

City of Oak Harbor Planning Commission Report

Date: December 28, 2010
Subject: Binding Site Plan Code
Amendments

FROM: Ethan Spoo, Senior Planner

PURPOSE

This report discusses proposed code amendments to Chapter 21.80 (“Binding Site Plans”) of the Oak Harbor Municipal Code (OHMC). The amendments will establish a process for altering previously approved Binding Site Plans (BSPs).

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. The ordinance shall provide for the alteration or vacation of binding site plans.

BACKGROUND

State law provides for the binding site plan process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). This chapter includes a section addressing under what circumstances proposed modifications to binding site plans may be considered. In the past, this section has been cited when considering applications to alter approved binding site plans. A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a pending application seeking to alter a previously approved binding site plan.

DISCUSSION

Binding site plan applications are made by a developer/property owner and then individual lots created by the binding site plan are usually sold or leased to other, and often multiple, property owners. If property owners later want to make changes to their property or redevelop their properties, they must do so in conformance with the previously approved binding site plan or seek to alter that plan. The City presently does not have a clear application process for binding site plan alterations. This lack of process can place a significant burden on a single property owner within the binding site plan who decides to upgrade, change, or redevelop their property. This in turn can limit economic development opportunities in the form of commercial and residential development.

The proposed municipal code amendment would establish a procedure for the acceptance and processing of a request to alter an approved binding site plan. When considering requests to alter a previously approved binding site plan, the question of property ownership and who has the

ability to request the proposed amendment is central to the acceptance and processing of the application. The existing code is silent on this topic.

The question of who must sign the application is clearly addressed in the proposed code. The proposed code draws from language found in RCW 58.17.215 that pertains to subdivision alterations, which requires that the application for the alteration of a subdivision contain the signatures of the majority of those persons having an ownership interest in the lots proposed to be altered. The draft prepared for Planning Commission discussion proposes a similar signature requirement for the alteration of a binding site plan. Another approach would be to require signatures from all persons having an ownership interest in the lots proposed to be altered. This approach would parallel State law regulating residential condominiums (RCW 64.34). Finally, if a binding site plan alteration is proposed on one lot, but the alterations to that one lot will affect areas which are owned in common, such as access drives, stormwater ponds, or commonly owned landscaping, then the signatures of all parties who have property affected by the proposed alteration are required.

SUMMARY

For the above reasons, staff proposes that a binding site plan alteration process be established. Staff prepared a draft ordinance for Planning Commission and public review intended to serve as a discussion tool for establishing this process. Staff plans to present additional concepts to Commission during the public hearing.

RECOMMENDATION

Staff recommends that Planning Commission open the public hearing on the proposed code amendments to Chapter 21.80 OHMC “Binding Site Plans”, accept public testimony and continue the item to January 25, 2011.

ATTACHMENTS

- Attachment A – Draft Ordinance amending Chapter 21.80 of the OHMC to establish a process for altering previously approved binding site plans.

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" ESTABLISHING A PROCEDURE FOR ALTERING PREVIOUSLY APPROVED BINDING SITE PLANS.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code has an inadequate alteration process for approved binding site plans and;

WHEREAS, there are number of undeveloped lots within City boundaries which are subject to previously approved binding site plans and can no longer develop in compliance with those binding site plan approvals due to the current economic situation and;

WHEREAS, Comprehensive Plan land use policies 11(a) and 14(g) encourage infill development, especially commercial, which is compatible with surrounding land uses, and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010.

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment period, as required by WAC Chapter 197-11 and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no substantive comments from the Department; and;

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010 and January 25, 2011 and public meetings were held by the City Council on _____ and _____;

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby repealed in its entirety.

Section Two. Chapter 21.80 of the Oak Harbor Municipal Code is hereby amended to read as follows:

Chapter 21.80

BINDING SITE PLANS

Sections:

21.80.005	Title.
21.80.010	Binding site plans allowed.
21.80.020	Division of property.
21.80.025	Condominium binding site plan.
21.80.030	Effect.
21.80.040	Application.
21.80.050	Procedure upon application.
21.80.060	Requirements for a binding site plan map.
21.80.070	Certifications required.
21.80.080	Title report.
21.80.090	Survey required.
21.80.100	Approval procedure.
21.80.110	Recording requirements.
21.80.120	Development requirements.
21.80.130	Standards for review of commercial binding site plan.
21.80.140	Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.
21.80.150	Performance guarantee requirements.
21.80.160	Warranty requirements for acceptance of final improvements.
21.80.170	Survey required.
21.80.180	Dedication – Warranty deed.
21.80.200	<u>Modification of binding site plan requirements.</u>
21.80.210	<u>Alteration of an approved binding site plan.</u>
21.80.300	Appeals to the hearing examiner.
21.80.400	Enforcement.
21.80.005	Title.

21.80.005 Title

This chapter shall be entitled “Binding Site Plans.”

21.80.010 Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (4).

21.80.020 Division of property.

Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;
- (3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel,

site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

- (4) A division of land subject to Chapter 64.32 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
 - (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:

All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
 - (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this chapter.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements either to be filed separately or on the binding site plan must be referenced on the binding site plan;
- (8) Zoning setback lines and building envelope sites where applicable;
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Parking areas, general circulation, and landscaping area where applicable;
- (14) Proposed use and location of building with dimensions where applicable;
- (15) Loading areas where applicable;
- (16) Utilities; and
- (17) Other restriction and requirements as deemed necessary by the city.

21.80.070 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site

plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.090 Survey required.

A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.

21.80.100 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.
- (3) The director shall review the final binding site plan and circulate it to other city departments to determine whether the requirements of this chapter and preliminary approval have been met.
- (4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (5) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (6) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.

- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130 Standards for review of commercial binding site plan.

The following standards shall apply to commercial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary

but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:

- (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
- (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has submitted a binding schedule for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in subsection (2) of this section.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request final approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.

- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170 Survey required.

- (1) The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.180 Dedication – Warranty deed.

Any dedication, donation or grant as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended

21.80.200 Modification of binding site plan requirements.

- (1) Any applicant can request and make application to the city requesting a modification of up to five percent from a requirement of ~~OHMC 21.80.130 or 21.80.140 or~~ OHMC Title 19, so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be considered by the director as an administrative decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;

- (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
- (d) Landscaping requirements are not thereby reduced.

21.80.210 Alteration of an approved binding site plan.

Alterations to an approved binding site plan may be considered subject to the provisions of this section.

(1) Submittal requirements.

- (a) Application form. An application shall be submitted on a form prescribed by the Director.
- (b) Authority to submit alteration application. The alteration application shall contain the signatures of a majority of property owners of lots proposed to be altered. Signatures of owners of lots within an approved binding site plan which are not proposed to be altered are not required on the alteration application form.
- (c) Commonly-owned property. If alterations are proposed which affect commonly-owned property such as tracts, easements, or rights-of-way previously approved under the binding site plan process, then the alteration application form shall contain the signatures of all property owners which have an interest in said property.
- (d) If the binding site plan is subject to restrictive covenants which were filed at the time of the approval of the binding site plan, and the application for alteration would result in the violation of the covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the binding site plan or portion thereof.
- (e) The alteration application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(2) Review process.

- (a) Applications for alteration of a binding site plan shall be processed under a Review Process II according to Chapter 18.20 OHMC.

21.80.300 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Three. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Four. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this 18th day of January, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

Mr. Powers recommended that Planning Commission open the public hearing again, take any additional public testimony, then close the public hearing and have Commission deliberation and make a recommendation to the Council.

Commission Discussion

Ms. Jensen asked about the sentence on page 21 of the packet titled 19.52.060 Non-conforming uses. She asked what is meant by, "an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction..." Mr. Powers explained that it meant that if someone claimed that they had a non-conforming status and the City said that they did not and the issue was taken to court that has jurisdiction to make that decision and the court decided that they in fact were non-conforming, that then would suffice for the meeting of the standards being a non-conforming use. Ms. Jensen also asked about 19.52.060 (2). Mr. Powers explained that there is an amortization period for a non-conforming use and that it will not continue forever.

Chairman Neil opened the public hearing. No comments were forthcoming and the public hearing was closed.

Mr. Oliver asked if there was anyone that had come forward stating that they would like move forward in opening an adult entertainment facility. Mr. Powers stated that there were none and that since the time that the City Council adopted the interim ordinance there have been one or two additional inquiries but there have been no applications filed yet.

ACTION: MR. FAKKEM MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE ADOPTING THE INTERIM ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE ORDINANCE AS THE FINAL ORDINACE.

PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS – Public Hearing

Chairman Neil opened the public hearing.

Mr. Spoo presented the binding site plan code amendments. Mr. Spoo indicated that the amendments would establish a process for altering binding site plans and specify who can submit an alteration for a binding site plan.

Mr. Spoo explained that a binding site plan is a type of land division. There are three types of land divisions that the State allows City's to regulate. Those are subdivisions, short subdivisions and binding site plans. Binding site plans are primarily for commercial and industrial properties but can be used for residential condominiums.

Mr. Spoo stated that State law RCW 58.17.035 requires a binding site plan alteration and vacation process. If a City chooses to adopt binding site plans as an alternative land division process then we are required to have an alteration and vacation process. The City's existing code is incomplete in that aspect, as it does not have an alteration process.

Mr. Spoo explained that the central issue in the draft Binding site plan code presented is who may submit an alteration application to a binding site plan. Page 35 of the agenda packet shows a new section of the Binding site plan code called "Alteration of an approved binding site plan." The proposed new section states that it is the majority of owners whose lots are proposed to be altered. After further consideration, staff believes that it is better if all owners whose lots are proposed to be altered within a binding site plan should sign the alteration

application rather than just a majority unless you have a situation where there is commonly owned properties; then all owners within the binding site plan would have to sign the binding site plan application.

The draft ordinance also addresses the submittal process and review process. Alterations are a Review Process Type 2 which means that staff reviews the application and make a decision which is appealable to the Hearing Examiner.

Mr. Spoo concluded by recommending that the Planning Commission open the public hearing, take public comment and then continue the hearing until next month.

Mr. Powers added the there was a public comment letter that was submitted and distributed to the Planning Commission (Attachment 1).

Mr. Spoo stated that the letter was submitted by Alice Smith and her opinion was that she doesn't think that alterations to binding site plans should be allowed unless all property owners within the binding site plan sign onto the alterations.

Commission Discussion

Commissioners asked the following questions:

Doesn't Alice Smith's letter say the same thing that Mr. Spoo just explained? Mr. Spoo said no, that actually what he said was that all property owners who are proposing to alter their lots would have to sign e.g. if you have 10 lots and someone proposed to alter three of those lots, all three of those property owners would have to sign the application because they own the lots that are proposed to be altered. What Ms. Smith is saying is that all 10 property owners would have to sign the alteration application even though the alterations would only directly affect 3 lots.

What has happened that brought this to staff's attention? Mr. Spoo said that an application was submitted to alter an existing binding site plan for some residential condominiums and that application was what brought to staffs attention that our code doesn't have an alteration process.

Chairman Neil opened the public hearing for public comment.

Sue Karahalios (1085 SE Regatta Dr., B-101) expressed concern that the City was changing the binding site plan rules midstream while the Pier Point Condominiums are in litigation with the applicant. She suggested that the Pier Point Condominiums should be "grandfathered". She noted that applicant has come before City staff twice and has been turned down and this appears to be a backdoor means to get what they want. Ms. Karahalios asked the Commission to think about themselves being in a situation where they had bought a condominium they believed had common area on the full plat, and because they didn't have enough money to keep going through litigation they get rolled over and then to have the rules changed again. Ms. Karahalois stated that is a very difficult thing to live with. She asked the Commission not to be a part of that.

Bob Severns (1085 SE Regatta Dr., C201) spoke as a resident of Pier Point Condominiums. Mr. Severns stated that he believed that the code change before the Commission comes from one particular binding site plan which is the Pier Point Condominium Binding site plan. Mr. Severns believed that the modification language in the current binding site plan ordinance has been fine up until now. Mr. Severns believed that the existing applicant has moved this process along so that the code change went into affect just before the Hearing Examiner hears yet

another appeal of the Pier Point Condominium Binding site plan. Mr. Severns also shared details about the legal process they had been through with the applicant regarding the Pier Point Condominium Binding site plan. Mr. Severns stated that the issue is who participates when you are altering an existing binding site plan and in Pier Point's case, it is an existing binding site plan with an expired construction schedule on the binding site plan. Mr. Severns stated that his point is that the language that has been proposed should not go forward unless it states that all owners and anyone with an interest in the property signs onto the alteration application. Mr. Severns recommendation was if this code change goes forward the Pier Point Condominium Binding site plan should be exempt.

Commissioners questioned Mr. Severns about the details of the Pier Point Condominium binding site plan and amendments, legal descriptions, easements, and common areas.

Mr. Powers reminded the Planning Commission that they were not being asked to be involved in making a decision on the pending application that Mr. Severns and Ms. Karahalois has spoken about. The Commission's roll will be to make recommendations about the language which should be in the code. Mr. Powers agreed that while it is helpful to hear a real life example as sort of a backdrop, the application that Mr. Severns is referring to is before the Hearing Examiner and it will be his responsibility to make a decision on the specifics.

Mr. Severns noted that he asked Mr. Powers how the proposed code language affects the Pier Point Condominiums ownership and that Mr. Powers stated that the City is not able to answer that. Mr. Severns stated that although he thinks he understands that answer but until the City can tell the eight residential owners what affect that potentially has on them he urged the Planning Commission not to move forward.

Alice Smith (1085 SE Regatta Dr., A-101) stated that all the property owners will be affected if the binding site plan is changed. Ms. Smith explained that prior to her purchase she read all the documents and saw that binding site plan had been expired so she bought it knowing that that property was not going to be built on. She didn't think it was right for the City to make it possible for what she signed as a legal document to change. She also suggested the "grandfathering" option.

Commission Discussion

Commissioners asked if the Hearing Examiner could rule something different for a particular situation and which would take precedence. Mr. Powers stated that neither would take precedence.

Mr. Powers went on to say that he appreciated the comments from citizens of the Pier Point Condominium have offered. He also said that staff apologizes if staff's first draft of the code amendment has created any undue anxiety. Mr. Powers stated that staff is attempting to put in place a process that the City code needs. He emphasized that this was a first draft and staff is already contemplating additional changes to the language as we move forward.

Mr. Powers went back to the question about which decision would take precedence. Mr. Powers stated that one is a decision on a pending application which City staff has already made a decision on: which is that we cannot process the amendment as proposed. That decision has been appeal to the Hearing Examiner. That is not litigation; that is just the land use process still inside of the City's administrative process. The other side is a deficiency in the City code which was discovered at our second look at the application. Upon further review we determined that our code lacks the appropriate process by which we accept and process someone's request to change a binding site plan. Mr. Powers emphasized that the simple act of requesting does not mean that it is approved. He pointed to the two denials that staff has already made on the

application as evidence that just because you ask doesn't mean that is what is approved. Regardless of that; a process is need in the code. That is what has been presented this evening. If the City Council adopted this language it would be in place but we still have to see what the Hearing Examiner's decision might be. That decision could then be appealed to the Court, which is what happened for the previous Hearing Examiner's decision, and depending on that hypothetical Court action we may or may not see the application come back for an amendment to the binding site plan. If that was to happen at least we would have a process in place that would tell us who needs to sign the application and how staff processes the application.

There was further discussion about whether the change in the process allows the applicant to do anything. Mr. Powers noted that there is no process in place today that tells us who needs to sign and that is the issue we have been dealing since the very beginning. Mr. Powers also cautioned against resting the entire conversation on the Pier Point example because there are other binding site plans and other property owners that may at some point in the future wish to amend their binding site plan and we should have a process in place.

Ms. Jensen stated that she would like to see language that concern a change for condominiums to require that anyone that owns at that time all need to sign.

Mr. Wallin asked how the modification process that is currently in place in the code works. Mr. Powers explained that the existing language on page 34 of the agenda packet. Mr. Powers stated that modification process is not very meaningful in terms of process.

Ms. Jensen asked how many times there have been changes to binding site plans during the time Mr. Powers has been with the City. Mr. Power indicated that there have been changes to Oak Tree Village Binding site plan and changes to Acorn Plaza and two requests for Pier Point Condominiums which is the only residential binding site plan.

Mr. Powers stated that there is no outside applicant which has driven staff to propose the amendment. The amendment was the result of an application. The applicant has not said to staff that we need to write the code. This is based upon review by the City Attorney and the City's land use attorney that our code needs to be amended. Mr. Power noted the term "Takings" used earlier; and stated that that term would be truer if there weren't at least a process by which someone can apply. Mr. Power also stated that "Takings" are an action of government which someone feels has deprived them of use of or enjoyment of their property. Mr. Powers stated the suggestion of "Grandfathering" will be looked at.

Mr. Oliver asked if the City should wait until the decision was made on the Pier Point Condominiums since we don't know what the ramifications could be. Mr. Powers stated that without knowing what the Hearing Examiner might say he can't tell how the ordinance would work with that particular decision and that it doesn't trouble staff because one is process and the other is a particular in a very specific instance. They can be done independent of each other. Mr. Powers explained that the timing is not opportune but it is where we are in terms of staff being able to bring something forward. Mr. Powers also noted that the earliest the code revision gets to the Council is in February and the Council has ability to make the decision as to whether they wish to take action or whether they need additional information, or if they think the timing needs to be delayed for a particular reason. Mr. Powers noted that he has tried most of the evening to keep the code amendment separate from the pending application and he acknowledged that the pending application has a hearing date set for early January. If that hearing goes forward we would anticipate that a decision could be reached by the end of January. Mr. Powers referred back to the question of should we wait, and noted that it is not litigation from the City's perspective it is just a land use decision.

Mr. Oliver stated that he believed all interested parties should have a say in what is changed and not changed.

Rhonda Severns (1085 SE Regatta Unit C-101) stated that when she purchased her property in 1994 she was assured by her real estate agent that it was going to be gorgeous and to go and look at the Pier Point binding site plan which would show how the site was going to be developed. Mrs. Severns stated that the owners were told that they needed to work with Mr. Massey and they have tried and find that he has gone in a different direction. She stated that Mr. Massey said that he doesn't want his condos to look the way Pier Point looks. She was concerned that Mr. Massey could put a totally different look which would devalue Pier Point because it would look like an add-on. She was concerned about what protection there is for condominium owners when they buy into a project and what their rights are when the rules can be changed 15 years later.

Mr. Neil commented that he felt that staff was asking the Planning Commission to just simply approve a process to change a binding site plan but for some reason he feels that whatever recommendation they make is sitting in judgment of the Pier Point situation.

Mr. Powers stated that it was reasonable to feel that way, while he has suggested that they should be looked at separately, he is not so naive to say that they are linked as well. Mr. Powers stated that the comment about the construction schedule is one that we didn't address in the draft and needs to be addressed. The issue of a construction schedule is required under the Condominium Act and it is not something that is required under the binding site plan code. We may be better served as a community if binding site plans deal with those things that deal with binding site plans and allow the Condominium Act and to address those things that are intended to protect the rights of condominium owners. Part of the confusing nature of this particular application is that the construction schedule is on the binding site plan which probably isn't necessary but absolutely has to be on the condominium documents that are required. Mr. Powers stated that staff will come back with another draft that addresses the questions raised tonight.

Ms. Jensen asked if Commissioners could e-mail further suggestion. Mr. Powers stated that it was appropriate to communicate with staff but not to courtesy copy fellow Commission members.

ACTION: MR. FAKKEMA MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO CONTINUE THE PUBLIC HEARING UNTIL JANUARY 2011.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 9:08 P.M.

City of Oak Harbor
865 S.E. Barrington Dr.
Oak Harbor, WA 98277

12/24/2010

RECEIVED

DEC 27 2010

**CITY OF OAK HARBOR
Development Services Department**

RE: Amendments to Chapter 21.80 OHMC Binding Site Plans

Let me begin by saying I am opposed to any change in amendment process that would apply to currently existing site plans.

It may be within the prevue of government to establish a procedure to change a binding site plans going forward, however it's questionable whether there would exist the authority to enact processes that would have the effect of substantially affecting existing plans, retroactively, without the unanimous consent of those property owners individually and specifically affected.

There should be no processes enacted or considered which would allow or assist in retroactive changes ignoring the reliance upon site plans existing property owners have made in making their investments in property.

Property currently under an existing binding site plan should either be exempt from new amendment revisions if adopted or subject to the unanimous assent of those property owners who have already made investments based upon and reliance upon existing plans.

The City always has the right to grant waivers based upon site and/or specific development conditions that meet fully the current property owners rights as well as the Cities broader community wide responsibilities.

Under no conditions, should the city be involved is assisting a single individual or entity to profit at the expense of other property owners immediately adjacent.

Current property owners bought their existing property based on the binding site plan, rules and legal documents existing at the time of the purchase. To allow changes which may significantly change the use of their property is not ethically appropriate. The government should not be able to reach back and make changes in the current regulations that will affect many home owners who relied on the documents that were in place at the time of sale.

What I see is an attempt to change current Municipal Code to allow advantage to certain individuals who have friends and business associates in the City government and on this very City Council. The goal is to have the Planning Commission make it possible to change existing "Binding Site Plans" so an individual developer can individually profit at the expense of others who have previously relied on the word "binding" meaning exactly that.

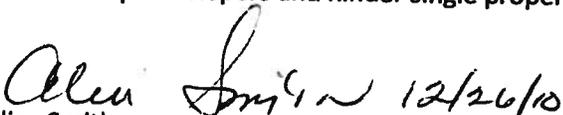
This current discussion is being prompted by one individual so let's provide a little background in order to shine a little light on this less than ethical person.

There is currently case of Alpine vs. City of Oak Harbor in which the binding site plan is allegedly holding back development of a specific property on Pioneer and Regatta. The individual bringing the suit is quite simply an arrogant bully who is used to getting his own way through the use of attorneys, intimidation and the use of friends and business associates currently within city government. He has been told by the hearing examiner in the cases previously brought to the courts he should work things out with us. He is not part of Pier Point condominiums and has no standing to act on its behalf without the majority consent of current owners. This is not his style however. To date all communication has been in the form of unilateral demands, suits or "mutually beneficial" arrangements with individuals he feels may be helpful to him.

He originally "bought" development rights to an undeveloped parcel within the development in which the binding site had expired. Turns out the seller did not own those rights. The title was thus not clear on the property, so he sued the title company and they refunded the money he paid for the rights and, incredibly, he now is trying to manipulate the City to accomplish his goal of developing the property anyway and without regard to the damage this would do the existing development. This should not be allowed. This individual wants to use our easements, utilities and property to build a non appropriate structure when he does not have the legal right to do so.

In November of 2006 the Hearing Examiner, Michael Bobbink, concluded and I quote "you cannot amend a Binding Site Plan to allow the schedule for phased condominium development to be changed after the deadline for completion of the development has passed." *Findings of Fact, Conclusions of Law, and Decision, at 10.*

When I purchased this property in 2001, it was clear from the documents I received at that time that the "Binding Site Plan" had expired and *NO additional building could occur without my specific agreement.* If the city makes retroactive the ability to change the binding site plan then owners like me who bought in good faith have been betrayed by the City of Oak Harbor. Filing suit against the city and the developer and anyone else possibly implicated imposes a burden I should not have to bear. What this man cannot do within the court system he is trying to do politically. I urge you not to allow past binding site plans to be changed. I urge you to not participate in this dishonest approach to changing City code to help developers and hinder single property owners.


Alice Smith 12/26/10

1085 SE Regatta Dr A101

Oak Harbor, WA 98277

City of Oak Harbor Planning Commission Report

Date: January 25, 2011
Subject: Binding Site Plan Code
Amendments

FROM: Ethan Spoo, Senior Planner

PURPOSE

This report continues the discussion on Binding Site Plan (BSP) code amendments that was initiated by staff at the December 28, 2010 Planning Commission meeting. The amendments, if approved, would establish a process for altering previously approved Binding Site Plans (BSPs). Staff will present additional concepts for the Planning Commission's consideration and comment and requests that the public hearing be continued to February 22, 2011.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. The ordinance is required to provide for the alteration or vacation of BSPs.

BACKGROUND

Binding Site Plans

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a pending application seeking to alter a previously approved binding site plan.

December 28, 2010 Planning Commission Meeting

At the December 28, 2010 Planning Commission meeting, staff presented a draft code amendment to Chapter 21.80 ("Binding Site Plans"). These code amendments, as then drafted, would have allowed an applicant to submit a BSP alteration application with the signatures of a majority of the property owners whose lots were proposed to be altered. Staff modeled this language after the state law dealing with subdivision alterations (RCW 58.17.215). Planning Commission took public comment on the draft code at that meeting. The public comment received at the December 28, 2010 Planning Commission meeting generally could be divided into two categories:

- **BSP alteration applications should require signatures of all property owners within the originally approved BSP.** Several members of the public gave testimony indicating

that alteration applications for existing BSPs should be signed by all property owners within the originally approved BSP, rather than just a majority of those property owners whose properties are being considered for alteration as was proposed by staff.

- **Suggestion to “grandfather-in” already existing BSPs.** Members of the public indicated that, if new regulations are adopted which allow for the alteration of BSPs, that the new regulations not apply in the same way to existing BSPs in place at the time of adoption of the ordinance.

More detail on the public comments is available in the December 28, 2010 Planning Commission meeting minutes.

DISCUSSION

To respond to issues raised by members of the public and questions from Planning Commission, especially the issue of whose signatures should be required on a BSP alteration application, staff researched what the requirements are of state law and how other communities in Washington approach this issue. The following discussion offers some guidance as to how the city might approach the issue of who has the authority to submit an application for alteration of a BSP.

With regard to BSP alterations, state law in RCW 58.17.035 says:

“Such ordinance...shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.”

RCW 58.17.035 also says:

“All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, or tract created pursuant to the binding site plan.”

From the above provisions, staff infers that the drafters of the state law intended that BSPs be enforceable, but also amendable. State law, however, is silent as to how the alteration process occurs, leaving this largely to the discretion of local jurisdictions. It is worth noting that subdivisions are also “binding” against property, meaning that the conditions approved as part of the subdivision plat are recorded against the property and apply to all subsequent owners of that property. For instance, easements for drainage may be recorded as part of a subdivision plat against a specific lot within the subdivision. That easement applies to all subsequent owners of the property. Yet, that easement can be vacated or altered and state law allows this to happen with only a “majority of those persons having an ownership interest of the lots, to be altered.”

The latitude granted to local jurisdictions to establish a process to alter BSPs in State Code, has resulted in a variety of different methods and threshold levels for altering BSPs across the state, as discovered by staff in researching the issue. Attachment 1 summarizes the research conducted by staff for 13 different jurisdictions across the state. These 13 different jurisdictions have a variety of different thresholds for requesting a binding site plan alteration ranging from requiring a majority of the signatures of only the lots to be altered to requiring all of the signatures of every property owner within the binding site plan.

With the above information in mind, staff offers the following principles for further consideration by Planning Commission:

- **Binding, but subject to change.** Binding site plans maps are recorded, legally binding documents, just like subdivisions. This means that the conditions of the binding site plan apply to all subsequent owners of the individual properties within the binding site plan. At the same time, state law requires that the City have a process to alter binding site plans. Thus, it would seem that state law does not intend that binding site plans never be subject to change.
- **Consistency with approved BSP.** As noted by those who testified at the December 28, 2010 public hearing and as written in state law, all subsequent owners of property are obligated to be consistent with the binding site plan. While it is reasonable for property owners within a BSP to expect continuity and consistency with the approved BSP as properties are developed, this expectation must be balanced with the requirement for alterations.
- **BSP changes affect some or all property owners within a BSP.** Staff recognizes that changes to one property can affect surrounding properties.
- **The City should not be in the position of settling disputes between property owners which are not in the public interest.** Many of the items traditionally shown on binding site plan maps or recorded with binding site plans, such as covenants, are items which do not pertain to the public interest and may, therefore, put the City in the position of being the arbitrator between property owners.

CONCEPTS FOR DISCUSSION

In working towards preparation of the second draft of this code staff considered:

- The Planning Commission's comments and questions from the December 28th hearing,
- Community input in the form of public testimony at that same hearing,
- The requirements of state law, and
- The need to balance property owner interests and expectations.

With this in mind staff is considering the following concepts for inclusion in the second draft and seeks the Planning Commission's feedback on these ideas:

- **Two-tiered process for alterations.** Staff is considering a two-tiered process for alterations:
 - In the first tier would be alterations to binding site plans in existence at the time the subject BSP code is adopted. Alterations to these properties would require the signature of *all property owners within the BSP*.
 - Alterations to future BSPs can be requested by *all of the property owners whose lots are proposed to be altered*. Alterations to commonly owned property within the BSP would continue to require the signatures of all property owners.
- **Reduced requirements for what is shown on binding site plans.** It is staff's observation that the existing BSP code requires more information regarding covenants

and agreements than is necessary. For example, the BSP code requires that reference be made to “covenants...or other agreements” on the face of the BSP map document. Covenants and agreements contain two types of information: (1) information which is in the public interest and (2) information which is not in the public interest. Since covenants and agreements include both types of information and are recorded with the binding site plan, all of the items which are not in the public interest become part of the binding site plan at recording. The city is then in the position of settling disputes for items which are not in the public interest, but which may nevertheless be part of the recorded binding site plan. Staff believes that the City should focus its efforts on monitoring those items which are in the public interest. Therefore staff proposes to change the code to exclude items which are not in the public interest from the binding site plan recorded documents.

It is staff’s plan to seek Planning Commission and community input on the concepts presented above, plus any additional general comments on the proposed amendments, at the January 25, 2011 meeting. Once this input is received staff will prepare a second draft of the code and present it to the Planning Commission at a later date (tentatively set for February 22, 2011).

RECOMMENDATION

Accept public testimony and continue the public hearing to February 22, 2011.

ATTACHMENTS

- Attachment 1 – Binding Site Plan Alterations: Signatures Required by Washington Jurisdictions.

