



NOTICE OF WORKSHOP MEETING

NOTICE IS HEREBY GIVEN that the Oak Harbor City Council will hold a Workshop Meeting on Wednesday, May 29, 2013, at 3:00 – 5:30 p.m. The meeting will be held in the Council Chambers, 865 SE Barrington Drive.

DATED this 21st day May 2013.

Valerie J. Loffler, City Clerk

The City Council may meet informally in workshop sessions (open to the public) to do concentrated strategic planning, to review forthcoming programs of the City, receive progress reports on current programs or projects, or receive other similar information from the City Administrator, provided that all discussions and conclusions thereon shall be informal. Council shall make no disposition of any item at a workshop meeting. Public comment is not normally allowed at workshop meetings, although Council may allow, or request participation.

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**CITY OF OAK HARBOR
CITY COUNCIL
AGENDA**

WORKSHOP MEETING

May 29, 2013 - 3:00 p.m.

1. Departmental Briefings

- a. Marina C-Dock Roof Project Recommendation
- b. Development Services
- c. Public Works
- d. Police
- e. Other

2. Pending Agenda Items

- a. Resolution 13-06: Adopting an Invocation Policy
- b. Binding Site Plan Code Amendment
- c. WAIF Contract
- d. NLC Prescription Program
- e. N Booster Station & Transmission Main – Gray & Osborne Design Contract
- f. Septic to Sewer Project – BHC Contract

3. Emerging Issues

- a. Non-Represented Employees – COLA and Opt Out



WORKSHOP MEETING
May 29, 2013 – 3:00 p.m. to 5:30 p.m.
CITY COUNCIL
AGENDA

Departmental Briefings

1. Marina C-Dock Roof Project Recommendation
2. Development Services - Bed and Breakfast Code Amendment
3. Public Works
 - a. Parks Code Revisions
 - b. Archaeology
 - c. Property Acquisition Presentation by Craig Fullerton
4. Police - Element Nightclub
5. Other

Pending Agenda Items

1. Resolution 13-06: Adopting an Invocation Policy
2. Binding Site Plan Code Amendment (Ord 1657, PH 06/18/13)
3. WAIF Contract
4. NLC Prescription Program
5. N Booster Station & Transmission Main – Gray & Osborne Design Contract
6. Septic to Sewer Project – BHC Contract

Emerging Issues

1. Non-Represented Employees – COLA and Opt Out

MEMORANDUM

TO: MAYOR SCOTT DUDLEY
FROM: STEVE POWERS, DEVELOPMENT SERVICES DIRECTOR
SUBJECT: MARINA / C-DOCK ROOF PROJECT
DATE: MAY 21, 2013
CC: LARRY CORT, CITY ADMINISTRATOR

PURPOSE:

This memo presents staff's recommendation that the damaged C-Dock roof not be replaced.

INTRODUCTION:

In January 2010, a portion of the western half of the Oak Harbor Marina C-Dock roof was damaged during a significant wind event.¹ The damaged roof provided cover to thirteen slips. Following the damage, the City's insurer indicated that the damage was covered under the City's policy and recommended the City hire a structural engineer for review of the structure and to develop plans and specifications to replace the roof material. The City retained the services of Reid Middleton, Inc. for this work (June 2010) and a report was completed (August 2010). The City then retained Reid Middleton to prepare plans and specifications for the repair project (December 2010). The project was put out to bid and a construction contract was awarded to Roosendaal Honcoop (RH) in the amount of \$151,223.44 (May 2011), followed shortly by the issuance of a Notice to Proceed (June 2011).

There are two major issues that affected the project from this point forward and both of them relate to permitting. One is how the project was designed to meet the current fire code. The other pertains to permits or approvals from other agencies.

BUILDING PERMIT AND FIRE CODE COMPLIANCE

When the plans as prepared by Reid Middleton were submitted to the Building Division and to the Fire Department for their review and permit approval, it was discovered that the proposed design did not meet current fire code standards. The non-compliant design included the use of a fiberglass reinforced panel that was intended to burn and melt away at a prescribed temperature and within a prescribed time limit. This melting away effect is necessary to provide the required venting during a fire. In an effort to keep the project moving forward, the plans were approved (May 2011) with the condition that the originally specified fiberglass material be substituted with a polycarbonate. The substituted material required approval by the Fire Department before it was installed. Significant effort was expended by the consultant, the contractor and staff to find a material that would meet all of the necessary code and structural requirements within a timeframe that would allow the contract to proceed in a timely fashion. Those efforts were not successful and resulted in the Fire Marshall rejecting the polycarbonate material based upon testing (August

¹ The roof over slips C-10, C-12, C-14, C-16, C-18, C-20, C-22, C-24, C-26, C-28, C-30, C-32 and C-34 was either blown off or damaged.

