



PLANNING COMMISSION

AGENDA

August 27, 2013

ROLL CALL: FAKKEMA_____ WASINGER_____

 JENSEN_____ PETERSON_____

 FIKSE_____ FREEMAN_____

 SCHLECHT_____

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1. **Approval of Minutes – July 23, 2013**
2. **Public Comment** – Planning Commission will accept public comment for items not otherwise on the agenda for the first 15 minutes of the Planning Commission meeting.

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3. **DIGITAL SIGNS CODE UPDATE – Public Hearing**
This item is a continuation of the public hearing that was opened in April. Staff will facilitate continued discussion on brightness, duration, and hours of operation of these signs, among other topics. Planning Commission will accept public comments and is expected to close the hearing.

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4. **BINDING SITE PLAN CODE AMENDMENT – Public Meeting**
Staff will brief the Planning Commission on the status of proposed amendments to the City’s binding site plan code (OHMC Chapter 21.80). The Planning Commission has already made a recommendation on this matter to the City Council. No action by the Planning Commission is required.

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5. **BED & BREAKFAST CODE – Public Hearing**
Planning Commission will continue its discussion of the draft bed and breakfast code allowing for bed and breakfast establishments within specific residential and commercial zones. Planning Commission is expected to open the public hearing, accept public comments, and close the public hearing and make a recommendation to the City Council.

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6. **ECONOMIC DEVELOPMENT STRATEGY – Public Meeting**
Economic development staff will brief the planning commission on the “Economic Development Strategy” which will direct the City’s economic development efforts for the next 3-5 years. Staff is requesting Planning Commission feedback on the strategy.

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7. **2016 COMPREHENSIVE PLAN UPDATE – Public Meeting**
Staff will update the Planning Commission on the continuing work and effort with the 2016 Comprehensive Plan Update. An update will also be provided on staff’s coordination with Island County and the work that’s related to the County Wide Planning Policies.

MINUTES

July 23, 2013

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
July 23, 2013**

ROLL CALL: **Present:** Greg Wasinger, David Fikse, Kristi Jensen, Bruce Freeman and Sandi Peterson
Absent: Keith Fakkema and Ana Schlecht
Staff Present: Senior Planners, Cac Kamak and Ethan Spoo

Vice Chairman Wasinger called the meeting to order at 7:30 p.m.

MINUTES: MS. PETERSON MOVED, MR. FREEMAN SECONDED, MOTION CARRIED TO APPROVE THE JUNE 25, 2013 MINUTES AS PRESENTED.

PUBLIC COMMENT:

Ron Nelson (resident of Oak Harbor and member of the Island County Economic Development Council) commented that as the Planning Commission proceeds with developing policies, it is critical that the permitting process does not take longer than the building process and permit fees should be reasonable enough to encourage growth.

DIGITAL SIGNS CODE UPDATE – Public Hearing

Mr. Spoo displayed a Power Point presentation (Attachment 1) which summarized additional research on brightness, a review of brightness, an inventory of current Electronic Message Centers (EMC's) and recommended actions. The recommended actions are to give staff direction on: desired brightness standards, whether to have a two-standard system (nits & foot-candles) or a one-standard system (nits OR foot-candles) and what level of brightness should be used. Staff also recommended the Planning Commission give staff direction on the treatment of non-conforming signs, whether to "grandfather" them in (vested under old code) or to require that they meet brightness and hours of operation standards within one year.

Discussion

Planning Commission discussed "grandfathering" existing signs until the sign owner replaced the old sign with a new sign or is operating the sign in a manner that wasn't allowed under the old code.

Mr. Fikse questioned whether the .3 foot candle criteria recommended by the International Sign Association was correct. Mr. Fikse reported that he purchase a foot-candle meter and conducted his own tests on brightness levels by taking measurements under different conditions on his sign. He provided a handout with the results of those measurements (Attachment 2). Mr. Fikse recommended raising .3 foot-candle criteria to .8 as some other jurisdictions have done. He believed .3 foot-candles was too low. He also recommended more testing using normal content instead of all-white backgrounds.

Planning Commission expressed their wishes that the code be very clear about the criteria, be right the first time and not done in haste.

The public hearing was opened at 8:05 p.m.

Aaron Syring owner of Island Drug said his main concern was the 10 second duration cited in section 19.36.030 (5) (g) (vii) of the draft code. He asked that the duration be decreased to 8

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seconds. He wanted more information on whether the 10 second duration is common. Mr. Syring said his experience with his sign was that 2 seconds was acceptable and it did not appear to be strobing or pulsating. He believed that a 10 second transition was too long. Mr. Syring also noted that 9.36.030 (5) (g) (xv) which requires that EMC's located 300 feet from a residentially zone property must turn the EMC off between the hours of 10 p.m. and 6 a.m. He believed 100 feet from residentially zoned properties was more reasonable.

Jason Trit owner of Flyers Restaurant commented that purchasing an EMC is a big investment of between \$30,000 and \$50,000 and there should be less regulation so that the signs can be used to their full capacity. Mr. Trit stated that charities, Chamber of Commerce and other business call him regularly to request that he advertise their events on his sign so he believes EMC signs also benefit the community. He also agreed that the 10 second duration is not reasonable. Mr. Trit said EMC's are the wave of the future and we need to grow if we are going to be a destination tourist town.

Mark Duncan (3145 Shadowbrook Drive) said he was part owner of the Blue Heron Professional Business Park (the lot directly behind the drug store) and he is 1/3 owner of the sign. He noted that Section 9.36.030 (5) (g) (iii) of the draft code allows only one sign per property for multitenant buildings on a single property. He was concerned that he would have to surrender his right to put a sign on Ely Street and hoped that the Planning Commission would amend that section.

Mel Vance Oak Harbor resident pointed out that Island Drug's sign is at a 90 degree angle to the residential property and is not shining in anyone's windows but if Element were to mount a sign on their building it would shine directly into the condos across the street and even 300 feet wouldn't be enough. He recommended that the requirements for EMC's adjacent to residential properties be flexible and be considered on a case-by-case basis.

Jason Trit owner of Flyers Restaurant added that his restaurant is opened until 11 p.m. on weekends and the requirement that EMC's located adjacent to residential areas be turned off from 10 p.m. to 6 a.m. will make it look like he is closed for business at 10 p.m.

Planning Commission and staff discussed the issues raised during the public comment period. Staff noted that Planning Commission could choose to adjust the durations, hours, distances or have no hours of operation if they chose.

MOTION: MR. FIKSE MOVED, MS. PETERSON SECONDED GRANDFATHERING ALL EXISTING SIGNS AS ORGINALLY PERMITTED.

Discussion:

Planning Commissioners discussed what would trigger a "grandfathered" sign to become regulated under the new code and were concerned that all businesses may not want to be "grandfathered". Mr. Kamak said that businesses could be given the choice to be "grandfathered" and be give a date e.g. one year from the date of adoption of the new code to respond with their preference. Mr. Kamak noted that the current motion is only to give staff direction.

ACTION: MOTION CARRIED UNANIMOUSLY.

Mr. Fikse commented that he wanted more research on the brightness issue before making a motion on whether to have a two-standard system (nits and foot-candles) vs. one-standard

system (nits OR foot-candles). **Commissioners agreed to table this item until the August meeting.**

Mr. Fikse commented on the maximum duration of 5 seconds in Section 19.36.030 (5) (g) (vii) and displayed video clips of a flag in motion and a diamond ring rotating on his sign. He didn't think that the duration of the motion shown in the videos was a traffic distraction or a safety issue. Mr. Fikse said that the flag ran all day on the 4th of July. The proposed code is written so that there is only a 2 to 5 second window with a static time after 5 seconds. He stated that it would look silly running the flag 5 seconds and stopping, running for 5 seconds and stopping.

MOTION: MS. PETERSON MOVED, MR. FIKSE SECONDED A MOTION TO REMOVE THE MAXIMUM DURATION OF 5 SECONDS, MOTION CARRIED UNANIMOUSLY.

Aaron Syring owner of Island Drug asked the Planning Commission to change the duration restriction for static images to 2 seconds instead of 10 seconds. **Planning Commission agreed to table this issue until the August 27th meeting.**

Planning Commission also agreed to table the hours of operation restriction when EMC's are within 300 feet of residentially zoned property until the August 27th meeting.

ACTION: MR. FREEMAN MOVED, MR. FIKSE SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING TO THE PLANNING COMMISSION'S AUGUST 27, 2013 BUSINESS MEETING, MOTION CARRIED.

BED AND BREAKFAST CODE – Public Meeting

Mr. Spoo displayed a Power Point presentation (Attachment 3) and reviewed the changes since last month's meeting. At last month's meeting there was discussion about the ability for bed and breakfast (B&B) establishments to have some sort of accessory commercial on site to sell items like trinkets, mugs or t-shirts. The proposed code has been revised to allow accessory commercial in residential zones but the area is limited to 100 SF and is for patrons only. On-site parking will not be required in the Central Business District (CBD) and the sign size in commercial districts should be the same as any other commercial use in that zone but in residential there is a 4 sq. ft. restriction as well as a restriction on the appearance of the sign in residential areas. The proposed code also clarifies that a resident or manager has to be domiciled onsite.

Mr. Spoo reviewed the zones where B&B's are permitted or where a conditional use permit is required show in the table below.

Type of B&B	R1	R2	R3	R4	R0	C1	CBD
Inns	X	X	P	P	P	P	P
Residential	C	C	P	P	P	P	P
Commercial	X	X	X	X	X	P	P

Note: P = permitted, C = conditional use permit required, X = prohibited

Mr. Spoo noted that the conditional use process in the R1 and the R2 zoning districts allows staff to access the impacts on a case-by-case basis and craft appropriate conditions.

Discussion

Commissioners discussed the conditional use process and agreed that B&B's should be a conditional use in the R1 and R2 districts. They also discussed parking in the CBD and agreed that parking is a management issue best left to downtown landlords and tenants to work out privately rather than having restrictions on specific uses in the zoning regulations. Commissioners asked staff to include a recommendation or a statement on the conditional use checklist advising the applicant to check their neighborhood covenants.

ECONOMIC DEVELOPMENT STRATEGY – Public Meeting

Mr. Spoo reported the Economic Development Committee is still reviewing the strategy and he hopes to have it for the Planning Commission soon.

2016 COMPREHENSIVE PLAN AMENDMENT – Public Meeting

Mr. Kamak reported that there are no items ripe for discussion yet and staff is still reviewing the checklist. Staff is continuing meeting with the County and discussing the county-wide planning policies and the Comprehensive Plan update.

ADJOURN: 9:50 p.m.

DRAFT



Additional Research on Brightness

Nits vs. footcandles: •Nits = 2, FC = 2, Both = 1

Levels: •Night = 500-1,000 nits. Day = 8,000 nits. FC 0.3 to 0.8 above ambient.

Autodim: •Required

Review of Brightness Discussions

Original Proposal	Modified Proposal	Input from the ISA Proposal	The Further Research Proposal
500 nits (night)/5,000 nits (day)	1,000 nits (night)/8,000 nits (day) for C ₁ , I, PIP, PBP & PF. 1,500 nits (night)/13,000 nits (day) for C ₃ , C ₄ , C ₅ .	0.3 footcandles above ambient with autodim	500-1,000 nits (night)/8,000 nits day. 0.3-0.8 footcandles above ambient. Autodim required.

Inventory

Number of signs: •18

Locations: •Primarily Hwy 20 & Midway

Type: •Mostly freestanding pole

Size: •1.5 SF – 68.5 SF (Avg 19 SF)

Recommended Action(s)

- Staff requests PC direction on desired brightness standards
 - Two-standard system (nits & footcandles) vs. one-standard system (nits OR footcandles)
 - Levels? Options in Planning Commission packet.
- Staff requests PC direction on treatment of non-conforming signs.
 - "grandfather" them in (vested under old code)
 - Require that they meet brightness and hours of operation standards within one year

Questions?

EMC Brightness Levels

Proposed Brightness Levels by the ISA, .3 foot-candle difference

Test Thursday July 18th, 2013

Conditions, Clear skies, ¾ moon

Measurement at Dusk ½ hour after sunset

.75 fc with sign off (black screen)

.81 fc with normal sign content (nonwhite backgrounds) .06 fc difference – PASSED TEST

1.05 fc with sign on (white background) .3 fc difference – PASSED TEST

Measurement at Dark 1 hour after sunset

.25 fc with sign off (black screen)

.28 - .35 fc with normal sign content (nonwhite backgrounds) .03 - .10 fc difference – PASSED TEST

.62 fc with sign on (white background) .37 fc difference – FAILED TEST

Observations

1. When testing using the criteria suggested by the ISA, using all white backgrounds, the sign failed, But when testing with normal display content (nonwhite backgrounds) as proposed by the planning commissioners, the sign easily passed.
2. Testing EMC Brightness Levels using an all-white background, creates a conflict with the "No White Background" section of the ordinance. It requires business to meet a criteria, they're not allowed to use.
3. The darker the conditions, the harder it becomes for a sign to meet the ISA's .3 fc criteria.
4. Conditions including no moon, full moon, cloudy skies and surrounding light sources affect the test results. This could make it possible for two identical signs to pass or fail, depending on location.
5. This criteria is too strict.

Recommendations

1. Raise the foot-candle difference.
2. Test using Normal Content, not all-white backgrounds.

BED & BREAKFAST CODE

Draft Regulations for Planning Commission
Consideration: July 23, 2013

Purpose

- Discuss changes since last month
- Conditional use permit process
- Further discussion and questions?

Changes since last month

- Accessory commercial. Allowed in residential zones and limited to 100 SF, for patrons only
- Parking in CBD – not required
- Other: sign size in commercial, sign appearance in residential, manager in commercial

Conditional Use Permit Process

Type of B&B	R1	R2	R3	R4	R0	C1	CBD
Inns	X	X	P	P	P	P	P
Residential	C	C	P	P	P	P	P
Commercial	X	X	X	X	X	P	P

Note: P = permitted, C = conditional use permit required, X = prohibited

Conditional use permit process cont.

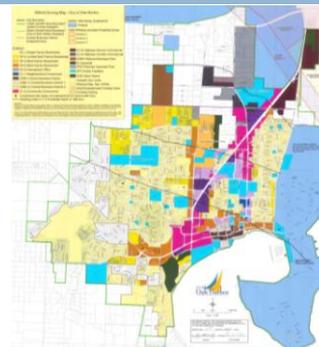
- Type III review with public notice 300 feet. 60 days is average.
- Hearing examiner is decision authority on criteria.
- Impacts can be considered on case-by-case basis
- Would apply to R1 & R2. Sensitivity may require unique conditions. (i.e. screening, parking)
- Thoughts on conditional use requirement in R1 and R2?

Schedule

- Goal to finish in August
- Any additional changes PC would like to see prior to August?

PC Questions?

Proposed Code cont.



Proposed Code

	Inns	Residential	Commercial
Max # Rooms	10	4	4
Room Capacity	4	4	4
Commercial Meals	No	No	No
Other Business	No	No	No
Resident/Manager	Full-time Mgr domiciled onsite	Resident in primary dwelling	Mgr onsite
Parking	Onsite/2+ 1 per room. Meet dimensions.	Onsite/2+ 1 per room. No dimensions.	Onsite/2+ 1 per room. No dimensions.
Signs	Per OHMC 19.36	4 SF monument/building	4 SF monument/building

Digital Signs

Code Update

Public Hearing

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Development Services Director
From: Ethan Spoo, Senior Planner
Date: 8/20/13
Re: Electronic Message Centers – Staff Request to Continue Public Hearing

Given the amount of public and Planning Commission input at the July meeting, staff requests that Planning Commission make a motion to continue the Electronic Message Center public hearing until the September meeting. At the September meeting, staff expects to have a revised code which addresses public and Planning Commission input on a number of items.

Binding Site Plan
Code Amendment

Public Meeting

City of Oak Harbor Planning Commission Report

Date: August 27, 2013
Subject: Binding Site Plan Code
Amendments: Informational
Briefing

FROM: Steve Powers, Development Services Director *RSP*

PURPOSE

This report presents materials related to a pending code amendment: the binding site plan (BSP) code amendment. Staff will brief the Planning Commission on the status of this code amendment. This item is for information only. No action is required by the Planning Commission.

BACKGROUND

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

Oak Harbor Municipal Code Chapter 21.80 is devoted to binding site plans. A review of the existing language found that it did not specifically or adequately address a process for the alteration or vacation of previously approved BSPs. Staff notes this review was the result of a past application seeking to alter a previously approved binding site plan.

The history of this project is lengthy and cannot reasonably be summarized in a few sentences. However, the following abbreviated project timeline and summary is shown below:

- Staff worked with the Planning Commission in late-2010 and early-2011 to identify necessary revisions to the existing code.
- The Planning Commission conducted the required public hearing over three meeting dates and accepted testimony from the public and from staff.
- On February 22, 2011 the Commission forwarded a recommendation of approval of the draft code to the City Council.
- Work on the project was suspended shortly after that time pending the resolution of a land use application appeal. Final action on the appeal occurred in June 2012.
- City Council was briefed on this project at their May 29, 2013 workshop.
- The code amendment was tentatively scheduled for the June 18, 2013 City Council

meeting. The item was not included as part of the final agenda for that meeting and a new date for Council consideration has not yet been selected.

- As a result of the workshop briefing, the Mayor requested staff brief the Planning Commission on the status of the project.

The materials attached to this report are the same ones provided to the City Council for their workshop. In addition, staff has included a citizen letter submitted to the Mayor and City Council after that workshop and the City's response to that letter.

RECOMMENDATION

Action by the Planning Commission is not required since the Commission has already made a recommendation on this matter.

ATTACHMENTS

- City Council workshop materials from May 29, 2013
- Letter from Ms. Sue Karahalios to the Mayor and City Council dated June 11, 2013
- Letter from Mayor Dudley to Ms. Karahalios dated July 16, 2013

City Council
Workshop Materials
from May 29, 2013

City of Oak Harbor City Council Agenda Bill

Bill No. _____
Date: June 18, 2013 (Tentative)
Subject: Ordinance No. 1657:
Binding Site Plan Code
Amendments

FROM: Steve Powers
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

_____ Scott Dudley, Mayor
_____ Larry Cort, City Administrator
_____ Doug Merriman, Finance Director
_____ Grant Weed, Interim City Attorney, as to form

PURPOSE

This agenda bill introduces a draft ordinance to the City Council that amends Oak Harbor Municipal Code (OHMC) Chapter 21.80, Binding Site Plans, by establishing a process for altering or vacating previously approved binding site plans and making other related amendments.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan (BSP). Should a city choose to adopt such an ordinance it is required to provide for the alteration or vacation of BSPs.

There are also two sections of the Oak Harbor Municipal Code that are relevant to this agenda item. One addresses the adoption of ordinances in general (OHMC 1.04.020), while the other addresses amendments to land use codes (OHMC 18.20.270).

OHMC Section 1.04.020(2) states:

An ordinance other than an emergency ordinance, budget amendment, moratorium ordinance or ordinance to be passed after a public hearing shall be introduced at least one full council meeting prior to the one it is considered for passage. After introduction and consideration, the ordinance shall then be continued to a scheduled subsequent full council meeting for additional consideration and for action such as passage, rejection or continuance to another hearing date.

City of Oak Harbor City Council Agenda Bill

OHMC Sections 18.20.270(1) and (2) establish that amendments to land use codes require a public hearing before the Planning Commission with a recommendation to the City Council. The City Council may hold additional hearings. Traditionally, the Council has conducted its own hearing.

FISCAL IMPACT DESCRIPTION

Funds Required: N/A

Appropriation Source: N/A

SUMMARY STATEMENT

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80; please see Attachment 1). A review of the existing language found that it does not specifically or adequately address the alteration or vacation of previously approved BSPs. Staff notes this review was the result of a past application seeking to alter a previously approved binding site plan.

BACKGROUND

The past application, submitted by Alpine Village, Inc. in 2010, sought an amendment to the Binding Site Plan for Pier Point Condominiums. The City processed the application, ultimately denying the requested amendment. Alpine Village, Inc. appealed the City's decision, first to the Hearing Examiner and then to Island County Superior Court. The Superior Court ruled in the City's favor and remanded the case back to the Hearing Examiner to enter a decision consistent with the Court's. The Hearing Examiner entered his decision on June 27, 2012. The Hearing Examiner's decision provides a summary of the issues involved (please see Attachment 2.)

The above information on Pier Point Condominium/Alpine Village, Inc. application is provided to the City Council as background information only and to illustrate why the code amendment project was initiated. It is important to note that while the proposed draft ordinance addresses some of the issues raised with the Pier Point application it is not specific to only that particular BSP. The proposed code amendment applies to all existing and future binding site plans, as noted in the draft.

Work on the draft amendment began in late-2010 and continued into 2011. Work was suspended after the Planning Commission completed their review and recommendation, pending completion of the appeal process for the Pier Point Condominium/Alpine Village, Inc. application.

City of Oak Harbor City Council Agenda Bill

PLANNING COMMISSION REVIEW

As required by OHMC 18.20.270, the Planning Commission conducted a public hearing on the proposed code amendment. The hearing was opened on December 28, 2010, and then continued to January 25, 2011 and February 22, 2011. Copies of the staff reports, attachments and minutes from those hearings are attached as Attachment 3. These materials document the background information presented to the Planning Commission by staff and the code concepts considered by the Commission. The Commission accepted testimony from the public and from staff on all three dates. After closing the hearing on February 22, 2011, they recommended approval of the attached draft code to the City Council (Attachment 4)

STANDING COMMITTEE REPORT

The draft code was discussed with the Governmental Services Standing Committee at their February 8 and March 2, 2011 meetings. No additional briefings of that committee have occurred.

The draft code was presented to the City Council at their May 29, 2013 workshop.

RECOMMENDED ACTION

Open public hearing on Ordinance No. 1644 and continue to May 21, 2013.

ATTACHMENTS

1. Oak Harbor Municipal Code Chapter 21.80, Binding Site Plans (existing code)
2. Hearing Examiner Decision of June 27, 2012
3. Planning Commission staff reports, attachments and minutes from December ²⁸~~17~~, 2010; January 25, 2011 and February 22, 2011.
4. Draft Ordinance No. 1644, amending OHMC 21.80

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ated thereby or where no lot is reduced in size below the minimum square footage and street frontage required by the applicable zoning control and this title. (Ord. 1568 § 9, 2010).

21.70.090 Filing of short plat and/or boundary line adjustment

The subdivider shall file the approved short plat and/or boundary line adjustment and shall furnish the city with one permanent reproducible copy, mylar or better quality, of the short plat or boundary line adjustment including all recording data within 30 days after approval by the director or the approval shall be deemed null and void. (Ord. 1568 § 9, 2010).

Chapter 21.80

BINDING SITE PLANS

Sections:

- 21.80.005 Title.
- 21.80.010 Binding site plans allowed.
- 21.80.020 Division of property.
- 21.80.025 Condominium binding site plan.
- 21.80.030 Effect.
- 21.80.040 Application.
- 21.80.050 Procedure upon application.
- 21.80.060 Requirements for a binding site plan map.
- 21.80.070 Certifications required.
- 21.80.080 Title report.
- 21.80.090 Survey required.
- 21.80.100 Approval procedure.
- 21.80.110 Recording requirements.
- 21.80.120 Development requirements.
- 21.80.130 Standards for review of commercial binding site plan.
- 21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.
- 21.80.150 Performance guarantee requirements.
- 21.80.160 Warranty requirements for acceptance of final improvements.
- 21.80.170 Survey required.
- 21.80.180 Dedication – Warranty deed.
- 21.80.200 Modification.
- 21.80.300 Appeals to the hearing examiner.
- 21.80.400 Enforcement.

21.80.005 Title.

This chapter shall be entitled "Binding Site Plans." (Ord. 1568 § 10, 2010).

21.80.010 Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (4). (Ord. 1568 § 10, 2010).

21.80.020 Division of property.

Division of property by binding site plans may only be used for the following:

(1) Divisions of land into lots classified for industrial or commercial use;

(2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all appli-

21.80.025

cable mobile home park regulations and the zoning code;

(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

(4) A division of land subject to Chapter 64.32 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140. (Ord. 1568 § 10, 2010).

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts if:

(1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:

(a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;

(b) The city has approved a binding site plan for all such land;

(c) Such approved binding site plan is recorded in the county or counties in which such land is located; and

(d) The binding site plan contains thereon the following statement:

All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one (1) or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site

plan shall be binding upon all now or hereafter having any interest in the land described herein.

(2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.

(3) The binding site plan for condominiums shall be deemed approved if:

(a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;

(b) Done in connection with the issuance of a building permit or final certificate of occupancy. (Ord. 1568 § 10, 2010).

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. (Ord. 1568 § 10, 2010).

21.80.040 Application.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels. (Ord. 1568 § 10, 2010).

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.50 OHMC. (Ord. 1568 § 10, 2010).

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final binding site plan shall be drawn on mylar drafting film having dimensions of 18 inches by 24 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites

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with accurate bearings, dimensions or angles and arcs, and of all curve data;

(5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;

(6) Number of each lot and each block;

(7) Reference to covenants, joint use, access easements, or other agreements either to be filed separately or on the binding site plan must be referenced on the binding site plan;

(8) Zoning setback lines and building envelope sites where applicable;

(9) Location, dimensions and purpose of any easements, noting if the easements are private or public;

(10) Location and description of monuments and all lot corners set and found;

(11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;

(12) A dedicatory statement acknowledging public and private dedications and grants;

(13) Parking areas, general circulation, and landscaping area where applicable;

(14) Proposed use and location of building with dimensions where applicable;

(15) Loading areas where applicable;

(16) Utilities; and

(17) Other restriction and requirements as deemed necessary by the city. (Ord. 1568 § 10, 2010).

21.80.070 Certifications required.

(1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

(2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law. (Ord. 1568 § 10, 2010).

21.80.080 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan. (Ord. 1568 § 10, 2010).

21.80.090 Survey required.

A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor. (Ord. 1568 § 10, 2010).

21.80.100 Approval procedure.

(1) Binding site plan approval shall be a Type II review process.

(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.

(3) The director shall review the final binding site plan and circulate it to other city departments to determine whether the requirements of this chapter and preliminary approval have been met.

(4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.

(5) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.

(6) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan. (Ord. 1568 § 10, 2010).

21.80.110 Recording requirements.

(1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Har-

21.80.120

bor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.

(2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor. (Ord. 1568 § 10, 2010).

21.80.120 Development requirements.

All development must be in conformance with the recorded binding site plan. (Ord. 1568 § 10, 2010).

21.80.130 Standards for review of commercial binding site plan.

The following standards shall apply to commercial binding site plans:

(1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.

(2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.

(3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.

(4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.

(5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.

(6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.

(7) Freestanding signage may be off of the tract, parcel or lot where the business is located as

long as sign requirements are met within the area encompassed by the binding site plan.

(8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

(9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants. (Ord. 1568 § 10, 2010).

21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

(1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.

(2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:

(a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.

(b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

(c) Reciprocal easements for parking shall be provided to all tenants and owners.

(d) The developer has submitted a binding schedule for completion of all phases.

(e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall

become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in this subsection (2).

(f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.

(g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners. (Ord. 1568 § 10, 2010).

21.80.150 Performance guarantee requirements.

(1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request final approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state-approved surety, the guarantee must be in a form acceptable to the city attorney.

(2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.

(3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.

(4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy. (Ord. 1568 § 10, 2010).

21.80.160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-

year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city. (Ord. 1568 § 10, 2010).

21.80.170 Survey required.

(1) The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.

(2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.

(3) In all binding site plans, perimeter monuments must be set before final approval can be granted.

(4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed in accordance with city design and construction standards.

(5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements. (Ord. 1568 § 10, 2010).

21.80.180 Dedication – Warranty deed.

Any dedication, donation or grant as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. (Ord. 1568 § 10, 2010).

21.80.200 Modification.

(1) Any applicant can request and make application to the city requesting a modification of up to five percent from a requirement of OHMC 21.80.130 or 21.80.140 or OHMC Title 19.

(2) Such request for modification shall be considered by the director as an administrative decision.

(3) The modification shall not be granted by the director until the following facts have been established:

(a) There are exceptional circumstances or conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which

21.80.300

prohibit the applicant from meeting the standards of this chapter;

(b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;

(c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;

(d) Landscaping requirements are not thereby reduced. (Ord. 1568 § 10, 2010).

21.80.300 Appeals to the hearing examiner.

(1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner.

(2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action. (Ord. 1568 § 10, 2010).

21.80.400 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator. (Ord. 1568 § 10, 2010).

Chapter 21.90**PENALTY**

Sections:

21.90.010 Violation - Nuisance declared.

21.90.020 Penalty.

21.90.030 Provisions not exclusive.

21.90.010 Violation - Nuisance declared.

Any violation of the provisions of this chapter constitutes a public nuisance which the city can abate by an action in Island County superior court. The cost of such action shall be taxed against the violator. (Ord. 1568 § 11, 2010).

21.90.020 Penalty.

(1) Any knowing or intentional violation of any provision of this title shall be a gross misdemeanor punishable by a fine of up to \$5,000 or a jail sentence of one year in jail or both such fine and jail time.

(2) Any other violation of this title shall be a civil infraction with a maximum penalty of \$250.00. (Ord. 1568 § 11, 2010).

21.90.030 Provisions not exclusive.

Penalty and enforcement provisions in this chapter are not exclusive and the city may pursue any remedy or relief authorized by law or equity. (Ord. 1568 § 11, 2010).

RECEIVED

JUL 02 2012

CITY OF OAK HARBOR
HEARING EXAMINER

CITY OF OAK HARBOR
Development Services Department

Administrative Appeal of
Alpine Village, Inc.

) No. BSP-IO-00001
) ORDER ON REMAND
)
)
)
)

Preliminary Information

Hearing Date: January 10, 2011

Order on Direct Judicial Review Date: December 27, 2011

Parties of Record:

Alpine Village, Inc. - appellant
C. Thomas Moser
1204 Cleveland Avenue
Mount Vernon, WA 98273

City of Oak Harbor - respondent
Margery Hite, Special Counsel.
865 SE Barrington Drive
Oak Harbor, WA. 98277

Steve Powers
Development Services Director
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Christon C. Skinner, Attorney for all other listed parties
Skinner and Saar, P.S.
791 SE Barrington Drive
Oak Harbor WA 98277

Alice Smith - respondent
1085 SE Regatta Drive, AIOI
Oak Harbor, WA 98277

Pier Point Condominium Association - respondent
c/o Sue Karahalios
PO Box 144
Oak Harbor, WA 98277

Order On Remand
Page 1

Lois Lewis - respondent
 c/o Pier Point Condominium Association
 PO Box 144
 Oak Harbor, WA 98277

Robert Severns - respondent
 Pier Point Condominiums, Unit C-201
 1085 SE Regatta
 Oak Harbor, WA 98277

Exhibits:

- 1 Appellant's Opening Brief, dated December 21, 2010, prepared by C. Thomas Moser, Attorney for the Appellant, with attachments
 - 1-1 Staff Report, Appeal BSP-05-00001, July 31, 2005
 - 1-2 Preliminary Staff Analysis, Pier Point Condominiums
 - 1-3 Notice of Decision, May 2, 2005
 - 1-4 LUPA Petition and Appeal, no. 06-2-00816-7
 - 1-5 Verbatim Report of Court's Oral Ruling, February 15, 2007
 - 1-6 Order Dismissing LUPA Petition with Prejudice, February 15, 2007
 - 1-7 Declaration of Tom Burdett, May 21, 2006
 - 1-8 Declaration of William L. Massey, August 24, 2006
 - 1-9 Order Granting Plaintiffs Motion for Partial Summary Judgment, August 27, 2009
 - 1-10 Order Granting Plaintiffs Second Motion, November 23, 2009

- 2 Cover letter, dated December 23, 2010, from Kimberly Waldbaum, with attachments:
 - 2-1 City's Motion to Dismiss Appeal and to Strike the January 10, 2011 Hearing Date to hear the Motion to Dismiss, dated December 23, 2010, prepared by Kimberly Waldbaum
 - 2-2 Declaration of Service, December 23, 2010, Marlis Pehling
 - 2-3 Hearing Examiner Decision, BSP05-0001, November 15, 2006
 - 2-4 LUPA Petition and Appeal, No. 06-2-00816-7
 - 2-5 Order Dismissing LUPA Petition with Prejudice, February 15, 2007

- 3 Declaration of Steve Powers, December 29, 2010

- 4 Letter dated December 29, 2010, from Alice Smith

- 5 City's Response Brief, December 29, 2010, Kimberly Waldbaum

- 6 Letter, December 30, 2010, Sue Karahalios, Alice Smith, Robert Severns, and Rhonda Haines of Pier Point Condominium Association

- 7 Brief of Pier Point Condominium Owners Association, December 30, 2010, prepared by

- Sue Karahalois
- 8 Declarations of Lois Lewis, Samir and Michele Bishai, Alice Smith, David Jasman, Robert Severns, Sue Karahalois, Rhonda Severns; John Royce, Jr., December 30, 2010
 - 9 Appellant's Response to City's Motion to Dismiss, January 3, 2011, C. Thomas Moser
 - 10 Declaration of Pier Point Condominium Association, January 4, 2011, Sue Karahalios
 - 11 Letter dated January 6, 2011, Lois Lewis
 - 12 Declaration of Robert Severns, January 10, 2011
 - 13 City's Reply in Support of Motion to Dismiss, January 6, 2011, Kimberly Waldbaum
 - 14 Superior Court, No. 08-2-00229-7 Answer to Complaint for Quiet Title and Declaratory Judgment
 - 15 Superior Court, No. 08-2-00229-7, Complaint for Quiet Title and Declaratory Judgment
 - 16 Superior Court, No. 08-2-00229-7, Plaintiffs Response to Defendants' Motion for Partial Summary Judgment
 - 17 Superior Court, No. 08-2-00229-7, Motion for Partial Summary Judgment Re: Quiet Title
 - 18 Cover letter, dated November 2, 2006, from G. Tim Martin with enclosure:
 - 18-1 Supplemental Memorandum of Appellant Alpine Village, Inc., November 2, 2006, prepared by G. Tim Martin
 - 18-2 Verbatim Report of Proceedings (Excerpt), September 11, 2006
 - 19 Order Denying Respondents' Motions for Dismissal of LUPA Petition and Other Relief, Island County Superior Court Cause No. 11-2-00137-1, Judge Alan R. Hancock, June 6, 2011.
 - 20 Agreed Order on Direct Judicial Review and Briefing Schedule, Island County Superior Court Cause No. 11-2-00137-1, Judge Alan R. Hancock, June 6, 2011.
 - 21 Order on Direct Judicial Review, Island County Superior Court Cause No. 11-2-00137-1, Judge Alan R. Hancock, December 27, 2011.

