



PLANNING COMMISSION

MEETING PACKET

October 25, 2016

PLANNING COMMISSION

PRE-MEETING

October 25, 2016



Planning Commission Briefing Agenda
October 25, 2016
7:00 P.M.

Members

Greg Wasinger, Chairman
Bruce Freeman, Vice-Chairman
Cecil Pierce
Jes Walker-Wyse
Hal Hovey
Alyssa Merriman
Erik Mann

1. Welcome New Commissioner Erik Mann
 - Appointed by the City Council at the October 18, 2016 Meeting
2. Council Action Update
 - No items (other than appointment) submitted to the Council in October
3. Marin Woods Hearing
 - Applicant needs more time to submit; Staff recommends PC continue the hearing until December 13, 2016 regular PC Meeting
4. Current Planning
 - Upcoming code amendments:
 - Sign Code hearing scheduled for November 22, 2016 PC Meeting
 - LID hearing tonight likely to need continuance until Special PC Meeting
5. Long Range Planning
 - County Comprehensive Plan, CWPP and Inter-local Agreement
6. Planning Commission questions and comments
 - Agenda Items
 - General
7. Planning Commission Upcoming Calendar
 - LID Special Meeting is scheduled for Wednesday, November 9th at 7:00 PM
 - November regular PC Meeting is Tuesday, November 22nd
(NOT the 29th as was published in some materials previously)
 - December regular PC Meeting date is scheduled for Tuesday, December 13th

**2016 - 2017
PLANNING COMMISSION
REGULAR BUSINESS MEETING
PENDING AGENDA**

Order	Item	Staff	Public Hearing?	CC Anticipated Dates	Notes
November 9, 2016 Special Meeting					
1	LID - continue Hearing	Dennis	Yes (cont.)	TBA	From 10/25
November 22, 2016					
1	Sign Code	Ray	Yes (tent.)	TBA	
2	2017 Comp Plan Amend.	Cac	Yes	12/6/2016	Apps due 12/1
December 13, 2016					
1	Marin Woods	Ray	Yes	12/20/2016	From 09/27
2					
January 24, 2017					
1	2017 Comp Plan Amend.	Cac	Yes		Preliminary docket
2					

PLANNING COMMISSION

AGENDA

October 25, 2016

MINUTES

September 27, 2016

**City of Oak Harbor
Planning Commission
Regular Meeting Minutes
September 27, 2016 at 7:30 PM**

1. Roll Call

Present:

Greg Wasinger (Chair)
Bruce Freeman (Vice Chair)
Cecil Pierce
Jes Walker-Wyse
Hal Hovey

Absent:

Alyssa Merriman

Staff Present:

Steve Powers, Development Services Director
Nikki Esparza, City Attorney
Dennis Lefevre, Senior Planner
Ray Lindenburg, Associate Planner
Joe Stowell, City Engineer
Brad Gluth, Civil Engineer
Arnie Peterschmidt, Project Engineer

Chairman Wasinger called the meeting to order at 7:30 PM.

2. Approval of Minutes – August 23, 2016

***Motion:** Commissioner Walker-Wyse moved to approve the August 23, 2016 minutes as presented. **Second:** Commissioner Hovey seconded the motion. Commissioner Pierce abstained, as he had been absent. With all in favor, the motion carried unanimously.*

3. Public Comment: There were no comments from the public.

4. Public Hearings and Meetings

A. MARIN WOODS PLANNED RESIDENTIAL DEVELOPMENT (PRD) AND PRELIMINARY PLAT – Public Hearing

Chairman Wasinger presented the introduction to the public hearing and opened the hearing at 7:31 PM. The Planning Commission will conduct a public hearing to consider the PRD, Preliminary Plat and Subdivision Waiver submitted by the George F. Marin Family Trust, for a 43-lot single-family residential subdivision known as Marin Woods on 10.6 acres, located at 1292 SW Swantown Avenue, parcel number R13204-459-4200. The Planning Commission may forward a recommendation to the City Council after conducting the public hearing.

Appearance of Fairness

Nikki Esparza, City Attorney, explained that these PRD, Preliminary Plat, and Subdivision Waivers are a quasi-judicial procedure, and as such conducted an Appearance of Fairness colloquy to determine if the Commissioners can hear this particular matter. Prior to the colloquy, Commissioner Walker-Wyse indicated she intended to recuse herself from the proceedings regarding Marin Woods for two reasons: she has had limited ex parte communication with the real estate agent in regards to this project; and given the nature of the business she is in, it is possible she could fund a loan within this development and benefit financially from that transaction. Commissioner Walker-Wyse stepped down and exited the Chambers.

City Attorney Esparza continued with the Appearance of Fairness colloquy as follows:

Question 1: *Does any member of this Commission have knowledge of, or conducted business with, either the opponents or proponents of this particular plat?*

Commissioners Wasinger, Freeman, and Pierce answered in the negative.
Commissioner Hovey answered in the positive. Commissioner Hovey explained that in

late June / early July 2013, he met with Richard Marin; he had subsequent email communications with Richard and George Marin on various dates; on July 10, 2013 he met with the Marins regarding Coldwell Banker Koetje representing the sale of the property; on July 16, 2013 he received an email that the Marins were still considering the proposal; on July 26, 2013 he received an email that the Marins had rejected the proposal; on September 11, 2013, he received communication that the Marins were still wanting to sell but had not yet picked a real estate agent. Commissioner Hovey stated he has had no communication with the applicant since that time.

