

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF OAK HARBOR**

In the Matter of the Application of	)	No. 2303-0014
	)	
<b>Colin Smith, Crowfoot Properties</b>	)	<b>Ridgeway Heights</b>
	)	<b>Preliminary Plat</b>
	)	
	)	
For Approval of a Preliminary Plat and Landscape Plan	)	FINDINGS, CONCLUSIONS, AND DECISION

**SUMMARY OF DECISION**

The request for preliminary plat approval to subdivide 4.8 acres into 28 single-family residential lots and associated improvements, located near 1300 SW 24th Avenue at the existing intersection of SW 24th Avenue and Ridgeway Drive, is **APPROVED**. The related request for approval of a landscape plan is also **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 29, 2023.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Ray Lindenburg, City Senior Planner  
Jon Pollock, City Engineering Technician  
Colin Smith, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report
2. Zoning and Vicinity Map
3. Application Materials:
  - A. Summary Application, dated May 15, 2023
  - B. Site Plan, dated February 3, 2023
  - C. Drainage Report, LDC, Inc., dated March 2023
  - D. Traffic Impact Analysis, Kimley-Horn and Associates, dated December 2022
  - E. Geotechnical Engineering Report, GeoTest Services, Inc., dated February 2, 2023

*Findings, Conclusions, and Decision  
City of Oak Harbor Hearing Examiner  
Ridgeway Heights Preliminary Plat and Landscape Plan  
No. 2303-0014*

- F. Wetland and Fish and Wildlife Habitat Assessment Technical Memorandum, Soundview Consultants, LLC, dated January 6, 2023
- G. Cultural Resource Assessment, Drayton Archaeology, dated December 20, 2022
- H. Site Drawings and Elevations, dated May 11, 2018
- I. House Renderings
- 4. Applicant SEPA Checklist; Comment from Washington State Department of Transportation, with Email from Applicant Traffic Engineer, dated August 2, 2023
- 5. Notice Materials:
  - A. Affidavit of Posting (not filled out)
  - B. Mailing Labels
  - C. Notice of Public Hearing, dated August 11, 2023
  - D. Notice to Adjacent Property Owners of Public Hearing, undated
  - E. Notice of Application, dated March 24, 2023
  - F. Notice of Application for publication in the *Whidbey News Times* on March 25, 2023
  - G. Return to Sender Postcard, dated August 11, 2023
  - H. Affidavit of Posting (Notice of Application), dated March 23, 2023
  - I. Photographs of Public Notice Posted On-site
  - J. Return to Sender Postcard, dated August 15, 2023
- 6. Public Comments:
  - A. Comment from Linda Bjorge, dated April 4, 2023

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## FINDINGS

### Application and Notice

1. Colin Smith, Crowfoot Properties (Applicant), requests approval of a preliminary plat to subdivide approximately 4.8 acres into 28 residential lots. Associated improvements would include installation of a new public road (Road A), pedestrian walkway, stormwater management features, access/utility tracts, and an open space/detention tract. The proposed development also requires approval of a landscape plan. Access to 15 of the lots would be provided by Road A, a new internal road serving the plat. Access to 11 lots would be provided by four common private driveways branching off of Road A. Access to the remaining two lots would be provided directly from SW 24th Avenue. The project site is currently vacant and unaddressed, and located near 1300 SW 24th Avenue at the existing intersection of SW 24th Avenue and Ridgeway Drive.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3.*

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<sup>1</sup> The property is identified as tax parcel numbers R13210-364-1400 and R13210-364-1570. *Exhibit 1, Staff Report, page 1.*

2. The City of Oak Harbor (City) determined that the application was complete on March 21, 2023. On March 24, 2023, the City provided notice of the application by mailing or emailing notice to property owners within 500 feet of the property and to reviewing agencies and by posting notice on-site and at City Hall, with a comment deadline of April 7, 2023. The next day, the City published notice of the application in the *Whidbey News Times*. On August 11, 2023, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to property owners within 300 feet of the property and to interested parties and by posting notice at City Hall. The next day, the City published notice of the hearing in the *Whidbey News Times*. *Exhibit 1, Staff Report, page 7; Exhibit 5.*
3. The City received one comment on the proposal from reviewing agencies or members of the public in response to its notice materials. Linda Bjorge expressed concerns about the traffic flow and speeding in the surrounding neighborhood. *Exhibit 1, Staff Report, page 7; Exhibit 6.*

