



PLANNING COMMISSION

AGENDA

December 28, 2010

ROLL CALL: NEIL _____ JENSEN _____ FAKKEMA _____
WASINGER _____ OLIVER _____
WALLIN _____

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1. **Approval of Minutes – October 26, 2010**

 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. **ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing**
Planning Commission will conduct a public hearing to consider finalizing the Interim Adult Entertainment Ordinance. The Public Hearing was opened on July 27th. The Planning Commission is expected to close the hearing and make a recommendation to the City Council.

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 4. **PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS – Public Hearing**
Development Services staff will present proposed changes to Chapter 21.80 of the Oak Harbor Municipal Code which will establish a process for altering previously approved Binding Site Plans. The Planning Commission will open the hearing and continue the item to January 25, 2011.

MINUTES

October 26, 2010

**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
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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

Commissioner Neil opened nominations for Chairman.

Commissioner Fakkema nominated Commissioner Bruce Neil.

Commissioner Gerry Oliver seconded the nomination.

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

Commissioner Neil opened nominations for Vice-Chairman.

Commissioner Gerry Oliver nominated Keith Fakkema for Vice-Chairman.

Commissioner 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 and 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 (eg. 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 Fakemma 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.

DRAFT

Adult Entertainment Overlay Zone

Zoning for Adult Entertainment Facilities

Ordinances Adopted

- Ordinance Banning Public Nudity: 6.70 entitled “Nudity in Public Places” to Title 6 Public Peace, Safety and Morals
- Ordinance adopting Adult Entertainment Licensing and Regulations: 5.20 entitled “Adult Entertainment” in Title 5 Business Licenses and Regulations
- Interim Ordinance adopting an Adult Entertainment Overlay Zone: This Ordinance created an interim zoning control by adopting an overlay zone that determines where such uses may locate. The interim ordinance created a new chapter 19.52 entitled “Adult Entertainment Facilities Overlay Zone”

Regulating Adult Entertainment

- Expressive Conduct – protected under Federal and State Constitution
- Regulations to address secondary effects are “content neutral”*
 - Increased crime
 - Decreased property values
 - Urban blight
- Evidence may be borrowed from other cities

* *Young v. American Mini Theaters, Inc.*, (1976) and *City of Renton v. Playtime Theaters, Inc.*, (1986)

Regulating AEF through Zoning

- Dispersion zoning
- Concentration zoning
- Both methods have been upheld to be constitutional as a legitimate “time, manner, and place” restriction of protected speech
- The regulations should be:
 - Unrelated to speech
 - Narrowly tailored to serve a substantial governmental interest
 - Permit reasonable alternative channels of communication

What zoning cannot do

- Completely eliminate Adult Entertainment Facilities from the municipality
- Exclusively permit it in an area that is “commercially unavailable”
- Force preexisting Adult Entertainment Facilities to cease operation and relocate.

Dispersed vs. Concentrated

- Concentrated
 - New York City, Boston, Oak Harbor's current interim overlay district
 - Advantages
 - Like uses are treated alike
 - Lower administration costs
 - Control over the total growth
 - Easier evaluation of public services impact
 - Disadvantages
 - Studies indicate more crime
- Dispersed
 - Detroit, many other cities
 - Advantages
 - Less crime
 - Disadvantages
 - Higher administration costs
 - No upper limit

Location Suitability for Oak Harbor

- Dispersion method – modest buffers would eliminate most commercial properties
 - Community input on larger than 100 ft buffer from residential
- Concentration method – Goldie Road area consistently outside buffers
 - May be the ideal location for AEF since sensitive areas are restricted due to proximity to Ault Field operations

Land Use Distribution

Zoning Category	City Limits			% of Total Acreage
	# of Parcels	Acreage	% of Total Parcels	
R1, Single Family Residential	4084	1292	70.20	40.74
R2, Limited Multifamily Residential	752	192	12.93	6.06
R3, Multifamily Residential	89	101	1.53	3.19
R4, Multifamily Residential	180	181	3.09	5.71
RO, Residential Office	187	77	3.21	2.43
C1, Neighborhood Commercial	12	6	0.21	0.20
CBD, Central Business District	144	41	2.48	1.28
C3, Community Commercial	203	164	3.49	5.17
C4, Highway Service Commercial	25	98	0.43	3.08
C5, Highway Corridor Commercial	45	69	0.77	2.18
PIP, Planned Industrial Park	11	37	0.19	1.15
PBP, Planned Business Park	3	80	0.05	2.52
I, Industrial	10	50	0.17	1.58
PF, Public Facilities	61	360	1.05	11.35
OS, Open Space	12	94	0.21	2.96
TOTALS	5818	2841	100	90