I.

THIS Matter comes before the Hearing Examiner on remand from the Island County Superior Court in the Land Use Petition Act Appeal filed by Alpine Village, Inc., in Island County Superior Court Cause No. 11-2-00137-1. An "Order on Direct Judicial Review" filed in that case on December 27, 2011 remands this matter back to the Oak Harbor Hearing Examiner for action "in compliance with this decision."

II.

The Binding Site Plan for Pier Point Condominiums was approved by the City on November 19, 1991, and thereafter amended on January 9, 1992. The January 9, 1992 amendment was approved prior to the expiration of the construction schedule. Pursuant to the requirements of the Binding Site Plan Ordinance, the proposed 8-phased, 16-condominium unit development was to be completed by January 15, 1996.

III.

On March 5, 2010, Alpine Village, Inc. submitted a request to the City for approval of an amendment to the Binding Site Plan for Pier Point Condominiums, SPR 9-91. Specifically, Alpine requested an extension of the construction schedule set forth in the binding site plan notwithstanding the fact that it had expired prior to the date the request for an extension was submitted. The City, through its Development Services Director, Steve Powers, denied Alpine Village, Inc.'s application by decision dated June 30, 2010.

IV.

Alpine Village, Inc. appealed that decision to the Hearing Examiner. The Hearing Examiner granted the City's motion to dismiss the appeal on January 26, 2011. That decision dismissed Alpine Village Inc.'s appeal of the Administrator's Decision dated June 30, 2010, based upon principles of collateral estoppel and res judicata.

V.

Alpine Village, Inc. appealed that Hearing Examiner decision to the Island County Superior Court. The Hearing Examiner's decision was reversed by the Superior Court. (See Order Denying Respondents' Motions for Dismissal of LUPA Petition and Other Relief, Island County Superior Court Cause No. 11-2-00137-1, June 6, 2011.)

VI.

The parties on appeal in the LUPA action then requested that the superior court grant direct judicial review of those legal issues that would be necessary for a hearing examiner's decision on remand. (See Agreed Order on Direct Judicial Review and Briefing Schedule filed in the aforementioned Superior Court proceeding.)

VII.

The Island County Superior Court affirmed the decision of the City of Oak Harbor's Administrator that there is no authority for the City to amend the expired construction schedule in this case. (Order on Direct Judicial Review.)

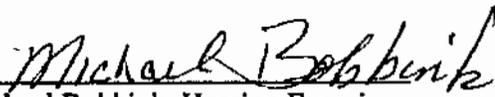
DECISION

The Administrator's denial of Alpine Village Inc.'s application to amend the construction schedule on the above-captioned binding site plan is therefore **AFFIRMED** and the above-captioned Appeal is **DISMISSED**.

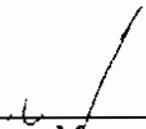
NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES
FROM FINAL DECISIONS OF
THE OAK HARBOR HEARING EXAMINER

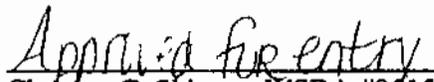
This decision of the Hearing Examiner for the City of Oak Harbor is final ^{Ka} ~~ten~~ ^{twenty-one} days after the issuance of this decision unless it is appealed to the Island County Superior Court within ~~ten~~ ^{twenty-one} days of the issuance of this decision, pursuant to ^{36a} ~~30.70C~~ ^{Ka} R.C.W.

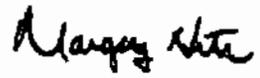
DATED this 27 day of June, 2012.


Michael Bobbink, Hearing Examiner

Approved for entry; presentation waived:


C. Thomas Moser, WSBA #7287
Attorney for Petitioner


Christon C. Skinner, WSBA #9815
Attorney For Pier Point Condominium Association
and Individual Affected Property Owners


Margery Hite, WSBA #8450
Attorney for City of Oak Harbor

FILED-COPY

DEC 27 2011

**DEBRA VAN PELT
ISLAND COUNTY CLERK**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND**

**ALPINE VILLAGE, INC., a Washington
corporation,**

Petitioner,

vs.

**CITY OF OAK HARBOR, a municipal
corporation; LOIS A. LEWIS, TRUSTEE
FOR FUND 'A' OF THE WILLIAM E.
LEWIS AND LOIS A. LEWIS LIVING
TRUST; JOHN C. ROYCE, JR.; SAMIR
BISHAI and MICHELLE BISHAI, husband
and wife; ALICE S. SMITH; DAVID A.
JASMAN; SUE M. KARAHALIOS;
ROBERT T. SEVERNS; RHONDA LEE
HAINES-PITT aka RHONDA KIRCHOFF;
and PIER POINT CONDOMINIUM
ASSOCIATION,**

Respondents.

NO. 11-2-00137-1

ORDER ON

DIRECT JUDICIAL REVIEW

**THIS MATTER came on regularly before the undersigned judge of the above-entitled
court upon an agreed order for direct judicial review of this land use petition act (LUPA)
appeal on July 29, 2011. Petitioner Alpine Village, Inc. is represented by its attorney of
record, Tom Moser of the Moser Law Office. Respondent, Pier Point Condominium**

**ORDER ON DIRECT JUDICIAL
REVIEW - 1**

**Oak Harbor City Attorney's Office
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540**

1 Association is represented by its attorney, Christon C. Skinner. Respondent, City of Oak
2 Harbor is represented by counsel, Margery Hite, Oak Harbor City Attorney. The parties
3 jointly moved for this court to accept direct judicial review of three, legal issues previously
4 decided by the City of Oak Harbor Director of Development Services in Binding Site Plan
5 BSP-10-00001 and dated June 30, 2010. Those legal issues had not then been reviewed by the
6 Hearing Examiner. This court agreed to direct judicial review of three legal issues by order
7 dated June 6, 2011.
8

9 Prior to submission of these legal issues to the court for review, the parties stipulated and
10 agreed that the Oak Harbor Development Services Director's Decision on these issues is the
11 "construction of a law by a local jurisdiction with expertise" and each waived their right to
12 have a Hearing Examiner determination prior to judicial review.
13

14 After considering the records and files herein, the memoranda of law and oral argument
15 submitted by the parties; and the court deeming itself fully advised, this court renders the
16 following decision on the three issues submitted for direct judicial review:

- 17 1. Does the City have authority to amend an expired, construction schedule in a binding
18 site plan?
19 No, the City has no authority to allow an extension of a construction phasing schedule
20 in this binding site plan after it has expired.
21
22 2. Does the City have authority to amend the expired, binding site plan construction
23 schedule if such amendment would conflict with the Condominium Declaration's
24 schedule for development?

25 ORDER ON DIRECT JUDICIAL
26 REVIEW - 2

Oak Harbor City Attorney's Office
865 SE Barrington Drive
Oak Harbor, Washington 96277
(360) 279-4540

1 The Pier Point condominium owners have the right to enforce the 7-year limitation on
 2 additional construction of condominium phases in the Declaration of the Pier Point
 3 Condominium as a running covenant. The City lacks authority to amend the expired
 4 binding site plan construction schedule regardless.

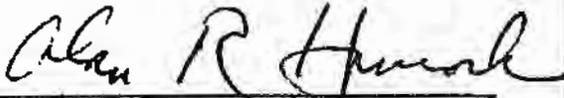
- 5
 6 3. Do the conditions and easements in Binding Site Plan #9-91 require all property
 7 owners impacted by the change to agree to any amendment to the binding site plan?
 8 In particular, did the expiration of the construction schedule affect any development
 9 rights of the condominium property owners in the un-built phases of the binding site
 10 plan?

11 Any further phases of the Pier Point Condominium are barred. Only if all landowners
 12 who have the benefit of the 7-year time limit on further phases were to waive its effect
 13 and agree that further phases could be constructed could the binding site plan be
 14 amended to that effect.

15
 16 The full text of this court's letter opinion of July 29, 2011 is attached hereto and
 17 incorporated in its entirety by reference in this decision.

18 IT IS FURTHER ORDERED that this matter be and hereby is REMANDED back to
 19 the Oak Harbor Hearing Examiner for action in compliance with this decision.

20 DONE IN OPEN COURT this 27th day of December, 2011.

21
 22
 23 
 24 Honorable Alan R. Hancock, Judge

25 ORDER ON DIRECT JUDICIAL
 26 REVIEW - 3

Oak Harbor City Attorney's Office
 865 SE Barrington Drive
 Oak Harbor, Washington 98277
 (360) 279-4540

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Presented by:

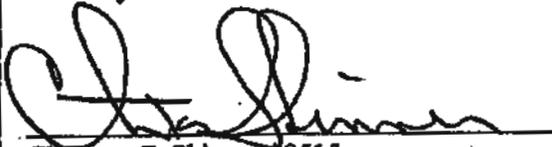
S

Margery Hite, #8450
Attorney for Respondent
City of Oak Harbor

Copy received; Notice of
Presentation waived;
Approved for entry:

S

C. Thomas Moser #7287
Attorney for Petitioner



Christon C. Skinner #9515
Attorney for Pier Point Condominium
Association and individual affected
property owners

ORDER ON DIRECT JUDICIAL
REVIEW - 4

Oak Harbor City Attorney's Office
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540


SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR ISLAND COUNTY

Law & Justice Facility, 101 NE 6th St, PO Box 3000, Coupeville WA 98239-3000
Phone: (360) 679-7361 Fax: (360) 679-7383

July 29, 2011

C. Thomas Moser, Esq.
 1204 Cleveland Avenue
 Mount Vernon, WA 98273

Margery Hite, Esq.
 Oak Harbor City Attorney's Office
 865 SE Barrington Drive
 Oak Harbor, WA 98277

Christon C. Skinner, Esq.
 Law Offices of Skinner & Saar, P.S.
 791 SE Barrington Drive
 Oak Harbor, WA 98277

Re: Alpine Village, Inc. v. City of Oak Harbor, et al.
 Island County Cause No. 11-2-00137-1

Dear Counsel:

The court held a hearing on July 29, 2011, on the issues submitted on direct judicial review in this case. Following the hearing, the court issued its oral decision on the issues. The court is now reducing its oral decision to writing to assist the parties as they move forward with the case.

Alpine Village, Inc. filed a petition under the Land Use Petition Act (LUPA), RCW 36.70C, appealing the Oak Harbor Hearing Examiner's Order Granting City's Motion to Dismiss Appeal. The hearing examiner's decision affirmed the Oak Harbor Director of Development's decision to deny Alpine Village's application to amend the binding site plan for the Pier Point Condominium property. Specifically, the application sought to revise the construction phasing schedule.

The court previously denied the respondents' motion to dismiss the appeal based on the grounds of collateral estoppel and res judicata.

By agreement of the parties, the court accepted direct judicial review of three legal issues arising from the Director's decision. These issues are as follows:

Court's Decision on Direct Judicial Review - page 1

1. Does the City have authority to amend an expired construction schedule in a binding site plan?
2. Does the City have authority to amend the expired binding site plan construction schedule if such amendment would conflict with the Condominium Declaration's schedule for development?
3. Do the conditions and easements in Binding Site Plan #9-91 require all property owners impacted by the change to agree to any amendment to the binding site plan? In particular, did the expiration of the construction schedule affect any development rights of the condominium property owners in the un-built phases of the binding site plan?

The background facts of this case are that on November 19, 1991, the City of Oak Harbor approved Binding Site Plan 9-91 for the proposed Pier Point Condominiums. The BSP provided for the phased development of 16 condominium units in 8, 2-unit buildings, to be constructed in 4 phases. The fourth phase was to be completed by October 1, 1996.

The City approved an amendment to the BSP allowing the 4 originally proposed phases of 2 buildings each to be changed to 8 phases of 1 building (2 units in each building) each. The amended phasing plan indicated that the last phase would be completed by January 15, 1996. The approved amendment showed a new construction schedule providing for 8 phases to be constructed by dates certain, with the final phase 8 to be completed by January 15, 1996.

On May 20, 1992, the previous owner of the property, Donna Mott, recorded a Declaration of Covenants, Conditions, Restrictions and Reservations. The declaration initially affected Phase One of the property, which was subject to the binding site plan. The Declaration also reserved the right to add seven additional phases, which would be subject to the same declaration.

RCW 64.34.216(1)(j) provides that the declaration for a condominium must contain, among other things, a description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised. (In passing, the court notes that the state code reviser has pointed out that RCW 64.34.020 was amended in 2008 to change subsection (29) to subsection (36).)

As required by RCW 64.34.216(1)(j), Article 3 of the Declaration for the Pier Point Condominiums sets forth a development schedule permitting the condominiums to be developed in up to 8 phases, and providing further that no additional phases could be added "more than seven years after the recording of this declaration."

Phases 1-4 of the condominium development were completed, but Phases 5-8 were never completed. Thus, they were not completed either within the timetable established for construction in the amended BSP recorded January 9, 1992, nor within the 7-year deadline set forth in Article 3 of the Declaration.

In Development Services Director Steve Powers's decision entered June 30, 2010, denying Alpine Village's application to amend the construction phasing schedule in the BSP, he also points out that the 7-year deadline for completion of construction of all phases of the condominiums was set forth in the Public Offering Statement for Pier Point Condominiums.

Thus, under the requirements of the binding site plan, no additional phases of the project could be added after May 20, 1999, i.e., 7 years after the recording of the declaration, at the very latest.

It goes without saying that the City cannot act outside of its powers under its municipal code, and therefore it is incumbent on Alpine Village to point to some provision of the code which permits an amendment to an expired construction phasing schedule set forth in an approved binding site plan.

The court will first address the issue of whether the City had authority to amend the expired construction schedule in the binding site plan.

Alpine Village cites subsection 21.80.200, 19.48.090, and 19.48.100 of the Oak Harbor Municipal Code as authority for its position that the City does have the authority to amend the expired construction schedule. It also cites RCW 58.17.215 in this connection.

Binding site plans are governed by Chapter 21.80 of the OHMC. As noted previously, Alpine Village first points to OHMC 21.80.200 as authority for its proposed amendment to the BSP. Subsection (1) of this subsection provides:

"Any applicant can request and make application to the city requesting a modification of up to five percent from a requirement of OHMC 21.80.130 or 21.80.140 or OHMC Title 19."

The City first argues that this code provision authorizes modification of certain code requirements for a BSP rather than establishing a procedure to amend an existing approved binding site plan. The court is not convinced that this is the case, so the court will assume, for the sake of argument, that this code provision allows for amendments to an existing approved BSP.

The City is correct, however, that subsection .200 by its own terms only applies to requests for modification of up to 5 percent from a requirement of OHMC 21.80.130 or 21.80.140. Subsection .130 only applies to commercial BSP's, so that clearly does not apply. Subsection .140 does include the requirements for submission of a BSP for completion of all phases of a phased condominium project. However, the 5 percent variation modification could not be applied to this code provision since no times are set in it. There are no other provisions of .140 that might apply in the situation regarding the Pier Point Condominiums.

Thus, OHMC 21.80.200 does not apply here.

The City is also correct that OHMC 19.48.090, relating to minor modifications of site plans, and 19.48.100, relating to major modifications of site plans, are not applicable here. The site plan review procedures set forth in OHMC 19.48 have to do with *uses* of property, that is to say, the horizontal and vertical arrangement of physical characteristics of a project and the site, as opposed to the *division* of property, which is the subject of the *binding* site plan review procedures of OHMC 21.80.

Moreover, the provisions of OHMC 19.48.090 and .100 do not apply by their own terms in the present case, even assuming that these code provisions applied to binding site plan review procedures, which they don't.

Finally, Alpine Village cites RCW 58.17.215 in support of its position. Again, the City is correct in arguing that this statute does not apply here. The City has elected to adopt a binding site plan review ordinance under RCW 58.17.035. Therefore, the provisions of the State Subdivision Act in RCW 58.17 do not apply.

Next, Alpine Village points out that the City has approved amendments to this BSP in the past, with the implicit argument presumably being that it can do so again. They point to statements by former city attorney Philip Bleyhl and former city planning director Tom Burdett in this connection. Mr. Powers had also apparently held the view at one time that this could be done, but he has changed his opinion. But the conclusion that the City can approve amendments to the BSP because it has done so in the past does not follow from the premise. The court recognizes that these prior actions of the City are final and binding, since there was no appeal of these actions under LUPA. Our State Supreme Court has ruled that even illegal land use decisions must be challenged in a timely, appropriate manner or they become unreviewable by the courts. The most recent case enunciating this rule is Habitat Watch v. Skagit County, 155 Wn.2d 397 (2005). But this doesn't mean that the City can continue to act contrary to its own ordinances.

In saying this, the court is not ruling or pronouncing that the City acted outside its authority in approving prior amendments to the BSP, because that issue is not before the court in this case. It is important to note that prior approved extensions of the construction schedule occurred while there was still time left within the approved construction schedule. This is in contrast to the situation in the present case, where Alpine Village is seeking such an extension after the construction schedule has already expired. There is no indication in the record that the City has actually allowed amendments to expired portions of a BSP. With all due respect to Mr. Bleyhl and Mr. Burdett, and to Mr. Powers, as far as his prior opinion is concerned, to the extent that they have opined that the city has the authority to amend an expired construction schedule in a BSP, their opinions are erroneous.

In general, it is difficult to understand how an argument can be made that the city should allow an amendment to the construction phasing schedule in a BSP after the time limits

have already expired. The construction schedule expired in either 1996, or 1999 at the latest, and there is no construction schedule left to amend.

The foregoing is, presumably, a complete answer to this appeal. The City has no authority to allow an extension of a construction phasing schedule in a binding site plan after it has expired.

The next issue to be addressed is whether the City has authority to amend the expired BSP construction schedule if such amendment would conflict with the condominium declaration's schedule for development. Alpine Village points out that the court has previously ruled that the property owned by Alpine Village is not subject to the declarations, conditions, restrictions, and reservations contained in the Declaration of the Pier Point Condominium. Rather, that Declaration only applies by its terms to the property upon which the built phases of the condominium are located, though the conditions and easements set forth in the BSP continue to apply to the remaining property.

That is true as far as it goes. But note that the only issue addressed in the prior litigation between Alpine Village and the Pier Point Condominium owners was the issue of *ownership* of phases 5-8 of the property. In the context of the prior litigation, to say that the Declaration only applies to property upon which the built phases of the condominium are located is to say, in essence, that the benefits and burdens imposed by the Declaration apply to the built phases of the condominium. But these benefits and burdens can also have legal application to property outside of the built phases of the condominium. To say that the Declaration only applies to property upon which the built phases of the condominium are located is not to say that Pier Point condominium unit owners do not have benefits that may apply to property outside of the condominium.

Again, Article 3 of the Declaration sets forth a development schedule permitting the condominiums to be developed in up to 8 phases and provides further that no additional phases could be added "more than seven years after the recording of this declaration."

RCW 64.34.216(1)(i) provides that a condominium declaration must contain a description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised.

After due consideration, it is evident that the restriction that no additional phases can be added more than 7 years after the recording of the declaration contained in Article 3 of the declaration is a running covenant, just as the name, *Declaration and Covenants, Conditions, Restrictions and Reservations*, states. The 5 elements of a running covenant are (1) a promise which is enforceable between the original parties, (2) which touches and concerns the land, (3) which the parties intended to bind successors, and (4) which is sought to be enforced by an original party or a successor, against an original party or a successor in possession, (5) who has notice of the covenant or has not given value. 1515-

1519 Lakeview Boulevard Condominium Association v. Apartment Sales Corporation,
146 Wn.2d 194 (2002):

The 7-year time limitation in the declaration has all the attributes of a running covenant. It is, in effect, a promise enforceable between the original parties, which touches and concerns the land, which the parties intended to bind successors, and which is sought to be enforced by successors, that is, the owners of condominium units, against a successor in possession, that is, Alpine Village, who has notice of the covenant by virtue of its recording.

The declaration specifically refers to the fact that the condominium may be developed in up to 8 phases, and phase 1 was submitted to the condominium form of ownership. The BSP was already a matter of public record, so it was clear what the land was that was subject to additional condominium phases. The developer reserved the right to add 7 additional phases. Article 3(b) of the declaration specifically stated that no additional phases may be added more than 7 years after the recording of the declaration, which was May 20, 1992.

Thus, the benefit of the 7-year limitation on further phases inured to the purchasers of Pier Point condominium units, while the burden of the limitation prevented the owner of the property subject to further phases or its successor in interest from developing any further phases after 7 years.

Again, the second question on direct judicial review is whether the City has authority to amend the expired BSP construction schedule if such amendment would conflict with the condominium declaration's schedule for development. The court has determined that the Pier Point condominium owners have the right to enforce the 7-year limitation in the declaration. Whether the City is required to acknowledge this covenant and refuse to approve any changes in the construction schedule in light of this fact has not specifically been briefed. It may be that the City does have the authority to refuse to amend the expired BSP based on a covenant issue such as this. On the other hand, the City may have the authority to go ahead despite the covenant. If it did so, however, the owners might well be able to successfully challenge any such approval based on the covenant which would prohibit that. And, in any event, as noted previously, the City has no authority to approve an amendment to an expired construction schedule under its ordinances.

The last question to be addressed is whether all property owners impacted by the change must agree to any amendment to the binding site plan. In view of the court's analysis set forth above, that is certainly true. Any further phases of the Pier Point Condominium are barred, and the project is effectively dead. Only if all landowners who have the benefit of the 7-year time limit on further phases were to waive its effect and agree that further phases could be constructed could that happen.

The court notes that this case has some features similar to the recent case of F.G. Associates v. Graham Neighborhood Association, Division One of the Court of Appeals docket no. 65279-6, decided May 31, 2011.

In that case, the court held that where a county ordinance mandates that land use permit applications not timely acted upon be cancelled, and such an application is cancelled pursuant to that ordinance, the county planning agency lacks the authority to thereafter reinstate that application in contravention of the pertinent ordinance.

The case is not directly on point, because in the present we are not dealing with a city ordinance mandating that land use permit applications not timely acted upon be cancelled. But we are dealing with a binding site plan which mandated that all phases of the condominium development be completed by 1996. Also, part and parcel of the condominium development was the requirement that a covenant be executed setting a time limit within which development rights, including the completion of all phases of the project, must be exercised.

The Court's discussion about the vested rights doctrine in the F.G. Associates case is instructive. The court quotes from Erickson & Associates, Inc. v. McLerran case, 123 Wn.2d 864, 872 P.2d 1090 (1994). In that case, the court stated that a date certain vesting standard reflects a recognition that development rights represent a valuable and protectable property right. On the other hand:

"Development interests and due process rights protected by the vested rights doctrine come at a cost to the public interest. The practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted." (123 Wn.2d at 873-74.)

The court went on to say in the F.G. Associates case that the "purpose of the vesting doctrine is to allow property owners to proceed with their planned projects with certitude. The purpose is not to facilitate permit speculation. Extended project delay is antithetical to the principles underlying the vesting doctrine." (Page 19.) The court held that a county planner had no authority to revive an expired permit application, and that his actions in doing so were a legal nullity.

The same general principles apply here in the context of Alpine Village's application to extend an already-expired construction schedule for the Pier Point Condominiums. The City has no authority to do that.

In its reply brief, Alpine Village states that the City and the respondent property owners seem to want it both ways: on the one hand, that Alpine Village is subject to the BSP, but on the other hand, the construction schedule has expired. Alpine Village then goes on to say that the logical conclusion must be that there is no BSP and Alpine Village is free

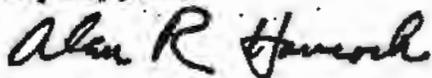
to make application for whatever site plan review process currently available under the City's comprehensive plan and land use regulations.

The court's view of this is that the land on which the Pier Point Condominiums have actually been developed is most certainly subject to the BSP. On the other hand, the construction schedule for additional phases of the originally contemplated project has expired, and no further phases of this particular project can be constructed. In that sense, it is probably true to say that there is no BSP as to the remaining land now owned by Alpine Village. Remember that the 7-year time limitation applied to further phases of the Pier Point Condominium project, not to any other project that might be applied for in the future. It would appear to be true that Alpine Village could apply for whatever binding site plan review or other development review process that might be available under City law. Of course, it would have to start from scratch, as it were, in that regard. That in and of itself would not appear to violate any of the rights of the Pier Point Condominium owners, and they would have the right to participate in any review process provided for under city or state law and the process would have to take its course.

These latter comments are dicta, but since these issues were raised, the court has addressed them.

The court will entertain an order consistent with the foregoing.

Very truly yours,



Alan R. Hancock
Judge

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Planning Commission
Staff Report & Minutes
from December 28, 2010

City of Oak Harbor Planning Commission Report

Date: December 28, 2010
 Subject: Binding Site Plan Code
Amendments

FROM: Ethan Spoo, Senior Planner

PURPOSE

This report discusses proposed code amendments to Chapter 21.80 ("Binding Site Plans") of the Oak Harbor Municipal Code (OHMC). The amendments will establish a process for altering previously approved Binding Site Plans (BSPs).

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. The ordinance shall provide for the alteration or vacation of binding site plans.

BACKGROUND

State law provides for the binding site plan process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). This chapter includes a section addressing under what circumstances proposed modifications to binding site plans may be considered. In the past, this section has been cited when considering applications to alter approved binding site plans. A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a pending application seeking to alter a previously approved binding site plan.

DISCUSSION

Binding site plan applications are made by a developer/property owner and then individual lots created by the binding site plan are usually sold or leased to other, and often multiple, property owners. If property owners later want to make changes to their property or redevelop their properties, they must do so in conformance with the previously approved binding site plan or seek to alter that plan. The City presently does not have a clear application process for binding site plan alterations. This lack of process can place a significant burden on a single property owner within the binding site plan who decides to upgrade, change, or redevelop their property. This in turn can limit economic development opportunities in the form of commercial and residential development.

The proposed municipal code amendment would establish a procedure for the acceptance and processing of a request to alter an approved binding site plan. When considering requests to alter a previously approved binding site plan, the question of property ownership and who has the

December 28, 2012 Binding Site Plan Code Amendments

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ability to request the proposed amendment is central to the acceptance and processing of the application. The existing code is silent on this topic.

The question of who must sign the application is clearly addressed in the proposed code. The proposed code draws from language found in RCW 58.17.215 that pertains to subdivision alterations, which requires that the application for the alteration of a subdivision contain the signatures of the majority of those persons having an ownership interest in the lots proposed to be altered. The draft prepared for Planning Commission discussion proposes a similar signature requirement for the alteration of a binding site plan. Another approach would be to require signatures from all persons having an ownership interest in the lots proposed to be altered. This approach would parallel State law regulating residential condominiums (RCW 64.34). Finally, if a binding site plan alteration is proposed on one lot, but the alterations to that one lot will affect areas which are owned in common, such as access drives, stormwater ponds, or commonly owned landscaping, then the signatures of all parties who have property affected by the proposed alteration are required.

SUMMARY

For the above reasons, staff proposes that a binding site plan alteration process be established. Staff prepared a draft ordinance for Planning Commission and public review intended to serve as a discussion tool for establishing this process. Staff plans to present additional concepts to Commission during the public hearing.

RECOMMENDATION

Staff recommends that Planning Commission open the public hearing on the proposed code amendments to Chapter 21.80 OHMC "Binding Site Plans", accept public testimony and continue the item to January 25, 2011.

ATTACHMENTS

- Attachment A – Draft Ordinance amending Chapter 21.80 of the OHMC to establish a process for altering previously approved binding site plans.

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" ESTABLISHING A PROCEDURE FOR ALTERING PREVIOUSLY APPROVED BINDING SITE PLANS.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code has an inadequate alteration process for approved binding site plans and;

WHEREAS, there are number of undeveloped lots within City boundaries which are subject to previously approved binding site plans and can no longer develop in compliance with those binding site plan approvals due to the current economic situation and;

WHEREAS, Comprehensive Plan land use policies 11(a) and 14(g) encourage infill development, especially commercial, which is compatible with surrounding land uses, and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010.

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment period, as required by WAC Chapter 197-11 and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no substantive comments from the Department; and;

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010 and January 25, 2011 and public meetings were held by the City Council on _____ and _____;

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby repealed in its entirety.

Section Two. Chapter 21.80 of the Oak Harbor Municipal Code is hereby amended to read as follows:

Chapter 21.80**BINDING SITE PLANS****Sections:**

21.80.005	Title.
21.80.010	Binding site plans allowed.
21.80.020	Division of property.
21.80.025	Condominium binding site plan.
21.80.030	Effect.
21.80.040	Application.
21.80.050	Procedure upon application.
21.80.060	Requirements for a binding site plan map.
21.80.070	Certifications required.
21.80.080	Title report.
21.80.090	Survey required.
21.80.100	Approval procedure.
21.80.110	Recording requirements.
21.80.120	Development requirements.
21.80.130	Standards for review of commercial binding site plan.
21.80.140	Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.
21.80.150	Performance guarantee requirements.
21.80.160	Warranty requirements for acceptance of final improvements.
21.80.170	Survey required.
21.80.180	Dedication – Warranty deed.
21.80.200	<u>Modification of binding site plan requirements.</u>
21.80.210	<u>Alteration of an approved binding site plan.</u>
21.80.300	Appeals to the hearing examiner.
21.80.400	Enforcement.
21.80.005	Title.

21.80.005 Title

This chapter shall be entitled “Binding Site Plans.”

21.80.010 Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (4).

21.80.020 Division of property.

Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;
- (3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel,

site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

- (4) A division of land subject to Chapter 64.32 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this chapter.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements either to be filed separately or on the binding site plan must be referenced on the binding site plan;
- (8) Zoning setback lines and building envelope sites where applicable;
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Parking areas, general circulation, and landscaping area where applicable;
- (14) Proposed use and location of building with dimensions where applicable;
- (15) Loading areas where applicable;
- (16) Utilities; and
- (17) Other restriction and requirements as deemed necessary by the city.

21.80.070 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site

plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.090 Survey required.

A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.

21.80.100 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.
- (3) The director shall review the final binding site plan and circulate it to other city departments to determine whether the requirements of this chapter and preliminary approval have been met.
- (4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (5) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (6) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.

- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130 Standards for review of commercial binding site plan.

The following standards shall apply to commercial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary

but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:

- (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
- (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has submitted a binding schedule for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in subsection (2) of this section.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request final approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.

- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170 Survey required.

- (1) The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.180 Dedication – Warranty deed.

Any dedication, donation or grant as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended

21.80.200 Modification of binding site plan requirements.

- (1) Any applicant can request and make application to the city requesting a modification of up to five percent from a requirement of ~~OHMC 21.80.130 or 21.80.140 or OHMC Title 19, so long as the maximum density allowed in the zone is not exceeded.~~
- (2) Such request for modification shall be considered by the director as an administrative decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;

- (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
- (d) Landscaping requirements are not thereby reduced.

21.80.210 Alteration of an approved binding site plan.

Alterations to an approved binding site plan may be considered subject to the provisions of this section.

(1) Submittal requirements.

- (a) Application form. An application shall be submitted on a form prescribed by the Director.
- (b) Authority to submit alteration application. The alteration application shall contain the signatures of a majority of property owners of lots proposed to be altered. Signatures of owners of lots within an approved binding site plan which are not proposed to be altered are not required on the alteration application form.
- (c) Commonly-owned property. If alterations are proposed which affect commonly-owned property such as tracts, easements, or rights-of-way previously approved under the binding site plan process, then the alteration application form shall contain the signatures of all property owners which have an interest in said property.
- (d) If the binding site plan is subject to restrictive covenants which were filed at the time of the approval of the binding site plan, and the application for alteration would result in the violation of the covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the binding site plan or portion thereof.
- (e) The alteration application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(2) Review process.

- (a) Applications for alteration of a binding site plan shall be processed under a Review Process II according to Chapter 18.20 OHMC.

