

**City Council Meeting**  
**Tuesday, October 19, 2010, 6:00 p.m.**  
**City Hall – Council Chambers**

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**CALL TO ORDER** Mayor Slowik called the meeting to order at 6:00 p.m.

**INVOCATION** Bishop Trent Lay, Church of Jesus Christ of Latter-Day Saints, Oak Harbor Second Ward

**ROLL CALL**

Mayor Jim Slowik	Paul Schmidt, City Administrator
Five Members of the Council,	Margery Hite, City Attorney
Rick Almberg	Doug Merriman, Finance Director
James M. Campbell	Cathy Rosen, Public Works Director
Scott Dudley	Eric Johnston, City Engineer
Jim Palmer	Steve Powers, Development Services Director
Danny Paggao, Mayor Pro Tem	Cac Kamak, Senior Planner
	Ethan Spoo, Senior Planner
Bob Severns and Beth Munns were absent	Melissa Sartorius, Associate Planner
and formally excused from this meeting.	Jessica Neill Hoyson, Human Resources Director
	Rick Wallace, Chief of Police
	Mark Soptich, Fire Chief
	Mike McIntyre, Senior Services Director
	Renée Recker, Executive Assistant to the Mayor

**NON-ACTION COUNCIL ITEMS**

**Employee Recognition – Sean Magorrian, Oak Harbor Police Department, 30 Years**

Chief of Police Rick Wallace introduced Sgt. Sean Magorrian and give a history of his service to the Police Department. Sgt. Magorrian will also be retiring from the Department. Sgt. Magorrian introduced his family and talked about the many things that have occurred in his thirty-year career, his witness to the City's amazing growth, and appreciation and thanks to his fellow officers. Mayor Slowik spoke and noted that Sgt Magorrian has been a key member of the Police Department and wished him well.

**APA Award – City of Oak Harbor Subdivision Code Project**

Development Services Director Steve Powers introduced Richard Hart who presented this award to the City. Mr. Hart is the Planning Manager for the City of Covington and also chairs the Awards Committee for the Washington Chapter of the American Planning Association. He has been a professional planner for thirty-one years. Mr. Hart talked about Oak Harbor's outstanding work in the field of planning. Twenty-six projects were submitted and nine projects were in planning implementation. Of those nine, there were two winners and Oak Harbor's Subdivision Code Project was the outstanding winner. Mr. Hart read direct quotes from the APA jury: The project is a creative and understandable effort with strong public involvement advancing modern concepts. It reduces project review time and is a usable, practical, thorough and comprehensive product.

Mr. Powers was pleased that Oak Harbor had been honored in this fashion and introduced and thanked the Planning staff: Senior Planner Ethan Spoo, who acted as the project manager for the last year of this project, Senior Planner Cac Kamak, and Associate Planner Melissa Sartorius. Mr. Powers also thanked the Planning Commission members for their tireless volunteer work on this project.

Councilmember AlMBERG noted that he has worked with many other city planning departments, complimented Oak Harbor's Planning Department as the most professional and easiest department to work with, and thanked Mr. Powers and the staff. Councilmember Campbell added "job well done."

## **BREAK**

Mayor Slowik called for a five-minute break at 6:25 p.m. and the meeting reconvened at 6:30 p.m.

## **MINUTES**

**MOTION:** Councilmember Palmer moved to approve the 9/30/10 budget workshop minutes and the 10/5/10 regular meeting minutes. The motion was seconded by Councilmember AlMBERG.

## **VOTE ON THE**

**MOTION:** Councilmembers AlMBERG, Dudley, Campbell, and Palmer voted in favor of the motion. Councilmember Paggao abstained from the vote since he had been absent from both meetings. The motion carried.

## **Public Comments**

**Helen Chatfield-Weeks, 1415 SE 9<sup>th</sup>, Oak Harbor.** Channel 10 is very popular. Oak Harbor's Neil Tower is one of the most magnificent buildings to be built in the 1900s and it provided water to agriculture and livestock. The round-roofed barn (now known as the Roller Barn) and the Neil Tower are listed in Washington State's historic sites. The barn was the first round-roofed barn in the State. The City's Parks Department will be landscaping the area around the Tower and Ms. Chatfield-Weeks invited the public to visit it; contact her for details.

