

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
OCTOBER 26, 2010**

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

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

MINUTES: **MR. FAKKEMA MOVED, MR. OLIVER SECONDED, MOTION CARRIED
 TO APPROVE THE SEPTEMBER 28, 2010 MINUTES AS PRESENTED.**

PUBLIC COMMENT

Mel Vance (PO Box 2882) reminded members of the Planning Commission to take steps to be prepared for weather associated with La Niña.

CHAIRPERSON AND VICE-CHAIRPERSON ELECTION

Mr. Neil opened nominations for Chairman.

Mr. Fakkema nominated Mr. Neil.

Mr. Oliver seconded the nomination.

ACTION: **MR. FAKKEMA MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO
 ELECT BRUCE NEIL AS CHAIRMAN.**

Mr. Neil opened nominations for Vice-Chairman.

Mr. Oliver nominated Mr. Fakkema for Vice-Chairman.

Mr. Neil seconded the nomination.

ACTION: **MR. OLIVER MOVED, MR. NEIL SECONDED, MOTION CARRIED TO ELECT
 KEITH FAKKEMA AS VICE-CHAIRMAN.**

ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing

Mr. Kamak reviewed previous actions by the City Council to adopted ordinances that address public nudity and licensing of adult entertainment and as part of adopting these regulations, the City also adopted an interim zoning control to restrict such uses to an overlay district. Mr. Kamak noted that the interim ordinance expired in September and staff submitted a work plan which extended the interim ordinance for six months so that staff could continue research as to whether the properties covered by the interim overlay zone was sufficient to legally cover the needs of locating such facilities in Oak Harbor.

Mr. Kamak provided a Power Point presentation (Attachment 1) to the Planning Commission detailing information regarding the legal framework regulating Adult Oriented Businesses,

accepted zoning methodology for locating such uses in a community, the locations suitable for such uses in Oak Harbor, land use distribution that impacts the location of such uses and determining whether the properties identified in the Interim Adult Entertainment Facilities Overlay District are sufficient to meet the needs of the community and the adult industry.

Mr. Kamak concluded the presentation by summarizing staff's findings as follows:

- 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 an ample supply of properties and will be augmented by properties identified by the county in and around the same area.

Mr. Kamak reasoned that based on the analysis, staff believes that the Interim Adult Entertainment Facilities Overlay District can be adopted as the Final Adult Entertainment Facilities Overlay District. Since studies indicate that the concentrated approach can have increased crime rates over the dispersed approach, specific site development conditions can be considered for inclusion in the development codes.

Mr. Kamak recommended that the Planning Commission take public comment and continue the public hearing to its November 23, 2010 meeting.

Commission Discussion

Commissioners asked the following questions:

Are there any other areas available? Mr. Kamak stated that the area selected was the only area located outside of sensitive buffer areas.

What if additional UGA land is absorbed by the City and it is zoned Industrial or PIP would adult entertainment uses be allowed there as well? Mr. Kamak said no, and explained that an overlay zone is a line that is drawn on certain properties that stays there.

What if at a later date there is more Industrial or PIP property available shouldn't we be expanding the overlay zone? Mr. Kamak explained that the overlay zone should only be expanded if our supply becomes less than our demand.

How would this affect a company's decision to expand in this area? Mr. Kamak explained that adult entertainment uses are located throughout the country in many areas so we are trying to find the best location in Oak Harbor and we hope that by identifying this location, a developer will know ahead of time that this is where adult uses can locate and the developer can plan for it.

Is the City allowed to add other types of restrictions on how the business is run? Mr. Kamak stated that the two ordinances that address public nudity and licensing of adult entertainment have regulations and restrictions concerning how the business is run. Mr. Powers added that the business regulations address some of the internal design characteristics and the personnel side of things in an effort to lessen the opportunity for those crimes that have been identified in the nationwide studies.

Chairman Neil opened the public hearing at 8:24 p.m.

Mel Vance (PO Box 2882) stated that he was not necessarily in favor of strip clubs in Oak Harbor and he was not in favor of the overlay method but was in favor of allowing adult uses through zoning by allowing adult uses in Industrial and Business Park zoning districts. Mr. Vance said the City should consider that once an adult entertainment facility is established in a particular location that a protected use should not be allowed to locate any closer than the established buffer area for that use. Mr. Vance also stated that the existing ordinances have existing grounds for a legal challenge. Mr. Vance encouraged being as flexible as possible to avoid any legal issues.

ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO CONTINUE THE ADULT ENTERTAINMENT INTERIM ORDINANCE PUBLIC HEARING TO THE PLANNING COMMISSION'S NOVEMBER 23, 2010 MEETING.