Question 2: *Does any member of this Commission have a pecuniary or non-pecuniary interest in the outcome of this proceeding?*

Commissioners Wasinger, Freeman, Pierce, and Hovey answered in the negative.

Question 3: *Does any member of this Commission know whether or not their employer has a financial interest in the property or area which will be impacted by the decision in this proceeding?*

Commissioners Wasinger, Freeman, Pierce, and Hovey answered in the negative.

Question 4: *Does any member of this Commission live or own property within 300 feet of the area which will be impacted by the decision in this proceeding?*

Commissioners Wasinger, Freeman, Pierce, and Hovey answered in the negative.

Question 5: *Does any member of this Commission have any special knowledge about the substance of the merits of this proceeding which would or could cause the Commissioner to pre-judge the outcome of this proceeding?*

Commissioners Wasinger, Freeman, Pierce, and Hovey answered in the negative.

Question 6: *Is there any member of this Commission who believes that he or she cannot sit and hear this matter fairly and impartially as to the respective positions of the proponents and the opponents of this proceeding?*

Commissioners Wasinger, Freeman, Pierce, and Hovey answered in the negative.

Question 7: *Has any member of the Commission had any ex parte contacts concerning this matter?*

Commissioners Freeman, Pierce, and Hovey answered in the negative.

Commissioner Wasinger answered in the affirmative. Commissioner Wasinger explained that he has had ex parte communication indirectly, through his son Brian Wasinger, and his daughter-in-law. His son and daughter-in-law have a real estate business; and though they are not under contract, they do business with Waldron Construction [which may be the builder for this subdivision]. Commissioner Wasinger stated that the record should show that he would have no financial benefit. He heard from his son that there was discussion about the egress onto Swantown; since then he has not had any contact regarding the matter.

Question 8: *Is there any member of the audience who believes because of the "Appearance of Fairness Doctrine" that any member of the Commission should be disqualified?*

There were no comments from the audience.

Staff Presentation

Ray Lindenburg, Associate Planner, presented the Staff Report and Attachments A-L to the Planning Commission. Mr. Lindenburg read an email submitted by the James family, who are owners of property adjacent to the proposed Marin Woods subdivision. The citizen was opposed to making Putnam Drive a connecting road; they proposed that if the connection must be made, that there be a correction to the visibility problem faced by the James' property.

Applicant Presentation

Rick Duran, John Bissell, and Michael Ryan presented on behalf of the applicant. The documents presented to the Planning Commission at this meeting, and not previously, were the Gibson Traffic Consultants, LLC updated traffic study dated December 16, 2015; and a packet containing a landscape site map, peak hour trips graphic, SW Swantown aerial map showing "Swantown Connection Analysis Alternate Connection 0" dated 02-26-2016 DRAFT, and Master Plan Exhibit map showing "Swantown Connection Analysis Master Plan" dated 02-26-2016 DRAFT.

Public Comment

Chairman Wasinger asked for any comments from the public in attendance. No members of the audience wished to make comments.

Commissioner Questions

The Commissioners addressed many questions to the applicant and Staff. Staff Members responded per their areas of expertise. Responding Staff Members were Steve Powers, Ray Lindenburg, Joe Stowell, and Brad Gluth. Rick Duran, John Bissell, and Michael Ryan responded on behalf of the applicant as appropriate.

Commissioner Freeman inquired if the road conditions at Fairway Lane will have to be brought up to code, including ADA, if this new street connection at Swantown is instituted. Mr. Stowell explained that Fairway Lane would not have to be corrected; it would only need to be brought to code when improvements are made.

Commissioner Freeman inquired of the applicant if the construction traffic for the project would use the side roads for access. Mr. Duran explained that a temporary alley would act as an access point onto Swantown Road. Commissioner Freeman asked if this would not create the same hazard that the applicant was claiming to avoid in the creation of a connection to Swantown; Mr. Bissell explained that temporary construction traffic would typically make use of a flagger with the trucks entering and existing the construction site.

Commissioner Freeman inquired as to the R1 zoning of this property and using the PRD to increase the number of lots to 43 smaller lots, and how this would impact the side street traffic, on-street parking, deliveries, etc. Commissioner Freeman referenced the letter submitted by the James family with the complaint about their blind spot on Putman. Mr. Bissell referred to the second traffic study the applicant submitted when they decided to change access; the report states that the impact will not change the level of service at any of the intersections; and that the construction traffic hazard would be mitigated as mentioned above. Mr. Duran referenced the smaller lot size was in conjunction with the recommendations the applicant received from local banks of a price point of \$300,000 to target Navy families moving into the area.