Attachment 1 - Binding Site Plan Alterations: Signature Required by Washington Jurisdictions

Jurisdiction	Required Signatures		Relevant Clause
	Less than All	All	
Auburn	X		"all owners of the properties directly affected"...no adverse impact"
Bellingham		X	"shall be processed in the same manner as an original application."
Bothell		X	"processed in same manner as the original specific binding site plan"
Cheney	X		"shall contain the signatures of the majority of the persons having an ownership interest of lots, tract, parcels, site, or divisions in the subject binding site plan or portion to be altered"
Federal Way		X	"same process and requirements...for the approval of a binding site plan"
Kitsap County	X		"shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered"
Lacey	X		"application shall contain the signatures of the majority of persons having an ownership interest of the lots, tracts, or parcels, sites or divisions in the subject land division or portion to be altered"
New Castle	X		"signatures of owners of portions of a binding site plan which are not altered by an amendment or rescission are not required on the amended binding site plan"
Sultan		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
University Place		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Walla Walla		X	"amendments...shall be processed pursuant to this chapter and must be recorded."
Woodland		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Yakima		X	"the acknowledged signatures of all parties having an ownership interest in the property"

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
January 25, 2011**

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

Vice Chair Fakkema called the meeting to order at 7:30 p.m.

MINUTES: **MR. WASINGER MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE DECEMBER 28, 2010 MINUTES AS PRESENTED.**

PUBLIC COMMENT: No comments.

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

Mr. Spoo summarized research and presented concepts for further discussion.

Mr. Spoo reported that State law requires an alteration process for binding site plans (BSP) and currently the City does not have an alteration process. State law also indicates that all development within a binding site plan shall be consistent with the approved binding site plan. Local jurisdictions are given the latitude and flexibility to shape that process to meet local circumstances.

Mr. Spoo reported that staff looked at 13 other jurisdictions across the State and found that 8 jurisdictions require all property owners within a BSP to sign a binding site plan alteration, and 5 jurisdictions require something less than all of the property owners to sign. Mr. Spoo further stated that staff believes that a balance is needed which allows for alterations but respects the rights of property owners within a BSP. Mr. Spoo stated that staff is proposing a two-tier process for requesting alterations to BSP's based on the findings and comments received at the last Planning Commission meeting.

Tier 1 provides for BSP's which exist at the time the code is adopted, assuming the code is adopted those BSP's would require the signatures of all owners within the BSP in order for an alteration to be made. Tier 2 would provide for future BSP's. Those BSP's would require the signatures of only the property owners whose lots are proposed to be altered.

In addition to the two-tier process, staff is recommending a change in requirements regarding what is shown on the binding site plan map. Only those things which are in the public interest would be shown on the BSP map. The existing BSP map requirements have required information which is not in the public interest to be recorded on the binding site plan. Once that information gets recorded, the City must settle disputes between property owners, even if those disputes don't pertain to the public interest. By reducing the requirements for what is shown on the binding site plan map, the City won't be in the position in deciding between private issues between property owners.

Mr. Spoo concluded by recommending that the Planning Commission accept public testimony and continue the hearing to February 22, 2011.

Mr. Fakkema opened the public hearing.

Bill Massey (41 NE Midway Blvd. Ste. 101) pointed out that OHMC 21.80.200 allows for minor modifications and has been used for minor modifications in the past. Mr. Massey supported keeping the existing code in place. Mr. Massey also used the Oak Tree Village Binding Site Plan as an example to demonstrate how a modification could be stopped by one person even though their lot may not even be connected. Mr. Massey also pointed that some of the Goldie Road properties that may be annexed in the future already have binding site plans through the County. Mr. Massey stated that there were more implications to the proposed changes than just the specific binding site plan that was discussed at the previous meeting.

Kenneth Manny (2094 SW Dillard Lane) stated he was a property owner within the Oak Tree Village BSP. He noted that this BSP is separated by Cabot Drive and that making changes, minor or otherwise, would require him to get the consent of the property owners on the other side of Cabot Drive. Mr. Manny stated that the issue was of procedural fairness for people that own property in a situation where the interest of one group of owners is entirely different and separate from the interest of another group of owners. Mr. Manny believed if the Planning Commission were to adopt the plan that requires 100 percent unanimity; it would stop any type of development or modifications. Mr. Manny stated that it gives a disproportionate advantage to persons who simply say no for the reasons of saying no or they're too busy to read the document or they are not inclined to be cooperative or worst yet they want to get something out of it in exchange for their willingness to cooperate even though they are in no way affected. Mr. Manny asked the Planning Commission to carefully consider the options so that we don't find ourselves in a position where people with a legitimate interest in making a change to a BSP are essentially thwarted simply because it is impossible to get 100 percent unanimity among all of the owners. Mr. Manny stated that Oak Tree Village was a perfect example of why 100 percent unanimity can never be enforced and be fair at the same time.

Mr. Powers commented that the ideas that have been presented are only concepts at this stage and there is no specific draft language before the Planning Commission at this time.

Mel Vance (PO Box 2882) stated that he was torn between requiring a simple majority or a super majority and he was in favor of everyone having input regarding a BSP amendment. He also stated that he didn't think Oak Tree Village was a good example because he believed it was an extremely unusual situation to have a BSP that is split by a street. He suggested that Oak Tree Village be split into two BSP's if possible.

Chris Anderson (390 NE Midway Blvd.) stated that he was also a property owner within Oak Tree Village. Mr. Anderson read from RCW 58.17.035 and noted that it singles out commercial and industrial binding site plans and says that the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval. Mr. Anderson suggested treating commercial/industrial and residential BSP's separately as the RCW seems to do.

Bob Severns (1085 SE Regatta Dr., C201) agreed that common ownership of facilities such as driveways, parking spaces and stormwater facilities is appropriate and are commonly found in BSP's. Mr. Severns also noted that BSP's get changed even without alteration language by getting the proper parties together and execute documents to allow the change. Mr. Severns asked that the Planning Commission to not be confused that BSP's can't be changed because they can. Mr. Severns urged the Planning Commission not to make it too easy to change a BSP because to say that we're going to change the BSP and we're going to ignore the other parties even though they purchased their properties after the fact is not something the City wants to do. Mr. Severns pointed out that the majority of the 13 jurisdictions require all parties

to participate in alterations. Mr. Severns agreed with a simpler BSP process on a go-forward basis but suggested that there needs to be a proper search done on people that have an interest in the property and they need to be included in major alterations.

Sue Karahalios (1085 SE Regatta Dr., B-101) thanked staff for acknowledging that there are rights given to those that have an existing BSP. She also appreciated that there is consistency in how people are treated. She supported having all the owners involved in a BSP alteration.

Tom Moser (1204 Cleveland Ave., Mount Vernon WA) detailed his background and experience in land use law. Mr. Moser pointed out that the option to say that everyone gets to vote and you have to have 100 percent gives tremendous veto power to somebody who may own a lot or have an interest in a piece of property. He encouraged the Planning Commission to reconsider that option.

Mr. Moser noted that the language proposed uses the term “restrictive covenants”. He asked if the term meant the face of the BSP or does it mean the CC&R’s or the declarations of CC&R’s. He suggested defining the term.

Mr. Moser stated that the City should divide between public and private as Mr. Spoo has suggested.

Mr. Moser presented a letter dated November 3, 2004 from the City of Oak Harbor’s City Attorney Phil Bleyhl (Attachment 1). Mr. Moser noted the following points Mr. Bleyhl made in the letter:

- The City should not be in the business of deciding ownership.
- Minor modifications to BSP’s are allowed under the code.
- Sign-off by parties to the BSP is not necessary because it gives too much control.

Mr. Moser noted that there is a history of the City doing fine on amending BSP’s until very recently. The BSP amendments were done administratively and he didn’t see any reason that couldn’t continue.

Mr. Moser concluded by stating that just because somebody hasn’t built on a lot yet doesn’t make it the property of the people who have built and that doesn’t transfer ownership to somebody who hasn’t purchased the land.

Being not further public comment, Mr. Fakkema closed the public hearing.

Commission Discussion

Commissioners asked the following questions:

How many jurisdictions were looked at? Mr. Spoo said staff only looked at jurisdictions that had the information readily available on the internet which are the 13 jurisdictions listed in the staff report.

Did staff also consider commercial verses residential BSP’s? Mr. Powers said that staff did consider whether it is necessary to have a different process for commercial and industrial BSP’s and BSP’s used for condominiums but tried an approach that covers all the bases with a single set of procedures and then deal with the specifics of each application as they come forth.

The public hearing was continued to February 22, 2011.

LAW DEPARTMENT

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November 3, 2004

Scott M. Missall
Short Cressman & Burgess
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

Re: Pier Point

Dear Mr. Missall:

This letter is in response to your letter of October 15, 2004 concerning title to the lots which are undeveloped in the Pier Point Condominium Binding Site Plan area.

It seems to me there are four major issues:

1. Whether the development rights to these lots still exist as property rights of the title holder.
2. Whether the City can process a change in the development schedule as a minor modification of the site plan or for a change in intensity of use for a lot.
3. Who must sign-off on an application or approved site plan change.
4. Whether the owner of the vacant lots can shift units from one lot to another on the plat.

P.C. HRG.
REC'D. 1/25/11
RSP

1. Ownership is a predicate to processing of a permit change. Because the City does not adjudicate ownership, the City does not have to process a land use permit where ownership is disputed. See for example, Taylor v. Board of Adjustment of the Town of South Bethany (Del. Supr.) 1985 WL 188302 . However, since the City permit process is not actually the place to adjudicate ownership disputes, the City may proceed with processing a permit even when there might be questions concerning title. MacDonald v. Board of Adjustment of the Town of Dewey Beach, 558 A.2d 1083, 1086 (Dela. 1989) This is especially true where the applicant, as you have now provided, shows recognition of ownership interest by a title company, the City can move forward with processing the application for a binding site plan change. Sun Oil Company v. Railroad Commission, 390 S.W.2d 803, 807 (Tex, 1965). Such processing or even approval, however, is not made in derogation of any property rights of others who own or rent property in Pier Point Condominiums. Rather, in a sense the City is looking at the site plan -- i.e., the plan for development and not the binding site plan -- i.e., the division into lots, easements and other reciprocal rights. Thus, the City can approve changes again to the site plan without adjudicating other's ownership interests. The difficulty for your client is that both types of information are on the same document.

2. Minor modification process. It is apparent that the previous Planning Director followed a long process of dealing with these issues by allowing amendments of the binding site plan under OHMC 21.80.200. It is my understanding that such long standing interpretation will not be disturbed by the City at this time, although, it seems a bit strained.

Minor modification, however, cannot mean the shifting of residential units from one location to another in the same development.

3. Sign-off by parties on the binding site plan. A question was raised as to who had to sign off on any change to the binding site plan map. That issue is not addressed in the City Code. RCW 58.17.215 et seq., provides some guidance. It authorizes a partial amendment which covers only certain lots. So long as the owners of the lots are wanting to make the change to their lots, they can sign-off to an amendment which covers the "site plan" elements of the lots. It would seem, therefore, an amending document should only show the lots for which change is being sought and that the person's needing to sign-off on the site plan are the owners of record for the site plan and not all of the owners of the binding site plan. Such an approval would not affect the other owners' interests. In fact, as the RCW sections above cited: an easement interest will not be affected by such amendment. However, again, the City has no authority to affect the others' interests in the condominium and because site plan elements are located on the binding site plan map, it is arguable such rights may be claimed. In short, the new map would only cover the lots

involved. The issue then is access easements. I understand you feel those are acceptably handled. We would take no position on that.

4. Change in development schedule. It is my understanding that you are claiming the development schedule is purely a creature of City regulation. Therefore, it is part of the site plan and not an issue of ownership and a property right of others in the condominium association. As such, it is subject to amendment by the City and should be allowed subject to any changes in regulatory law which have occurred since then. I can conceive of no reason why it should not be permitted. Approval of the schedule change, however, would subject the owner into applying for and obtaining all of the necessary permits.

Yours truly,



Phillip L. Bleyhl
City Attorney

PLB/kp

cc: Development Services

City of Oak Harbor Planning Commission Report

Date: February 22, 2011
Subject: Binding Site Plan Code
Amendments

FROM: Steve Powers, Director and Ethan Spoo, Senior Planner

PURPOSE

At its February meeting, Planning Commission will be in the third month of discussions regarding amendments to the binding site plan (BSP) code. This report continues those discussions where they left off in January. The code amendments, if approved, would establish a process for altering previously approved BSPs. With this report, staff presents the second draft of the code for the Planning Commission's consideration.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. Should a city chose to adopt such an ordinance, is required to provide for the alteration or vacation of BSPs.

BACKGROUND

Binding Site Plans

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a recent application seeking to alter a previously approved binding site plan.

January 25, 2011 Planning Commission Meeting

Discussion concepts presented by staff at the January meeting introduced a two-tiered system whereby alterations to BSPs already in existence would require the signatures of all property owners within that BSP. All future BSPs would require that only those property owners whose lots are proposed to be altered sign the alteration application.

Planning Commission accepted testimony in an open public hearing based on the concepts presented by staff. Two distinctly different opinions were voiced by those who gave testimony: (1) those who believe that the signatures of all property owners within a BSP should be required to make alterations and (2) those who believe that signatures of less than all property owners within a BSP should be required (i.e. only those whose lots are proposed to be altered). The former group pointed out that a BSP, by its very nature, sets up expectations by property owners

of the need for consistency with that BSP. The latter group expressed concern that requiring all signatures would effectively prevent any changes to BSPs since one reluctant property owner could halt an alteration.

More detail on the public comments is available in the January 25, 2011 Planning Commission meeting minutes.

DISCUSSION

Additional Research

Based on comments received at last month's Planning Commission meeting, staff conducted additional research regarding how other communities around the state process alteration requests, as well as the nature of BSPs in Oak Harbor.

At last month's meeting, staff presented research from 13 communities distinguishing between those who require all property owners within a BSP to sign and those which require less than all to sign alteration applications. This month staff researched additional communities increasing the total number to 59. Of the 59 communities researched, 11 communities either do not have a BSP process or an alteration process. Of the 48 communities which do have a process, 39 (81%) require signatures by all property owners within the BSP to make alterations. However, we should proceed with caution in drawing conclusions from this information. Most of the jurisdictions in this category have code language stating that the same process shall be used for alterations as for submitting the original binding site plan application. The two actions are treated the same. It is not clear from this research whether or not any of these jurisdictions have encountered any difficulty in implementing this approach to alterations. This research also does not give any insight in to whether the other jurisdictions' application procedures are guided by policy, rather than code. See Attachment 1 for further detail.

Staff also looked into the number and type of BSPs within the Oak Harbor city boundaries. There are 13 BSPs in city boundaries, ten of which are commercial/industrial BSPs and three of which are residential condominiums. Only one BSP within the city has a construction schedule associated with it. See map in Attachment 2.

Topics for Consideration

The following topics are offered for the Planning Commission's consideration as you review the second draft of the amended code:

- **The City must have an alteration or vacation process.** It bears repeating that the City of Oak Harbor is required under RCW 58.17.035 to provide a process for property owners to seek to alter or vacate portions or all of an approved binding site plan.
- **Submittal of an application is the beginning, not the end, of the process.** It is important to note that the proposed code amendment is primarily intended to put into place a process by which applications for alterations may be submitted and considered. The process only begins with the receipt of the application. The review of the alteration application is deemed a Type II process (an administrative decision, requiring notice to the general public and property owners within 300 feet). This administrative decision is appealable to the City's Hearing Examiner.

- **Varying property owner interests.** At the January 25, 2011 Planning Commission meeting, one of the central issues (based on public testimony) was the topic of varying property owner interests. At issue is whether a single property owner, or group of property owners, should be able to submit an application for a binding site plan alteration without first securing the permission (in the form of signatures on the application) from all property owners within the binding site plan.
- **A BSP is a method of dividing land (public versus private interests).** The binding site plan process is a means of dividing property; it is the approval of this land division that is the ‘public interest.’ The existing code language requires certain information to be included on a binding site plan map that is not necessarily directly related to this purpose. Some of this information may be regulated by other permit procedures (such as through a site plan and design review approval per OHMC 19.48) or it may be in the form of private agreements (covenants) between property owners. It is staff’s belief that the City should not be adjudicating private interest issues, but should focus on issues clearly in the public interest.
- **Research findings.** Staff research shows that the majority of jurisdictions choose to require the signatures of all property owners within a BSP for alterations (by way of stating the procedure for alterations is the same as for original approval). It is unclear from this research whether or not requiring all property owners within a BSP to sign has led to problems. In other words, these cities should not necessarily be looked at as directly applicable models for the City of Oak Harbor. Staff research also shows that the City has relatively few BSPs and most of the BSPs are commercial or industrial. The staff recommendation seeks to create a process that will work with existing and future binding site plans.

SUMMARY OF SECOND DRAFT OF CODE

The second draft of the code responds to the above topics. The code has the following features:

- **Limit what is recorded on BSP map documents.** In order that the City focus its role on the subject land division and what is in the public interest, the language proposed by staff will limit what is recorded on future BSP map documents. Staff is proposing to limit what is recorded on a binding site plan map to those items which pertain directly to land division; primarily lots and their dimensions, rights-of-way, easements (access, parking, open space, etc.), and public utilities (sewer, water, storm).
- **The City will only accept alterations that pertain to the public interest.** As a way of distinguishing between public (land division) and private interests, the City will only accept an alteration application if it pertains to the items recorded on a binding site plan map. Since the items which are recorded on a binding site plan map are being limited, as per the first bullet above, staff believes this will focus the City on those items in the public interest.

Binding site plans approved prior to the date of the new ordinance include items not pertaining directly to land division. In recognition of this fact, the City will accept alterations to already established binding site plans for elements such as zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed

use, location of buildings, and loading areas.

- **Alteration applications may be submitted by only those property owners who are directly affected.** At its January meeting, Planning Commission accepted public testimony indicating that requiring all signatures for BSP changes could limit private property rights as well as create a process which may be impossible for a property owner to initiate. On the other hand, the Commission also heard testimony that those property owners who may be directly affected by the proposed alteration should have a role in determining whether the amendment is submitted. After reviewing this testimony, other codes and weighing the pros and cons of different approaches, the staff recommends that only those property owners directly affected by the proposed alteration be required to sign the application. In some cases, this may be only one property owner if a change directly affects only his lots (e.g. the alteration of a property line or easement). In other cases, this may require the signatures of multiple property owners who may be affected, as would be the case if an alteration to a shared parking facility were proposed. Each alteration application would need to be accompanied by a title company certification proving ownership, and therefore, ability to submit the application. It is staff's opinion that this process is the most appropriate given all the information at our disposal.

CITIZEN COMMENTS

The Chair of the Planning Commission received a letter from Mr. Christian Anderson on behalf of Dry Lake Land Stewardship, LLC. Dry Lake Land Stewardship has been planning a new commercial development, which is partly within the Oak Tree Village Binding Site Plan. It is Mr. Anderson's opinion that alterations to a BSP should require the signatures of only the property owners directly affected. His contention is that requiring additional signatures may constitute a "taking" of private property and could hinder economic development within the City.

The Chair of the Planning Commission also received a letter from Mr. William Massey. In that letter, Mr. Massey expressed his opposition to requiring all property owners within a BSP to sign alterations. He proposed two alternative ways to process an alteration application: (1) by vote of the majority of the property owners contiguous to and directly affected by the proposed alteration and (2) a minor/major system whereby minor alterations would be decided administratively by staff and major alterations would be decided by the City's hearing examiner.

RECOMMENDATIONS

- Accept public testimony and close the public hearing.
- Recommend approval to City Council of the amendments to Chapter 21. 80 OHMC ("Binding Site Plans") as drafted in Attachment 5.

ATTACHMENTS

- Attachment 1 – Binding Site Plan Alterations: Signatures Required by Washington Jurisdictions.
- Attachment 2 – Map of binding site plans in Oak Harbor.
- Attachment 3 – Letter from Mr. Christian Anderson, Dry Lake Land Stewardship, LLC
- Attachment 4 – Letter from Mr. William Massey

- Attachment 5 – Draft amendments to Chapter 21.80 OHMC (“Binding Site Plans”)
(Please note that both a legislative edit version and a ‘clean’ version are provided.)

Attachment 1 - Binding Site Plan Alterations: Signature Required by Washington Jurisdictions

previously researched

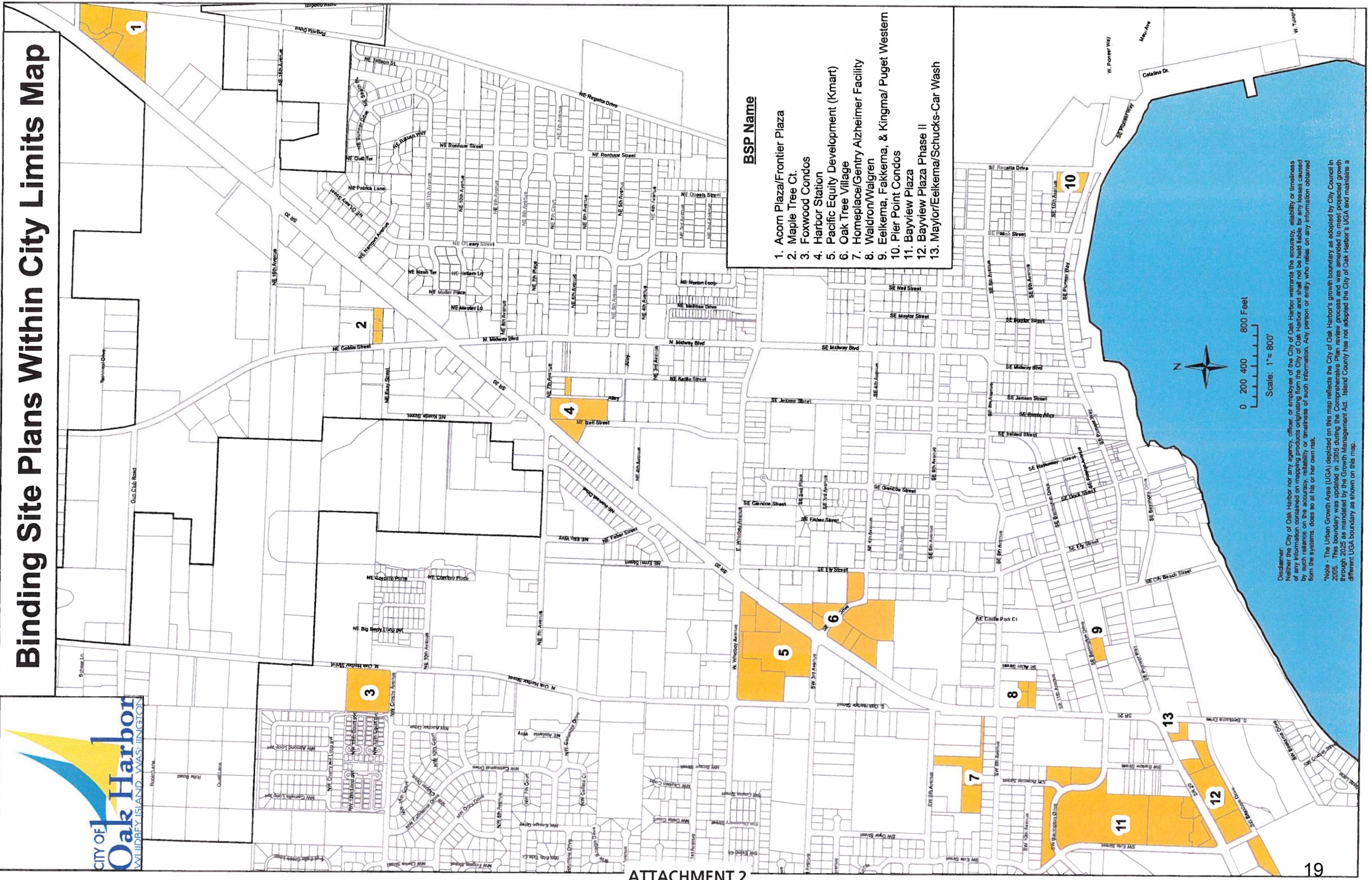
Jurisdiction	Required Signatures		Relevant Clause
	Less than All	All	
Aberdeen			Do not have BSP process
Anacortes		X	Modifications may be applied for pursuant to established city procedures.
Arlington		X	The application materials, procedures, review criteria, standards, etc., shall be the same as for the initial binding site plan
Auburn	X		"all owners of the properties directly affected"... "vacations shall no adverse impact"
Bainbridge Island			Do not have BSP process
Battleground			No alteration process
Bellingham		X	"shall be processed in the same manner as an original application."
Bonney Lake		X	Do not have BSP process
Bothell		X	"processed in same manner as the original specific binding site plan"
Bremerton			No alteration process
Burien	X		For residential, all signatures required, unless vacation in which case it's only the property owners involved. No commercial/industrial BSP allowed.
Burlington			No alteration process
Camas		X	Modifications may be applied for pursuant to established city procedures.
Centralia		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded
Cheney	X		"shall contain the signatures of the majority of the persons having an ownership interest of lots, tract, parcels, site, or divisions in the subject binding site plan or portion to be altered"
Covington		X	same process required for a new application as set forth in this chapter
Des Moines		X	no alteration process
Edmonds		X	The proposed modification shall be considered in the same manner as the proposed subdivision.
Ellensburg			Do not have BSP process
Federal Way		X	"same process and requirements... for the approval of a binding site plan
Issaquah		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the Planning Director/Manager using the criteria in IMC 18.13.160
Kenmore		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter
Kirkland		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the planning dept. using the criteria in KMC.
Kitsap County	X		"shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered"
Lacey	X		"application shall contain the signatures of the majority of persons having an ownership interest of the lots, tracts, or parcels, sites or divisions in the subject land division or portion to be altered"
Lake Forest Park			Do not have BSP process
Lake Stevens		X	Any request for a revision to an approved plan shall be reviewed pursuant to Section 14.16A.235
Longview		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded.
Lynnwood		X	Alteration of an approved preliminary or final binding site plan other than slight deviations as defined in LMC 19.75.070(B) shall be accomplished by application as set forth in LMC 19.75.035 and shall be subject to all procedures and requirements established in this chapter.
Maple Valley		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application, as set forth in this chapter.
Mercer Island			Do not have BSP process
Mill Creek			Do not have BSP process

Monroe		X	If the revision is substantial, the proposal shall follow the same procedures required for acquiring a binding site plan, as set forth in this chapter.
Moses Lake		X	no alteration process
Mount Vernon		X	major and minor modifications
Mountlake Terrace		X	The amended binding site plan shall be processed subject to all the procedures and requirements of this chapter.
Mukiteto		X	Alteration or vacation of binding site plans shall be accomplished by following the same process and applying the same criteria as for an initial application for binding site plan approval.
New Castle	X		"signatures of owners of portions of a binding site plan which are not altered by an amendment or rescission are not required on the amended binding site plan"
Olympia			No alteration process
Pasco		X	The recorded binding site plan may be altered at the City Planner's discretion by processing through the review/approval procedure.
Port Angeles		X	Alterations may be applied for pursuant to established city procedures.
Pullman			N/A
Puyallup		X	Alteration of an approved and recorded binding site plan shall be accompanied by application as set forth in PMC 19.10.040 and shall be subject to all procedures and requirements established in this chapter.
Redmond		X	Amendments to or vacations of an approved binding site plan shall be made through the subdivision vacation process and shall be made by all persons having an ownership interest in the portion to be vacated.
Richland		X	no alteration process
Sammamish		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter.
Seatac	X		Any subdivision or binding site plan application under subsection (D) of this section shall require the written consent of parties representing no less than sixty-six percent (66%) ownership interest in the entire site
Shoreline		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application.
Sultan		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Sunnyside		X	Whenever any person is interested in the vacation or alteration of a recorded binding site plan, the procedures set forth in SMC 16.06.040 through 16.06.090 contained herein shall be followed.
Tukwila	X		that only owners of lots within the BSP that are directly affected by the proposed alteration shall be required to authorize application for the alteration.
Tumwater	X		Where the lots within a recorded plat are held in more than one ownership, the application for replat shall not be accepted by the City for processing unless accompanied by the signatures of all property owners within the plat whose lot boundaries would be altered or affected by the replat.
University Place		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Walla Walla		X	"amendments...shall be processed pursuant to this chapter and must be recorded."
Washougal		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Wenatchee		X	no alteration process
West Richland		X	no alteration process
Woodland		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Yakima		X	"the acknowledged signatures of all parties having an ownership interest in the property"

Binding Site Plans Within City Limits Map



- BSP Name**
1. Acorn Plaza/Frontier Plaza
 2. Maple Tree Ct.
 3. Foxwood Condos
 4. Harbor Station
 5. Pacific Equity Development (Kmart)
 6. Oak Tree Village
 7. Homeplace/Gentry Alzheimer Facility
 8. Waldron/Waigren
 9. Eelkema, Fakkema, & Kingma/ Puget Western
 10. Pier Point Condos
 11. Bayview Plaza Phase II
 13. Maylor/Eelkema/Schucks-Car Wash



Disclaimer:
Neither the City of Oak Harbor nor any agency, officer, or employee of the City of Oak Harbor warrants the accuracy, reliability or timeliness of any information contained on mapping products originating from the City of Oak Harbor and shall not be held liable for any losses caused by such reliance on the accuracy, reliability or timeliness of such information. Any person or entity who relies on any information obtained from the systems, does so at his or her own risk.

***Note -** The Urban Growth Area (UGA) depicted on this map reflects the City of Oak Harbor's growth boundary as adopted by City Council in 2005. This boundary was updated in 2015 during the Comprehensive Plan review process and was amended to meet projected growth through 2025 as mandated by the Growth Management Act. Island County has not adopted the City of Oak Harbor's UGA and maintains a different UGA boundary as shown on this map.

RECEIVED

FEB 14 2011

**CITY OF OAK HARBOR
Development Services Department**

DRY LAKE LAND STEWARDSHIP LLC

chris.anderson@century21trophy.com

February 11, 2011

Mr. Nathan Spoo
City of Oak Harbor Planning Dept.
865 SE Barrington Drive
Oak Harbor, WA 98277

Chairman Bruce Neil
Oak Harbor Planning Commission
865 SE Barrington Drive
Oak Harbor, WA 98277

RE: Proposed Amendments to the Binding Site Plan Ordinance

Please consider the following:

Dry Lake Land Stewardship LLC's background

My Name is Christian A. Anderson. I am an Oak Harbor native, developer, real estate broker and a member of a group which has been planning a new commercial development within the City Limits of Oak Harbor.

The property which we intend to develop will serve as home to a "Home Grown" locally based commercial retail and service oriented company. The new facility will directly employ between 20 and 40 people once completed. During the construction of the facility it will directly and indirectly employ hundreds of others.