2011). The contract with RH was suspended (August 2011) and then terminated (September 2011). The contractor was compensated for their work as required by the contract (December 2011).

During this same timeframe, Reid Middleton staff continued to evaluate other means to meet the fire code, namely mechanical vents and fire sprinklers. Their evaluation concluded with a recommendation that fire sprinklers be installed (August 2011). Fire sprinklers could not be installed however without extending a new water service to the Marina. The cost of extending the new service was prohibitive both in terms of the actual cost to the Marina and the relative cost compared to the small number of slips to initially benefit from this infrastructure (13 slips).

Also during this same timeframe, the City and Reid Middleton discussed ways to get the project back on track. Reid Middleton agreed to redesign the project to meet the appropriate fire code standards and entered into contract to do so at no cost to the City (January 2012). The contract required a bid ready set of plans be produced by June 29, 2012.

Plans and specifications were prepared, with the redesigned project utilizing roof vents to meet the fire code requirements. The estimated cost of the redesigned project was \$392,000, which was more than twice the original contract amount. This amount equates to approximately \$30,154 per slip.

PERMITTING

The City has an aquatics land lease with DNR for a majority of the property associated with the Marina. The boilerplate language in the lease requires the City to obtain plan approval from DNR for major repairs or reconstruction projects. The relevant language is shown below:

Construction, Major Repair, Modification, and Demolition

- (a) This Subsection 7.3 governs construction, alteration, replacement, major repair, modification, demolition, and deconstruction of Improvements (“Work”). Section 11 governs routine maintenance and minor repair of Improvements and the Property.
- (b) Except in an emergency, Tenant shall not conduct any Work, except as described in Exhibit B, without State’s prior written consent, as follows:
 - (1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Property. If Work is for removal of Improvements at End of Term, State may waive removal of any or all Improvements.
 - (2) State will deny consent for any Work that provides for
 - (i) Placement of fill below ordinary high water, unless fill is intended for mitigation in accordance with Exhibit B,
 - (ii) Construction of new bulkhead, or
 - (iii) An increase in the total square footage of covered moorage
 - (3) ***Except in an emergency, Tenant shall submit to State plans and specifications describing the proposed Work concurrent with submitting permit applications to regulatory authorities unless Tenant***

and State otherwise agree to coordinate permit applications. At a minimum, or if no permits are necessary, Tenant shall submit plans and specifications at least ninety (90) days before commencement of Work (emphasis added).

- (4) State waives the requirement for consent if State does not notify Tenant of its grant or denial of consent within sixty (60) days of submittal.

Per the language shown above no work may proceed without prior written approval from DNR and DNR may impose their own conditions (in addition to those required by other permitting agencies, if applicable).

There is an exception to these requirements as outlined in Exhibit B to the lease. The relevant language from Exhibit B is shown below:

IV. RENOVATION, REPAIRS AND NEW CONSTRUCTION

- C. Planned Marina Redevelopment. As of the Commencement Date, Tenant secured permits for phased reconstruction and upgrading of the existing marina facilities. Tenant has not secured funding for this work and the City Council has not determined whether to implement the full scope of work.

Permits current as of the Commencement Date include Section 404 permit issued by the United States Army Corps of Engineers (Permit #: NWS-2007-951-NO, issued on October 31, 2008), Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife, (Permit #: 111469-1 issued on January 25, 2008), and a Shoreline Conditional Use Permit (Permit #: PLN-07-00010), issued on November 28, 2008), Department of Ecology Conditional Use or Variance Permit, issued on March 28, 2008, (collectively “Commencement Permits”). Tenant anticipates that the permits will expire before all of the authorized work is funded or completed.

State grants its approval for work authorized under the Commencement Permits. *Unless otherwise explicitly required under this Exhibit B, State does not require Tenant to submit plans and specifications as required by Section 7.3 of the Lease for work authorized under the Commencement Permit. For work not authorized under the Commencement Permits and if any Commencement Permit expires before the work described below is complete, Tenant shall submit plans and specification to State and obtain State’s approval of work in accordance with Section 7.3* (emphasis added).