21.80.300 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Three. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Four. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this 18th day of January, 2011.

() APPROVED by its Mayor this ____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
December 28, 2010**

ROLL CALL: **Present:** Bruce Neil, Kristi Jensen, Keith Fakkema, Greg Wasinger, Gerry Oliver and Jeff Wallin.

Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo; and Associate Planner; Melissa Sartorius

Chairman Neil called the meeting to order at 7:30 p.m.

MINUTES: **MR. FAKKEMA MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE OCTOBER 26, 2010 MINUTES AS PRESENTED.**

PUBLIC COMMENT

No comments.

ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing

The Planning Commission conducted a public hearing to consider finalizing the Interim Adult Entertainment Ordinance. Mr. Neil noted that the Public Hearing was opened on July 27th.

Mr. Powers reminded the Commission that in previous briefings staff provided information on the legal framework that regulates adult used, several studies on the effects of adult uses in communities and analysis regarding the location of such uses in Oak Harbor. Mr. Powers noted that this material was not recreated in the Planning Commission's December agenda packet but that he had three copies available if needed. Mr. Powers stated that staff is recommending that the Planning Commission make a recommendation to the Council to adopt the interim ordinance as the final ordinance based on the following:

- Adult Oriented Businesses are entitled to some protection under the State and Federal constitution.
- The courts have upheld regulations that are tailored to regulate the secondary effects (crime, property values, blight) of such businesses.
- Regulations cannot completely eliminate these uses from a municipality.
- The dispersed approach and concentrated approach have both been held to be constitutionally permissible as legitimate "time, place, and manner" of protected speech.
- The dispersed approach is not suitable for Oak Harbor since it eliminates almost all properties.
- Concentrated approach may be the best method for Oak Harbor to regulate adult entertainment facilities.
- There is more industrial land available for development than commercial lands.
- Properties identified in the interim overlay district, referred to as subject properties, fall outside the buffers of sensitive areas.
- Subject properties are located in a developing area and can be served by all utilities.
- Area of subject properties is more than all available community commercial lands.
- Since there have been no applications for the development of adult entertainment facilities in Oak Harbor and Island County the land identified in the interim ordinance will provide and ample supply of properties and will be augmented by properties identified by the county in and around the same area.

Mr. Powers recommended that Planning Commission open the public hearing again, take any additional public testimony, then close the public hearing and have Commission deliberation and make a recommendation to the Council.

Commission Discussion

Ms. Jensen asked about the sentence on page 21 of the packet titled 19.52.060 Non-conforming uses. She asked what is meant by, "an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction..." Mr. Powers explained that it meant that if someone claimed that they had a non-conforming status and the City said that they did not and the issue was taken to court that has jurisdiction to make that decision and the court decided that they in fact were non-conforming, that then would suffice for the meeting of the standards being a non-conforming use. Ms. Jensen also asked about 19.52.060 (2). Mr. Powers explained that there is an amortization period for a non-conforming use and that it will not continue forever.

Chairman Neil opened the public hearing. No comments were forthcoming and the public hearing was closed.

Mr. Oliver asked if there was anyone that had come forward stating that they would like move forward in opening an adult entertainment facility. Mr. Powers stated that there were none and that since the time that the City Council adopted the interim ordinance there have been one or two additional inquiries but there have been no applications filed yet.

ACTION: MR. FAKKEM MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE ADOPTING THE INTERIM ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE ORDINANCE AS THE FINAL ORDINANCE.

PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS – Public Hearing

Chairman Neil opened the public hearing.

Mr. Spoo presented the binding site plan code amendments. Mr. Spoo indicated that the amendments would establish a process for altering binding site plans and specify who can submit an alteration for a binding site plan.

Mr. Spoo explained that a binding site plan is a type of land division. There are three types of land divisions that the State allows City's to regulate. Those are subdivisions, short subdivisions and binding site plans. Binding site plans are primarily for commercial and industrial properties but can be used for residential condominiums.

Mr. Spoo stated that State law RCW 58.17.035 requires a binding site plan alteration and vacation process. If a City chooses to adopt binding site plans as an alternative land division process then we are required to have an alteration and vacation process. The City's existing code is incomplete in that aspect, as it does not have an alteration process.

Mr. Spoo explained that the central issue in the draft Binding site plan code presented is who may submit an alteration application to a binding site plan. Page 35 of the agenda packet shows a new section of the Binding site plan code called "Alteration of an approved binding site plan." The proposed new section states that it is the majority of owners whose lots are proposed to be altered. After further consideration, staff believes that it is better if all owners whose lots are proposed to be altered within a binding site plan should sign the alteration

application rather than just a majority unless you have a situation where there is commonly owned properties; then all owners within the binding site plan would have to sign the binding site plan application.

The draft ordinance also addresses the submittal process and review process. Alterations are a Review Process Type 2 which means that staff reviews the application and make a decision which is appealable to the Hearing Examiner.

Mr. Spoo concluded by recommending that the Planning Commission open the public hearing, take public comment and then continue the hearing until next month.

Mr. Powers added there was a public comment letter that was submitted and distributed to the Planning Commission (Attachment 1).

Mr. Spoo stated that the letter was submitted by Alice Smith and her opinion was that she doesn't think that alterations to binding site plans should be allowed unless all property owners within the binding site plan sign onto the alterations.

Commission Discussion

Commissioners asked the following questions:

Doesn't Alice Smith's letter say the same thing that Mr. Spoo just explained? Mr. Spoo said no, that actually what he said was that all property owners who are proposing to alter their lots would have to sign e.g. if you have 10 lots and someone proposed to alter three of those lots, all three of those property owners would have to sign the application because they own the lots that are proposed to be altered. What Ms. Smith is saying is that all 10 property owners would have to sign the alteration application even though the alterations would only directly affect 3 lots.

What has happened that brought this to staff's attention? Mr. Spoo said that an application was submitted to alter an existing binding site plan for some residential condominiums and that application was what brought to staff's attention that our code doesn't have an alteration process.

Chairman Neil opened the public hearing for public comment.

Sue Karahalios (1085 SE Regatta Dr., B-101) expressed concern that the City was changing the binding site plan rules midstream while the Pier Point Condominiums are in litigation with the applicant. She suggested that the Pier Point Condominiums should be "grandfathered". She noted that applicant has come before City staff twice and has been turned down and this appears to be a backdoor means to get what they want. Ms. Karahalios asked the Commission to think about themselves being in a situation where they had bought a condominium they believed had common area on the full plat, and because they didn't have enough money to keep going through litigation they get rolled over and then to have the rules changed again. Ms. Karahalios stated that is a very difficult thing to live with. She asked the Commission not to be a part of that.

Bob Severns (1085 SE Regatta Dr., C201) spoke as a resident of Pier Point Condominiums. Mr. Severns stated that he believed that the code change before the Commission comes from one particular binding site plan which is the Pier Point Condominium Binding site plan. Mr. Severns believed that the modification language in the current binding site plan ordinance has been fine up until now. Mr. Severns believed that the existing applicant has moved this process along so that the code change went into affect just before the Hearing Examiner hears yet

another appeal of the Pier Point Condominium Binding site plan. Mr. Severns also shared details about the legal process they had been through with the applicant regarding the Pier Point Condominium Binding site plan. Mr. Severns stated that the issue is who participates when you are altering an existing binding site plan and in Pier Point's case, it is an existing binding site plan with an expired construction schedule on the binding site plan. Mr. Severns stated that his point is that the language that has been proposed should not go forward unless it states that all owners and anyone with an interest in the property signs onto the alteration application. Mr. Severns recommendation was if this code change goes forward the Pier Point Condominium Binding site plan should be exempt.

Commissioners questioned Mr. Severns about the details of the Pier Point Condominium binding site plan and amendments, legal descriptions, easements, and common areas.

Mr. Powers reminded the Planning Commission that they were not being asked to be involved in making a decision on the pending application that Mr. Severns and Ms. Karahalois has spoken about. The Commission's roll will be to make recommendations about the language which should be in the code. Mr. Powers agreed that while it is helpful to hear a real life example as sort of a backdrop, the application that Mr. Severns is referring to is before the Hearing Examiner and it will be his responsibility to make a decision on the specifics.

Mr. Severns noted that he asked Mr. Powers how the proposed code language affects the Pier Point Condominiums ownership and that Mr. Powers stated that the City is not able to answer that. Mr. Severns stated that although he thinks he understands that answer but until the City can tell the eight residential owners what affect that potentially has on them he urged the Planning Commission not to move forward.

Alice Smith (1085 SE Regatta Dr., A-101) stated that all the property owners will be affected if the binding site plan is changed. Ms. Smith explained that prior to her purchase she read all the documents and saw that binding site plan had been expired so she bought it knowing that that property was not going to be built on. She didn't think it was right for the City to make it possible for what she signed as a legal document to change. She also suggested the "grandfathering" option.

Commission Discussion

Commissioners asked if the Hearing Examiner could rule something different for a particular situation and which would take precedence. Mr. Powers stated that neither would take precedence.

Mr. Powers went on to say that he appreciated the comments from citizens of the Pier Point Condominium have offered. He also said that staff apologizes if staff's first draft of the code amendment has created any undue anxiety. Mr. Powers stated that staff is attempting to put in place a process that the City code needs. He emphasized that this was a first draft and staff is already contemplating additional changes to the language as we move forward.

Mr. Powers went back to the question about which decision would take precedence. Mr. Powers stated that one is a decision on a pending application which City staff has already made a decision on: which is that we cannot process the amendment as proposed. That decision has been appeal to the Hearing Examiner. That is not litigation; that is just the land use process still inside of the City's administrative process. The other side is a deficiency in the City code which was discovered at our second look at the application. Upon further review we determined that our code lacks the appropriate process by which we accept and process someone's request to change a binding site plan. Mr. Powers emphasized that the simple act of requesting does not mean that it is approved. He pointed to the two denials that staff has already made on the

application as evidence that just because you ask doesn't mean that is what is approved. Regardless of that; a process is need in the code. That is what has been presented this evening. If the City Council adopted this language it would be in place but we still have to see what the Hearing Examiner's decision might be. That decision could then be appealed to the Court, which is what happened for the previous Hearing Examiner's decision, and depending on that hypothetical Court action we may or may not see the application come back for an amendment to the binding site plan. If that was to happen at least we would have a process in place that would tell us who needs to sign the application and how staff processes the application.

There was further discussion about whether the change in the process allows the applicant to do anything. Mr. Powers noted that there is no process in place today that tells us who needs to sign and that is the issue we have been dealing since the very beginning. Mr. Powers also cautioned against resting the entire conversation on the Pier Point example because there are other binding site plans and other property owners that may at some point in the future wish to amend their binding site plan and we should have a process in place.

Ms. Jensen stated that she would like to see language that concern a change for condominiums to require that anyone that owns at that time all need to sign.

Mr. Wallin asked how the modification process that is currently in place in the code works. Mr. Powers explained that the existing language on page 34 of the agenda packet. Mr. Powers stated that modification process is not very meaningful in terms of process.

Ms. Jensen asked how many times there have been changes to binding site plans during the time Mr. Powers has been with the City. Mr. Power indicated that there have been changes to Oak Tree Village Binding site plan and changes to Acom Plaza and two requests for Pier Point Condominiums which is the only residential binding site plan.

Mr. Powers stated that there is no outside applicant which has driven staff to propose the amendment. The amendment was the result of an application. The applicant has not said to staff that we need to write the code. This is based upon review by the City Attorney and the City's land use attorney that our code needs to be amended. Mr. Power noted the term "Takings" used earlier; and stated that that term would be truer if there weren't at least a process by which someone can apply. Mr. Power also stated that "Takings" are an action of government which someone feels has deprived them of use of or enjoyment of their property. Mr. Powers stated the suggestion of "Grandfathering" will be looked at.

Mr. Oliver asked if the City should wait until the decision was made on the Pier Point Condominiums since we don't know what the ramifications could be. Mr. Powers stated that without knowing what the Hearing Examiner might say he can't tell how the ordinance would work with that particular decision and that it doesn't trouble staff because one is process and the other is a particular in a very specific instance. They can be done independent of each other. Mr. Powers explained that the timing is not opportune but it is where we are in terms of staff being able to bring something forward. Mr. Powers also noted that the earliest the code revision gets to the Council is in February and the Council has ability to make the decision as to whether they wish to take action or whether they need additional information, or if they think the timing needs to be delayed for a particular reason. Mr. Powers noted that he has tried most of the evening to keep the code amendment separate from the pending application and he acknowledged that the pending application has a hearing date set for early January. If that hearing goes forward we would anticipate that a decision could be reached by the end of January. Mr. Powers referred back to the question of should we wait, and noted that it is not litigation from the City's perspective it is just a land use decision.

Mr. Oliver stated that he believed all interested parties should have a say in what is changed and not changed.

Rhonda Severns (1085 SE Regatta Unit C-101) stated that when she purchased her property in 1994 she was assured by her real estate agent that it was going to be gorgeous and to go and look at the Pier Point binding site plan which would show how the site was going to be developed. Mrs. Severns stated that the owners were told that they needed to work with Mr. Massey and they have tried and find that he has gone in a different direction. She stated that Mr. Massey said that he doesn't want his condos to look the way Pier Point looks. She was concerned that Mr. Massey could put a totally different look which would devalue Pier Point because it would look like an add-on. She was concerned about what protection there is for condominium owners when they buy into a project and what their rights are when the rules can be changed 15 years later.

Mr. Neil commented that he felt that staff was asking the Planning Commission to just simply approve a process to change a binding site plan but for some reason he feels that whatever recommendation they make is sitting in judgment of the Pier Point situation.

Mr. Powers stated that it was reasonable to feel that way, while he has suggested that they should be looked at separately, he is not so naive to say that they are linked as well. Mr. Powers stated that the comment about the construction schedule is one that we didn't address in the draft and needs to be addressed. The issue of a construction schedule is required under the Condominium Act and it is not something that is required under the binding site plan code. We may be better served as a community if binding site plans deal with those things that deal with binding site plans and allow the Condominium Act and to address those things that are intended to protect the rights of condominium owners. Part of the confusing nature of this particular application is that the construction schedule is on the binding site plan which probably isn't necessary but absolutely has to be on the condominium documents that are required. Mr. Powers stated that staff will come back with another draft that addresses the questions raised tonight.

Ms. Jensen asked if Commissioners could e-mail further suggestion. Mr. Powers stated that it was appropriate to communicate with staff but not to courtesy copy fellow Commission members.

ACTION: MR. FAKKEMA MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO CONTINUE THE PUBLIC HEARING UNTIL JANUARY 2011.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 9:08 P.M.

City of Oak Harbor
 865 S.E. Barrington Dr.
 Oak Harbor, WA 98277

12/24/2010

RECEIVED

DEC 27 2010

CITY OF OAK HARBOR
Development Services Department

RE: Amendments to Chapter 21.80 OHMC Binding Site Plans

Let me begin by saying I am opposed to any change in amendment process that would apply to currently existing site plans.

It may be within the prevue of government to establish a procedure to change a binding site plans going forward, however it's questionable whether there would exist the authority to enact processes that would have the effect of substantially affecting existing plans, retroactively, without the unanimous consent of those property owners individually and specifically affected.

There should be no processes enacted or considered which would allow or assist in retroactive changes ignoring the reliance upon site plans existing property owners have made in making their investments in property.

Property currently under an existing binding site plan should either be exempt from new amendment revisions if adopted or subject to the unanimous assent of those property owners who have already made investments based upon and reliance upon existing plans.

The City always has the right to grant waivers based upon site and/or specific development conditions that meet fully the current property owners rights as well as the Cities broader community wide responsibilities.

Under no conditions, should the city be involved is assisting a single individual or entity to profit at the expense of other property owners immediately adjacent.

Current property owners bought their existing property based on the binding site plan, rules and legal documents existing at the time of the purchase. To allow changes which may significantly change the use of their property is not ethically appropriate. The government should not be able to reach back and make changes in the current regulations that will affect many home owners who relied on the documents that were in place at the time of sale.

What I see is an attempt to change current Municipal Code to allow advantage to certain individuals who have friends and business associates in the City government and on this very City Council. The goal is to have the Planning Commission make it possible to change existing "Binding Site Plans" so an individual developer can individually profit at the expense of others who have previously relied on the word "binding" meaning exactly that.

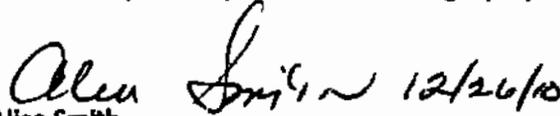
This current discussion is being prompted by one individual so let's provide a little background in order to shine a little light on this less than ethical person.

There is currently case of Alpine vs. City of Oak Harbor in which the binding site plan is allegedly holding back development of a specific property on Pioneer and Regatta. The individual bringing the suit is quite simply an arrogant bully who is used to getting his own way through the use of attorneys, intimidation and the use of friends and business associates currently within city government. He has been told by the hearing examiner in the cases previously brought to the courts he should work things out with us. He is not part of Pier Point condominiums and has no standing to act on its behalf without the majority consent of current owners. This is not his style however. To date all communication has been in the form of unilateral demands, suits or "mutually beneficial" arrangements with individuals he feels may be helpful to him.

He originally "bought" development rights to an undeveloped parcel within the development in which the binding site had expired. Turns out the seller did not own those rights. The title was thus not clear on the property, so he sued the title company and they refunded the money he paid for the rights and, incredibly, he now is trying to manipulate the City to accomplish his goal of developing the property anyway and without regard to the damage this would do the existing development. This should not be allowed. This individual wants to use our easements, utilities and property to build a non appropriate structure when he does not have the legal right to do so.

In November of 2006 the Hearing Examiner, Michael Bobbink, concluded and I quote "you cannot amend a Binding Site Plan to allow the schedule for phased condominium development to be changed after the deadline for completion of the development has passed." *Findings of Fact, Conclusions of Law, and Decision, at 10.*

When I purchased this property in 2001, it was clear from the documents I received at that time that the "Binding Site Plan" had expired and *NO additional building could occur without my specific agreement.* If the city makes retroactive the ability to change the binding site plan then owners like me who bought in good faith have been betrayed by the City of Oak Harbor. Filing suit against the city and the developer and anyone else possibly implicated imposes a burden I should not have to bear. What this man cannot do within the court system he is trying to do politically. I urge you not to allow past binding site plans to be changed. I urge you to not participate in this dishonest approach to changing City code to help developers and hinder single property owners.


Alice Smith

1085 SE Regatta Dr A101

Oak Harbor, WA 98277

Planning Commission
Staff Report & Minutes
from January 25, 2011

City of Oak Harbor Planning Commission Report

Date: January 25, 2011
Subject: Binding Site Plan Code
Amendments

FROM: Ethan Spoo, Senior Planner

PURPOSE

This report continues the discussion on Binding Site Plan (BSP) code amendments that was initiated by staff at the December 28, 2010 Planning Commission meeting. The amendments, if approved, would establish a process for altering previously approved Binding Site Plans (BSPs). Staff will present additional concepts for the Planning Commission's consideration and comment and requests that the public hearing be continued to February 22, 2011.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. The ordinance is required to provide for the alteration or vacation of BSPs.

BACKGROUND

Binding Site Plans

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a pending application seeking to alter a previously approved binding site plan.

December 28, 2010 Planning Commission Meeting

At the December 28, 2010 Planning Commission meeting, staff presented a draft code amendment to Chapter 21.80 ("Binding Site Plans"). These code amendments, as then drafted, would have allowed an applicant to submit a BSP alteration application with the signatures of a majority of the property owners whose lots were proposed to be altered. Staff modeled this language after the state law dealing with subdivision alterations (RCW 58.17.215). Planning Commission took public comment on the draft code at that meeting. The public comment received at the December 28, 2010 Planning Commission meeting generally could be divided into two categories:

- **BSP alteration applications should require signatures of all property owners within the originally approved BSP.** Several members of the public gave testimony indicating

that alteration applications for existing BSPs should be signed by all property owners within the originally approved BSP, rather than just a majority of those property owners whose properties are being considered for alteration as was proposed by staff.

- **Suggestion to “grandfather-in” already existing BSPs.** Members of the public indicated that, if new regulations are adopted which allow for the alteration of BSPs, that the new regulations not apply in the same way to existing BSPs in place at the time of adoption of the ordinance.

More detail on the public comments is available in the December 28, 2010 Planning Commission meeting minutes.

DISCUSSION

To respond to issues raised by members of the public and questions from Planning Commission, especially the issue of whose signatures should be required on a BSP alteration application, staff researched what the requirements are of state law and how other communities in Washington approach this issue. The following discussion offers some guidance as to how the city might approach the issue of who has the authority to submit an application for alteration of a BSP.

With regard to BSP alterations, state law in RCW 58.17.035 says:

“Such ordinance ...shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.”

RCW 58.17.035 also says:

“All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, or tract created pursuant to the binding site plan.”

From the above provisions, staff infers that the drafters of the state law intended that BSPs be enforceable, but also amendable. State law, however, is silent as to how the alteration process occurs, leaving this largely to the discretion of local jurisdictions. It is worth noting that subdivisions are also “binding” against property, meaning that the conditions approved as part of the subdivision plat are recorded against the property and apply to all subsequent owners of that property. For instance, easements for drainage may be recorded as part of a subdivision plat against a specific lot within the subdivision. That easement applies to all subsequent owners of the property. Yet, that easement can be vacated or altered and state law allows this to happen with only a “majority of those persons having an ownership interest of the lots, to be altered.”

The latitude granted to local jurisdictions to establish a process to alter BSPs in State Code, has resulted in a variety of different methods and threshold levels for altering BSPs across the state, as discovered by staff in researching the issue. Attachment 1 summarizes the research conducted by staff for 13 different jurisdictions across the state. These 13 different jurisdictions have a variety of different thresholds for requesting a binding site plan alteration ranging from requiring a majority of the signatures of only the lots to be altered to requiring all of the signatures of every property owner within the binding site plan.

With the above information in mind, staff offers the following principles for further consideration by Planning Commission:

- **Binding, but subject to change.** Binding site plans maps are recorded, legally binding documents, just like subdivisions. This means that the conditions of the binding site plan apply to all subsequent owners of the individual properties within the binding site plan. At the same time, state law requires that the City have a process to alter binding site plans. Thus, it would seem that state law does not intend that binding site plans never be subject to change.
- **Consistency with approved BSP.** As noted by those who testified at the December 28, 2010 public hearing and as written in state law, all subsequent owners of property are obligated to be consistent with the binding site plan. While it is reasonable for property owners within a BSP to expect continuity and consistency with the approved BSP as properties are developed, this expectation must be balanced with the requirement for alterations.
- **BSP changes affect some or all property owners within a BSP.** Staff recognizes that changes to one property can affect surrounding properties.
- **The City should not be in the position of settling disputes between property owners which are not in the public interest.** Many of the items traditionally shown on binding site plan maps or recorded with binding site plans, such as covenants, are items which do not pertain to the public interest and may, therefore, put the City in the position of being the arbitrator between property owners.

CONCEPTS FOR DISCUSSION

In working towards preparation of the second draft of this code staff considered:

- The Planning Commission's comments and questions from the December 28th hearing,
- Community input in the form of public testimony at that same hearing,
- The requirements of state law, and
- The need to balance property owner interests and expectations.

With this in mind staff is considering the following concepts for inclusion in the second draft and seeks the Planning Commission's feedback on these ideas:

- **Two-tiered process for alterations.** Staff is considering a two-tiered process for alterations:
 - In the first tier would be alterations to binding site plans in existence at the time the subject BSP code is adopted. Alterations to these properties would require the signature of *all property owners within the BSP*.
 - Alterations to future BSPs can be requested by *all of the property owners whose lots are proposed to be altered*. Alterations to commonly owned property within the BSP would continue to require the signatures of all property owners.
- **Reduced requirements for what is shown on binding site plans.** It is staff's observation that the existing BSP code requires more information regarding covenants

and agreements than is necessary. For example, the BSP code requires that reference be made to "covenants...or other agreements" on the face of the BSP map document. Covenants and agreements contain two types of information: (1) information which is in the public interest and (2) information which is not in the public interest. Since covenants and agreements include both types of information and are recorded with the binding site plan, all of the items which are not in the public interest become part of the binding site plan at recording. The city is then in the position of settling disputes for items which are not in the public interest, but which may nevertheless be part of the recorded binding site plan. Staff believes that the City should focus its efforts on monitoring those items which are in the public interest. Therefore staff proposes to change the code to exclude items which are not in the public interest from the binding site plan recorded documents.

It is staff's plan to seek Planning Commission and community input on the concepts presented above, plus any additional general comments on the proposed amendments, at the January 25, 2011 meeting. Once this input is received staff will prepare a second draft of the code and present it to the Planning Commission at a later date (tentatively set for February 22, 2011).

RECOMMENDATION

Accept public testimony and continue the public hearing to February 22, 2011.

ATTACHMENTS

- Attachment 1 – Binding Site Plan Alterations: Signatures Required by Washington Jurisdictions.

Attachment 1 - Binding Site Plan Alterations: Signature Required by Washington Jurisdictions

Jurisdiction	Required Signatures		Relevant Clause
	Less than All	All	
Auburn	X		"all owners of the properties directly affected"... "no adverse impact"
Bellingham		X	"shall be processed in the same manner as an original application."
Bothell		X	"processed in same manner as the original specific binding site plan"
Cheney	X		"shall contain the signatures of the majority of the persons having an ownership interest of lots, tract, parcels, site, or divisions in the subject binding site plan or portion to be altered"
Federal Way		X	"same process and requirements...for the approval of a binding site plan"
Kitsap County	X		"shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered"
Lacey	X		"application shall contain the signatures of the majority of persons having an ownership interest of the lots, tracts, or parcels, sites or divisions in the subject land division or portion to be altered"
New Castle	X		"signatures of owners of portions of a binding site plan which are not altered by an amendment or rescission are not required on the amended binding site plan"
Sultan		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
University Place		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Walla Walla		X	"amendments... shall be processed pursuant to this chapter and must be recorded."
Woodland		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Yakima		X	"the acknowledged signatures of all parties having an ownership interest in the property"

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
January 25, 2011**

ROLL CALL: Present: Kristi Jensen, Keith Fakkema, Greg Wasinger, Gerry Oliver and Jeff Wallin. Absent: Bruce Neil. Staff Present: Development Services Director, Steve Powers; Senior Planner Ethan Spoo; and Associate Planner; Melissa Sartorius

Vice Chair Fakkema called the meeting to order at 7:30 p.m.

MINUTES: MR. WASINGER MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE DECEMBER 28, 2010 MINUTES AS PRESENTED.

PUBLIC COMMENT: No comments.

PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS – Public Hearing (continued)

Mr. Spoo summarized research and presented concepts for further discussion.

Mr. Spoo reported that State law requires an alteration process for binding site plans (BSP) and currently the City does not have an alteration process. State law also indicates that all development within a binding site plan shall be consistent with the approved binding site plan. Local jurisdictions are given the latitude and flexibility to shape that process to meet local circumstances.

Mr. Spoo reported that staff looked at 13 other jurisdictions across the State and found that 8 jurisdictions require all property owners within a BSP to sign a binding site plan alteration, and 5 jurisdictions require something less than all of the property owners to sign. Mr. Spoo further stated that staff believes that a balance is needed which allows for alterations but respects the rights of property owners within a BSP. Mr. Spoo stated that staff is proposing a two-tier process for requesting alterations to BSP's based on the findings and comments received at the last Planning Commission meeting.

Tier 1 provides for BSP's which exist at the time the code is adopted, assuming the code is adopted those BSP's would require the signatures of all owners within the BSP in order for an alteration to be made. Tier 2 would provide for future BSP's. Those BSP's would require the signatures of only the property owners whose lots are proposed to be altered.

In addition to the two-tier process, staff is recommending a change in requirements regarding what is shown on the binding site plan map. Only those things which are in the public interest would be shown on the BSP map. The existing BSP map requirements have required information which is not in the public interest to be recorded on the binding site plan. Once that information gets recorded, the City must settle disputes between property owners, even if those disputes don't pertain to the public interest. By reducing the requirements for what is shown on the binding site plan map, the City won't be in the position in deciding between private issues between property owners.

Mr. Spoo concluded by recommending that the Planning Commission accept public testimony and continue the hearing to February 22, 2011.

Mr. Fakkema opened the public hearing.

Bill Massey (41 NE Midway Blvd. Ste. 101) pointed out that OHMC 21.80.200 allows for minor modifications and has been used for minor modifications in the past. Mr. Massey supported keeping the existing code in place. Mr. Massey also used the Oak Tree Village Binding Site Plan as an example to demonstrate how a modification could be stopped by one person even though their lot may not even be connected. Mr. Massey also pointed that some of the Goldie Road properties that may be annexed in the future already have binding site plans through the County. Mr. Massey stated that there were more implications to the proposed changes than just the specific binding site plan that was discussed at the previous meeting.

Kenneth Manny (2094 SW Dillard Lane) stated he was a property owner within the Oak Tree Village BSP. He noted that this BSP is separated by Cabot Drive and that making changes, minor or otherwise, would require him to get the consent of the property owners on the other side of Cabot Drive. Mr. Manny stated that the issue was of procedural fairness for people that own property in a situation where the interest of one group of owners is entirely different and separate from the interest of another group of owners. Mr. Manny believed if the Planning Commission were to adopt the plan that requires 100 percent unanimity; it would stop any type of development or modifications. Mr. Manny stated that it gives a disproportionate advantage to persons who simply say no for the reasons of saying no or they're too busy to read the document or they are not inclined to be cooperative or worst yet they want to get something out of it in exchange for their willingness to cooperate even though they are in no way affected. Mr. Manny asked the Planning Commission to carefully consider the options so that we don't find ourselves in a position where people with a legitimate interest in making a change to a BSP are essentially thwarted simply because it is impossible to get 100 percent unanimity among all of the owners. Mr. Manny stated that Oak Tree Village was a perfect example of why 100 percent unanimity can never be enforced and be fair at the same time.

Mr. Powers commented that the ideas that have been presented are only concepts at this stage and there is no specific draft language before the Planning Commission at this time.

Mel Vance (PO Box 2882) stated that he was torn between requiring a simple majority or a super majority and he was in favor of everyone having input regarding a BSP amendment. He also stated that he didn't think Oak Tree Village was a good example because he believed it was an extremely unusual situation to have a BSP that is split by a street. He suggested that Oak Tree Village be split into two BSP's if possible.

Chris Anderson (390 NE Midway Blvd.) stated that he was also a property owner within Oak Tree Village. Mr. Anderson read from RCW 58.17.035 and noted that it singles out commercial and industrial binding site plans and says that the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval. Mr. Anderson suggested treating commercial/industrial and residential BSP's separately as the RCW seems to do.

Bob Severns (1085 SE Regatta Dr., C201) agreed that common ownership of facilities such as driveways, parking spaces and stormwater facilities is appropriate and are commonly found in BSP's. Mr. Severns also noted that BSP's get changed even without alteration language by getting the proper parties together and execute documents to allow the change. Mr. Severns asked that the Planning Commission to not be confused that BSP's can't be changed because they can. Mr. Severns urged the Planning Commission not to make it too easy to change a BSP because to say that we're going to change the BSP and we're going to ignore the other parties even though they purchased their properties after the fact is not something the City wants to do. Mr. Severns pointed out that the majority of the 13 jurisdictions require all parties

to participate in alterations. Mr. Severns agreed with a simpler BSP process on a go-forward basis but suggested that there needs to be a proper search done on people that have an interest in the property and they need to be included in major alterations.

Sue Karahalios (1085 SE Regatta Dr., B-101) thanked staff for acknowledging that there are rights given to those that have an existing BSP. She also appreciated that there is consistency in how people are treated. She supported having all the owners involved in a BSP alteration.

Tom Moser (1204 Cleveland Ave., Mount Vernon WA) detailed his background and experience in land use law. Mr. Moser pointed out that the option to say that everyone gets to vote and you have to have 100 percent gives tremendous veto power to somebody who may own a lot or have an interest in a piece of property. He encouraged the Planning Commission to reconsider that option.

Mr. Moser noted that the language proposed uses the term "restrictive covenants". He asked if the term meant the face of the BSP or does it mean the CC&R's or the declarations of CC&R's. He suggested defining the term.

Mr. Moser stated that the City should divide between public and private as Mr. Spoo has suggested.

Mr. Moser presented a letter dated November 3, 2004 from the City of Oak Harbor's City Attorney Phil Bleyhl (Attachment 1). Mr. Moser noted the following points Mr. Bleyhl made in the letter:

- The City should not be in the business of deciding ownership.
- Minor modifications to BSP's are allowed under the code.
- Sign-off by parties to the BSP is not necessary because it gives too much control.

Mr. Moser noted that there is a history of the City doing fine on amending BSP's until very recently. The BSP amendments were done administratively and he didn't see any reason that couldn't continue.

Mr. Moser concluded by stating that just because somebody hasn't built on a lot yet doesn't make it the property of the people who have built and that doesn't transfer ownership to somebody who hasn't purchased the land.

Being not further public comment, Mr. Fakkema closed the public hearing.

Commission Discussion

Commissioners asked the following questions:

How many jurisdictions were looked at? Mr. Spoo said staff only looked at jurisdictions that had the information readily available on the internet which are the 13 jurisdictions listed in the staff report.

