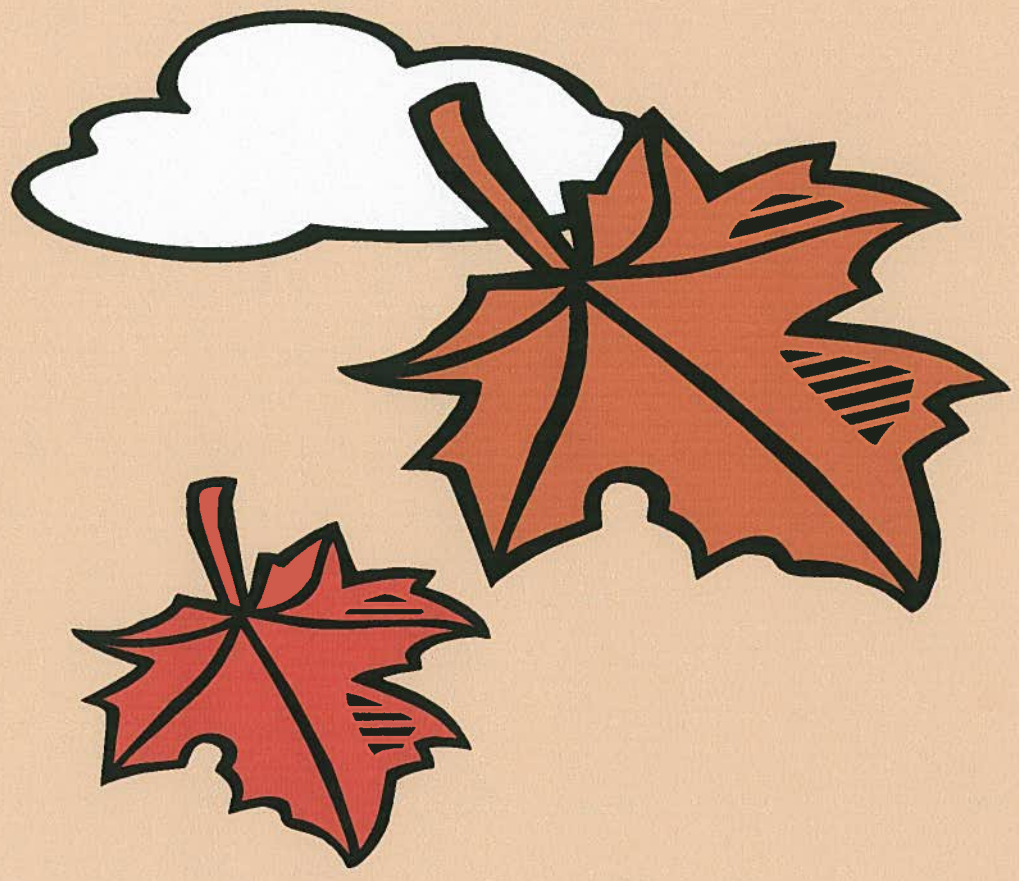
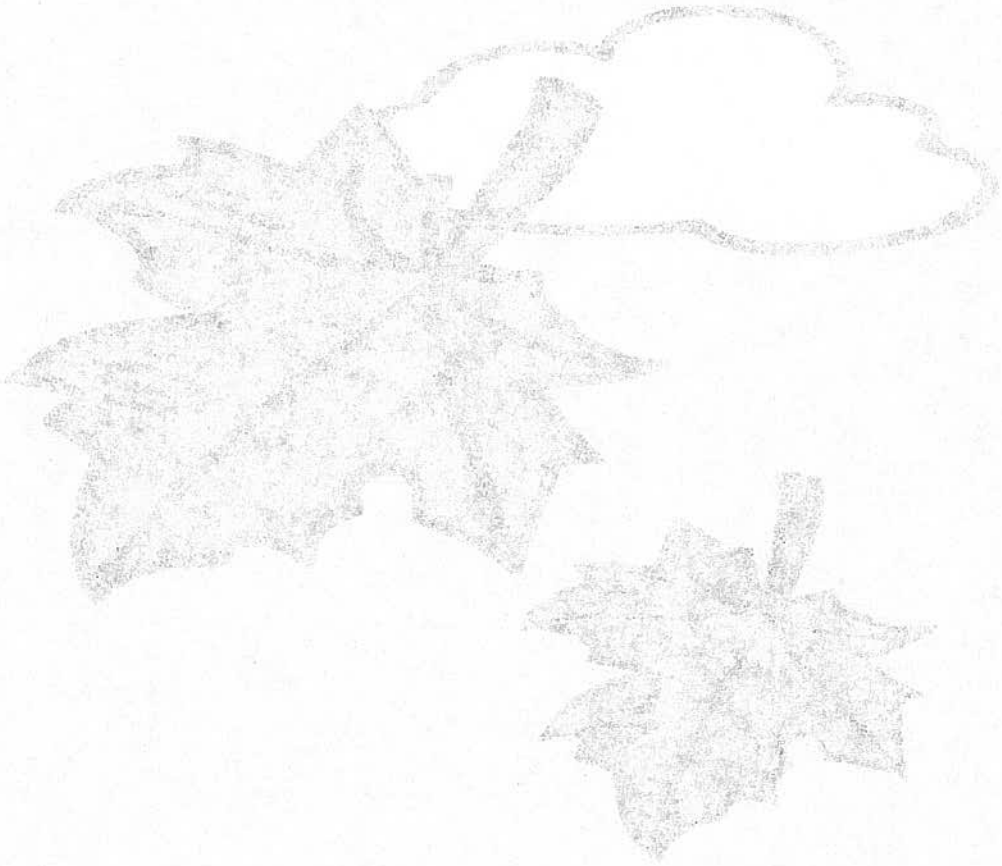
City of Oak Harbor

City Council Meeting
Agenda For
October 16, 2012
6:00 p.m.





Oak Harbor City Council
Minutes of the Regular Meeting
6:00 p.m.
Tuesday, October 2, 2012

CALL TO ORDER:

The Mayor called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE:

The Mayor led the pledge of allegiance to the flag.

INVOCATION:

Councilmember Severns gave the invocation.

ROLL CALL:

The clerk called the roll with all members present.

Present:
Mayor Scott Dudley
Mayor Pro Tempore Danny Paggao
Councilmember Tara Hizon
Councilmember Bob Severns
Councilmember Rick Almberg
Councilmember Jim Campbell
Councilmember Beth Munns
Councilmember Joel Servatius

Staff Present:
Interim City Administrator Larry Cort
Public Works Director Cathy Rosen
Interim City Clerk Nacelle Heuslein
Renee Recker, Exec. Assist. To the Mayor

ACCEPTANCE OF AGENDA:

Motion: Councilmember Almberg moved a memo from the Mayor addressing a ninety – day extension for Interim City Administrator Larry Cort's position be placed on the agenda for discussion as *Item 5*. Motion seconded by Mayor Pro Tempore Paggao and carried unanimously.

Motion: Councilmember Hizon moved to rescind the motion from the September 4, 2012 Regular City Council meeting deferring the decision of purchasing a Fire Rescue Unit until after the City Council has completed their budget for 2013 – 2014 and the city has resolution with the firefighter's union and place purchasing this Aid Unit as *Item 6* for consideration. Seconded by Councilmember Campbell. Upon vote, the motion carried with Councilmember Almberg voting no.

Motion: Councilmember Munns moved to place the Agenda Bill requesting the purchase and installation of two five ton rooftop HVAC units to replace existing units at City Hall as *Item 7*. Councilmember Servatius seconded the motion and the motion carried.

Motion: Councilmember Munns moved to add the Agenda Bill for an emergency allocation to purchase a 2012 HP Proliant DL380 G7 High Performance Server in the amount of $13,950.64 to the agenda as *Item 8*. Councilmember Campbell seconded the motion and the motion carried.

Motion: Councilmember Campbell moved to accept the agenda as amended. Councilmember Almberg seconded the motion and the motion carried.

MINUTES of the Regular Council Meeting held September 4, 2012, September 18, 2012 and the Special Meeting held September 19, 2012 were presented to the Council for additions or corrections. When there were none, the Mayor declared them approved as presented

PROCLAMATIONS:

Councilmember Hizon read the Proclamation declaring October 11, 2012 as the *International Day of the Girl in Oak Harbor* and presented it to Paige Bates, President Elect of the Oak Harbor Soroptimist International.

PRESENTATIONS OF OTHER NON-ACTION COUNCIL ITEMS

There were none.

CITIZEN COMMENTS PERIOD

Marshall Goldberg affiliated with a group called *Island County Citizens Ignited against Citizens United* supports a Constitutional amendment to regulate corporate political spending and campaign financing. He stated the group has 1600 signatures of which 400 are Oak Harbor citizens on the petition they are circulating. Island County, Langley and Coupeville have all passed resolutions supporting this amendment and he is interested in coming back at a future date to speak individually with the council.

Crystal Reed was concerned over panhandlers in the Safeway parking lot. She requested assistance from the Police Department and was pleased with the results. With permission from Safeway, Officer Valenzuela contacted the property managers of the Safeway property and panhandlers are no longer allowed to loiter and panhandle near the Safeway property.

When there were no further comments from the public, the Mayor closed the Citizen Comments Period.

CONSENT AGENDA

a. **Approval of Accounts Payable Vouchers** Claims Vouchers 151413 - 151432 in the amount of $1,710.61 and Claims Vouchers 151433 – 151600 in the amount of $740,440.63

b. **Introduction of Ordinance No. 1635 –** for Fire Department changes amending OHMC Chapter 2.24 entitled "Volunteer Firemen's State Relief', Chapter 2.28 Entitled "Firemen's Relief and Compensation Fund Trustees", Chapter 2.44 entitled "Fire Chief", and Chapter 8.12 entitled "Alarm Systems" and adopting this Ordinance at the Council's Regular meeting to be held October 16, 2012.

c. **Set a Public Hearing for October 16, 2012** for surplus and disposition of Utility Surplus list items.

Motion: Councilmember Munns moved to pull Consent Agenda *Item b* to make a correction in the text of the proposed Ordinance No. 1635. Councilmember Servatius seconded the motion and the motion carried.

Motion: Councilmember Severns moved to approve Consent Agenda *Item a* and *Item c*. The motion was seconded by Councilmember Campbell and it carried unanimously.

Motion: Councilmember Munns moved to amend Chapter 2.28 of proposed Ordinance No. 1635 from "Comptroller" to "Finance Director". Councilmember Hizon seconded the motion and the motion carried unanimously.

Motion: Councilmember Munns moved to accept *Item b* from the Consent Agenda as amended. Councilmember Campbell seconded the motion and the motion carried.

HEARINGS AND ORDINANCES

Public Hearing Marin Annexation and Adoption of Ordinance 1634 annexing certain real property and County right-of-way to the City of Oak Harbor, assessing all property within the annexation area at the same rate and basis as other property within the City, requiring the subject properties to assume their proportionate share of City indebtedness and assigning zoning for the annexed property consistent with the Oak Harbor Comprehensive Plan.

Development Services Director Powers stated tonight's meeting will be the final consideration for the Marin annexation along with a public hearing per RCW 35A.14.130. The location of the property is located at 1292 SW Swantown Road, approximately 0.85 miles west from the SW Swantown Avenue and Fort Nugent Avenue intersection. The proposed annexation area is located within the Oak Harbor Urban Growth Area (UGA) and is designated Low Density Residential on the City's Future Land Use Designation Map (please see Attachment 1). If the property is annexed, it would be assigned R-1-Single Family Residential zoning per the City's Comprehensive Plan.

As way of background he provided the following information: in September 2010 the Marins submitted their annexation petition. In November, 2010 the council reviewed the 10% Letter of Intent for Annexation and followed staff's recommendation to expand to include the enclave area east of this property with the intent to avoid the creation of an island enclave following along with the City's Comprehensive Plan Goals and Policies where the City should avoid annexations that would result in unincorporated enclaves. The City may make exceptions to Policy 4.b, in cases where the potential enclave is already characterized by urban density, in such cases the city should first encourage the petitioners to work with property owners from within the enclave to include them in the annexation area, failing this preferred option only then should the council consider whether annexation would further other Comprehensive Plan goals and policies.

After hearing from the applicant and staff, City Council expanded the annexation to include the unincorporated enclave area to the east and authorized the applicant to circulate the "60% annexation petition."

Following the November, 2010 meeting, the applicant approached all of the property owners within the proposed annexation area. The applicant obtained signatures of only five additional property

owners within the enclave area. This number of signatures did not meet the 60% minimum assessed value threshold required by state law to annex the Marin Property and the entire enclave. Because the minimum threshold for annexation of the enclave area was not met, staff sought Council's input on alternative annexation scenarios at the August 8, 2012 regular Council meeting. Council chose to further consider annexing only the Marin Property.

Council did authorize the annexation to move forward to the next step which was a submittal of the petition that met the 60% assessed valuation requirement. Staff took the petition to the Island County Assessor and received the Determination of Sufficiency as required by state law. The annexation does meet the Comprehensive Plan goals and policies of the city, the infrastructure will be provided with the development of the area and all city services are adequate or will be so when development occurs.

Staff's recommendation is to conduct a public hearing and adopt Ordinance No. 1634 annexing the Marin Property.

Public Hearing Marin Annexation
The Mayor opened the public hearing at 6:32 p.m. when there were no comments from the public; he declared the public hearing closed.

Council discussion ensued regarding failing septics or wells; the city limits surrounding one neighborhood; the annexation not going back to the county for further review; a favorable decision request to the annexation received in a letter; no apprehension for public safety being provided within the enclave; the city has in place a natural vegetation area that is part of a development review process, is applied as part of the platting process.

Upon a disclosure from Councilmember Hizon that she had family living adjacent to the proposed annexation, the public was asked if they preferred her recusing herself from voting. There was no response from the audience. The same question was posed to the Council. There was no response from the Council.

Motion: Councilmember Almberg moved to adopt Ordinance No. 1634 as it relates to the Marin Annexation. Councilmember Campbell seconded the motion and the motion carried unanimously.

RESOLUTIONS

Special Benefit Analysis – Driftwood Beach Addition (Dillard's) Adoption of Resolution 12-22 regarding Local Improvement District financing for sewer improvements in the Driftwood Beach area.

Public Works Director Cathy Rosen stated the purpose of the agenda bill was to discuss and consider the conclusions of the final Special Benefit Study conducted by Macaulay and Associates, Ltd. as requested by the City Council.

The purpose of conducting the special benefit analysis was to provide information to the City Council as it related to the feasibility of forming a local improvement district (LID). An LID is a financing method authorized under state law for property owners to pay for improvements benefiting their property. The requisite to formation of any LID is the value of benefit derived from the improvements must exceed the assessment levied.

With this requirement in mind, Council action on February 7, 2012 directed that a Special Benefit Study be performed to provide information on the amount of special benefit that could be realized through additional sewer improvement. Questions related to engineering, development potential, types of improvement and constructability are beyond the scope of the Special Benefit Study. In assessing the potential Special Benefit Study, the appraiser considered the following possible scenarios for an LID funded project:

With LID - Scenario 1 "Privately-Owned Low Pressure System"
The first scenario assumes that the City will extend the existing low pressure sewer system. Property owners are still responsible to install and maintain their grinder pumps on their private property.

With LID - Scenario 2 "City-Owned Low Pressure System"
The second proposed scenario assumes that the City will extend the existing low pressure sewer system as well as install and maintain all required grinder pumps. Grinder pumps will be placed in the City right-of-way.

With LID – Scenario 3 "City-Owned Gravity System"
The final scenario requires the City to replace the existing low pressure sewer system with a gravity system. Gravity mains and pump station will be maintained and operated by the City and gravity sewer stubs will be provided to each lot at the time of public main construction.

Consistent with Council direction, two open public meetings with the appraiser (Macaulay and Associates, Ltd.) and Steve Dijulio were held. In addition to the typical public notice, letters were mailed to the property owners, door hangers placed, paid advertising was published in the Whidbey News Times and an announcement was shown on Channel 10. The first meeting, on March 28, 2012, outlined the process of a Special Benefit Study and provided a forum for discussion on process and property specific input. The second meeting, on June 27, 2012, presented the draft study and requested input and feedback on both the assumptions and conclusions contained in the report. Public comment was sought and received on the draft report. All comments received were distributed to the Public Works and Government Services Standing Committees in July and were sent to Macaulay for consideration. Macaulay considered the comments, revised the report and issued a final report.

Based on the Special Benefit Report, the following can be concluded:

1) From Scenario #3, the estimated cost of a gravity sewer construction project exceeds the special benefit and therefore cannot proceed as an LID project without significant contributions from the City. Without these contributions, this scenario fails to meet the fundamental pre-requisite that the value of benefit derived from the improvements exceed the assessment level;

2) From Scenario #1 and Scenario #2, the greatest benefit to the properties is when the City owns and operates the grinder pumps necessary to serve individual properties. Further, it is questionable that an LID financed project (including all necessary costs) could be developed that would be less than the estimated special benefit.

These conclusions support previous discussions that the City pursue a project to install, own and operate the grinder pumps. The pumps would be located within public right way. Private property owners would be responsible for onsite gravity side sewer connections from their homes to the grinder pump, septic system abandonment and property restoration.

However, while the general concept of such a project appears to make sense, there remain a number of questions and issues warranting resolution. Project specific issues include project scope, type of equipment

Public Works Director Rosen's recommendations to the council at this time would be to adopt Resolution 12-22 finding that the formation of a Local Improvement District for financing the installation of a gravity sewer system in the Driftwood Beach/Dillard's Addition area was not feasible based on the Summary of Preliminary Special Benefit/Proportionate Assessment Study dated July 25, 2012 by Macaulay and Associates, Ltd.; and provide direction to staff whether they should include Driftwood Beach/Dillard's Addition project where the city would install and maintain the grinder pump be included in the 2013-2014 budget or if this project should be included in the overall City-wide plan for installing sewers in areas currently serviced by septic systems which should be presented for Council consideration in late 2012 and early 2013.

Mayor Dudley opened the meeting up for public comments.

Emma Young, a Dillard's Addition resident spoke in favor of being included in the city-wide Comprehensive Sewer Plan and rescind any ordinances currently in existence requiring hooking up to the sewer within a certain timeframe.

David Glass also a resident of the Dillard subdivision cannot refinance his home because the city says there are sewers available and the VA says he needs to hookup. There also seems to be confusion regarding what he can and cannot build on his property because it may conflict with the city's Shoreline Master Program.

When there were no further comments, the Mayor closed the public comment period.

Upon a question from Councilmember Hizon, Public Works Director Rosen did say that the timeline to hookup to sewers had been extended for five years.

There was general consensus from the council to support a City-wide Comprehensive Sewer Plan study and not to fund a gravity sewer system in the Driftwood Beach area in the 2013 – 2014 budget process. It was also suggested there be no time limit for the Dillard Subdivision to hook up to sewers.

Motion: Councilmember Munns moved to adopt Resolution 12.22 finding the formation of a Local Improvement District for financing the installation of a gravity sewer system in the Driftwood Beach/Dillard's Addition area as not feasible based on the Summary of Preliminary Special Benefit/Proportionate Assessment Study dated July 25, 2012 by Macaulay and Associates, Ltd. Councilmember Almberg seconded the motion and the motion carried unanimously.

Motion: Councilmember Almberg moved to provide direction to staff that the Driftwood Beach/Dillard's Addition project should not be included in the 2013-2014 budget, but the project should be included in the overall City-wide plan for installing sewers in areas currently served by septic systems which will be presented for Council consideration in late 2012 and early 2013. Councilmember Munns seconded the motion and the motion carried unanimously.

Recess: The Mayor declared a 5 minute recess and reconvened the meeting at 7:13 p.m.

Introduction: Mayor Dudley introduced Cheryl Beyer attorney with Weed, Graafstra & Benson, Inc. the City's interim City Attorney firm who did Public Records Request training for City staff that afternoon and is filling in for Grant Weed this evening.

Presentation of Surplus List - approve the surplus list and authorize the disposal of non-utilities obsolete equipment.

Public Works Director Rosen stated the purpose of the agenda bill is to approve the non-utility surplus list and authorize the disposal of obsolete equipment as the equipment has been determined to no longer be of practical use to the City.

The Mayor asked for public comments and there were none.

Motion: Councilmember Severns moved to approve the surplus list as presented and authorize the disposal of such items. Councilmember Campbell seconded the motion and the motion carried.

Interim City Administrator Status.
Councilmember Almberg questioned whether a 90-day interim position can be extended by the Mayor or the City Administrator depending on the position unlimited times. Councilmember Almberg requested Interim City Attorney Grant Weed to report back to the Council and Mayor on these extensions.

The Council expressed their appreciation to Dr. Cort for accepting the position of Interim City Administrator for another ninety days. There was concurrence amongst the Council to advertise for the City Administrator position as quickly as possible. The Mayor informed Council his goal is to appoint a City Administrator as soon as some of the other key positions are filled.

Councilmember Almberg questioned if there is a legal reason why the Mayor needs to advertise for the City Administrator's position. Interim City Administrator stated he would pose this question to the Interim City Attorney as well.

Councilmember Hizon stated she had made an inquiry to MRSC back in June regarding the Mayor appointing and extending interim ninety day appointments. State statute says the mayor shall have the power of appointment and removal of appointive offices and employees are subject to applicable laws and regulations relating to civil service. Upon a question by Councilmember Hizon, Public Works Director Rosen stated KBA is assisting with construction projects and staff is filling in for work that would have been performed by Interim City Administrator Cort.

Fire Rescue Unit

Councilmember Hizon moved to rescind the motion from the September 4, 2012 Regular City Council meeting that deferred the decision of purchasing a Fire Rescue Unit until after the City Council has completed their budget for 2013 – 2014 and the city has resolution with the firefighter's union. Motion was seconded by Councilmember Campbell. Discussion ensued. Councilmember Hizon called for a point of order. The motion failed with Mayor Pro Tempore Paggao and Councilmembers Hizon and Campbell voting yes and Councilmembers Servatius, Munns, Severns and Almberg voting no.

Councilmember Campbell went on record that somebody could get hurt with the present Fire Department aid rescue vehicle.

Emergency Purchase of two HVAC units for City Hall

Motion: After a brief statement from Public Works Director Rosen, Mayor Pro Tempore Paggao moved to authorize the emergency purchase of and installation of two five ton rooftop HVAC units to replace existing units at City Hall. Councilmember Almberg seconded the motion and the motion carried.

Emergency Allocation to Purchase Server

Motion: After a brief statement from Director Rosen, Councilmember Almberg moved to approve an emergency allocation to purchase a 2012 HP Proliant DL380 G7 High Performance Server in the amount of $13,950.64. Councilmember Severns seconded the motion and the motion carried.

Future City Council Pending Items was included in the packet.

City Administrator Comments

Interim City Administrator stated interviews for the Human Resources Administrator have been scheduled. The City Attorney's position will be returning to the full Council on 10-16-12 to discuss using a professional search firm to assist. City Engineer closes on October 19, 2012. The City Clerk position will close on October 5, 2012.

Lastly he stated Department Head budget meetings will be held in October, 2012

He also noted that Renee Recker will be taking a medical leave and wished her well.

Council Comments:

Mayor Pro Tempore Paggao stated the Public Works Standing Committee will be meeting Thursday, October 4, 2012 at 3:30 p.m. in the Council Chambers.

Councilmember Campbell noted the Governmental Services Standing Committee will be meeting October 9, 2012 in the Council Chambers at 3:30 p.m.

Councilmember Almberg stated that he and Councilmember Severns were not available for the upcoming Finance Standing Committee meeting and Finance Director Merriman would come up with another suitable day.

Motion: Councilmember Almberg moved the Council direct the Mayor to instruct the Finance Director to provide an analysis showing the anticipated cost impacts to the 2013 "Beginning Fund

Balance" as a result of all staff changes in 2012. This analysis shall be presented at the first Council meeting in November 2012. In addition, the Finance Director's analysis shall include, but not be limited to, all known and anticipated recruiting cost, legal costs, interim contract personnel and consultant costs and estimated staff salaries and transition costs. The presentation shall be provided showing the costs both quantitatively and graphically. Councilmember Servatius seconded the motion and the motion carried with Councilmember Campbell voting no.

Councilmember Munns noted the next Public Safety Standing Committee will be held October 18, 2012 at 3:30 p.m. She will be unable to attend, but the remainder of the Committee will be attending. She also stated at a recent AWC Board of Directors Meeting, Legislative Priorities were being developed and encouraged the Council and the Interim City Administrator to look at what the City's priorities might be. She also hoped councilmembers would be attending the AWC Regional Meeting in Bellingham this month. She will be bringing to Channel 10 the clip of an AWC sponsored forum with the Governor Candidates, State Attorney General and State Auditors concerning city matters. Lastly she was working with HR to appropriately voice an opinion for City Staff about a recent article in the newspaper about benefits.

Councilmember Severns attended Economic Development meeting in Coupeville and an annual business expo was scheduled at the high School on the 6th of October. Pioneer Days would be held on Saturday with a salmon barbecue. Tribal dancers and drummers will be entertaining the crowd.

Councilmember Hizon did not have any comments.

Upon a question by Councilmember Servatius, Interim City Administrator Cort stated the presentation on October 16, 2012 would include costs and services for the search firm only and not current expenses to date. Councilmember Servatius requested August and September, 2012 legal costs. The Public Works Director was thanked for the link to the information in the packet that evening.

Mayor's Comments:
A panel that included Councilmembers Servatius, Munns and Mayor Pro Tempore Paggao was formed to interview the Police Chief candidates. He hoped to have an appointment announcement at the October 16, 2012 Council Meeting. The Mayor continued to express his concern over the Council not authorizing the purchase of a Fire Aid Unit for the Fire Department.

Executive Session:
The Mayor recessed the meeting for an Executive Session Pursuant to RCW 42.30.110(1)(i)): Discussion of Property Issue at 8:32 p.m. At 8:56 p.m. he extended it for another 5 minutes. The regular meeting reconvened at 9:03 p.m.

Adjournment:
Councilmember Hizon moved for adjournment. Councilmember Almberg seconded the motion and the motion carried.

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR

PROCLAMATION IN RECOGNITION OF

SNO-ISLE LIBRARIES 50TH YEAR CELEBRATION DAY
OCTOBER 27, 2012

WHEREAS, The City of Oak Harbor is a member of the Sno-Isle Regional Libraries District; and

WHEREAS, Sno-Isle Libraries provide library services to the residents of our community through the Oak Harbor Library; and

WHEREAS, the Oak Harbor Library is an institution which is both appreciated and enjoyed by the inhabitants of our fair city; and

WHEREAS, the library serves and benefits our citizens in numerous ways, through cherished and valuable library services, materials, classes and events; and

WHEREAS, the Sno-Isle Libraries' mission is to be a community doorway to reading, resources, lifelong learning and a center for people, ideas and culture; and

WHEREAS, the library is much more than a repository of books, but plans for, responds to and meets the needs and interest of all citizens by ensuring equal and free access to information, learning, economic regeneration, cultural enrichment, diversity, entertainment, recreation and opportunities for public dialogue; and

WHEREAS, Sno-Isle Libraries is celebrating 2012 as its 50th year of existence as a two-county library district spanning 2,306 square miles, 21 community libraries, mobile and virtual library services within Snohomish and Island Counties; and

WHEREAS, the Oak Harbor Library is hosting an Open House and Time Capsule event to commemorate and celebrate 50 years of Sno-Isle Libraries services on Saturday, October 27th at 11:00am.

NOW, THEREFORE, WE, Scott Dudley, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim **October 27, 2012** as **Sno-Isle Libraries 50th Year Celebration Day** in the City of Oak Harbor.

Signed this 16th day of October, 2012

Scott Dudley, Mayor

City of Oak Harbor

OFFICE OF THE MAYOR
SCOTT DUDLEY
MAYOR

PROCLAMATION IN RECOGNITION OF

RED RIBBON WEEK
OCTOBER 20 – 27, 2012

WHEREAS, The Oak Harbor High School "Students Against Destructive Decisions" (SADD) Club recognizes the use of drugs and alcohol can have serious effects on an individual's health, behavior and development; and

WHEREAS, drug and alcohol abuse is costly to our society as a whole but is especially harmful to our youth; and,

WHEREAS, behavior patterns that result from preteen drug and alcohol use often produce tragic consequences including self degradation, loss of control, disruptive conduct and antisocial attitudes; and

WHEREAS, the use of substances such as marijuana can lead to changes in the mind and body similar to those caused by cocaine, heroin, alcohol and tobacco; and

WHEREAS, the use of drugs and alcohol can adversely affect student performance in academics, sports and can cause legal issues; and

WHEREAS, that approximately one in six high school seniors in the U.S. reports driving under the influence of marijuana, indicates that many teens do not realize the risks associated with driving under the influence.

NOW, THEREFORE, WE, Scott Dudley, Mayor, and Councilmembers of the City of Oak Harbor do hereby proclaim, **October 20 - 27, 2012** as **Red Ribbon Week.**

Signed this 16th day of October, 2012

_____
Scott Dudley, Mayor

City of Oak Harbor
City Council Agenda Bill

Bill No. 0

Date: _____

Subject: **PUBLIC COMMENTS**

FROM: **Scott Dudley, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Larry Cort, Interim City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney

SUMMARY STATEMENT

City Council will accept public comments for items not otherwise on the agenda for the first 15 minutes of the Council meeting. You may also speak to any of the consent agenda items.

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 1-a
Date:
Subject: Approval of Accounts Payable Vouchers

FROM: **Doug Merriman, Finance Director**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

_____ Scott Dudley, Mayor
_____ Larry Cort, Interim City Administrator
_____ Grant Weed, Interim City Attorney

SUMMARY

Oak Harbor Municipal Code Chapter 3.72 establishes procedures for claims (vouchers) payment. The documentation that regularly supports the signature cover sheets is included in this agenda packet. Claim cover sheets will continue to be on hand prior to the City Council meeting for City Council signatures.

AUTHORITY

Oak Harbor Municipal Code Chapter 3.72.

RECOMMENDED ACTION

Approve accounts payable vouchers.

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151601	10/1/2012	0000066	AWC EMPLOYEES BENEFITS TRUST	092812		PREMIUMS	44.65
						Total :	**44.65**
151602	10/1/2012	0000860	STANDARD INSURANCE COMPANY	093012		LONG TERM DISABILITY	4,082.79
						Total :	**4,082.79**
151603	10/10/2012	0006845	48 NORTH	32055		OCT 2012/ADVERTISING	328.00
						Total :	**328.00**
151604	10/10/2012	0000029	ALL PHASE ELECTRIC SUPPLY	0952-626467		BALLAST	38.09
						Total :	**38.09**
151605	10/10/2012	0000042	ANACORTES, CITY OF	2008		2008 BILLING ADJUSTMENT	23,782.47
				2009		2009 BILLING ADJUSTMENT	86,730.62
						Total :	**110,513.09**
151606	10/10/2012	0002044	ANACORTES.NET/HOW IT WORKS	31281		SEP 2012/WEB HOSTING	15.95
						Total :	**15.95**
151607	10/10/2012	0001165	ASSOCIATION OF PUBLIC TREASURE	7871		ANNUAL MEMBERSHIP RENEWAL	185.00
						Total :	**185.00**
151608	10/10/2012	0000065	AVOCET ENVIRONMENTAL TESTING	1203091-IN		TESTING SERVICES	120.00
						Total :	**120.00**
151609	10/10/2012	0000109	BLUMENTHAL UNIFORMS	956068		BOOTS/HOAGLAND	152.17
						Total :	**152.17**
151610	10/10/2012	0005027	BURT'S SAW & MOWER	1770		PULLEY/SPRING	36.58
						Total :	**36.58**
151611	10/10/2012	0002644	C JOHNSON CONSTRUCTION, INC	4		PROF SVC/GUN CLUB ROAD WATE	79,052.61
						Total :	**79,052.61**
151612	10/10/2012	0000150	CASCADE NATURAL GAS	08793000004		NATURAL GAS/POLICE STATION	21.22
				18583000007		NATURAL GAS/TREATMENT PLANT	10.00
				36624000000		NATURAL GAS/FIRE STATION	88.48

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151612	10/10/2012	0000150	CASCADE NATURAL GAS	(Continued)			
				58793000009		NATURAL GAS/CITY HALL	118.11
				80434000008		NATURAL GAS/CITY SHOP	143.73
				82193000005		NATURAL GAS/ANNEX	23.61
				90134000000		NATURAL GAS/ADULT CARE CENTI	23.61
						Total :	**428.76**
151613	10/10/2012	0000167	CHEVRON AND TEXACO BUSINESS	569932		FUEL	31.98
						Total :	**31.98**
151614	10/10/2012	0005773	COMCAST	8498300270032028		XFINITY	7.96
						Total :	**7.96**
151615	10/10/2012	0000197	CONCRETE NORWEST	831015		DUMP FEE	24.46
				831856		0160A	676.12
						Total :	**700.58**
151616	10/10/2012	0000202	COREY OIL COMPANY	71637		FUEL	19.92
						Total :	**19.92**
151617	10/10/2012	0000220	CUMMINS NORTHWEST, INC	001-28862		SENSORS	156.66
						Total :	**156.66**
151618	10/10/2012	0000222	CUSTOM ENGRAVING	12-1225		NAME TAG-DUDLEY/PLAQUE-KELL	62.50
				12-1226		PLAQUE-CROUCH	54.35
				12-1227		PLAQUE-JOHNSTON	54.35
				12-1243		RETIREMENT PLAQUE-MCMICKLE	54.35
						Total :	**225.55**
151619	10/10/2012	0000253	DIVERSINT	97787		ACER LCD DISPLAY	182.68
						Total :	**182.68**
151620	10/10/2012	0000257	DUTCH MAID CLEANERS	093012		SEP 2012/LAUNDRY SERVICES	446.37
						Total :	**446.37**
151621	10/10/2012	0000967	ECOLOGY, WASHINGTON STATE DEPT	092512		ACCREDITATION APPLICATION FEE	680.00
						Total :	**680.00**

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151622	10/10/2012	0000273	EDGE ANALYTICAL, INC	12-16120		TESTING SERVICES	18.00
						Total :	**18.00**
151623	10/10/2012	0002900	FASTENAL	WAOAK12329		IC WB CAUTN BLU	39.23
						Total :	**39.23**
151624	10/10/2012	0006093	FRAZIER SURVEYING, LLC	49		PRV STATION STAKING	872.50
						Total :	**872.50**
151625	10/10/2012	0000355	FRONTIER	240-2350		CURRENT PHONE CHARGES	1,133.06
				675-1568		CURRENT PHONE CHARGES	202.20
				675-6858		CURRENT PHONE CHARGES	53.41
				679-0500		CURRENT PHONE CHARGES	58.38
				679-1640		CURRENT PHONE CHARGES	53.58
				679-1651		CURRENT PHONE CHARGES	58.74
				679-1789		CURRENT PHONE CHARGES	53.58
				679-2628		CURRENT PHONE CHARGES	317.50
				679-3013		CURRENT PHONE CHARGES	53.41
				679-3321		CURRENT PHONE CHARGES	45.08
				679-3902		CURRENT PHONE CHARGES	58.78
				679-4541		CURRENT PHONE CHARGES	106.82
				679-6391		CURRENT PHONE CHARGES	45.08
				679-8477		CURRENT PHONE CHARGES	74.89
						Total :	**2,314.51**
151626	10/10/2012	0000349	GRAINGER	9925410087		PUMP	146.75
						Total :	**146.75**
151627	10/10/2012	0000999	GRCC/WW	121980		REGISTRATION/BEBEE	259.00
						Total :	**259.00**
151628	10/10/2012	0004707	HD SUPPLY FACILITIES MAINT	9117485573		SOAP DISPENSERS	130.42
						Total :	**130.42**
151629	10/10/2012	0006868	HEUSLEIN, NACELLE	EXP REIMB		EXP REIMB	241.71
						Total :	**241.71**
151630	10/10/2012	0001251	HEWLETT-PACKARD COMPANY	51795544		COMPUTER	857.64

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151630	10/10/2012	0001251	HEWLETT-PACKARD COMPANY	(Continued)			
				51803284		MEMORY	45.65
						Total :	**903.29**
151631	10/10/2012	0003095	HOME DEPOT CREDIT SERVICES	2032814		MUD MIXER	12.46
				22285		INSERTS	6.44
				25400		4X4-10 PT/CS/JUTES/10 GDF	189.31
				4030202		INSIDEELBWWH/CORDMATE-CHL	21.88
				4034998		FLYTRAPS/ELMHMLNS	17.33
				42353		BALLASTS	43.38
				5023815		14W DL 12P	11.67
				5094998		CORNER BRACE/DRWR SLIDE	-9.63
				6029890		CORNER BRACE/DRWR SLIDE	9.63
				6039632		SCREWS	86.45
				7026559		COMBO PACK/PLASTIC BAGS/WIN(	295.26
				8051162		60W8T12CW	8.70
				8081081		4X4-10 PT/CS/JUTES/10 GDF	-74.93
				8094605		YELLOWJACKET	10.82
				9025642		POST BASE	5.92
				9029009		GOLDEN CEDAR	25.01
				9038928		1" IN-LINE	16.96
						Total :	**676.66**
151632	10/10/2012	0000392	HUBBARD, SCOTT	EXP REIMB		EXP REIMB	61.00
						Total :	**61.00**
151633	10/10/2012	0000394	HUMAN RESOURCE SERVICES	100112		OCT 2012/UNEMPLOYMENT SERVI(	110.00
						Total :	**110.00**
151634	10/10/2012	0000417	INDUSTRIAL BOLT & SUPPLY	519253-1		BOLTS/CONNECTORS/COTTER PIN	101.77
						Total :	**101.77**
151635	10/10/2012	0000411	ISLAND COUNTY TREASURER	100112		CRIME VICTIM COMPENSATION	193.92
						Total :	**193.92**
151636	10/10/2012	0000412	ISLAND COUNTY TREASURER	100112		3RD QTR 2012/JOINT TOURISM	5,000.00
						Total :	**5,000.00**

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
151637	10/10/2012	0000476 KERR, JACK	09-12		SEP 2012/PUBLIC DEFENSE SCREI	1,400.00
					Total :	1,400.00
151638	10/10/2012	0000477 KESSELRING'S	33698		AMMUNITION	1,542.89
					Total :	1,542.89
151639	10/10/2012	0000494 LAKESIDE INDUSTRIES	5101307MB		ASPHALT	293.57
					Total :	293.57
151640	10/10/2012	0006891 LARSEN, PENNY	1		TRAVEL REFUND	80.00
					Total :	80.00
151641	10/10/2012	0000522 LUEHR, TOM	1		DRIVING SERVICES	549.00
					Total :	549.00
151642	10/10/2012	0002729 MAILFINANCE	H3553984		4TH QTR 2012/LEASE PAYMENT	806.84
					Total :	806.84
151643	10/10/2012	0000530 MAILLIARD'S LANDING NURSERY	62799		BARK	114.03
			62821		BARK	114.03
			63255		SOIL	1,747.03
			63350		SOIL	347.41
			63351		SOIL	34.74
			63358		SOIL	34.74
			63369		SOIL	34.74
			63370		SOIL	17.37
			63387		SOIL	17.37
			63441		DRAIN ROCK	24.98
			63463		DRAIN ROCK	47.78
					Total :	2,534.22
151644	10/10/2012	0000660 MARKET PLACE FOOD & DRUG	159161		GROCERIES	432.96
					Total :	432.96
151645	10/10/2012	0006072 MASTER'S TOUCH, LLC	P26507		SEP 2012/POSTAGE FOR LATE NOT	423.81
					Total :	423.81
151646	10/10/2012	0006072 MASTER'S TOUCH, LLC	26507		SEP 2012/MAILING SERVICES FOR	268.49

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151646	10/10/2012	0006072	MASTER'S TOUCH, LLC	(Continued)			
				S121718		LATE NOTICES	330.45
						Total :	**598.94**
151647	10/10/2012	0000040	MATRIX	608003564		LONG DISTANCE	463.95
						Total :	**463.95**
151648	10/10/2012	0006028	MCI COMM SERVICE	679-3902		LONG DISTANCE	36.91
						Total :	**36.91**
151649	10/10/2012	0000608	NC MACHINERY COMPANY	SECS0549751		PADS/NUTS	495.41
						Total :	**495.41**
151650	10/10/2012	0000610	NORTH CENTRAL LABORATORIES	310229		WATERPROOF PH TESTER	86.57
						Total :	**86.57**
151651	10/10/2012	0000648	NORTHWEST PUMP & EQUIPMENT CO	2357672-00		SEAL KITS	783.98
						Total :	**783.98**
151652	10/10/2012	0000672	OAK HARBOR ACE	210172		SWITCH	30.43
				210174		ADAPTERS	1.93
				210261		BRUSH/PERCOLATOR	11.27
				210295		EPOXY/COVER	9.22
				210321		FASTENERS	2.90
				210395		ACID	34.74
				210439		FASTENERS	0.65
				210491		THREADLOCKER/ROPE	13.57
				210497		REDUCER/BUSHING/PIPE JOINT	16.92
				210545		BUSHING/COUPLE	49.22
						Total :	**170.85**
151653	10/10/2012	0000668	OAK HARBOR AUTO CENTER	001-144528		SOLENOID	12.33
				001-144543		AUTOANALYZER	49.22
				001-144569		IBS MTP-27	144.29
				001-144669		MINI LAMP	4.03
				001-144788		PRIME EXT LIFE	123.92
				001-144800		FILTERS	152.54
				001-144892		WATER PUMP/HOSE	70.50

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151653	10/10/2012	0000668	0000668 OAK HARBOR AUTO CENTER	(Continued)		Total :	556.83
151654	10/10/2012	0000688	OVERHEAD DOOR CO	JS56920		DOOR REPAIR	447.57
						Total :	447.57
151655	10/10/2012	0002985	PACIFIC TIRE CO. INC	0059571		TIRES	513.37
				0060274		TIRES	259.36
				0060315		TIRES	823.51
				0060320		TIRES	1,674.07
				0060395		TIRES	63.84
				0060396		TIRES	63.84
				0060398		TIRES	63.84
				0060503		TIRES	1,549.42
				0060548		TIRES	763.21
						Total :	5,774.46
151656	10/10/2012	0006674	PARKFORMS, LLC	4409		BENCHES/SKATE GUARDS	6,076.33
						Total :	6,076.33
151657	10/10/2012	0003084	POLLARDWATER.COM	I335212-IN		CPLG LOCK/ROUNDER	108.77
						Total :	108.77
151658	10/10/2012	0000730	POWELL, JANIS	1		DRIVING SERVICES	78.00
						Total :	78.00
151659	10/10/2012	0006866	PROTHMAN	2012-3545		CITY CLERK SERVICES	3,757.44
						Total :	3,757.44
151660	10/10/2012	0000746	PUGET SAFETY EQUIPMENT	0007542-IN		GLOVES/SOLES	304.25
						Total :	304.25
151661	10/10/2012	0000743	PUGET SOUND ENERGY	0349160002		ELECTRICITY/WELL #7	12.23
				1055170003		ELECTRICITY/STREET LIGHTS	12,683.83
				9249160004		ELECTRICITY/WELL #6	12.23
						Total :	12,708.29
151662	10/10/2012	0002997	QUINTON DESIGN & ELECTRICAL	2579		FIXTURE INSTALLATION	675.00
				2580		RECESSED LIGHT REPLACEMENT	387.00

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151662	10/10/2012	0002997	0002997 QUINTON DESIGN & ELECTRICAL (Continued)				
						Total :	1,062.00
151663	10/10/2012	0000965	REVENUE, WASHINGTON STATE DEPT	100112		3RD QTR 2012/LEASEHOLD EXCISI	26,743.13
						Total :	26,743.13
151664	10/10/2012	0001649	RIX, KATHY	1		EXP REIMB	735.00
						Total :	735.00
151665	10/10/2012	0000911	RON TURLEY ASSOCIATES, INC	38051		BEST OF IQ REPORTS I & II	215.23
						Total :	215.23
151666	10/10/2012	0005967	SEATTLE AUTOMOTIVE DIST	06-785523		MOTOR	46.71
				06-785558		ROTORS/RAYBESTOS	224.49
						Total :	271.20
151667	10/10/2012	0005274	SEATTLE OPERA	091912		TICKETS	2,895.00
						Total :	2,895.00
151668	10/10/2012	0000809	SENIOR SERVICES OF ISLAND	OH08-2012		AUG 2012/SENIOR SERVICES	1,500.00
						Total :	1,500.00
151669	10/10/2012	0000822	SHRED-IT USA, INC	101203218		SHREDDING	49.50
				101231366		SHREDDING	69.60
						Total :	119.10
151670	10/10/2012	0004184	SIPES, TAMRA	103112		OCT 2012/RACE COORDINATOR SE	2,546.00
						Total :	2,546.00
151671	10/10/2012	0000831	SIX ROBBLEES', INC	14-257670		CAMERA	244.98
				14-257817		POLE	14.96
						Total :	259.94
151672	10/10/2012	0000814	SKAGIT FARMERS SUPPLY	306074		SPRAYER	92.38
				308889		FENCE	36.94
						Total :	129.32
151673	10/10/2012	0006892	SNOHOMISH COUNTY SHERIFF'S	092812		REGISTRATION/WILKIE/SEIM	200.00

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151673	10/10/2012	0006892	0006892 SNOHOMISH COUNTY SHERIFF'S (Continued)			Total :	200.00
151674	10/10/2012	0000846	SOUND PUBLISHING	676373		ORD 1631	62.30
				676377		ORD 1633	56.07
				676381		ORD 1632	56.07
				677717		SPECIAL MEETING	62.30
				677791		NOTICE OF PUBLIC HEARING	68.53
				678654		NOA COOH NORTH RESERVOIR PF	205.59
						Total :	510.86
151675	10/10/2012	0003883	STAPLES BUSINESS ADVANTAGE	3181396107		PAPER	10.65
				3181692733		KEY TAG/MOUSE PAD/FOLDER/BR(	37.97
				3182074519		FILTER	195.65
				3182074520		TONER	767.11
				3182074521		POWER STRIPS	32.54
				3182074522		PAPER/INDEX TABS/DIVIDERS	57.12
				3182074523		JACKET/FRAMES/FOLDERS/MOIST	40.82
						Total :	1,141.86
151676	10/10/2012	0003749	STUMP, PATRICK L	1		DRIVING SERVICES	96.00
						Total :	96.00
151677	10/10/2012	0001287	SUNCRUISER MAGAZINE	2344		ADVERTISING	825.00
						Total :	825.00
151678	10/10/2012	0001053	TREASURER, WASHINGTON STATE	100112		COURT/BC FEES	9,740.94
						Total :	9,740.94
151679	10/10/2012	0000913	TYHUIS, RICHARD	EXP REIMB		EXP REIMB	97.37
						Total :	97.37
151680	10/10/2012	0006890	U-HAUL COMPANY OF WASHINGTON	092512		BUSINESS LICENSE OVERPAYMEN	12.50
						Total :	12.50
151681	10/10/2012	0000922	UNUM LIFE INSURANCE COMPANY	091812		LONG TERM CARE	141.00
						Total :	141.00
151682	10/10/2012	0004903	US BANK	4485591000304067		CREDIT CARD PURCHASES	3,254.79

Bank code : bank

Voucher	Date	Vendor		Invoice	PO #	Description/Account	Amount
151682	10/10/2012	0004903	0004903 US BANK	(Continued)		Total :	3,254.79
151683	10/10/2012	0003067	WHIDBEY ANIMALS' IMPROVEMENT	1183		SEP 2012/ANIMAL SHELTER	7,083.33
						Total :	7,083.33
151684	10/10/2012	0001000	WHIDBEY AUTO PARTS, INC.	153404		BAT/FILL	22.31
						Total :	22.31
84	Vouchers for bank code : bank					Bank total :	308,631.87
84	Vouchers in this report					Total vouchers :	308,631.87

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City of Oak Harbor
City Council Agenda Bill

Bill No. CA-16
Date: October 16, 2012
Subject: Sign Code – amendment for temporary signs

FROM: Steve Powers, Director of Development Services

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to present amendments to the City's sign code to City Council pertaining to temporary signs. The majority of these amendments are contained in Oak Harbor Municipal Code (OHMC) 19.36.080. However, there are also some changes to the "Definitions" section in 19.20.020.

AUTHORITY

RCW 36.70A.040 provides that city legislative bodies have the authority to adopt development regulations. The sign code is part of the City's development regulations.

FISCAL IMPACT DESCRIPTION

Funds Required: $_____0_____

Appropriation Source: _____N/A_____

The code amendments offer a more detailed set of regulations with regard to temporary signs. If adopted, these regulations may require a higher level of enforcement than the City's existing temporary sign regulations. However, because the City enforces sign regulations on a complaint-only basis, the Development Services Department anticipates that enforcement activities can be carried out within existing staff and budget levels.

SUMMARY STATEMENT

Background

This project began in July of 2011 when the City adopted an interim sign ordinance. The ordinance removed the 60-day pre-election limit on the placement of campaign signs. This provision was thought to be unconstitutional by legal staff.

Immediately following the July 2011 adoption of the interim ordinance, Development Services staff began working with the Planning Commission to draft a sign code addressing the 60-day pre-election limit and other problematic provisions including placement of temporary signs on public property. Initially, the project scope was limited to temporary political signs on public property. However, staff research and discussions with the Planning Commission revealed that more extensive changes were required to address temporary political and non-political (commercial) signs on both public and private property. The Council extended the interim ordinance in December 2011 for an additional six-month period expiring in June, 2012 to allow Planning Commission to finish their discussions on the topic. The interim ordinance was extended a second time in June 2012 to allow for continued legal review of the draft sign code document prior to presentation to City Council. The most recent interim ordinance is set to expire in December 2012.

Because signs are inherently about First Amendment rights, there is a large volume of case law pertaining to how, when, and in what situations signs may be regulated. The case law is difficult to navigate and often conflicting. The difficulty in applying the case law to specific regulations and situations has led to several rounds of legal review during the sign code update.

Summary of the Draft Sign Code

Two versions of the draft code are attached. Attachment A is the "legislative edit" version of the draft code showing all proposed changes. For ease of reading, staff have also attached the "clean" version of the code as Attachment B, which shows the code as it would appear if it had already been adopted.

The draft code changes to Section 19.36.080 are organized into two basic parts: (1) regulations for temporary signs on private property and (2) regulations for temporary signs on public property. There were few substantive changes pertaining to signs on private property. The substantive changes to signs on private property include the following:

- For "General Promotions" signs, Promotional signs such as lights, flags, pennants, streamers, etc. may be placed from October – thru December of each year, defined as the "holiday season" , rather than just at Christmas.
- A-frame signs. The prohibition on A-frame signs in the Central Business District (CBD) has been deleted. The draft code proposes to allow A-frame signs on private property in all zoning districts. A-frame signs are specifically allowed on sidewalks in the CBD. See further discussion under "public rights-of-way" below.
- The restriction on temporary vehicular mounted signs has been deleted. Previously, the code prohibited signs in vehicles. This provision has been deleted as vague and unenforceable.
- Political free speech signs versus campaign signs. Please note that a distinction has been made between "political free speech signs" and "campaign signs." Campaign signs are those which pertain to an election. A political free speech sign pertains to a public or social issue (i.e. "this country should have more national parks"), without regard to a specific election(s). Previously, the code did not distinguish between campaign signs and political signs. Timeframes which require the removal of political free speech signs after an election cannot be required, whereas such a restriction is constitutional for campaign signs.

The bulk of changes to OHMC 19.20.080 relate to the placement of temporary signs on public property. Case law divides public property into different types called "forums" each of which has different First Amendment rights. The three types of public forums are: (1) traditional, (2) limited, and (3) non-public. Traditional public forums are the most permissive for free speech activities (including sign placement), while non-public forums are the most restrictive. Traditional public forums include street rights-of-way, which by long tradition have been considered places for assembly and debate and where placement of signs can only be prohibited under a narrow set of circumstances. Non-public forums are city facilities such as buildings and vehicles where placement of signs can be prohibited without infringing on free speech rights.

The draft code pertaining to temporary signs on public property, is divided by the type of forum (traditional or non-public) to which the regulations apply. Rights-of-way and parks are considered traditional public forums where free speech cannot be prohibited, but is subject to time, place, and manner restrictions. City vehicles and buildings are non-public forums where public speech in the form of signs is prohibited outright. The following discussion outlines key provisions of the code related to each type of public facility.

- **Public rights-of-way.** The code outlines general standards which apply to both political and non-political (commercial) speech for the placement of temporary signs within public rights-of-way. Such signs must adhere to safety, size, height, and location standards. All signs must be located within planter (a.k.a. "landscape") strips outside of vision clearance areas. Signs may be removed for purposes of street maintenance by public works staff.

  Specific standards apply to political free speech and campaign signs. Campaigns signs must be removed within 14 days following an election. Transitory (signs carried by a person) political free speech and campaign signs are allowed on sidewalks and in landscape strips.

  Specific standards also apply for commercial signs within public rights-of-way. The draft code limits the type of commercial signs within public rights-of-way. The following types of commercial signs are allowed within public rights of way: (1) portable A-frames within the CBD only, (2) flag pole banners on Pioneer Way (3) "open house" signs (4) subdivision directional signs (5) community events and fund raiser signs and (6) transitory commercial signs also known as "sign wavers" (for example, the "dancing pizza signs").

- **Parks.** Temporary signs are allowed in public parks subject to restrictions. First, and foremost, installation of temporary signs in parks is prohibited. No sign can be attached to park equipment or pounded into the ground. A few exceptions to sign installation in parks apply. Directional, event or notification signs can be installed for city-sponsored activities such as youth sports leagues. Sponsoring agencies or businesses may place their signs on the outfield fences at Windjammer and Volunteer parks. Sign banners are allowed at Gateway-Beeksma Park, but not for commercial purposes. Transitory signs, such as those used for a protest, are permitted.

- **City vehicles and buildings.** Because these are considered non-public forums, commercial signs are prohibited on all city vehicles and buildings. Governmental messages, however, are permitted.

STANDING COMMITTEE REPORT

This item was presented to the Governmental Services Committee in June and September, 2012 and to the Public Works Standing Committee on November 1, 2012.

PLANNING COMMISSION REPORT

Planning Commission discussed this topic during six sessions in 2011 and 2012, including holding a public hearing in May 2012. Minutes from those discussions are included as Attachment C.

RECOMMENDED ACTION

No recommended action at this time. This item is scheduled for a City Council public hearing on November 7, 2012. At that time, City staff will recommend an action to City Council.

ATTACHMENTS

- Attachment A – Ordinance No. 1640 pertaining to temporary and special signs showing legislative edits to the existing OHMC.
- Attachment B – Ordinance No. 1640 pertaining to temporary and special signs clean version.
- Attachment C - Planning Commission meeting minutes from October and November, 2011; and February, March, April and May, 2012.

ORDINANCE NO. 1640

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.36 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "TEMPORARY AND SPECIAL SIGNS".

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(d) says: "Business-related signs, both temporary and permanent, should serve the needs of the business owner and public to identify business locations but should not proliferate in a manner whereby the sum of all signs detracts from a positive aesthetic experience of the City's commercial areas," and;

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(e) says "Signage standards should promote design sensitivity to the context in which signs are placed and scaled to both the mass of the building and the location of the sign on the lot" and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on March 27, April 24, and May 22, 2012. The public hearing was closed on May 22, 2012. Public meetings were held before the Planning Commission on October 25 and November 22, 2011and February 28, 2012.

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on September 15, 2012 and a Determination of Non-Significance (DNS) on October 6, 2012 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

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

Section One. Section 19.36.020 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 2 in 2009 is hereby amended to read as follows:

19.36.020 Definitions

(1) "Abandoned sign" means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.

(2) "Animation" means the use of movement or some element thereof, to depict action or create a special effect or scene.

(3) "Area or surface area of sign" means the greatest area of a sign on which copy or artwork can be placed and not just the portion of which is covered by letters or symbols, enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.

DRAFT

(4) "Architectural blade" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something suspended from the building.

(5) "Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.

(6) "Billboard" means outdoor advertising signs containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.

(7) "Building line" means a line established by ordinance defining the limits of buildings in relation to streets. A building line in some instances may coincide with the property line. "Building line" is sometimes referred to as "required setback line."

(8) "Building-mounted sign" means a single- or multiple-faced sign attached to the face of a building or marquee.

(9) "Campaign sign" means a sign which exclusively and solely advertises a candidate or candidate's public elective office, a political party, or promotes a position on a ballot issue.

~~(9)~~(10) "Canopy" means a freestanding structure affording protection from the elements to persons or property thereunder.

(11~~0~~) "Canopy sign" means any sign erected upon, against or directly above a canopy.

(12) "Commercial sign" means a sign containing expression related to the economic interests of the advertiser and its audience or a sign proposing a commercial transaction.

(13~~1~~) "Construction sign" means an information sign which identifies the architect, engineers, contractors and other individuals or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.

(14~~2~~) "Electronic message center" means a sign capable of displaying words or symbols that can be electronically or mechanically changed by remote or automatic means. An electronic message center is considered a primary sign and may be either freestanding or building-mounted.

(15~~3~~) "Flashing" means pattern of changing light illumination where the sign illumination alternates suddenly between fully illuminated and fully non-illuminated for the purpose of drawing attention to the sign. Flashing is not permitted in any zoning district.

(16~~4~~) "Frame effect" means a visual effect on an electronic message center applied to a single frame to transition from one message to the next. Such usage must comply with the 2-1-2 provision.

(17~~5~~) "Freestanding sign" means a single- or multiple-faced sign supported from the ground by one or more columns, uprights or braces. Freestanding signs include monument, pylon and pole signs.

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(18~~6~~) "General promotions" means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, seasonal sales, civic events, etc.).

(19~~7~~) "Grade" means the elevation or level of the street closest to the sign to which reference is made, as measured at the street's centerline, or the relative ground level in the immediate vicinity of the sign.

(~~18~~20) "Grand openings and anniversaries" means events that are held on a once-per-year basis for the purpose of advertising grand openings, ownership changes, or anniversaries.

(21~~19~~) "Height" or "height of sign" means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level in the immediate vicinity of the sign.

(22~~0~~) "Incidental sign" means a single- or double-faced sign not exceeding four square feet in surface area of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development. Also included are building directories with the letters not to exceed four inches in height. (See OHMC 19.36.100.)

(23~~1~~) "Marquee" means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.

(24~~2~~) "Monument sign" means a primary freestanding sign, generally mounted on a solid base. Monument signs shall not contain or include reader boards.

(25~~3~~) "Multiple-occupancy building" means a single structure housing more than one type of retail business office or commercial venture.

(26~~4~~) "Multiple-occupancy complex" means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.

(27~~5~~) "Noncommercial public service sign" means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to, the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.

(28~~6~~) "Occupant" means the person, firm or corporation that occupies the land or building.

(29~~7~~) "Office building" means an office building in the commercial and residential-office land use districts as defined by the Oak Harbor zoning ordinance.

(~~28~~30) "Parapet" means that portion of a building wall which extends above the roof of the building.

(31~~29~~) "Penthouse" means a structure on top of a building roof such as houses an elevator shaft or similar form.

(32~~30~~) "Pole sign" means a primary freestanding sign where the sign is supported by a pole or other similar structural element that is substantially narrower than the width of the sign.

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(~~31~~33) "Political free speech sign" means a sign which promotes a position on a public, or social issue.~~signs advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by ballot.~~

(3~~1~~2) "Primary sign or signs" means all signs, including freestanding signs, of a user which are not exempt (see OHMC 19.36.100), or which do not come within the category of incidental signs (see OHMC 19.36.030 and subsection (20) of this section) or temporary or special signs (see 19.36.080). The term "primary sign" is intended to include virtually all signs of a commercial nature.

(3~~5~~3) "Property line" means the line denoting the limits of legal ownership of property.

(~~34~~36) "Pylon sign" means a primary freestanding sign other than a pole sign with the appearance of a solid base. The base of a pylon sign shall be distinctive in appearance from the sign area.

(~~35~~37) "Reader board" means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.

(38) "Right-of-way" means either a publicly owned fee, an easement or privilege to traverse over land. A right-of-way is for public travel. Rights-of-way may be opened or unopened, and when open usually contain street improvements.

(3~~6~~9) "Roof sign" means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.

(~~37~~40) "Sign" means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided, however, that sources of light used primarily to attract attention to the light itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk (see OHMC 19.36.100 for more detailed treatment of exempt signs), and religious symbols.

(~~38~~41) "Single-occupancy building" means a commercial building or structure with one major enterprise, generally under one ownership. A building is classified as single-occupancy only if:

(a) It has only one occupant;

(b) It has no wall in common with another building;

(c) No part of its roof in common with another building.

(~~39~~42) Special Signs. See "Temporary and Special Signs."

(~~40~~43) "Special projection sign" means a sign no larger than six square feet projecting out from the side of a building.

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(~~41~~44) "Street" means any automobile thoroughfare so designated by city ordinance. "Street" includes portions thereof used for parking.

(~~42~~45) "Subdivision signs" means signs used to identify a land development which is to be or was accomplished at essentially one time.

(~~43~~46) Surface Area. See "Area or surface area of sign."

(~~44~~47) "Surface area of facade" means the area of that front, side or back elevation, including doors and windows, but excluding any roof area and structures or elevators or air conditioning equipment thereon; provided, that in the case of a roof sign, the surface area of facade shall be the area of that front, side or back immediately beneath the roof, including doors and windows, but excluding the roof area and structures for elevators or air conditioning thereon.

(~~45~~48) Temporary and Special Signs. Temporary and special signs are those, which are not defined as "primary signs" or "incidental signs" by this chapter. Different types of temporary and special signs include~~d~~ ~~in this category~~, but are not limited to construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs, ~~and~~ subdivision directional signs, A-frame signs, political signs, and campaign signs. (see OHMC 19.36.080).

(49) Transitory signs. Transitory signs, also known as "human signs" are those carried by or worn by a human being usually for the purposes of a protest, demonstration, rally, or other similar event.

(~~46~~50) "Video" means the use of live action footage shot with a video camera or similar device which is sized to fit and be displayed by an electronic message center or similar device. The use of video is not permitted in any zoning district.

(~~47~~51) "Video board" means an electronically activated sign that creates the effect of motion or animation, except as allowed by this chapter for changing electronic message signs which are in compliance with the 2-1-2 provision, and the prohibition of RGB technology. Video board signs are not permitted in any zoning district.

(~~48~~52) "Way open to public" means any paved or unpaved area on private property open to the general public for driving or parking.

(~~49~~53) "Window sign" means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs. (See OHMC 19.36.030.)

Section Two. Section 19.36.060 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby readopted and to read as follows:

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19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.

Requirements for signs in multifamily residential districts and public facilities districts shall be identical to those for the R-O residential office district and the C-1 neighborhood commercial district zones as set forth in OHMC 19.36.040.

(1) Exceptions. In the public facilities zoning district, a single freestanding or building-mounted changing general electronic reader board is allowed with the following restrictions:

(a) Freestanding signs are limited to 35 square feet in sign area, no more than 15 feet in height and must be set back five feet from the property line;

(b) Wall-mounted signs are limited to 35 square feet in sign area and no more than 20 feet in height;

(c) Lettering shall not be more than 12 inches in height;

(d) The electronic message shall be limited to those allowed on noncommercial signs as defined in OHMC 19.36.020(25) and shall not change more frequently than every four seconds;

(e) The sign's lights shall be limited to a warm-toned, off-white color or other similar color as approved by the development services director;

(f) An electronic reader board counts as one of the allowed primary signs; and

(g) For locations adjacent to a residential use or district, electronic displays shall be turned off between the hours of 10:00 p.m. and 6:00 a.m.

Section Three. Section 19.36.070 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby readopted and to read as follows:

19.36.070 Single-family residential signs – R-1 zones.

(1) General. Two categories of sign uses are covered by this section:

(a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.

(b) Noncommercial uses such as schools, churches, fire stations and house number identification.

(2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:

(a) Such sign may be either freestanding or building-mounted.

(b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.

(c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.

(3) Signs for Noncommercial Uses.

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(a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:

(i) Signs shall be unobtrusive in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.

(ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:

(A) The sign is to identify current events or activities;

(B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;

(C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) of this section);

(D) The sign shall not exceed 15 square feet in area nor five feet in height;

(E) Not more than two such signs shall be permitted.

(b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.

(c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.

(d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction.

Section Four. Section 19.36.080 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby amended to read as follows:

19.36.080 Temporary and special signs.

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Temporary and special signs or displays are nonpermanent in nature and are intended for use only for a short period of time. The category includes, but is not limited to, the temporary signs specified in this section on both private and public property. No permits are required for temporary and special signs. ~~any banner, pennant or advertising display constructed of canvas, fabric, wood, plastic or other semi-durable material, with or without frame. Permissible signs, with applicable limitations, are as follows:~~

(1) Temporary signs on private property. Temporary signs on private property shall adhere to the following guidelines. Compliance with these guidelines is achieved by meeting the regulations contained in this section. Temporary signs shall not:

(a) Obstruct designated vehicle or pedestrian traffic circulation areas. Vehicle or pedestrian traffic circulation areas include, but are not limited to drive aisles, private streets, parking areas, walkways, and paths;

(b) Represent safety problems by creating traffic distractions;

(c) Be in a state of disrepair including being tattered, torn or broken;

(d) Contain obscene language, symbols or images;

(e) Clutter the visual landscape by not meeting the quantity and quality standards specified in this section; and,

(f) All artistic embellishments and lettering shall have the appearance of professionalism. For the purposes of this section, professionalism means signs created by a graphic artist, sign design professional, or other design professional.

(2) Regulations for temporary signs on private property. The following signs and regulations are presumed to meet the principles outlined in subsection (a) above.

(a)~~(1)~~ Construction Signs.

(i)~~(a)~~ These signs identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and announce the character of the building, or the purpose for which the building is intended. Such signs may be displayed only after a building permit is obtained and during the period of construction on the construction site. Only one such sign (which may be double-faced) is permitted per construction project for each public street upon which the project fronts.

(ii)~~(b)~~ In all zones other than single-family residential zones, no construction sign shall exceed 32 square feet in surface area or 10 feet in height, nor be located closer than 10 feet from the property line or closer than 30 feet from the property line of the abutting owner. Further, such signs must be removed by the date of first occupancy of the premises, or one year after placement of the sign, whichever first occurs.

(iii)~~(c)~~ In single-family residential zones, no construction sign shall exceed eight square feet in surface area, or be located closer than 10 feet from the property line of the abutting owner. Such signs shall be removed by the date of first occupancy of the premises or six months after first placement of the sign, whichever first occurs.

(b)~~(2)~~ General Promotions.

(i)~~(a)~~ General promotions are those events which occur on a regular basis in retail businesses for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, etc.), seasonal sales and the like.

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(ii)~~(b)~~ Allowed temporary signage for these types of events consists of posters in windows, posters under motor vehicle hoods, glass painting, small balloons of less than 12 inches in diameter and ~~a~~ banners. ~~maximum of one banner per street frontage placed on the exterior of the building on the space that the particular business occupies.~~ The size of the banners will be limited to a maximum of four feet in height and a maximum length of either 50 percent of the length of the side of the building on which the banner is located or 30 feet. Businesses with a facade of less than 24 feet in length may have banners of up to 12 feet in length. Each separate business is permitted to have one banner on the building.

(iii)~~(c)~~ No clusters of flags or pennants, ribbons, streamers, shimmering discs, spinners, twirlers, or propellers, strings of lights, moving, flashing, rotating or blinking lights, chasing or scintillating lights, flares, or large balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell may be used for these types of promotions with the exception of during the Holiday Season. The Holiday Season is defined as October thru December of each year. ~~of Christmas, when flashing Christmas-type lights will be allowed.~~

(iv)~~(d)~~ The duration of these promotions will be 30 days maximum. (except banners) and no permit will be required. Banners have no time restrictions but shall be placed solely on the building for which the banner is advertising. In the event that the banner becomes dilapidated or otherwise ruined it must be removed or replaced. ~~Such promotions are permitted only in districts where the enterprise so advertised is allowed under district zoning regulations.~~ Banners shall be allowed in addition to primary signage and shall not be used as primary signs. When no primary sign is installed the duration of a banner shall be no more than 30 days.

(c)~~(3)~~ Light Pole Banners.

(i)~~(a)~~ Businesses may have light pole banners on 100 percent of the total number of poles located in privately owned parking lots.

(ii)~~(b)~~ Size of banners shall be limited to three feet by seven feet free flying or two feet by six feet when attached by brackets.

(iii)~~(c)~~ There shall be at least eight feet of clearance between the bottom of the banner and the ground. No banner shall extend over a public sidewalk or street.

(iv)~~(d)~~ There is no time limit for light pole banners. However, when the banners become dilapidated or otherwise ruined, they must be removed or replaced.

(v)~~(e)~~ No other signage of any type shall be permitted on light poles where light pole banners are displayed.

(d)~~(4)~~ Grand Openings and Anniversaries.

(i)~~(a)~~ Businesses may have one grand opening or anniversary promotion per year. One additional such promotion may be held if the business changes ownership or management, should this occur less than one year after a particular grand opening or anniversary promotion.

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(ii)~~(b)~~ In addition to those items allowed in general promotions (above) the business may also use flags, pennants, ribbons, streamers, various types of balloons (including large "hot air" types), and strings of lights.

(iii)~~(c)~~ These promotions will be no more than 30 days in length.

(e)~~(5)~~ Grandfathered Commercial Promotions Signage. No existing temporary or special signage will be grandfathered. Businesses will have 60 days from the date of enactment of the ordinance codified in this chapter in which to comply.

(f)~~(6)~~ Real Estate Signs. All exterior real estate signs must be of wood or plastic or other durable material. The permitted signs, with applicable limits, are as follows:

(i)~~(a)~~ Residential "For Sale" or "For Rent" Signs. Signs advertising residential property for sale or for rent shall be limited to one single- or double-faced sign per street frontage. Sign to be installed 30 days prior to becoming available or during a vacancy only. The sign may not exceed four square feet in surface area, and must be placed wholly on the property for sale or rent. The "For Sale" or "For Rent" sign may remain up until the property is sold or rented.

(ii)~~(b)~~ Residential Directions "Open House" Signs. Signs advertising an open house ~~and the directions to a residence for sale~~ shall be limited to one single- or double-faced on-premises ~~for sale~~ sign.

(iii)~~(c)~~ Residential Condominiums, Condominium Conversions, Apartments, Mobile Home Parks and New Subdivisions.

(A)~~(i)~~ Temporary Real Estate Signs. Temporary signs, posters and banners may be used for the grand opening and ongoing promotion of new residential projects having five or more units. These signs and banners may be used in a particular project for a period not exceeding one year after the date of issuance of the final occupancy permit for that project or at such time as the project is 90 percent occupied, whichever occurs first, or in the case of subdivision and mobile home parks, one year after final plat approval. In the event that the project consists of more than one phase, as in a "phased" condominium project, the signs and banners promoting one phase must be removed prior to installing the signs and banners for the next phase. A time extension may be granted for up to one year in length by the building official where 90 percent occupancy has not been obtained. Justification for the extension includes:

1.~~(A)~~ Certification of vacant units; and

2.~~(B)~~ Statement of reason for lack of occupancy.

(B)~~(ii)~~ Allowable Number and Sizes of Signs.

1.~~(A)~~ One banner of not more than 30 feet in length and four feet in height advertising the project for sale or rent;

2.~~(B)~~ Banners or signs of not more than 18 square feet each on each model unit with a maximum of three of these types allowed per project or phase;

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3.~~(C)~~ "A-frame" and other signs used internally within the project as needed for the purpose of directing traffic to model units or open house functions;

4.~~(D)~~ One sign per road frontage of not more than 32 square feet per side advertising the project for rent or sale. These signs may be installed only after the construction sign has been removed.

(iv)~~(d)~~ Undeveloped Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising undeveloped commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the property is actually for sale or rent. The sign may not exceed 16 square feet in surface area. If freestanding, the sign may not exceed five feet in height, and shall be located more than 15 feet from any abutting interior property line and wholly on the property for sale or rent.

(v)~~(e)~~ Developed Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising developed commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the building is actually for rent or sale. The sign may not exceed 16 feet in surface area. If freestanding, the sign may not exceed five feet in height and shall be located more than 15 feet from any abutting side or rear property line, and wholly on the property for sale or rent.

(vi)~~(f)~~ Residential Land Subdivision Signs. Signs advertising residential subdivisions shall be limited to one single- or double-faced sign not exceeding a total of 32 square feet in surface area placed at a right angle to the street, or two signs not exceeding a total of 32 square feet in surface area facing the street, which shall be at least 200 feet apart. ~~No sign shall project beyond the building line.~~ Such signs must be placed more than 30 feet from the abutting owner's property line and may not exceed a height of 12 feet. Such signs shall be removed by the end of one year or when 75 percent of the houses in the subdivision are sold or occupied, whichever first occurs. Permanent subdivision or neighborhood designation signs shall be approved by the administrator of this code as set forth in OHMC 19.36.070.

~~(G)(g) Subdivision Directional Signs Designating New Development. Signs advertising the direction to a subdivision shall be furnished and placed only by the developer or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name of realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.~~

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(vii)~~(h)~~ Undeveloped Multifamily Property "For Sale" Signs. Permissible signs and their limitations for undeveloped multifamily zoned property shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(viii)~~(i)~~ Undeveloped Single-Family Acreage "For Sale" Signs. Permissible signs and their limitations for undeveloped, unsubdivided single-family property which may be legally divided into four or more single lots shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(g) Civic Organizations. Civic organizations shall be allowed to have two A-frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of portable A-frame commercial signs. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A-frame signs existing on site at time of application.

(h) Portable A-Frame Commercial Signs. For the purpose of this code, portable A-frame commercial signs also include sandwich board signs.

(i) Location. The portable A-frame commercial sign shall be placed solely on the property of the business for which the sign advertises. No two portable A-frames shall be closer than 10 feet from one another.

(ii) Size. Each business is permitted to have one portable A-frame commercial sign no larger than 36 inches by 48 inches.

(iii) Time limit. Portable A-frame commercial signs shall be placed during normal business hours and removed at the close of business each day.

(iv) Lighting. No direct or indirect lighting of any kind shall be permitted.

(v) Construction. A-frame commercial signs shall be constructed to be sturdy and withstand all types of weather conditions.

(vi) Lettering. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy.

~~(x) No temporary vehicular-mounted sign shall be placed in such a manner as to subvert the intentions of this chapter.~~

(i) Political Headquarters Signs.

~~(a)~~ (i) Party Headquarters. On-premises campaign~~political~~ signs are permitted on the premises of political headquarters located in the business districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts.

~~(b)~~(ii) Headquarters for Candidate or Ballot Issue. On-premises ~~political~~campaign signs are permitted on the premises of the headquarters of a candidate for public elective office (whether partisan or nonpartisan) or on the headquarters of persons supporting or opposing a public issue decided by ballot, when such headquarters are located in the commercial districts (OHMC 19.36.030), on office buildings in the residential/office

and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts, ~~and so long as the signs remain for a period no longer than six months.~~ Such signs shall be removed within ~~seven~~fourteen (14) days after the general election.

~~(8)~~ (i) Political Free Speech and Campaign Signs on Private Property Not a Headquarters.

~~(a)~~(i) Political free speech signs and campaign signs ~~Signs, posters or bills promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election~~ may be displayed on private property. Campaigns~~Such~~ signs, posters or bills shall be permitted ~~only for a period of 60 days preceding the election and for~~ through a period of ~~seven~~ fourteen (14) days following such election; provided, that campaign signs, posters or bills promoting successful candidates in a primary election may remain displayed on private property until ~~seven~~fourteen (14) days following the immediately subsequent general election.

~~(b)~~(ii) Sign Dimension and Location. Political free speech signs and campaign signs shall not exceed 32 square feet in surface area per side or 10 feet in height, or be located closer than five feet from the property line or closer than 15 feet from the property line of an abutting owner. Signs must be located so as not to restrict sight distances on approaches to intersections. ~~A-frame type political signs are not permitted.~~ Political free speech signs and campaign signs located along SR-20 within the city limits of Oak Harbor must be located on private property. ~~Signs installed within the SR-20 right-of-way will be removed by the city or State Highway Department personnel.~~

~~(c)~~(iii) Removal of Campaign Signs Following Election. Any such campaign sign, poster or bill shall be removed within ~~seven~~fourteen (14) days following ~~an~~ the general election. It shall be the responsibility of the above campaign officer or responsible official to have the signs, posters or bills removed.

(iv) Political free speech signs and campaign signs on private property are not subject to the "appearance of professionalism" principle.

~~(d) Political Signs Not Allowed on Public Property. It is unlawful for any person to paste, paint, affix or fasten on any utility pole or on the sidewalk, roadway, or on any public building or structure any such sign, poster, bill or other advertising device when such facilities are located on public property or within public easements.~~

~~(e) Public Notices Unaffected. Nothing in this section shall be construed to prohibit the placement of public notices required by law.~~

~~(f) The display of any political sign in violation of this section, or any portion thereof, shall be presumed to have been done at the direction and request of the campaign officer or responsible official.~~

~~(g) No permit is required for placement of political signs.~~

~~(9) Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and similar events scheduled for the benefit of the general community may install~~

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~~temporary directional signing, provided such signs are removed within two days following the event.~~

~~(10) Civic Organizations. Civic organizations shall be allowed to have two A-frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of A-frames for businesses. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A-frame signs existing on site at time of application.~~

~~(11) Portable A-Frame Signs.~~

~~(a) Portable A-frame signs, for the purpose of this code, also include sandwich board signs.~~

~~(b) Portable A-frame signs are allowed in all districts throughout the city except the CBD.~~

~~(c) Each business is permitted to have one portable A-frame sign no larger than 36 inches by 48 inches. The portable A-frame sign shall be included in the total allowable signage for said business.~~

~~(d) The portable A-frame sign shall be placed solely on the property of the business for which the sign advertises during normal business hours and removed at the close of business, and located no further than four feet from the building line. No two portable A-frames shall be closer than 20 feet from one another. No direct or indirect lighting of any kind shall be permitted.~~

~~(e) A-frame signs shall be constructed to be sturdy and withstand all types of weather conditions. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy. All artistic embellishments and lettering shall have the appearance of professionalism.~~

~~(12) No temporary vehicular-mounted sign shall be placed in such a manner as to subvert the intentions of this chapter.~~

(3) Temporary signs on public property shall adhere to the following principles. Temporary signs on public property shall not:

(a) Detract from the primary purpose of the public property or facility;

(b) Obstruct designated vehicle, bicycle, or pedestrian traffic circulation areas; Vehicle or pedestrian traffic circulation areas include, but are not limited to drive aisles, private streets, parking areas, walkways, and paths;

(c) Represent safety problems by creating traffic distractions or visual obstructions;

(d) Be in a state of disrepair including being tattered, torn , ripped, defaced, or broken;

(e) Contain obscene language, symbols or images;

(f) Be in place for more time than is specifically authorized herein;

(g) All artistic embellishments and lettering shall have the appearance of professionalism. For the purposes of this section, professionalism means signs created by a graphic artist, sign design professional, or other design professional.

(4) Regulations for temporary signs on public property. Temporary signs on public property are subject to the following restrictions. These restrictions are presumed to meet the principles outlined in subsection (3) above.

(a) Public rights-of-way. Public rights-of-way are considered to be traditional public forums by the City, places which have been historically devoted to assembly,

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debate, and free speech activities. However, for reasons of public safety, temporary signs are subject to the time, manner, and place restrictions below.

(i) General standards. The following standards apply to all temporary signs located within public rights-of-way.

(A) Location. For safety reasons, temporary signs may not be placed in visibility triangles which is the area along street frontages within 30 feet of an alley or an unsignallized intersection, or within 25 feet of a driveway. Temporary signs placed within the public-right-of-way may only be located within the landscape strip ("planter strip") or on the public sidewalk. However, a four foot unobstructed width for pedestrians and wheelchair access on sidewalks must be maintained. No signs may be placed within vehicle or bicycle travel lanes, medians, traffic circles, parking lanes, on utility poles or, traffic sign poles, or the decorative planter pots on Pioneer Way. Signs located within the State Highway 20 right-of-way are subject to State standards.

(B) Safety. If a temporary sign is deemed to be a traffic safety hazard, then City personnel may move signs or request that the entity who placed the sign move them.

(C) Size. Temporary signs located within the public right-of-way may not be more than six square feet in size. Double-faced signs of six square feet on each side are permitted.

(D) Height. So as not to obstruct visibility for vehicular, pedestrian, and bicycle traffic, temporary signs may not be more than 3.5 feet in height when located within the public right-of-way.

(E) Public works projects. City personnel may remove temporary signs from public rights-of-way in order to conduct periodic maintenance activities. Staff will make an effort to replace the sign in its previous location. Signs may be returned to their prior location if still within the durational limit. City personnel may permanently remove temporary signs from public rights-of-way for the purposes of carrying out major public works projects. If temporary signs must be removed for maintenance reasons, City staff will make an effort to contact the sign owner or they will be available at the City Public Works Building for pickup for a 10-day period. If not claimed within 10 days, the sign will be disposed of.

(F) Removal of signs in disrepair. City personnel may remove any sign which is in a state of disrepair from the public right-of-way or public property at any time. For purposes of this subsection, a sign is in a state of disrepair if it is ripped, torn, broken, faded, obliterated, obscured, dilapidated, blown down, knocked over or in any other state which its message has ceased to be readable or legible.

(ii) Political free speech signs and campaign signs– specific standards. In addition to the general standards, the following standards apply to political

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free speech signs and campaign signs placed within the public right-of-way.

(A) Time limits. Campaign signs on public property may be placed at any time prior to an election. Except for properties fronting interstate primary or scenic highways of the state where the provisions of WAC 468-66-050 shall prevail, the deadline for removal shall be remove fourteen (14) days after the date of the election to which the sign pertains. Failure to remove campaign signs within the time limit provided shall constitute a violation of this code and shall be punishable as such. In the event that city personnel are required to remove signs from public rights-of-way after expiration of the post-election time limit, all costs associated with such removal shall be the responsibility of the candidate or campaign organization for who the sign was posted and shall be collected in addition to any other penalty applicable for failure to remove the sign.

(B) The display of any political free speech sign or campaign sign in violation of this section or the general standards above, shall be presumed to have been done at the direction and request of the campaign officer or responsible official.

(C) Political free speech signs and campaign signs within the public right-of-way are not subject to the "appearance of professionalism" principle.

(D) Transitory signs. Transitory political free speech and campaign signs, such as those used for protest, picketing, demonstrations, etc. are allowed within public rights-of-way on sidewalks and on planter strips provided they do not create a public safety issue by blocking visibility and access for pedestrians, automobiles, and bicyclists using the street. Transitory signs are not subject to the "appearance of professionalism" principle.

(iii) Commercial signs – Specific standards. In addition to the general standards, the following standards apply to commercial signs placed within the public right-of-way. The only types of commercial signs which are allowed within the public right-of-way are those signs listed here subject to the following restrictions:

(A) Portable A-frame commercial signs. Location. A-frame commercial signs may be placed within the CBD zone in downtown. There shall be at least forty-four inches (44") unobstructed width on the sidewalk to allow for passage of pedestrians and disabled persons when the sign is in place. Signs shall be placed within three feet (3') of the building face. No two portable A-frames shall be closer than 10 feet from one another. Size. Each business is permitted to have one portable A-frame sign no larger than 36 inches by 48 inches.

Time limit. Portable A-frame signs shall be placed during normal business hours and removed at the close of business each day.

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Lighting. No direct or indirect lighting of any kind shall be permitted.

Construction. A-frame signs shall be constructed to be sturdy and withstand all types of weather conditions.

Lettering. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy.

(B) Flag pole banners (a.k.a "flag banners"). Flag pole banners are allowed within the CBD zone in downtown and shall be placed within the preexisting flag pole holders along Pioneer Way. The flag pole banners may be placed during business hours, but must be removed at the close of business each day. Flag poles shall be a rigid material so that the flag pole banners do not obstruct vehicle parking and pedestrian circulation areas. Additionally, on holidays such as Martin Luther King Junior Day, President's Day, St. Patrick's Day, Memorial Day, Fourth of July, Labor Day, and Veterans' Day, the flag pole holders shall not be used by businesses and shall be reserved for public purposes.

(C) Residential directions "open house" signs. In addition to the general standards, the following standards apply to residential directions "open house" signs placed within the public right-of-way.

1. Number. Four single or double faced signs per residence which is for sale or rent are allowed within the public right-of-way. However, if a realtor has more than one house open for sale or rent in a single development or subdivision, off-premises signs are limited to five for the entire development or subdivision. All signs must be located within one mile of the property for sale.

2. Time limit. Such signs are permitted only during daylight hours and when the realtor or seller or an agent is in attendance at the property for sale. Open house or for sale signs must be removed the same day as the open house event ends.

3. Size. Open house signs located within the public right-of-way may not be more than six square feet in size. Double-faced signs of six square feet on each side are permitted.

(D) Subdivision Directional Signs Designating New Development. Signs advertising the direction to a subdivision shall be furnished and placed only by the developer or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name of realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent

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of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.

(E) Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and other events scheduled for the benefit of the general community, not including sales for individual businesses, may install temporary directional signs, provided such signs are put in place no sooner than 30 days prior to the event and removed within seven days following the event.

(F) Transitory commercial signage, also known as "sign wavers", advertising specific goods or services.

(b) City Parks. Public parks are considered to be a traditional public forums, which have historically been devoted to assembly, debate, and free speech activities. The following restrictions are meant to offer adequate means of expression while protecting the primary public purpose of the park as a recreational facility.

(i) Transitory signs. Transitory signs, such as those used for protest, picketing, demonstrations, etc. are allowed within public parks. Transitory signs are not subject to the "appearance of professionalism" principle.

(ii) Sign installation prohibited. Temporary signs may not be affixed to park equipment, land or facilities in any way. This prohibition includes the pounding of temporary signs into the ground.

(iii) Exceptions. Certain exceptions for installation of temporary signs in parks applies as follows:

(A) Temporary, directional, event, or notification signs installed for City authorized activities such as youth sports leagues. Such signs must be removed when the recruitment period ends.

(B) Windjammer Park and Volunteer Park baseball fields. Signs of agencies, businesses, or organizations which sponsor youth sports activities may be placed on the outfield fences on the youth baseball fields in these two parks.

(C) Gateway-Beeksma Park. Sign banners from governmental agencies, non-profits, or community messages of an informational nature may be placed in this park.

(c) City Vehicles. City vehicles are considered to be non-public forums by the City meaning that they are not meant to be a location for public communication and are intended solely for their designated purpose. Temporary signage is prohibited on City vehicles, with the exception of government sponsored messages and communication which do not undermine the primary purpose of the vehicle.

(d) City buildings. City buildings are considered to be non-public forums. Temporary signage is prohibited on City buildings with the exception of government sponsored messages and communication which do not undermine the primary purpose of the building.

Section Five. Section 19.36.090 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 in 2009 is hereby readopted to read as follows:

19.36.090 Street right-of-way signs.

(1) General. Signs for the purpose of identification only, which contain no advertising, may be located upon the street right-of-way only where view-obstructing acoustical protective devices such as acoustical walls, berms or solid fences have been legally installed with city approval at property line thereby making building-mounted or conforming freestanding signs ineffective. Such signing may not exceed the maximum square footage for signs permitted in the applicable district.