**Fred Henninger, 580 SE Ireland, Oak Harbor.** At the end of the utilities meeting, Councilmember AlMBERG said that all of the money collected goes to the service of utilities. Dr. Henninger went on to say that 6.2% goes to the general fund. Three-quarters of a million dollars went from utility bills into the general fund. The CPI measures what a dollar is worth. For us to raise utility taxes 12% or better, Council has taken an attitude of knowing better than citizens how to spend their money. We have a spending problem in Oak Harbor. The minimum raise for City services should be at 3.5%. We spend money on water mains going out of the City and out Goldie Road to Ault Field Road. Money has been spent on the Pioneer Way Project and the Multi-Modal Project. Animal control and domestic violence responses go to the Navy for free along with all three housing units. I doubt that the one percent tax you are levying this evening would pay for the Mayor and Council's travel. No one on social security receives raises.

**Dave Harrington, 1524 NE Narrows, Oak Harbor.** Mr. Harrington agreed with Dr. Henninger but also spoke to the condition of Oak Harbor's streets. Streets in Oak Harbor continue to deteriorate on a daily basis. Articles and lawsuits indicate that the City is taking on more liability than they should. The potholes on Fourth Street are dangerous and can create a liability. The City is responsible for providing safe passage on its streets or close them as they

deteriorate. Citizens do not care about funding problems; you come up with funding for other things. Council could leave a legacy. Quit bickering amongst yourselves and come up with a way to get our streets paved and made safe again.

**Mel Vance, P.O. 2882, Oak Harbor.** Hold another budget workshop. Create a contingency fund to increase emergency management in the City. With a major emergency, good emergency management and well-trained citizens will repay this. Fund more training for citizens along with disaster response training for our Police and Fire Department. Mayor Slowik noted that our emergency manager is budgeted separately from the Fire Department.

## **COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS**

### **Consent Agenda**

- A. Appointments – Island County Joint Administration (Tourism) Board, Zane Platt and Jim Campbell
- B. Authorization to Advertise for Bids – Refuse Truck Replacements/Acquisition
- C. Approval of Accounts Payable Vouchers (Pay Bills)

Councilmember AlMBERG requested that Consent Agenda Item 4B be removed for discussion.

**MOTION:** Councilmember AlMBERG moved to approve Consent Agenda Items A and C with Item C paying accounts payable check numbers 143294 – 143450 in the amount of \$540,692.09, and payroll check numbers 941845 – 94200 in the amount of \$401,923.12. The motion was seconded by Councilmember Palmer and carried unanimously.

### **Consent Agenda Item 4B – Authorization to Advertise for Bids – Refuse Truck Replacements/Acquisition**

Councilmember AlMBERG asked about the cost for truck replacement and that Council would be approving the purchase of a large item without first finishing the budget. Public Works Director Cathy Rosen responded that this agenda bill is asking for Council authorization to pursue competitive bids for automated refuse trucks, not the purchase of these trucks. A bid award would return to Council for approval and, by that time, we will have an approved budget. It can take up to a year to have these vehicles built. Mayor Slowik asked Ms. Rosen to address the need for these refuse trucks. Ms. Rosen noted that two refuse trucks are reaching the end of their useful life and will need to be replaced. Additionally, more homes are coming into the City and, as Island Disposal franchise agreements expire in annexed areas, they will need service. Refuse service cannot be postponed. \$360,000 in equipment rental funds has been set aside for two vehicles; remaining funds are requested through the solid waste budget for the additional truck purchase. Potential costs are \$180,000 to \$200,000 each. Council discussion continued regarding additional residences (530) and the area of town that will need service (Cherry Hill and Ft. Nugent). An additional employee has been requested in the Public Works budget. In addition, to solid waste pick up, this department also picks up recycling, and yard waste.

**MOTION:** Councilmember AlMBERG moved to approve Consent Agenda Item 4B which authorizes staff to proceed with advertisement to bid for automated refuse trucks. The motion was seconded by Councilmember Dudley and carried unanimously.

**Public Hearing – Municipal Code Amendments: Application Vesting and SEPA Appeal**  
Development Services Director Steve Powers presented this agenda bill. The City's insurance provider, Washington Cities Insurance Authority (WCIA), conducts annual audits of their member cities and each audit focuses on a particular City function. The 2009 audit reviewed the City's land use procedures. The City's land use review and approval procedures are substantially in line with WCIA's recommendations and only four minor areas required additional attention by the City. Two of these items are administrative in nature and are nearly complete. Two require minor code amendments: one addressing the vesting rights of development applications and the other addressing administrative appeals of final Environmental Impact Statements (part of the SEPA process). The City is required to incorporate these recommendations into our procedures by October 31, 2010. Mr. Powers noted a typographic error in both ordinances: the last "whereas" in each ordinance will be corrected to show October 10, 2010 rather than October 5, 2010 as the public hearing and amendment date.