Did staff also consider commercial verses residential BSP's? Mr. Powers said that staff did consider whether it is necessary to have a different process for commercial and industrial BSP's and BSP's used for condominiums but tried an approach that covers all the bases with a single set of procedures and then deal with the specifics of each application as they come forth.

The public hearing was continued to February 22, 2011.

Steve
LARRY C.
[REDACTED]
[REDACTED]

LAW DEPARTMENT

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November 3, 2004

Scott M. Missall
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Re: Pier Point

Dear Mr. Missall:

This letter is in response to your letter of October 15, 2004 concerning title to the lots which are undeveloped in the Pier Point Condominium Binding Site Plan area.

It seems to me there are four major issues:

1. Whether the development rights to these lots still exist as property rights of the title holder.
2. Whether the City can process a change in the development schedule as a minor modification of the site plan or for a change in intensity of use for a lot.
3. Who must sign-off on an application or approved site plan change.
4. Whether the owner of the vacant lots can shift units from one lot to another on the plat.

P.C. HRC.
REC'D. 1/25/11
RCP

ATTACHMENT 1

1. Ownership is a predicate to processing of a permit change. Because the City does not adjudicate ownership, the City does not have to process a land use permit where ownership is disputed. See for example, Taylor v. Board of Adjustment of the Town of South Bethany (Del. Supr.) 1985 WL 188302. However, since the City permit process is not actually the place to adjudicate ownership disputes, the City may proceed with processing a permit even when there might be questions concerning title. MacDonald v. Board of Adjustment of the Town of Dewey Beach, 568 A.2d 1083, 1086 (Del. 1989) This is especially true where the applicant, as you have now provided, shows recognition of ownership interest by a title company, the City can move forward with processing the application for a binding site plan change. Sun Oil Company v. Railroad Commission, 390 S.W.2d 803, 807 (Tex. 1965). Such processing or even approval, however, is not made in derogation of any property rights of others who own or rent property in Pier Point Condominiums. Rather, in a sense the City is looking at the site plan -- i.e., the plan for development and not the binding site plan -- i.e., the division into lots, easements and other reciprocal rights. Thus, the City can approve changes again to the site plan without adjudicating other's ownership interests. The difficulty for your client is that both types of information are on the same document.

2. Minor modification process. It is apparent that the previous Planning Director followed a long process of dealing with these issues by allowing amendments of the binding site plan under OHMC 21.80.200. It is my understanding that such long standing interpretation will not be disturbed by the City at this time, although, it seems a bit strained.

Minor modification, however, cannot mean the shifting of residential units from one location to another in the same development.

3. Sign-off by parties on the binding site plan. A question was raised as to who had to sign off on any change to the binding site plan map. That issue is not addressed in the City Code. RCW 58.17.215 et seq., provides some guidance. It authorizes a partial amendment which covers only certain lots. So long as the owners of the lots are wanting to make the change to their lots, they can sign-off to an amendment which covers the "site plan" elements of the lots. It would seem, therefore, an amending document should only show the lots for which change is being sought and that the person's needing to sign-off on the site plan are the owners of record for the site plan and not all of the owners of the binding site plan. Such an approval would not affect the other owners' interests. In fact, as the RCW sections above cited: an easement interest will not be affected by such amendment. However, again, the City has no authority to affect the others' interests in the condominium and because site plan elements are located on the binding site plan map, it is arguable such rights may be claimed. In short, the new map would only cover the lots

Involved. The issue then is access easements. I understand you feel those are acceptably handled. We would take no position on that.

4. Change in development schedule. It is my understanding that you are claiming the development schedule is purely a creature of City regulation. Therefore, it is part of the site plan and not an issue of ownership and a property right of others in the condominium association. As such, it is subject to amendment by the City and should be allowed subject to any changes in regulatory law which have occurred since then. I can conceive of no reason why it should not be permitted. Approval of the schedule change, however, would subject the owner into applying for and obtaining all of the necessary permits.

Yours truly,



Philip L. Bleyhl
City Attorney

PLB/kp

cc: Development Services

Planning Commission
Staff Report & Minutes
from February 22, 2011

City of Oak Harbor Planning Commission Report

Date: February 22, 2011
 Subject: Binding Site Plan Code
Amendments

FROM: Steve Powers, Director and Ethan Spoo, Senior Planner

PURPOSE

At its February meeting, Planning Commission will be in the third month of discussions regarding amendments to the binding site plan (BSP) code. This report continues those discussions where they left off in January. The code amendments, if approved, would establish a process for altering previously approved BSPs. With this report, staff presents the second draft of the code for the Planning Commission's consideration.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. Should a city chose to adopt such an ordinance, is required to provide for the alteration or vacation of BSPs.

BACKGROUND

Binding Site Plans

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a recent application seeking to alter a previously approved binding site plan.

January 25, 2011 Planning Commission Meeting

Discussion concepts presented by staff at the January meeting introduced a two-tiered system whereby alterations to BSPs already in existence would require the signatures of all property owners within that BSP. All future BSPs would require that only those property owners whose lots are proposed to be altered sign the alteration application.

Planning Commission accepted testimony in an open public hearing based on the concepts presented by staff. Two distinctly different opinions were voiced by those who gave testimony: (1) those who believe that the signatures of all property owners within a BSP should be required to make alterations and (2) those who believe that signatures of less than all property owners within a BSP should be required (i.e. only those whose lots are proposed to be altered). The former group pointed out that a BSP, by its very nature, sets up expectations by property owners

February 22, 2011 Binding Site Plan Code Amendments

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of the need for consistency with that BSP. The latter group expressed concern that requiring all signatures would effectively prevent any changes to BSPs since one reluctant property owner could halt an alteration.

More detail on the public comments is available in the January 25, 2011 Planning Commission meeting minutes.

DISCUSSION

Additional Research

Based on comments received at last month's Planning Commission meeting, staff conducted additional research regarding how other communities around the state process alteration requests, as well as the nature of BSPs in Oak Harbor.

At last month's meeting, staff presented research from 13 communities distinguishing between those who require all property owners within a BSP to sign and those which require less than all to sign alteration applications. This month staff researched additional communities increasing the total number to 59. Of the 59 communities researched, 11 communities either do not have a BSP process or an alteration process. Of the 48 communities which do have a process, 39 (81%) require signatures by all property owners within the BSP to make alterations. However, we should proceed with caution in drawing conclusions from this information. Most of the jurisdictions in this category have code language stating that the same process shall be used for alterations as for submitting the original binding site plan application. The two actions are treated the same. It is not clear from this research whether or not any of these jurisdictions have encountered any difficulty in implementing this approach to alterations. This research also does not give any insight in to whether the other jurisdictions' application procedures are guided by policy, rather than code. See Attachment 1 for further detail.

Staff also looked into the number and type of BSPs within the Oak Harbor city boundaries. There are 13 BSPs in city boundaries, ten of which are commercial/industrial BSPs and three of which are residential condominiums. Only one BSP within the city has a construction schedule associated with it. See map in Attachment 2.

Topics for Consideration

The following topics are offered for the Planning Commission's consideration as you review the second draft of the amended code:

- **The City must have an alteration or vacation process.** It bears repeating that the City of Oak Harbor is required under RCW 58.17.035 to provide a process for property owners to seek to alter or vacate portions or all of an approved binding site plan.
- **Submittal of an application is the beginning, not the end, of the process.** It is important to note that the proposed code amendment is primarily intended to put into place a process by which applications for alterations may be submitted and considered. The process only begins with the receipt of the application. The review of the alteration application is deemed a Type II process (an administrative decision, requiring notice to the general public and property owners within 300 feet). This administrative decision is appealable to the City's Hearing Examiner.

- **Varying property owner interests.** At the January 25, 2011 Planning Commission meeting, one of the central issues (based on public testimony) was the topic of varying property owner interests. At issue is whether a single property owner, or group of property owners, should be able to submit an application for a binding site plan alteration without first securing the permission (in the form of signatures on the application) from all property owners within the binding site plan.
- **A BSP is a method of dividing land (public versus private interests).** The binding site plan process is a means of dividing property; it is the approval of this land division that is the 'public interest.' The existing code language requires certain information to be included on a binding site plan map that is not necessarily directly related to this purpose. Some of this information may be regulated by other permit procedures (such as through a site plan and design review approval per OHMC 19.48) or it may be in the form of private agreements (covenants) between property owners. It is staff's belief that the City should not be adjudicating private interest issues, but should focus on issues clearly in the public interest.
- **Research findings.** Staff research shows that the majority of jurisdictions choose to require the signatures of all property owners within a BSP for alterations (by way of stating the procedure for alterations is the same as for original approval). It is unclear from this research whether or not requiring all property owners within a BSP to sign has led to problems. In other words, these cities should not necessarily be looked at as directly applicable models for the City of Oak Harbor. Staff research also shows that the City has relatively few BSPs and most of the BSPs are commercial or industrial. The staff recommendation seeks to create a process that will work with existing and future binding site plans.

SUMMARY OF SECOND DRAFT OF CODE

The second draft of the code responds to the above topics. The code has the following features:

- **Limit what is recorded on BSP map documents.** In order that the City focus its role on the subject land division and what is in the public interest, the language proposed by staff will limit what is recorded on future BSP map documents. Staff is proposing to limit what is recorded on a binding site plan map to those items which pertain directly to land division; primarily lots and their dimensions, rights-of-way, easements (access, parking, open space, etc.), and public utilities (sewer, water, storm).
- **The City will only accept alterations that pertain to the public interest.** As a way of distinguishing between public (land division) and private interests, the City will only accept an alteration application if it pertains to the items recorded on a binding site plan map. Since the items which are recorded on a binding site plan map are being limited, as per the first bullet above, staff believes this will focus the City on those items in the public interest.

Binding site plans approved prior to the date of the new ordinance include items not pertaining directly to land division. In recognition of this fact, the City will accept alterations to already established binding site plans for elements such as zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed

use, location of buildings, and loading areas.

- **Alteration applications may be submitted by only those property owners who are directly affected.** At its January meeting, Planning Commission accepted public testimony indicating that requiring all signatures for BSP changes could limit private property rights as well as create a process which may be impossible for a property owner to initiate. On the other hand, the Commission also heard testimony that those property owners who may be directly affected by the proposed alteration should have a role in determining whether the amendment is submitted. After reviewing this testimony, other codes and weighing the pros and cons of different approaches, the staff recommends that only those property owners directly affected by the proposed alteration be required to sign the application. In some cases, this may be only one property owner if a change directly affects only his lots (e.g. the alteration of a property line or easement). In other cases, this may require the signatures of multiple property owners who may be affected, as would be the case if an alteration to a shared parking facility were proposed. Each alteration application would need to be accompanied by a title company certification proving ownership, and therefore, ability to submit the application. It is staff's opinion that this process is the most appropriate given all the information at our disposal.

CITIZEN COMMENTS

The Chair of the Planning Commission received a letter from Mr. Christian Anderson on behalf of Dry Lake Land Stewardship, LLC. Dry Lake Land Stewardship has been planning a new commercial development, which is partly within the Oak Tree Village Binding Site Plan. It is Mr. Anderson's opinion that alterations to a BSP should require the signatures of only the property owners directly affected. His contention is that requiring additional signatures may constitute a "taking" of private property and could hinder economic development within the City.

The Chair of the Planning Commission also received a letter from Mr. William Massey. In that letter, Mr. Massey expressed his opposition to requiring all property owners within a BSP to sign alterations. He proposed two alternative ways to process an alteration application: (1) by vote of the majority of the property owners contiguous to and directly affected by the proposed alteration and (2) a minor/major system whereby minor alterations would be decided administratively by staff and major alterations would be decided by the City's hearing examiner.

RECOMMENDATIONS

- Accept public testimony and close the public hearing.
- Recommend approval to City Council of the amendments to Chapter 21. 80 OHMC ("Binding Site Plans") as drafted in Attachment 5.

ATTACHMENTS

- Attachment 1 – Binding Site Plan Alterations: Signatures Required by Washington Jurisdictions.
- Attachment 2 – Map of binding site plans in Oak Harbor.
- Attachment 3 – Letter from Mr. Christian Anderson, Dry Lake Land Stewardship, LLC
- Attachment 4 – Letter from Mr. William Massey

- Attachment 5 – Draft amendments to Chapter 21.80 OHMC (“Binding Site Plans”) (Please note that both a legislative edit version and a ‘clean’ version are provided.)

Attachment 1 - Binding Site Plan Alterations: Signature Required by Washington Jurisdictions

 previously researched

Jurisdiction	Required Signatures		Relevant Clause
	Less than All	All	
Aberdeen			Do not have BSP process
Anacortes		X	Modifications may be applied for pursuant to established city procedures.
Arlington		X	The application materials, procedures, review criteria, standards, etc., shall be the same as for the initial binding site plan
Auburn	X		"all owners of the properties directly affected"... "vacations shall no adverse impact"
Bainbridge Island			Do not have BSP process
Battleground			No alteration process
Bellingham		X	"shall be processed in the same manner as an original application."
Bonney Lake			Do not have BSP process
Bothell		X	"processed in same manner as the original specific binding site plan"
Bremerton			No alteration process
Bunien	X	X	For residential, all signatures required, unless vacation in which case it's only the property owners involved. No commercial/industrial BSP allowed.
Burlington			No alteration process
Camas		X	Modifications may be applied for pursuant to established city procedures.
Centralia		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded
Cheney	X		"shall contain the signatures of the majority of the persons having an ownership interest of lots, tract, parcels, site, or divisions in the subject binding site plan or portion to be altered"
Covington		X	same process required for a new application as set forth in this chapter
Des Moines		X	no alteration process
Edmonds		X	The proposed modification shall be considered in the same manner as the proposed subdivision.
Ellensburg			Do not have BSP process
Federal Way		X	"same process and requirements...for the approval of a binding site plan
Issaquah		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the Planning Director/Manager using the criteria in IMC 18.13.160
Kenmore		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter
Kirkland		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the planning dept. using the criteria in KMC.
Kitsap County	X		"shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered"
Lacey	X		"application shall contain the signatures of the majority of persons having an ownership interest of the lots, tracts, or parcels, sites or divisions in the subject land division or portion to be altered"
Lake Forest Park			Do not have BSP process
Lake Stevens		X	Any request for a revision to an approved plan shall be reviewed pursuant to Section 14.16A.235
Longview		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded.
Lynnwood		X	Alteration of an approved preliminary or final binding site plan other than slight deviations as defined in LMC 19.75.070(B) shall be accomplished by application as set forth in LMC 19.75.035 and shall be subject to all procedures and requirements established in this chapter.
Maple Valley		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application, as set forth in this chapter.
Mercer Island			Do not have BSP process
Mill Creek			Do not have BSP process

ATTACHMENT 1

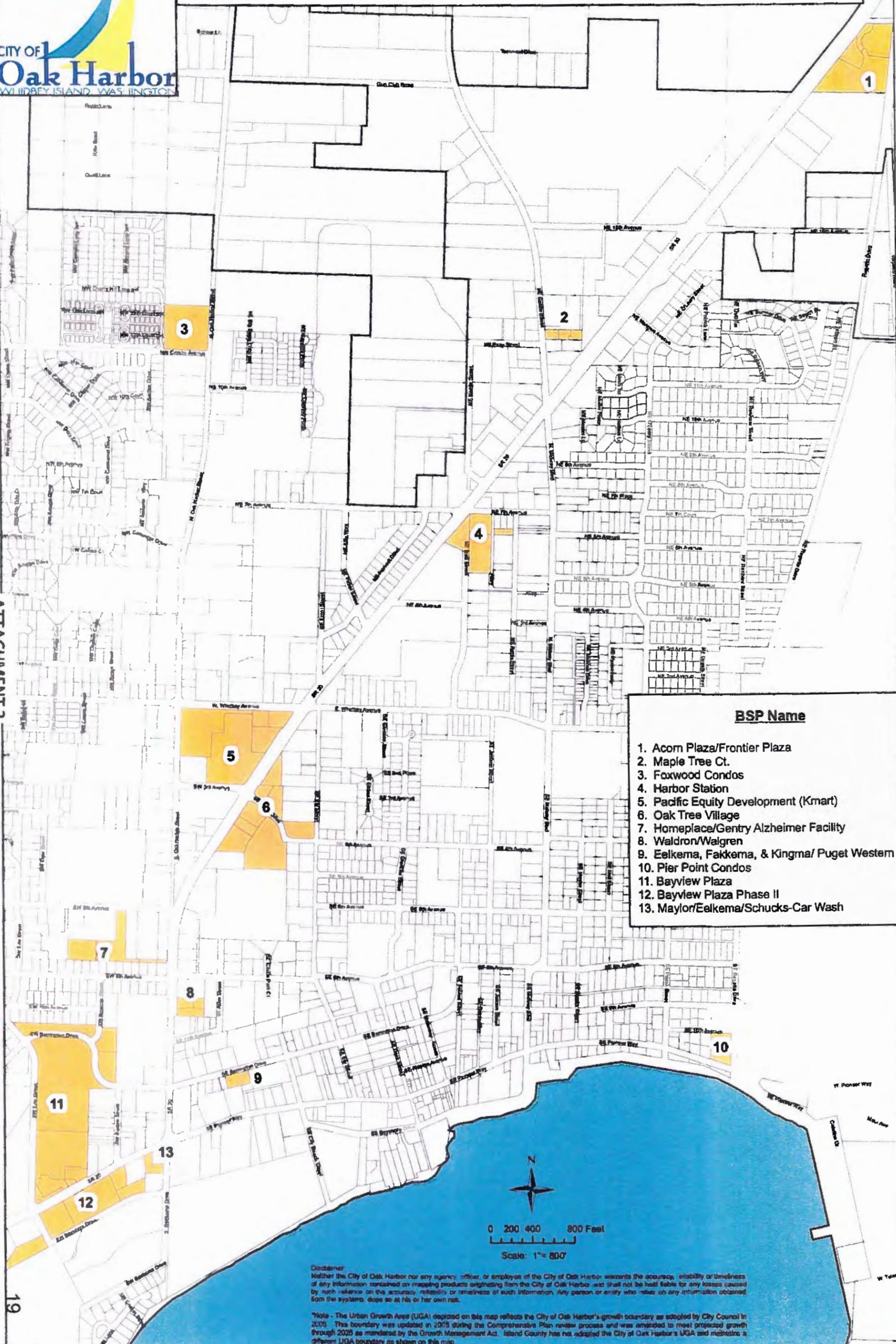
ATTACHMENT 3

Monroe		X	If the revision is substantial, the proposal shall follow the same procedures required for acquiring a binding site plan, as set forth in this chapter.
Moses Lake		X	no alteration process
Mount Vernon		X	major and minor modifications
Mountlake Terrace		X	The amended binding site plan shall be processed subject to all the procedures and requirements of this chapter.
Mukiteo		X	Alteration or vacation of binding site plans shall be accomplished by following the same process and applying the same criteria as for an initial application for binding site plan approval.
New Castle	X		"signatures of owners of portions of a binding site plan which are not altered by an amendment or rescission are not required on the amended binding site plan"
Olympia			No alteration process
Pasco		X	The recorded binding site plan may be altered at the City Planner's discretion by processing through the review/approval procedure.
Port Angeles		X	Alterations may be applied for pursuant to established city procedures.
Pullman			N/A
Puyallup		X	Alteration of an approved and recorded binding site plan shall be accompanied by application as set forth in PMC 19.10.040 and shall be subject to all procedures and requirements established in this chapter.
Redmond		X	Amendments to or vacations of an approved binding site plan shall be made through the subdivision vacation process and shall be made by all persons having an ownership interest in the portion to be vacated.
Richland		X	no alteration process
Sammamish		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter.
Seatac	X		Any subdivision or binding site plan application under subsection (D) of this section shall require the written consent of parties representing no less than sixty-six percent (66%) ownership interest in the entire site
Shoreline		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application.
Sultan		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Sunnyside		X	Whenever any person is interested in the vacation or alteration of a recorded binding site plan, the procedures set forth in SMC 16.06.040 through 16.06.090 contained herein shall be followed,
Tukwila	X		that only owners of lots within the BSP that are directly affected by the proposed alteration shall be required to authorize application for the alteration.
Tumwater	X		Where the lots within a recorded plat are held in more than one ownership, the application for replat shall not be accepted by the City for processing unless accompanied by the signatures of all property owners within the plat whose lot boundaries would be altered or affected by the replat.
University Place		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Walla Walla		X	"amendments...shall be processed pursuant to this chapter and must be recorded."
Washougal		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Wenatchee		X	no alteration process
West Richland		X	no alteration process
Woodland		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Yakima		X	"the acknowledged signatures of all parties having an ownership interest in the property"

Binding Site Plans Within City Limits Map



ATTACHMENT 2



BSP Name
1. Acorn Plaza/Frontier Plaza
2. Maple Tree Ct.
3. Foxwood Condos
4. Harbor Station
5. Pacific Equity Development (Kmart)
6. Oak Tree Village
7. Homeplace/Gentry Alzheimer Facility
8. Waldron/Waigren
9. Eelkema, Fakkema, & Kingma/ Puget Western
10. Pier Point Condos
11. Bayview Plaza
12. Bayview Plaza Phase II
13. Maylor/Eelkema/Schucks-Car Wash

0 200 400 800 Feet
Scale: 1" = 800'

Disclaimer:
Neither the City of Oak Harbor nor any agency, officer, or employee of the City of Oak Harbor warrants the accuracy, reliability or timeliness of any information contained on mapping products originating from the City of Oak Harbor and shall not be held liable for any losses caused by such reliance on the accuracy, reliability or timeliness of such information. Any person or entity who relies on any information obtained from the systems does so at his or her own risk.

Note: - The Urban Growth Area (UGA) depicted on this map reflects the City of Oak Harbor's growth boundary as adopted by City Council in 2009. This boundary was updated in 2015 during the Comprehensive Plan review process and was amended to meet projected growth through 2025 as mandated by the Growth Management Act. Island County has not adopted the City of Oak Harbor's UGA and maintains a different UGA boundary as shown on this map.

ATTACHMENT 3

RECEIVED

FEB 14 2011

CITY OF OAK HARBOR
Development Services Department**DRY LAKE LAND STEWARDSHIP LLC**

chris.anderson@century21trophy.com

February 11, 2011

Mr. Nathan Spoo
City of Oak Harbor Planning Dept.
865 SE Barrington Drive
Oak Harbor, WA 98277

Chairman Bruce Neil
Oak Harbor Planning Commission
865 SE Barrington Drive
Oak Harbor, WA 98277

RE: Proposed Amendments to the Binding Site Plan Ordinance

Please consider the following:

Dry Lake Land Stewardship LLC's background

My Name is Christian A. Anderson. I am an Oak Harbor native, developer, real estate broker and a member of a group which has been planning a new commercial development within the City Limits of Oak Harbor.

The property which we intend to develop will serve as home to a "Home Grown" locally based commercial retail and service oriented company. The new facility will directly employ between 20 and 40 people once completed. During the construction of the facility it will directly and indirectly employ hundreds of others.

A portion of the property which we own and plan to develop lies within the Oak Tree Village Binding Site Plan (BSP). We have shared our plans with city staff and we have together developed a concept which is ready to be submitted for site plan review by the Oak Harbor City Planning Department. Our proposed site plan may require modifications to the Oak Tree Village BSP. It is unclear in our particular situation if any BSP landowner acknowledgement will be required because in our particular case the rights to access our larger parcel which adjoins the Oak Tree Village BSP were reserved prior to the issuance of final approval of the Oak Tree Village BSP.

Our development plans involve the modification of what is now an exit for some of the lots in the Oak Tree Village BSP onto Highway 20. Our plans also includes the modification of the

landscaping and will undoubtedly involve tying into or modifying existing utilities which are associated with the Oak Tree Village BSP.

The Oak Tree Village BSP was approved in the early 90's and all of the lots within the BSP have been transferred from the original developer to successor property owners. These property owners, some of which are not community based, may be very hard to communicate with and are not likely to be interested in taking the time to consider any change which does not directly effect them.

It is our opinion that any changes to the BSP ordinance should consider the long term economic effects on our local economy and not hinder Oak Harbor's inter-city development potential which would ultimately lead to "Sprawl" instead of "Infill" of the existing city limits.

Competing Views on the Proposed Amendment to the BSP Ordinance

The City of Oak Harbor is seeking public input on a proposed amendment to the current Binding Site Plan Ordinance. It is my understanding that the City Planners are attempting to amend the regulations governing BSP's to provide for a method to make changes to a BSP after the BSP has been adopted. It seems that there are differences of opinion on how the BSP amendment process should be administered.

At one end of the debate it is suggested that it should require 100% approval of all of the property owners who have any interest in the BSP to approve of any change to the BSP in all cases.

It is unclear to us if this scenario would include seeking permission of all property owners who simply own some of the rights associated with the real estate involved in the BSP or would it be perhaps that any associated parties with an interest in the BSP should have to bless a modification.

That scenario could potentially involve a tenant which owns a Lease Hold Estate, Mortgage or Lien Holders which may have a security interest, Owners of specific rights such as easements and or mineral rights which may own some but not all of the real property rights. Other such examples could be owners of view rights or mineral rights or water rights. Then of course there are the private property rights of the property owners which share a property line but are outside of the BSP and have shared rights.

The views on the other side of the debate seems to be, if a property owner is legally in title to the private real property after the BSP has been adopted, that private property owner would be entitled to, as a free citizen of the United States of America, make whatever changes to the property the owner desires without any governmental involvement whatsoever so long as it complies with the rest of the multitude of existing State, County and City ordinances.

In this scenario if another citizen or group did not approve of the changes the private property owner was making the conflicted parties could sort out their differences through whatever remedies they so chose which is already provided for under existing laws and customs

BSP's effects on adjacent property owners

Other effects of the changes to ordinance should be considered as well. What about the neighboring properties of a BSP? Please consider this. What would the effect of a BSP be on a neighboring property owner if the property owner was somehow landlocked or surrounded by a BSP that was difficult or impossible to amend because it was impossible to get a majority of the landowners within the BSP to agree to a change? What if the owners within the BSP wished to extract money from the land locked private property owner in exchange for cooperation in amending the BSP for a minor change? We believe in that case BSP's could be considered Unconstitutional. It is what is known as a "taking". In our opinion it would be no different than surrounding a private property owner with what is akin to a giant mote without a draw bridge. Even if the Mote was on one or two sides the effect could be devastating to the private property owner who had nothing to do with creating the original BSP which is now looming around them. There is a protection for private property owners for this in the US Constitution under the 5th Amendment.

Washington State Law

Washington State Law provides guidance to how municipalities shall administer Binding Site Plans under Title 58 RCW. The section of the Revised Code of Washington (RCW) which specifically addresses how the municipal code shall be drafted by individual Cities and Counties is found under RCW 58.17.035. and is attached as Attachment "A" to the letter. I wish to point out that RCW 58.17.035 specifically identifies different types of BSP's. The ordinance groups them into categories such as residential, commercial and industrial. The ordinance goes on to say;

"Such ordinance may apply the same or different requirements and procedures to each of these three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan".

In the next paragraph of the RCW it specifically mentions industrial and commercial BSP's. The state law says;

"The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval."

This requirement raises a question. Was the BSP Ordinance originally adopted in by the City of Oak Harbor in accordance with State Law? The next question that comes to mind is. If Oak Harbor's BSP ordinance was not in compliance with state law are the owners of the properties within the existing BSP's bound by any BSP ordinance at all? These are legal questions which should be addressed with haste.

Conclusion

We propose that any amended City Ordinance make it possible for individual property owners to efficiently and inexpensively make changes to a BSP in the same manner changes

are made to any other piece of real estate which is located outside of a BSP. A property owner interested in making an amendment should first look to the existing Covenants of the property for guidance as to who should have a say in the process.

If a method for amendment is unavailable in the Covenants it is our opinion that changes to the BSP be handled privately between property owners and then blessed administratively by the City. The City's only concern at that point should be to make sure the changes allow for similar Zoning and the safety and welfare of the public. After a brief review the planning department could then approve the proposed amendments, with any agreed upon changes, acknowledge them, and then suggest that the amendments be recorded with the County Auditor.

This in our view would be in the best interest of the City planners, local citizens as well as the individual property owners involved with the proposed Amendments to the BSP. We don't believe that it should be a requirement under the new revised code to seek permission from any or all people who claim to have an interest in the real estate located within the BSP.

It is also our opinion, based on knowledge of the real estate laws, that even if there are Covenants recorded on the property within a BSP that do specifically contain a procedure for privately amending the BSP, that it is not the place of the City Planning Department to defend the private property rights of individual private real estate owner or owners in enforcing those Covenants. Remedies and Protections for private property rights already exist in other areas of our existing laws.

Very Truly Yours,



CHRISTIAN ANKER ANDERSON
Member of Dry Lake Land Stewardship LLC

RCW 58.17.035

Alternative method of land division — Binding site plans.

A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval.

The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances.

All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW.

[1987 c 354 § 2.]

RCW 58.17.040
Chapter inapplicable, when.

The provisions of this chapter shall not apply to:

Not (1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

A (4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations; *Commercial & Ind*

X (5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations; *Trailer Parks*

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; *condos*

W (7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) in connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures; and

(9) A division of land into lots or tracts of less than three acres that is recorded in accordance with chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. New customers are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed.

[2004 c 239 § 1; 2002 c 44 § 1; 1992 c 220 § 27; 1989 c 43 § 4-123. Prior: 1987 c 354 § 1, 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 283 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Notes:

Severability -- Effective date -- 1989 c 43: See RCW 64.34.920 and 64.34.930.



William L. Massey

41 NE Midway Blvd., Suite 101
Oak Harbor, WA 98277

(360) 675-9091 (360) 675-5341 Fax

February 17, 2011

Bruce Neil
Chairman
Oak Harbor Planning Commission
865 SE Barrington Ave.
Oak Harbor, WA 98277

RECEIVED

FEB 17 2011

**CITY OF OAK HARBOR
Development Services Department**

Re: Proposed revisions to City of Oak Harbor Binding Site Plan Ordinance (OHMC 21.80).

Chairman Neil and Planning Commissioners

Our primary interest in the proposed revisions relate to the four separate parcels, of a total of eight parcels, 50% of the BSP owned by our company in Fee Simple Title, in the residential BSP known as Pier Point (our company's parcels are not part of the Pier Point Condominium). Our company also has a lenders deed of trust interest in a parcel of the BSP known as Oak Tree Village and we are therefore very concerned about restrictions that could impair the development rights of our client.

The changes to the ordinance, as they are currently proposed by staff, become a property rights issue wherein property owners within a BSP could control the reasonable use of another property owner even if there is no detriment to the property owners who vote against proposed changes to the BSP. Opposition could be based on the apathy or animosity of one or two individuals

It's interesting to note that at the December 28 Planning Commission hearing, staff member Mr. Spoo acknowledged that this issue was brought to the city's attention as a result of an application to alter an existing site plan. Further testimony, allowed by the Chairman, identified Pier Point. Staff member Mr. Powers acknowledged that there is a link between the history of the Pier Point application and the proposed ordinance changes.

Please consider the following:

Condominium ownership and regulations should not be confused with BSP regulations.

Using Pier Point as the example; there are eight parcels and within four of the parcels there are eight condo owners.

Rather than allowing all condo owners a vote, which creates a disproportionate advantage, it would be more fair to allow each parcel within the BSP one vote. The right to vote on an alteration should be allowed only if there might be an effect on the reasonable use of the properties outside the area of the proposed alteration such as easement changes, utility changes or changes to building envelopes. A tie in the voting should be settled by an arbiter.

In the case of a commercial BSP consider the potential detriment to a commercial applicant if every parcel owner has a vote in the process and one vote could negate the applicant's process.

If a vote is required it should only be by a majority of those property owners contiguous to, and directly affected by the proposed alteration.

As you have seen by the process to date this is a complicated issue and doesn't necessarily work fairly if put to a vote by neighboring property owners.

The City of Oak Harbor has adopted a Hearing Examiner process specifically to take the politics out of land use issues. As you can see by some of the testimony the Pier Point example appears to have become somewhat political.

"The City Council created the hearing examiner system in May 2004 to ensure that fair and impartial decisions are made on project permits that are quasi-judicial in manner and administrative decisions by city departments"

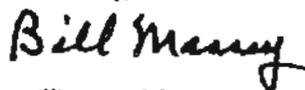
If changes to the BSP ordinance are required they should be addressed in the same manner as other land use issues, such as plats, by administrative procedure for minor modifications and a public hearing before the Hearing Examiner for a major change. In either case appeal procedures are in place if there are disagreements.

Our company currently has an appeal pending before the Island County Superior Court regarding our Pier Point application. It might be instructive to table this issue to wait for the results of the appeal.

As a side note, I have been retired from the development and construction business for several years now. Our company will not be building on the Pier Point lots and I am only pursuing the appeal as a matter of my belief in an owner's right of reasonable use. Private property rights.

If our appeal is successful Kathy and I will be donating a portion of, or all of the Pier Point parcels we own, as we have donated a number of our properties, to a non profit organization which will use the sale proceeds from the parcels toward affordable housing to benefit modest income families.