(2) Design and Materials. Street right-of-way signs shall be in keeping with the character of the zoning district in which they are located and shall be constructed of quality materials. The proposed design and materials to be utilized in the construction of any such sign shall be approved in advance of the issuance of any sign permit by the administrator of this code.

(3) Types of Signs Permitted. Only signs identifying the use being maintained or operated upon the immediately abutting property and incidental signs indicating the appropriate entrance to and exit therefrom are permitted upon the public right-of-way under this section; provided, that vacancy signs no larger than three square feet in surface area may be installed as an addition to the identification sign.

(4) Sign Location. Signs permitted upon the street right-of-way shall not be installed or placed on the top of acoustical protective devices, nor shall such signs be installed upon or attached to acoustical protective devices constructed by the city.

(5) Sign Dimensions. Street right-of-way signs shall have a maximum height of five feet measured from the street grade only, a maximum surface area of 15 square feet.

(6) Sign Illumination. Street right-of-way sign illumination shall be from a source other than the sign itself.

(7) Permit Requirements. Street right-of-way signs are subject to all general requirements of this code; provided, that no such sign may be erected without a permit regardless of the size of the sign; and provided further, that any application for a street right-of-way sign permit is subject to the approval of the superintendent of public works

Section Six. Section 19.36.100 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 in 2009 is hereby readopted to read as follows:

19.36.100 Exempt signs or displays.

The following signs or displays are exempted from coverage under this code:

(1) Traffic or pedestrian control signs or signals, or signs indicating scenic or historic points of interest, which are erected by or on the order of a public officer in the performance of his public duty;

(2) Regulatory, informational, identification or directional signs installed by or at the direction of a government entity;

(3) Signs required by law;

(4) Official public notices, official court notices or official sheriff's notices;

(5) The flag of a government or noncommercial institution such as schools;

(6) Exterior signs or displays not visible from streets or ways open to the public;

(7) Signs in the interior of a building more than three feet from the closest window or not facing a window;

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(8) Plaques, tablets or inscriptions indicating the name of a building, its date of erection, or other commemorative information, which are an integral part of the building structure or are attached flat to the face of the building, which are nonilluminated, and which do not exceed three square feet in surface area;

(9) "No Trespassing," "No Dumping," "No Parking," "Private," and other informational warning signs, which shall not exceed three square feet in surface area;

(10) Reasonable seasonal decorations within the appropriate public holiday season. However, such displays shall be removed promptly at the end of the public holiday season;

(11) Sculptures, fountains, mosaics and design features which do not incorporate advertising or identification;

(12) Existing theater marquees (freestanding and/or building-mounted);

(13) Nonflashing, low-lumen building outline and window accent lighting may be installed by businesses in the CBD, CBD-1, CBD-2, C-3, C-4 and C-5 business and commercial districts. Permit and plan review is required.

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

PASSED by the City Council this __ day of _____, 2012.

( ) APPROVED by its Mayor this _____ day of _____, 2012.

( ) Vetoed

THE CITY OF OAK HARBOR

_____

Mayor

Attest:

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_____

Interim City Clerk

Approved as to Form:

_____

Interim City Attorney

Published: _____

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ORDINANCE NO. 1640

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.36 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "TEMPORARY AND SPECIAL SIGNS".

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(d) says: "Business-related signs, both temporary and permanent, should serve the needs of the business owner and public to identify business locations but should not proliferate in a manner whereby the sum of all signs detracts from a positive aesthetic experience of the City's commercial areas," and;

WHEREAS, the City's Comprehensive Plan, Land Use Element, Policy 1(e) says "Signage standards should promote design sensitivity to the context in which signs are placed and scaled to both the mass of the building and the location of the sign on the lot" and;

WHEREAS, the City of Oak Harbor conducted a public hearing before the Planning Commission on March 27, April 24, and May 22, 2012. The public hearing was closed on May 22, 2012. Public meetings were held before the Planning Commission on October 25 and November 22, 2011and February 28, 2012.

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on September 15, 2012 and a Determination of Non-Significance (DNS) on October 6, 2012 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

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

Section One. Section 19.36.020 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 2 in 2009 is hereby amended to read as follows:

19.36.020 Definitions

(1) "Abandoned sign" means a sign which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity, and/or for which no legal owner can be found.

(2) "Animation" means the use of movement or some element thereof, to depict action or create a special effect or scene.

(3) "Area or surface area of sign" means the greatest area of a sign on which copy or artwork can be placed and not just the portion of which is covered by letters or symbols, enclosed within not more than three circles, rectangles or squares, or any combination of these forms which produces the smallest area. Sign structure, architectural embellishments, framework and decorative features which contain no written or advertising copy and are not internally lighted shall not be included.

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(4) "Architectural blade" means a projecting sign with no exposed legs or braces, designed to look as though it could have been part of the building structure rather than something suspended from the building.

(5) "Banner" means a flexible material (i.e., cloth, paper, vinyl, etc.) on which a sign is painted or printed.

(6) "Billboard" means outdoor advertising signs containing a message, commercial or otherwise, unrelated to any use or activity on the property on which the sign is located, but not including directional signs as defined herein.

(7) "Building line" means a line established by ordinance defining the limits of buildings in relation to streets. A building line in some instances may coincide with the property line. "Building line" is sometimes referred to as "required setback line."

(8) "Building-mounted sign" means a single- or multiple-faced sign attached to the face of a building or marquee.

(9) "Campaign sign" means a sign which exclusively and solely advertises a candidate or candidate's public elective office, a political party, or promotes a position on a ballot issue.

(10) "Canopy" means a freestanding structure affording protection from the elements to persons or property thereunder.

(11) "Canopy sign" means any sign erected upon, against or directly above a canopy.

(12) "Commercial sign" means a sign containing expression related to the economic interests of the advertiser and its audience or a sign proposing a commercial transaction.

(13) "Construction sign" means an information sign which identifies the architect, engineers, contractors and other individuals or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.

(14) "Electronic message center" means a sign capable of displaying words or symbols that can be electronically or mechanically changed by remote or automatic means. An electronic message center is considered a primary sign and may be either freestanding or building-mounted.

(15) "Flashing" means pattern of changing light illumination where the sign illumination alternates suddenly between fully illuminated and fully non-illuminated for the purpose of drawing attention to the sign. Flashing is not permitted in any zoning district.

(16) "Frame effect" means a visual effect on an electronic message center applied to a single frame to transition from one message to the next. Such usage must comply with the 2-1-2 provision.

(17) "Freestanding sign" means a single- or multiple-faced sign supported from the ground by one or more columns, uprights or braces. Freestanding signs include monument, pylon and pole signs.

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(18) "General promotions" means events which occur on a regular basis in retail business for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, seasonal sales, civic events, etc.).

(19) "Grade" means the elevation or level of the street closest to the sign to which reference is made, as measured at the street's centerline, or the relative ground level in the immediate vicinity of the sign.

(20) "Grand openings and anniversaries" means events that are held on a once-per-year basis for the purpose of advertising grand openings, ownership changes, or anniversaries.

(21) "Height" or "height of sign" means the vertical distance from the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns, or the vertical distance from the relative ground level in the immediate vicinity of the sign.

(22) "Incidental sign" means a single- or double-faced sign not exceeding four square feet in surface area of a noncommercial nature, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, public telephone, etc. Also included are signs designed to guide pedestrian or vehicular traffic to an area or place on the premises of a business, building or development. Also included are building directories with the letters not to exceed four inches in height. (See OHMC 19.36.100.)

(23) "Marquee" means a covering structure projecting horizontally from and attached to a building, affording protection from the elements to persons or property thereunder.

(24) "Monument sign" means a primary freestanding sign, generally mounted on a solid base. Monument signs shall not contain or include reader boards.

(25) "Multiple-occupancy building" means a single structure housing more than one type of retail business office or commercial venture.

(26) "Multiple-occupancy complex" means a group of structures housing more than one type of retail business, office or commercial venture and generally under one ownership and control.

(27) "Noncommercial public service sign" means noncommercial signs devoted to religious, charitable, cultural, governmental or educational messages, including, but not limited to, the advertising of events sponsored by a governmental agency, a school, church, civic or fraternal organization or other organizations engaged in activities for profit.

(28) "Occupant" means the person, firm or corporation that occupies the land or building.

(29) "Office building" means an office building in the commercial and residential-office land use districts as defined by the Oak Harbor zoning ordinance.

(30) "Parapet" means that portion of a building wall which extends above the roof of the building.

(31) "Penthouse" means a structure on top of a building roof such as houses an elevator shaft or similar form.

(32) "Pole sign" means a primary freestanding sign where the sign is supported by a pole or other similar structural element that is substantially narrower than the width of the sign.

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(33) "Political free speech sign" means a sign which promotes a position on a public, or social issue.

(34) "Primary sign or signs" means all signs, including freestanding signs, of a user which are not exempt (see OHMC 19.36.100), or which do not come within the category of incidental signs (see OHMC 19.36.030 and subsection (20) of this section) or temporary or special signs (see 19.36.080). The term "primary sign" is intended to include virtually all signs of a commercial nature.

(35) "Property line" means the line denoting the limits of legal ownership of property.

(36) "Pylon sign" means a primary freestanding sign other than a pole sign with the appearance of a solid base. The base of a pylon sign shall be distinctive in appearance from the sign area.

(37) "Reader board" means a sign or part of a sign on which the letters are readily replaceable such that the copy can be changed from time to time at will.

(38) "Right-of-way" means either a publicly owned fee, an easement or privilege to traverse over land. A right-of-way is for public travel. Rights-of-way may be opened or unopened, and when open usually contain street improvements.

(39) "Roof sign" means any sign erected upon, against or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any structure erected upon a roof, including a structure housing building equipment.

(40) "Sign" means any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided, however, that sources of light used primarily to attract attention to the light itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk (see OHMC 19.36.100 for more detailed treatment of exempt signs), and religious symbols.

(41) "Single-occupancy building" means a commercial building or structure with one major enterprise, generally under one ownership. A building is classified as single-occupancy only if:

(a) It has only one occupant;

(b) It has no wall in common with another building;

(c) No part of its roof in common with another building.

(42) Special Signs. See "Temporary and Special Signs."

(43) "Special projection sign" means a sign no larger than six square feet projecting out from the side of a building.

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(44) "Street" means any automobile thoroughfare so designated by city ordinance. "Street" includes portions thereof used for parking.

(45) "Subdivision signs" means signs used to identify a land development which is to be or was accomplished at essentially one time.

(46) Surface Area. See "Area or surface area of sign."

(47) "Surface area of facade" means the area of that front, side or back elevation, including doors and windows, but excluding any roof area and structures or elevators or air conditioning equipment thereon; provided, that in the case of a roof sign, the surface area of facade shall be the area of that front, side or back immediately beneath the roof, including doors and windows, but excluding the roof area and structures for elevators or air conditioning thereon.

(48) Temporary and Special Signs. Temporary and special signs are those, which are not defined as "primary signs" or "incidental signs" by this chapter. Different types of temporary and special signs include, but are not limited to construction signs, grand opening displays, real estate signs, open house signs, residential land subdivision signs, subdivision directional signs, A-frame signs, political signs, and campaign signs. (see OHMC 19.36.080).

(49) Transitory signs. Transitory signs, also known as "human signs" are those carried by or worn by a human being usually for the purposes of a protest, demonstration, rally, or other similar event.

(50) "Video" means the use of live action footage shot with a video camera or similar device which is sized to fit and be displayed by an electronic message center or similar device. The use of video is not permitted in any zoning district.

(51) "Video board" means an electronically activated sign that creates the effect of motion or animation except as allowed by this chapter for changing electronic message signs which are in compliance with the 2-1-2 provision, and the prohibition of RGB technology. Video board signs are not permitted in any zoning district.

(52) "Way open to public" means any paved or unpaved area on private property open to the general public for driving or parking.

(53) "Window sign" means all signs located inside and affixed to or within three feet of windows of a building, whether temporary or permanent, except lighted signs of a commercial advertisement nature which may be viewed from the exterior of the building. The term does not include merchandise located within three feet of a window. Lighted window signs shall be included in determining the number of primary signs and in determining the permissible sign area for each facade. Does not include incidental signs. (See OHMC 19.36.030.)

Section Two. Section 19.36.060 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby readopted and to read as follows:

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19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.

Requirements for signs in multifamily residential districts and public facilities districts shall be identical to those for the R-O residential office district and the C-1 neighborhood commercial district zones as set forth in OHMC 19.36.040.

(1) Exceptions. In the public facilities zoning district, a single freestanding or building-mounted changing general electronic reader board is allowed with the following restrictions:

(a) Freestanding signs are limited to 35 square feet in sign area, no more than 15 feet in height and must be set back five feet from the property line;

(b) Wall-mounted signs are limited to 35 square feet in sign area and no more than 20 feet in height;

(c) Lettering shall not be more than 12 inches in height;

(d) The electronic message shall be limited to those allowed on noncommercial signs as defined in OHMC 19.36.020(25) and shall not change more frequently than every four seconds;

(e) The sign's lights shall be limited to a warm-toned, off-white color or other similar color as approved by the development services director;

(f) An electronic reader board counts as one of the allowed primary signs; and

(g) For locations adjacent to a residential use or district, electronic displays shall be turned off between the hours of 10:00 p.m. and 6:00 a.m.

Section Three. Section 19.36.070 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby readopted and to read as follows:

19.36.070 Single-family residential signs – R-1 zones.

(1) General. Two categories of sign uses are covered by this section:

(a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.

(b) Noncommercial uses such as schools, churches, fire stations and house number identification.

(2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:

(a) Such sign may be either freestanding or building-mounted.

(b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.

(c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.

(3) Signs for Noncommercial Uses.

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(a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:

(i) Signs shall be unobtrusive in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.

(ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:

(A) The sign is to identify current events or activities;

(B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;

(C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) of this section);

(D) The sign shall not exceed 15 square feet in area nor five feet in height;

(E) Not more than two such signs shall be permitted.

(b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.

(c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.

(d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction.

Section Four. Section 19.36.080 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 section 5 in 2009 is hereby amended to read as follows:

19.36.080 Temporary and special signs.

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Temporary and special signs or displays are nonpermanent in nature and are intended for use only for a short period of time. The category includes, but is not limited to, the temporary signs specified in this section on both private and public property. No permits are required for temporary and special signs.

(1) Temporary signs on private property. Temporary signs on private property shall adhere to the following guidelines. Compliance with these guidelines is achieved by meeting the regulations contained in this section. Temporary signs shall not:

(a) Obstruct designated vehicle or pedestrian traffic circulation areas. Vehicle or pedestrian traffic circulation areas include, but are not limited to drive aisles, private streets, parking areas, walkways, and paths;

(b) Represent safety problems by creating traffic distractions;

(c) Be in a state of disrepair including being tattered, torn,or broken;

(d) Contain obscene language, symbols or images;

(e) Clutter the visual landscape by not meeting the quantity and quality standards specified in this section; and,

(f) All artistic embellishments and lettering shall have the appearance of professionalism. For the purposes of this section, professionalism means signs created by a graphic artist, sign design professional, or other design professional.

(2) Regulations for temporary signs on private property. The following signs and regulations are presumed to meet the principles outlined in subsection (a) above.

(a) Construction Signs.

(i) These signs identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and announce the character of the building, or the purpose for which the building is intended. Such signs may be displayed only after a building permit is obtained and during the period of construction on the construction site. Only one such sign (which may be double-faced) is permitted per construction project for each public street upon which the project fronts.

(ii) In all zones other than single-family residential zones, no construction sign shall exceed 32 square feet in surface area or 10 feet in height, nor be located closer than 10 feet from the property line or closer than 30 feet from the property line of the abutting owner. Further, such signs must be removed by the date of first occupancy of the premises, or one year after placement of the sign, whichever first occurs.

(iii) In single-family residential zones, no construction sign shall exceed eight square feet in surface area, or be located closer than 10 feet from the property line of the abutting owner. Such signs shall be removed by the date of first occupancy of the premises or six months after first placement of the sign, whichever first occurs.

(b) General Promotions.

(i) General promotions are those events which occur on a regular basis in retail businesses for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, etc.), seasonal sales and the like.

(ii) Allowed temporary signage for these types of events consists of posters in windows, posters under motor vehicle hoods, glass painting, small

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balloons of less than 12 inches in diameter and banners. The size of the banners will be limited to a maximum of four feet in height and a maximum length of either 50 percent of the length of the side of the building on which the banner is located or 30 feet. Businesses with a facade of less than 24 feet in length may have banners of up to 12 feet in length. Each separate business is permitted to have one banner on the building.

(iii) No clusters of flags or pennants, ribbons, streamers, shimmering discs, spinners, twirlers, or propellers, strings of lights, moving, flashing, rotating or blinking lights, chasing or scintillating lights, flares, or large balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell may be used for these types of promotions with the exception of during the Holiday Season. The Holiday Season is defined as October thru December of each year.

(iv) The duration of these promotions will be 30 days maximum. (except banners) and no permit will be required. Banners have no time restrictions but shall be placed solely on the building for which the banner is advertising. In the event that the banner becomes dilapidated or otherwise ruined it must be removed or replaced. Banners shall be allowed in addition to primary signage and shall not be used as primary signs. When no primary sign is installed the duration of a banner shall be no more than 30 days.

(c) Light Pole Banners.

(i) Businesses may have light pole banners on 100 percent of the total number of poles located in privately owned parking lots.

(ii) Size of banners shall be limited to three feet by seven feet free flying or two feet by six feet when attached by brackets.

(iii) There shall be at least eight feet of clearance between the bottom of the banner and the ground. No banner shall extend over a public sidewalk or street.

(iv) There is no time limit for light pole banners. However, when the banners become dilapidated or otherwise ruined, they must be removed or replaced.

(v) No other signage of any type shall be permitted on light poles where light pole banners are displayed.

(d) Grand Openings and Anniversaries.

(i) Businesses may have one grand opening or anniversary promotion per year. One additional such promotion may be held if the business changes ownership or management, should this occur less than one year after a particular grand opening or anniversary promotion.

(ii) In addition to those items allowed in general promotions (above) the business may also use flags, pennants, ribbons, streamers, various types of balloons (including large "hot air" types), and strings of lights.

(iii) These promotions will be no more than 30 days in length.

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(e) Grandfathered Commercial Promotions Signage. No existing temporary or special signage will be grandfathered. Businesses will have 60 days from the date of enactment of the ordinance codified in this chapter in which to comply.

(f) Real Estate Signs. All exterior real estate signs must be of wood or plastic or other durable material. The permitted signs, with applicable limits, are as follows:

(i) Residential "For Sale" or "For Rent" Signs. Signs advertising residential property for sale or for rent shall be limited to one single- or double-faced sign per street frontage. Sign to be installed 30 days prior to becoming available or during a vacancy only. The sign may not exceed four square feet in surface area, and must be placed wholly on the property for sale or rent. The "For Sale" or "For Rent" sign may remain up until the property is sold or rented.

(ii) Residential Directions "Open House" Signs. Signs advertising an open house shall be limited to one single- or double-faced on-premises sign.

(iii) Residential Condominiums, Condominium Conversions, Apartments, Mobile Home Parks and New Subdivisions.

(A) Temporary Real Estate Signs. Temporary signs, posters and banners may be used for the grand opening and ongoing promotion of new residential projects having five or more units. These signs and banners may be used in a particular project for a period not exceeding one year after the date of issuance of the final occupancy permit for that project or at such time as the project is 90 percent occupied, whichever occurs first, or in the case of subdivision and mobile home parks, one year after final plat approval. In the event that the project consists of more than one phase, as in a "phased" condominium project, the signs and banners promoting one phase must be removed prior to installing the signs and banners for the next phase. A time extension may be granted for up to one year in length by the building official where 90 percent occupancy has not been obtained. Justification for the extension includes:

1. Certification of vacant units; and
2. Statement of reason for lack of occupancy.

(B) Allowable Number and Sizes of Signs.

1. One banner of not more than 30 feet in length and four feet in height advertising the project for sale or rent;
2. Banners or signs of not more than 18 square feet each on each model unit with a maximum of three of these types allowed per project or phase;
3. "A-frame" and other signs used internally within the project as needed for the purpose of directing traffic to model units or open house functions;
4. One sign per road frontage of not more than 32 square feet per side advertising the project for rent

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or sale. These signs may be installed only after the construction sign has been removed.

(iv) Undeveloped Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising undeveloped commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the property is actually for sale or rent. The sign may not exceed 16 square feet in surface area. If freestanding, the sign may not exceed five feet in height, and shall be located more than 15 feet from any abutting interior property line and wholly on the property for sale or rent.

(v) Developed Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising developed commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the building is actually for rent or sale. The sign may not exceed 16 feet in surface area. If freestanding, the sign may not exceed five feet in height and shall be located more than 15 feet from any abutting side or rear property line, and wholly on the property for sale or rent.

(vi) Residential Land Subdivision Signs. Signs advertising residential subdivisions shall be limited to one single- or double-faced sign not exceeding a total of 32 square feet in surface area placed at a right angle to the street, or two signs not exceeding a total of 32 square feet in surface area facing the street, which shall be at least 200 feet apart. Such signs must be placed more than 30 feet from the abutting owner's property line and may not exceed a height of 12 feet. Such signs shall be removed by the end of one year or when 75 percent of the houses in the subdivision are sold or occupied, whichever first occurs. Permanent subdivision or neighborhood designation signs shall be approved by the administrator of this code as set forth in OHMC 19.36.070.

(vii) Undeveloped Multifamily Property "For Sale" Signs. Permissible signs and their limitations for undeveloped multifamily zoned property shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(viii) Undeveloped Single-Family Acreage "For Sale" Signs. Permissible signs and their limitations for undeveloped, unsubdivided single-family property which may be legally divided into four or more single lots shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(g) Civic Organizations. Civic organizations shall be allowed to have two A-frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of portable A-frame commercial signs. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A-frame signs existing on site at time of application.

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(h) Portable A-Frame Commercial Signs. For the purpose of this code, portable A-frame commercial signs also include sandwich board signs.

(i) Location. The portable A-frame commercial sign shall be placed solely on the property of the business for which the sign advertises. No two portable A-frames shall be closer than 10 feet from one another.

(ii) Size. Each business is permitted to have one portable A-frame commercial sign no larger than 36 inches by 48 inches.

(iii) Time limit. Portable A-frame commercial signs shall be placed during normal business hours and removed at the close of business each day.

(iv) Lighting. No direct or indirect lighting of any kind shall be permitted.

(v) Construction. A-frame commercial signs shall be constructed to be sturdy and withstand all types of weather conditions.

(vi) Lettering. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy.

(i) Political Headquarters Signs.

(i) Party Headquarters. On-premises campaign signs are permitted on the premises of political headquarters located in the business districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts.

(ii) Headquarters for Candidate or Ballot Issue. On-premises campaign signs are permitted on the premises of the headquarters of a candidate for public elective office (whether partisan or nonpartisan) or on the headquarters of persons supporting or opposing a public issue decided by ballot, when such headquarters are located in the commercial districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts. Such signs shall be removed within fourteen (14) days after the general election.

(j) Political Free Speech and Campaign Signs on Private Property Not a Headquarters.

(i) Political free speech signs and campaign signs may be displayed on private property. Campaigns signs, posters or bills shall be permitted through a period of fourteen (14) days following such election; provided, that campaign signs, posters or bills promoting successful candidates in a primary election may remain displayed on private property until fourteen (14) days following the immediately subsequent general election.

(ii) Sign Dimension and Location. Political free speech signs and campaign signs shall not exceed 32 square feet in surface area per side or 10 feet in height, or be located closer than five feet from the property line or closer than 15 feet from the property line of an abutting owner. Signs must be located so as not to restrict sight distances on approaches to intersections.

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Political free speech signs and campaign signs located along SR-20 within the city limits of Oak Harbor must be located on private property.

(iii) Removal of Campaign Signs Following Election. Any such campaign sign, poster or bill shall be removed within fourteen (14) days following the general election. It shall be the responsibility of the above campaign officer or responsible official to have the signs, posters or bills removed.

(iv) Political free speech signs and campaign signs on private property are not subject to the "appearance of professionalism" principle.

(3) Temporary signs on public property shall adhere to the following principles. Temporary signs on public property shall not:

(a) Detract from the primary purpose of the public property or facility;

(b) Obstruct designated vehicle, bicycle, or pedestrian traffic circulation areas; Vehicle or pedestrian traffic circulation areas include, but are not limited to drive aisles, private streets, parking areas, walkways, and paths;

(c) Represent safety problems by creating traffic distractions or visual obstructions;

(d) Be in a state of disrepair including being tattered, torn , ripped, defaced, or broken;

(e) Contain obscene language, symbols or images;

(f) Be in place for more time than is specifically authorized herein;

(g) All artistic embellishments and lettering shall have the appearance of professionalism. For the purposes of this section, professionalism means signs created by a graphic artist, sign design professional, or other design professional.

(4) Regulations for temporary signs on public property. Temporary signs on public property are subject to the following restrictions. These restrictions are presumed to meet the principles outlined in subsection (3) above.

(a) Public rights-of-way. Public rights-of-way are considered to be traditional public forums by the City, places which have been historically devoted to assembly, debate, and free speech activities. However, for reasons of public safety, temporary signs are subject to the time, manner, and place restrictions below.

(i) General standards. The following standards apply to all temporary signs located within public rights-of-way.

(A) Location. For safety reasons, temporary signs may not be placed in visibility triangles which is the area along street frontages within 30 feet of an alley or an unsignallized intersection, or within 25 feet of a driveway. Temporary signs placed within the public-right-of-way may only be located within the landscape strip ("planter strip") or on the public sidewalk. However, a four foot unobstructed width for pedestrians and wheelchair access on sidewalks must be maintained. No signs may be placed within vehicle or bicycle travel lanes, medians, traffic circles, parking lanes, on utility poles or, traffic sign poles, or the decorative planter pots on Pioneer Way. Signs located within the State Highway 20 right-of-way are subject to State standards.

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(B) Safety. If a temporary sign is deemed to be a traffic safety hazard, then City personnel may move signs or request that the entity who placed the sign move them.

(C) Size. Temporary signs located within the public right-of-way may not be more than six square feet in size. Double-faced signs of six square feet on each side are permitted.

(D) Height. So as not to obstruct visibility for vehicular, pedestrian, and bicycle traffic, temporary signs may not be more than 3.5 feet in height when located within the public right-of-way.

(E) Public works projects. City personnel may remove temporary signs from public rights-of-way in order to conduct periodic maintenance activities. Staff will make an effort to replace the sign in its previous location. Signs may be returned to their prior location if still within the durational limit. City personnel may permanently remove temporary signs from public rights-of-way for the purposes of carrying out major public works projects. If temporary signs must be removed for maintenance reasons, City staff will make an effort to contact the sign owner or they will be available at the City Public Works Building for pickup for a 10-day period. If not claimed within 10 days, the sign will be disposed of.

(F) Removal of signs in disrepair. City personnel may remove any sign which is in a state of disrepair from the public right-of-way or public property at any time. For purposes of this subsection, a sign is in a state of disrepair if it is ripped, torn, broken, faded, obliterated, obscured, dilapidated, blown down, knocked over or in any other state which its message has ceased to be readable or legible.

(ii) Political free speech signs and campaign signs– specific standards. In addition to the general standards, the following standards apply to political free speech signs and campaign signs placed within the public right-of-way.

(A) Time limits. Campaign signs on public property may be placed at any time prior to an election. Except for properties fronting interstate primary or scenic highways of the state where the provisions of WAC 468-66-050 shall prevail, the deadline for removal shall be remove fourteen (14) days after the date of the election to which the sign pertains. Failure to remove campaign signs within the time limit provided shall constitute a violation of this code and shall be punishable as such. In the event that city personnel are required to remove signs from public rights-of-way after expiration of the post-election time limit, all costs associated with such removal shall be the responsibility of the candidate or campaign organization for who the sign was posted and shall be collected in addition to any other penalty applicable for failure to remove the sign.

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(B) The display of any political free speech sign or campaign sign in violation of this section or the general standards above, shall be presumed to have been done at the direction and request of the campaign officer or responsible official.

(C) Political free speech signs and campaign signs within the public right-of-way are not subject to the "appearance of professionalism" principle.

(D) Transitory signs. Transitory political free speech and campaign signs, such as those used for protest, picketing, demonstrations, etc. are allowed within public rights-of-way on sidewalks and on planter strips provided they do no create a public safety issue by blocking visibility and access for pedestrians, automobiles, and bicyclists using the street. Transitory signs are not subject to the "appearance of professionalism" principle.

(iii) Commercial signs – Specific standards. In addition to the general standards, the following standards apply to commercial signs placed within the public right-of-way. The only types of commercial signs which are allowed within the public right-of-way are those signs listed here subject to the following restrictions:

(A) Portable A-frame commercial signs. Location. A-frame commercial signs may be placed within the CBD zone in downtown. There shall be at least forty-four inches (44") unobstructed width on the sidewalk to allow for passage of pedestrians and disabled persons when the sign is in place. Signs shall be placed within three feet (3') of the building face. No two portable A-frames shall be closer than 10 feet from one another.
Size. Each business is permitted to have one portable A-frame sign no larger than 36 inches by 48 inches.
Time limit. Portable A-frame signs shall be placed during normal business hours and removed at the close of business each day.
Lighting. No direct or indirect lighting of any kind shall be permitted.
Construction. A-frame signs shall be constructed to be sturdy and withstand all types of weather conditions.
Lettering. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy.

(B) Flag pole banners (a.k.a "flag banners"). Flag pole banners are allowed within the CBD zone in downtown and shall be placed within the preexisting flag pole holders along Pioneer Way. The flag pole banners may be placed during business hours, but must be removed at the close of business each day. Flag poles shall be a rigid material so that the flag pole banners do not obstruct vehicle parking and pedestrian circulation areas. Additionally, on holidays such as Martin Luther King Junior Day, President's Day, St. Patrick's Day, Memorial Day, Fourth of July, Labor Day, and

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Veterans' Day, the flag pole holders shall not be used by businesses and shall be reserved for public purposes.

(C) Residential directions "open house" signs. In addition to the general standards, the following standards apply to residential directions "open house" signs placed within the public right-of-way.

1. Number. Four single or double faced signs per residence which is for sale or rent are allowed within the public right-of-way. However, if a realtor has more than one house open for sale or rent in a single development or subdivision, off-premises signs are limited to five for the entire development or subdivision. All signs must be located within one mile of the property for sale.
2. Time limit. Such signs are permitted only during daylight hours and when the realtor or seller or an agent is in attendance at the property for sale. Open house or for sale signs must be removed the same day as the open house event ends.
3. Size. Open house signs located within the public right-of-way may not be more than six square feet in size. Double-faced signs of six square feet on each side are permitted.

(D) Subdivision Directional Signs Designating New Development. Signs advertising the direction to a subdivision shall be furnished and placed only by the developer or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name of realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.

(E) Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and other events scheduled for the benefit of the general community, not including sales for individual businesses, may install temporary directional signs, provided such signs are put in place no sooner than 30 days prior to the event and removed within seven days following the event.

(F) Transitory commercial signage, also known as "sign wavers", advertising specific goods or services.

(b) City Parks. Public parks are considered to be a traditional public forums, which have historically been devoted to assembly, debate, and free speech activities. The following restrictions are meant to offer adequate means of expression while protecting the primary public purpose of the park as a recreational facility.

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(i) Transitory signs. Transitory signs, such as those used for protest, picketing, demonstrations, etc. are allowed within public parks. Transitory signs are not subject to the "appearance of professionalism" principle.

(ii) Sign installation prohibited. Temporary signs may not be affixed to park equipment, land or facilities in any way, This prohibition includes the pounding of temporary signs into the ground.

(iii) Exceptions. Certain exceptions for installation of temporary signs in parks applies as follows:

(A) Temporary, directional, event, or notification signs installed for City authorized activities such as youth sports leagues. Such signs must be removed when the recruitment period ends.

(B) Windjammer Park and Volunteer Park baseball fields. Signs of agencies, businesses, or organizations which sponsor youth sports activities may be placed on the outfield fences on the youth baseball fields in these two parks.

(C) Gateway-Beeksma Park. Sign banners from governmental agencies, non-profits, or community messages of an informational nature may be placed in this park.

(c) City Vehicles. City vehicles are considered to be non-public forums by the City meaning that they are not meant to be a location for public communication and are intended solely for their designated purpose. Temporary signage is prohibited on City vehicles, with the exception of government sponsored messages and communication which do not undermine the primary purpose of the vehicle.

(d) City buildings. City buildings are considered to be non-public forums. Temporary signage is prohibited on City buildings with the exception of government sponsored messages and communication which do not undermine the primary purpose of the building.

Section Five. Section 19.36.090 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 in 2009 is hereby readopted to read as follows:

19.36.090 Street right-of-way signs.

(1) General. Signs for the purpose of identification only, which contain no advertising, may be located upon the street right-of-way only where view-obstructing acoustical protective devices such as acoustical walls, berms or solid fences have been legally installed with city approval at property line thereby making building-mounted or conforming freestanding signs ineffective. Such signing may not exceed the maximum square footage for signs permitted in the applicable district.

(2) Design and Materials. Street right-of-way signs shall be in keeping with the character of the zoning district in which they are located and shall be constructed of quality materials. The proposed design and materials to be utilized in the construction of any such sign shall be approved in advance of the issuance of any sign permit by the administrator of this code.

(3) Types of Signs Permitted. Only signs identifying the use being maintained or operated upon the immediately abutting property and incidental signs indicating the appropriate entrance to and exit therefrom are permitted upon the public right-of-way under this

section; provided, that vacancy signs no larger than three square feet in surface area may be installed as an addition to the identification sign.

(4) Sign Location. Signs permitted upon the street right-of-way shall not be installed or placed on the top of acoustical protective devices, nor shall such signs be installed upon or attached to acoustical protective devices constructed by the city.

(5) Sign Dimensions. Street right-of-way signs shall have a maximum height of five feet measured from the street grade only, a maximum surface area of 15 square feet.

(6) Sign Illumination. Street right-of-way sign illumination shall be from a source other than the sign itself.

(7) Permit Requirements. Street right-of-way signs are subject to all general requirements of this code; provided, that no such sign may be erected without a permit regardless of the size of the sign; and provided further, that any application for a street right-of-way sign permit is subject to the approval of the superintendent of public works

Section Six. Section 19.36.100 of the Oak Harbor Municipal Code last adopted by Ordinance 1553 in 2009 is hereby readopted to read as follows:

19.36.100 Exempt signs or displays.

The following signs or displays are exempted from coverage under this code:

(1) Traffic or pedestrian control signs or signals, or signs indicating scenic or historic points of interest, which are erected by or on the order of a public officer in the performance of his public duty;

(2) Regulatory, informational, identification or directional signs installed by or at the direction of a government entity;

(3) Signs required by law;

(4) Official public notices, official court notices or official sheriff's notices;

(5) The flag of a government or noncommercial institution such as schools;

(6) Exterior signs or displays not visible from streets or ways open to the public;

(7) Signs in the interior of a building more than three feet from the closest window or not facing a window;

(8) Plaques, tablets or inscriptions indicating the name of a building, its date of erection, or other commemorative information, which are an integral part of the building structure or are attached flat to the face of the building, which are nonilluminated, and which do not exceed three square feet in surface area;

(9) "No Trespassing," "No Dumping," "No Parking," "Private," and other informational warning signs, which shall not exceed three square feet in surface area;

(10) Reasonable seasonal decorations within the appropriate public holiday season. However, such displays shall be removed promptly at the end of the public holiday season;

(11) Sculptures, fountains, mosaics and design features which do not incorporate advertising or identification;

(12) Existing theater marquees (freestanding and/or building-mounted);

(13) Nonflashing, low-lumen building outline and window accent lighting may be installed by businesses in the CBD, CBD-1, CBD-2, C-3, C-4 and C-5 business and commercial districts. Permit and plan review is required.

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

PASSED by the City Council this __ day of _____, 2012.

( ) APPROVED by its Mayor this _____ day of _____, 2012.

( ) Vetoed

THE CITY OF OAK HARBOR

_____

Mayor

Attest:

_____

Interim City Clerk

Approved as to Form:

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_____

Interim City Attorney

Published: _____

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

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

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

MINUTES: **MR. FAKKEMA MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE SEPTEMBER 27, 2011 MINUTES AS PRESENTED.**

PUBLIC COMMENT:

No comments.

SIGN CODE UPDATE – Public Hearing

Mr. Spoo reported that Planning Commission will have at least two meetings on this topic. This month staff will present some background, shortcomings of the existing code, principles for new code language and initial research. Next month the draft code will be presented.

Background
On July 12, 2011, the City Council adopted an interim ordinance. Interim ordinances are effective for a period not to exceed six months. The interim ordinance deleted a provision in the "Temporary and Special Signs" code that limits placement of political signs to "a period of 60 days preceding the election". By January 12, 2012, the City Council must either extend the interim ordinance for another six months accompanied by a work plan or adopt a permanent ordinance.

Shortcomings of the Existing Code
Mr. Spoo pointed out that section 19.36.080(8)(d) prohibits political signs on public property and 19.36.080(8)(a) establishes that a time limit of 60 days preceding an election. *Collier vs. City of Tacoma,* has established that political signs must be allowed on certain types of public property subject to time, place, and manner restrictions and pre-election time limits have been deemed to be unconstitutional.

Mr. Neil asked if the Collier case means that someone can put a political sign up three years before the event. Mr. Spoo answered yes, that is our understanding.
Mr. Neil asked if they can put up a sign in Windjammer Park. Mr. Spoo answered yes, parks are considered to be public fora, but that doesn't mean there can't be certain restrictions for where the signs can go.

Mr. Spoo continued; there are different types of public property. Some of those locations are appropriate for placement of political signs and some are not. The way the courts have distinguished between these types of public property is using something called forum analysis. There are three different types of public forums: traditional public forums, limited public forums, and non-public forums.

Traditional public forums are places where public debate has traditionally been allowed in the past. The public right-of-way is one of those places. Think marches, rallies, etc. Limited public forums are places where public debate and signage might be appropriate at some times, but not others. Finally, there is what is called a non-public forum where political signage and debate is

clearly not allowed. An example would be a police car. Clearly, this would detract from the police car's main purpose. Even though we have different classes of public property, the community can impose time, manner, place restrictions subject to legitimate government purpose, as long as those restrictions aren't any more restrictive than necessary.

Mr. Spoo outlined some of the time, manner, place restrictions that are proposed for the new code. Mr. Spoo explained that the pre-election time limit will be removed since pre-election time limits are not permissible. Manner restrictions can be applicable subject to a legitimate public concern. Safety has been seen as a legitimate public concern (limiting the size and the height of signs in the public right-of-way so that drivers can see pedestrians, bicyclists, etc.). Place: the same safety principle applies. You don't want signs at locations that obstruct views and visibility and you also don't want the signs in traffic lanes. So we will be proposing restrictions to only allow signs to be placed in the public right-of-way or on the sidewalk at appropriate locations.

Mr. Spoo provided, for the record, a letter (Attachment A) to the Planning Commission from the American Civil Liberties Union of Washington (ACLU) which was given to the Planning Commission at the pre-meeting. The letter expresses concern about the City's retention of a post-election time limit of seven days on political signage.

Mr. Spoo provided another handout (Attachment B) to the Planning Commission which supported retention of the post-election time limit. The handout came from the Municipal Research Services Center of Washington (MRSC).

Planning Commission Questions/Discussion

Mr. Neil asked if someone could put up a political sign on the City of Oak Harbor entrance sign or on the trees along SR20 and if the signs could stay up there forever. Mr. Powers explained that tonight the Planning Commission is being presented with a couple of concepts that have to be addressed. It is complicated and there are many court cases that help form the case law that the City has to respond to. The short answer is that the community is able to limit the placement and the length of time on the signs if the community can clearly articulate a public purpose behind those limitations. As for the example of the trees along the highway, there is a public purpose in saying that you can't nail your sign to the public's tree. There is a public investment, community ideal and goal that is part of the landscaping theme. So we could probably successfully limit the ability for someone to nail their sign to the public's tree.

Ms. Jensen asked staff to provide the State's definition of pre-election and asked if there was a certain time that a candidate would have to register as a candidate? Ms. Johnson also commented that there are candidates that file immediately for fund raising purposes, so there are perpetual candidates which make the post-election time limit open to question.

Mr. Spoo indicated that he may be able to get a definition in the State law but that his impression was that you cannot impose any pre-election time limit. In most cities this issue works itself out practically because generally a candidate won't buy signs three years ahead of an election.

Mr. Powers pointed out that you can have political speech without being a candidate, so trying to say that the sign shouldn't go up until they file declaring their intension to run for election is a limitation on that speech.

Ms. Johnson asked if there is a definition of a political sign. Can a sign say "I don't like the military", "I don't like war", I don't like police" or I don't like whatever. We are assuming these are advocacy signs but what if they are signs in opposition of a value that this community holds closely. Are those signs allowed in public spaces at any time as long as they meet the height requirement?

Mr. Powers said that his operating assumption would be that all of that is political speech and protected in some fashion. The question is what community standards that the citizens of Oak Harbor would like to see put into the code that address time, manner and place but not content. This is why we made a special effort to say political signs and elections signs because it can be a particular candidate or a particular topic.

Mr. Wallin asked if we can address the quantity of signs.

Mr. Spoo said he didn't think that you can limit the number of signs, for instance, an apartment complex may have 15 apartments with 15 people that might want to put up signs up regarding 10 different issues each and to say that there can only be two signs per property could be challenging.

Mr. Neil asked if the code will apply to the dancing pizza signs.

Mr. Spoo replied, those signs would fall under the temporary signs category and you have to treat commercial and non-commercial speech the same and they would be subject to the same restrictions that apply to political signs.

Mr. Powers explained that staff has tried to narrow the scope of what we are dealing with. Political signs are in the category of temporary signs so we will need to address all of the standards that relate to temporary signs which include A-frame signs, but he didn't know that we will get into the dancing pizza signs. We are not proposing any amendments to the permanent signs.

Ms. Johnson asked if temporary signage means the way it is designed or the length of time that it is up.

Mr. Powers indicated that there are definitions in the code that relate to the length of time and structural make-up (signs that can be easily put in place and removed).

Ms. Johnson asked if there can be a timeframe on commercial speech but not an individual's right to speech.

Mr. Powers said that there are questions about whether commercial speech needs to be treated the same as political speech. That is a topic that is outside the scope of this particular amendment. Our immediate concern was responding to the issue raised that lead to the interim ordinance being adopted. But it is likely we will have to address that in the future.

Ms. Johnson and Mr. Neil felt that free speech should extend to businesses, candidates and individuals equally and asked how you could have a different set of criteria for business than we have for candidates.

Mr. Powers clarified that we can't regulate separately or differently on content. In the temporary sign aspect we will have to treat all signs that go on public property in a uniform fashion and all signs that go on private property in a uniform fashion. The challenge is to figure out what the community wants to see in the regulations that we can reasonably pin to time, place and manner.

Mr. Wasinger asked who is in charge of policing signage.

Mr. Powers said that the sign code is in the zoning title of the Municipal Code so it falls under the Development Services Department in a couple of different aspects. The Building Division issues permits for those signs that require permits. For those signs that don't require permits and are placed illegally, the Building Division will also operate as our code compliance arm of the City. So they notify the people that the signs are placed inappropriately.

Ms. Jensen asked what Tacoma did.

Mr. Spoo said that Tacoma did the same thing that we are doing which is to remove the 60 day pre-election time limit and they also had to allow political signs within planter strips, public sidewalks and parks.

Ms. Jensen asked how Tacoma's code reads now to comply with the court case and make the people of Tacoma happy.

Mr. Spoo said that it may not have made the people of Tacoma happy and we understand that there are some issues that we have to deal with in the community in which the direction to us is fairly strong. Mr. Powers reminded the Commissioners of the discussion regarding adult entertainment and the process by which we put regulations into place as a community and in some sense those arguments are the same. This is one of those issues that the Commission cannot just say no to, but what we can do is to try to tailor those regulations so they apply to the City of Oak Harbor in as good a way as possible. That theory worked for adult entertainment regulations. That same sort of thought process can work for the temporary signs.

Ms. Jensen asked if we can designate certain planter strips or certain parks.

Mr. Spoo indicated that you have to have a legitimate public purpose; safety is generally considered the legitimate purpose. Mr. Powers added that aesthetics is much tougher to argue but not necessarily impossible. We have to be able to clearly articulate what those reasons are. From the aesthetics standpoint it would have to clearly be based on some existing standards or policies that the City has in place that get to the issue of community design and aesthetics. Even then it might not be successful.

Mr. Powers concluded the discussion by noting that the meeting has accomplished its goal which was to get the Planning Commission's comments and creative juices flowing. Staff will find other codes that are compliant with the case law to provide good examples for the Commission to see how other communities have responded to this particular challenge. Commissioner's suggested looking at communities of similar size.

Ms. Jensen asked about the sign limitations for residential directions "Open House Signs" that was highlighted on page 12 of the agenda packet. Mr. Spoo said that section was highlighted because that is one of the only other types of signs in the existing code that was allowed in the public right-of-way and had a limitation on the number of signs. The limitation on the number of signs will probably be deleted in the draft code.

Mr. Wallin commented that if we are going to allow signs in the public right-of-way can we put limitations on the way that the signs are put in the ground? If there is a planter and you put 50 signs in a public planter, the planter will be trashed.

Mr. Powers thought that would be a budget issue to the community because the City would have to repair the damage. The City would be better served by setting the parameters for the structure of a sign that could go there.

Ms. Jensen commented that the Planning Commission was uncomfortable with open-ended regulations because they are thinking of the person that will take advantage and the negative effect it could have on the City.

Mr. Powers acknowledged the struggle that the Planning Commission has with topics that relate to aesthetics and design and that it is natural for the Commission to worry about what will result if the bar isn't set high enough in terms of the design of a building or the character of landscaping or the character of a housing development. It is very understandable that the Planning Commission would express concerns about aesthetics.

Ms. Jensen also noted the discomfort in allowing signs that are anti something that is close to the community's heart. Mr. Powers reminded the Commission that fundamentally it is a free

speech issue and the citizens have the right to express their opinion on a topic, event or issue so we can't only have signs that say "hooray" for something without allowing signs that say "boo" to something.

CAPITAL IMPROVEMENT PLAN 2011-2016 – Public Hearing

Mr. Kamak reported that the 2011 Comprehensive Plan Amendment Process began in October 2010. Call for projects was advertised in November 2010, no applications for sponsored amendments were received so the only items on the docket were the continuing work on the UGA Capacity Analysis and amendments to the Capital Improvements Plan (CIP). The UGA Capacity Analysis is still in work and there is a hearing at the end of the month that will hopefully create a framework for continued work on the UGA Capacity Analysis with the County. So the UGA Capacity Analysis will remain on the docket for two or three years while work continues. We hope that by 2015 there will be some sort of resolution coming forth.

The CIP is updated every year and what is normally updated are the project lists. As projects are completed and new projects are added during the course of the year through Council action, those projects are added to or deleted from the list. This year there are minor amendments to the plan. The years are updated to reflect the planning period 2011-2016, financial numbers get updated every year to reflect current revenues and expenditures. The Pioneer Way project is being removed from the list as it is close to completion as well as the revenue and expenditures associated with the project. Projects schedules have also been updated.

Some of the major projects that will be coming forward in the next six years are the NE 7th Avenue improvements and the SE 4th Avenue waterline replacement and street improvements. In terms of parks, the Windjammer Park has a lot of structures that are coming to the end of their lifespan so some of those buildings will need to be replaced. Trail connections and extensions will be pursued as opportunities arise as well as acquiring new park land to accommodate the population. The waste water treatment plant and the 42-inch outfall are also coming forward. Other updates include an update to reflect the City Council's decision to return the federal grant for the Municipal Pier project but to keep the project on the books. The cost for the Marina Redevelopment project was updated to reflect the gangway and dredging improvements.

Mr. Kamak provided updated pages to reflect a change in the Animal Shelter situation. Originally it was thought that the shelter could stay on Navy property since the gate security was removed but now the gate security has been reinstated and brings back the need to find a place for the shelter in the City.

The one addition to the project list is the old high school stadium along Midway Boulevard. There is a possibility of the City using that facility. The old stadium is in an area that has been identified in the Parks and Recreation Plan that has a need for a park. Minor improvements can be made to use the facility as a neighborhood/community park.

Planning Commission Questions

Ms. Jensen asked why we have to have a levy for the pool and not for the other park areas.

Mr. Kamak explained that the pool is maintained by the North Whidbey Parks and Recreation and they are different from the City.

Ms. Johnson asked how we have money for acquisition but not for maintenance of parks.

Mr. Powers explained that the State says that certain funds can be used for acquisition and certain funds that can be used for maintenance. Impact fees are restricted funding sources that can be used for acquisition of land, development of new parks and if we can reasonably demonstrate that new improvements in existing parks are necessary to serve new growth.

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

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

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

MINUTES: **MS. JENSEN MOVED, MR. FAKKEMA SECONDED, MR. OLIVER ABSTAINED, MOTION CARRIED TO APPROVE THE OCTOBER 25, 2011 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
None present for comment.

SIGN CODE UPDATE – Public Meeting
The Planning Commission continued its discussion of amendments to OHMC 19.36.080 ("Temporary and Special Signs"). Staff addressed Planning Commission questions from the October meeting about the temporary sign code amendments. The proposed Code amendments address time, manner, and place provisions for temporary signs, especially political signs, located on public property.

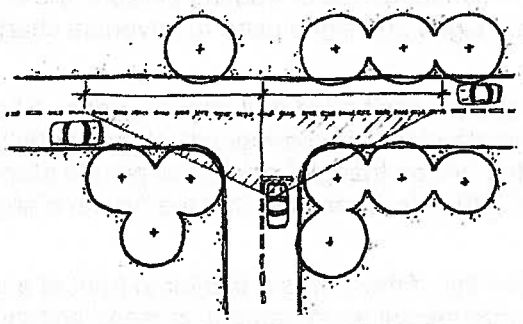
Mr. Spoo highlighted the following Planning Commission questions and answers:

- **Question:** Does the *Collier vs. City of Tacoma* case mean that someone can put up a political sign for an unlimited amount of time prior to the event or election? What is the State's definition of "pre-election" in regards to time limits?
- **Answer:** According to the Municipal Research Services Center (MRSC) of Washington, pre-election time limits are unconstitutional. "It is not legally possible to limit the time in advance of an election that political signs can be posted in the places where political signs are allowed." The State does not define pre-election.
- **Question:** Can someone put up a political sign on the "Welcome to Oak Harbor" entrance sign or on the trees along SR20 because these are within the public right-of-way? If so, couldn't these signs stay up for an indefinite period of time?
- **Answer:** The *Collier* case concluded that political signs cannot be prohibited within the public right-of-way. However, the Washington State Department of Transportation (WSDOT) has issued an opinion prohibiting political signs within state highway rights-of-way. City staff does not know whether the WSDOT prohibition is correct or how it aligns with the conclusions of *Collier.*
- **Question:** What is the definition of a political sign? Does the City have any ability to limit the content of political signs?
- **Answer:** OHMC 19.36.020(31) defines political signs as "signs advertising a candidate or candidates for public elective office, or a political party, or signs urging a particular vote on a public issue decided by ballot." According to longstanding case law, with the exception of obscenity, the City cannot regulate the content of signs.

- **Question:** How have other communities handled these issues?
- **Answer:** Staff attached relevant codes from Pierce County, City of Redmond, and City of Kirkland to the agenda packet. Staff provided the codes as examples, but their legality or constitutionality has not been research.

Mr. Spoo provided an additional handout (Attachment A) regarding the City of Redmond.

Mr. Spoo displayed the following depiction of the "vision triangle" while explaining that signage would not be allowed within the "vision triangle" for safety reasons.



Mr. Spoo also reported that the City Council will be considering a six-month extension of the interim sign code which will extend the interim ordinance to June 2012.

Planning Commission Discussion

Mr. Neil asked if the "dancing pizza" signs would be addressed. Mr. Spoo said that these types of signs fall outside of the scope of this amendment.

Ms. Jensen asked to have real estate signs addressed in the draft code. Mr. Spoo indicated that real estate signs will be addressed.

Ms. Johnson asked if signs could be addressed in the Comprehensive Plan in terms of aesthetics. Mr. Powers said that the Urban Design Element does not have specific policies or goal statements directed at signage but there are statements that address community aesthetics and possibly the aesthetics of the right-of-way or discussions about appropriate design treatments for gateway entries into the community. If the Commission thinks work needs to be done from a goals and policies perspective to lay a clearly defined foundation for our sign code in the Comprehensive Plan that can be discussed in the Comprehensive Plan Docket agenda item that will follow. As for the "dancing pizza" signs, Mr. Powers noted that six months is not a lot of time to address sign codes and if the project takes longer we may not be able to meet the six month deadline but staff could provide some language for review.

Mr. Neil said that he believed that the dancing signs were a distraction at intersections.

Mr. Wallin commented that he has seen sign ordinances that have stipulations regarding the "vision triangle".

Mr. Oliver commented that he knew a special needs person that makes his money by carrying a sign and would hate to take away that job option.

Ms. Johnson asked if the City can allow a certain amount of "visual retail space" to control community aesthetics. Mr. Spoo said that he had seen that done in some of the city codes but that he couldn't speak to its constitutionality. Mr. Powers added that it would have to be framed from something other than an aesthetic perspective.

Mr. Wallin commented that he has seen where other communities have a permit process and each candidate is allowed a certain number of spots on public property and they pay a permit fee. He wasn't sure about allowing signs on public right-of-ways because most of the cities that he looked at didn't allow signs on public right-of-ways. He found another Seattle document that said you aren't allowed to put signs in public right-of-ways. He also stated that the Supreme Court has upheld and allowed cities to maintain the part of the Code that doesn't allow temporary signs. We can't just say political signs but have to address all signs in the same way so it will stand up constitutionally.

Mr. Powers said that the consequence of treating all signs the same is that the regulations would include real estate signs and signs used to advertise charity/civic organization fund raisers.

Ms. Johnson said that she wouldn't mind that consequence. She didn't think that public property was an appropriate place for commercial, charity or political communication. Ms. Johnson also asked if the "vision triangle" applied to private property as well, e.g. the corner of Whidbey Avenue and SR20. Mr. Spoo said that the "vision triangle" would apply to private property as well.

Ms. Johnson commented that if there was a planter in front of a store and a political sign is placed there it implies commercial endorsement, is there language that says you have to get the storeowner's permission to put your sign there. Mr. Spoo said that Municipal Research Services Center (MRSC) recommends that you get the signature of the adjacent property owner even though it is in the public right-of-way.

Ms. Johnson asked about liability and who would be responsible if there was an injury or damage from a sign on public property. Mr. Spoo believed it would be the person that put the sign up. Ms. Johnson believed signs on public property should not expose the City to undue financial risk.

There was discussion about signs that were obscene versus uncomfortable. Mr. Powers noted there are many subtopics to the sign code and when cities dive into sign codes the process can take a year or more. Mr. Powers stressed that this amendment was to address what is political speech and how we can or cannot regulate it and recommended that the Commission narrow the discussion to that issue.

Mr. Neil commented that he wanted everyone to have their political signs but he didn't want to see fifty political signs in Windjammer Park and he didn't want to see them along the tree line all year long. He wanted to see the sign code be as restrictive as possible but to be constitutional as well.

Ms. Jensen asked if the City Attorney would be able to address some of Planning Commission's questions. Mr. Power indicated that he has spoken with the City Attorney about attending one of the Planning Commission meetings.

Mr. Wasinger asked if temporary signage was tied to permanent signage for retail. Mr. Powers indicated that the sign provisions regarding banners changed about six years ago. There is a limitation on banners if you don't have permanent signs. Mr. Powers didn't believe that there are regulations which limit the temporary signs for permanent commercial properties other than placement of the a-frame signs which don't count toward the total number of signs. The Code sets limit on the number of signs which each property can have. It is a function of the size of the building and the facade and other characteristics that come into play.

Ms. Johnson commented that signage may be economy driven. When the economy is down people don't have the money for the nicer signs so there is signage overload and the signs look junky.

Mr. Oliver asked if murals on the side of buildings were considered signage. Mr. Powers said that there is a section in the sign code that provides a definition of signs which essentially says if a commercial message is involved, it is signage. If it is purely art and is not advertising a particular business then it would not be seen as signage.

Ms. Jensen pointed out the sandwich boards at the top of Dock Street and asked if it would be better to a have a kiosk. Mr. Powers noted that the sandwich boards were allowed temporarily to help during the Pioneer Way construction project. He also noted that we can't have off-premise signs for certain business and not for others. Off-premise signage is typically where billboards have been addressed. Most communities don't allow off-premise signage.

Mr. Fakkema asked if it was possible to say that no one candidate could have his/her signs closer than 100 yards from one sign to the next. Mr. Spoo said that his best guess was no, because it gets back to the issue of not limiting the number of signs due to free speech rights.

Mr. Spoo indicated that staff would look closer at whether the City can prohibit signs in the public right-of-way as Mr. Wallin has pointed out that other cities have done. Staff will also invite the City Attorney to answer questions at the next meeting.

Mr. Wallin wanted to look into the possibility of being specific about eliminating signage in parks and light poles but allow signs in planter strips and other appropriate areas.

2012 COMPREHENSIVE PLAN AMENDMENT DOCKET – Public Meeting

Mr. Kamak explained that a preliminary docket is compiled each year with input from the public and the Planning Commission. This is done prior to a December 1st deadline and therefore this November Planning Commission meeting is a good time to discuss potential ideas and items for the preliminary docket.

Mr. Kamak explained that there are three types of Comprehensive Plan Amendments:

- Sponsored Amendments
  Sponsored amendments can either be *private* or *public*. An example of a *private* amendment is a request for changes to land use designations that result in a change to the Future Land Use Map in the Comprehensive Plan. *Public* sponsored amendments are requests for changes to policies with the Comprehensive Plan. Since changes to policies have potential for a larger community-wide impact and may affect other referenced plans, the procedures to consider these changes are different than the private sponsored amendments.
- Mandatory Amendments
  These are amendments mandated by the State through the Growth Management Act or other laws. The updates to the Capital Improvement Plan are done every year fall under this category. This year the Shoreline Management Program will be on the docket under this category. The requirements of RCW 36.70A.130 (3) related to review of urban growth areas and any revision to accommodate urban growth projected to occur for the succeeding twenty years will also be under this category. Currently this requirement is titled as "UGA Capacity Analysis" and is currently on the City's docket. Mandatory Amendments are automatically given a Priority A in accordance to OHMC 18.15.050 (4).
- Discretionary Amendments
  These amendments are added to the annual docket to proactively add, amend, revise, delete or further goals and policies in the Comprehensive Plan. Discretionary items can be added to the docket by boards, commissions, city council and by the director of

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
February 28, 2012

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

Vice Chairman Fakkema called the meeting to order at 7:35 p.m.

MINUTES: **MR. OLIVER MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE JANUARY 24, 2012 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
None present for comment.

SIGN CODE UPDATE – Public Meeting
Mr. Spoo reviewed previous discussions by the Planning Commission in which the Planning Commission discussed pre-post election time limits and the fact that we can't have pre-election time limits but post election time limits were acceptable. There was discussion about what types of public property are appropriate for temporary signs and about signs in the public right-of-way, signs in parks, and planter strips. There was also some discussion about placing size and height limits on signs, especially within the public right-of-way primarily for reasons of safety and visibility (vision triangles). To date discussion has centered on concerns that temporary signs on public property would cause clutter and detract from the primary purpose of public properties.

Mr. Spoo explained that the main purpose of tonight's meeting is to have a discussion about preferences for temporary signage and to talk briefly about what we've learned so far in regards to the legal principles that guide temporary signs.

Mr. Spoo said that there were three main legal principles:

1. **Can't** prohibit political signs on public property, if any commercial speech allowed.
2. **Can't** elevate commercial speech above political.
3. **Can't** regulate content. Time, manner, place can be regulated.
   - Too restrictive→time, manner, place, is effectively a content restriction. Aesthetics often seen as too restrictive for political signs.
   - No pre-election time limits.

Mr. Spoo displayed photos of temporary signs in the community to give the Planning Commission an idea what's going on in the community and was not intended to point out what was wrong or right about the signs.

Mr. Spoo explained that tonight's discussion would be about temporary signs on public property and then on temporary signs on private property.

Public Property

Mr. Spoo explained that public property includes street right-of-ways (ROW's), buildings, parks and city vehicles and asked the Planning Commission the following series of questions:

- What types of public property is appropriate for placement of temporary signs?
- If temporary signs are appropriate in X. Are commercial signs appropriate in the same places? Same general restrictions apply for real estate/garage sale/A-frames?
- What post-election time limit is appropriate for candidates to remove their signs? The Code currently says seven days.
- Commercial signs. A-frame signs that you see on sidewalks. How long should these be allowed to be up? Code currently calls for these to be removed outside of business hours.
- Garage sale/real estate/open house signs time limits?

  Garage sale: placement preceding, remove as soon as sale ends?

  Real estate: only while unit is for sale?

  Open house, only during the open house or several days preceding?

Planning Commission Discussion

Mr. Wallin asked how to determine where the public ROW is. Mr. Powers explained that as a general rule, the measurement is from the centerline of the road to the back of the sidewalk in areas where there are no sidewalks it is a little more difficult to visually tell where the ROW is.

Ms. Jensen said that she thought there was a place for temporary signs on all of the public property listed by Mr. Spoo.

Mr. Spoo asked about city vehicles such as police vehicles. Mr. Fakkema didn't think police vehicles were appropriate because of the primary purpose of police vehicles.

Ms. Jensen asked if busses were city vehicles. Mr. Powers explained that busses e.g. Island Transit and school busses are governed by different agencies.

Ms. Johnson-Pfeiffer asked if the "Go Wildcats" signs on the city garbage trucks were considered public, political or commercial speech. She also commented that if you say yes to commercial speech on public property you are saying yes to political speech on public property. Mr. Spoo said that was correct. Mr. Spoo also said that we could look at banning all types of temporary signs on public property including commercial signs which would mean that you couldn't have the real estate sign, open house and garage sale signs. If you want some signs then you automatically have to include political signs too.

Mr. Wallin said that rather than a wide-spread ban of temporary signs we should be specific on what areas of the City we would want to protect, whether it is parks, vehicles etc.

Mr. Oliver commented that most of the signs that were displayed by Mr. Spoo looked junky.

Ms. Jensen brought up the baseball fields that have signs on the fence surrounding the field and that those signs are a method of raising funds for the Little League.

Ms. Jensen suggested issuing sign permits in order to standardize the signs and define the time line for the temporary signs. Mr. Spoo noted that a permit is not required for temporary signs currently.

Mr. Spoo asked the Commission if they wanted staff to look into banning temporary signs in public property.

Mr. Oliver said that it was worth looking into.

Ms. Johnson-Pfeiffer asked about the ball field signs. Mr. Spoo thought that they might be permanent signs and he would look into it.

Ms. Johnson-Pfeiffer asked who regulates the content of the ball field signs. Mr. Powers said that the City does not take an active role in regulating the content. Since it is a sponsorship for the Little League it was possible that the Little League expresses an opinion about the content.

Mr. Powers went on to say there is a distinction between the regulations and the enforcement of the regulations. The size, standardization, quality and the placement of signs are the body of regulations which are different than the enforcement. The junky and visual clutter issue is more of an enforcement issue of our existing regulations rather than whether the signs are allowed at all.

Mr. Oliver asked if enforcement would have a bigger impact on the City's budget. Mr. Powers said that currently the City uses a complaint process for enforcement which is true of almost all property issues. The City doesn't have staff that actively drives around to look for sign code violations. The only exception is for safety issues, staff is authorized to take action to eliminate the safety issue. If we go to active enforcement you would be spending a greater amount of staff time which would have a budgetary impact which could be partially offset by the fee for a permit that was suggested earlier.

Mr. Oliver asked Ms. Jensen how she thought a complete ban would impact the real estate businesses. Ms. Jensen responded that a complete ban would cause an uproar and working with a good temporary sign code would be better.

Ms. Johnson-Pfeiffer went back to the ball field signs and said, if there is no mechanism in place to regulate content, who would be able to say what speech was appropriate or not in public spaces. In this context there is nothing the City can do about content. There is only something that can be done about placement, time and manner. Ms. Johnson-Pfeiffer said that we like the "Go Wildcats" on our garbage trucks and we like the signs that support the Little League but if you get into a situation where you have to say no that signage can't be there because we don't like the content of the sign because we don't like the message that the sign puts forward to that audience. We are in the same situation with the political signs. Mr. Powers acknowledged that was true and he suggested that rather than have staff speculate he would like to have a chance to check to see if there is already an agreement between the City and the Little League that governs the ball fields and possibly addresses the issue of the sponsorship signs. Operating under the assumption that there is no agreement we have potentially identified a hole in the regulation that this group should discuss.

Ms. Jensen thought that those signs were self-disciplined and that if a cigarette sign were put up the parents would be in an uproar.

Ms. Johnson-Pfeiffer said that we can only regulate the time, place or manner. Her concern was that if a parent were to call and say they don't like the sign they would be told that we can only regulate time, place or manner and not the content. She said that we don't get to have a conversation about appropriateness, content, what we like and what we don't like and that is the part that was hard for her and that she would paint half the town purple and gold with a can of spray paint but that opens it up for someone who wants to paint it a different set of colors. We have determined if you allow commercial speech then you open the door for political speech so any place where you think I don't want to see a political sign you have to say we can't allow

commercial signs or if you say you want a commercial sign there then you have to be prepared to see a political sign regardless of what that political speech is. That speech could advocate for a candidate or an idea or it could be a statement about someone's negative feeling about the President or about war or about the military. There is no ability to control content.

Mr. Fakkema asked if we were confusing temporary signs with permanent signs in a lot of these cases. He thought that the "Go Wildcats" sign was a permanent sign because it would be there nine months out of the year. Mr. Spoo said that staff would have to discuss how the signs on the garbage trucks fit into the overall temporary signs scheme.

Mr. Spoo went back to the different types of public property (buildings and ROW's). Mr. Spoo clarified that the types of public property being discussed are those properties or structures owned by the City.

Mr. Wallin said that his preference was to not allow temporary signage on buildings, parks or vehicles. He thought that we could segregate some sections of ROW's.

Ms. Johnson-Pfeiffer said she agreed with Mr. Wallin.

Mr. Spoo asked which areas of the ROW are appropriate for temporary signs. Obviously, travel lanes, parking lanes, sidewalks, center medians and vision clearance triangles at intersections are not appropriate.

Ms. Johnson-Pfeiffer said she didn't like planters being used for temporary signs.

Mr. Spoo asked how the Commission feels about planter strips that are located in between the travel lane and the sidewalk. Commissioners agreed that they needed to allow temporary signage in planter strips. Mr. Spoo said staff will craft regulations that allow temporary signage within certain parts of the public ROW and on sidewalks provided that they don't obstruct pedestrian or ADA access on the sidewalk and present that language next month.

Mr. Spoo asked if the current code's time limit of removing signs seven days after an election was acceptable. Commissioners agreed that was an acceptable time limit.

Mr. Spoo asked what the time restrictions should be for garage sale, real estate and open house signs. Currently, the code is silent on garage sale signs. How far in advance of a garage sale should people be allowed to put up a sign and should it be take down the day that the sale is done? Ms. Johnson-Pfeiffer said that you can't limit their free speech on when it goes up. Mr. Spoo said that was only for political signs and that there is a different standard for political signs. Commercial and political can have different standards as long as they are not more permissive for commercial than political.

Commissioners agreed that garage sale signs should go up and down on the day of the garage sale.

Commissioners agreed that real estate signs are self governed by the Multiple Listing Service (MLS) and that the code should remain silent on real estate signs other than the number of directional signs allowed.

Mr. Oliver asked if there was a way to regulate the quality of A-frame signs. Mr. Powers said that the existing code says that the signs have to be professionally done. It is a question of the ability to enforce that regulation as opposed to having that regulation on the books. Mr. Powers asked the Commissioner's to think about the other side of the equation. A business owner who is trying to attract people to their business and the City comes and says you must spend X amount of dollars and they say they don't have X amount of dollars and the City says you don't get a sign. The City ends up in the unenviable position of trying to figure out how to fairly administer the regulations and also be respectful of someone's business activity. Mr. Oliver

said that as a small business owner he could appreciate that but when you make your sign it is your identity and you should care about that. Mr. Powers said that we could look at other jurisdictions to see if there is other language that can be added. Mr. Powers envisioned some public education process from the City side that provides information on what is regulated when it comes to temporary signs. We could work with the Chamber of Commerce and provide information to their businesses and go through and education process instead of an enforcement process.

Mr. Spoo moved on to looking at the manner of temporary signs on public property and asked if there certain manner restrictions we should think about?

- Can't block visibility – size and height limit would be appropriate.
- Aesthetics – easier to regulate for commercial. Political aesthetics is usually too restrictive.
- Number of A-frames. Number of garage sale/Real estate signs/open house signs?

Are there general principles that you would like to see applied to all temporary signs on public property? Examples of principles, blocking traffic, causing safety hazard, detracting from the primary purpose of the facility, be so distracting so as to create a safety problem?

Ms. Jensen suggested time limits.

Mr. Fakkema suggested temporary signs should not be a distraction to traffic. Mr. Powers said there was code language about streamers and flags etc. that say they should not cause a distraction to drivers.

Ms. Johnson-Pfeiffer said that the temporary signs should be proportionate to the permanent signs and not dominate the visual landscape. She believed that the City is very restrictive on permanent signs and very loose on temporary signs which encourages people to put up banners because they can get away with more with their temporary signs than they can with their permanent signage because we have created this culture that says you can do what you want on the temporary side of things.

Mr. Powers suggested that this conversation would take longer for the Planning Commission, community and the Council to get through than the length of time that we have left to work on the political side of things. Mr. Powers said that we won't abandon this conversation because Mr. Spoo has outlined a great process for the conversation. As we draw nearer to your solution on the political signs there is still a significant amount of work to do about the commercial signage which cuts across a lot of different topics and user groups that are not presently engaged in the conversation.

Mr. Fakkema asked if the Liberty Tax sign was considered as two signs. Mr. Spoo said it was considered to be two signs. Since there isn't a permit required for temporary signs it was put up without talking to the City.

Mr. Wallin asked if it would be considered a portable A-frame. Mr. Spoo said no and that anytime you come up with a classification of sign someone will come up with a sign that doesn't fit the classification.

Mr. Powers asked the Planning Commission if they felt the need to cover each bullet point under the private temporary signage since the conversation so far has overlapped between public and private and that staff could draw parallels from their concerns between public and private.

Ms. Jensen asked what merchants are allowed to do on the inside of the window. Mr. Powers said that window signs are regulated by the code and he believed the limitation is no more than 50% of the square footage of the window area.

Mr. Wallin suggested that the number of commercial signs on private property should be limited to reduce visual clutter.

Mr. Powers noted that the code currently says that A-frame signs need to be placed within three feet of the building. That part of the code is rarely followed and the majority of A-frame signs are placed close to the sidewalk or travel lane. Mr. Powers asked how the Commission feels about the placement of the A-frame signs for commercial messaging purposes. Mr. Powers noted that A-frame signs are allowed everywhere except within the Central Business District under the present code. This is also something that we need to correct given what we have done with our downtown environment.

Mr. Oliver said that it goes back to his point of junky signs that are not up to standard and it makes a difference.

Ms. Jensen said that keeping the distance to within the three feet of the building tends to obstruct the side walk and she would rather see them further away so as not to obstruct the sidewalks.

Mr. Oliver suggested an outright ban.

Mr. Powers offered combining Mr. Oliver's suggestion of the quality of the signs and Mr. Wallin's suggestion of limiting the number of signs. If those two things work together does the Commission comfortable with the signs being out further and closer to where the traveling consumer is?

Mr. Oliver said he would be comfortable with that. There were no other objections to Mr. Power's suggestion.

Mr. Spoo said that he would present a draft code at the next meeting and the Planning could possibly form a recommendation to the City Council in April. May and June will be City Council discussion and adoption.

Mr. Fakkema thought that more of the business community should be taking part in the discussion.

WASTEWATER TREATMENT FACILITY PLAN UPDATE – Public Meeting

Mr. Johnston reviewed the project timeline spanning seven years to date and the activities leading to the current recommendation to add a "sixth" site for review. Mr. Johnston explained the basics of planning for a new facility which includes looking at population projections to determine how much flow the City will need deal with in the 20 year planning horizon as well as 50 years into the future. Mr. Johnston detailed the current effluent quality and the future effluent quality goals. Effluent is the water that comes out of the treatment plant process.

Mr. Johnston displayed the following table of effluent quality goals:

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
March 27, 2012

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

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

MINUTES: **MR. OLIVER MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE FEBRUARY 28, 2012 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
No comments.

SIGN CODE UPDATE – Public Hearing
Mr. Spoo reported that that there have been three previous meetings of the Planning Commission on this topic. Mr. Spoo noted that staff is recommending that Planning Commission not conduct a public hearing and make a recommendation tonight but to take public comment.

Mr. Spoo explained that the interim code was initially adopted in July of 2011 for a period of six months. The City Council extended the interim sign code for another 6 months in December of last year which made the interim code valid until July of 2012. Last month, staff and Planning Commission discussions led to an expanded scope for this project. Rather than just talking about political signs on public property, we began talking about both political and non-political signs on public and private property which to lead to discussion about necessary public involvement which we'll have tonight. Because of the expanded scope of the project, staff suggests that the City adopt the interim code this July, while at the same time continuing to work on this draft sign code. We recognize that with the expanded scope of this project it's unlikely that we can conclude discussions with Planning Commission and City Council by July of this year.

Mr. Spoo discussed the three basic sections of the draft code in section 19.36.080:

- Permits for temporary signs
- Temporary signs on private property
- Temporary signs on public property

Permits for Temporary Signs
Mr. Spoo explained that the draft code proposes a permit system based on comments we received from Planning Commission and it is an effort to address comments Planning Commission made about the prevalence of these types of signs. The permit system would be the most simple permit system available under Oak Harbor code, a review process 1, staff compliance review. There would be no cost to applicants for staff to review these permits. Provided that complete information is submitted, the review would be a 2-day process. The

point is to inform applicants about appropriate placement of temporary signs prior to placement of the sign. It's a proactive approach, rather than relying on enforcement.

Temporary signs on private property

Proposed changes:

(1) Time limits for temporary signs. The existing code does not define temporary by any specific timeframe. Some types of temporary signs can stay up indefinitely. The draft code proposes that 6 mos. in a calendar year be the limit, except for real estate and political signs which subject to more specific timeframes. Real estate signs generally can stay up during the time the property/unit is for sale or rent. Political signs don't have a pre-election time limit, but are required to be removed 7 days after an election.

(2) Responding to Planning Commission's comments about the quality of A-frame signs, the draft code requires that there be no hand-draw letters or graphics.

Temporary signs on public property

Proposed changes:

(1) A limit on the type of signs that can happen on public property to four types: political signs, real estate open house signs, portable A-frame signs and garage sale signs.

(2) A limit on the location of these signs to planter strips and sidewalk of the right-of-way. With exceptions for Windjammer Park Little League fields, Gateway-Beeksma Park, and the City's solid waste vehicle.

(3) Limits on the size and height of temporary signs within the public right-of-way for safety reasons. There are provisions addressing the quality of these signs, no hand-drawn letters or graphics. And there are provisions allowing City staff to remove these signs for maintenance purposes.

(4) More specific standards for political, open house, A-frames, garage sale signs. Garage sale signs – exception for hand-drawn letters and graphics.

Mr. Spoo summarized the issued addressed:

- Location: not allowed in parks, vehicles, buildings w/ certain exceptions
- Timeframes – 6 mos./year w/ exceptions
- Permit system
- Quality – no hand-drawn or hand-painted signs
- Limits on number of signs

Mr. Spoo noted that since the scope has expanded to look at temporary signs on both public and private properties it is necessary to target involvement with the following groups and possibly attending a merchant's meeting in downtown.

- Stakeholders: merchants/business owners, political candidates, general public
- More specific merchant involvement.
- General public: important stakeholders. Looking for more targeted ways to involve them.

Ms. Jensen commented that she would like expand the list of parks that temporary signs are allowed i.e. Ft. Nugent Park, because that is where the temporary signs are put to remind parents it is time to sign up for soccer etc.

Ms. Jensen commented that the City of Edmonds sign ordinance states that off-premises campaign signs shall be posted and displayed no earlier than upon declaration of candidacy. In accordance with RCW 29.15. Mr. Spoo said staff would look in to the RCW but thought that it might not be legal to limit political speech.

Mr. Fakkema opened the meeting for public comment.

Bob Olsen (1371 NE 7th Place and Pioneer Way business owner) commented that he heard and was concerned that banners, flags and kites might not be allowed on Pioneer Way.

Karen Muller (Wind and Tide Book Shop) was concerned about not being allowed to have hand painted signs or any artistic graphic signs. Mr. Powers said that it is possible to make a distinction between less than neatly done (i.e. spray paint on a piece of plywood) and artistic professional quality.

Being no further public comment the Planning Commission began their discussion.

Ms. Jensen commented that she didn't think the size limits were adequate because cars block the view of the A-frame signs and flags. Mr. Spoo noted that there are only the four types of signs allow in the public right-of-way currently (political, garage sale, real estate and A-frames). But if the Commission believes that flag banners should be added to the list of allowed signs that could be done and it is local preference. Mr. Spoo suggested deferring the question until there is further public input. Mr. Powers added that the Commission could consider is whether or not all street environments should be treated equally for those types of signs. It may make sense in the Pioneer Way area but not make as much sense in a more car oriented environment along the highway.

Mr. Wallin asked if Mr. Power meant that the Commission could specify certain section so the City that flag banners. Mr. Powers said it could be done by zoning district.

Mr. Wallin stated that he prefer the flag banners be kept near the curb and the poles should not be made of PVC and should be regulated as far as the structure of the flag banners for safety reasons.

Ms. Johnson-Pfeiffer asked if content couldn't be regulated on the flag banners. Mr. Powers said that language could be crafted to say that no message would be allowed on flag banners and would only be decorative in nature.

Ms. Jensen asked what if the flag banner said "Open". Mr. Powers said there may be a way to craft a sign which provides the "open" idea without getting into the idea of a message.

Ms. Johnson-Pfeiffer said that she had general concerns about getting into a situation where staff is asked to make determination what is aesthetically pleasing and what isn't. She wondered how enforceable interpreting style can be. Everyone has a different opinion and will not agree on style. Mr. Spoo said that it is possible to address aesthetics of commercial signs (i.e. Coupeville) as long as you are not disadvantaging a certain type of speech, especially political speech. Mr. Powers read an excerpt from the current code addresses A-frame signs

and says, "All artistic embellishments and lettering shall have the appearance of professionalism."

Ms. Jensen suggested adding guidelines that say not sun faded, not tattered etc. She didn't believe there would be 50 people putting up 50 different flags and she liked seeing different things it makes it fun. Mr. Powers said he appreciated Ms. Jensen's confidence in people being able to police themselves but from experience that isn't always the case and sometimes it takes nudging from the City to remind folks that there signs or banners have gone past their useful life. The vast majority would change the sign or banner because they want to make a good impression but that is not always the case. This is a particularly difficult area for code enforcement because when we approach business and say that your sign has gone past it life or the banner is tattered it is sometimes viewed as an affront on that business.

Ms. Johnson-Pfeiffer commented that the permit process is a no fee permit but there is a cost to the City to issue some type of permitting. She said she wasn't a big fan of fees but asked if the City was going to implement a permitting process that has no revenue stream for. Mr. Spoo acknowledged that was correct and it is more of an information transfer process. There would be some staff time dedicated to reviewing permits for temporary signs and we don't think it will be very much time because it is a one page application that asked for a description or a picture of the sign and show where the temporary sign will be placed. We are trying not to discourage temporary signs but to find a friendly way of getting compliance with the regulations.

Ms. Johnson-Pfeiffer asked what the communication process would be to let people know that they have to get a permit and what would be the consequences to businesses that didn't get a permit. Mr. Powers said one of the avenues of communication would be to work with the sign companies that would produce the A-frame signs. The City would also reach out to the business community. This would be a phased implementation. On the code compliance side would start with a health length of time where it is all about the message. The permit process was a response to what staff thought were the Planning Commission's concerns about the proliferation of temporary signs throughout the community. There may be another way to get at that issue besides a permit process and another important point is that even if the Planning Commission recommends approval of it the Council has the final determination.

Ms. Johnson-Pfeiffer commented that she wasn't completely comfortable with the permitting process. She preferred more than an educational process versus a regulation mechanism like permits.

Mr. Wasinger asked if the permit process was aimed at temporary signs on both public and private property. Mr. Spoo said confirmed that was correct and the one exception would be window signs. Mr. Wasinger asked if a back board for a banner that changes every month would be a temporary sign code. Mr. Spoo said that would fall under the temporary sign code and would be allowed for six months of the calendar year.

Mr. Oliver asked about the dancing sign holder signs. Mr. Spoo said that those were not one of the four listed types assigns that are allowed in the public right-of-way. But it was unlikely that the City would force a person with a sign to leave the public right-of-way.

Mr. Oliver asked about the A-frame real estate open house signs. Mr. Oliver commented that the goal was to drive people to the property and open house signs are up between two to four hours and then remove. Mr. Oliver suggested that the number of real estate signs allowed be more than three. Mr. Spoo said that was something that could be looked at.

Ms. Jensen suggested that five real estate open house signs be allowed.

Mr. Oliver asked if there was some sort of guarantee that the permit would be ready in two days. Mr. Powers said that the City could not offer a flat guarantee. The City would be reasonable in the application of the standard. Mr. Powers suggested that the permit system is perhaps more problematic than the Planning Commission's concern about how we control the number of the signs in the community. Mr. Powers said that rather than using the permit process, the educational process could be used as well as the enforcement process. Mr. Powers reminded the Commission that the City's enforcement process is by complaint only.

Ms. Johnson-Pfeiffer said that her concern about permitting was that there will be people that don't get the permit and are out of compliance and the City will have to enforce the non-compliance of getting a permit. It doesn't solve the City's enforcement problem so what will happen is the people that follow the rules will get permits and the people don't play by the rules won't get the permit and the City will have to enforce non-permitted signs. She didn't think that adding the permitting layer would address the bigger concerns because it still comes down to enforcement. If that is where the breakdown is we are just adding another layer.

Ms. Jensen said that she liked the education side of the permit process.

Ms. Jensen commented that she didn't like the last sentence of (3)(b)(B) on page 35 which states: "Prior to placement of temporary signs in the public right-of-way, permission of the adjacent and nearest property owner must first be obtained."

Ms. Johnson-Pfeiffer said she liked the requirement because the sign in front of a business implies endorsement of what the sign says which could be and endorsement of a political candidate or a type of speech that they may or may not be comfortable with. Business should have some control of how their business is politicized.

Ms. Jensen asked about the area on SR20 and asked if someone wanted to put a sign there would they have to get permission from all the individual rental units adjacent to the area. Mr. Spoo noted that the highway right-of-way falls under the Washington State Department of Transportation and they may have rules against political signs within the State right-of-way.

Mr. Wasinger asked if business owners have the right to determine what goes into the public easement in front of their properties. Mr. Spoo said the reason that statement was put into the code was partly about the issue that Ms. Johnson-Pfeiffer raised. Mr. Spoo indicated that the way right-of-way is defined is that it is an easement for public travel so the underlying land is still owned by an adjacent property owner on title so you would still need permission from the property owner. Mr. Powers added that there was still the basic prohibition on off-premise commercial signage so as an example, Safeway could not put a temporary sign in the grass strip in front of the Seven Eleven because that would be considered an off-premise commercial sign.

Mr. Oliver asked if it would be improper to get input from some of our political figures i.e. Mayor and City Council. Mr. Spoo said that they would automatically have input as part of the approval process and they will want to know what the general public and business owners think.

Mr. Powers added that if Planning Commission wanted to talk to past candidate for elected office that would be good to find out what they struggle with when it comes to signage. That input could only help to balance the issues. Mr. Spoo suggested input be put in writing in a letter addressed to the Planning Commission.

Ms. Johnson-Pfeiffer suggested that the two day time limit on removing community event and fundraiser signs is too short. It usually takes a week because volunteers are used to remove the signs. She also thought that seven days for political sign removal was too short given the size of some of the districts. She suggested two weeks. Mr. Spoo said that was the typical range.

Ms. Jensen commented that special events need to have more than two signs. Cost of producing the signs needs to be a consideration as well. For the community pig roast they usually just attach a paper over real estate signs. Mr. Powers said that the last two comments demonstrate exactly what the struggle is in crafting the temporary sign code. There were suggestions that we need to have more signage for civic events and that the standards should not apply to civic events and that is our struggle because we can't treat a non-profit activity substantially different than we treat for-profit groups and we can't treat political speech and commercial speech substantially different either. If the Commission has concerns about the number of signs that a permanent business has you are going to struggle by say one sign for that business and seven signs for the great non-profit that we have. That is not to say that they have to be identical because you may be able to establish some rational reasons as to how they are different but that is the challenge we are going to have.

Mr. Oliver asked about video signage not being allowed in any zoning district and asked it that applied to inside the window or just outside. Mr. Spoo said that language was focused on permanent signage and it is not in the context of temporary signage. Mr. Powers added that the reason that you see the definition of "video" and "video board" is that they work with other definitions specifically electronic message center signs. A few years ago the community went through a process to decide if they wanted to allow the electronic message center/reader board signs. As part of that review process it was determined that the community did not want to see the flashing video signs like the signs you see around Fife on I-5 and like the Angel of the Winds Casino sign on I-5.

Ms. Johnson-Pfeiffer went back to the discussion about community events. She felt that community events were different. It isn't commercial speech or political speech and falls into a unique niche. These events are for community branding and identity and to create that sense of community and it is important to let the community know that these events are going on. Signage may be expensive in the initial creation of them but they can be re-used and she felt that the signage was particularly limited for community events. She asked staff for more research on how other communities handle signage for community events.

Mr. Fakkema asked noted a correction that should be made on page 34 number (3)(a) (ii) through (vii) should say "shall not".

Mr. Fakkema suggested saying that if a 2-day approval is not given it is assumed to be approved. Mr. Spoo said that was not something the City should do and the challenge is that if an applicant does not submit all the information you can't approve the permit in 2 days.

Ms. Johnson-Pfeiffer indicated that she was comfortable with the temporary political signage language.

Mr. Wallin asked if there should be language included about how many signs are allowed and that the City regulates the number allowed in parks as well as the City's solid waste collection vehicle. Mr. Powers acknowledged that more work is necessary and that internal legal review still being done. Mr. Powers added that staff is proposing to adopt the interim ordinance while also continuing work on the draft code with the Planning Commission. Staff will return to the Planning Commission with the interim code in May.

Mr. Spoo outlined the next steps as follows:

- March – Draft code/changes?/recommendation
- April – recommendation to City Council
- May-June – Council Discussion/Adoption

Planning Commission had no further questions or comments.

ADJOURN: 8:50 p.m.

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
April 24, 2012

ROLL CALL: **Present:** Keith Fakkema, Jeff Wallin, Gerry Oliver and Jill Johnson-Pfeiffer.
Absent: Bruce Neil, Kristi Jensen and Greg Wasinger.
Staff Present: Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius.

