

CITY OF OAK HARBOR
HEARING EXAMINER

RE: Conditional Use Permit) CUP-12-01
Application for)
U-Haul) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Application is a request for a Conditional Use Permit for a truck rental dealership in the Central Business District (CBD) zoning district.

Decision: The Conditional Use Permit is Denied.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

I.

Applicant: Alex Lewis for U-Haul

Property Owner: Edward C. Beeksma and William Massey
c/o Robert Sebo and June Haig
41 NE Midway Blvd, Suite 101
Oak Harbor, WA 98277

Address of Proposal: 601 SE Pioneer Way
Oak Harbor, WA 98277

Parcel Number: S6565-00-00B22-0

Comprehensive Plan Designation: Central Business District

Zoning Designation: CBD, Central Business District

Application Presented for Action:

Conditional Use Permit (CUP-12-01), Review Process III

SEPA: Categorically exempt from environmental review, per WAC 197.11.800.

Legal Notices: Published, July 30, 2012
 Mailed, June 27, 2012
 Posted, June 26 and June 29, 2012

Hearing Date: July 23, 2012; Record left open for further Staff Review, for Applicant input on parking and access issues, and for comments from Parties of Record.

Parties of Record:

Alex Lewis
U-Haul
6401 Martin Luther King Jr. Way South
Seattle, WA 98118

Debra Staley
601 SE Pioneer Way
Oak Harbor, WA 98277

Kathy Collantes
1253 Canterbury Lane
Oak Harbor, WA 98277

Robert Olson
1376 NE 7th Avenue
Oak Harbor, WA 98277

Denna Royal
2511 West Best Road
Oak Harbor, WA 98277

Dr. Major Laurion
540 SE Pioneer Way
Oak Harbor, WA 98277

Jerri Morgan
1974 SW Dillard Lane
Oak Harbor, WA 98277

Helen Chatfield-Weeks
1415 SE 9th Avenue
Oak Harbor, WA 98277

Lynette Gordano
1418 6th Avenue
Anacortes, WA 98221

Jerry Oliver
740 SE Pioneer Way
Oak Harbor, WA 98277

Melissa Sartorius
Associate Planner City of Oak Harbor

Exhibits:

- 1 Staff Report
 - 1-1 Conditional Use Application, dated 6/25/12
 - 1-2 Aerial Photo of Site
 - 1-3 Letter to Debra Saley; copied to Alex Lewis, dated April 23, 2012
 - 1-4 Site Visit Photos
 - 1-5 Zoning Map of Site and Surrounding Area
 - 1-6 CBD Zoning Code from 1990
 - 1-7 Staff memo to BOA dated May 6, 1993
 - 1-8 BOA Findings of Fact, dated June 3, 1993
 - 1-9 Public Noticing Documents
 - 1-10 Public Comments
- 2 Letter dated July 17, 2012 from Julia Price, MBS Partnership to City of Oak Harbor Property Owners Approval of CUP Application by U-Haul Dealership
- 3 Email dated July 17, 2012 from Michael-John Paparella to Lisa Bebee re: U-Haul
- 4 Memorandum, stamped received July 23, 2012, from Robert Olson to City of Oak Harbor Hearing Examiner re: CUP12-01
- 5 Development Services Department Analysis re: U-Haul Conditional Use Potential Aesthetics Mitigation, Memo from Steve Powers, August 10, 2012, with attachments:
Attachment 1: Review of Past Studies and Plans-A Summary of Findings
Attachment 2: Comprehensive Plan Goal 8 and Policy 8.a thru 8.h, December 2001
Attachment 3: Comprehensive Plan: Land Use Element: Central Business District, Goals and Policies; City of Oak Harbor Goals and Policies: Community Identity Goals 1.a, b, c, d, e, f, 2, 4.b, 7.a, b, 12.e, 14.a, c, e, f, 19.a, b; Growth Management: Urban Design Elements