#### State Environmental Policy Act

4. The City acted as lead agency and analyzed the environmental impacts of the proposal as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City reviewed the Applicant's environmental checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Determination of Nonsignificance (DNS) for the proposal on July 14, 2023, with a comment and appeal deadline of July 28, 2023. The DNS was not appealed. *Exhibit 1, Staff Report, page 3; Testimony of Ray Lindenburg.*

#### Comprehensive Plan and Zoning

5. The property is designated "Low-Intensity Residential" by the City Comprehensive Plan. The Low-Intensity Residential designation is intended to "accommodate most of the residential uses and to support low-intensity uses such as religious institutions, care facilities, schools etc., that create healthy livable neighborhoods." *City Comprehensive Plan, page 25.* Residential densities in the Low-Intensity Residential designation range from a minimum of three units per acre to a maximum of 16 units per acre. *City Comprehensive Plan, page 25. Exhibit 1, Staff Report, page 1.*
6. The property is zoned Limited Multiple-Family Residential (R-2). Properties to the north, south, and east are zoned Single-Family Residential (R-1). The property to the west is zoned Oak Harbor – Residential in Island County. The purpose of the R-2 zone is to provide "medium density residential housing." *Oak Harbor Municipal Code (OHMC) 19.20.125.* Manufactured home subdivisions and single-family residences are permitted in the R-2 zoning district. *OHMC 19.20.125; OHMC 19.20.1050.* Densities for the R-2 district range between a minimum of six units per gross acre and a maximum of 12 units

per gross acre. *OHMC 19.20.125*. The proposed development would have a density of 5.8 dwelling units per acre. City staff noted that City staff have interpreted density calculations to round the number when a decimal is present and, accordingly, the present proposal would satisfy the minimum density requirement with rounding. City staff also noted that four lots could be constructed in open Tract 998, which is currently not being developed because of the Road A temporary cul-de-sac, and that, with the additional development, the density of the site would be 6.7 units per acre. City staff reviewed the proposal for compliance with dimensional standards specific to the R-2 zoning district and determined that the proposed development would comply with all applicable regulations. *Exhibit 1, Staff Report, pages 1, 2, and 5; Exhibit 2.*

#### Existing Property, Surrounding Development, and Critical Areas

7. The two rectangular parcels comprising the property contain rolling hills, with a high point near the center of the western boundary and slopes down to the east and south. The site is densely forested. No protected Garry Oak trees were identified on the properties. Soundview Consultants, LLC, prepared a memorandum addressing critical areas on the property, entitled “Wetland and Fish and Wildlife Habitat Assessment” (“Wetland Report” or “WR”), dated January 6, 2023. The Wetland Report determined that there are no potentially regulated wetlands identified on-site. The WR identified one Category IV wetland approximately 72 feet southeast of the properties. Category IV wetlands require a standard 50-foot buffer. *OHMC 20.24.030.3; OHMC Table 20.24.030.a.i*. The required 50-foot buffer does not extend onto the project site. Accordingly, the properties do not contain any regulated critical areas. Properties to the south, east, and west are undeveloped. Properties to the north are developed with single-family residences. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3.E; Exhibit 3.F.*
8. GeoTest Services, Inc., prepared a report evaluating the geology of the site, entitled “Geotechnical Engineering Report” (“Geotechnical Report” or “GR”), dated February 2, 2023. The Geotechnical Report determined that the site is suitable for the proposed development, provided the recommendations contained in the GR are incorporated into the project design. The GR provides recommendations related to site preparation and earthwork, fill and compaction, wet weather earthwork, foundation support, floor support, site drainage, slopes, utilities, and construction monitoring. The Geotechnical Report also indicates that conventional infiltration systems may be difficult, if not infeasible, to implement due to the presence of shallow restriction layers. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 3.E.*
9. Drayton Archaeology prepared a report addressing cultural resources on the property on behalf of the Applicant, entitled “Cultural Resource Assessment” (“CRA”), dated December 20, 2022. The Cultural Resource Assessment determined that the project site is located within an area of low probability for cultural resources. *Exhibit 3.G.*

### Access, Traffic, and Parking

10. Primary access to the site would be provided by Road A, which would connect to SW 24th Avenue and be located opposite Ridgeway Drive. Road A would be constructed with a five-foot sidewalk and five-foot planter strip on both sides and would culminate in a temporary cul-de-sac. Tract 998, which is located adjacent the cul-de-sac, would be reserved for future development to allow for the street network to be connected when the parcel to the south is developed.