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

MINUTES: **MR. WALLIN MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE MARCH 27, 2012 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
Martha Yount (364 NE Ronhaar St.) had two questions. She asked about the property between the shopping center on Highway 20 and Ely Street where Island Café and a smaller shopping center are. She wanted to know what businesses are slated to go into the open field area once it is developed and she asked about the results of the traffic study for Jehovah's Witnesses church project located at the end of NE Ronhaar Street.

Mr. Kamak said that the development application for the property between SR20 and Ely Street is for two buildings. The larger building will house Island Drug and the smaller building is for a commercial use but we don't know what business will go in yet. Ms. Sartorius added that the second small building is slated to be an office but there isn't an identified tenant at this time.

Ms. Sartorius explained that there was a conditional use hearing before the City's hearings examiner regarding the Jehovah's Witnesses church project and the traffic impacts were addressed in the staff report to the hearings examiner which will be provided to Mrs. Yount.

ADOPTION OF THE OFFICIAL ZONING MAP – Public Hearing
Ms. Sartorius presented a draft ordinance that would adopt the Official Zoning Map for the City of Oak Harbor. Ms. Sartorius explained that the Washington State Growth Management Act requires that counties and cities adopt zoning and other development regulations that are consistent with their adopted Comprehensive Plans. Cities are authorized to adopt appropriate regulations complying with state law for the regulation of property in the city, including adopting zoning codes and official zoning. Adoption of the zoning map with signatures of the Mayor and City Clerk with the City's seal affixed formalizes this action. The City of Oak Harbor updates its Comprehensive Plan and Future Land Use Map by taking action on Comprehensive Plan amendments annually in December with subsequent amendments to zoning and the Official Zoning Map following in the spring.

Ms. Sartorius recommended that Planning Commission hold a public hearing and recommend adoption of the ordinance and the attached official zoning map to City Council.

Commission Discussion
Mrs. Johnson-Pfeiffer asked if the zoning map takes into consideration the same zoning that was in the Shoreline Master Program (SMP). The Shoreline Master program designates the area around the Marina as maritime industrial usage and the zoning map shows the area as Public Facilities zoning. Do these need to match?

extra uses of that space where they can move the tables and now they have room for dancing and music. The mixture of uses gives the business a choice on whether they want to apply for the nightclub license or not.

Mr. Oliver asked what size would not be disruptive to the residences.

Kelly Beedle (940 SE Pioneer Way) said that her place was 1,440 square feet which is plenty of room and she asked how the City could control the size of a building that someone buys or rents.

Darnell Allen (7-West business owner) said that his business is 1,400 square feet and hold 117 people maximum.

Mr. Oliver said that it sound like controlling 100 to 150 people is controllable and that anything above that is difficult. Mr. Allen agreed.

Ms. Johnson-Pfeiffer said that she would not be opposed to having nightclubs listed as a specific land use item with a strict definition that would need to be fleshed out.

Mr. Fakkema thanked the citizens for their participation and noted how important their input is.

Mr. Kamak echoed the same and said that at the next meeting we will try and address some of the concerns and provide options to consider.

Mr. Wallin asked for size information on all of the current nightclubs for the next meeting.

Mr. Fakkema closed the public meeting.

SIGN CODE – Public Hearing

Mr. Spoo explained that the item before the Planning Commission tonight is simply a notification to Planning Commission that staff will be requesting that City Council renew the interim sign code for another six-month period. Staff will return to Planning Commission with the draft temporary sign code in May. The draft temporary sign code will include comments voiced at the March Planning Commission meeting.

Mr. Spoo recommended that Planning Commission hold a public hearing to take testimony regarding extending the interim sign code for an additional six-month period. Any public testimony will be included in information forwarded to the City Council. Another public hearing will be conducted before the City Council when extension of the interim sign code is considered.

Mr. Fakkema asked if the Planning Commission needed to recommend that the City Council extend the interim sign code. Mr. Spoo said that it isn't necessary because it the interim code has been in place for almost a year and they will only be extending it for another six months.

Mr. Fakkema opened the public hearing for public comment, seen none he closed the public hearing.

SHORELINE MASTER PROGRAM (SMP) – Public Meeting

Mr. Spoo explained that the SMP project has been an ongoing since 2010. Staff have provided several updates to the Planning Commission in pre-meetings and at the regular meeting since 2010. This introduction marks the formal start of discussions and consideration of the shoreline

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
May 22, 2012

ROLL CALL: **Present:** Bruce Neil, Kristi Jensen, Greg Wasinger, Keith Fakkema, Jeff Wallin and Jill Johnson-Pfeiffer.
Absent: Gerry Oliver.
Staff Present: Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak; Associate Planner, Melissa Sartorius; Project Engineer, Arnie Peterschmidt.

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

MINUTES: **MR. FAKKEMA MOVED, MS. JOHNSON-PFEIFFER SECONDED, MOTION CARRIED TO APPROVE THE APRIL 24, 2012 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
No comments.

SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM (TIP) – Public Hearing
Mr. Neil opened the public hearing on this item.

Mr. Peterschmidt reported:
The City is required by State law to submit an approved six-year Transportation Improvement Program. The primary purpose of the TIP is to facilitate use of Federal transportation funds awarded to the City. The submittal process is accomplished in conjunction with the Regional Transportation Planning Organization (RTPO). Once approved by the Council, the City's TIP is submitted to the RTPO. In turn, the RTPO submits a regional TIP to the State by October of each year. The State then prepares a statewide TIP in January of each year. The incorporation of the City's projects into this statewide TIP is what enables the City to spend Federal funds on local transportation projects.

The projects listed on the TIP are coordinated with those listed in the Transportation Element of the Comprehensive Plan. Coordinating projects in the Transportation Comprehensive Plan, the Six-Year TIP and the Capital Facilities Plan improve our communication and coordination with other agencies and help the City remain focused on a manageable list of transportation projects.

The six-year TIP form includes a number of codes and symbols used in the statewide management of the regional TIP documents. A symbol in the status column of "S" means funding is secured while a symbol of "P" indicates the project is not funded.

Mr. Powers added that the recommendation to the Planning Commission is to conduct a public hearing and make a recommendation to the City Council to adopt the 2013-2018 Six-Year Transportation Improvement Program.

Discussion
Ms. Jensen pointed out that SW Heller Street Improvements have the number 12 listed as the improvement type code and there is no improvement type code number 12 in Appendix A. Mr. Peterschmidt said it is a typographical error and the improvement type code should be number 4 which is "Reconstruction, no added capacity".

Ms. Johnson-Pfeiffer asked what the Eagle Vista – West Extension does. Mr. Peterschmidt said the extension would provide access to the highway and would be a development driven project. Mr. Powers added that the extension would facilitate east/west circulation in the southern portion of the City limits and that we need to ensure that we have good east/west circulation as parcels develop. If we don't plan ahead for the project there will only be local street connections to the highway. This project will line up with Eagle Vista on the east side of the highway so that there is alignment that makes sense.

Mr. Neil asked for public comment. Seeing none the public hearing was closed.

ACTION: **MR. WALLIN MOVED, MS. JENSEN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADPOPT THE 2013-2018 SIX-YEAR TRANSPORTATION IMPROVEMENT PROGRAM WITH THE CORRECTION OF THE IMPROVEMENT TYPE CODE TO NUMBER 4 FOR THE SW HELLER STREET IMPROVEMENTS PROJECT. MOTION CARRIED.**

SIGN CODE – Public Hearing

The Planning Commission continued its discussion of amendments to OHMC 19.36.080 ("Temporary and Special Signs"). Mr. Spoo summarized the changes that were made to the draft sign code resulting from comments made at the March Planning Commission meeting as follows:

Organizational Changes:

- Two main sections: (1) Private property (2) Public property
- Public property section reorganized by forum
  - Public rights-of-way = traditional public forum
  - City parks = traditional public forum
  - City vehicles = non-public forum
  - City buildings = non-public forum

Key Changes:

- Definition of political signs expanded. Mr. Spoo provided a comment letter from the American Civil Liberties Union (ACLU) regarding the definition of "political sign" (the letter is attached as Attachment A to these minutes)
- Permit system – eliminated (also commented on by ACLU)
- Time limits – 6 mos. eliminated. Shorter and more specific timelines remain
- Post election timeframe: 14 days
- Community events signs: can be posted 4-6 weeks prior, removal within a week.
- "Appearance of professionalism" language: Staff is seeking Planning Commission input. There are two choices - either keep the "appearance of professionalism" language in the code or remove it all together. Previously, the Planning Commission had a discussion about hand-drawn or hand-painted images and lettering. Based on public input and previous discussion, the Planning Commission wanted to allow for artistic signs that might have hand-drawn images or lettering. Planning Commission asked staff to draw a distinction between spray paint on plywood and more artistic signs. Mr. Spoo indicated that there is a question about whether these types of quality standards are desirable for temporary signs. Most communities don't have quality standards.

Mr. Spoo continued reviewing the changes to the draft sign code:

Signs within public ROW

- Limits on commercial sign types (portable A-frame, flag pole banners, residential directions "open house" signs, subdivision directional signs designating new development and community events and fund raisers)
- Garage sale deleted - only allowed on private property

Signs within public parks

- Signs cannot be installed (may not be affixed to park equipment, land of facilities in any way, this prohibition includes pounding a temporary sign into the ground)
- Transitory signs allowed (signs such as those used for protest, picket, demonstrate etc.)
- Exceptions - signs for sponsorships in Windjammer and Volunteer Parks. Notifications for youth sports leagues and information banners in Gateway-Beeksma Park.
- City vehicles/buildings: are non-public forums and signs are not allowed

Mr. Spoo reported that there were two meetings with Downtown Merchants Association. On April 18, they discussed:

- Flag banners
- A-frames/sandwich boards: ability to have & location
- Remote placement of temporary signs
- Event signage – clarified
- Sign directory

On May 16 the Association re-emphasized their desire for a sign directory.

Mr. Spoo concluded by noting that substantial work went into this project by the Planning Commission and staff. The draft code is detailed and specific and public input was sought and considered and we have done our best to meet constitutional standards. Mr. Spoo also noted that additional legal review is likely. Mr. Spoo recommended that the Planning Commission conclude their discussion and forward the draft sign code to the City Council for their approval.

Discussion

Mr. Fakkema commented that he noticed "public right-of-way" was not defined in Section 19.36.020 and asked if "public right-of-way" was defined somewhere else in the code. Mr. Powers said that the definition was either in the zoning definitions or the subdivision code but that it should be in the sign code section as well and will be added.

Mr. Fakkema commented that he objected to the change in Section 19.36.080(1)(b)(ii)(C) which deletes Christmas and replaces it with Holiday Season, but he realized that it would not be changed.

Mr. Wallin asked if the banners were only allowed in the CBD zone public right-of-ways. Mr. Spoo said that was correct.

Ms. Johnson-Pfeiffer asked if the flag pole holes in the sidewalks were public or privately owned. Mr. Spoo said they are on public property. Ms. Johnson-Pfeiffer said she was concerned that any type of speech could also go into the flag pole holes.

Mr. Wasinger asked if permission was granted to put the holes for the flags in the sidewalk. Mr. Powers said that since the sidewalk is the City's we didn't need permission. Mr. Powers also noted that there is language in the code that says, before placing a sign in the public right-of-way, you have to get permission from the private property owner adjacent to the sign. This language has been used in other communities and has been upheld.

Ms. Johnson-Pfeiffer commented that the expensive planters downtown should be protected from signs because the planters are intended for a specific purpose (beautification). She was concerned that there could be a "free-for-all" of signs in the planters and all it would take is one sign to start a "free-for-all." Mr. Spoo offered to craft language about what type of sign holder could be used in the planters in an effort to protect the planter but still allow speech. Ms. Johnson said her preference was to keep the signs out of the planters. Mr. Powers offered that there could be a subset within the public forum within the public right-of-way that says that you don't utilize planters that are above ground as opposed to the strips that are more traditionally available for the placement of signs.

Mr. Wallin thought that there was already discussion about the type of sign holder that would be allowed i.e. thin metal stakes as opposed to thick wooden stakes. Mr. Spoo said that language could be crafted but we shouldn't restrict to a certain type of sign holder that is more expensive. That could effectively amount to content restriction because you would not be allowing an underfunded candidate to express their viewpoint. In the interest in maintaining the city's investment in the planters and avoiding underground pipes that might be in the planter, we can craft language to that effect.

Mr. Neil asked if we are still allowing the dancing pizza person in the right-of-way. Mr. Spoo said that the dancing pizza signs have not been called out as prohibited but if you look at the list of types of signs allowed in the public right-of-way the dancing pizza sign is not listed and would not be allowed as the code is drafted.

Mr. Fakkema voiced his support of Ms. Johnson-Pfeiffer's comments about not allowing signs in the raised planters.

Ms. Jensen asked whether the planters were private property in the public right-of-way. Mr. Powers said that the planters were purchased with public dollars so they are public property. Mr. Powers said that as long as there is the ability to have some form of political speech sign within the CBD that he didn't believe it was necessary to allow them on every location within the public right-of-way. Staff can look at language that prohibits all temporary sign from being in those planters so long as we allow political speech signs elsewhere within the right-of-way within the CBD.

Mr. Neil asked for public comment.

Mr. John Voigt (732 La Conner Street, Coupeville WA) asked what the effective date would be if the ordinance was adopted. Mr. Powers said the effective date would be five days after it was published in the newspaper.

Planning Commission discussed whether or not to leave the "Appearance of professionalism" language in the code. Commission members agreed that the language should be left in the code.

ACTION: **MS. JOHNSON-PFEIFFER MOVED, MR. WALLIN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADPOPT THE SIGN CODE ORDINANCE INCLUDING THE LANGUAGE "APPEARANCE OF PROFESSIONALISM" AND THE ADDITION OF THE DEFINITION OF PUBLIC RIGHT-OF-WAY AND SOME INCLUSION OF RESTRICTIONS FOR RAISED PLANTERS WITHIN THE CENTRAL BUSINESS DISTRICT. MOTION CARRIED.**

SHORELINE MASTER PROGRAM (SMP) – Public Meeting

Mr. Spoo briefed the Planning Commission on their role in the SMP project which is to listen, understand, question and make recommendations. Mr. Spoo noted that the SMP is also being reviewed by the Department of Ecology (DOE). It is possible that DOE will have comments that affect the draft and those proposed changes will be reviewed with the Planning Commission.

Mr. Spoo explained the purpose of the Shoreline Management Act (state legislation that guides the creation of SMP's) and the Shoreline Master Program is to promote and enhance public access, prioritize water dependent and water oriented uses over non-water oriented uses, and to preserve and restore the environment.

Mr. Spoo noted that the shoreline jurisdiction is 200 feet back from the ordinary high watermark (OHWM) and also includes wetlands that cross that 200 foot mark and goes to the edge of the wetland.

Mr. Spoo explained that the SMP requires DOE approval and if we don't meet their standards DOE will step in and adopt an SMP that suits their needs. This is our chance to exercise our local preferences in the SMP.

Mr. Spoo explained that jurisdictions are required to meet what is called "no net loss" of ecological functions. Ecological functions are hydrology, vegetation and habitat. We have to demonstrate that whatever development occurs in the shoreline jurisdiction meets no net loss.

Mr. Spoo moved on to Chapter 2 of the SMP and explained Shoreline Environment Designations. They are akin to zoning and are a type of overlay zoning that applies within the shoreline jurisdiction and they apply in addition to the underlying zoning.

Mr. Spoo displayed the following table which shows the State designations and the proposed designations for Oak Harbor and describes the types of allowed uses:

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 1C
Date: October 16, 2012
Subject: Introduction: Property tax ordinance for 2013.

FROM: **Doug Merriman**
Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE
An ordinance to increase the 2013 City of Oak Harbor property tax levy by 1%.

AUTHORITY
RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property, newly constructed wind turbines, and any increase in the value of state-assessed utility property.

RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable;

RCW 84.55.005(2)(c), provides the limit factor for the City of Oak Harbor, a taxing jurisdiction with a population of over 10,000, is the lesser of 101 percent or 100 percent plus inflation;

FISCAL IMPACT DESCRIPTION

Funds Required: $ $40,825.68 annually

Appropriation Source: Not Applicable

SUMMARY STATEMENT

This agenda bill presents the ordinance required to establish the property tax levy rate for the City of Oak Harbor for 2013. Under and RCW 84.55.005(1) and RCW 84.55.005(2)(c), the City may increase the collection of property tax revenues by the lower of 1% or the rate of inflation as set by the Implicit Price Deflator (IPD) as published by the Bureau of Economic Analysis (BEA). The IPD measurement to be utilized for 2013 is 1.295%. Accordingly, the allowed levy adjustment for 2013 is 1%.

City of Oak Harbor
City Council Agenda Bill

STANDING COMMITTEE REPORT

The Finance Standing Committee reviewed this item at their meeting.

RECOMMENDED ACTION

1. Set public hearing date for November 7, 2012

ATTACHMENTS

1. Draft Ordinance
2. IPD information (Source: MRSC)

ORDINANCE NO. 1636

AN ORDINANCE TO INCREASE BY $40,825.68 THE AMOUNT TO BE RAISED BY AD VALOREM TAXES FOR THE 2013 PROPERTY TAX LEVY WHICH REPRESENTS A 1% INCREASE OVER THE ACTUAL LEVY ASSESSED IN 2012.

WHEREAS, proper public notice of this ordinance and the related public hearing was given in the Whidbey News Times on October 31, 2012, and

WHEREAS, a public hearing was held November 7, 2012, to consider the City of Oak Harbor's Current Expense budget for the Year 2013; and

WHEREAS, RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property, newly constructed wind turbines, any increase in the value of state-assessed utility property, and any annexations that have occurred and refunds made.

WHEREAS, under one provision of RCW 84.55.005(2)(c), the annual inflationary increase limit factor for the City of Oak Harbor, a taxing jurisdiction with a population of over 10,000, is the lesser of 101 percent or 100 percent plus inflation;

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable; Inflation as evidenced by the change in the for the twelve month period ending July 2012 as measured by the change in the implicit price deflator (IPD) is 1.295% (percent).

WHEREAS, the City Council of the City of Oak Harbor has met and considered its budget for the calendar year 2013, and after hearing and after duly considering all relevant evidence and testimony presented, has determined that the City of Oak Harbor requires an increase in property tax revenue from the previous year, in order to discharge the expected expenses and obligations of the City of Oak Harbor.

WHEREAS, the City of Oak Harbor's actual levy amount from the previous year was $4,082,568.00.

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

Section One: An increase in the regular property tax levy is hereby authorized for the levy to be collected in 2013 tax year. The dollar amount of the increase over the actual levy amount of the previous year shall be $40,825.68, which is an increase of one percent (1%) from the previous year. This increase is exclusive of any additional revenues resulting from under-utilized levy capacity, from new construction, improvements to property, newly constructed wind turbines, and from any increase in the value of state-assessed property, any annexations that have occurred and refunds made,. The total regular property taxes will be budgeted at $4,160,568 for 2013.

Section Two: The City Clerk shall file a certified copy of this ordinance with the Island County Auditor.

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 take effect five days after publication as provided by law.

PASSED by the City Council this 7th day of November, 2012.

CITY OF OAK HARBOR

_____

Scott Dudley, Mayor

_____

Date

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

Published:_____

Historical Increases in the July Implicit Price Deflator for Personal Consumption Expenditures

Dates	Percent
July 1996 to July 1997	1.9*
July 1997 to July 1998	0.85
July 1998 to July 1999	1.42
July 1999 to July 2000	2.61
July 2000 to July 2001	1.89
July 2001 to July 2002	1.16
July 2002 to July 2003	1.84
July 2003 to July 2004	2.387
July 2004 to July 2005	2.541
July 2005 to July 2006	3.419
July 2006 to July 2007	2.084
July 2007 to July 2008	4.527
July 2008 to July 2009	-0.848
July 2009 to July 2010	1.539
July 2010 to July 2011	2.755
July 2011 to July 2012	1.295

*The Bureau of Economic Analysis uses anywhere from one to three decimal places.

Source: Table B-1 of *The Survey of Current Business*

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 1-d
Date: October 16, 2012
Subject: Introduction: Utility tax for Art Maintenance Resolution

FROM: Doug Merriman, Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda item is for the City Council to decide, per Oak Harbor Municipal Code section 3.71.060, what proportion of the utility tax collected shall be allocated to the art acquisition fund for the biennial budget period of 2013-2014.

AUTHORITY

Under RCW 35A.11.020, The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees;

SUMMARY STATEMENT

In 2009, City Council passed Ordinance #1547 which in part established OHMC Section 3.71.060 with the following language:

"3.71.060 Allocation of utility tax to the art acquisition and maintenance fund."

The city council shall decide, no less frequently than through the adoption of every biennial budget, what proportion of the utility tax collected pursuant to this chapter shall be allocated to the art acquisition and maintenance fund for the purposes set forth in Chapter 3.26 OHMC. (Ord. 1547 § 1, 2009)."

In order to comply with this code section, City Council needs to formally decide what proportion of the utility tax collected shall be allocated to the art acquisition and maintenance fund. Currently, a .25% proportion of the utility tax collected for water, sewer, and storm drain businesses is directed to art acquisition and maintenance purposes.

FISCAL IMPACT DESCRIPTION

Funds Required: $ Not Applicable
Appropriation Source: Not Applicable

STANDING COMMITTEE REPORT

This topic has been presented to the Finance Standing Committee on September 12, 2012.

RECOMMENDED ACTION

1. No action required. Resolution 12-25 is being introduced to Council and the public for advance notice with further discussion, public comment, and action scheduled for November 7, 2012.

ATTACHMENTS

1. Draft resolution 12-25

RESOLUTION NO. 12-25

A RESOLUTION OF THE CITY OF OAK HARBOR COUNCIL REGARDING THE PROPORTION OF UTILITY TAX COLLECTED UNDER OHMC 3.71 THAT SHALL BE ALLOCATED TO THE ART ACQUISITION AND MAINTNENACE FUND.

WHEREAS, The City of Oak Harbor has an established utility tax on suppliers of water, sewer collection and treatment, solid waste, and storm water collection services within the City; and

WHEREAS, Oak Harbor Municipal Code section 3.71.060 requires City Council of the City of Oak Harbor to decide, no less frequently than through the adoption of every biennial budget, what proportion of utility tax collected shall be allocated to art acquisition and maintenance purposes; and

WHEREAS, the City Council of the City of Oak Harbor wishes to set the proportionate utility tax allocation for the 2013-2014 biennial budget period.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, SETS THE PROPORTIOINATE PERCENTAGE OF UTILITY TAX ALLOCATED TO THE ART ACQUISITION AND MAINTENANCE FUND TO BE ___% OF ACTUAL RECEIPTS RECEIVED DURING THE 2013-2014 BIENNIAL BUDGET PERIOD.

PASSED and approved by the City Council this 7TH day of November, 2012.

THE CITY OF OAK HARBOR

_____

Mayor

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 1.e
Date: October 16, 2012
Subject: Excused Absence Request
Councilmember Beth Munns

FROM: Scott Dudley
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Beth Munns excused absence request for the November 7, 2012 Regular City Council Meeting.

AUTHORITY

Per RCW 35A.12.060: *...A council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Munns has submitted an excused absence request for the November 7, 2012 Regular City Council Meeting.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Move to approve Councilmember Munn's excused absence for the November 7, 2012 Regular City Council Meeting.

ATTACHMENTS

None

City of Oak Harbor
City Council Agenda Bill

Bill No. 2
Date: October 16, 2012
Subject: Police Chief Confirmation and Contract Approval

FROM: **Scott Dudley**
Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
Larry Cort, Interim City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE

This agenda bill presents the Mayor's selection of Mr. Edgar "Ed" J. Green for appointment as the next Oak Harbor Police Department Chief and his employment contract.

AUTHORITY

RCW 35A.11.020
Powers vested in legislative bodies of noncharter and charter code cities.

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people:

OHMC Police Chief 2.36.030 Appointment.

The police chief shall serve at the pleasure of the mayor pursuant to an employment contract proposed by the mayor and approved by the city council. (Ord. 1628 § 4, 2012; Ord. 984 § 2, 1994; Ord. 649 § 1, 1983).

FISCAL IMPACT DESCRIPTION

Funds Required: The appointment itself does not have a fiscal impact; however, approval of the employment contract does. Additional funds are not required as this position was budgeted as part of the 2012 budget. The total annual cost for this contract in compensation and benefits is $133,705.

Appropriation Source: Fund 001/General Fund.

City of Oak Harbor
City Council Agenda Bill

SUMMARY STATEMENT

In April 2012 the City began a search for the Police Chief. There were 16 applications received, of which five where unqualified. The remaining 11 were reviewed by Human Resources from which emerged seven viable candidates. Before the first round of interviews could occur, four candidates removed their names from consideration due to various personal reasons. As a result, three candidates remained: Ed Green, Andy Reinhardt, and Phil Schenck.

On the afternoon of September 6, 2012, the three candidates met as a panel with Police Department employees (21 attended) and fielded questions which Human Resources moderated. The questions had been submitted in advance to Human Resources to screen and organize. The members of the Police Department were given an opportunity to give written feedback to Human Resources regarding their impressions of the candidates (a form was supplied by Human Resources). Three Police Department employees submitted responses.

In the evening of September 6, 2012, the public was invited to a meet and greet of the candidates. This was held at the Oak Harbor Fire Station 81.

On September 7, 2012, the candidates appeared individually before a panel of nine to be interviewed. The panel consisted of three representatives from the City Council, two representatives from the Police Department, one representative from the Fire Department, two Oak Harbor business owners, one Oak Harbor citizen and an external Sheriff from another jurisdiction. The panel asked each candidate the same questions and scored each response. The panel's recommended top two candidates were then forwarded to the Mayor.

After interviewing the candidates, and conferring with all panel members, the Mayor selected Mr. Green for appointment as the City of Oak Harbor's next Police Chief and is at this time seeking City Council confirmation of this appointment.

The Mayor, in consultation with the Interim Human Resources Manager, recommends the attached employment contract for Mr. Green. Mr. Green's employment will begin on October 29, 2012 and would continue indefinitely unless Mr. Green's employment is terminated by either party.

The proposed contract specifies conditions of employment and sets working conditions for the Oak Harbor Police Chief including but not limited to:

- Salary: Starting base salary $101,292.00 annually, with a provision for annual cost of living adjustments.
- City Provided Vehicle: Due to the nature of the work done by the Police Chief, the City will provide a vehicle for his use.
- Vacation: Accrual of one day per month rising based on years of service.
- Sick Leave: Accrual of one day per month.
- Clothing Allowance: Annual clothing allowance of $900.00
- Severance Package: Severance pay for at-will termination in the amount of 6 months' salary. No severance pay for termination by resignation or for cause.

- Other Benefits: Same as provided for general City employees, including but not limited to, retirement and medical and dental insurance.

STANDING COMMITTEE REPORT

This item has not been presented at any standing committee meetings.

RECOMMENDED ACTIONS

1. Confirm the appointment of Ed Green as Oak Harbor Police Chief.

2. Authorize the Mayor to sign the Police Chief Employment Contract with Ed Green

ATTACHMENTS

Mr. Green's experience and education.
Employment contract for Mr. Green.

EDGAR J. GREEN

OBJECTIVE

Obtain the position Chief of Police, Oak Harbor Police Department

EXPERIENCE

1986-1993 Los Angeles Police Department Los Angles, CA

Police Officer/Field Training Officer/Squad Leader

- **Patrol**
- **Worked Special Problems Unit (SPU) handling Level 1 Crime Suppression (Robbery/Burglary/Assaults)**
- **Assigned to work Community Resources Against Street Hoodlums (CRASH) Unit – combating gangs and gang related crimes**
- **Promoted to Field Training Officer (Corporal/Squad Leader)**
- **Selected to Undercover Assignment working VICE dealing with Sex/Alcohol/Gambling related crimes**
- **Worked Patrol as Field Training Officer training new officers**
- **Selected as a Designated Squad Leader during major deployments in riot/crisis situations**
- **Selected as Department Training Officer to work with others in development of rapid response/deployment of officers during riot/crisis situations**
- **Selected as one of 40 Field Training Officers (in department of 9,000) to revamp Field Training Program for Officers within the department**

1993-Present Port Townsend Police Department Port Townsend, WA

Police Officer/Field Training/Special Event Coordinator/Sergeant

- **Patrol**
- **Assigned to Bike Patrol in downtown designated areas successfully addressing business and tourists concerns, solving a multitude of community problems through meetings and enforcement**
- **Selected to be the Reserve Officer Coordinator – revamped program to be equal to that of full time officers in regard to hiring, training, accountability.**
- **Assigned as Field Training Officer and Coordinator responsible for overseeing the training of all newly hired officers within the department.**

- 1995 – Selected as Emergency Vehicle Operator Instructor; have developed and taught hundreds of hours of emergency vehicle operations, classroom and practical applications.
- Worked as Acting Sergeant on numerous occasions handling officer involved shootings, major crime scenes, major flooding and as a supervisor on the County Emergency Management Team.
- July 2001 – promoted to Sergeant of Patrol; supervise staff of 12 patrol officers.
- November 2007 (to present)– Promoted to Administrative Sergeant in Department, act as second in command and currently assist Chief of Police in development of policy, budget and deployment and handle administrative affairs for the department.

EDUCATION

1986-1987	Los Angeles Police Academy
1993	Washington State Criminal Justice Academy
	-Basic Law Enforcement Certificate
	-Supervisor Law Enforcement Certificate
	-Mid-Management Law Enforcement Certificate
1983-1987	Glendale Community College, Glendale, CA Major in Criminal Justice
1998-2002	Washington State University, Pullman, WA BA, Social Sciences / Minor in Criminal Justice, Minor in Business

INTERESTS

2002-Present Rhododendron Festival, Port Townsend, WA
Volunteer for the Port Townsend Rhododendron Festival; assisting with various projects, primarily rebuilding and constructing their floats for the past 10 years.

EMPLOYMENT CONTRACT
Chief of Oak Harbor Police Department

THIS AGREEMENT effective October 29, 2012, by and between the City of Oak Harbor, hereinafter referred to as "City", and Edgar J. Green, hereinafter referred to as "Police Chief".

WHEREAS, the Police Chief has been selected by the Mayor through a competitive process to undertake the duties of the position of Police Chief, and

WHEREAS, pursuant to OHMC 2.34.055 department heads employed by the City shall be offered employment contracts, and

WHEREAS, it is the desire of the City to provide certain benefits, establish certain conditions of employment, and to set working conditions for the position of Police Chief, and,

WHEREAS, pursuant to OHMC 2.36.030 the City Council has confirmed the Mayor's appointment of Edgar J. Green as Police Chief for the City of Oak Harbor, and

WHEREAS, the Police Chief agrees to serve in that capacity subject to the terms and conditions set forth in this Employment Contract,

NOW, THEREFORE,

FOR AND IN CONSIDERATION OF the terms and conditions hereinafter set forth, the City and Police Chief agree as follows:

1. Employment. The City hereby employs the Police Chief to serve in the position of Police Chief for the City of Oak Harbor. The duties of said position shall be to perform all duties assigned to the position of Police Chief as provided in the job description, the Oak Harbor Municipal Code, and Washington State law, together with such other and further duties and special projects as may be assigned to the Police Chief by the City's Mayor and/or City Administrator. Pursuant to OHMC 2.36.030 and 2.34.055 the Police Chief shall serve at the pleasure and at the discretion of the City's Mayor.

2. Duration of Employment. This Employment Agreement shall become effective on October 29, 2012, and shall continue indefinitely thereafter unless sooner terminated by the parties as provided in paragraphs 3 and 4 below.

3. "At Will" – Termination by the City. The Police Chief shall at all times during his employment be considered an "At Will" employee, subject to termination by the City's Mayor at any time with or without cause. Nothing in this Agreement shall be construed other than an "At Will" employment relationship between the City and the Police Chief and the Police Chief expressly acknowledges that no contrary representations have been made by the City.

4. Resignation – Termination by the Police Chief. The Police Chief reserves the right to resign from employment at any time with or without cause. The Police Chief agrees to give the City not less than two (2) weeks' notice prior to the effective date of any such resignation.

5. Compensation: The Police Chief shall be compensated for services rendered during the term of this Agreement as follows:

   a. Base Salary. The Police Chief shall receive a monthly salary of $8441.00. The rate of pay may be adjusted annually equal to the cost-of-living and/or cost-of-market increase given to the other Department Heads thereafter.

   b. In the event that a salary and wage study is conducted, the Police Chief position shall be included.

   c. Benefits. The Police Chief shall be entitled to a sick leave accrual of one day each per month, vacation leave accrual as set forth in the City Personnel Polices, and twelve paid holidays which includes one floating holiday of his choice.

The Police Chief shall also receive all other benefits provided by the City of Oak Harbor to regular employees as follows:

- Medical insurance, premium paid 100% and 75% premium paid for spouse and dependent children.
- Dental insurance, premium paid 100% and 75% premium paid for spouse and children.
- Standard Insurance life insurance policy of $25,000 paid for employee only
- Enrollment in Law Enforcement Officers and Firefighters (LEOFF) retirement system.

The Police Chief shall also be entitled to elect other voluntary benefit options as follows:

- Self-paid individual and/or family supplemental insurance coverage for Short-term Disability, Cancer Care, and Critical Illness
- Pre-tax deductions for Unreimbursed Medical expenses and/or Dependent Day Care
- Additional self-paid Voluntary Group Life Insurance
- Self-paid enrollment in his choice of two Deferred Compensation Plans

The Police Chief shall also be entitled to the following Police Chief specific benefits:

- The City agrees to provide a Plainclothes Allowance annually to the Police Chief in the amount of $900.
- The Department will provide any and all reasonably necessary uniform needs.
- The duties of the Police Chief require unrestricted use of a vehicle at all times. The City shall provide a vehicle for the Police Chief.

d. Timing of Monthly Payments – Deductions. All monthly payments of salary and benefits shall be made at the same time and on the same date as the City's regular payroll. All such monthly payments shall be subject to all required state and federal deductions, including income tax, social security, and any other deduction required and authorized by law. The City agrees to pay all employer contributions to FICA, worker's compensation, and similar programs as required by law.

6. The Police Chiefs Work Schedule. The Police Chief is a confidential, exempt employee for purposes of the Federal Fair Labor standards Act and as such shall not work a fixed forty hour per week schedule. The Police Chief Director shall generally work at Oak Harbor Police Department during regular business hours of the City, Monday through Friday, provided, that the Police Chief shall receive time off for holidays according to the holiday schedule customarily observed by the City. The Police Chief is also required to attend all meetings of the Oak Harbor City Council and such other Council Committee, City Board, Commission and staff meetings as requested by the Mayor or City Administrator or as required by the duties of the position.

7. Severance Package.

a. Severance for At Will Termination. In the event the Police Chief's employment with the City is terminated for any reason other than those delineated in subparagraph (b) below, the City will provide the Police Chief severance payment for a period of six months (6) months after the effective date of termination. The monthly amount shall be paid in accord with the same schedule as the regular City payroll, and shall be subject to the same mandatory deductions as the Police Chief's salary was prior to termination.

i. Reference. In the event of termination of the Police Chief's employment by the City, the Police Chief shall be entitled to an employment reference from the City, the language of which shall be agreed upon by the parties, provided, that in the event the parties cannot agree on the form of the reference, the City will provide only the dates of the Police Chief's employment, the last position held, the last salary received, the fact that the Police Chief is no longer employed by the City.

ii. Unemployment Benefits. The City will not oppose any unemployment benefit claims made by the Police Chief.

b. Termination by Resignation or for Cause. The severance package provided for in subparagraph (a) above shall not be available to the Police Chief if the termination of the Police Chief's employment with the City is due to:

i. Resignation. The Police Chief's voluntary resignation from employment. For purposes of this paragraph, "voluntary resignation" means a resignation of employment resulting from the free choice of the Police Chief and not the result of a suggestion to resign in lieu of termination made by formal action of the Mayor or City Council.

ii. Misconduct. Criminal conduct, commission of any crime, abuse of public office, or other gross misconduct, including, but not limited to, fraud, deceit,

embezzlement, theft of funds or property, assault, or sexual, racial, or other harassment; or

iii. Job Performance. Insubordination, incompetence, inadequacy, or inefficiency of the Police Chief in the performance of his official duties.

c. Construction. The severance package provided in subparagraph (a) above shall not be construed as an extension of the Police Chief's employment beyond the termination date. The Police Chief shall not, during the period between the termination date and the end of the severance payments, accrue any additional sick leave, vacation, leave, or other benefit accorded active City employees.

9. The City agrees to pay the reasonable professional dues and subscriptions necessary for continuation, enrollment and full participation of continued education in the law enforcement profession. In addition, the City may pay for membership in such other associations or organizations, and may reimburse the Police Chief for attendance at annual conferences or the same and for such other professional development activities as the Mayor or City Administrator may approve and as may be annually budgeted by the City Council.

10. The City agrees to cover the Police Chief on the City's liability insurance policies to the same extent as any regular employee of the City is covered for acts, errors, or omissions within the scope of employment. All such liability insurance coverage shall be provided at the City's sole cost and expense.

11. The City of Oak Harbor agrees to hold harmless and indemnify the Police Chief from any and all costs, risk or liability associated with or arising out of acts or failures to act which are performed within the scope of his employment as the Police Chief including the reasonable cost of legal defense by counsel appointed by the City or its insurance carrier, as applicable. This promise to indemnify shall exclude only criminal acts of the Police Chief and acts or failure to act which would constitute an intentional tort or intentional wrongdoing knowingly committed by the Police Chief without the express direction of the Mayor or City Administrator of the City of Oak Harbor. This promise to hold harmless and indemnify shall survive beyond the employment of the Police Chief with the City of Oak Harbor in order that the Police Chief shall be held harmless, indemnified and defended in the future for all acts taken as the Police Chief subject to the limitations contained herein.

12. Severability. If any paragraph, sentence, clause or phrase of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, said invalidity or unenforceability shall not affect the validity or enforceability of any other paragraph, sentence, clause or phrase, and to that end the terms and conditions set forth in this Agreement shall be severable.

13. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties as to the terms and conditions of the Police Chief's employment by the City and no other agreements or understandings, oral or otherwise, exist or shall be deemed binding upon the parties. The Agreement may be amended only by a written instrument duly executed by both parties.

Dated this _____ day of _____, 2012.

For the City of Oak Harbor:

_____

D. Scott Dudley, Mayor

_____

Edgar J. Green

Attest:

_____

Nacelle J. Heuslein, Interim City Clerk

Approved as to Form:

_____

Grant K. Weed, Interim City Attorney

L:\LGLB\Civil 2012\Police Chief Employment Contract.doc

City of Oak Harbor
City Council Agenda Bill

Bill No. 3.
Date: October 16, 2012
Subject: Fairway Point PRD Modification – To Consider ADU's within Division 4 - Closed Record Review

FROM: Steve Powers, Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill requests City Council approval of a modification to the Fairway Point Planned Residential Development (PRD) Division 4 to add accessory dwelling units (ADU's) to the basements of house plans for up to six remaining lots to be developed. The modification is requested by the owner FP4, L.L.C. represented by Mr. Kendall Gentry.

REVIEW PROCESS

Please note this is a quasi-judicial process and a closed record review. As such the City Council must decide if the record justifies the recommendation of the Planning Commission under the applicable provisions of the municipal code. After review of the record, the City Council may approve, disapprove or remand the decision to the Planning Commission to take additional evidence.

AUTHORITY

The City Council has authority under RCW 58.17 to regulate the subdivision of land, promote the effective use of land, and to adequately provide for the housing needs of the citizens of the state. The Washington State Growth Management Act (RCW 36.70A) requires that counties and cities adopt zoning and other development regulations that are consistent with their adopted Comprehensive Plans. The Washington Growth Management Act encourages innovative techniques of land development, including PUDs or PRD's[1]. The City of Oak Harbor's Comprehensive Plan contains policies regarding PRD's in both the Land Use Element and the Housing Element of the Plan. The Planning Commission has the authority to review plans and hold a public hearing on PRDs and form a recommendation to City Council under the Oak

[1] http://www.mrsc.org/subjects/planning/lu/plannedunitdev.aspx

Harbor Municipal Code (OHMC) Sections 19.31.210 and 19.31.220. The City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230.[1]

SUMMARY STATEMENT

In the City of Oak Harbor accessory dwelling units are permitted on all residential properties with an administrative permit. Fairway Point PRD is a subdivision consisting of 180 lots located on the north side of Ft. Nugent Avenue, and west of Whidbey Golf and Country Club. As the subdivision is a PRD, the development of the subdivision is tied to specific approved plans. The applicant is requesting to modify the PRD plans of Fairway Point to add ADU's to the basements of house plans for up to six remaining lots to be developed within Division 4.

Project Information

Developer:	Landed Gentry Development
Owner:	FP4, L.L.C. (Division 4)
Location:	West Ft. Nugent Avenue, west of Whidbey Golf & Country Club.
Zoning:	R-1 Single-family Residential
Comprehensive Plan:	Low-Density Residential
Site Area:	8.4 acres
Units:	40 single family residential lots
Density:	4.76 du/acre for Division 4

DISCUSSION

Background

On June 19, 2007 the City Council approved the Preliminary Plat and Preliminary and Final Planned Residential Development (PRD) plans for Fairway Point Division 4. With the adoption of Ordinance No. 1583 the City Council approved the PRD overlay zone for Division 4 on August 4, 2010 in association with the final plat (Attachment 1).

Process

Section 19.31.280 of the OHMC provides for modifications to PRD development plans. Modifications are classified as either minor or major depending upon the scope of change. In this case, as the applicant requests the addition of dwelling units to the subdivision, the modification is considered a major modification as it changes the approved density of the division. Major modifications to PRD plans require a public hearing and review by the Planning Commission who shall forward a recommendation to the City Council for consideration in a closed record meeting (OHMC 19.31.230). Such a modification is classified as a Type IV review process in the OHMC and is quasi-judicial in nature.

Proposal Description and Review

[1] 19.31.230 PRD development plan – Council decision.
The council shall hold a closed record meeting to consider the application. Council shall make one of the following decisions: approval as submitted, approval with conditions or denial. Council decisions on PRD permits shall be final unless appealed to the Island County superior court in accordance with Chapter 36.70C RCW.

The applicant is requesting to modify the PRD plans of Fairway Point to add ADU's to the house plans for up to six remaining lots to be developed within Division 4. A modification to these specific plans require legislative approval and seeks public input and comment through the PRD process. The applicant indicates in the narrative that the actual number of ADU's that are to be built will likely be lower than requested. As the modification process is somewhat lengthy, the applicant is seeking the maximum number of units to provide them with future flexibility. The applicant proposes the ADUs be attached.

The application was routed to city departments for review and comment. City staff analyzed transportation concurrency, addressing, solid waste, water meter size, and utility billing aspects of the project but had no substantial comments on the modification. The Development Services Department is tasked with reviewing the proposal for conformity with all applicable criteria and standards. This review is encompassed in the Planning Commission Reports (see below).

PLANNING COMMISSION REVIEW

The Planning Commission held public hearings on this matter on July 24, 2012, August 28, 2012, and September 25, 2012 (see Attachment 2 for the meetings' staff reports). Concerns were raised by citizens about the increase in density in the neighborhood at the July and August Planning Commission meetings (see Attachment 3 for meeting minutes). The Planning Commission decided to continue the public hearing the subsequent month's meeting in both instances. At the end of the August 28, 2012 meeting, the Planning Commission chose to close the public hearing on the matter after extensive public comment at both the July and August meetings and continue deliberation on the item at the September meeting. By taking such action, no additional public testimony was taken at the September meeting.

The Planning Commission deliberated the matter at the September meeting and ultimately decided to recommend approval to the City Council for ADU's to be allowed on four (Lots 173-176) of the six lots proposed. The Planning Commission determined that allowing ADU's on the remaining two lots (Lots 171 and 172) would be incompatible with the adjacent existing homes and homeowners of Fairway Point PRD Division 2. In order to make it perfectly clear which lots the Planning Commission is recommending approval of ADU's for, staff revised Exhibit A of the draft ordinance to indicate the recommended lots as well as updated the draft ordinance to reflect the same (see Attachment 4).

The July and August reports to the Planning Commission contain staff's analysis and review of the proposal against applicable criteria and standards. As this agenda bill was completed prior to October 16th, only draft minutes from the September 25th meeting are provided.

PUBLIC NOTICE

A City Council Agenda, advertising the City Council closed record review for this matter on October 16, 2012 was published in the Whidbey News Times on September 29, 2012.

CONCLUSION

The City Council is tasked with reviewing the record of the project in a closed record meeting and making a decision on the application. The Council shall make one of the following decisions:

approval as submitted, approval with conditions or denial.

The criteria for review of a major modification to a PRD is listed under OHMC 19.31.200 through 19.31.230 and an analysis of the request by staff and the Planning Commission is included in the record. The analysis concluded that the only change to approved plans or regulations is the modification to density on Sheet A1.1 of the Preliminary and Final PRD Drawing Set dated June 7, 2006 and the reference to the former in Ordinance No. 1583. Otherwise, the request is in conformance with all applicable criteria and standards in the OHMC and the approved PRD plans, resolutions and ordinances. The approval of a modification to the PRD plans for Fairway Point Division 4 will allow the applicant to apply for the administrative ADU permits on a house-by-house basis.

The draft ordinance addressing the items noted above and other requirements of the OHMC and incorporating any conditions of approval recommended by the Planning Commission, and approving the proposed modification for Division 4 is attached for the City Council's consideration.

STANDING COMMITTEE REVIEW

This item was not reviewed by the Governmental Services Standing Committee as it is quasi-judicial in nature.

RECOMMENDED ACTION

1. Conduct the closed record review of the major modification to Fairway Point PRD Division 4.
2. Adopt Ordinance No. 1638 amending Ordinance No. 1583.

ATTACHMENTS

1. Ordinance No. 1583 - Approval of the PRD Overlay Zone for Fairway Point Division 4 dated August 4, 2010.
2. Planning Commission Staff Reports dated July 24, 2012, August 28, 2012 and September 25, 2012.
3. Planning Commission Minutes from the July 24, 2012, August 28, 2012, and September 25, 2012 (draft) meetings.
4. Ordinance No. 1638 amending Ordinance No. 1583.

MAYOR'S COMMENTS

Attachment 1

Ordinance No. 1583

Approval of the PRD Overlay Zone for Fairway Point Division 4 dated August 4, 2010

ORDINANCE NO. 1583

AN ORDINANCE APPROVING A PRD OVERLAY ZONE FOR THE FAIRWAY POINT DIVISION 4 PLANNED RESIDENTIAL DEVELOPMENT LOCATED ON ISLAND COUNTY PARCEL NUMBER R13204-152-1801 AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF OAK HARBOR TO REFLECT THE OVERLAY ZONE

WHEREAS, the City Council of the City of Oak Harbor has approved the Final Plat for the Fairway Point Division 4 Planned Residential Development ("PRD");

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

Section One: The zoning for the property generally known as the Fairway Point Division 4 PRD located on Island County Parcel Number R13204-152-1801 is hereby amended to add the Fairway Point Division 4 PRD Overlay Zone to the underlying zoning of R-1 Single-Family Residential.

Section Two: All development within the Fairway Point Division 4 PRD Overlay Zone shall be consistent with the Fairway Point Division 4 Final PRD as approved by the Oak Harbor City Council on June 19, 2007. Development standards not addressed by the Fairway Point Division 4 Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC. Development shall be to a maximum of 40 residential lots to be placed within the area described by the Fairway Point Division 4 PRD Final Plat.

Section Three: The official zoning map of the City of Oak Harbor is hereby amended to reflect the planned residential development subdistrict for the above mentioned property.

Section Four: 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 Five: Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law and upon recording of the Fairway Point Division 4 PRD Final Plat with the Island County Auditor.

PASSED by the City Council this 4th day of August, 2010.

(✓) APPROVED by its Mayor this 6th day of AUGUST, 2010.
( ) Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: AUGUST 11, 2010

Attachment 2

Planning Commission Staff Reports dated July 24, 2012, August 28, 2012, and September 25, 2012

Planning Commission

Staff Report

July 24, 2012

City of Oak Harbor Planning Commission Report

Date: July 24, 2012
Subject: Fairway Point PRD Modification – To Consider ADU's within the Subdivision

FROM: Melissa Sartorius, Associate Planner

PURPOSE

This report presents a request to Planning Commission for a modification to the Fairway Point Planned Residential Development (PRD) Division 4 to add accessory dwelling units (ADU's) to the basements of house plans for up to six remaining lots to be developed. The modification is requested by the owner FP4, L.L.C. represented by Mr. Kendall Gentry.

Initially the proposed modification was believed to affect Divisions 1-4 of the Fairway Point subdivision however upon further review it was determined that only an amendment to Division 4 would be required as the request changes the approved density for Division 4. The inclusion of ADU's within Divisions 1-3 does not exceed the approved density for those divisions and thus an amendment to their respective PRD plans is not required. However public noticing of the proposal and hearing was prepared and sent prior to the determination and encompassed all divisions. Subsequently, it should be clarified that the public hearing and action on this item is for Division 4 only.

AUTHORITY

The Washington State Growth Management Act (RCW 36.70A) requires that counties and cities adopt zoning and other development regulations that are consistent with their adopted Comprehensive Plans. The Washington Growth Management Act encourages innovative techniques of land development, including PUDs or PRD's[1]. The City of Oak Harbor's Comprehensive Plan contains policies regarding PRD's in both the Land Use Element and the Housing Element of the Plan. The Planning Commission has the authority to review plans and hold a public hearing on PRDs and form a recommendation to City Council under the Oak Harbor Municipal Code (OHMC) sections 19.31.210 and 19.31.220. The City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230.[2]

SUMMARY STATEMENT

In the City of Oak Harbor accessory dwelling units are normally permitted in all single family zoning districts with an administrative permit. Fairway Point PRD is a subdivision consisting of 180 lots located on the north side of Ft. Nugent Avenue, and west of Whidbey Golf and Country Club. As the subdivision is a PRD, the development of the subdivision is tied to specific

[1] http://www.mrsc.org/subjects/planning/lu/plannedunitdev.aspx

[2] 19.31.230 PRD development plan – Council decision.
The council shall hold a closed record meeting to consider the application. Council shall make one of the following decisions: approval as submitted, approval with conditions or denial. Council decisions on PRD permits shall be final unless appealed to the Island County superior court in accordance with Chapter 36.70C RCW.

approved plans. The applicant is requesting to modify the PRD plans of Fairway Point (Attachment 1) to add ADU's to the basements of house plans for up to six remaining lots to be developed within Division 4 (Attachment 2). A modification to these specific plans require legislative approval and seeks public input and comment through the PRD process.

Project Information

Developer:	Landed Gentry Development
Owner:	Fairway Point 1, Inc. (Divisions 1-3) and FP4, L.L.C. (Division 4)
Location:	West Ft. Nugent Avenue, west of Whidbey Golf & Country Club.
Zoning:	R-1 Single-family Residential
Comprehensive Plan:	Low-Density Residential
Site Area:	44.4 acres (total site)
Units:	180 single family residential lots (total site)
Density:	3.8 dwelling units per acre (total site), 4.9 du/acre for Divisions 1,1a, 2, and 3, and 4.76 du/acre for Division 4
Open Space:	4.44 acres (total site)

DISCUSSION

Background

On May 22, 2007, the Planning Commission recommended approval of the Preliminary and Final PRD for Fairway Point Division 4 to the City Council subject to Conditions of Approval. On June 19, 2007 the City Council approved the same. The City Council approved the PRD overlay zone for Division 4 on August 4, 2010 in association with the final plat (Attachment 3).

Accessory Dwelling Units (ADU)

The OHMC defines an accessory dwelling unit (ADU) as "a habitable living unit added to, created within or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation." ADU's are commonly known as mother-in-law apartments or cottage apartments and are essentially a second dwelling unit created on a lot. Typically they are auxiliary to and smaller than the main dwelling unit. ADU's are recognized in urban planning for providing solutions for affordable housing and infill development within urban areas[1]. ADU's are addressed under section 19.42 of the OHMC which requires administrative permits from the Development Services Department ADUs within city limits. ADU's are required to meet the criteria listed in the code.

Planned Residential Development (PRD)

According to the Municipal Research and Services Center of Washington (MRSC), "a planned unit development (PUD) is a large, integrated development, developed under unified control according to a master plan, and located on a single (or contiguous) tract of land. Some jurisdictions provide for planned residential developments (PRDs) which are similar, master-planned, and typically clustered development, but are limited to residential uses."[2] Local PRD development regulations provide more planning flexibility than traditional zoning. They typically offer applicants regulatory flexibility in return for higher quality site and architectural design

[1] http://www.mrsc.org/publications/texadu.aspx
[2] http://www.mrsc.org/subjects/planning/lu/plannedunitdev.aspx

with the intent of encouraging the design of a more complete and sustainable neighborhood environment. "The Washington Growth Management Act encourages innovative techniques of land development, including PUDs and PRDs. A PRD is master planned, but the PRD process cannot, by itself, create legal lots of record. Legal lots within the PRD must be created through the subdivision process. In general, the PRD is a voluntary option, available in many Washington communities."[1]

The PRD regulations of the OHMC (Section 19.31.010) offer applicants regulatory flexibility in return for higher quality site and architectural design with the intent of encouraging the design of more complete and sustainable neighborhood environments consistent with Oak Harbor's comprehensive plan. The PRD regulations allow and promote design flexibility, pedestrian-oriented development, interconnectivity among uses, sensitivity to the natural environment and natural features, and the coordination of development with adequacy of public facilities.

The PRD overlay zone essentially modifies the regulations of the existing zoning district. Because legal lots of record must be created through the subdivision process, the approval process for a PRD subdivision often creates several approval documents (ordinances/resolutions) distinguishing the plat from the PRD plans. The modification process must include a public input process for homeowners.

Process

Section 19.31.280 of the OHMC provides regulations for modifications to PRD development plans. Modifications are classified as either minor or major depending upon the scope of change. In this case, as the applicant requests the addition of dwelling units to the subdivision, the modification is considered a major modification as it changes the approved density of the subdivision. Major modifications to PRD plans require a public hearing and review by the Planning Commission who shall forward a recommendation to the City Council for consideration in a closed record meeting (OHMC 19.31.230). Such a modification is classified as a Type IV review process in the OHMC and is quasi-judicial in nature.

Proposal Description and Review

The applicant proposes a maximum of an additional six dwelling units to Division 4. The applicant indicates in the narrative that the actual number of ADU's that are to be built will likely be lower than requested. As the modification process is somewhat lengthy, the applicant is seeking the maximum number of units to provide them with future flexibility. The applicant proposes the ADU be attached and be located in the basements of two of their specific house plans; the Maxwelton and Whidbey. The proposal includes plans showing the lots eligible for ADU's, lots that are already built on, floor plans including exterior elevations for the two house models, and an example of a typical house plan on a lot proposed for an ADU (Attachment 2).

The application was routed to city departments for review and comment. City staff analyzed transportation concurrency, addressing, solid waste, water meter size, and utility billing aspects of the project but had no substantial comments on the modification. The Development Services Department is tasked with reviewing the proposal for conformity with all applicable criteria and

[1] http://www.mrsc.org/subjects/planning/lu/plannedunitdev.aspx

standards. The following details that review:

Density

As the number of dwelling units is proposed to change, the density[1] would also change. City staff reviewed the current and proposed density for the overall subdivision and for the approved divisions to ensure that as proposed, it would not exceed the maximum for the R-1 zoning district. Density for the R-1 zoning district ranges from a minimum of three dwelling units per acre (du/ac) to a maximum of six du/ac.

The current density for Divisions 1, 1a, 2, and 3 was approved by Ordinance No. 1421 and is 4.9 du/ac. Using a maximum of 29 ADU's, the proposed density for these divisions would be 4.69 du/ac (140+29=169/36=4.69). The proposed density is less than the approved density and therefore does not require an amendment to the PRD.

The current density for Division 4 as approved by Ordinance 1583 (Attachment 3) is 4.76 du/ac (see the *Project Info* on Sheet A1.1 of Attachment 1). Using a maximum of 6 ADU's (as shown on the proposed PRD plan- Attachment 2), the proposed density for these divisions would be 5.47 du/ac (40+6=46/8.4=5.48). The proposed density is more than the approved density and therefore an amendment to the PRD is required.

PRD Review Criteria

The OHMC states that major modifications shall be reviewed under the same process as outlined under OHMC 19.31.200 through 19.31.230. This section of code outlines the Planning Commission and City Council review processes. The City Council review process is listed under Footnote 2 on Page 1 of this report. OHMC 19.31.210 outlines the Planning Commission's review process as the following:

(1) The PRD development plan shall be considered at a public hearing before the planning commission.

The public hearing on this proposal is scheduled for June 26, 2012.

(2) Upon receipt of the PRD development plan, the planning commission shall examine such plan and determine whether it conforms to all applicable criteria and standards.

OHMC 19.31.250(1) requires "all lots or other divisions of a subdivided PRD shall remain subject to compliance with the PRD development plan regardless of the fact of subdivision under OHMC Title 21 or subsequent conveyance of such individual lots or divisions, unless a minor or major modification has been approved."

City staff have reviewed the modification against the existing approved PRD plans (Attachment 1). Ordinance 1583 approving the PRD overlay zone for Fairway Point Division 4 on August 4,

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[1] 19.08.245 Density. "Density" means the number of dwelling units divided by the gross acre.

2010 (Attachment 3), requires that all development within the Fairway Point Division 4 PRD Overlay Zone be consistent with the that division's PRD as approved by the Oak Harbor City Council on June 19. 2007. Development standards not addressed by Division 4's PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC. Staff reviewed this drawing set and the Project Info on Sheet A1.1 lists the density as 4.76 lots/acre. In order to conform to all applicable criteria and standards, Ordinance 1583 shall be amended to reflect the proposed density change of 5.48 for this division.

As the applicant is proposing ADU's within the basements of house plans that fit within the existing building envelopes for the PRD (Attachment 2) and are not detached ADU's, no compatibility issues with setbacks, lot coverage, landscaping, or other appear to exist. Compatibility with these items and those criterion listed in OHMC 19.42 (ADU section of code) will be addressed on a permit-by-permit basis during administrative review of each ADU. Staff analysis of the PRD criteria are listed under #4 below.

As proposed, the modification only changes the density listed on the face of the plans. All other provisions and approvals remain as shown. No other changes to the PRD development plans are proposed.

(3) In the event the planning commission determines that the development plan does not conform to these criteria and standards, they may require such changes in the proposed project or impose such conditions of approval as are, in its judgment, necessary to ensure conformity.

The Planning Commission may add conditions of approval to staff's recommendation below as they see necessary to ensure conformity.

(4) The planning commission shall review the project to determine if it is consistent with the criteria in OHMC 19.31.170.

The criteria from 19.31.170 are primarily for new PRD development however staff identified that the following criteria are applicable to the proposed modification:

> **(1) Aside from the specific regulations, requirements or standards proposed to be varied, the project otherwise meets the requirements of the Oak Harbor Municipal Code.**
>
> *As previously mentioned, city staff have reviewed the modification with the requirements of the OHMC and have determined that all requirements are met or will be met.*
>
> **(6) The PRD shall comply with all of the following adopted standards:**
>
> **(a) The requirements of OHMC Title 21, Subdivisions. Variations from the requirements in OHMC Title 21 may be requested and reviewed as part of the PRD application. Other than the specific standards being varied from, PRDs must meet all applicable standards of OHMC Title 21, including the general design standards (Chapter 21.50 OHMC) and the residential design standards (Chapter 21.60 OHMC).**

No variations from Title 21 are being requested as part of the modification.

(b) The standards and requirements of this chapter. If there is a conflict between the standards of this chapter and the standards in OHMC Title 21, the standards in this chapter shall take precedence.

There are no conflicts between Chapter 19.31 and Title 21 for the proposed modification.

(c) The Oak Harbor comprehensive plan policies.

As previously mentioned, the Oak Harbor Comprehensive Plan contains two policies regarding PRD's; one in the Land Use Element and the other in the Housing Element of the Plan.

> ***Land Use Element***
> ***Goal 2, Policy 2a: Encourage planned residential development (PRDs) with performance based standards.***
>
> ***Housing Element***
> ***Island County Goals and Policies***
> ***Policy F: Provide for PRDs to include either attached or detached housing units, while preserving rural character.***

(d) The design guidelines and regulations, if applicable.

The design guidelines and regulations are not applicable to this particular modification. ADU criteria exists within Section 19.42 of the OHMC.

(e) All other standards adopted by the city of Oak Harbor, including engineering details and drawings.

No specific standards as adopted by the City are applicable to this modification.

PUBLIC NOTICE

The Planning Commission was to hold a public hearing on this matter on June 26, 2012 however the meeting was cancelled due to lack of a quorum. Subsequently, the Planning Commission held the public hearing at their next meeting on July 24, 2012.

A Notice of Public Hearing, advertising the Planning Commission public hearing for June 26, 2012 was published in the Whidbey News Times on June 9, 2012. A Notice of Application also stating the public hearing date of June 26th was published in the Whidbey News Times on June 9, 2012. A combined Notice of Application and of Public Hearing was sent to all of the property owners within the subdivision and within 300 feet of the subdivision on June 8, 2012.

A Notice of Public Hearing, advertising the Planning Commission public hearing for July 24, 2012 was published in the Whidbey News Times on July 7, 2012. A revised Notice of Public Hearing was sent to all of the property owners within the subdivision and within 300 feet of the

subdivision on July 6, 2012.

CITIZEN COMMENTS

As of the date of this report, no written comments on the proposal by citizens have been received.

CONCLUSION

Staff has reviewed the PRD modification and has determined it to be in conformance with all applicable criteria and standards in the OHMC, the prior approved PRD development plans, and the approved resolutions and ordinances. The approval of a modification to the PRD plans for Fairway Point Division 4 will allow the applicant to apply for the administrative ADU permits on a house-by-house basis.

Since PRD's are tied specifically to the plans approved for the project and any modifications to these plans if approved must also become part of the official record of the subdivision, staff recommends that only Sheet 1 of 1 titled *ADU Modification to Fairway Point PRD* dated June 5, 2012 (Exhibit A) be approved with the draft ordinance so that the modification to the PRD is clearly shown. The draft ordinance addressing the items noted above and other requirements of the OHMC, and approving the proposed modification for Division 4 is attached for the Planning Commission's consideration.

RECOMMENDATION

Staff recommends that Planning Commission take the following actions:

- Accept public comments on the proposed modification and close the public hearing.
- Recommend approval of the draft ordinance amending Ordinance No. 1583 to City Council.

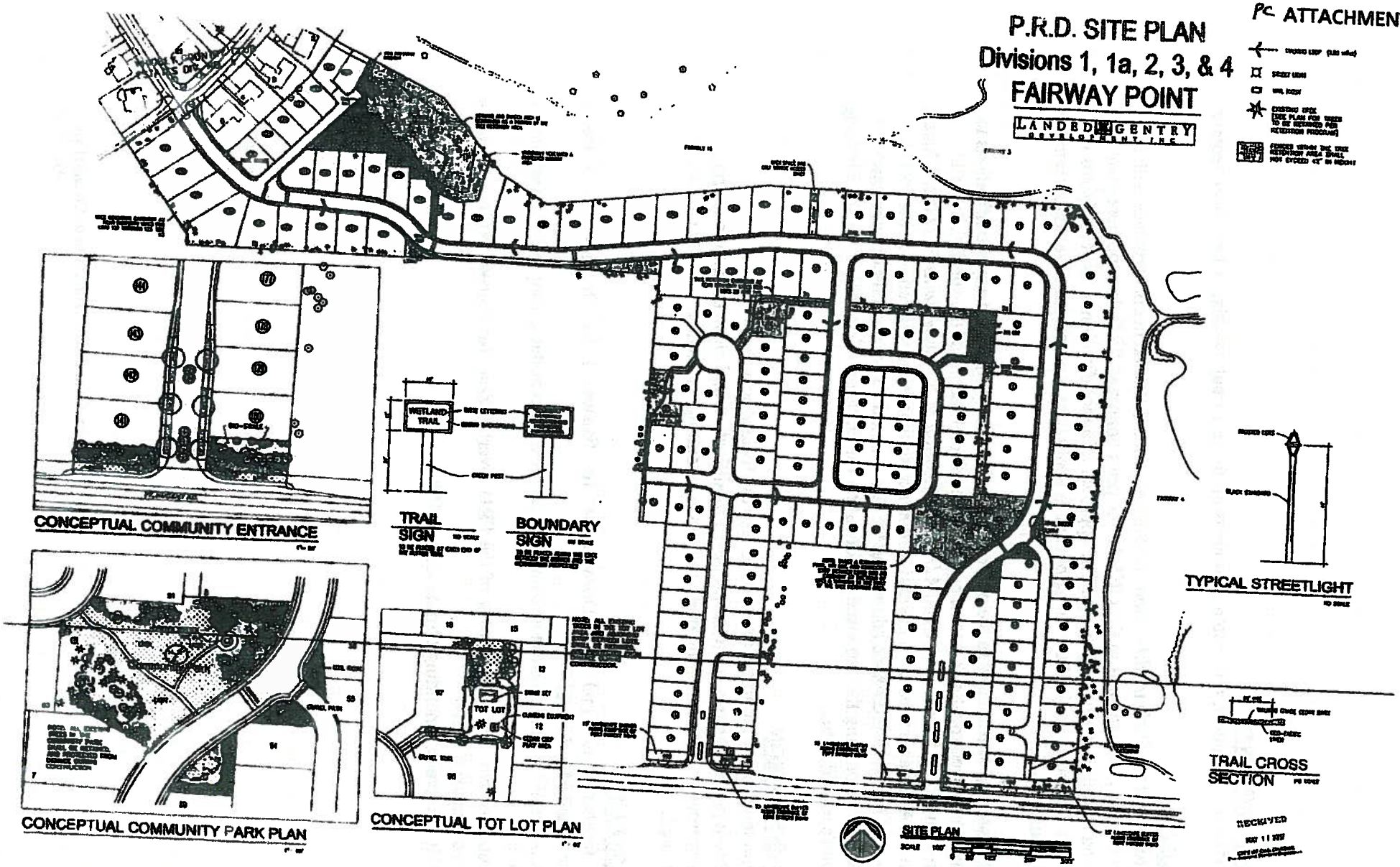
ATTACHMENTS

1. Preliminary and Final PRD Drawing Set for Fairway Point Division 4 – 5 sheets, Submitted May 17, 2007.
2. Proposed PRD Modification as submitted by the applicant dated May 9, 2012 and June 5, 2012.
3. Ordinance No. 1583 - Approval of the PRD Overlay Zone for Fairway Point Division 4 dated August 4, 2010.
4. Draft Ordinance amending Ordinance No. 1583.

PC ATTACHMENT 1

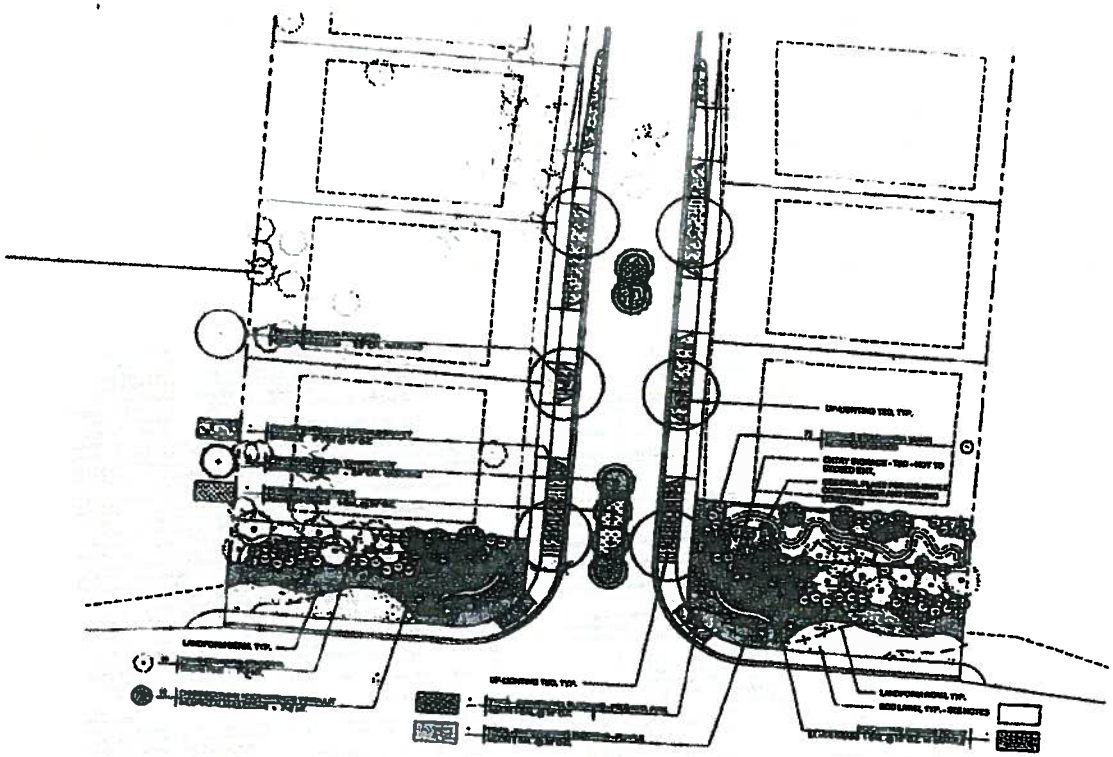
P.R.D. SITE PLAN
Divisions 1, 1a, 2, 3, & 4
FAIRWAY POINT

LANDED GENTRY DEVELOPMENT, INC.



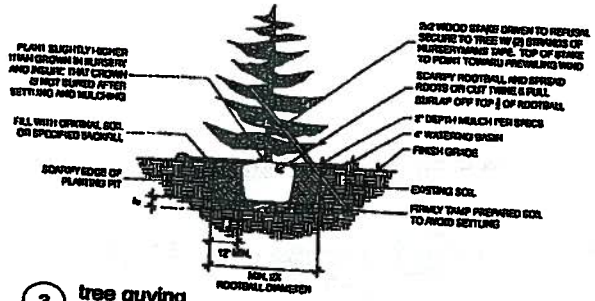
RECEIVED

ATTACHMENT 1

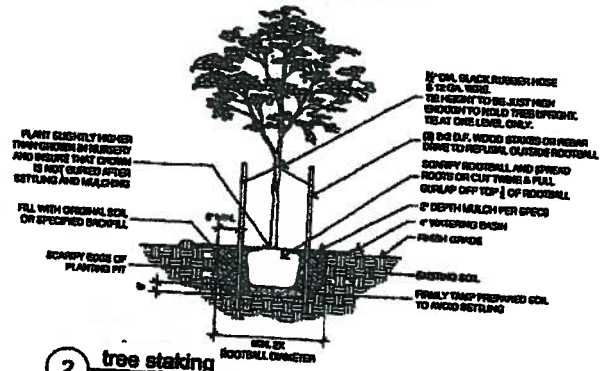


1 LANDSCAPE TRACT SITE PLAN
SCALE: 1"=20'-0" (1"=40' @ 50% REDUCTION)

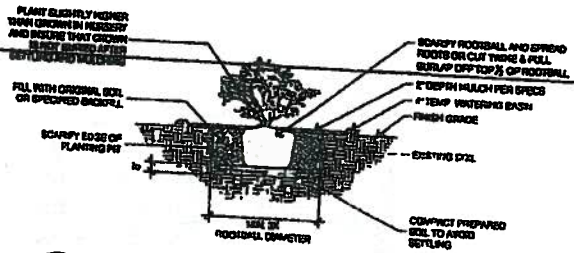
north



3 tree guying
SCALE: 1" = 10'-0"



2 tree staking
SCALE: n/a



1 shrub & ground cover
SCALE: n/a

EXHIBIT 1

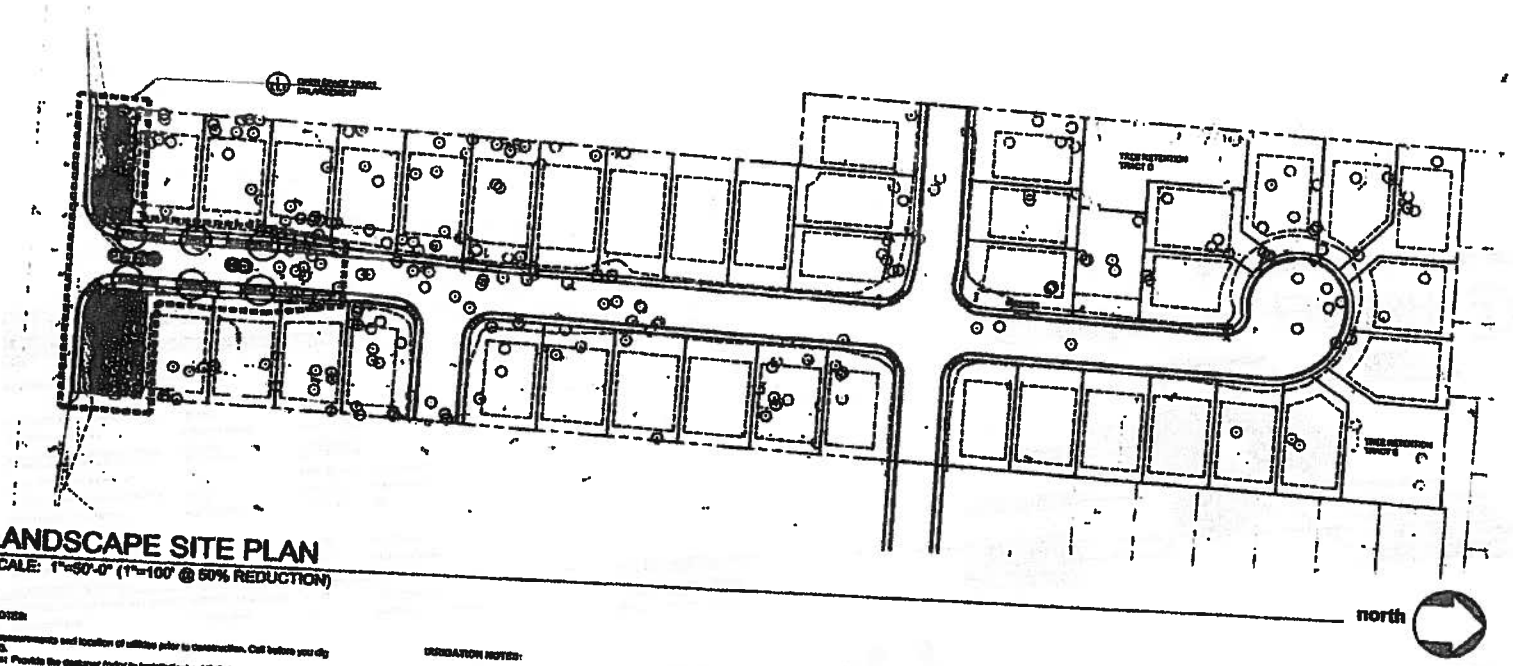
Fairway Point - phase 4
Entrance @ Ft. Nugent Rd.
Oak Harbor, WA
LANDED GENTRY
HOMES AND COMMUNITIES

FAIRWAY POINT

planting plan & details

L1.1

ATTACHMENT 1



1 LANDSCAPE SITE PLAN
SCALE: 1"=50'-0" (1"=100' @ 50% REDUCTION)

PLANTING NOTES:

1. Verify all measurements and location of utilities prior to construction. Call before you dig 1.800.424.5555.
2. Submittal: Provide the designer (prior to installation) a 1-Qt. sample of imported soil mix, compost and mulch prior to installation for review and approval. Label product and provide documentation of sample i.e. supplier, content, etc.
3. Contractor is to abide by all local, state, and federal guidelines, codes, regulations and industry standards.
4. Storing or stockpiling of material soil is not permitted under existing tree drip line, within the wetland or its buffer.
5. Review specific plant quantities and varieties prior to installation. Plant condition shall be taken from the plan. Plant material shall be provided by the contractor as specified or greater. Any substitutions must be approved in writing.
6. All plant material shall be healthy, vigorous, vigorous of growth, free of any defects, diseases and any form of infestation. Plant material shall meet American Standard for Nurserymen Stock (ASNS) requirements.
7. Plant locations are approximate and may need adjustment according to completed field conditions.
8. Prior to planting the designer must review plant material condition and location. The designer has the right to reject any plant material.
9. Import Soils only as required to restore grades following site and building construction. Imported stored topsoil may be used as supply allows. On site soil must be approved by designer prior to installation.
10. Beds & Tree Pregs: Planting areas shall receive a minimum 4" composted material (Cedar Grove or equal). Prior to applying compost all planting beds shall be rototilled to a min. 6-10" depth. Remove all debris and stones greater than 1". The composted material shall be rototilled into the soil to a minimum depth of 6-10". Rototill into the soil in conjunction with organic mineral Gypsum "Floor Grade" as available at a rate as suggested by manufacturer.
11. Lawn Prep: Areas shall receive a minimum 6" 3-way mix (50% sand & 25% composted material) and stones greater than 1". The 3-way mix shall be rototilled into the soil to a minimum depth of 6-10". Rototill into the soil in conjunction with 3-way mix Gypsum "Floor Grade" as available at a rate as suggested by manufacturer. All lawn areas shall be raked, compacted with Outside Lines of a rate as suggested by manufacturer. All lawn areas shall be raked, compacted with weighted roller and all debris and stones greater than 1" shall be removed.
12. Sod Installation: All lawn areas shall be prepared, see lawn prep above. Sod shall be Eco-Mix or equal. Prior to applying 3-way mix all lawn areas shall be rototilled to a min. 6-10" depth. Remove all debris and any form of infestation. Plant material shall meet American Standard for Nurserymen Stock (ASNS) requirements. Sod shall be installed prior to and placed, after soil is prepared soil and stage so that ends are staggered with edges firmly pressed against each other. Trim and re-seeded. Roll and with roller half filled with water. Water daily (or as needed) until establishment.
13. Hydroseed Installation: All lawn areas shall be prepared, see lawn prep above. Seed mix shall be Outside, OF Mono Co. or equal.
14. All slopes greater than 3:1 shall be protected with jute mesh following installation.
15. All planted areas shall receive a min. of 6" mulch composted material (Cedar Grove or equal) or at the grade wood-chips. Provide the designer (prior to installation) a 1/2 Qt. sample of material.
16. Stake all trees and shrubs greater than 36. In height immediately following installation.
17. Shatty the roots of all container plants prior to installation.
18. Prepare all container material in container suitable to hold a 5 gal. plant prior to installation.

IRRIGATION NOTES:

1. Irrigation system shall be of MAX design in nature.
2. Contractor shall review with designer layout of valves and watering zone landscape beds, lawn, etc.
3. The irrigation system will provide suitable water to all landscape plantings for a minimum of 2 growing seasons following the initial plantings. Definition of growing season shall be April to September.
4. The following components shall constitute the minimum requirements for the irrigation system.
   a. Install automatic watering system, double check valve and associated plumbing to per applicable local codes.
   b. All beds with landscape plantings shall receive either spray heads (min. 6" pop-up) or micro-irrigation. No stationary rotor shall be used.
   c. Stationary piping shall be school, 40 1120" min. depth
   d. Lateral line shall be class 200 min 50" dia.
   e. Automatic timer shall be outdoor mounted with locking cabinet. Verify location.
   g. Co-ordinate with general contractor above locations in utilities and drawings. Sleeves shall be school, 4" PVC min.

* Contractor shall warranties planting and irrigation construction from defects for a minimum of one year starting from date of completion. Completion date established once owner or designer provide written confirmation on completed punch-list items.

TREE RETENTION STATISTICS:

TOTAL NUMBER OF EXISTING TREES	297
TOTAL NUMBER OF EXISTING TREES RETAINED	29
PERCENTAGE OF EXISTING TREES RETAINED	9.8%
MINIMUM REQUIRED PERCENTAGE OF EXISTING TREES TO BE RETAINED PER CODE	15.0%
MINIMUM REQUIRED NUMBER OF TREES TO BE RETAINED PER CODE	29
DEFICIENCY OF RETAINED TREES	13
MINIMUM ADDITIONAL TREES REQUIRED PER 2:1 REPLACEMENT POLICY, PER CODE	26
NUMBER OF REPLACEMENT TREES PROPOSED	44
TOTAL NUMBER OF TREES RETAINED OR REPLACED	69

legend

EXISTING TREE TO BE REMOVED SEE CIVIL PLANS FOR SIZE AND TYPE

EXISTING TREE TO REMAIN SEE CIVIL PLANS FOR SIZE AND TYPE

NOTES:
1. ALL GRADES TO BE FIELD VERIFIED.
2. ALL SOFTSCAPE ELEMENTS (LAWN, PLANTING BEDS ETC.) SHALL BE FIELD LOCATED AND VERIFIED.
3. PLANT LOCATIONS TO BE LOCATED BY LANDSCAPE ARCHITECT

ABBREVIATIONS

TOW - TOP OF WALL	ALT. - ALTERNATE
BOW - BOTTOM OF WALL	CIP - CAST IN-PLACE CONCRETE
TOS - TOP OF STAIR	SCH. - SCHEDULE
BOS - BOTTOM OF STAIR	TYP. - TYPICAL
MAX. - MAXIMUM	W/ - WITH
SIM. - SIMILAR	STL. - STEEL
EA. - EACH	L.P. - LOW POINT

EXHIBIT E

RECEIVED
FEB 15 2007

Fairway Point - phase 4
Entrance @ Ft. Nugent Rd.
Oak Harbor, WA
LANDED GENTRY HOMES AND COMMUNITIES

planting plan
project: 2007.01
date: 02.06.07

L1.0

Pc ATTACHMENT 1

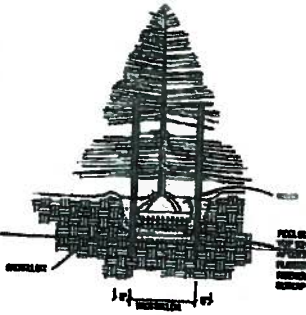
Notes:

1. AT COMMON PROPERTY LINES WITH ANOTHER RESIDENCE OR COMMON OPEN SPACE NOT LISTED BELOW: A TYPE "A" SOLID CEDAR FENCE NOT EXCEEDING 6' IN HEIGHT IS ALLOWED
2. WITHIN TREE RETENTION AREA: FENCED ALONG THE TREE RETENTION AREA SHALL NOT EXCEED 42" IN HEIGHT

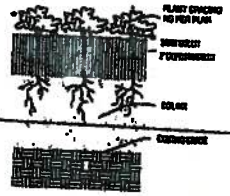
Homeowner Options A-B

Notes:

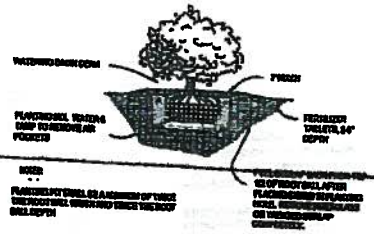
1. AT COMMON PROPERTY LINES WITH ANOTHER RESIDENCE OR COMMON OPEN SPACE NOT LISTED BELOW: A TYPE "A" SOLID CEDAR FENCE NOT EXCEEDING 6' IN HEIGHT IS ALLOWED
2. WITHIN TREE RETENTION AREA: FENCED ALONG THE TREE RETENTION AREA SHALL NOT EXCEED 42" IN HEIGHT



Tree Planting Detail



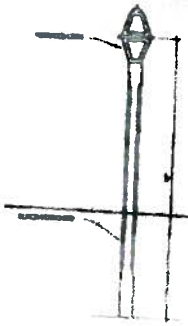
Ground cover installation



Shrub Planting Detail

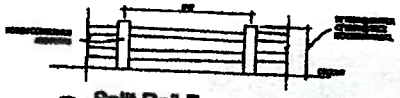
(A) 6' Cedar Fence Elevation

FENCE: FOR USE AROUND AND BEHIND RESIDENCES FOR PRIVACY



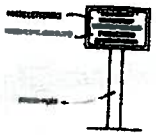
Typical Streetlight

NO SCALE



(B) Split Rail Fence

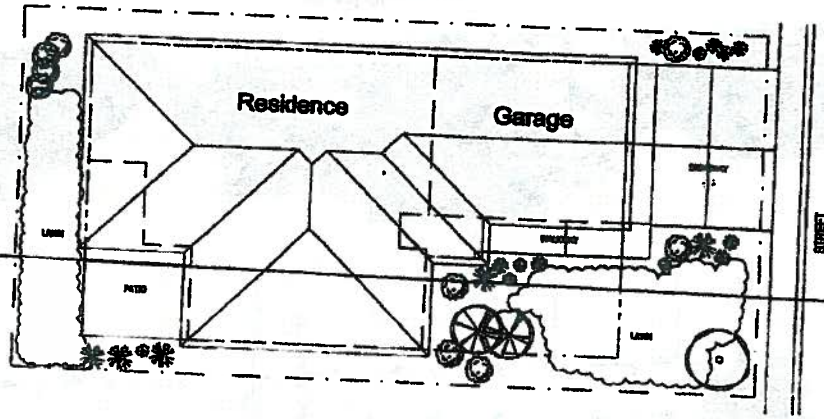
FOR USE ALONG THE REAR OF LOTS ADJACENT TO THE BUFFER AREA, AND ALSO ALONG THE REAR OF LOTS CONTAINING TREE RETENTION AREAS



Boundary Sign

NO SCALE

WILL BE PLACED ALONG THE EDGE BETWEEN THE BUFFER AND THE NEIGHBORING PROPERTIES



Typical Residential Landscape Plan

Residential Landscape Legend

EXHIBIT F

Fairway Point 4

OAK HARBOR, WASHINGTON, 98277

Landed Gentry - Communities and Homes

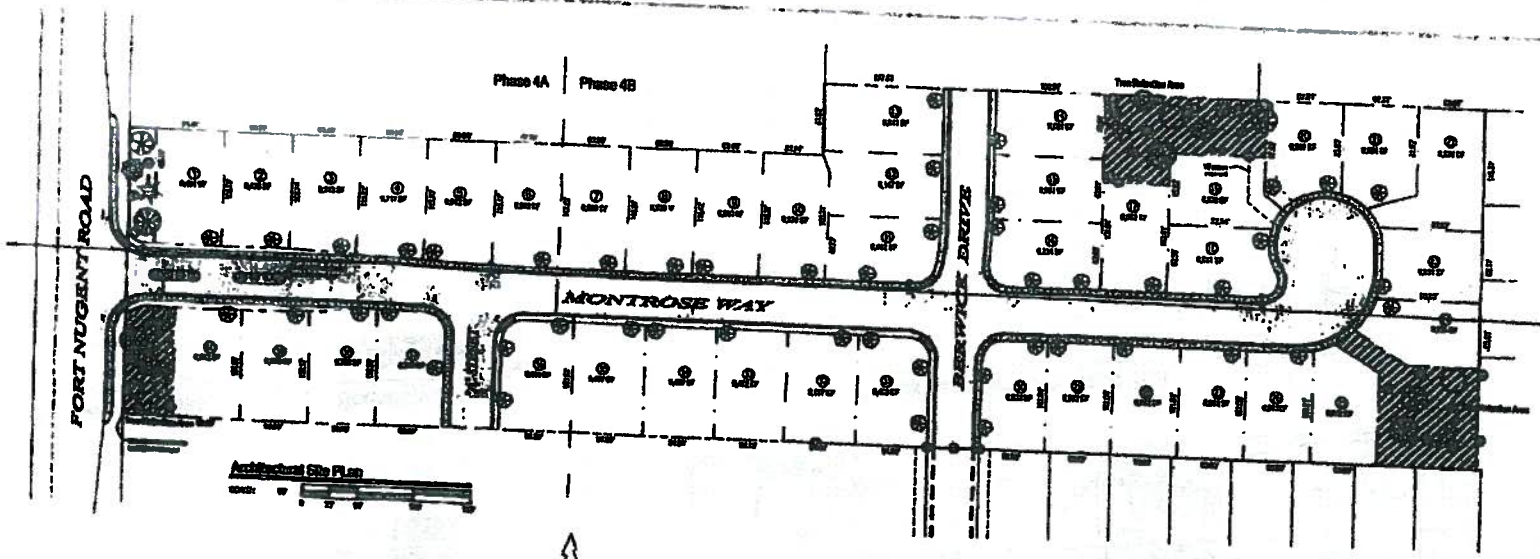
5016 E. Parkway
Bellingham, WA 98226
360-738-8273

RECEIVED
JUN 17 2021
CITY OF OAK HARBOR
Development Services Dept.