A portion of the property which we own and plan to develop lies within the Oak Tree Village Binding Site Plan (BSP). We have shared our plans with city staff and we have together developed a concept which is ready to be submitted for site plan review by the Oak Harbor City Planning Department. Our proposed site plan may require modifications to the Oak Tree Village BSP. It is unclear in our particular situation if any BSP landowner acknowledgement will be required because in our particular case the rights to access our larger parcel which adjoins the Oak Tree Village BSP were reserved prior to the issuance of final approval of the Oak Tree Village BSP.

Our development plans involve the modification of what is now an exit for some of the lots in the Oak Tree Village BSP onto Highway 20. Our plans also includes the modification of the

landscaping and will undoubtedly involve tying into or modifying existing utilities which are associated with the Oak Tree Village BSP.

The Oak Tree Village BSP was approved in the early 90's and all of the lots within the BSP have been transferred from the original developer to successor property owners. These property owners, some of which are not community based, may be very hard to communicate with and are not likely to be interested in taking the time to consider any change which does not directly effect them.

It is our opinion that any changes to the BSP ordinance should consider the long term economic effects on our local economy and not hinder Oak Harbor's inter-city development potential which would ultimately lead to "Sprawl" instead of "Infill" of the existing city limits.

Competing Views on the Proposed Amendment to the BSP Ordinance

The City of Oak Harbor is seeking public input on a proposed amendment to the current Binding Site Plan Ordinance. It is my understanding that the City Planners are attempting to amend the regulations governing BSP's to provide for a method to make changes to a BSP after the BSP has been adopted. It seems that there are differences of opinion on how the BSP amendment process should be administered.

At one end of the debate it is suggested that it should require 100% approval of all of the property owners who have any interest in the BSP to approve of any change to the BSP in all cases.

It is unclear to us if this scenario would include seeking permission of all property owners who simply own some of the rights associated with the real estate involved in the BSP or would it be perhaps that any associated parties with an interest in the BSP should have to bless a modification.

That scenario could potentially involve a tenant which owns a Lease Hold Estate, Mortgage or Lien Holders which may have a security interest, Owners of specific rights such as easements and or mineral rights which may own some but not all of the real property rights. Other such examples could be owners of view rights or mineral rights or water rights. Then of course there are the private property rights of the property owners which share a property line but are outside of the BSP and have shared rights.

The views on the other side of the debate seems to be, if a property owner is legally in title to the private real property after the BSP has been adopted, that private property owner would be entitled to, as a free citizen of the United States of America, make whatever changes to the property the owner desires without any governmental involvement whatsoever so long as it complies with the rest of the multitude of existing State, County and City ordinances.

In this scenario if another citizen or group did not approve of the changes the private property owner was making the conflicted parties could sort out their differences through whatever remedies they so chose which is already provided for under existing laws and customs.

BSP's effects on adjacent property owners

Other effects of the changes to ordinance should be considered as well. What about the neighboring properties of a BSP? Please consider this. What would the effect of a BSP be on a neighboring property owner if the property owner was somehow landlocked or surrounded by a BSP that was difficult or impossible to amend because it was impossible to get a majority of the landowners within the BSP to agree to a change? What if the owners within the BSP wished to extract money from the land locked private property owner in exchange for cooperation in amending the BSP for a minor change? We believe in that case BSP's could be considered Unconstitutional. It is what is known as a "taking". In our opinion it would be no different than surrounding a private property owner with what is akin to a giant mote without a draw bridge. Even if the Mote was on one or two sides the effect could be devastating to the private property owner who had nothing to do with creating the original BSP which is now looming around them. There is a protection for private property owners for this in the US Constitution under the 5th Amendment.

Washington State Law

Washington State Law provides guidance to how municipalities shall administer Binding Site Plans under Title 58 RCW. The section of the Revised Code of Washington (RCW) which specifically addresses how the municipal code shall be drafted by individual Cities and Counties is found under RCW 58.17.035. and is attached as Attachment "A" to the letter. I wish to point out that RCW 58.17.035 specifically identifies different types of BSP's. The ordinance groups them into categories such as residential, commercial and industrial. The ordinance goes on to say;

"Such ordinance may apply the same or different requirements and procedures to each of these three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan".

In the next paragraph of the RCW it specifically mentions industrial and commercial BSP's. The state law says;

"The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval."

This requirement raises a question. Was the BSP Ordinance originally adopted in by the City of Oak Harbor in accordance with State Law? The next question that comes to mind is. If Oak Harbor's BSP ordinance was not in compliance with state law are the owners of the properties within the existing BSP's bound by any BSP ordinance at all? These are legal questions which should be addressed with haste.

Conclusion

We propose that any amended City Ordinance make it possible for individual property owners to efficiently and inexpensively make changes to a BSP in the same manner changes

are made to any other piece of real estate which is located outside of a BSP. A property owner interested in making an amendment should first look to the existing Covenants of the property for guidance as to who should have a say in the process.

If a method for amendment is unavailable in the Covenants it is our opinion that changes to the BSP be handled privately between property owners and then blessed administratively by the City. The City's only concern at that point should be to make sure the changes allow for similar Zoning and the safety and welfare of the public. After a brief review the planning department could then approve the proposed amendments, with any agreed upon changes, acknowledge them, and then suggest that the amendments be recorded with the County Auditor.

This in our view would be in the best interest of the City planners, local citizens as well as the individual property owners involved with the proposed Amendments to the BSP. We don't believe that it should be a requirement under the new revised code to seek permission from any or all people who claim to have an interest in the real estate located within the BSP.

It is also our opinion, based on knowledge of the real estate laws, that even if there are Covenants recorded on the property within a BSP that do specifically contain a procedure for privately amending the BSP, that it is not the place of the City Planning Department to defend the private property rights of individual private real estate owner or owners in enforcing those Covenants. Remedies and Protections for private property rights already exist in other areas of our existing laws.

Very Truly Yours,



CHRISTIAN ANKER ANDERSON
Member of Dry Lake Land Stewardship LLC

Attachment "A"

RCW 58.17.035
Alternative method of land division — Binding site plans.

A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval.

The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances.

All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW.

[1987 c 354 § 2.]

RCW 58.17.040
Chapter inapplicable, when.

The provisions of this chapter shall not apply to:

Not

(1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

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(4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

Commercial & Ind

A

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

Trailer Parks

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site;

condos

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(7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) in connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures; and

(9) A division of land into lots or tracts of less than three acres that is recorded in accordance with chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. New customers are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed.

[2004 c 239 § 1; 2002 c 44 § 1; 1992 c 220 § 27; 1989 c 43 § 4-123. Prior: 1987 c 354 § 1; 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 293 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Notes:

Severability -- Effective date -- 1989 c 43: See RCW 64.34.920 and 64.34.930.



William L. Massey

41 NE Midway Blvd., Suite 101
Oak Harbor, WA 98277

(360) 675-9091 (360) 675-5341 Fax

February 17, 2011

Bruce Neil
Chairman
Oak Harbor Planning Commission
865 SE Barrington Ave.
Oak Harbor, WA 98277

RECEIVED

FEB 17 2011

**CITY OF OAK HARBOR
Development Services Department**

Re: Proposed revisions to City of Oak Harbor Binding Site Plan Ordinance (OHMC 21.80).

Chairman Neil and Planning Commissioners

Our primary interest in the proposed revisions relate to the four separate parcels, of a total of eight parcels, 50% of the BSP owned by our company in Fee Simple Title, in the residential BSP known as Pier Point (our company's parcels are not part of the Pier Point Condominium). Our company also has a lenders deed of trust interest in a parcel of the BSP known as Oak Tree Village and we are therefore very concerned about restrictions that could impair the development rights of our client.

The changes to the ordinance, as they are currently proposed by staff, become a property rights issue wherein property owners within a BSP could control the reasonable use of another property owner even if there is no detriment to the property owners who vote against proposed changes to the BSP. Opposition could be based on the apathy or animosity of one or two individuals

It's interesting to note that at the December 28 Planning Commission hearing, staff member Mr. Spoo acknowledged that this issue was brought to the city's attention as a result of an application to alter an existing site plan. Further testimony, allowed by the Chairman, identified Pier Point. Staff member Mr. Powers acknowledged that there is a link between the history of the Pier Point application and the proposed ordinance changes.

Please consider the following:

Condominium ownership and regulations should not be confused with BSP regulations.

Using Pier Point as the example; there are eight parcels and within four of the parcels there are eight condo owners.

Rather than allowing all condo owners a vote, which creates a disproportionate advantage, it would be more fair to allow each parcel within the BSP one vote. The right to vote on an alteration should be allowed only if there might be an effect on the reasonable use of the properties outside the area of the proposed alteration such as easement changes, utility changes or changes to building envelopes. A tie in the voting should be settled by an arbiter.

In the case of a commercial BSP consider the potential detriment to a commercial applicant if every parcel owner has a vote in the process and one vote could negate the applicant's process.

If a vote is required it should only be by a majority of those property owners contiguous to, and directly affected by the proposed alteration.

As you have seen by the process to date this is a complicated issue and doesn't necessarily work fairly if put to a vote by neighboring property owners.

The City of Oak Harbor has adopted a Hearing Examiner process specifically to take the politics out of land use issues. As you can see by some of the testimony the Pier Point example appears to have become somewhat political.

"The City Council created the hearing examiner system in May 2004 to ensure that fair and impartial decisions are made on project permits that are quasi-judicial in manner and administrative decisions by city departments"

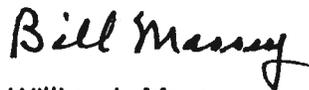
If changes to the BSP ordinance are required they should be addressed in the same manner as other land use issues, such as plats, by administrative procedure for minor modifications and a public hearing before the Hearing Examiner for a major change. In either case appeal procedures are in place if there are disagreements.

Our company currently has an appeal pending before the Island County Superior Court regarding our Pier Point application. **It might be instructive to table this issue to wait for the results of the appeal.**

As a side note, I have been retired from the development and construction business for several years now. Our company will not be building on the Pier Point lots and I am only pursuing the appeal as a matter of my belief in an owner's right of reasonable use. Private property rights.

If our appeal is successful Kathy and I will be donating a portion of, or all of the Pier Point parcels we own, as we have donated a number of our properties, to a non profit organization which will use the sale proceeds from the parcels toward affordable housing to benefit modest income families.

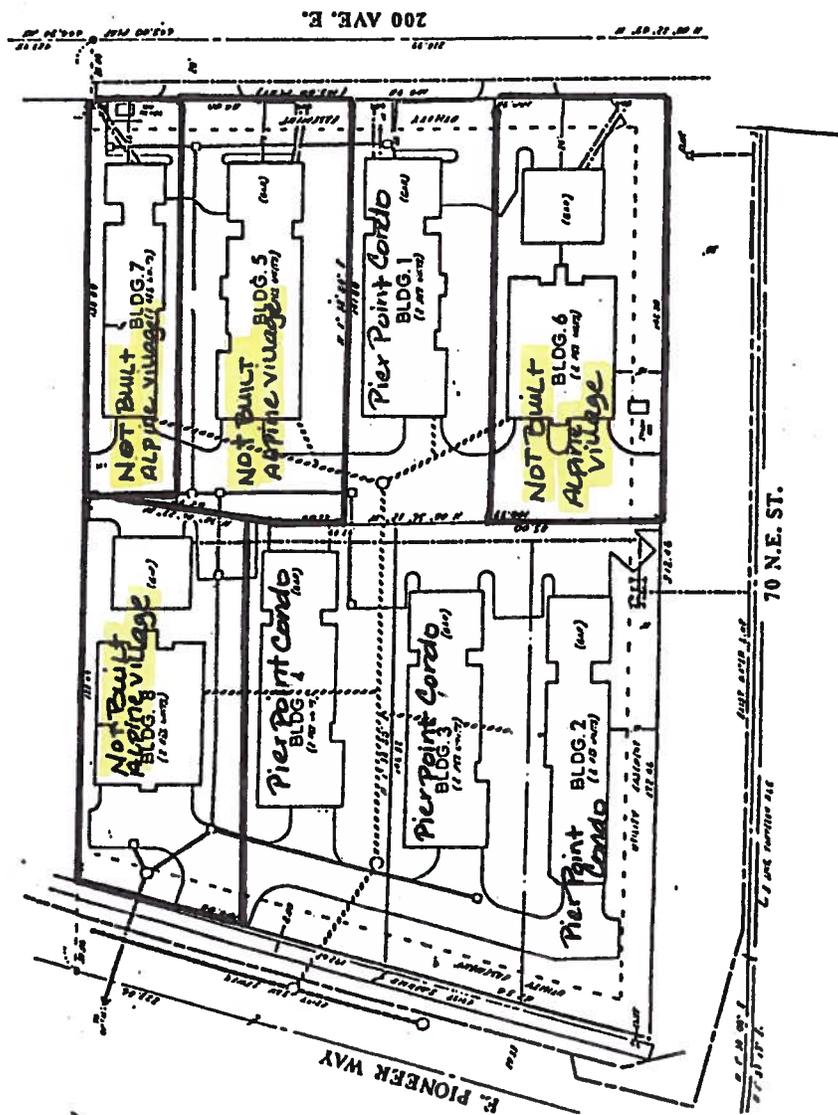
Sincerely,



William L. Massey

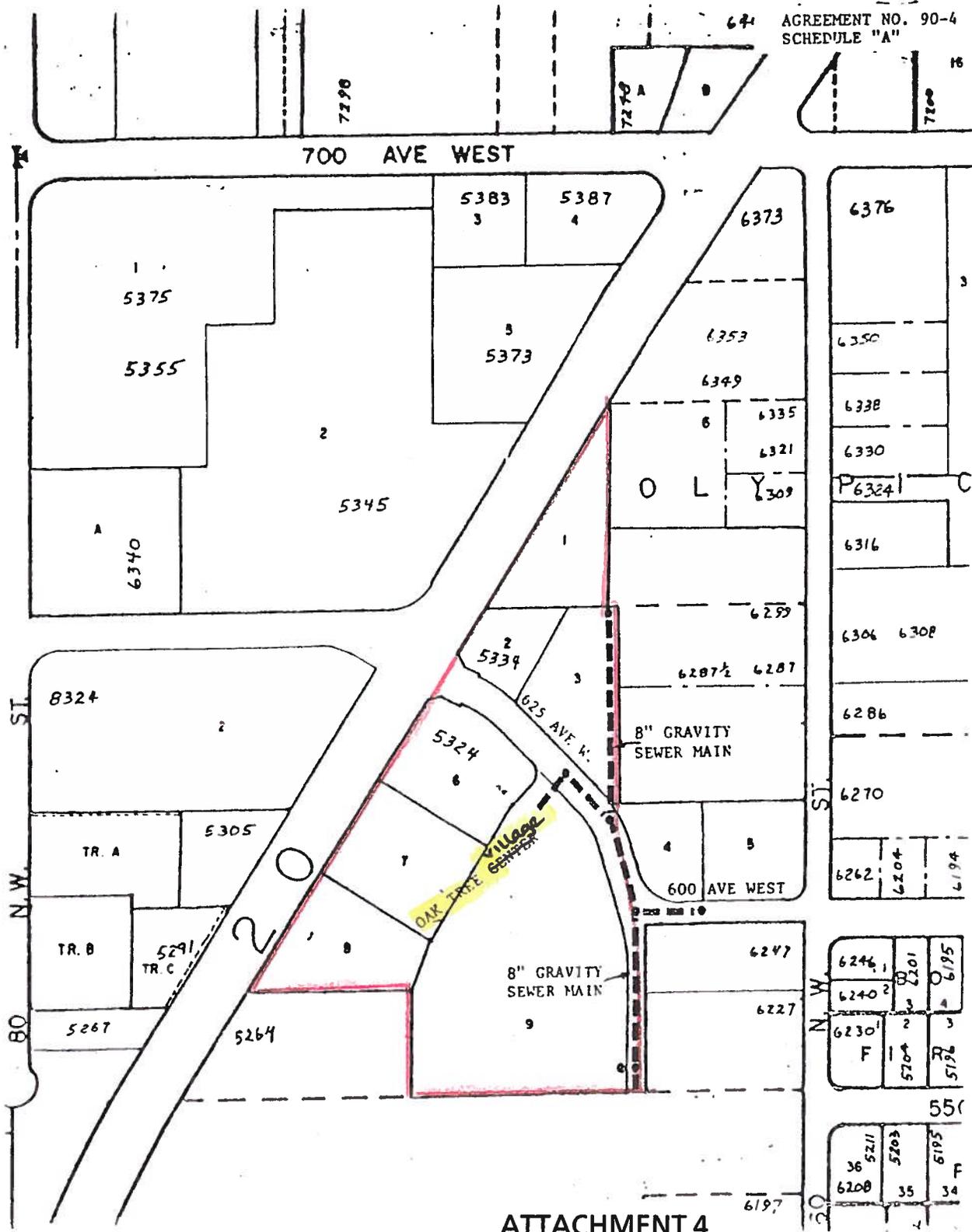
Cc: Ethan Spoo, Senior Planner, City of Oak Harbor
Steve Powers, Development Services Director, City of Oak Harbor
Margery Hite, City Attorney, City of Oak Harbor
Jim Slowik, Mayor, City of Oak Harbor

Enclosure: Copy of Pier Point map
Oak Tree Village map



Pier Point

AGREEMENT NO. 90-4
SCHEDULE "A"



Legislative Edit Version

Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment. and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
21.80.010 Binding site plans allowed.
21.80.020 Division of property.
21.80.025 Condominium binding site plan.
21.80.030 Effect.
21.80.040 Application.
~~**21.80.050 Procedure upon application.**~~
21.80.060~~050~~ Requirements for a binding site plan map.
21.80.055 Site plan review required.
~~**21.80.070~~060~~ Certifications required.**~~
~~**21.80.080~~070~~ Title report.**~~
~~**21.80.090 Survey required.**~~
~~**21.80.100~~080~~ Approval procedure.**~~
~~**21.80.110~~090~~ Recording requirements.**~~
~~**21.80.120~~100~~ Development requirements.**~~
~~**21.80.130~~110~~ Standards for review of commercial binding site plan.**~~
~~**21.80.140~~120~~ Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.**~~
~~**21.80.150~~130~~ Performance guarantee requirements.**~~
~~**21.80.160~~140~~ Warranty requirements for acceptance of final improvements.**~~
~~**21.80.170~~150~~ Survey required.**~~
~~**21.80.180~~160~~ Dedication – Warranty deed.**~~
~~**21.80.200~~170~~ Requirements for Modification of binding site plan standards.**~~
~~**21.80.180 Alteration or vacation of an approved binding site plan.**~~
~~**21.80.300~~190~~ Appeals to the hearing examiner.**~~
~~**21.80.400~~200~~ Enforcement.**~~

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (4~~3~~).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:
(1) Divisions of land into lots classified for industrial or commercial use;
(2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies

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with all applicable mobile home park regulations and the zoning code;

- ~~(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and~~
- (4)(3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot

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lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to eChapter 19.48 is required for every lot created under this chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this eChapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

~~An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.~~

21.80.050 Procedure upon application.

~~At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.~~

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The ~~final~~ recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements ~~either to be filed separately or on the binding site plan~~ must be referenced on the binding site plan;
- (8) ~~Zoning setback lines and building envelope sites where applicable;~~
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) ~~Parking areas, general circulation, and landscaping areas where applicable;~~

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- ~~(14)~~ Proposed use and location of building with dimensions where applicable;
- ~~(15)~~ Loading areas where applicable;
- ~~(16)~~(13) Utilities; and
- ~~(17)~~(14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.070060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.
- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

~~21.80.090 Survey required.~~

~~A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.~~

21.80.100080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- ~~(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.~~
- ~~(3)~~ (2) The director shall review the final binding site plan application and circulate it to other city departments to determine whether the requirements of this chapter ~~and preliminary approval~~ have been met.
- (4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (5) If either the director or the city engineer determine that the requirements have not been met, the ~~final~~ binding site plan shall be returned to the applicant for modification,

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correction, or other action as may be required for approval.

- (65) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120100 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

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- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.140120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
 - (c) Reciprocal easements for parking shall be provided to all tenants and owners.
 - (d) The developer has ~~submitted~~ entered into a binding schedule development agreement pursuant to eChapter 18.30 for completion of all phases.
 - (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in ~~subsection (2) of this section~~ the development agreement pursuant to eChapter 18.30.
 - (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
 - (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request ~~final~~ approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the

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city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.

- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170150 Survey required.

- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.190160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

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21.80.200170 Requirements for modification of binding site plan standards.

- (1) Any applicant can request and make application to the city requesting. As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of OHMC 21.80.130 or 21.80.140 or OHMC the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as an administrative a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) Alteration: for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) Application form. An application shall be submitted on a form provided by the Director.

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- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20-OHMC.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

(4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20-OHMC.

21.80.300190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

“Clean” Version

Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled “Binding Site Plans” last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
- 21.80.010 Binding site plans allowed.**
- 21.80.020 Division of property.**
- 21.80.025 Condominium binding site plan.**
- 21.80.030 Effect.**
- 21.80.040 Application.**

- 21.80.050 Requirements for a binding site plan map.**
- 21.80.055 Site plan review required.**
- 21.80.060 Certifications required.**
- 21.80.070 Title report.**

- 21.80.080 Approval procedure.**
- 21.80.090 Recording requirements.**
- 21.80.100 Development requirements.**
- 21.80.110 Standards for review of commercial binding site plan.**
- 21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.**
- 21.80.130 Performance guarantee requirements.**
- 21.80.140 Warranty requirements for acceptance of final improvements.**
- 21.80.150 Survey required.**
- 21.80.160 Dedication – Warranty deed.**
- 21.80.170 Requirements for modification of binding site plan standards.**
- 21.80.180 Alteration or vacation of an approved binding site plan.**
- 21.80.190 Appeals to the hearing examiner.**
- 21.80.200 Enforcement.**

21.80.005 Title
This chapter shall be entitled “Binding Site Plans.”

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (3).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;

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- (3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
 - (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:

All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
 - (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to chapter 19.48 is required for every lot created under this Chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

21.80.050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements to be filed separately must be referenced on the binding site plan;
- (8)
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as

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shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) The director shall review the application and circulate it to other city departments to determine whether the requirements of this chapter have been met.
- (3) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (4) If either the director or the city engineer determine that the requirements have not been met, the binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (5) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.100 Development requirements.

All development must be in conformance with the recorded binding site plan.

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21.80.110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department

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personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has entered into a development agreement pursuant to Chapter 18.30 for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in the development agreement pursuant to Chapter 18.30.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.150 Survey required.

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- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

21.80.170 Requirements for modification of binding site plan standards.

- (1) As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) Alteration: for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.(b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) Application form. An application shall be submitted on a form provided by the Director.
- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved

vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20.

21.80.190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40..
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

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City Attorney

Published: _____

Binding Site Plan Code Amendment
Ordinance

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**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.

City of Oak Harbor Planning Commission Report

Date: August 27, 2013
Subject: Binding Site Plan Code
Amendments: Informational
Briefing

FROM: Steve Powers, Development Services Director *RSP*

PURPOSE

This report presents materials related to a pending code amendment: the binding site plan (BSP) code amendment. Staff will brief the Planning Commission on the status of this code amendment. This item is for information only. No action is required by the Planning Commission.

BACKGROUND

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

Oak Harbor Municipal Code Chapter 21.80 is devoted to binding site plans. A review of the existing language found that it did not specifically or adequately address a process for the alteration or vacation of previously approved BSPs. Staff notes this review was the result of a past application seeking to alter a previously approved binding site plan.

The history of this project is lengthy and cannot reasonably be summarized in a few sentences. However, the following abbreviated project timeline and summary is shown below:

- Staff worked with the Planning Commission in late-2010 and early-2011 to identify necessary revisions to the existing code.
- The Planning Commission conducted the required public hearing over three meeting dates and accepted testimony from the public and from staff.
- On February 22, 2011 the Commission forwarded a recommendation of approval of the draft code to the City Council.
- Work on the project was suspended shortly after that time pending the resolution of a land use application appeal. Final action on the appeal occurred in June 2012.
- City Council was briefed on this project at their May 29, 2013 workshop.
- The code amendment was tentatively scheduled for the June 18, 2013 City Council

meeting. The item was not included as part of the final agenda for that meeting and a new date for Council consideration has not yet been selected.

- As a result of the workshop briefing, the Mayor requested staff brief the Planning Commission on the status of the project.

The materials attached to this report are the same ones provided to the City Council for their workshop. In addition, staff has included a citizen letter submitted to the Mayor and City Council after that workshop and the City's response to that letter.

RECOMMENDATION

Action by the Planning Commission is not required since the Commission has already made a recommendation on this matter.

ATTACHMENTS

- City Council workshop materials from May 29, 2013
- Letter from Ms. Sue Karahalios to the Mayor and City Council dated June 11, 2013
- Letter from Mayor Dudley to Ms. Karahalios dated July 16, 2013

City Council
Workshop Materials
from May 29, 2013

City of Oak Harbor City Council Agenda Bill

Bill No. _____
Date: June 18, 2013 (Tentative)
Subject: Ordinance No. 1657:
Binding Site Plan Code
Amendments

FROM: Steve Powers
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill introduces a draft ordinance to the City Council that amends Oak Harbor Municipal Code (OHMC) Chapter 21.80, Binding Site Plans, by establishing a process for altering or vacating previously approved binding site plans and making other related amendments.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan (BSP). Should a city choose to adopt such an ordinance it is required to provide for the alteration or vacation of BSPs.

There are also two sections of the Oak Harbor Municipal Code that are relevant to this agenda item. One addresses the adoption of ordinances in general (OHMC 1.04.020), while the other addresses amendments to land use codes (OHMC 18.20.270).

OHMC Section 1.04.020(2) states:

An ordinance other than an emergency ordinance, budget amendment, moratorium ordinance or ordinance to be passed after a public hearing shall be introduced at least one full council meeting prior to the one it is considered for passage. After introduction and consideration, the ordinance shall then be continued to a scheduled subsequent full council meeting for additional consideration and for action such as passage, rejection or continuance to another hearing date.

City of Oak Harbor City Council Agenda Bill

OHMC Sections 18.20.270(1) and (2) establish that amendments to land use codes require a public hearing before the Planning Commission with a recommendation to the City Council. The City Council may hold additional hearings. Traditionally, the Council has conducted its own hearing.

FISCAL IMPACT DESCRIPTION

Funds Required: N/A

Appropriation Source: N/A

SUMMARY STATEMENT

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80; please see Attachment 1). A review of the existing language found that it does not specifically or adequately address the alteration or vacation of previously approved BSPs. Staff notes this review was the result of a past application seeking to alter a previously approved binding site plan.

BACKGROUND

The past application, submitted by Alpine Village, Inc. in 2010, sought an amendment to the Binding Site Plan for Pier Point Condominiums. The City processed the application, ultimately denying the requested amendment. Alpine Village, Inc. appealed the City's decision, first to the Hearing Examiner and then to Island County Superior Court. The Superior Court ruled in the City's favor and remanded the case back to the Hearing Examiner to enter a decision consistent with the Court's. The Hearing Examiner entered his decision on June 27, 2012. The Hearing Examiner's decision provides a summary of the issues involved (please see Attachment 2.)

The above information on Pier Point Condominium/Alpine Village, Inc. application is provided to the City Council as background information only and to illustrate why the code amendment project was initiated. It is important to note that while the proposed draft ordinance addresses some of the issues raised with the Pier Point application it is not specific to only that particular BSP. The proposed code amendment applies to all existing and future binding site plans, as noted in the draft.

Work on the draft amendment began in late-2010 and continued into 2011. Work was suspended after the Planning Commission completed their review and recommendation, pending completion of the appeal process for the Pier Point Condominium/Alpine Village, Inc. application.

City of Oak Harbor City Council Agenda Bill

PLANNING COMMISSION REVIEW

As required by OHMC 18.20.270, the Planning Commission conducted a public hearing on the proposed code amendment. The hearing was opened on December 28, 2010, and then continued to January 25, 2011 and February 22, 2011. Copies of the staff reports, attachments and minutes from those hearings are attached as Attachment 3. These materials document the background information presented to the Planning Commission by staff and the code concepts considered by the Commission. The Commission accepted testimony from the public and from staff on all three dates. After closing the hearing on February 22, 2011, they recommended approval of the attached draft code to the City Council (Attachment 4)

STANDING COMMITTEE REPORT

The draft code was discussed with the Governmental Services Standing Committee at their February 8 and March 2, 2011 meetings. No additional briefings of that committee have occurred.

The draft code was presented to the City Council at their May 29, 2013 workshop.

RECOMMENDED ACTION

Open public hearing on Ordinance No. 1644 and continue to May 21, 2013.

ATTACHMENTS

1. Oak Harbor Municipal Code Chapter 21.80, Binding Site Plans (existing code)
2. Hearing Examiner Decision of June 27, 2012
3. Planning Commission staff reports, attachments and minutes from December ²⁸~~17~~, 2010; January 25, 2011 and February 22, 2011.
4. Draft Ordinance No. 1644, amending OHMC 21.80

Oak Harbor Municipal Code

ated thereby or where no lot is reduced in size below the minimum square footage and street frontage required by the applicable zoning control and this title. (Ord. 1568 § 9, 2010).

21.70.090 Filing of short plat and/or boundary line adjustment

The subdivider shall file the approved short plat and/or boundary line adjustment and shall furnish the city with one permanent reproducible copy, mylar or better quality, of the short plat or boundary line adjustment including all recording data within 30 days after approval by the director or the approval shall be deemed null and void. (Ord. 1568 § 9, 2010).

Chapter 21.80

BINDING SITE PLANS

Sections:

- 21.80.005 Title.
- 21.80.010 Binding site plans allowed.
- 21.80.020 Division of property.
- 21.80.025 Condominium binding site plan.
- 21.80.030 Effect.
- 21.80.040 Application.
- 21.80.050 Procedure upon application.
- 21.80.060 Requirements for a binding site plan map.
- 21.80.070 Certifications required.
- 21.80.080 Title report.
- 21.80.090 Survey required.
- 21.80.100 Approval procedure.
- 21.80.110 Recording requirements.
- 21.80.120 Development requirements.
- 21.80.130 Standards for review of commercial binding site plan.
- 21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.
- 21.80.150 Performance guarantee requirements.
- 21.80.160 Warranty requirements for acceptance of final improvements.
- 21.80.170 Survey required.
- 21.80.180 Dedication – Warranty deed.
- 21.80.200 Modification.
- 21.80.300 Appeals to the hearing examiner.
- 21.80.400 Enforcement.