Access to 15 of the lots would be provided directly by Road A. Access to 11 lots would be provided by four common private driveways branching from Road A. The remaining two lots (Lots 1 and 28) would be accessed directly from SW 24th Avenue. SW 24th Avenue is developed with existing curb, gutter, and sidewalk.

Kimley-Horn and Associates, Inc., prepared a “Traffic Impact Analysis” (“TIA”), dated December 2022. The TIA determined that the proposed development would generate 313 new average weekday daily trips, with 30 new PM peak-hour trips. The TIA further determined that all studied intersections would continue to operate at acceptable levels of service (LOS) following a full build out of the project. The Applicant would not be required to provide mitigation apart from the payment of traffic mitigation fees. The City has a residential traffic mitigation fee of \$907 per residential unit. Accordingly, the required mitigation fee for the 28-unit development would be \$25,396. The Washington State Department of Transportation (WSDOT) submitted a comment regarding the TIA, which stated that the Garry Oaks development traffic should be included in the analysis as a pipeline project; a seasonal adjustment of 12 percent should be added to the traffic count; and suitable mitigation strategies should be proposed if the level of service is degraded to F. Kimley-Horn and Associates, Inc., responded to WSDOT comments in an email, dated August 2, 2023. The email stated that Phase 1 of the Garry Oaks development was included and that it seemed like only Phase 1 was permitted; seasonal adjustments to counts have never been included for projects located in the City and that trip generation is based on averages; State Route 20 at SW 24th Avenue has no collision history to show a problem and the level of service (LOS) following full build out the proposed development would be LOS E; a 12 percent adjustment would likely result in LOS F at that intersection but that the baseline may be LOS F without the development because there are so few trips along SW 24th Avenue and appropriate street improvements would exist along the Garry Oaks development frontage.

Bus routes are located approximately 800 feet from the entrance to the subdivision on State Route 20 near the intersection with SW 24th Avenue. City staff determined that there is currently little pedestrian infrastructure along the route, but that City staff are currently reviewing a subdivision proposal in the space between the proposed development and transit stop. Parking would be provided by private driveways. *Exhibit 1, Staff Report, pages 1 through 4, 6, and 8; Exhibit 3.B; Exhibit 3.D; Exhibit 4.*

### Stormwater

11. LDC, Inc., prepared a report addressing stormwater on the property, entitled “Drainage Report” (“DR”), dated March 2023. Runoff would be collected in an on-site basin and routed to through a series of storm drainpipe and catch basins to an on-site detention vault located in Tract 999. Runoff would then be released at predeveloped rates from the vault using a control structure and riser to a Perkfilter, which would treat the runoff. The Drainage Report determined that runoff from the site would be discharged at historical predeveloped rates and that the stormwater management system would comply with the requirements of the 2019 Department of Ecology Stormwater Management Manual for Western Washington. *Exhibit 1, Staff Report, pages 1 and 4; Exhibit 3.B; Exhibit 3.C.*

### Parks, Open Space, and Landscaping

12. There are no minimum open space requirements for preliminary plats within the city. However, the Applicant proposes a 23,848 square foot open space/detention tract (Tract 999). Tract 999 would include an area set aside for preservation of existing trees and native vegetation. The tract would also be adjacent to a mid-block pedestrian walkway that would connect the proposed subdivision to neighboring parcels and future development. The Applicant would be required to pay park impact fees, which would be used to construct new parks and park capital facilities in the city that could serve residents of the subdivision.