Commissioner Hovey asked for clarification regarding the requirements for making the road connection at the intersection of Swantown Avenue and Fairway Lane. Mr. Stowell clarified that Staff has asked the applicant to make sure the road is aligned with Fairway Lane; the applicant is not responsible for the west side of the roadway, grading, ADA status, etc. Staff explained that emergency services were provided a chance to respond to the application, and they did not identify the lack of connection as a public safety issue. Mr. Stowell explained that the idea of connectivity between neighborhoods is to bolster alternative routes to various places in the City. Mr. Powers clarified from the Staff presentation that there is no reference in the Staff Report to using this connecting street as a relief valve for State Route 20.

Commissioner Pierce inquired what would be done to the Fairway Lane side of the road if this street connection was made. Mr. Stowell reiterated that since there is not an ADA facility in place now, one will not have to be installed. As quoted in the Staff Report, the fact that new design

values are in place does not imply that existing design values are unsafe; nor does it indicate that new upgrades are required. Mr. Gluth pointed out that the traffic study submitted by the applicant does not mention inherent danger or accident increase at the site of the proposed street connection.

Commissioner Wasinger asked for clarification regarding the hardship waiver. Mr. Stowell explained that there is a cost to development; Staff is not asking applicant to make improvements to Fairway Lane; and not asking the developer to do more than the code requires.

Commissioner Freeman inquired to Staff if the proposed street connection on the annexation drawing had been a factor in approving the annexation of the property. Mr. Powers stated that the road was a part of the conversation at the time; he directed the Commissioners to the Staff Report Attachment F for historical annexation information.

Mr. Powers directed the Commissioners to the Staff Report's list of Staff's recommended action for their consideration.

Motion

Motion: *Commissioner Hovey moved to recommend to the City Council disapproval of the Marin Woods subdivision application, and associated permits; and to adopt the Findings of Fact included in Attachment A to the Staff Report. Second: Commissioner Pierce seconded.*

Mr. Powers asked the Commissioners to grant a five minute recess to confer with the applicant. After the break, Mr. Powers stated that the applicant believes they have heard some new information at this meeting concerning the road connection on the Fairway Lane side of Swantown Avenue, and would like to request the Commission grant a continuance on the proposal. Mr. Powers suggested that the continuance be granted until the October 25, 2016 Planning Commission Meeting.

Commissioner Hovey asked if there was any objection to withdrawing his motion; with none he withdrew the above motion. Commission Pierce withdrew his second of the above motion. The motion failed.

Chairman Wasinger stated that the applicant would be granted a continuance to the October 25, 2016 Planning Commission Meeting, and the hearing will remain open.

B. MODEL HOMES CODE AMENDMENT – Public Hearing

This item has been rescheduled for the October 25, 2016 Planning Commission Meeting; the Commission did not address this agenda item.

C. LOW IMPACT DEVELOPMENT – Public Meeting

Dennis Lefevre, Senior Planner, provided a Staff Report on the continued subject of Low Impact Development. The Report is for Commissioner's information and will not be reviewed at this meeting.

Chairman Wasinger adjourned the meeting at 10:49 PM.

Respectfully submitted,

Lisa Felix
Administrative Assistant
Development Services

MARIN WOODS
Planned Residential Development
(PRD) and
Preliminary Plat

Public Hearing (continued)

**City of Oak Harbor
Planning Commission Report**

Date: October 25, 2016
Subject: Marin Woods PRD Subdivision
Preliminary Plat, PRD and
Subdivision Waiver Applications
Continuance of Hearing

FROM: Ray Lindenburg, Associate Planner, Development Services Department

ADDENDUM

This document serves as an addendum to the Staff Report regarding the proposed Marin Woods subdivision presented to the Planning Commission at their regular meeting on September 27, 2016.

RECOMMENDED ACTION

Staff recommends that the Planning Commission continue the Public Hearing for the Marin Woods subdivision that began at the September 27, 2016 Planning Commission Meeting until the December 13, 2016 Planning Commission Meeting. This will allow the applicant more time to submit their revised application.

SUGGESTED MOTIONS

I move we continue the Marin Woods subdivision application Public Hearing to December 13, 2016.

ATTACHMENTS

None.

MODEL HOMES CODE AMENDMENT

Public Hearing

City of Oak Harbor Planning Commission Report

Date: October 25, 2016
Subject: Model Home Ordinance

FROM: Ray Lindenburg, Associate Planner, Development Services Department

PURPOSE

The purpose of this report is to introduce a draft of the proposed zoning regulations allowing for up to nine model homes to be constructed prior to final plat approval in new subdivisions. Standards are set forth in the proposed ordinance to require that the homes be constructed to approved plans, include stormwater facilities, access to the homes for fire equipment and utility connections.

BACKGROUND

This change was based on a request by a local developer to allow for construction to begin before improvements were completed, to allow for earlier showing of homes to prospective buyers and gauge interest in home designs and other details. Currently, the Oak Harbor Municipal Code (OHMC) limits single-family development of just one home per parcel. In the case of a developing subdivision, there is typically only one lot until the time at which the final plat is recorded, which means additional homes cannot be started until after the final plat is recorded. This leads to difficulties in being able to show differing floor plans and home types to prospective buyers.

Staff reviewed the request to determine how an ordinance could be structured that would allow a developer the flexibility to construct homes before the final plat approval, but protect the City's interests in case of unforeseen circumstances that would interrupt the construction process or other issues. The draft code as proposed is based on a similar code in Mt. Vernon.