21.80.005 Title.

This chapter shall be entitled "Binding Site Plans." (Ord. 1568 § 10, 2010).

21.80.010 Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (4). (Ord. 1568 § 10, 2010).

21.80.020 Division of property.

Division of property by binding site plans may only be used for the following:

(1) Divisions of land into lots classified for industrial or commercial use;

(2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all appli-

21.80.025

cable mobile home park regulations and the zoning code;

(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

(4) A division of land subject to Chapter 64.32 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140. (Ord. 1568 § 10, 2010).

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts if:

(1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:

(a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;

(b) The city has approved a binding site plan for all such land;

(c) Such approved binding site plan is recorded in the county or counties in which such land is located; and

(d) The binding site plan contains thereon the following statement:

All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one (1) or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site

plan shall be binding upon all now or hereafter having any interest in the land described herein.

(2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.

(3) The binding site plan for condominiums shall be deemed approved if:

(a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;

(b) Done in connection with the issuance of a building permit or final certificate of occupancy. (Ord. 1568 § 10, 2010).

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. (Ord. 1568 § 10, 2010).

21.80.040 Application.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels. (Ord. 1568 § 10, 2010).

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.50 OHMC. (Ord. 1568 § 10, 2010).

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final binding site plan shall be drawn on mylar drafting film having dimensions of 18 inches by 24 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites

Oak Harbor Municipal Code

with accurate bearings, dimensions or angles and arcs, and of all curve data;

(5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;

(6) Number of each lot and each block;

(7) Reference to covenants, joint use, access easements, or other agreements either to be filed separately or on the binding site plan must be referenced on the binding site plan;

(8) Zoning setback lines and building envelope sites where applicable;

(9) Location, dimensions and purpose of any easements, noting if the easements are private or public;

(10) Location and description of monuments and all lot corners set and found;

(11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;

(12) A dedicatory statement acknowledging public and private dedications and grants;

(13) Parking areas, general circulation, and landscaping area where applicable;

(14) Proposed use and location of building with dimensions where applicable;

(15) Loading areas where applicable;

(16) Utilities; and

(17) Other restriction and requirements as deemed necessary by the city. (Ord. 1568 § 10, 2010).

21.80.070 Certifications required.

(1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

(2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law. (Ord. 1568 § 10, 2010).

21.80.080 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan. (Ord. 1568 § 10, 2010).

21.80.090 Survey required.

A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor. (Ord. 1568 § 10, 2010).

21.80.100 Approval procedure.

(1) Binding site plan approval shall be a Type II review process.

(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.

(3) The director shall review the final binding site plan and circulate it to other city departments to determine whether the requirements of this chapter and preliminary approval have been met.

(4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.

(5) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.

(6) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan. (Ord. 1568 § 10, 2010).

21.80.110 Recording requirements.

(1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Har-

21.80.120

bor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.

(2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor. (Ord. 1568 § 10, 2010).

21.80.120 Development requirements.

All development must be in conformance with the recorded binding site plan. (Ord. 1568 § 10, 2010).

21.80.130 Standards for review of commercial binding site plan.

The following standards shall apply to commercial binding site plans:

(1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.

(2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.

(3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.

(4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.

(5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.

(6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.

(7) Freestanding signage may be off of the tract, parcel or lot where the business is located as

long as sign requirements are met within the area encompassed by the binding site plan.

(8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

(9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants. (Ord. 1568 § 10, 2010).

21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

(1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.

(2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:

(a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.

(b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

(c) Reciprocal easements for parking shall be provided to all tenants and owners.

(d) The developer has submitted a binding schedule for completion of all phases.

(e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall

become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in this subsection (2).

(f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.

(g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners. (Ord. 1568 § 10, 2010).

21.80.150 Performance guarantee requirements.

(1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request final approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state-approved surety, the guarantee must be in a form acceptable to the city attorney.

(2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.

(3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.

(4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy. (Ord. 1568 § 10, 2010).

21.80.160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-

year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city. (Ord. 1568 § 10, 2010).

21.80.170 Survey required.

(1) The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.

(2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.

(3) In all binding site plans, perimeter monuments must be set before final approval can be granted.

(4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed in accordance with city design and construction standards.

(5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements. (Ord. 1568 § 10, 2010).

21.80.180 Dedication – Warranty deed.

Any dedication, donation or grant as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. (Ord. 1568 § 10, 2010).

21.80.200 Modification.

(1) Any applicant can request and make application to the city requesting a modification of up to five percent from a requirement of OHMC 21.80.130 or 21.80.140 or OHMC Title 19.

(2) Such request for modification shall be considered by the director as an administrative decision.

(3) The modification shall not be granted by the director until the following facts have been established:

(a) There are exceptional circumstances or conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which

21.80.300

prohibit the applicant from meeting the standards of this chapter;

(b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;

(c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;

(d) Landscaping requirements are not thereby reduced. (Ord. 1568 § 10, 2010).

21.80.300 Appeals to the hearing examiner.

(1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner.

(2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action. (Ord. 1568 § 10, 2010).

21.80.400 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator. (Ord. 1568 § 10, 2010).

Chapter 21.90

PENALTY

- Sections:
- 21.90.010 Violation - Nuisance declared.
- 21.90.020 Penalty.
- 21.90.030 Provisions not exclusive.

21.90.010 Violation – Nuisance declared.

Any violation of the provisions of this chapter constitutes a public nuisance which the city can abate by an action in Island County superior court. The cost of such action shall be taxed against the violator. (Ord. 1568 § 11, 2010).

21.90.020 Penalty.

(1) Any knowing or intentional violation of any provision of this title shall be a gross misdemeanor punishable by a fine of up to \$5,000 or a jail sentence of one year in jail or both such fine and jail time.

(2) Any other violation of this title shall be a civil infraction with a maximum penalty of \$250.00. (Ord. 1568 § 11, 2010).

21.90.030 Provisions not exclusive.

Penalty and enforcement provisions in this chapter are not exclusive and the city may pursue any remedy or relief authorized by law or equity. (Ord. 1568 § 11, 2010).

RECEIVED

JUL 02 2012

CITY OF OAK HARBOR
HEARING EXAMINER

CITY OF OAK HARBOR
Development Services Department

Administrative Appeal of
Alpine Village, Inc.

) No. BSP-IO-00001
) ORDER ON REMAND
)
)
)
)

Preliminary Information

Hearing Date: January 10, 2011

Order on Direct Judicial Review Date: December 27, 2011

Parties of Record:

Alpine Village, Inc. - appellant
C. Thomas Moser
1204 Cleveland Avenue
Mount Vernon, WA 98273

City of Oak Harbor - respondent
Margery Hite, Special Counsel.
865 SE Barrington Drive
Oak Harbor, WA. 98277

Steve Powers
Development Services Director
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Christon C. Skinner, Attorney for all other listed parties
Skinner and Saar, P.S.
791 SE Barrington Drive
Oak Harbor WA 98277

Alice Smith - respondent
1085 SE Regatta Drive, AIOI
Oak Harbor, WA 98277

Pier Point Condominium Association - respondent
c/o Sue Karahalios
PO Box 144
Oak Harbor, WA 98277

Order On Remand
Page 1

Lois Lewis - respondent
 c/o Pier Point Condominium Association
 PO Box 144
 Oak Harbor, WA 98277

Robert Severns - respondent
 Pier Point Condominiums, Unit C-201
 1085 SE Regatta
 Oak Harbor, WA 98277

Exhibits:

- 1 Appellant's Opening Brief, dated December 21, 2010, prepared by C. Thomas Moser, Attorney for the Appellant, with attachments
 - 1-1 Staff Report, Appeal BSP-05-00001, July 31, 2005
 - 1-2 Preliminary Staff Analysis, Pier Point Condominiums
 - 1-3 Notice of Decision, May 2, 2005
 - 1-4 LUPA Petition and Appeal, no. 06-2-00816-7
 - 1-5 Verbatim Report of Court's Oral Ruling, February 15, 2007
 - 1-6 Order Dismissing LUPA Petition with Prejudice, February 15, 2007
 - 1-7 Declaration of Tom Burdett, May 21, 2006
 - 1-8 Declaration of William L. Massey, August 24, 2006
 - 1-9 Order Granting Plaintiffs Motion for Partial Summary Judgment, August 27, 2009
 - 1-10 Order Granting Plaintiffs Second Motion, November 23, 2009

- 2 Cover letter, dated December 23, 2010, from Kimberly Waldbaum, with attachments:
 - 2-1 City's Motion to Dismiss Appeal and to Strike the January 10, 2011 Hearing Date to hear the Motion to Dismiss, dated December 23, 2010, prepared by Kimberly Waldbaum
 - 2-2 Declaration of Service, December 23, 2010, Marlis Pehling
 - 2-3 Hearing Examiner Decision, BSP05-0001, November 15, 2006
 - 2-4 LUPA Petition and Appeal, No. 06-2-00816-7
 - 2-5 Order Dismissing LUPA Petition with Prejudice, February 15, 2007

- 3 Declaration of Steve Powers, December 29, 2010

- 4 Letter dated December 29, 2010, from Alice Smith

- 5 City's Response Brief, December 29, 2010, Kimberly Waldbaum

- 6 Letter, December 30, 2010, Sue Karahalios, Alice Smith, Robert Severns, and Rhonda Haines of Pier Point Condominium Association

- 7 Brief of Pier Point Condominium Owners Association, December 30, 2010, prepared by

- Sue Karahalois
- 8 **Declarations of Lois Lewis, Samir and Michele Bishai, Alice Smith, David Jasman, Robert Severns, Sue Karahalois, Rhonda Severns; John Royce, Jr., December 30, 2010**
 - 9 **Appellant's Response to City's Motion to Dismiss, January 3, 2011, C. Thomas Moser**
 - 10 **Declaration of Pier Point Condominium Association, January 4,2011, Sue Karahalios**
 - 11 **Letter dated January 6, 2011, Lois Lewis**
 - 12 **Declaration of Robert Severns, January 10, 2011**
 - 13 **City's Reply in Support of Motion to Dismiss, January 6,2011, Kimberly Waldbaum**
 - 14 **Superior Court, No. 08-2-00229-7 Answer to Complaint for Quiet Title and Declaratory Judgment**
 - 15 **Superior Court, No. 08-2-00229-7, Complaint for Quiet Title and Declaratory Judgment**
 - 16 **Superior Court, No. 08-2-00229-7, Plaintiffs Response to Defendants' Motion for Partial Summary Judgment**
 - 17 **Superior Court, No. 08-2-00229-7, Motion for Partial Summary Judgment Re: Quiet Title**
 - 18 **Cover letter, dated November 2, 2006, from G. Tim Martin with enclosure:**
 - 18-1 **Supplemental Memorandum of Appellant Alpine Village, Inc., November 2, 2006, prepared by G. Tim Martin**
 - 18-2 **Verbatim Report of Proceedings (Excerpt), September 11, 2006**
 - 19 **Order Denying Respondents' Motions for Dismissal of LUPA Petition and Other Relief, Island County Superior Court Cause No. 11-2-00137-1, Judge Alan R. Hancock, June 6, 2011.**
 - 20 **Agreed Order on Direct Judicial Review and Briefing Schedule, Island County Superior Court Cause No. 11-2-00137-1, Judge Alan R. Hancock, June 6, 2011.**
 - 21 **Order on Direct Judicial Review, Island County Superior Court Cause No. 11-2-137-1, Judge Alan R. Hancock, December 27, 2011.**

I.

THIS Matter comes before the Hearing Examiner on remand from the Island County Superior Court in the Land Use Petition Act Appeal filed by Alpine Village, Inc., in Island County Superior Court Cause No. 11-2-00137-1. An "Order on Direct Judicial Review" filed in that case on December 27, 2011 remands this matter back to the Oak Harbor Hearing Examiner for action "in compliance with this decision."

II.

The Binding Site Plan for Pier Point Condominiums was approved by the City on November 19, 1991, and thereafter amended on January 9, 1992. The January 9, 1992 amendment was approved prior to the expiration of the construction schedule. Pursuant to the requirements of the Binding Site Plan Ordinance, the proposed 8-phased, 16-condominium unit development was to be completed by January 15, 1996.

III.

On March 5, 2010, Alpine Village, Inc. submitted a request to the City for approval of an amendment to the Binding Site Plan for Pier Point Condominiums, SPR 9-91. Specifically, Alpine requested an extension of the construction schedule set forth in the binding site plan notwithstanding the fact that it had expired prior to the date the request for an extension was submitted. The City, through its Development Services Director, Steve Powers, denied Alpine Village, Inc.'s application by decision dated June 30, 2010.

IV.

Alpine Village, Inc. appealed that decision to the Hearing Examiner. The Hearing Examiner granted the City's motion to dismiss the appeal on January 26, 2011. That decision dismissed Alpine Village Inc.'s appeal of the Administrator's Decision dated June 30, 2010, based upon principles of collateral estoppel and res judicata.

V.

Alpine Village, Inc. appealed that Hearing Examiner decision to the Island County Superior Court. The Hearing Examiner's decision was reversed by the Superior Court. (See Order Denying Respondents' Motions for Dismissal of LUPA Petition and Other Relief, Island County Superior Court Cause No. 11-2-00137-1, June 6, 2011.)

VI.

The parties on appeal in the LUPA action then requested that the superior court grant direct judicial review of those legal issues that would be necessary for a hearing examiner's decision on remand. (See Agreed Order on Direct Judicial Review and Briefing Schedule filed in the aforementioned Superior Court proceeding.)

VII.

The Island County Superior Court affirmed the decision of the City of Oak Harbor's Administrator that there is no authority for the City to amend the expired construction schedule in this case. (Order on Direct Judicial Review.)

DECISION

The Administrator's denial of Alpine Village Inc.'s application to amend the construction schedule on the above-captioned binding site plan is therefore **AFFIRMED** and the above-captioned Appeal is **DISMISSED**.

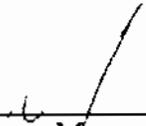
NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES
FROM FINAL DECISIONS OF
THE OAK HARBOR HEARING EXAMINER

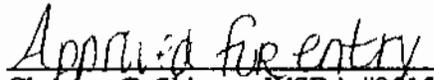
This decision of the Hearing Examiner for the City of Oak Harbor is final ^{Ka} ~~ten~~ ^{twenty-one} days after the issuance of this decision unless it is appealed to the Island County Superior Court within ~~ten~~ ^{twenty-one} days of the issuance of this decision, pursuant to ^{36a} ~~30.70C~~ ^{Ka} R.C.W.

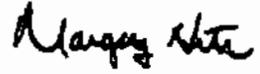
DATED this 27 day of June, 2012.


Michael Bobbink, Hearing Examiner

Approved for entry; presentation waived:


C. Thomas Moser, WSBA #7287
Attorney for Petitioner


Christon C. Skinner, WSBA #9815
Attorney For Pier Point Condominium Association
and Individual Affected Property Owners


Margery Hite, WSBA #8450
Attorney for City of Oak Harbor

FILED-COPY

DEC 27 2011

**DEBRA VAN PELT
ISLAND COUNTY CLERK**

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF ISLAND**

ALPINE VILLAGE, INC., a Washington corporation,

Petitioner,

vs.

CITY OF OAK HARBOR, a municipal corporation; LOIS A. LEWIS, TRUSTEE FOR FUND 'A' OF THE WILLIAM E. LEWIS AND LOIS A. LEWIS LIVING TRUST; JOHN C. ROYCE, JR.; SAMIR BISHAI and MICHELLE BISHAI, husband and wife; ALICE S. SMITH; DAVID A. JASMAN; SUE M. KARAHALIOS; ROBERT T. SEVERNS; RHONDA LEE HAINES-PITT aka RHONDA KIRCHOFF; and PIER POINT CONDOMINIUM ASSOCIATION,

Respondents.

NO. 11-2-00137-1

ORDER ON

DIRECT JUDICIAL REVIEW

THIS MATTER came on regularly before the undersigned judge of the above-entitled court upon an agreed order for direct judicial review of this land use petition act (LUPA) appeal on July 29, 2011. Petitioner Alpine Village, Inc. is represented by its attorney of record, Tom Moser of the Moser Law Office. Respondent, Pier Point Condominium

ORDER ON DIRECT JUDICIAL REVIEW - 1

Oak Harbor City Attorney's Office
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540

1 Association is represented by its attorney, Christon C. Skinner. Respondent, City of Oak
2 Harbor is represented by counsel, Margery Hite, Oak Harbor City Attorney. The parties
3 jointly moved for this court to accept direct judicial review of three, legal issues previously
4 decided by the City of Oak Harbor Director of Development Services in Binding Site Plan
5 BSP-10-00001 and dated June 30, 2010. Those legal issues had not then been reviewed by the
6 Hearing Examiner. This court agreed to direct judicial review of three legal issues by order
7 dated June 6, 2011.
8

9 Prior to submission of these legal issues to the court for review, the parties stipulated and
10 agreed that the Oak Harbor Development Services Director's Decision on these issues is the
11 "construction of a law by a local jurisdiction with expertise" and each waived their right to
12 have a Hearing Examiner determination prior to judicial review.
13

14 After considering the records and files herein, the memoranda of law and oral argument
15 submitted by the parties; and the court deeming itself fully advised, this court renders the
16 following decision on the three issues submitted for direct judicial review:

- 17 1. Does the City have authority to amend an expired, construction schedule in a binding
18 site plan?
19 No, the City has no authority to allow an extension of a construction phasing schedule
20 in this binding site plan after it has expired.
21
22 2. Does the City have authority to amend the expired, binding site plan construction
23 schedule if such amendment would conflict with the Condominium Declaration's
24 schedule for development?
25

26 ORDER ON DIRECT JUDICIAL
REVIEW - 2

Oak Harbor City Attorney's Office
865 SE Barrington Drive
Oak Harbor, Washington 96277
(360) 279-4540

1 The Pier Point condominium owners have the right to enforce the 7-year limitation on
 2 additional construction of condominium phases in the Declaration of the Pier Point
 3 Condominium as a running covenant. The City lacks authority to amend the expired
 4 binding site plan construction schedule regardless.

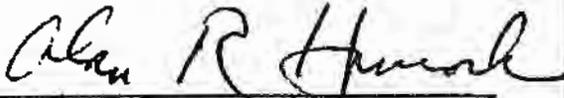
- 5
 6 3. Do the conditions and easements in Binding Site Plan #9-91 require all property
 7 owners impacted by the change to agree to any amendment to the binding site plan?
 8 In particular, did the expiration of the construction schedule affect any development
 9 rights of the condominium property owners in the un-built phases of the binding site
 10 plan?

11 Any further phases of the Pier Point Condominium are barred. Only if all landowners
 12 who have the benefit of the 7-year time limit on further phases were to waive its effect
 13 and agree that further phases could be constructed could the binding site plan be
 14 amended to that effect.

15
 16 The full text of this court's letter opinion of July 29, 2011 is attached hereto and
 17 incorporated in its entirety by reference in this decision.

18 IT IS FURTHER ORDERED that this matter be and hereby is REMANDED back to
 19 the Oak Harbor Hearing Examiner for action in compliance with this decision.

20 DONE IN OPEN COURT this 27th day of December, 2011.

21
 22
 23 
 24 Honorable Alan R. Hancock, Judge

25 ORDER ON DIRECT JUDICIAL
 26 REVIEW - 3

Oak Harbor City Attorney's Office
 865 SE Barrington Drive
 Oak Harbor, Washington 98277
 (360) 279-4540

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Presented by:

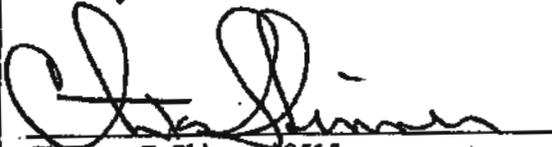
S

Margery Hite, #8450
Attorney for Respondent
City of Oak Harbor

Copy received; Notice of
Presentation waived;
Approved for entry:

S

C. Thomas Moser #7287
Attorney for Petitioner



Christon C. Skinner #9515
Attorney for Pier Point Condominium
Association and individual affected
property owners

ORDER ON DIRECT JUDICIAL
REVIEW - 4

Oak Harbor City Attorney's Office
865 SE Barrington Drive
Oak Harbor, Washington 98277
(360) 279-4540


SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR ISLAND COUNTY

Law & Justice Facility, 101 NE 6th St, PO Box 3000, Coupeville WA 98239-3000
Phone: (360) 679-7361 Fax: (360) 679-7383

July 29, 2011

C. Thomas Moser, Esq.
 1204 Cleveland Avenue
 Mount Vernon, WA 98273

Margery Hite, Esq.
 Oak Harbor City Attorney's Office
 865 SE Barrington Drive
 Oak Harbor, WA 98277

Christon C. Skinner, Esq.
 Law Offices of Skinner & Saar, P.S.
 791 SE Barrington Drive
 Oak Harbor, WA 98277

Re: Alpine Village, Inc. v. City of Oak Harbor, et al.
 Island County Cause No. 11-2-00137-1

Dear Counsel:

The court held a hearing on July 29, 2011, on the issues submitted on direct judicial review in this case. Following the hearing, the court issued its oral decision on the issues. The court is now reducing its oral decision to writing to assist the parties as they move forward with the case.

Alpine Village, Inc. filed a petition under the Land Use Petition Act (LUPA), RCW 36.70C, appealing the Oak Harbor Hearing Examiner's Order Granting City's Motion to Dismiss Appeal. The hearing examiner's decision affirmed the Oak Harbor Director of Development's decision to deny Alpine Village's application to amend the binding site plan for the Pier Point Condominium property. Specifically, the application sought to revise the construction phasing schedule.

The court previously denied the respondents' motion to dismiss the appeal based on the grounds of collateral estoppel and res judicata.

By agreement of the parties, the court accepted direct judicial review of three legal issues arising from the Director's decision. These issues are as follows:

Court's Decision on Direct Judicial Review - page 1

ALAN R. HANCOCK
Judge
 VICKIE L. CHURCHILL
Judge
 BROOKE POWELL
Court Administrator

1. Does the City have authority to amend an expired construction schedule in a binding site plan?
2. Does the City have authority to amend the expired binding site plan construction schedule if such amendment would conflict with the Condominium Declaration's schedule for development?
3. Do the conditions and easements in Binding Site Plan #9-91 require all property owners impacted by the change to agree to any amendment to the binding site plan? In particular, did the expiration of the construction schedule affect any development rights of the condominium property owners in the un-built phases of the binding site plan?

The background facts of this case are that on November 19, 1991, the City of Oak Harbor approved Binding Site Plan 9-91 for the proposed Pier Point Condominiums. The BSP provided for the phased development of 16 condominium units in 8, 2-unit buildings, to be constructed in 4 phases. The fourth phase was to be completed by October 1, 1996.

The City approved an amendment to the BSP allowing the 4 originally proposed phases of 2 buildings each to be changed to 8 phases of 1 building (2 units in each building) each. The amended phasing plan indicated that the last phase would be completed by January 15, 1996. The approved amendment showed a new construction schedule providing for 8 phases to be constructed by dates certain, with the final phase 8 to be completed by January 15, 1996.

On May 20, 1992, the previous owner of the property, Donna Mott, recorded a Declaration of Covenants, Conditions, Restrictions and Reservations. The declaration initially affected Phase One of the property, which was subject to the binding site plan. The Declaration also reserved the right to add seven additional phases, which would be subject to the same declaration.

RCW 64.34.216(1)(j) provides that the declaration for a condominium must contain, among other things, a description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised. (In passing, the court notes that the state code reviser has pointed out that RCW 64.34.020 was amended in 2008 to change subsection (29) to subsection (36).)

As required by RCW 64.34.216(1)(j), Article 3 of the Declaration for the Pier Point Condominiums sets forth a development schedule permitting the condominiums to be developed in up to 8 phases, and providing further that no additional phases could be added "more than seven years after the recording of this declaration."

Phases 1-4 of the condominium development were completed, but Phases 5-8 were never completed. Thus, they were not completed either within the timetable established for construction in the amended BSP recorded January 9, 1992, nor within the 7-year deadline set forth in Article 3 of the Declaration.

In Development Services Director Steve Powers's decision entered June 30, 2010, denying Alpine Village's application to amend the construction phasing schedule in the BSP, he also points out that the 7-year deadline for completion of construction of all phases of the condominiums was set forth in the Public Offering Statement for Pier Point Condominiums.

Thus, under the requirements of the binding site plan, no additional phases of the project could be added after May 20, 1999, i.e., 7 years after the recording of the declaration, at the very latest.

It goes without saying that the City cannot act outside of its powers under its municipal code, and therefore it is incumbent on Alpine Village to point to some provision of the code which permits an amendment to an expired construction phasing schedule set forth in an approved binding site plan.

The court will first address the issue of whether the City had authority to amend the expired construction schedule in the binding site plan.

Alpine Village cites subsection 21.80.200, 19.48.090, and 19.48.100 of the Oak Harbor Municipal Code as authority for its position that the City does have the authority to amend the expired construction schedule. It also cites RCW 58.17.215 in this connection.

Binding site plans are governed by Chapter 21.80 of the OHMC. As noted previously, Alpine Village first points to OHMC 21.80.200 as authority for its proposed amendment to the BSP. Subsection (1) of this subsection provides:

"Any applicant can request and make application to the city requesting a modification of up to five percent from a requirement of OHMC 21.80.130 or 21.80.140 or OHMC Title 19."

The City first argues that this code provision authorizes modification of certain code requirements for a BSP rather than establishing a procedure to amend an existing approved binding site plan. The court is not convinced that this is the case, so the court will assume, for the sake of argument, that this code provision allows for amendments to an existing approved BSP.

The City is correct, however, that subsection .200 by its own terms only applies to requests for modification of up to 5 percent from a requirement of OHMC 21.80.130 or 21.80.140. Subsection .130 only applies to commercial BSP's, so that clearly does not apply. Subsection .140 does include the requirements for submission of a BSP for completion of all phases of a phased condominium project. However, the 5 percent variation modification could not be applied to this code provision since no times are set in it. There are no other provisions of .140 that might apply in the situation regarding the Pier Point Condominiums.

Thus, OHMC 21.80.200 does not apply here.

The City is also correct that OHMC 19.48.090, relating to minor modifications of site plans, and 19.48.100, relating to major modifications of site plans, are not applicable here. The site plan review procedures set forth in OHMC 19.48 have to do with *uses* of property, that is to say, the horizontal and vertical arrangement of physical characteristics of a project and the site, as opposed to the *division* of property, which is the subject of the *binding* site plan review procedures of OHMC 21.80.

Moreover, the provisions of OHMC 19.48.090 and .100 do not apply by their own terms in the present case, even assuming that these code provisions applied to binding site plan review procedures, which they don't.

Finally, Alpine Village cites RCW 58.17.215 in support of its position. Again, the City is correct in arguing that this statute does not apply here. The City has elected to adopt a binding site plan review ordinance under RCW 58.17.035. Therefore, the provisions of the State Subdivision Act in RCW 58.17 do not apply.

Next, Alpine Village points out that the City has approved amendments to this BSP in the past, with the implicit argument presumably being that it can do so again. They point to statements by former city attorney Philip Bleyhl and former city planning director Tom Burdett in this connection. Mr. Powers had also apparently held the view at one time that this could be done, but he has changed his opinion. But the conclusion that the City can approve amendments to the BSP because it has done so in the past does not follow from the premise. The court recognizes that these prior actions of the City are final and binding, since there was no appeal of these actions under LUPA. Our State Supreme Court has ruled that even illegal land use decisions must be challenged in a timely, appropriate manner or they become unreviewable by the courts. The most recent case enunciating this rule is Habitat Watch v. Skagit County, 155 Wn.2d 397 (2005). But this doesn't mean that the City can continue to act contrary to its own ordinances.

In saying this, the court is not ruling or pronouncing that the City acted outside its authority in approving prior amendments to the BSP, because that issue is not before the court in this case. It is important to note that prior approved extensions of the construction schedule occurred while there was still time left within the approved construction schedule. This is in contrast to the situation in the present case, where Alpine Village is seeking such an extension after the construction schedule has already expired. There is no indication in the record that the City has actually allowed amendments to expired portions of a BSP. With all due respect to Mr. Bleyhl and Mr. Burdett, and to Mr. Powers, as far as his prior opinion is concerned, to the extent that they have opined that the city has the authority to amend an expired construction schedule in a BSP, their opinions are erroneous.

In general, it is difficult to understand how an argument can be made that the city should allow an amendment to the construction phasing schedule in a BSP after the time limits

have already expired. The construction schedule expired in either 1996, or 1999 at the latest, and there is no construction schedule left to amend.

The foregoing is, presumably, a complete answer to this appeal. The City has no authority to allow an extension of a construction phasing schedule in a binding site plan after it has expired.

The next issue to be addressed is whether the City has authority to amend the expired BSP construction schedule if such amendment would conflict with the condominium declaration's schedule for development. Alpine Village points out that the court has previously ruled that the property owned by Alpine Village is not subject to the declarations, conditions, restrictions, and reservations contained in the Declaration of the Pier Point Condominium. Rather, that Declaration only applies by its terms to the property upon which the built phases of the condominium are located, though the conditions and easements set forth in the BSP continue to apply to the remaining property.

That is true as far as it goes. But note that the only issue addressed in the prior litigation between Alpine Village and the Pier Point Condominium owners was the issue of *ownership* of phases 5-8 of the property. In the context of the prior litigation, to say that the Declaration only applies to property upon which the built phases of the condominium are located is to say, in essence, that the benefits and burdens imposed by the Declaration apply to the built phases of the condominium. But these benefits and burdens can also have legal application to property outside of the built phases of the condominium. To say that the Declaration only applies to property upon which the built phases of the condominium are located is not to say that Pier Point condominium unit owners do not have benefits that may apply to property outside of the condominium.

Again, Article 3 of the Declaration sets forth a development schedule permitting the condominiums to be developed in up to 8 phases and provides further that no additional phases could be added "more than seven years after the recording of this declaration."

RCW 64.34.216(1)(i) provides that a condominium declaration must contain a description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised.

