

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

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

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

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

PUBLIC COMMENT: No comments.

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

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

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

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

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

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

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

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

Chairman Neil closed the public hearing.

Discussion

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

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

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

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

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

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

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

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

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

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

Discussion

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

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

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

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

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

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

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

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

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

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

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

Mr. Neil opened the public hearing.

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

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

ADJOURN: 8:55 p.m.