The proposed subdivision would be required to provide landscaping meeting the landscaping and screening standards of Chapter 19.46 OHMC and the residential design standards of Chapter 21.60 OHMC. City staff reviewed the Applicant’s landscape plans and determined that it would meet these standards by providing a ten-foot landscape buffer along the frontage of SW 24th Street; a five-foot park strip with ground cover and streets trees along the street right-of-way; perimeter vegetation, including small trees suitable for rear yard areas; and an area set aside for existing trees and native vegetation in the southeast corner of the project site. Native vegetation would comprise over 10 percent of the total site area and at least one tree per 600 square feet of designated space. City staff would inspect the site prior to final plat approval to ensure that landscaping is provided in accordance with the requirements of Chapter 19.46 OHMC and Chapter 21.60 OHMC. *Exhibit 1, Staff Report, pages 3, 4, and 8; Exhibit 3.B; Exhibit 3.H.*

### Utilities and Services

13. Each lot within the subdivision would be connected to the City’s public water system, which meets state water quality standards. City staff notes that the City has planned for and can accommodate the growth in population on the subject site to adequately serve it with potable water. Each lot within the subdivision would be served by the City’s sewer and solid waste services. City staff notes that the capacity to serve the proposed subdivision has been accounted for in the City’s wastewater collection and treatment

system. Students residing within the subdivision would be served by the Oak Harbor School District. The School District did not provide any comments on the proposed development. *Exhibit 1, Staff Report, pages 3, 4, and 7; Exhibit 3.B.*

#### Testimony

14. City Senior Planner Ray Lindenburg testified generally about the proposal and how, with conditions, it would comply with the City's Comprehensive Plan, zoning ordinances and the specific criteria for approval of a preliminary plat. He explained that the new public road internal to the plat would culminate in a temporary cul-de-sac that the City hopes would eventually connect to development south of the project site. He noted that the proposed development would not be a planned residential development (PRD) but that the Applicant proposes an open space tract with native vegetation, and street trees and frontage improvements along SW 24th Avenue. He stated that the City would review transportation concurrency at a later date. Mr. Lindenburg testified that the City issued a DNS for the proposal, which was not appealed. He explained that students would be bused from the site to nearby schools. He noted that the Applicant submitted a landscape plan which includes a ten-foot landscape buffer along street frontage. He explained that the Applicant would be required to orient Lots 13 through 18 towards the pedestrian walkway to create a pedestrian thoroughfare between the proposed subdivision and adjacent subdivision. He stated that the proposed subdivision would likely not substantively change traffic on Ridgeway Drive. *Testimony of Mr. Lindenburg.*
15. Applicant Colin Smith explained that he had spoken with City staff regarding revisions to the traffic impact analysis. *Testimony of Mr. Smith.*
16. City Engineering Technician Jon Pollock explained that stormwater would travel from north to south to a detention facility in the southeast corner of the project site, where it would be treated and released slowly through a control device into a dispersion trench apparatus and infiltrated back into the ground. He noted that the stormwater management system would provide hydrologic recharge to wetlands in the area. Mr. Pollock explained that the Washington State Department of Transportation (WSDOT) was concerned that the Applicant's traffic study was completed in December, which is not a peak traffic month for the City, and requested a seasonal adjustment of an additional 12 percent. He stated that the City does not anticipate that the Applicant would be solely responsible for level of service impacts to WSDOT roads. *Testimony of Mr. Pollock.*

#### Staff Recommendation

17. Mr. Lindenburg testified that City staff recommends the approval of the preliminary plat application, with conditions. *Exhibit 1, Staff Report, pages 7 through 9; Testimony of Mr. Lindenburg.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for approval of a preliminary plat and landscape plans. *OHMC 18.20.260; OHMC 21.20.060.*

### Criteria for Review

#### *Preliminary Plat*

OHMC 21.20.070 sets forth the criteria for approval of a preliminary plat application:

The hearing examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedications(s). It shall make written findings:

- (a) Whether appropriate provisions have been made for, but not limited to, the public health, safety and general welfare, for open spaces, drainageways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.
- (b) Whether the public use and interest will be served by the platting of the subdivision and dedication(s).

The criteria set forth in the Oak Harbor Municipal Code are identical to the state subdivision criteria codified at Chapter 58.17 RCW, which must also be met by the application before a decision of approval can be made. Specifically, RCW 58.17.110(2) provides:

A proposed subdivision and dedication shall not be approved unless the city, town, or county legislature body makes written findings that: (a) appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication.

### *Landscape Plan*

OHMC 19.46.110 provides:

- (1) Landscape plans shall be submitted and reviewed concurrently with a development or use permit and shall be processed as part of the integrated permit process under OHMC 18.20.360.