DISCUSSION

The draft subdivision regulations touch on a number of concerns brought forth by City staff regarding potential benefits and detriments caused by such an ordinance.

- The number of homes that would be allowed to be constructed was capped at nine – which is the same number of lots that could be created by a Short Plat process. If for some reason the subdivision process were to stall or not be recorded, a Short Plat could be used to create the necessary lots to keep the homes at a one home per one lot ratio.
- A developer may apply for a building permit for individual model home(s), which are to meet the criteria set forth in the proposed code and meet all other OHMC sections regarding density standards such as setbacks and building height. There would be no difference between a home built under the provisions of this proposed ordinance and one constructed as a single home on an individual lot.

- Stormwater facilities shall be in place and approved prior to construction of any homes. This restriction will protect neighboring properties from runoff and sedimentation created by the construction of the subdivision and homes themselves. It also means that those stormwater facilities are in place in case of the aforementioned failure of the subdivision recording process, if a Short Plat must be utilized.
- Road improvements must be made up to the point where access is provided as required by the Fire Department and to the standards that are set forth by Engineering and approved in the Preliminary Plat. Access therefore is provided for life safety needs as well as the ability to show the homes to the public. Frontage improvements that meet all applicable standards to subdivisions in the OHMC will also be required to be completed.
- Water and sewer connections will be required to the homes to provide them with proper sanitation.
- The builder and developer will be on notice that the model home(s) are subject to removal if final plat approval is not granted or the preliminary plat approval period expires.
- Financial securities will be required of the developer in the amount of 150% of the contractor's estimated cost to restore the site to its previous condition in the event of a failure to meet the conditions set forth in the proposed and the subdivision ordinances as well as any applicable regulations.

The application for a model home will be subject to a model home fee to cover the additional review and approval for said homes. All other fees for plat improvements and building permit fees are to be paid before construction of model homes commence. Impact fees for the homes shall be paid at that time as well unless a deferral is granted by the City Engineer per OHMC 3.63.075.

After model home construction is completed and before final plat approval, as-built plans will be required to be submitted to the City that shows the locations of the completed structures, setback dimensions, utility locations and other details. After final plat approval, the homes may then be sold to private owners or, used as model homes until the sale of the remaining homes within the subdivision.

In the event that the preliminary plat approval has expired and no extension is granted, or if the subdivision is denied final plat approval or the approval period has expired, the City may cause the homes to be removed, using funds collected as part of the 150% bond noted above.

Development of the remainder of the subdivision would be carried out as normal, with lots being sold off to individual buyers or homes constructed by the developer then sold.

CODE AMENDMENT CRITERIA

The process by which amendments are made to the Oak Harbor Municipal Code are governed by OHMC 19.80. Two criteria are considered for amendments:

- (a) The amendment must be consistent with the Oak Harbor Comprehensive Plan;
- (b) The amendment must substantially promote the public health, safety and welfare.

Staff determined that both of the above criteria have been met in this text amendment. The proposed amendment does not contravene any aspect of the Oak Harbor Comprehensive Plan. This proposed change will simply allow property owners to utilize a different process to develop single-family residential subdivisions. The amendment also promotes the public health, safety and welfare by being compliant with all other life safety provisions of the Oak Harbor Municipal Code. Based on the two criteria and the positive aspects of the proposed code listed in the discussion section above, staff recommends approval of the new code section as written in Attachment 1.

RECOMMENDED ACTION

1. Conduct public hearing
2. Recommend approval of Draft Ordinance No. 1780 to the City Council

SUGGESTED MOTIONS

I move the Planning Commission recommend approval of Draft Ordinance No. 1780 to the City Council.

ATTACHMENTS

1. Draft Ordinance No. 1780, 'AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE TITLE 21 "SUBDIVISIONS", ADDING CHAPTER 21.100 ENTITLED "MODEL HOMES"'

ORDINANCE NO. 1780

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE TITLE 21
“SUBDIVISIONS”, ADDING CHAPTER 21.100 ENTITLED “MODEL HOMES”

WHEREAS, Subdivision development from beginning to construction of new homes can be a time-consuming process; and,

WHEREAS, Land developers have asked for a streamlined process by which model homes may be constructed and shown to the home-buying public; and,

WHEREAS, City staff has determined that such a streamlined process may be accommodated by a change in the Oak Harbor Municipal Code that is in the best interest of developers and residents; and,

WHEREAS, on the 25th day of October, 2016, the Planning Commission held a duly noticed public hearing related to the proposed amendment to the Oak Harbor Municipal Code set forth in the proposed ordinance; and,

WHEREAS, after due process outlined by the Oak Harbor Municipal Code, the City Council approved the amendment to the Oak Harbor Municipal Code on ___ day of November, 2016,

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 21.100 entitled, “Model Homes” to Title 21 “Subdivisions” of the Oak Harbor Municipal Code to read as follows:

CHAPTER 21.100 MODEL HOMES

Sections:

21.100.010	Purpose
21.100.020	Number of model home permits authorized
21.100.030	Eligibility for a model home permit
21.100.040	Application requirements
21.100.050	Model homes – Occupancy
21.100.060	Model homes as built – Submittal
21.100.070	Removal
21.100.080	Permitted

21.100.010 Purpose. Permit a limited number of model homes to be constructed in an approved preliminary subdivision prior to final plat approval and recording in accordance with Chapters 21.20 and 21.40 OHMC. This chapter shall not be construed to supersede or amend the purpose and intent of the city of Oak Harbor Municipal Code regarding the requirements for subdivision approval.