Mayor Slowik opened the public hearing at 7:00 p.m., but there were no public comments so the hearing was closed.

#### Council Discussion

Discussion followed about costs to the City (none), the administrative process for an appeal, Council's action on changes to the Oak Harbor Municipal Code (OHMC), the use of effective dates, permit expiration dates and the type of permit application, and timelines for applications as defined in the OHMC. Discussion continued regarding the change to twenty days in Section Four, 18.20.550 (a) which is more practical, and, if the Planning Commission holds a public hearing and approves a subject, to provide the Planning Commission minutes to Council.

**MOTION: Councilmember Campbell moved to adopt the ordinance amending OHMC Chapter 18.20 and providing vesting regulations. The motion was seconded by Councilmember Palmer.**

#### **AMENDMENT TO THE MOTION AND VOTE ON THE**

**AMENDMENT: Councilmember Almberg moved to correct the date to show October 19, 2010. The motion was seconded by Councilmember Campbell and carried unanimously.**

#### **VOTE ON THE ORIGINAL**

**MOTION: The motion carried unanimously.**

**MOTION: Councilmember Campbell moved to adopt the ordinance amending OHMC Chapters 18.20 and 20.04, clarifying the SEPA appeal process with the date correction to show October 19, 2010. The motion was seconded by Councilmember Palmer and carried unanimously.**

#### **Public Hearing and Final Consideration – Ordinance, Property Tax Increase for 2011**

**MOTION: Councilmember Almberg moved to table this agenda bill to the November 3, 2010 City Council meeting. The motion was seconded by Councilmember Campbell and carried unanimously.**

## **BREAK**

Mayor Slowik called for a break at 7:10 p.m. and the meeting reconvened at 7:15 p.m.

### **Hearing Examiner Recommendations – Franklin Manor**

Since this is a quasi-judicial process, City Attorney Hite explained Rules 19A and 19B of the *Administration and Personnel Council Rules Handbook* which have been slightly modified. Rule 19A is: Quasi-Judicial Procedure – Appearance of Fairness; and Rule 19B is: Quasi-Judicial Procedure - Ex Parte Contacts. With Rule 19A, prior to staff presentation of a quasi-judicial matter, Council Members shall each determine whether the appearance of fairness doctrine requires that the Council Member recuse himself or herself from sitting on the quasi-judicial matter. The matter this evening is a land use decision and the Council Member shall identify:

- If they have any interest in the property or application;
- If they own property within 300 feet of the subject property;
- If they stand to gain or lose any financial benefit as a result of the outcome of the hearing;
- If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question;
- If there is any reason why they could not be fair and impartial in deciding this matter.

Councilmember Dudley – no concerns and can be fair and impartial in deciding this matter.

Councilmember Almberg – no concerns and can be fair and impartial in deciding this matter.

Councilmember Palmer – no concerns and can be fair and impartial in deciding this matter.

Councilmember Paggao – no concerns and can be fair and impartial in deciding this matter.

Councilmember Campbell – no concerns and can be fair and impartial in deciding this matter.

Rule 19B, the second part of a quasi-judicial procedure, ex parte contacts, are contacts about the quasi-judicial matter occurring outside of the open public hearing at which it is decided. Every Council Member shall disclose any ex parte contacts he or she had and describe them on the record prior to the quasi-judicial hearing. Unless the Council Member feels that the ex parte contact(s) have affected his or her ability to be fair, the fact that the Council Member has had ex parte contacts shall not disqualify a Council Member provided that the Council Member disclosed those contacts on the record prior to the quasi-judicial hearing. In any case in which a Council Member has disclosed ex parte contacts, any party to the quasi-judicial hearing shall be allowed to rebut the substance of the ex parte contact(s) either prior to or during the quasi-judicial hearing.

Councilmember Dudley – no ex parte contact.

Councilmember Almberg – no ex parte contact.

Councilmember Palmer – no ex parte contact.

Councilmember Paggao – no ex parte contact.

Councilmember Campbell – no ex parte contact.