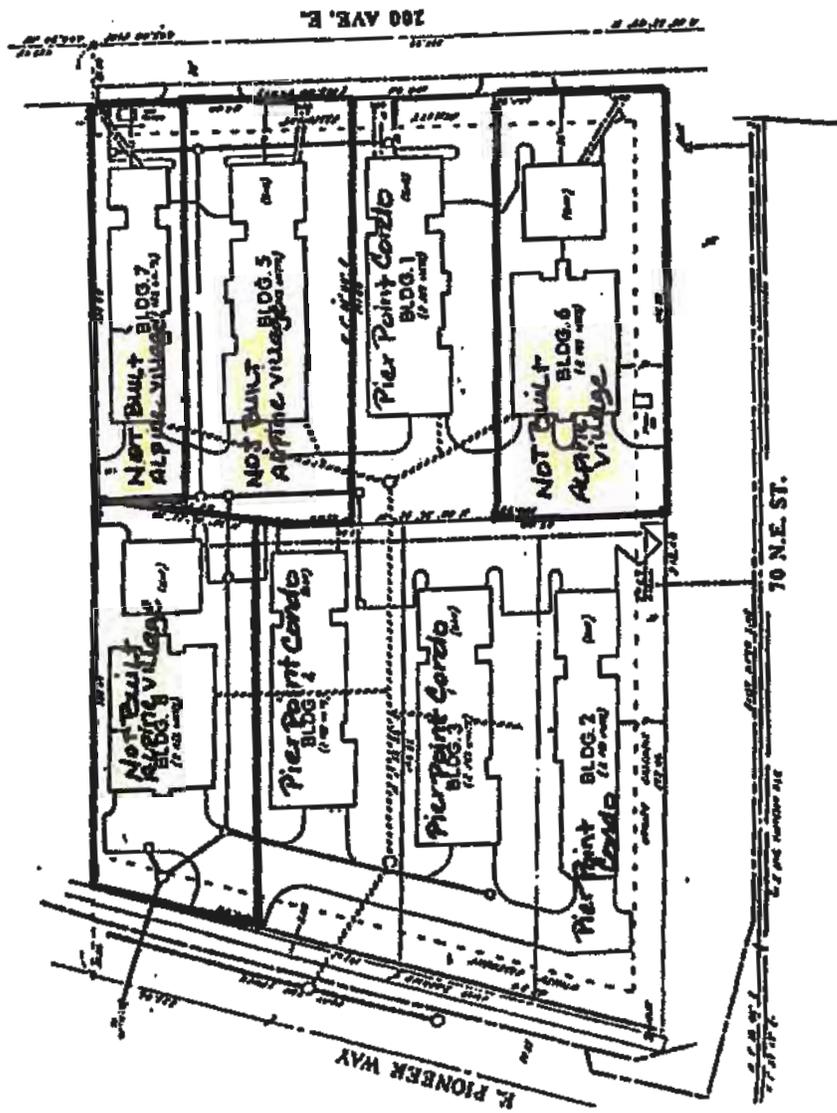
Sincerely,



William L. Massey

Cc: Ethan Spoo, Senior Planner, City of Oak Harbor
Steve Powers, Development Services Director, City of Oak Harbor
Margery Hite, City Attorney, City of Oak Harbor
Jim Slowik, Mayor, City of Oak Harbor

Enclosure: Copy of Pier Point map
Oak Tree Village map



Pier Point

Legislative Edit Version

Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment. and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Binding Site Plan Code Amendment
Ordinance

\\City\planning\PlanCom\PC11\2-22-11\BSP Code Update\BSP amendment ord final draft 021811 doc

Page 1 of 11

Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005** Title.
- 21.80.010** Binding site plans allowed.
- 21.80.020** Division of property.
- 21.80.025** Condominium binding site plan.
- 21.80.030** Effect.
- 21.80.040** Application.
- ~~**21.80.050** Procedure upon application.~~
- ~~**21.80.060** Requirements for a binding site plan map.~~
- ~~**21.80.055** Site plan review required.~~
- ~~**21.80.070** Certifications required.~~
- ~~**21.80.080** Title report.~~
- ~~**21.80.090** Survey required.~~
- ~~**21.80.100** Approval procedure.~~
- ~~**21.80.110** Recording requirements.~~
- ~~**21.80.120** Development requirements.~~
- ~~**21.80.130** Standards for review of commercial binding site plan.~~
- ~~**21.80.140** Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.~~
- ~~**21.80.150** Performance guarantee requirements.~~
- ~~**21.80.160** Warranty requirements for acceptance of final improvements.~~
- ~~**21.80.170** Survey required.~~
- ~~**21.80.180** Dedication – Warranty deed.~~
- ~~**21.80.190** Requirements for modification of binding site plan standards.~~
- ~~**21.80.180** Alteration or vacation of an approved binding site plan.~~
- ~~**21.80.200** Appeals to the hearing examiner.~~
- ~~**21.80.400** Enforcement.~~

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (43).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies

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with all applicable mobile home park regulations and the zoning code:

- ~~(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and~~
- (4)(3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140, 20.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
 - (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
 - (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot

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lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to eChapter 19.48 is required for every lot created under this chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this eChapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The ~~final~~ recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements either to be filed separately or on the binding site plan must be referenced on the binding site plan;
- (8) ~~Zoning setback lines and building envelope sites where applicable;~~
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) ~~Parking areas, general circulation, and landscaping areas where applicable;~~

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- ~~(14) Proposed use and location of building with dimensions where applicable;~~
~~(15) Loading areas where applicable;~~
~~(16)(13) Utilities; and~~
~~(17)(14) Other restriction and requirements as deemed necessary by the city.~~

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.070060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.
- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

~~**21.80.090 Survey required.**~~

~~A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.~~

21.80.100080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- ~~(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.~~
- (32) The director shall review the final binding site plan application and circulate it to other city departments to determine whether the requirements of this chapter ~~and preliminary approval~~ have been met.
- (43) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (54) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification,

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correction, or other action as may be required for approval.

- (65) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.130100 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

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- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.140120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
 - (c) Reciprocal easements for parking shall be provided to all tenants and owners.
 - (d) The developer has ~~submitted~~ entered into a binding schedule development agreement pursuant to Chapter 18.30 for completion of all phases.
 - (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in ~~subsection (2) of this section~~ the development agreement pursuant to Chapter 18.30.
 - (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
 - (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request ~~final~~ approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the

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city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.

- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170150 Survey required.

- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.180160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

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21.80.200170 Requirements for modification of binding site plan standards.

- (1) ~~Any applicant can request and make application to the city requesting. As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of OHMC 21.80.130 or 21.80.140 or OHMC the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.~~
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as an administrative a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) Alteration: for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) Application form. An application shall be submitted on a form provided by the Director.

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- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20-OHMG.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

(4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20-OHMG.

21.80.300190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

“Clean” Version

**Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”**

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

21.80.005	Title.
21.80.010	Binding site plans allowed.
21.80.020	Division of property.
21.80.025	Condominium binding site plan.
21.80.030	Effect.
21.80.040	Application.
21.80.050	Requirements for a binding site plan map.
21.80.055	Site plan review required.
21.80.060	Certifications required.
21.80.070	Title report.
21.80.080	Approval procedure.
21.80.090	Recording requirements.
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21.80.110	Standards for review of commercial binding site plan.
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21.80.130	Performance guarantee requirements.
21.80.140	Warranty requirements for acceptance of final improvements.
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21.80.190	Appeals to the hearing examiner.
21.80.200	Enforcement.

21.80.005 Title

This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (3).

21.80.020 Division of property.

Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;

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- (3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

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21.80.035 Site plan review required.

A site plan pursuant to chapter 19.48 is required for every lot created under this Chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

21.80.050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements to be filed separately must be referenced on the binding site plan;
- (8)
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as

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shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) The director shall review the application and circulate it to other city departments to determine whether the requirements of this chapter have been met.
- (3) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (4) If either the director or the city engineer determine that the requirements have not been met, the binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (5) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.100 Development requirements.

All development must be in conformance with the recorded binding site plan.

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21.80.110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department

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personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has entered into a development agreement pursuant to Chapter 18.30 for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in the development agreement pursuant to Chapter 18.30.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.150 Survey required.

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- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

21.80.170 Requirements for modification of binding site plan standards.

- (1) As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) **Alteration:** for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) **Vacation:** for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) **Application form.** An application shall be submitted on a form provided by the Director.
- (b) **Title report.** All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) **Authority to submit alteration or vacation application.** The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved

vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20.

21.80.190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40..
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

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City Attorney

Published: _____

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
February 22, 2011**

ROLL CALL: **Present:** Bruce Neil, Keith Fakkema, Greg Wasinger, Gerry Oliver and Jeff Wallin. **Absent:** Kristi Jensen. **Staff Present:** Development Services Director, Steve Powers; Senior Planner Ethan Spoo; and Associate Planner Melissa Sartorius

Chairman Neil called the meeting to order at 7:30 p.m.

MINUTES: MR. OLIVER MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE JANUARY 25, 2011 MINUTES AS PRESENTED.

PUBLIC COMMENT: No comments.

PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS (BSP) – Public Hearing (continued)

Mr. Powers presented a revised draft of changes to Chapter 21.80 of the Oak Harbor Municipal Code which will establish a process for altering previously approved Binding Site Plans. Mr. Powers explained that this code amendment is a legislative process and will apply to the entire community for all binding site plans; which is in contrast to a pending application that the Commission heard about at the first hearing on this matter which is a Quasi Judicial proceeding on a site specific application. Mr. Powers reminded the Commission that it is not within their authority to have any action on that pending application so he strongly suggested that public testimony as well as Planning Commission questions and comments should relate the proposed code amendment and not to the pending Quasi Judicial proceeding for the Pier Point Condominium project. Mr. Powers noted that the Hearing Examiner's decision was appealed on to Superior Court which is known as a LUPA appeal. There is reference to the LUPA appeal in two additional comment letters beyond those found in the agenda packet. The two additional letters were received today and copies were provided to the Planning Commission and read by the Commission at the pre-meeting. The letters came from Mr. Robert Severns and from Ms. Sue Karahalios on behalf of the Pier Point Condominium Association. Both Mr. Severns and Ms. Karahalios suggested that this agenda item should be continued until the completion of the LUPA appeal. That suggestion was also found in Mr. Massey's letter which was part of the agenda packet.

Mr. Powers reminded the Commission of public comment taken at the Planning Commission's January meeting which were of two viewpoints. One viewpoint supported an amendment approach that required all property owners to sign an application for alteration or vacation of a BSP. The other supported an approach that would only require signatures from only those owners seeking the alteration. That input is addressed in the staff report.

Mr. Powers reported that staff utilized Municipal Research and Service Center (MRSC) website. MRSC is a resource for cities and counties regarding local governmental issues. Staff looked at 59 other communities that have their codes posted on the MRSC web site. Of those 59 communities 48 have an alteration process and of that 39 (81%) require signatures of all property owners. Mr. Powers noted most of those jurisdictions have code language stating that the same process shall be used for alterations as for submitting the original binding site plan

application. Their code doesn't specifically address the application rather it seems to be a more broad statement that a particular city is going to use the same process.

Mr. Powers also noted that the agenda packet contains a map showing all the binding site plans in the City. There are 13 BSPs in the City boundaries, ten of which are commercial/industrial BSPs and three of which are residential condominiums. Only one BSP within the city has a construction schedule associated with it.

Mr. Powers reviewed the Topics for Consideration section of the staff report as follows:

- The City must have an alteration or vacation process.
- Submittal of an application is the beginning, not the end, of the process. In other words it allows the process to start. It's a Type II process (an administrative decision, requiring notice to the general public and property owners within 300 feet). This administrative decision is appealable to the City's Hearing Examiner.
- Varying property owner interests. At issue is whether a single property owner, or group of property owners, should be able to submit an application for a binding site plan alteration without first securing the permission (in the form of signatures on the application) from all property owners within the BSP.
- A BSP is a method of dividing land (public versus private interests). It is the staff's belief that the City should not be adjudicating private interest issues, but should focus on issues clearly in the public interest.
- Research findings. It is unclear from the research whether or not requiring all property owners within a BSP to sign led to problems. The cities that were looked at should not necessarily be looked at as directly applicable models of the City of Oak Harbor. Staff research also shows that the City has relatively few BSPs and most of the BSPs are commercial or industrial. Staff recommends creating a process that will work with existing and future BSPs.

Mr. Powers summarized the second draft of the code as follows:

- Limit what is recorded on BSP map documents to those items which pertain directly to land division; primary lots and their dimensions, rights-of-way, easements (access, parking, open space, etc.), and public utilities (sewer, water, storm).
- The City will only accept alterations that pertain to the public interest.
- Alteration applications may be submitted by only those property owners who are directly affected.

Mr. Powers concluded by recommending that the Planning Commission take testimony, close the public hearing and recommend approval of the draft code to the City Council.

Discussion

Commissioners asked what is considered an "affected owner" and to give an example of what would not be in the public interest. Mr. Powers said an affected owner is one who either wants to change something on their property or would be affected by a change to an easement, access or utility or their property would be affected as the result of change on the other piece of property. An example of what would not be considered in the public interest is the color of the building (absent any City code that dictates color of buildings) but there could be a private agreement about building color between lot owners within the BSP.

Mr. Powers directed attention to Section 21.80.180 (1) (a) which describes generally which elements of a BSP that can be altered after adoption of the proposed changes. This section

also acknowledges that there is a body of BSP's approved prior to the date of adoption of the proposed changes. This section also provides a list of additional elements that may be altered for those BSP's approved before the proposed changes are adopted because those elements were previously required on the BSP.

Mr. Powers added that the elements that are no longer required on the BSP are still required under the site plan process and all new construction requires a site plan. The key difference is that the site plan is not recorded but it also doesn't divide the land, the binding site plan is a mechanism to subdivide property. So what staff is suggesting is that the City should keep BSPs as simple as possible and show only those things which are related to the land division and not those items that are related to the zoning code.

Commissioners asked what the difference was between a Type I and a Type II application. Mr. Powers explained that the Type I doesn't require any general notice to the public. A Type II application requires notice of application in the newspaper, posting the property and letters to property owners within 300 feet. Both processes are appealable to the Hearing Examiner.

Commissioners asked for a comparison of the process for a BSP versus a short plat or a long plat from a customer's standpoint; is it simpler, easier or a shorter process? Mr. Powers said that the process is not necessarily simpler or shorter. The BSP can only be used for commercial/industrial or residential if it is a condominium project. A BSP cannot be used for a traditional single-family neighborhood, that process is a regular subdivision which is often called a long plat. The long plat process is typically a year or so depending applicant and on the city's workload. A short plat can only be used to create up to nine lots and can take less time because there aren't as many steps involved. The BSP can be a relatively quick process but can also be lengthy due to how difficult it is to design and construct the utilities.

Chairman Neil asked if there was additional public comment and reminded speakers that testimony should be confined to new information and concentrated on the material presented at this meeting.

Sue Karahalios (1085 SE Regatta Drive #B101) spoke on behalf of Mr. Bob Severns and Mrs. Rhonda Severns who asked her to extend their apologies for not being able to attend tonight's meeting. Ms. Karahalios said that the Severn's asked her to reiterate that they are asking that this hearing be continued due to the pending LUPA appeal. Ms. Karahalios said she agreed with the Severn's as did the majority of members of the Pier Point Condominium Association. She pointed out that the City is named first in the LUPA appeal and then the others are listed. Ms. Karahalios also said that the term "affected property owners" should be clearly defined.

Mr. Neil asked Ms. Karahalios what the LUPA appeal which is a judicial process between two parties on a land use issue has to do with what the City is trying to do with the BSP amendment which is to establish, through the legislative process, a method to alter a BSP. Ms. Karahalios said that the City is a party to the appeal and one of the issues is the request to alter and or use the vacation process that the original BSP was predicated on.

Bill Massey (41 NE Midway Blvd.) said that he sent his letter prior to receiving the current recommendation from City staff. In his letter he stated that it might be instructive to wait and see what the Superior Court case brought to help the City develop their ordinance. Since he has seen the current proposed ordinance he didn't think it was 100% as good as it could be structured but believed that the process has lead to a reasonable approach to alterations for BSP's particularly for commercial BSP's which he also has an interest in. He recommended the

Planning Commission go ahead and send it to the City Council for approval. Mr. Massey indicated that he wasn't completely convinced that a change was needed to the ordinance but since something that is reasonable has been achieved he supported moving it forward.

Mr. Massey also stated that he believed that the ordinance addresses all the things that are in the public interest. The LUPA hearing is really a civil matter which is different than what the City is proposing which is a legislative matter.

Sue Karahalios (1085 SE Regatta Drive #B101) reiterated that there is a need to define "affected parties".

Chairman Neil closed the public hearing.

Discussion

Commissioners asked for staff's opinion on the LUPA appeal and the legislative process for the BSP code amendment. Mr. Powers reiterated that the two processes were separate issues. Staff saw no reason why continuance is necessary due of the pending LUPA appeal. The idea is to put into place a process that would be utilized to accept and process requests to alter BSP's. The process would be used for all BSP's. The LUPA action is a specific action which is related to a single application. When looking at the issues and the form of the LUPA appeal staff sees nothing that would come out of it that would tell us what should be in this legislative process in terms of how an application for alteration should be processed. It is also important to have a procedure in place when and if we get another application to amend any given BSP. It is better to have it in place sooner rather than later.

There was lengthy discussion about defining "directly affected parties". Some Commissioners liked the idea of compiling a list of what is considered a "directly affected party". Others Commissioners were concerned about leaving something off that list because something could be presented which is outside of that list then you are stuck as to what to do. Mr. Powers explained that "affected property owners" may mean different things under different circumstances but it is staff's job to read the code and to determine how that code may apply, but most importantly if someone thinks staff has done their job wrong there is an avenue to have staff's decision reviewed through the Hearing Examiner. Mr. Powers said that staff is comfortable with the language because we think we can figure out how to apply the code in the variety of situations that may come up.

Commissioners expressed concern about being fair to all parties whether it is a matter of all parties except one agreeing to sign an alteration application therefore stopping the application or whether the majority forced their will on the minority who disagree with the alteration. There was also the view that "binding" means "binding" unless 100% of the owners agree. Commissioners agreed that distinguishing between public and private was a good idea.

Mr. Powers explained that staff is trying to create a process that is fair and at least lets the process start. If there is a party that simply refuses to sign; that means that the process doesn't even get started. The request doesn't get considered because it can't even get in the door. Mr. Powers said that from staff's perspective that is fundamentally unfair. Mr. Powers also addressed the notion that "binding" means "binding" by using the final plat process as an example of how the State allows for a recorded document to be changed with only the signatures of the majority of the lots that are proposed to be altered.

Commissioners asked if there were any binding site plans that have been changed in the past and if 100% of the owners had to sign. Mr. Powers said that the City utilized the language on modification which exists today in the code to take in alteration applications for the Acorn Plaza BSP, Bayview Plaza Phase II BSP and the Oak Tree Village BSP. Only the applicant signed the application and public notice was given as required for BSPs. The old code language is confusing and doesn't clearly give application procedures.

Commissioners asked if the limitation of what can appear on BSPs is consistent with other jurisdictions. Mr. Powers said that he couldn't say whether that the language was consistent with other jurisdictions but that staff concluded that having things on the BSP that are extraneous to land division doesn't help so that is why staff is tailoring the code to our community's experience.

Commissioners also raised the fact that parties not considered to be affected have ample opportunity to get involved in the public process and to give public testimony and also have the opportunity to appeal with the Hearing Examiner.

Commissioners asked what it means when a binding site plan expires. Mr. Powers said it is important to remember that there is exactly one BSP that falls into that category. The remedy for that into the future is to not put the schedule on the BSP. The schedule can be addressed in the development agreement which will typically include a timeline and language that says what happens if performances aren't reached within that timeline.

ACTION: MR. WASINGER MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO CLOSE THE PUBLIC HEARING REGARDING THE PROPOSED CHANGES TO OAK HARBOR MUNICIPAL CODE PERTAINING TO BINDING SITE PLANS.

MOTION: MR. OLIVER MOVED TO ADD VERBAGE TO 21.80.180(2)(c) THAT MORE CLEARLY DEFINES "AFFECTED PARTIES", MR. FAKKEMA SECONDED THE MOTION.

Discussion

Mr. Fakkema said that he thought that it was almost impossible to make a complete list and that it is very subjective.

Mr. Wasinger reminded Commissioner's that there is more than one way for people to have their voices heard. Making a list doesn't work as well because something is always forgotten and anything that falls outside of that list still has to be dealt with.

VOTE: MOTION FAILED BY A VOTE OF 1 IN FAVOR AND 3 OPPOSED.

Mr. Powers asked the Commission to consider the definition of alteration in Section 21.80.180 (1) (a) which is a change that generally relates to the items that are described in Section 21.80.050(4), (9), (16) or (17). Mr. Powers said that (4) addresses boundary lines, driveways, streets, easements and property lines, (9) is location, dimensions and purpose of any easements, noting if the easements are private or public; (16) is utilities; and (17) is other restriction and requirements as deemed necessary by the City. So if staff has defined alteration to mean changing a particular group of things which are shown on BSP. What the Commission has been wrestling with is to be sure that easements that might apply to a particular property onto another property would be captured in that definition. Now the code says who has to sign

the application but that link goes back to how we define alteration. The answer to the question may be to take both of those together and staff will have a clear direction as to what we should be looking at when we determine what the appropriate signatures are.

MOTION: MR. FAKKEMA MOVED, MR. WASINGER SECONDED, A MOTION TO RECOMMEND APPROVAL TO CITY COUNCIL OF THE AMENDMENTS TO CHAPTER 21.80 OHMC ("BINDING SITE PLANS") AS DRAFTED.

Mr. Fakkema asked staff to let the City Council know that the Planning Commission struggled with the amendments. Mr. Powers said the minutes from each of the Planning Commission's meetings on the subject would be provided to the Council.

VOTE: MOTION CARRIED BY A VOTE OF 3 IN FAVOR AND 1 OPPOSED.

Mr. Powers noted that the next steps will be a brief to the Governmental Services Standing Committee. Then the item will be placed on the City Council's pending agenda and scheduled for the City Council's public hearing. Both meetings are opened to the public.

LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT – Public Hearing

Due to the late hour the Planning Commission opted to hear the staff presentation at the March 22, 2011 Planning Commission meeting and to open the public hearing at this time.

Mr. Neil opened the public hearing.

Bill Massey (41 NE Midway Blvd.) said that he was generally in support of the proposed changes. He asked staff to take a closer look at 19.44.105 (2) (a). Mr. Massey shared his company's experience with parking areas using pervious pavement. He found that over a period of time the pavers didn't work because of the combination of oil and siltation. Mr. Massey said that if the surfaces were not maintained absolutely perfectly they plugged up and there was standing water. Mr. Massey recommended that staff look at other options rather than requiring one approach. He suggested allowing landscape areas, where soil conditions make infiltration feasible, to substitute for 20% landscaping requirement. Mr. Massey noted that there was a proliferation of stormwater retention ponds that are not always maintained and working. He said that the City can't police them as well as they should and it takes a lot of money to police them. In that case he recommended a regional approach to stormwater retention and collection. He thought that the pervious surface he described earlier would add to the problem.

ACTION: MR. WALLIN MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO CONTINUE THE LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PUBLIC HEARING TO MARCH 22, 2011.

ADJOURN: 8:55 p.m.

Draft Code – Legislative Edit Version

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows.

Binding Site Plan Code Amendment
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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
21.80.010 Binding site plans allowed.
21.80.020 Division of property.
21.80.025 Condominium binding site plan.
21.80.030 Effect.
21.80.040 Application.
~~21.80.050 Procedure upon application.~~
21.80.050 Requirements for a binding site plan map.
21.80.055 Site plan review required.
21.80.060 Certifications required.
21.80.070 Title report.
~~21.80.090 Survey required.~~
21.80.080 Approval procedure.
21.80.090 Recording requirements.
21.80.100 Development requirements.
21.80.110 Standards for review of commercial binding site plan.
21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.
21.80.130 Performance guarantee requirements.
21.80.140 Warranty requirements for acceptance of final improvements.
21.80.150 Survey required.
21.80.160 Dedication – Warranty deed.
21.80.170 Requirements for modification of binding site plan standards.
21.80.180 Alteration or vacation of an approved binding site plan.
21.80.190 Appeals to the hearing examiner.
21.80.200 Enforcement.

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (3)

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following
(1) Divisions of land into lots classified for industrial or commercial use:

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- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;
- ~~(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site, and~~
- (4)(3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - The city has approved a binding site plan for all such land;
 - Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - Done in connection with the issuance of a building permit or final certificate of occupancy

21.80.030 Effect.

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Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to Chapter 19.48 is required for every lot created under this chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

21.80.060050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements ~~either~~ to be filed separately ~~or on the binding site plan~~ must be referenced on the binding site plan;
- (8) ~~Zoning setback lines and building envelope sites where applicable.~~
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department

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Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;

- (12) A dedicatory statement acknowledging public and private dedications and grants;
- ~~(14) Parking areas, general circulation, and landscaping areas where applicable.~~
- ~~(14) Proposed use and location of building with dimensions where applicable.~~
- ~~(15) Loading areas where applicable.~~
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.070060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.
- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

~~21.80.090 — Survey required.~~

~~A survey must be performed for every binding site plan by or under the supervision of a state-of-Washington-registered land surveyor.~~

21.80.100080 Approval procedure.

- (1) **Binding site plan approval shall be a Type II review process.**
- ~~(2) As part of or after site plan review as provided under CHM/C Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.~~
- (2) The director shall review the final binding site plan application and circulate it to other city departments to determine whether the requirements of this chapter ~~and preliminary~~

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- ~~approval~~ have been met.
- (43) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
 - (54) If either the director or the city engineer determine that the requirements have not been met, the ~~final~~ binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
 - (65) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.140090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120100 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.140110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways

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- are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
 - (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
 - (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
 - (c) *Reciprocal easements for parking shall be provided to all tenants and owners.*
 - (d) The developer has ~~submitted~~ entered into a binding schedule development agreement pursuant to Chapter 18.30 for completion of all phases.
 - (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in ~~subsection (2) of this section~~ the development agreement pursuant to Chapter 18.30.
 - (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee
 - (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150~~130~~ Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request ~~final~~ approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140~~160~~ Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170~~150~~ Survey required.

- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements.

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- general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.
- (2) Submittal requirements for alterations and vacations.
- (a) Application form. An application shall be submitted on a form provided by the Director.
- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.
- (3) Criteria for Review.
- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20 ~~CHIMC~~.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.
- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20 ~~CHIMC~~.

21.80. ~~400~~190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action

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21.80.400200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

Draft Code – ‘Clean’ Version

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

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WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows.

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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
- 21.80.010 Binding site plans allowed.**
- 21.80.020 Division of property.**
- 21.80.025 Condominium binding site plan.**
- 21.80.030 Effect.**
- 21.80.040 Application.**

- 21.80.050 Requirements for a binding site plan map.**
- 21.80.055 Site plan review required.**
- 21.80.060 Certifications required.**
- 21.80.070 Title report.**

- 21.80.080 Approval procedure.**
- 21.80.090 Recording requirements.**
- 21.80.100 Development requirements.**
- 21.80.110 Standards for review of commercial binding site plan.**
- 21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.**
- 21.80.130 Performance guarantee requirements.**
- 21.80.140 Warranty requirements for acceptance of final improvements.**
- 21.80.150 Survey required.**
- 21.80.160 Dedication – Warranty deed.**
- 21.80.170 Requirements for modification of binding site plan standards.**
- 21.80.180 Alteration or vacation of an approved binding site plan.**
- 21.80.190 Appeals to the hearing examiner.**
- 21.80.200 Enforcement.**

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (3).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:
(1) Divisions of land into lots classified for industrial or commercial use;
(2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;

- (3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW,
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

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21.80.035 Site plan review required.

A site plan pursuant to chapter 19.48 is required for every lot created under this Chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

21.80.050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements to be filed separately must be referenced on the binding site plan;
- (8)
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as

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shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) The director shall review the application and circulate it to other city departments to determine whether the requirements of this chapter have been met.
- (3) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (4) If either the director or the city engineer determine that the requirements have not been met, the binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (5) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.100 Development requirements.

All development must be in conformance with the recorded binding site plan.

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21.80.110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department

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personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has entered into a development agreement pursuant to Chapter 18.30 for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in the development agreement pursuant to Chapter 18.30.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.150 Survey required.

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- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

21.80.170 Requirements for modification of binding site plan standards.

- (1) As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

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21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) **Alteration:** for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (13) or (14). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) **Vacation:** for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) **Application form.** An application shall be submitted on a form provided by the Director.
- (b) **Title report.** All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) **Authority to submit alteration or vacation application.** The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) **The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.**

(3) Criteria for Review.

- (a) **The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.**
- (b) **Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20.**
- (c) **The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved**

vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20.

21.80.190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40..
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

Binding Site Plan Code Amendment
Ordinance

Karahalios Letter

Dated

June 11, 2013

Sue Karahalios
P. O. Box 144
Oak Harbor, WA 98277-0144

(360) 675-6455

June 11, 2013

Elected Representatives of the City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Mary Dudley
Dear Mayor and City Council Members:

I am writing you to one thank you for allowing me to speak at the workshop Wednesday, May 29, 2013, and two to request that you either postpone consideration of Binding Site Plan Code Amendment (Ord 1657, PH 06/18/13) until you have all of the information and know everything you need to know about this situation before you are voting. Also, you may want to consider changing the wording to include grand-fathering Pier Point because of the litigation trail and the judgments rendered, separate or differentiate between residential and commercial binding site plans.

I am puzzled as to why the City has chosen to resurrect this item not only in the manner it has but also with all that they have gone through and will continue to go through if this item is passed as presented. I might also add that not all of the information at the Workshop 5-29-13 was presented in whole and in an objective manner so that the full picture was before you.

I do apologize that I misspoke when I said that Pier Point was the only residential binding site plan (bsp) on the City of Oak Harbor's books. Pier Point is the only residential binding site plan on the books that is not fully developed. There are two other fully developed residential bsps and 10 commercial binding site plans as well. Again, Pier Point is the only residential bsp that is not fully developed and has the potential for radical change. A vote for this change without grandfathering Pier Point will violate Judge Hancock's decision described below.

The City and Pier Point have come from the same position repeatedly. To recap some of the many incidents involved in this matter, it is worth noting that the City of Oak Harbor along with Pier Point to date have been involved with several instances of litigation coming from similar perspectives and seated on the very same side of the legal room sharing the same table both at the Hearing Examiner's level and Island County Superior Court level. Pier Point has been to Superior Court three times and the Hearing Examiner three times. As you can see the most current decision was rendered June 27, 2012, supporting the City's and Pier Point's position, which is the same decision, that has been made in all six legal proceedings. The Developer, Alpine Village, Inc, aka Mr. Massey, cannot change Pier Point's bsp without permission of the Pier Point owners. This proposed change in ordinance does not comply with Judge Hancock's decision!

As it stands Pier Point does have the ability to amend its bsp, it can do so with the united vote of all of its owners. Therefore, there is a mechanism in place.

If you go through your packet you will note some of the history. Yes, you will see that in 2011 the OH Planning Commission did vote to send the matter to the Council. What was not shared was some of the pertinent important discussions, which included policy concerns when there was a specific situation that has caused the City quite a bit of staff time and City monies and is historically grounded in behalf of the owners who have owned the property way before this developer become involved. Several of the Planning commission members stated they were voting this matter forward to have the City Council make the hard decision as they expected language changes would be needed to separate the types of bsps (commercial versus residential which have very different considerations) and grand-fathering those that have been in existence and litigation. The Commission members did not see themselves as able to write language. (I can provide specific names of Planning Commission members who stated what specifically.) Also, note that the specific matter of the City of Oak Harbor-Pier Point-Alpine Village, Inc. aka Mr. Massey has been to Superior Court and the Hearing Examiner for another ruling by both (two rulings) since the OH Planning commission has looked at this matter and moved it forward.

The owners of Pier Point bought and paid for their homes knowing their rights of ownership. The Superior Court and the Hearing Examiner on multiple readings have concurred that the owners of Pier Point have rights that cannot be negated. I would like to point out that Judge Hancock during the third time this matter was before him was presented this proposed ordinance by then City Attorney Hite as if it had already been passed by the City Council. Upon cross examining, the Judge admonished Hite for bringing something before him that was not on the books and he later in that hearing stated he did not normally rule or reference something not on the books but he warned all present that the Pier Point owners did have rights that could be heard before this court if passed as is.

I also would like to remind each of you that during the previous ruling (the second time in Judge Hancock's court) the Judge very specifically stated that any body needed to ensure that "all benefits" do not weigh in the favor of change. (Again, there had been a reference to the fact the City of Oak Harbor was possibly considering changing the Binding Site Plan Ordinance.) This alone speaks to the need of considering separating any new policy allowing for grandfathering Pier Point and possibly separating residential and commercial bsps.

Has our present City Attorney thought about talking with former City Attorney Bleyhl who has a lot of experience with Alpine and Pier Point? Former Attorney Bleyhl did make recommendations on this matter that may need to be heeded.

I would like to emphasize and remind you that Mr. Massey knew when he bought this specific property in 2004 what the restrictions were and that the bsp end date had run out

in 1996, therefore the restrictions remained in place. He knew he needed to work with the owners of Pier Point. The property was so inexpensive because of the restrictions. The courts have spoken repeatedly. Pier Point owners have rights.