LANDSCAPE DETAILS

PROJ. 19-019
DWN
DATE 10-Sep-20
SHEET A3.1

ATTACHMENT 1



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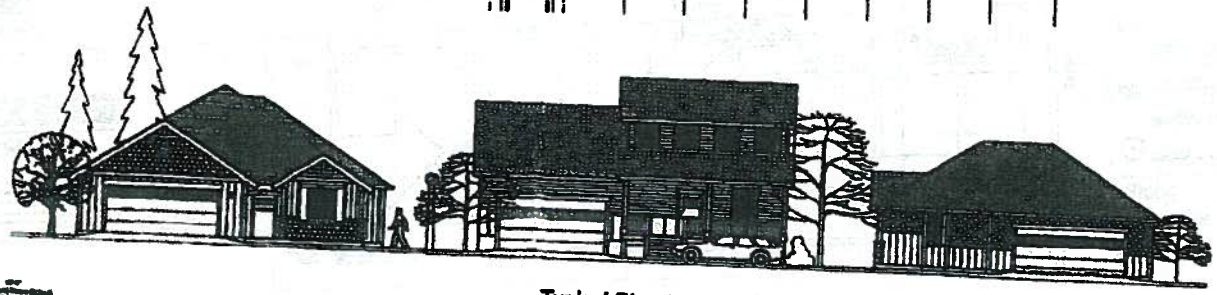
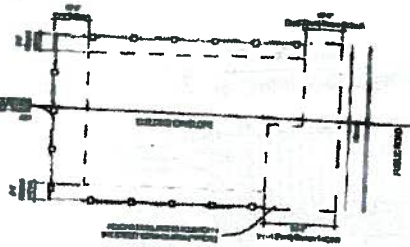


Typical Streetscape



Typical Building Envelope Plan

Drawing Index

Project Info

FAIRWAY POINT FOUR

LANDED GENTRY DEVELOPMENT, INC.

Landed Gentry - Communities and Homes

Fairway Point 4

OAK HARBOR, WASHINGTON, 98277

RECEIVED

ARCH SITE PLAN

SHEET A1.1

PC ATTACHMENT 2

LANDED GENTRY
HOMES AND COMMUNITIES

May 9, 2012

RECEIVED
MAY 9 2012
CITY OF OAK HARBOR
Development Services Dept.

Ms Melissa Sartorius
City of Oak Harbor
Planning Department
865 SE Barrington Drive
Oak Harbor, WA 98277

RE: Amendment to the Fairway Point PRD, Divisions 1, 3 & 4 to increase the density by the placement of Accessory Dwelling Units (ADU) on lots inside the PRD.

Melissa,

As we have been discussing for some weeks now, Landed Gentry Homes & Communities wishes to formally request an amendment to the above referenced divisions of Fairway Point PRD to allow the discreet placement of ADU's inside the project.

It is our understanding that an amendment process is necessary because we are requesting a PRD density change and it is a Review Process IV, heard by both the Planning Commission and City Council. We have determined through earlier research, provided by you, that there are approximately 50 more units available in Fairway Point before the maximum density is reached. Therefore, I am requesting that no more than 40 of the 80+ vacant lots in the three remaining phases be eligible for the placement of an ADU structure. An ADU permit could be applied for on any lot but only up to a maximum of 40 units. The actual number will most likely be much less but I would like the maximum flexibility since the amendment process is fairly cumbersome.

Some of the Fairway Point lots fall away from the street making basement homes fit those lots nicely. Our most likely first ADU application will be for Lot 174 in Phase 4, which we call the Maxwelton Basement plan. I am attaching the site plan, floor plans and elevations to illustrate how this unit will not be discernible from the street. The plan can either have an ADU or two additional bedrooms with fairly simple alterations. Both options are shown on the plan.

The attorney who drafted the association documents and CC&R's has told us that the current documentation for the PRD allows for these type units in the development without any changes.

Therefore, it is my understanding that if the City Council approves the PRD density change then on any lot that we would want to include an ADU, there is a separate administratively processed ADU permit that is processed with the building permit through your department.

Thank you for the effort that you have put into helping me cue up this application.

Sincerely,

Kendall Gentry

Old City Hall Bldg. • 504 E. Fairhaven • Burlington, WA 98233
(360) 755-9021 • Toll Free (877) 769-8070 • Fax (360) 755-9029
www.LandedGentry.com • #LANDE[illegible]

AC ATTACHMENT 2

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

CITY OF OAK HARBOR
Development Services Department

RECEIVED
1 2012
CITY OF OAK HARBOR
Development Services Department

Application Form

Project Name:
FAIRWAY POINT PID AMENDMENT

Type(s) of Application:
Increase Density on an approved PRD

Description of Proposal:
To Add to permit "Accessory Dwelling Unit ADU" within the existing PRD, Phases 1, 4 &

APPLICANT NAME/CONTACT PERSON (or legal representative): KENDALL GENTRY	**Address:** 504 E. FAIRHAVEN AVE BURLINGTON WA 98233
E-mail Address: Kendall@KendallGentry.	**Phone and Fax:** 360-661-3812
PROPERTY OWNER NAME (list multiple owners on a separate sheet): FAIRWAY POINT I, INC FP 4, LLC & RP Fakkema/Ryan Kingma	**Address:** C/O 504 E Fairhaven Ave Burlington, WA 98233
E-mail Address: Same as Applicant	**Phone and Fax:**
ENGINEER/SURVEYOR: NOT APPLICABLE	**Address:** —
E-mail Address: —	**Phone and Fax:** —
PROJECT SITE INFORMATION (address/location): SEE ATTACHED MAP	**Comp. Plan Designation:** Low Density Residential
Zoning: R-1	**Parcel Number(s):**
Legal Description (attach separate sheet):	**Acreage of Original Parcel(s):**
Section/Township/Range: Sec 4 / Twp 32N / Rge 1 EWM	**Total Square Footage of Proposed Building or Number of Units:** MAXIMUM ADDITIONAL UNITS 40

AUTHORIZATION:
The undersigned hereby certifies that this application has been made with the consent of the lawful property owner(s) and that all information submitted with this application is complete and correct. False statements, errors, and/or omissions may be sufficient cause for denial of the request.

I declare under penalty of the perjury laws that the information I have provided on this form/application is true, correct and complete.

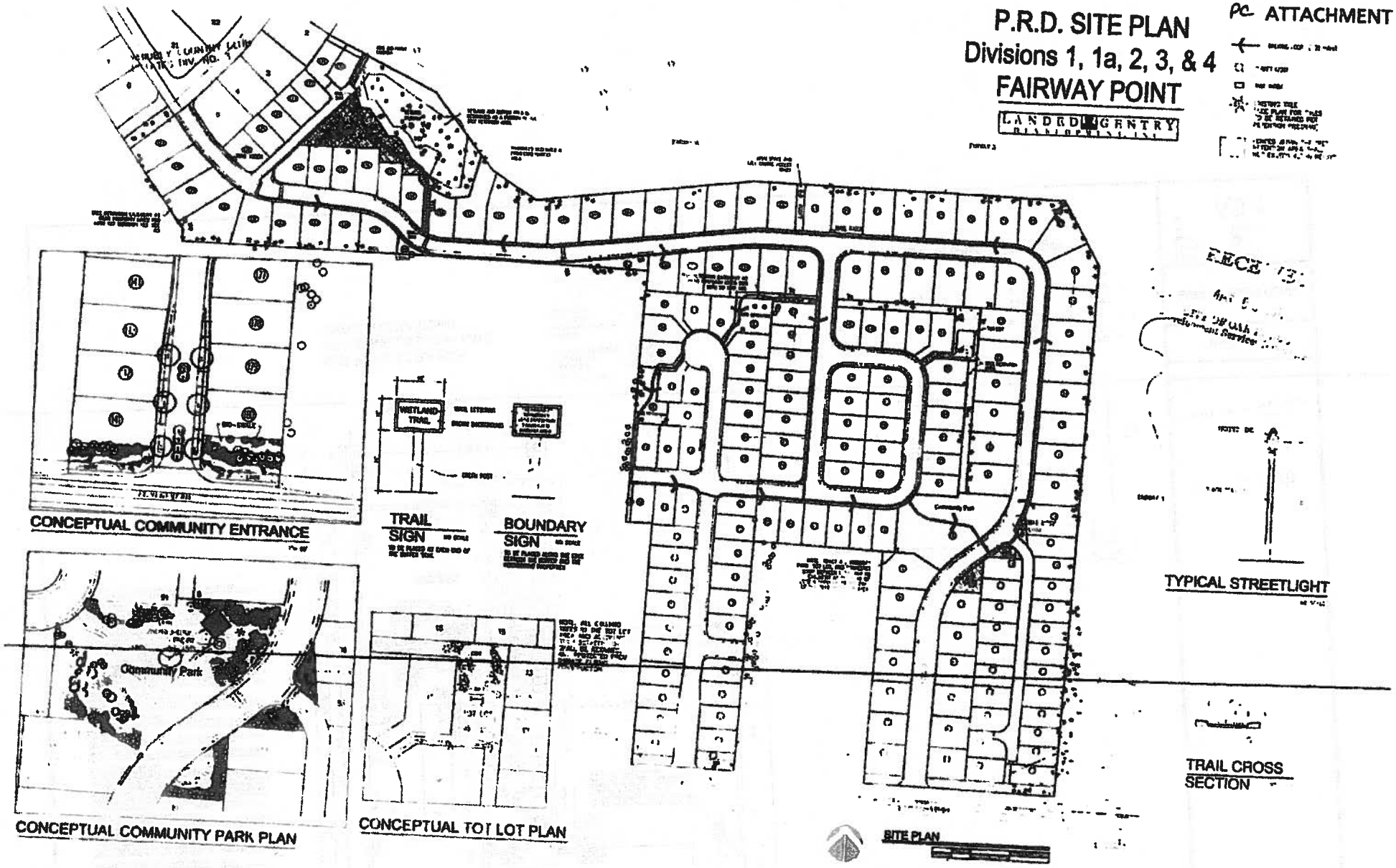
Kendall D Gentry — 5/9/12
Authorized Signature — **Date**

C:\Users\kgentry\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\TM6QR0T\Application Form.doc
REV: 8/1/12

P.R.D. SITE PLAN
Divisions 1, 1a, 2, 3, & 4
FAIRWAY POINT

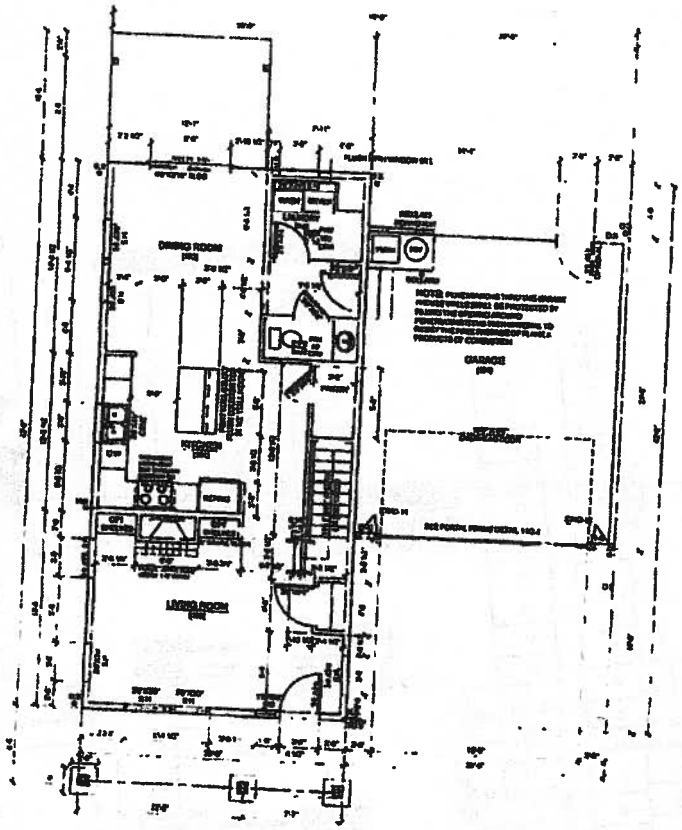
LANDRED GENTRY

PC ATTACHMENT 2



SAFETY

GENERAL REQUIREMENTS



MAIN FLOOR

SEE PAGE 3.3/3.4 FOR BRACEWALLS LOCATIONS AND CALCULATIONS

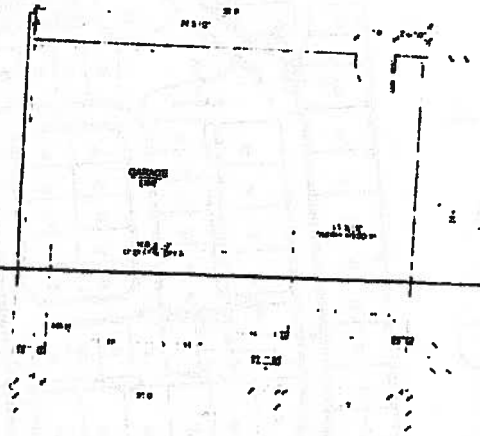
SQUARE FOOTAGE

MAIN FLOOR	940 SQ FT
UPPER FLOOR	1,134 SQ FT
TOTAL LIVING SPACE	1,134 SQ FT
GARAGE	418 SQ FT
3rd CAR GARAGE OPT	220 SQ FT
FRONT PORCH	48 SQ FT
BACK DECK	100 SQ FT

FOR USE DURING REDLINE WITH CUSTOMER ONLY VENDORS SEE ATTACHED DOCUMENT WITH ALL SELECTED OPTIONS.

PLANNING OPTIONS LIST

- [ ] MAN DOOR IN GARAGE
- [ ] THIRD CAR GARAGE
- [ ] ARCHES
  - [ ] KITCHEN / DINING ROOM
  - [ ] DINING ROOM / HALL
- [ ] BUILT IN SHELVES NEXT TO FIREPLACE



3RD CAR GARAGE OPTION

LANDED GENTRY

RECEIVED

WHIDBEY

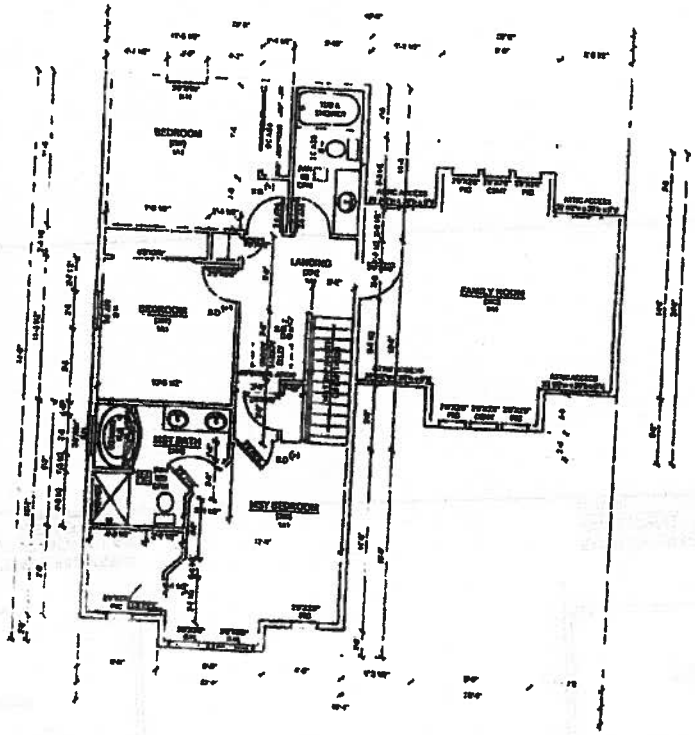
MAIN FLOOR PLAN

A3.1

PC ATTACHMENT 2

SAFETY

GENERAL REQUIREMENTS



UPPER FLOOR PLAN

SQUARE FOOTAGE

MAIN FLOOR	640 SQ. FT
UPPER FLOOR	1,154 SQ. FT
TOTAL LIVING SPACE	1,804 SQ. FT
GARAGE	400 SQ. FT
3rd CAR GARAGE OPT.	220 SQ. FT
FRONT PORCH	40 SQ. FT
BACK DECK	100 SQ. FT

FOR USE DURING REDLINE WITH CUSTOMER ONLY VENDORS SEE ATTACHED DOCUMENT WITH ALL SELECTED OPTIONS.

PLANNING OPTIONS LIST

- ARCHES
  - MASTER BEDROOM HALLWAY
  - MASTER BATHROOM TUB

LANDED GENTRY

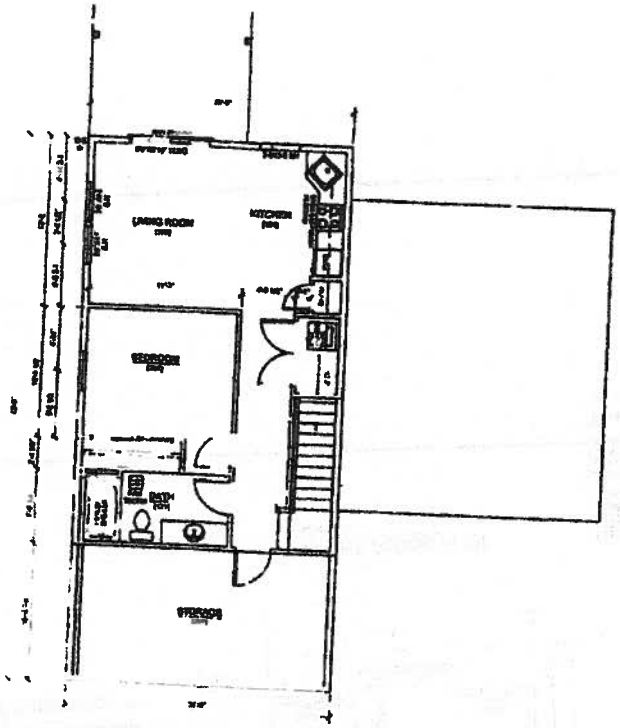
RECEIVED

WHIDBEY

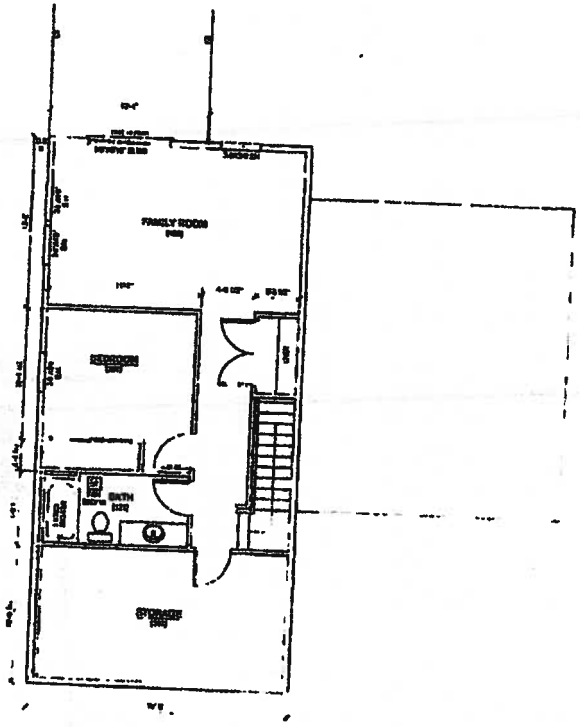
UPPER FLOOR PLAN

A3.2

PC ATTACHMENT 2



ACCESSORY DWELLING OPTION
BASEMENT FLOOR PLAN



FAMILY ROOM OPTION
BASEMENT FLOOR PLAN

LANDED GENTRY

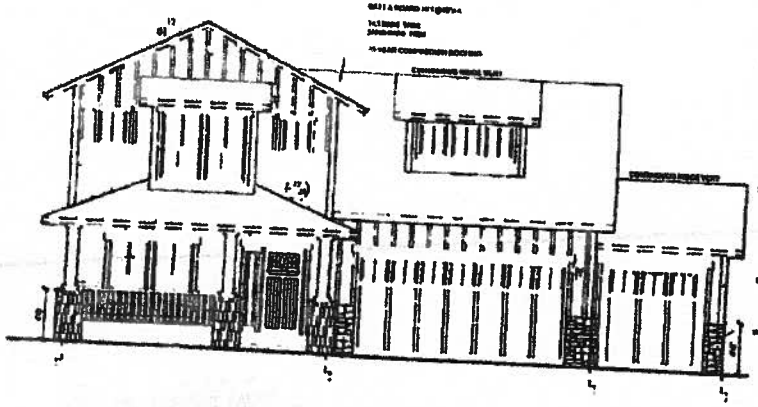
RECEIVED

WHIDBEY

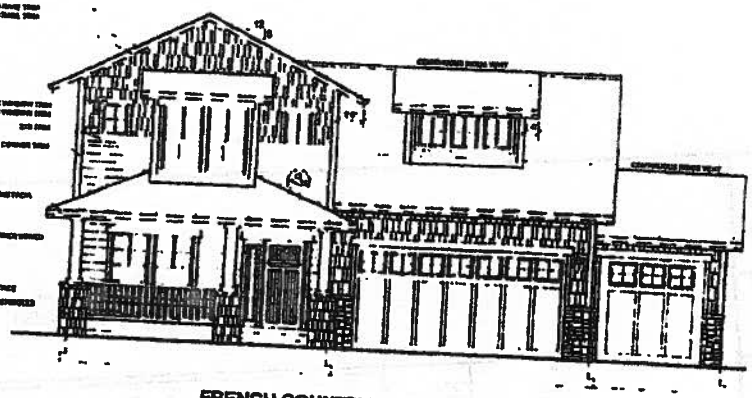
BASEMENT FLOOR

A3.3

AC ATTACHMENT 2

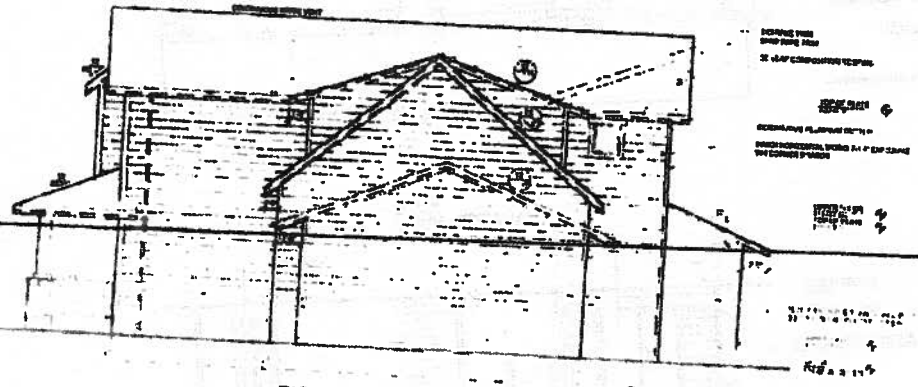


CRAFTSMAN ELEVATION



FRENCH COUNTRY ELEVATION

GENERAL



RIGHT SIDE ELEVATION

LANDED GENTRY

RECEIVED

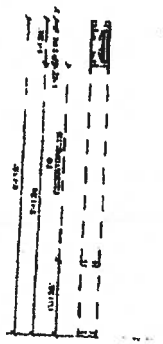
2017

WHIDBEY

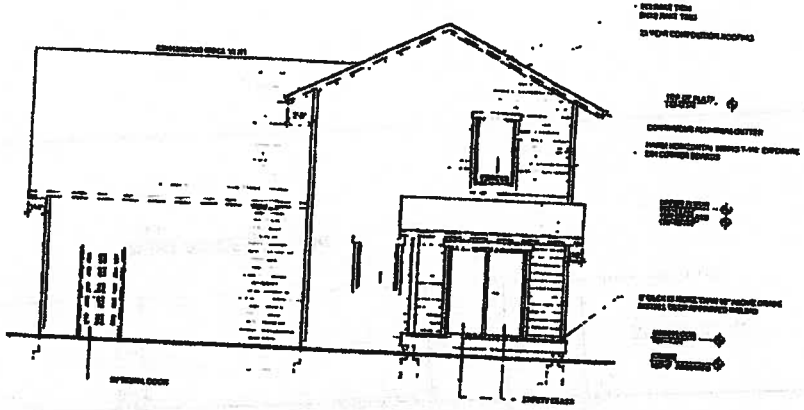
ELEVATIONS

A6.1

ATTACHMENT 2

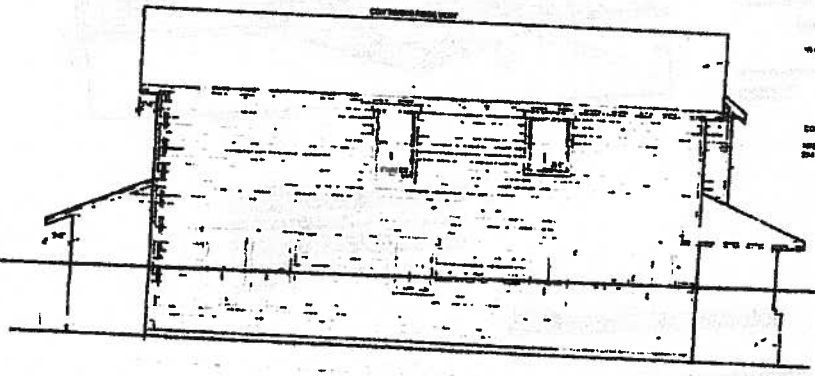


8'-1 1/8" TYPICAL WALL



REAR ELEVATION

9'-1 1/8" TYPICAL WALL



LEFT SIDE ELEVATION

LANDED GENTRY

RECEIVED

WHIDBEY

ELEVATIONS

A6.2

PC ATTACHMENT 2

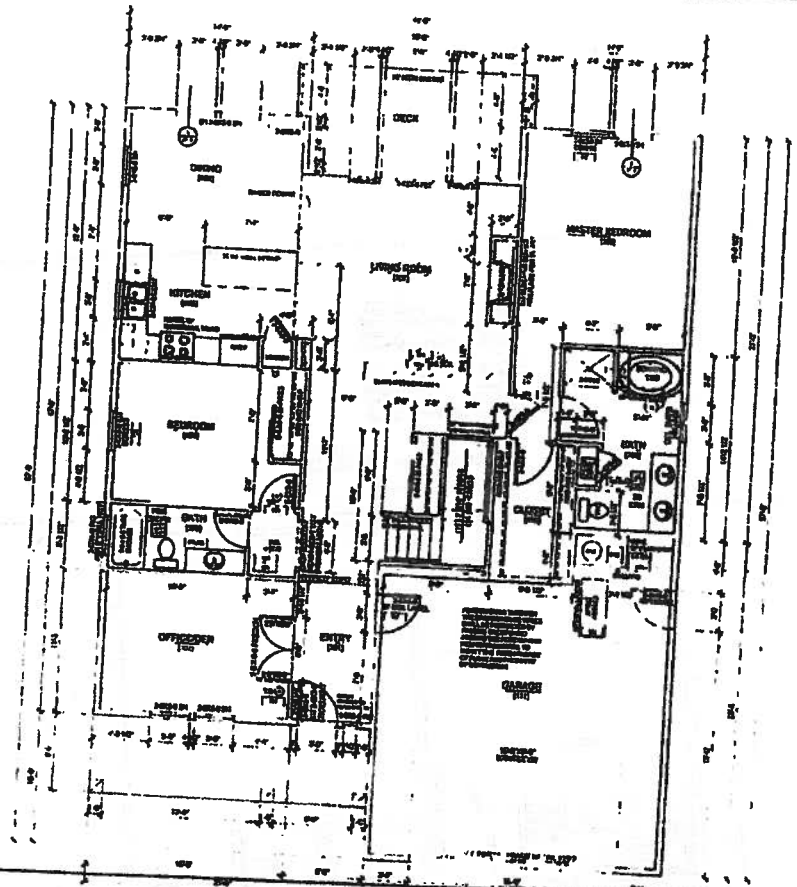
SAFETY

GENERAL REQUIREMENTS

FOR USE DURING REDLINE WITH CUSTOMER ONLY
VENDORS SEE ATTACHED DOCUMENT WITH ALL
SELECTED OPTIONS.

PLANNING OPTIONS LIST

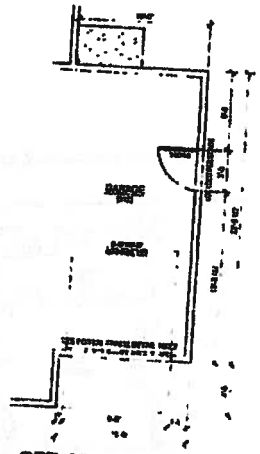
- | | PULL DOWN ATTIC ACCESS LADDER
- | | 3'-0" EXTERIOR DR IN GARAGE
- | | FRONT BEDROOM vs DEN/STUDY
- | | LIGHT STORAGE ATTIC TRUSSES
- | | ARCHES
  - | | ENTRY HALLWAY
  - | | MASTER BATH TUB



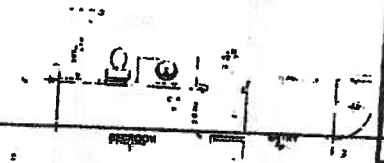
MAIN FLOOR PLAN

SQUARE FOOTAGE

MAIN FLOOR	[illegible] SQ FT
BASEMENT	[illegible] SQ FT
[illegible]	[illegible] SQ FT
TOTAL LIVING SPACE	[illegible] SQ FT
GARAGE	622 SQ FT
3rd CAR GARAGE OPT	294 SQ FT
MONTFORT H	[illegible] SQ FT
FOX DECK	[illegible] SQ FT



OPT. 3RD CAR GARAGE



BEDROOM OPTION

LANDED GENTRY

RECEIVED

CITY OF [illegible]
Development Services Department

MAXWELTON BASEMENT

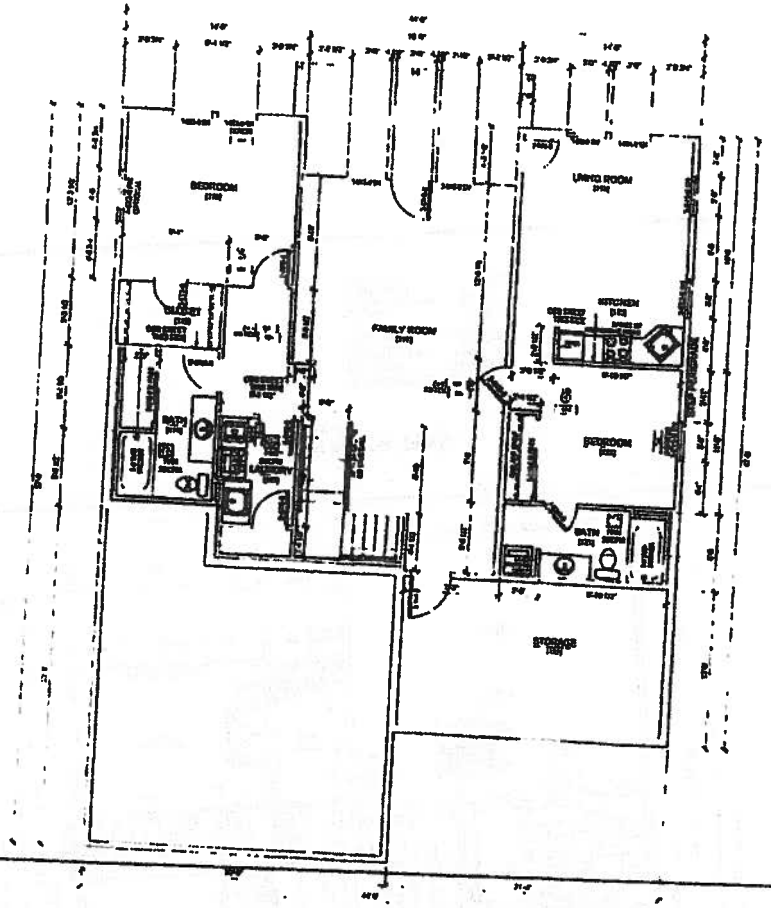
MAIN FLOOR PLAN

A3.1

PC ATTACHMENT 2

SAFETY

GENERAL REQUIREMENTS



BASEMENT FLOOR PLAN

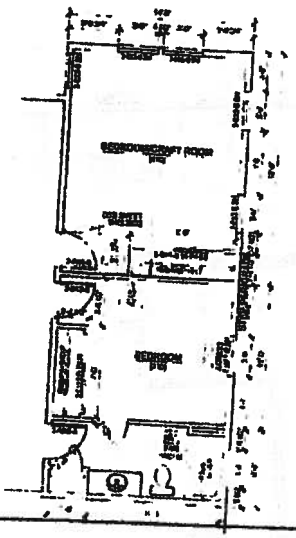
SQUARE FOOTAGE

FOR USE DURING REDLINE WITH CUSTOMER ONLY
VENDORS SEE ATTACHED DOCUMENT WITH ALL
SELECTED OPTIONS.

PLANNING OPTIONS LIST

| | 4'-0" x 2'-0" WINDOW IN BEDROOM

| | BEDROOMS INSTEAD OF ADU



BASEMENT BEDROOM OPTIONS

LANDED GENTRY

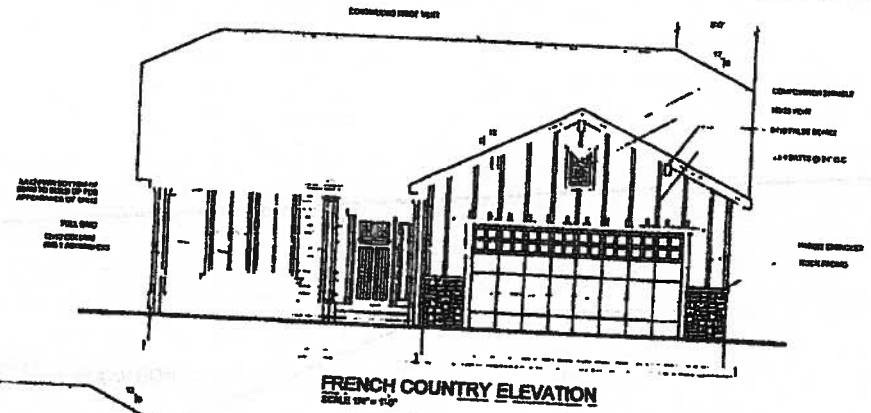
RECEIVED

MAXWELTON BASEMENT

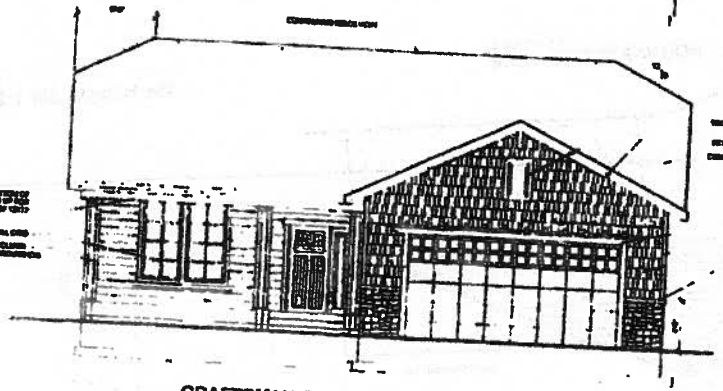
BASEMENT

A3.2

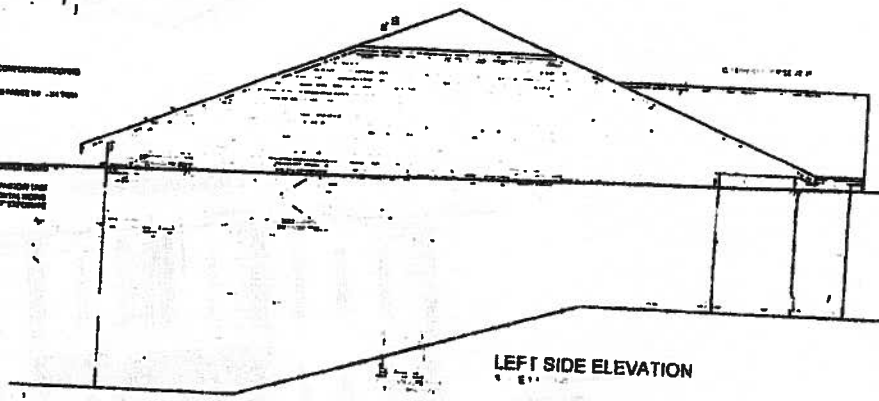
PC ATTACHMENT 2



FRENCH COUNTRY ELEVATION



CRAFTSMAN ELEVATION



LEFT SIDE ELEVATION

GENERAL

LANDED GENTRY

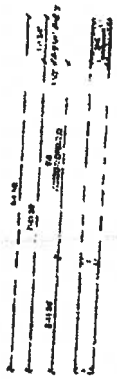
RECEIVED

MAXWELTON BASEMENT

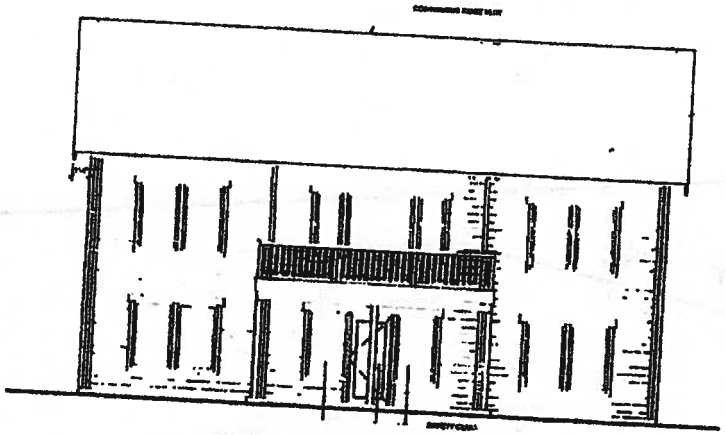
ELEVATIONS

A6.1

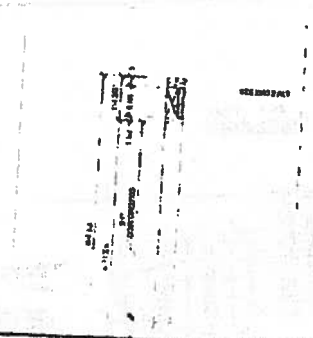
PC ATTACHMENT 2



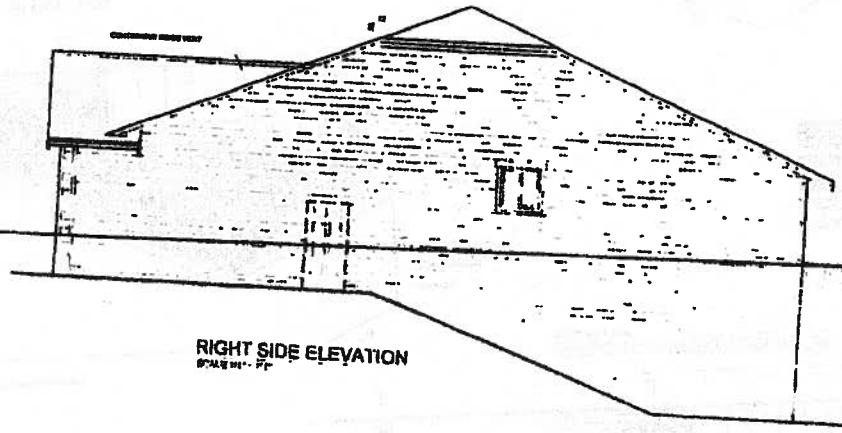
9'-1 1/8" TYPICAL WALL



REAR ELEVATION



8'-1 1/8" TYPICAL WALL



RIGHT SIDE ELEVATION

LANDED GENTRY

RECEIVED

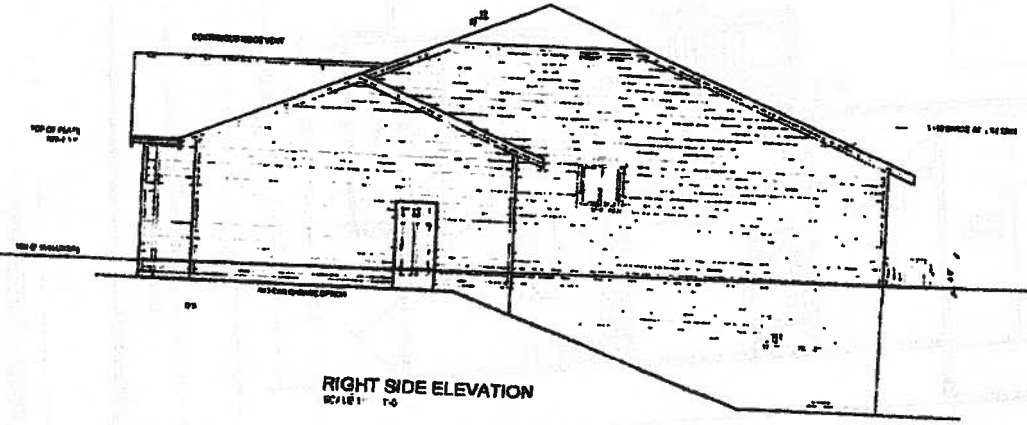
MAXWELTON BASEMENT

ELEVATIONS

A6.2

PC ATTACHMENT 2

FRENCH COUNTRY 3RD CAR ELEVATION



RIGHT SIDE ELEVATION

LANDED GENTRY

RECEIVED

JUN 2017

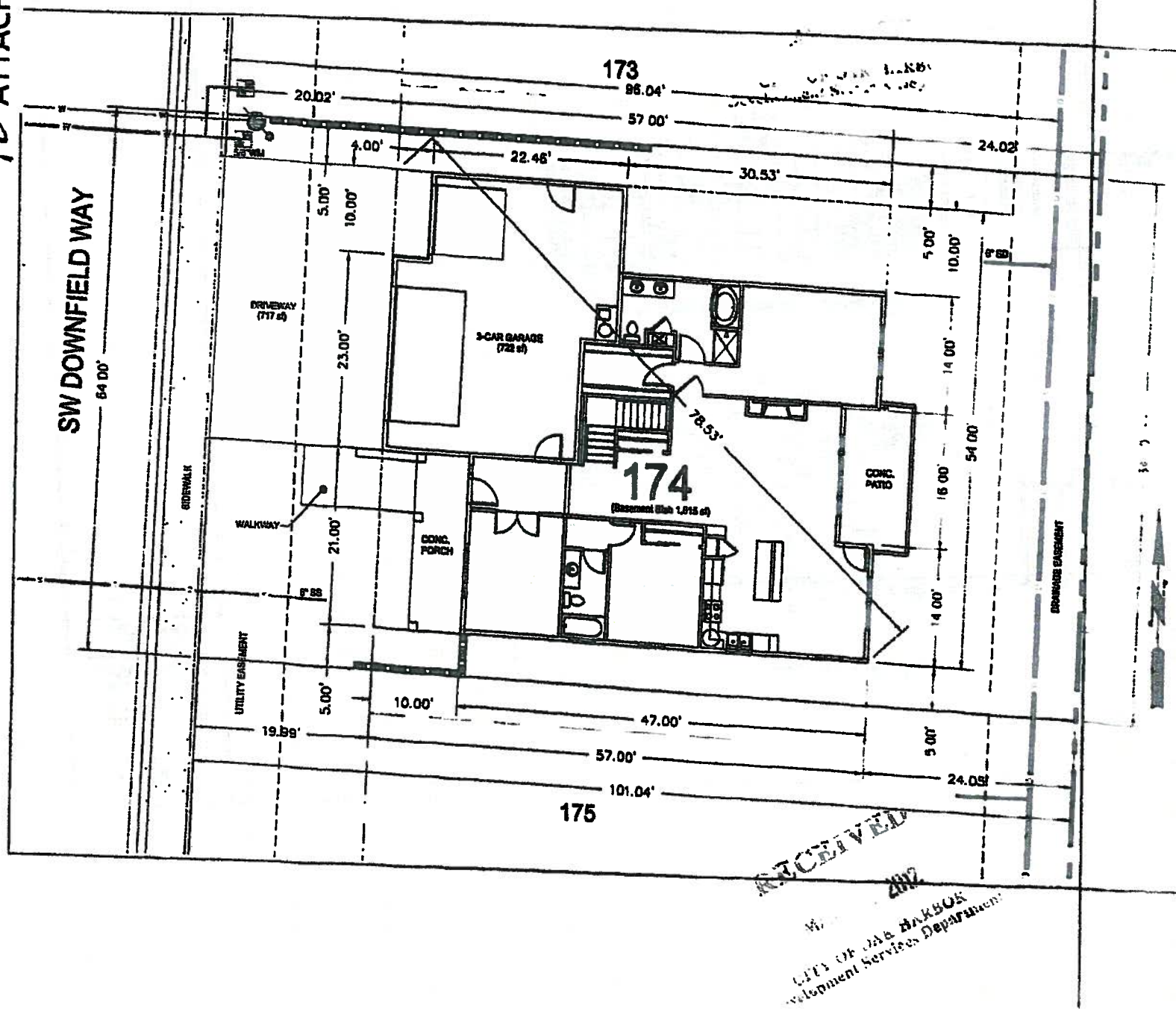
MAXWELTON BASEMENT

3RD CAR GARAGE ELEVATIONS

A6.3

pc ATTACHMENT 2

RECEIVED



RECEIVED

CITY OF LAKE HAVASU
Development Services Department

LANDED GENTRY
HOMES AND COMMUNITIES

GENERAL NOTES

OWNER:
LANDED GENTRY
204 E. FAIRHAVEN
BURLINGTON, WA
98233
1-(360)-755-9021

BUILDING AREAS:
MAIN FLOOR 1,668 SF
BASEMENT - 1,148 SF
BASEMENT ADU 490 SF
TOTAL LIVING AREA - 3,324 SF

GARAGE AREA 776 SF

SITE:
TYPICAL

ZONING:
PUD

SETBACKS:
ALL SETBACKS IN COMPLIANCE WITH CITY GUIDLINES
SIDEYARDS MIN 5'
REAR YARD MIN 10'
FRONT OF GARAGE TO STREET 20'

HEIGHT:
MAX. ALLOWED: 35'
PROPOSED UNDER

PARKING:
PARKING SPACES PROVIDED-
2 IN GARAGES, 2 IN DRIVEWAY

FAIRWAY POINT 4
MAXWELTON BASEMENT
(3-CAR GARAGE LEFT)

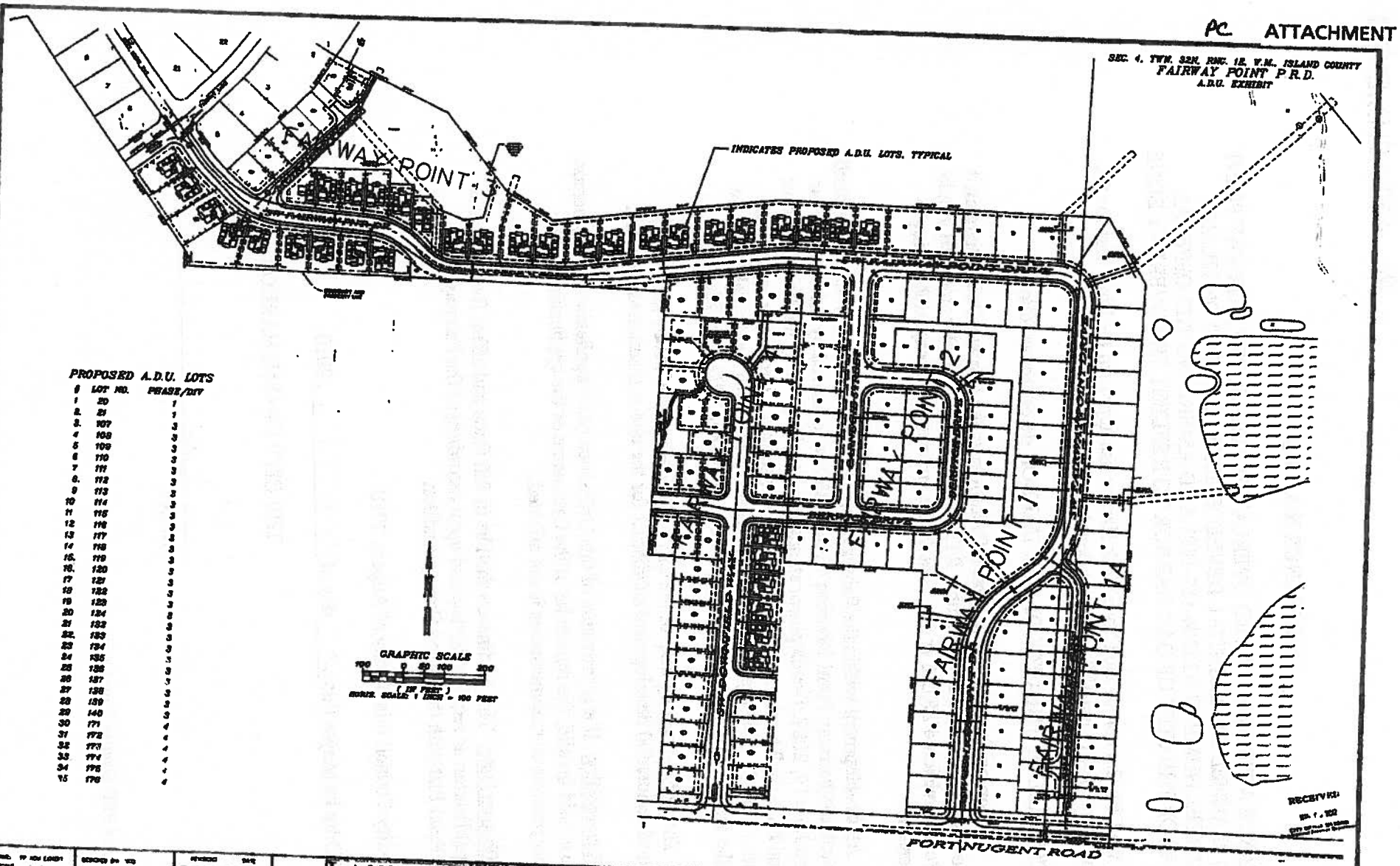
SITE PLAN
LOT 174
1752 SW DOWNFIELD WAY

0' 5' 10'
GRAPHIC SCALE
1" = 10'

Date: 04/23/2012
SHEET: A1.1

PC ATTACHMENT 2

SEC. 4, TWN. 32N, RNG. 1E, W.M., ISLAND COUNTY
FAIRWAY POINT P.R.D.
A.D.U. EXHIBIT



PROPOSED A.D.U. LOTS

#	LOT NO.	PHASE/DIV
1	20	1
2.	21	1
3.	107	3
4	108	3
5	109	3
6	110	3
7	111	3
8.	112	3
9	113	3
10	114	3
11	115	3
12	116	3
13	117	3
14	118	3
15.	119	3
16.	120	3
17	121	3
18	122	3
19	123	3
20	124	3
21	132	3
22.	133	3
23	134	3
24	135	3
25	136	3
26	137	3
27	138	3
28	139	3
29	140	3
30	171	4
31	172	4
32	173	4
33	174	4
34	175	4
35	176	4

FILE NAME: FP ADU EXHIBIT
PLOT SCALE: 1:1
LAST REV DATE: 08/18/2015

DESIGNED BY: TCD
DRAWN BY: SDS
CHECKED BY: AG

REVISION | DATE

LANDED GENTRY
HOMES AND COMMUNITIES

SHEET DESCRIPTION
FAIRWAY POINT A.D.U. EXHIBIT

PROJECT
FAIRWAY POINT P.R.D.
OAK HARBOR, WASHINGTON
OWNER: FAIRWAY HOLDINGS, LLC, C/O LANDED GENTRY DEVELOPMENT, INC. (360) 733-4031

1 of 1

RECEIVED
AUG 1 , 2015
CITY OF OAK HARBOR
COMMUNITY DEVELOPMENT

ORDINANCE NO. 1583

AN ORDINANCE APPROVING A PRD OVERLAY ZONE FOR THE FAIRWAY POINT DIVISION 4 PLANNED RESIDENTIAL DEVELOPMENT LOCATED ON ISLAND COUNTY PARCEL NUMBER R13204-152-1801 AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF OAK HARBOR TO REFLECT THE OVERLAY ZONE

WHEREAS, the City Council of the City of Oak Harbor has approved the Final Plat for the Fairway Point Division 4 Planned Residential Development ("PRD");

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

Section One: The zoning for the property generally known as the Fairway Point Division 4 PRD located on Island County Parcel Number R13204-152-1801 is hereby amended to add the Fairway Point Division 4 PRD Overlay Zone to the underlying zoning of R-1 Single-Family Residential.

Section Two: All development within the Fairway Point Division 4 PRD Overlay Zone shall be consistent with the Fairway Point Division 4 Final PRD as approved by the Oak Harbor City Council on June 19, 2007. Development standards not addressed by the Fairway Point Division 4 Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC. Development shall be to a maximum of 40 residential lots to be placed within the area described by the Fairway Point Division 4 PRD Final Plat.

Section Three: The official zoning map of the City of Oak Harbor is hereby amended to reflect the planned residential development subdistrict for the above mentioned property.

Section Four: 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 Five: Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law and upon recording of the Fairway Point Division 4 PRD Final Plat with the Island County Auditor.

PASSED by the City Council this 4th day of August, 2010.

( ) APPROVED by its Mayor this _____ day of _____, 2010.
( ) Vetoed

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

Published: [illegible]

ORDINANCE NO. _____

AN ORDINANCE, AMENDING ORDINANCE NO. 1583 WHICH APPROVED THE PLANNED RESIDENTIAL DEVELOPMENT (PRD) OVERLAY ZONE FOR FAIRWAY POINT DIVISION 4, AND APPROVING A MODIFICATION TO THE PRD PLANS FOR FAIRWAY POINT DIVISION 4 WITH RESPECT TO DENSITY ONLY TO ALLOW FOR THE INCLUSION OF ACCESSORY DWELLING UNITS (ADU) WITHIN THE FAIRWAY POINT PRD.

WHEREAS, although not specifically authorized in state statute, planned residential developments are encouraged by the Washington Growth Management Act as an innovative land development technique; and

WHEREAS, the City Council has authority under RCW 58.17 to regulate the subdivision of land, promote the effective use of land, and to adequately provide for the housing needs of the citizens of the state; and

WHEREAS, the City of Oak Harbor's Comprehensive Plan contains policies regarding PRD in both the Land Use Element and the Housing Element of the Plan and the City regulates PRD through Chapter 19.31 of the OHMC; and

WHEREAS, FP4, L.L.C. (current property owner) is requesting to modify the PRD plans of Fairway Point to add ADU to the basements of house plans for up to six remaining lots to be developed within Division 4; and

WHEREAS, accessory dwelling units are normally permitted in all single family zoning districts with an administrative permit however the inclusion of ADUwithin a PRD may change the approved density of a PRD and is therefore considered a major modification to the PRD; and

WHEREAS, the Oak Harbor Planning Commission has the authority to review plans and hold a public hearing on PRD and modifications to PRD and form a recommendation to City Council under Sections 19.31.210 and 19.31.220 of the OHMC; and

WHEREAS, the City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230; and

WHEREAS, Ordinance No. 1583 approved the PRD overlay zone for Fairway Point Division 4 on August 4, 2010; and

WHEREAS, Ordinance No. 1583 required development of the subject property to be consistent with the Fairway Point Division 4 Final PRD Plan as approved by the Oak Harbor City Council on June 19, 2007 and any development standards not addressed by the Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC; and

WHEREAS, a PRD Overlay Zone modifies the existing zoning regulations for a district; and

WHEREAS, Ordinance No. 1583 established the density for Division 4 of the PRD to be 4.76 du/ac by reference to the approved PRD plans; and

WHEREAS, the applicant is seeking to change the density established through the PRD Overlay Zone from 4.76 du/ac to 5.48 du/ac for Division 4; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on July 24, 2012, the Planning Commission held a public hearing regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on August 8, 2012, the City Council held a closed record meeting regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

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

Section One. Section 2 of Ordinance No. 1583 is hereby amended with respect to the project density set forth on the face of Sheet A1.1 of Exhibit F: Preliminary & Final PRD Building Elevations, Typical Residential Landscape Plan, & Fence Detail - dated June 7, 2006 from 4.76 du/ac to 5.48 du/ac as shown in Exhibit A referenced herein and attached to this ordinance.

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 8th day of August, 2012.

( ) APPROVED by its Mayor this _____ day of _____, 2012.
( ) Vetoed

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____

City Attorney

Published: _____

SEC. 4, TWN. 32N, RNG. 1E, W.M., ISLAND COUNTY
FAIRWAY POINT P.R.D.
A.D.U. EXHIBIT

GRAPHIC SCALE
100 0 50 100 200
(IN FEET)
SCALE: 1 INCH = 100 FEET

INDICATES PROPOSED A.D.U. LOTS, TYPICAL

FAIRWAY POINT

FAIRWAY POINT 1

FAIRWAY POINT 1A

FAIRWAY POINT 2

FAIRWAY POINT 4

FORT NUGENT ROAD

PROJECT DENSITY DATA

FAIRWAY POINT P.R.D. DIVISIONS 1, 1a, 2 AND 3

CURRENT DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 140
GROSS AREA OF P.R.D.: 39.02 ACRES (AC)

THEREFORE:
140 DU / 39.02 AC = 3.59 DU/AC

PROPOSED INCREASE IN DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 140
PROPOSED ADDITIONAL DWELLING UNITS: 19
TOTAL COMBINED DWELLING UNITS: 159
GROSS AREA OF P.R.D.: 39.02 ACRES (AC)

THEREFORE:
159 DU / 39.02 AC = 4.09 DU/AC
MAXIMUM DENSITY: 6.00 DWELLING UNITS PER ACRE
4.09 PROPOSED DU/AC IS LESS THAN 6.00 MAXIMUM DU/AC

FAIRWAY POINT P.R.D. DIVISIONS 4

CURRENT DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 40
GROSS AREA OF P.R.D.: 8.40 ACRES (AC)

THEREFORE:
40 DU / 8.40 AC = 4.76 DU/AC

PROPOSED INCREASE IN DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 40
PROPOSED ADDITIONAL DWELLING UNITS: 8
TOTAL COMBINED DWELLING UNITS: 48
GROSS AREA OF P.R.D.: 8.40 ACRES (AC)

THEREFORE:
48 DU / 8.40 AC = 5.48 DU/AC
MAXIMUM DENSITY: 6.00 DWELLING UNITS PER ACRE
5.48 PROPOSED DU/AC IS LESS THAN 6.00 MAXIMUM DU/AC

PROPOSED A.D.U. LOTS
FAIRWAY POINT P.R.D.
DIVISIONS 1, 1a, 2, AND 3:

#	LOT NO.	PHASE/DIV.
1.	20	1
2.	21	1
3.	107	3
4.	108	3
5.	109	3
6.	110	3
7.	111	3
8.	112	3
9.	113	3
10.	114	3
11.	115	3
12.	116	3
13.	117	3
14.	118	3
15.	119	3
16.	120	3
17.	121	3
18.	122	3
19.	123	3
20.	124	3
21.	125	3
22.	126	3
23.	134	3
24.	135	3
25.	136	3
26.	137	3
27	138	3
28.	139	3
29	140	3

PROPOSED A.D.U. LOTS
FAIRWAY POINT P.R.D.
DIVISION 4

#	LOT NO.	PHASE/DIV.
1.	171	4
2.	172	4
3.	173	4
4.	174	4
5.	175	4
6.	176	4

RECEIVED
JUN 12 2012
CITY OF OAK HARBOR
Development Services Department

LANDED GENTRY
HOMES AND COMMUNITIES

FAIRWAY POINT A.D.U. EXHIBIT

A.D.U. MODIFICATION TO FAIRWAY POINT P.R.D.
OAK HARBOR, WASHINGTON

1 of 1

EXHIBIT

PC ATTACHMENT 4

Planning Commission

Staff Report

August 28, 2012

City of Oak Harbor Planning Commission Report

Date: August 28, 2012
Subject: Fairway Point PRD Modification – To Consider ADU's within Division 4

FROM: Melissa Sartorius, Associate Planner

PURPOSE

This report presents a request to Planning Commission for a modification to the Fairway Point Planned Residential Development (PRD) Division 4 to add accessory dwelling units (ADU's) to the basements of house plans for up to six remaining lots to be developed. The modification is requested by the owner FP4, L.L.C. represented by Mr. Kendall Gentry.

Initially the proposed modification was believed to affect Divisions 1-4 of the Fairway Point subdivision however upon further review it was determined that only an amendment to Division 4 would be required as the request changes the approved density for Division 4. The inclusion of ADU's within Divisions 1-3 does not exceed the approved density for those divisions and thus an amendment to their respective PRD plans is not required. However public noticing of the proposal and hearing was prepared and sent prior to the determination and encompassed all divisions. Subsequently, it should be clarified that the public hearing and action on this item is for Division 4 only.

AUTHORITY

The Washington State Growth Management Act (RCW 36.70A) requires that counties and cities adopt zoning and other development regulations that are consistent with their adopted Comprehensive Plans. The Washington Growth Management Act encourages innovative techniques of land development, including PUDs or PRD's[1]. The City of Oak Harbor's Comprehensive Plan contains policies regarding PRD's in both the Land Use Element and the Housing Element of the Plan. The Planning Commission has the authority to review plans and hold a public hearing on PRDs and form a recommendation to City Council under the Oak Harbor Municipal Code (OHMC) sections 19.31.210 and 19.31.220. The City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230.[2]

SUMMARY STATEMENT

In the City of Oak Harbor accessory dwelling units are permitted in all single family zoning districts with an administrative permit. Fairway Point PRD is a subdivision consisting of 180 lots located on the north side of Ft. Nugent Avenue, and west of Whidbey Golf and Country Club. As the subdivision is a PRD, the development of the subdivision is tied to specific approved plans.

[1] http://www.mrsc.org/subjects/planning/lu/plannedunitdev.aspx

[2] 19.31.230 PRD development plan – Council decision.
The council shall hold a closed record meeting to consider the application. Council shall make one of the following decisions: approval as submitted, approval with conditions or denial. Council decisions on PRD permits shall be final unless appealed to the Island County superior court in accordance with Chapter 36.70C RCW.

The applicant is requesting to modify the PRD plans of Fairway Point (Attachment 1) to add ADU's to the basements of house plans for up to six remaining lots to be developed within Division 4 (Attachment 2). A modification to these specific plans require legislative approval and seeks public input and comment through the PRD process.

Project Information

Developer:	Landed Gentry Development
Owner:	Fairway Point 1, Inc. (Divisions 1-3) and FP4, L.L.C. (Division 4)
Location:	West Ft. Nugent Avenue, west of Whidbey Golf & Country Club.
Zoning:	R-1 Single-family Residential
Comprehensive Plan:	Low-Density Residential
Site Area:	44.4 acres (total site)
Units:	180 single family residential lots (total site)
Density:	3.8 dwelling units per acre (total site), 4.9 du/acre for Divisions 1,1a, 2, and 3, and 4.76 du/acre for Division 4
Open Space:	4.44 acres (total site)

DISCUSSION

Background

On May 22, 2007, the Planning Commission recommended approval of the Preliminary and Final PRD for Fairway Point Division 4 to the City Council subject to Conditions of Approval. On June 19, 2007 the City Council approved the same. The City Council approved the PRD overlay zone for Division 4 on August 4, 2010 in association with the final plat (Attachment 3).

Accessory Dwelling Units (ADU)

The OHMC defines an accessory dwelling unit (ADU) as "a habitable living unit added to, created within or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation." ADU's are commonly known as mother-in-law apartments or cottage apartments and are essentially a second dwelling unit created on a lot. Typically they are auxiliary to and smaller than the main dwelling unit. ADU's are recognized in urban planning for providing solutions for affordable housing and infill development within urban areas[1]. ADU's are addressed under section 19.42 of the OHMC which requires administrative permits from the Development Services Department.. ADU's are required to meet the criteria listed in the code (see Attachment 4).

Planned Residential Development (PRD)

According to the Municipal Research and Services Center of Washington (MRSC), "a planned unit development (PUD) is a large, integrated development, developed under unified control according to a master plan, and located on a single (or contiguous) tract of land. Some jurisdictions provide for planned residential developments (PRDs) which are similar, master-planned, and typically clustered development, but are limited to residential uses."[2] Local PRD development regulations provide more planning flexibility than traditional zoning. They typically offer applicants regulatory flexibility in return for higher quality site and architectural design

[1] http://www.mrsc.org/publications/texadu.aspx
[2] http://www.mrsc.org/subjects/planning/lu/plannedunitdev.aspx

with the intent of encouraging the design of a more complete and sustainable neighborhood environment. "The Washington Growth Management Act encourages innovative techniques of land development, including PUDs and PRDs. A PRD is master planned, but the PRD process cannot, by itself, create legal lots of record. Legal lots within the PRD must be created through the subdivision process. In general, the PRD is a voluntary option, available in many Washington communities."[1]

The PRD regulations of the OHMC (Section 19.31.010) offer applicants regulatory flexibility in return for higher quality site and architectural design with the intent of encouraging the design of more complete and sustainable neighborhood environments consistent with Oak Harbor's comprehensive plan. The PRD regulations allow and promote design flexibility, pedestrian-oriented development, interconnectivity among uses, sensitivity to the natural environment and natural features, and the coordination of development with adequacy of public facilities.

The PRD overlay zone essentially modifies the regulations of the existing zoning district. Because legal lots of record must be created through the subdivision process, the approval process for a PRD subdivision often creates several approval documents (ordinances/resolutions) distinguishing the plat from the PRD plans. The modification process must include a public input process for homeowners.

Process

Section 19.31.280 of the OHMC provides regulations for modifications to PRD development plans. Modifications are classified as either minor or major depending upon the scope of change. In this case, as the applicant requests the addition of dwelling units to the subdivision, the modification is considered a major modification as it changes the approved density of the subdivision. Major modifications to PRD plans require a public hearing and review by the Planning Commission who shall forward a recommendation to the City Council for consideration in a closed record meeting (OHMC 19.31.230). Such a modification is classified as a Type IV review process in the OHMC and is quasi-judicial in nature.

Proposal Description and Review

The applicant proposes a maximum of an additional six dwelling units to Division 4. The applicant indicates in the narrative that the actual number of ADU's that are to be built will likely be lower than requested. As the modification process is somewhat lengthy, the applicant is seeking the maximum number of units to provide them with future flexibility. The applicant proposes the ADU be attached and be located in the basements of two of their specific house plans; the Maxwelton and Whidbey. The proposal includes plans showing the lots eligible for ADU's, lots that are already built on, floor plans including exterior elevations for the two house models, and an example of a typical house plan on a lot proposed for an ADU (Attachment 2).

The application was routed to city departments for review and comment. City staff analyzed transportation concurrency, addressing, solid waste, water meter size, and utility billing aspects of the project but had no substantial comments on the modification. The Development Services Department is tasked with reviewing the proposal for conformity with all applicable criteria and

[1] http://www.mrsc.org/subjects/planning/lu/plannedunitdev.aspx

standards. The following details that review:

Density

As the number of dwelling units is proposed to change, the density[1] would also change. City staff reviewed the current and proposed density for the overall subdivision and for the approved divisions to ensure that as proposed, it would not exceed the maximum for the R-1 zoning district. Density for the R-1 zoning district ranges from a minimum of three dwelling units per acre (du/ac) to a maximum of six du/ac.

The current density for Divisions 1, 1a, 2, and 3 was approved by Ordinance No. 1421 and is 4.9 du/ac. Using a maximum of 29 ADU's, the proposed density for these divisions would be 4.69 du/ac (140+29=169/36=4.69). The proposed density is less than the approved density and therefore does not require an amendment to the PRD.

The current density for Division 4 as approved by Ordinance 1583 (Attachment 3) is 4.76 du/ac (see the *Project Info* on Sheet A1.1 of Attachment 1). Using a maximum of 6 ADU's (as shown on the proposed PRD plan- Attachment 2), the proposed density for these divisions would be 5.48 du/ac (40+6=46/8.4=5.48). The proposed density is more than the approved density and therefore an amendment to the PRD is required.

PRD Review Criteria

The OHMC states that major modifications shall be reviewed under the same process as outlined under OHMC 19.31.200 through 19.31.230. This section of code outlines the Planning Commission and City Council review processes. The City Council review process is listed under Footnote 2 on Page 1 of this report. OHMC 19.31.210 outlines the Planning Commission's review process as the following:

(1) The PRD development plan shall be considered at a public hearing before the planning commission.

The public hearing on this proposal is scheduled for June 26, 2012.

(2) Upon receipt of the PRD development plan, the planning commission shall examine such plan and determine whether it conforms to all applicable criteria and standards.

OHMC 19.31.250(1) requires "all lots or other divisions of a subdivided PRD shall remain subject to compliance with the PRD development plan regardless of the fact of subdivision under OHMC Title 21 or subsequent conveyance of such individual lots or divisions, unless a minor or major modification has been approved."

City staff have reviewed the modification against the existing approved PRD plans (Attachment 1). Ordinance 1583 approving the PRD overlay zone for Fairway Point Division 4 on August 4,

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[1] 19.08.245 Density. "Density" means the number of dwelling units divided by the gross acre.

2010 (Attachment 3), requires that all development within the Fairway Point Division 4 PRD Overlay Zone be consistent with the that division's PRD as approved by the Oak Harbor City Council on June 19. 2007. Development standards not addressed by Division 4's PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC. Staff reviewed this drawing set and the Project Info on Sheet A1.1 lists the density as 4.76 lots/acre. In order to conform to all applicable criteria and standards, Ordinance 1583 shall be amended to reflect the proposed density change of 5.48 for this division.

As the applicant is proposing ADU's within the basements of house plans that fit within the existing building envelopes for the PRD (Attachment 2) and are not detached ADU's, no compatibility issues with setbacks, lot coverage, landscaping, or other appear to exist. Compatibility with these items and those criterion listed in OHMC 19.42 (ADU section of code) will be addressed on a permit-by-permit basis during administrative review of each ADU. Staff analysis of the PRD criteria are listed under #4 below.

As proposed, the modification only changes the density listed on the face of the plans. All other provisions and approvals remain as shown. No other changes to the PRD development plans are proposed.

(3) In the event the planning commission determines that the development plan does not conform to these criteria and standards, they may require such changes in the proposed project or impose such conditions of approval as are, in its judgment, necessary to ensure conformity.

The Planning Commission may add conditions of approval to staff's recommendation below as they see necessary to ensure conformity.

(4) The planning commission shall review the project to determine if it is consistent with the criteria in OHMC 19.31.170.

The criteria from 19.31.170 are primarily for new PRD development however staff identified that the following criteria are applicable to the proposed modification:

(1) Aside from the specific regulations, requirements or standards proposed to be varied, the project otherwise meets the requirements of the Oak Harbor Municipal Code.

As previously mentioned, city staff have reviewed the modification with the requirements of the OHMC and have determined that all requirements are met or will be met.

(6) The PRD shall comply with all of the following adopted standards:

(a) The requirements of OHMC Title 21, Subdivisions. Variations from the requirements in OHMC Title 21 may be requested and reviewed as part of the PRD application. Other than the specific standards being varied from, PRDs must meet all applicable standards of OHMC Title 21, including the general design standards (Chapter 21.50 OHMC) and the residential design standards (Chapter 21.60 OHMC).

No variations from Title 21 are being requested as part of the modification.

(b) The standards and requirements of this chapter. If there is a conflict between the standards of this chapter and the standards in OHMC Title 21, the standards in this chapter shall take precedence.

There are no conflicts between Chapter 19.31 and Title 21 for the proposed modification.

(c) The Oak Harbor comprehensive plan policies.

As previously mentioned, the Oak Harbor Comprehensive Plan contains two policies regarding PRD's; one in the Land Use Element and the other in the Housing Element of the Plan.

Land Use Element
Goal 2, Policy 2a: Encourage planned residential development (PRDs) with performance based standards.

Housing Element
Island County Goals and Policies
Policy F: Provide for PRDs to include either attached or detached housing units, while preserving rural character.

(d) The design guidelines and regulations, if applicable.

The design guidelines and regulations are not applicable to this particular modification. ADU criteria exists within Section 19.42 of the OHMC.

(e) All other standards adopted by the city of Oak Harbor, including engineering details and drawings.

No specific standards as adopted by the City are applicable to this modification.

PUBLIC NOTICE

The Planning Commission held a public hearing on July 24, 2012 and decided to continue the hearing until the next regular meeting of the Commission on August 28, 2012. A Notice of Public Hearing, advertising the Planning Commission public hearing for August 28, 2012 was published in the Whidbey News Times on August 11, 2012.

CITIZEN COMMENTS

In addition to the public comment presented at the hearing on July 24, 2012, one written public comment on the matter was received on July 23, 2012. Although this comment was given to Commissioners at the July meeting, it has also been included as Attachment 5 to this report. At the July Planning Commission meeting, concerns were raised by citizens about the increase in density, vehicle traffic, on-street parking, and the number of proposed ADU's. Citizens voiced concerns regarding general incompatibility of ADU inclusion within the subdivision. Should the Planning Commission decide to approve the modification, they may add conditions of approval

that mitigate or address the above concerns.

CONCLUSION

Staff has reviewed the request and found the only change to approved plans or regulations is the modification to density on Sheet A1.1 of the Preliminary and Final PRD Drawing Set dated June 7, 2006 and the reference to the former in Ordinance No. 1583. Otherwise, the request is in conformance with all applicable criteria and standards in the OHMC and the approved PRD plans, resolutions and ordinances. Since PRD's are tied specifically to the plans approved for the project and any modifications to these plans if approved should become part of the official record of the subdivision, staff recommends that only Sheet 1 of 1 titled *ADU Modification to Fairway Point Division 4 P.R.D.* dated August 6, 2012 (Exhibit A) be approved with the draft ordinance. The approval of a modification to the PRD plans for Fairway Point Division 4 will allow the applicant to apply for the administrative ADU permits on a house-by-house basis.

The Planning Commission has the authority under OHMC 19.31.210(3) to consider adding a condition of approval to the draft ordinance that would limit the number of ADU's to a number less than the six proposed by the applicant. In addition, City staff would recommend, and the applicant has indicated agreement with, a condition of approval whereby the ADU's shall be integrated into the primary unit as opposed to detached.

The draft ordinance addressing the items noted above and other requirements of the OHMC, and approving the proposed modification for Division 4 is attached for the Planning Commission's consideration.

RECOMMENDATION

Staff recommends that Planning Commission take the following actions:

- Accept public comments on the proposed modification and close the public hearing.
- Recommend approval of the draft ordinance amending Ordinance No. 1583 to City Council.

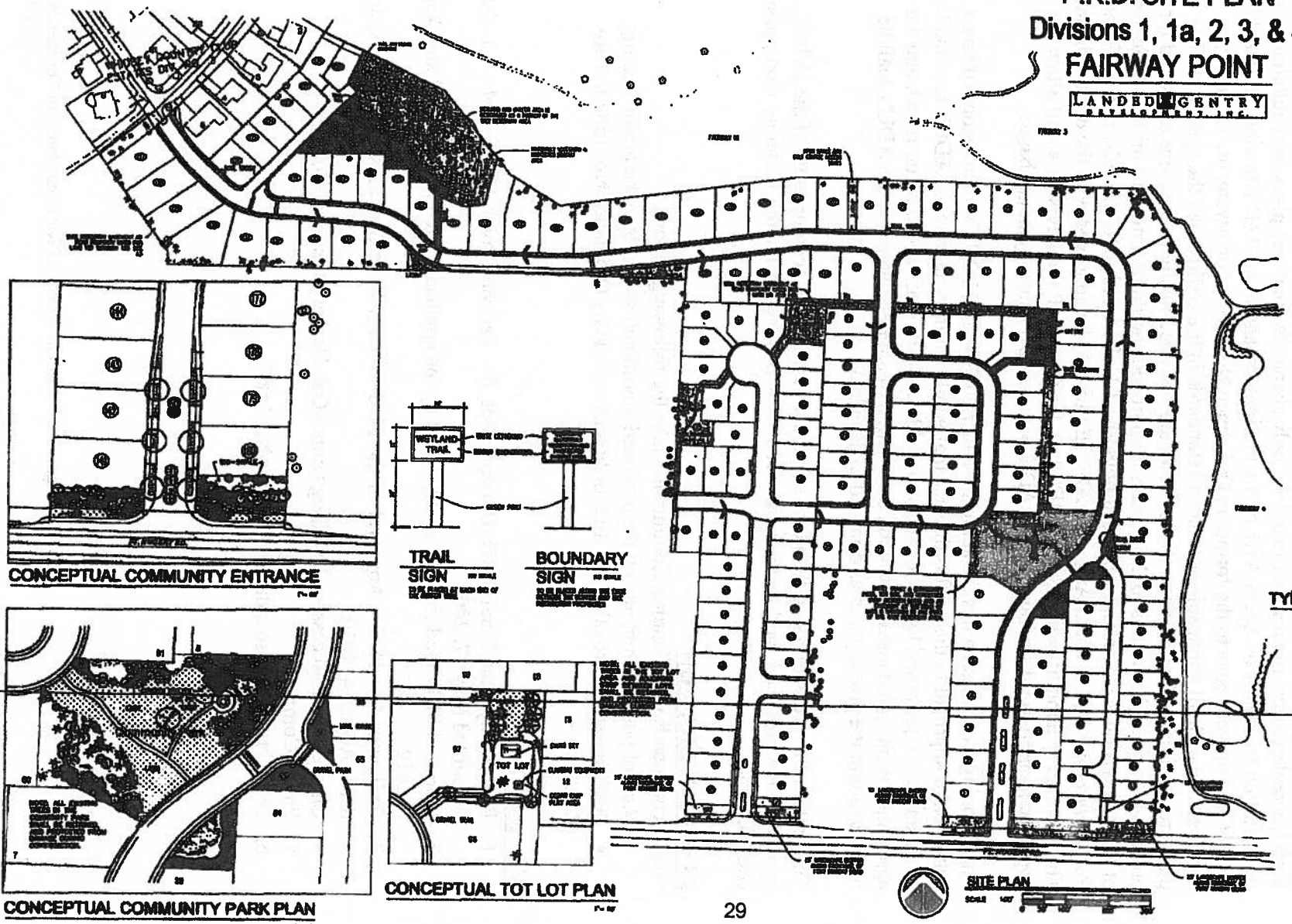
ATTACHMENTS

1. Preliminary and Final PRD Drawing Set for Fairway Point Division 4 – 5 sheets, Submitted May 17, 2007.
2. Proposed PRD Modification as submitted by the applicant dated May 9, 2012 and August 6, 2012.
3. Ordinance No. 1583 - Approval of the PRD Overlay Zone for Fairway Point Division 4 dated August 4, 2010.
4. Chapter 19.42 Accessory Dwelling Units - Oak Harbor Municipal Code
5. Public Comment
6. Draft Ordinance amending Ordinance No. 1583.

PC ATTACHMENT 1

P.R.D. SITE PLAN
Divisions 1, 1a, 2, 3, & 4
FAIRWAY POINT

LANDED GENTRY DEVELOPMENT INC.



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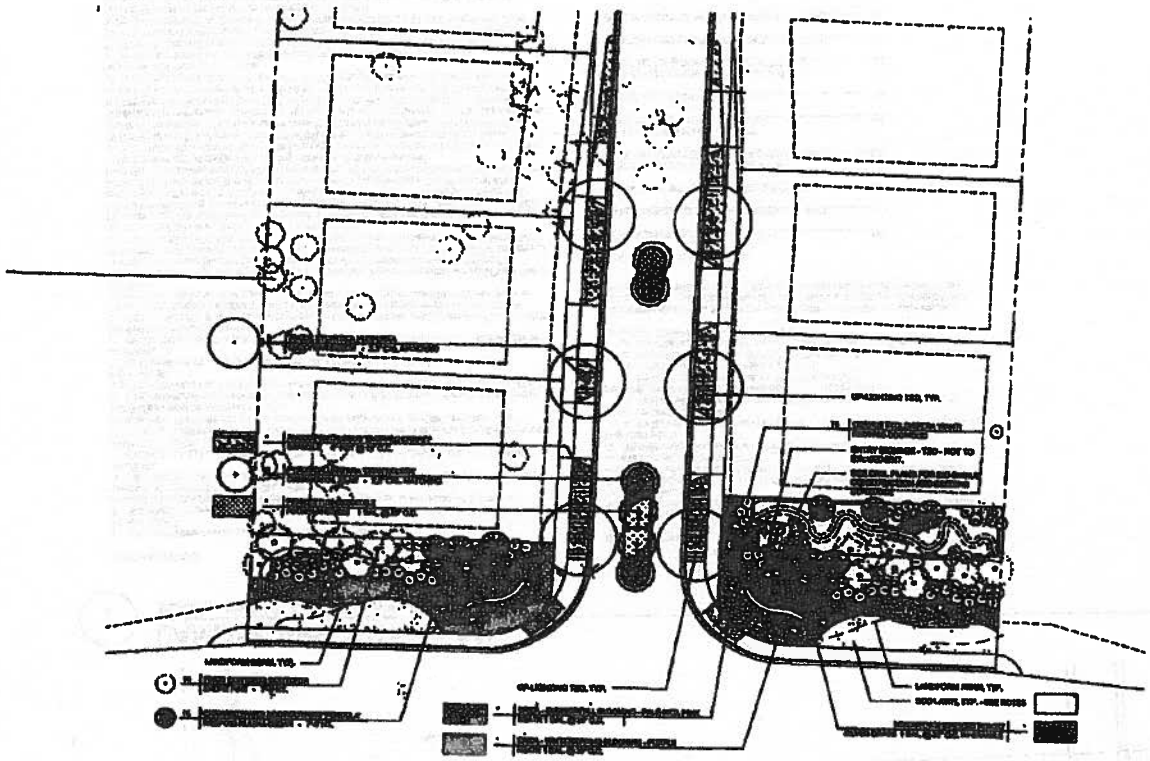
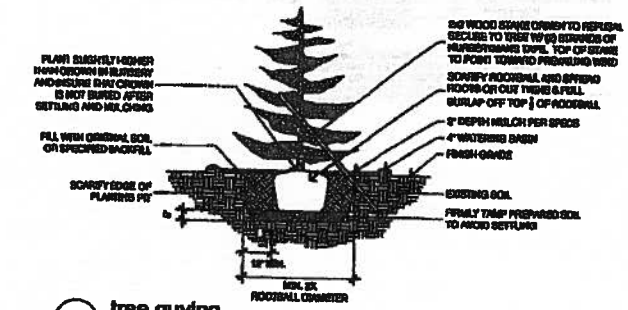
PC ATTACHMENT 1

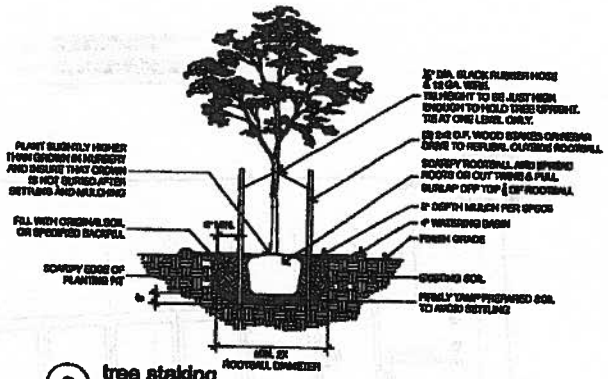


1 LANDSCAPE TRACT SITE PLAN
SCALE: 1"=20'-0" (1"=40' @ 60% REDUCTION)

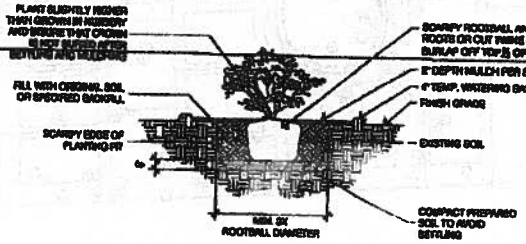
north



3 tree guying
SCALE: 1" = 10'-0"



2 tree staking
SCALE: n/a



1 shrub & ground cover
SCALE: n/a

EXHIBIT D

pasa

FAIRWAY POINT

Fairway Point - phase 4

Entrance @ Ft. Nugent Rd.
Oak Harbor, WA

LANDED GENTRY
HOMES AND COMMUNITIES

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APR 11 2007

planting plan & details

L1.1

PC ATTACHMENT 1

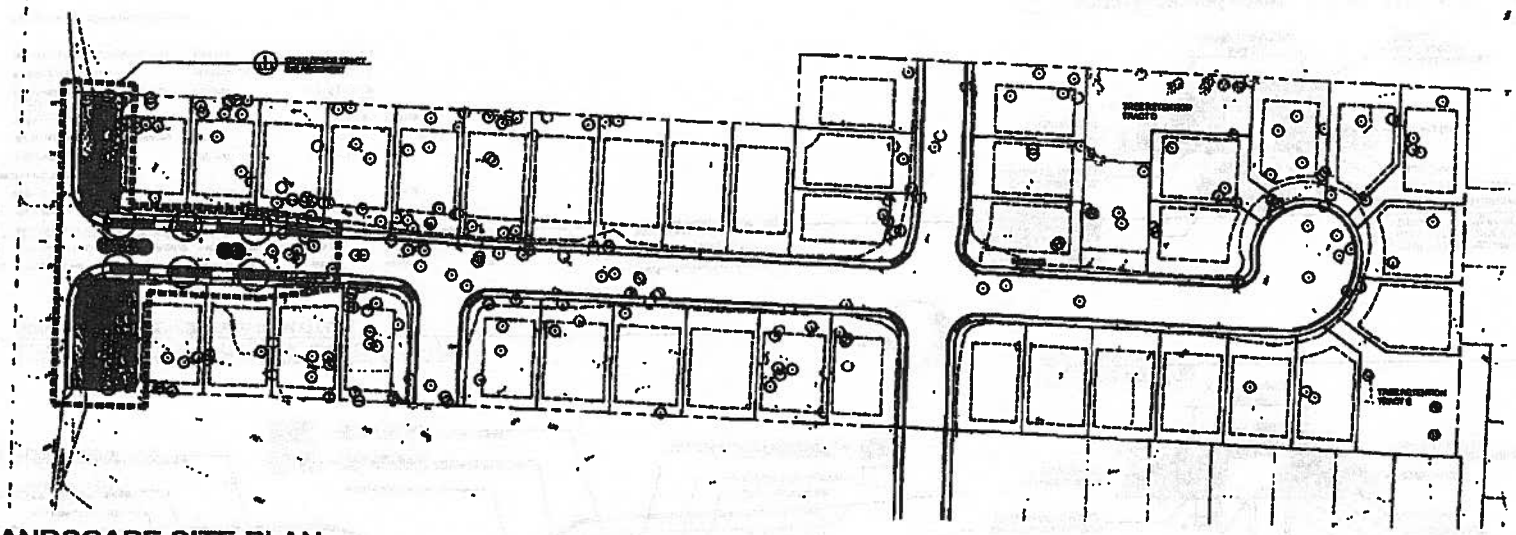
pd

FAIRWAY POINT

Fairway Point - phase 4

Entrance @ Ft. Nugent Rd.
Oak Harbor, WA

LANDED GENTRY
HOMES AND COMMUNITIES



1 LANDSCAPE SITE PLAN

SCALE: 1"=60'-0" (1"=100' @ 50% REDUCTION)

north

PLANTING NOTES:

1. Verify all measurements and location of utilities prior to construction. Call before you dig 1.800.424.5555.
2. Submittals: Provide the designer (prior to installation) a 1qt dbl. sample of imported soil mix, compost and mulch prior to construction for review and approval. Label product and provide documentation of sample (i.e. supplier, content, etc.
3. Contractor to comply by all local, state, and federal guidelines, codes, regulations and industry standards.
4. Storing or stockpiling of material soil is not permitted under existing tree drip line, within the wetland or its buffer.
5. Review specific plant quantities and variables prior to installation. Plant quantities shallow below from the plan. Plant material shall be provided by the contractor as specified or greater. Any substitutions must be approved in writing.
6. All plant material shall be healthy, sound, vigorous of growth, free of any defects, diseases and any form of infestations. Plant material shall meet American Standard for Nurseryman Stock (ASN-1) requirements.
7. Plant quantities are approximate and may need adjustment according to completed field conditions.
8. Prior to planting the designer must review plant material condition and location. The designer has the right to reject any plant material.
9. Mulch (bark only) as needed to restore grades following site and building construction. Imported for borrow and to restore grades following construction shall be a 3 way sandy loam mix. On site stored topsoil may be used as supply allows. On site soil must be approved by designer prior to installation.
10. Shrub & Tree Pregn Planting areas shall receive a minimum 4" compacted material Cedar Grove or equal. Prior to applying compost all planting beds shall be rototilled to a min. 8-10" depth. Remove all debris and stones greater than 1". The composted material shall be rototilled into the soil to a minimum depth of 6-10". Rototill into the soil in conjunction with organic matter Gypsum "Floor Grade" as available at a rate as suggested by manufacturer.
11. Lawn Prepn Areas shall receive a minimum 6" 3-way mix (50% sand & 25% composted material). Prior to applying 3-way mix all lawn areas shall be rototilled to a min. 8-10" depth. Remove all debris and stones greater than 1". The 3-way mix shall be rototilled into the soil to a minimum depth of 6-10". Rototill into the soil in conjunction with 3-way mix; Gypsum "Floor Grade" as available and Dolomite Lime at a rate as suggested by manufacturer. All lawn areas shall be rolled, compacted with weighted roller and all debris and stones greater than 1" shall be removed.
12. Sod installation: All lawn areas shall be prepared, see lawn prep above. Sod shall be Eco-Mix or 85% Rye grass & 20% Fescue. Sod shall be full, not less, healthy, sound, free of any defects, diseases and any form of infestations. Plant material shall meet American Standard for Nurseryman Stock (ASN-1) requirements. Sod shall be rototilled prior to sod placement. After sod is prepared roll out strips so that ends are staggered with edges firmly pressed against each other. Trim sod as needed. Roll and rototiller half filled with water. Water daily (or as needed) until establishment.
13. Hydroseed Installation: All lawn areas shall be prepared, see lawn prep above. Seed mix shall be Barenbrug, OP Marin Co. or equal.
14. All slopes greater than 3:1 shall be protected with jute mesh following installation.
15. Stake all trees and shrubs greater than 6ft. in height immediately following installation.
16. All planted areas shall receive a min. of 3" mulch composted material (Cedar Grove or equal) or fine grade wood chips. Provide the designer (prior to installation) a 1qt dbl. sample of material
17. Bundle the ends of all container plants prior to installation.
18. Prescott all container material in container suitable to hold a 5-gal. plant prior to installation

IRRIGATION NOTES:

1. Irrigation system shall be of folder design in nature.
2. Contractor shall review with designer layout of valves and valving zone landscape beds, lawn, etc.
3. The irrigation system will provide suitable water to all landscape plantings for a minimum of 3 growing seasons following the initial plantings. Validation of growing season shall be April to September.
4. The following components shall constitute the minimum requirements for the irrigation system.
   a. Install automatic valving system, double check valve and associated plumbing as per applicable local codes.
   b. Attends with landscape plantings shall receive either spray heads (pop, 6" pop-up) or micro-irrigation. No stationary risers shall be used.
   a. Rotation piping shall be sched. 40 1 1/4" min. diam
   d. Lateral line shall be class 200 min 1" dia.
   e. Automatic timer shall be outdoor mounted with locking cabinet. Verify location.
   f. Coordinate with general contractor sleeve location in walkways and driveways. Sleeves shall be sched. 4" PVC min.