The redevelopment permits included constructing new covered moorage. Following the language of the lease, the City believed it did not need to get DNR approval to replace the existing, damaged roof so long as the redevelopment permits (aka the Commencement Permits) were valid.

Knowing that the United States Army Corps of Engineers (the Corp) permit would expire on October 31, 2011, City staff contacted that agency in advance of that date to seek an extension.

In response to that request the City was informed that an extension could not be acted upon until two issues were addressed. One issue was the submittal of a mitigation monitoring report as required by conditions of the redevelopment permit. The other issue pertained to what the Corps refers to as unauthorized activity. In short, the Corps believes that several of the existing in-water structures were never permitted by them and are therefore unauthorized.

City staff has been working to address both of these issues. A mitigation monitoring report was prepared by a qualified environmental firm and will be submitted to the Corps very shortly. Staff has also submitted documentation to the Corps attempting to prove that the structures they view as unauthorized were funded and permitted by other agencies. To date the Corps has not changed their opinion of these structures. Staff continues to coordinate with the Corps on resolving this issue.

Until such time as it is resolved, an extension of the Commencement Permits will not be considered by the Corps. Without an extension, the roof cannot be replaced without first receiving DNR's approval and receiving new permits from DOE and, ironically, the Corps.

If the City needs to seek new permits to replace the damaged covered moorage, the terms of the DNR lease addressing renovation, repairs and new construction will apply. Several of the lease provisions require features to be constructed that increase the amount of light that pass through overwater structures. The relevant portions of the lease are shown below (with emphasis added):

IV. RENOVATION, REPAIRS AND NEW CONSTRUCTION

A. Conservation Measures. ***Whenever replacing, renovating, or repairing improvements, regardless of whether under Section 7 or Section 11 of the Lease, or constructing new improvements, Tenant shall implement the following conservation measures:***

- Install only flotation material that is encapsulated in a shell resistant to ultraviolet radiation and/or abrasion and which prevents breakup or release of flotation material to the water.
- Do not use vehicle tires as flotation material or as dock or float bumpers that come into contact with the water at any time.
- For floats with the potential to ground out (come in contact with the underlying tidelands), provide stoppers set to a height sufficient to keep the bottom of the floats at least twelve (12) inches above the substrate at all times. Minimize the number of pilings used in new construction, thereby minimizing changes to existing sediment transport.
- ***Maximize light passage through overwater structures as follows:***
 1. ***The main walkway and laterals shall be at least fifty (50) percent grated, with the grating having at least sixty (60) percent open space, for both covered and non-covered docks.*** This shall apply to all docks 8 feet in width and greater, unless those docks are designed to be ADA compliant, in which case ADA standards for open space in the grating shall apply. See #5 below.

2. Finger floats less than 8 feet in width in the uncovered moorage area shall utilize grating on 25% of the float area.
3. Where dead loads such as gangways, electrical units, and other stationary loads are present, the maximum amount of grating (up to 50%) will be used in the float as is structurally feasible to support the required dead loads.
4. ***Finger floats in covered moorage areas are not required to have grating but shall incorporate grating if structurally feasible. Grating on the main walkways and laterals in covered moorage areas shall be incorporated to the maximum extent that it is structurally feasible and shall have a minimum of 40% open space in the grating.***
5. According to the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) the Oak Harbor Marina is required to have a minimum of six (6) ADA accessible slips for a marina of their size (301-400 slips). ADA accessible slips must at a minimum meet the grating requirements defined in standard 4.5.4 of the ADAAG.
 - Orient night lighting to minimize the amount of light shining directly onto the water.
 - Make every reasonable effort to minimize noise during nighttime operations.
 - Post no-wake signs throughout the leasehold to minimize noise and sediment re-suspension.
 - Install storm drain filters on all storm drains that discharge directly into the bay.
 - Inspect filters monthly and replace as needed. Annually submit verification of the inspections and filter replacements to State.
 - Do not use treated wood timbers or pilings below the waterline. Use steel or concrete for new or replacement piles.
 - When feasible, remove structures/fixtures that are no longer in operation or use.
 - Maintain the dredge basin with a depth gradient shallower toward shore to avoid deep pockets that can act as unflushed holding basins.
 - ***Before construction or replacement of covered storage, Tenant shall submit plans and specifications showing the location for State approval in accordance with Section 7.3 of the Lease².***

Given DNR's clear preference for increasing the amount of light that penetrates structures shading the water, staff is not convinced that their approval would be granted without requiring

² Please note Section 7.3 permits the State to deny consent for improvements if they determine that denial is in the best interests of the State. It also permits them to impose additional conditions reasonably intended to protect and preserve the property.

the City to construct significant mitigation measures in either the floats or the roof. Securing new permits will also mean the expenditure of additional funds for various consultants.