After due consideration, it is evident that the restriction that no additional phases can be added more than 7 years after the recording of the declaration contained in Article 3 of the declaration is a running covenant, just as the name, Declaration and Covenants, Conditions, Restrictions and Reservations, states. The 5 elements of a running covenant are (1) a promise which is enforceable between the original parties, (2) which touches and concerns the land, (3) which the parties intended to bind successors, and (4) which is sought to be enforced by an original party or a successor, against an original party or a successor in possession, (5) who has notice of the covenant or has not given value. 1515-

1519 Lakeview Boulevard Condominium Association v. Apartment Sales Corporation,
146 Wn.2d 194 (2002):

The 7-year time limitation in the declaration has all the attributes of a running covenant. It is, in effect, a promise enforceable between the original parties, which touches and concerns the land, which the parties intended to bind successors, and which is sought to be enforced by successors, that is, the owners of condominium units, against a successor in possession, that is, Alpine Village, who has notice of the covenant by virtue of its recording.

The declaration specifically refers to the fact that the condominium may be developed in up to 8 phases, and phase 1 was submitted to the condominium form of ownership. The BSP was already a matter of public record, so it was clear what the land was that was subject to additional condominium phases. The developer reserved the right to add 7 additional phases. Article 3(b) of the declaration specifically stated that no additional phases may be added more than 7 years after the recording of the declaration, which was May 20, 1992.

Thus, the benefit of the 7-year limitation on further phases inured to the purchasers of Pier Point condominium units, while the burden of the limitation prevented the owner of the property subject to further phases or its successor in interest from developing any further phases after 7 years.

Again, the second question on direct judicial review is whether the City has authority to amend the expired BSP construction schedule if such amendment would conflict with the condominium declaration's schedule for development. The court has determined that the Pier Point condominium owners have the right to enforce the 7-year limitation in the declaration. Whether the City is required to acknowledge this covenant and refuse to approve any changes in the construction schedule in light of this fact has not specifically been briefed. It may be that the City does have the authority to refuse to amend the expired BSP based on a covenant issue such as this. On the other hand, the City may have the authority to go ahead despite the covenant. If it did so, however, the owners might well be able to successfully challenge any such approval based on the covenant which would prohibit that. And, in any event, as noted previously, the City has no authority to approve an amendment to an expired construction schedule under its ordinances.

The last question to be addressed is whether all property owners impacted by the change must agree to any amendment to the binding site plan. In view of the court's analysis set forth above, that is certainly true. Any further phases of the Pier Point Condominium are barred, and the project is effectively dead. Only if all landowners who have the benefit of the 7-year time limit on further phases were to waive its effect and agree that further phases could be constructed could that happen.

The court notes that this case has some features similar to the recent case of F.G. Associates v. Graham Neighborhood Association, Division One of the Court of Appeals docket no. 65279-6, decided May 31, 2011.

In that case, the court held that where a county ordinance mandates that land use permit applications not timely acted upon be cancelled, and such an application is cancelled pursuant to that ordinance, the county planning agency lacks the authority to thereafter reinstate that application in contravention of the pertinent ordinance.

The case is not directly on point, because in the present we are not dealing with a city ordinance mandating that land use permit applications not timely acted upon be cancelled. But we are dealing with a binding site plan which mandated that all phases of the condominium development be completed by 1996. Also, part and parcel of the condominium development was the requirement that a covenant be executed setting a time limit within which development rights, including the completion of all phases of the project, must be exercised.

The Court's discussion about the vested rights doctrine in the F.G. Associates case is instructive. The court quotes from Erickson & Associates, Inc. v. McLerran case, 123 Wn.2d 864, 872 P.2d 1090 (1994). In that case, the court stated that a date certain vesting standard reflects a recognition that development rights represent a valuable and protectable property right. On the other hand:

"Development interests and due process rights protected by the vested rights doctrine come at a cost to the public interest. The practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted." (123 Wn.2d at 873-74.)

The court went on to say in the F.G. Associates case that the "purpose of the vesting doctrine is to allow property owners to proceed with their planned projects with certitude. The purpose is not to facilitate permit speculation. Extended project delay is antithetical to the principles underlying the vesting doctrine." (Page 19.) The court held that a county planner had no authority to revive an expired permit application, and that his actions in doing so were a legal nullity.

The same general principles apply here in the context of Alpine Village's application to extend an already-expired construction schedule for the Pier Point Condominiums. The City has no authority to do that.

In its reply brief, Alpine Village states that the City and the respondent property owners seem to want it both ways: on the one hand, that Alpine Village is subject to the BSP, but on the other hand, the construction schedule has expired. Alpine Village then goes on to say that the logical conclusion must be that there is no BSP and Alpine Village is free

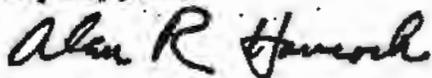
to make application for whatever site plan review process currently available under the City's comprehensive plan and land use regulations.

The court's view of this is that the land on which the Pier Point Condominiums have actually been developed is most certainly subject to the BSP. On the other hand, the construction schedule for additional phases of the originally contemplated project has expired, and no further phases of this particular project can be constructed. In that sense, it is probably true to say that there is no BSP as to the remaining land now owned by Alpine Village. Remember that the 7-year time limitation applied to further phases of the Pier Point Condominium project, not to any other project that might be applied for in the future. It would appear to be true that Alpine Village could apply for whatever binding site plan review or other development review process that might be available under City law. Of course, it would have to start from scratch, as it were, in that regard. That in and of itself would not appear to violate any of the rights of the Pier Point Condominium owners, and they would have the right to participate in any review process provided for under city or state law and the process would have to take its course.

These latter comments are dicta, but since these issues were raised, the court has addressed them.

The court will entertain an order consistent with the foregoing.

Very truly yours,



Alan R. Hancock
Judge

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Planning Commission
Staff Report & Minutes
from December 28, 2010

City of Oak Harbor Planning Commission Report

Date: December 28, 2010
 Subject: Binding Site Plan Code
Amendments

FROM: Ethan Spoo, Senior Planner

PURPOSE

This report discusses proposed code amendments to Chapter 21.80 (“Binding Site Plans”) of the Oak Harbor Municipal Code (OHMC). The amendments will establish a process for altering previously approved Binding Site Plans (BSPs).

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. The ordinance shall provide for the alteration or vacation of binding site plans.

BACKGROUND

State law provides for the binding site plan process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). This chapter includes a section addressing under what circumstances proposed modifications to binding site plans may be considered. In the past, this section has been cited when considering applications to alter approved binding site plans. A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a pending application seeking to alter a previously approved binding site plan.

DISCUSSION

Binding site plan applications are made by a developer/property owner and then individual lots created by the binding site plan are usually sold or leased to other, and often multiple, property owners. If property owners later want to make changes to their property or redevelop their properties, they must do so in conformance with the previously approved binding site plan or seek to alter that plan. The City presently does not have a clear application process for binding site plan alterations. This lack of process can place a significant burden on a single property owner within the binding site plan who decides to upgrade, change, or redevelop their property. This in turn can limit economic development opportunities in the form of commercial and residential development.

The proposed municipal code amendment would establish a procedure for the acceptance and processing of a request to alter an approved binding site plan. When considering requests to alter a previously approved binding site plan, the question of property ownership and who has the

December 28, 2012 Binding Site Plan Code Amendments

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ability to request the proposed amendment is central to the acceptance and processing of the application. The existing code is silent on this topic.

The question of who must sign the application is clearly addressed in the proposed code. The proposed code draws from language found in RCW 58.17.215 that pertains to subdivision alterations, which requires that the application for the alteration of a subdivision contain the signatures of the majority of those persons having an ownership interest in the lots proposed to be altered. The draft prepared for Planning Commission discussion proposes a similar signature requirement for the alteration of a binding site plan. Another approach would be to require signatures from all persons having an ownership interest in the lots proposed to be altered. This approach would parallel State law regulating residential condominiums (RCW 64.34). Finally, if a binding site plan alteration is proposed on one lot, but the alterations to that one lot will affect areas which are owned in common, such as access drives, stormwater ponds, or commonly owned landscaping, then the signatures of all parties who have property affected by the proposed alteration are required.

SUMMARY

For the above reasons, staff proposes that a binding site plan alteration process be established. Staff prepared a draft ordinance for Planning Commission and public review intended to serve as a discussion tool for establishing this process. Staff plans to present additional concepts to Commission during the public hearing.

RECOMMENDATION

Staff recommends that Planning Commission open the public hearing on the proposed code amendments to Chapter 21.80 OHMC "Binding Site Plans", accept public testimony and continue the item to January 25, 2011.

ATTACHMENTS

- Attachment A – Draft Ordinance amending Chapter 21.80 of the OHMC to establish a process for altering previously approved binding site plans.

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" ESTABLISHING A PROCEDURE FOR ALTERING PREVIOUSLY APPROVED BINDING SITE PLANS.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code has an inadequate alteration process for approved binding site plans and;

WHEREAS, there are number of undeveloped lots within City boundaries which are subject to previously approved binding site plans and can no longer develop in compliance with those binding site plan approvals due to the current economic situation and;

WHEREAS, Comprehensive Plan land use policies 11(a) and 14(g) encourage infill development, especially commercial, which is compatible with surrounding land uses, and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010.

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment period, as required by WAC Chapter 197-11 and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no substantive comments from the Department; and;

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010 and January 25, 2011 and public meetings were held by the City Council on _____ and _____;

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby repealed in its entirety.

Section Two. Chapter 21.80 of the Oak Harbor Municipal Code is hereby amended to read as follows:

Chapter 21.80**BINDING SITE PLANS****Sections:**

21.80.005	Title.
21.80.010	Binding site plans allowed.
21.80.020	Division of property.
21.80.025	Condominium binding site plan.
21.80.030	Effect.
21.80.040	Application.
21.80.050	Procedure upon application.
21.80.060	Requirements for a binding site plan map.
21.80.070	Certifications required.
21.80.080	Title report.
21.80.090	Survey required.
21.80.100	Approval procedure.
21.80.110	Recording requirements.
21.80.120	Development requirements.
21.80.130	Standards for review of commercial binding site plan.
21.80.140	Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.
21.80.150	Performance guarantee requirements.
21.80.160	Warranty requirements for acceptance of final improvements.
21.80.170	Survey required.
21.80.180	Dedication – Warranty deed.
21.80.200	<u>Modification of binding site plan requirements.</u>
21.80.210	<u>Alteration of an approved binding site plan.</u>
21.80.300	Appeals to the hearing examiner.
21.80.400	Enforcement.
21.80.005	Title.

21.80.005 Title

This chapter shall be entitled “Binding Site Plans.”

21.80.010 Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (4).

21.80.020 Division of property.

Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;
- (3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel,

site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

- (4) A division of land subject to Chapter 64.32 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this chapter.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements either to be filed separately or on the binding site plan must be referenced on the binding site plan;
- (8) Zoning setback lines and building envelope sites where applicable;
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Parking areas, general circulation, and landscaping area where applicable;
- (14) Proposed use and location of building with dimensions where applicable;
- (15) Loading areas where applicable;
- (16) Utilities; and
- (17) Other restriction and requirements as deemed necessary by the city.

21.80.070 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site

plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.090 Survey required.

A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.

21.80.100 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.
- (3) The director shall review the final binding site plan and circulate it to other city departments to determine whether the requirements of this chapter and preliminary approval have been met.
- (4) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (5) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (6) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.

- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130 Standards for review of commercial binding site plan.

The following standards shall apply to commercial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.140 Standards for binding site plans for condominium developments regulated by Chapter 64.32 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary

but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:

- (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
- (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has submitted a binding schedule for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in subsection (2) of this section.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request final approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.

- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170 Survey required.

- (1) The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.180 Dedication – Warranty deed.

Any dedication, donation or grant as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended

21.80.200 Modification of binding site plan requirements.

- (1) Any applicant can request and make application to the city requesting a modification of up to five percent from a requirement of ~~OHMC 21.80.130 or 21.80.140 or OHMC Title 19, so long as the maximum density allowed in the zone is not exceeded.~~
- (2) Such request for modification shall be considered by the director as an administrative decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;

- (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
- (d) Landscaping requirements are not thereby reduced.

21.80.210 Alteration of an approved binding site plan.

Alterations to an approved binding site plan may be considered subject to the provisions of this section.

(1) Submittal requirements.

- (a) Application form. An application shall be submitted on a form prescribed by the Director.
- (b) Authority to submit alteration application. The alteration application shall contain the signatures of a majority of property owners of lots proposed to be altered. Signatures of owners of lots within an approved binding site plan which are not proposed to be altered are not required on the alteration application form.
- (c) Commonly-owned property. If alterations are proposed which affect commonly-owned property such as tracts, easements, or rights-of-way previously approved under the binding site plan process, then the alteration application form shall contain the signatures of all property owners which have an interest in said property.
- (d) If the binding site plan is subject to restrictive covenants which were filed at the time of the approval of the binding site plan, and the application for alteration would result in the violation of the covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the binding site plan or portion thereof.
- (e) The alteration application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(2) Review process.

- (a) Applications for alteration of a binding site plan shall be processed under a Review Process II according to Chapter 18.20 OHMC.

21.80.300 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Three. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Four. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this 18th day of January, 2011.

() APPROVED by its Mayor this ____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
December 28, 2010**

ROLL CALL: **Present:** Bruce Neil, Kristi Jensen, Keith Fakkema, Greg Wasinger, Gerry Oliver and Jeff Wallin.

Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo; and Associate Planner; Melissa Sartorius

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

MINUTES: **MR. FAKKEMA MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE OCTOBER 26, 2010 MINUTES AS PRESENTED.**

PUBLIC COMMENT

No comments.

ADULT ENTERTAINMENT INTERIM ORDINANCE – Public Hearing

The Planning Commission conducted a public hearing to consider finalizing the Interim Adult Entertainment Ordinance. Mr. Neil noted that the Public Hearing was opened on July 27th.

Mr. Powers reminded the Commission that in previous briefings staff provided information on the legal framework that regulates adult used, several studies on the effects of adult uses in communities and analysis regarding the location of such uses in Oak Harbor. Mr. Powers noted that this material was not recreated in the Planning Commission's December agenda packet but that he had three copies available if needed. Mr. Powers stated that staff is recommending that the Planning Commission make a recommendation to the Council to adopt the interim ordinance as the final ordinance based on the following:

- Adult Oriented Businesses are entitled to some protection under the State and Federal constitution.
- The courts have upheld regulations that are tailored to regulate the secondary effects (crime, property values, blight) of such businesses.
- Regulations cannot completely eliminate these uses from a municipality.
- The dispersed approach and concentrated approach have both been held to be constitutionally permissible as legitimate "time, place, and manner" of protected speech.
- The dispersed approach is not suitable for Oak Harbor since it eliminates almost all properties.
- Concentrated approach may be the best method for Oak Harbor to regulate adult entertainment facilities.
- There is more industrial land available for development than commercial lands.
- Properties identified in the interim overlay district, referred to as subject properties, fall outside the buffers of sensitive areas.
- Subject properties are located in a developing area and can be served by all utilities.
- Area of subject properties is more than all available community commercial lands.
- Since there have been no applications for the development of adult entertainment facilities in Oak Harbor and Island County the land identified in the interim ordinance will provide and ample supply of properties and will be augmented by properties identified by the county in and around the same area.

Mr. Powers recommended that Planning Commission open the public hearing again, take any additional public testimony, then close the public hearing and have Commission deliberation and make a recommendation to the Council.

Commission Discussion

Ms. Jensen asked about the sentence on page 21 of the packet titled 19.52.060 Non-conforming uses. She asked what is meant by, "an adult entertainment facility which receives non-conforming status by virtue of an order from a court of competent jurisdiction..." Mr. Powers explained that it meant that if someone claimed that they had a non-conforming status and the City said that they did not and the issue was taken to court that has jurisdiction to make that decision and the court decided that they in fact were non-conforming, that then would suffice for the meeting of the standards being a non-conforming use. Ms. Jensen also asked about 19.52.060 (2). Mr. Powers explained that there is an amortization period for a non-conforming use and that it will not continue forever.

Chairman Neil opened the public hearing. No comments were forthcoming and the public hearing was closed.

Mr. Oliver asked if there was anyone that had come forward stating that they would like move forward in opening an adult entertainment facility. Mr. Powers stated that there were none and that since the time that the City Council adopted the interim ordinance there have been one or two additional inquiries but there have been no applications filed yet.

ACTION: MR. FAKKEM MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE ADOPTING THE INTERIM ADULT ENTERTAINMENT FACILITIES OVERLAY ZONE ORDINANCE AS THE FINAL ORDINANCE.

PROPOSED CHANGES TO CHAPTER 21.80 OHMC PERTAINING TO BINDING SITE PLANS – Public Hearing

Chairman Neil opened the public hearing.

Mr. Spoo presented the binding site plan code amendments. Mr. Spoo indicated that the amendments would establish a process for altering binding site plans and specify who can submit an alteration for a binding site plan.

Mr. Spoo explained that a binding site plan is a type of land division. There are three types of land divisions that the State allows City's to regulate. Those are subdivisions, short subdivisions and binding site plans. Binding site plans are primarily for commercial and industrial properties but can be used for residential condominiums.

Mr. Spoo stated that State law RCW 58.17.035 requires a binding site plan alteration and vacation process. If a City chooses to adopt binding site plans as an alternative land division process then we are required to have an alteration and vacation process. The City's existing code is incomplete in that aspect, as it does not have an alteration process.

Mr. Spoo explained that the central issue in the draft Binding site plan code presented is who may submit an alteration application to a binding site plan. Page 35 of the agenda packet shows a new section of the Binding site plan code called "Alteration of an approved binding site plan." The proposed new section states that it is the majority of owners whose lots are proposed to be altered. After further consideration, staff believes that it is better if all owners whose lots are proposed to be altered within a binding site plan should sign the alteration

application rather than just a majority unless you have a situation where there is commonly owned properties; then all owners within the binding site plan would have to sign the binding site plan application.

The draft ordinance also addresses the submittal process and review process. Alterations are a Review Process Type 2 which means that staff reviews the application and make a decision which is appealable to the Hearing Examiner.

Mr. Spoo concluded by recommending that the Planning Commission open the public hearing, take public comment and then continue the hearing until next month.

Mr. Powers added there was a public comment letter that was submitted and distributed to the Planning Commission (Attachment 1).

Mr. Spoo stated that the letter was submitted by Alice Smith and her opinion was that she doesn't think that alterations to binding site plans should be allowed unless all property owners within the binding site plan sign onto the alterations.

Commission Discussion

Commissioners asked the following questions:

Doesn't Alice Smith's letter say the same thing that Mr. Spoo just explained? Mr. Spoo said no, that actually what he said was that all property owners who are proposing to alter their lots would have to sign e.g. if you have 10 lots and someone proposed to alter three of those lots, all three of those property owners would have to sign the application because they own the lots that are proposed to be altered. What Ms. Smith is saying is that all 10 property owners would have to sign the alteration application even though the alterations would only directly affect 3 lots.

What has happened that brought this to staff's attention? Mr. Spoo said that an application was submitted to alter an existing binding site plan for some residential condominiums and that application was what brought to staff's attention that our code doesn't have an alteration process.

Chairman Neil opened the public hearing for public comment.

Sue Karahalios (1085 SE Regatta Dr., B-101) expressed concern that the City was changing the binding site plan rules midstream while the Pier Point Condominiums are in litigation with the applicant. She suggested that the Pier Point Condominiums should be "grandfathered". She noted that applicant has come before City staff twice and has been turned down and this appears to be a backdoor means to get what they want. Ms. Karahalios asked the Commission to think about themselves being in a situation where they had bought a condominium they believed had common area on the full plat, and because they didn't have enough money to keep going through litigation they get rolled over and then to have the rules changed again. Ms. Karahalios stated that is a very difficult thing to live with. She asked the Commission not to be a part of that.

Bob Severns (1085 SE Regatta Dr., C201) spoke as a resident of Pier Point Condominiums. Mr. Severns stated that he believed that the code change before the Commission comes from one particular binding site plan which is the Pier Point Condominium Binding site plan. Mr. Severns believed that the modification language in the current binding site plan ordinance has been fine up until now. Mr. Severns believed that the existing applicant has moved this process along so that the code change went into affect just before the Hearing Examiner hears yet

another appeal of the Pier Point Condominium Binding site plan. Mr. Severns also shared details about the legal process they had been through with the applicant regarding the Pier Point Condominium Binding site plan. Mr. Severns stated that the issue is who participates when you are altering an existing binding site plan and in Pier Point's case, it is an existing binding site plan with an expired construction schedule on the binding site plan. Mr. Severns stated that his point is that the language that has been proposed should not go forward unless it states that all owners and anyone with an interest in the property signs onto the alteration application. Mr. Severns recommendation was if this code change goes forward the Pier Point Condominium Binding site plan should be exempt.

Commissioners questioned Mr. Severns about the details of the Pier Point Condominium binding site plan and amendments, legal descriptions, easements, and common areas.

Mr. Powers reminded the Planning Commission that they were not being asked to be involved in making a decision on the pending application that Mr. Severns and Ms. Karahalois has spoken about. The Commission's roll will be to make recommendations about the language which should be in the code. Mr. Powers agreed that while it is helpful to hear a real life example as sort of a backdrop, the application that Mr. Severns is referring to is before the Hearing Examiner and it will be his responsibility to make a decision on the specifics.

Mr. Severns noted that he asked Mr. Powers how the proposed code language affects the Pier Point Condominiums ownership and that Mr. Powers stated that the City is not able to answer that. Mr. Severns stated that although he thinks he understands that answer but until the City can tell the eight residential owners what affect that potentially has on them he urged the Planning Commission not to move forward.

Alice Smith (1085 SE Regatta Dr., A-101) stated that all the property owners will be affected if the binding site plan is changed. Ms. Smith explained that prior to her purchase she read all the documents and saw that binding site plan had been expired so she bought it knowing that that property was not going to be built on. She didn't think it was right for the City to make it possible for what she signed as a legal document to change. She also suggested the "grandfathering" option.

Commission Discussion

Commissioners asked if the Hearing Examiner could rule something different for a particular situation and which would take precedence. Mr. Powers stated that neither would take precedence.

Mr. Powers went on to say that he appreciated the comments from citizens of the Pier Point Condominium have offered. He also said that staff apologizes if staff's first draft of the code amendment has created any undue anxiety. Mr. Powers stated that staff is attempting to put in place a process that the City code needs. He emphasized that this was a first draft and staff is already contemplating additional changes to the language as we move forward.

Mr. Powers went back to the question about which decision would take precedence. Mr. Powers stated that one is a decision on a pending application which City staff has already made a decision on: which is that we cannot process the amendment as proposed. That decision has been appeal to the Hearing Examiner. That is not litigation; that is just the land use process still inside of the City's administrative process. The other side is a deficiency in the City code which was discovered at our second look at the application. Upon further review we determined that our code lacks the appropriate process by which we accept and process someone's request to change a binding site plan. Mr. Powers emphasized that the simple act of requesting does not mean that it is approved. He pointed to the two denials that staff has already made on the

application as evidence that just because you ask doesn't mean that is what is approved. Regardless of that; a process is need in the code. That is what has been presented this evening. If the City Council adopted this language it would be in place but we still have to see what the Hearing Examiner's decision might be. That decision could then be appealed to the Court, which is what happened for the previous Hearing Examiner's decision, and depending on that hypothetical Court action we may or may not see the application come back for an amendment to the binding site plan. If that was to happen at least we would have a process in place that would tell us who needs to sign the application and how staff processes the application.

There was further discussion about whether the change in the process allows the applicant to do anything. Mr. Powers noted that there is no process in place today that tells us who needs to sign and that is the issue we have been dealing since the very beginning. Mr. Powers also cautioned against resting the entire conversation on the Pier Point example because there are other binding site plans and other property owners that may at some point in the future wish to amend their binding site plan and we should have a process in place.

Ms. Jensen stated that she would like to see language that concern a change for condominiums to require that anyone that owns at that time all need to sign.

Mr. Wallin asked how the modification process that is currently in place in the code works. Mr. Powers explained that the existing language on page 34 of the agenda packet. Mr. Powers stated that modification process is not very meaningful in terms of process.

Ms. Jensen asked how many times there have been changes to binding site plans during the time Mr. Powers has been with the City. Mr. Power indicated that there have been changes to Oak Tree Village Binding site plan and changes to Acom Plaza and two requests for Pier Point Condominiums which is the only residential binding site plan.

Mr. Powers stated that there is no outside applicant which has driven staff to propose the amendment. The amendment was the result of an application. The applicant has not said to staff that we need to write the code. This is based upon review by the City Attorney and the City's land use attorney that our code needs to be amended. Mr. Power noted the term "Takings" used earlier; and stated that that term would be truer if there weren't at least a process by which someone can apply. Mr. Power also stated that "Takings" are an action of government which someone feels has deprived them of use of or enjoyment of their property. Mr. Powers stated the suggestion of "Grandfathering" will be looked at.

Mr. Oliver asked if the City should wait until the decision was made on the Pier Point Condominiums since we don't know what the ramifications could be. Mr. Powers stated that without knowing what the Hearing Examiner might say he can't tell how the ordinance would work with that particular decision and that it doesn't trouble staff because one is process and the other is a particular in a very specific instance. They can be done independent of each other. Mr. Powers explained that the timing is not opportune but it is where we are in terms of staff being able to bring something forward. Mr. Powers also noted that the earliest the code revision gets to the Council is in February and the Council has ability to make the decision as to whether they wish to take action or whether they need additional information, or if they think the timing needs to be delayed for a particular reason. Mr. Powers noted that he has tried most of the evening to keep the code amendment separate from the pending application and he acknowledged that the pending application has a hearing date set for early January. If that hearing goes forward we would anticipate that a decision could be reached by the end of January. Mr. Powers referred back to the question of should we wait, and noted that it is not litigation from the City's perspective it is just a land use decision.

Mr. Oliver stated that he believed all interested parties should have a say in what is changed and not changed.

Rhonda Severns (1085 SE Regatta Unit C-101) stated that when she purchased her property in 1994 she was assured by her real estate agent that it was going to be gorgeous and to go and look at the Pier Point binding site plan which would show how the site was going to be developed. Mrs. Severns stated that the owners were told that they needed to work with Mr. Massey and they have tried and find that he has gone in a different direction. She stated that Mr. Massey said that he doesn't want his condos to look the way Pier Point looks. She was concerned that Mr. Massey could put a totally different look which would devalue Pier Point because it would look like an add-on. She was concerned about what protection there is for condominium owners when they buy into a project and what their rights are when the rules can be changed 15 years later.

Mr. Neil commented that he felt that staff was asking the Planning Commission to just simply approve a process to change a binding site plan but for some reason he feels that whatever recommendation they make is sitting in judgment of the Pier Point situation.

Mr. Powers stated that it was reasonable to feel that way, while he has suggested that they should be looked at separately, he is not so naive to say that they are linked as well. Mr. Powers stated that the comment about the construction schedule is one that we didn't address in the draft and needs to be addressed. The issue of a construction schedule is required under the Condominium Act and it is not something that is required under the binding site plan code. We may be better served as a community if binding site plans deal with those things that deal with binding site plans and allow the Condominium Act and to address those things that are intended to protect the rights of condominium owners. Part of the confusing nature of this particular application is that the construction schedule is on the binding site plan which probably isn't necessary but absolutely has to be on the condominium documents that are required. Mr. Powers stated that staff will come back with another draft that addresses the questions raised tonight.

Ms. Jensen asked if Commissioners could e-mail further suggestion. Mr. Powers stated that it was appropriate to communicate with staff but not to courtesy copy fellow Commission members.

ACTION: MR. FAKKEMA MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO CONTINUE THE PUBLIC HEARING UNTIL JANUARY 2011.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 9:08 P.M.

City of Oak Harbor
 865 S.E. Barrington Dr.
 Oak Harbor, WA 98277

12/24/2010

RECEIVED

DEC 27 2010

**CITY OF OAK HARBOR
 Development Services Department**

RE: Amendments to Chapter 21.80 OHMC Binding Site Plans

Let me begin by saying I am opposed to any change in amendment process that would apply to currently existing site plans.

It may be within the prevue of government to establish a procedure to change a binding site plans going forward, however it's questionable whether there would exist the authority to enact processes that would have the effect of substantially affecting existing plans, retroactively, without the unanimous consent of those property owners individually and specifically affected.

There should be no processes enacted or considered which would allow or assist in retroactive changes ignoring the reliance upon site plans existing property owners have made in making their investments in property.

Property currently under an existing binding site plan should either be exempt from new amendment revisions if adopted or subject to the unanimous assent of those property owners who have already made investments based upon and reliance upon existing plans.

The City always has the right to grant waivers based upon site and/or specific development conditions that meet fully the current property owners rights as well as the Cities broader community wide responsibilities.

Under no conditions, should the city be involved is assisting a single individual or entity to profit at the expense of other property owners immediately adjacent.

Current property owners bought their existing property based on the binding site plan, rules and legal documents existing at the time of the purchase. To allow changes which may significantly change the use of their property is not ethically appropriate. The government should not be able to reach back and make changes in the current regulations that will affect many home owners who relied on the documents that were in place at the time of sale.

What I see is an attempt to change current Municipal Code to allow advantage to certain individuals who have friends and business associates in the City government and on this very City Council. The goal is to have the Planning Commission make it possible to change existing "Binding Site Plans" so an individual developer can individually profit at the expense of others who have previously relied on the word "binding" meaning exactly that.

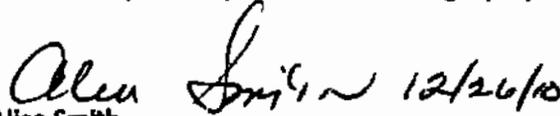
This current discussion is being prompted by one individual so let's provide a little background in order to shine a little light on this less than ethical person.

There is currently case of Alpine vs. City of Oak Harbor in which the binding site plan is allegedly holding back development of a specific property on Pioneer and Regatta. The individual bringing the suit is quite simply an arrogant bully who is used to getting his own way through the use of attorneys, intimidation and the use of friends and business associates currently within city government. He has been told by the hearing examiner in the cases previously brought to the courts he should work things out with us. He is not part of Pier Point condominiums and has no standing to act on its behalf without the majority consent of current owners. This is not his style however. To date all communication has been in the form of unilateral demands, suits or "mutually beneficial" arrangements with individuals he feels may be helpful to him.

He originally "bought" development rights to an undeveloped parcel within the development in which the binding site had expired. Turns out the seller did not own those rights. The title was thus not clear on the property, so he sued the title company and they refunded the money he paid for the rights and, incredibly, he now is trying to manipulate the City to accomplish his goal of developing the property anyway and without regard to the damage this would do the existing development. This should not be allowed. This individual wants to use our easements, utilities and property to build a non appropriate structure when he does not have the legal right to do so.