Goals and Policies, Goal 2.c, g, 3.a, b, 4.a, 6.a, b, 9.a; Parks, Recreation and Open Space Element: CBD; Housing Element: Technical Appendix-2004 Urban Growth Area Housing Capacity Analysis: Methodology Assumptions 5; Utilities Element, Goal 7.d; Transportation Element, Goal 3.b; Economic Development Element, Goal 2, Goal 6.e [highlighted in yellow], December 2010

Attachment 4: Oak Harbor Municipal Code, 19.20.430 Density provisions

Attachment 5: City of Oak Harbor Design Regulations & Guidelines, 3) Neighborhood Context, i. Harborside, Approved 4/18/06

Attachment 6: Site photos [8] taken by Staff

Attachment 7: Fleet dimensions from U-Haul

Attachment 8: Fence/Truck Height simulations created by City Staff using existing photos

Attachment 9: Email to the City from the Applicant, August 6, 2012

- 6 Engineering Department Analysis re: U-Haul CUP, Memo from Eric Johnston, August 13, 2012, including completed analysis, backup documentation, and recommendation

- 7 Public Comments
 - Butoll Laurion, stamped received Aug 13, 2012
 - Cliff Laing, stamped received Aug 14, 2012
 - Noreen Warnock, Aug 14, 2012
 - Bruce and Lou Mattson, August 13, 2012
 - Dina Nichols, Aug 14, 2012
 - Norman Myers, Aug 15, 2012
 - Jerome Olsen, Aug 15, 2012
 - Gray and Dee Giordan, Aug 15, 2012
 - Jean Bright, Aug 17, 2012
 - Faye Konopik, stamped received Aug 17, 2012
 - Doris Hans, Aug 17, 2012
 - Billie J. Cook, Aug 17, 2012
 - Kathy Harbour, August 16, 2012
 - Laurie Torcaso, Aug 16, 2012
 - Carol Glover, Aug 16, 2012
 - Kathlen Callantes, Aug 17, 2012

- 8 Materials Submitted by the Applicant on July 30, 2012 [Three-ring binder containing the above Exhibits 5, 6, 7].

II.

U-Haul Dealership is seeking Conditional Use Permit Approval for a truck rental dealership, to be located at 601 SE Pioneer Way, Oak Harbor, Washington.

This site is currently the site of an existing Quilters Workshop Business. The proposed rental vehicle business would be in addition to the existing business and would be limited to up to four rental

units [trucks and/or trailers] onsite at any one time.

As a result of additional Engineering review of the proposal, the record establishes that the proposed rental vehicle location contains a satisfactory open area for maneuvering the vehicles in and out of the proposed parking area for the rental trucks and would allow the trucks to be parked along side the Quilters Workshop building, facing South Pioneer Way. A visual display of the proposed truck and trailer rental units is contained in Exhibit No. 8. The eight photographs supplied by the Applicant show that the front, both sides, and back of the units consist of large orange and black signage and other graphic images, identifying and advertising U-Haul.

The Applicant has not proposed any kind of screening of the rental units. They would be placed outside and would amount to an outside visual display of the merchandise available to rent.

Since the Quilters Workshop is located at the top of the hill entering into the historic old town portion of the Central Business District, the bright and heavily signed rental vehicles would be visible from traffic proceeding up SE Pioneer Way into the old town area, as well as from Bay Shore Drive, and the recreational areas and parks located between SE Pioneer Way and the waterfront.

III.

SE Pioneer Way has been newly reconstructed as a single lane and narrow roadway leading through the Central Business District. This multi-million dollar project was aimed at enhancing pedestrian access and turning the old historic Central Business District of Oak Harbor into a destination-oriented environment for both local residents and tourists. The area is intended for mixed-use developments, combining retail and visitor oriented activities on the ground floor with office, retail, and residential uses, above. This emphasis on a pedestrian-friendly environment is accentuated by the narrow, one-way street through the heart of the Central Business District, with angled parking. Short crosswalks from pedestrian islands, extending into the road right-of-way for pedestrian use, have resulted in an environment in which through traffic is discouraged and destination traffic, with pedestrian access to the retail shops and restaurants in the area, is emphasized.