COVERED MOORAGE AND EXISTING SLIP MIX

The Marina has 420 slips with 217 open permanent slips and 135 covered permanent slips (prior to the damage) of varying sizes, with the remainder of slips being either conditional or temporary moorage. It was constructed in 1974 and the mixture of slip sizes is reflective of the boat sizes of that era. The longer and taller boats of today require larger slips. While covered moorage helps protect boats from the elements, many larger boats and all sail boats are incapable of utilizing covered moorage as exists in Oak Harbor. In fact, over time various marina tenants have cut notches or openings into some of the roof beams in order to allow their boats to pass underneath. Leaving thirteen 40-foot slips uncovered provides a greater number of slips capable of handling today's larger boats. In fact, a key component of the Marina Redevelopment Program sought to increase the number of larger slips available for moorage.

CONCLUSION

More than three years has passed since the western half of the C-Dock roof was damaged in a storm. Efforts to design and install a replacement roof have been hampered by fire code compliance difficulties and permit problems with other agencies. While the fire code compliance issues have been solved (although at a much higher cost than originally estimated), the permit problems still remain. In short, the City cannot replace the roof without (1) having been granted a time extension to the original Marina redevelopment permits, or (2) starting a new permit process with the Corps of Engineers, Department of Ecology and Department of Natural Resources. It is not clear when or if the City's request for a time extension will be approved. Starting a new permit process will require the hiring of environmental and/or engineering consultants to assist with the JARPA process.

Finally, decisions regarding the C-Dock roof project should also be made in the context of how they fit within the overall Marina Redevelopment Program and in recognition of the age of the facility. Simply put, building a brand new roof structure on top of 39 year old floats may not make economic sense given the evolution of boating design and preferences.

RECOMMENDATION

For the reasons stated above, staff recommends that a new roof not be constructed on that portion of C-Dock that was damaged in January 2010.

DRAFT – FOR DISCUSSION PURPOSES

RESOLUTION NO. 13-06

A RESOLUTION OF THE CITY OF OAK HARBOR ESTABLISHING A WRITTEN POLICY FOR THE PRESENTATION OF INVOCATIONS AT CITY COUNCIL MEETINGS

WHEREAS, it is the desire of the Oak Harbor City Council to set the tone for the City of Oak Harbor for the conduct of its City Council meetings during 2013 and for years to come; and

WHEREAS, invocations can serve the secular purpose of solemnizing public occasions and encouraging the recognition of things that are worthy of appreciation in society; and

WHEREAS, in order to continue the long standing history and tradition of legislative invocation established by the drafters of the Constitution, it is the policy of the City to permit invocations to be presented at the commencement of City Council meetings; and

WHEREAS, it is the intent of the Oak Harbor City Council to recognize and respect spiritual diversity; and

WHEREAS, it is the wish of the Oak Harbor City Council to conform its written invocation policy with the holding in *Rubin v. City of Lancaster*, No. 11-56318 (9th Cir. 2013) and to express the City's commitment to spiritual neutrality;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Oak Harbor, Washington as follows:

1. The Oak Harbor City Council will continue to begin the regular City Council meetings with an invocation presented by representatives of the greater Oak Harbor area spiritual community.
2. The City will advertise at least once per year that it is seeking interested members of public from any and all religious denominations or spiritual organizations to present invocations at City Council meetings. The City Clerk shall establish a list of religious and spiritual organizations located within the greater Oak Harbor area. The list shall be available to the public and additional organizations shall be added at the request of any organization.. Notice of the opportunity to give the invocation will be sent to all organizations on the list. A sign up procedure will be established by the City for scheduling of interested volunteers.
3. The opportunity to offer an invocation is voluntary and the contents of the invocation may be dictated by the beliefs of the individual or organization offering the invocation. As a general guideline only, it is requested that invocations be limited to approximately 90 seconds.