In November of 2006 the Hearing Examiner, Michael Bobbink, concluded and I quote "you cannot amend a Binding Site Plan to allow the schedule for phased condominium development to be changed after the deadline for completion of the development has passed." *Findings of Fact, Conclusions of Law, and Decision, at 10.*

When I purchased this property in 2001, it was clear from the documents I received at that time that the "Binding Site Plan" had expired and *NO additional building could occur without my specific agreement.* If the city makes retroactive the ability to change the binding site plan then owners like me who bought in good faith have been betrayed by the City of Oak Harbor. Filing suit against the city and the developer and anyone else possibly implicated imposes a burden I should not have to bear. What this man cannot do within the court system he is trying to do politically. I urge you not to allow past binding site plans to be changed. I urge you to not participate in this dishonest approach to changing City code to help developers and hinder single property owners.


Alice Smith

1085 SE Regatta Dr A101

Oak Harbor, WA 98277

Planning Commission
Staff Report & Minutes
from January 25, 2011

City of Oak Harbor Planning Commission Report

Date: January 25, 2011
Subject: Binding Site Plan Code
Amendments

FROM: Ethan Spoo, Senior Planner

PURPOSE

This report continues the discussion on Binding Site Plan (BSP) code amendments that was initiated by staff at the December 28, 2010 Planning Commission meeting. The amendments, if approved, would establish a process for altering previously approved Binding Site Plans (BSPs). Staff will present additional concepts for the Planning Commission's consideration and comment and requests that the public hearing be continued to February 22, 2011.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. The ordinance is required to provide for the alteration or vacation of BSPs.

BACKGROUND

Binding Site Plans

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a pending application seeking to alter a previously approved binding site plan.

December 28, 2010 Planning Commission Meeting

At the December 28, 2010 Planning Commission meeting, staff presented a draft code amendment to Chapter 21.80 ("Binding Site Plans"). These code amendments, as then drafted, would have allowed an applicant to submit a BSP alteration application with the signatures of a majority of the property owners whose lots were proposed to be altered. Staff modeled this language after the state law dealing with subdivision alterations (RCW 58.17.215). Planning Commission took public comment on the draft code at that meeting. The public comment received at the December 28, 2010 Planning Commission meeting generally could be divided into two categories:

- **BSP alteration applications should require signatures of all property owners within the originally approved BSP.** Several members of the public gave testimony indicating

that alteration applications for existing BSPs should be signed by all property owners within the originally approved BSP, rather than just a majority of those property owners whose properties are being considered for alteration as was proposed by staff.

- **Suggestion to “grandfather-in” already existing BSPs.** Members of the public indicated that, if new regulations are adopted which allow for the alteration of BSPs, that the new regulations not apply in the same way to existing BSPs in place at the time of adoption of the ordinance.

More detail on the public comments is available in the December 28, 2010 Planning Commission meeting minutes.

DISCUSSION

To respond to issues raised by members of the public and questions from Planning Commission, especially the issue of whose signatures should be required on a BSP alteration application, staff researched what the requirements are of state law and how other communities in Washington approach this issue. The following discussion offers some guidance as to how the city might approach the issue of who has the authority to submit an application for alteration of a BSP.

With regard to BSP alterations, state law in RCW 58.17.035 says:

“Such ordinance ...shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.”

RCW 58.17.035 also says:

“All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, or tract created pursuant to the binding site plan.”

From the above provisions, staff infers that the drafters of the state law intended that BSPs be enforceable, but also amendable. State law, however, is silent as to how the alteration process occurs, leaving this largely to the discretion of local jurisdictions. It is worth noting that subdivisions are also “binding” against property, meaning that the conditions approved as part of the subdivision plat are recorded against the property and apply to all subsequent owners of that property. For instance, easements for drainage may be recorded as part of a subdivision plat against a specific lot within the subdivision. That easement applies to all subsequent owners of the property. Yet, that easement can be vacated or altered and state law allows this to happen with only a “majority of those persons having an ownership interest of the lots, to be altered.”

The latitude granted to local jurisdictions to establish a process to alter BSPs in State Code, has resulted in a variety of different methods and threshold levels for altering BSPs across the state, as discovered by staff in researching the issue. Attachment 1 summarizes the research conducted by staff for 13 different jurisdictions across the state. These 13 different jurisdictions have a variety of different thresholds for requesting a binding site plan alteration ranging from requiring a majority of the signatures of only the lots to be altered to requiring all of the signatures of every property owner within the binding site plan.

With the above information in mind, staff offers the following principles for further consideration by Planning Commission:

- **Binding, but subject to change.** Binding site plans maps are recorded, legally binding documents, just like subdivisions. This means that the conditions of the binding site plan apply to all subsequent owners of the individual properties within the binding site plan. At the same time, state law requires that the City have a process to alter binding site plans. Thus, it would seem that state law does not intend that binding site plans never be subject to change.
- **Consistency with approved BSP.** As noted by those who testified at the December 28, 2010 public hearing and as written in state law, all subsequent owners of property are obligated to be consistent with the binding site plan. While it is reasonable for property owners within a BSP to expect continuity and consistency with the approved BSP as properties are developed, this expectation must be balanced with the requirement for alterations.
- **BSP changes affect some or all property owners within a BSP.** Staff recognizes that changes to one property can affect surrounding properties.
- **The City should not be in the position of settling disputes between property owners which are not in the public interest.** Many of the items traditionally shown on binding site plan maps or recorded with binding site plans, such as covenants, are items which do not pertain to the public interest and may, therefore, put the City in the position of being the arbitrator between property owners.

CONCEPTS FOR DISCUSSION

In working towards preparation of the second draft of this code staff considered:

- The Planning Commission's comments and questions from the December 28th hearing,
- Community input in the form of public testimony at that same hearing,
- The requirements of state law, and
- The need to balance property owner interests and expectations.

With this in mind staff is considering the following concepts for inclusion in the second draft and seeks the Planning Commission's feedback on these ideas:

- **Two-tiered process for alterations.** Staff is considering a two-tiered process for alterations:
 - In the first tier would be alterations to binding site plans in existence at the time the subject BSP code is adopted. Alterations to these properties would require the signature of *all property owners within the BSP*.
 - Alterations to future BSPs can be requested by *all of the property owners whose lots are proposed to be altered*. Alterations to commonly owned property within the BSP would continue to require the signatures of all property owners.
- **Reduced requirements for what is shown on binding site plans.** It is staff's observation that the existing BSP code requires more information regarding covenants

and agreements than is necessary. For example, the BSP code requires that reference be made to "covenants...or other agreements" on the face of the BSP map document. Covenants and agreements contain two types of information: (1) information which is in the public interest and (2) information which is not in the public interest. Since covenants and agreements include both types of information and are recorded with the binding site plan, all of the items which are not in the public interest become part of the binding site plan at recording. The city is then in the position of settling disputes for items which are not in the public interest, but which may nevertheless be part of the recorded binding site plan. Staff believes that the City should focus its efforts on monitoring those items which are in the public interest. Therefore staff proposes to change the code to exclude items which are not in the public interest from the binding site plan recorded documents.

It is staff's plan to seek Planning Commission and community input on the concepts presented above, plus any additional general comments on the proposed amendments, at the January 25, 2011 meeting. Once this input is received staff will prepare a second draft of the code and present it to the Planning Commission at a later date (tentatively set for February 22, 2011).

RECOMMENDATION

Accept public testimony and continue the public hearing to February 22, 2011.

ATTACHMENTS

- Attachment 1 – Binding Site Plan Alterations: Signatures Required by Washington Jurisdictions.

Attachment 1 - Binding Site Plan Alterations: Signature Required by Washington Jurisdictions

Jurisdiction	Required Signatures		Relevant Clause
	Less than All	All	
Auburn	X		"all owners of the properties directly affected"... "no adverse impact"
Bellingham		X	"shall be processed in the same manner as an original application."
Bothell		X	"processed in same manner as the original specific binding site plan"
Cheney	X		"shall contain the signatures of the majority of the persons having an ownership interest of lots, tract, parcels, site, or divisions in the subject binding site plan or portion to be altered"
Federal Way		X	"same process and requirements...for the approval of a binding site plan"
Kitsap County	X		"shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered"
Lacey	X		"application shall contain the signatures of the majority of persons having an ownership interest of the lots, tracts, or parcels, sites or divisions in the subject land division or portion to be altered"
New Castle	X		"signatures of owners of portions of a binding site plan which are not altered by an amendment or rescission are not required on the amended binding site plan"
Sultan		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
University Place		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Walla Walla		X	"amendments... shall be processed pursuant to this chapter and must be recorded."
Woodland		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Yakima		X	"the acknowledged signatures of all parties having an ownership interest in the property"

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
January 25, 2011**

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

Vice Chair Fakkema called the meeting to order at 7:30 p.m.

MINUTES: MR. WASINGER MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE DECEMBER 28, 2010 MINUTES AS PRESENTED.

PUBLIC COMMENT: No comments.

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

Mr. Spoo summarized research and presented concepts for further discussion.

Mr. Spoo reported that State law requires an alteration process for binding site plans (BSP) and currently the City does not have an alteration process. State law also indicates that all development within a binding site plan shall be consistent with the approved binding site plan. Local jurisdictions are given the latitude and flexibility to shape that process to meet local circumstances.

Mr. Spoo reported that staff looked at 13 other jurisdictions across the State and found that 8 jurisdictions require all property owners within a BSP to sign a binding site plan alteration, and 5 jurisdictions require something less than all of the property owners to sign. Mr. Spoo further stated that staff believes that a balance is needed which allows for alterations but respects the rights of property owners within a BSP. Mr. Spoo stated that staff is proposing a two-tier process for requesting alterations to BSP's based on the findings and comments received at the last Planning Commission meeting.

Tier 1 provides for BSP's which exist at the time the code is adopted, assuming the code is adopted those BSP's would require the signatures of all owners within the BSP in order for an alteration to be made. Tier 2 would provide for future BSP's. Those BSP's would require the signatures of only the property owners whose lots are proposed to be altered.

In addition to the two-tier process, staff is recommending a change in requirements regarding what is shown on the binding site plan map. Only those things which are in the public interest would be shown on the BSP map. The existing BSP map requirements have required information which is not in the public interest to be recorded on the binding site plan. Once that information gets recorded, the City must settle disputes between property owners, even if those disputes don't pertain to the public interest. By reducing the requirements for what is shown on the binding site plan map, the City won't be in the position in deciding between private issues between property owners.

Mr. Spoo concluded by recommending that the Planning Commission accept public testimony and continue the hearing to February 22, 2011.

Mr. Fakkema opened the public hearing.

Bill Massey (41 NE Midway Blvd. Ste. 101) pointed out that OHMC 21.80.200 allows for minor modifications and has been used for minor modifications in the past. Mr. Massey supported keeping the existing code in place. Mr. Massey also used the Oak Tree Village Binding Site Plan as an example to demonstrate how a modification could be stopped by one person even though their lot may not even be connected. Mr. Massey also pointed that some of the Goldie Road properties that may be annexed in the future already have binding site plans through the County. Mr. Massey stated that there were more implications to the proposed changes than just the specific binding site plan that was discussed at the previous meeting.

Kenneth Manny (2094 SW Dillard Lane) stated he was a property owner within the Oak Tree Village BSP. He noted that this BSP is separated by Cabot Drive and that making changes, minor or otherwise, would require him to get the consent of the property owners on the other side of Cabot Drive. Mr. Manny stated that the issue was of procedural fairness for people that own property in a situation where the interest of one group of owners is entirely different and separate from the interest of another group of owners. Mr. Manny believed if the Planning Commission were to adopt the plan that requires 100 percent unanimity; it would stop any type of development or modifications. Mr. Manny stated that it gives a disproportionate advantage to persons who simply say no for the reasons of saying no or they're too busy to read the document or they are not inclined to be cooperative or worst yet they want to get something out of it in exchange for their willingness to cooperate even though they are in no way affected. Mr. Manny asked the Planning Commission to carefully consider the options so that we don't find ourselves in a position where people with a legitimate interest in making a change to a BSP are essentially thwarted simply because it is impossible to get 100 percent unanimity among all of the owners. Mr. Manny stated that Oak Tree Village was a perfect example of why 100 percent unanimity can never be enforced and be fair at the same time.

Mr. Powers commented that the ideas that have been presented are only concepts at this stage and there is no specific draft language before the Planning Commission at this time.

Mel Vance (PO Box 2882) stated that he was torn between requiring a simple majority or a super majority and he was in favor of everyone having input regarding a BSP amendment. He also stated that he didn't think Oak Tree Village was a good example because he believed it was an extremely unusual situation to have a BSP that is split by a street. He suggested that Oak Tree Village be split into two BSP's if possible.

Chris Anderson (390 NE Midway Blvd.) stated that he was also a property owner within Oak Tree Village. Mr. Anderson read from RCW 58.17.035 and noted that it singles out commercial and industrial binding site plans and says that the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval. Mr. Anderson suggested treating commercial/industrial and residential BSP's separately as the RCW seems to do.

Bob Severns (1085 SE Regatta Dr., C201) agreed that common ownership of facilities such as driveways, parking spaces and stormwater facilities is appropriate and are commonly found in BSP's. Mr. Severns also noted that BSP's get changed even without alteration language by getting the proper parties together and execute documents to allow the change. Mr. Severns asked that the Planning Commission to not be confused that BSP's can't be changed because they can. Mr. Severns urged the Planning Commission not to make it too easy to change a BSP because to say that we're going to change the BSP and we're going to ignore the other parties even though they purchased their properties after the fact is not something the City wants to do. Mr. Severns pointed out that the majority of the 13 jurisdictions require all parties

to participate in alterations. Mr. Severns agreed with a simpler BSP process on a go-forward basis but suggested that there needs to be a proper search done on people that have an interest in the property and they need to be included in major alterations.

Sue Karahalios (1085 SE Regatta Dr., B-101) thanked staff for acknowledging that there are rights given to those that have an existing BSP. She also appreciated that there is consistency in how people are treated. She supported having all the owners involved in a BSP alteration.

Tom Moser (1204 Cleveland Ave., Mount Vernon WA) detailed his background and experience in land use law. Mr. Moser pointed out that the option to say that everyone gets to vote and you have to have 100 percent gives tremendous veto power to somebody who may own a lot or have an interest in a piece of property. He encouraged the Planning Commission to reconsider that option.

Mr. Moser noted that the language proposed uses the term "restrictive covenants". He asked if the term meant the face of the BSP or does it mean the CC&R's or the declarations of CC&R's. He suggested defining the term.

Mr. Moser stated that the City should divide between public and private as Mr. Spoo has suggested.

Mr. Moser presented a letter dated November 3, 2004 from the City of Oak Harbor's City Attorney Phil Bleyhl (Attachment 1). Mr. Moser noted the following points Mr. Bleyhl made in the letter:

- The City should not be in the business of deciding ownership.
- Minor modifications to BSP's are allowed under the code.
- Sign-off by parties to the BSP is not necessary because it gives too much control.

Mr. Moser noted that there is a history of the City doing fine on amending BSP's until very recently. The BSP amendments were done administratively and he didn't see any reason that couldn't continue.

Mr. Moser concluded by stating that just because somebody hasn't built on a lot yet doesn't make it the property of the people who have built and that doesn't transfer ownership to somebody who hasn't purchased the land.

Being not further public comment, Mr. Fakkema closed the public hearing.

Commission Discussion

Commissioners asked the following questions:

How many jurisdictions were looked at? Mr. Spoo said staff only looked at jurisdictions that had the information readily available on the internet which are the 13 jurisdictions listed in the staff report.

Did staff also consider commercial verses residential BSP's? Mr. Powers said that staff did consider whether it is necessary to have a different process for commercial and industrial BSP's and BSP's used for condominiums but tried an approach that covers all the bases with a single set of procedures and then deal with the specifics of each application as they come forth.

The public hearing was continued to February 22, 2011.

Steve
LARRY C.
[REDACTED]
[REDACTED]

LAW DEPARTMENT

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November 3, 2004

Scott M. Missall
Short Cressman & Burgess
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088

Re: Pier Point

Dear Mr. Missall:

This letter is in response to your letter of October 15, 2004 concerning title to the lots which are undeveloped in the Pier Point Condominium Binding Site Plan area.

It seems to me there are four major issues:

1. Whether the development rights to these lots still exist as property rights of the title holder.
2. Whether the City can process a change in the development schedule as a minor modification of the site plan or for a change in intensity of use for a lot.
3. Who must sign-off on an application or approved site plan change.
4. Whether the owner of the vacant lots can shift units from one lot to another on the plat.

P.C. HRC.
REC'D. 1/25/11
RCP

ATTACHMENT 1

1. Ownership is a predicate to processing of a permit change. Because the City does not adjudicate ownership, the City does not have to process a land use permit where ownership is disputed. See for example, Taylor v. Board of Adjustment of the Town of South Bethany (Del. Supr.) 1985 WL 188302 . However, since the City permit process is not actually the place to adjudicate ownership disputes, the City may proceed with processing a permit even when there might be questions concerning title. MacDonald v. Board of Adjustment of the Town of Dewey Beach, 568 A.2d 1083, 1086 (Dela. 1989) This is especially true where the applicant, as you have now provided, shows recognition of ownership interest by a title company, the City can move forward with processing the application for a binding site plan change. Sun Oil Company v. Railroad Commission, 390 S.W.2d 803, 807 (Tex. 1965). Such processing or even approval, however, is not made in derogation of any property rights of others who own or rent property in Pier Point Condominiums. Rather, in a sense the City is looking at the site plan -- i.e., the plan for development and not the binding site plan -- i.e., the division into lots, easements and other reciprocal rights. Thus, the City can approve changes again to the site plan without adjudicating other's ownership interests. The difficulty for your client is that both types of information are on the same document.

2. Minor modification process. It is apparent that the previous Planning Director followed a long process of dealing with these issues by allowing amendments of the binding site plan under OHMC 21.80.200. It is my understanding that such long standing interpretation will not be disturbed by the City at this time, although, it seems a bit strained.

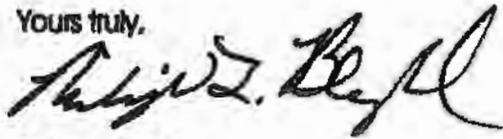
Minor modification, however, cannot mean the shifting of residential units from one location to another in the same development.

3. Sign-off by parties on the binding site plan. A question was raised as to who had to sign off on any change to the binding site plan map. That issue is not addressed in the City Code. RCW 58.17.215 et seq., provides some guidance. It authorizes a partial amendment which covers only certain lots. So long as the owners of the lots are wanting to make the change to their lots, they can sign-off to an amendment which covers the "site plan" elements of the lots. It would seem, therefore, an amending document should only show the lots for which change is being sought and that the person's needing to sign-off on the site plan are the owners of record for the site plan and not all of the owners of the binding site plan. Such an approval would not affect the other owners' interests. In fact, as the RCW sections above cited: an easement interest will not be affected by such amendment. However, again, the City has no authority to affect the others' interests in the condominium and because site plan elements are located on the binding site plan map, it is arguable such rights may be claimed. In short, the new map would only cover the lots

Involved. The issue then is access easements. I understand you feel those are acceptably handled. We would take no position on that.

4. Change in development schedule. It is my understanding that you are claiming the development schedule is purely a creature of City regulation. Therefore, it is part of the site plan and not an issue of ownership and a property right of others in the condominium association. As such, it is subject to amendment by the City and should be allowed subject to any changes in regulatory law which have occurred since then. I can conceive of no reason why it should not be permitted. Approval of the schedule change, however, would subject the owner into applying for and obtaining all of the necessary permits.

Yours truly,



Philip L. Bleyhl
City Attorney

PLB/kp

cc: Development Services

F:\GLA\WORK\01\2004\Pier Point - Ltr.fm

Planning Commission
Staff Report & Minutes
from February 22, 2011

City of Oak Harbor Planning Commission Report

Date: February 22, 2011
 Subject: Binding Site Plan Code
Amendments

FROM: Steve Powers, Director and Ethan Spoo, Senior Planner

PURPOSE

At its February meeting, Planning Commission will be in the third month of discussions regarding amendments to the binding site plan (BSP) code. This report continues those discussions where they left off in January. The code amendments, if approved, would establish a process for altering previously approved BSPs. With this report, staff presents the second draft of the code for the Planning Commission's consideration.

AUTHORITY

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan. Should a city chose to adopt such an ordinance, is required to provide for the alteration or vacation of BSPs.

BACKGROUND

Binding Site Plans

State law provides for the BSP process as an alternative means of subdividing property. This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities).

The Municipal Code includes a chapter devoted to binding site plans (OHMC 21.80). A recent review of this existing language found that it does not specifically or adequately address alterations. Staff notes this review was the result of a recent application seeking to alter a previously approved binding site plan.

January 25, 2011 Planning Commission Meeting

Discussion concepts presented by staff at the January meeting introduced a two-tiered system whereby alterations to BSPs already in existence would require the signatures of all property owners within that BSP. All future BSPs would require that only those property owners whose lots are proposed to be altered sign the alteration application.

Planning Commission accepted testimony in an open public hearing based on the concepts presented by staff. Two distinctly different opinions were voiced by those who gave testimony: (1) those who believe that the signatures of all property owners within a BSP should be required to make alterations and (2) those who believe that signatures of less than all property owners within a BSP should be required (i.e. only those whose lots are proposed to be altered). The former group pointed out that a BSP, by its very nature, sets up expectations by property owners

February 22, 2011 Binding Site Plan Code Amendments

Page 1 of 5

of the need for consistency with that BSP. The latter group expressed concern that requiring all signatures would effectively prevent any changes to BSPs since one reluctant property owner could halt an alteration.

More detail on the public comments is available in the January 25, 2011 Planning Commission meeting minutes.

DISCUSSION

Additional Research

Based on comments received at last month's Planning Commission meeting, staff conducted additional research regarding how other communities around the state process alteration requests, as well as the nature of BSPs in Oak Harbor.

At last month's meeting, staff presented research from 13 communities distinguishing between those who require all property owners within a BSP to sign and those which require less than all to sign alteration applications. This month staff researched additional communities increasing the total number to 59. Of the 59 communities researched, 11 communities either do not have a BSP process or an alteration process. Of the 48 communities which do have a process, 39 (81%) require signatures by all property owners within the BSP to make alterations. However, we should proceed with caution in drawing conclusions from this information. Most of the jurisdictions in this category have code language stating that the same process shall be used for alterations as for submitting the original binding site plan application. The two actions are treated the same. It is not clear from this research whether or not any of these jurisdictions have encountered any difficulty in implementing this approach to alterations. This research also does not give any insight in to whether the other jurisdictions' application procedures are guided by policy, rather than code. See Attachment 1 for further detail.

Staff also looked into the number and type of BSPs within the Oak Harbor city boundaries. There are 13 BSPs in city boundaries, ten of which are commercial/industrial BSPs and three of which are residential condominiums. Only one BSP within the city has a construction schedule associated with it. See map in Attachment 2.

Topics for Consideration

The following topics are offered for the Planning Commission's consideration as you review the second draft of the amended code:

- **The City must have an alteration or vacation process.** It bears repeating that the City of Oak Harbor is required under RCW 58.17.035 to provide a process for property owners to seek to alter or vacate portions or all of an approved binding site plan.
- **Submittal of an application is the beginning, not the end, of the process.** It is important to note that the proposed code amendment is primarily intended to put into place a process by which applications for alterations may be submitted and considered. The process only begins with the receipt of the application. The review of the alteration application is deemed a Type II process (an administrative decision, requiring notice to the general public and property owners within 300 feet). This administrative decision is appealable to the City's Hearing Examiner.

- **Varying property owner interests.** At the January 25, 2011 Planning Commission meeting, one of the central issues (based on public testimony) was the topic of varying property owner interests. At issue is whether a single property owner, or group of property owners, should be able to submit an application for a binding site plan alteration without first securing the permission (in the form of signatures on the application) from all property owners within the binding site plan.
- **A BSP is a method of dividing land (public versus private interests).** The binding site plan process is a means of dividing property; it is the approval of this land division that is the 'public interest.' The existing code language requires certain information to be included on a binding site plan map that is not necessarily directly related to this purpose. Some of this information may be regulated by other permit procedures (such as through a site plan and design review approval per OHMC 19.48) or it may be in the form of private agreements (covenants) between property owners. It is staff's belief that the City should not be adjudicating private interest issues, but should focus on issues clearly in the public interest.
- **Research findings.** Staff research shows that the majority of jurisdictions choose to require the signatures of all property owners within a BSP for alterations (by way of stating the procedure for alterations is the same as for original approval). It is unclear from this research whether or not requiring all property owners within a BSP to sign has led to problems. In other words, these cities should not necessarily be looked at as directly applicable models for the City of Oak Harbor. Staff research also shows that the City has relatively few BSPs and most of the BSPs are commercial or industrial. The staff recommendation seeks to create a process that will work with existing and future binding site plans.

SUMMARY OF SECOND DRAFT OF CODE

The second draft of the code responds to the above topics. The code has the following features:

- **Limit what is recorded on BSP map documents.** In order that the City focus its role on the subject land division and what is in the public interest, the language proposed by staff will limit what is recorded on future BSP map documents. Staff is proposing to limit what is recorded on a binding site plan map to those items which pertain directly to land division; primarily lots and their dimensions, rights-of-way, easements (access, parking, open space, etc.), and public utilities (sewer, water, storm).
- **The City will only accept alterations that pertain to the public interest.** As a way of distinguishing between public (land division) and private interests, the City will only accept an alteration application if it pertains to the items recorded on a binding site plan map. Since the items which are recorded on a binding site plan map are being limited, as per the first bullet above, staff believes this will focus the City on those items in the public interest.

Binding site plans approved prior to the date of the new ordinance include items not pertaining directly to land division. In recognition of this fact, the City will accept alterations to already established binding site plans for elements such as zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed

use, location of buildings, and loading areas.

- **Alteration applications may be submitted by only those property owners who are directly affected.** At its January meeting, Planning Commission accepted public testimony indicating that requiring all signatures for BSP changes could limit private property rights as well as create a process which may be impossible for a property owner to initiate. On the other hand, the Commission also heard testimony that those property owners who may be directly affected by the proposed alteration should have a role in determining whether the amendment is submitted. After reviewing this testimony, other codes and weighing the pros and cons of different approaches, the staff recommends that only those property owners directly affected by the proposed alteration be required to sign the application. In some cases, this may be only one property owner if a change directly affects only his lots (e.g. the alteration of a property line or easement). In other cases, this may require the signatures of multiple property owners who may be affected, as would be the case if an alteration to a shared parking facility were proposed. Each alteration application would need to be accompanied by a title company certification proving ownership, and therefore, ability to submit the application. It is staff's opinion that this process is the most appropriate given all the information at our disposal.

CITIZEN COMMENTS

The Chair of the Planning Commission received a letter from Mr. Christian Anderson on behalf of Dry Lake Land Stewardship, LLC. Dry Lake Land Stewardship has been planning a new commercial development, which is partly within the Oak Tree Village Binding Site Plan. It is Mr. Anderson's opinion that alterations to a BSP should require the signatures of only the property owners directly affected. His contention is that requiring additional signatures may constitute a "taking" of private property and could hinder economic development within the City.

The Chair of the Planning Commission also received a letter from Mr. William Massey. In that letter, Mr. Massey expressed his opposition to requiring all property owners within a BSP to sign alterations. He proposed two alternative ways to process an alteration application: (1) by vote of the majority of the property owners contiguous to and directly affected by the proposed alteration and (2) a minor/major system whereby minor alterations would be decided administratively by staff and major alterations would be decided by the City's hearing examiner.

RECOMMENDATIONS

- Accept public testimony and close the public hearing.
- Recommend approval to City Council of the amendments to Chapter 21. 80 OHMC ("Binding Site Plans") as drafted in Attachment 5.

ATTACHMENTS

- Attachment 1 – Binding Site Plan Alterations: Signatures Required by Washington Jurisdictions.
- Attachment 2 – Map of binding site plans in Oak Harbor.
- Attachment 3 – Letter from Mr. Christian Anderson, Dry Lake Land Stewardship, LLC
- Attachment 4 – Letter from Mr. William Massey

- Attachment 5 – Draft amendments to Chapter 21.80 OHMC (“Binding Site Plans”) (Please note that both a legislative edit version and a ‘clean’ version are provided.)