* Contractor shall warrantee planting and irrigation construction from defects for a minimum of one year starting from date of completion. Completion date established when owner or designer provide written confirmation on completed punch list items.

TREE RETENTION STATISTICS:

TOTAL NUMBER OF EXISTING TREES	207
TOTAL NUMBER OF EXISTING TREES RETAINED	20
PERCENTAGE OF EXISTING TREES RETAINED	9.66%
MINIMUM REQUIRED PERCENTAGE OF EXISTING TREES TO BE RETAINED PER CODE	10.0%
MINIMUM REQUIRED NUMBER OF TREES TO BE RETAINED PER CODE	32
DEFICIENCY OF RETAINED TREES	13
MINIMUM ADDITIONAL TREES REQUIRED PER 2:1 REPLACEMENT POLICY, PER CODE	26
NUMBER OF REPLACEMENT TREES PROPOSED	44
TOTAL NUMBER OF TREES RETAINED OR REPLACED	64

Legend

- EXISTING TREE TO BE RETAINED PER CIVIL PLANS FOREST AND TWC
- EXISTING TREE TRAGGED PER CIVIL PLANS FOREST AND TWC

NOTES:

1. ALL GRADES TO BE FIELD VERIFIED.
2. ALL SOFTSCAPE ELEMENTS (LAWN, PLANTING BEDS ETC.) SHALL BE FIELD LOCATED AND VERIFIED.
3. PLANT LOCATIONS TO BE LOCATED BY LANDSCAPE ARCHITECT

ABBREVIATIONS:

TOW - TOP OF WALL	ALT. - ALTERNATE
BOW - BOTTOM OF WALL	CP - CAST IN-PLACE CONCRETE
TOS - TOP OF STAIR	SCH. - SCHEDULE
BOS - BOTTOM OF STAIR	TYP. - TYPICAL
MAX. - MAXIMUM	W/ - WITH
SIM. - SIMILAR	STL. - STEEL
EA. - EACH	L.P. - LOW POINT

EXHIBIT E

RECEIVED

planting plan

project # 2007.01
date 03.09.07

L1.0

Pc ATTACHMENT 1

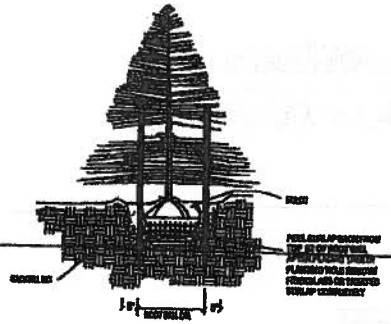
Notes:

1. AT COMMON PROPERTY LINES WITH ANOTHER RESIDENCE OR COMMON OPEN SPACE NOT LISTED BELOW: A TYPE "A" SOLID CEDAR FENCE NOT EXCEEDING 6'-0" HEIGHT IS ALLOWED
2. WITHIN TREE RETENTION AREA: FENCES ALONG THE TREE RETENTION AREA SHALL NOT EXCEED 42" IN HEIGHT

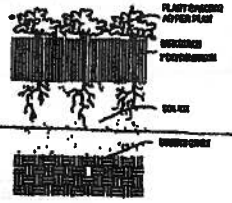
Homeowner Options A-B

Notes:

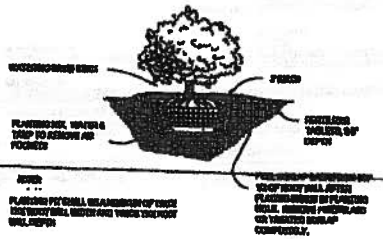
1. AT COMMON PROPERTY LINES WITH ANOTHER RESIDENCE OR COMMON OPEN SPACE NOT LISTED BELOW: A TYPE "A" SOLID CEDAR FENCE NOT EXCEEDING 6'-0" HEIGHT IS ALLOWED
2. WITHIN TREE RETENTION AREA: FENCES ALONG THE TREE RETENTION AREA SHALL NOT EXCEED 42" IN HEIGHT.



Tree Planting Detail



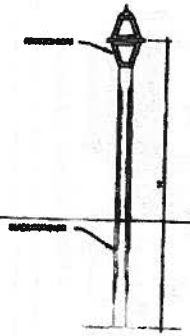
Ground cover installation



Shrub Planting Detail

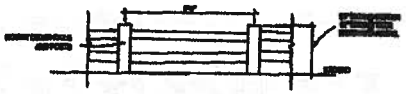
(A) 6' Cedar Fence Elevation

FENCE FOR USE ABOVE AND BETWEEN RESIDENCES FOR PRIVACY



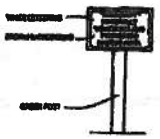
Typical Streetlight

NO SCALE



(B) Split Rail Fence

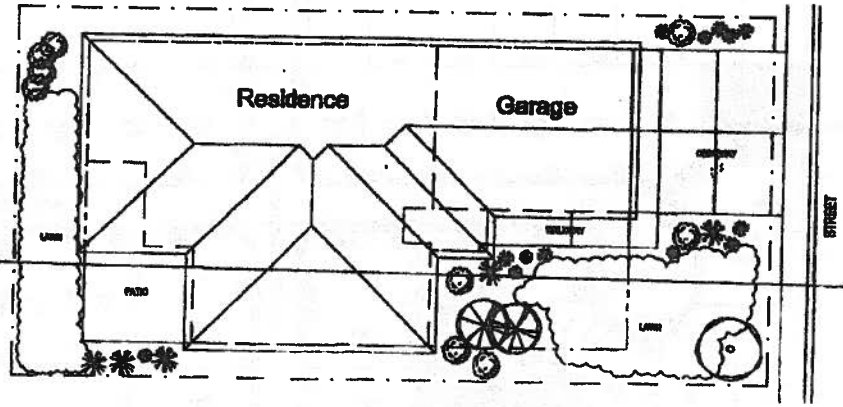
FOR USE ALONG THE REAR OF LOTS ADJACENT TO THE BUFFER AREA, AND ALSO ALONG THE REAR OF LOTS CONTAINING TREE RETENTION AREAS



Boundary Sign

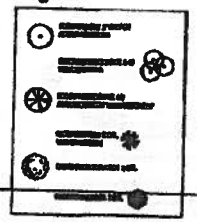
NO SCALE

TO BE PLACED ALONG THE EDGE BETWEEN THE BUFFER AND THE HOMEOWNERS PROPERTIES



Typical Residential Landscape Plan

Residential Landscape Legend



Landed Gentry - Communities and Homes

Fairway Point 4

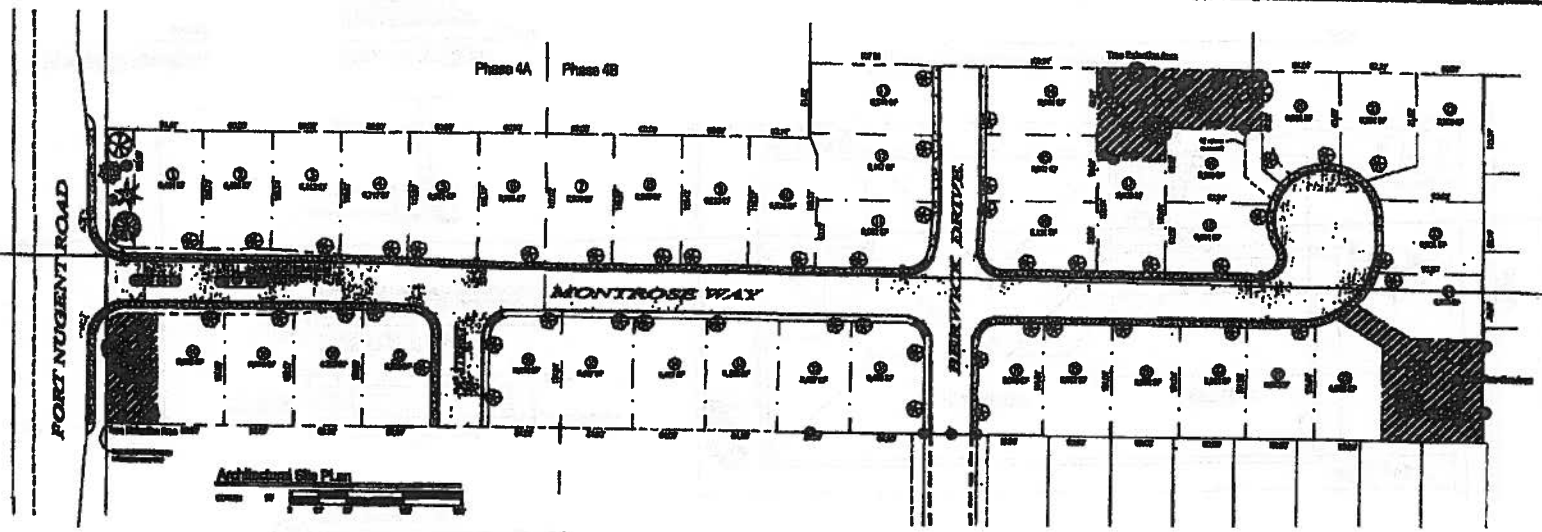
LANDSCAPE DETAILS

RECEIVED

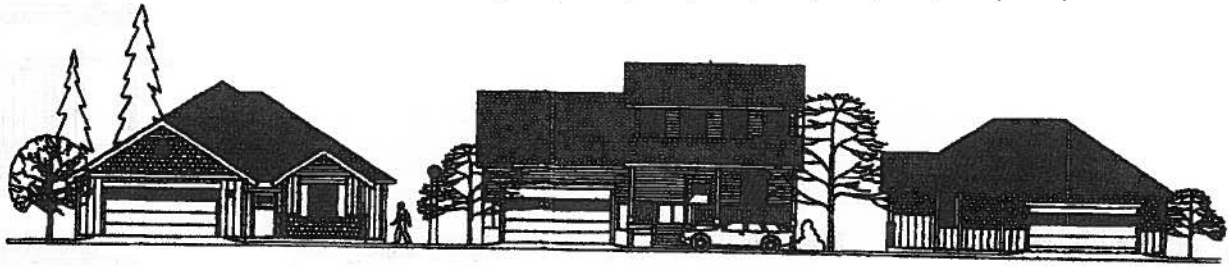
SHEET A3.1

EXHIBIT F

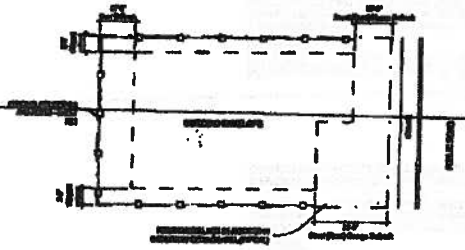
PC ATTACHMENT 1



Notes



Typical Streetscape



Typical Building Envelope Plan

Drawing Index

A1.1 SITE PLAN
TOPOGRAPHY, PROJECT INFO
TYPICAL DIMENSIONS/DIMENSION
GENERAL ENVELOPE PLAN

A1.2 DETAILED LANDSCAPE PLAN PERIMETER

A1.3 RESIDENTIAL TYPICAL LANDSCAPE PLAN PLANTING DETAILS

Project Info

- TOTAL SITE AREA (ac) ——
- PROJECT DENSITY & DETAILS
  NUMBER OF LOTS: 20 (20)
  ZONING: R-4
  COMPREHENSIVE PLAN: LOW DENSITY RESIDENTIAL
- DEVELOPER: LANDED GENTRY DEVELOPMENT, INC.
  [illegible]
  [illegible]
- CONSULTANT: [illegible]
  [illegible]
- WATER SUPPLIER: CITY OF OAK HARBOR
  SEWER DISPOSAL: CITY OF OAK HARBOR
- SURROUNDING ZONING
  FRONT: WATER BY TO SURZONE
  SIDE STREET: BY TO SURZONE, BY TO CHANGE
  SURROUNDING TYPES OF
  POINT TOWN, IN

FAIRWAY POINT FOUR

LANDED GENTRY DEVELOPMENT, INC.

REVISION	DATE
[illegible]	-

Landed Gentry - Communities and Homes

[illegible]

Fairway Point 4

OAK HARBOR, WASHINGTON, 98277

RECEIVED

ARCH SITE PLAN

[illegible]

SHEET A1.1

PC ATTACHMENT 2

CITY OF OAK HARBOR
Development Services Department

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CITY OF OAK HARBOR
Development Services Department

CITY OF Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Application Form

Project Name: FAIRWAY POINT PRD AMENDMENT

Type(s) of Application: Increase Density on an approved PRD

Description of Proposal: To Be able to permit "Accessory Dwelling Units" (ADUs) within the existing PRD, Phases 1, 4 & 3.

APPLICANT NAME/CONTACT PERSON (or legal representative): KENDALL GENTRY	**Address:** 504 E. FAIRHAVEN AVE BURLINGTON WA 98233
E-mail Address: Kendall@LandedGentry.com	**Phone and Fax:** 360-661-3812
PROPERTY OWNER NAME (list multiple owners on a separate sheet): FAIRWAY POINT 1, INC FP4, LLC & RD Fakkema/Ryan Kingman	**Address:** c/o 504 E Fairhaven Ave - Burlington, Wa 98233
E-mail Address: Same as Applicant	**Phone and Fax:**
ENGINEER/SURVEYOR: NOT APPLICABLE	**Address:** —
E-mail Address: —	**Phone and Fax:** —
PROJECT SITE INFORMATION (address/location): SEE ATTACHED MAP	**Comp. Plan Designation:** Low Density Residential
Zoning: R-1	**Parcel Number(s):**
Legal Description (attach separate sheet):	**Acreage of Original Parcel(s):**
Section/Township/Range: Sec 4 / Twp 32N / Rge 1 EWM	**Total Square Footage of Proposed Building or Number of Units:** MAXIMUM ADDITIONAL UNITS 40

AUTHORIZATION:
The undersigned hereby certifies that this application has been made with the consent of the lawful property owner(s) and that all information submitted with this application is complete and correct. False statements, errors, and/or omissions may be sufficient cause for denial of the request.

I declare under penalty of the perjury laws that the information I have provided on this form/application is true, correct and complete.

Kendall D Gentry 5/9/12

Authorized Signature **Date**

C:\Users\kgentry\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\ITM6QR0T\Application Form.doc
REV: 5/1/12

LANDED GENTRY
HOMES AND COMMUNITIES

May 9, 2012

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CITY OF OAK HARBOR
Development Services Dept

Ms Melissa Sartorius
City of Oak Harbor
Planning Department
865 SE Barrington Drive
Oak Harbor, WA 98277

RE: Amendment to the Fairway Point PRD, Divisions 1, 3 & 4 to increase the density by the placement of Accessory Dwelling Units (ADU) on lots inside the PRD.

Melissa,

As we have been discussing for some weeks now, Landed Gentry Homes & Communities wishes to formally request an amendment to the above referenced divisions of Fairway Point PRD to allow the discreet placement of ADU's inside the project.

It is our understanding that an amendment process is necessary because we are requesting a PRD density change and it is a Review Process IV, heard by both the Planning Commission and City Council. We have determined through earlier research, provided by you, that there are approximately 50 more units available in Fairway Point before the maximum density is reached. Therefore, I am requesting that no more than 40 of the 80+ vacant lots in the three remaining phases be eligible for the placement of an ADU structure. An ADU permit could be applied for on any lot but only up to a maximum of 40 units. The actual number will most likely be much less but I would like the maximum flexibility since the amendment process is fairly cumbersome.

Some of the Fairway Point lots fall away from the street making basement homes fit those lots nicely. Our most likely first ADU application will be for Lot 174 in Phase 4, which we call the Maxwelton Basement plan. I am attaching the site plan, floor plans and elevations to illustrate how this unit will not be discernible from the street. The plan can either have an ADU or two additional bedrooms with fairly simple alterations. Both options are shown on the plan.

The attorney who drafted the association documents and CC&R's has told us that the current documentation for the PRD allows for these type units in the development without any changes.

Therefore, it is my understanding that if the City Council approves the PRD density change then on any lot that we would want to include an ADU, there is a separate administratively processed ADU permit that is processed with the building permit through your department.

Thank you for the effort that you have put into helping me cue up this application.

Sincerely,

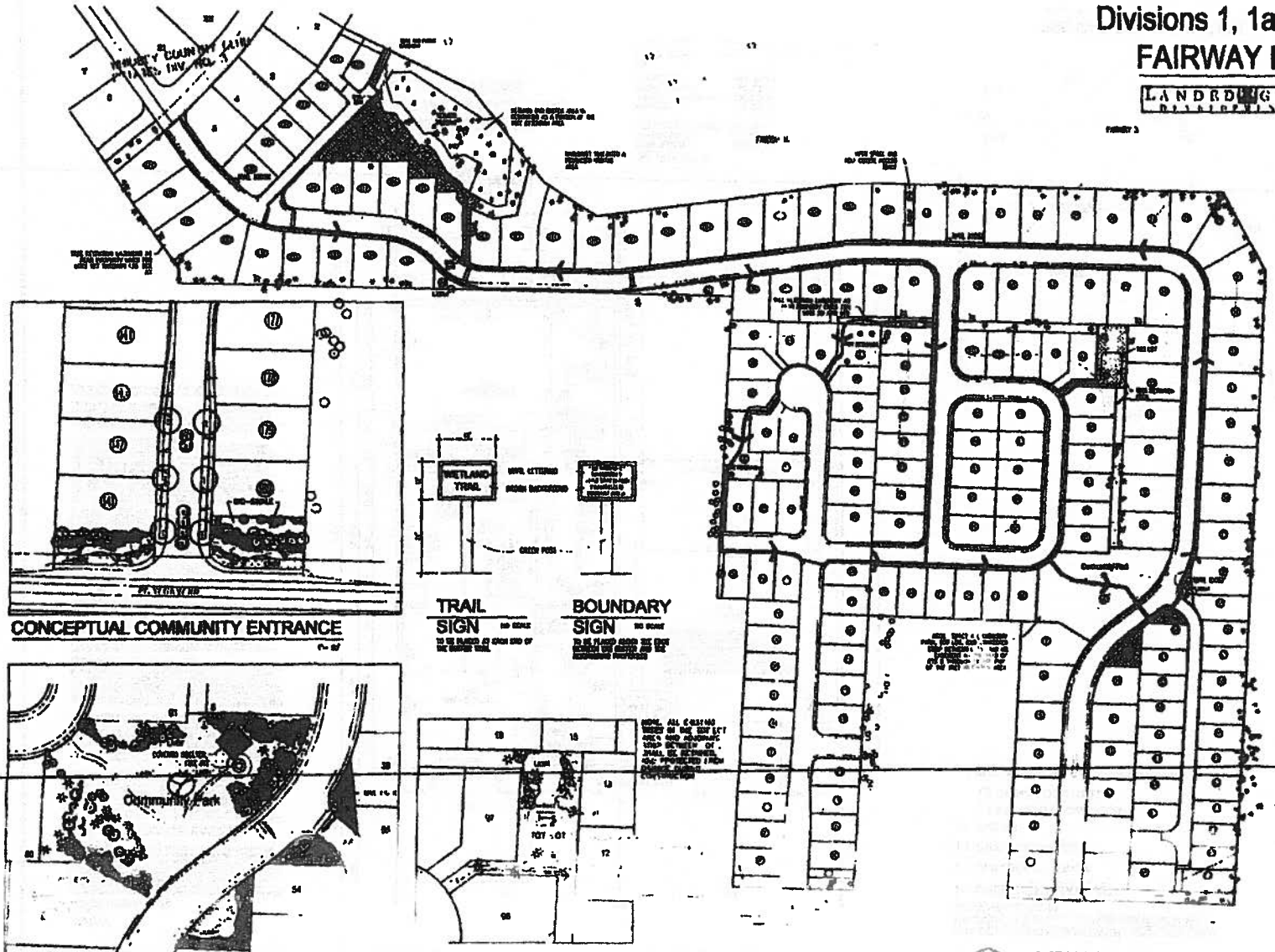
Kendall Gentry

[illegible] • [illegible] • [illegible]
[illegible] • Toll Free [illegible] • Fax [illegible]
[illegible]

PC ATTACHMENT 2

P.R.D. SITE PLAN
Divisions 1, 1a, 2, 3, & 4
FAIRWAY POINT

LANDRED GRNTRY



CONCEPTUAL COMMUNITY ENTRANCE

TRAIL SIGN

BOUNDARY SIGN

TYPICAL STREETLIGHT

TRAIL CROSS SECTION

CONCEPTUAL COMMUNITY PARK PLAN

ONCEPTUAL TOT LOT PLAN

SITE PLAN

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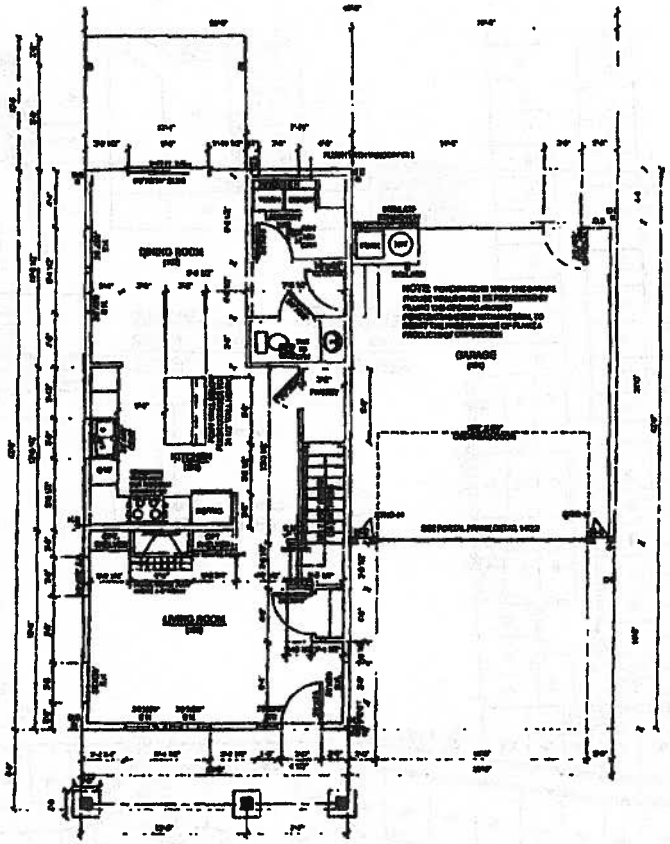
CITY OF OAK HARBOR
Development Services Department

SAFETY

GENERAL REQUIREMENTS

[redacted]



MAIN FLOOR

SEE PAGE 3.3/3.4 FOR BRACEWALLS LOCATIONS AND CALCULATIONS

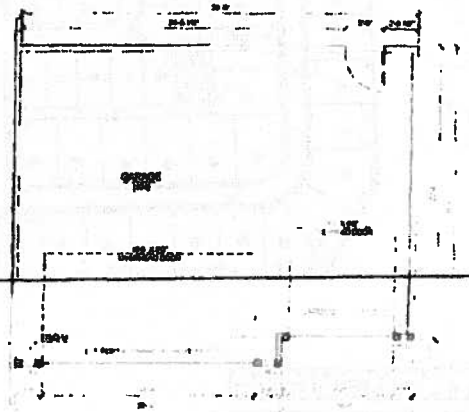
SQUARE FOOTAGE

MAIN FLOOR	[illegible] SQ FT
UPPER FLOOR	[illegible] SQ FT
TOTAL LIVING SPACE	[illegible] SQ FT
GARAGE	[illegible] SQ FT
3rd CAR GARAGE OPT	[illegible] SQ FT
FRONT PORCH	[illegible] SQ FT
BACK DECK	[illegible] SQ FT

FOR USE DURING REDLINE WITH CUSTOMER ONLY VENDORS SEE ATTACHED DOCUMENT WITH ALL SELECTED OPTIONS.

PLANNING OPTIONS LIST

- [ ] MAN DOOR IN GARAGE
- [ ] THIRD CAR GARAGE
- [ ] ARCHES
  - [ ] KITCHEN / DINING ROOM
  - [ ] DINING ROOM / HALL
- [ ] BUILT IN SHELVES NEXT TO FIREPLACE



3RD CAR GARAGE OPTION

LANDED GENTRY

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[illegible] 2012

CITY OF SAN MARCOS
Development Services Department

WHIDBEY

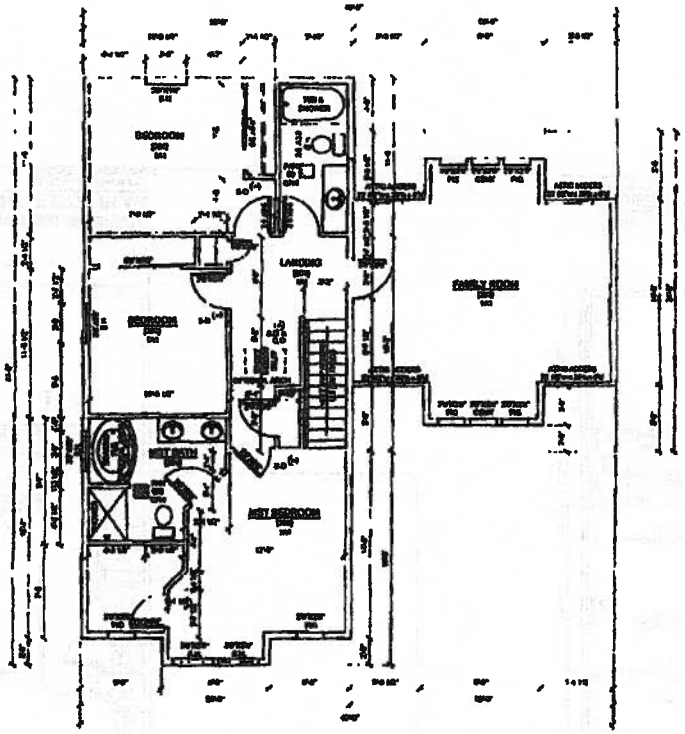
MAIN FLOOR PLAN

A3.1

PC ATTACHMENT 2

SAFETY

GENERAL REQUIREMENTS



UPPER FLOOR PLAN

SCALE 1/4"

SQUARE FOOTAGE

MAIN FLOOR	[illegible] SQ. FT
UPPER FLOOR	[illegible] SQ. FT
TOTAL LIVING SPACE	[illegible] SQ. FT
GARAGE	[illegible] SQ. FT
3rd CAR GARAGE OPT.	[illegible] SQ. FT
FRONT PORCH	[illegible] SQ. FT
BACK DECK	[illegible] SQ. FT

FOR USE DURING REDLINE WITH CUSTOMER ONLY VENDORS SEE ATTACHED DOCUMENT WITH ALL SELECTED OPTIONS.

PLANNING OPTIONS LIST

- ARCHES
  - MASTER BEDROOM HALLWAY
  - MASTER BATHROOM TUB

LANDED GENTRY

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HARBOR

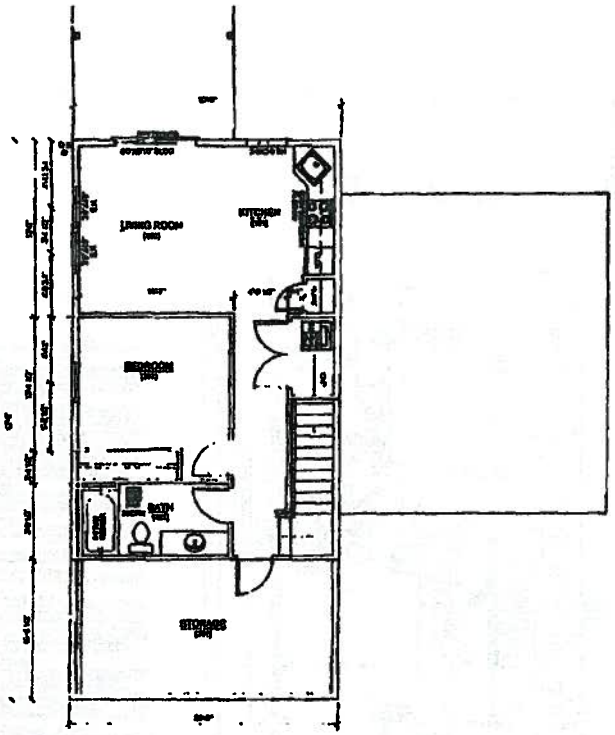
Services Department

WHIDBEY

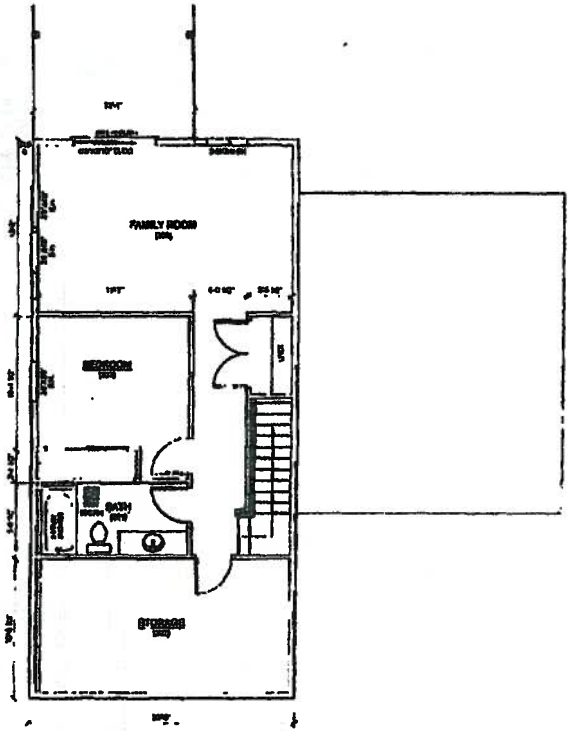
UPPER FLOOR PLAN

A3.2

PC ATTACHMENT 2



ACCESSORY DWELLING OPTION
BASEMENT FLOOR PLAN



FAMILY ROOM OPTION
BASEMENT FLOOR PLAN

LANDED GENTRY
HOMES AND COMMUNITIES

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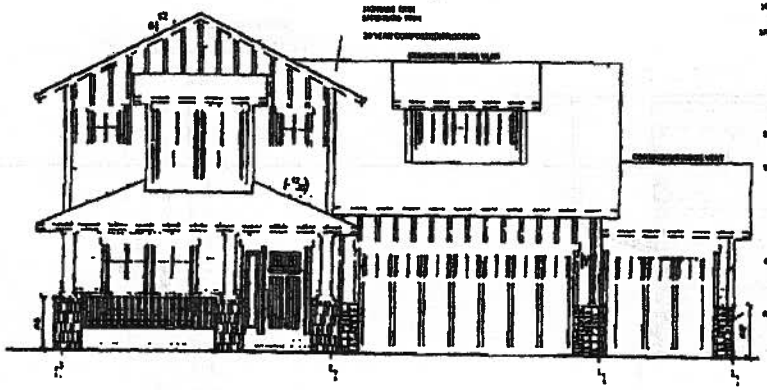
Development Services Department

WHIDBEY

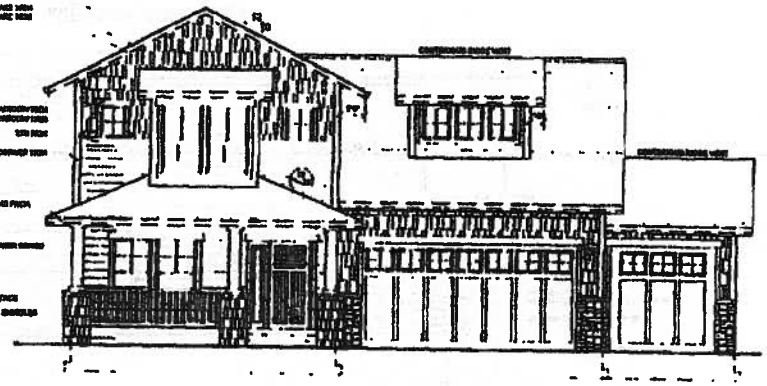
BASEMENT FLOOR

A3.3

PC ATTACHMENT 2

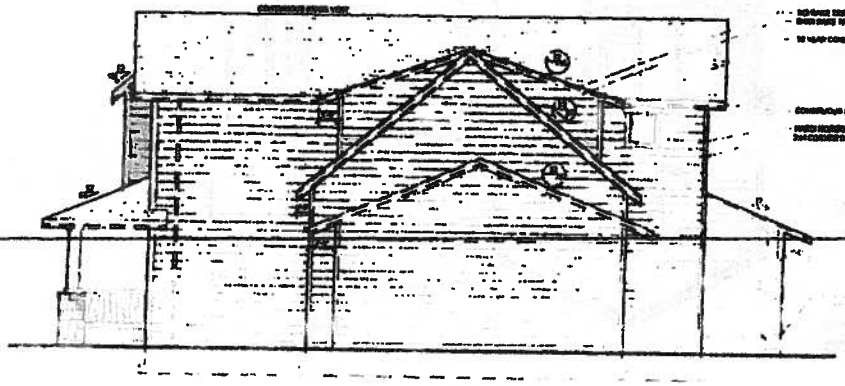


CRAFTSMAN ELEVATION



FRENCH COUNTRY ELEVATION

GENERAL



RIGHT SIDE ELEVATION

LANDED GENTRY

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2012

CITY OF OAK HARBOR

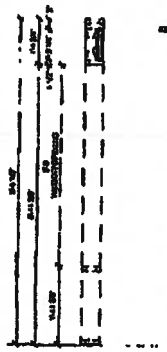
Development Services Department

WHIDBEY

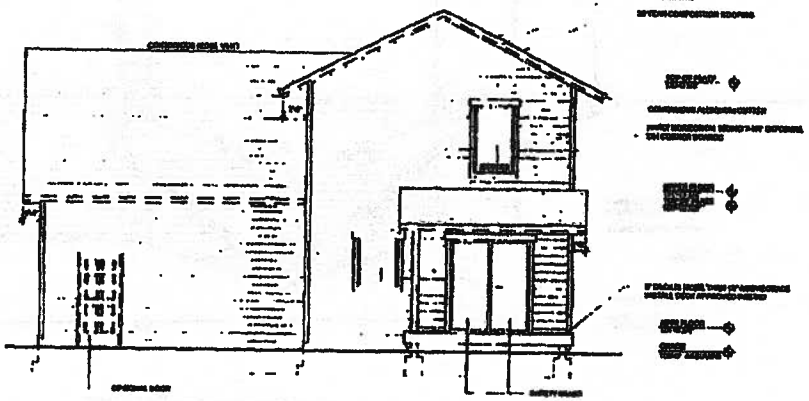
ELEVATIONS

A6.1

PC ATTACHMENT 2

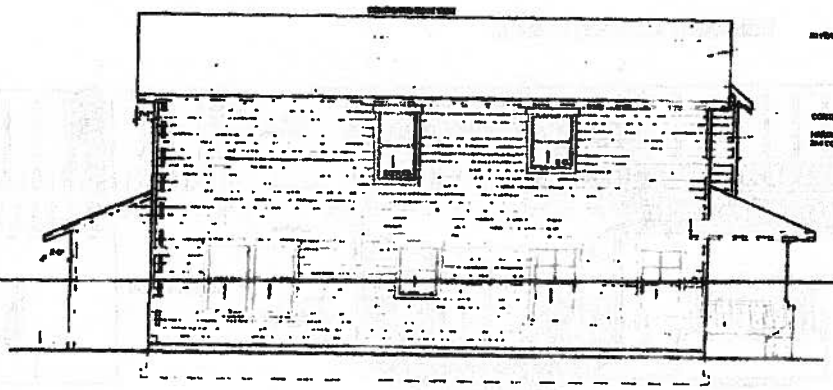


8'-1 1/8" TYPICAL WALL



REAR ELEVATION

9'-1 1/8" TYPICAL WALL



LEFT SIDE ELEVATION

LANDED GENTRY

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JUN 2012

CITY OF OAK HARBOR
Development Services Department

WHIDBEY

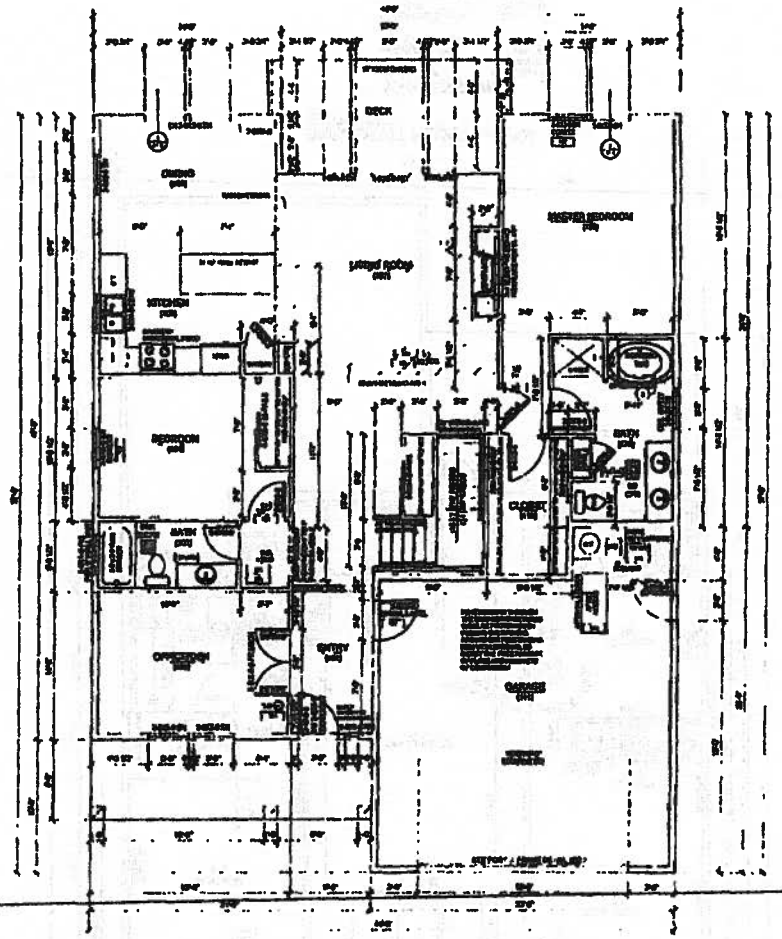
ELEVATIONS

A6.2

PC ATTACHMENT 2

SAFETY

GENERAL REQUIREMENTS



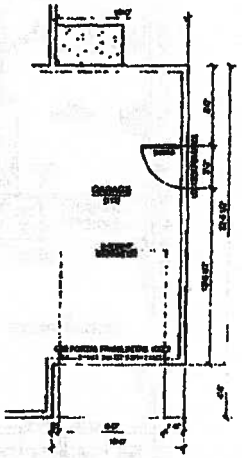
MAIN FLOOR PLAN

SCALE 1/4" = 1'-0"

FOR USE DURING REDLINE WITH CUSTOMER ONLY
VENDORS SEE ATTACHED DOCUMENT WITH ALL
SELECTED OPTIONS.

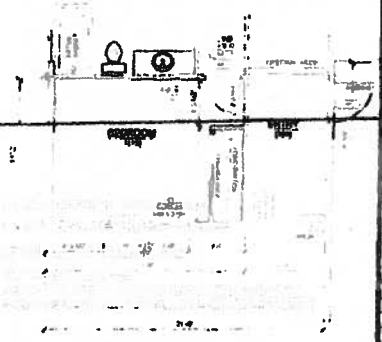
PLANNING OPTIONS LIST

- [ ] PULL DOWN ATTIC ACCESS LADDER
- [ ] 3'-0" EXTERIOR DR IN GARAGE
- [ ] FRONT BEDROOM vs DEN/STUDY
- [ ] LIGHT STORAGE ATTIC TRUSSES
- [ ] ARCHES
  - [ ] ENTRY HALLWAY
  - [ ] MASTER BATH TUB



OPT. 3RD CAR GARAGE

SCALE 1/4" = 1'-0"



BEDROOM OPTION

SCALE 1/4" = 1'-0"

SQUARE FOOTAGE

MAIN FLOOR	1,959 SQ FT
BASEMENT LIVING	1,140 SQ FT
[illegible]	[illegible] SQ FT
TOTAL LIVING SPACE	3,099 SQ FT
GARAGE	532 SQ FT
3rd CAR GARAGE OPT	344 SQ FT
FRONT PORCH	135 SQ FT
BACK DECK	139 SQ FT

LANDRD GENTRY
HOMES AND COMMUNITIES

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CITY OF OAK HARBOR
Development Services

MAXWELTON
BASEMENT

MAIN FLOOR PLAN

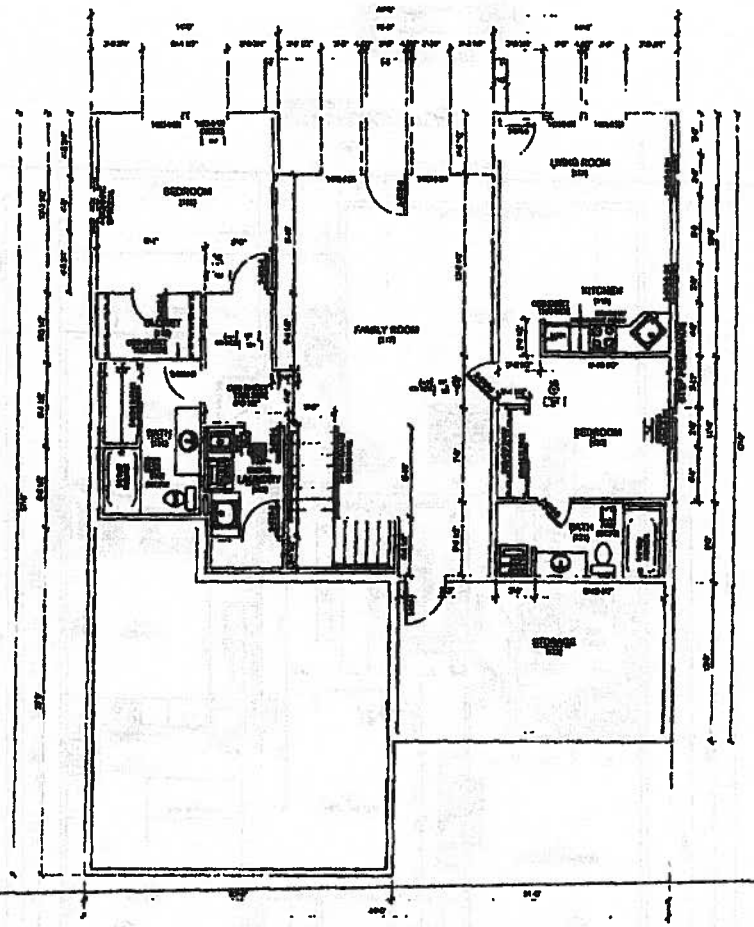
A3.1

PC ATTACHMENT 2

SAFETY

GENERAL REQUIREMENTS

[redacted]



BASEMENT FLOOR PLAN

SQUARE FOOTAGE

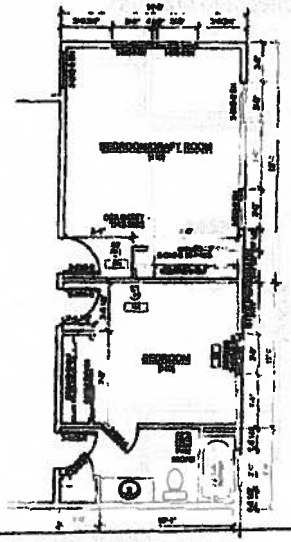
MAIN FLOOR	1,[illegible] SQ FT
BASEMENT LIVING	[illegible] SQ FT
BASEMENT ADU	[illegible] SQ FT
TOTAL LIVING SPACE	3,[illegible] SQ FT
BASEMENT STORAGE	[illegible] SQ FT
GARAGE	[illegible] SQ FT
3rd CAR GARAGE OPT	[illegible] SQ FT
FRONT PORCH	[illegible] SQ FT
BACK DECK	[illegible] SQ FT

FOR USE DURING REDLINE WITH CUSTOMER ONLY
VENDORS SEE ATTACHED DOCUMENT WITH ALL SELECTED OPTIONS.

PLANNING OPTIONS LIST

[ ] 4'-0" x 2'-0" WINDOW IN BEDROOM

[ ] BEDROOMS INSTEAD OF ADU



BASEMENT BEDROOM OPTIONS

LANDED GENTRY

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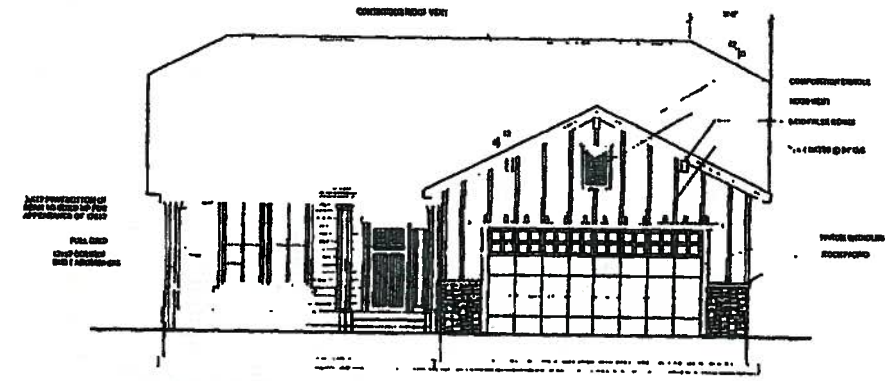
Development Services Dept.

MAXWELTON BASEMENT

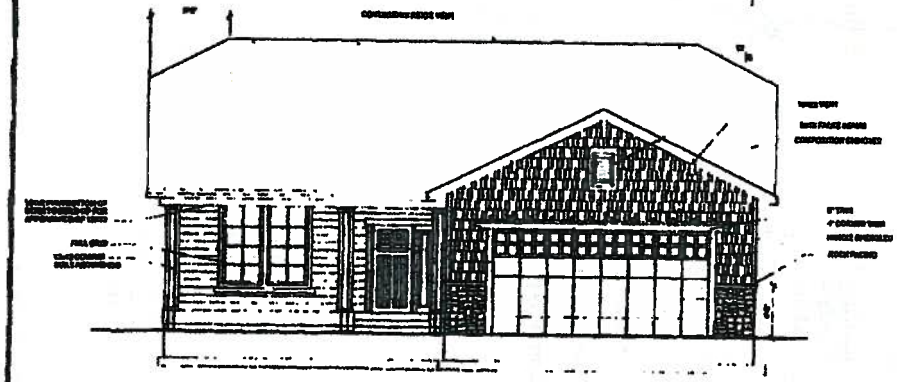
BASEMENT

A3.2

PC ATTACHMENT 2

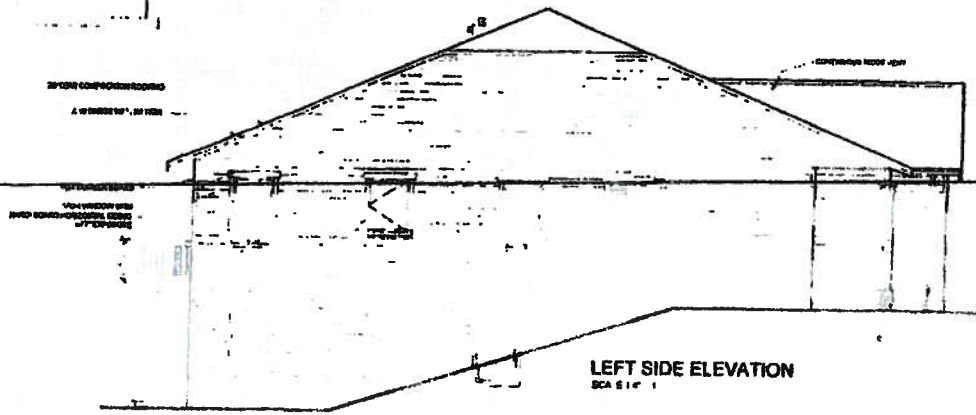


FRENCH COUNTRY ELEVATION



CRAFTSMAN ELEVATION

GENERAL



LEFT SIDE ELEVATION

LANDED GENTRY

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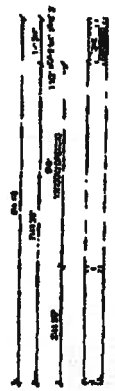
Development Services Dept

MAXWELTON BASEMENT

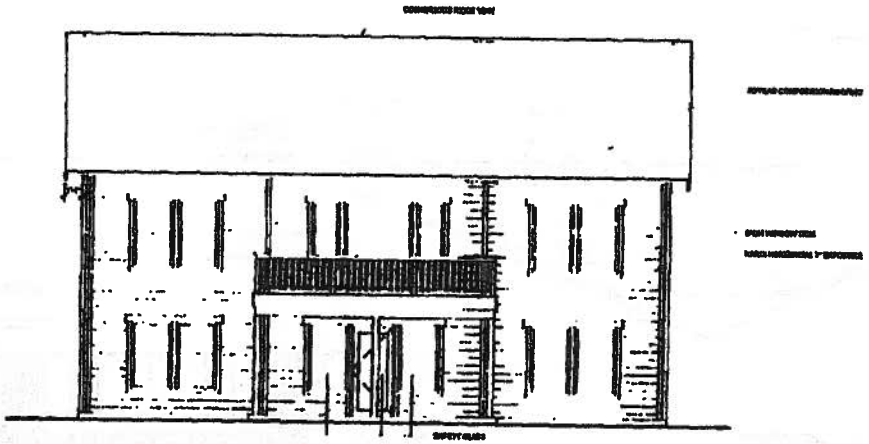
ELEVATIONS

A6.1

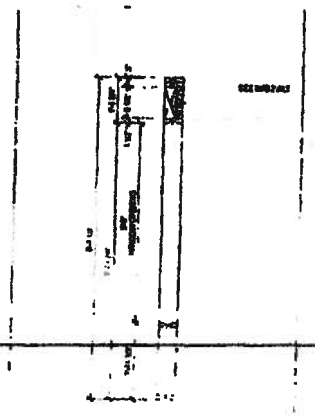
PC ATTACHMENT 2



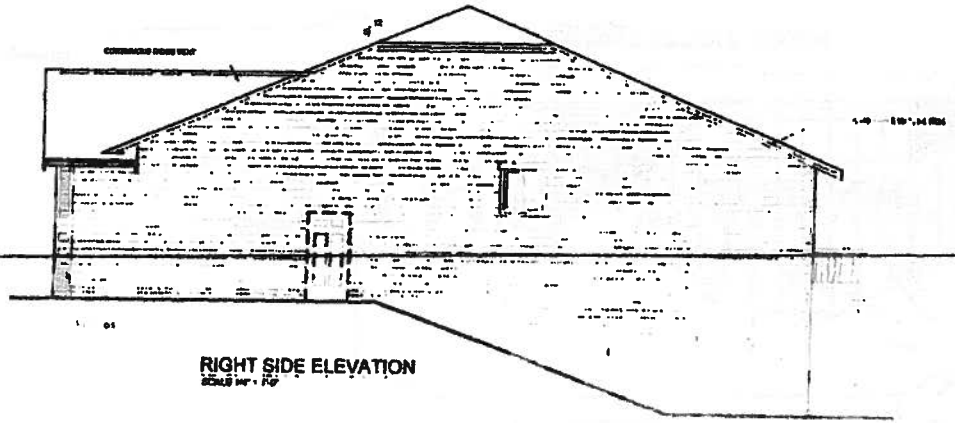
9'-1 1/8" TYPICAL WALL



REAR ELEVATION



5'-1 1/8" TYPICAL WALL



RIGHT SIDE ELEVATION

LINDRED GENTRY

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JUN 05 2012
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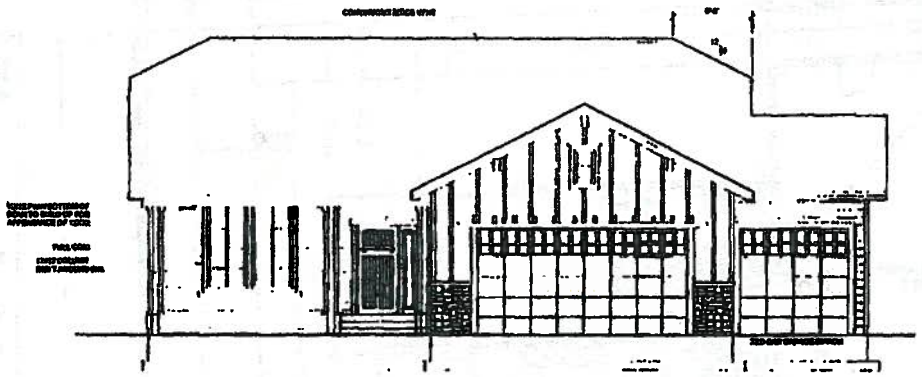
Development Services Department

MAXWELTON BASEMENT

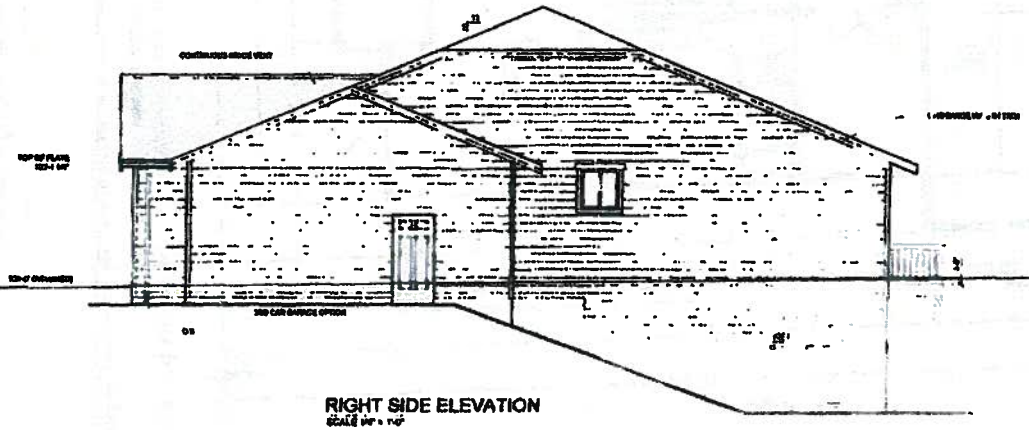
ELEVATIONS

A6.2

PC ATTACHMENT 2



FRENCH COUNTRY 3RD CAR ELEVATION



RIGHT SIDE ELEVATION

LANDED GENTRY

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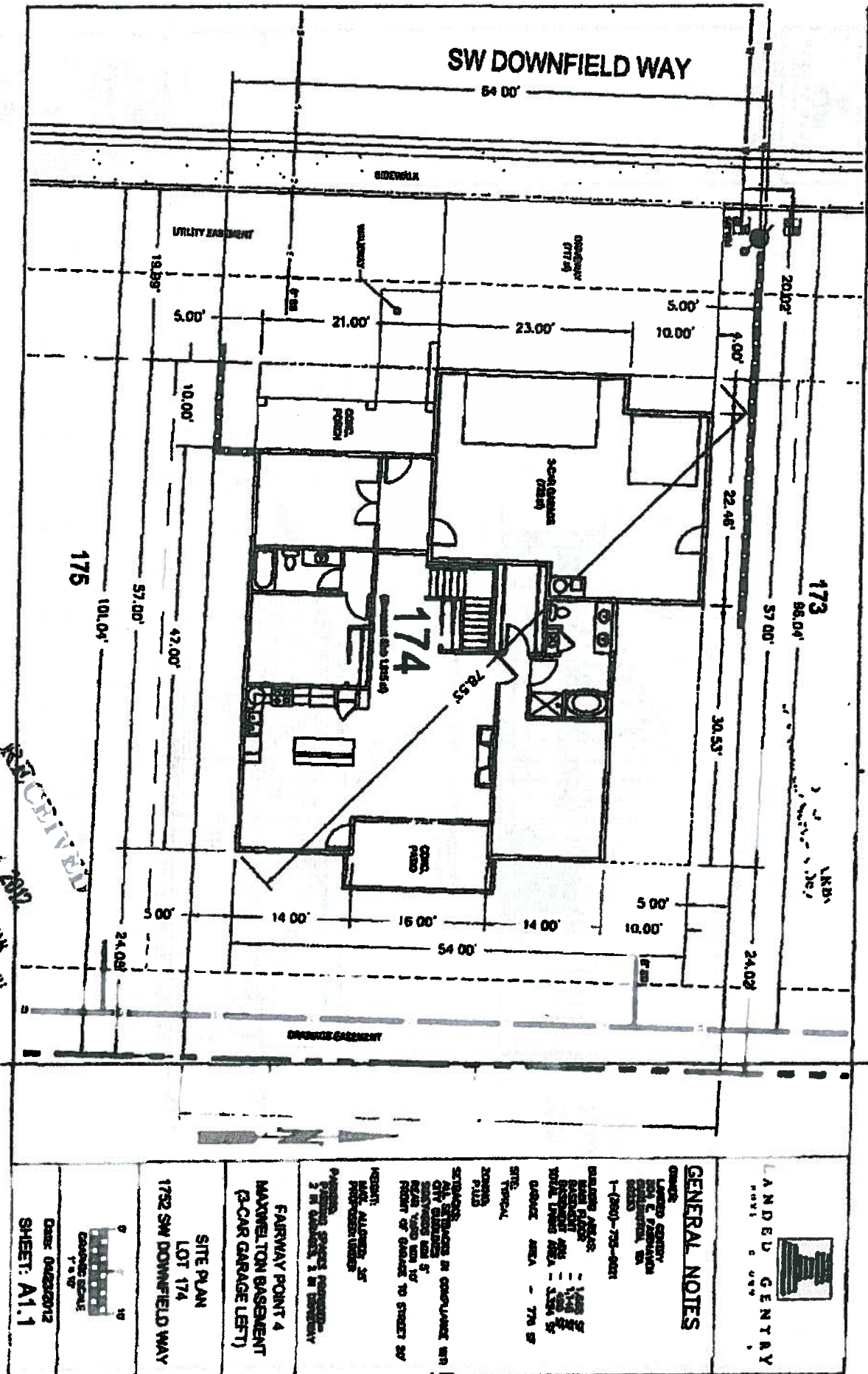
Development Services Dept

MAXWELTON BASEMENT

3RD CAR GARAGE ELEVATIONS

A6.3

PC ATTACHMENT 2



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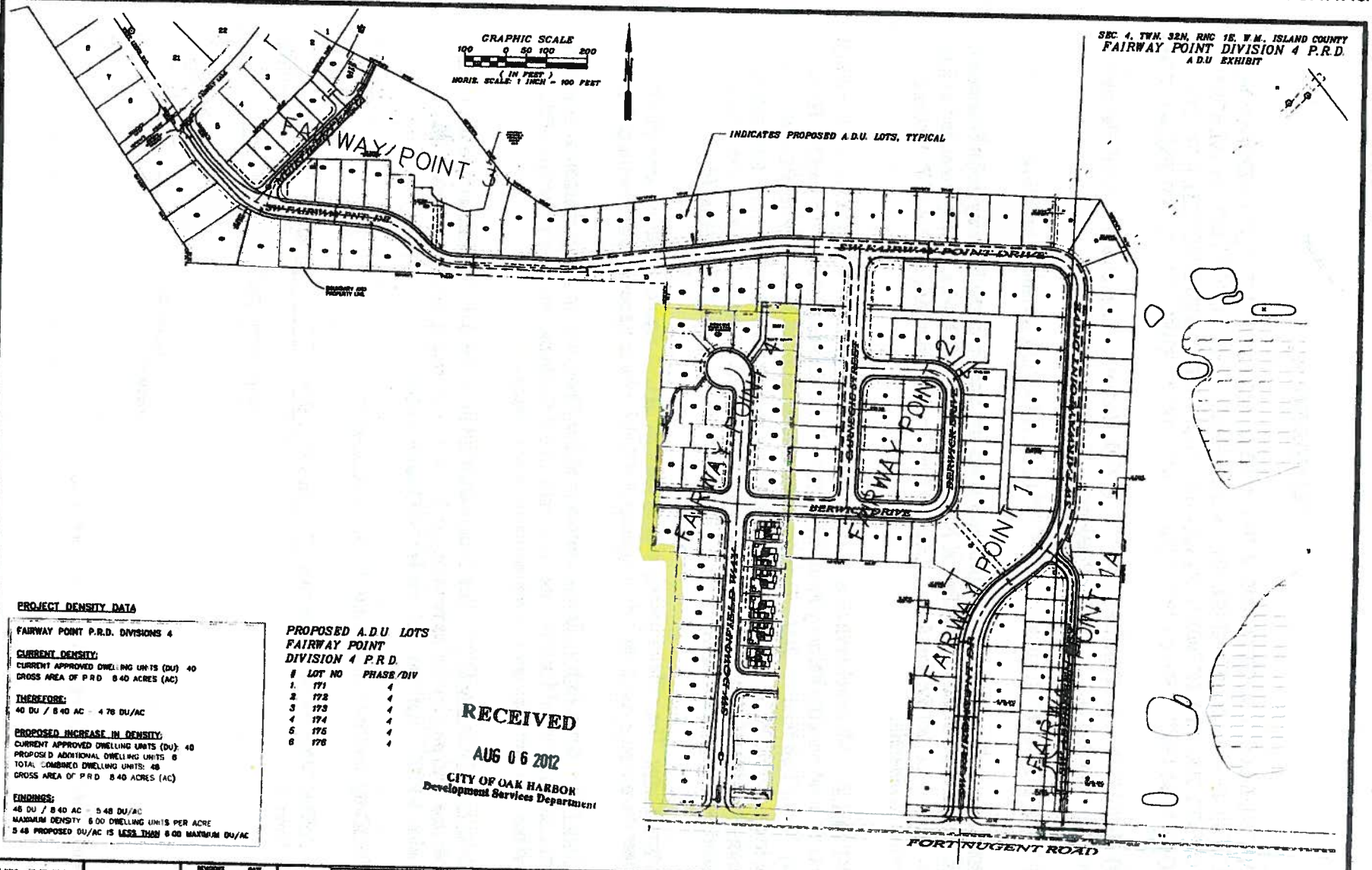
MAY 2012

CITY OF OAK HARBOR
Development Services Department

SEC. 4, TWN. 32N, RNG 1E, W.M., ISLAND COUNTY
FAIRWAY POINT DIVISION 4 P.R.D.
A.D.U. EXHIBIT

GRAPHIC SCALE
100 0 50 100 200
(IN FEET)
HORIZ. SCALE: 1 INCH = 100 FEET

INDICATES PROPOSED A.D.U. LOTS, TYPICAL



PROJECT DENSITY DATA

FAIRWAY POINT P.R.D. DIVISIONS 4

CURRENT DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 40
GROSS AREA OF P.R.D. 8.40 ACRES (AC)

THEREFORE:
40 DU / 8.40 AC = 4.76 DU/AC

PROPOSED INCREASE IN DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 40
PROPOSED ADDITIONAL DWELLING UNITS: 8
TOTAL COMBINED DWELLING UNITS: 48
GROSS AREA OF P.R.D. 8.40 ACRES (AC)

FINDINGS:
48 DU / 8.40 AC = 5.48 DU/AC
MAXIMUM DENSITY 6.00 DWELLING UNITS PER ACRE
5.48 PROPOSED DU/AC IS LESS THAN 6.00 MAXIMUM DU/AC

PROPOSED A.D.U. LOTS
FAIRWAY POINT
DIVISION 4 P.R.D.

#	LOT NO	PHASE/DIV
1.	171	4
2.	172	4
3	173	4
4	174	4
5	175	4
6	176	4

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AUG 06 2012
CITY OF OAK HARBOR
Development Services Department

LANDED GENTRY
HOMES AND COMMUNITIES

SHEET DESCRIPTION: FAIRWAY POINT A.D.U. EXHIBIT

PROJECT: A.D.U. MODIFICATION TO FAIRWAY POINT DIVISION 4 P.R.D.
OAK HARBOR, WASHINGTON

1 of 1

ORDINANCE NO. 1583

AN ORDINANCE APPROVING A PRD OVERLAY ZONE FOR THE FAIRWAY POINT DIVISION 4 PLANNED RESIDENTIAL DEVELOPMENT LOCATED ON ISLAND COUNTY PARCEL NUMBER R13204-152-1801 AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF OAK HARBOR TO REFLECT THE OVERLAY ZONE

WHEREAS, the City Council of the City of Oak Harbor has approved the Final Plat for the Fairway Point Division 4 Planned Residential Development ("PRD");

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

Section One: The zoning for the property generally known as the Fairway Point Division 4 PRD located on Island County Parcel Number R13204-152-1801 is hereby amended to add the Fairway Point Division 4 PRD Overlay Zone to the underlying zoning of R-1 Single-Family Residential.

Section Two: All development within the Fairway Point Division 4 PRD Overlay Zone shall be consistent with the Fairway Point Division 4 Final PRD as approved by the Oak Harbor City Council on June 19, 2007. Development standards not addressed by the Fairway Point Division 4 Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC. Development shall be to a maximum of 40 residential lots to be placed within the area described by the Fairway Point Division 4 PRD Final Plat.

Section Three: The official zoning map of the City of Oak Harbor is hereby amended to reflect the planned residential development subdistrict for the above mentioned property.

Section Four: 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 Five: Effective Date. This Ordinance shall be in full force and effect five days after its passage and publication as required by law and upon recording of the Fairway Point Division 4 PRD Final Plat with the Island County Auditor.

PASSED by the City Council this 4th day of August, 2010.

( ) APPROVED by its Mayor this 6th day of August, 2010.
( ) Vetoed

THE CITY OF OAK HARBOR

Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published: _____

Chapter 19.42
ACCESSORY DWELLING UNITS

Sections:

19.42.010 Purpose and intent.
19.42.020 Permit required.
19.42.030 Standards and criteria.
19.42.040 Basis for denial.
19.42.050 Application process.
19.42.060 Permit conditions.
19.42.070 Nonconforming units.

19.42.010 Purpose and intent.

The purpose of an accessory dwelling unit is to:

(1) Add affordable units to existing housing and make housing units available to moderate-income people who might otherwise have difficulty finding homes within the city;

(2) Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle;

(3) Provide homeowners with a means of obtaining, through tenants in either the accessory dwelling unit or the principal residence, rental income, companionship, or security;

(4) Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that accessory dwelling units are installed under the conditions of this title. (Ord. 1555 § 18, 2009).

19.42.020 Permit required.

An accessory dwelling unit requires a permit approved by the director. (Ord. 1555 § 18, 2009).

19.42.030 Standards and criteria.

Accessory dwelling units shall meet the following criteria:

(1) The design and size of the accessory dwelling unit shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire, health, and any other applicable codes. When there are practical difficulties involved in carrying out the provisions of this title, the director or his designee may recommend modifications that will meet the intent of these codes. Such modifications shall be processed as a variance under this title.

(2) Any additions to an existing building shall not exceed the allowable lot coverage or encroach into required setbacks. The director shall not have the power to vary this provision.

(3) An accessory dwelling unit may be attached or detached from the principal unit.

(4) Only one accessory dwelling unit may be created per residence.

(5) The property owner, which shall include title holders and contract purchasers, must occupy either the principal unit or the accessory dwelling unit as their permanent

residence, but not both, for more than six months out of each year, and at no time receive rent for the owner-occupied unit.

(6) An accessory dwelling unit may be either in a new or an existing residence.

(7) The primary unit, together with the accessory dwelling, may not occupy more than 40 percent of the total site area and must be designed so that, to the degree reasonably feasible, they will appear as one primary residence.

(8) The primary entrance to the accessory dwelling unit shall be located in such a manner as to be unobtrusive from the same view of the building which encompasses the entrance to the principal unit.

(9) One additional off-street parking space, in addition to that required by the underlying zone, shall be provided or as many spaces as deemed necessary to accommodate the actual number of vehicles used by the occupants of both the primary dwelling and the accessory dwelling unit.

(10) In order to encourage the development of housing units for people with disabilities, the director or his designee may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the applicable codes.

(11) Manufactured homes, except zones where these structures are allowed, recreational vehicles or temporary housing shall not be utilized as an accessory dwelling unit. (Ord. 1555 § 18, 2009).

19.42.040 Basis for denial.

The director may deny any permit where it will create an adverse visual impact on the neighborhood or public services, or result in the overall density of the residential area to exceed that established in the Oak Harbor comprehensive plan. (Ord. 1555 § 18, 2009).

19.42.050 Application process.

Any person desiring approval of an accessory dwelling unit shall submit an application containing all of the information required by Chapter 19.48 OHMC, as determined as appropriate by the director, as well as the following information:

(1) Proof that the single-family property upon which the accessory dwelling unit is proposed to be located is owned and occupied by the applicant;

(2) A covenant, in a form acceptable to the city attorney, and suitable for recording with the Island County auditor, providing notice to future owners of the subject site that the existence of the accessory dwelling unit is predicated on the occupancy of the accessory dwelling unit or the primary dwelling. The covenant shall also require any owner of the property to notify a prospective buyer of the limitations of this chapter and to provide for the removal of improvements added to convert the premises to an accessory dwelling unit and the restoration of the site to a single-family dwelling in the event than any condition of approval is violated. (Ord. 1555 § 18, 2009).

19.42.060 Permit conditions.

In addition to any conditions imposed by the director, an approved conditional use permit for an accessory dwelling unit shall state and is expressly subject to the condition that such a permit shall expire automatically whenever:

(1) The accessory dwelling unit is substantially altered and is thus no longer in conformance with the plans and drawings reviewed and approved;

(2) The subject site ceases to maintain three or more off-street parking spaces;

(3) The applicant ceases to own and reside in either the primary residence or the accessory dwelling unit. (Ord. 1555 § 18, 2009).

19.42.070 Nonconforming units.

An owner of an accessory dwelling unit existing prior to the date of adoption of this chapter shall register with the director within one year from the date of adoption of this chapter. The director shall have the authority to waive certain standards in order to accommodate existing accessory dwelling units and may require reasonable conditions to cause the existing accessory dwelling unit to meet the purpose and intent of this title. (Ord. 1555 § 18, 2009).

Lisa Bebee

From: Jesse and Shannon Dougherty [dougherty999@msn.com]
Sent: Saturday, July 21, 2012 1:26 PM
To: Lisa Bebee
Subject: Dwelling units in Fairway Point

Lisa,

I spoke with you a few weeks back about the dwelling units in Fairway point. I believe this is in reference to PLN-12-02. I am against this decision. This will hurt the value of our homes. We have already taken roughly a $50,000 loss in the values sense we bought in 2008. Adding this type of property will de-value our home even more. Please email us with the results of this decision. I know they have already started building one unit. I just hope we can prevent them from building more. Thank you

Jesse and Shannon Dougherty

RECEIVED
JUL 23 2012
CITY OF OAK HARBOR
Development Services Department

ORDINANCE NO. _____

AN ORDINANCE, AMENDING ORDINANCE NO. 1583 WHICH APPROVED THE PLANNED RESIDENTIAL DEVELOPMENT (PRD) OVERLAY ZONE FOR FAIRWAY POINT DIVISION 4, AND APPROVING A MODIFICATION TO THE PRD PLANS FOR FAIRWAY POINT DIVISION 4 WITH RESPECT TO DENSITY ONLY TO ALLOW FOR THE INCLUSION OF ACCESSORY DWELLING UNITS (ADU) WITHIN THE FAIRWAY POINT PRD.

WHEREAS, although not specifically authorized in state statute, planned residential developments are encouraged by the Washington Growth Management Act as an innovative land development technique; and

WHEREAS, the City Council has authority under RCW 58.17 to regulate the subdivision of land, promote the effective use of land, and to adequately provide for the housing needs of the citizens of the state; and

WHEREAS, the City of Oak Harbor's Comprehensive Plan contains policies regarding PRD in both the Land Use Element and the Housing Element of the Plan and the City regulates PRD through Chapter 19.31 of the OHMC; and

WHEREAS, FP4, L.L.C. (current property owner) is requesting to modify the PRD plans of Fairway Point to add ADU to the basements of house plans for up to six remaining lots to be developed within Division 4; and

WHEREAS, accessory dwelling units are normally permitted in all single family zoning districts with an administrative permit however the inclusion of ADUwithin a PRD may change the approved density of a PRD and is therefore considered a major modification to the PRD; and

WHEREAS, the Oak Harbor Planning Commission has the authority to review plans and hold a public hearing on PRD and modifications to PRD and form a recommendation to City Council under Sections 19.31.210 and 19.31.220 of the OHMC; and

WHEREAS, the City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230; and

WHEREAS, Ordinance No. 1583 approved the PRD overlay zone for Fairway Point Division 4 on August 4, 2010; and

WHEREAS, Ordinance No. 1583 required development of the subject property to be consistent with the Fairway Point Division 4 Final PRD Plan as approved by the Oak Harbor City Council on June 19, 2007 and any development standards not addressed by the Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC; and

WHEREAS, a PRD Overlay Zone modifies the existing zoning regulations for a district; and

WHEREAS, Ordinance No. 1583 established the density for Division 4 of the PRD to be 4.76 du/ac by reference to the approved PRD plans; and

WHEREAS, the applicant is seeking to change the density established through the PRD Overlay Zone from 4.76 du/ac to 5.48 du/ac for Division 4; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on July 24, 2012, the Planning Commission held a public hearing regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on August 28, 2012, the Planning Commission continued the public hearing from July 24, 2012 regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, OHMC 19.31.210(3) authorizes conditions of approval to be imposed upon a PRD major modification that are, in the Planning Commission's judgment, necessary to ensure conformity; and

WHEREAS, the Oak Harbor Planning Commission finds that conditioning this approval whereby the ADU's shall be integrated into the primary unit and such condition is consistent with OHMC 19.31.210(3) and the City Council finds the same; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on September 4, 2012, the City Council held a closed record meeting regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

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

Section One. Section 2 of Ordinance No. 1583 is hereby amended with respect to the project density set forth on the face of Sheet A1.1 of Exhibit F: Preliminary & Final PRD Building Elevations, Typical Residential Landscape Plan, & Fence Detail - dated June 7, 2006 from 4.76 du/ac to 5.48 du/ac as shown in Exhibit A referenced herein and attached to this ordinance.

Section Two. Section 2 of Ordinance No. 1583 is hereby amended to add the following sentence: Accessory Dwelling Units within Fairway Point Division 4 PRD shall be integrated into the primary unit and shall not be detached.

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 4th day of September, 2012.

( ) APPROVED by its Mayor this _____ day of _____, 2012.
( ) Vetoed

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published: _____

SEC. 4, TWN. 32N, RNG. 1E, W.M., ISLAND COUNTY
FAIRWAY POINT DIVISION 4 P.R.D.
A.D.U EXHIBIT

GRAPHIC SCALE
100 0 50 100 200
(IN FEET)
HORIZ. SCALE: 1 INCH = 100 FEET

INDICATES PROPOSED A.D.U. LOTS, TYPICAL

FAIRWAY POINT 3
FAIRWAY POINT 4
FAIRWAY POINT 2
FAIRWAY POINT 1
FAIRWAY POINT 1A
SW FAIRWAY POINT DRIVE
SW FAIRWAY POINT PKWY. DR.
SHINGLEBOX DRIVE
BERWICK DRIVE
SW SCHONFIELD WAY
FORT NUGENT ROAD

PROJECT DENSITY DATA

FAIRWAY POINT P.R.D. DIVISIONS 4

CURRENT DENSITY:
CURRENT APPROVED DWELLING UNITS (DU) 40
GROSS AREA OF P.R.D. 8.40 ACRES (AC)

THEREFORE:
40 DU / 8.40 AC = 4.76 DU/AC

PROPOSED INCREASE IN DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 40
PROPOSED ADDITIONAL DWELLING UNITS: 6
TOTAL COMBINED DWELLING UNITS: 46
GROSS AREA OF P.R.D. 8.40 ACRES (AC)

FINDINGS:
46 DU / 8.40 AC = 5.48 DU/AC
MAXIMUM DENSITY 8.00 DWELLING UNITS PER ACRE
5.48 PROPOSED DU/AC IS LESS THAN 8.00 MAXIMUM DU/AC

PROPOSED A.D.U. LOTS
FAIRWAY POINT
DIVISION 4 P.R.D

#	LOT NO	PHASE/DIV
1	171	4
2	172	4
3	173	4
4	174	4
5	175	4
6	176	4

RECEIVED
AUG 06 2012
CITY OF OAK HARBOR
Development Services Department

LANDED GENTRY
HOMES AND COMMUNITIES

FAIRWAY POINT A.D.U. EXHIBIT

A.D.U. MODIFICATION TO FAIRWAY POINT
DIVISION 4 P.R.D.
OAK HARBOR, WASHINGTON

1 of 1

Planning Commission

Staff Report

September 25, 2012

City of Oak Harbor Planning Commission Report

Date: September 25, 2012
Subject: Fairway Point PRD Modification – To Consider ADU's within Division 4

FROM: Melissa Sartorius, Associate Planner

INTRODUCTION

The report this month focuses on the public comments that were received at the public hearing by the Planning Commission at the August 28, 2012 meeting. The report is significantly reduced from that of previous months as most of the information on this item has been included in previous reports and minutes. Staff ask that the Planning Commission reference and rely on the staff reports from June, July, and August of this year, as well as the minutes from those meetings. This report summarizes the public concerns that were voiced at the August 28th meeting for the public and members of the Planning Commission. The minutes from the August 28, 2012 meeting are attached to this report as Attachment 1.

SUMMARY

At the August 28, 2012 meeting, the Planning Commission chose to close the public hearing on the matter after extensive public comment and continue consideration of the item until this month's meeting. By taking such action, no additional public testimony may be taken this month. It is anticipated that the Planning Commission will deliberate on the matter and make a recommendation to City Council.

PUBLIC NOTICE

A Notice of Public Hearing, advertising the Planning Commission public hearing for September 25, 2012 was published in the Whidbey News Times on September 5, 2012. Letters advertising the Planning Commission public hearing for September 25, 2012 were also sent on September 19, 2012 to the interested parties who attended the previous month's hearings or provided written comment.

PUBLIC COMMENT

Members of the public voiced their concerns regarding the inclusion of ADUs in the subdivision at last month's meeting. While there was a request by a citizen for staff to provide an executive summary of the public's concerns, the minutes (Attachment 1) from that meeting provide much more detail and more accurately capture the concerns than can be summarized in this report. However, for the benefit of the public and for the Commissioners not in attendance last month, staff has summarized the main points of concern from citizens. Please note that the bullet points below do not capture all of the public comment received to date on this project; only that heard at the August meeting. Previous public comments are described in the minutes from each month's meeting and, if submitted in written form, were included in the reports as attachments.

Concerns Voiced at the August 28, 2012 Meeting (generalized)

- Homeowners bought into idea of single-family neighborhood not multi-family.

- Concern that ADU will become a multi-family rental unit.
- Negative effect on property values.
- HOA will have to provide enforcement if owner moves out and property becomes a rental. Concerned about cost and implementation of enforcement.
- Concern from HOA over lack of control of rental versus ownership.
- Increased traffic on roadways within subdivision and increase in on-street parking.
- Traffic will use Fairway Lane to get to Ault Field rather than Fort Nugent Ave. Concern about traffic increase on this lane.
- ADU's will become rental units.
- HOA should not be the regulatory board for rental units.
- If approved, it sets a precedent for the City.
- Concern about rentals in a single-family neighborhood.
- Increase in negative aesthetics; more trash cans per residence, cars, etc.

City staff responded to the public's questions and comments at the meeting and the responses are detailed in the August meeting minutes. In addition, the developer, Mr. Gentry, also spoke on the matter and responded to several public concerns (his response is also furnished in the minutes). Furthermore, the City received an email from Mr. Gentry dated September 7, 2012 in which he wishes to restate his position on the matter for the clarification of the Planning Commission (see Attachment 2).

REVIEW CRITERIA

The criteria for review of a major modification to a PRD is listed under OHMC 19.31.200 through 19.31.230 and an analysis of that review by staff was included in the last three month's reports. The conclusion of that analysis is that staff found that the only change to approved plans or regulations is the modification to density on Sheet A1.1 of the Preliminary and Final PRD Drawing Set dated June 7, 2006 and the reference to the former in Ordinance No. 1583. Otherwise, the request is in conformance with all applicable criteria and standards in the OHMC and the approved PRD plans, resolutions and ordinances. If the Planning Commission chooses to recommend approval of the modification, it will allow the applicant to apply for the administrative ADU permits on a house-by-house basis.

The Planning Commission is reminded that they have the authority under OHMC 19.31.210(3) to consider requiring such changes in the proposed project or impose such conditions of approval as are, in its judgment, necessary to ensure conformity with all applicable PRD criteria and standards. As an example, the Commission may consider adding a condition of approval to the draft ordinance that would limit the number of ADU's to a number less than the six proposed by the applicant. In addition, City staff would recommend, and the applicant has indicated agreement with, a condition of approval whereby the ADU's shall be integrated into the primary unit as opposed to detached.

CONCLUSION

While this month's report is brief, the record of review for this item is fairly extensive. There has been significant public input as well as significant deliberation by the Commission at past meetings. The Planning Commission shall review the criteria of a major modification to a PRD, review the public testimony given and conclude deliberation on the matter. The Planning

Commission shall also recommend approval as submitted, approval with conditions or denial to the City Council.

It should also be pointed out that the draft ordinance (Attachment 3) is the same as that considered by the Planning Commission at the August meeting; no changes have been made. The draft ordinance approving the proposed modification for Division 4 is attached for the Planning Commission's consideration.

RECOMMENDATION

Staff recommends that Planning Commission take the following actions:

- Conclude deliberations.
- Recommend approval of the draft ordinance amending Ordinance No. 1583 to City Council.

ATTACHMENTS

1. August 28, 2012 Planning Commission Meeting Minutes (see draft approval minutes, page 3 of this agenda packet)
2. Email from Mr. Gentry dated September 7, 2012
3. Draft Ordinance amending Ordinance No. 1583

Melissa Sartorius

From: Kendall Gentry [kendall@landedgentry.com]
Sent: Friday, September 07, 2012 4:06 PM
To: Melissa Sartorius
Cc: Art Shaw; Chris Lofgren; Michelle Lehr; Dave Moreland
Subject: Fairway Point 4, density correction for ADU's

Hi Melissa,

I want to restate the core issues associated with the subject density change for Fairway Point 4 to make sure that the Planning Commission members who have not been party to the meetings have a clear understanding of our request at their September meeting.