Pier Point owners have been open to work with the City, Alpine Village, Inc. aka Mr. Massey (before and after Hearing Examiner Bobbink admonished Alpine to try). The residents of Pier Point live in the City of Oak Harbor.

Please do not hesitate in contacting me to answer any questions that you have. I know what it is like to sit in your seat and to have to make the tough decisions. I know you do not take it lightly but I do encourage you to make sure you realize any and all of the implications from what has happened, the legal decisions to date, the costs to the City in time and actual dollars now and possibly in the future.

Sincerely,



Sue Karahalios

cc Mr. Wood

Mayor Dudley Letter

Dated

July 16, 2013

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR



865 S.E. BARRINGTON DRIVE
OAK HARBOR, WASHINGTON 98277
(360) 279-4502
FAX (360) 279-4507

July 16, 2013

Ms. Sue Karahalios
P.O. Box 144
Oak Harbor, WA 98277-0144

Re: Your letter of June 11, 2013
Binding Site Plan Code

Dear Ms. Karahalios,

Thank you for your letter concerning the proposed amendments to Oak Harbor Municipal Code Chapter 21.80, Binding Site Plans (BSP). I appreciate you taking the time to share your comments and concerns on this topic with me and the City Council. I have passed your letter on to our Development Services Department and I have asked that they take your comments under consideration.

As you know, this project has been on the City's to do list for some time now. Staff is devoting time to the project so that the work can be completed and so that a deficiency in our code can be corrected. Please rest assured that the City staff is committed to helping the City Council adopt a revised code that is easy to understand and apply, takes into account relevant available information and is fair and equitable to existing and future property owners. While the next formal step in this project is likely a public hearing before the City Council, I've asked staff to brief the Planning Commission on the project's status. The briefing was tentatively scheduled for the July Planning Commission meeting but due to scheduling difficulties it has been moved to their August agenda. Finally, I encourage you to continue to participate in the public process associated with this code amendment project.

I thank you again for sharing your concerns with me. If you have questions regarding specific aspects of the proposed code amendment I encourage you to contact Mr. Steve Powers, Development Services Director, at 279-4511.

Sincerely,

Scott Dudley
Mayor

cc: City Council
Dr. Larry Cort, City Administrator
Mr. Steve Powers, Development Services Director

Bed and Breakfast Code

Public Hearing

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Development Services Director
From: Ethan Spoo, Senior Planner
Date: 7/16/13
Re: Bed and Breakfast Draft Code- Public Hearing and Recommendation

PURPOSE

In preparation for Planning Commission to make a recommendation to the City Council, this memorandum provides an analysis of the criteria for zoning code text amendments contained in the Oak Harbor Municipal Code Section 19.80.020.

CHANGES TO THE DRAFT SINCE LAST MONTH

Yellow highlights in Attachment 1 (draft code) show the changes made by staff since last month. There are two types of changes that have been made to the draft code:

1. Based on comments submitted by the US Navy on the SEPA environmental checklist for the project, bed and breakfast establishments of all types are proposed to be prohibited from locating in Noise Subdistrict C (greater than 75 decibels) as that area is shown on the City's Future Land Use Map. This prohibition applies to all zones where bed and breakfast establishments would be permitted.
2. Also based on the review of the SEPA environmental checklist for the project, staff inserted language requiring that exterior lighting on bed and breakfast establishments be downward directed so as not to impact adjacent properties. The requirement for downward directed lighting would apply to all zones where bed and breakfast establishments would be permitted.\
3. Rather than having sign regulations for bed and breakfast establishments in Chapter 19.20 (Zoning Districts), staff have put references in Chapter 19.20 for bed and breakfast signs to Chapter 19.36 (Sign Code). Regulations regarding signs for bed and breakfast have been moved to Chapter 19.36 where they properly belong.

COMPLIANCE WITH REVIEW CRITERIA (OHMC 19.80.020)

(a) The amendment must be consistent with the Oak Harbor comprehensive plan.

Response: The Oak Harbor Comprehensive Plan is a large document which contains approximately 600 individual goals and policies. Below, staff have provided responses to the most pertinent goals and policies with regard to the subject code amendments which seek to more permissively allow bed and breakfast establishments in residential and commercial zones.

Land Use Goal 1: To respect the “small town” heritage of Oak Harbor while enhancing the unique character of its neighborhoods and districts with development that is fitting with the City’s future as a regional center.

Response: The subject code amendments will allow bed and breakfast establishments as permitted uses in the R3, R4, RO, C1, and CBD zoning districts and as conditional uses in the R1 and R2 zoning districts subject to parking, signage, lighting, occupancy, meal service, and room limits. The draft code will categorize bed and breakfast establishments into three types: (1) bed and breakfast inns, (2) bed and breakfast rooms (residential), and (3) bed and breakfast rooms (commercial). Each of these three types of bed and breakfast establishments will be allowed in the following zones:

Table 1: Bed and breakfast permitted use table

Type of B&B	R1	R2	R3	R4	RO	C1	CBD
<i>Inns</i>	X	X	P	P	P	P	P
<i>Residential Rooms</i>	C	C	P	P	P	P	P
<i>Commercial Rooms</i>	X	X	X	X	X	P	P

Bed and breakfast inns will allow up to 10 rooms and will be required to have off-street parking lots which meet minimum parking space dimensions required in the code. These establishments will be allowed in the higher density residential, neighborhood commercial, and central business district zone, but prohibited in all other residential, commercial, and industrial zones. Since these establishments could be sizeable facilities, they are not compatible with nor would be permitted in the lower density residential zones (R1 and R2).

Bed and breakfast rooms (residential) will be allowed to have up to four rooms and are proposed to be permitted in the R3, R4, RO, C1, and CBD districts and allowed conditionally in the R1 and R2 districts. The conditional use requirement for R1 and R2 will help ensure that these uses are compatible with the low density residential neighborhoods in which they might be located.

Finally, bed and breakfast rooms (commercial) will be allowed to have up to four rooms and proposed to be permitted in the C1 and CBD zones. Bed and breakfast rooms (commercial) are not compatible with residential zones because these establishments would be part of a larger commercial building where commercial uses are prohibited. Therefore, bed and breakfast rooms (commercial) are proposed to be prohibited in all residential zones. These types of establishments would also be prohibited in all commercial zones, with the exception of C1 and CBD and all industrial/business park zones.

The zones where bed and breakfast establishments are permitted will help respect the “small town” heritage of Oak Harbor, while allowing these establishments at a size and scope where they will enhance the character of neighborhoods and districts, in compliance with this goal.

Land Use Goal 5: To protect existing land uses as new development occurs.

Response: The bed and breakfast code has been crafted to allow new establishments which are compatible in use, scale, and design with existing residential neighborhoods and commercial areas.

- **Zoning and Land Use.** Three types of bed and breakfast establishments are proposed. Bed and breakfast inns will be permitted to have up to 10 rooms and bed and breakfast rooms (residential and commercial) will be allowed to have up to four rooms. Each of these types of bed and breakfast establishments will be allowed in some zones and prohibited in areas where they are not compatible. See table 1. Bed and breakfast inns, the largest of the types, will be allowed in high density residential zones, and the C1 and CBD zones, but prohibited in low density residential zones, most commercial and all industrial zones. Bed and breakfast rooms (residential) will be allowed in most residential zones (with the exception of low density areas), C1, and CBD zones, but prohibited in most commercial and all industrial zones. In addition, bed and breakfast rooms (residential) will be allowed conditionally in low density residential zones. Finally, for bed and breakfast establishments in residential zones, the amount of onsite accessory commercial will be restricted to 100 square feet.
- **Operation/management requirements::** All bed and breakfast establishments will be required to have a resident/manager domiciled onsite and no meals will be served to the general public, reducing the possibility of parking and traffic issues in neighborhoods from meal patrons arriving and leaving.
- **Parking:** All bed and breakfast establishments will be required to have off-street parking, helping to reduce the traffic impact on adjacent areas.
- **Signage:** To protect the character of neighborhoods, all bed and breakfast establishments in residential zones will be limited to having a four square foot sign which uses nonflashing, nonreflective materials. Only building or monument signs are permitted.

The above measures will help protect existing land uses as new development occurs, in compliance with this goal.

Land Use Goal 7: To encourage land use opportunities for diversified economic development

Response: Oak Harbor's existing code does not allow bed and breakfast establishments in any zone as a permitted use, but allows them as conditional uses in the R3, R4, and RO zones. The draft code would allow bed and breakfast establishments in the R1, R2, R3, R4, RO, C1, and CBD zones, thus, permitting these establishments subject to a simpler process and in a greater range of zoning districts and thereby encouraging business establishments and diversified economic development associated with the tourism industry.

Land Use Goal 8: To ensure that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible.

Policy 8.b Promote the integrity of areas established or proposed for residential land uses by preventing the sporadic and haphazard intrusion of incompatible land uses.

Response: The bed and breakfast draft code requires compatibility with existing residential land uses by limiting the size of the establishment in residential areas, using the conditional use process in low density residential areas and applying parking, signage, operational, and land use restrictions to the establishments.

Economic Development Goal 5: Implement long-range diversification projects to provide job opportunities and reduce economic reliance on Naval Air Station Whidbey Island.

Response: Bed and breakfast establishments, if opened, will fill a demand for lodging in Oak Harbor, which helps make the City a tourist destination and attract money from outside the area, thereby helping to diversify the local economy.

(b) The amendment must substantially promote the public health, safety, and welfare.

Response: Staff is not aware of any specific health or safety impacts from bed and breakfast establishments. These establishments have the potential to better the economic welfare of the community by creating jobs and attracting tourist dollars from outside the area.

RECOMMENDATION

Staff recommends that Planning Commission recommend approval of the bed and breakfast draft code to the City Council.

ATTACHMENTS

1. Bed and Breakfast Draft Code – Amendments to OHMC Chapters 19.08, 19.20, and 19.44.

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.08 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED “DEFINITIONS” AND ALSO AMENDING CHAPTER 19.20 ENTITLED “ZONING.”

WHEREAS, the City’s Comprehensive Plan, Economic Development Goal 6 says: “Ensure tourism with an emphasis on strengthening Oak Harbor as a tourist destination.” and;

WHEREAS, the City’s Comprehensive Plan, Land Use Element, Goal 5 says “To protect existing land uses as new development occurs” and;

WHEREAS, the City’s Comprehensive Plan, Land Use Element Goal 6 says “To encourage land use opportunities for diversified economic development, and;

WHEREAS, the City’s Comprehensive Plan, Land Use Element, Goal 8 says “to ensure that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible” and;

WHEREAS, the City’s Comprehensive Plan, Land Use Element Goal 19 says “ to create and maintain a balanced community that mixes residential and non-residential uses in a way that promotes environmental quality and community aesthetics.”

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on August 27, 2013. A public meeting was held before the Planning Commission on April 23, 2013.

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on July 13, 2013 and a Mitigated Determination of Non-Significance (MDNS) on August 8, 2013 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Chapter 19.08 of the Oak Harbor Municipal Code last amended by Ordinance 1555 section 4 in 2009 is hereby amended to read as follows:

Chapter 19.08 DEFINITIONS

Sections:

- 19.08.005 Definitions.
- 19.08.010 Accessory dwelling unit.
- 19.08.015 Accessory use.
- 19.08.020 Alley.
- 19.08.025 Alteration.
- 19.08.030 Assisted living facility.
- 19.08.035 Auto convenience market.
- 19.08.040 Automatic teller machine.
- 19.08.045 Automobile service station including self-service.
- 19.08.050 Aviation environs.
- 19.08.055 Banner.
- 19.08.060 Basement.
- 19.08.061 Bed and Breakfast Inns
- 19.08.062 Bed and Breakfast Room (residential)
- 19.08.063 Bed and Breakfast Room (commercial)
- 19.08.065 Berm.
- 19.08.070 Binding site plan.
- 19.08.075 Hearing examiner.
- 19.08.078 Building code.
- 19.08.079 Fire code.
- 19.08.080 Brew pub.
- 19.08.085 Buffer.
- 19.08.090 Buildable area.
- 19.08.095 Building.
- 19.08.100 Building, accessory.
- 19.08.105 Building area.
- 19.08.110 Building, detached.
- 19.08.115 Building height.
- 19.08.120 Building line.
- 19.08.125 Building, multiple-occupancy.
- 19.08.130 Building, office.
- 19.08.135 Building, quasi-public.
- 19.08.140 Building, single-occupancy.
- 19.08.145 Building site.
- 19.08.150 Canopy.
- 19.08.155 Carport.
- 19.08.160 Certificate of occupancy.
- 19.08.165 Child day care center.
- 19.08.170 Church.
- 19.08.175 City.
- 19.08.180 City staff.

19.08.185	Club.
19.08.190	Coffee kiosk.
19.08.195	Commercial use.
19.08.200	Commercial vehicle.
19.08.205	Conditional use.
19.08.210	Condominium.
19.08.215	Court.
19.08.220	Covered moorage building area.
19.08.225	Currency exchange.
19.08.230	Data processing facility.
19.08.235	Day-night average sound level (Ldn).
19.08.240	Deciduous.
19.08.245	Density.
19.08.250	Design review board.
19.08.252	Director of development services.
19.08.255	Dock.
19.08.260	Dwelling, multifamily.
19.08.265	Dwelling, single-family.
19.08.270	Dwelling unit.
19.08.275	Electrical distribution substation.
19.08.280	Essential public facility.
19.08.285	Essential use.
19.08.290	Evergreen.
19.08.295	Extended stay motel.
19.08.300	Factory-built structure.
19.08.305	Family.
19.08.310	Floor area.
19.08.315	Fraternity, sorority or student cooperative.
19.08.320	Garage, commercial.
19.08.325	Gated community.
19.08.330	General promotions.
19.08.335	Grade (adjacent ground elevation).
19.08.340	Grand openings and anniversaries.
19.08.345	Greenbelt.
19.08.350	Ground cover.
19.08.355	Health club.
19.08.360	Home, family child day care.
19.08.365	Home, foster.
19.08.370	Home, group.
19.08.375	Home improvement center.
19.08.380	Home occupation.
19.08.385	Hospital.
19.08.390	Hospital, animal.
19.08.395	Hotel.
19.08.400	House, apartment.
19.08.405	House, boarding, lodging or rooming.

19.08.410	House, guest.
19.08.415	Institution, educational.
19.08.420	Junkyard.
19.08.425	Kennel, commercial.
19.08.430	Kitchen.
19.08.435	Land clearing.
19.08.440	Landscape perimeter.
19.08.445	Landscape policy manual.
19.08.450	Landscape setback.
19.08.455	Landscaping.
19.08.460	Ldn contour.
19.08.465	Lot.
19.08.470	Lot area.
19.08.475	Lot, corner.
19.08.480	Lot coverage.
19.08.485	Lot depth.
19.08.490	Lot, developed single-family residential.
19.08.495	Lot, interior.
19.08.500	Lot, irregular shaped.
19.08.505	Lot line.
19.08.510	Lot line, front.
19.08.515	Lot line, rear.
19.08.520	Lot line, side.
19.08.525	Lot, partially developed single-family residential.
19.08.530	Lot, through.
19.08.535	Lot, undeveloped.
19.08.540	Lot width.
19.08.545	Marquee.
19.08.550	Mixed use.
19.08.555	Manufactured home.
19.08.560	Manufactured home park.
19.08.565	Manufactured home subdivision.
19.08.570	Moorage.
19.08.575	Motel.
19.08.580	Multiple-occupancy complex.
19.08.585	Neighborhood convenience store.
19.08.590	Noise zone map.
19.08.595	Nonconforming structure.
19.08.600	Nonconforming use.
19.08.605	Nonconforming use, land.
19.08.610	Occupant.
19.08.615	Opaque.
19.08.620	Open space.
19.08.625	Parapet.
19.08.630	Parking, employee.
19.08.635	Parking, off-street.

- 19.08.640 Parking space.
- 19.08.645 Penthouse.
- 19.08.650 Permit, conditional use.
- 19.08.655 Permit, land clearing.
- 19.08.660 Permit, minor clearing.
- 19.08.665 Permit, temporary use.
- 19.08.670 Permitted use.
- 19.08.675 Primary use.
- 19.08.680 Professional office.
- 19.08.685 Property line.
- 19.08.690 Public utility.
- 19.08.695 Qualified affordable housing.
- 19.08.700 Recreation facilities.
- 19.08.705 Recreational vehicle.
- 19.08.710 Reside.
- 19.08.715 School, commercial.
- 19.08.720 Schools – Elementary, junior or senior high, including public, private and parochial.
- 19.08.725 Screen.
- 19.08.730 Secondary use, incidental or accessory.
- 19.08.735 Setback and yard requirements.
- 19.08.740 Shelter station.
- 19.08.745 Shopping center.
- 19.08.750 Shrub.
- 19.08.755 Sign.
- 19.08.760 Sign, abandoned.
- 19.08.765 Sign, area or surface area.
- 19.08.770 Sign, billboard.
- 19.08.775 Sign, building-mounted.
- 19.08.780 Sign, canopy.
- 19.08.785 Sign, construction.
- 19.08.790 Sign, freestanding.
- 19.08.795 Sign, grade.
- 19.08.800 Sign, height of.
- 19.08.805 Sign, incidental.
- 19.08.810 Sign, low-profile.
- 19.08.815 Sign, noncommercial public service.
- 19.08.820 Sign, political.
- 19.08.825 Sign or signs, primary.
- 19.08.830 Sign, projection.
- 19.08.835 Sign, reader board.
- 19.08.840 Sign, roof.
- 19.08.845 Signs, subdivision.
- 19.08.850 Signs, temporary and special.
- 19.08.855 Sign, window.
- 19.08.860 Skilled nursing facility.

19.08.865	Solid planting.
19.08.870	Sorority.
19.08.875	Story.
19.08.880	Street.
19.08.885	Structure.
19.08.890	Structural alteration.
19.08.895	Surface area or facade.
19.08.896	Temporary.
19.08.897	Tree.
19.08.898	Tree cluster, grove or stand.
19.08.899	Tree root zone.
19.08.900	Understory.
19.08.901	Tree, ornamental.
19.08.905	Tree, shade.
19.08.910	Tree, significant.
19.08.915	Upholstery shop.
19.08.920	Use.
19.08.925	Use district.
19.08.930	Used car lot.
19.08.935	Uses, prohibited.
19.08.940	Variance.
19.08.945	Vehicular surface area.
19.08.950	Video rental store.
19.08.955	Waste, hazardous.
19.08.960	Waste, hazardous – Off-site treatment and storage facility.
19.08.965	Waste, hazardous – On-site treatment and storage facility.
19.08.970	Waste, hazardous – Storage of.
19.08.975	Waste, hazardous – Treatment of.
19.08.980	Way open to public.
19.08.985	Wireless communications facility, macro.
19.08.990	Wireless communications facility, micro.
19.08.995	Wireless communications facility, mini.
19.08.1000	Wireless communications facility, monopole.
19.08.1005	Xeriscape.
19.08.1010	Yard.
19.08.1015	Yard, front.
19.08.1020	Yard, rear.
19.08.1025	Yard, service.
19.08.1030	Yard, side.

19.08.061 Bed and Breakfast Inn

“Bed and Breakfast Inn” means a building or group of buildings on a lot which is designed or used for rental for transient lodging, where:

- (1) Not more than ten rooms are available for such rental;
- (2) No meals are served to members of the general public;
- (3) In residential zones, only accessory business, service, or commercial activity is allowed or provided on premises which shall not exceed 100 square feet in size. Such business shall only serve guests of the bed and breakfast establishment.
- (4) No room is rented to more than four persons.

19.08.062 Bed and Breakfast Rooms (residential)

“Bed and breakfast room (residential) means a room used for rental to not more than four persons for transient lodging situated in a building which is used primarily as the dwelling for a non-transient family, or in the case where there is an approved accessory dwelling unit on the same property, the principal dwelling is owner-occupied, and where:

- (1) Not more than four rooms are available for such rental
- (2) No meals are served to members of the general public; and
- (3) In the residential zones, only accessory business, service, or commercial activity is allowed or provided on premises which shall not exceed 100 square feet in size. Such business shall only serve guests of the bed and breakfast establishment.
- (4) If the principal dwelling ceases to be owner-occupied, the bed and breakfast use shall be terminated.

19.08.063 Bed and Breakfast Rooms (commercial)

“Bed and breakfast room (commercial)” means a room used for rental to not more than four persons for transient lodging situated in a building which is used primarily as a commercial establishment, where:

- (1) Not more than four rooms are available for such rental
- (2) No meals are served to members of the general public; and
- (4)(3) The room(s) are located above the first or street level or behind the street front side of the building.

Section Two. Sections 19.20.100 through 19.20.120 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article II. R-1 – Single-Family Residential

19.20.100 Purpose and intent.

The R-1 single-family residential district is intended for low-density, urban, single-family residential uses, while providing sufficient density to allow the city to effectively provide needed urban services. Manufactured home subdivisions are also allowed in this zone. The densities for this district range between a minimum of three units per gross acre and a maximum of six units per gross acre.

19.20.105 Principal permitted uses.

In an R-1 district, the following are principal permitted uses:

- (1) One single-family detached dwelling structure on each lot;
- (2) Development under a planned residential development as per Chapter 19.31 OHMC;
- (3) Manufactured home subdivisions as defined by OHMC 19.08.565 and in compliance with Chapter 19.25 OHMC.

19.20.110 Accessory permitted uses.

In an R-1 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops, and barns; provided, that none shall be rented or occupied for gain;
- (2) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located within the setback lines of the lot.

19.20.115 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-1 district when authorized by the hearing examiner:

- (1) All radio, television and microwave receiving antennas, whether variously described as a wire, dish, tower antenna, or otherwise, located outside of the setback lines of the lot when:
 - (a) Reception cannot be obtained when located within the setback lines;
 - (b) The location in a setback yard does not block the view of Oak Harbor Bay proposed from other property;
 - (c) The antenna does not cause a danger to adjacent properties;
 - (d) The antenna installation complies with all other zoning and building provisions of this code.
- (2) Assisted living facility.
- (3) Bed and breakfast rooms (residential only) subject to the following conditions:
 - (a) A resident is domiciled onsite;
 - (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
 - (c) Signs shall be permitted per OHMC 19.36.070.
 - (d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;
 - (e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.
- (34) Cemetery, mausoleum, or crematorium, but only in connection therewith.
- (54) Churches and associated rectories, convents or other similar structures.

- | ~~(65)~~ Community center building.
- | ~~(76)~~ Excavations, other than simple foundation.
- | ~~(87)~~ Garages, for storage only of automobiles as an accessory to a public or quasi-public institution.
- | ~~(98)~~ Golf course, including club house, but not an independent pitch-and-putt course, golf driving range or miniature golf.
- | ~~(910)~~ Government buildings for administrative or protective services, government storage yards, treatment plants, well sites, pump stations and sanitary landfills.
- | ~~(4011)~~ Group home.
- | ~~(4412)~~ Home occupations as regulated in Chapter 19.34 OHMC.
- | ~~(4213)~~ Hospital.
- | ~~(4314)~~ Landfills, reclamation to improve steep, low or otherwise unusable land.
- | ~~(4415)~~ Mortuaries.
- | ~~(4516)~~ Nursery and landscape material, including greenhouses.
- | ~~(4617)~~ Private club, lodge, social or recreation building or community assembly hall (except those having a chief activity carried on for monetary gain); provided, that the buildings used for such purpose may require additional front, rear or side yard setback from an adjoining lot in any residential district beyond the established requirements in the parent zoning district.
- | ~~(4718)~~ Private nursery school, foster home, kindergarten, or child day care center, not qualifying as a home occupation, on a legal lot, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight.
- | ~~(4819)~~ Private park or recreational area operated by a nonprofit community organization or association as a neighborhood playground, or local community recreational area, operated for the benefit of and exclusive use of members and their invited guests. Applications for a conditional use under this section shall state the specific use or uses to which the proposed neighborhood playground or local community recreational area shall be put. Conditional uses granted under this section shall be limited to one or more of the specific use or uses requested. Any use or uses in addition to or different from those specifically permitted by the hearing examiner hereunder shall require the separate approval of the hearing examiner. Included within the generality of the phrase "neighborhood playground, or local community recreational areas," but not limited thereto, are swimming pools, community beaches and tennis courts, together with appurtenances thereto.
- | ~~(4920)~~ Public school.
- | ~~(2021)~~ Public or private college.
- | ~~(2422)~~ Public, private or parochial school and supporting dormitory facilities.
- | ~~(2223)~~ Public or semi-public building serving as a library, museum or other similar purpose.
- | ~~(2324)~~ Public transportation shelter stations.
- | ~~(2425)~~ Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, or pumping station, provided there shall be no service or storage buildings or yards in connection therewith.
- | ~~(2526)~~ Radio and television broadcasting stations and towers.
- | ~~(2627)~~ Rapid transit terminals.

| (~~2728~~) Skilled nursing facility.

19.20.120 Density provisions.

For single-family dwelling structures, in an R-1 district, the following density provisions apply:

- (1) Minimum density, three DU/AC; maximum density, six DU/AC;
- (2) Minimum lot area, 7,200 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard, 20 feet;
- (6) Minimum side yard setbacks are 12 feet and five feet; however, minimum side yard along the flanking street of a corner lot, 15 feet;
- (7) Minimum rear yard, 20 feet;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage, 35 percent of lot area;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

Section Three. Sections 19.20.125 through 19.20.155 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article III. R-2 – Limited Multiple-Family Residential

19.20.125 Purpose and intent.

The R-2 limited multiple-family residential district is intended for medium density residential housing. Manufactured home subdivisions and parks are allowed in this zone. The densities for this district range between a minimum density of three units per gross acre and a maximum density of 12 units per gross acre. The R-2 districts are intended only for those areas having safe and convenient access to improved collector or arterial streets and adequate public services.

19.20.130 Principal permitted uses.

In an R-2 district, the following are principal permitted buildings and uses:

- (1) Principal use permitted in an R-1 district;
- (2) Duplexes, two-family dwelling structures;
- (3) Multifamily dwellings;
- (4) Development under a planned residential development as per Chapter 19.31 OHMC;

- (5) Manufactured home subdivisions and parks in compliance with Chapter 19.25 OHMC.

19.20.135 Accessory permitted uses.

In an R-2 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.140 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-2 district when authorized by the hearing examiner:

- ~~(1) Any conditional use permitted in an R-1 district;~~
- ~~(2) Bed and breakfast rooms (residential only) subject to the following conditions:~~
 - ~~(a) A resident is domiciled onsite;~~
 - ~~(b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.~~
 - ~~(c) Signs shall be permitted as per OHMC 19.36.060.~~
 - ~~(d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;~~
 - ~~(e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.~~
 - ~~(f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.~~
- ~~(2) Bed and breakfast inns subject to the following conditions:~~
 - ~~(a) There shall be no more than four guest rooms;~~
 - ~~(b) Service of meals shall be to registered guests only;~~
 - ~~(c) there shall be a full-time manager domiciled on the premises;~~
 - ~~(d) Parking of guest vehicles shall be accommodated on the same site with the main building;~~
 - ~~(e) Only one on-premises sign not exceeding four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;~~
- ~~(3) Bed and breakfast rooms subject to the following conditions:~~
 - ~~(a) A resident family is domiciled within the structure;~~
 - ~~(b) No more than 50 percent of the existing bedrooms are devoted to bed and breakfast;~~
 - ~~(c) Parking of guest vehicles shall be accommodated on the premises;~~
 - ~~(d) Only one on-premises sign not more than four square feet in area shall be permitted. Maximum height of pole signs shall be 42 inches;~~

- ~~(e) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;~~
- ~~(f) The use of the building as a dwelling is the predominant use.~~

19.20.145 Density provisions.

In an R-2 district, the following density provisions apply:

- (1) Minimum density, three DU/AC; maximum density, 12 DU/AC;
- (2) Minimum lot area: 6,000 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard setback, 20 feet; see also subsection (6) of this section;
- (6) Minimum side yard setbacks are 20 feet, five feet on one side for duplexes and multiple-family dwellings while single-family detached dwelling structures must provide minimum 12-foot and five-foot side yard setbacks. For both single-family and multiple-family dwellings, side yard along the flanking street of a corner lot is 15 feet (see also subsection (7) of this section);
- (7) Minimum rear yard setbacks where distinguishable from side yards and where required for a platted lot shall not be less than 25 feet for duplexes and multiple-family dwellings, while for single-family detached dwelling structures they shall not be less than 20 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot is to be kept free of impervious surfacing;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line; provided, there are six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development may occur as a planned residential development subject to Chapter 19.31 OHMC.

19.20.150 Landscaping requirements.

Except for single-family dwellings and duplexes, landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.155 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Section Four. Sections 19.20.160 through 19.20.190 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article IV. R-3 – Multiple-Family Residential

19.20.160 Purpose and intent.

The R-3 multiple-family residential district is intended to provide for and protect areas for medium- to high-density multiple-family residential development. The densities for this district range between a minimum density of six units per gross acre and a maximum density of 16 units per gross acre. The R-3 districts are intended only for those areas adjacent to arterials or collector streets, without generation of additional traffic upon residential streets, and with adequate public services.

19.20.165 Principal permitted uses.

In an R-3 district, the following are principal permitted buildings and uses:

- (1) Principal uses permitted in an R-2 district, except single-family uses;
- (2) Bed and breakfast inns subject to the following conditions:
 - (a) There shall be a full-time manager domiciled on the premises;
 - (b) Parking of guest vehicles shall be accommodated on the same site with the main building and shall meet the requirements of OHMC Chapter 19.44;
 - (c) Signs shall be permitted as per OHMC 19.36.060.
 - (d) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (f) If exterior lighting is proposed for the bed and breakfast inn establishment, it shall be downward directed so as not to impact adjacent properties.
- (3) Bed and breakfast rooms (residential only) subject to the following conditions:
 - (a) A resident is domiciled onsite;
 - (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
 - (c) Signs shall be permitted as per OHMC 19.36.060.
 - (d) No commercial dining or other hospitality facilities are maintained for the entertainment of guests;
 - (e) Bed and breakfast rooms (residential) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (f) If exterior lighting is proposed for the bed and breakfast room (residential) establishment, it shall be downward directed so as not to impact adjacent properties.
- ~~(2)~~(4) (42) Manufactured home park, subject to the provisions of Chapter 19.25 OHMC;
- ~~(3)~~(5) (53) Multifamily dwellings;
- ~~(4)~~(6) (64) Development under a planned residential development as per Chapter 19.31 OHMC.

19.20.170 Accessory permitted uses.

In an R-3 district, the following are accessory permitted uses:

- (1) Accessory uses and structures incidental to any permitted residential uses, such as servants' quarters, garages, greenhouses, or workshops; provided, that none shall be rented or occupied for gain;
- (2) Television satellite dish reflectors, ground-mounted within required building setback lines.

19.20.175 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an R-3 district when authorized by the hearing examiner:

- (1) Any conditional use permitted in an R-2 district;
- (2) Assembly hall;
- (3) Gymnasium or stadium in connection with public or private schools certified by the State of Washington Board of Education.

19.20.180 Density provisions.

In an R-3 district, the following density provisions apply:

- (1) Minimum density, six DU/AC; maximum, 16 DU/AC;
- (2) Minimum lot area: 6,000 square feet;
- (3) Minimum lot width, 60 feet;
- (4) Minimum lot depth, 90 feet;
- (5) Minimum front yard setback, 20 feet; see subsection (7) of this section;
- (6) Minimum side yard setbacks are 20 feet, five feet on one side. Minimum side yard along flanking street of a corner lot is 15 feet; see subsection (7) of this section;
- (7) Minimum rear yard setbacks, where distinguishable from side yards and where required for a platted lot, shall not be less than 25 feet. In addition to the above, any building of more than two stories in height must provide a minimum of two feet additional front, side and rear yard setback for each additional story;
- (8) Maximum building height, 35 feet;
- (9) Maximum lot coverage by buildings, 45 percent. A minimum of 20 percent of lot area is to be kept free of impervious surfacing;
- (10) A single-story accessory building containing less than 600 square feet of floor area may be constructed within five feet of either sideline or rear property line, provided there is six feet of unencumbered space between the principal structure and the accessory building. Accessory buildings shall not have a metal finish except when the finish is listed by the manufacturer or approved by the building department as a nonglare finish. The maximum floor area of an accessory structure shall not exceed 50 percent of the floor area of the primary structure;
- (11) Development as a planned residential development may occur subject to Chapter 19.31 OHMC.

19.20.185 Landscaping requirements.

Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.190 Site plan review required.

Site plan review shall be required as defined in Chapter 19.48 OHMC.

Section Five. Sections 19.20.265 through 19.20.295 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article VII. C-1 – Neighborhood Commercial

19.20.265 Purpose and intent.

The C-1 neighborhood commercial district is intended to provide for limited commercial facilities serving residents of the surrounding residential district.