4. The City shall endeavor to provide a copy of this resolution to each volunteer in advance of his or her presentation of the invocation.

PASSED by the City Council of the City of Oak Harbor and approved by its Mayor this ____ day of _____, 2013.

CITY OF OAK HARBOR

SCOTT DUDLEY, MAYOR

ATTEST:

Approved as to Form:

Valerie J. Loffler, City Clerk

Grant Weed, Interim City Attorney

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 12, 2010; January 25, 2011 and February 22, 2011.
4. Draft Ordinance No. 1644, amending OHMC 21.80

Please note that for the introduction of this topic to the City Council at the May 29, 2013 workshop, only the February 22, 2011 Planning Commission report and the draft ordinance are provided as attachments.

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 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

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- 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.)

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

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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.~~
- ~~21.80.060~~**050** Requirements for a binding site plan map.
- ~~21.80.055~~ Site plan review required.
- ~~21.80.070~~**060** Certifications required.
- ~~21.80.080~~**070** Title report.
- ~~21.80.090~~ ~~Survey required.~~
- ~~21.80.100~~**080** Approval procedure.
- ~~21.80.110~~**090** Recording requirements.
- ~~21.80.120~~**100** Development requirements.
- ~~21.80.130~~**110** Standards for review of commercial binding site plan.
- ~~21.80.140~~**120** Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.
- ~~21.80.150~~**130** Performance guarantee requirements.
- ~~21.80.160~~**140** Warranty requirements for acceptance of final improvements.
- ~~21.80.170~~**150** Survey required.
- ~~21.80.180~~**160** Dedication – Warranty deed.
- ~~21.80.200~~**170** Requirements for ~~M~~modification of binding site plan standards.
- ~~21.80.180~~ Alteration or vacation of an approved binding site plan.
- ~~21.80.300~~**190** Appeals to the hearing examiner.
- ~~21.80.400~~**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 (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;

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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:
 - (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.

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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 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.~~

21.80.060050 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;

~~(13) 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;~~

~~(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~~

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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.

21.80.110090 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.

21.80.120100 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.
 - (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

21.80.149120 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 eChapter 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 eChapter 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 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.

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)13~~ or ~~(17)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 ~~OHMC~~.

(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 ~~OHMC~~.

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.

Binding Site Plan Code Amendment
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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: _____

City of Oak Harbor City Council Agenda Bill

Bill No. _____
Date: June 4, 2013
Subject: Prescription Discount Card
Program

FROM: Cheryl L. Lawler, HR Manager

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

To introduce a Prescription Discount Card Program through National League of Cities that would benefit the citizens of Oak Harbor and employees.

AUTHORITY

None

FISCAL IMPACT DESCRIPTION

There is no cost of the city or to its citizens to enroll or use this program.

SUMMARY STATEMENT

The National League of Cities, of which Oak Harbor is a member, has created the NLC Prescription Discount Card Program that will provide our residents with a program that offers an average savings of 23%.

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

It is recommended that the City Council and Mayor approve the necessary steps to launch this program to our citizens.

ATTACHMENTS

Information about the program from The National League of Cities.

CITY OF OAK HARBOR
RESOLUTION NO. 13-XX

**A RESOLUTION TO ADOPT THE NATIONAL LEAGUE OF
CITIES PRESCRIPTION DISCOUNT CARD PROGRAM**

WHEREAS, The City of Oak Harbor values and desires to meet the needs of the residents it serves; and

WHEREAS, the City recognizes that with the continuing rise in the cost of healthcare many individuals and families are without health insurance or a traditional pharmacy benefit plan, or have prescriptions not covered by insurance; and

WHEREAS, as a member of National League of Cities (NLC) our city can offer to our residents a free prescription discount card that provides savings off the retail price of prescription medications, at no cost to the city.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Oak Harbor that the NLC Prescription Discount Card Program will be implemented.

PASSED by the City Council and approved by its Mayor 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

THE NLC PRESCRIPTION DISCOUNT CARD PROGRAM

IT'S ALL ABOUT
MEETING THE
NEEDS OF
RESIDENTS!

SAVE your
residents an
average of
23% off the
retail price of
prescription
medication
at no cost
to the city.

MORE THAN EIGHT MILLION DOLLARS IN SAVINGS TO RESIDENTS.