- We are asking to change the density number on the face of the Final plat map from 40 to 46 making the possibility for up to 6 Accessory Dwelling Units (ADU) to be applied for under a separate permit on the 6 lots that will take basements, Lots 171-176. Just having the available density to make an application does not mean that all 6 or even one permit will be subsequently applied for.
- As you know this is not an ADU issue as ADU's are eligible to be placed on most lots throughout the City, it is essentially correcting a Scribner's error on the face of the final plat map.
- The only unique difference that an ADU has is that there is a range so that cooking can occur independently from the main house kitchen. In other words, the same space can be provided in a home (ie. a snack bar) without any additional city permits, just without a range.
- Therefore, making a permit available to a homeowner for an ADU, in the end, gives the City more regulatory oversight than not and puts some structure around how the space is used.
- As mentioned earlier, I will agree to conditions that require any ADU's in FP4 to be integral to the home and not be detached.
- My guesstimate is that only one-half of the increased density will be used for ADU's but since the process is so onerous I am asking for the 6 just to be safe and to only be able to use our 6 basement lots for this purpose.

Thank you,

Kendall Gentry, Principal

Landed Gentry Development, Inc.
504 E Fairhaven Ave
Burlington, WA 98233
360-661-3812, cell
Kendall@LandedGentry.com

ORDINANCE NO. _____

AN ORDINANCE, AMENDING ORDINANCE NO. 1583 WHICH APPROVED THE PLANNED RESIDENTIAL DEVELOPMENT (PRD) OVERLAY ZONE FOR FAIRWAY POINT DIVISION 4, AND APPROVING A MODIFICATION TO THE PRD PLANS FOR FAIRWAY POINT DIVISION 4 WITH RESPECT TO DENSITY ONLY TO ALLOW FOR THE INCLUSION OF ACCESSORY DWELLING UNITS (ADU) WITHIN FAIRWAY POINT PRD DIVISION 4.

WHEREAS, although not specifically authorized in state statute, planned residential developments are encouraged by the Washington Growth Management Act as an innovative land development technique; and

WHEREAS, the City Council has authority under RCW 58.17 to regulate the subdivision of land, promote the effective use of land, and to adequately provide for the housing needs of the citizens of the state; and

WHEREAS, the City of Oak Harbor's Comprehensive Plan contains policies regarding PRD in both the Land Use Element and the Housing Element of the Plan and the City regulates PRD through Chapter 19.31 of the OHMC; and

WHEREAS, FP4, L.L.C. (current property owner) is requesting to modify the PRD plans of Fairway Point to add ADU to the basements of house plans for up to six remaining lots to be developed within Division 4; and

WHEREAS, accessory dwelling units are normally permitted in all single family zoning districts with an administrative permit however the inclusion of ADU within a PRD may change the approved density of a PRD and is therefore considered a major modification to the PRD; and

WHEREAS, the Oak Harbor Planning Commission has the authority to review plans and hold a public hearing on PRD and modifications to PRD and form a recommendation to City Council under Sections 19.31.210 and 19.31.220 of the OHMC; and

WHEREAS, the City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230; and

WHEREAS, Ordinance No. 1583 approved the PRD overlay zone for Fairway Point Division 4 on August 4, 2010; and

WHEREAS, Ordinance No. 1583 required development of the subject property to be consistent with the Fairway Point Division 4 Final PRD Plan as approved by the Oak Harbor City Council on June 19, 2007 and any development standards not addressed by the Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC; and

WHEREAS, a PRD Overlay Zone modifies the existing zoning regulations for a district; and

WHEREAS, Ordinance No. 1583 established the density for Division 4 of the PRD to be 4.76 du/ac by reference to the approved PRD plans; and

WHEREAS, the applicant is seeking to change the density established through the PRD Overlay Zone from 4.76 du/ac to 5.48 du/ac for Division 4; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on July 24, 2012, the Planning Commission held a public hearing regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on August 28, 2012, the Planning Commission continued the public hearing from July 24, 2012 regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on September 25, 2012, the Planning Commission continued the public hearing from August 28, 2012 regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, OHMC 19.31.210(3) authorizes conditions of approval to be imposed upon a PRD major modification that are, in the Planning Commission's judgment, necessary to ensure conformity; and

WHEREAS, the Oak Harbor Planning Commission finds that conditioning this approval whereby the ADU's shall be integrated into the primary unit and such condition is consistent with OHMC 19.31.210(3) and the City Council finds the same; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on October 16, 2012, the City Council held a closed record meeting regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

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

Section One. Section 2 of Ordinance No. 1583 is hereby amended with respect to the project density set forth on the face of Sheet A1.1 of Exhibit F: Preliminary & Final PRD Building Elevations, Typical Residential Landscape Plan, & Fence Detail - dated June 7, 2006 from 4.76 du/ac to 5.48 du/ac as shown in Exhibit A referenced herein and attached to this ordinance.

Section Two. Section 2 of Ordinance No. 1583 is hereby amended to add the following sentence: Accessory Dwelling Units within Fairway Point Division 4 PRD shall be integrated into the primary unit and shall not be detached.

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.

Ms. Sartorius noted that there will only be one meter serving the residence so if there are two units within one house the primary unit owner will be billed.

Mr. Gentry noted that part of the ADU covenant that the property owner signs says that the property owner has to live in one of the units. The covenant is also recorded.

Phil Collier (2118 Fairway Lane) commented that it doesn't make sense, it is just a gimmick and not enforceable and that the unit are going to be multi-family units not single-family units.

Bruce Freeman (2746 SW Fairway Point Drive) commented on the parking issue saying that 95% of the people use their garage as storage so they park vehicles on the street. He also commented that he believe there would be multiple people living in the home, enforcement would be have to be through the HOA and he didn't think that would work.

Rick Porritt (2130 Fairway Lane) asked if Mr. Gentry would explain the marketing tool he talked about at the last meeting which involved using the additional rent as extra income to offset the mortgage payments.

Mr. Powers explained that Mr. Porritt's question to Mr. Gentry should be answered outside of this proceeding because whether or not the unit is for the care of family member or whether they are renting the unit is not a factor that the Planning Commission can consider as part of the recommendation to the City Council. Mr. Powers further noted that one of the purposes of an ADU that the ADU Code specifically states is that ADU's are intended to provide homeowners with a means of obtaining through tenants in either the accessory dwelling unit or the principal residence, rental income, companionship, or security.

Mr. Gentry explained that all he is asking the Commission to do is recommend that a couple of digits on the preliminary plat be changed to say 46 instead of 40 and the ADU happen only if someone wants one and it allows him to advertise and sell the home legitimately.

ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED A MOTION TO CLOSE PUBLIC TESTIMONY. MOTION CARRIED.

Planning Commission Discussion

Mr. Oliver raised concerns over parking. Mr. Wallin noted that Mr. Gentry could still build homes to accommodate larger families with a basement and there is nothing that would require him to provide extra parking. Mr. Wasinger commented that the density is allowable and that is the issue that needs to be dealt with and it is not uncommon for homeowners to fill their garage up with belongings and park their cars in the street. Mr. Oliver, Mr. Wasinger and Mr. Wallin thought that more of the Commissioners should be present before taking a vote. Mr. Powers said that the Commission could choose to hold the agenda item over for another month and staff will work to ensure that more Commissioners are present recognizing that the Planning Commissioners are volunteers.

MOTION: MR. OLIVER MOVED TO MAKE A RECOMMENDATION TO THE CITY COUNCIL TO DENY THE APPLICATION. MOTION DIED DUE TO A LACK OF A SECOND.

ACTION: MR. WALLIN MOVED, MR. WASINGER SECONDED A MOTION TO CONTINUE THE FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S TO SEPTEMBER 25 TO ALLOW THE COMMISSION TO REVIEW THE

was the maximum density allowed and the density that they were using (29 units) is short of the maximum density allowed. Therefore, to add ADU's in Phase 1-3 no additional review is required by the Planning Commission. So the intent of this request is to raise the density of Phase 4 from 40 units to 46 units which is well below the maximum density allowed. The idea that we are changing single-family neighborhoods into multiple-family or rezoning something by using a provision in the code that applies to every single-family home in the City is a mischaracterization of the idea of an ADU. Mr. Gentry conveyed his own experience with an ADU that he rents in his home. Mr. Gentry concurred with staff's recommendation that there be no detached ADU's. Mr. Gentry pointed out that ADU's are market driven and that ADU's will only be done for people that request ADU's. This is a way to help families accommodate their various needs and the positives outweigh the negatives.

Mr. Oliver asked what the parking requirements are. Ms. Sartorius said that one additional space is required in addition to what is required for the underlying zoning district. In this instance the zoning is R-1 and requires two parking spaces so with the addition of an ADU there needs to be three parking spaces (includes spaces inside the garage and driveway).

Mr. Oliver asked Mr. Gentry what the negatives of adding ADU's are. Mr. Gentry said that traffic issue neighbors have raised will be negligible because he won't be building 29 ADU's for people that don't want it. He will only be building them for people that want it.

Mr. Wallin asked if there was anything in the Code that would prevent someone from finishing out the basement as a bedroom and rent that room as versus an ADU. Mr. Powers said that was correct and the distinction is the combination of sleeping, living and cooking facilities that establishes it as an ADU and there is nothing that prevents anyone from renting out a bedroom.

Mr. Gentry said that he valued his relationship with the City and they wanted to be able to promote ADU's as a permitable use and be above board. He said he would be impressed if he got 3 customers for the ADU's out of the six they were asking for.

Mr. Oliver asked the president of the HOA how the ADU's would affect HOA dues and the covenant that is in place now. Will there be something spelled out that says the ADU is specifically for a mother-in-law unit or for rental purposes?

Mike Oberholtzer (2770 SW Fairway Point Drive) said that he was on the Board for the HOA. He said they were wondering how they would enforce the rules and how they would control whether the homeowner rents the residence.

Mr. Powers clarified that the request before the Planning Commission is to change the density to allow additional units in the form of ADU's. The City's Code for ADU's does not draw a distinction between whether the ADU is or is not for a rental situation. This applies across other cities' zoning codes as well. Cities don't regulate the form of ownership. Cities regulate the land use. The City is prevented from placing a restriction that says it should be only for the care of individuals that are part of the family or that it should not allow for a rental.

Mike Oberholtzer (2770 SW Fairway Point Drive) added that it is the Planning Commission's objective to understand the impact on the homeowners that are living in that area. If it is an enforcement issue that falls on the HOA it costs us money and they have to raise the dues to pursue legal action for the people that are not in compliance.

- The draft ordinance was updated to include the Planning Commission authority to impose conditions of approval and include a condition regarding the integration of ADU's as part of the primary unit rather than detached units.

Ms. Sartorius concluded by recommending that the Planning Commission conduct the public hearing, close the public hearing and make a recommendation to the City Council to approve the draft ordinance amending Ordinance 1583.

Phil Collier (2118 Fairway Lane) voiced his concerns about overloading a road system that currently has no sidewalks or lighting (Fairway Lane) and changing the single-family plan to what he considers duplexes that will become rental units. He urged the Planning Commission to vote no.

Bruce Freeman (2746 SW Fairway Point Drive) said that he bought a home that he thought was in a single-family zone and that the homeowners don't know that Phases 1-3 already allow ADU's and Phase 4 currently doesn't allow ADU's. He was concerned about the ADU becoming a rental unit and that the Home Owners Association (HOA) will have to enforce the rules through a civil action and the problem is that people don't notify the HOA when they are moving. He urged the Planning Commission to vote no.

Rick Porritt (2130 Fairway Lane) noted his concern about conflicting, confusing and changing information, potential traffic congestion with vehicles from multiple ADU's that could bring nearly 30 additional cars. He noted that a reference was made at the previous meeting about renting the ADU's as an income producer and a marketing tool to help offset a mortgage. He said that homeowners association should not be the regulatory board for rental units and that property values will be adversely affected.

Rich Wais (2142 Fairway Lane) said he was the president of the HOA of 23 families on Fairway Lane and Links Way. Mr. Wise said that their major concern was the increased traffic on a county road that has no speed bumps and basically no law enforcement. He believed that there was an advantage to getting onto Fairway Lane if you are going to the base instead of going through Fairway Point which would increase the traffic. He urged the Planning Commission to vote no.

Jerry Grunwald (2145 Fairway Lane) said that if the Planning Commission approves the six units in Division 4 they are setting a dangerous precedent. He asked the Planning Commission to think of the impacts on the community when allowing a sales pitch/gimmick to make the units more attractive to purchase by saying that you could get income on the side. He asked the Commission to how many single-family residents in their neighborhoods have rentals in them. He said this is something new and he didn't like it.

Kendall Gentry (of Landed Gentry) introduced himself as the proponent of the density modification to Division 4. Mr. Gentry pointed out that the county residents that provided testimony tonight are not the constituents of the City Planning Commission. Mr. Gentry also stated that it would be very circuitous for the potential homeowners to wind their way back through Fairway Lane and create traffic issues to Fairway Lane. He thought that residents would exit the property through Fort Nugent/Swantown Road. Mr. Gentry said that the issue is convoluted and is really a very succinct simple issue. ADU's are a property right that every single property owner enjoys. The reason it is an issue in Fairway Point Division 4 is because on the face of the plat that was recorded that the density was 40 units even though the allowable density was more than that. For Phases 1-3 the density posted on the face of the plat

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
August 28, 2012

ROLL CALL: **Present:** Keith Fakkema, Gerry Oliver, Greg Wasinger and Jeff Wallin.
Absent: Bruce Neil, Kristi Jensen and Jill Johnson-Pfeiffer.
Staff Present: Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak and Associate Planner, Melissa Sartorius.
Guest Speaker: David Pater, Department of Ecology.

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

MINUTES: **MR. WALLIN MOVED, MR. OLIVER SECONDED, MR. WASINGER ABSTAINED, MOTION CARRIED TO APPROVE THE JULY 24 AND AUGUST 14, 2012 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
No comments.

FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S – Public Hearing
Mr. Fakkema recused himself from the discussion of this item.

Mr. Wasinger opened the public hearing.

Ms. Sartorius reported that this item is a continuation from last month's meeting. Planning Commission's discussion and questions at that meeting prompted staff to provided supplemental information regarding Accessory Dwelling Units (ADU's) (PC Attachment 1). The publication from the Municipal Research and Services Center of Washington discusses the benefits and regulatory issues and options of ADU's. Ms. Sartorius pointed out that the exhibit that was shown last month has been revised to show only Division 4 and the six ADU's that are proposed in order to alleviate confusion that was experienced at the previous meeting. Other changes from last month's report to this month's report include:

- Page 23 points out Attachment 4 which is a copy of OHMC Chapter 19.42 so that the Commission and the public understand the criteria and standards that apply to an ADU on a permit-by-permit basis when an applicant applies for a permit on the administrative basis.
- Page 27, the Public Notice section has been updated to reflect the publication for this month's meeting. The Citizen Comment section was revised to include written comments on the proposal as well as summarizing comments made at last month's meeting. One additional comment was provided by Mr. Porritt late last week and was provided to the Planning Commission (PC Attachment 2).
- Page 28, the Conclusions section was revised to remind the Commission that should they decide to approve the modification they may add conditions of approval that mitigate or address concerns by limiting the number of ADU's to a number less than the six proposed by the applicant. In addition, City staff would recommend, and the applicant has indicated agreement with, a condition of approval whereby the ADU's shall be integrated into the primary unit as opposed to detached.

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on which of the three options that the Planning Commission would like staff to pursue and then staff will start trying to answer these questions.

Ms. Johnson-Pieffer said that she liked the combination of zoning and occupancy but that she believed that it doesn't matter what zone you put the nightclub in you are going to have the same problem but we can't just say that we don't want them. There are members of the community that do use these establishments and we have a responsibility to allow these types of businesses to exist. Mr. Kamak said that he didn't think limiting the occupancy load is denying a certain type of business but just the size.

Mr. Neil said he would like staff to pursue Option 3 - Licensing uses by occupant limit method.

Mr. Wallin said he would like a combination of occupancy limit tied to the specific zones.

Mr. Oliver said he prefers the occupancy limit but not tied to the specific zone. Mr. Kamak said it was possible to have different occupancy limits in the different zoning districts and it will be a business license requirement. By saying in the license requirement that any business with an occupancy load of greater than 200 in the CBD is prohibited from applying for a license, that will limit the number in the CBD. You can say no business greater than 400 in the C-3 zone is permitted to apply for the nightclub license. You can have that staggering in varying zoning districts if you choose. So therefore you are not limiting or you can say in no zoning district shall be greater than 200, it is a community choice.

Ms. Johnson-Pieffer liked that approach and asked if you put a 100 person limit in the CBD and you had a business that broke their building into three separate rooms in which they had a hip-hop nightclub, a county/western club and a ballroom dancing each in a separate space that had the same 100 person occupancy limitation in each room and the same hours and they all left that facility at the same time we won't have accomplished anything. Mr. Kamak said that was correct and that is the risk. The entire downtown could have nightclubs but those businesses would have to be separate from a building code standpoint.

Mr. Oliver asked how the occupancy load is calculated. Mr. Kamak said it was calculated by each business. Each business has to be separate. We are not limiting by area within the building we are calculating by the entire business's occupancy load.

Mr. Neil confirmed with the Planning Commission that they were directing staff to pursue option 3 – Licensing uses by Occupancy Limit with some consideration to zoning.

Mr. Kamak said that since the Planning Commission wishes to consider zoning categories it will still be in the Planning Commission's realm to make a recommendation. If the Planning Commission had said just occupancy load and not zoning it would no longer have been a Planning Commission issue and only a City Council issue.

Mr. Oliver suggested thinking about barriers to mitigate sound also. Mr. Kamak said that could be considered as part of the licensing requirement.

Staff and Planning Commission discussed how to handle the remaining items on the agenda and decided to hold a special meeting on Monday, August 13, 2012 at 5:00 p.m. to discuss the Shoreline Master Program Update and the 2012 Comprehensive Plan Amendments.

ADJOURN: 10:30 p.m.

New Jersey in which many people were burned to death. Mr. Powers noted that the fire code was changed as a result of that tragedy. Mr. Powers also pointed out that the numbers are calculations and there is a difference between what the capacity is and what normally happens and the practical limitations. Mr. Powers said that we are not in a position to change what the occupancy loads are and this is not a subject of discussion this evening.

Mr. Everett said that in 2007 the condominium residents recommended that the City Council not authorize formation of the Element in that area and Captain Wallace made a statement for the record that he advised against it because it exposed the City to continuing problems from the mass of people that were going to be coming out of the club and the proximity of residents. Captain Wallace's arguments were brushed aside and here we are four years later with this dilemma still before us. He implored the City to use whatever power it has to do something constructive about it. The Element is impacting the residents and others in terms of health, welfare and economic loss. It should never have been and has got to cease as soon as possible.

Billie Cook (651 SE Bayshore Drive) said that a small business district was never meant to bear the use or the impact of a mega-nightclub in like this. She asked if this was the image that we want to project in our mixed use business district of large nightclubs that have violence, drunkenness and lewd behavior that goes on there all the time. In other parts of the county these mega nightclubs are referred to as "roadhouses" where the venue is very loud and excessive drinking and finding a date or "hooking up" is the goal. She stated that she didn't feel that people who frequent the "roadhouse" or mega-nightclub are criminals or wrong in any way but that she didn't want them in her front yard. She asked if we wanted more of them in an area that we present to tourists, many whom are family-oriented or older visitors that don't feel comfortable with that venue. Is this the image that we want to present to attract businesses and jobs? Ms. Cook believed that there should be a limit on the size of nightclubs in the Central Business District CBD) because it is too small for the impact of the mega-nightclub. Along with a limitation on the size the CBD she hoped there would be some action taken to designate an area where the mega-club can operate.

Mr. Oliver asked what Ms. Cook thought the best occupancy limit would be for the CBD. Ms. Cook thought the limit should be100 but maybe 200.

Planning Commission Discussion

Mr. Oliver said that the problem with anything that people do in the business world is what they offer and he wasn't sure how to address this issue. Mr. Kamak said that the nexus is large groups of people create impacts and that is what we are trying to address. Mr. Oliver asked if there was a count that can be gauged. Mr. Kamak said that if the Planning Commission chooses occupancy load as a methodology the mission would be to see how we can write a code that would address the impacts to prevent large users from obtaining nightclub licenses. The occupant loads are based on their current uses and not based on nightclubs. They are based their underlying use and that is a limitation established by the building code, so that will determine whether they can apply for a nightclub license or not. We are not limiting the number of people in a particular building by the nightclub license we are saying who can apply for it so larger users may not be able to apply for it. Or if the community wants to choose a special process that will accommodate the larger uses we would have to write that into the code as well.

Mr. Wallin noted that Mi Pueblo has a particular room that is designated as the nightclub area and asked if each of their rooms has a separate occupancy load. Mr. Powers said yes and that it is a combined occupancy. Mr. Powers restated that the mission tonight is to get a consensus

Mr. Oliver pointed out that he was representing Mr. Kumberfelt in a couple of real estate transactions as well as a couple of people in the Bayshore Condominium Association. He asked the public if they cared to hear what he had to say.

Mr. Powers noted that this was not a quasi-judicial proceeding so if this is a code amendment it is legislative so this is not focused on a particular piece of property.

A member of the public asked if it was appropriate for Mr. Oliver to recues himself from voting on the issue and that he would like to hear what Mr. Oliver has to say but was a little reluctant to have him voting on the issue.

Mr. Wallin asked if whatever is decided would have no effect on what Element has currently. Mr. Powers said that was correct. Mr. Neil said this would affect new nightclubs.

Mr. Wallin asked if the City be creating two different occupancy licenses if occupancy load was used as the criteria. Mr. Kamak said yes, we could regulate by zoning districts. You could have a limitation in occupancy depending on the zoning district.

Ms. Johnson-Pieffer asked if Option 3 would mean that a business would have to choose whether it was applying for a restaurant license or a nightclub license. Mr. Kamak said that when a business comes in for a building permit they are applying for a particular use such as a restaurant perhaps, the building official will review the plans against the building code and establish what the occupancy load for that restaurant is which sets the limit. If later the restaurant determines that they want live music and extend the use they would come in a get a license on top of what they already have. So the established occupancy load for the primary use would apply. Ms. Johnson-Pieffer asked if a 400 capacity restaurant was applying for a nightclub license restricted to capacity of 300 would they be denied a nightclub license. Mr. Kamak said they would have to be qualified to even apply. If they wanted the nightclub license they would have to redesign the interior space to meet the building code. They would have to make substantial changes to their capacity in order to accommodate the nightclub. Mr. Powers noted that there is no language crafted yet and that so far we are only discussing the methodology.

Mr. Oliver asked if an established nightclub were to sell and we have set the occupancy load at a lower level how will the new business owner be affected. Mr. Kamak said that the new owner would have to apply for a new license and in that case we can either write a code that would allow the continued use of existing businesses or we can do it by location. These are details that would need to be worked out if this methodology is chosen.

Ms. Johnson-Pieffer said she did not support the conditional use permit methodology (Option 1) because she felt it was too volatile and was not a predictable enough process for a business model to operate in.

Mr. Neil asked for public comment.

Richard Everett (651 SE Bayshore Drive) asked how the occupancy limits would be developed. Mr. Powers said that the occupancy load was a function of the building code and the fire code. It is prescribed based upon uses, exits, construction materials, hallways and a variety of life safety issues. Mr. Everett said that he felt an occupancy load of 800 was too high regardless of what the code says especially when patrons are drinking. He also pointed out the tragedy in

Regulation. For instance, only structures/spaces below 5000 square feet are eligible for nightclub licenses.

- Pros: This will definitely limit the size of building or use that can apply for a nightclub license.
- Cons: This option may not address the actual impact of large groups of people generated from nightclubs because occupancy limits vary based on primary use and interior features/fixtures of the building. Therefore, there is a high probability that a 5000 square feet space can vary in occupancy limit ranging from 50 to 500. For example, a restaurant under 5000 square feet and a occupant limit of 120 can apply for a nightclub license and so can a piano bar under 5000 square feet and a occupant limit of 400. So, although the square footage is the same, the occupancy limits can vary substantially.

3. **Licensing uses by occupant limit:** Using occupancy limits to restrict nightclubs was discouraged in the last memo to Planning Commission. However, further discussion with the City's Building Official has indicated that occupancy limits can be used creatively to regulate nightclubs. The use of occupancy limits was discouraged earlier because it would not be feasible to implement a regulation that limited nightclub license holders to certain occupancy limits. For example, if the City adopted a code to limit all nightclubs to an occupancy limit of 100, and if a restaurant that has an occupancy limit of 150 applies for a nightclub license, the City cannot now require the restaurant to maintain a occupancy limit of 100 which is less than the approved occupancy limit for the primary use (restaurant). However, the City can adopt a code that sets an occupancy limit threshold to apply for the nightclub license. For example, the code can restrict nightclub licenses to only uses that have an occupancy limit of 100 or less. Therefore the restaurant in the above example that has an occupancy limit of 150 will not be able to apply for a nightclub License.
   - Pros: This will get to the heart of the impacts created by large nightclubs and will therefore limit the concentration of people in one location.
   - Cons: This will limit the buildings and uses that can apply for a nightclub license and has the potential to create many small nightclubs that can still have a cumulative impact in an area.

Mr. Kamak pointed out the occupancy limits of existing nightclub license holders as follows:

El Cazador - 291
Oak Harbor Tavern - 108
Mi Pueblo - 280
7 West – 165
Off the Hook – 201
Elements – 580 +219 (covered area)

Mr. Kamak concluded that it appears that regulating nightclub licenses based on an occupancy limit threshold may address the impacts that adjacent property owners and residences feel from large nightclubs. If the Planning Commission feels that Option 3 is the best course of action, code amendments related to it would go directly to City Council since the amendment would be in OHMC Chapter 5.22, Business Licenses & Regulation, and not in OHMC Title 19, Zoning.

Mr. Kamak asked the Planning Commission for their recommendation on the methodology that should be use.

have that option out there and we have a responsibility as a community to think through these types of needs as well.

Mr. Wallin said that the Planning Commission should continue the public hearing to next month's regular Planning Commission meeting to allow the public an opportunity to review the staff report.

Mr. Powers said that continuing the hearing was possible and staff would mail the staff report to those wishing to receive a copy.

ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED A MOTION TO CONTINUE THE FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S AGENDA ITEM TO NEXT MONTH'S PLANNING COMMISSION MEETING. MOTION CARRIED.

Planning Commission took a 5 minute break.

NIGHTCLUB ORDINANCE – Public Meeting

Mr. Kamak reported that this is a continuation of the discussion to regulate the size of night clubs. Mr. Kamak highlighted several items discussed at the previous meeting and noted that the result of the public input at the last meeting was that the scale of nightclubs and the number of people that they can accommodate has a direct nexus to the negative impacts on adjacent properties. Therefore the success of any solution would seem to be directly related to the ability of any proposed regulation to restrict the number of people that can patronize such an establishment on any given night. Mr. Kamak presented the following methodologies for addressing the issue as well as some pros and cons for each:

1. **Regulate nightclubs as a land use:** Several comments received at the public meeting on amending the zoning code to include nightclubs as a use in certain zoning districts and requiring such uses to obtain a Conditional Use Permit.
   - Pros: Requiring a nightclub to obtain a conditional use permit is a public process that will require public hearings and therefore adjacent property owners will have an opportunity to comment on the permit. This will allow the Hearing Examiner to consider impacts and impose appropriate conditions on the use.
   - Cons: It is possible for a nightclub to be approved if the proposed use meets all the identified criteria and still be an impact on the adjacent properties. It is then a difficult and legally challenging process to identify and document violations of conditions of approval and to revoke the conditional use permit.

     Under the current structure of the code, where any use can obtain a nightclub license, defining nightclubs separately in the zoning ordinance will add an extra layer of confusion. For example, would a restaurant (currently listed as a use) wanting to apply for a nightclub license be considered as a restaurant or as a nightclub? The requirements for these from a building code and zoning code stand point are different and review of these permits can be challenging. Situations such as these can potentially create legal loop holes.

2. **Licensing uses by area:** This idea was included in the last memo to Planning Commission as a potential option to follow. This idea would keep all the current codes in place and add an area threshold to OHMC Chapter 5.22, Business Licenses &

Floyd Haney (2777 SW Fairway Point Drive) asked what the administrative process was. Mr. Powers explained that staff would review the submitted plans against the standards and the zoning code and verify that the plans meet requirements for lot coverage, parking, entryway and review the covenants. Only if it meets all those criteria can it be approved by staff.

Ms. Johnson-Pieffer asked staff to explain the difference between a PRD and a general residential development. Mr. Powers explained that the normal platting process (regular subdivision) has certain requirements that are prescribed within the code. The PRD also has a subdivision with an extra layer of approval but still operates inside of the density allowed by the zoning code but provides the developer flexibility in prescribing how big the lots might be. They may wish to have smaller lots with smaller setbacks and devote more of their project space to open space or to a club house or to trails or those types of community features. The PRD is an approval process that requires a public hearing before the Planning Commission and a decision by the Council that effectively customizes the development regulations for that particular piece of property. So if a developer wants that flexibility they have to ask for the PRD and go through that process and they also have to have the subdivision plan approved. The size of the project is immaterial to the type of development option that is utilized.

Ms. Johnston-Pieffer asked if the PRD is designed to offer flexibility to the developer or certainty to the future homebuyers. Mr. Powers said he believe that it is the former and that it is intended to allow flexibility to create varying lot sizes to develop the type of community that they wish to market to that end user. In our community PRD's are focused around natural features or golf courses because that is the market that that particular developer is interested in attracting. So there is flexibility on one hand but in exchange for that flexibility they have to provide a certain amount of open space, amenities for the residence of that community. They also lock themselves down to that plan and they have to build to that plan. If they chose to ask to do something different we look at the code to determine if it is a minor change that can be approved administratively or a major change which has to go to the Planning Commission and the City Council.

Mr. Wallin noted that the density is the issue and asked if building 6 bedroom homes affect the density. Mr. Powers said that density is a function of the number of dwelling units per acre. The number of bedrooms doesn't matter and it is still a single dwelling unit.

Commissioners asked Mr. Powers to explained density, the difference between a PRD and a regular development.

Planning Commission Discussion

Mr. Oliver didn't think that only the four Planning Commissioner's present should make this decision.

Mr. Johnson-Pieffer said that she didn't believe in fear based decision-making and the fear is that there may be a lot of young folks living in this area and the golf course land is going to turn into a bunch of duplexes and that is not what anyone had envisioned. On the other hand the developer entered into this planned relationship with the City. The developer said this is what I want to do with that property and set out the setbacks and density because they wanted certainty in what they were able to do. The developer was given that certainty by the City and now the developer wants some additional flexibility and she didn't know that they could have it both ways. There is also some responsibility to the homeowners that bought into that certainty. There is also the responsibility to provide a viable housing option to some people that don't

plan for a range of housing types and acknowledge the fact that there are certain members of our community that may need an ADU for the reasons that we have already talked about.

Commissioner's asked if any of the ADU's would be pre-built with the hopes of finding a buyer or would the developer only build it at the request of the buyer. Mr. Gentry said that the basement will not be finished until the buyer tells us whether they want bedrooms or an ADU and if they want an ADU we will apply for the ADU permit.

Commissioner's asked if Mr. Gentry could build the six bedroom house without going through this process. Mr. Gentry said that is what they are doing now, because we don't have this issue resolved the only way to be permitted by the City is with bedrooms.

Commissioners asked if the 6 lots could be for 55 and older area and if that was a determination that could be made by the builder or by City Code. Mr. Powers said that age restricted communities are typically proposed by the developer and is enforced by the CC&R's. The City does not get in the business of age restricting developments. Mr. Gentry added that Landed Gentry has built several age restricted communities that are governed by the Federal Fair Housing law and there are certain criteria that have to be met to be able to discriminate against families with children.

Richard Porritt (2130 Fairway Lane) asked if the 4 additional lots available for development in Division 1 and the administrative action are not the issue tonight. Mr. Powers said there has been no administrative action on any ADU permits in the Fairway Project. What we are saying is that Landed Gentry has the ability to ask for that permit without first coming through a public hearing because the density is not an issue in Division 1 - 3.

Richard Porritt (2130 Fairway Lane) asked if there could be an unlimited number of ADU's in Division 3 because of the density standpoint. Ms. Sartorius responded that the density for 1, 1a, 2 and 3 is 4.9 dwelling units per acre. If accessory units were built on all available lots within Division 3 it would still be within the originally approved density.

Bruce Freeman (2746 SW Fairway Point Drive) was concerned about allowing ADU's to be a separate structure without zoning approval. Mr. Powers said that the permit process for ADU's is an approval process in which the application is reviewed against the zoning code but it does not require a public hearing and this applies across the City of Oak Harbor.

Mr. Powers outlined how the Planning Commission could address the concerns about the character of the PRD and believed that those concerns can be addressed through land, zoning or standard based conditions of approval. If Planning Commission feels the way to handle the parking issue is to recommend to the Council that they require two parking spaces for the ADU in addition to the two that are required for the primary structure, that is something Planning Commission could recommend to the Council as a way of dealing with the land use impact to the proposed change. Planning Commission can't get into the issue of whether it is rented by someone or someone's elderly mother that lives there or children that come home to live with their parents.

Mr. Oliver asked if Mr. Gentry if there has been discussion within Landed Gentry about detached ADU's. Mr. Gentry said he didn't think that the lots were large enough to accommodate detached units and anything that they would propose would be built into the home. Mr. Powers noted that Planning Commission could add a condition that the ADU only be attached. Mr. Gentry said that he would be willing to agree to that condition.

Mr. Freeman also suggested mailing the staff reports with the notices.

Commissioner's asked if it was possible to add to the covenant a limit on the amount of cars that the extra dwelling unit is allowed to have. Mr. Powers explained that a covenant is between private property owners and the City is not involved in the enforcement of those conditions of covenant or restrictions. If the City imposes a condition of approval it must be through the zoning process, the conditions associated with the plat. Mr. Powers added that parking can be an issue at any point in the community and not necessarily driven by accessory dwelling units. It can depend on the neighborhood, lot size, driveway, garage and whether it is a five person family or a two person family. The Code sets out the minimum amount of parking for each dwelling unit. For a single-family house it is two spaces. For a single-family house with an ADU it is at least two plus one.

Mr. Gentry was asked how he would address the parking issue. Mr. Gentry said that the seller provides the garage and parking space but how the buyer chooses to utilize it is outside of the seller's control. The homeowner's association would have the responsibility for enforcing the rules that were designed for the plat.

Floyd Haney (2777 SW Fairway Point Drive) said he was under the assumption that he was in a single-family residential area and expressed concern about the number of people that could live in a home with an ADU and was opposed to any change to the PRD.

Richard Porritt (2130 Fairway Lane) asked want the difference was between a phase and a division and what the density is of the administratively approved Division 3 area.

Mr. Powers gave an example, of 30 lots in division 1 of a particular project and the developer chooses not to develop all 30 lots at one time they might build 10 in the first phase, 10 in the second phase and 10 in the third and final phase inside of that division.

Richard Porritt (2130 Fairway Lane) asked if he understood that we were talking about 6 lots or more in Division 3 that are being administratively approved. Mr. Powers explained that the density that was approved at the time Divisions 1, 2 and 3 were approved, were approved at a higher level than what the actual development plans were utilizing. So, should Mr. Gentry request ADU's on all available lots they would still be beneath the approved density already. The reason this is before the Planning Commission is because the density for Division 4 and the development in Division 4 are very close to each other and in order to pursue ADU's on one or more of the remaining 6 lots he needs to request that the density be increased. Landed Gentry is obligated to follow the density which was originally approved.

Since Division 3 in below the density cap it does not require a modification to the PRD. Mr. Gentry has the opportunity to request ADU permits on those lots through the City's pre-existing ADU provisions in the Code which is the administrative process. It is important to point out that there are no requests to date and no information available that says Mr. Gentry will be requesting an ADU on each and every lot within Division 3.

Commissioners asked if there would be a public hearing if Mr. Gentry requested and ADU for Division 3 through the administrative process. Mr. Powers said that there would be not public hearing and that the ADU Code applies city-wide and is no different for any other neighborhood in the community. Mr. Powers explained that the reason for the ADU code provisions is because the Growth Management Act requires that, as we plan for our communities, we need to

Planning Commission asked if there were any concerns because this is a PRD that was planned and the people that bought into this residential community had an expectation of a certain lifestyle versus another neighborhood. Ms. Sartorius stated that this public process is meant to gather input from the residents in the neighborhood and they have received a number of public notices. The only comment to date is the written comment.

There was discussion about density levels in Fairway Point Divisions 1-3 as compared to Division 4 and the reason for that the request is only for Division 4. Ms. Sartorius explained that for Fairway Point Divisions 1-3 the proposed density using a maximum of 29 ADU's is less than the original approved density and therefore does not require an amendment to the PRD whereas Fairway Point Division 4 originally was approved for 4.76 dwelling units per acre and the proposed density using a maximum of 6 ADU's is 5.47 dwelling units per acre which is more than what was originally approved and therefore requires an amendment to the PRD.

Planning Commissioners asked the following:

- Do the zoning requirements run with the property to the new owner? (Yes).
- How much notice was given to the adjacent property owners? (3-4 notices were sent out, a notice of application, the hearing date changed so a revised notice was sent then the lack of a quorum require another notice of public hearing for this month).
- Will this allow for a detached ADU? (The applicant is not locked into the basement design but will have to go through the ADU administrative permit which staff would review to make sure that it meets the criteria in the Oak Harbor Municipal Code).

Mr. Neil opened the hearing for public comment.

Bruce Freeman (2746 SW Fairway Point Drive) stated that he purchased his home based on the density that was approved by the City of Oak Harbor. The proposal would increase density and could change the tranquil neighborhood considerably. Traffic is a big issue with adding an entire living unit. He said he was not against the caregiver unit but when kitchens, bathrooms and separate entrance are added it is more of a duplex. Mr. Freeman asked the following questions and Mr. Powers provided the answers:

- Will the residence be owner occupied? Answer: Yes, the Code requires that the owner of the property occupy one of the units at least six months out of the year.
- Can the units be rented out to anyone that is not a family member? We know the majority of the people are military and when they get sent out on deployment they rent the rooms out while they're gone. How is it going to be enforced? Answer: There are two ways, since this is a zoning code requirement, violations of the zoning code are a code enforcement action that the City can engage in and it is also possible to end up in a civil action as well.
- Could the unit be used as a commercial office? Answer: No, but you can have a small home business.
- Are there specific lots identified that the ADU's will be built on? Answer: Yes
- Do the ADU's have kitchens? Answer: General they do.
- How many on-site parking spaces will be provided? Answer: One additional space for the additional unit or additional spaces that may be determined by staff.

Development Services Department is tasked with reviewing the proposal for conformity with all applicable criteria.

A Notice of Public Hearing was advertised in the Whidbey News Times and combined Notice of Application and of Public Hearing was sent to all of the property owners within the subdivision and within 300 feet of the subdivision on June 8, 2012. One comment was received yesterday via e-mail regarding concern about the impact on property values (Attachment 1).

Ms. Sartorius concluded that staff has reviewed the PRD modification and has determined it to be in conformance with all applicable criteria and standards in the OHMC, the prior approved PRD development plans, and the approved resolutions and ordinances. The approval of a modification to the PRD plans for Fairway Point Division 4 will allow the applicant to apply for the administrative ADU permits on a house-by-house basis.

Since PRD's are tied specifically to the plans approved for the project and any modifications to these plans if approved must also become part of the official record of the subdivision, staff recommends that only Sheet 1 of 1 titled *ADU Modification to Fairway Point PRD* dated June 5, 2012 be approved with the draft ordinance so that the modification to the PRD is clearly shown.

Ms. Sartorius concluded by recommending that Planning Commission accept public comments on the proposed modification, close the public hearing and then recommend approval of the draft ordinance amending Ordinance No. 1583 to City Council.

Mr. Neil asked the applicant if he had comments.

Kendal Gentry (14559 Jura Place, Anacortes) introduced himself as the applicant and explained that the motivation for requesting the PRD amendment was because of the slow real estate market and the need to understand the needs of the customer. Some of his customers have requested accessory dwelling units due to the need for a live-in caregiver. Landed Gentry would like to advertise the homes with the accessory dwelling unit option. Mr. Gentry noted that the ADU's would not be visible from the street.

Planning Commission Discussion

Planning Commission asked Mr. Gentry about how ADU's would affect parking and whether he had any comment about land value as a result of adding the ADU's. Mr. Gentry said that part of the permit process is to demonstrate that there is adequate off-street parking and that ADU's are very tightly governed by the city codes. Once an applicant applies for an ADU permit they sign a covenant which is placed on the property and says the owner of the house will live in one of the two units so it is not like creating a duplex.

Planning Commissioner's asked staff about a scenario of a Navy family that purchases the home and transfers in a couple of years and then wants to rent the home out and have a tenant in the ADU. Ms. Sartorius repeated Mr. Gentry's comment about the requirement for a covenant and the requirement for the owner to live in one of the two units. Mr. Powers added that the person that purchases the home has to understand the restrictions and make decisions accordingly secondly; in the scenario described they would have to give up the right to have the ADU. There is no prohibition on an individual buying a home moving away and renting that home but under our Code there would be a prohibition on that individual renting out the main unit and renting out the accessory dwelling unit separately. The homeowner would lose the right to have the accessory dwelling unit and used it only as a single family dwelling.

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
July 24, 2012

ROLL CALL: **Present:** Bruce Neil, Gerry Oliver, Jeff Wallin and Jill Johnson-Pfeiffer.
Absent: Kristi Jensen, Greg Wasinger and Keith Fakkema
Staff Present: Development Services Director, Steve Powers; Senior Planners, Ethan Spoo and Cac Kamak; Associate Planner, Melissa Sartorius; Project Engineer, Arnie Peterschmidt.

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

Mr. Neil noted that the agenda item regarding OHMC Chapter 17.24 Sidewalks, Curbs and Gutters Installation would be move to another date.

MINUTES: **MS. JOHNSON-PFEIFFER MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO APPROVE THE MAY 22, 2012 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
No comments.

FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S – Public Hearing
Mr. Neil opened the public hearing on this item.

Ms. Sartorius reported that this item is a request to modify the Planned Residential Development (PRD) plans for Fairway Point Division 4 to add accessory dwelling units to homes. Accessory dwelling units are normally permitted in all single-family zoning districts with an administrative permit but since PRD's are tied to specific approved plans, a modification is needed and a public hearing is required.

A PRD is a planned unit development which offers flexibility in neighborhood design. The PRD overlay zone modifies the regulations of the existing zoning district. Because legal lots of record must be created through the subdivision process, the approval process for a PRD subdivision often creates several approval documents (ordinances/resolutions) distinguishing the plat from the PRD plans. The modification process must include a public input process for homeowners.

The Oak Harbor Municipal Code (OHMC) defines an accessory dwelling unit (ADU) as "a habitable living unit added to, created within or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking and sanitation." ADU's are commonly known as mother-in-law apartments or cottage apartments and are essentially a second dwelling unit created on a lot.

The applicant proposes a maximum of six ADU's to Division 4. The applicant indicates in the narrative that the actual number of ADU's that are to be built will likely be lower than requested. As the modification process is somewhat lengthy, the applicant is seeking the maximum number of units to provide them with future flexibility. So the modification is to only consider a change to the density on the approved plan set.

City staff analyzed transportation concurrency, addressing, solid waste, water meter size, and utility billing aspects of the project but had no substantial comments on the modification. The

Planning Commission

Minutes

July 24, 2012

Attachment 3

Planning Commission Minutes dated July 24, 2012, August 28, 2012, and September 25, 2012

EXHIBIT A

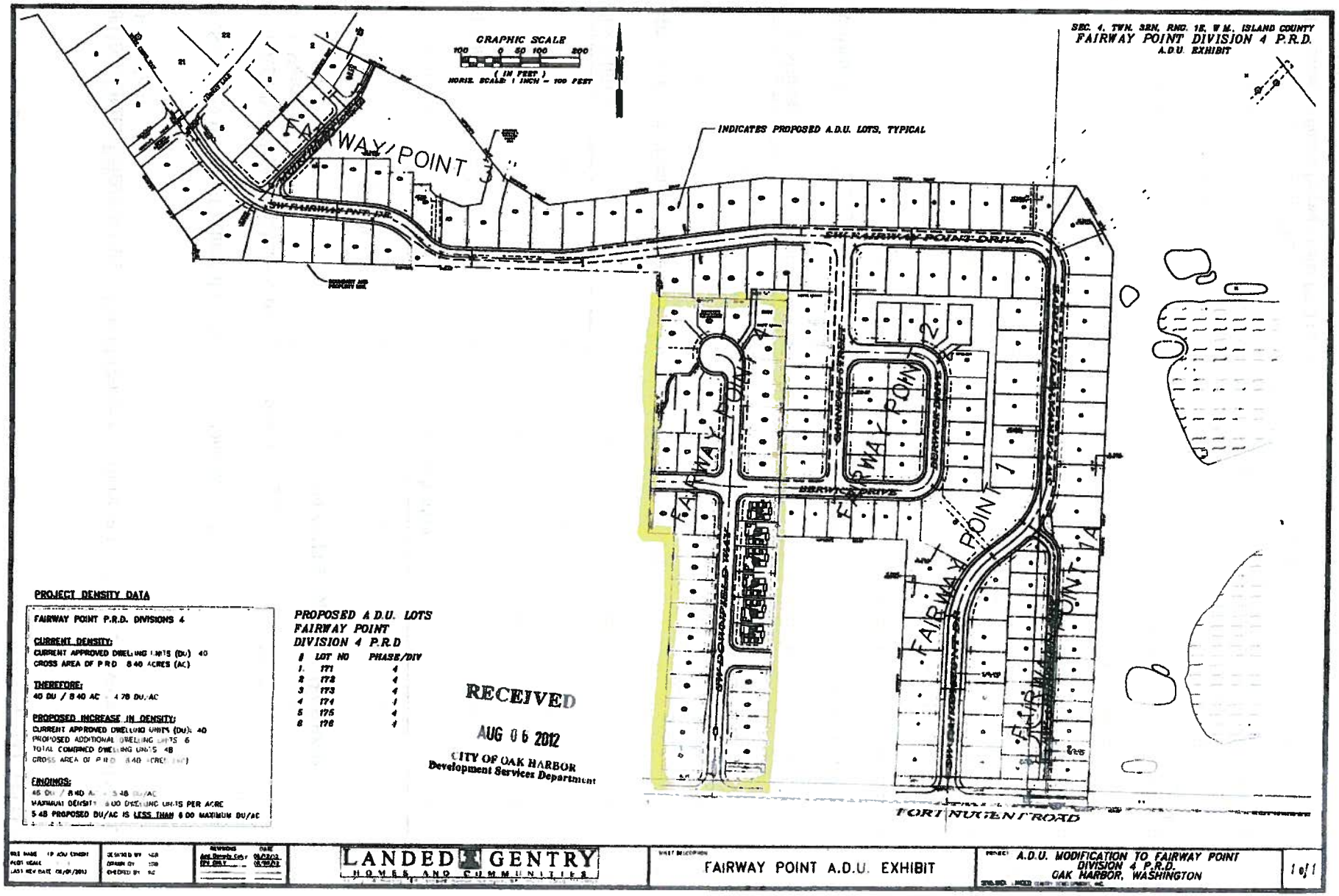

Exhibit A

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

PASSED by the City Council this 16th day of October, 2012.

( ) APPROVED by its Mayor this _____ day of _____, 2012.
( ) Vetoed

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published: _____

TESTEMONY AND MAKE A DECISION IN SEPTEMBER. MOTION CARRIED BY A VOTE OF TWO IN FAVOR AND ONE OPPOSED.

Mr. Fakkema returned for the remainder of the meeting.

SHORELINE MASTER PROGRAM (SMP) UPDATE – Public Meeting
Mr. Spoo introduced David Pater, Shoreline Planner for the Department of Ecology (DOE) as the person that reviews the City's submittal to the DOE. Mr. Pater has already reviewed the City's initial submittal. Mr. Pater will also talk about shoreline stabilization impacts and will provide key guideline standards.

Mr. Pater provided a brief overview on Shoreline Stabilization Impacts and SMP Guideline Standards (PC Attachment 3).

Mr. Fakkema asked about the effectiveness of soft shore stabilization. Mr. Pater said that information is building on how effective it may be and in his experience it is fairly site specific and you need to have a good engineer that understands coastal processes. Mr. Spoo pointed out page 71 of the agenda packet that lists internet resources for more information on soft shore armoring.

Mr. Spoo reviewed Chapters 5 -7 of the draft SMP and provided a PowerPoint presentation (PC Attachment 4). Chapter 5 contains the shoreline modification provisions. Chapter 6 is the permit review and administration chapter and Chapter 7 contains definitions.

Mr. Spoo concluded his presentation and indicated that staff will present the changes resulting from DOE comments at the Planning Commission September regular business meeting. The goal is to have a recommendation from the Planning Commission to the City Council in September.

Planning Commission Discussion
Mr. Fakkema asked how long the SMP review process has been in work. Mr. Spoo explained that the process began in 2010 with the review of the State's scope of work and the hiring of the consultant to assist with drafting the SMP.

Mr. Fakkema asked how often the SMP needs to be reviewed. Mr. Pater said that it was every eight years, but this level of update isn't expected every time. Most communities are currently doing a major update this time because their SMP's are outdated and once they are in the eight year cycle this level of update won't be necessary.

Mr. Powers commended Mr. Pater for his assistance with the SMP project.

ADJOURN: 9:20 p.m.

Memo

To: Members of the Planning Commission

Cc: Steve Powers, Development Services Director

From: Melissa Sartorius, Associate Planner

Date: 8/24/12

Re: Fairway Point PRD Modification to Consider ADU's

Please find attached a publication on Accessory Dwelling Units (ADU) by the Municipal Research and Services Center of Washington (MRSC). After the July Planning Commission meeting, staff thought it might be helpful to provide you additional information regarding ADU's and their pros and cons. In addition, the revised report to you this month contains the City's Accessory Dwelling Unit Chapter 19.42 from the municipal code so that you may more fully understand the criteria on an administrative permit basis.

Thank you, Melissa

Municipal Research and Services Center of Washington

Working Together for Excellence in Local Government

Accessory Dwelling Units

October 1995 - Report No. 33

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Foreword

In the 1940s and '50s, many American families rented out an extra apartment over their garages or in the basement of their homes as a way to earn some extra income to help with the mortgage payment or with other household expenses. In fact, backyard cottages and attic and basement apartments were a common feature in many communities across the country. Since then, as more communities have adopted restrictive residential zoning regulations, such apartments, technically known as accessory dwelling units (ADUs), have been either severely limited or banned altogether, usually in the name of protecting single-family neighborhoods.

Recently, however, perceptions and attitudes toward accessory dwelling units are once again beginning to change. Much of this transformation can be attributed to the effects of the affordable housing crisis. Demographic trends that have resulted in growing numbers of smaller households have also contributed to the increased interest in accessory dwelling units. In addition, new growth management laws are requiring many communities to plan for and accommodate higher housing densities. Against this backdrop, many communities in Washington have begun to reexamine the appropriateness of zoning regulations that severely limit or prohibit accessory dwelling units. For cities over 20,000 in population, the Washington Legislature has now mandated that accessory dwelling units be encouraged and allowed in single-family zones.

What are accessory dwelling units? How can they benefit your community? How can your community encourage accessory dwelling units in ways that protect existing neighborhood character? This publication is intended to help local policy-makers answer these and other questions as they consider accessory dwelling units in their communities.

Allowing accessory dwelling units in single-family neighborhoods is not a panacea for all of a community's housing problems. They should also be considered with a variety of other possible approaches for achieving your community's housing goals. For more information on the many other techniques available to promote affordable housing, see *Affordable Housing Techniques - A Primer for Local Government Officials*, Municipal Research & Services Center of Washington, April 1992.

Special acknowledgment is given to Byron Katsuyama, MRSC Public Policy Consultant, who prepared this report. Thanks also to Bob Meinig, MRSC LegalConsultant, Sue Enger, MRSC Planning Consultant, for their review and comments, and to Holly Martin, MRSC Word Processing Specialist, for her assistance in format design and copy preparation.

Richard Yukubousky, Executive Director
Municipal Research & Services Center of Washington

Introduction

Allowing the development of accessory dwelling units, or ADUs, in single-family homes is becoming an increasingly popular technique for creating low- and moderate-income housing for both homeowners and renters. Homeowners benefit from the additional rental income that they can use to pay part of their mortgage payment or to help with the upkeep on their homes. Renters benefit from the availability of moderately priced rental housing in single-family neighborhoods. The community benefits from the addition of affordable housing for little or no public expense.

ADUs are most commonly understood to be a separate additional living unit, including separate kitchen, sleeping, and bathroom facilities, attached or detached from the primary residential unit, on a single-

family lot. ADUs are usually subordinate in size, location, and appearance to the primary unit.

Attached units, contained within a single-family home, known variously as "mother-in-law apartments," "accessory apartments," or "second units," are the most common types of accessory dwelling units. Accessory apartments usually involve the renovation of a garage, basement, attached shed, or similar space in a single-family home.

Less common are detached "accessory cottages" or "echo homes" (an acronym for "elder cottage housing opportunities"), which are structurally independent from the primary residence. These units are often constructed or installed to provide housing for elderly parents being cared for by their adult children. Accessory cottages are permanent structures, while echo homes are temporary and movable. [*Accessory Units: An Increasing Source of Affordable Housing*, p. 5]

To reduce housing costs and meet changing market demands, pressures have increased in recent years to allow higher densities in urban areas, make more efficient use of existing housing stocks, and to eliminate regulatory barriers that unnecessarily limit affordable housing opportunities. Recent state legislation has underscored the need to review local housing needs and to plan for and take action to encourage the development of more affordable housing. Accessory dwelling units have emerged as an important component of the affordable housing strategies being carried out in many Washington cities.

The purpose of this report is to help local officials as they begin to consider proposals to allow ADUs in their communities. It is intended as a primer for city council and planning commission members on the potential of ADUs as a source of affordable housing and on the various regulatory issues and options that are likely to arise as ADUs are discussed. The report begins with a discussion of the reasons for the current interest in ADUs. It also reviews some benefits that ADUs can provide for homeowners, renters, and the community. The remaining sections focus on ADU policy issues and options, including a discussion of common zoning regulations. The report also includes sample ordinance language where applicable.

Appendix A contains the text of a model accessory dwelling unit ordinance developed by the state Department of Community, Trade, and Economic Development in consultation with the Affordable Housing Advisory Board (created by the 1993 Housing Policy Act). Appendix B contains a table summarizing selected ADU ordinance provisions from 10 Washington cities. Finally, Appendix C contains some sample ADU permits and forms.

Why the Interest in ADUs?

Three factors have spurred the recent interest in accessory dwelling units—the growing affordable housing crisis, changing demographics and recently adopted state growth management and housing policies.

The Affordable Housing Crisis

The need for more affordable housing is probably the single most important reason for the growing interest in accessory dwelling units. Several studies by both public and private housing groups have amply documented the nature and extent of the affordable housing crisis in Washington. Many see ADUs, which use existing housing resources, as a simple and inexpensive way for communities to respond to the affordable housing crisis. ADUs typically cost 25 to 40 percent less to build than new, comparably-sized housing units since they do not require development of new land, and because construction costs are lower. Consequently, ADUs are usually much less expensive to rent.

Demographic Trends

There is a growing need for smaller housing. In Washington, the average household size in 1960 was 3.09 persons. In 1990, it had declined to 2.53 persons. The decline in average household size has

resulted from several factors, including a growing elderly population, increasing numbers of single-person households, decreasing family size preferences, and high divorce rates.

A growing elderly population has led to an increase in the proportion of households having only one or two persons. According to data from the 1990 census, households with one or more persons 65 and older, make up more than 21 percent of the households in Washington. Persons over 65 and living alone (mostly women) make up almost 9 percent of all households in the state. Many of the elderly live in homes that have surplus space, and, while most want to stay in their homes, they often do not need and, in some cases, can no longer take care of a large home. Adding an ADU to their homes may allow many of these homeowners to remain in their homes for a longer time. [*Housing Affordability and Density: Regulatory Reform and Design Recommendations*, p.48]

These statistics indicate that much of our single-family housing is no longer being used primarily by families with children in residence. These trends call into question the emphasis that exclusive single-family zoning has traditionally placed on promoting a life-style built around female domesticity and childrearing. This emphasis may have made some sense sixty years ago, when almost two-thirds of the households living in single-family houses had children present. But today, when less than half of them do, it is questionable whether promoting homogeneous, family-oriented neighborhoods will produce better residential environments, or even whether is will bolster the family as an institution in contemporary society.

Growing numbers of single-person households have also increased the demand for smaller housing. Households with single persons under 65 now make up almost 17% of the households in the state.

The number of single-parent households has also increased. A large part of the growth in the numbers of these households is due to continuing high divorce rates. Mothers with one or more children head the majority of single-parent households. This group of single-parent households now represents almost 7 percent of the total number of households in the state. For many single-parent households the only options available for housing may be apartments in large complexes that offer few amenities for families with children. [*Housing Affordability and Density: Regulatory Reform and Design Recommendations*, p.47]

A decrease in family-size preferences has also contributed to the trend toward smaller household size. Many young married couples today are waiting longer to have children and, when they do, are usually deciding to have fewer children than their parents. Many of these families do not need or cannot afford homes as large as the ones that they grew up in.

One consequence of these demographic changes has been a growing need and demand for smaller housing. Many single-parents, single-persons, and young families either cannot afford, or do not need, a large home for themselves or their families. At the same time, many parents of baby boomers are now empty-nesters who live in homes that were originally built to hold families of five or six. The decline in household size has left many of these empty-nesters and other homeowners with unused, surplus housing space.The coincidental increase in the demand for smaller homes and the presence of surplus housing space has led many communities to consider ADUs as an efficient and low cost strategy for increasing affordable housing opportunities.

State Laws

While many cities in Washington have considered ordinances to allow ADUs in the past, the Washington Growth Management Act and, more recently, the Washington Housing Policy Act are now requiring cities to plan for and provide more affordable housing opportunities, including ADUs, in their communities.

State Growth Management Act. The state Growth Management Act (GMA), passed by the legislature in 1990, establishes an extensive planning and land use regulatory framework and requires the counties (and cities within those counties) with the greatest population growth to formulate, under

guidelines in the Act, both a comprehensive plan and development regulations in conformance with the plan. Counties that are not required to plan under the GMA may elect to do so.

The GMA provides that communities in developing comprehensive plans should strive to "encourage the availability of affordable housing to all economic segments of the population" and to "promote a variety of residential densities and housing types, and encourage the preservation of existing housing stock." The Act also discourages the conversion of undeveloped land "into sprawling, low-density development." [RCW 36.70A.020]

Comprehensive plans developed under the GMA are required to have a separate housing element that includes:

- An inventory and analysis of existing and projected housing needs;
- A statement of goals and policies for housing preservation, improvement and development;
- Identification of sufficient land for housing, including government-assisted housing, housing for low-income families, mobile/manufactured housing, multifamily housing, and special needs housing; and
- A plan for meeting the housing needs of all economic segments of the community

[RCW 36.70A.070]

A 1991 amendment to the GMA adds a requirement for county-wide planning policies that must include, among other things,"policies that consider the need for affordable housing for all economic segments of the population and parameters for its distribution." [RCW 36.70A.210(3)(e)]

Finally, the GMA specifically encourages the use of innovative land use management techniques to enhance affordable housing opportunities, including, "density bonuses, cluster housing, planned unit developments, and the transfer of development rights." [RCW 36.70A.090]

1993 Housing Policy Act. The Washington Housing Policy Act, passed by the legislature in 1993, establishes the goals of reducing housing costs and improving housing quality for people in all income groups. Encouraging the development and placement of ADUs in single-family homes was recognized as an important part of these goals.

The Act directs the state Department of Community, Trade, and Economic Development (CTED (Dept. of Commerce)), in consultation with the affordable housing advisory board created by the Act, to report to the legislature on the development and placement of accessory apartments. The Act also directs CTED (Dept. of Commerce) to make recommendations to the legislature "designed to encourage the development and placement of accessory apartments in areas zoned for single-family residential use." [RCW 43.63A.215(1)(b)] In response, CTED (Dept. of Commerce), along with the affordable housing advisory board, developed a model accessory dwelling unit ordinance (see Appendix A).

The Act further requires that counties planning under the Growth Management Act and cities with populations of over 20,000 adopt ordinances by the end of 1994 that incorporate the accessory apartment recommendations developed by CTED (Dept. of Commerce) into their "development regulations, zoning regulations, or official controls." To allow some local flexibility, the recommendations are "subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority." [RCW 43.63A.215(3)]

Although the cities and counties subject to the Act's requirements probably must adopt ordinances to allow ADUs within single-family zones, the "local flexibility" provision appears to give legislative authorities some latitude to adapt CTED (Dept. of Commerce)'s model ordinance recommendations to the needs and preferences of the local community. For example, while the model ordinance recommends that ADUs be allowed in either existing or new homes, some cities have decided to limit them to homes that are over a certain age so as to prohibit ADUs in new construction. Similarly, while the model ordinance recommends that ADUs be allowed as both attached and detached units, some

communities have, due to local preferences or conditions, decided to limit ADUs to units that are attached to the primary residence. However, it is still unclear how far cities may depart from CTED (Dept. of Commerce)'s recommendations and remain in compliance with the intent of the Act

Many cities have already adopted ADU ordinances to comply with the Act, while others are currently in the process of doing so.

Benefits

ADUs can provide a surprising number of benefits to communities, homeowners and renters. Although much of the attention given to ADUs revolves around their potential for increasing the supply of affordable housing opportunities, ADUs may also help to address other social issues, particularly those relating to housing options for our growing elderly population.

Community Benefits

ADUs Can Help to Increase the Supply of Affordable Housing Without Government Subsidies. Allowing ADUs is one way that communities can provide more affordable housing opportunities without the necessity of local government expenditures or subsidies. This is a particularly good feature in view of the recent declines in federal support for the construction of new affordable housing units. When compared to the costs of constructing new government-subsidized apartments, the lower cost of converting existing units, which are paid for by the homeowner, will be an attractive option for most communities.

If 1 in every 10 of America's owner-occupied single-family homes built before 1975 were to devote space to an accessory unit, 3.8 million rental units would be generated, increasing the supply of rental housing by about 10 percent.

"Not In My Backyard": Removing Barriers to Affordable Housing
Advisory Commission on Regulatory Barriers to Affordable
Housing, U.S. Department of Housing & Urban Development

ADUs also tend to be better integrated into the community, unlike other forms of affordable housing that may be concentrated in a few areas. In most communities this dispersion occurs without the necessity for government intervention. A few communities, however, have adopted provisions that limit concentrations of ADUs by controlling the number of conversions that may occur within a particular area.

ADUs add to affordability both from the perspective of potential tenants, for whom rents are usually cheaper than for market units, and from the perspective ofhomeowners, who can use the rental income from an ADU to ease the burden of home mortgage and maintenance expenses.

ADUs Encourage Efficient Use of Existing Housing Stocks and Infrastructure. Many homes built during the 40's, 50's, and 60's were designed to hold large (by today's standards) households. Demographic trends since those times have resulted in lower fertility rates, a reduction in family size preferences, and smaller average household sizes. One consequence of these trends has been a widespread increase in the number of homes with surplus living space. [*Accessory Apartments in Single-Family Housing*, pp. 60-61]

Survey findings from the federal Housing and Urban Development Department's American Housing Survey show that 32 percent of all homes with five or more rooms are occupied by one- or two-person households. [*"Not In My Backyard": Removing Barriers to Affordable Housing*, p. 7-13] By using surplus space in single-family homes, ADUs promote more efficient use of the community's existing housing stock and supporting infrastructure.

ADUs Encourage Better Housing Maintenance and Neighborhood Stability. By allowing ADUs,

communities can encourage better upkeep of the existing housing stock since homeowners can apply a portion of the income from their rental unit to maintaining their property. Homeowners can also exchange rent reductions for maintenance services by tenants.

ADUs also help to enhance neighborhood stability since they can provide homeowners (e.g., elderly homeowners on fixed incomes and single parents with low incomes) with the extra income they may need to remain in their homes for longer periods.

ADUs Can Help to Meet Growth Management Goals by Creating More Housing Opportunities Within Existing Urban Areas. A fundamental principle of the state Growth Management Act is to steer new growth to areas that are already urban or urbanizing. Using surplus space in existing housing is one way that communities can take action to meet regional growth management goals to conserve land, house more people within urban growth areas, and prevent more sprawl.

Homeowner Benefits

ADUs Make it Possible for Adult Children to Provide Care and Support to a Parent in a Semi-Independent Living Arrangement. Many baby boomers are now facing the prospect of having to arrange for the care and housing of their aging parents or other close relatives. By allowing ADUs, the community can give these families the option of providing for either live-in care in their parents' house or of having their parents move in with them. With an ADU in their home, adult children can care for an aging parent while retaining a semi-independent living arrangement both for themselves and their parents.

ADUs Can Provide Homeowners with Extra Income to Help Meet Rising Homeownership Costs. ADUs can provide many homeowners with needed additional income to meet high mortgage and maintenance costs. For a young family in their first home or for a single parent after a divorce, the additional income froman ADU may spell the difference between being able and not being able to stay in their home.

The additional income from an ADU may be particularly helpful for many elderly homeowners who are living on fixed incomes. Contrary to popular notions, most elderly people do not move to retirement homes or senior citizen communities as they age. The vast majority actually age in place in single-family homes. Housing studies show that the single-family home is not only the most common form of housing for senior citizens, but it is also the type of housing most often preferred by them. [*Planning for and Aging Society*, p. 15] However, many elderly people on fixed incomes may find it difficult to stay in their homes in the face of rising costs for utilities, maintenance and property taxes. ADUs may allow some of these elderly homeowners to stay in their homes, even on fixed incomes, where the extra income from an ADU helps them to offset some of their living expenses.

ADUs Provide Homeowners with the Ability to Trade Rent Reductions for Needed Services. Homeowners may also offer lower rents to tenants in exchange for assistance in performing various household services. For some elderly homeowners, being able to exchange rent reductions for needed services could be a deciding factor enabling them to stay in their homes.

The ability to exchange reduced rents for services will also benefit many other groups of homeowners, including young families, single parents, and handicapped persons. For example, a mother with young children may rent an ADU to an elderly couple and make an arrangement for reduced rent in exchange for regular babysitting.

Tenants, of course, would also benefit from service exchange arrangements by having their rents reduced in return for performing various services.

For owner-occupiers who live alone, for the widowed, retired, or infirm, or for young families with small children, the opportunity to exchange services with tenants next door offers substitutes for social supports that were provided by the extended family in earlier generations.

Accessory Apartments in Single-Family Housing
Martin Gellen

ADUs Provide Increased Security and Companionship. Besides the financial benefits, many homeowners will also benefit from the security and companionship provided by having a tenant who lives close by. For an elderly person, concerns about injuries while they are home alone and fears about rising neighborhood crime rates may be greatly reduced just by the fact of having someone else living under the sameroof. The presence of a tenant may also enhance security while homeowners are out of town.

ADUs Can Help First-Time Buyers Qualify for Loans and Help Offset Mortgage Payments. For a single individual or a young family buying their first home, the presence of an ADU and its potential rental income may help them to qualify for a larger mortgage loan than they otherwise might get. After purchasing a home, the rental income from an ADU could help reduce the financial burden of a high mortgage payment. Young families could rent out an ADU until a time when their incomes have risen and they need more room. In this way ADUs allow families the flexibility to adjust the way they use their homes to suit changing life-cycle needs.

Tenant Benefits

Moderately-Priced Rental Housing. Studies have shown that ADUs rent for less than average market rent levels. Lower rents are possible primarily because ADUs do not require the development of new land and are cheaper to build than conventional rental units. [*Accessory Units: An Increasing Source of Affordable Housing*, p. 5] Homeowners are also less likely to charge market rents because of their interest in getting and keeping good tenants.

Lower rents for ADUs may make it easier for some tenants to save for a downpayment on a home of their own. Rising rents for multifamily housing have been cited as a major barrier to many prospective homebuyers who are having a more difficult time saving enough to make the required down payment on a new home.

ADUs Provide Affordable Rental Housing in Single-Family Neighborhoods. ADUs also offer housing opportunities in more desirable single-family neighborhoods for some who might not otherwise be able to afford to live there. For many single individuals, single parents, or others with modest incomes, the only other housing option available may be apartment complexes. Living in an ADU would give these households the opportunity to enjoy the amenities typically found in many single-family neighborhoods, including more privacy, a quieter environment, and less traffic congestion.

ADUs Increase Housing Opportunities for Handicapped People. Handicapped people often face limited opportunities for housing that can meet their special needs. ADUs can provide many handicapped individuals with the opportunity to live independently in their own home but close enough to others to provide needed assistance.

Regulatory Issues and Options

Accessory dwelling units do represent a controversial housing alternative in many communities. Therefore, it is important to carefully assess the local issues and options presented by ADUs. Ultimately, most communities will address ADUs through the adoption of zoning ordinances designed to regulate the conditions under which they will be allowed. However, there are several preliminary issues that policy-makers may want to consider before deciding what zoning regulations may be appropriate for ADUs. Among the more important questions to consider are:

- What are the community's housing goals and how will these affect the regulation of ADUs?
- What is the likely demand for ADUs in the community?

- What are the characteristics of the community's existing housing stock?

The answers to these questions will provide valuable information and insights that can assist and guide policy-makers in deciding the best course for the community.

Community Goals: Balancing Neighborhood Concerns with the Need for Affordable Housing

One of the first issues to consider is the community's housing goals. ADU regulations are likely to vary depending on the goals the community chooses to implement. The most common reasons cited for allowing ADUs are: (1) to expand the supply of affordable housing for both owners and renters in the community; (2) to provide a means for homeowners, particularly the elderly, to obtain extra income, security, companionship, and services; (3) to make more efficient use of existing housing stocks and infrastructure; and (4) to provide a mix of housing that responds to changing family needs.

From the perspective of some homeowners, however, ADUs may be viewed as a potential threat to the stability of single-family neighborhoods that should either not be allowed or, at least, closely controlled to avoid any potential negative impacts. For these homeowners, the most important goals may be to protect property values,neighborhood stability, and to preserve the single-family character of community neighborhoods.

The challenge for policy-makers is to find the right balance between the community's need for more affordable housing and the desire to preserve the quality of residential neighborhoods. There are many opportunities for communities to be creative in meeting this challenge.

The purpose of allowing ADUs is to:

1. ***Provide homeowners with a means of obtaining, through tenants in either the ADU or the principal unit, rental income, companionship, security, and services.***
2. ***Add affordable units to the existing housing.***
3. ***Make housing units available to moderate-income people who might otherwise have difficulty finding homes within the (city/county).***
4. ***Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle.***
5. ***Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that ADUs are installed under the conditions of this Ordinance.***

Model Accessory Dwelling Unit Ordinance
Washington State Department of Community, Trade, and Economic Development

Neighborhood Concerns

Opposition to accessory units usually arises from neighborhood concerns about the perceived impacts of ADUs with respect to such issues as property values, density, changes in neighborhood appearance, and increased parking and traffic congestion. In response to these concerns, many communities have adopted regulations designed to deal with such issues as the size of units, their exterior appearance, off-street parking, and their concentration in neighborhoods. The general intent of these types of regulations is to calm neighborhood fears by controlling the number of conversions, minimizing neighborhood change, and upholding prevailing standards.

Homeowner Needs

ADU proponents point out the importance of reducing regulatory obstacles and argue that, if controls are too restrictive, some homeowners will be unwilling or unable to add an ADU. Such regulations might include undue cost-generating requirements,overly-burdensome parking regulations, or restrictions on who will be allowed to live in ADUs. Supporters also argue against cumbersome review procedures, particularly those that may involve public hearings. They point out that many homeowners,particularly the elderly, may be intimidated by and unwilling to go through a lengthy public review process.

Need and Demand for ADUs - How Many Units Will be Built?

Another issue that bears some consideration before zoning regulations can be adopted is the current need and demand for rental units in general and ADUs in particular. As part of their growth management planning, many communities in Washington are already required to conduct a housing needs assessment that includes an inventory of existing housing stocks and an analysis of housing needs. This type of information can also help policy-makers in evaluating zoning alternatives for ADUs. For example, the existence of low rental vacancy rates may suggest that there is a high potential demand for additional rental units, including ADUs. High vacancy rates also serve to reduce the risk for homeowners who want to install an ADU.

Although this information may be more difficult to collect, some estimate of the number of existing accessory apartments in the community will also be useful to policy-makers. The presence of many illegal units would be one indication of the demand for this housing option. [*Accessory Apartments in Single-Family Housing*, 1985]

Another question that usually comes up in discussions of ADUs concerns the number of units that are likely to be built. The answer to this question will vary for each community and is related to such factors as current vacancy rates, housing characteristics, and the restrictiveness of the community's zoning regulations. Opponents often worry that legalizing ADUs will lead to a flood of applications and conversions resulting in too many units. In response to these concerns, some communities have adopted regulations that attempt to limit, either directly or indirectly, the number of ADUs that can be installed in the community. By all accounts, however, the experience of other communities that have legalized ADUs seems to indicate that the actual number of conversions is likely to be relatively low. One national survey involving 47 communities suggests that communities with "favorable" zoning can expect to get approximately one ADU per 1,000 single family homes per year. [*Accessory Units: An Increasing Source of Affordable Housing*, pp. 5-6]

Know Your Housing Stock

Policy-makers should also have some familiarity with the makeup and composition of the community's existing housing stock, including any evidence of current orprojected surplus space in single-family housing. Information on home and household size will be available from census data on housing. Current census statistics reveal that many people are living in homes that have surplus space. A high percentage of homes with extra habitable space may be another indicator of the potential for ADU conversions in the community.

Keys to Success

Achievable standards, fast track processing for units meeting standards, and sensitivity to compatibility within existing neighborhoods are all techniques to encourage second unit development.

Develop specific performance standards dealing with such issues as minimum lot size, maximum unit size, parking standards, setback and height requirements.

Limits on the maximum number of units within a neighborhood, requirements for owner occupancy, and high parking requirements may be necessary to ameliorate community concerns, but they may deter construction of second units.

If second unit approvals can be made without a conditional use permit or other action requiring public hearing, property owners will find it less burdensome to add second units.

Financial or technical assistance can encourage second unit development and improve their affordability.

Allow for the legalizing and upgrading of existing units so as to conform with health and safety requirements. This can be encouraged by establishing building code requirements to achieve minimum health and safety requirements and by streamlining the conformance process.

Blueprint for Bay Area Housing
Association of Bay Area Governments, et al.

Also, are existing homes in the community of a type that are easily converted? Split level, Cape Cod, and ranch style houses may be good candidates for conversion, while many smaller bungalow style homes may not. Other home features that may lendthemselves to adding an ADU include: detached garages, daylight basements, two-story homes, larger homes, and alley access. The relative ease of conversion of the predominant housing types in the community will also have an impact on the potential for ADU conversions.

Again, information of this type can help policy-makers in evaluating the appropriateness of proposed regulatory options.

The remaining sections contain a review of zoning provisions that have been proposed and in many cases adopted to regulate ADU conversions in single-family districts. Each section contains a discussion of the rationale for the regulation together with sample ordinance provisions. For a comparison of ADU zoning regulations adopted by a sample of 10 Washington cities, see Appendix II.

Zoning Regulations for ADUs - Issues and Options

Definitions

Most zoning ordinances contain some definition of the term "accessory dwelling unit," which may also be called an "accessory apartment," "accessory living unit," "accessory cottage," or a similar term. A good definition is important to provide a common understanding of the term and may also be useful to establish basic requirements and limitations. ADUs are most commonly defined as a self-contained living unit created within or detached from a single-family dwelling. Many ordinances also highlight the existence of separate cooking, sleeping, and sanitation facilities as distinguishing ADU features.

> *An accessory dwelling unit (ADU) is a habitable living unit added to, created within, or detached from a single-family dwelling that provides basic requirements for living, sleeping, eating, cooking, and sanitation.* [Sec. 19.04.0607(B), Mercer Island Municipal Code]

Note that the above definition includes units that are either "added to, created within, or detached from" a single-family dwelling, which indicates that both attached and detached units are allowed. Some communities, however, have decided to limit ADUs only to units attached to the main residence. ADUs in these communities may be defined in a way that excludes detached units.

> *"Accessory dwelling unit" means a subordinate dwelling unit incorporated within a single family structure. Accessory units may not be subdivided or otherwise segregated in ownership from the primary residence structure.* [Sec. 20.20.120(A)(1), Bellevue City Code]

The term "accessory" in "accessory dwelling unit" denotes a use that, under zoning regulations, is commonly understood to be one that is subordinate in size, location, and function to the principal unit. Communities that wish to underscore this point may also choose to highlight the subordinate or secondary nature of ADUs in their definition.

> *Accessory Dwelling Unit: A second subordinate dwelling unit added to or created within a single-family dwelling ... with a provision for independent cooking, living, sanitation, and sleeping.* [Sec.

13.06.010(1)(c), Tacoma Municipal Code]

Review and Approval Procedures

ADUs are typically regulated either as a permitted use, with an administrative review, or as a conditional use, subject to a public hearing requirement.

ADUs that are regulated as a permitted use are usually allowed "as-of-right," if all applicable zoning and building code requirements are met. The approval process normally involves some type of administrative review and an inspection of the premises to ensure compliance with ordinance requirements. Under an administrative review process, the ADU permit is issued if the applicant meets the development standards without the necessity of a public hearing. The permitted use approach offers the advantage of administrative simplicity and is less intimidating for homeowners who want to install an ADU but who may be reluctant to go through a public hearing review.

> *The installation of an ADU in new and existing single-family dwellings (hereinafter principal units) shall be allowed in single-family zones subject to specific development, design, and owner-occupancy standards.* [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Conditional use procedures are usually more rigorous and often add a neighborhood notice and public hearing requirement to the review process. Conditional use permit procedures have the advantage of providing for a case-by-case review of ADU applications, which may allow a more tailored response to problems.

ADU proponents argue that requirements for conditional use permits and public hearings are too cumbersome and intimidating and will present too much of a barrier to those who might otherwise benefit from this housing alternative. They argue that requirement may actually encourage the installation of more illegal units.

As an alternative procedure, some communities provide for an exemption from the public hearing requirement if, after notification of the property owners within a certain distance from the applicant's property, the planning department receives no requests for a hearing. This approach has the advantage of avoiding unnecessary hearing expenses in cases where neighborhood residents are more accepting of ADUs. It also spares homeowners from the burden of having to comply with a significant regulatory hurdle. [*Model Zoning*, p. 4]

Even when no public hearing is required, some communities require that a notice be sent to residents within a certain distance of the proposed ADU, either before approval to allow residents an opportunity to comment on the permit, or after the approval has been issued, to notify them about the ADU and the requirements of the ordinance. A notice to neighborhood residents lets them know what to expect and what their enforcement options are if problems arise. In some communities, the inclusion of public notice provisions may be necessary to satisfy the concerns of opponents.

> *After approval, the Director shall provide notice of the registration of the accessory unit to owners of property within 200' of the registered site. The notice shall state that the unit complies with the standards of this section, shall describe the requirements for maintaining the unit, and shall explain how to obtain general information and how to request inspections.* [Bellevue Ordinance No. 4498]

The current trend among Washington cities that have recently adopted ADU ordinances has been toward a permitted use approach that allows ADUs in single-family zones subject to various development standards designed to preserve neighborhood character and appearance.

Owner-Occupancy Requirements

A common apprehension of opponents is that ADUs may harm neighborhood character if they are not

properly maintained by owners and/or renters. Opponents also express concern that too many ADUs may be created if individual speculators can purchase or develop multiple homes with ADUs. In response, many communities require that the homeowner must occupy either the principal or the accessory unit. The expectation is that homeowners will be more likely to maintain the property if they also live there. Also, by limiting ADUs to owner-occupied homes, individual speculators are effectively prevented from building multiple units.

> *The property owner, which shall include title holders and contract purchasers, must occupy either the principal unit or the ADU as their permanent residence, but not both, . . . and at no time receive rent for the owner-occupied unit.* [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

> *'Owner occupancy' means a property owner, as reflected in title records, makes his or her legal residence at the site, as evidenced by voter registration, vehicle registration, or similar means ....* [Ch. 20.20.120(A)(3), Bellevue Municipal Code]

Owner-occupancy requirements are also thought to have the added benefit of ensuring better tenant management, since resident owners will be more likely to enforce appropriate behavior standards.

Where the community does not intend to require that homeowners must occupy the principal unit, it may be useful to clarify in the ordinance that the they can live in either unit. Many homeowners, particular the elderly, who no longer need the space or who wish to avoid the burden of caring for the larger unit, may want the option of living in the smaller unit. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 6]

Communities that adopt owner-occupancy restrictions may also want to include a provision that exempts temporary absences to allow some flexibility for homeowners while still requiring that the home be maintained as their principal residence.

> *One (1) of the dwelling units in the structure shall be occupied by one or more owners of the property as the owner's(s') permanent and principal residence; provided that the Director may waive this requirement for temporary absences of less than one (1) year, where the accessory unit has been a permitted use for at least two (2) years and the owner submits proof of absence from the Puget Sound region.* [Sec. 23.44.025(A)(2), Seattle Municipal Code]

To ensure compliance, some communities require that homeowners sign an affidavit affirming that they will occupy either the primary or accessory residence.

> *Affidavit. The property owner shall sign an affidavit before a notary public affirming that the owner occupies either the main building or the ADU ....* [Sec. 13.06.196(B)(3), Tacoma Municipal Code]

For added insurance that owner-occupancy requirements will continue to be met, some communities provide for termination of an ADU permit upon the sale of the property and require new owners to re-register.

> *Upon sale of the property, a new owner shall be required to sign a new affidavit and to register the ADU, paying a reauthorization fee of $100 ....* [Sec.13.06.196(B)(2), Tacoma Municipal Code]

Some ordinances require that the owner occupancy requirement be recorded as a deed restriction to put prospective buyers on notice of the prohibition against renting out both units. Whenever there is a transfer of ownership of the property, the title search turns up the document noting the regulation. See "Recording Requirements" on page 49.

In addition to the requirement that homes with ADUs must be owner-occupied, some communities also require that owners must have lived in their homes for a certain number of years before they can install an ADU. See "Length of Residence" on page 48.

ADU/Principal Residence Size Regulations

ADU ordinances often contain provisions regulating the size of ADUs and/or the principal unit. Size limits for ADUs are expressed either in absolute terms or some percentage of the principal unit (usually in the range of 20% to 40%). Size regulations may specify minimum and/or maximum sizes for the ADU or the primary residence. Some ordinances also regulate size by specifying a maximum number of bedrooms (e.g., two bedrooms) allowed in an ADU.

> *In no case shall an ADU be more than 40 percent of the building's total floor area, nor more than 800 square feet, nor less than 300 square feet, nor have more than 2 bedrooms, unless in the opinion of the (building official), a greater or lesser amount of floor area is warranted by the circumstances of the particular building.* [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Size limitations serve several purposes. Most often they are designed to ensure that ADUs remain subordinate in size to the primary residence (percentage based limits, in particular, are designed to ensure that an ADU remains subordinate regardless of home size). They are also intended to control neighborhood density, the assumption being that controls on the size of ADUs will also tend to limit the number of tenants who can live in an ADU. Size limits are also aimed at minimizing visual impacts of additions or alterations to the residence.

> *The ADU, excluding any garage area and other non-living areas such as workshops or greenhouses, shall not exceed 33 percent of the total square footage of the main building and the ADU combined after modification. The ADU shall not contain less than 300 square feet or more than 800 square feet.* [Tacoma Ordinance No. 25624]

Note that the size limitations in the above provision, which are relatively permissive, effectively require a minimum home size of 900 square feet in order to install a minimum-sized 300 square foot ADU. ADU proponents caution that a size limit based on a ratio between the primary unit and the ADU should be small enough to keep ADUs subordinate to the primary unit, but not so small as to require a large house to establish a viable ADU. Since house size and income are often related, aminimum home size requirement that is too restrictive could eliminate some homeowners who might benefit most from the opportunity to install an ADU.

If minimum/maximum size requirements are adopted, it may be helpful to give some discretion to the reviewing agency to modify requirements in cases where strict adherence would be impractical or uneconomical. For example, many two-story homes may be most economically converted by installing an ADU on the bottom floor which may take up half or nearly half of the entire space available. Or an ordinance may provide exemptions for the use of basement or attic space that are more than the specified maximums.

> *The accessory dwelling unit shall contain not less than 300 square feet and not more than 800 square feet, excluding any related garage area; provided, if the accessory unit is completely located on a single floor, the Director may allow increased size in order to efficiently use all floor area, so long as all other standards set forth in this section are met.* [Bellevue Ordinance No. 4498]

Some ordinances do not contain specific size requirements but rely instead on applicable zoning, health, housing and building codes that regulate general height, set-back and lot coverage, and establish minimum space requirements for habitation.

Attached Or Detached?

One question that the community must answer is whether to allow detached ADUs. Some cities have limited ADUs to attached units to reduce the visual impact and to preserve the single-family character of neighborhoods. When made a part of the main house an attached unit is kept as a subordinate use and does not give the impression of two separate houses on a single-family lot. Where average lot sizes are very small throughout the community, this may be an appropriate restriction.

> Location: Accessory dwelling units shall not be permitted in structures detached from the primary

residence, including but not limited to guest cottages, detached garages, or workshops. [Bellevue Ordinance No. 4498]

Detached units are less frequently allowed in zoning codes and are generally more expensive to build than an attached unit. While they are more visible as detached units, where they are permitted, they are usually required to be located in the rear yard area to minimize the visual impact of two separate residences. [*Accessory Units: An Increasing Sources of Affordable Housing*, p. 5] In many cases, a detached residence may provide a better living arrangement for those who want an ADU but who do not wish to have someone else living in the same physical structure. Even on relatively small lots, a unit may be successfully installed in a previously existing detached garage or similar structure.

The ADU may be attached to, or detached from, the principal unit. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Some communities allow detached ADUs only on larger lots.

7.a. Accessory dwelling units: ...

(2)Only in the same building as the principal residence unless the lot is at least 10,000 square feet in area and the allowable density of the zone is not exceeded. [Sec. 21A.08.030(B), King County Zoning Code]

ADU Occupant Restrictions

Some ordinances, particularly those adopted 10 or more years ago, contain restrictions on who may live in an ADU. These ordinances typically provide that tenants must be a certain minimum age, usually 60 or 65, and/or that tenants be related to the owner. Ordinances may also specify that tenants be limited to employees of the homeowner or have some other special relationship (e.g., providing in-home care or assistance) to the homeowner. Typically, these types of restrictions are intended to allow residents to install an ADU for the limited purpose of providing in-home care to aging parents while maintaining separate living areas. Ordinance restrictions that limit the age of tenants or that require that the tenant be related to the homeowner are intended to preserve the "family character" of neighborhoods and to keep the number of conversions low, while still allowing them for the purpose of dealing with special family needs.

Occupancy of the accessory or principal unit is limited to family members related by blood, marriage, or adoption, or persons providing nursing or domiciliary care of assistance to the owner in exchange for lodging. [Sec. 11.19.3210(B)(3), Spokane Municipal Code]

ADU proponents argue that restrictions based on the age or familial status of tenants may discourage some homeowners from installing an ADU because of the risk of losing their investment in the event that their tenant moves away or dies. Because of the tenant restrictions, homeowners may have difficulty finding another renter who meets the ordinance's requirements. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 13]

Restrictions on the age of tenants and their relationship to homeowners may also be difficult to enforce. When relatives die or move away, homeowners will be left with an empty and unusable apartment and may be tempted to fill the vacancy in violation of the ordinance. Without adopting a cumbersome enforcement procedure and in the absence of neighbor complaints, it may be difficult for communities to keep tabs on the status of ADU tenants.