Total Land Area 3170.4
 ROW 329.5 10%

Developability of properties

- 90% threshold – When the assessed land value is 90% or greater of the total value.
- Considered the most highly developable properties in the city
 - Land that is undeveloped
 - Vacant
 - Very small structure compared to the land

Zoning Classifications	Land Available (acres)	Total land in zoning classification	% of land available of total zoning classification
C3, Community Commercial	16.7	164	10%
I, Industrial	29.1	50	58%
PIP	22.5	36.5	62%

Value of properties

- Large industrial land > 5 acres = \$1 per sq. ft.
- Improved industrial land = \$3 - \$4 per sq. ft.
- Commercial properties \$8 - \$20 based on location
 - Highway = \$17 - \$20
 - Downtown = \$10 - \$15
 - Midway Corridor = \$8 - \$10

North Whidbey and the Goldie Road Corridor

- Largest inventory of industrial lands in Island County
- Most properties are in the UGA
- Inter-local Agreement provides consistent zoning and land use regulations
- Area is under an enterprise zone that provides development and annexation incentives
- Goldie Road area has consistent development and will continue to be developed in the future
- Utilities available along Goldie Road

Properties in the interim ordinance



Properties in the interim ordinance

- Total acreage = 18.7
 - PIP, Planned Industrial Park = 9.7
 - I, Industrial = 9 acres
- Parcel 1 is partially developed and has room for further development
- Parcel 2 is likely to develop last due to poor access
 - Access can be obtained through Parcel 1 or Parcel 2
- Parcel 3 is largest parcel and can be subdivided into several lots based on user needs
 - Will require construction of Gun Club Road
 - Survey for Wetlands (critical area report)
- Area slopes to the west
- Soils suitable for infiltration, low impact development
- Utilities available on Goldie Road

Supply and Demand

- Currently no adult uses located in Oak Harbor or Island County
- No application have been filed with the City or the County
- No applications equates to “No Demand”
- Amount of land in Overlay Zone can be considered substantial when compared to the demand
- 18.7 acres is approximately .66 acres of total zoned land in City and 22% of PIP and I zoning combined
- County is also considering development regulations for AOB in this area
- Staff believes that it is an ample supply for the demand

Summary of Findings

- 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.

Planning Commission Action

- Public Input
- Continue the hearing to November 23, 2010

Adult Entertainment
Ordinance

Public Hearing

PLANNING COMMISSION

TO: CITY OF OAK HARBOR PLANNING COMMISSIONERS
FROM: CAC KAMAK, AICP, SENIOR PLANNER
SUBJECT: ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE – PUBLIC HEARING
DATE: 12/20/10
CC: STEVE POWERS, AICP, DEVELOPMENT SERVICES DIRECTOR

Introduction: This memo presents a recommendation on the Adult Entertainment Facilities Overlay District. Staff has provided information on the legal framework that regulates adult uses, several studies on the effects of adult uses in communities and an analysis regarding the location of such uses in Oak Harbor. The information was presented at several meetings of the Planning Commission since a public hearing on this issue was opened on July 27, 2010 and continued at each meeting to provide an opportunity for early and continuous public input. The Planning Commission is recommended to close the public hearing on December 28, 2010 and make a recommendation to the City Council.

Background: The Planning Commission received a report on locating Adult Entertainment Facilities in Oak Harbor at its last meeting on October 26, 2010¹. The summary of the findings in the report are listed below:

- 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.

¹ Please bring the material provided at the last meeting for Adult Entertainment Facilities Overlay District. If you need a copy please let us know.

- 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.

The report concluded that the Interim Adult Entertainment Facilities Overlay District can be adopted as the Final Adult Entertainment Facilities Overlay District. In order to finalize the overlay district, the code language (OHMC Chapter 19.52) of the interim ordinance will need to be readopted as the final ordinance. A copy of the ordinance is attached to this memo.

Recommendation: Staff recommends closing the public hearing and making a recommendation to the City Council that the interim Adult Entertainment Facilities Overlay District be adopted as the final Adult Entertainment Facilities Overlay District.

Chapter 19.52
ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE

Sections:

- 19.52.010 Purpose.
- 19.52.020 Application of chapter provisions.
- 19.52.030 Definitions.
- 19.52.040 Adult entertainment facilities overlay zone established.
- 19.52.045 Overlay zone map adopted.
- 19.52.050 Adult entertainment overlay zone use restrictions.
- 19.52.060 Non-conforming uses.