Development Services Director Steve Powers, using PowerPoint, then presented this agenda item and recommendation of the City of Oak Harbor Hearing Examiner to approve, with conditions, a PRD, site plan review, and two administrative variance applications to construct 158 multi-family apartment units on 5.57 acres. In accordance with OHMC 18.20.260(2)(f), the

City Council shall conduct a closed record review of the Hearing Examiner's record and make a final decision on this application. Mr. Powers also recognized Associate Planner Melissa Sartorius who worked on this project and then described a closed record review – to look at the review of a prior body (in this case, the Hearing Examiner) and determine if that recommendation is appropriate for this particular circumstance. The Council does not take new public testimony; there is only a single public hearing with land use and the Hearing Examiner conducted a public hearing on September 24, 2010.

Mayor Slowik called for public comments.

**Mel Vance, P.O. Box 2882, Oak Harbor.** There is a need for change in the City's regulations. This is displacing 30 affordable housing units and generating four affordable housing units and a bonus. Mr. Vance would like staff and Council to make necessary changes to ordinances to provide the same amount of affordable housing as is displaced by projects.

#### Council Discussion

Discussion followed about the covenants and affordable housing units and if specific units are identified as such (no, but the project is required to have these units and provide information on unit availability to the Opportunity Council annually), the use of Garry Oaks which was taken from the City's design guidelines, and the use of the Hearing Examiner instead of the Planning Commission (under site plan review, if there are more than 100 attached units, it requires a hearing by the Hearing Examiner). Discussion continued about the concurrency review, impact on Swantown and SR-20 and reduction in levels of service at that intersection (no reduction), the density bonus which provides more open space and the affordable units, and at what point in the project the affordable units are built (the units have to be honored as part of the covenant). Rain gardens which are part of the landscaping and disburse stormwater (not to be confused with detention/retention ponds which are part of subdivisions) were discussed, the maximum and permissible four-story height and administrative variance for the height was clarified, and the plan review process which involves emergency services was discussed (this project is already within City limits). Discussion returned to the potential for transportation impact on surrounding roads with these additional residents, the difference between no impact and impact that would take this area below the adopted level of service (we will not fall below that level), and how congestion has been relieved through the Transportation Plan, completion of Barrington Drive, access to SW Mulberry Place without dumping all of the traffic onto Swantown, and that the number of trips will not cause concern about the level of service or concurrency issues. Discussion continued about the transportation impact fee (collected when the building permit is issued), the number of units (158 multi-family apartment units), the definition of affordable housing (80% of median income; rent and the covenant will prescribe this), and notification of current tenants – the applicant owns the current units which is a distinction from mobile homes under individual ownership. Final Council comments – the cost of housing is related to the cost of land and land cost is related to density. Older affordable housing units may be replaced, but a higher density potentially could reduce rent to stay market-competitive. Replacing 34 mobile homes is not necessarily taking away affordable housing.

**MOTION: Councilmember AlMBERG moved to adopt the Findings of Fact, Conclusions of Law, and Decision of Council. The motion was seconded by Councilmember Dudley and carried unanimously.**

### **Public Hearing – Franklin Manor PRD Overlay Zone**

Mr. Powers also presented this agenda bill which discussed an ordinance that, if adopted, would amend the City's official zoning map. The amendment will indicate a PRD overlay zone over the underlying R-4 Multi-Family Residential zoning for the Franklin Manor Planned Residential Development.

Mayor Slowik opened the public hearing at 7:50 p.m.

**Mel Vance, P.O. Box 2882, Oak Harbor.** This is already R4 zoning, why is there a need for an overlay?

With no other comments coming forth, Mayor Slowik closed the public hearing at 7:53 p.m.

Per Councilmember Dudley's request, Mr. Powers responded to Mr. Vance's question. The applicants chose to apply for a PRD overlay, but could have chosen to do a site plan and in that case, this would not be necessary. To reach the 158 unit density level and seek the density bonus, the PRD overlay process was used. Zoning maps are a form of development regulation under RCW 36.70-A.030 (7) and OHMC 19.31.260 which requires the boundary of a PRD to be indicated as a "subdistrict PRD" on the zoning map of the City of Oak Harbor. Adoption of a PRD overlay zone is a Type V review process requiring City Council action (OHMC 18.20.270).