As more communities have come to view ADUs as an important means of providing affordable housing alternatives, these types of restrictions, which limit opportunities to install ADUs to relatively few homeowners, have become less common. Few of the ordinances reviewed for this report contained restrictions of this type.

Number of Occupants

Limits on the numbers of occupants in homes with ADUs are designed to control overcrowding in homes with ADUs and increased neighborhood density, as well as related parking and traffic impacts.

Some communities limit the aggregate number of persons that may occupy both the ADU and primary unit to the number allowed in the house without the rental unit. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 8] In theory, under this restriction, the density, parking, and traffic impacts resulting from ADU conversions should be no greater than those from a single-family structure without an ADU. Ordinances may also refer to provisions in the zoning code defining "family" that generally contain limitations on the numbers of related and/or unrelated persons who can live in a single residence.

> *The total number of occupants in both the primary residence and the accessory dwelling unit combined may not exceed the maximum number established by the definition of family in Section 20.50.020.* [Sec. 20.20.120(B)(2), Bellevue Land Use Code]

> *Any number of related persons may occupy each unit in a single-family residence with an accessory dwelling unit provided that if unrelated persons occupy either unit, the total number of persons occupying both units together may not exceed eight (8).* [Sec. 23.44.025(A)(3), Seattle Municipal Code]

Some ordinances place specific limitations on the occupancy of ADUs based on the size of the unit. This type of occupancy limitation is more sensitive to individual variations in the size of ADUs.

Occupancy. Occupancy shall be limited to the following: No more than two persons in a unit of 300-400 square feet, no more than three persons in a unit ranging from 401-600 square feet, and no more than four persons in a unit ranging from 601-800 square feet. [Sec. 13.06.196(C)(2), Tacoma Municipal Code]

Parking Requirements

The potential for parking problems generated by the installation of ADUs is one of the most common concerns expressed by residents. Neighborhood groups are generally opposed to any increases in on-street parking, particularly in areas where competition for existing parking is already a problem, or in neighborhoods where prevailing aesthetic standards make on-street parking less acceptable. Many communities have addressed this issue by requiring a certain number of off-street parking spaces for homes with ADUs. Off-street parking requirements typically range from one to one and one-half off-street spaces per ADU. [*Accessory Apartments -Using Surplus Space in Single-Family Houses*, p. 14].

Whether parking will become a problem depends to a great extent on current neighborhood standards and the perceptions of residents about existing parking problems. In some neighborhoods, on-street parking is a common practice and may therefore be more acceptable, while in others, off-street parking in garages is the more common rule. Varying neighborhood standards may suggest the need for a response that is more tailored (e.g., based on performance standards rather than specific parking requirements) to the particular needs of each neighborhood. [*Accessory Apartments in Single-Family Housing*, p. 172]

Once the community decides to require off-street parking for ADUs, the next question is where such spaces will be allowed. One concern expressed by neighborhood groups is that additional off-street parking be provided in a way that will not detract from the neighborhood's low-density, single-family character. Solutions might include restrictions on parking in front yard areas or landscaping requirements to limit visual impacts.

Parking. One off-street parking space shall be required for the ADU, in addition to the off-street parking required for the main building....Such parking must be provided in the rear of the lot where adequate

access is available. Adequate access shall be defined as a dedicated street or alley with a minimum gravel surface. [Tacoma Ordinance No. 25624]

One off-street parking space, in addition to that which is required by the Ordinance for the underlying zone, shall be provided or as many spaces deemed necessary by the (building official) to accommodate the actual number of vehicles used by occupants of both the primary dwelling and the ADU. Parking spaces include garages, carports, or off-street areas reserved for vehicles. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Some communities allow homeowners to use tandem parking (one car behind the other) as a less costly alternative for satisfying requirements for off-street parking.

A minimum of two (2) off-street parking spaces shall be provided, which spaces may be in tandem. The Director may waive the requirement for one (1) or both of the spaces if topography or existing structures makes provision of one (1) or both of the parking spaces unduly burdensome and adequate parking capacity exists. [Sec. 23.44.025(A)(7), Seattle Municipal Code]

Proponents point out that in many instances single-family homes without ADUs could generate just as much traffic and demand for parking as a home with an ADU, particularly in homes with teenage children. They point out that ADUs are often in the homes of "empty nesters," single parents, and single residents, who tend to have fewer cars. Meeting requirements for additional parking spaces could be an expensive proposition for some homeowners and may discourage them from installing an ADU.

Design/Appearance Standards

Provisions that govern the design and appearance of homes with ADUs are intended primarily to preserve the visual and single-family character of neighborhoods. Many ordinances contain conditions limiting certain exterior modifications of homes with ADUs. These may include limitations on additions that increase the size of the home, restrictions on the location of entrances and exterior stairs, and other design guidelines. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 16]

> *The creation of an accessory living unit is subject to the following requirements: ... (5) Any additions to an existing structure for the purpose of the accessory unit do not increase the square footage of the structure by more than ten percent.* [Sec. 11.19.3210(B)(5), Spokane Municipal Code]

While some ordinances contain specific square foot limits on expansions, others simply rely on existing setback and lot coverage requirements to control the size of additions.

> *Any additions to an existing building shall not exceed the allowable lot coverage or encroach into the existing setbacks.* [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Some communities prohibit any increase in home size to accommodate an ADU. Restrictions of this type are intended to minimize any changes to the exterior appearance of homes with ADUs.

> *Single-family conversions may only be installed within existing structures, whether primary or accessory structures, subject to the following conditions: ...*
>
> *4. No additions to the existing floor area are necessary as a part of the conversion.* [Sec. 18.42.010(D), Tumwater Municipal Code]

Proponents point out that restrictions on the size of additions may not be either necessary or effective. The high cost of remodeling may be just as effective at limiting large new additions to accommodate ADUs. Additionally, it may be easy forhomeowners to avoid this type of restriction simply by adding space at one time to be later converted into an ADU. [*Model Zoning*, p. 15]

In an attempt to discourage homeowners from circumventing size limitations, some communities prohibit the installation of ADUs in homes that have recently added on space. This type of restriction

also seeks to encourage the use of existing surplus space, rather than new additions that increase density, to accommodate ADUs.

Single-family conversions may only be installed within existing structures, whether primary or accessory structures, subject to the following conditions: ...

3. Where no additional floor area has been added in the preceding two years; and [Sec. 18.42.010(D), Tumwater Municipal Code]

Many of the appearance and design standards applied to homes with ADUs are concerned with those portions of the home that can be seen from the street. One of the most common provisions prohibits the creation of additional front entrances. Communities typically require that entrances to ADUs be located on either the rear or side of the home.

Only one (1) entrance may be located on each front or street side of the residence ... [Sec. 23.44.025(A)(6), Seattle Municipal Code]

The primary entrance to the ADU shall be located in such a manner as to be unobtrusive from the same view of the building which encompasses the entrance to the principal unit. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

The installation and/or location of exterior stairs is also likely to be restricted to rear or side yard locations or prohibited altogether.

Many communities also include a stipulation in their ordinance that any modifications to the exterior of the home should conform to the original design characteristics and style of the home.

When reviewing a conditional use request for an accessory apartment, the hearing examiner shall consider the following guidelines: . . . 3. The design of the accessory apartment is incorporated into the primary unit's design with matching materials, colors, window style and roof design. [Sec. 17.16.030(G)(3), Gig Harbor Municipal Code]

Design. An ADU shall be designed to maintain the architectural design, style, appearance and character of the main building as a single-family residence. If an ADU extends beyond the current footprint or existing heightof the main building, such an addition must be consistent with the existing facade, roof pitch, siding and windows. [Tacoma Ordinance No.25624]

Some ordinances simply say that any changes to the exterior of the home should not alter the "single-family character" of the neighborhood.

The ADU shall be designed so that, to the degree reasonably feasible, the appearance of the building remains that of a single-family residence. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

This type of provision allows the reviewing agency some discretion and flexibility in applying design guidelines. However, unless "single-family appearance" or "character" are defined in some way, it may be difficult for a community to deny a permit application.

Illegal ADUs

What to do with existing illegal ADUs? Illegal units may be common in communities where there is excess demand for rental apartments, where zoning laws prohibit or tightly restrict ADUs, and where enforcement procedures are slow and/or ineffective. [*Accessory Apartments in Single-Family Housing*, p. 187]

So, depending on the circumstances, you may already have a substantial number of ADUs in your community. Some may predate the adoption of your city's zoning code and may therefore be classified as legal nonconforming units. Any ADUs built after the adoption of zoning codes prohibiting them would, of course, be classified as illegal units. Building and planning officials often have some idea of the number of illegal units in the community.

Safety is usually the most important concern of communities with illegal ADUs. When an ordinance allowing ADUs is adopted, many communities provide incentives for the owners of illegal units to legalize them and to bring them up to minimum fire and life safety requirements.

One option for encouraging legalization of existing illegal units is to waive any applicable fines for homeowners who apply for a permit within a certain period (e.g., six months) following adoption of the ordinance. Allowing a grace period for homeowners to modify illegal units that do not meet minimum health and safety standards may also be a useful incentive.

> *That portion of a single family residence which meets the definition of accessory dwelling unit which was in existence prior to January 17, 1995, may continue in existence provided the following requirements are met:*
>
> 1. *An application for an accessory dwelling unit is submitted within eighteen (18) months of January 17, 1995.*
> 2. *The unit complies with the minimum requirements of the Uniform Building Code, Section 1208....*
>
> [Sec. 19.04.0607(D), Mercer Island Municipal Code]

Owners of illegal units who apply for a permit within the grace period may also be given some leeway on minor violations of ADU size, lot size, setback, parking, andother requirements where full compliance would be impractical. [*Model Zoning*, p. 29]

> *The Director may waive the one thousand (1,000) square feet limitation where exceeded in an accessory dwelling unit existing on January 1, 1993, if an application to legalize the accessory dwelling unit is filed within eighteen (18) months of the effective date of the ordinance codified in this section and if the Director finds that reduction of the floor area would be impractical.* [Sec. 23.44.025(A)(5), Seattle Municipal Code]

Imposing a stiff penalty on the owners of illegal units discovered after the grace period has run out may also serve as an effective incentive for owners to legalize their unauthorized units.

> *Legalization of Nonconforming ADUs. Nonconforming ADUs existing prior to the enactment of these requirements may be found to be legal if the property owner applies for an ADU permit prior to December 31, 1995, and brings the unit up to Minimum Housing Code standards. After January 1, 1996, owners of illegal ADUs shall be guilty of a misdemeanor and, upon conviction thereof, subject to a fine not to exceed $1,000, including all statutory costs, assessments, and fees, plus $75 per day after notice of the violation has been made. All owners of illegal ADUs shall also be required to either legalize the unit or remove it.* [Sec. 13.06.196(C)(11), Tacoma Municipal Code]

Experience in other jurisdictions indicates that cities may expect only limited success in getting owners of illegal units to come forward and register them even when offered amnesty. Owners of illegal conversions may prefer to keep their accessory apartments secret in order to avoid paying property taxes on them. A more significant motivation may be the desire to avoid income taxes. Even when zoning is not a constraint, property owners may choose to convert without a valid building permit in order to avoid the costs of compliance with building codes.

Accessory Apartments in Single-Family Housing
Martin Gellen

Minimum Lot Size

Some communities restrict ADUs to lots that are over a certain minimum size. The purpose of this type of restriction is to control density and, indirectly, to limit the number of conversions.

Proponents point out that minimum and maximum ADU size requirements along with existing lot coverage, setbacks, and other regulations are sufficient to control density. They argue that minimum lot size requirements may prevent many older homeowners and others with homes on small lots from securing the benefits of an ADU. (Hare, Model Zoning, p. 25)

None of the Washington State ordinances reviewed for this report contained a minimum lot size requirement for homes with attached ADUs.

Some communities have adopted a minimum lot size requirement for detached ADUs.

7.a. Accessory dwelling units: ...

(2) Only in the same building as the principal residence unless the lot is at least 10,000 square feet in area and the allowable density of the zone is not exceeded.... [Sec. 21A.08.030(B), King County Zoning Code]

Density Controls

Density controls place a limit on the total number of homes within a particular area (e.g., city blocks, census tracts, etc.) that can have ADUs. They are intended to prevent traffic, parking, and other density-related impacts that may result from an overconcentration of homes with ADUs. They are also intended to ensure an even distribution of ADUs throughout the community. Such requirements may limit the number of homes with ADUs that may be located within a certain distance of one another, or they may place a cap on the total number of ADUs that may be installed on a particular block without regard to proximity to other ADUs.

Density controls may serve as a useful reassurance for residents who are concerned about the possibility of numerous new conversions appearing in single-family neighborhoods. Since typical conversion rates are usually quite low, such restrictions may not actually prevent many conversions. Density controls can always be reviewed and possibly lifted at a later date after the community has gained more experience with actual conversion rates. [*Model Zoning*, p. 24]

If ... applications are filed for accessory dwelling units which would cause the concentration of single-family structures with new accessory dwelling units to exceed twenty percent (20%) of all single-family structures in single-family zones in any one census tract or in an area formed by a circle with a radius of one thousand feet (1,000') form the point at which three (3) or more census tracts meet, no further applications may be accepted for accessory dwelling units in such census tract or area. The Master Use Permit process set forth in Chapter 23.76 shall be followed to authorize these uses. [Sec. 23.44.025, Seattle Municipal Code]

On the downside, dispersion requirements may be vulnerable to charges of inequity where homeowners who want to install an ADU are prevented from doing so simply because one or two other homeowners on the same block or within a certain distance, have already done so. This may be particularly troublesome in cases where the existing units were formerly illegal units that have recently been legalized. Dispersion requirements may also discourage the owners of illegal units from legalizing them and encourage the creation of new illegal units in areas that have already reached their limit.

Age of Home

Some communities have adopted restrictions on ADU conversions based on the age of the home. Ordinances that restrict the ADU conversions to homes that are over a certain age (e.g., three years) effectively prohibit ADUs in new construction. Regulations of this type are intended to limit the number of conversions and to prevent developers from constructing and marketing new homes with accessory apartments in single-family zones. Such regulations are also intended to prevent new construction designed specifically for conversion at a later time.

One accessory dwelling unit is permitted as subordinate to an existing single-family dwelling ...

"Existing single-family dwelling" means that permits for construction of the principal dwelling were finaled (occupancy approved) at least three years prior to application for accessory dwelling unit. [Secs. 20.20.120(B) and (A)(2), Bellevue Land Use Code]

Supporters of restrictions based on the age of homes assert that the goal should be to promote the recycling and better use of existing housing rather than to encourage the development of "duplexes" in single-family neighborhoods.

ADU proponents question the need for restrictions on ADUs in newly constructed homes. They argue that this type of restriction denies homeowners flexibility in the use of their homes to allow for changes in family size, economic status, or other life cycle changes. They also point out that ADUs can be more easily included in new construction with designs that more effectively address exterior appearance and parking issues. Many communities do allow ADUs in new as well as existing homes.

> *An ADU may be developed in either an existing or a new residence.* [CTED (Dept. of Commerce) Accessory Dwelling Unit Ordinance]

It is not clear that allowing ADUs in new construction will result in waves of ADU installations. Where there is concern over the potential numbers of ADUs, sunset provisions or reviews that are triggered after a certain number conversions may also provide reassurance to neighborhood groups, without restricting the ability of young homebuyers or others who may benefit from the opportunity to install an ADU in a newly purchased home. [*Accessory Units: State of the Art - Summary of Experience*, p. 23]

Length of Residence

Some ordinances limit ADU conversions to situations where the homeowner has lived in the house for a certain number of years (e.g., three years). These regulations are intended to prohibit conversions at the time of purchase and for a period of time after the purchase of both new and existing homes. Restrictions based on length of residence are also designed to prevent homebuyers from purchasing a home with the specific intent of installing an ADU. Such restrictions are usually based on concerns that legalization will result in large numbers of new ADU conversions.

> *... no application shall be considered for an accessory dwelling unit, unless the applicant has owned and resided at the subject site for a period of not less than two years prior to the application.* [Sec. 20.21.010 Edmonds Municipal Code]

ADU proponents argue that regulations of this type effectively remove the opportunity for first-time buyers to use the rental income from an ADU to help in qualifying for a mortgage loan and to offset a portion of their house payment.

Only one of the Washington ordinances reviewed for this report contained restrictions based on the length of homeowner residence.

Recording Requirements

To ensure continued compliance with owner-occupancy and other ordinance requirements by current, as well as by any subsequent owners, many communities require that either a deed restriction, covenant, or similar instrument be filed and recorded by the homeowner.

Deed restrictions run with the land and put prospective buyers on notice with respect to the requirements and limitations of the ordinance and, in some cases, inform them of the steps they must take to apply for ADU permits. Whenever there is a transfer of ownership of the property, the title search turns up the document noting the regulations.

> *The registration form or other forms as required by the (building official) shall be filed as a deed restriction with the (county) Department of Records and Elections to indicate the presence of the ADU, the requirement of owner-occupancy, and other standards for maintaining the unit as described above.* [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Some ordinances require homeowners to sign and file an agreement binding them to comply with all of the ADU ordinance provisions. The agreement may also provide an additional avenue for enforcement of the ordinance's requirements.

The applicant shall provide a covenant in a form acceptable to the City Attorney and suitable for recording with the County Auditor, providing notice to future owners or long term lessors of the subject lot that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by the person to whom the accessory dwelling unit permit has been issued. The covenant shall also require any owner of the property to notify a prospective buyer of the limitations of this Section and to provide for the removal of improvements added to convert the premises to an accessory dwelling unit and the restoration of the site to a single family dwelling in the event that any condition of approval is violated. [Sec. 39.020(D)(13), Everett Zoning Code]

Utility Service Requirements

ADU ordinances sometimes require applicants to get a permit approval affirming the adequacy of existing water and sewer service capacity. This may be important in cases where the principal and accessory units combined have more bedrooms than the original home or in rural areas where older septic systems may be near capacity. In cases where the existing capacity is inadequate, the ordinance may require proof that provisions will be made for adding capacity. [*Accessory Units: State of the Art - Model Zoning*, p. 30]

Certification by the (city/county) Health Department that the water supply and sewage disposal facilities are adequate for the projected number of residents must be provided to the building official. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Proponents point out that ADUs in most cases will not increase the number of people living in a house beyond the number for which it was originally designed and should not therefore cause any problems with respect to increased burdens on water and sewer systems. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 15] Instead of requiring new infrastructure, ADUs may actually result in more efficient use of existing underutilized service capacities.

Some ordinances also prohibit the principal and accessory units from having separate utility meters. Requiring service through single water and electrical meters is intended to reinforce owner-occupancy requirements and to avoid the "duplex look" of separate electrical meters.

An accessory apartment must be connected to the utilities (except telephone and television) of the dwelling unit and may not have separate services. [Sec. 23.70.030(10), Richland Municipal Code]

Provisions to Encourage Barrier-Free ADUs

ADUs increase housing opportunities for handicapped persons by allowing them to live independently in a separate dwelling but close to any needed support.

The community may want to consider including provisions to encourage the installation of barrier-free ADUs. One option would be to relax certain requirements where doing so would facilitate the installation of a barrier-free unit. It may also be helpful to add a statement in the ADU ordinance declaring the community's intention to increase affordable housing opportunities for the handicapped. [*Accessory Apartments - Using Surplus Space in Single-Family Houses*, p. 6]

In order to encourage the development of housing units for disabled and handicapped individuals, and persons with limited mobility, the director may allow reasonable deviation from the prescribed conditions where necessary to install features that facilitate access and mobility of disabled persons.

Such facilities are in conformance with Washington State regulations for barrier-free facilities. [Sec. 11.19.3210(B)(13), Spokane Municipal Code]

In order to encourage the development of housing units for people with disabilities, the (building official) may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the UBC. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

Maximum Number of ADUs per Lot

Most ordinances impose a limit of one ADU per single-family lot, particularly in urban areas that may have smaller average lot sizes. This restriction is intended to minimize increases in neighborhood density resulting from ADU conversions.

There shall be no more than one single-family conversion per lot. [Sec. 18.42.010(A), Tumwater Municipal Code]

Such limits may not be necessary or appropriate in some areas such as agricultural zones where multiple accessory housing units may be provided on large lots (e.g., housing for farm workers).

Only one ADU may be created per residence in single-family zones. Multiple detached ADUs may be created in (agricultural) zones, if one of the occupants of each unit is employed by the property owner. [CTED (Dept. of Commerce) Model Accessory Dwelling Unit Ordinance]

For most homeowners in single-family zones, the potential for adding more than a single ADU is not great in any event, in view of space requirements and the additional expense.

ADUs with Home Occupations

It may also be useful to consider what, if any, provisions there should be to regulate home occupations (e.g., bed and breakfast, home businesses, day care, etc.) in homes with ADUs. One option would be to prohibit all or certain types of home occupations in homes with ADUs.

A property may not have both an accessory dwelling unit and a home occupation as defined by this Ordinance. [Sec. 20.118.030(B)(8), Walla Walla Zoning Code]

No home profession, family day care home, or mini day care facility may be undertaken in either the principal or the accessory unit. [Sec. 11.19.3210(B)(8), Spokane Municipal Code]

Another option would be to allow home occupations in only one of the units, either the primary unit or the ADU, but not both. Many communities have already adopted regulations that are designed to control the impacts of home occupations. These regulations may be sufficient to control any impacts from residences that have both an ADU and a home business.

Home Occupations. Home occupations shall be allowed, subject to existing regulations, in either the ADU of the main building, but not both. [Sec. 13.06.196(C)(9), Tacoma Municipal Code]

As an additional safeguard, the ordinance could include a provision requiring a review on a case-by-case basis of the cumulative impacts of a home occupation with an ADU, particularly with respect to parking and traffic. The reviewing agency may be provided with the discretion to modify ADU conditions or deny a permit where the cumulative impacts are deemed to be excessive. [*Accessory Units: State of the Art -Model Zoning*, p. 23]

Periodic Permit Renewal

Some ordinances require periodic renewal of ADU permits to allow closer monitoring of ADUs over time

and to ensure that any zoning requirements continue to be met. This type of requirement can serve to allay the fears of neighborhood groups concerned about enforcement of ordinance conditions for the period after the permit has been issued. Periodic renewal of ADU permits also requires more planning department resources for enforcement.

> *The owner of a single family dwelling with an accessory dwelling unit shall file an Owner's Certificate of Occupancy in a form acceptable to the City Attorney no later than April 1st of each year.* [Sec. 39.020(D)(10), Everett Zoning Code]

Proponents argue that, where they are adopted, reapproval procedures should be routine unless conditions are no longer being met. A less onerous requirement from the perspective of the homeowner would be to waive permit renewals unless neighbors specifically complain and request a hearing. Another alternative would be to require renewal at longer intervals (e.g., two years), coupled with a survey of neighbors.

Of course, the community may decide not to include any requirement for permit renewal at all. Many communities simply rely on neighbor complaints (particularly those that require notice to neighbors at the time of installation) to ensure continued compliance. This appears to be the most common approach followed in the Washington ordinances reviewed for this report.

Using less restrictive requirements for permit renewals will allow the jurisdiction to concentrate enforcement efforts where they are most needed while at the same time reducing the regulatory burden on ADU homeowners. [*Accessory Units: State of the Art - Model Zoning*, pp. 5-6].

A related requirement found in some ordinances provides for the automatic expiration of the permit when changes occur causing the ADU to be out of compliance with the required development standards.

> *In addition to the conditions which may be imposed by the Planning Director ... all accessory dwelling units shall also be subject to the condition that such a permit shall automatically expire whenever:*
>
> *a.The accessory dwelling unit is substantially altered and is thus no longer in conformance with the plans approved by both the Planning Director and the Building Official; or*
>
> *b.The subject lot ceases to maintain at least three off-street parking spaces; or*
>
> *c.The applicant ceases to own or reside in either the principal or the accessory dwelling unit.* [Sec. 39.020(D)(12), Everett Zoning Code]

Automatic ADU Ordinance Review

Some communities have adopted provisions that require an automatic review of ADU ordinances after a certain number of ADU permits have been issued. An automatic review based on the number of permits issued may be based on a certain number issued community-wide or the number of permits issued within a single area (e.g., census tract), or a combination of these.

> *At least three (3) months prior to reaching the two thousand five hundred (2,500) limit on applications or on September 1, 1999, whichever is earlier, the Department of Construction and Land Use and the Planning Department shall submit to the City Council a report regarding accessory dwelling units established, and, if deemed necessary, recommendations for revisions to the regulations and procedures related to accessory dwelling units. ....*
>
> *Within six (6) months of receiving the report, the City Council shall review the report and consider the recommendations proposed. If the City has reached or is nearing the two thousand five hundred (2,500) limit on applications, the City Council shall determine whether to authorize further permits or otherwise revise the provisions.*
>
> *If applications are filed for permits for accessory dwelling units which would cause the concentration of new structures with accessory dwelling units to exceed twenty percent (20%) of the number of single-family residences in single-family zones in any one (1) census tract or in an area bounded by a circle with a radius of one thousand feet (1,000') from a point where three (3) or more census tracts meet, the Department of Construction and Land Use shall notify the City Council. Within three*

(3) months, that department shall submit a report to the City Council containing an analysis of the number, location and character of the single-family structures with accessory dwelling units in the tract or area exceeding the twenty percent (20%) threshold. The City Council shall request that the neighborhood planning organization for the affected neighborhood submit a recommendation within three (3) months of that request regarding action to be taken. Within six (6) months of receiving the neighborhood planning organization's recommendation, the City Council shall review the report and consider recommendations proposed. The City Council shall determine whether toauthorize further permits or otherwise revise the provisions. [Sec. 23.44.025(F), Seattle Land Use Code]

Automatic review provisions may be useful to reassure neighborhood groups that any problems related to ADUs will be reviewed and dealt with at some point.

If this type of provision is adopted, it may also be useful to include a provision grandfathering any ADUs that have been constructed before the ordinance is amended or repealed. This may help to remove any doubts or concerns that homeowners who legally install ADUs may have about the legal status of their units in the event that the ordinance is amended or repealed at a later date. [*Accessory Units: State of the Art -Summary of Experience*, p. 21]

Most of the Washington ordinances reviewed for this report do not provide for an automatic ordinance review.

Periodic Reports on ADU Applications

Periodic reporting by the planning department on permit applications may be useful to monitor the impacts of ADUs in the community. Some communities have included such requirements to address concerns expressed by neighborhood groups that unanticipated large numbers of conversions could harm single-family neighborhoods without some mechanism for periodic monitoring and review. If the number of conversions is having disproportionate impacts on particular areas in the community, then, presumably, the city council could step in to correct the situation by amending the ordinance to either limit or even prohibit additional conversions.

Reports. The Building and Land Use Services Division of the Public Works Department shall report annually to the City Council regarding ADU applications. The report shall include: (a) the number of units established; (b) the geographic distribution of the units; (c) the average size of the units; and (d) the number and type of completed regulatory enforcement actions. The ADU ordinance will be reassessed every five years, or sooner, if records show that 20 percent of the single-family structures within any census tract or city-wide have ADUs. [Sec. 13.06.196(B)(8), Tacoma Municipal Code]

Biennially (every two (2) years), DCLU [Department of Construction and Land Use] shall prepare a report for the City Council stating the number and location of permits issued for new accessory housing units. [Sec.23.44.025(F), Seattle Land Use Code]

Periodic reporting and monitoring requirements may give reassurance to neighborhood groups without hindering ADU installations, and may therefore be useful in communities where neighborhood groups are particularly wary of ADUs. Although experience around the country shows that actual installation rates will probably be lower than those predicted by many opponents, adoption of this requirement may be worthwhile to address neighborhood concerns.

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Appendix A

MODEL ACCESSORY DWELLING UNIT

ORDINANCE RECOMMENDATIONS

Washington State Department of Community, Trade, and Economic Development, January 1994

SECTIONS:

Definitions

Purpose and Intent

Standards and Criteria

Grandfathering

Application Procedures

DEFINITIONS

1.An Accessory Dwelling Unit (ADU) is a habitable living unit that provides the basic requirements of shelter, heating, cooking, and sanitation.

Comment: The Uniform Building Code (UBC) Sec. 1207 & 1208 lists minimum room sizes for an efficiency unit. The jurisdiction could set up maximum areas in the Standards and Criteria below, if it so desired.

PURPOSE AND INTENT

A. The installation of an ADU in new and existing single-family dwellings (hereinafter principal units) shall be allowed in single-family zones subject to specific development, design, and owner-occupancy standards.

Comment: As required by Senate Bill 5584.

B.The purpose of allowing ADUs is to:

1.Provide homeowners with a means of obtaining, through tenants in either the ADU or the principal unit, rental income, companionship, security, and services.

2.Add affordable units to the existing housing.

3.Make housing units available to moderate-income people who might otherwise have difficulty finding homes within the (city/county).

4.Develop housing units in single-family neighborhoods that are appropriate for people at a variety of stages in the life cycle.

5.Protect neighborhood stability, property values, and the single-family residential appearance of the neighborhood by ensuring that ADUs are installed under the conditions of this Ordinance.

STANDARDS AND CRITERIA

A.ADUs shall meet the following standards and criteria:

1.The design and size of the ADU shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire, health, and any other applicable codes. When there are practical difficulties involved in carrying out the provisions of this Ordinance, the (building official) may grant modifications for individual cases.

Comment: Construction shall conform to all codes which are required for any new construction.

2.Certification by the (city/county) Health Department that the water supply and sewage disposal facilities are adequate for the projected number of residents must be provided to the building official.

Comment: More applicable in rural areas for septic and wells. It is actually covered by No. 1 above.

3.Any additions to an existing building shall not exceed the allowable lot coverage or encroach into the existing setbacks.

Comment: Planning ordinance already in place in most jurisdictions.

4.The ADU may be attached to, or detached from, the principal unit.

Comment: Jurisdictions need to survey their existing housing stock and neighborhood standards to determine where and how ADUs would best fit their housing needs. This would allow the most diversity of choice and honor the uniqueness of each site.

5.Only one ADU may be created per residence in single-family zones. Multiple detached ADUs may be created in (agricultural) zones, if one of the occupants of each unit is employed by the property owner.

Comment: The first sentence is to "maintain single-family appearance." The second sentence is appropriate in agricultural zones.

6.The property owner, which shall include title holders and contract purchasers, must occupy either the principal unit or the ADU as their permanent residence, but not both, for at least (X) months out of the year, and at no time receive rent for the owner-occupied unit.

Comment: Owner-occupied units are better maintained, and therefore the neighborhood will be better

maintained. If the owner has to live on site for more than six months out of the year, they could not own more than one ADU. This would eliminate speculators/developers from developing duplexes throughout an area under the guise of calling them ADUs.

7.An ADU may be developed in either an existing or a new residence.

Comment: This would allow new home builders to plan ahead for "mother-in-law" type units and thus save money now and time and inconvenience later.

8.In no case shall an ADU be more than 40 percent of the building's total floor area, nor more than 800 square feet, nor less than 300 square feet, nor have more than 2 bedrooms, unless in the opinion of the (building official), a greater or lesser amount of floor area is warranted by the circumstances of the particular building.

Comment: Area limitation. See No. 1 under Definition above. The existing structure, the lot size, or the jurisdiction will determine ADU's size.

9.The ADU shall be designed so that, to the degree reasonably feasible, the appearance of the building remains that of a single-family residence.

Comment: To maintain single-family appearance. This is a subjective evaluation and unless specific design standards are adopted by the jurisdiction, this may be difficult to consistently apply.

10.The primary entrance to the ADU shall be located in such a manner as to be unobtrusive from the same view of the building which encompasses the entrance to the principal unit.

Comment: The second entrance is located this way to maintain single-family appearance with an attached ADU. Less restrictive than "no second entry on the street side of the principal unit," but it allows for site restriction that may make a side or rear entry impossible.

11.One off-street parking space, in addition to that which is required by the Ordinance for the underlying zone, shall be provided or as many spaces deemed necessary by the (building official) to accommodate the actual number of vehicles used by occupants of both the primary dwelling and the ADU. Parking spaces include garages, carports, or off-street areas reserved for vehicles.

Comment: Parking requirements may vary from jurisdiction to jurisdiction depending on density of neighborhood, existing neighborhood standards, etc. Other parking options include more than one additional space, tandem parking, or allowing on-street parking.

12.In order to encourage the development of housing units for people with disabilities, the (building official) may allow reasonable deviation from the stated requirements to install features that facilitate accessibility. Such facilities shall be in conformance with the UBC.

Comment: This is an accessibility issue.

GRANDFATHERING

1.Option 1.

ADUs created prior to (date) shall be registered with the (building official) for inclusion into the Certificate of Occupancy Program. Application for registration must contain the name of the owner, the address of the unit, the floor area of the two dwelling units, a plot plan of the property, evidence of the date of establishment of the unit, evidence of the use for the six-month period prior to the application for registration, and a signature of the owner.

Comment: This provision would allow the building official to verify the compliance of the ADU to the codes, and to require changes as necessary.

Option 2.

Ignore.

Comment: It would be difficult, and very time consuming, to determine under which codes the ADU was originally constructed.

APPLICATION PROCEDURE

1.Application for a building permit for an ADU shall be made to the (building official) in accordance with the permit procedures established in Section (00.0000), and shall include:

Comment: For building official's plan check.

a.A letter of application from the owner(s) stating that the owner(s) shall occupy one of the dwelling units on the premises, except for bona fide temporary absences, (for (X) months out of each year).

Comment: This is an owner-occupancy requirement. Limits the owner from "living" in several units at the same time.

2.The registration form or other forms as required by the (building official) shall be filed as a deed restriction with the (county) Department of Records and Elections to indicate the presence of the ADU, the requirement of owner-occupancy, and other standards for maintaining the unit as described above.

Comment: This is for optional use if the owner-occupancy requirement is adopted.

3.The (building official) shall report annually to the (council) on ADU registration, number of units and distribution throughout the (city/county), average size of units, and number and type of complaint and enforcement-related actions.

Comment: This is a local jurisdiction option. This provides a tracking mechanism on the number of ADUs to determine if changes to the Ordinance are needed.

4.Cancellation of an ADU's registration may be accomplished by the owner filing a certificate with the (building official) for recording at the (city/county) Department of Records and Elections, or may occur as a result of enforcement action.

5.This Ordinance shall take effect and be in force five days after passage and legal publication.

Comment: This is a local jurisdiction option.

RECEIVED
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Development Services Department

PC ATTACHMENT 2

Kathy Gifford

From: porritt@whidbey.net
Sent: Friday, August 24, 2012 4:24 PM
To: Melissa Sartorius; Kathy Gifford; Steve Powers
Subject: E-mail concerning issue of approving ADUs at Fairway Point division 4

Steve, Melissa and Kathy,

Here are some of my thoughts for submission to public comment on the issue. Thanks for all your hard work and assistance. Have a good weekend.

Oak Harbor Planning Commission

8-24-2012

1. **My name is Richard Porritt, Jr. I live at 2130 Fairway Lane, Oak Harbor. My remarks concern the Additional Dwelling Unit (ADU) issue in the adjacent Fairway Point development.**
2. **First, my compliments to the Planning Commission for their many insightful questions regarding the issue during the July meeting. Through those questions, many other facets of the problem came to light.**
3. **Second, adjoining property owners have received 3 or 4 pieces of correspondence from the city over the past few months on this issue with conflicting, confusing, and changing information. A public notice sign on lot 19 in Division 1 also changed adding to the confusion. Additionally, the notice for the August meeting now only refers to division 4 as the issue.**
4. **Planning Commission Report dated July 24, 2012 makes it clear that 29 units in division 3 could each have ADU's and that approval would be "administrative" based on Density Units being in an acceptable range. With the potential for nearly 30 ADU's on the 40 lots in division 3, traffic congestion increase with vehicles from multiple ADU's could be significant—nearly 30 additional vehicles.**
5. **The ADU's have been described in the various documents and meeting discussion as "cottage apartments", mother-in-law apartments, care giver apartments, and rental apartments. During the comment and discussion portion of the July meeting, a reference was made to renting the ADU's for $600 a month as an income producer and a marketing tool to help offset a mortgage.**
6. **Division 4 decisions can set a precedent for administrative actions that could make ADU development easier in Division 3, where 29 lots are affected.**
7. **Increased traffic congestion and a large number of unregulated, one-bedroom rental apartments in a single-family residential neighborhood seem to be larger issues not measured within the scope of the Density Units per acre index. A homeowners association should not be the regulatory board for rental units. If it must, then property values will likely be adversely affected.**

Richard H. Porritt, Jr.

2130 Fairway Lane, Oak Harbor

Planning Commission

Minutes

September 25, 2012

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
September 25, 2012

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

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

MINUTES: **MR. WALLIN MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE AUGUST 28, 2012 MINUTES AS PRESENTED.**

PUBLIC COMMENT:
No comments.

FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S – Public Hearing
Mr. Fakkema recused himself from this item. Mr. Wasinger conducted the public hearing.

Mr. Powers reminded the Planning Commission that they closed the public hearing at the last meeting and therefore closed the public comment portion and Planning Commission will deliberate and make a recommendation to the City Council this evening. Ms. Sartorius reported that this item is a continuation from last month's meeting.

Mr. Wallin asked staff if they could limit the amount of people that reside in the accessory dwelling unit (ADU) to two and to clarify the parking requirements for an ADU. Mr. Powers said there isn't a Code basis to impose a limit as well as being a challenge to enforce such a limit. Mr. Sartorius indicated that the parking requirements are two per single-family unit plus at least one additional space for an ADU per Chapter 19.42.030(9).

Ms. Johnson Pfeiffer asked if Planning Commission could reduce the number of ADUs. Mr. Powers said that the applicant has asked to have ADU's on up to six lots in this division of their project. It is within the Commission's purview to recommend to the Council something less than six if the Commission thinks that it addresses a compatibility issue.

Ms. Johnson Pfeiffer said she thought that the parking for a five bedroom house and an ADU is more than that area can sustain. She also talked about entering into a Planned Residential Development (PRD) that we have been locked into for a long time and should the developer be allowed to change the plan. She was concerned that if you don't allow any change ever that this would discourage developers from using the PRD design. A compromise might be to allow ADUs on the lots that don't abut existing homes so there would be the flexibility and compatibility with the existing neighborhood.

Mr. Wasinger noted that allowing the developer the opportunity for including ADU's on up to six lots does not necessarily mean that all six lots will have ADU's and the living scenarios for those ADU's could vary from the worst case scenario of a family living in the ADU to just one caregiver living in the ADU.

MOTION: **MR. WALLIN MOVED TO RECOMMEND THAT THE ORDINACE BE APPROVED AS PRESENTED. MS. JOHNSON-PHIEFFER SECONDED THE MOTION.**

Planning Commission Discussion

Ms. Johnson-Pfeiffer asked it was possible to allow ADU's in the four lots that do not abut existing homes.

Mr. Powers suggested adding "shall only occur on the four southern lots" to the end of Section Two. The lots would be identified by lot number.

ACTION: **MR. WALLEN WITHDREW HIS MOTION. MS. JOHNSON-PHEIFFER WITHDREW HER SECOND.**

ACTION: **MS. JOHNSON-PHEIFFER MOVED, MR. WALLIN SECONDED TO RECOMMEND THAT CITY COUNCIL APPROVE THE ORDINANCE WITH THE ADDED LANGUAGE THAT ADU'S SHOULD ONLY OCCUR ON THE FOUR SOUTHER LOTS. MOTION CARRIED UNANIMOUSLY.**

Mr. Powers noted for the record that the four lots would be identified by lot number in the ordinance so that it is clear which lots the Planning Commission is referring to.

Mr. Fakkema returned for the remainder of the meeting.

NIGHTCLUB ORDINANCE – Public Meeting

Mr. Kamak noted that this is a continuing discussion that started in April of this year. Mr. Kamak presented the attached PowerPoint presentation (PC ATTACHMENT 1) which provided the information presented to-date, public input to-date and options considered. Planning Commission directed staff to pursue the option to license nightclubs by occupancy limit. Mr. Kamak presented the idea of licensing nightclubs by occupancy limit in the various zoning districts based on the intent of the zoning district as follows.

- CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
- C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- PIP, PBP – Planned Developments, no residential (less or no restrictions)
- I, - Industrial, no residential (less or no restrictions)

Mr. Kamak noted that there are no national standards or best solution and that the decisions are community driven.

Mr. Kamak displayed the occupancy limits of existing nightclub license holders to use as a starting point for considering what the occupancy limit should be in the various zoning districts:

- El Cazador – 291 – no impacts reported
- Oak Harbor Tavern – 108 – min impacts
- Mi Pueblo – 280 – less impacts

- 7 West – 165 – min impacts
- Off the Hook – 201 – min impacts
- Elements – 580 +219 (covered area) – most impacts

Mr. Kamak explained that occupancy limits are determined by the use and how the spaces in the building are allocated. Staff is proposing that if an occupancy limit is greater than the number that the Planning Commission selects tonight you cannot apply for a nightclub license. If a current business is more than the limit that the Planning Commission selects then they become non-conforming license holder. Specific language for dealing with non-conforming license holders would have to be written. Options are: allow them to continue to operating as they are in a non-conforming status as long as they remain under the same ownership or allow X number of years to become compliant (20 to 40 years). The specific language will require legal assistance and is not a land use issue and not under Planning Commission's review authority however, the Planning Commission can choose to make a recommendation or not to make a recommendation on this.

Mr. Fakkema asked for public input.

Billie Cook (651 SE Bayshore Drive) read her comments (PC ATTACHMENT 2).

Vernon Meyers (651 SE Bayshore Drive) said he received the staff report by mail and reviewed it and his first thoughts were that someone has really put a lot of work into this and he wanted to thank them for listening. He was happy that the City is aware of the situation and is responding to their concerns. He asked the Planning Commission, when making their decision, to think about they would feel living next to the business.

Planning Commission Discussion

Mr. Fakkema asked if Industrial or Planned Industrial Park zoning districts that are next to residential properties and if they are should distance requirements be included. Mr. Kamak said that the zones are next to residential properties and that distance requirements could be included. The distance requirement can be tricky if there are several and whoever comes in last can't meet any of the distance requirements. This can be unfair. Many cities that have distance requirements are facing challenges.

Mr. Fakkema voiced concern about creating a situation where there will be an impact on residential uses. Mr. Kamak said that is the challenge, the fact that the property is zoned Industrial and that there are residential uses adjacent to it, that impact can happen whether we implement this code revision or not. Industrial properties exist with certain intensity or with the potential of a certain intensity already so we are acting within that zoning intensity and classification.

Ms. Johnson-Pfeiffer asked if the Central Business District (CBD), C3 and C5 all allow mixed use. Mr. Kamak acknowledged that they do allow mixed use.

Mr. Kamak displayed the following table to give a starting point for setting a capacity limit for each zoning district

Zoning Districts	Starting Point	Planning Commission recommendation
Central Business District	300	?
C3, Community Commercial	300 or 30% increase to 400	?
C5, Highway Corridor Commercial	300 or ≙ 60% increase to 500	?
PBP, PIP	300 or ≙ 60% increase to 500 or No limitations	?
I, Industrial	300 or ≙ 60% increase to 500 or No limitations	?

Mr. Fakkema asked where the 30% was derived. Mr. Kamak explained that he increased it by 100 with equated to about 30%. From a gradation standpoint as you go higher in intensity that seems to be a reasonable increase between zoning districts.

Mr. Kamak displayed the zoning map to give the Commission an idea of where the zoning districts are located.

Mr. Powers asked if the Commissioners could assume that the numbers are a maximum number subject to the building to support that occupancy based upon the Building Code and the Fire Code. Mr. Kamak said that was true and the occupancy limits were not negotiable and are fixed by the Building Code and the Fire Code. This does not mean that just because we decide to set the maximum limit at 400 for a nightclub license that anyone that has a license can have up to 400 people; that is not what it means, they are still limited by what the building occupancy load can support.

Ms. Johnson Pfeiffer asked if there was a reason for recommending the incremental increases rather than setting at the same number anytime there is residential and commercial use mixed together. Mr. Kamak explained that the City of Oak Harbor zoning districts gradually increase in intensity so there is a natural understanding that the uses are also getting more intense and therefore it is logical to consider increasing intensity for such uses as well.

Commissioners discussed the commercial areas and the noise impacts on adjacent residential areas (Midway Boulevard). Mr. Kamak noted that if a business owner has an occupancy load of 600 in the CBD they won't qualify for a nightclub license if the City adopts a capacity limit of 300 in the CBD. Mr. Fakkema asked if that business owner were to split the building in half could he apply. Mr. Kamak said he could and that he would have to submit the building plans, calculations and what the business is and then we would calculate the new occupancy load based on that and if that falls under 300 they can apply for a night club license.

Mr. Kamak also noted that the Planning Commission isn't obliged to use the progression and that they could choose another method.

Planning Commissioners discussed the police enforcement limitations if allowing a limit of 500 or no limitation. Mr. Kamak said that when we say no limitation we are not putting a restriction on the size of a business in the PBP, PIP and Industrial can apply. The size of a business will be market driven a city of our size. Mr. Powers also noted that there are site development drivers such as parking and stormwater. The more parking the more stormwater will have to be handled. The number of parking spaces required is a function of the size of the building so there are more limitations on just what the occupant load is, there will be the economics of developing the site plus the economics of having a business.

Mr. Kamak also reminded the Planning Commission that the Code doesn't allow any new residential uses north of NE 16th Avenue.

Planning Commissioners settled on the following limitations and to not make a recommendation regarding dealing with non-conforming license holders:

Zoning District	**Planning Commission Recommendation**
Central Business District	300
C3, Community Commercial	300
C5, Highway Corridor Commercial	400
PBP, PIP	No limit
I, Industrial	No limit

SHORELINE MASTER PROGRAM (SMP) UPDATE – Public Meeting

Mr. Spoo explained that this is a continuing discussion of the SMP and the goal is to move toward making a recommendation to City Council tonight if Planning Commission is ready after the presentation and discussion.

Mr. Spoo asked Planning Commission what their preference was for a review of the chapters or to skip the review and go into the Department of Ecology (DOE) required changes and then to talk about chapters that the Commission may have questions on. Commissioners preferred a presentation of the DOE required changes.

Commissioners asked if the changes had to be made or could the City take a stand against something we don't agree with. Mr. Spoo said that other cities have taken a stand on some things and have been successful and unsuccessful at times but that DOE has final approval authority.

Mr. Spoo gave an overview of the Department of Ecology required changes. One of the changes regards how we are treating critical areas (wetlands, steep slopes, and fish and wildlife conservation areas along marine shorelines). DOE has requested that when we adopt the SMP to include our Critical Areas Ordinance (CAO) as an appendix. However there is one change. Initially DOE asked that a redline version be attached to the SMP but this creates confusion so staff is proposing to substitute the red-line version of the CAO with the CAO without the redline so there are not two versions of the CAO. So any planner or citizen can see that the CAO is adopted and attached to the SMP without any changes. If there are areas where the SMP and the CAO conflict that will be called out in the body of the SMP. This occurs in Chapter 3, Section 4 of the SMP where the SMP talks about the CAO and how it relates to the SMP and item number 4 identifies exceptions in the CAO. Exceptions to applicability are:

- Marine buffers – per SMP
- Marine buffer reductions – no more than 25%
- Buffer averaging – per SMP
- Flexibility on steep slopes – CAO does not apply

There was discussion about the implementation issues involving the CAO and SMP.
Mr. Spoo said additional changes include technical changes to definitions and a change to the Shoreline Environment Designations Map in area of Freund Marsh due to better information available and the East ditch has a salinity percentage and is therefore considered tidal water so that means that anything within 200 feet of the ditch is within shoreline jurisdiction so that incorporates some of Dillard's Addition and they will be subject to the SMP. Staff sent a letter of notification last week to the properties impacted and have offered to hold a special neighborhood meeting with them to get their comment and to explain how they will be impacted.

Mr. Fakkema opened the public hearing.

Ron Hancock (Pioneer Way) said he has resided on Pioneer Way since 1966. He was concerned that he wouldn't be able to replace his private dock. He noted that in the 70's the City asked private property owners along Pioneer Way to relinquish their property to the City so the City could widen Pioneer Way and the property owners did. Mr. Hancock believed that at the very least they should have free access to their beach and opportunities to have docks as they have in the past. He asked that those property owners be "grandfathered".

Mr. Spoo said that Chapter 5 talks about shoreline modification and that private docks are considered a shoreline modification and under this chapter the Urban Mixed Use Environment, which is along Pioneer Way, would require that a private dock go through a conditional use permit which requires approval by City staff and then goes to DOE for final approval. One of the conditions would be that it be a joint use dock and would have to serve more than one single-family residence or public access would have to be allowed.

Mr. Spoo suggested that the SMP could be revised to allow private docks as a permitted use in the Urban Mixed Use Environment. The test for DOE is that it meets no net loss. Mr. Spoo said that mitigations could be to use smaller pilings, smaller over overwater deck structures or require grating in order to achieve no net loss.

Seeing no further public comment Mr. Fakkema closed the public hearing.

Planning Commission Discussion
Ms. Johnson-Pfeiffer asked what the difference would be in the process by changing private docks in the Urban Mixed Use Environment to a permitted use. Mr. Spoo said the permitting process would have applicants apply for a substantial development permit which would only require staff review with no DOE involvement but DOE could appeal staff's permit decision if they disagree with it. Mr. Powers added that a Hydraulic Project Approval (HPA) permit from the Department of Fish and Wildlife would be required which is a separate permit through the State but the permit wouldn't have to go through DOE.

ACTION: MS. JOHNSON-PHEIFFER MOVED, MR. WALLIN SECONED A MOTION TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE SHORELINE MASTER PROGRAM AND APPENDIX WITH THE UNDERSTANDING THAT STAFF WILL ATTACH A NON REDLINE COPY OF THE CRITICAL AREAS ORDINANCE TITLE 20 OHMC AND REVISE MAP TO THE DRAFT SMP FOR

CITY COUNCIL CONSIDERATION. MOTION DIED DUE TO LACK OF A MAJORITY VOTE.

ACTION: **MS. JOHNSON-PHEIFFER MOVED, MR. WALLIN SECONED A MOTION TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE SHORELINE MASTER PROGRAM AND APPENDIX WITH THE UNDERSTANDING THAT STAFF WILL ATTACH A NON REDLINE COPY OF THE CRITICAL AREAS ORDINANCE TITLE 20 OHMC AND REVISE MAP TO THE DRAFT SMP FOR CITY COUNCIL CONSIDERATION AND TO CHANGE PRIVATE DOCKS TO A PERMITTED USE IN THE URBAN MIXED USE ENVIRONMENT. MOTION CARRIED.**

Request to restrict by size and zoning

Nightclubs

Nightclubs

- Regulated in Title 5 - Business Licenses and Regulation
- Defined - "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises

Nightclubs

- Nightclubs are specifically not listed as a use in Title 19 – Zoning
- Any permitted or conditional use can apply for a Nightclub license
- Nightclub License review process – Lead by the Chief of Police with a Public Hearing at the City Council
- License review is not a Land use review

Nightclubs

- Currently six uses have obtained a Nightclub license
  - Element – CBD (Central Business District)
  - Seven West – CBD (Central Business District)
  - Off the Hook – CBD (Central Business District)
  - Oak Harbor Tavern – CBD (Central Business District)
  - Mi Pueblo – CBD (Central Business District)
  - El Cazador – C_5, Highway Corridor Commercial
- These uses are classified as Bars, Taverns and Restaurants – all of which are permitted uses in their respective zoning districts
- Some of these uses can continue to exist without a Nightclub License

Nightclubs

- Public Input on April 24 at Planning Commission
  - New code may not change the operations of current nightclubs
  - Small scale nightclubs don't seem to be an impact
  - All complaints were related to Element nightclub
  - Noise created by large groups, loud cars, trespassing, lack of respect and poor business practices
  - Perceived lack of owner's cooperation, neighborliness and initiative
  - Preference for restricting nightclubs specifically as opposed to general uses

Nightclubs

- Nexus
  - Scale of nightclub has direct relation to the negative impacts on adjacent properties
- Options considered at the June 26th meeting
  - Regulate nightclubs as a land use
  - Licensing uses by area (sq. ft.)
  - Licensing by occupancy limit ✓

Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
  - Determine the districts where they should be prohibited
    - Primarily Residential– R1, R2, R3, R4
    - Mixed - RO, C1
    - Commercial – C4, Highway Service Commercial
    - Public – PF

Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
  - Regulate the zoning districts based on the intent of the zoning district
    - CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
    - C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
    - C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
    - PIP, PBP – Planned Developments, no residential (less or no restrictions)
    - I1, - Industrial, no residential (less or no restrictions)

Nightclubs

- So what should the occupancy limit be in the various zoning districts?
  - Occupancy limits of existing nightclub license holders
    - El Cazador – 291 – no impacts reported
    - Oak Harbor Tavern – 108 – min impacts
    - Mi Pueblo – 280 – less impacts
    - 7 West – 165 – min impacts
    - Off the Hook – 201 – min impacts
    - Elements – 580 +219 (covered area) – most impacts

Nightclubs

- So what should the occupancy limit be in the various zoning districts?

Zoning Districts	Starting Point	Planning Commission recommendation
Central Business District	300	?
C3, Community Commercial	300 or 30% increase to 400	?
C5, Highway Corridor Commercial	300 or @ 60% increase to 500	?
PBP, PIP	300 or @ 60% increase to 500 or No limitations	?
I1, Industrial	300 or @ 60% increase to 500 or No limitations	?

Nightclubs

- Nonconforming License Holders
  - Not a land use issue since primary use is permitted in the zoning district
  - Code can be adopted to allow nonconforming licenses to continue – options to consider
    - Remain under same ownership
    - Amortization period to become conforming – How long? Ownership changes during amortization -? (Legal assistance needed)
  - Planning Commission can choose to make a recommendation.

Nightclubs

- Legal assistance
- Formal adoption process
  - SEPA checklist
  - Public Hearing at the Planning Commission
  - Standing Committees
  - Public Hearing at the City Council
  - Action by City Council

Nightclubs

- ...

Nightclubs

- 1. Regulating nightclubs as a land use
  - Introduce nightclub as a use into the zoning ordinance
  - Require it as a conditional use
  - Pros: Public process, notification, public hearing, place conditions for approval
  - Cons: Can meet all criteria and still have impacts, size of use will not be regulated, challenging legal process to revoke permit
  - Code can be confusing with the Business Licensing and Regulation chapter

Nightclubs

- 2. Licensing uses by area
  - Limit the size of the use that can apply for a nightclub license based on area (eg. < 5000 sq. ft.)
  - Condition in the Business and License Regulation section of the code
  - Pros: Limits the size of use that can apply
  - Cons: limit the structures that can apply, may not address the actual impacts, occupancy varies for different uses (restaurant vs. bar)

Nightclubs

- 3. Licensing uses by occupancy limit
  - Limit the size of the use that can apply for a nightclub license by occupancy limits (eg. < 300)
  - Condition in the Business and License Regulation section of the code
  - Pros: Size of building may not matter, will limit the concentration of people in nightclubs
  - Cons: Can create several small establishments that can still have cumulative impacts

I am glad that the process of drafting a nightclub ordinance is moving toward completion. What looks to be the end result is quite different from what I envisioned and in some ways much better. I feel this is due to the hard work of the Planning Department, especially Cac Kamak, Thank you. The original idea of addressing size limits for nightclubs in the CBD has expanded to a city wide definition of allowable size of "nightclubs" by zones. Since this issue is not addressed by the Nightclub Licensing Act, I am pleased this proactive approach be taken as Oak Harbor continues to grow.

The original idea to restrict proliferation of overly large nightclubs in the CBD would indeed be accomplished by the adoption of the material listed in the table: Occupancy Limits by Zoning District contained in the report. I am very pleased it allows a zone, for such establishments, with no restrictions; as well as graduated occupancy limits in other zones. This would protect all land users from problems that occur when a large business with a nightclub license is situated too close to a church, other businesses, or residences.

However, I suggest you do not include specific language concerning non-compliant licensees in the proposed draft amendment. Let the city council decide specifics.

I would like to address some assumptions being made that may not be appropriate.

One is that there will be only one non-compliant licensee and that they will be in the CBD. By the time this amendment might be enacted there may be others, in other zones, and may not be the Element owner. As I said, I hope you will use non-specific language in the proposed draft amendment.

Even I have assumed that non-compliant licensees would be grandfathered in and retain their status for as long as they wished to remain in business. Although this could be the case with a non-conforming land user there may be different procedures for licensees. I believe that in some cases license holders are given a time period in which they need become compliant, or are no longer eligible for

licensing. Unlike revocation, for cause, this is merely the inability to renew. There are arguments for this action.

1. It levels the playing field for license holders who come after an amendment. The non-compliant licensee has a continuing advantage over them, a monopoly of sorts.

2. Since the purpose of the amendment cannot be fully realized with non-compliant licensees operating, such a time frame may be a way to achieve the desired purpose.

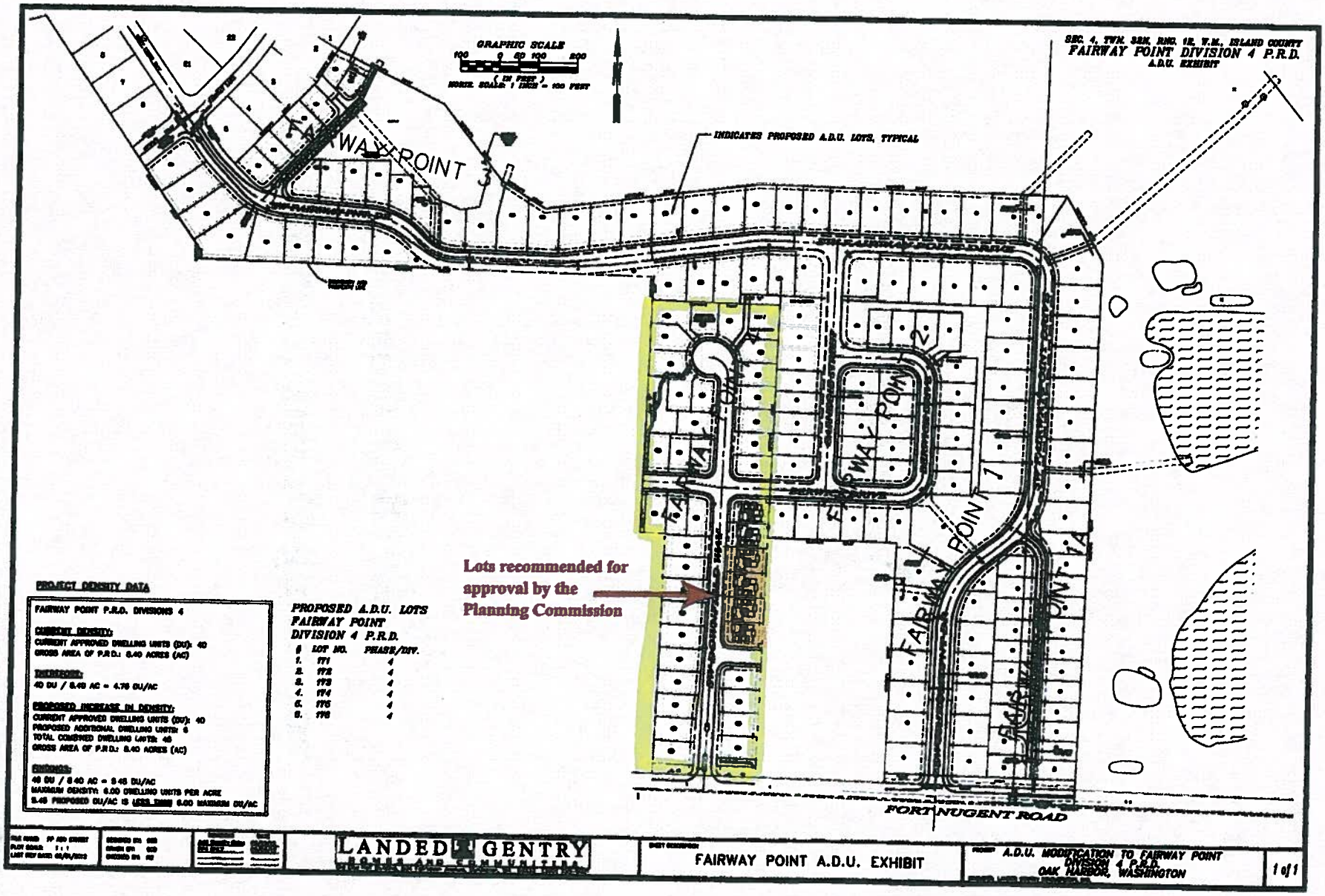
3. Also having non-compliant licensees adds to administrative costs.

I believe the city might be able to take such a course of action since non-compliant license holders are not the same as non-conforming land users and are not governed by the same statues. Were the city to follow this course, of requiring compliance within a time frame, the underlying land use business would be unaffected, and the decision to become compliant or not rests solely with the licensees.

Another assumption, I see being made, is that a "nightclub" is a business, under land use statues when in fact it is not. This leads to the issue of possible transferability of non-compliant status so as to sell the "nightclub". In Oak Harbor, "Nightclubs" don't exist as a permitted land use and are therefore not bought or sold. Under Land Use the business owner can at any time sell their business, with an amendment to the nightclub licensing act this would not change. They could sell their underlying business. Under Land Use if they became non-conforming they might be allowed an amortization period within which transfer of ownership, of the business, is allowed. However, Business Licenses including the Nightclub License are not saleable or transferable. The assumption that the proposed amendment should address this issue and somehow allow a special privilege be given to non-compliant licensees is, I feel, incorrect, unfair, and possibly not legal. This question is a very complex issue which I feel should be left out of the language of your recommendation for amending the Nightclub Licensing Act. You might ,however, include the suggestion that the city council

retain to itself the discretionary right to, upon request from a non-compliant licensee, convene a public hearing to consider requests for waivers from license provisions. This would allow the city council to take action on a case by case basis, not set a general precedent, and still allow non-compliant licensees an avenue to address their desires.

I propose the draft amendment be kept simple, containing the material in the Occupancy by Zone table. Suggest to the city council they decide separately if non-compliance be open-ended, or have a time frame for compliance, and how non-compliant licensees would renew their license. I hope you will also suggest the city council address questions about the Amended Nightclub Licensing Act by public hearings on a case by case basis, rather than build into your proposal language, addressing specific conditions, which the city may come to regret in the future.


SEC. 4, TWN. 32N, RNG. 1E, W.M., ISLAND COUNTY
FAIRWAY POINT DIVISION 4 P.R.D.
A.D.U. EXHIBIT
GRAPHIC SCALE
100 0 50 100 200
(IN FEET)
HORIZ. SCALE: 1 INCH = 100 FEET
INDICATES PROPOSED A.D.U. LOTS, TYPICAL
FAIRWAY POINT 3
FAIRWAY POINT 4
FAIRWAY POINT 2
FAIRWAY POINT 1
FAIRWAY POINT 1A
FAIRWAY POINT DRIVE
FORT NUGENT ROAD
Lots recommended for approval by the Planning Commission
PROJECT DENSITY DATA
FAIRWAY POINT P.R.D. DIVISIONS 4
CURRENT DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 40
GROSS AREA OF P.R.D.: 8.40 ACRES (AC)
THEREFORE:
40 DU / 8.40 AC = 4.76 DU/AC
PROPOSED INCREASE IN DENSITY:
CURRENT APPROVED DWELLING UNITS (DU): 40
PROPOSED ADDITIONAL DWELLING UNITS: 6
TOTAL COMBINED DWELLING UNITS: 46
GROSS AREA OF P.R.D.: 8.40 ACRES (AC)
THEREFORE:
46 DU / 8.40 AC = 5.48 DU/AC
MAXIMUM DENSITY: 6.00 DWELLING UNITS PER ACRE
5.48 PROPOSED DU/AC IS LESS THAN 6.00 MAXIMUM DU/AC
PROPOSED A.D.U. LOTS
FAIRWAY POINT
DIVISION 4 P.R.D.
LOT NO. PHASE/DIV.
1. 171 4
2. 172 4
3. 173 4
4. 174 4
5. 175 4
6. 176 4
LANDED GENTRY
HOMES AND COMMUNITIES
FAIRWAY POINT A.D.U. EXHIBIT
A.D.U. MODIFICATION TO FAIRWAY POINT
DIVISION 4 P.R.D.
OAK HARBOR, WASHINGTON
1 of 1

Attachment 4

Draft Ordinance
amending Ordinance No. 1583

ORDINANCE NO. 1638

AN ORDINANCE, AMENDING ORDINANCE NO. 1583 WHICH APPROVED THE PLANNED RESIDENTIAL DEVELOPMENT (PRD) OVERLAY ZONE FOR FAIRWAY POINT DIVISION 4, AND APPROVING A MODIFICATION TO THE PRD PLANS FOR FAIRWAY POINT DIVISION 4 WITH RESPECT TO DENSITY ONLY TO ALLOW FOR THE INCLUSION OF ACCESSORY DWELLING UNITS (ADU) WITHIN FAIRWAY POINT PRD DIVISION 4.

WHEREAS, although not specifically authorized in state statute, planned residential developments are encouraged by the Washington Growth Management Act as an innovative land development technique; and

WHEREAS, the City Council has authority under RCW 58.17 to regulate the subdivision of land, promote the effective use of land, and to adequately provide for the housing needs of the citizens of the state; and

WHEREAS, the City of Oak Harbor's Comprehensive Plan contains policies regarding PRD in both the Land Use Element and the Housing Element of the Plan and the City regulates PRD through Chapter 19.31 of the OHMC; and

WHEREAS, FP4, L.L.C. (current property owner) is requesting to modify the PRD plans of Fairway Point to add ADU to the basements of house plans for up to six remaining lots to be developed within Division 4; and

WHEREAS, accessory dwelling units are normally permitted in all single family zoning districts with an administrative permit however the inclusion of ADU within a PRD may change the approved density of a PRD and is therefore considered a major modification to the PRD; and

WHEREAS, the Oak Harbor Planning Commission has the authority to review plans and hold a public hearing on PRD and modifications to PRD and form a recommendation to City Council under Sections 19.31.210 and 19.31.220 of the OHMC; and

WHEREAS, the City Council has the authority to approve or deny a modification to a PRD at a closed record meeting pursuant to OHMC 19.31.280(2) and 19.31.230; and

WHEREAS, Ordinance No. 1583 approved the PRD overlay zone for Fairway Point Division 4 on August 4, 2010; and

WHEREAS, Ordinance No. 1583 required development of the subject property to be consistent with the Fairway Point Division 4 Final PRD Plan as approved by the Oak Harbor City Council on June 19, 2007 and any development standards not addressed by the Final PRD shall be the same as the underlying zoning and/or other applicable provisions of the OHMC; and

WHEREAS, a PRD Overlay Zone modifies the existing zoning regulations for a district; and

WHEREAS, Ordinance No. 1583 established the density for Division 4 of the PRD to be 4.76 du/ac by reference to the approved PRD plans; and

WHEREAS, the applicant is seeking to change the density established through the PRD Overlay Zone from 4.76 du/ac to 5.48 du/ac for Division 4; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on July 24, 2012, the Planning Commission held a public hearing regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on August 28, 2012, the Planning Commission continued the public hearing from July 24, 2012 regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on September 25, 2012, the Planning Commission continued the public hearing from August 28, 2012 regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

WHEREAS, OHMC 19.31.210(3) authorizes conditions of approval to be imposed upon a PRD major modification that are, in the Planning Commission's judgment, necessary to ensure conformity; and

WHEREAS, the Oak Harbor Planning Commission finds that conditioning this approval whereby the ADU's shall be integrated into the primary unit and such condition is consistent with OHMC 19.31.210(3) and the City Council finds the same; and

WHEREAS, pursuant to OHMC 18.20, and after due and proper notice, on October 16, 2012, the City Council held a closed record meeting regarding the modification to Fairway Point Division 4 PRD to consider the inclusion of ADU within the subdivision; and

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

Section One. Section 2 of Ordinance No. 1583 is hereby amended with respect to the project density set forth on the face of Sheet A1.1 of Exhibit F: Preliminary & Final PRD Building Elevations, Typical Residential Landscape Plan, & Fence Detail - dated June 7, 2006 from 4.76 du/ac to 5.48 du/ac as shown on the Fairway Point A.D.U Exhibit - A.D.U. Modification to Fairway Point Division 4 P.R.D., labeled as Exhibit A referenced herein and attached to this ordinance.

Section Two. Section 2 of Ordinance No. 1583 is hereby amended to add the following sentence: Accessory Dwelling Units within Fairway Point Division 4 PRD shall be integrated into the primary unit and shall not be detached and shall occur only on the following lots: Lots 173, 174, 175 and 176.

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 16th day of October, 2012.

( ) APPROVED by its Mayor this _____ day of _____, 2012.
( ) Vetoed

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Introduction: _____

Passed: _____

Published: _____

City of Oak Harbor
City Council Agenda Bill

Bill No. 4.
Date: October 16, 2012
Subject: Public Hearing-Surplus List and adoption of Resolution 12-23

FROM: **Cathy Rosen, Public Works Director**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

____ Scott Dudley, Mayor
SCC Larry Cort, Interim City Administrator
____ Doug Merriman, Finance Director
DW Legal Council, City Attorney, as to form

PURPOSE
The purpose of this agenda bill is to conduct a Public Hearing declaring property acquired by the utility funds to be surplus property and adopt Resolution 12-23.

AUTHORITY
RCW 35.94.040

Lease or sale of land or property originally acquired for public utility purposes.

Whenever a city shall determine, by resolution of its legislative authority, that any lands, property, or equipment originally acquired for public utility purposes is surplus to the city's needs and is not required for providing continued public utility service, then such legislative authority by resolution and after a public hearing may cause such lands, property, or equipment to be leased, sold, or conveyed. Such resolution shall state the fair market value or the rent or consideration to be paid and such other terms and conditions for such disposition as the legislative authority deems to be in the best public interest.

FISCAL IMPACT DESCRIPTION

Funds Required: _____

Appropriation Source: _____

SUMMARY STATEMENT
Per RCW 35.94.040, a public hearing is required to declare that certain utility property is surplus to the needs of the city and is not required for public utility service. Attached is Resolution 12-23 surplusing city property and authorizing its disposition. A list of the surplus items has been attached for your review.

STANDING COMMITTEE REPORT
This item has not been reviewed by any of the standing committees.

Regular City Council Meeting
October 16, 2012
Utilities Surplus List

City of Oak Harbor
City Council Agenda Bill

RECOMMENDED ACTION

A motion to adopt Resolution 12-23 declaring utility funds property to be surplus and authorize its disposition.

ATTACHMENTS

Surplus List 2012-Utility Funds

RESOLUTION NO. 12-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON DECLARING CERTAIN CITY PROPERTY OF THE WATER AND/OR SEWER UTILITY TO BE SURPLUS PROPERTY

WHEREAS, it has been determined that the City has no further use of certain items of personal property; and

WHEREAS, the City Council has determined that these items are surplus property is no longer needed for public use; and

WHEREAS, the fair market value, if any, is determined for the surplus property and its disposal will be for the common benefit; and

WHEREAS, at time of sale of surplus items, moneys, if any, will be allocated back to the appropriate utility fund; and

WHEREAS, RCW 35.94.040 requires that action taken to surplus utility property may only occur by resolution and after a public hearing, which was held October 16, 2012; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Harbor that:

1) Based upon the findings and the recommendations of the City, the items of property belonging to said City, as shown in Exhibit A attached hereto, are declared to be surplus to the foreseeable needs of the City.
2) That it is deemed to be for the common benefit of the residents of said City to dispose of said property.
3) That the Mayor or his designee is authorized to dispose of items listed in Exhibit A, attached hereto, in a manner that will be to the best advantage and in a manner which will net the greatest amount to the City of Oak Harbor.

PASSED and approved by the City Council this 16th day of October, 2012.

THE CITY OF OAK HARBOR

_____

Mayor

Attest:

_____

Interim City Clerk

Approved as to Form:

_____

City Attorney

Surplus List 2012 Exhibit A Resolution 12-23

Item	Quantity	Identifier	Division/Department	Condition
Digital Camera	1	PRB-0502	Engineering	Broken
Digital Camera	1	226061164	Engineering	Broken
Toxic Gas Detector	1	PU 73	Engineering	Broken
Portable Calibration Kit	1	QDO605	Engineering	Broken
Digital Camera	1	711195238	Public Works	Broken
Armada Laptop	1	AE5P3600T3X6DM6458	Public Works	Broken
Compaq EVO Laptop FA#1272	1	N6CP120P43000C25X0L	Public Works	Outdated
Kodak Easyshare Digital Camera	1	1384	Solid Waste	Broken
Kodak Easyshare Digital Camera	1	KCGKP94201213	Solid Waste	Broken
Digital Camera	1	FA #0801	Streets	Broken
Carb Saw FA#4704	1	33832000	Water	Broken
Kodak Digital Camera CX7330	1	KCFDH50230630	Water	Broken
Water Meters	2374lbs		Water	Scrapped
1977 Onan Generator	1	3121	Wastewater	Poor
Onan Generator	1	B950569988	Wastewater	Poor
Box Trailer	1		Wastewater	

City of Oak Harbor
City Council Agenda Bill

Bill No. 5
Date: October 16, 2012
Subject: Resolution Adopting a Methodology for Phasing Construction of WWTP Components

FROM: **Cathy Rosen, Public Works Director**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill presents a methodology for phasing construction of the components for the new wastewater treatment plant.

FISCAL IMPACT DESCRIPTION

Funds Required: NA

Appropriation Source: NA

SUMMARY STATEMENT

On August 14, 2012 the City Council selected the Windjammer Park vicinity as the site to build a new wastewater treatment plant. In preparing the Facility Plan for the new wastewater treatment plant, Carollo Engineers and City staff have developed an approach to phasing the construction of various components of the new treatment plant based on planned growth, as may be refined using currently available data, technical requirements and that provides the best combination of rate control and years of service.

Staff is seeking City Council concurrence with this approach through adoption of the attached Resolution 12-24.

STANDING COMMITTEE REPORT

This item was discussed at the October 4, 2012 Public Works Standing Committee meeting.

RECOMMENDED ACTION

Adopt Resolution 12-24

ATTACHMENTS

Resolution 12-24

RESOLUTION NO. 12-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, ADOPTING A METHODOLOGY FOR PHASING CONSTRUCTION OF WASTEWATER TREATMENT PLANT COMPONENTS.

WHEREAS, The City of Oak Harbor is required by the Growth Management Act and RCW 36.70A to plan for its future growth; and

WHEREAS, The City of Oak Harbor has met this requirement by adopting various policy plans; and

WHEREAS, These plans include but are not limited to the Transportation Element of the City of Oak Harbor Comprehensive Plan, the City of Oak Harbor Comprehensive Sewer Plan, the City of Oak Harbor Water System Plan, and the City of Oak Harbor Comprehensive Parks and Recreation Plan; and

WHEREAS, Each of the adopted plans for the City of Oak Harbor has been developed based on population projections that have been developed in coordination with Island County and approved by the City Council of the City of Oak Harbor; and

WHEREAS, The City of Oak Harbor has determined that it requires additional capacity for wastewater treatment for the projected 2017 population forecast; and

WHEREAS, The flow to the Seaplane Base Lagoon Wastewater Treatment Plant has exceeded 85% of the plant capacity for more than three months in a row, triggering a need to prepare an Engineering Facility Plan to provide for future growth; and

WHEREAS, In recognition of this determination, the City of Oak Harbor is required by Wastewater Treatment NPDES Permit No WA-002056-7 to prepare a Wastewater Facility Plan to plan for future wastewater treatment capacity to meet future growth; and

WHEREAS, The City of Oak Harbor and its citizens have engaged in a two year long process to evaluate potential sites and technologies for a new wastewater treatment facility; and

WHEREAS, This process has resulted in a number of actions by the City Council, including the approval of various resolutions; and

WHEREAS, The approval of Resolution No. 12-17 resulted in the selection of the vicinity around Windjammer Park as the location for a new wastewater treatment plant.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, RESOLVES AS FOLLOWS:

That the layout of the facilities for a new wastewater treatment plant will be based on planned growth per prior adopted documents, as may be refined based upon currently available data; and

That the construction of various wastewater treatment plant components will be evaluated on the potential to phase-in capacity based on technical requirements; and

That a phasing plan that meets technical requirements and provides the best combination of rate control and years of service will be included in the Wastewater Facilities Plan.

PASSED and approved by the City Council this _____ day of _____, 2012.

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

City of Oak Harbor
City Council Agenda Bill

Bill No. 6.
Date: October 16, 2012
Subject: Agreement with Carollo Engineers
Contract Amendment No. 5

FROM: **Cathy Rosen, Public Works Director**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
Scott Dudley, Mayor
Larry Cort, Interim City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney, as to form

PURPOSE
This Agenda Bill requests the approval of Amendment No. 5 to the Agreement with Carollo Engineers for the preparation of a facilities plan necessary for the development of a new wastewater treatment facility for the City of Oak Harbor. The development of a new wastewater facility is identified as a necessary improvement in the City of Oak Harbor Wastewater Comprehensive System Plan and is needed due to the age and condition of the existing plants.

AUTHORITY
The authority to enter into agreements for improvements or use of real property is granted to the City of Oak Harbor under RCW 35A.11.020.

FISCAL IMPACT DESCRIPTION

Funds Required: $149,700

Appropriation Source: Wastewater Fund

SUMMARY STATEMENT
The City Council approved an agreement with Carollo Engineers for the development of a facilities plan for a new wastewater treatment plant on August 4, 2010. With Carollo's assistance, the City and its citizens engaged in a two year long process to evaluate potential sites and technologies for a new wastewater treatment plant, and on August 14, 2012, the City Council selected the Windjammer Vicinity as the site for a new MBR wastewater treatment plant.

The Windjammer Vicinity is more than 52 acres in area and additional site investigation is needed to assist the City in determining the best locations within this area to construct the wastewater treatment plant. It has been suggested that, as part of our site investigation, we also obtain information on some vacant property near Windjammer Park. Field exploration required to determine the best site within the Windjammer Vicinity is more detailed and site specific than the planning tasks included in the original scope of work with Carollo, therefore an amendment to Carollo's contract is warranted.

The information collected as a result of the proposed Contract Amendment No. 5 will provide the City with surface, subsurface and environmental information to help the City quantify risks prior to moving forward with purchasing property for the new wastewater treatment plant.

The scope of Contract Amendment No. 5 includes:

Task 100 Project Management
The scope of the project management task is being increased by the proposed contract amendment to include project management activities associated with the additional site investigation. In addition, the overall schedule will extend approximately four months beyond the anticipated duration of the authorized contract. The proposed Contract Amendment No. 5 will increase the amount of the project management task by $8,997 to reflect the additional scope and extended contract duration.

Task 1000 Topographical Survey
The survey will be broken out into 2 phases. An initial preliminary phase will collect preliminary information about the entire Windjammer Vicinity which will assist the City in selecting the final location for the wastewater treatment plant. The cost for this work will be billed at cost plus a 5% markup for subcontractors and will not exceed $25,000.

The second phase of the topographical survey will be completed upon authorization of the City once the final location for the treatment plant has been identified. This work will collect detailed topographic information of the selected site which will be adequate for preliminary design (30%) of the treatment plant. Costs for this second phase will be negotiated once a final site is selected, and will not exceed $37,700.

Task 1100 Geotechnical Exploration
This task will include geotechnical information sufficient to assist the City in selecting the final location for the wastewater treatment plant and for completion of preliminary (30%) design detail. Specific work includes:

- a review of existing information including geologic maps and previous geotechnical reports in the project vicinity;
- drilling of 10 geotechnical borings to evaluate subsurface conditions;
- an analysis and evaluation of pertinent physical and engineering characteristics of the foundation and subgrade soils;
- identification of seismic design considerations;
- development of recommendations for foundation design for the proposed structures;
- identification of lateral soil pressures and lateral resistance parameters for subsurface elements;
- development of recommendations for slab-on-grade support;
- development of recommendations for pavement subgrade support and design of pavement sections;
- development of drainage and dewatering considerations based on the groundwater conditions encountered or expected;

- development of recommendation for earthwork including stripping depth, site preparation, use of on-site soils for structural fill, imported soils and compaction criteria;
- development of recommendations regarding temporary slopes and shoring for below-grade walls;
- archeological support during the geotechnical exploration of the site including:
  - assistance in developing the Area of Potential Effect (APE);
  - background research on the project and study area;
  - on-site monitoring and examination of the geotechnical samples collected during field exploration;
- attendance at up to two meetings with the City to discuss the results of explorations and preliminary recommendations.

The cost for this work will be billed at cost plus a 5% markup for subcontractors, and is estimated at $40,130. In addition to this amount, the proposed Contract Amendment No. 5 also includes a contingency amount of up to $15,225 (covering 2 additional days of drilling and/or test pit excavation) which would only be used upon authorization by the City for additional geotechnical work if it is deemed necessary by the City and Carollo.

Task 1200 Phase I ESA
This purpose of this task is to conduct a Phase I Environmental Site Assessment (ESA) to identify the recognized environmental condition (RECs) associated with the selected location in preparation for a future property acquisition. Specific tasks include:

- a review of existing records and databases;
- interviews (as necessary) with individuals who may have information regarding past and present uses of the property;
- a visual reconnaissance of the selected site and adjacent properties to identify visible evidence of RECs;
- observation of soil and groundwater conditions during geotechnical borings for potential contamination;
- preparation of a report summarizing the results of the Phase I ESA results and identified RECs along with recommendations regarding the potential for contamination by hazardous substances at the subject property and the significance of any data gaps identified.

The budget for this task is $13,454. Work will be authorized by the City once a final site has been selected.

Task 1300 Additional Site Technical/Cost Analysis
Carollo has included this task for the possible consideration of a property which is adjacent to the Windjammer Vicinity but was not included on the list of locations considered during the "Charette" discussion. Recently, City staff was approached by the owner of this property who has suggested that the City consider the property as a location for the wastewater treatment plant.

If it is determined that it is in the City's best interest to consider this property, we will conduct public outreach to the local neighborhood prior to starting any field investigation of the site. Carollo's scope of work for this task will provide technical and cost analysis which can be used by the City to determine if the site is feasible as a location for the wastewater treatment plant and whether conducting a full triple bottom line plus technical (TBL+) analysis and public vetting process that was used to identify the Windjammer Vicinity as the proposed site for the new WWTP has value. Specific tasks included in this scope of work are:

- Evaluate site-specific layout differences associated with potentially locating a WWTP on the new site, including wastewater/treated effluent conveyance; geotechnical and groundwater issues identified through Task 1100; and other relevant technical considerations.
- Develop an opinion of probable construction cost for a WWTP located on the new site, and develop a comparative analysis showing how costs may be different for this facility.
- Summarize differences into a brief project memorandum. Develop presentation slides illustrating differences and present information to City staff and Council.

The cost for this task is $9,170.

The table below summarizes the costs for Amendment No. 5:

	Initial Authorization	Requires Written Authorization	Total Amendment No. 5 Budget
Task 100	$8,997	$0	**$8,997**
Task 1000	$25,000	$37,720	**$62,720**
Task 1100	$40,134	$15,225	**$55,359**
Task 1200	$0	$13,454	**$13,454**
Task 1300	$9,170	$0	**$9,170**
TOTAL	**$83,301**	**$66,399**	**$149,700**

Contract amount:
If all of the tasks included in Amendment No. 5 are completed, the total authorized amount of the contract with Carollo Engineers will be $1,239,261.

Justification:
The work proposed under Contract Amendment No. 5 is necessary to assist the City in identifying the final location of the new wastewater treatment plant and to collect site-specific information necessary for preliminary (30%) design.

It is recommended that the City Council authorize the Mayor to sign Contract Amendment No. 5 with Carollo Engineers with a not to exceed limit of $149,700.

STANDING COMMITTEE REPORT
This item was discussed at the October 4, 2012 Public Works Standing Committee meeting and at the October 9, 2012 Government Services Standing Committee meeting.

RECOMMENDED ACTION

A Council motion authorizing the Mayor to sign Contract Amendment No. 5 with Carollo Engineers for additional site investigation related to a new wastewater treatment plant.

ATTACHMENTS

Scope of Work

Consultant Agreement Amendment Number 5	Organization and Address City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239 Phone: 360-279-4522	
Original Agreement Title: Engineering Services for City of Oak Harbor Wastewater Treatment Plant Preliminary Engineering and Facilities Plan		
Project Number: 8549A.00	Execution Date 9/16/10	Completion Date (Prior) December 2012
Project Title: Preliminary Engineering and Facilities Plan	New Maximum Amount Payable $1,239,261	
Description of Work: This phase of the work includes further characterization of the selected site and surrounding properties to allow for final site selection and preliminary design (30%).		

The City of Oak Harbor
desires to supplement the agreement entered into with Carollo Engineers
executed on 9/16/10 and identified as: Preliminary Engineering and Facilities Plan

All provisions in the basic agreement remain in effect except as expressly modified by this supplement

The changes to the agreement are described as follows:

SCOPE OF WORK is hereby amended to add the following:
Please see the attached scope of work.

SCOPE OF WORK is hereby changed and supplemented with the following:

PROJECT COMPLETION DATE AMENDED TO: April 2014

TIME OF COMPLETION – SCOPE OF SERVICES:

PAYMENT shall be amended as follows:

If all tasks in Amendment 5 are completed, the maximum payable amount of $1,089,561 will be increased by $149,700 to $1,239,261. Up to $88,301 is authorized initially. An additional $66,399 may be authorized in writing by the City.

Payment shall be made in accordance with the terms and conditions described in the original contract.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: _____

Consultant Signature

By: _____

Approving Authority Signature

Date

EXHIBIT B - SCOPE OF SERVICES
AMENDMENT NO. 5 – September 28, 2012

ENGINEERING SERVICES FOR CITY OF OAK HARBOR
WASTEWATER TREATMENT PLANT
PRELIMINARY ENGINEERING AND FACILITIES PLAN

AMENDMENT 5 PURPOSE

The Windjammer Vicinity has been selected as the proposed site for a new wastewater treatment plant (WWTP) for the City of Oak Harbor (City). Additional site investigation is required before the City can acquire property and initiate design. Information collected as a result of this amendment will provide the City with surface, subsurface, and environmental information to help quantify risks prior to moving forward. Also, a new site near the Windjammer Vicinity is under consideration. Amendment 5 provides scope for necessary additional tasks including preliminary topographical and boundary surveys; geotechnical exploration; and technical/cost analysis of the new site. This amendment also includes a Phase 1 Environmental Site Assessment (ESA) and more detailed topographical/boundary surveys, to be conducted once the final site for the new WWTP has been selected.

SCOPE OF SERVICES

TASK 100 – PROJECT MANAGEMENT

The scope for Task 100 is increased to include project management activities support services outlined in this amendment, and to extend activities four (4) months beyond the anticipated duration of the authorized contract.

The existing Task 100 contract limit has been increased by $8,997 to reflect the additional scope and extended contract duration.

TASK 200 – PRELIMINARY ALTERNATIVES DEVELOPMENT AND SCREENING

No change to Task 200 Scope and Contract Limit.