19.52.010 Purpose. The purpose of this chapter is to establish an overlay district within which adult entertainment facilities may be located in such a way as to mitigate the adverse secondary effects associated with such facilities. Because of the adverse secondary effects of adult entertainment facilities, restrictions on location are necessary: to protect residents, especially sensitive uses such as schools, religious institutions, parks and residential neighborhoods, from crimes, nuisances and disturbances of the public welfare, peace and safety; to preserve property values; and to respect the place of neighborhoods, schools, religious institutions and parks in the city of Oak Harbor. It is not the intention of this ordinance to suppress any constitutionally protected speech or expression, but to provide sufficient alternative avenues of communication for adult entertainment uses at the same time as providing appropriate zoning and separation between adult entertainment facilities and potentially conflicting uses.

19.52.020 Application of chapter provisions. Adult entertainment facilities, as defined in OHMC 19.52.030(2), shall only be permitted within the Adult Entertainment Facilities Overlay Zone established herein. This chapter applies to all adult entertainment facilities located within the city of Oak Harbor.

19.52.030 Definitions. The following definitions shall apply to this chapter.

- (1) "Adult entertainment" shall have the meaning set out in OHMC 5.20.020.
- (2) "Adult entertainment facility" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises activity.
- (3) "Overlay zone" shall mean that portion of the Industrial zone and the Planned Industrial Park zone in which adult entertainment establishments may be located.
- (4) "Potentially conflicting uses" shall mean schools, religious institutions, residential zones and parks established within the city of Oak Harbor as of the date of this ordinance. The term "potentially conflicting uses" shall also mean any such other uses which the city council shall determine require separation from adult entertainment facilities, provided that the addition of any such uses shall require a

review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.

19.52.040 Adult entertainment facilities overlay zone established. There is established an adult entertainment facilities overlay zone in the city of Oak Harbor. The adult entertainment facilities overlay zone shall overlay the Industrial zone and the Planned Industrial Park zone. It does not include certain portions of the Industrial zone and the Planned Industrial Park zone in which potentially conflicting uses were located at the time of adoption of this ordinance. The following exclusions from the Industrial zone and the Planned Industrial Park zones apply:

- (1) The adult entertainment facilities overlay zone removes a buffer of seven hundred fifty (750) feet around the existing potentially conflicting uses of schools, religious institutions, and parks.
- (2) A further buffer removes seven hundred fifty (760) feet around existing areas zoned exclusively for residential uses – R-1, Single-Family Residential; R-2, Limited Multiple-Family Residential; R-3, Multiple-Family Residential; and R-4, Multiple-Family Residential.

19.52.045 Overlay zone map adopted. The adult entertainment facilities overlay zone map as attached hereto in Exhibit A is adopted as a pictorial description of the sole geographic areas within the city of Oak Harbor in which adult entertainment facilities are permitted. A copy of the adult entertainment facilities overlay zone map is on file with the city clerk and shall be available for public inspection and copying.

19.52.050 Adult entertainment overlay zone use restrictions. To mitigate the adverse secondary effects associated with adult entertainment facilities, the following parking and lighting restrictions shall apply within the adult entertainment facilities overlay zone:

- (1) Parking requirements. For adult entertainment facilities constructed after the effective date of this ordinance all parking must be visible from the public right-of-way. For adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance, all parking should be visible from the public right-of-way. In cases of adult entertainment facilities located in buildings constructed prior to the effective date of this ordinance where this is not feasible, access to the parking shall be in as direct a route as possible from the public right-of-way and the parking area shall remain free and clear of visual obstructions at all times. Access to the exterior rear of the building shall be denied to any persons other than employees and public officials during the performance of their respective duties and tasks by means of a fence, wall or other device approved by the city building official. On-site parking shall be required and regulated in accordance with Chapter 19.44 OHMC. Parking shall be provided at a ratio of one (1) space for every three (3) seats, plus one (1) space for every two (2) employees on the largest shift.

- (2) Lighting requirements. All on-site parking areas and premises entries of adult entertainment facilities shall be illuminated from dusk until one (1) hour past closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. In addition, all on-site lighting, including signs, shall comply with the shading and directional requirements of OHMC 19.28.010(4). An on-premises exterior lighting plan shall be presented to the city building official for approval prior to the operation of any adult entertainment.

19.52.060 Non-conforming uses. For purposes of this title, a “non-conforming adult entertainment facility” constitutes an adult entertainment facility which lawfully exists as an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction, or which lawfully existed as an adult entertainment facility prior to a change in the zoning which change does not permit an adult entertainment facility in its existing location and is maintained as an adult entertainment facility although it does not comply with the adult entertainment facility zoning requirements set forth in this chapter, or is an adult entertainment facility which lawfully existed prior to annexation by the city and is maintained after the effective date of annexation and does not comply with the adult entertainment facility zoning requirements set forth in this chapter.