19.20.270 Principal permitted uses.

In a C-1 district, the following are principal permitted uses:

- (1) Principal uses permitted in an RO district;
- (2) Artist's studios and supplies;
- (3) Auto convenience market;
- (4) Bakery, retail only;
- (5) Barber shop or beauty shop;
- (6) Bed and breakfast inns subject to the following conditions:
 - (a) There shall be a full-time manager domiciled on the premises;
 - (b) Parking of guest vehicles shall be accommodated on the same site with the main building and shall meet the requirements of OHMC Chapter 19.44;
 - (c) Signs shall meet the requirements of OHMC 19.36.040
 - (d) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (e) If exterior lighting is proposed for the bed and breakfast inn establishment, it shall be downward directed so as not to impact adjacent properties.
- (7) Bed and breakfast rooms (residential or commercial) subject to the following conditions:
 - (a) A resident or manager is domiciled onsite;
 - (b) Parking of guest vehicles shall be accommodated on the premises and the number of spaces must meet OHMC 19.44.100. The size and dimensional requirements of OHMC 19.44 are not required to be met.
 - (c) Signs shall meet the requirements of OHMC 19.36.
 - (d) Bed and breakfast rooms (residential or commercial) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.
 - (e) If exterior lighting is proposed for the bed and breakfast room (residential or commercial), it shall be downward directed so as not to impact adjacent properties.
- (86) Book and stationery store;
- (97) Clothing store;
- (108) Confectionery;

- (119) Dairy products, retail only;
- (1240) Delicatessen;
- (1344) Dress and millinery shop;
- (1442) Drug store, including fountain;
- (1543) Dry cleaners;
- (1644) Florist shop;
- (1745) Garden supplies and horticultural nursery, not including greenhouses;
- (186) Grocery store;
- (1947) Hardware store;
- (2048) Health club;
- (2149) Laundry, self-service;
- (2220) Library;
- (2324) Office supply and equipment store;
- (2422) Photographic studio and supplies;
- (2523) Private nursery school, child day care center or kindergarten, provided there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
- (2624) Radio and television sales and service;
- (2725) Restaurant, including sidewalk cafes;
- (2826) Service station;
- (2927) Single-family residential uses when located on the second floor above a permitted use;
- (3028) Shoe repair shop;
- (3129) Variety store;
- (3230) Other uses as defined by the planning director to be similar to those identified above and having equal or less impact on the purposes of this section. .

19.20.275 Accessory permitted uses.

In a C-1 district, following are accessory uses permitted outright:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed 35-foot height limitations;
- (4) Outdoor storage as an accessory use is not permitted.

19.20.280 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a C-1 district when authorized by the hearing examiner:

- (1) Church;
- (2) Excavations, other than simple foundation;
- (3) Garages, for storage only of automobiles as an accessory to a public or quasi-public institution;

- (4) Governmental buildings for administrative or protective service, government storage yards, treatment plants, well sites, pump stations and sanitary landfills;
- (5) Landfill, reclamation to improve steep, low or otherwise unusable land;
- (6) Nursery and landscape material including greenhouses;
- (7) Public transportation shelter stations;
- (8) Public utility and communications facility, such as a branch telephone exchange, static transformer, booster station, pumping station; provided, there shall be no service or storage building or yards in connection therewith, including microwave relay stations;
- (9) Rapid transit terminals;
- (10) Roller rink;
- (11) Swimming pools or beaches, public or private.

19.20.285 Density provisions.

In a C-1 district, the following density provisions apply:

- (1) Multifamily dwelling structures shall conform to the requirements of the R-4 district;
- (2) Other uses shall conform to the following standards:
 - (a) Minimum lot area, 5,000 square feet;
 - (b) Minimum lot width, 50 feet;
 - (c) Minimum lot depth, 90 feet;
 - (d) Minimum front yard, 15 feet;
 - (e) Minimum side yard, 10 feet each side;
 - (f) Minimum side yard along flanking street of corner lot, 15 feet;
 - (g) Minimum rear yard, 20 feet;
 - (h) Minimum rear yard abutting a public street, 15 feet;
 - (i) Maximum building height, 35 feet;
 - (j) Maximum lot coverage, 60 percent of lot area.

19.20.290 Conditions governing permitted uses.

Uses permitted in a C-1 district, except conditional uses and dwellings, shall be subject to the following conditions:

- (1) All business, service, repair, processing, storage, or merchandise display shall be conducted within a wholly enclosed building except for the following:
 - (a) Off-street parking or loading;
 - (b) Drive-in windows, but not including food or drink service;
 - (c) Food and drink service in connection with a delicatessen or confectionery;
 - (d) Sale of plant materials in connection with a florist shop;
- (2) Items produced or wares and merchandise handled shall be limited to those sold at retail on the premises;
- (3) The use shall not be objectionable because of odor, dust, smoke, cinders, exhaust fumes, noise, vibration, disturbance to television or radio reception or because of unsightly structure, facilities or use of land;
- (4) Design shall be in accordance with the provisions of the design guidelines;
- (5) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.295 Site plan and design review required.

- (1) Site plan and design review shall be required as defined in Chapter 19.48 OHMC.
- (2) The planning director, under site plan review, may impose the following conditions before a building permit will be issued for the proposed development:
 - (a) Limit or prohibit openings to structures on sides within 50 feet of a residential district if the openings will cause glare, excessive traffic, noise or other adverse effects on adjacent residential areas;
 - (b) Access shall be limited to streets designated as collector or arterial streets in the comprehensive plan;
 - (c) Require additional setbacks and landscaping or screening abutting a residential district if necessary to minimize the detrimental effects of commercial activity such as glare and noise.

Section Six. Sections 19.20.300 through 19.20.330 of the Oak Harbor Municipal Code last amended by Ordinance 1573 section 1 in 2010 are hereby amended to read as follows:

Article VIII. CBD – Central Business District

19.20.300 Purpose and intent.

The central business district (CBD) is intended to preserve and enhance the unique harbor location of the city’s heritage with the character of the traditional center of social, cultural and retail activity. Mixed use developments, combining retail and visitor-oriented activities on the ground floor with office, retail and residential uses above, are required. Within the district, pedestrian-oriented activity is encouraged. Standards and design guidelines are adopted to enhance and maintain a pedestrian-friendly environment. Incentives are also provided to encourage the development of mixed use projects. Subdistricts CBD-1 and CBD-2 are created in order to provide for flexibility of residential development within specific areas of the central business district. Large surface parking lots are not encouraged. Shared clustered parking areas in the middle of blocks are allowed away from street frontages. Access driveways are to be kept at a minimum to promote safety and convenience of pedestrians.

19.20.305 Principal permitted uses.

In a central business district (CBD, CBD-1 or CBD-2), the following are principal permitted uses (for the purposes of this district only, uses considered to be “retail” are denoted with an (R)):

- (1) Antique shop (R);
- (2) Artist’s studios and supplies (R);
- (3) Bakery, retail only (R);
- (4) Bank;
- (5) Barber and beauty shops;
- (6) Bars (R);
- (7) Bed and breakfast inns subject to the following conditions:
 - (a) There shall be a full-time manager domiciled on the premises;
 - (b) Signs shall meet the requirements of OHMC 19.36.030.

(c) Bed and breakfast inns shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.

(d) If exterior lighting is proposed for the bed and breakfast inn, it shall be downward directed so as not to impact adjacent properties.

(8) Bed and breakfast rooms (residential or commercial) subject to the following conditions:

(a) A resident or manager is domiciled onsite;

(b) Signs shall meet the requirements of OHMC 19.36.030.

(c) Bed and breakfast rooms (residential or commercial) shall not be located in Noise Subdistrict C as that area is shown on the City of Oak Harbor's Official Zoning Map.

(d) If exterior lighting is proposed for the bed and breakfast room (residential or commercial), it shall be downward directed so as not to impact adjacent properties.

(97) Bicycle shop (R);

(108) Billiards and pool hall (R);

(119) Blueprinting;

(1240) Bookstore (R);

(1344) Brew pub (R);

(1442) Camera and supply shop (R);

(1543) Clothes and apparel shop (R);

(1644) Cocktail lounge (R);

(1745) Coffee house (R);

(1846) Confectionery store (R);

(1947) Conference center;

(2048) Data processing facility;

(2149) Delicatessen (R);

(2220) Department store (R);

(2324) Dry cleaners;

(2422) Furniture shop (R);

(2523) Florist shop (R);

(2624) Gift shop (R);

(2725) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);

(2826) Hardware store (R);

(2927) Hobby shop (R);

(3028) Hotel and motel;

(3129) Ice cream shop (R);

(3230) Interior decorator studio (R);

(3334) Jewelry store (R);

(3432) Leather goods store (R);

(3533) Music store (R);

(3634) Offices;

(3735) Office supply and equipment store (R);

- (~~3836~~) Pet shop (R);
- (~~3937~~) Pharmacy and drug store (R);
- (~~4038~~) Photographic film processing and associated retail sales (R);
- (~~4139~~) Photographic studio and supplies;
- (~~4240~~) Photocopying;
- (~~4341~~) Post office;
- (~~44442~~) Printing shop;
- (~~4543~~) Residential uses, provided:
 - (a) In the CBD district: mixed use sites with multiple street frontages may locate dwelling units on the ground level on any street frontages other than Pioneer Way;
 - (b) In subdistricts CBD-1 or CBD-2: dwelling units may be the primary use of the site;
- (~~4644~~) Restaurant, including sidewalk cafe (R);
- (~~4745~~) Schools for the fine arts;
- (~~4846~~) Shoe repair shop (R);
- (~~4947~~) Shoe store (R);
- (~~5048~~) Sporting goods shop (R);
- (~~5149~~) Tailor shop (R);
- (~~5250~~) Tavern (R);
- (~~5351~~) Taxi service;
- (~~5452~~) Theater;
- (~~5553~~) Tobacco shop (R);
- (~~5654~~) Toy store (R);
- (~~5755~~) Travel agencies;
- (~~5856~~) Trophy shop (R);
- (~~5957~~) Upholstery shop;
- (~~6058~~) Variety store (R);
- (~~6159~~) Visitor information center;
- (~~6260~~) Other uses similar to those identified above and having equal or less impact on the purposes of this section.

19.20.310 Accessory permitted uses.

In a central business district (CBD, CBD-1, or CBD-2), the following are accessory permitted uses:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050.

19.20.315 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a central business district (CBD, CBD-1, or CBD-2) when authorized by the hearing examiner:

- (1) Coffee kiosk;
- (2) Dancehall;
- (3) Governmental buildings for administrative or protective services;
- (4) Health club;
- (5) Land reclamation with water-dependent marine development;
- (6) Parking lots or garages not in conjunction with permitted uses;
- (7) Places of entertainment and amusement, if conducted within a wholly enclosed building;
- (8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided, there is established in connection therewith an outdoor play area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;
- (9) Public utility and communications facility;
- (10) Transit terminals;
- (11) Swimming pools or beaches, public or private;
- (12) Other uses similar to uses permitted or conditionally permitted and normally located in the central business district; provided, that there shall be no manufacturing, compounding, processing or treatment of products other than that which is essential to the retail store or business where all such products are sold on the premises.

19.20.320 Density provisions.

In CBD, CBD-1 and CBD-2, the following density provisions apply:

(1) Allowable density:

District	Minimum	Maximum
CBD	None	None
CBD-1	9 du/ac	None
CBD-2	13 du/ac	None

- (2) Minimum lot area, no limitation;
- (3) Minimum lot width, no limitation;
- (4) Minimum lot depth, no limitation;
- (5) Minimum front yard, no limitation, except when opposite a residentially zoned property, then a 10-foot front yard is required. Front yard setback may also be increased to 10 feet if needed for traffic safety; front yard setback shall be provided so as to maintain a 12-foot sidewalk measured from the existing curb or future curb line;
- (6) Minimum side yard, no limitation except when abutting a residentially zoned property, then 10 feet each. For corner lots, side yard may also be increased to 10 feet if needed for traffic safety;
- (7) Minimum rear yard, no limitation except when opposite a residentially zoned property, then 10-foot rear yard is required or except when abutting a public street where the setback may be increased to 10 feet if needed for traffic safety;
- (8) Maximum building height; 35 feet; except:
 - (a) In CBD: building height may be increased to 45 feet if ground floor retail space (as defined in OHMC 19.20.300) is developed in conjunction with a residential use;
 - (b) In CBD-2: building height may be increased to 45 feet for residential development (without a retail component);
 - (c) In CBD: building height may be increased to 45 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines;
 - (d) In CBD: building height may be increased to 55 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines. The design review board shall specifically review the proposed project and building height for its impacts on waterfront and mountain views and require reasonable mitigation as necessary;
- (9) Maximum lot coverage, no limitation;
- (10) Parking.
 - (a) Nonresidential Uses. There shall be no required parking for nonresidential uses; except, however, if parking is provided, it shall meet the parking space size and access requirements of OHMC 19.44.110;

- (b) Residential uses shall provide parking per Chapter 19.44 OHMC, except that guest parking need not be provided. If guest parking is provided it shall meet the parking space size and access requirements of OHMC 19.44.110;
 - (c) Any parking provided beneath a permitted residential use shall be enclosed;
 - (d) No more than 50 percent of the gross floor area along pedestrian-oriented streets may be used for residential parking;
- (11) Design Standards.
- (a) Development shall be in accordance with the provisions of the Oak Harbor commercial and industrial design guidelines;
 - (b) Residential development shall have ground level access independent of nonresidential uses from an inside lobby, elevators and/or corridors, from an enclosed interior court, or from other separate access provisions;
 - (c) Nonresidential development along Pioneer Way, between SE City Beach Street and SE Midway Boulevard, shall meet the following standards:
 - (i) Ground-floor, nonretail development shall not comprise more than 50 percent of the lineal street frontage of the lot;
 - (ii) Window areas for nonresidential portions of a building's facades shall not be less than 40 percent or greater than 60 percent of the total facade area;
 - (iii) Conformance with the above standards shall be determined by using the design guideline applicability standards established under OHMC 19.48.040;
 - (d) Residential development in subdistrict CBD-1 or CBD-2 shall be under a planned residential development per Chapter 19.31 OHMC;
 - (e) Nonresidential development with building heights greater than 45 feet, as approved by the design review board, shall provide a minimum of 450 square feet of pedestrian-oriented space (as defined in the Oak Harbor commercial and industrial design guidelines) plus an additional 25 square feet for each vertical foot of building height above 45 feet;
 - (f) All buildings in the CBD greater than three stories must set back upper stories by at least 10 feet.

19.20.325 Conditions governing permitted uses.

All principal uses permitted outright in a CBD, CBD-1, or CBD-2 district shall meet the following conditions:

- (1) All business, service, repair, storage, or merchandise display shall be conducted within a wholly enclosed building, except for the following:
 - (a) Off-street parking and loading;
 - (b) Food and drink service in connection with cafes, restaurants or other eating establishments.
- (2) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.
- (3) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC.

19.20.330 Site plan and design review required.

Site plan and design review shall be required as per Chapter 19.48 OHMC.

Section Seven Section 19.36.040 of the Oak Harbor Municipal Code last amended by Ordinance 1553, Section 3 in 2009 is hereby amended to read as follows:

19.36.040 Residential/office district and neighborhood commercial district signs – RO and C-1 zones.

(1) **General.** ~~Subsections 1-4~~ **This section applies only** to office and apartment buildings in RO and buildings in C-1 zones of the city. Such buildings in other zones are governed by the sign regulations of the applicable zone. As the RO and C-1 zones are primarily placed as a buffer between CBD, C-3, C-4 and C-5 business district zones and residential zones, the permissible signs are scaled down from those allowed in business districts.

(2) **Setback Limitations – Freestanding Signs.** The size of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Minimum Setback: 5 feet from front property line

Maximum Area: 35 square feet (per side)

(a) **Sign Height – Freestanding Signs.** The height of any freestanding sign in an RO or C-1 district shall not exceed the following limits, based on the sign setback of the sign:

Maximum Height: 15 feet

(b) **Facade Limitations – Building-Mounted Signs, Roof and Canopy-Mounted Signs.** The surface area of any building-mounted sign and roof or canopy-mounted sign in the RO and C-1 districts shall not exceed the figures derived from the following schedule:

Relevant Surface Area of Facade as Determined Pursuant to OHMC 19.36.020(40) (sq. ft.)	Maximum Sign Surface Area for That Facade
Below 100	20 percent of the sign area
100 – 199	21 sq. ft. + 9 percent of facade area over 100 sq. ft.
200 – 499	30 sq. ft. + 10 percent of facade area over 200 sq. ft.
500 – 999	60 sq. ft. + 9 percent of

	facade area over 500 sq. ft.
Over 1,000	105 sq. ft. maximum

In multiple-occupancy buildings the facade area for each occupant is derived by measuring only the surface area of the exterior facade of the premises actually used by the tenant or user, and the sign displayed by that tenant or user must be located on the facade used to determine the size of the sign, except as provided in this section.

Unused sign surface area for a facade may be used by any tenant or user within the same multiple occupancy building, if:

- (i) The applicant files with the city a written statement signed by the tenant or user permitted to utilize that sign area under this code permitting the applicant to utilize the unused sign surface area;
- (ii) The display of a sign on that facade by the nondependent sign user will not create a significant adverse impact on dependent sign users of that facade;
- (iii) The display of the nondependent sign is necessary to reasonably identify the use, and the provisions of this code do not provide the use with adequate sign display options.

In no case may the maximum sign surface area permitted on a building facade be exceeded.

- (c) Sign Height – Building-Mounted Signs. No building-mounted sign in the RO or C-1 district, regardless of type, shall exceed a height of 20 feet above grade, or above the height of the building to which it is attached, whichever is less.
 - (d) Limitation. Any freestanding or building-mounted sign located in these districts shall be limited in content and message to identify the building and the name of the firm, or the major enterprise, and the principal service or product of the business without references to prices or the characteristics of the product or services offered.
- (3) Number of Signs. In the RO and C-1 districts no more than two primary signs are permitted for buildings facing on one street, only one of which may be freestanding. Buildings or building complexes on street corner locations may have two freestanding signs only if they are located on two different streets and are separated more than 100 feet, measured in a straight line between the signs. Buildings or building complexes which extend a block to face on two parallel streets are permitted two primary signs on each street, only one of which may be freestanding for each street.

For purposes of determining the limit on number of signs for apartments, a single apartment complex, regardless of the number of buildings, shall be considered one building.

- (4) Types and Placement. Within RO and C-1 districts the permissible types of signs, their placement and other limitations are as follows:
- (a) Freestanding Signs. Requirements are identical to OHMC 19.36.030(5)(a), except that advertising shall not be permitted.
 - (b) Building-Mounted Signs. Requirements are identical to OHMC 19.36.030(5)(b), except that advertising shall not be permitted.
 - (c) Electronic Message Center Signs. These signs are allowed only in the C-1 district. Requirements are identical to OHMC 19.36.030(5)(g).
 - (d) Incidental Signs. In addition to the permitted primary signs, each building or complex of buildings is permitted the incidental signs as described and limited in OHMC 19.36.030(6).
 - (e) Street Address Identification. Each building or complex of buildings shall display and maintain on-premises street address number identification.
 - (f) Signs or portions of signs indicating premises for rent (e.g., "Apartment for Rent," "Apartment Available," "Vacancy," "Now Renting," "Free Rent," etc.) shall not exceed a surface area of six square feet and many remain up until the premises are sold or rented.
 - (g) The illumination of any sign in the RO and C-1 districts shall be shaded, shielded, directed or reduced so that it is not visible from a public street or adjoining residential property.
 - (h) Legal nonconforming signs same as OHMC 19.36.030(10) and (11).
 - (i) Monument signs shall not exceed six feet in height measured from the finished grade to top of the sign and not exceed 32 square feet in area. Monument signs shall be located within the center two-thirds of street frontage. Signs may be located up to the property line when there is no sight visibility obstruction from driveways or intersections caused by placement of the sign.

(5) Bed and breakfast establishments. Only one on-premises monument sign or building mounted sign not more than four square feet in area shall be permitted. Such signs shall use non-flashing, non-reflective materials; and the legend shall show only the name of the facility and/or the operator and/or the address. Pole or pylon signs are prohibited.

Section Eight Section 19.36.070 of the Oak Harbor Municipal Code last amended by Ordinance 1640, Section 3 in 2012 is hereby amended to read as follows:

19.36.070 Single-family residential signs – R-1 zones.

- (1) General. Two categories of sign uses are covered by this section:
 - (a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.

- (b) Noncommercial uses such as schools, churches, fire stations and house number identification.

(2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:

- (a) Such sign may be either freestanding or building-mounted.
- (b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.
- (c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.

(3) Signs for Noncommercial Uses.

- (a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:
 - (i) Signs shall be unobtrusive, in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.
 - (ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:
 - (A) The sign is to identify current events or activities;
 - (B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;
 - (C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) of this section);
 - (D) The sign shall not exceed 15 square feet in area nor five feet in height;
 - (E) Not more than two such signs shall be permitted.
- (b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.
- (c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.

(d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction. (Ord. 1553 § 5, 2009; Ord. 1307 § 8, 2002; Ord. 1221 § 1, 2000. Formerly 19.36.060).

(e) Bed and breakfast establishment signs. Only one on-premises monument sign or building mounted sign not more than four square feet in area shall be permitted. Such signs shall use non-flashing non-reflective materials; and the legend shall show only the name of the facility and/or the operator and/or the address. Pole or pylon signs are prohibited.

Section Nine. Section 19.44.100 of the Oak Harbor Municipal Code last amended by Ordinance 1614 section 1 in 2011 is hereby amended to read as follows:

19.44.100 Minimum parking space standards.

Use	Required Parking
Residential, single-family	Two per dwelling
Residential, duplex	Two per dwelling
Residential, multiple	One and one-half per dwelling unit
Three or more bedroom dwelling unit	Two per three or more bedroom dwelling unit. In addition, multifamily projects with eight or more units shall provide one visitor parking space for each eight units.
Banks	One per 400 square feet of gross floor area, plus employee parking
<u>Bed and breakfast inns and rooms</u>	<u>Two for primary resident or on-site manager plus one for each guest room</u>
Bowling alleys	Four per alley, plus employee parking
Churches, auditoriums and similar enclosed places of assembly	One per four seats and/or one per 30 square feet of assembly space without fixed seats
Skilled nursing facilities	One per five beds, plus owner and employee parking
College	One space per 200 square feet of classroom space
Assisted living facilities	Minimum of 0.8 spaces per unit, with a maximum of one and one-half spaces per unit
Food and beverage places with sales and consumption on premises	One per three seats, plus one space for every two employees on the largest shift
Furniture, appliance, hardware, clothing and shoe	One per 600 square feet gross floor area, plus

Use	Required Parking
stores, personal service stores such as beauty parlors, barbershops and physical fitness centers	employee parking
Gasoline stations	15 spaces, including pump and service area
Hospital	One per two beds, excluding bassinets
Hotels, motor hotels	One per sleeping room, plus owner and employee parking
Libraries and museums	One per 200 square feet gross floor area, plus employee parking
Manufacturing uses, research testing and processing, assembling, all industries	One per each two employees on maximum shift and not less than one per each 800 square feet gross floor area
Mortuaries	One per 100 square feet of gross floor area used for assembly or one per five seats, plus employee parking
Motels	One per unit, plus owner and employee parking
Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One per 1,000 square feet floor area, plus employee parking
Offices, medical and dental (including optometrists)	One per 200 gross square feet of floor area, plus employee parking
Offices not providing customer services	One per each employee
Offices of opticians, chiropractors and others licensed by the state of Washington to practice the healing arts	One per 400 square feet of gross floor area, plus employee parking
Offices, business and professional (other than medical and dental) with on-site customer service	One per 400 square feet of gross floor area, plus employee parking
Rooming houses, similar uses	One per dwelling unit
Schools, elementary and junior high	One per each employee and faculty member, plus 15 visitor parking
Schools, high	One per each 10 students, plus one per each employee and faculty member, plus 15 visitor parking
Shopping centers with over 30,000 square feet of gross floor area	Four and one-half spaces per 1,000 square feet gross floor area, but not to exceed five spaces per 1,000 square feet of gross floor area
Stadiums, sport arenas and similar open assemblies	One per four seats and/or one each 30 square feet of assembly space without fixed seats
Theaters	One per four seats, plus employee parking
Warehouses, storage and wholesale business	One per each employee, plus two additional spaces
Other retail	One per 300 square feet gross floor area, plus employee parking

Section Ten. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Eleven. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____ 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

Attest: Approved as to Form:

Valerie J. Loffler, City Clerk Grant K. Weed, Interim City Attorney

Introduction:

Adopted:

Published:

Economic Development Strategy

Public Meeting

Memo

To: Members of the Planning Commission
Cc: Steve Powers, Development Services Director
From: Ethan Spoo, Senior Planner
Date: 8/27/13
Re: Economic Development Strategy and Action Plan – Public Meeting

PURPOSE

This memo introduces the Draft Economic Development Strategy and Action Plan (Draft EDSAP) to the Planning Commission for review and comment.

BACKGROUND

The Mayor convened the ad hoc Economic Development Committee in early 2012. Beginning in January 2013 at the recommendation and guidance of staff, this committee began discussions on the Draft EDSAP. As part of the background research for the Draft EDSAP, staff prepared the “Economic Profile and Needs Assessment” and presented the findings to Planning Commission at the March, 2013 meeting. The Executive Summary of the Economic Profile and Needs Assessment is provided as Attachment 2. Staff encourages Planning Commission to obtain a copy of the full Economic Profile and Needs Assessment because it forms the basis of the Draft EDSAP and the population, housing, and economy trends will also be important for the 2016 Comprehensive Plan Update. Among the key trends of the Economic Profile and Needs Assessment are:

- **Slow population growth.** Oak Harbor’s population growth has slowed dramatically over the last two decades from an annual rate of eight percent prior to 1990 to a rate between just above one percent thereafter.
- **Young demographic.** Oak Harbor has a young demographic with strong representation of people in their 20s and 30s, but also has a fast growing population of senior citizens.
- **Housing affordability.** Oak Harbor has a housing affordability problem for civilian sector workers whose median wages are often too low to leave budget for non-housing related expenses (food, clothes, transportation, etc.).
- **High unemployment.** Oak Harbor’s unemployment rate is higher than average and was the highest in the state for a city its size in 2010 at 11.1 percent.¹ Oak Harbor’s unemployment rate has been persistently high over the last decade in which NASWI was reducing military personnel. The high unemployment could be due to the reduced personnel at NASWI, as well as the ongoing dynamic of veterans who recently left service and are looking for work.
- **Low incomes.** As previously mentioned, Oak Harbor’s incomes are quite low, not considering Navy allowances for housing. Oak Harbor’s median household income is approximately \$50,000 per year compared with incomes of \$70,000 for other cities its size across the state.

¹ Source: 2011 American Community Survey 3-Year Estimates for 2009-2011.

- **High per capita sales.** Possibly due to Navy allowances for housing and other living expenses, Oak Harbor residents likely have higher disposable incomes than their household income would imply and giving them more leeway to spend at local businesses.

Following the completion of the Economic Profile and Needs Assessment, the Economic Development Committee conducted several months of discussions on the Draft EDSAP. The Committee worked very hard to discuss the draft strategy with the goal of creating a document that is based on implementable projects that Oak Harbor can accomplish over the next 3-5 years with existing staff resources. Thus, the Draft EDSAP reads more like a list of projects than a narrative. In addition, staff conducted four focus groups to obtain additional input on Oak Harbor's economy and potential obstacles to economic growth. The four focus groups conducted were: (1) US Navy (2) Small Businesses (3) Large Businesses and (4) Public Non-profit Institutions. Notes from the focus group sessions are included as Attachment 3.

SUMMARY

OVERVIEW

The Draft EDSAP is organized into four goals with actions listed under each goal. Each action is organized into those actions which require no additional funding or staffing and actions which require additional funding or staffing. There are a total of 31 different actions, 12 of which will require additional funding or staffing to accomplish and 19 which can be accomplished with existing funding and staffing levels.

GOALS

The 31 actions are organized under four broad goals which are:

1. Retain and Grow Existing Businesses
2. Foster a Business-friendly Culture at the City
3. Redevelop to Catalyze Job Growth
4. Welcome Tourists to Oak Harbor

These four goals were chosen as the most important to promote economic development in Oak Harbor over the next 3-5 years. Retaining and growing existing businesses was chosen because research has shown that 60-80 percent of all job growth comes from existing businesses. In the past, economic development in cities across the US has focused heavily on recruiting new businesses. While recruiting new businesses is still important and attracts much attention, research is showing that helping existing businesses thrive is more productive and cost effective.

Fostering a business-friendly culture at the City was chosen because the committee perceived that improvements were needed to reach out to new and existing businesses to make them feel welcome and cared for. In addition, the committee wanted to see that business interests were continually represented and taken into consideration in City decision making.

Goal 3 refers to the City's efforts to create new redevelopment which will catalyze development on adjacent properties and create high quality buildings in which businesses can locate. For many years, downtown has been the focus of efforts to attract new development. The Draft EDSAP affirms that redevelopment is an important activity for the City to undertake to revitalize Oak Harbor's business districts. Redevelopment might be accomplished by selling city-owned land to a developer who would meet City goals for design of a property.

Goal 4 focuses on tourism and attracting tourists to Oak Harbor. Tourism can be a controversial economic development focus because tourist-oriented jobs such as restaurants, tours, etc. usually pay low wages. However, the committee chose this goal because the Economic Profile and Needs Assessment showed that Oak Harbor lags far behind other communities for its lodging tax revenues meaning that Oak Harbor has work to do just to be seen as an "average" tourist destination.

ACTIONS

Each action can be seen as a project that the City needs to complete toward the furtherance of each goal. To date, the resources which the City has to accomplish these actions/projects is a 0.5 FTE economic development coordinator. In addition, to the degree that these projects are needed by other City departments (engineering, planning, etc.) there may be shared staff resources dedicated to some of these projects. For example, action number 11, "create a business impact section in its agenda bills" would likely require multiple staff persons to implement.

Staff encourages Planning Commission to read the three plus Draft EDSAP document, ask questions, and offer comments, with the goal of forwarding the document to the City Council for their approval in September.

SCHEDULE

- August – Introduction of Draft Economic Development Strategy and Action Plan
- September – Open public hearing and make recommendation to City Council on Draft Economic Development Strategy and Action Plan.