The overall design of SE Pioneer Way is intended to minimize through traffic and to discourage use of the roadway by larger vehicles. The Hearing Examiner recognizes that the rented U-Haul truck and trailers can safely be driven through the Central Business District on SE Pioneer Way if proper care is taken, but are for the most part out of scale with the anticipated type of traffic and the pedestrian uses encouraged along this street.

For at least two decades, the long-term planning intent for the Central Business District has been to revive small business, retail and tourist and residential uses, designed to create an aesthetically pleasing urban village. The commercial image that U-Haul projects, through the establishment of numerous small rental units within a limited area and through the use of the trucks for billboard-like advertising, is inconsistent with the purpose of the Central Business District zoning. This Zoning District is designed to provide a unique traditional center of social, cultural, and retail activities within the historic downtown center of the city, mixed-in with urban residential uses, and tied into the amenities

associated with the nearby Oak Harbor waterfront area.

This Conditional Use Application gives rise to two serious issues regarding compatibility. These issues are the visual and aesthetic impacts of a U-Haul Rental Business and the introduction of larger vehicles into an area designed for automobile destination traffic and pedestrian-oriented uses.

IV.

In 1993, Enterprise Rent-A-Car received Conditional Use Permit Approval for a small rental site, located at 980 SE Pioneer Way. This Conditional Use Permit Approval allowed up to eight vehicles to be parked onsite. To the degree that the U-Haul proposal cannot be distinguished from the Enterprise Rent-A-Car Approval, the Enterprise Approval would appear to establish some kind of precedent for vehicle rentals within the Central Business District.

The Enterprise Business was approved approximately twenty years ago. While the goals for Central Business Districts have not changed all that much in twenty years, the physical nature of the Central Business District, especially taking into account the recent improvements, including the new narrow, single-lane roadway through the district, and the emphasis on pedestrian-oriented use. It is not clear to this Examiner, that the Enterprise Rental Business would be approved at this time, although any adverse impacts are less than those resulting from approval of the U-Haul Dealership proposal.

The Enterprise Rental Business deals with automobiles and the parking site for these vehicles is no different than other small parking areas within the district. Enterprise has a modest sign at the location of their business. The vehicles, themselves, are not a source of advertising or signage and the Enterprise Rental lot is much more visually compatible with other uses in the district when compared to the U-Haul Dealership proposal.

U-Haul's use of their trucks for advertising appears to violate the limitations on signage found in OHMC 19.36.030.

The Sign Ordinance, OHMC 19.36, also notes in 19.36.010(3), "The responsible regulation of signs may, in fact, improve business opportunity as a result of the increased attractiveness of the city's environment."

V.

Some of the visual impacts from the U-Haul Dealership proposal could be mitigated through the use of fencing. However, fences in the district are limited to six feet in height, were not proposed by the Applicant, and would not completely screen the rental units.

VI.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

At the request of the Hearing Examiner, the Development Services Department did additional analyses of the compatibility of the proposed use with the Goals and Policies associated with the Central Business District. This analysis, Exhibit No. 5 in the Hearing Examiner file, contains a number of attachments which review past studies and plans for the Central Business District, and a number of the current elements of the Comprehensive Plan applicable to this proposed Conditional Use. For more than twenty years, Oak Harbor has envisioned a renewal of the historic downtown area and its connection to the nearby waterfront. In one way or another, the purpose has always been to create an attractive historic area of small businesses, restaurants, bars, and residential uses to both supply a destination area for local citizens and to attract tourist to the area.

The past plans and the current Comprehensive Plan for this area discourage use of the area by through traffic and encourage use of the area by pedestrians. The proposed U-Haul Dealership would introduce through truck traffic into the area.