- (1) The location of a newly-established public park, permanent religious institution, or school within seven hundred fifty (750) feet or the establishment of a residential district within seven hundred fifty (750) feet of an existing adult entertainment facility shall not cause the existing adult entertainment business to be deemed a non-conforming use unless the city council makes a determination that the newly-established park, religious institution or school requires separation from adult entertainment facilities, and further provided that the exclusion of any such areas from adult entertainment facility zoning overlay shall require a review of available lands to ensure sufficient alternative avenues of communication for adult entertainment uses are available.
- (2) Adult entertainment facilities which are non-conforming uses in the zone in which they are located and which are located within the city limits shall be discontinued within one year of the date of becoming a non-conforming adult use business or upon the expiration of the leasehold period in existence as of the date of becoming a non-conforming adult entertainment facility, or upon the sale of the non-conforming adult entertainment facility, whichever occurs first. Adult entertainment facilities which are non-conforming as a result of annexation to the city shall be discontinued within one year of the date of annexation. Such non-conforming adult entertainment facility shall not be extended, expanded, enlarged or increased in intensity. Such prohibited activities (extend, expand, enlarge, increase in intensity) shall include:

- (a) Extension of a non-conforming adult entertainment facility to any building or other structure or land area other than one occupied by such use as of the date of becoming a non-conforming adult entertainment facility.
 - (b) Extension of any specific type of non-conforming adult entertainment facility, as separately defined in OHMC 19.52.030(2), within a building or other structure to any portion of the floor area that was not occupied by that same type of adult entertainment facility as of the date of becoming a non-conforming adult entertainment facility.
 - (c) Operation of a non-conforming use in such manner as to conflict with, or to further conflict with if already conflicting as of the date of becoming a non-conforming adult entertainment facility.
- (3) Any change in a non-conforming adult entertainment facility shall be to a use which is legally permitted within the zone in which it is located. In the event a non-conforming adult entertainment facility, or portion thereof, is changed to a use which is legally permitted within the zone in which it is located, then the structure or portion thereof which contained the adult entertainment facility cannot thereafter be used or reused for any type of adult entertainment facility. In the event a non-conforming adult entertainment facility building or structure is vacated, closed or abandoned for a period in excess of six (6) months, the structure shall not thereafter be used except in conformance with a use which is legally permitted within the zone in which it is located. A vacated, closed or abandoned non-conforming adult entertainment facility building or structure shall also be subject to the discontinuation provisions of OHMC 19.52.060(2).
- (4) Repairs and alterations to a non-conforming adult entertainment facility building or structure shall be limited to nonstructural repairs and incidental alterations for normal maintenance and shall only be permitted to the extent necessitated by normal wear and tear. No structural alterations shall be allowed.
- (5) A building or structure containing a non-conforming adult entertainment facility which is damaged or destroyed by fire, wind, earthquake or other natural disaster can be restored and the same use or occupancy continued or resumed provided the total cost of such restoration does not exceed fifty percent (50%) of the real valuation of the building or structure exclusive of foundations at the time of such damage provided that such restoration shall not extend the one (1) year discontinuation period established in OHMC 19.52.060(2). Restoration of a structure or building housing a non-conforming adult entertainment facility or moneys used therefore shall not be used as factors by the examiner when considering any request of a time extension made pursuant to subsection (6) of this section.
- (6) In the event the owner of a non-conforming adult entertainment facility determines that the period set forth in subsection (2) of this section does not

provide the adult entertainment facility with a reasonable period of amortization, then no later than one hundred eighty (180) days prior to the expiration of the period, the owner of a non-conforming adult entertainment facility shall make application to the city land use hearing examiner for an extension of time.

Accompanying the application shall be a fee in the amount of Seven Hundred Twelve Dollars (\$712.00) and detailed information addressing the below-listed factors to be considered by the hearing examiner. In determining whether or not to grant the extension, the hearing examiner shall determine whether or not the harm or hardship to the non-conforming adult entertainment facility outweighs the benefit to be gained from the public from termination of the use. Factors to be considered by the hearing examiner include the location of the business in relation to sensitive land uses such as schools, parks, churches, residential zone(s), etc., initial capital investment, investment realization to date, life expectancy of the investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternate use of the property exists. The action of the hearing examiner shall be in accordance with the review process as described in Chapter 18.40 OHMC for a Review Process III.

- (7) Within thirty (30) calendar days of becoming a non-conforming adult entertainment facility, the non-conforming adult entertainment facility shall provide the city's development services director with copies of its current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a non-leasehold interest, the city's development services director shall be provided other documents which show record of ownership.

Binding Site Plan
Code Amendments

Public Hearing

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

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: _____