As a member of National League of Cities (NLC) you can offer your residents a FREE prescription discount card that provides average savings of 23% off the retail price of prescription medication, at no cost to your city.

Now residents who are without health insurance or a traditional pharmacy benefit plan, or have prescriptions not covered by insurance have a solution to obtain medications at a discount. The card may be used for pet medications that are also used to treat a human condition that can be obtained from a participating pharmacy. The discount cards are widely accepted at all national chain pharmacies and most local independent pharmacies.

"We're pleased so many residents are taking advantage of this program. Costs continue to rise in all areas of healthcare and any savings we can find are welcome. We encourage all residents to look at the program for their family and in some cases, their pets."

- Brian Sullivan
Town Manager
Arlington, Massachusetts

One benefit of membership in the National League of Cities is that you can save your residents money at no cost to the city!

Sign up today!
Complete the form inside.

Free Prescription Discount Card

Your City
Name Here



Brought to you in collaboration with the National League of Cities.

This is not insurance.



Start saving on prescriptions today!

Easy Access This prescription discount card is brought to you by your city government in collaboration with the National League of Cities. By using this card you have access to nine out of 10 participating pharmacies across the country, including many in your city, to save an average of 20% off the regular retail price of prescription drugs.

No Restrictions You and your family may use your discount card anytime your prescription is not covered by insurance. There are no restrictions and no limits on how many times you may use your card.

Extra Savings As part of this program you will also be eligible for higher discounts on select medications. To get program information, locate a pharmacy, look up a drug price, or access health resources visit www.caremark.com/nlc, or call toll-free 1-888-620-1749.

Accepted by **all** major pharmacy chains nationwide!

SAVINGS FOR YOUR RESIDENTS AT NO COST TO THE CITY!

PROGRAM MATERIALS

The city is provided with marketing materials including pre-approved press releases and a sample web page for the city website to promote and launch the program. Printed discount cards and display materials (customized with the city name and logo) are provided at no cost as well as information on how residents can print a customized city discount card from a website. Program materials are available in English and Spanish. Participating cities receive a monthly report from NLC with data on savings to residents.

CUSTOMIZED CARD AND POSTER

Lower the Cost of Your Prescriptions. Start Saving Today!

The **Prescription Discount Card** is easy to use and can be used any time your prescription is not covered by insurance.

The program includes:

- Average savings of 20%
- It's FREE, no enrollment or membership fees
- All family members are covered
- Even some pet prescriptions are covered
- No limit on how many times you use the card
- 9 out of 10 pharmacies accept the card

Start Saving Today with the City of [City Name] Prescription Discount Card

It's easy to get a card from the Internet, go to www.caremark.com/nlc and select "Print a Card Now" and follow the easy steps. Cards may also be found at city hall and most libraries.

For more program information visit www.caremark.com/nlc or call toll-free 1-888-620-1749

NATIONAL LEAGUE OF CITIES

Baje el Costo de sus Recetas. ¡Comience a Ahorrar Hoy Mismo!

La **Tarjeta de Descuento para Recetas** es fácil de usar y se puede usar en cualquier momento que su receta no sea cubierta por el seguro.

El programa incluye:

- Ahorros en un promedio del 20%
- Es GRATIS, sin cuotas de inscripción o membresía
- Cobertura para todos los miembros de su familia
- Aún la puede usar para pagar por algunas recetas para sus mascotas
- Sin límites en el número de veces que puede usar la tarjeta
- 9 de 10 farmacias aceptan la tarjeta

Comience a ahorrar hoy, con la Tarjeta de Descuento para Recetas de la Ciudad de [City Name]

Es muy fácil obtener una tarjeta a través del Internet, visite www.caremark.com/nlc y haga clic en "Imprimir una Tarjeta Ahora" y siga los pasos fáciles. Las tarjetas también se pueden conseguir en City Hall y en la mayoría de las bibliotecas.

Para obtener más información acerca del programa, visite www.caremark.com/nlc o llame gratuitamente al 1-888-620-1749

NATIONAL LEAGUE OF CITIES

Sample Posters (Size: 11" x 17")

"The program has saved Detroit area residents nearly a quarter million of dollars on the cost of prescription medications with an actual savings of 30 percent."

- Janice Winfrey
City Clerk
Detroit, Michigan

Prescription Discount Card

Your City Name Here City Logo

Rx BIN: [City Name] ID Rx GRP: ISSUER (000001)

This is NOT insurance.