21.100.020 Number of model home permits authorized. Building permit applications for model homes may be accepted for a maximum of nine lots. The number of homes permitted for each subdivision shall be no greater than 20 percent of the approved lots within the preliminary plat, not to exceed a total of nine homes. In the event that calculation of the number of lots equal to 20 percent of the total number of preliminary lots creates a fractional lot, the number of permitted lots for model homes shall be rounded up, not to exceed the maximum allowed.

21.100.030 Eligibility for a model home permit. Any applicant who has received preliminary plat approval may apply for a building permit or building permits for model homes, up to nine lots authorized under OHMC 21.100.020, if the following criteria are met:

- (1) The applicant for the model home building permit, if different than the owners and applicant for the approved preliminary plat, shall provide a signed and notarized document by the owner demonstrating that the applicant has real or possessory interest in the property described in the legal description of the approved preliminary plat;
- (2) The applicant has submitted and received approval of public improvement construction plans required pursuant to OHMC 21.30;
- (3) Stormwater facilities that serve the model home lots shall be in place;
- (4) Any road improvement required as a condition of preliminary plat approval which is designed to provide access to the model home from an existing public right-of-way shall be approved for final alignment and subgrade, and the driveway(s) for the model home(s)

Ordinance No. 1780 AN ORDINANCE AMENDING
OAK HARBOR MUNICIPAL CODE TITLE 21
“SUBDIVISIONS”, ADDING CHAPTER 21.100
ENTITLED “MODEL HOMES”

shall be approved in accordance with the adopted standards and specifications established by OHMC 21.60. Lot corners shall be staked by a professional registered land surveyor;

- (5) All areas of the subdivision serving the model home(s) have installed frontage improvements as required by the preliminary plat approval. Said improvements shall meet all ADA requirements;
- (6) Water and sewer are installed to each lot proposed for model homes, as per approved construction plans;
- (7) All proposed streets serving the model homes are adequately marked with street signs, to the satisfaction of the Public Works and Fire Departments;
- (8) All impact fees which are required to be paid prior to building permit issuance shall have been paid prior to the issuance of a building permit for the model home(s), unless impact fee deferral has been approved pursuant to OHMC 3.63.075;
- (9) The approved preliminary plat shall not expire within 60 days from the date of building permit application for the model home(s);
- (10) Fire protection must be available to any lot proposed for construction of a model home;
- (11) An instrument recorded against the parcels containing the model home(s) stating, "Model home(s) are subject to removal should the preliminary plat not receive final plat approval or the approval period has expired, consistent with OHMC 21.100.070." This instrument shall remain in effect until the plat is recorded or the home(s) are removed.

21.100.040 Application requirements. Each residential building permit application for a model home shall include the following submittals:

- (1) Title certificate demonstrating ownership interest in the legal description of the approved preliminary plat, or if the model home permit applicant is different than the owners or applicant for the preliminary plat, provide a signed and notarized document by the owner demonstrating that the model home permit applicant has real or possessory interest in the property;
- (2) Copy of adopting resolution approving the preliminary plat;
- (3) Building plot plan(s) showing the location(s) of the proposed model home(s) with distances indicated from the proposed final plat lot lines and consistency with density and setback requirements of the underlying zone district;
- (4) Overall site plan showing the location of proposed temporary improvements specific to the model home(s) uses such as the location of signage, flags, banners, fencing, landscaping, and impervious surfaces such as parking areas and sidewalks;
- (5) One dark line print of the proposed final plat;

- (6) A statement signed by the applicant in which the applicant agrees to indemnify and hold harmless the city of Oak Harbor, its employees, agents, representatives, and elected and appointed officials from any and all claims made against them arising from the construction or occupancy of the model home(s) prior to recording the final plat;
- (7) Submittal of financial securities at 150 percent of a contractor's cost estimate, approved by the city, necessary to restore the site to conditions existing prior to the construction of the model home(s) and all associated structures and improvements;
- (8) In addition to the residential building permit fees for plan check, permit and building permit, a model home base fee of \$300.00 per model home shall be required. All other applicable fees shall be paid for the proposed plat improvements and building permit fees prior to individual model home building permit issuance.

21.100.050 Model homes – Occupancy. The applicant may request final inspection and occupancy as a residence for only one model home prior to final subdivision approval and recording. Additional model homes constructed in the same preliminary subdivision in compliance with this chapter shall be used for display and marketing purposes only and shall not be occupied prior to final subdivision approval and recording. Occupancy as a model home/sales office prior to final plat recording is subject to meeting the life/safety requirements and approval of the development services director. Water and sewer services are required prior to occupancy.