Mr. Kamak asked the Planning Commission to hold on to the materials that were provided in their agenda packet because they would need them at the November 23rd meeting.

2010 COMPREHENSIVE PLAN AMENDMENTS – Public Hearing

Chairman Neil opened the public hearing for the 2010 Comprehensive Plan amendments and asked staff to present the staff report.

Mr. Kamak reviewed the 2010 Comprehensive Plan amendment process that began in October of 2009 with a call for applications. No sponsored applications were received. The deadline for all applications was December 1, 2009. Although no private sponsored applications were received, there were city-owned properties that needs land use changes. Therefore, a preliminary docket that included three city-owned properties, an update to the Capital Improvement Plan and an analysis on the City's UGA capacity was reviewed by the Planning Commission and the City Council for the 2010 Comprehensive Plan Amendments. The docket was recommended by the Planning Commission and approved by City Council on March 2, 2010.

Mr. Kamak summarized the Planning Commission meetings that included discussions on the 2010 Comprehensive Plan Amendments as follows:

- April 28, 2010 – UGA Capacity Analysis – Initial data collection
- May 25, 2010 – UGA Capacity Analysis – Continued discussion of data collection and methodologies
- June 22, 2010 – Discussion on the three proposed land use changes

- July 27, 2010 – Review and recommendation of the Transportation Improvement Plan that will be included in the Capital Improvement Plan
- August 24, 2010 – UGA Capacity Analysis – Preliminary findings

Mr. Kamak noted that the work done on the UGA capacity analysis will not result in any amendments this year and that this is the first phase of the project. The scope of this year's work was to determine if there is capacity within the current UGA. Results from the analysis will require further discussion to determine how the 20 year growth should be accommodated. This may or may not result in expansion of the UGA. Therefore the work on the UGA capacity analysis will continue into the next Comprehensive Plan Amendment cycle.

Mr. Kamak summarized the updates to the Capital Improvement Plan as follows:

- Updates to the current and projected revenues
- Removal of projects that have been complete (e.g. Oak Harbor Street improvements)
- Updating the list of street projects to reflect the adopted Transportation Improvement Plan
- Updated project list for the water, sewer and the wastewater system
- Updates to project schedules

Mr. Kamak summarized the three land use changes as follows:

- Scenic Heights Trailhead site - Low Density Residential to Public Facilities
- Water Reservoir Site near Gun Club Road –Planned Business Park to Public Facilities
- SE corner of SR 20 and Fakkema Road –Auto/Industrial Commercial to Open Space

Mr. Kamak also noted the reviewed criteria in accordance with OHMC 18.15.080 is reviewed in detail in the Planning Commission's agenda packet. The proposed amendments will not adversely affect the public health, safety and welfare in any significant way. The proposed amendments are consistent with the overall goals and intent of the comprehensive plan and are in compliance with the Growth Management Act and the Countywide Planning Policies.

Mr. Kamak closed his presentation by stating that the 2010 Amendments meet the evaluation criteria for Comprehensive Plan Amendments. The update to the Capital Improvements Plan was done with input from the various departments within the City of Oak Harbor. Project updates and changes have their basis on already adopted Plans by the City Council. The financial information is based on the most recent information available and the adopted budget. Therefore, he recommended that the Planning Commission hold the public hearing and forward a recommendation to the City Council to approve the:

- 2010-2015 Capital Improvements Plan.
- Amend the Future Land Use Map to reflect the following changes:
 - Scenic Heights Trailhead site - Low Density Residential to Public Facilities
 - Water Reservoir Site near Gun Club Road –Planned Business Park to Public Facilities
 - SE corner of SR 20 and Fakkema Road –Auto/Industrial Commercial to Open Space

Commission Discussion

Commissioners asked the following questions:

What will happen to the remaining 5 acres for the well site? Mr. Kamak stated that the property will go back to the property owner. Mr. Powers added that the result of a court settlement a number of years ago the City acquired 5 acres of a 10 acre parcel that had not yet been subdivided. Once we have completed this process the property owner is responsible for

subdividing that property creating the 5 acres for the City and then the City will deed back the other 5 acres.

What is the tax status of the property on the SE corner of SR 20 and Fakkema Road? Mr. Powers stated that the property is owned by the City of Oak Harbor so it is not a taxable property.

Chairman Neil closed the public hearing.

ACTION: MR. FAKKEMA MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO FORWARD A RECOMMENDATION TO THE CITY COUNCIL TO ADOPT THE 2010 COMPREHENSIVE PLAN AMENDMENTS AS PRESENTED.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 8:48 P.M.