Start saving on prescriptions today!

Easy Access This prescription discount card is provided to you by your city government in collaboration with the National League of Cities. It is one of 10 pharmacies nationwide participate in this program, making many in your city. Save an average of 20% off the regular retail price of prescription drugs.

No Restrictions You and your family may use your discount card anytime your prescription is not covered by insurance. There are no restrictions and no cash back many times you may use your card.

Extra Savings As part of this program, you will also be eligible for higher co-pays or select medications. To get program information locate a pharmacy and ask for a drug price or access health resources visit www.caremark.com/nlc or call toll free 1-888-620-1749

Member of the National League of Cities

Prescription Discount Card

Your City Name Here City Logo

Rx BIN: [City Name] ID Rx GRP: ISSUER (000001)

Este NO es un seguro.

Comience a ahorrar hoy mismo en sus recetas medicas!

Acceso Fácil Esta tarjeta de descuento para la receta ha sido provista por el gobierno de su ciudad en colaboración con la National League of Cities. Al usar esta tarjeta tiene acceso a un número de farmacias participantes en toda la nación, incluyendo muchas en su ciudad, para ahorrar un promedio del 20% del precio regular al costo de los medicamentos recetados.

Sin Restricciones Usted y su familia pueden usar su tarjeta de descuento en cualquier momento que su receta no sea cubierta por el seguro. No existen ningunas restricciones y puede usar su tarjeta en cuantas veces puede usar su tarjeta.

Ahorros Extra Como parte de este programa, usted también será elegible para mayores descuentos en medicinas seleccionadas. Para recibir información acerca del programa, visite una farmacia, confirme el precio de un medicamento, o tiene acceso a los recursos de salud, visite www.caremark.com/nlc o llame sin cargo al 1-888-620-1749

Member of the National League of Cities

Sample Cards (Size: 3.75" x 8.5")

SIMPLE IMPLEMENTATION PROCESS FOR THE CITY AND EASY ACCESS FOR RESIDENTS[†]

The city works with NLC and a CVS Caremark representative to launch the prescription discount card program. Everything needed to get started and launch the program is provided at no cost to the city.

Following the launch in your city, your residents will have:

- Average savings of 23%
- Easy access, nine out of 10 pharmacies participate in the program, more than 60,000 pharmacies nationwide
- No enrollment fees
- No membership fees
- No limit on how many times the card can be used
- No age requirements
- No income requirements
- ALL family members are covered
- Pet medications that are also used to treat a human condition are covered

To obtain more information about the program, please contact Marc Shapiro at NLC (shapiro@nlc.org) or visit www.nlc.org/prescriptioncard; additional program information can also be obtained at www.caremark.com/nlc. Cities may also sign up for the program by completing the form attached or on NLC's website www.nlc.org/prescriptioncard.

The National League of Cities (NLC) Prescription Discount Card program is administered by CVS Caremark, an experienced prescription discount card provider who has administered these programs since 1992. Your city must be a member in good standing of NLC to sponsor the program.

[†] All communications must be reviewed and approved by NLC and CVS Caremark unless the city is using communications supplied by CVS Caremark.



Scan code to access
the NLC website.

Operated by CVS Caremark.
This is NOT insurance. Discounts are only available at participating pharmacies.



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FREQUENTLY ASKED QUESTIONS



How much will residents save by using the discount card?

While savings on each prescription may vary, the NLC Prescription Discount Card Program, administered by CVS Caremark, saves an average of 23% off of the pharmacy's regular retail prices. The savings are validated monthly and annually.

What if a pharmacy's price on particular prescription drugs is lower than the discount card price?

The program uses a "lower-of" pricing schedule so that residents are never disadvantaged by using the discount card. On occasion, a participating pharmacy may have a lower price on particular prescription drugs. If that occurs, residents will always pay the lowest price.

Who pays the cost of the discount?

Pharmacies in the national discount network agree to absorb the cost of the discount. The benefit to the pharmacy of participating in the program is that it creates customer loyalty and increases store traffic.

Does NLC or CVS Caremark share the personal information of residents using the discount card?

CVS Caremark does not give or share personally identifiable health information to manufacturers or direct marketers. CVS Caremark is fully compliant with all federal and state privacy and security regulations pertaining to the protection of protected health information and has a robust compliance program which monitors and enforces policy compliance. NLC neither receives nor shares personal information of residents.