21.100.060 Model homes as built – Submittal. Prior to final subdivision approval, the applicant shall submit two copies of a plot plan delineating the as-built location of the model home on the lot. The corners of the lot shall be set by a registered professional land surveyor prior to commencement of construction. The plot plan shall be included in both the building permit record and the subdivision file record.

21.100.070 Removal. The model home(s) and all associated improvements, including parking lot shall be removed within six months of the following occurrences:

- (1) Preliminary plat approval has expired and no extension has been granted.
- (2) The subdivision was denied final plat approval and/or required substantial improvements not consistent with the design of the preliminary approved plat in the opinion of the development services department.
- (3) The approval period has expired, consistent with OHMC 21.20.

21.100.080 Permitted. The model home(s) may be used for no longer than the expiration of the preliminary plat approval. Upon final plat approval, model homes may be used until the sale of all homes within the approved subdivision.

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 and effect five (5) days after publication.

PASSED by the City Council this day of November, 2016.

Veto ()
Approve ()

THE CITY OF OAK HARBOR

By _____
Robert Severns, Mayor

Dated: _____

Attest:

Anna Thompson, City Clerk

Approved as to Form:

Nikki Esparza, City Attorney

Published: _____

LOW IMPACT DEVELOPMENT

Public Hearing

City of Oak Harbor Planning Commission Report

Date: October 25, 2016
Subject: Low Impact Development –
Code Amendment

FROM: Dennis Lefevre, AICP, Senior Planner, Development Services Department
Brad Gluth, Civil Engineer, Public Works Department

PURPOSE

This report serves as an update to the low impact development (LID) code amendment project providing a project status and anticipated schedule.

BACKGROUND

The City of Oak Harbor, a Phase II jurisdiction under the National Pollutant Discharge Elimination System (NPDES), is required to review, revise and make effective code amendments to incorporate and require LID best management practices (BMPs) and principles. Low impact development means a storm water management and land development strategy applied at the parcel and subdivision scale that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic pre-development hydrologic functions. Simply put, low impact development requires that most stormwater stays on the site.

DISCUSSION

The proposed code amendments are the focus of this meeting. As part of the Public Hearing, Staff will address questions from meeting attendees and Planning Commission members.

RECOMMENDED ACTION

Open the Public Hearing. Due to the amount of information for review, a recommendation to continue the Hearing to a Special Planning Commission meeting on November 9, 2016, would provide additional time for review and comment.

SUGGESTED MOTIONS

I move we continue the low impact development code amendment Public Hearing to November 9, 2016.

ATTACHMENTS

Low Impact Development – Proposed Code Amendments booklet (Distributed at Joint Workshop October 19, 2016).

SIGN CODE AMENDMENT

Public Meeting

City of Oak Harbor Planning Commission Report

Date: October 25, 2016
Subject: Sign Code Amendment

FROM: Ray Lindenburg, Associate Planner, Development Services Department

PURPOSE

The purpose of this presentation is to introduce the Planning Commission to work being done by City Staff to draft revisions to the existing sign code within the Oak Harbor Municipal Code (OHMC).

BACKGROUND

A recent Supreme Court decision, *Reed v. Town of Gilbert*, the Court determined that the manner in which the local jurisdiction regulated signs was unconstitutional. The town's sign code referred to different types of signs by their content, which can create situations where Constitutionally-protected free speech may be infringed upon (Attachment 1). Therefore, code references to sign types based on their messaging should be avoided – what constitutes a “real estate sign” versus a “political sign.”

At the beginning of the year, staff determined that the temporary sign section of the sign code should be revised based on the Supreme Court decision and began work on the concept of a “form-based” sign code. To the knowledge of staff, this may be a unique and new approach to sign regulation.

More recently, staff has applied the form-based approach to *all* signage and is before the Planning Commission to show our preliminary concept work as an informational presentation. While this proposal appears to be significantly different than the existing code, it is not intended to be a radical re-thinking of how signs are regulated in the city of Oak Harbor – rather it is a new way of relaying that information. Staff believes that the new formatting, wording and presentation will be easier for citizens, business owners and city staff to understand, administer and abide by.

DISCUSSION

Rather than textually discussing differing sign design criteria and the regulations that go with each, staff has distilled this information into a form-based matrix. The matrix will be the basis by which the sign types are organized:

- Temporary signs are divided into categories based on size, material type and location details. These signs generally correspond to known sign “types,” but are not referred to by the content of the message, instead simply being called a sign “Type A” or “B” and so on.
 - As noted in the matrix, the key concept of time, place and manner is addressed specifically in the left margin. This explicitly addresses constitutional concerns – there are no additional regulations outside those boundaries.

§ Time refers to the amount of time a temporary sign may remain in a

particular location.

- § Place outlines the specific number of a particular sign type that is allowed per parcel and where the sign may be placed upon the parcel.
- § Manner discusses the way in which the message is delivered – what the sign is made of, what the dimensional limits are and how it is placed on the ground or a building.

- Permanent signs are similarly categorized. The matrix is very similar in design to the temporary sign section, with the exception of the ‘time’ category, which is not needed for permanent signs.
- As noted previously, this matrix does not represent an overhaul of how signs may be placed in the City. Staff has made every effort to ensure that non-conformities will not be created by this sign code, and that business owners and citizens will not be limited by the new regulations any more than by existing ordinance.