ATTACHMENTS

1. Draft Economic Development Strategy and Action Plan
2. Economic Profile and Needs Assessment, Executive Summary
3. Notes from the economic development focus groups

Draft Strategy & Action Plan

Goal/Action	Schedule	Funding
Goal 1: Retain and grow existing businesses		
Actions - No Additional Funding or Staffing		
1. Annual Business Survey and Reporting. Nurture open communications lines with existing businesses to anticipate their expansion or relocation needs. To do so, the City will implement a business survey to ascertain how the City can help existing businesses remain successful or avoid closing. The City will also have a business visitation outreach program, as well as contact businesses which closed or left the City. The City will issue annual reports for survey and business visitation efforts.	Q1 2014 & annually thereafter	Nominal
2. Coordinate with the Chamber on researching "shop local" campaigns and report on the findings.	End of 2014	N/A
3. Seek grants/money to build the knowledge of existing business owners/operators to help them succeed and grow.	Ongoing	N/A
a. Actively promote free entrepreneurship training available to businesses through the Island EDC.	Ongoing	N/A
b. Spread the word about Skagit Valley College business classes and secure possible funding to send business owners to these classes. These classes would work in tandem with training classes offered by the Chamber.	Ongoing	N/A
4. Assist merchants in creating a mainstreet program for downtown Oak Harbor allowing a portion of B&O taxes to be used locally. Part of this effort should be to explore the feasibility of creating a historic district downtown.	End of 2014	N/A
Additional Funding and Staffing		
5. Explore creating a business incubator in coordination with Island EDC, Skagit Valley College, and the high school. Such incubator could be a light manufacturing/industrial incubator in the Goldie Road corridor and could work in conjunction with the high school vocational program.	End of 2014	Unknown
6. "Business Leadership Breakfast." Organize events in which the Mayor and Council can meet with business owners on a quarterly basis. These events may be hosted by different businesses in Oak Harbor.	Q1 2014	\$1,000 per event
Goal 2: Foster a business-friendly culture at the City		
No Additional Funding or Staffing		

7. Develop “welcome packages” for those considering opening a business in Oak Harbor. The packages should be tailored to retail, office, and industrial sectors and would provide information on the steps required to open their doors. The packages will include information on the economic impact of the Navy and information on WorkSource. The City should also develop recruitment/marketing packages with basic demographic/.workforce information for Oak Harbor that can be used to attract new businesses. In addition, the City should contact new businesses, with the assistance of city designated ambassadors, and establish a relationships.	End of 2013	Nominal
8. Actively maintain business owner membership on boards and commissions.	Ongoing	N/A
9. Actively engage with the Chamber of Commerce and maintain constructive relationships with its leadership.	Ongoing	N/A
10. Research financial incentives for new and existing businesses such as reducing/waiving/abating fees and taxes, tax increment financing, industrial revenue development bonds, and storefront improvement grants.	End of 2014	N/A
11. Create a business impact section in its agenda bills.	End of 2014	N/A
12. Research target industries to attract to the City to determine which are most likely to succeed in Oak Harbor and fit the communities long-term vision	End of 2014	
13. Make a stronger link between the City’s Capital Improvement Plan and the budget with realistic reflections of cost and time to complete projects to reduce guesswork and risk for developers.	End of 2015	N/A
14. Revise the list of permitted/conditional uses for its Central Business District code to streamline permitting and align uses with community policies.	End of 2016	N/A
15. Explore issuing planned action SEPA’s to reduce regulatory barriers.	N/A	N/A
Additional Funding and Staffing		
16. Complete a buildable lands analysis to ensure that there is an adequate supply of residential, commercial, and industrial land in the City and incorporate the findings from this study into the Comprehensive Plan.	End of 2014	\$10,000- \$15,000
17. Excellent customer service should be the hallmark of the business-friendly atmosphere at the City. Customer service training for employees should be regular and reoccurring.	Ongoing	\$10,000- \$20,000
18. Revise the "business" portion of the City website to include tools for new and expanding businesses, including possible financial incentives.	End of 2014	\$10,000
19. Consider developing a streamlined development review process and implementing it, including a “fast response” review team for the review of new business and job-generating uses.	End of 2016	Unknown
20. Complete a cultural resources management plan to more accurately quantify risk of encountering resources and to inform developers/builders about their responsibilities.	End of 2016	Unknown

21. Explore partnerships with nonprofit and private organizations to create a community center focused on, but not exclusively for, youth. A new senior center may be a component of the overall community center complex.	End of 2017	N/A
22. Gauge parking supply and demand in downtown for now and the future. Explore feasibility of a public garage downtown which will help facilitate redevelopment of this area. Adequate parking is a precursor to investment in new retail and office space in downtown.	End of 2015	N/A
Goal 3: Redevelop to Catalyze Job Growth		
No Additional Funding or Staffing		
23. Explore selling land to a developer to create a catalyst development in downtown or elsewhere. The developer would need to meet City objectives for development of the land. The catalyst development might include a new City library.	End of 2015	N/A
Additional Funding and Staffing		
24. Determine the feasibility of overnight moorage pier/dock near downtown/Flintstone Park.	End of 2015	\$20,000
25. Explore creating a port district.	End of 2016	Unknown
Goal 4: Welcome Tourists to Oak Harbor		
No Additional Funding or Staffing		
26. The City, in coordination with the Chamber and Island County Tourism, needs to explore what it can do to increase tourism, including creating tourist attraction(s) and a regular schedule of events.	End of 2014	N/A
27. Explore better transportation options to and from the Marina, including pursuing grants for city bicycles and/or a trolley.	End of 2014	N/A
28. Explore options for funding restrooms for downtown.	End of 2015	N/A
Additional Funding and Staffing		
29. Commission a study to explore ways that it can create a more tourist-oriented atmosphere in the City including an arch/gateway for downtown and updated design regulations for downtown.	End of 2016	\$15,000
30. Study the feasibility of constructing an amphitheater near the waterfront as envisioned by the Waterfront Redevelopment, Branding, and Marketing Program as well as other improvements envisioned by that plan such as vendors. The Windmill is a potential location for a vendor.	End of 2014	\$15,000
31. Market the City to tourists using the Whidbey Island Scenic Byway and the Cascade Scenic Loop, including capitalizing on visitors to Deception Pass Bridge possible transportation to and from the bridge. The City should work in coordination with the merchants to develop a "hot list" of things to do in Oak Harbor for tourists.	End of 2014	Unknown



**Economic Profile and Needs Assessment
May 21, 2013**

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Acknowledgements

City of Oak Harbor Staff: Ethan Spoo, Economic Development Coordinator

Washington State Employment Security Department: Elizabeth Court, Labor Market Economist Serving Clallam, Island, Jefferson, Kitsap, San Juan, Counties

Windermere Real Estate: Kristi Jensen, Broker

Cover Photo: Oak Harbor looking Northeast toward Mt. Baker

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Executive Summary

The major driver of Oak Harbor's economy for the past half century has been the US Navy. In the past few decades, however, Oak Harbor's population growth has slowed. After experiencing year-over-year growth rates above 10 percent from 1940-1970, Oak Harbor's population growth has slowed to less than 1.5 percent per year since 1990, a rate comparable to that of Coupeville and Langley, and slower than the statewide average for cities.

Recently, US Navy officials and Representative Larsen announced a commitment of additional P-8A squadrons to Naval Air Station Whidbey Island (NASWI). According to Representative Larsen's office, the base will be home to all seven Pacific squadrons of P-8As which "will bring hundreds of new military families and will create hundreds of local jobs."

While the announcement of new squadrons and personnel at NASWI is excellent news, in the context of large federal deficits and debt it is difficult to predict with complete certainty what will happen to staffing levels at NASWI in the decades to come as the political climate changes. For this reason and others, Oak Harbor should focus its economic development efforts on the private sector. Doing so will also benefit NASWI in the long run by increasing the overall stability of the base in the region and increasing the quality of life of Oak Harbor's residents and veterans.

Previous discussions and plans, including the 1995 "*North Whidbey Community Diversification Action Plan*", have focused on the concept of growing Oak Harbor's private sector economy and diversifying its employment base. This plan led to the rezoning and annexation of much of the north Oak Harbor area for industrial and business park uses.

Since the time of the *Diversification Plan*, there has been very little inquiry into the size and nature of Oak Harbor's economy. This *Economic Profile and Needs Assessment* provides descriptive information on Oak Harbor's business environment including characteristics of its population, housing, and economy. This document will provide the foundation of an economic strategy/action plan so that Oak Harbor can refocus on diverse, private sector growth.

The Needs Assessment chapter of this report performed a Strengths, Weaknesses, Opportunities, and Threats (SWOT) analysis to determine what the inherent advantages and disadvantages are of Oak Harbor's economy for new business growth and expansion. SWOT analysis is commonly used in business planning. Figure A is a visual representation of a SWOT analysis.

Figure A: SWOT Analysis Diagram



Source: businessteacher.org.uk

The following highlights key findings from this *Economic Profile and Needs Assessment* report in the categories of population, housing, and economy:

Population

- **Slowing population growth.** Oak Harbor's population grew rapidly at annual rate near eight percent from 1950-1990 after which the city grew at a slower annual rate near one percent. The City's population growth since 1990 is comparable to the rates in Langley and Coupeville.
- **Young demographic.** Oak Harbor's population is heavily slanted toward people aged 10 or younger and people in their 20s. This comes as no surprise given that the Navy is by far the City's largest employer.
- **Growing population of seniors.** Despite its young demographic, Oak Harbor's fastest growing age group are those aged 65 and over. This age group grew 13 percent from 2000-2010. The growing population of seniors presents opportunities for Oak Harbor to consider infrastructure, such as a new senior center, serving this population and to plan for housing and services that anticipate their needs.
- **Large veteran population.** In 2010, Oak Harbor's veterans made up nearly 1/3rd of its population aged 18 and older, more than double the percentage in the state which stood at 12 percent. Oak Harbor's veterans are also younger and have served in more recent conflicts, such as the Gulf War, whereas most of the State's veterans are from the Vietnam era. Veterans have lower unemployment rates than the general population and special skills that present opportunities for attracting employers.

Housing

- **Housing unit mismatch.** Based upon available evidence, there seems to be a mismatch between the availability of housing units in Oak Harbor and what is actually in demand. Well over half, 57 percent, of Oak Harbor's housing units are rented. While this may come as no surprise in a military town, it is unusual since the County and the State have approximately 30 percent of their housing stock which is rented. In addition, Oak Harbor has a lower proportion of one-bedroom units than the County or State. Household size declined 6% over the decade meaning

smaller houses may be more in demand. Even considering all these facts, Oak Harbor's housing stock is over 60 percent single-family units implying that its supply does not match demand.

- **Unaffordable housing.** Oak Harbor's average home values are approximately \$50,000 below those of the County or the State. Taken by itself, that means that Oak Harbor's housing is more affordable to new residents than that of the County or the State. However, when compared to the incomes of jobs in Oak Harbor, which are quit low, housing is actually less affordable for Oak Harbor workers than it is in Island County or Washington.

Economy

- **High unemployment.** Oak Harbor's unemployment rate has historically been higher than the County or the State. In fact, Oak Harbor's unemployment rate of 11.1% was the highest in the State for any city with a population of 20,000-30,000 in 2010. This fact may come as a surprise to those who might have assumed that the presence of NASWI might mean that Oak Harbor's unemployment rate was lower than average. The high unemployment rate is likely due to the lack of diversity in Oak Harbor's industries and businesses.
- **Industry sectors.** Oak Harbor's top four industries in 2010 were: (1) education, health, and social services; (2) public administration; (3) arts, entertainment, recreation, accommodation and food services and (4) retail trade. The fastest growing sectors from 2000-2010 were: (1) construction, (2) transportation and warehousing, and utilities, (3) arts, entertainment, recreation, accommodation and food services. Oak Harbor saw a major decline in the information sector over the decade.
- **Low incomes.** Oak Harbor's average income levels, both on a per capita and household basis, are significantly lower than those of the County or the State. Oak Harbor has the second lowest per capita income in the State for any city with a population of 20,000-30,000. The median household income for cities in this population category outside of King County is about \$70,000 per year compared to Oak Harbor's median household income which is approximately \$50,000. Income levels typically have a significant bearing on business growth in a community because it usually implies that residents have low disposable incomes. Nonetheless, Oak Harbor's average incomes are growing, having risen 21% in the last decade.
- **High per capita sales.** Despite the fact that Oak Harbor has some of the lowest income levels in the State, it has some of the highest per capita sales. In fact, only Moses Lake and SeaTac have higher per capita sales. Oak Harbor's per capita sales are equal to that of Bainbridge Island and Mercer Island, which is an impressive statistic given that these are much wealthier communities. This report hypothesizes that Oak Harbor's high per capita sales are likely due to housing stipends that US Navy personnel receive which, in turn, gives them more disposable income than their gross income might imply.
- **Educational attainment.** Oak Harbor's population and workforce has a smaller proportion with Bachelor's Degrees than does Island County or the State. Many employers in today's economy require that employees, at a minimum, have Bachelor's Degrees. This finding may make it more difficult for Oak Harbor to attract certain types of employers who require Bachelor's Degrees. At the same time, Oak Harbor has a higher proportion of its population with Associate's Degrees and at least some college than the County or the State. Associate's Degrees are becoming more commonplace in the workforce and more sophisticated as the price of four-year degrees rises. Oak Harbor has an opportunity to capitalize on its high population of persons with Associate's Degrees. In addition, the City may want to work with Skagit Valley College to explore

opportunities for four year degree programs so that those with Associate's Degrees, such as Navy spouses, can graduate with four year degrees, making Oak Harbor a more attractive locale.

- **Workforce age.** Because Oak Harbor has a much younger than average population and workforce, it has special workforce training needs. The City, in coordination with workforce training organizations, should help bring experience and skills to young workers so that it can offset the lack of experience when attracting new employers. In addition, the City should focus on attracting employers with workers in their 30s, 40s, and 50s.
- **Commute patterns.** Oak Harbor's commuters travel by car and less by transit or carpooling than do Island County or commuters across the State. Oak Harbor's drive alone mode share is 84%, a full 10% above the County or the State. This trend is important for economic development purposes, because driving alone is more expensive than taking transit or carpooling, resulting in less disposable income for workers to spend at Oak Harbor businesses.

Oak Harbor has significant challenges that it this report recommends it address, such as high civilian unemployment, low incomes, and unaffordable housing. The City also has opportunities it can take advantage of like the skills and experience of its veterans, quality of life, potential for waterfront recreation and development, and young demographic, and growing population of seniors. To be successful at economic development and encourage diverse, private sector growth, Oak Harbor needs to not lose sight these challenges and opportunities Economic development is a lofty, but achievable goal if Oak Harbor applies appropriate resources to the issue, tackles its problems head-on, and internally cooperates to meet its economic development needs. If it chooses, Oak Harbor can be a standout on economic development in Washington State.

Economic Development Focus Groups: Shared Themes

1. **Impact of Navy.** All participants noted the impact of the Navy on the local economy.
2. **Windjammer Park is an underutilized space.** Participants noted the need for more activities and events in Windjammer Park. One participant indicated that vendors, including for alcohol, should be allowed in the park. Park needs to have more amenities like bath houses, wading pools, splash park, functioning play equipment.
3. **City needs community center/recreational activities for youth afterschool and during summer.** Several participants noted that there is a lack of recreational/entertainment options for kids and families. A community center with indoor activities was desired. School district pointed out possible location of community center on school property where elementary school is now. Better community facilities will help attract family-wage workers.
4. **Business competition with commissary, Navy exchange, on base commercial contentious.** There was disagreement regarding the impact of Navy commercial facilities and competition with local businesses. Business owners seemed to think Navy facilities hurt private business. Navy officials indicated that downturn in private business lately was due to base downsizing. Navy officials noted that federal impact aid more than offsets for tax impact to community.
5. **Labor pool and educational training.** Navy and large business owner noted that the labor pool does not possess the right skills for technical jobs. Secondary educational programs do not meet aerospace needs or needs of tech businesses.
6. **Navy spouses/families are untapped labor pool.** Participants noted that the Navy spouses and families have education and training that qualifies them for jobs, but those jobs don't necessarily exist here in Oak Harbor.
7. **Tax abatements/fee waivers.** Several participants indicated that the City should offer tax abatements/fee waivers to encourage new businesses to locate in Oak Harbor or encourage businesses to upgrade design.
8. **Hours of operation.** Participants noted that the hours of operation of businesses in the City are a problem. Businesses need to stay open more consistently on weekends and evenings to attract locals and tourists alike. There was perceived reticence to change hours of operation.
9. **Rebuild the pier.** Participants recommended strengthening the connection of the marina/water with downtown. Rebuilding the city pier was suggested.
10. **More upscale restaurants needed.** A desire for more upscale restaurant choices, especially a waterfront restaurant was nearly universal.

**Economic Development Focus Group
Non-Profit and Public Sector
Notes
June 19, 2013**

The meeting began at 3:30 p.m. with the following in attendance: Shawn Harris (Island Transit). Lance Gibbon (Oak Harbor School District) and Calvin Hewitt (Habitat for Humanity). Staff present: Ethan Spoo, Economic Development Coordinator

Ethan Spoo began the focus group by reviewing some of the demographic information contained in the Oak Harbor Economic Profile and Needs Assessment Report.

Focus group discussed the demographic information as it relates to the Navy:

- The Navy's income level is low but they have access to health care, subsidized housing, Navy Exchange and Commissary privileges so it is difficult to compare Oak Harbor to other communities.
- The Navy provides a bowling alley, theater and paintball etc. so that siphons off part of the population from small businesses. We do have the opportunity to compete with the facilities that the Navy has, not head-to-head but, you have to offer something different or complementary with what they have.

How do you see the economic climate in Oak Harbor?

- The economy is recovering based on what Island Transit is seeing.
- Habitat for Humanity store has seen five month in a row of record sales. Possibly indicative of people needing affordable alternatives.
- Island County median income level dropped \$4,500 last year which means that family's ability to make a mortgage payment dropped \$90 a month. Building materials are going up but a family's ability to pay is going down. Rent is too high for low income.
- Job opportunities are no better than they were two to three years ago.
- Slight increase in students qualifying for free and reduces lunches in school (Federal Standard).
- The School District is hiring at a higher level now than in the past due to the recent local levy passage. The State budget will have more money for education.
- Low interest rates have made it more attractive for Navy families to buy homes instead of staying in base housing. Housing that is \$300,000 or less is selling, above \$300,000 is not.
- Island transit employs 30% to 40% Oak Harbor residents. Constant need for operators.
- When the economy tanked and gas prices went up ridership increased for Island Transit.
- Island Transit is an advantage for Oak Harbor because you can get around the Island without a car.
- Even during the economic downturn the School District has had difficulty filling substitute positions whether it is substitute janitors, teachers

Retaining and Growing Existing Business

- Not a lot of job opportunities for people in their 30's, 40's and 50's to stay in Oak Harbor. The plan needs to address this demographic.
- Oak Harbor needs a community center for kids and should include computers, classrooms and recreation such as a gym and basketball courts. Coupeville and Anacortes invested in a place where there are computers and classroom spaces.
- Need more support for recreational activities after school and after school activities whether it is supported by Parks and Recreation or another entity.
- Windjammer Park is underutilized.
- Oak Harbor is an easy place to live with kids, would choose Oak Harbor over Anacortes. If your child needs something in Anacortes you have to drive to Burlington or Oak Harbor to get it.
- Wrap Island Transit busses with photos of Deception Pass and Windjammer Park.
- The City and School District could partner and share the costs on a digital sign in front of the School District's main office on SR20 where community events could be advertised.
- Survey the community on what their needs are though a form survey or knock on some doors and get some personal contact.

Community Center Discussion

There was discussion about a joint activity with the School District and the City on the School District facilities on Midway Boulevard. In the next five years the School District could run a bond to build a new Oak Harbor Elementary where the soccer fields on Ft Nugent are and demolish the middle building but leave the old building with the gym and all the old transportation buildings would be gone. The gym and classrooms in the old Elementary School would make a good start to a community center. Midway Boulevard is a large street and provides great access and could be revitalized with the addition of community center complex in an area that already has the pool, senior center, ball fields and the skateboard park. If there is a compelling vision, the community could buy into the idea of doing something bold in the Midway area, which would also give businesses reason to invest on Midway Boulevard.

Is there anything that the City is doing to prevent businesses from starting?

- The political climate has to change. The bickering and arguing is not conducive to attracting new businesses. There should be stability and a common vision with everyone pulling in the same direction.
- Whatever comes out of this group can't be the agenda of a small group of people. There needs to be real broad based support and a compelling long term vision with a positive energized message.
- The alignment between the City and the Chamber of Commerce could be improved. It is not clear that both organizations are working on the same agendas and objectives. There doesn't seem to be a partnership.
- The permit process and working with the City is better than working with the County.

Meeting concluded at 5:00 p.m.

**Economic Development Focus Group
Small Business Sector
Notes
June 19, 2013**

The meeting began at 1:30 p.m. with small business owners: Jason Trit (Flyers Restaurant) and David Wilson (Woody's Car Wash). Chris Reissner was absent. Staff present: Ethan Spoo, Economic Development Coordinator.

Ethan Spoo began the focus group by reviewing some of the demographic information contained in the Oak Harbor Economic Profile and Needs Assessment Report.

Question: How do you see the business climate in Oak Harbor?

- David Wilson indicated that his gross income was 13% higher over last year and last year was 8% above the previous year. He believes the Navy is the driving force as more sailors come to Oak Harbor.
- Jason Trit indicated that starting in January he is up 20% and has had months of 40% increase over the year. He believes that his new sign has helped as well as the Navy expansion as well as contractors that are coming in and staying in Oak Harbor during a job which may last for months. He also said that the State's targeting our area for development and Island County Tourism has done good job promoting Whidbey Island in the Seattle and Vancouver, Canada market.

Question: What do you think about the broader economy of Oak Harbor?

- Jason Trit said people are telling him that their business is down and they are struggling. His analysis about why they are struggling is that the ones are succeeding work their businesses. If you are going to be a tourist destination you have to be open on Saturdays and Sundays. If businesses are not consistent with the hours of operation people won't go there because they might not be open.

Question: Is there anything that the City could do to educate business owners and encourage them to stay open and have consistent hours by getting the message out about free business classes through the Economic Development Council and the Chamber of Commerce?

- Business hours are a personal choice for business owners and there isn't much the City can do about that.
- Establish a theme e.g. Leavenworth and Winthrop, and Anacortes. They have strict business requirements from signage to style to comply with the adopted theme.
- Oak Harbor has a waterfront that is publicly owned and in Anacortes you can't get to the water unless you walk down to the dock. Oak Harbor has an underutilized waterfront. The dock should be rebuilt. Make it a convenience to stop with convenient services such as a nice restaurant.

- The Anacortes marina is more accessible to the downtown and stores than our marina is. A pier would make our downtown and stores are more accessible. Many boat owners have stated that they go to LaConner and Anacortes because they can park their boat and walk to where they need to go. Our marina is too detached and they have to take a cab.
- The City of Portland has the pink bikes that you can pick up and drop-off anywhere. Oak Harbor is an easy town to ride your bike around. You may lose a few bikes but not many if you paint them an outrageous color and tag them. Pick up and drop off stations could be a nautical theme. The bikes are locked up and you slide your ATM card and the bike pops out and when you park it at location "B" you get your credit back for it or it charges you a couple of dollars. We have the electric charge station downtown which is a great idea but there is no follow through.
- Formulate a target list of businesses to attract and have the City go after those businesses whether it is through the Chamber or someone else. There are no men's stores on the Island. There are niches that can be filled and if locals are not going to fill those niches then the City could seek out those businesses. Anacortes did it; Mount Vernon and Burlington do it. They sought out the business that they want in certain area.

If the City approached the business community and said we have to be more selective in terms of how the business looks. It could be seen as the City being over regulating.

- There has to be buy-in by the community.
- Currently the problem is the restriction on signage, the permitting process can be difficult and deters business expansion. Several years ago Mr. Trit said he was told he couldn't use a wood stone oven and there were several restaurants in a 50 mile radius that had them and he couldn't use one in Oak Harbor. He said things like this deter businesses from doing business here. The process is the problem and the City needs to be more involved in finding solutions.

How should the City add more regulations about how businesses should look/landscaping?

- The City doesn't enforce little things and lets things slide because they say they don't have the resources. If the City would be consistent with code enforcement at first people would be upset but eventually it would be the norm. The City picks and chooses what they enforce and it needs to be consistent for everyone.

Question: How should the City approach businesses about requiring buildings to be designed according to a theme?

- The City has to decide on a theme and it is not going to happen overnight. But you have to start applying a venue that is where it starts.
- Promote special events to draw people from out of town. Windjammer Park is our biggest asset. The City of Coeur d'Alene has a massive park like we do except they have bath houses, working wading pools and working swing sets, musicians and

vendors selling food in their park. You can sit in a café in their park and have a beer or a glass of wine.

- Make the Farmers Market a theme, relocate it and grow it. Having the farmers market next to the chamber doesn't benefit businesses.

San Louis Obispo promotes a Thursday night market were the stores and restaurants stay open. The restaurants that aren't on the avenue have a beer stand and there is entertainment. This is a big event downtown on certain nights in the summer. We have a similar venue downtown where you can close the street and have the farmers market there and draw people from up and down the Island. Mr. Wilson has broached the subject of moving the Farmer's Market downtown. The response that he got was that the market is where it is for a reason and people don't like change. If the City would help promote it and use the downtown as a venue the Farmers Market would grow and become a big event. The City of Sacramento called their event the Thursday night market. The event was from 6 p.m. to 10 p.m. and there was entertainment.

- Mr. Trit said he was on the Events Committee but quit because it wasn't going anywhere because they aren't willing to make changes e.g. moving the Farmers Market. The number one thing in Oak Harbor is people don't like change.
- Mr. Trit suggested having one night a week or a month to allow the car clubs to get together and cruise Oak Harbor. He has been trying to convince the Rotary to change the date of the Car Show because they have it on the same weekend two other events are going on, in La Conner there is a car show and in Coupeville there is an arts festival. Don't compete with other events.
- Have regulations for buildings design but in return the City could help with finding grant money or tax breaks. Businesses that are succeeding have put money into their spaces. The building looks nice so people shop there. If the space doesn't look nice are you going to go there?

Question: Is there anything that the City is doing to prevent businesses from going into business or run businesses out of business.

- Mr. Trit said for him it was difficult going into business and expanding his business, right now the issue of parking has become a roadblock as he tries to expand.
- Mr. Wilson said his biggest problem over the years has been vandalism from unsupervised children with nothing for them to do.
- Mr. Trit suggested attracting business that can provide entertainment for youth. The City has done a pretty good job they built a skate park but there is nothing for them in the evening.
- The lack of funds for maintenance or budget for enhancing Windjammer Park with a splash park is almost as important as bringing businesses downtown. If there were

vendors that had to pay for a permit or beer gardens that generate money which can be used as fundraisers in order to help generate money to put back into the Park.

- The Parks Board is meeting to decide on whether or not to forward a recommendation to the Council to allow alcohol in the park and there is opposition from the Impaired Driving Impact Panel of Island County (IDIPIIC). This is another example of resistance to change but this is something that will help Oak Harbor move forward but every time we attempt to move forward a group steps up and says no.
- The political infighting hampers business opportunities. The Mayor and the Council tries to make everyone happy and it almost doesn't matter what is best for the City. Let's look to the future of Oak Harbor knowing that you will never please everybody.

Question: What would you tell a new business who is considering coming to Oak Harbor and are there things the City could do to attract new businesses?

- David Wilson said that compared to the City of Burlington, the City of Oak Harbor is pleasant to do business with but he has experienced huge dollar losses due to vandalism. The City needs to get people to stop in Oak Harbor.

Question: Is there a mix of services that the City offers that is attractive to businesses?

- The City should offer business recycling.
- David Wilson said his biggest bill is sanitary sewer and offering an incentive for installing a recycling system would cut his water utilization by 2/3 would be helpful.
- Jason Trit suggested promoting the quality of life in Oak Harbor as a good place to raise a family.

Question: What would you say about the future of Oak Harbor?

- David Wilson said the future is positive with what the Navy is bringing. Let's face it our economy is driven by the Navy. To be positive we have to make Oak Harbor a positive environment for families to be.
- Jason Trit said the playing field should be level for all businesses.

Meeting concluded at 2:30 p.m.

**Economic Development Focus Group
Navy
Notes
July 9, 2013**

The meeting began at 3:30 p.m. with the following in attendance: Jennifer Meyer (Community Liaison) and Scott Smith (Business Manager) and Mike Welding (Public Affairs Officer). Staff present: Ethan Spoo, Economic Development Coordinator.

Ethan Spoo began the focus group by providing background on the Economic Development Committee and reviewing some of the demographic information contained in the Oak Harbor Economic Profile and Needs Assessment Report.

Scott Smith commented that basic allowance for housing is not counted as income so it is possible that the average household income of \$50,000 does not include housing. The basic allowance for housing can be substantial upwards of \$15,000 to \$20,000 a year. Additionally there is basic allowance for subsistence which is about \$2,000 a year. People who live on base do not get the allowance. Approximately 1,500 single sailors live in the barracks and there are about 1,500 homes. The rest of the sailors live in non-Navy housing.

Island Transit

Scott Smith and Jennifer Meyer noted that the Navy has addressed the Island Transit Board with a solution to the security issue when busses enter and leave the Base. Island Transit has not been responsive to the idea of providing service to the Base. The State study showed that 88% of economic activity of the County is driven largely by payroll out of the Base. Island County Transit is funded by sales tax so arguably a big chunk of their revenue stream is funded directly or indirectly by the Base. If the mission of the Transit is to support all citizens of Island County as stated on their website and the Base is paying at least their fair share and we would pay more if we could get into town to spend money. The mini-mart at Ault Field is rated the top mini-mart for sales density because there are no other options within miles and there is no public transportation. The walk from the barracks is a long distance especially you are carrying things and the weather is bad.

Housing

- The Navy's housing survey that was done in 2008 showed that for bachelors living off base housing inventory for higher pay grade military personnel was limited (apartment/townhomes) although that is changing.

New Jobs/Businesses

- Maintenance work for the aircraft needs to be done on base.
- Maintenance center of gravity for the Growler is Lemoore, California.
- P-3 needs continual maintenance but the C-40 doesn't need a lot of maintenance.
- The P-3 squadron is 350 people and the P-8 squadron is 265.
- The Growler and the P-8 are both Boeing aircraft so there may be some opportunities but should wait for better data before talking to the Boeing support team.

Education:

- Skagit Valley College and on-base college enrollment numbers have risen since the Navy provides its sailors dollars for education and if active duty personnel want to advance they need an associate's degree.
- Availability of classes in aerospace technology (advanced engineering and science) is limited in Oak Harbor and you have to go off-island to Mt. Vernon.

Services/entertainment businesses:

- Need higher end dining opportunities
- An indoor fun center for families
- Single sailors – an under 21 club with arcade type entertainment & bands would be nice
- The bar life is problematic
- Spouses are an untapped labor pool, jobs are limited, home occupations such as in home childcare is an option

Existing businesses

- Animal Shelter, Fire, Police and Public Works have had a good partnership with the Navy.
- The Navy Marina is being eroded and the failure to figure out how to drive piles with all of the regulations has resulted in incremental reduction of the slips where eventually it may go away. Boat rentals for crabbing may or may not remain out of Ault Field. The City Marina may see more demand.
- Local businesses perceive a problem with competing with the Commissary and Exchange but the reduction of personnel may have had an impact on local businesses.
- There is a perception that the military is not paying its fair share but the flip side is that DOD impact aid far exceeds what this school district would receive if you were to pay property taxes on those 1,500 homes. The cooperation between the Navy and Oak Harbor on the Seaplane base wastewater treatment plant several years ago benefited both parties.

Looking ahead

- Do not see the value of the base going down.
- National and geopolitics play a big role on the number of military personnel. The thing that the City and County can control is airspace encroachment which is huge and the City has done very well on that.

Meeting concluded at 5:00 p.m.

**Economic Development Focus Group
Large Business
Notes
July 11, 2013**

The meeting began at 3:30 p.m. with the following in attendance: Todd Krantz (Whidbey Island Bank) and Abdul Sharif (Technical Services Inc.). Staff present: Ethan Spoo, Economic Development Coordinator.

Ethan Spoo began the focus group by reviewing some of the demographic information contained in the Oak Harbor Economic Profile and Needs Assessment Report.

How do you see the economic climate in Oak Harbor?

- Believe that residential construction will increase largely due to additional Navy personnel and contractors.
- Economy is driven by impact of the Navy.
- There are a lot of vacancies, not a lot of new or expanding businesses. Investors are waiting to see if the economy improves.
- The manufacturing industry is starting to come back from offshore since pay rates are starting to go up which affects the transportation cost of shipping goods back-and-forth.
- Oak Harbor is three to six months and as much as a year behind in some sectors as far as growth and the housing market.
- Manufacturing has to offer free shipping/deliveries or other incentives to cut costs to the customer to get customers to do business in Oak Harbor.
- Skagit Valley College lacks programs geared to manufacturing and service related.
- There is a labor pool issue on the Island. Mr. Sharif said that a former employer had a partnership with a technical school and a community college that offered electronic programs.

What would make you grow your business?

- TSI has plans for expansion but they have to decide if it is worth it because of City taxes. Snohomish County gave a 5-year tax free zone for manufacturing as an incentive for growth. Not paying taxes allowed businesses to spend money on things to grow the business in that zone.
- Banking is changing due to technology, in Oak Harbor people still like to go to the bank and talk to someone but Whidbey Island Bank is not looking at expanding branches in Oak Harbor.
- Being on an island is a transportation issue since it is an additional 40 minutes from the freeway when Burlington is only 5 minutes away. A bridge from Whidbey to Stanwood would have the biggest impact but unfortunately that is not feasible.
- Oak Harbor has to give businesses a reason to come here.
- Oak Harbor needs a greater variety of local businesses e.g. the street improvements downtown are great but there isn't anything to draw people there. Businesses and leaders of the community need to step up and do a lot and stop relying on the City, County and State.
- Hillsboro outside of Portland there is an area where they have a recreation area that has everything (soccer fields, baseball fields, tennis, pool, skate parks).

What is preventing business growth?

- The older business owners that have been here a long time like the status quo don't want the area to change. They are comfortable with what they have.
- As a society we are not encouraging entrepreneurial growth. Kids go to school and learn to work for someone else.
- The cost of starting a business has gone up. Waiving fees can help start-up businesses.
- A comparison of the banking industry in 1996 to now shows that there were 11,000 banks in the US in 1996 and now there are around 7,000 but there are 20% more employees. So it looks like it is not cost affective to start up a new business. The initial investment for permitting and licensing requirements can be prohibitive.

- Crossing the threshold of over 100 employees changes your tax bracket. The health care changes will be very bad for a small business. Even though the income levels are lower, business still have the same spending.

Is there was anything that the City is doing to prevent businesses from going into business?

- The permit process and working with the City is better than it was about 10 years ago.

Attracting New Businesses

- Attract recreational businesses and better restaurants to people a reason to stop in Oak Harbor. An Anthony's would be a good anchor business downtown and the stores should be open in the evening so people can browse after dinner and entertainment should be available downtown.
- Rebuild the pier.
- Better advertise Oak Harbor's assets, people don't know where things are and just drive through the City on their way somewhere else.

Meeting concluded at 5:00 p.m.

2016 Comprehensive Plan

Update

Public Meeting

CITY OF OAK HARBOR

TO: PLANNING COMMISSION
FROM: CAC KAMAK, SENIOR PLANNER
SUBJECT: 2016 COMPREHENSIVE PLAN UPDATE, CWPP – COUNTY/CITY
DATE: 8/21/2013
CC: STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR

2016 Comprehensive Plan Update – Oak Harbor

Staff continues the review of the Comprehensive Plan against the checklist provided by the WA Department of Commerce. If you remember from the presentation from Joe Tovar in Anacortes earlier this year, the 2016 update to the Comprehensive Plan also includes updates to the Development Regulations. Therefore staff is reviewing the status of the Development Regulations as well and will be ready to present the findings at the September meeting.

2016 Comprehensive Plan Update and CWPP – Island County

The City Council approved a resolution accepting the twenty year population projection for Island County on August 7, 2013 following the Planning Commission's recommendation. Staff is currently in discussion with the County on the County Wide Planning Policies.