**MOTION: Councilmember Dudley moved to approve the ordinance amending the zoning map for the Franklin Manor PRD. The motion was seconded by Councilmember Palmer and carried unanimously.**

### **Emergency Ordinance – Personnel Appeals Board**

Human Resources Director Jessica Neill Hoyson presented this agenda bill and ordinance which proposed a clarification to the City's method of dealing with employee appeals of disciplinary actions. The internal grievance process is currently established through the policies of the Personnel Manual. This grievance process addresses appeals from supervisory and department-level discipline decisions within the City before a City employment decision is final. In addition, it is important that the City also provide an administrative "post-deprivation" appeals process after a final City decision so that an efficient and independent review can be provided without recourse to superior court. Traditionally, the Personnel Advisory Board filled this function on an *ad hoc* basis but without authority under the City code. Under current City code provisions, the Personnel Advisory Board is only authorized to act in an advisory capacity rather than as an independent decision-making body. The proposed changes to the current code will clarify that the Personnel Appeals Board functions as an independent administrative review body. This ordinance amendment was proposed as an emergency due to the need to have this remedy available for a number of pending personnel issues which could require use of the appeals board. Since this is a housekeeping amendment to conform the language of the code with the actual personnel practices of the City, it will not significantly change existing practices. On the other hand, it makes clear that this remedy is available to employees and must be utilized before recourse may be had to the courts. In the event that any of the pending issues lead to a grievance and appeal, the immediate effectiveness of this ordinance

would obviate any questions about the availability of a post-deprivation administrative remedy, thus saving the City from the potential expense of a trial de novo.

Mayor Slowik called for public comments but there were none.

#### Council Discussion

Discussion followed about the emergency nature of the proposed ordinance, due process for the employer, and the criteria for an emergency basis. An emergency finding is required for these changes to take effect without delay. City Attorney Hite also addressed the two requirements to adopt this as an emergency ordinance:

1. It must be passed by a majority plus one of the whole membership of the Council.
2. The Council must make a finding that the ordinance is necessary for the protection of public health, public safety, public property or the public peace.

Discussion continued about employees' rights and if they would be in jeopardy if they have an appeal right now (no, this clarifies the process, per Ms. Neill Hoyson and Ms. Hite), how past practice for appeal worked with the Personnel Advisory Board (could be seen as an administrative remedy), and justification for the emergency nature of a housekeeping amendment (this would codify the availability of an appeals board for an employee; the emergency nature addresses when the ordinance would take effect).

#### **MOTION: Councilmember Alberg moved to:**

- 1. Enter a finding that an emergency exists requiring the immediate passage of the ordinance for the preservation and protection of public property and public peace.**
- 2. Adopt the proposed emergency ordinance clarifying procedures and bases to appeal disciplinary action by a majority plus one vote of the City Council.**

#### Council Discussion Continued

Discussion continued about the emergency nature of this ordinance (in the past, the advisory board has been viewed as an appeals board and the City has a current issue where an employee may be seeking that remedy and this clarifies that remedy). Mr. Schmidt also reiterated what had been said by Ms. Neill Hoyson and Ms. Hite: Simply, the advisory board was not used in the proper context and it needs to act as an appeals board and afford employees an appeal action. The ordinance cleans this up and does not hinder an employee; it gives an employee the advantage of an appeals process rather than going through court litigation.

#### **SECOND TO THE MOTION AND**

**VOTE: Councilmember Paggao seconded the motion. Councilmembers Alberg, Campbell, Paggao, and Palmer voted in favor of the motion. Councilmember Dudley opposed. The motion did not carry.**

**MOTION: Councilmember Palmer moved to set this agenda item for the November 3, 2010 City Council meeting. The motion was seconded by Councilmember Campbell and carried unanimously.**

**City Administrator's Comments**

City Administrator Paul Schmidt talked about upcoming meetings for Council including the AWC Regional Meeting in Bellingham on 10/20/10 and the Blaine WWTP tour on 10/28/10.

**Council Members' Comments**

Council Members gave standing committee reports. Councilmember Palmer asked if the Pioneer Way Workshop on 10/27/10 would be televised and talked about the 11/3/10 and 11/16/10 Council meeting budget presentations.

**Mayor's Comments**

Mayor Slowik talked about his meeting with the NASWI Commander, NASWI staff including the Navy's public works staff to discuss public works, City and Navy operations, domestic violence, WAIF and animal control, WWTP, and access to City facilities on the Seaplane Base. The Navy will be celebrating the centennial year of naval air next year and would like to coordinate the NASWI celebration with the City. NASWI plans are underway to create an A3 static display at Ault Field's old main gate. Mayor Slowik is planning a meet-and-greet for 11/8/10 with NASWI staff, NASWI Task Force, and interested Council members and City staff.

**ADJOURN**

With no other business coming before the Council, Mayor Slowik adjourned the meeting at 8:45 p.m.

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Connie T. Wheeler  
City Clerk