Staff believes that the draft ordinance strikes a good balance between businesses and citizens being able to express messages while maintaining a safe and attractive environment.

RECOMMENDED ACTION

This is purely an informational presentation. Staff encourages discussion of the proposed concept and will incorporate concerns and comments into a final product, which will be presented to the Planning Commission at a future public hearing.

ATTACHMENTS

1. *Reed v. Town of Gilbert* Supreme Court Syllabus

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

REED ET AL. *v.* TOWN OF GILBERT, ARIZONA, ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 13–502. Argued January 12, 2015—Decided June 18, 2015

Gilbert, Arizona (Town), has a comprehensive code (Sign Code or Code) that prohibits the display of outdoor signs without a permit, but exempts 23 categories of signs, including three relevant here. “Ideological Signs,” defined as signs “communicating a message or ideas” that do not fit in any other Sign Code category, may be up to 20 square feet and have no placement or time restrictions. “Political Signs,” defined as signs “designed to influence the outcome of an election,” may be up to 32 square feet and may only be displayed during an election season. “Temporary Directional Signs,” defined as signs directing the public to a church or other “qualifying event,” have even greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the “qualifying event” and 1 hour after.

Petitioners, Good News Community Church (Church) and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near the Town, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the Code abridged their freedom of speech. The District Court denied their motion for a preliminary injunction, and the Ninth Circuit affirmed, ultimately concluding that the Code’s sign categories were content neutral, and that the Code satisfied the intermediate scrutiny accorded to content-neutral regulations of speech.

Held: The Sign Code’s provisions are content-based regulations of

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speech that do not survive strict scrutiny. Pp. 6–17.

(a) Because content-based laws target speech based on its communicative content, they are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *E.g.*, *R. A. V. v. St. Paul*, 505 U. S. 377, 395. Speech regulation is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *E.g.*, *Sorrell v. IMS Health, Inc.*, 564 U. S. ___, ___–___. And courts are required to consider whether a regulation of speech “on its face” draws distinctions based on the message a speaker conveys. *Id.*, at ___. Whether laws define regulated speech by particular subject matter or by its function or purpose, they are subject to strict scrutiny. The same is true for laws that, though facially content neutral, cannot be “justified without reference to the content of the regulated speech,” or were adopted by the government “because of disagreement with the message” conveyed. *Ward v. Rock Against Racism*, 491 U. S. 781, 791. Pp. 6–7.

(b) The Sign Code is content based on its face. It defines the categories of temporary, political, and ideological signs on the basis of their messages and then subjects each category to different restrictions. The restrictions applied thus depend entirely on the sign’s communicative content. Because the Code, on its face, is a content-based regulation of speech, there is no need to consider the government’s justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny. Pp. 7.

(c) None of the Ninth Circuit’s theories for its contrary holding is persuasive. Its conclusion that the Town’s regulation was not based on a disagreement with the message conveyed skips the crucial first step in the content-neutrality analysis: determining whether the law is content neutral on its face. A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of “animus toward the ideas contained” in the regulated speech. *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 429. Thus, an innocuous justification cannot transform a facially content-based law into one that is content neutral. A court must evaluate each question—whether a law is content based on its face and whether the purpose and justification for the law are content based—before concluding that a law is content neutral. *Ward* does not require otherwise, for its framework applies only to a content-neutral statute.

The Ninth Circuit’s conclusion that the Sign Code does not single out any idea or viewpoint for discrimination conflates two distinct but related limitations that the First Amendment places on government regulation of speech. Government discrimination among viewpoints

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is a “more blatant” and “egregious form of content discrimination,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 829, but “[t]he First Amendment’s hostility to content-based regulation [also] extends . . . to prohibition of public discussion of an entire topic,” *Consolidated Edison Co. of N. Y. v. Public Serv. Comm’n of N. Y.*, 447 U. S. 530, 537. The Sign Code, a paradigmatic example of content-based discrimination, singles out specific subject matter for differential treatment, even if it does not target viewpoints within that subject matter.

The Ninth Circuit also erred in concluding that the Sign Code was not content based because it made only speaker-based and event-based distinctions. The Code’s categories are not speaker-based—the restrictions for political, ideological, and temporary event signs apply equally no matter who sponsors them. And even if the sign categories were speaker based, that would not automatically render the law content neutral. Rather, “laws favoring some speakers over others demand strict scrutiny when the legislature’s speaker preference reflects a content preference.” *Turner Broadcasting System, Inc. v. FCC*, 512 U. S. 622, 658. This same analysis applies to event-based distinctions. Pp. 8–14.

(d) The Sign Code’s content-based restrictions do not survive strict scrutiny because the Town has not demonstrated that the Code’s differentiation between temporary directional signs and other types of signs furthers a compelling governmental interest and is narrowly tailored to that end. See *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U. S. ___, ___. Assuming that the Town has a compelling interest in preserving its aesthetic appeal and traffic safety, the Code’s distinctions are highly underinclusive. The Town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the Town when other types of signs create the same problem. See *Discovery Network, supra*, at 425. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs. Pp. 14–15.