In addition to the Central Business District, the Oak Harbor Comprehensive Plan and enabling ordinances allow other commercial areas more compatible to a use such as the U-Haul Dealership. The U-Haul Dealership proposal would perhaps best be located in the C-4 Auto/Industrial Commercial District. The Land Use Element of the Oak Harbor Comprehensive Plan describes this district as follows:

“C-4 Auto/Industrial Commercial. The Auto/Industrial Commercial district would permit the establishment of facilities oriented toward uses dependent upon a highway location, for purposes of either access or visibility. The district would primarily be intended to allow for the concentration of automobile and other motor vehicle sales centers. Other commercial and limited industrial activities would also be permitted. The uses permitted by this district must also be compatible with the NAS Whidbey AICUZ recommendations. Access to the highway would be controlled, so as to minimize turning movement conflicts and maximize traffic efficiencies.”

The Auto/Industrial Commercial District, for example, is oriented toward uses dependent upon a highway location for purposes of either access or visibility. On the other hand, the Central Business District discourages outdoor visual display of products.

The proposed U-Haul Dealership is inconsistent with the intended character and visual identity of the Central Business District and nearby waterfront. The Comprehensive Plan for this area encourages city beautification through design and quality standards; aims to identify and preserve the historic old town area; aims for the visual enhancement of the Oak Harbor Central Business District; and the enhancement and protection of both the historic business district and the nearby waterfront, as an asset for future economic development, by providing an aesthetically pleasing area

of shops and restaurants that will draw both locals and tourists.

Quite simply, the Comprehensive Plan puts great emphasis on the visual enhancement of the Central Business District and the waterfront area, seeks to retain and enhance the character of the historic commercial district, and proposes landscaping and design requirements, the use of buffers, and the protection of these areas from incompatible development.

The image that U-Haul chooses to advertise and brand its product is incompatible with Oak Harbor's desire to maintain and enhance the unique character of the Central Business District and to provide an urban village with a mixture of low impact commercial uses, residential uses, and the establishment of a pedestrian-friendly environment.

The City's desire, as set forth in the Comprehensive Plan, to visually improve the Central Business District through design guidelines, landscaping, protection of historic buildings, and overall to provide in this area a safe and aesthetically pleasing and interesting environment is, quite simply, visually incompatible with the way U-Haul brands and markets its business.

Perhaps the central purpose of zoning is to separate incompatible uses in a manner which reduces land use conflicts and improves the quality of life for the community. There was significant public comment on this proposal from property owners, both business persons and citizens, opposing the location of the U-Haul Dealership at the top of the hill on SE Pioneer Way. Public opposition to a proposal is not, in and of itself, sufficient grounds to deny a project. However when the single issue involved is compatibility and where Goals of the Comprehensive Plan require careful consideration to the aesthetics, the amount of and degree of public concern and opposition to this proposal do reflect its basic incompatibility with the Goals, Policies, and Vision as laid out in the Comprehensive Plan for the Central Business District.

II.

The U-Haul Dealership Conditional Use Permit Application, as presented, is not consistent with the Goals and Policies of the Comprehensive Plan and would not be compatible with the existing and intended uses of the Central Business District and therefore cannot be approved as a Conditional Use.

III.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

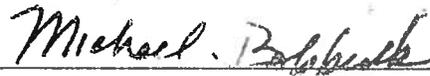
DECISION

The request for a Conditional Use Permit, CUP-12-01, Application submitted by the U-Haul Dealership is hereby Denied by the Hearing Examiner for the City of Oak Harbor.

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

This Decision of the Hearing Examiner for the City of Oak Harbor is final twenty-one days after the issuance of this Decision unless it is appealed to the Island County Superior Court within twenty-one days of the issuance of this Decision, pursuant to 36.70C RCW.

DATED this 17th day of September 2012.



Michael Bobbink, Hearing Examiner