TASK 300 – FINAL ALTERNATIVES DEVELOPMENT AND SCREENING

No changes to Task 300 Scope and Contract Limit.

TASK 400 – OUTFALL EVALUATION

No changes to Task 400 Scope and Contract Limit.

TASK 500 – REUSE OPPORTUNITIES

No changes to Task 500 Scope and Contract Limit.

TASK 600 – FACILITIES PLAN

No changes to Task 600 Scope and Contract Limit.

TASK 700 – ENVIRONMENTAL REVIEW AND DOCUMENTATION

No changes to Task 700 Scope and Contract Limit.

TASK 800 – PUBLIC PROCESS SUPPORT

No changes to Task 800 Scope and Contract Limit.

TASK 900 – MANAGEMENT RESERVE

No changes to Task 900 Scope and Contract Limit.

TASK 1000 – SITE SURVEY AND MAPPING

The purpose of Task 1000 is to provide site survey and mapping data for the Windjammer Vicinity site. This task will be completed in two phases. During the initial phase, preliminary survey and mapping will be completed on approximately 58 acres as shown in Attachment 1 and generally described as: Island County Parcels S6565-00-00B02-0, S6565-00-00B18-0, S6565-00-00B34-2, S6565-00-00B05-2, S6565-00-00B13-1, S6565-00-00B17-0, S6565-00-00B06-0, S6565-00-00B20-0, S6565-00-00B21-0, S6565-00-00B14-0, S6565-00-00B09-0, S6565-00-00B22-0, R13202-106-0750; related adjacent parcels owned by the City of Oak Harbor; baseball fields; a lot north of existing Bayshore Drive; and a lot near the Windjammer Vicinity. Once a final site has been selected, a second phase will be completed to collect detailed topographical information on this site.

Subtask 1010 – Phase 1 Preliminary Survey

Survey activities will include:

- Establish legal property lines for all parcels included within the site outlined in Attachment 1:
  - Field locate and tie all existing property boundary corners.
  - Research property ownership records and identify any boundary encroachments, discrepancies, or easements that could affect acquisition of properties within the site, and delineate encroachments on boundary lines.
- Establish horizontal control:
  - Locate existing City of Oak Harbor control points.
  - Establish new horizontal control points as needed. Reference horizontal datum plan coordinates to Washington State Plan Coordinates (NAD 83/98). Mark new control with permanent brass cap monuments with labels as specified by the City.
- Establish vertical control:
  - Locate existing City of Oak Harbor control points.
  - Establish elevations on new horizontal control points. Reference vertical datum to NAVD-88.
- Provide a preliminary topographical survey of the site, including:
  - Attend a site walk through prior to starting field work.
  - Shoot up to 20 spot elevations at locations selected during the site walkthrough.
  - Coordinate with utility locating service to identify and paint on site all underground utilities. Delineate underground utilities as marked by a locating service.
  - Coordinate with geotechnical work on the site, and identify locations of borings marked by geotechnical subconsultant.

- Provide mapping of site based on AutoCAD 2009 (Version 9), with a scaled aerial photo overlay. Show contour lines based on existing LIDAR data.
- Provide final electronic files of survey points and descriptors.

Subtask 1020 – Phase 2 Detailed Survey

Survey activities will include:

- Establish legal property lines for up to three parcels included within the site outlined in Attachment 1 to be determined at a later date:
  - If corners are missing set new corners.
  - File Record of Survey in accordance with Washington State Survey Recording Act.
- Provide a topographical survey of a site to be determined (up to 10 acres in area), including:
  - Attend a site walk through prior to starting field work.
  - Spot elevations and cross sections as needed to generate accurate contours at one (1) foot delineation.
  - Delineate major physical features of the site including but not limited to edges of pavement, curb lines, sidewalks, building corners, top/bottom of ditches, trees, signs, etc.
  - Coordinate with utility locating service to identify and paint on site all underground utilities. Delineate underground utilities as marked by a locating service.
  - Provide mapping of site based on AutoCAD 2009 (Version 9) showing topographical detail, spot elevations, and one (1) foot contour lines.
  - Provide final electronic files of survey points and descriptors.

Task 1000 Assumptions:

1. Field work does not include potholing for utilities.
2. Title reports and survey recording fees will be provided by the City.
3. Field survey will include as much of the site as can be surveyed at low tide. Soundings of Oak Harbor Bay are not included.
4. Survey deliverables will be stamped and signed by a Professional Surveyor licensed by the State of Washington.

Task 1000 Deliverables:

1. New survey control field monuments as defined above.
2. Original topographic survey map (24" by 36") and electronic files, as defined above for Phase 1 and Phase 2 surveys.
3. Record of Survey filed with auditor and electronic files.

Task 1000 is a new task with a budget of $62,720. Subtask 1010 is authorized with a budget of $25,000. Subtask 1020 may be authorized by the City at a later date, with a budget of up to $37,720.

TASK 1100 – GEOTECHNICAL EXPLORATION

The purpose of Task 1100 is to determine soil and groundwater conditions at the site at a level of detail that is sufficient enough to provide geotechnical engineering recommendations for preliminary design. As defined below, the scope of services for Task 1100 includes:

Subtask 1110 – Geotechnical Exploration

Complete the following services to provide geotechnical information sufficient for preliminary (approximately 30 percent) level of design detail:

- Review existing information including geologic maps and previous geotechnical reports in the project vicinity. Conduct an initial site visit to evaluate surface conditions and coordinate with the design team to develop a suitable exploration program.

- Locate borings in the field and call the state "dial-before-you-dig" contractor number to clear utility locations prior to the explorations, and/or coordinate a private utility locating service to ensure buried utilities are identified prior to digging.

- Drill ten (10) geotechnical borings located around the site as determined by the City and ENGINEER to evaluate subsurface conditions:
  - Provide a licensed geotechnical engineer or engineering geologist on a full-time basis during field exploration to obtain samples of the various soils encountered, classify the materials, and maintain a detailed log of the exploration.
  - Seal and return collected soil samples to a laboratory for additional examination and laboratory testing, as required.
  - Install a 2-inch diameter open standpipe piezometer (monitoring well) inside of two (2) of the boreholes for groundwater monitoring.

- Conduct analysis and evaluation of pertinent physical and engineering characteristics of the foundation and subgrade soils based on laboratory tests performed on samples obtained from the explorations. Laboratory testing will include determination of soil moisture content, Atterberg limits, and grain size distribution as applicable to the soils encountered.

- Provide seismic design considerations based on the 2009 or 2012 International Building Code (IBC).

- Develop recommendations for foundation design for the proposed structures. Include discussion of ground improvement techniques and/or pile support of structures as appropriate depending on soil conditions encountered, foundation loads and settlement tolerances of the proposed structures.

- Provide lateral soil pressures and lateral resistance parameters for subsurface elements.

- Provide recommendations for slab-on-grade support.

- Provide recommendations for pavement subgrade support and design sections for parking and driveway areas.

- Provide drainage considerations based on the groundwater conditions encountered or expected and provide dewatering considerations.

- Provide recommendations for earthwork including stripping depth, site preparation, use of on-site soils for structural fill, imported soils and compaction criteria for foundation support.

- Provide conclusions regarding temporary slopes to construct below-grade walls and temporary shoring recommendations, if required.

- Attend up to two (2) meetings in Oak Harbor to discuss results of explorations and preliminary recommendations.

Subtask 1120 Additional Exploration As Authorized

Subtask 1120 provides budget for additional site exploration as deemed necessary and authorized by the City and ENGINEER. Budget is provided for two additional days of drilling and one day of test pits with a subcontracted drill rig and excavator.

Subtask 1130 Archaeological Support

Section 106 of the National Historic Preservation Act (NHPA), SEPA and Executive Order 05-05 requires agencies to consider the effects of their actions on historic properties and to consult with others in carrying out historic preservation activities. Washington State also has a series of RCWs and the Associated WACs that regulate work in and around a range of cultural resources including human remains. The purpose of Subtask 1130 is to provide archaeological support during the geotechnical exploration of the site, in accordance with these regulations, including:

- Assist in developing the Area of Potential Effect (APE).

- Conduct background research on project and study area.

- Provide on-site monitoring and examination of geotechnical samples collected during field exploration.

Task 1100 Assumptions:

1. No special permits are required to complete the scope outlined herein.

2. City will coordinate with existing property owners and provide written permission to access site prior to authorizing work.

3. The site consists of multiple properties including: a car sales and maintenance facility; part of the existing Windjammer Park; and several parking lots. City and ENGINEER will coordinate with Geotechnical Engineer in selecting locations for field exploration during a site visit.

4. Drill cuttings will be disposed on site. Concrete surfacing will be cored in advance of the borings with a concrete corer.

5. Geotechnical Engineer's site visit will serve as the reconnaissance for the Phase I ESA (Task 1200).

6. The cost of filed exploration depends on the number of days of drilling. The budget for Task 1100 assumes two (2) days of drilling. The program may be adjusted within these

two days to complete a number and depth of borings to allow for reasonable characterization of the site.

7. The cost of filed exploration depends on the total depth of drilling. The budget for Task 1100 assumes: one (1) boring of approximately 50 feet below ground surface (bgs); two (2) borings to approximately 20 feet bgs; seven borings of approximately 20 to 30 feet bgs. Additional exploration budget may be used as authorized by City and ENGINEER, if required by field conditions.
8. Piezometers installed during field exploration may be used for future pump or slug testing. These tests are not included in this scope.

Subtask 1130 scope specifically does not include

- A phase one field investigation that includes subsurface testing in the project area;
- Costs associated with completing Historic Property Inventory Forms (HPIFs) for any buildings older than 50 years;
- Costs associated with developing additional plans, protocols, or permits should they be required for this project;
- Costs associated with encountering human remains or other archaeological findings that may be encountered during the field testing.

Task 1100 Deliverables:

1. Draft and Final Preliminary Geotechnical Report (electronic .PDF version) summarizing field work and including conclusions and recommendations for preliminary design.
2. Exploration logs, a site plan, cross sections of the subsurface profile and any supporting test data.
3. A brief project memorandum describing archaeological conditions encountered at the site in compliance with Section 106 of the NHPA.

Task 1100 is a new task with a budget of $55,359. Subtasks 1110 and 1130 are authorized with a budget of $40,134. Subtask 1120 may be authorized by the City at a later date, with a budget of up to $15,225.

TASK 1200 – PHASE 1 ESA

The purpose of Task 1200 is to conduct a Phase 1 Environmental Site Assessment (ESA) to identify the recognized environmental condition (REC) associated with the site in preparation for a future property acquisition. The Phase 1 ESA will be conducted in general accordance with ASTM International (ASTM) Standard E 1527-05 for Phase I ESAs and the U.S. Environmental Protection Agency's (EPA's) Federal Standard 40 CFR Part 312 "Standards and Practices for All Appropriate Inquiries (AAI)."

Complete the services described below by, or under the direction of, an environmental professional as described in 40 CFR Part 312:

- Review readily available geotechnical reports, environmental reports and/or other relevant documents pertaining to environmental conditions at the subject property.
- Review the results of a federal, state, and local environmental database search provided by an outside environmental data service (EDR) for listings of properties with known or suspected environmental concerns on or near the subject property within the search distances specified by ASTM. The database and file review search will include a check for and review of publications or reports on EPA and Washington State Department of Ecology (Ecology) and other state agency websites concerning area-wide soil and groundwater contamination on or adjacent to the subject property. The EDR report will include a search for environmental liens for each parcel comprising the subject property.
- Review regulatory agency files regarding listed properties of potential environmental concern relative to the subject property.
- Identify a key site manager with specific knowledge of past and present property use and request that the key site manager meet on site for an interview during the visual site reconnaissance and/or an interview by telephone if he or she is not available during the site reconnaissance. Identify and interview others familiar with the use and history of the subject property, as available and appropriate, including representatives of current occupants that likely use, store, treat, handle or dispose of hazardous substances now or in the past.
- Interview current owners or occupants of neighboring properties only as necessary to gather information or fill site property use data gaps regarding the subject property or if the subject property is abandoned and no owner or occupant interviews can be conducted.
- Interview past owners and occupants of the subject property as necessary to gather information or fill property use data gaps regarding property use history.
- Interview a representative of the local fire department, health department, police department, planning department, and/or Ecology as necessary to gather information or fill data gaps regarding the history of the subject property and surrounding properties relative to the likely presence of hazardous substances.
- Review historical aerial photographs, fire insurance maps, building department records, city directories, chain-of-title reports, and land use and tax assessor records, as available and appropriate, to identify past development history on and adjacent to the subject property relative to the possible use, generation, storage, release or disposal of hazardous substances. Attempt to identify uses of the subject property from the present back to the time that records show no apparent structures on the property, back to the time that the property was first used for residential, agricultural, commercial, industrial or governmental purposes, or back to 1940, whichever is earliest.
- Review current United States Geological Survey (USGS) topographic maps to identify the physiographic setting of the subject property and provide a statement on the local geologic, soil and groundwater conditions based on our general experience and sources such as geologic maps and soil surveys.

- Conduct a visual reconnaissance of the subject property and adjacent properties to identify visible evidence of RECs.
- Identify the source(s) of potable water for the subject property and current heating and sewage disposal system(s) used at the subject property, if any, and their age if readily available.
- Identify data gaps relative to the Phase I ESA study findings.
- Provide a report with a summary of the Phase I ESA results and identified RECs along with a recommendations regarding the potential for contamination by hazardous substances at the subject property and the significance of any data gaps identified.
- Observe the soil and groundwater conditions for potential contamination during completion of the borings.

Task 1200 Assumptions:

1. The City will complete a brief questionnaire in support of Task 1200 work.
2. The City will provide the names and phone numbers of key individuals with knowledge of the use history of the subject property.
3. If available, the City to provide copies of the following:
   - Any past ESA and/or audit reports;
   - Environmental permits;
   - Registrations for underground and aboveground storage tanks;
   - Material data safety sheets for hazardous substances used or stored on the subject property (if any);
   - Community right-to-know plans pertaining to the subject property; 6) safety plans pertaining to on-site facilities;
   - Reports regarding geotechnical and/or hydrogeologic conditions;
   - Notices of environmental violations and/or environmental liens or property use restrictions;
   - Specialized knowledge or experience and commonly known information of which you are aware regarding the subject property and related environmental conditions; and
   - Explanation for any significant difference between purchase price and market value, if the subject property is not known to be contaminated.
4. Recognized Environmental Conditions (REC) are defined in ASTM E 1527-05 as "the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include de minimis conditions that generally do not present a material risk of harm to public health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies."

5. The following are specifically not included in Task 1200:
   - Soil, surface water or groundwater sampling and chemical analysis;
   - An environmental compliance audit or an evaluation for the presence of lead-based paint, toxic mold, polychlorinated biphenyls (PCBs) in light ballasts, radon, lead in drinking water, asbestos-containing building materials or urea-formaldehyde insulation in on-site structures or debris or other potentially hazardous building materials;
   - An assessment of vapor intrusion into structures on the property per ASTM Standard E 2600-08.

Task 1200 Deliverables:

1. Phase 1 ESA summary report.

Task 1200 is a new task with a budget of $13,454. Written authorization from the City is required prior to completing this task.

TASK 1300 – ADDITIONAL SITE TECHNICAL/COST ANALYSIS

The purpose of Task 1300 is to conduct additional technical and cost analysis for a potential new site near the Windjammer Vicinity. Technical and cost information developed under Task 1300 will be used to determine the benefits of conducting a full triple bottom line plus technical (TBL+) analysis of the site, according to the criteria and process used to identify the Windjammer Vicinity as the proposed site for a new WWTP. Services for Task 1300 include:

- Evaluate site-specific layout differences associated with potentially locating a WWTP on property near the Windjammer Vicinity. Include wastewater/treated effluent conveyance; geotechnical and groundwater issues identified through Task 1100; and other relevant technical considerations.
- Develop an opinion of probable construction cost for a WWTP located property near the Windjammer Vicinity. Develop a comparative analysis showing how costs may be different for a facility located on this site (versus a facility located on the site proposed through the charrette process).
- Summarize differences into a brief project memorandum. Develop presentation slides illustrating differences in cost and layout. Present information to City Staff and City Council.

Task 1300 Assumptions: None.

Task 1300 Deliverables:

1. Cost/Technical Project Memorandum.
2. City Council presentation slides and information.

Task 1300 is a new task with a budget of $9,170.

EXHIBIT D-3

City of Oak Harbor
Wastewater Treatment Plant Preliminary Design and Facilities Plan
October 4, 2012
Changes from Previous Budget (Through Amendment No. 4)

WORK TASKS	Carollo	Subconsultants														Total Cost
		BHC	ESA Adolfson	Triangle Associates	Enviroissues	Michael Willis Architects	Cosmo. Engineering Group	Geo-Engineers	Bruce Dees and Associates	ERCI (Archaeologist)	KBA	Paragon Research	Certified Land Services	Hansen (Surveyor)	Bel Grass Survey	
Hourly Billing Rate																
TASK 100 - PROJECT MANAGEMENT	$0,000	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0,000
TASK 200 - PRELIMINARY ALTERNATIVES DEVELOPMENT AND SCREENING	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 300 - FINAL ALTERNATIVES DEVELOPMENT AND SCREENING	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 400 - OUTFALL EVALUATION	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 500 - REUSE OPPORTUNITIES	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 600 - FACILITIES PLAN	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 700 - ENVIRONMENTAL REVIEW AND DOCUMENTATION	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 800 - PUBLIC PROCESS SUPPORT	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 900 - MANAGEMENT RESERVE	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TASK 1000 - SITE SURVEY AND MAPPING	$0,017	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$54,000	$0	$00,017
TASK 1100 - GEOTECHNICAL EXPLORATION	$0,400	$0	$0	$0	$0	$0	$0	$40,030	$0	$3,013	$0	$0	$0	$0	$0	$03,013
Subtask 1110 - Geotechnical Exploration	$0,400	0	0	0	0	0	0	20,430	0	0	0	0	0	0	0	34000
Subtask 1120 - Additional Investigation As Authorized	0	0	0	0	0	0	0	14,900	0	0	0	0	0	0	0	14900
Subtask 1130 - Archaeologist Support	0	0	0	0	0	0	0	0	0	3,513	0	0	0	0	0	3513
TASK 1200 - PHASE 1 ESA	$3,705	$0	$0,000	$0	$0	$0	$0	$4,800	$0	$0	$0	$0	$0	$0	$0	$13,305
TASK 1300 - ADDITIONAL SITE TECHNICAL/COST ANALYSIS	$0,170	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0,170
SUBTOTAL COST	$00,360	$0	$0,000	$0	$0	$0	$0	$40,430	$0	$3,013	$0	$0	$0	$54,000	$0	$127,803
SUBCONSULTANT MARKUP 10% for all subconsultants except BHC			$300					$2,277		$170				$2,700	$0	$5,507
TOTAL COST	$00,360	$0	$0,300	$0	$0	$0	$0	$47,707	$0	$3,183	$0	$0	$0	$56,700	$0	$133,310

Cost Summary (Project Total Through Amendment No. 5)

WORK TASKS	Carollo	Subconsultants														Total Cost
		BHC	ESA Adolfson	Triangle Associates	Enviroissues	Michael Willis Architects	Cosmo. Engineering Group	Geo-Engineers	Bruce Dees and Associates	ERCI (Archaeologist)	KBA	Paragon Research	Certified Land Services	Hansen (Surveyor)	Bel Grass Survey	
TASK 100 - PROJECT MANAGEMENT	$00,400	$10,534	$3,394	$6,000	$1,394	$4,002	$3,733	$000	$530	$0	$2,100	$1,072	$931	$0	$0	$00,004
TASK 200 - PRELIMINARY ALTERNATIVES DEVELOPMENT AND SCREENING	$127,107	$124,711	$0,000	$4,300	$0	$10,141	$0	$7,243	$0	$0	$2,000	$1,000	$4,231	$0	$0	$377,300
TASK 300 - FINAL ALTERNATIVES DEVELOPMENT AND SCREENING	$03,007	$41,500	$0	$1,433	$0	$0,409	$0	$0	$4,430	$0	$0	$0	$0	$0	$0	$119,449
TASK 400 - OUTFALL EVALUATION	$7,140	$0	$0	$0	$0	$0	$94,358	$0	$0	$0	$0	$0	$0	$0	$0	$101,497
TASK 500 - REUSE OPPORTUNITIES	$13,044	$7,300	$3,723	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$24,474
TASK 600 - FACILITIES PLAN	$64,018	$42,110	$0	$0	$0	$30,302	$0	$0	$0	$0	$13,040	$0	$0	$0	$0	$183,150
TASK 700 - ENVIRONMENTAL REVIEW AND DOCUMENTATION	$0,320	$0	$34,570	$0	$0	$0	$0	$0	$0	$0	$0	$0,100	$0	$0	$0,420	$77,410
TASK 800 - PUBLIC PROCESS SUPPORT	$03,779	$10,274	$0	$40,304	$40,000	$13,103	$0	$0	$0	$0	$3,300	$0	$0	$0	$0	$220,000
TASK 900 - MANAGEMENT RESERVE	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0,000
TASK 1000 - SITE SURVEY AND MAPPING	$0,017	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$54,000	$0	$00,017
TASK 1100 - GEOTECHNICAL EXPLORATION	$0,400	$0	$0	$0	$0	$0	$0	$40,030	$0	$3,013	$0	$0	$0	$0	$0	$03,013
TASK 1200 - PHASE 1 ESA	$3,705	$0	$0,000	$0	$0	$0	$0	$4,800	$0	$0	$0	$0	$0	$0	$0	$13,305
TASK 1300 - ADDITIONAL SITE TECHNICAL/COST ANALYSIS	$0,170	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0,170
SUBTOTAL COST	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$1,[illegible]
SUBCONSULTANT MARKUP 10% for all subconsultants except BHC	$0	$0	$3,006	$2,070	$1,414	$3,704	$4,674	$3,030	$347	$170	$1,210	$478	$423	$2,700	$471	$[illegible]
TOTAL COST	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$[illegible]	$1,[illegible]

City of Oak Harbor
City Council Agenda Bill

Bill No. 7.
Date: October 16, 2012
Subject: Ordinance No. 1635

FROM: **Ray Merrill, Fire Chief**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Larry Cort, Interim City Administrator
Doug Merriman, Finance Director
Legal Council, City Attorney, as to form

PURPOSE

To adopt Ordinance 1635 that proposes several housekeeping amendments to bring the Oak Harbor Municipal Code into compliance with current RCWs and WACs as they pertain to the Fire Chief, the Volunteer Fireman's State Relief, the Fireman's Relief and Compensation Fund Trust and Fire Alarms.

AUTHORITY

RCW 35A.11.020
Powers vested in legislative bodies of noncharter and charter code cities.

Such body may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city, and may impose penalties of fine not exceeding five thousand dollars or imprisonment for any term not exceeding one year, or both, for the violation of such ordinances, constituting a misdemeanor or gross misdemeanor as provided therein. However, the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such a body alternatively may provide that violation of such ordinances constitutes a civil violation subject to monetary penalty, but no act which is a state crime may be made a civil violation.

FISCAL IMPACT DESCRIPTION

Funds Required: $0.00

Appropriation Source: N/A

SUMMARY STATEMENT

There are four (4) sections of the Oak Harbor Municipal Code relating to the Fire Chief, the Volunteer Fireman's State Relief, the Fireman's Relief and Compensation Fund Trust and Fire Alarms that are either outdated, have been affected by a change in state law, or there has been a change in governing bodies. In order to bring these sections current they need to be revised.

City of Oak Harbor
City Council Agenda Bill

STANDING COMMITTEE REPORT

These items were presented at the Standing Committee meeting on September 20, 2012.

RECOMMENDED ACTION

A motion to adopt Ordinance 1635 which amends Chapter 2.24 entitled "Volunteer Firemen's State Relief", Chapter 2.28 entitled "Firemen's Relief and Compensation Fund Trustees', Chapter 2.44 entitled "Fire Chief" and Chapter 8/12 entitled "Alarm Systems".

ATTACHMENTS

Redlined copy of Ordinance No. 1635
Final Version of Ordinance No. 1635

ORDINANCE NO. 1635

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 2.24 ENTITLED "VOLUNTEER FIREMEN'S STATE RELIEF", CHAPTER 2.28 ENTITLED "FIREMEN'S RELIEF AND COMPENSATION FUND TRUSTEES", CHAPTER 2.44 ENTITLED "FIRE CHIEF", AND CHAPTER 8.12 ENTITLED "ALARM SYSTEMS".

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

Section One. Oak Harbor Municipal Code Chapter 2.24 entitled "Volunteer Firemen's State Relief", adopted by Ordinance No. 83 in 1953, is hereby amended to read as follows:

CHAPTER 2.24
VOLUNTEER FIREMEN'S STATE RELIEF

Sections:

2.24.010 Fire department membership.
2.24.020 Enrollment in relief and pension fund.
2.24.030 Enrollment in pension provisions.
2.24.040 Annual fee payment.
2.24.050 Pension or retirement annual fee.
2.24.060 Adoption of act – Filing of copies.

2.24.010 Fire department membership. The ~~volunteer fire department of the city of Oak Harbor shall not exceed 25 firemen for each 1,000 population or fraction thereof, and in no event shall the membership be limited to less than 15 firemen.~~ Oak Harbor Fire Department's Paid-on-Call staffing shall not exceed forty-two (42) members.

2.24.020 Enrollment in relief and pension fund. All of the members of the ~~volunteer fire department of the city of Oak Harbor~~ Oak Harbor Fire Department's Paid-on-Call staff are hereby enrolled under the provisions of the ~~volunteer firemen's relief and pension fund~~ volunteer firefighter's and reserve officers' relief and pension principal fund for the purpose of providing protection for the ~~firemen~~ firefighters and their families from death or disability arising in the performance of their duties as ~~firemen~~ firefighters.

2.24.030 Enrollment in pension provisions. Any member of the ~~volunteer fire department of the city of~~ Oak Harbor Fire Department's Paid-on-Call staff may enroll under the pension provisions of Chapter 41.24 RCW, for the purpose of enabling any such ~~firemen~~ firefighter to avail himself/herself of the retirement provisions of Chapter 41.24 RCW.

2.24.040 Annual fee payment. An annual fee ~~of $3.00~~ as established by RCW 41.24.030 for each member of the fire department shall be paid by the city of Oak Harbor for the purpose of affording the members of the department protection from death or disability as provided in the ~~Volunteer Firemen's Relief and Pension Act~~ volunteer firefighters' and reserve officers' relief and pension principal fund.

2.24.050 Pension or retirement annual fee. An annual fee ~~of $25.00~~ as established by RCW 41.24.030 shall be collected and paid for each ~~fireman~~ firefighter electing to enroll under the pension or retirement provisions of Chapter 41.24 RCW.~~, $13.00 of which shall be paid by the city of Oak Harbor, and $12.00 of which shall be paid by the fireman so enrolling.~~ – In accordance with resolution 96-05 the City of Oak Harbor will pay the full amount.

2.24.060 Adoption of act – Filing of copies. The city of Oak Harbor does hereby adopt the provisions of Chapter 41.24 RCW, and amendments thereto, which may hereafter be made by the legislature. The city clerk is instructed to maintain on file in his/her office three copies of such legislation.

Section Two. Oak Harbor Municipal Code Chapter 2.28 entitled "Firemen's Relief and Compensation Fund Trustees", adopted by Ordinance No. 38 in 1936, is hereby amended to read as follows:

CHAPTER 2.28
FIREMEN'S RELIEF AND COMPENSATION FUND TRUSTEES

Sections:

2.28.010 Creation of board of trustees.
2.28.020 Duties of board.

2.28.010 Creation of board of trustees. ~~There is hereby created and established, pursuant to law, a board of trustees of the volunteer firemen's relief and compensation fund to be known as the board of trustees of the volunteer firemen's relief and compensation fund, which board shall consist of the mayor; city clerk-treasurer; one duly elected, qualified and acting councilman, to be chosen by the mayor and approved by the council; the chief of the fire department; and one member of the fire department elected by the members of the department for a term of one year and annually thereafter, and when so chosen by the department, notice of such election and choice shall be filed with the city clerk-treasurer~~. A firefighter board of trustees is created and established to administer this chapter in every municipal corporation maintaining a regularly organized fire department. A firefighter board of trustees shall consist of the mayor, city clerk or comptroller, and one councilmember of such municipality, the chief of the fire department, and one (1) member of the fire department to be elected by the members of such fire department for a term of one (1) year and annually thereafter. Where a municipality is governed by a board, the chair, one member of the board, and the secretary or clerk thereof shall serve as members of the firefighter board of trustees in lieu of the mayor, clerk or ~~comptroller~~ Finance Director, and councilmember. RCW 41.21.060.

2.28.020 Duties of board. When established and organized as provided in OHMC 2.28.010, the board of trustees shall perform all duties prescribed by law.

Section Three. Oak Harbor Municipal Code Chapter 2.44 entitled "Fire Chief", last amended by Ordinance No. 1628 in 2012, is hereby amended to read as follows:

CHAPTER 2.44
FIRE CHIEF

Sections:

2.44.010 Appointment.
~~2.44.020 Salary grade.~~
2.44.~~030~~020 Duties.

2.44.010 Appointment. The fire chief shall be appointed by the mayor and confirmed by the city council. The fire chief shall serve at the pleasure of the mayor pursuant to an employment contract proposed by the mayor and approved by the city council.

~~**2.44.020 Salary grade.**~~
~~The fire chief shall have an initial salary grade of 20 . This may be adjusted from time to time by resolution.~~

2.44.~~030~~020 Duties. The fire chief shall be responsible for those duties set forth in the ~~Uniform Fire Code~~ International Fire Code and the ordinances of the city. He shall be responsible for the direction of all of the activities of the fire department, including firefighting, employee training, fire prevention, and the repair and maintenance of property, equipment, and apparatus. His further administrative duties shall include the preparation of the annual budget estimates, the recruitment of personnel and the carrying out of the programs of the department, and such further duties as may be prescribed by ordinance.

Section Four. Oak Harbor Municipal Code Chapter 8.12 entitled "Alarm Systems", last amended by Ordinance No. 1516 in 2007, is hereby amended to read as follows:

CHAPTER 8.12
ALARM SYSTEMS

Sections:

8.12.010 Purpose.
8.12.020 Definitions.
8.12.030 Duty to maintain system.
8.12.040 Permit – Required.
8.12.050 Right of Inspection.
8.12.060 False alarms – Civil Infraction – Penalty.
8.12.070 False alarms – Unintentional – Not a defense.
8.12.080 Permit – Revocation notification – Permittee's right to be heard.
8.12.090 Permit – Revocation – Effect on occupancy permits.
8.12.100 Appeals.
8.12.110 Severability.

8.12.010 Purpose. The ordinance codified in this chapter is an exercise of police power and promulgated to increase safety and to lower the cost of vital city services by reducing the frequency of false alarms and nothing in this chapter shall be construed as creating a duty or liability by the city to any particular person or persons, corporation, partnership or association.

8.12.020 Definitions.
(1) "Alarm system" means any mechanism, equipment or device which is designed to operate automatically through the use of public facilities or radio to transmit a signal, message or warning ~~either to the fire or police department of Oak Harbor.~~ to a U.L. listed and approved monitoring station.

(2) "Person" is any person, partnership, association, corporation or other entity which installs, maintains, operates or uses an alarm system terminating at ~~either the Oak Harbor police or fire department~~ a U.L. listed and approved monitoring station.

8.12.030 Duty to maintain system.
(1) It is the duty of every person who operates, uses or maintains an alarm system to assure that the system is maintained in a satisfactory operating condition such that it will generate alarms when it is supposed to and will not generate false alarms. Intentional or knowing failure to meet this duty is a misdemeanor. The maximum penalty for each violation shall be a fine of Two Hundred Fifty Dollars ($250.00). Each day of failure to comply with this section is a separate violation.

(2) It is a defense to a criminal charge under this section that a user defendant has no right, privilege or power to effect a repair to the system.

8.12.040 Permit – Required. It is unlawful for any person to install, operate, maintain or use an alarm system which automatically transmits a signal, message or warning ~~to the city police or fire departments,~~ to a U.L. listed and approved monitoring station unless that person has been issued a permit under the provisions of this chapter. ~~The yearly fee for obtaining a permit hereunder shall be $10.00.~~

8.12.050 Right of inspection. The chief of the concerned department, either police or fire, shall have the right to inspect any alarm system on the premises where it is intended to function prior to issuance of any permit for its operation, and he may cause an inspection of such system to be made at any time after issuance of a permit to determine whether it is being used in conformity with the terms of the permit and the provisions of this chapter.

8.12.060 False alarms – Civil infraction – Penalty.
(1) If an alarm or alarm system generates and transmits more than one false alarm to which either city fire department or police has responded in any 180-day period, the owner or other persons in control of the premises shall be liable for a civil penalty not to exceed Two Hundred Fifty Dollars ($250.00). A minimum penalty shall be Fifty Dollars ($50.00).

(2) If an alarm or alarm system generates and transmits more than two false alarms to which either city fire department or police has responded in any 180-day period, the owner or other

persons in control of the premises shall be liable for a civil penalty not to exceed Two Hundred Fifty Dollars ($250.00). A minimum penalty shall be One Hundred Dollars ($100.00).

(3) If an alarm or alarm system generates and transmits more than three false alarms to which either city fire department or police has responded in any 180-day period, the owner or other persons in control of the premises shall be liable for a civil penalty not to exceed Two Hundred Fifty Dollars ($250.00). A minimum penalty shall be One Hundred Fifty Dollars ($150.00).

8.12.070 False alarms – Unintentional – Not a defense. It shall not be a defense to a claim for penalty that the permit holder did not knowingly or intentionally cause the false alarm or that the holder did not negligently nor recklessly cause the false alarm.

8.12.080 Permit – Revocation notification – Permittee's right to be heard. The chief of the concerned department may revoke any permit issued pursuant to the provisions of this chapter after giving written notice to the permit holder and an opportunity for the permit holder to be heard, if he determines that the alarm system installed pursuant to the permit has been installed, maintained or operated in violation of the provisions of this chapter, or of any term or condition of the permit, or for failure to pay the costs assessed pursuant in OHMC 8.12.040.

8.12.090 Permit – Revocation – Effect on occupancy permits. If a person loses a permit specified in this chapter, and by OHMC 8.05.070, such person is required to provide monitoring of automatic fire detection system for a building or for use in a building, by a U.L.-approved monitoring station. If no alternative monitoring system is obtained, the occupancy permit is revoked.

8.12.100 Appeals. Whenever the chief of the relevant department shall disapprove an application for a license or revoke a license already issued, or when it is claimed that these provisions do not apply or that the true intent and meaning of these provisions have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief or the police chief to the board of appeals established under the building code within thirty (30) days of the date of the decision to be appealed. This provision shall not apply to criminal penalties under OHMC 8.12.030.

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

Section Five. 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.

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Section Six. Effective Date. This Ordinance shall be in full force and effect five days after publication.

PASSED by the City Council this _____ day of _____, 2012.

THE CITY OF OAK HARBOR

Veto ( )
Approve ( )

_____
Mayor

_____
Date

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Introduction: _____

Passed: _____

Published: _____

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ORDINANCE NO. 1635

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 2.24 ENTITLED "VOLUNTEER FIREMEN'S STATE RELIEF", CHAPTER 2.28 ENTITLED "FIREMEN'S RELIEF AND COMPENSATION FUND TRUSTEES", CHAPTER 2.44 ENTITLED "FIRE CHIEF", AND CHAPTER 8.12 ENTITLED "ALARM SYSTEMS".

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

Section One. Oak Harbor Municipal Code Chapter 2.24 entitled "Volunteer Firemen's State Relief", adopted by Ordinance No. 83 in 1953, is hereby amended to read as follows:

CHAPTER 2.24
VOLUNTEER FIREMEN'S STATE RELIEF

Sections:

2.24.010 Fire department membership.
2.24.020 Enrollment in relief and pension fund.
2.24.030 Enrollment in pension provisions.
2.24.040 Annual fee payment.
2.24.050 Pension or retirement annual fee.
2.24.060 Adoption of act – Filing of copies.

2.24.010 Fire department membership. The Oak Harbor Fire Department's Paid-on- Call staffing shall not exceed forty-two (42) members.

2.24.020 Enrollment in relief and pension fund. All of the members of the Oak Harbor Fire Department's Paid-on-Call staff are hereby enrolled under the provisions of the volunteer firefighter's and reserve officers' relief and pension principal fund for the purpose of providing protection for the firefighters and their families from death or disability arising in the performance of their duties as firefighters.

2.24.030 Enrollment in pension provisions. Any member of the Oak Harbor Fire Department's Paid-on-Call staff may enroll under the pension provisions of Chapter 41.24 RCW, for the purpose of enabling any such firefighter to avail himself/herself of the retirement provisions of Chapter 41.24 RCW.

2.24.040 Annual fee payment. An annual fee as established by RCW 41.24.030 for each member of the fire department shall be paid by the city of Oak Harbor for the purpose of affording the members of the department protection from death or disability as provided in the volunteer firefighters' and reserve officers' relief and pension principal fund.

2.24.050 Pension or retirement annual fee. An annual fee as established by RCW 41.24.030 shall be collected and paid for each firefighter electing to enroll under the pension or retirement provisions of Chapter 41.24 RCW in accordance with resolution 96-05 the City of Oak Harbor will pay the full amount.

2.24.060 Adoption of Act – Filing of copies. The city of Oak Harbor does hereby adopt the provisions of Chapter 41.24 RCW, and amendments thereto, which may hereafter be made by the

legislature. The city clerk is instructed to maintain on file in his/her office three copies of such legislation.

Section Two. Oak Harbor Municipal Code Chapter 2.28 entitled "Firemen's Relief and Compensation Fund Trustees", adopted by Ordinance No. 38 in 1936, is hereby amended to read as follows:

CHAPTER 2.28
FIREMEN'S RELIEF AND COMPENSATION FUND TRUSTEES

Sections:
2.28.010 Creation of board of trustees.
2.28.020 Duties of board.

2.28.010 Creation of board of trustees. A firefighter board of trustees is created and established to administer this chapter in every municipal corporation maintaining a regularly organized fire department. A firefighter board of trustees shall consist of the mayor, city clerk or Finance Director and one councilmember of such municipality, the chief of the fire department, and one (1) member of the fire department to be elected by the members of such fire department for a term of one (1) year and annually thereafter. Where a municipality is governed by a board, the chair, one member of the board and the secretary or clerk thereof shall serve as members of the firefighter board of trustees in lieu of the mayor, clerk or Finance Director and councilmember. RCW 41.21.060.

2.28.020 Duties of board. When established and organized as provided in OHMC 2.28.010, the board of trustees shall perform all duties prescribed by law.

Section Three. Oak Harbor Municipal Code Chapter 2.44 entitled "Fire Chief", last amended by Ordinance No. 1628 in 2012, is hereby amended to read as follows:

CHAPTER 2.44
FIRE CHIEF

Sections:
2.44.010 Appointment.
2.44.020 Duties

Duties.
2.44.010 Appointment. The fire chief shall be appointed by the mayor and confirmed by the city council. The fire chief shall serve at the pleasure of the mayor pursuant to an employment contract proposed by the mayor and approved by the city council.

2.44.020 Duties. The fire chief shall be responsible for those duties set forth in the International Fire Code and the ordinances of the city. He shall be responsible for the direction of all of the activities

of the fire department, including firefighting, employee training, fire prevention, and the repair and maintenance of property, equipment, and apparatus. His further administrative duties shall include the preparation of the annual budget estimates, the recruitment of personnel and the carrying out of the programs of the department, and such further duties as may be prescribed by ordinance.

Section Four. Oak Harbor Municipal Code Chapter 8.12 entitled "Alarm Systems", last amended by Ordinance No. 1516 in 2007, is hereby amended to read as follows:

CHAPTER 8.12
ALARM SYSTEMS

Sections:

8.12.010 Purpose.
8.12.020 Definitions.
8.12.030 Duty to maintain system.
8.12.040 Permit – Required.
8.12.050 Right of inspection.
8.12.060 False alarms – Civil Infraction – Penalty.
8.12.070 False alarms – Unintentional – Not a defense.
8.12.080 Permit – Revocation notification – Permittee's right to be heard.
8.12.090 Permit – Revocation – Effect on occupancy permits.
8.12.100 Appeals.
8.12.110 Severability.

8.12.010 Purpose. The ordinance codified in this chapter is an exercise of police power and promulgated to increase safety and to lower the cost of vital city services by reducing the frequency of false alarms and nothing in this chapter shall be construed as creating a duty or liability by the city to any particular person or persons, corporation, partnership or association.

8.12.020 Definitions.

(1) "Alarm system" means any mechanism, equipment or device which is designed to operate automatically through the use of public facilities or radio to transmit a signal, message or warning to a U.L. listed and approved monitoring station.

(2) "Person" is any person, partnership, association, corporation or other entity which installs, maintains, operates or uses an alarm system terminating at a U.L. listed and approved monitoring station.

8.12.030 Duty to maintain system.

(1) It is the duty of every person who operates uses or maintains an alarm system to assure that the system is maintained in a satisfactory operating condition such that it will generate alarms when it is supposed to and will not generate false alarms. Intentional or knowing failure to meet this duty is a misdemeanor. The maximum penalty for each violation shall be a fine of Two Hundred Fifty Dollars ($250.00). Each day of failure to comply with this section is a separate violation.

(2) It is a defense to a criminal charge under this section that a user defendant has no right, privilege or power to affect a repair to the system.

8.12.040 Permit – Required. It is unlawful for any person to install, operate, maintain or use an alarm system which automatically transmits a signal, message or warning to a U.L. listed and approved monitoring station unless that person has been issued a permit under the provisions of this chapter.

8.12.050 Right of inspection. The chief of the concerned department, either police or fire, shall have the right to inspect any alarm system on the premises where it is intended to function prior to issuance of any permit for its operation, and he may cause an inspection of such system to be made at any time after issuance of a permit to determine whether it is being used in conformity with the terms of the permit and the provisions of this chapter.

8.12.060 False alarms – Civil infraction – Penalty.
(1) If an alarm or alarm system generates and transmits more than one false alarm to which either city fire department or police has responded in any 180-day period, the owner or other persons in control of the premises shall be liable for a civil penalty not to exceed Two Hundred Fifty Dollars ($250.00). A minimum penalty shall be Fifty Dollars ($50.00).

(2) If an alarm or alarm system generates and transmits more than two false alarms to which either city fire department or police has responded in any 180-day period, the owner or other persons in control of the premises shall be liable for a civil penalty not to exceed Two Hundred Fifty Dollars ($250.00). A minimum penalty shall be One Hundred Dollars ($100.00).

(3) If an alarm or alarm system generates and transmits more than three false alarms to which either city fire department or police has responded in any 180-day period, the owner or other persons in control of the premises shall be liable for a civil penalty not to exceed Two Hundred Fifty Dollars ($250.00). A minimum penalty shall be One Hundred Fifty Dollars ($150.00).

8.12.070 False alarms – Unintentional – Not a defense. It shall not be a defense to a claim for penalty that the permit holder did not knowingly or intentionally cause the false alarm or that the holder did not negligently nor recklessly cause the false alarm.

8.12.080 Permit – Revocation notification – Permittee's right to be heard. The chief of the concerned department may revoke any permit issued pursuant to the provisions of this chapter after giving written notice to the permit holder and an opportunity for the permit holder to be heard, if he determines that the alarm system installed pursuant to the permit has been installed, maintained or operated in violation of the provisions of this chapter, or of any term or condition of the permit, or for failure to pay the costs assessed pursuant in OHMC 8.12.040.

8.12.090 Permit – Revocation – Effect on occupancy permits. If a person loses a permit specified in this chapter, and by OHMC 8.05.070, such person is required to provide monitoring of automatic fire detection system for a building or for use in a building, by a U.L.-approved monitoring station. If no alternative monitoring system is obtained, the occupancy permit is revoked.

8.12.100 Appeals. Whenever the chief of the relevant department shall disapprove an application for a license or revoke a license already issued, or when it is claimed that these provisions do not apply or that the true intent and meaning of these provisions have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire chief or the police chief to the board of appeals established under the building code within thirty (30) days of the date of the decision to be appealed. This provision shall not apply to criminal penalties under OHMC 8.12.030.

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

Section Five. 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 Six. Effective Date. This Ordinance shall be in full force and effect five days after publication.

PASSED by the City Council this _____ day of _____, 2012.

THE CITY OF OAK HARBOR

Veto ( )
Approve ( )

_____
Mayor

_____
Date

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Introduction: _____

Passed: _____

Published: _____

City of Oak Harbor
City Council Agenda Bill

Bill No. 8
Date: October 16, 2012
Subject: **Resolution to Amend Employee Policy Manual**

FROM: **Cheryl L. Lawler**
Interim Human Resources Manager

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill proposes a Resolution to Amend the Employee Policy Manual that was adopted on June 18, 2012. The amendment is to Section 2.09 Employment Classifications and addresses a distinct class of individuals paid by the City.

AUTHORITY

The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title or of existing charter provisions until changed by the people…
RCW 35A.11.020 (in pertinent part).

The mayor shall have general authority to oversee administration of the personnel matters of the city. The city council recognizes that the management of the city and the administration of personnel are administrative matters and not legislative functions. For that reason, and also because there are complex and constantly changing state and federal regulations affecting city employees, it would be unwise, inefficient and impractical to attempt to incorporate all details of personnel policies in an ordinance, resolution or motion of the city council. Thus, the city council expressly authorizes and directs the mayor to adopt such additional or clarifying personnel policies by administrative actions. Such policies shall be in accordance with this chapter and shall be for the purpose of carrying out the goals and policies of this chapter. Such personnel policies shall not create rights in employment, but instead shall implement the personnel policies provided for in this chapter and other applicable ordinances. The mayor may incorporate personnel policies into a handbook or other informational document for employee use.

(1) Nothing in any handbook, manual or other informational document shall, nor shall any oral promises, assurances or other statements by city employees, officers or agents, be binding upon the city in personnel matters.

(2) The city reserves the right to modify personnel policies at any time and the same shall not be construed as guaranteeing or promising contract or property rights in employment with the city. (Ord. 1627 § 1, 2012).

FISCAL IMPACT DESCRIPTION

Funds Required: There are no funds required for this action.

SUMMARY STATEMENT

This resolution addresses the distinct class of individuals serving the Oak Harbor Fire Department as Paid on Call Firefighters. The recommendation is to add Paid on Call (POC) Firefighters as a distinct class of individuals under Section 2.09 Employment Classifications. This clarification will not require any changes to any individual's status; it will merely serve as a clarification of this distinct class of individuals.

The Fire Chief, human resources department, as well as legal and labor counsel met on August 16, 2012 to review the Paid on Call Firefighter program and to address whether or not these individual's status should be distinguished from the stated Employment Classifications outlined in Section 2.09. The committee has reviewed and supports the recommended action.

STANDING COMMITTEE REPORT

This proposed amendment has not been presented to a Standing Committee.

RECOMMENDED ACTION

Staff recommends that city council adopt the attached Resolution No. 12-21 to amend Section 2.09 Employment Classifications of the current Employee Policy Manual.

ATTACHMENT:

Resolution No. 12-21

RESOLUTION NO. 12-21

A RESOLUTION TO AMEND THE EMPLOYEE POLICY MANUAL AS ADOPTED BY RESOLUTION NO. 12-14 ON JUNE 18, 2012 TO ADD "PAID ON CALL" (POC) FIREFIGHTERS AS A DISTINCT EMPLOYMENT CLASS

WHEREAS, the Oak Harbor City Council adopted the Employee Policy Manual on June 18, 2012 by Resolution No. 12-14; and

WHEREAS, the portion of the Employee Policy Manual which addresses classification of employees has omitted a distinct classification which needs to be addressed at this time dealing with individuals who participate in the Paid on Call (POC) Firefighter program.

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

The City of Oak Harbor Employee Policy Manual, last amended by Resolution No. 12-14 on June 18, 2012, is amended to add the following employee classification to Section 2.09 of the Manual:

> **Paid on Call (POC) Firefighters**: individuals who are paid by the City on an on-call basis as firefighters. Paid on Call individuals shall not be eligible for City provided benefits or accrue seniority. Some benefits are available to Paid on Call (POC) Firefighters through the Board of Volunteer Fire Fighters.

PASSED by the City Council this _____ day of _____, 2012.

CITY OF OAK HARBOR

_____
Scott Dudley, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

City of Oak Harbor
City Council Agenda Bill

Bill No. 9
Date: October 16, 2012
Subject: **Discussion – Consider Hiring a Recruitment Firm**

FROM: **Larry Cort, Interim City Administrator**
Cheryl Lawler, Interim Human Resources Manager

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill introduces for discussion only the prospect of hiring a professional recruitment firm to help fill key leadership positions at the City.

BACKGROUND

Since June of this year, the City has advertised and continues to advertise openings in key leadership positions within the City. The following summarizes our efforts to date to fill four positions, Human Resources Manager, City Attorney, City Clerk and City Engineer:

Human Resources Manager: This position is currently filled by a temporary employee. The initial recruitment for this position began in June and resulted in three applicants meeting the qualifications for the position. One of these candidates removed her name from the interview list. The remaining two candidates were interviewed with neither candidate selected. A second recruitment effort concluded in September and interviews are scheduled for October 24.

City Attorney: This position is currently filled by the firm of Weed, Graafstra and Benson. This recruitment effort was initiated in early August and ran for a month. The internal review of the applications resulted in the consensus conclusion that we did not receive a strong pool of candidates from which to choose a new City Attorney. This recruitment is now on hold to determine if a professional recruitment effort may be in order.

City Clerk: This position is currently filled by a temporary employee hired through a staffing services firm that specializes in public sector workers. Recruitment for this position closed for first consideration on October 5 without attracting a pool of qualified applicants. As this position was advertised as "open until filled," there is still the chance that other applications may arrive.

City Engineer: This position is currently filled on an interim basis by Project Engineer Joe Stowell. Recruitment for this position will remain open for first consideration until October 19, 2012.

All the recruitment efforts to date have been "passive," meaning that the most likely applicants are those that are actively seeking work and are watching the various locations where we advertise our job openings. That said, our HR staff has made every effort to widen this net as far as possible.

Professional recruiting firms develop a recruiting strategy that uses a combination of an effective print and social media advertising campaign, placement in professional journals, direct mailing to individuals currently serving in a given capacity, and a rigorous personal outreach effort to prospective applicants. The goal of the comprehensive strategy is to identify quality people who are not necessarily looking for work but who may consider a good opportunity. All firms provide candidate screening services, background checks and assistance with the hiring process.

Based on research conducted by our Human Resources staff, fees for this service range from about $17,000 to $21,000 per recruitment, although at least one firm may be willing to negotiate a reduced fee if there is more than one recruitment effort at the same time. All firms state that if they are not successful with the initial recruitment effort, the City will be charged only direct costs (mailings, printing, ads) for a second recruitment. Likewise, the firms state that if a successful candidate leaves City employment within one year, the re-recruitment will be at no cost except the direct costs. Recruitments typically take about 65 to 90 days to reach selection of a finalist.

Staff is seeking direction from the Council about the advisability of hiring a professional recruiting firm to seek good candidates for one or more of our outstanding vacancies.

STANDING COMMITTEE REPORT

This item was discussed briefly at the Government Services Standing Committee on October 9, 2012.

RECOMMENDED ACTION

Provide direction to the staff with respect to the potential use of a professional recruitment firm to fill key leadership positions.

ATTACHMENT

City of Oak Harbor
City Council Agenda Bill

Bill No. 10
Date: October 16, 2012
Subject: Retainer Agreement for Interim City Attorney Services

FROM: **Larry Cort, Interim City Administrator**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Scott Dudley, Mayor
Doug Merriman, Finance Director
Kimberly Geariety, Contract Attorney

PURPOSE

During the August 8, 2012 City Council meeting, the Council approved a Retainer Agreement for Interim City Attorney Services with the firm of Weed, Graafstra and Benson. In doing so, this action included establishing a contract termination date of October 16, 2012. This agenda bill proposes renewal of the Retainer Agreement for Interim City Attorney under the same terms with effect from October 17, 2012 through January 2, 2013.

AUTHORITY

The Oak Harbor Municipal Code states:

2.310.050 Professional service contracts.

Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of $10,000 shall require approval by the city council. Contracts for professional services under $10,000 shall be reviewed by the finance director and the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing policies promulgated by the mayor. (Ord. 1470 § 2, 2006).

FISCAL IMPACT DESCRIPTION

Funds Required: Retainer is $6,400 per month for 40 hours, $170 per hour above 40 hours
Appropriation Source: Primarily General Fund (Legal)

SUMMARY STATEMENT

Due to staffing changes in the Legal Department, the City retained interim legal services beginning on June 4, 2012 from the Snohomish, WA firm of Weed, Graafstra and Benson. This firm specializes in municipal law, comes highly recommended and is currently representing a number of cities in western Washington, including Snohomish, Lake Stevens, Marysville and Coupeville, among others. The City Council

confirmed the hiring of this firm on June 18, 2012 through August 8, 2012 and then extend this contractual relationship on August 8, 2012 through October 16, 2012.

The attached Retainer Agreement, if approved, would extend the City's contractual relationship with Weed, Graafstra and Benson through the first meeting in January 2013. City staff have been quite pleased with the overall quality, responsiveness and expertise demonstrated by the small team of lawyers working for Weed, Graafstra and Benson. Until such time as a new City Attorney is hired, the firm has proven capable of serving as Interim City Attorney.

STANDING COMMITTEE REPORT

This Agreement has not been presented to a Standing Committee.

RECOMMENDED ACTION

Authorize the Mayor to sign a Retainer Agreement for Interim City Attorney Services with the law firm of Weed, Graafstra and Benson, Inc., for the period between October 17, 2012 and January 2, 2013.

ATTACHMENTS

1. Retainer Agreement for Interim City Attorney Services

RETAINER AGREEMENT
FOR INTERIM CITY ATTORNEY SERVICES

I - PARTIES/EMPLOYMENT

The CITY OF OAK HARBOR (hereinafter "CITY") agrees to retain the law firm of WEED, GRAAFSTRA AND BENSON, INC., P.S., 21 Avenue A, Snohomish, Washington, and said law firm (hereinafter "CITY ATTORNEY") agrees to serve as interim CITY ATTORNEY on the terms and conditions stated below. The CITY ATTORNEY shall serve at the pleasure of the Mayor; PROVIDED, that all decisions relative to such employment, or termination of the same, shall be subject to confirmation by a majority vote of the City Council.

II - QUALITY OF SERVICES

The CITY ATTORNEY shall perform all legal services covered by this contract in a capable and efficient manner, and in accordance with the professional and ethical standards of the Washington State Bar Association.

III - COMPENSATION

A. Basic Retainer: The CITY shall pay the CITY ATTORNEY a retainer in the amount of $6,400.00 per month, which retainer shall be compensation for up to 40 hours of work per month for the following legal services:

1. To oversee and supervise the prosecution function for the CITY in municipal court.

2. To attend the two regularly scheduled meetings of the City Council per month.

3. To provide legal advice to the Mayor, Councilpersons, City Administrator and administrative heads of the various departments of the CITY under the direction of the Mayor and City Administrator.

4. To prepare such ordinances, resolutions, and instruments as the Mayor, City Council and City Administrator may direct, to render legal advice on all civil and criminal matters, and to prepare or review such correspondence, contracts, easements, and instruments as may be necessary and appropriate.

B. Additional Services: The CITY shall pay the CITY ATTORNEY for the following additional or special legal services at the rate of $170.00 per hour, or, if said services are performed by a paralegal in the CITY ATTORNEY's office the same shall be compensated at the rate of $130.00 per hour:

1. Time in excess of basic retainer. Any and all hours expended on legal services referred to in paragraph A above (Basic Retainer) in excess of 40 hours per month.

2. Extra meetings. Attendance, at the request of the Mayor or City Administrator, at evening meetings of CITY boards, commissions or committees, except for regular City Council meetings held two times a month.

3. Local Improvement Districts. All legal services performed in connection with the formation and financing of any LID or ULID (although it is understood that the primary responsibility for this type of legal work will fall under the exceptions referred to in paragraph V below).

C. Litigation. The CITY shall pay the CITY ATTORNEY for all superior and appellate court litigation and all administrative hearings of a quasi-judicial nature, except those conducted by the CITY itself, at the rate of $180.00 per hour.

D. Time Records. In order to determine appropriate compensation, the CITY ATTORNEY shall maintain accurate time records, copies of which shall be made available to the CITY.

E. Time for Payment. The CITY shall pay all compensation provided herein to the CITY ATTORNEY on a monthly basis, and within two weeks of the date on which each billing statement is received.

IV - REIMBURSEMENT

In addition to compensation for the legal services specified above, the CITY shall reimburse the CITY ATTORNEY for direct expenses incurred, and costs advanced, including but not limited to court costs, filing fees, witness fees, recording fees, copying expenses at cost, long distance phone calls, library charges for municipal law books, and the cost of travel, at the

hourly rate one way, lodging and tuition relating to meetings of the Association of Washington Cities and Association of Municipal Attorneys which shall be pro-rated. However, ordinary law office operating expenses, such as rent and secretarial services, shall not be compensated or reimbursed.

V - EXCEPTIONS

This contract shall not cover legal representation relating to insurance defense, the formation and financing of local improvement districts, or other specialized fields where it is agreed by the parties that outside legal counsel should be retained.

VI - INSURANCE COVERAGE

The CITY ATTORNEY shall provide errors and omissions, and malpractice insurance coverage, while acting in the capacity of CITY ATTORNEY. Provided, the CITY shall indemnify and hold the CITY ATTORNEY harmless from any and all claims brought by third parties against the CITY ATTORNEY acting in said capacity.

VII – EMPLOYMENT

The CITY agrees for a period of two years from the effective date of this Agreement it shall not employ or contract with any employee, former employee or independent contractor of WEED, GRAAFSTRA AND BENSON, INC., P.S., for services. This provision shall survive expiration and/or termination of this Agreement.

VIII - EFFECTIVE DATE AND DURATION

This contract shall take effect on October 17, 2012 and shall continue in effect through January 2, 2013 unless earlier terminated or renegotiated by either party upon 60 days' written notice. This contract may be renewed automatically upon the mutual agreement of the CITY and CITY ATTORNEY for an agreed upon period of time.

DATED this _____ day of _____, 2012.

WEED, GRAAFSTRA AND BENSON, INC., P.S.

By:_____
GRANT K. WEED, PRESIDENT

CITY OF OAK HARBOR

By_____
SCOTT DUDLEY, MAYOR

ATTEST:

By_____
NACELLE HEUSLEIN,
INTERIM CITY CLERK

/resume/oh/ret.agmt.F.10.4.12

City of Oak Harbor
City Council Agenda Bill

Bill No. //
Date: October 16, 2012
Subject: Prof. Services Agreement - Michelle Hull

FROM: **Larry Cort, Interim City Administrator**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
Scott Dudley, Mayor
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney

PURPOSE

This agenda bill presents for City Council consideration a draft Professional Services Agreement with Michelle Hull, an attorney with a strong background in Tribal-related issues, for on-call legal services as they relate to the City's ongoing relationship with several Tribal governments.

AUTHORITY

The Oak Harbor Municipal Code states:

2.310.050 Professional service contracts.

Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of $10,000 shall require approval by the city council. Contracts for professional services under $10,000 shall be reviewed by the finance director and the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing policies promulgated by the mayor. (Ord. 1470 § 2, 2006).

FISCAL IMPACT DESCRIPTION

Funds Required: On call rate of $150 per hour, with a not-to-exceed total of $45,000.00
Appropriation Source: 001 General Fund (Legal) or depending on project

SUMMARY STATEMENT

Over the next year, the City will be working on a number of projects that will require regular contact between City staff and Tribal governments. The list of projects includes the ongoing recovery work at Pit Road, the eventual reburial of ancestral human remains, consultation with the Tribes on public works projects (such as the outfall project and wastewater treatment plant) in known culture-rich areas and review and adoption of a Cultural Resource Management Plan for the Pioneer Way archaeological site.

Since a proportion of this work will be legal in nature, the administration supports hiring a specialist in Tribal-related law to assist staff in this effort. Attorney Michelle Hull is currently on staff with the Lummi Nation in Bellingham and has worked with other Tribal governments in Washington. In addition to her experience in Tribal matters, having Ms. Hull available as a consistent point of contact for the Tribes over the next few months would be beneficial during this period when the City is operating with an Interim City Attorney and recruitment not yet started on hiring a regular City Attorney. Further, the Mayor and City staff introduced Ms. Hull to the Swinomish Tribal Chair and other Tribal members and staff who expressed their willingness to work with her.

It is proposed that the City hire Michelle Hull on an on-call basis at a rate of $150 per hour up to a not-to-exceed amount of $45,000 (or 300 hours). Council approval would be required for an amendment to exceed this total.

STANDING COMMITTEE REPORT

This Agreement has not been presented to a Standing Committee.

RECOMMENDED ACTION

Authorize the Mayor to sign a Professional Services Agreement with Michelle Hull to provide legal services on Tribal-related matters on an on-call basis to a not-to-exceed amount of $45,000.

ATTACHMENTS

1. Draft Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this _____ day of _____, 2012, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and Michelle Hull, hereinafter referred to as the "SERVICE PROVIDER".

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. Scope of Services.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement, and specifically for the provision of on-call legal services for matters related to the City's ongoing business with Tribal governments and related entities. All such work shall be authorized in advance by the Mayor or City Administrator.

2. Term.

The Project shall begin on October 17, 2012, and shall be completed no later than October 16, 2013, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement at the rate of $150.00 per hour on an on-call basis in an amount not to exceed $45,000.

4. Reports and Inspections.

4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.

4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

5.1 The parties intend that an independent SERVICE PROVIDER/CITY relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

5.2 In the performance of the services herein contemplated, the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.

7. Hold Harmless/Indemnification.

7.1 SERVICE PROVIDER shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

7.2 For purposes of this indemnification and hold harmless agreement, the Contractor waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.

7.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. Insurance.

The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, or employees.

8.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:

a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the City.

c. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.

8.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:

a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars ($1,000,000) per accident.

b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) each occurrence, Two Million Dollars ($2,000,000) general aggregate.

c. Professional Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) per claim and One Million Dollars ($1,000,000) policy aggregate limit.

8.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

a. The SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the SERVICE PROVIDER'S insurance and shall not contribute with it.

b. The SERVICE PROVIDER'S insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

8.5 Verification of Coverage. SERVICE PROVIDER shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. Compliance with Laws.

10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

11.3 Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be

required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. Assignment/subcontracting.

12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. Changes.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. Maintenance and Inspection of Records.

14.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

14.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. Other Provisions.

The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement cannot be reached, the CITY may terminate this Agreement no sooner than sixty (60) days thereafter.

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving at least thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the City shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

16.2 Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. Notice.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

18. Attorneys Fees and Costs.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

19.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

20. Severability.

20.1 If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

20.2 If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision that may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

21. Entire Agreement.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute a material breach of contract and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:	SERVICE PROVIDER:
CITY OF OAK HARBOR 865 SE Barrington Drive Oak Harbor, WA 98277	MICHELLE HULL
_____	_____
Scott Dudley, Mayor	

Attest:

_____

Nacelle Heuslein, Interim City Clerk

City of Oak Harbor
City Council Agenda Bill

Bill No. 12.
Date: October 16, 2012
Subject: Contract Amendment 3
Archaeology Recovery

FROM: **Cathy Rosen, Public Works Director**
Joe Stowell, Interim City Engineer

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to authorize the Mayor to sign Amendment No. 3 to the professional services agreement with Equinox Research and Consulting International (ERCI) for archaeology services related to the Archaeological Recovery Project, specifically an additional 12 weeks of field work. The proposed amendment would expand the scope of services to include Phase 4 of the project and increase the not to exceed contract amount to $1,207,586.75.

AUTHORITY

Oak Harbor Municipal Code states:

2.310.050 Professional service contracts.

Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of $30,000 shall require approval by the city council. Contracts for professional services under $30,000 shall be reviewed by the finance director or the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing policies promulgated by the mayor. (Ord. 1470 § 2, 2006).

FISCAL IMPACT DESCRIPTION

Funds Required: $536,352.25

Appropriation Source: Utility Funds

Funding for this phase of the archaeology recovery is available within the funding plan previously authorized by Resolution 10-16 for the SE Pioneer Project. The amount of this phase is consistent with the range of potential costs previously presented to City Council.

SUMMARY STATEMENT

Immediately following the June 16, 2011 inadvertent discovery of ancestral human remains during the Pioneer Way Reconstruction Project, just over 100 truckloads of construction spoils removed from Pioneer Way were identified and isolated at a gravel pit location. On June 18, 2011, representatives from the Washington State Office of Archaeology and Historic Preservation (DAHP) visited the gravel pit location and identified ancestral human remains within several piles. The site was subsequently recorded as a 'redeposited site' (No. 45IS300) within the State of Washington Archeological Inventory database.

On March 6, 2012, the City Council approved a Professional Services Agreement between the City of Oak Harbor and Equinox Research and Consulting International (ERCI) covering Phase 1 of the Archaeological Recovery Project. Phase 1 encompassed project orientation, initial research, Tribal and State consultation, document control, and permit preparation and submittal. These tasks were all pre-requisites to acquiring a new Archaeological Excavation Permit to commence field work for the offsite recovery. As approved by the City Council, the Phase 1 Agreement was for a total (not to exceed) contract amount of $30,000.00.

On April 17, 2012, the City Council approved an amendment to the Professional Services Agreement to include Phase 2 of the Archaeological Recovery Project. Phase 2 covered the mobilization and first eight weeks of field work at the Pit Road site. Phase 2 included the following five components: 1) planning, administration, documentation and reporting; 2) archaeological analysis; 3) field equipment; 4) field labor; and 5) housing and travel. Phase 2 had an estimated budget of $288,758.25. A conservative budget allowed staff to extend Phase 2 from 8 weeks to 12 weeks without exceeding the authorized budget.

The original plan presented to Council included three phases that would have taken us to completion in October 2012. While work is going well, it is taking longer than anticipated to process the material. With that, staff believes it is appropriate to add additional phases. This will allow Council and staff the ability to closely track the progress and adjust the scope of work as needed. Several conditions have caused time delays to the project but, overall, the projected cost has not increased beyond what was originally presented.

This proposed amendment to the Professional Services Agreement will extend the contract for another 12 weeks and increase the authorized amount by $536,352.25. The scope of work remains the same and will likely not change through completion of the project.

Staff has reviewed the attached estimate for Phase 4 work from ERCI and concludes that they are reasonable based on the scope of work.

Why establish break points? According to ERCI, providing break points allows ERCI and the City to reevaluate the scope of work as the workflow proceeds. Information gathered during previous phases will be used to fine tune the scope of work in future phases which allows for a more accurate estimate of costs.

Staff recommends approval of Contract Amendment No. 3 to the Professional Services Agreement with Equinox Research and Consulting International (ERCI) to expand the scope of services to include Phase 4 of the Archaeological Recovery Project and increasing the not to exceed contract amount from $671,234.50 to $1,207,586.75.

STANDING COMMITTEE REPORT

The agenda bill for Contract Amendment No. 3 was presented to the Public Works Standing Committee on October 4, 2012.

RECOMMENDED ACTION

Authorize the Mayor to sign Amendment No. 3 to the Professional Services Agreement with Equinox Research and Consulting International (ERCI) to expand the scope of services to include Phase 4 of the Archaeological Recovery Project and increasing the not to exceed contract amount by $536,352.25, from $671,234.50 to $1,207,586.75.

ATTACHMENTS

Contract Amendment No. 3

Professional Services Agreement **Amendment Number** 3	Organization and Address City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239 Phone: 360-279-4539	
Original Agreement Title: Pioneer Way Archaeological Recovery Project		
Project Number: ENG-12-02	Execution Date	Completion Date (Prior) 12/31/2013
Project Title Archaeology Recovery	New Maximum Amount Payable $1,207,586.75	
Description of Work Phase 4 of archaeology recovery efforts at Pit Road and associate off site areas.		

OK
GW
10-10-12

The City of Oak Harbor
desires to supplement the agreement entered into with ERCI
and executed on 3/7/2012 and identified as Professional Services Agreement with ERCI

All provisions in the basic agreement remain in effect except as expressly modified by this supplement.

The changes to the agreement are described as follows:

SCOPE OF WORK is hereby amended to add the following:
See attached scope of work and fee.

SCOPE OF WORK is hereby changed and supplemented with the following:
NO CHANGE.

PROJECT COMPLETION DATE AMENDED TO: December 31, 2013
TIME OF COMPLETION – SCOPE OF SERVICES: December 31, 2013

PAYMENT shall be amended as follows:
Amendment reflects an increase in time necessary to complete the work required under the permit as Phase 4 of the archaeology recovery. The maximum amount payable under the contract is increased by $536,352.25, from $671,234.50 to $1,207,586.75, as outlined in the attached spreadsheet.

Payment shall be made in accordance with the terms and conditions described in the original contract.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: _____ By: _____

_____ _____
Consultant Signature Approving Authority Signature

_____
Date

Exhibit A

Notes	Description	Units	Rate/HR	Sub Total
This includes phone calls, emails, and meetings related to planning, decision making, and other administrative tasks	Ongoing administrative work (4 hrs/week)	48.00	143.75	6,900.00
This is over and above the daily/weekly written report. This includes phone calls, emails, and site visits that occur especially when we have decision points.	Ongoing consultation with SHPO (1 hrs/week)	12.00	143.75	1,725.00
This is emails, phone calls and site visits with all tribes.	Ongoing consultation with affected Tribes (2 hrs/week)	24.00	143.75	3,450.00
This includes the design, ordering and testing of field and lab gear. Organizing crew structure, accomodations and transportation.	Logistical Planning for field work (2 hours per week)	24.00	143.75	3,450.00
All field notes will need to be curated eventually. We transcribe notes that need to have an electronic component and copy or archive notes that will need to go to the archives. This is also the time we identify problems with information flow or managment	Document control and transcriptions (8 hrs/week)	96.00	63.25	6,072.00
Each outlier and Pit Road will need a site form before and after the project	Site Inventory Forms (5 sites at 6 hours)	30.00	63.25	1,897.50
It is clear we need to do more indepth historic research to try and tie the artifacts in the piles to activities along Pioneer way. We are completing a review of published and unpublished documents and some interviews with archaeologists who have worked but not written up their work in the immediate area.	Archival background research	24.00	97.75	2,346.00
Weekly report to stakeholders	Interim Report editing (2 hr/week)	6.00	143.75	862.50
Final Project Reports	Draft and Final Report editing	0.00	143.75	0.00
	Interim (weekly) Report writing (2 hrs per week)	24.00	97.75	2,346.00
	Draft and Final Report writing	0.00	97.75	0.00
This is the documentation of the objects in the field lab prior to wrapping for reburial. 20 minutes is the lowest threshold for data collection.	Documentation of precontact artifacts such as stone, bone, antler or shell tools: photo, metrics and characterization of precontact artifacts (30 minutes per artifact @ an estimate of 160 artifacts	80.00	74.75	5,980.00
This is a very simple analysis on the data in the tables collected in the field lab. We are comparing object type to other sites and regional trends	Analysis of precontact artifact data	30.00	97.75	2,932.50
This is proving to be the largest category of artifacts to process	Managment of non curated historic artifacts approximately 1000 fragments per week	72.00	74.75	5,382.00
This is the documentation of the objects in the field lab prior to wrapping for reburial. 30 minutes is the average time it is taking to document and collect preliminary information for analysis	Documentation: Curated Historics artifacts (30 minutes per artifact @ an estimate of 150 artifacts)	75.00	74.75	5,606.25
This is a very simple analysis on the data in the tables collected in the field lab. We will try to tie in some of the objects to Oak Harbor history and past activities along Pioneer Way.	Analysis of historic artifacts	30.00	97.75	2,932.50
Photos, maps and other images for the interim reporting	Graphics and layout (field maps, profiles and report ready graphics for interim reports 4 hrs/week)	48.00	97.75	4,692.00
formatting and distribution	Report production interim (1 hr per week)	12.00	63.25	759.00
formating, printing, binding	Report production draft and final reports	0.00	63.25	0.00
formating, printing, binding	Report production Appendicies	0.00	63.25	0.00
	SUB TOTAL for planning, field documentation, preliminary analysis and reporting for second 8 weeks			57,333.25
	DESCRIPTION	**Units**	**Rates Daily**	**Sub Total**

	Principal Investigator 1 days per week for 12 weeks	96.00	143.75	13,800.00
	Travel time for PI	30.00	34.50	1,035.00
	Mileage for PI	1200.00	0.56	672.00
Tamela Smart will be the field director for this project. She will be to go to person on site for field related work, managing personnel and data on site and will be involved in all decision points for work on the Pit Road and outliers sites.	Field Director 40 hr/week @ 12 weeks	480.00	97.75	46,920.00
Alyson Rollins is the Physical Anthropologist and will be responsible for all bone identification, and reassociation.	Physical (Biological) Anthropologist (2 days/week for 12 weeks-plus 2 hours per week for reports that go to Guy Tasa 216 hrs)	216.00	115.00	24,840.00
	Physical (Biological) Anthropologist Reassociation (at 40 days)	0.00	115.00	0.00
With the number of skeletal material we have had to have a person in the PW lab with the Phys Anth to get the identification and documentation complete.	Lab technician assistant to the Physical Anthropologist for documentation of skeletal material and	192.00	74.75	14,352.00
The field technicians will be shoveling and screening, identification of artifacts and tracking the volumes of processed material	Archaeological Field Technician	480.00	74.75	35,880.00
	Archaeological Field Technician	480.00	74.75	35,880.00
	Archaeological Field Technician	480.00	74.75	35,880.00
	Archaeological Field Technician	480.00	74.75	35,880.00
	Archaeological Field Technician	480.00	74.75	35,880.00
	Archaeological Field Technician	480.00	74.75	35,880.00
	Archaeological Field Technician	480.00	74.75	35,880.00
	Archaeological Field Technician	480.00	74.75	35,880.00
Screens, covers, power screens, sharpening tools, inspection and replacement of tools. On site safety.	Equipment fabrication and maintenance on going service of 6 hours per week)	32 00	74.75	2,392.00
This will be able to feed the power screen and keep work areas clear of processed material and help to move equipment around	Equipment Rental small landscape tractor 900.00 week	12.00	900.00	10,800.00
This is for processing piles that don't have cultural material in them. It includes the cost of the power screen and the conveyor.	Equipment Rental power screens (2 @80.00/day for 12 weeks)	60.00	160.00	9,600.00
	Equipment rental front end loader	24.00	275.00	6,600.00
	Equipment rental track hoe	12.00	395.00	4,740.00
	Field and Lab Supplies: paper bags (25.00), plastic bags (48.00), field and archive paper (110.00) (storage boxes 100@3.50), other lab supplies(300.00)	0.00	833.00	0.00
These hand screens are used in addition to the hanging screens. The replacement mesh is for all screens on the project	Field Equipment: hand screens (3 at 140.00 each) and replacement mesh for all screens (300.00)	0.00	720.00	0.00

Shelters will provide privacy and keep screeners somewhat protected from the elements - this will help keep productivity up.	Field Equipment: mobile shelters for screen sets	2.00	550.00	1,100.00
	Field Equipment: shovels and other hand tools	0.00	65.00	0.00
These are the frames for holding the screens up.	Field Equipment: screen holding sets	0.00	220.00	0.00
These are the screens that process the material	Field Equipment: hanging screens	0.00	125.00	0.00
This is if we order one, I expect we can fashion one for less.	Field Equipment: storage tub for Fire Cracked Rock	0.00	435.00	0.00
We may not need this.	Field Equipment: steel plates	0.00	450.00	0.00
	7 camera security system and I.T. set up	0.00	1,750.00	0.00
	SUB TOTAL for the second 8 weeks of field work			**423,891.00**
	Travel 3.5 hrs/ week/person for 7 crew members staying in town	294.00	34.50	10,143.00
	Travel time for 3 crew members not staying in town 2.5 hours per day=12.5 hrs per week X 3 crew members= 37.5 travel hours per week	450.00	34.50	15,525.00
	Housing-house rental for 6 crew members at $22.50/crew member/night=500.00/week	12.00	675.00	8,100.00
This is the federal rate.	Per Diem 5 days per week, 4 crew members	240.00	61.00	14,640.00
	Mileage for 2 crew vehicles not staying in town, mileage for 60 days at 200 miles per day	12000.00	0.56	6,720.00
	SUB TOTAL of accomodations and travel for 12 weeks			**55,128.00**
	GRAND TOTAL			**$536,352.25**

City of Oak Harbor
City Council Agenda Bill

Bill No. 13
Date: October 16, 2012
Subject: Totalizer Flow Meter Purchase

FROM: **Cathy Rosen, Public Works Director**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

The purpose of this agenda bill is to authorize the purchase and installation of a Multi-Mag Model FPI 394L Insertion Flow Meter to replace the existing flow meter, which records the total water flow that enters Oak Harbor at the Ault Field Water Pumping Station. The cost to replace the meter is $10,300.

AUTHORITY

2.390.010 Council approval. Unless otherwise authorized or directed by law, ordinance or council resolution (for example, responding to an emergency), all contracts over $10,000 require council approval. (Ord. 1629 § 1, 2012; Ord. 1470 § 8, 2006).

FISCAL IMPACT DESCRIPTION

Funds Required: $10,300

Appropriation Source: 401.00.501.034.4800

SUMMARY STATEMENT

In 2003, the City of Oak Harbor Water Division installed a Model #285 Insertable Electromagnetic Averaging Flow Meter. This meter records the total water flow that enters Oak Harbor at the Ault Field Water Pumping Station. This meter is used to confirm our water use with the City of Anacortes' water meters in order to verify the City's consumption for water efficiency monitoring. It also controls our fluoride chemical addition pumps and is tied to the telemetry system which remotely monitors the water flow into the City. The unique design of this meter allows us to obtain very accurate readings at very low flows which improves accuracy of water used as well as the accuracy of our chemical injection pumps. The meter inserts into the 18 inch water main under pressure and can be replaced without shutting down the system.

The Water Division staff became aware that the meter was not registering correctly and planned to send it in for recalibration. The company which supports this meter informed us that this model is no longer available and it would have to be upgraded to their more current model. With this replacement, we will replace the probe that inserts into the water main and the meter totalizer which converts the signal to the appropriate flow in gallons. Also included is the technical support and assistance to install the probe and calibrate the unit.

Bainbridge Associates, Inc. is the sole supplier and supporter for this unit in our region. This unit has performed to the Water Division's expectations and we have been happy with their product and support. We also required this same type of meter to be installed in the Redwing booster pump station.

It is important that we replace this meter as soon as possible to reestablish accuracy and accountability for our water system.

Funds are budgeted and available in the 2012 Water Operations Budget.

STANDING COMMITTEE REPORT
This item has not been reviewed by any of the Standing Committees.

RECOMMENDED ACTION
A motion to authorize the purchase of a Multi-Mag Model FPI 394L Insertion Flow Meter in the amount of $10,300.

ATTACHMENTS
Flow Meter quote

Bainbridge Associates, Inc.

QUOTATION

Quotation Number **BAI 12-1006-001**

For: CITY OF OAK HARBOR

OAK HARBOR, WA

Date: Saturday, September 22, 2012

Project: POTABLE WATER FLOW

Contact: Tim Shelley

Telephone: 360.279.4763

E-MAIL Tim Shelley [tshelley@oakharbor.org]

Quantity	Part No.	Description	Unit Price	Extended
1 EA	MODEL FPI 394L	The Multi-Mag™ Model FPI 394 is a AC powered, real-time, BIDIRECTIONAL, averaging full pipe flowmeter. Model 284 includes: a NEMA 4X enclosure with a clear front cover; a 19-key numerical key pad; two backlit LCD displays (one display for totalized flow and one display for velocity and flow); a heater for the electronics; a multi-point averaging electromagnetic velocity sensor for a **18.0 inch i.d.** pipe; 20 feet of sensor cable; sensor mounting hardware; a flow proportional contact closure; a 4-20 mA output for flow; and an instruction manual.	$8,587.00	$8587.00
		MODEL FPI 394L ACCESSORIES		
	105002901	Extra Instruction Manuals	$40.00	
	0624B339001	Sun Shield - Heavy duty polyurethane shield for meters placed in direct sunlight.		
80	36001	Additional Sensor Cable - Maximum cable length is 300 feet.	$3.00/ft.	240.00
	43059/43060	Stainless Steel Valve/Stainless Steel Nipple - 250psi Maximum		
	43055/43060	Bronze Valve/Stainless Steel Nipple - 250psi Maximum		
	438000401	Bronze Corporation Stop		
	75031	Insertion Tool - Expedites movement of sensor insertion hardware. Highly recommended for pipe sizes over 24 inches.		
1 lot		Installation supervision, start-up & training		600.00
		ALL PRICES ARE IN USD (Freight & Taxes Not Included)	Total	$9427.00

* NO RETAINAGE'S *

F.O.B. – Hemet, CA U.S.A. - Prepay & Add

This quote will be honored for 60 days from above date.

Delivery: 4 / 6 weeks ARO

Payment Terms: NET 30 DAYS

Quoted By: Stu Fetters

Controls for the Process Industry • Manufacturers Representative

Seattle Office
P.O. Box 966 Olalla, WA 98359
(253) 857-7800 • Fax (253) 857-6870
e-mail: baisea@nwrain.com

Portland Office
97 Garibaldi, Lake Oswego, OR 97035
(503) 697-9711 • Fax (503) 697-9970
e-mail: baiptl@worldstar.com

City of Oak Harbor
City Council Agenda Bill

Bill No. _____
Date: _____
Subject: Pending Items for Future City Council Meetings

FROM: **Scott Dudley, Mayor**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
Larry Cort, Interim City Administrator
Doug Merriman, Finance Director
Grant Weed, Interim City Attorney

SUMMARY STATEMENT

The attached list of pending items is meant to be an organizational tool and not a definitive list of what will come before the Council for a given meeting's date. As a tentative list, it is subject to frequent, if not daily changes.

+Pending Items As of: October 10, 2012 This list is subject to change.

Council Absences: Rick Almberg 10/16/12 Meeting; Beth Munns November 6th meeting

Targeted Meeting Date	Agenda Bills ARE DUE	Public Hearing Notice Date (if needed)	Consent Agenda	Subject	Department
10/24/12	**10/4/12**	24 hr notice to paper		**Special Workshop Changes to Shoreline Master Program** Notice to Steve	**Dev. Servs.**
10/25/12				**Council Budget Workshops city council chambers 9 – noon and 6:30 – 9:00 p.m.**	
November	**Meeting will be held Wednesday to**	**accommodate Election Day**			
11/7/12	10/18/12	10/19/12		Shoreline Master Program: Public hearing required	
11/7/12	10/18/12	10/19/12		Sign Code: Public hearing required	
11/7/12	10/18/12			Binding Site Plan Code Amendment: No public hearing for this meeting, introduction only Consent Agenda	
11/7/12	10/18/12	10/19/12		Public Hearing - Ordinance, Property Tax Adjustment ordinance No. 1636	10/16/12
11/7/12	10/18/12			Authorization to Advertise for Proposals - Animal Shelter Services	PD/Admin/P. Works
11/7/12	10/18/12			Report on impacts of staffing changes to Fund Balance for 2013	Fin
11/7/12	10/18/12			Results of Bid Opening for Newspaper	Finance
11/7/12	10/18/12	10/19/12		Public Hearing – Ordinance for Utility Tax Adjustment Ordinance No. 1637	10/16/12
11/7/12	10/18/12			Report on Solid Waste Transfer Study	P. Works
11/7/12	10/18/12			Interlocal Agreement – Island County Housing Authority, Oak Harbor, Coupeville, and Langley - Affordable Housing. Recording surcharge funds to fund housing programs.	Admin/Dev Srv
11/7/12	10/18/12			Interlocal Agreement for Solid Waste Management - Oak Harbor, Coupeville, Langley, Island County	P.Works
11/7/12	10/18/12			Proclamation in Recognition of Veterans Day	
11/20/12	**10/31/12**			**Shoreline Master Program – Continued Public Hearing from Nov 7th & adoption of Ordinance No. 1639**	

11/20/12	10/31/12	10/31/12		Binding Site Plan Code Amendment: Public hearing required	
11/20/12	10/31/12	10/31/12 11/7/12		Final Budget Hearing & Adoption of Budget **Advertised two consecutive weeks in a row 31st & 7th**	
11/20/12	10/31/12			Approval of Employment Contracts Merriman & Recker	HR/ Admin
11/20/12	10/31/12			Extension of Public Defense Services Agreements: Chief Public Defender (Matt Montoya), Assistant Public Defender (Georgina Sierra), Public Defense Administrator (Jack Kerr). Present agreements expire December 31, 2012.	Admin
11/7/12	10/18/12			Short term extension agreement with WAIF	Adm
(tentative pending PWTF results at end of August)				Authorization to Advertise for Bids - Water Reservoir	P.Works
12/4/12	**11/14/12**			**Adoption of GASB 54 Ordinance**	**Finance**
12/4/12	11/14/12			Adoption of DOC Contract	Police
12/4/12	11/14/12			Contract – Automated Pay Station for Staysail RV Park	**P. Works**
12/4/12	11/14/12			Council discussion of National League of Cities & Capitol Hill visit	Admin
12/4/12	11/14/12			City Wide Sewer Plan by year end	
12/4/12	11/14/12			Resolution Supporting School Levy	Admin
12/4/12	11/14/12			Discussion of legislative priorities for AWC Conference Feb 13 – 14. 2013	
12/18/12	**11/28/12**			**2012 Comp Plan**	
12/18/12	11/28/12			Council Resolution to authorize submittal of the Wastewater Facility Plan to the Department of Ecology	P.Works
12/18/12	11/28/12			Authorization to begin negotiations with Carollo Engineers for engineering design of WWTP	P.Works
				Agreement Renewal - Puget Sound Energy Franchise Agreement	P.Works Admin Legal

				Authorization to Advertise for Bids - Newspaper Advertisement Services	Finance
				Authorization to Advertise for Bids - Online Payment Services	Finance
				Council Rule Change – Public Forum – Free Speech	Legal
				Channel 10 Rules	Admin/Legal
				Banner Program Guidelines	P.Works/ Dev Srv
				Impact Fees – under review for deferral at closing	Dev Srv / P.Works
				Legal Department Restructure	Legal
				Utilities Office, City Council Chambers, Law Department Remodels	Finance, Dev Srv

STANDING COMMITTEES and other meetings and activities

Date	Subject	Dept.
10/4/12	PUBLIC WORKS STANDING COMMITTEE, 3:30 p.m., City Hall Council Chambers	Committee Members
10/8/12	ARTS COMMISSION, 7:00 p.m., City Hall Council Chambers	Committee Members
10/9/12	GOVERNMENTAL SERVICES STANDING COMMITTEE, City Hall Council Chambers	Committee Members
10/10/12	FINANCE STANDING COMMITTEE, City Hall Council Chambers	Committee Members
10/18/12	PUBLIC SAFETY STANDING COMMITTEE, 3:30 p.m., City Hall Council Chambers	Committee Members
Date TBD	CITY COUNCIL SPECIAL MEETING, Workshop on Recommendations from HDR - System Development Fees	P.Works and Finance
12/8/12	CITY COUNCIL RETREAT – Review Goals set at March Retreat	Council