(e) This decision will not prevent governments from enacting effective sign laws. The Town has ample content-neutral options available to resolve problems with safety and aesthetics, including regulating size, building materials, lighting, moving parts, and portability. And the Town may be able to forbid postings on public property, so long as it does so in an evenhanded, content-neutral manner. See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 817. An ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers—*e.g.*, warning signs marking hazards on private property or signs directing traffic—might also survive strict scrutiny. Pp. 16–17.

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707 F. 3d 1057, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, ALITO, and SOTOMAYOR, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment. KAGAN, J., filed an opinion concurring in the judgment, in which GINSBURG and BREYER, JJ., joined

2017 COMPREHENSIVE PLAN AMENDMENTS

Public Meeting

City of Oak Harbor Planning Commission Report

Date: October 25, 2016
Subject: 2017 Annual Comprehensive
Plan Amendments

FROM: Cac Kamak, AICP, Senior Planner, Development Services Department

PURPOSE

The purpose of this memo is to inform the Planning Commission on the initiation of the annual Comprehensive Plan Amendment Process.

BACKGROUND

In accordance with OHMC 18.15, the City is initiating its annual Comprehensive Plan Amendment Process, after the State required major update to the Comprehensive Plan was completed in June 2016. The major update in 2016 reinstated the vision for Oak Harbor and addressed all of the State required elements of the Comprehensive Plan. Some of the major changes included a generalized land use map; identifying and delineating unique neighborhoods; and updates to the housing element, urban growth areas element and the transportation element. The goals and policies from various elements of the Comprehensive Plan were updated by simplifying the goals, removing inapplicable policies, and eliminating redundancy.

Prior to the 2016 major update, the annual amendment process primarily included requests for land use changes, along with special studies and policy considerations such as the scenic view study. With the major update, Staff expects a reduction in the applications for land use changes, since the adopted generalized land use map provides a way to rezone a property outside of the structured annual amendment process¹.

2017 ANNUAL COMPREHENSIVE PLAN AMENDMENTS

The Planning Commission can expect Staff to submit the following necessary amendments:

Capital Improvements Plan – As part of the annual amendment process, the Capital Improvements Plan will also be updated. No major changes are anticipated, however there may be some minor adjustments made based on the budget, and minor changes to schedules.

Economic Development Element – The Mayor and Administration are initiating a process to tackle economic development opportunities in Oak Harbor. The process may potentially lead to some updates and changes to this element of the Comprehensive Plan.

Parks, Recreation and Open Space Plan – The current plan needs to be updated since its last adoption in 2009. Updating this plan will likely result in changes to this element of the Comprehensive Plan.

¹ Under the generalized land use map, a land use designation is implemented by more than one zoning district, and therefore changes between zoning classification under the same land use designation can be done by the rezoning process outlined in OHMC 19.75.

PROCESS

The annual amendment process for 2017 is initiated by publishing a notice in the newspaper with a call for applications. This notice is published twice, once in October and once in November, and gives citizens an opportunity to request amendments. As mentioned earlier, the primary requests prior to the 2016 major update were land use changes. Although Staff expects a reduction in these types of applications, it is not out of the ordinary for a property owner to file for a sponsored amendment. The deadline for applications is December 1, 2016.

The City Council, Planning Commission, and the Development Services Director may also include amendments into the preliminary docket. The Planning Commission will hold a public hearing in January on the preliminary docket and make a recommendation to the City Council. The City Council is required to adopt the annual amendments docket before the end of March 2017.

RECOMMENDED ACTION

The Planning Commission is not requested to take any action on this item at this time. Staff will provide a brief update at the November 22 Planning Commission meeting.

ATTACHMENTS

Call for applications notice published in the Whidbey News Times on October 22, 2016, and scheduled for second publication on November 12, 2016.



2017 CITY OF OAK HARBOR COMPREHENSIVE PLAN AMENDMENTS CALL FOR APPLICATIONS

The City of Oak Harbor is initiating its annual Comprehensive Plan Amendment Process with a call for applications.

Amendments may be made to any aspect of the Comprehensive Plan. However, the application requirements differ for private sponsored amendments and public amendments. An example of a private amendment is a request to change a land use designation for a property, and an example of a public amendment would be a request to change the density requirements for a particular zoning district which can impact all properties in that district. For more information on public amendments please contact City staff. Information regarding this can also be found in the Oak Harbor Municipal Code (OHMC) Chapter 18.15.060. Links to the OHMC can be found on the City's website homepage www.oakharbor.org.

Applications are now being accepted for the 2017 Comprehensive Plan Amendment Process. The application for private amendments (land use changes) is currently available at City Hall and on the City's webpage under the Development Services tab and Planning Division permit applications page. The deadline for applications is THURSDAY, DECEMBER 1, 2016 AT 5:00 PM.

The process to consider amendments to the Comprehensive Plan is a year long process. All applications received will be placed on a docket with other mandatory and discretionary items. The docket will then be reviewed by the Planning Commission (January 2017) and the City Council (March 2017) through a public hearing process before approval. The process is designed to provide opportunities for public participation at various stages of the process.

Please contact Lisa Felix, Administrative Assistant, at (360) 279-4512 or lfelix@oakharbor.org if you have questions.

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