Does NLC or any participating city receive revenue from the program?

Neither NLC nor any participating city receives revenue for sponsoring the discount card program.

Does the program provide a competitive advantage to CVS pharmacies?

All major pharmacy chains and most local independent pharmacies, more than 60,000 pharmacies nationwide, participate in the discount card network. Residents are not encouraged or incentivized to use CVS pharmacies over any other chain or independent pharmacy.

Can the discount card be used with other prescription insurance benefits?

The program is not insurance; it is a prescription discount program. The card cannot be used to supplement insurance benefits. The card can be used for prescriptions not covered by an insurance plan.

To obtain more information about the program, please contact Marc Shapiro at NLC (shapiro@nlc.org) or Brad Stone at CVS Caremark (brad.stone@caremark.com) or visit www.nlc.org/prescriptioncard.

BILL INSERT FOR YOUR RESIDENTS

NLC prescription discount cards are also available in a bill insert format at no cost to the city. This insert with the city name and logo can be used in mailings to residents, such as a utility bill, city newsletter or other communications. By using the bill insert a prescription discount card can be delivered directly to residents.

The inserts are designed to be lightweight to have minimal if any effect on postage. The specifications on the bill insert are:
 Flat Size: 7.5" x 3.375" - 7.5" x 3.375" finished
 Colors: 2/2
 Stock: 70# Casa Opaque White Offset 30% PCW (Post Consumer Waste) Uncoated (offset) Book/Text
 Press Features: Full Horizontal Perforation
 The weight of each insert is .063 ounces, or 1.79 grams.

CITY OF

WELCOME!

Welcome to the City of Avondale Prescription Discount Card Program!
 Clip out your FREE prescription discount card below and start saving on your prescriptions TODAY!

EASY ACCESS

This prescription discount card is brought to you by your local city government in collaboration with the National League of Cities. By using this card you can have access to nine out of 10 participating pharmacies across the country, including many in your city, to save an average of 20% off the regular retail price of prescription drugs.

NO RESTRICTIONS

You and your family may use your discount card anytime your prescription is not covered by insurance. There are no restrictions and no limits on how many times you may use your card.

EXTRA SAVINGS

As part of this program you will also be eligible for higher discounts on selected medications. To get program information, locate a pharmacy, look up a drug price, or access health resources visit www.caremark.com/nlc or call toll-free 1-888-620-1749.

Clip out your card and start saving today!

Free Prescription Discount Card

City of

RxBIN: 610415 RXGRP: RXNLCVAOAZ
 RxPCN: ADV Issuer: (B0840)
 ID: W1B00358301

This is NOT insurance.

Members: Call toll-free 1-888-620-1749. This card is accepted by nine out of 10 pharmacies nationwide.
Miembros: Llame sin cargos al 1-888-620-1749. Esta tarjeta se acepta en nueve de cada diez farmacia participantes en la nacion.

Pharmacist: The RxPCN, RxGRP, full ID, and an 01 person code must be submitted online to process claims for this program. For information, call toll-free 1-800-364-6331.

This is NOT insurance. Discounts are only available at participating pharmacies. By using this card, you agree to pay the entire prescription cost less any applicable discount. Savings may vary by drug and by pharmacy. Savings based on actual 2009 drug purchases for all drug discount programs administered by CVS Caremark. The program administrator may obtain fees or rebates from manufacturers and/or pharmacies based on your prescription drug purchases. These fees or rebates may be retained by the program administrator or shared with you and/or your pharmacy. Prescription claims through this program will not be eligible for reimbursement through Medicaid, Medicare or any other government program. This program does not guarantee the quality of the services or products offered by individual providers. We do not sell your personal information. Call the member toll-free number on the back of your ID card to file a complaint related to this program. Note to Texas Consumers: You may contact the Texas Department of Insurance if you remain dissatisfied after completing this program's complaint process.

WEB PRINT-A-CARD FEATURE

The print-a-card feature is a program tool that provides residents with convenient access to print a city discount card from any computer. Getting a card is easy!

It's easy to implement the NLC Prescription Discount Card Program and receive customized city cards, posters and other materials at no cost. Simply complete the attached 'Ready to get started' form and return it to NLC. The process to implement the program takes approximately eight weeks.