Attachment 1 - Binding Site Plan Alterations: Signature Required by Washington Jurisdictions

 previously researched

Jurisdiction	Required Signatures		Relevant Clause
	Less than All	All	
Aberdeen			Do not have BSP process
Anacortes		X	Modifications may be applied for pursuant to established city procedures.
Arlington		X	The application materials, procedures, review criteria, standards, etc., shall be the same as for the initial binding site plan
Auburn	X		"all owners of the properties directly affected"... "vacations shall no adverse impact"
Bainbridge Island			Do not have BSP process
Battleground			No alteration process
Bellingham		X	"shall be processed in the same manner as an original application."
Bonney Lake			Do not have BSP process
Bothell		X	"processed in same manner as the original specific binding site plan"
Bremerton			No alteration process
Bunien	X	X	For residential, all signatures required, unless vacation in which case it's only the property owners involved. No commercial/industrial BSP allowed.
Burlington			No alteration process
Camas		X	Modifications may be applied for pursuant to established city procedures.
Centralia		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded
Cheney	X		"shall contain the signatures of the majority of the persons having an ownership interest of lots, tract, parcels, site, or divisions in the subject binding site plan or portion to be altered"
Covington		X	same process required for a new application as set forth in this chapter
Des Moines		X	no alteration process
Edmonds		X	The proposed modification shall be considered in the same manner as the proposed subdivision.
Ellensburg			Do not have BSP process
Federal Way		X	"same process and requirements...for the approval of a binding site plan
Issaquah		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the Planning Director/Manager using the criteria in IMC 18.13.160
Kenmore		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter
Kirkland		X	Proposals for alterations and vacations of binding site plans shall be reviewed by the planning dept. using the criteria in KMC.
Kitsap County	X		"shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered"
Lacey	X		"application shall contain the signatures of the majority of persons having an ownership interest of the lots, tracts, or parcels, sites or divisions in the subject land division or portion to be altered"
Lake Forest Park			Do not have BSP process
Lake Stevens		X	Any request for a revision to an approved plan shall be reviewed pursuant to Section 14.16A.235
Longview		X	Amendments to a binding site plan shall be processed pursuant to this title and must be recorded.
Lynnwood		X	Alteration of an approved preliminary or final binding site plan other than slight deviations as defined in LMC 19.75.070(B) shall be accomplished by application as set forth in LMC 19.75.035 and shall be subject to all procedures and requirements established in this chapter.
Maple Valley		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application, as set forth in this chapter.
Mercer Island			Do not have BSP process
Mill Creek			Do not have BSP process

ATTACHMENT 1

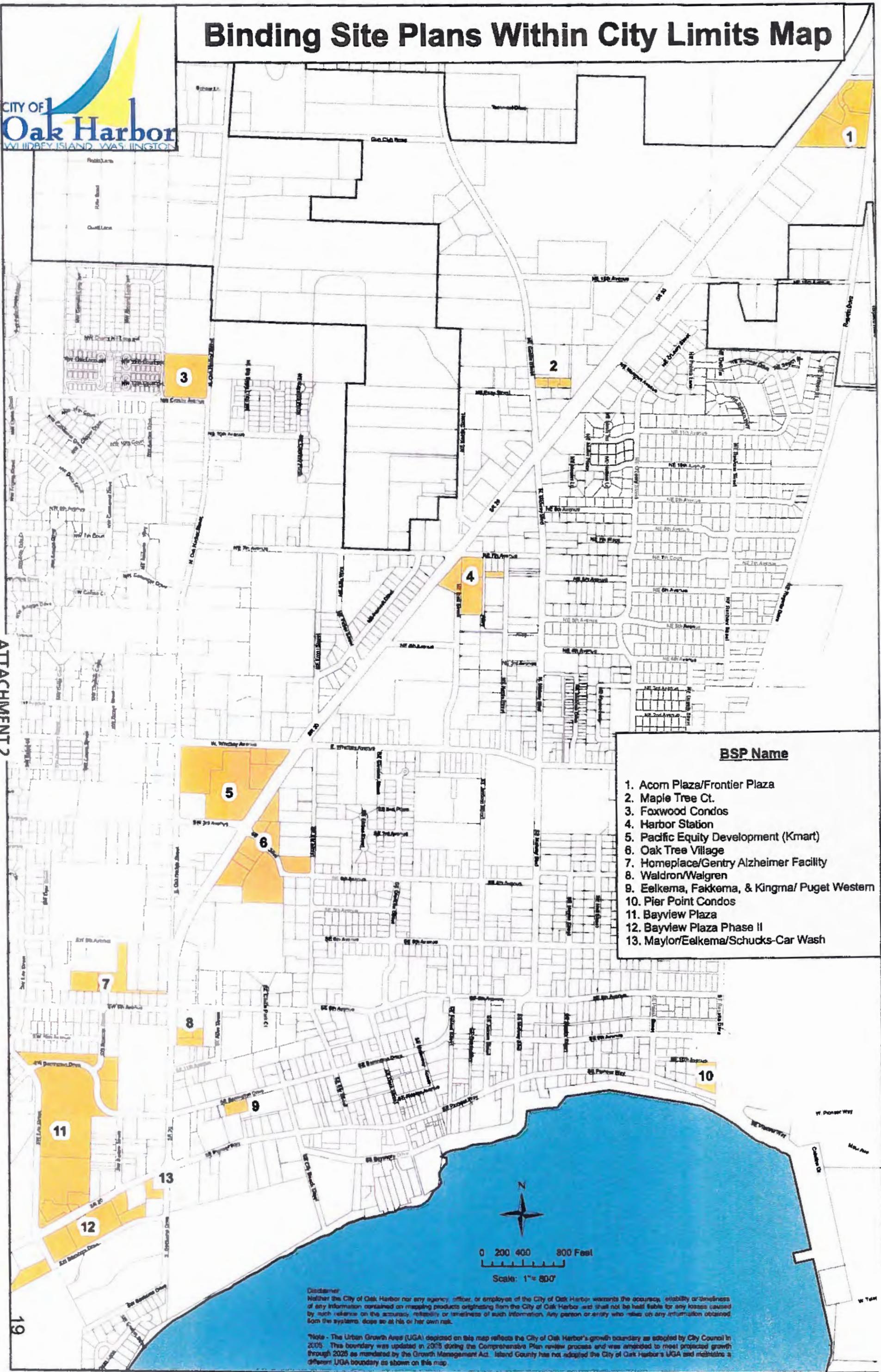
ATTACHMENT 3

Monroe		X	If the revision is substantial, the proposal shall follow the same procedures required for acquiring a binding site plan, as set forth in this chapter.
Moses Lake		X	no alteration process
Mount Vernon		X	major and minor modifications
Mountlake Terrace		X	The amended binding site plan shall be processed subject to all the procedures and requirements of this chapter.
Mukilteo		X	Alteration or vacation of binding site plans shall be accomplished by following the same process and applying the same criteria as for an initial application for binding site plan approval.
New Castle	X		"signatures of owners of portions of a binding site plan which are not altered by an amendment or rescission are not required on the amended binding site plan"
Olympia			No alteration process
Pasco		X	The recorded binding site plan may be altered at the City Planner's discretion by processing through the review/approval procedure.
Port Angeles		X	Alterations may be applied for pursuant to established city procedures.
Pullman			N/A
Puyallup		X	Alteration of an approved and recorded binding site plan shall be accompanied by application as set forth in PMC 19.10.040 and shall be subject to all procedures and requirements established in this chapter.
Redmond		X	Amendments to or vacations of an approved binding site plan shall be made through the subdivision vacation process and shall be made by all persons having an ownership interest in the portion to be vacated.
Richland		X	no alteration process
Sammamish		X	Alteration of a binding site plan shall be accomplished by following the same process required for a new application as set forth in this chapter.
Seatac	X		Any subdivision or binding site plan application under subsection (D) of this section shall require the written consent of parties representing no less than sixty-six percent (66%) ownership interest in the entire site
Shoreline		X	Amendment, modification and vacation of a binding site plan shall be accomplished by following the same procedure and satisfying the same laws, rules and conditions as required for a new binding site plan application.
Sultan		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Sunnyside		X	Whenever any person is interested in the vacation or alteration of a recorded binding site plan, the procedures set forth in SMC 16.06.040 through 16.06.090 contained herein shall be followed,
Tukwila	X		that only owners of lots within the BSP that are directly affected by the proposed alteration shall be required to authorize application for the alteration.
Tumwater	X		Where the lots within a recorded plat are held in more than one ownership, the application for replat shall not be accepted by the City for processing unless accompanied by the signatures of all property owners within the plat whose lot boundaries would be altered or affected by the replat.
University Place		X	"shall be accomplished by following the same procedure and satisfying the same laws, rules, and conditions as required for a new binding site plan application"
Walla Walla		X	"amendments...shall be processed pursuant to this chapter and must be recorded."
Washougal		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Wenatchee		X	no alteration process
West Richland		X	no alteration process
Woodland		X	"shall be accomplished by the same procedure set forth in this chapter for the original plan"
Yakima		X	"the acknowledged signatures of all parties having an ownership interest in the property"

Binding Site Plans Within City Limits Map



ATTACHMENT 2



BSP Name
1. Acorn Plaza/Frontier Plaza
2. Maple Tree Ct.
3. Foxwood Condos
4. Harbor Station
5. Pacific Equity Development (Kmart)
6. Oak Tree Village
7. Homeplace/Gentry Alzheimer Facility
8. Waldron/Waigren
9. Eelkema, Fakkema, & Kingma/ Puget Western
10. Pier Point Condos
11. Bayview Plaza
12. Bayview Plaza Phase II
13. Maylor/Eelkema/Schucks-Car Wash

Disclaimer:
 Neither the City of Oak Harbor nor any agency, officer, or employee of the City of Oak Harbor warrants the accuracy, reliability or timeliness of any information contained on mapping products originating from the City of Oak Harbor and shall not be held liable for any losses caused by such reliance on the accuracy, reliability or timeliness of such information. Any person or entity who relies on any information obtained from the systems, does so at his or her own risk.

Note: - The Urban Growth Area (UGA) depicted on this map reflects the City of Oak Harbor's growth boundary as adopted by City Council in 2009. This boundary was updated in 2015 during the Comprehensive Plan review process and was amended to meet projected growth through 2025 as mandated by the Growth Management Act. Island County has not adopted the City of Oak Harbor's UGA and maintains a different UGA boundary as shown on this map.

ATTACHMENT 3

RECEIVED

FEB 14 2011

CITY OF OAK HARBOR
Development Services Department**DRY LAKE LAND STEWARDSHIP LLC**

chris.anderson@century21trophy.com

February 11, 2011

Mr. Nathan Spoo
City of Oak Harbor Planning Dept.
865 SE Barrington Drive
Oak Harbor, WA 98277

Chairman Bruce Neil
Oak Harbor Planning Commission
865 SE Barrington Drive
Oak Harbor, WA 98277

RE: Proposed Amendments to the Binding Site Plan Ordinance

Please consider the following:

Dry Lake Land Stewardship LLC's background

My Name is Christian A. Anderson. I am an Oak Harbor native, developer, real estate broker and a member of a group which has been planning a new commercial development within the City Limits of Oak Harbor.

The property which we intend to develop will serve as home to a "Home Grown" locally based commercial retail and service oriented company. The new facility will directly employ between 20 and 40 people once completed. During the construction of the facility it will directly and indirectly employ hundreds of others.

A portion of the property which we own and plan to develop lies within the Oak Tree Village Binding Site Plan (BSP). We have shared our plans with city staff and we have together developed a concept which is ready to be submitted for site plan review by the Oak Harbor City Planning Department. Our proposed site plan may require modifications to the Oak Tree Village BSP. It is unclear in our particular situation if any BSP landowner acknowledgement will be required because in our particular case the rights to access our larger parcel which adjoins the Oak Tree Village BSP were reserved prior to the issuance of final approval of the Oak Tree Village BSP.

Our development plans involve the modification of what is now an exit for some of the lots in the Oak Tree Village BSP onto Highway 20. Our plans also includes the modification of the

landscaping and will undoubtedly involve tying into or modifying existing utilities which are associated with the Oak Tree Village BSP.

The Oak Tree Village BSP was approved in the early 90's and all of the lots within the BSP have been transferred from the original developer to successor property owners. These property owners, some of which are not community based, may be very hard to communicate with and are not likely to be interested in taking the time to consider any change which does not directly effect them.

It is our opinion that any changes to the BSP ordinance should consider the long term economic effects on our local economy and not hinder Oak Harbor's inter-city development potential which would ultimately lead to "Sprawl" instead of "Infill" of the existing city limits.

Competing Views on the Proposed Amendment to the BSP Ordinance

The City of Oak Harbor is seeking public input on a proposed amendment to the current Binding Site Plan Ordinance. It is my understanding that the City Planners are attempting to amend the regulations governing BSP's to provide for a method to make changes to a BSP after the BSP has been adopted. It seems that there are differences of opinion on how the BSP amendment process should be administered.

At one end of the debate it is suggested that it should require 100% approval of all of the property owners who have any interest in the BSP to approve of any change to the BSP in all cases.

It is unclear to us if this scenario would include seeking permission of all property owners who simply own some of the rights associated with the real estate involved in the BSP or would it be perhaps that any associated parties with an interest in the BSP should have to bless a modification.

That scenario could potentially involve a tenant which owns a Lease Hold Estate, Mortgage or Lien Holders which may have a security interest, Owners of specific rights such as easements and or mineral rights which may own some but not all of the real property rights. Other such examples could be owners of view rights or mineral rights or water rights. Then of course there are the private property rights of the property owners which share a property line but are outside of the BSP and have shared rights.

The views on the other side of the debate seems to be, if a property owner is legally in title to the private real property after the BSP has been adopted, that private property owner would be entitled to, as a free citizen of the United States of America, make whatever changes to the property the owner desires without any governmental involvement whatsoever so long as it complies with the rest of the multitude of existing State, County and City ordinances.

In this scenario if another citizen or group did not approve of the changes the private property owner was making the conflicted parties could sort out their differences through whatever remedies they so chose which is already provided for under existing laws and customs

BSP's effects on adjacent property owners

Other effects of the changes to ordinance should be considered as well. What about the neighboring properties of a BSP? Please consider this. What would the effect of a BSP be on a neighboring property owner if the property owner was somehow landlocked or surrounded by a BSP that was difficult or impossible to amend because it was impossible to get a majority of the landowners within the BSP to agree to a change? What if the owners within the BSP wished to extract money from the land locked private property owner in exchange for cooperation in amending the BSP for a minor change? We believe in that case BSP's could be considered Unconstitutional. It is what is known as a "taking". In our opinion it would be no different than surrounding a private property owner with what is akin to a giant mote without a draw bridge. Even if the Mote was on one or two sides the effect could be devastating to the private property owner who had nothing to do with creating the original BSP which is now looming around them. There is a protection for private property owners for this in the US Constitution under the 5th Amendment.

Washington State Law

Washington State Law provides guidance to how municipalities shall administer Binding Site Plans under Title 58 RCW. The section of the Revised Code of Washington (RCW) which specifically addresses how the municipal code shall be drafted by individual Cities and Counties is found under RCW 58.17.035. and is attached as Attachment "A" to the letter. I wish to point out that RCW 58.17.035 specifically identifies different types of BSP's. The ordinance groups them into categories such as residential, commercial and industrial. The ordinance goes on to say;

"Such ordinance may apply the same or different requirements and procedures to each of these three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan".

In the next paragraph of the RCW it specifically mentions industrial and commercial BSP's. The state law says;

"The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval."

This requirement raises a question. Was the BSP Ordinance originally adopted in by the City of Oak Harbor in accordance with State Law? The next question that comes to mind is. If Oak Harbor's BSP ordinance was not in compliance with state law are the owners of the properties within the existing BSP's bound by any BSP ordinance at all? These are legal questions which should be addressed with haste.

Conclusion

We propose that any amended City Ordinance make it possible for individual property owners to efficiently and inexpensively make changes to a BSP in the same manner changes

are made to any other piece of real estate which is located outside of a BSP. A property owner interested in making an amendment should first look to the existing Covenants of the property for guidance as to who should have a say in the process.

If a method for amendment is unavailable in the Covenants it is our opinion that changes to the BSP be handled privately between property owners and then blessed administratively by the City. The City's only concern at that point should be to make sure the changes allow for similar Zoning and the safety and welfare of the public. After a brief review the planning department could then approve the proposed amendments, with any agreed upon changes, acknowledge them, and then suggest that the amendments be recorded with the County Auditor.

This in our view would be in the best interest of the City planners, local citizens as well as the individual property owners involved with the proposed Amendments to the BSP. We don't believe that it should be a requirement under the new revised code to seek permission from any or all people who claim to have an interest in the real estate located within the BSP.

It is also our opinion, based on knowledge of the real estate laws, that even if there are Covenants recorded on the property within a BSP that do specifically contain a procedure for privately amending the BSP, that it is not the place of the City Planning Department to defend the private property rights of individual private real estate owner or owners in enforcing those Covenants. Remedies and Protections for private property rights already exist in other areas of our existing laws.

Very Truly Yours,



CHRISTIAN ANKER ANDERSON
Member of Dry Lake Land Stewardship LLC

RCW 58.17.035

Alternative method of land division — Binding site plans.

A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval.

The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances.

All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW.

[1987 c 354 § 2.]

RCW 58.17.040
Chapter inapplicable, when.

The provisions of this chapter shall not apply to:

Not (1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one-one hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: PROVIDED, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

A (4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations; *Commercial & Ind*

X (5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations; *Trailer Parks*

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; *condos*

X (7) Divisions of land into lots or tracts if: (a) Such division is the result of subjecting a portion of a parcel or tract of land to either chapter 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land; (b) the improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (c) a city, town, or county has approved the binding site plan for all such land; (d) such approved binding site plan is recorded in the county or counties in which such land is located; and (e) the binding site plan contains thereon the following statement: "All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein." The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either chapter 64.32 or 64.34 RCW. A site plan shall be deemed to have been approved if the site plan was approved by a city, town, or county: (i) in connection with the final approval of a subdivision plat or planned unit development with respect to all of such land; or (ii) in connection with the issuance of building permits or final certificates of occupancy with respect to all of such land; or (iii) if not approved pursuant to (i) and (ii) of this subsection (7)(e), then pursuant to such other procedures as such city, town, or county may have established for the approval of a binding site plan;

(8) A division for the purpose of leasing land for facilities providing personal wireless services while used for that purpose. "Personal wireless services" means any federally licensed personal wireless service. "Facilities" means unstaffed facilities that are used for the transmission or reception, or both, of wireless communication services including, but not necessarily limited to, antenna arrays, transmission cables, equipment shelters, and support structures; and

(9) A division of land into lots or tracts of less than three acres that is recorded in accordance with chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities. For purposes of this subsection, "electric utility facilities" means unstaffed facilities, except for the presence of security personnel, that are used for or in connection with or to facilitate the transmission, distribution, sale, or furnishing of electricity including, but not limited to, electric power substations. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of cities, towns, counties, and municipal corporations. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers. New customers are defined as electric service locations not already in existence as of the date that electric utility facilities subject to the provisions of this subsection are planned and constructed.

[2004 c 239 § 1; 2002 c 44 § 1; 1992 c 220 § 27; 1989 c 43 § 4-123. Prior: 1987 c 354 § 1, 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 283 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Notes:

Severability – Effective date – 1989 c 43: See RCW 64.34.920 and 64.34.930.



William L. Massey

41 NE Midway Blvd., Suite 101
Oak Harbor, WA 98277

(360) 675-9091 (360) 675-5341 Fax

February 17, 2011

Bruce Neil
Chairman
Oak Harbor Planning Commission
865 SE Barrington Ave.
Oak Harbor, WA 98277

RECEIVED

FEB 17 2011

**CITY OF OAK HARBOR
Development Services Department**

Re: Proposed revisions to City of Oak Harbor Binding Site Plan Ordinance (OHMC 21.80).

Chairman Neil and Planning Commissioners

Our primary interest in the proposed revisions relate to the four separate parcels, of a total of eight parcels, 50% of the BSP owned by our company in Fee Simple Title, in the residential BSP known as Pier Point (our company's parcels are not part of the Pier Point Condominium). Our company also has a lenders deed of trust interest in a parcel of the BSP known as Oak Tree Village and we are therefore very concerned about restrictions that could impair the development rights of our client.

The changes to the ordinance, as they are currently proposed by staff, become a property rights issue wherein property owners within a BSP could control the reasonable use of another property owner even if there is no detriment to the property owners who vote against proposed changes to the BSP. Opposition could be based on the apathy or animosity of one or two individuals

It's interesting to note that at the December 28 Planning Commission hearing, staff member Mr. Spoo acknowledged that this issue was brought to the city's attention as a result of an application to alter an existing site plan. Further testimony, allowed by the Chairman, identified Pier Point. Staff member Mr. Powers acknowledged that there is a link between the history of the Pier Point application and the proposed ordinance changes.

Please consider the following:

Condominium ownership and regulations should not be confused with BSP regulations.

Using Pier Point as the example; there are eight parcels and within four of the parcels there are eight condo owners.

Rather than allowing all condo owners a vote, which creates a disproportionate advantage, it would be more fair to allow each parcel within the BSP one vote. The right to vote on an alteration should be allowed only if there might be an effect on the reasonable use of the properties outside the area of the proposed alteration such as easement changes, utility changes or changes to building envelopes. A tie in the voting should be settled by an arbiter.

In the case of a commercial BSP consider the potential detriment to a commercial applicant if every parcel owner has a vote in the process and one vote could negate the applicant's process.

If a vote is required it should only be by a majority of those property owners contiguous to, and directly affected by the proposed alteration.

As you have seen by the process to date this is a complicated issue and doesn't necessarily work fairly if put to a vote by neighboring property owners.

The City of Oak Harbor has adopted a Hearing Examiner process specifically to take the politics out of land use issues. As you can see by some of the testimony the Pier Point example appears to have become somewhat political.

"The City Council created the hearing examiner system in May 2004 to ensure that fair and impartial decisions are made on project permits that are quasi-judicial in manner and administrative decisions by city departments"

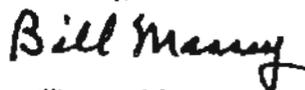
If changes to the BSP ordinance are required they should be addressed in the same manner as other land use issues, such as plats, by administrative procedure for minor modifications and a public hearing before the Hearing Examiner for a major change. In either case appeal procedures are in place if there are disagreements.

Our company currently has an appeal pending before the Island County Superior Court regarding our Pier Point application. It might be instructive to table this issue to wait for the results of the appeal.

As a side note, I have been retired from the development and construction business for several years now. Our company will not be building on the Pier Point lots and I am only pursuing the appeal as a matter of my belief in an owner's right of reasonable use. Private property rights.

If our appeal is successful Kathy and I will be donating a portion of, or all of the Pier Point parcels we own, as we have donated a number of our properties, to a non profit organization which will use the sale proceeds from the parcels toward affordable housing to benefit modest income families.

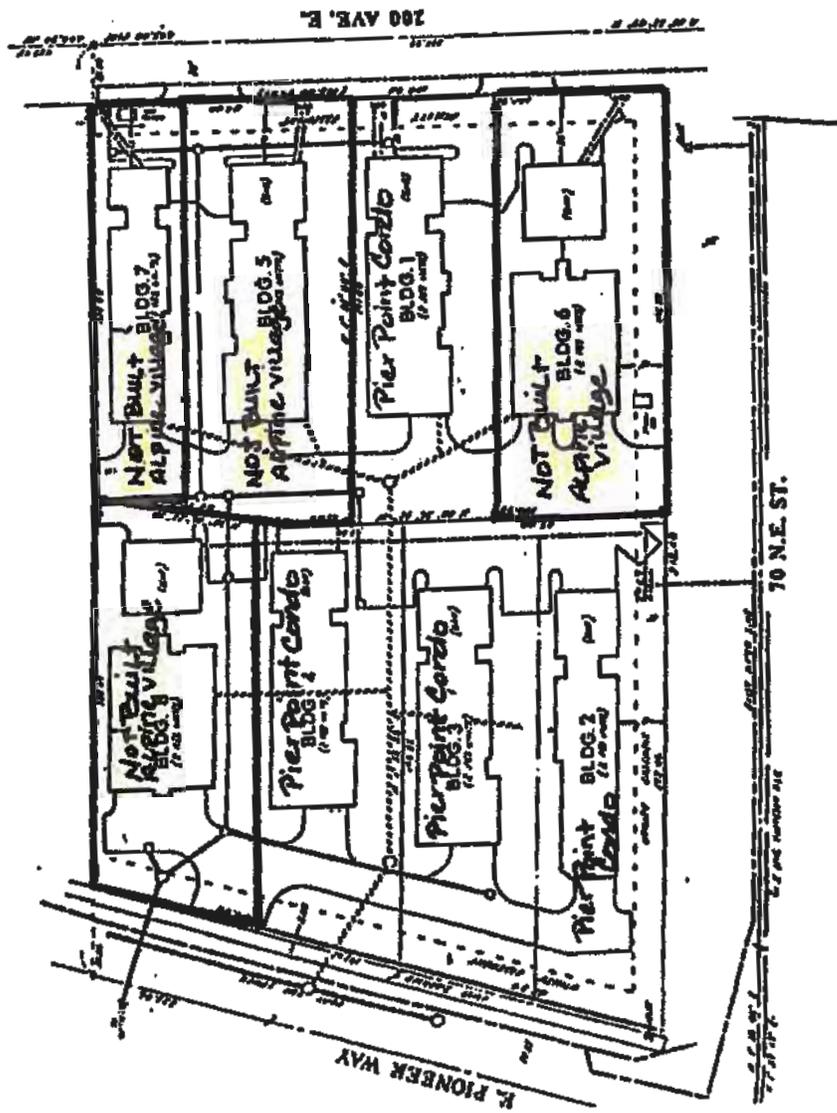
Sincerely,



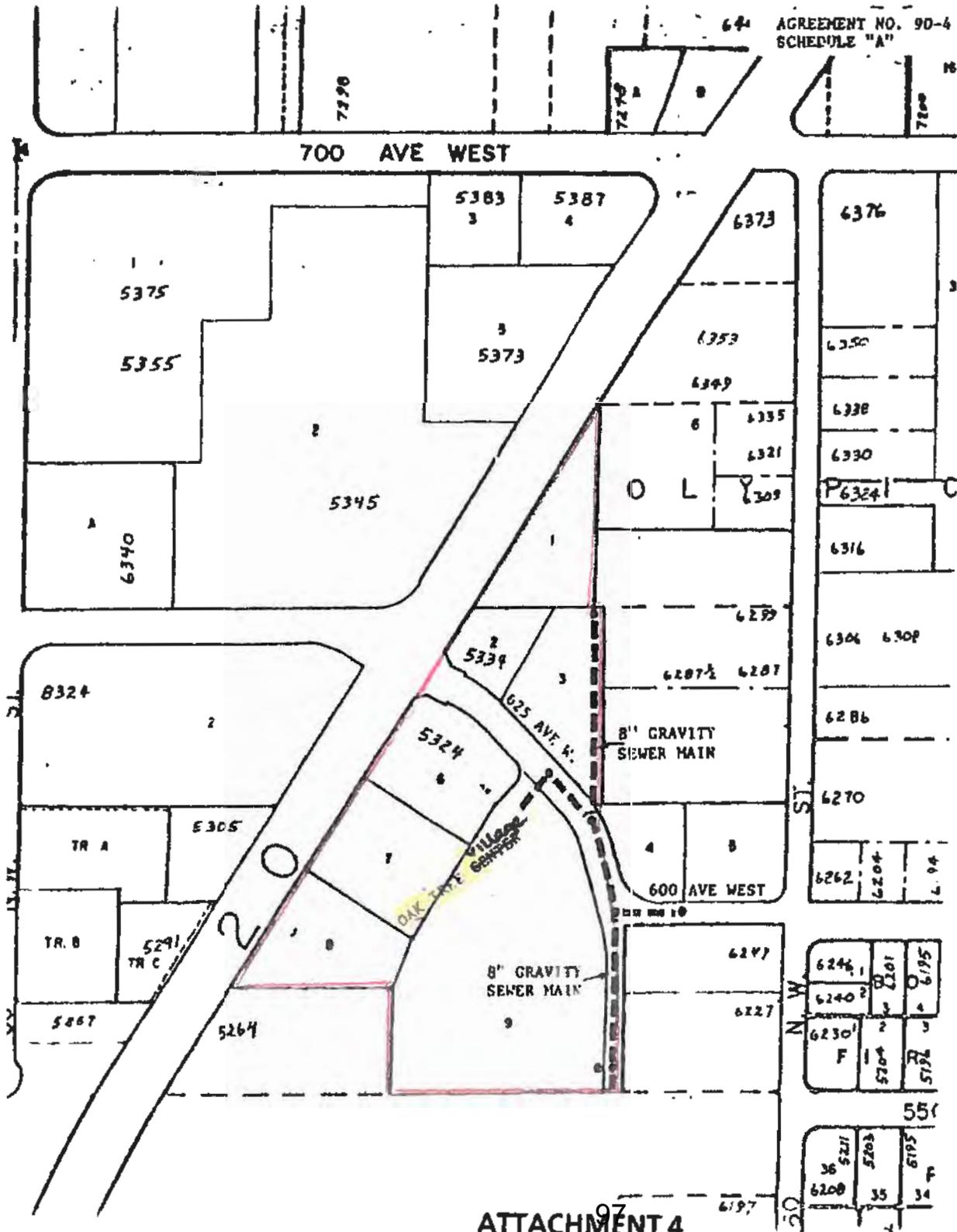
William L. Massey

Cc: Ethan Spoo, Senior Planner, City of Oak Harbor
Steve Powers, Development Services Director, City of Oak Harbor
Margery Hite, City Attorney, City of Oak Harbor
Jim Slowik, Mayor, City of Oak Harbor

Enclosure: Copy of Pier Point map
Oak Tree Village map



Pier Point



Legislative Edit Version

Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment. and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Binding Site Plan Code Amendment
Ordinance

\\City1\planning\PlanCom\PC11\2-22-11\BSP Code Update\BSP amendment ord final draft 021811 doc

Page 1 of 11

Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005** Title.
- 21.80.010** Binding site plans allowed.
- 21.80.020** Division of property.
- 21.80.025** Condominium binding site plan.
- 21.80.030** Effect.
- 21.80.040** Application.
- ~~**21.80.050** Procedure upon application.~~
- ~~**21.80.060** Requirements for a binding site plan map.~~
- ~~**21.80.055** Site plan review required.~~
- ~~**21.80.070** Certifications required.~~
- ~~**21.80.080** Title report.~~
- ~~**21.80.090** Survey required.~~
- ~~**21.80.100** Approval procedure.~~
- ~~**21.80.110** Recording requirements.~~
- ~~**21.80.120** Development requirements.~~
- ~~**21.80.130** Standards for review of commercial binding site plan.~~
- ~~**21.80.140** Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.~~
- ~~**21.80.150** Performance guarantee requirements.~~
- ~~**21.80.160** Warranty requirements for acceptance of final improvements.~~
- ~~**21.80.170** Survey required.~~
- ~~**21.80.180** Dedication – Warranty deed.~~
- ~~**21.80.190** Requirements for modification of binding site plan standards.~~
- ~~**21.80.180** Alteration or vacation of an approved binding site plan.~~
- ~~**21.80.200** Appeals to the hearing examiner.~~
- ~~**21.80.400** Enforcement.~~

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (43).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies

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with all applicable mobile home park regulations and the zoning code:

- ~~(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and~~
- (4)(3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.149~~120~~.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
 - (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
 - (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot

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lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to eChapter 19.48 is required for every lot created under this chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this eChapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

21.80.060 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The ~~final~~ recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements ~~either to be filed separately or on the binding site plan must be referenced on the binding site plan;~~
- (8) ~~Zoning setback lines and building envelope sites where applicable;~~
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) ~~Parking areas, general circulation, and landscaping areas where applicable;~~

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- ~~(14)~~ Proposed use and location of building with dimensions where applicable;
- ~~(15)~~ Loading areas where applicable;
- ~~(16)~~(13) Utilities; and
- ~~(17)~~(14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.070060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.
- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

~~**21.80.090 Survey required.**~~

~~A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.~~

21.80.100080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- ~~(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.~~
- (32) The director shall review the final binding site plan application and circulate it to other city departments to determine whether the requirements of this chapter ~~and preliminary approval~~ have been met.
- (43) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (54) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification,

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correction, or other action as may be required for approval.