- (2) Compliance with the approved landscape plans shall be a condition of approval for all development applications approved pursuant to OHMC Title 19, 20, or 21.
- (3) The director may allow or approve minor modifications to an approved landscape plan during the site development construction process to account for unforeseen site conditions and circumstances. The submittal of an amended landscape plan meeting the requirements of [Chapter 19.46] may be required.

The criteria for review adopted by the Oak Harbor City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions

1. **With conditions, the proposed preliminary plat would satisfy the requirements of OHMC 21.20.070 for subdivision approval.** The City provided reasonable notice and opportunity to comment on the proposal and to testify at the open record hearing. The City received one comment on the proposal from a neighboring property owner, who raised concerns about traffic impacts in the surrounding area.

The City analyzed the environmental impacts of the proposal, determined that the project would not have any probable significant adverse impacts on the environment and issued a Determination of Nonsignificance on July 14, 2023. This determination was not appealed. Soundview Consultants, LLC, prepared a report addressing wetlands on and in the vicinity of the property. The Wetland Report identified a Category IV wetland approximately 72 feet southeast of the project site. The off-site wetland requires a standard 50-foot buffer, which does not extend onto the properties. No other critical areas were identified on or in the immediate vicinity of the properties. Drayton Archaeology prepared a report addressing cultural resources on the project site, which determined that the site is located in an area with a low probability of containing cultural resources. GeoTest Services, Inc., provided a Geotechnical Report, which determined that the site is suitable for the proposed development, provided the recommendations contained in the Geotechnical Report are incorporated into the project design.

The Applicant proposes to collect and convey stormwater runoff to an on-site detention vault. Runoff would be treated with a Perfilter before being discharged at a controlled flow rate. Discharged runoff would provide hydrologic recharge to the nearby wetland. The proposed stormwater management measures must comply with the requirements of the 2019 Department of Ecology Stormwater Management Manual for Western Washington. City engineering staff would review the Applicant's final stormwater

drainage design at later permitting stages to ensure that it would comply with all applicable stormwater regulations and would not adversely impact neighboring properties.

The property is located within the R-2 zoning district. The Applicant's preliminary plat plan set demonstrates that the proposed development would comply with dimensional standards for lots within the R-2 zone and that residential structures could be sited within the lots in conformance with all applicable setback requirements for the R-2 zone.

Access to the site would be provided by Road A, a new public road located opposite Ridgeway Drive on SW 24th Avenue. Road A would culminate in a temporary cul-de-sac to allow for connection to future development on the parcel south of the proposed development. The Applicant would construct Road A with a five-foot sidewalk and five-foot planter strip on both sides. Access to individual lots would be provided by Road A or private drives connecting to Road A. Two lots (Lots 1 and 28) would be accessed directly from SW 24th Avenue. SW 24th Avenue is developed with existing curb, gutter, and sidewalk.

The Applicant's TIA determined that the traffic generated from the proposed development would not cause any studied intersections to operate at a deficient level of service. The Applicant would be required to pay traffic impacts fees to mitigate for the proposal's impacts to the City's transportation network. The Applicant would provide off-street parking in compliance with minimum code requirements.

Preliminary plats within the City are not required to provide open space areas. However, the Applicant proposes a 23,848 square foot open space/detention tract (Tract 999), which includes an area set aside for preservation of existing trees and native vegetation. The Applicant would be required to pay park impact fees, which would be used to construct new parks and park capital facilities in the city that could serve residents of the subdivision. As detailed in Conclusion 3 below, the Applicant's landscape plan demonstrates that the proposed development would comply with all applicable landscape standards for subdivisions within the R-2 zoning district.

The City has sufficient capacity to provide water and sanitary sewer service to all lots within the subdivision. Students residing within the subdivision would be served by the Oak Harbor School District. The School District did not provide any comments on the proposed development. Students would likely be bused to nearby schools. The Hearing Examiner determines that the proposed land division, as conditioned herein, would not adversely impact the public health, safety, or general welfare and that the public interest would be served by the platting of the subdivision. Conditions, as detailed below, are necessary to ensure that the proposal satisfies all local and state requirements for preliminary plat approval. *Findings 1 – 17.*

