have 30 mph speed limit signs posted on every block from the closed Blockbuster site. Move the 30 mph at least to Erie if not further. Education of the public is key.

With no other comments coming forth, Mayor Slowik closed the public hearing at 7:50 p.m.

Council Comments

Discussion followed about the type of crosswalk at Heller (painted and flashing lights) and that there are existing funds for these costs. Expenses run beyond materials to staff time, street crews, traffic counters, data, and time and expense for sign replacement. Discussion continued about the speed limit transitions from County to City limits and how signs are offset.

MOTION: Councilmember Munns moved to adopt the amendments and new sections to OHMC 10.08 related to speed limits as shown in the proposed ordinance. The motion was seconded by Councilmember Palmer and carried unanimously.

Public Hearing – 2010 Comp Plan Docket

Development Services Director Steve Powers presented this agenda bill for the 2010 Comprehensive Plan Amendment Docket. Though no sponsored amendment applications were received, there are amendments to consider in 2010. The proposed 2010 docket includes two mandated amendments and three City-initiated Comprehensive Plan Land Use Map changes. The mandated amendments are the UGA capacity analysis (City mandate) and the annual update to the Capital Improvements Plan (GMA mandate). The three City-initiated Land Use Map amendments are for City-owned properties.

Mayor Slowik opened the public hearing at 8:00 p.m. but there were no comments so the public hearing was closed.

Council Comments

Discussion followed regarding the reservoir site land use change and loss of business park designation, and the history of this property. Discussion continued about the Boyer property and its potential use as an oak grove or possibly, if the oak grove proves to be impractical, use as a national cemetery. This agenda bill only addresses the docket, the Comp Plan itself can not be amended more than once a year, but the process can be reviewed.

MOTION: Councilmember Palmer moved to approve the proposed 2010 Comprehensive Plan Amendment Docket and adopt Resolution 10-04. The motion was seconded by Councilmember Munns and carried unanimously.

City Administrator's Comments

City Administrator Schmidt reviewed upcoming meeting dates and Whidbey Island Marathon registration numbers. A "Municipal Issues on Oak Harbor T.V." Marathon presentation will be filmed on March 3rd and broadcast on Channel 10.

Council Members' Comments

Council Members gave their respective standing committee and board reports. Councilmember Dudley asked for a follow-up Marathon briefing during April 20th's Council meeting, thanked the City for the utility billing flyer, talked about the successful China City grand opening, and the Bids for Kids dinner and auction which benefits the Boys and Girls Club. Councilmember Dudley also read the list of annual award recipients which was presented by the Chamber.

Mayor's Comments

Mayor Slowik talked about his recent meeting with NASWI CO CAPT Gerral David, CDR Matt Miller, and NASWI Program Analyst Scott Smith with regard to the upcoming Pentagon meetings which will include the Secretary of the Navy and Chief of Naval Operations. Mayor Slowik, Councilmember Munns, Councilmember Almberg, and Councilmember Severns will be attending this year. Meetings are also scheduled in Washington, D.C. with Senator Patty Murray, Senator Maria Cantwell, Representative Rick Larsen, and Representative Norm Dicks. Other discussion points with Capt. David included maintenance of the wastewater treatment facility at the Seaplane Base, Forest City and non-military tenants, the Maylor Point ribbon cutting, the Marathon, June seaplane event, A-3 static display, Island Transit, traffic concerns by the child development center, and signage on the Walk of Honor by the PBY Museum. Mayor Slowik also talked about the paintings by featured artist Carolyn Bishoff which are on display in Council Chambers.

ADJOURN

With no other business coming before Council, Mayor Slowik adjourned the meeting at 8:30 p.m.

Connie T. Wheeler
City Clerk



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February 18, 2010

Mr. Ethan Spoo, Senior Planner
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Dear Mr. Spoo:

This letter is to express the Skagit/Island Counties Builders Association's (SICBA) input regarding the city of Oak Harbor's draft Planned Residential Development (PRD) ordinance update, particularly as it relates to the proposed 5 to 1 density bonus for building units of affordable housing in future PRDs. SICBA is a roughly 600-member association representing the voice of the local building industry. Please consider this letter as SICBA's written input on this draft ordinance update and share it with Mayor Slowik and the City Council.

SICBA believes that if jurisdictions wish to have developers contribute toward affordable housing needs, they must find a way to properly incentivize the building community. We believe that the density bonus is a good vehicle to achieve this goal. The five bonus units for every one affordable unit currently proposed in the PRD code update certainly creates an appropriate incentive for the developer to fund this type of community contribution. If a proper and appropriate ratio is not established, then the density bonus will not be utilized and there will be no community benefit of additional affordable housing units established.

We commend the city of Oak Harbor for your work on this PRD code update and particularly for your efforts to create meaningful incentives for local developers to create future affordable housing in our community. If you have any questions regarding our feedback, please contact me at the SICBA office at (360) 757-6916 or via e-mail at cory@sicba.org.

Sincerely,


Cory Eitel
SICBA Government Affairs Director

CC: Oak Harbor Mayor Jim Slowik
Oak Harbor City Council
Steve Powers, Director of Development Services Department