- (65) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.110090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.130100 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.130110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

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- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.140120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
 - (c) Reciprocal easements for parking shall be provided to all tenants and owners.
 - (d) The developer has ~~submitted~~ entered into a binding schedule development agreement pursuant to Chapter 18.30 for completion of all phases.
 - (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in ~~subsection (2) of this section~~ the development agreement pursuant to Chapter 18.30.
 - (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
 - (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request ~~final~~ approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the

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city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.

- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140160 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170150 Survey required.

- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.180160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

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21.80.200170 Requirements for modification of binding site plan standards.

- (1) ~~Any applicant can request and make application to the city requesting. As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of OHMC 21.80.130 or 21.80.140 or OHMC the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.~~
- (2) ~~Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as an administrative a Type I decision.~~
- (3) ~~The modification shall not be granted by the director until the following facts have been established:~~
 - (a) ~~There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;~~
 - (b) ~~The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;~~
 - (c) ~~A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;~~
 - (d) ~~Landscaping requirements are not thereby reduced.~~

21.80.180 Alteration or vacation of an approved binding site plan.

~~The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.~~

(1) Definitions.

- (a) ~~Alteration: for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.~~
- (b) ~~Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.~~

(2) Submittal requirements for alterations and vacations.

- (a) ~~Application form. An application shall be submitted on a form provided by the Director.~~

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- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20-OHMG.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

(4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20-OHMG.

21.80.300190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.400200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

“Clean” Version

**Draft Amendments to
Chapter 21.80 OHMC
“Binding Site Plans”**

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

21.80.005	Title.
21.80.010	Binding site plans allowed.
21.80.020	Division of property.
21.80.025	Condominium binding site plan.
21.80.030	Effect.
21.80.040	Application.
21.80.050	Requirements for a binding site plan map.
21.80.055	Site plan review required.
21.80.060	Certifications required.
21.80.070	Title report.
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21.80.190	Appeals to the hearing examiner.
21.80.200	Enforcement.

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (3).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;

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- (3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

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21.80.035 Site plan review required.

A site plan pursuant to chapter 19.48 is required for every lot created under this Chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

21.80.050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements to be filed separately must be referenced on the binding site plan;
- (8)
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as

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shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) The director shall review the application and circulate it to other city departments to determine whether the requirements of this chapter have been met.
- (3) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (4) If either the director or the city engineer determine that the requirements have not been met, the binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (5) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.100 Development requirements.

All development must be in conformance with the recorded binding site plan.

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21.80.110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department

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personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has entered into a development agreement pursuant to Chapter 18.30 for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in the development agreement pursuant to Chapter 18.30.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.150 Survey required.

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- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

21.80.170 Requirements for modification of binding site plan standards.

- (1) As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) **Alteration:** for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (16) or (17). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) **Vacation:** for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) **Application form.** An application shall be submitted on a form provided by the Director.
- (b) **Title report.** All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) **Authority to submit alteration or vacation application.** The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.

(3) Criteria for Review.

- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved

vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20.

21.80.190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40..
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

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City Attorney

Published: _____

**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 given 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 include 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 MUNICIPAL 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 to 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.

Draft Code – Legislative Edit Version

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows.

Binding Site Plan Code Amendment
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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
21.80.010 Binding site plans allowed.
21.80.020 Division of property.
21.80.025 Condominium binding site plan.
21.80.030 Effect.
21.80.040 Application.
~~21.80.050 Procedure upon application.~~
21.80.050 Requirements for a binding site plan map.
21.80.055 Site plan review required.
21.80.060 Certifications required.
21.80.070 Title report.
~~21.80.090 Survey required.~~
21.80.080 Approval procedure.
21.80.090 Recording requirements.
21.80.100 Development requirements.
21.80.110 Standards for review of commercial binding site plan.
21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.
21.80.130 Performance guarantee requirements.
21.80.140 Warranty requirements for acceptance of final improvements.
21.80.150 Survey required.
21.80.160 Dedication – Warranty deed.
21.80.170 Requirements for modification of binding site plan standards.
21.80.180 Alteration or vacation of an approved binding site plan.
21.80.190 Appeals to the hearing examiner.
21.80.200 Enforcement.

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through ~~(3)~~

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following
(1) Divisions of land into lots classified for industrial or commercial use:

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- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;
- ~~(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site, and~~
- (4)(3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.144)120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - The city has approved a binding site plan for all such land;
 - Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
- Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - Done in connection with the issuance of a building permit or final certificate of occupancy

21.80.030 Effect.

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Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

21.80.035 Site plan review required.

A site plan pursuant to Chapter 19.48 is required for every lot created under this chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

21.80.050 Procedure upon application.

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

21.80.060050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements ~~either~~ to be filed separately ~~or on the binding site plan~~ must be referenced on the binding site plan;
- (8) ~~Zoning setback lines and building envelope sites where applicable.~~
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department

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Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;

- (12) A dedicatory statement acknowledging public and private dedications and grants;
- ~~(14) Parking areas, general circulation, and landscaping areas where applicable.~~
- ~~(14) Proposed use and location of building with dimensions where applicable.~~
- ~~(15) Loading areas where applicable.~~
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.070060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.
- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.080070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

~~21.80.090 — Survey required.~~

~~A survey must be performed for every binding site plan by or under the supervision of a state-of-Washington-registered land surveyor.~~

21.80.100080 Approval procedure.

- (1) **Binding site plan approval shall be a Type II review process.**
- ~~(2) As part of or after site plan review as provided under CHM/C Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.~~
- (2) The director shall review the final binding site plan application and circulate it to other city departments to determine whether the requirements of this chapter ~~and preliminary~~

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- ~~approval~~ have been met.
- (43) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
 - (54) If either the director or the city engineer determine that the requirements have not been met, the ~~final~~ binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
 - (65) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.140090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.120100 Development requirements.

All development must be in conformance with the recorded binding site plan.

21.80.140110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways

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- are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
 - (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
 - (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
 - (c) *Reciprocal easements for parking shall be provided to all tenants and owners.*
 - (d) The developer has ~~submitted~~ **entered into a binding schedule development agreement pursuant to Chapter 18.30** for completion of all phases.
 - (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in ~~subsection (2) of this section~~ **the development agreement pursuant to Chapter 18.30.**
 - (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee
 - (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.150~~130~~ Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request ~~final~~ approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140~~160~~ Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.170~~150~~ Survey required.

- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements.

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- general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.
- (2) Submittal requirements for alterations and vacations.
- (a) Application form. An application shall be submitted on a form provided by the Director.
- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.
- (3) Criteria for Review.
- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
- (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20 ~~CHIMC~~.
- (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.
- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20 ~~CHIMC~~.

21.80. ~~21.190~~ Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

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21.80.400200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: _____

Draft Code – ‘Clean’ Version

ORDINANCE NO. _____

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED "BINDING SITE PLANS" FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as "binding site plans" and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City's existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on _____.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows.

Binding Site Plan Code Amendment
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Section One. Oak Harbor Municipal Code Chapter 21.80 entitled "Binding Site Plans" last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80
BINDING SITE PLANS**

Sections:

- 21.80.005 Title.**
- 21.80.010 Binding site plans allowed.**
- 21.80.020 Division of property.**
- 21.80.025 Condominium binding site plan.**
- 21.80.030 Effect.**
- 21.80.040 Application.**

- 21.80.050 Requirements for a binding site plan map.**
- 21.80.055 Site plan review required.**
- 21.80.060 Certifications required.**
- 21.80.070 Title report.**

- 21.80.080 Approval procedure.**
- 21.80.090 Recording requirements.**
- 21.80.100 Development requirements.**
- 21.80.110 Standards for review of commercial binding site plan.**
- 21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.**
- 21.80.130 Performance guarantee requirements.**
- 21.80.140 Warranty requirements for acceptance of final improvements.**
- 21.80.150 Survey required.**
- 21.80.160 Dedication – Warranty deed.**
- 21.80.170 Requirements for modification of binding site plan standards.**
- 21.80.180 Alteration or vacation of an approved binding site plan.**
- 21.80.190 Appeals to the hearing examiner.**
- 21.80.200 Enforcement.**

21.80.005 Title
This chapter shall be entitled "Binding Site Plans."

21.80.010 Binding site plans allowed.
It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (3).

21.80.020 Division of property.
Division of property by binding site plans may only be used for the following:
(1) Divisions of land into lots classified for industrial or commercial use;
(2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies with all applicable mobile home park regulations and the zoning code;

- (3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.120.

21.80.025 Condominium binding site plan.

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
- (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
 - (b) The city has approved a binding site plan for all such land;
 - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
 - (d) The binding site plan contains thereon the following statement:
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW,
- (3) The binding site plan for condominiums shall be deemed approved if:
- (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
 - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

21.80.030 Effect.

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

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21.80.035 Site plan review required.

A site plan pursuant to chapter 19.48 is required for every lot created under this Chapter.

21.80.040 Application.

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application under Chapter 19.48 OHMC.

21.80.050 Requirements for a binding site plan map.

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The recorded binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements to be filed separately must be referenced on the binding site plan;
- (8)
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- (10) Location and description of monuments and all lot corners set and found;
- (11) Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- (12) A dedicatory statement acknowledging public and private dedications and grants;
- (13) Utilities; and
- (14) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under chapter 19.48.

21.80.060 Certifications required.

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as

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shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.

- (2) A certification by a licensed surveyor is required, licensed in the state, that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

21.80.070 Title report.

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

21.80.080 Approval procedure.

- (1) Binding site plan approval shall be a Type II review process.
- (2) The director shall review the application and circulate it to other city departments to determine whether the requirements of this chapter have been met.
- (3) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (4) If either the director or the city engineer determine that the requirements have not been met, the binding site plan shall be returned to the applicant for modification, correction, or other action as may be required for approval.
- (5) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

21.80.090 Recording requirements.

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

21.80.100 Development requirements.

All development must be in conformance with the recorded binding site plan.

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21.80.110 Standards for review of commercial and industrial binding site plans.

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.
- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

21.80.120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
 - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
 - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department

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personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.

- (c) Reciprocal easements for parking shall be provided to all tenants and owners.
- (d) The developer has entered into a development agreement pursuant to Chapter 18.30 for completion of all phases.
- (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in the development agreement pursuant to Chapter 18.30.
- (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
- (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

21.80.130 Performance guarantee requirements.

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.
- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

21.80.140 Warranty requirements for acceptance of final improvements.

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

21.80.150 Survey required.

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- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

21.80.160 Dedication – Warranty deed.

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

21.80.170 Requirements for modification of binding site plan standards.

- (1) As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
 - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
 - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
 - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
 - (d) Landscaping requirements are not thereby reduced.

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21.80.180 Alteration or vacation of an approved binding site plan.

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

(1) Definitions.

- (a) **Alteration:** for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (9), (13) or (14). For binding site plans approved prior to XXX, 2011, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) **Vacation:** for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

(2) Submittal requirements for alterations and vacations.

- (a) **Application form.** An application shall be submitted on a form provided by the Director.
- (b) **Title report.** All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
- (c) **Authority to submit alteration or vacation application.** The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
- (d) **The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.**

(3) Criteria for Review.

- (a) **The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.**
- (b) **Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20.**
- (c) **The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved**

vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.

- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20.

21.80.190 Appeals to the hearing examiner.

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40..
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

21.80.200 Enforcement.

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Effective Date. This Ordinance shall be in full force (5) five days following publication.

PASSED by the City Council this _____ day of _____, 2011.

() APPROVED by its Mayor this _____ day of _____, 2011.

() Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

Binding Site Plan Code Amendment
Ordinance

Karahalios Letter

Dated

June 11, 2013

Sue Karahalios
P. O. Box 144
Oak Harbor, WA 98277-0144

(360) 675-6455

June 11, 2013

Elected Representatives of the City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Mary Dudley
Dear Mayor and City Council Members:

I am writing you to one thank you for allowing me to speak at the workshop Wednesday, May 29, 2013, and two to request that you either postpone consideration of Binding Site Plan Code Amendment (Ord 1657, PH 06/18/13) until you have all of the information and know everything you need to know about this situation before you are voting. Also, you may want to consider changing the wording to include grand-fathering Pier Point because of the litigation trail and the judgments rendered, separate or differentiate between residential and commercial binding site plans.

I am puzzled as to why the City has chosen to resurrect this item not only in the manner it has but also with all that they have gone through and will continue to go through if this item is passed as presented. I might also add that not all of the information at the Workshop 5-29-13 was presented in whole and in an objective manner so that the full picture was before you.

I do apologize that I misspoke when I said that Pier Point was the only residential binding site plan (bsp) on the City of Oak Harbor's books. Pier Point is the only residential binding site plan on the books that is not fully developed. There are two other fully developed residential bsps and 10 commercial binding site plans as well. Again, Pier Point is the only residential bsp that is not fully developed and has the potential for radical change. A vote for this change without grandfathering Pier Point will violate Judge Hancock's decision described below.

The City and Pier Point have come from the same position repeatedly. To recap some of the many incidents involved in this matter, it is worth noting that the City of Oak Harbor along with Pier Point to date have been involved with several instances of litigation coming from similar perspectives and seated on the very same side of the legal room sharing the same table both at the Hearing Examiner's level and Island County Superior Court level. Pier Point has been to Superior Court three times and the Hearing Examiner three times. As you can see the most current decision was rendered June 27, 2012, supporting the City's and Pier Point's position, which is the same decision, that has been made in all six legal proceedings. The Developer, Alpine Village, Inc, aka Mr. Massey, cannot change Pier Point's bsp without permission of the Pier Point owners. This proposed change in ordinance does not comply with Judge Hancock's decision!

As it stands Pier Point does have the ability to amend its bsp, it can do so with the united vote of all of its owners. Therefore, there is a mechanism in place.

If you go through your packet you will note some of the history. Yes, you will see that in 2011 the OH Planning Commission did vote to send the matter to the Council. What was not shared was some of the pertinent important discussions, which included policy concerns when there was a specific situation that has caused the City quite a bit of staff time and City monies and is historically grounded in behalf of the owners who have owned the property way before this developer become involved. Several of the Planning commission members stated they were voting this matter forward to have the City Council make the hard decision as they expected language changes would be needed to separate the types of bsps (commercial versus residential which have very different considerations) and grand-fathering those that have been in existence and litigation. The Commission members did not see themselves as able to write language. (I can provide specific names of Planning Commission members who stated what specifically.) Also, note that the specific matter of the City of Oak Harbor-Pier Point-Alpine Village, Inc. aka Mr. Massey has been to Superior Court and the Hearing Examiner for another ruling by both (two rulings) since the OH Planning commission has looked at this matter and moved it forward.

The owners of Pier Point bought and paid for their homes knowing their rights of ownership. The Superior Court and the Hearing Examiner on multiple readings have concurred that the owners of Pier Point have rights that cannot be negated. I would like to point out that Judge Hancock during the third time this matter was before him was presented this proposed ordinance by then City Attorney Hite as if it had already been passed by the City Council. Upon cross examining, the Judge admonished Hite for bringing something before him that was not on the books and he later in that hearing stated he did not normally rule or reference something not on the books but he warned all present that the Pier Point owners did have rights that could be heard before this court if passed as is.

I also would like to remind each of you that during the previous ruling (the second time in Judge Hancock's court) the Judge very specifically stated that any body needed to ensure that "all benefits" do not weigh in the favor of change. (Again, there had been a reference to the fact the City of Oak Harbor was possibly considering changing the Binding Site Plan Ordinance.) This alone speaks to the need of considering separating any new policy allowing for grandfathering Pier Point and possibly separating residential and commercial bsps.

Has our present City Attorney thought about talking with former City Attorney Bleyhl who has a lot of experience with Alpine and Pier Point? Former Attorney Bleyhl did make recommendations on this matter that may need to be heeded.

I would like to emphasize and remind you that Mr. Massey knew when he bought this specific property in 2004 what the restrictions were and that the bsp end date had run out

in 1996, therefore the restrictions remained in place. He knew he needed to work with the owners of Pier Point. The property was so inexpensive because of the restrictions. The courts have spoken repeatedly. Pier Point owners have rights.

Pier Point owners have been open to work with the City, Alpine Village, Inc. aka Mr. Massey (before and after Hearing Examiner Bobbink admonished Alpine to try). The residents of Pier Point live in the City of Oak Harbor.

Please do not hesitate in contacting me to answer any questions that you have. I know what it is like to sit in your seat and to have to make the tough decisions. I know you do not take it lightly but I do encourage you to make sure you realize any and all of the implications from what has happened, the legal decisions to date, the costs to the City in time and actual dollars now and possibly in the future.

Sincerely,

A handwritten signature in cursive script that reads "Sue Karahalios".

Sue Karahalios

cc Mr. Wood

Mayor Dudley Letter

Dated

July 16, 2013

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR



865 S.E. BARRINGTON DRIVE
OAK HARBOR, WASHINGTON 98277
(360) 279-4502
FAX (360) 279-4507

July 16, 2013

Ms. Sue Karahalios
P.O. Box 144
Oak Harbor, WA 98277-0144

Re: Your letter of June 11, 2013
Binding Site Plan Code

Dear Ms. Karahalios,

Thank you for your letter concerning the proposed amendments to Oak Harbor Municipal Code Chapter 21.80, Binding Site Plans (BSP). I appreciate you taking the time to share your comments and concerns on this topic with me and the City Council. I have passed your letter on to our Development Services Department and I have asked that they take your comments under consideration.

As you know, this project has been on the City's to do list for some time now. Staff is devoting time to the project so that the work can be completed and so that a deficiency in our code can be corrected. Please rest assured that the City staff is committed to helping the City Council adopt a revised code that is easy to understand and apply, takes into account relevant available information and is fair and equitable to existing and future property owners. While the next formal step in this project is likely a public hearing before the City Council, I've asked staff to brief the Planning Commission on the project's status. The briefing was tentatively scheduled for the July Planning Commission meeting but due to scheduling difficulties it has been moved to their August agenda. Finally, I encourage you to continue to participate in the public process associated with this code amendment project.

I thank you again for sharing your concerns with me. If you have questions regarding specific aspects of the proposed code amendment I encourage you to contact Mr. Steve Powers, Development Services Director, at 279-4511.

Sincerely,

Scott Dudley
Mayor

cc: City Council
Dr. Larry Cort, City Administrator
Mr. Steve Powers, Development Services Director

**PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
August 27, 2013**

ROLL CALL: Present: Keith Fakkema, Greg Wasinger, David Fikse, Bruce Freeman, Sandi Peterson and Ana Schlecht
Absent: Kristi Jensen
Staff Present: Development Services Director, Steve Powers; Senior Planners, Cac Kamak and Ethan Spoo

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

MINUTES: MS. PETERSON MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE JULY 23, 2013 MINUTES AS PRESENTED.

PUBLIC COMMENT:

None

DIGITAL SIGNS CODE UPDATE – Public Hearing

Mr. Powers asked Planning Commission to continue this item to the Planning Commission's regular business meeting on September 24, 2013 in order allow more time for staff to address public and Planning Commission input from the previous meeting.

ACTION: MR. FREEMAN MOVED, MR. FIKSE SECONDED A MOTION TO CONTINUE THE PUBLIC HEARING FOR THE DIGITAL SIGNS CODE UPDATE TO SEPTEMBER 24, 2013. MOTION CARRIED.

BINDING SITE PLAN CODE AMENDMENT – Public Meeting

Mr. Powers displayed a Power Point presentation (Attachment 1) briefing the Planning Commission on the status of the pending Binding Site Plan (BSP) code amendment. Mr. Powers explained that the Planning Commission has made a recommendation to the City Council that is pending before the City Council. The Council can send it back to the Planning Commission if they decide to do so or the Council could take up the issues themselves if they feel that there is anything else to be addressed in the code amendment.

Mr. Powers explained what Binding Site Plans are and displayed RCW 58.17.035 which authorizes cities, towns, or counties to adopt, by ordinance, procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by the RCW. Mr. Powers noted that this chapter also states that those procedures shall provide for the alteration or vacation of the binding site plan. Work on the Pier Point applications resulted in a review of the existing code language and staff found that the current code did not specifically or adequately address a process for the alteration or vacation of previously approved BSPs. Mr. Power said that the proposed amendment would fix the deficiency and applies to all BSP's.

Mr. Powers also reviewed the BSP amendment project history as well as the Pier Point application history.

Mr. Powers detailed the key issues regarding the proposed code language. The proposed language is as follows:

OHMC 21.80.180(2)(c) - Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.

The Planning Commission allowed public comment.

Sue Karahalios (1085 SE Regatta Drive) spoke with concern about the impact of the proposed code on the owners of the Pier Point Condominium. She also noted that there have been other decisions since the 2011 Planning Commission recommendation the City Council and only two members of the current Planning Commission voted in 2011.

Bob Severns (1085 SE Regatta Drive) disclosed that he is a member of the City Council and talked about the questions that were addressed in Superior Court regarding the Pier Point Condominiums. He believed that if the BSP amendment goes forward and is challenged in Superior Court again, the judge will ask why Pier Point was not excluded from the proposed BSP amendment. Mr. Severns asked that the Pier Point Condominiums be excluded from the proposed BSP amendment.

Discussion

Planning Commissioner's discussed whether the current Planning Commission would be able to consider the proposed BSP amendment again since the Planning Commission's recommendation has already been forwarded to the City Council. Mr. Powers said that an agenda bill will be prepared for Council action and that the agenda bill could indicate that that the Planning Commission would like to consider the code amendment again if that is what the Planning Commission wants to do. Mr. Powers noted that City Council could also decide that they will take up the issues themselves. Ms. Peterson wanted it on record that her strong desire was that the City Council be very aware of the issues.

BED AND BREAKFAST CODE – Public Meeting

Mr. Spoo displayed a Power Point presentation (Attachment 2) which presented changes since last month, a brief discussion of compliance and staff's recommendation.

Mr. Spoo reported one of the changes made resulted from a request from the Navy. The Navy asked that Bed and Breakfast (B&B) establishments be prohibited in Noise Subdistrict C. The second change requires that B&B lighting be directed downward so as not to impact adjacent uses. The last change was to move the sign language that was previously in Section 19.20 Zoning to Section 19.36 Sign Code.

Mr. Spoo reviewed how the propose code complies with the Oak Harbor Comprehensive Plan and recommended that the Planning Commission recommend approval of the B&B draft code to the City Council.

Discussion

Planning Commissioners discussed sign size allowance, lighting for B&B establishments and whether two B&B's under the same ownership would need to have a resident domiciled at each site. Mr. Power indicated that for two B&B's on the same property you could reasonable conclude that is a single entity and a resident manager in one or the other would suffice. In the case where there are two separate pieces of property in the R1 the conditional use permit and the Hearing Examiner could approve conditions which apply to both pieces of property.

The public hearing was opened at 8:30 p.m.

Billie Cook (651 SE Bayshore Drive) expressed concern that persons living in the R3 and R4 districts should be afforded the same protection as those in the R1 and R2 district by requiring B&B establishments get a conditional use permit for the R3 and R4 districts.

Mr. Spoo explained that there would be a site plan review process required for new B&B establishments and the review process requires public notice to the adjacent property owners. Adjacent property owners would have input during the public hearing. If there is a home that is converted in a residential neighborhood in the R3 and R4, a site plan review might not be required. Mr. Spoo indicated that mitigations could be placed in the code. Efforts have been made to allow B&B where staff believes is appropriate as well as including mitigations for some of the impacts they would have on neighborhoods.

Discussion

Planning Commissioners discussed the character of B&B's and the desire to be business friendly.

ACTION: MS. PETERSON MOVED, MR. FREEMAN SECONDED A MOTION TO RECOMMEND THAT CITY COUNCIL APPROVE THE BED AND BREAKFAST CODE AS PRESENTED. MOTION CARRIED.

ECONOMIC DEVELOPMENT STRATEGY – Public Meeting

Mr. Spoo displayed a Power Point presentation (Attachment 3) which presented a summary of key trends and an overview of the economic development strategy.

Discussion

Planning Commissioner Fakkema commented that he remembered hearing that the City always spends money planning but never did anything e.g. the amphitheater and the municipal pier. He was concerned that a couple of the action items require hiring someone to do additional studies and thought the City should look carefully at that.

Mr. Spoo indicated that the Planning Commission could make a motion to remove items or revise the language in the strategy in order to give staff direction.

Planning Commissioner Freeman was also concerned about the feasibility of a dock and that the sound from an amphitheater will carry to the surrounding residential developments. Mr. Freeman also noted that tourism only brings minimum wage jobs and we won't get to the \$50,000 to \$70,000 jobs which would be nice for the City. Mr. Freeman also questioned some of the data in the Economic Profile and Needs Assessment.

Mr. Spoo indicated that the Planning Commission will have this agenda item again next month.

Nancy Hakala (painting the mural on Pioneer Way) commented on how unique and patriotic Oak Harbor is compared to the other cities on the Island and that it is a little piece of Americana. She suggested that the City capitalize on that.

2016 COMPREHENSIVE PLAN AMENDMENT – Public Meeting

Mr. Kamak reported that staff is still assessing the scope. Staff is continuing meeting with the County and discussing the county-wide planning policies and the Comprehensive Plan update.

ADJOURN: 9:15 p.m.

**Binding Site Plan Code
Amendment**

Oak Harbor Planning Commission
August 27, 2013

Purpose

- Brief the Planning Commission on the status of this pending code amendment.
- This item is for information only. In keeping with this purpose, the item was advertised as a public meeting, not a public hearing
- No action is required by the Planning Commission.

Presentation Overview

- Binding Site Plans
- Project History
- Pier Point Condominium BSP
- Proposed Code
- Conclusion
- Recommendation
- Questions

Binding Site Plans

Binding Site Plans



- What are BSPs?
 - Alternative type of land division
(as opposed to subdivision plats or short plats)
 - Primarily used for commercial/industrial properties
 - May also be used for residential condos
 - Governed by RCW 58.17.035
 - OHMC 21.80, Binding Site Plans
 - Approved BSP are recorded with the County

Binding Site Plans (cont.)



- **RCW 58.17.035** - A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4) [industrial or commercial]; (2) divisions of property for lease as provided for in RCW 58.17.040(5) [mobile homes]; and (3) divisions of property as provided for in RCW 58.17.040(7) [condominiums]. Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

Binding Site Plans (cont.)

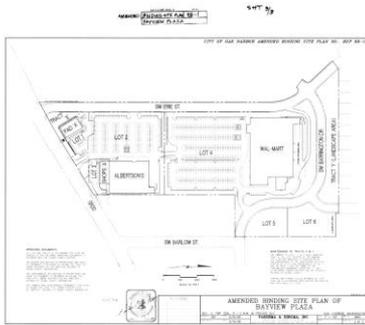


- BSPs within Oak Harbor:
 - 13 total
 - 10 commercial/industrial
 - 3 residential condominiums
 - Only 1 of 13 with construction schedule

Binding Site Plans (cont.)



Examples – Bayview Plaza



Examples – Oak Tree Village



Pier Point



Pier Point



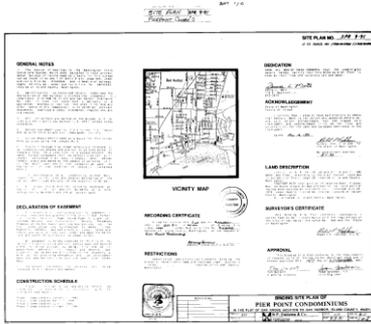
- BSP approved in 1991
- Approval included a construction schedule
- All phases were to have been constructed by 1996
- Schedule was not met; un-built phases remain
- Alpine Village, Inc. applied in 2005 and in 2010 to amend expired schedule

Pier Point (cont.)

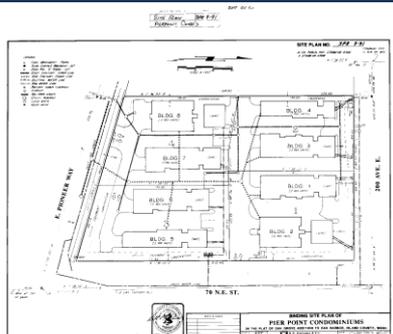


- Central question: Can an expired schedule be amended?
 - (This raised the question as to who must sign applications.)
- Staff, Hearing Examiner & Island County Superior Court decisions say no
- It appears that development rights do exist for the vacant land

Pier Point (cont.)

Pier Point (cont.)

Project History



Project History



- A review of the existing code language found that it did not specifically or adequately address a process for the alteration or vacation of previously approved BSPs.
- This review resulted from work on the Pier Point applications.

Project History (cont.)



- Staff worked with the Planning Commission in late-2010 and early-2011 to identify necessary revisions to the existing code.
- The Planning Commission conducted the required public hearing over three meeting dates and accepted testimony from the public (representing different interests) and from staff.
- On February 22, 2011 the Commission forwarded a recommendation of approval of the draft code to the City Council.

Project History (cont.)



- Work on the project was suspended shortly after that time pending the resolution of LUPA appeal on Pier Point.
- Final action on the appeal occurred by the Hearing Examiner in June 2012.
- After that, the recommended draft was reviewed for consistency with final action – it was determined no changes required.

Project History (cont.)



- City Council was briefed on this project at their May 29, 2013 workshop.
- As a follow-up to the Council briefing, the Mayor requested staff brief the Planning Commission on the status of the project for following reasons:
 - To keep you informed
 - Due to length of time since heard by PC
 - New PC members



Proposed Code



Proposed Code (cont.)

- Key Points
 - The City must have an alteration or vacation process
 - The code amendment addresses all BSPs; it is not intended to apply only to one specific BSP
 - What information should be included on binding site plans?



Proposed Code

- Key Issue
 - Who must sign an application seeking to amend or vacate a previously approved binding site plan?
 - May a single property owner sign; or
 - Must all owners sign; or
 - Should it depend on the request?



Proposed Code (cont.)

- Proposed code language
 - City accepts applications pertaining to public interest/land division
 - Limit what is recorded on BSPs
 - Protects public interest
 - Keeps City out of private property disputes
 - Applications for alteration/vacation may be submitted by property owners directly affected by proposed change
 - o In some cases = single signature
 - o In other cases = more than one signature

Proposed Code (cont.)



- Proposed code language:
OHMC 21.80.180(2)(c) - Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.

Conclusion



- BSPs authorized under State law
- State grants authority to City to determine process
- If BSPs used, City must have an alteration and vacation process
- Existing code lacks these processes
- Proposed amendment would fix deficiency
- Proposed amendment applies to all BSPs, as appropriate

Recommendation



- No action is required. The Planning Commission has already made a recommendation to the City Council on this matter.

- Questions?