2. **With conditions, the proposal would comply with preliminary subdivision requirements under the State Subdivision Act (RCW 58.17.110).** The criteria set forth in the Oak Harbor Municipal Code are identical to those in the Revised Code of Washington. Accordingly, with conditions as detailed in full below, the proposal would satisfy all local and state requirements for plat development. *Findings 1, 4 – 17.*
3. **The Applicant's landscape plans meet the requirements for approval.** City staff reviewed the Applicant's landscape plans and determined that they would comply with all applicable landscaping and screening standards of Chapter 19.46 OHMC and with the applicable residential design standards Chapter 21.60 OHMC. The Hearing Examiner concurs with City staff's analysis. The landscape plans demonstrate that the Applicant would provide a ten-foot landscape buffer along the frontage of SW 24th Street; a five-foot park strip with ground cover and street trees along the street right-of-way; perimeter vegetation, including small trees suitable for rear yard areas; and an area set aside for existing trees and native vegetation in the southeast corner of the project site. Native vegetation would comprise over 10 percent of the total site area and the Applicant would plant at least one tree per 600 square feet of designated space. Accordingly, the Hearing Examiner approves the Applicant's landscape plans. *Finding 12.*

### **DECISION**

Based on the above findings and conclusions, the request for preliminary plat approval to subdivide approximately 4.8 acres into 28 single-family residential lots and associated improvements, located near 1300 SW 24th Avenue at the existing intersection of SW 24th Avenue and Ridgeway Drive, is **APPROVED**, and the related request for approval of a landscape plan is also **APPROVED**, subject to the following conditions:

#### Preliminary Plat

1. The Applicant's final plat document, landscape plans, architectural design and associated permits shall be in general conformance with the approved preliminary plat drawings entitled "Ridgeway Heights Preliminary Plat," and dated March 1, 2023.
2. The Applicant shall coordinate with the United States Postal Service for approval of mailbox location(s).
3. Manufactured homes are permitted to be placed in the subdivision. Units shall include a design similar to the plans and photos submitted by the applicant and be of a quality equal to the other homes in the subdivision. Utility connections shall be on the side or rear of the home and carports and other connected features shall be finished to the same standard of the main portion of the home.

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No. 2303-0014*

4. Detached garages shall be constructed per appropriate codes and include exterior materials and finishes that match those of the home on the property.
5. Homes sited on lots 13-18 shall be oriented with the front toward the pedestrian walkway, with front porches or architectural features highlighting the entrance facing that direction. Garages and parking areas are to be provided via the private driveway at the rear of the lot.

#### Landscaping

6. The Applicant shall post a three-year maintenance bond to ensure landscaping completion and a minimum plant survival of 80 percent at the end of three years. The type of bond shall be approved by the City and must be submitted on forms supplied by the City of Oak Harbor. The approved bond shall be posted with the Development Services Department prior to the issuance of a building permit. The bond amount shall be 150 percent of a landscaping maintenance bid amount submitted and approved by the City. The bid amount must include labor and materials.
7. Any signage proposed for the subdivision is not approved with the Preliminary Plat and PRD. A separate sign permit shall be required and approved before any permanent signage including subdivision identification, is placed. Any signage proposed for the subdivision is not approved with the Preliminary Plat and PRD. A separate sign permit shall be required and approved before any permanent signage including subdivision identification, is placed.

#### SEPA

8. Applicant shall coordinate with the Washington State Department of Transportation to determine appropriate mitigation measures for additional traffic generated by the proposed subdivision.

#### Clearing and Grading Plan

9. All BMPs shall be followed during clearing and grading of the property, and during the duration of the project as required by the approved civil drawings.

#### Plat Drawing

10. Prior to approval of final plat, the applicant is required to submit a copy of all proposed deed restrictions and covenants.

11. The Applicant shall include dedication language on the face of the final plat as stated in OHMC 21.40.040.

### Engineering

12. Following approval of the preliminary plat by the city, the subdivider shall submit to the city engineer the applicable plans and other documents, review fees as set out in Title 21 and the city's fee schedule, and three complete sets of construction plans and specifications (sheet size 22 inches by 34 inches) prepared by an engineer registered in the state of Washington showing all improvements as required by the city council in granting the preliminary plat. Such plans must be submitted and approved by the city engineer prior to beginning any grading work on the site. OHMC 21.30.020(1).
13. All construction plans and specifications shall be in conformance with the city street and utility standards, as may be modified by this approval. The subdivider shall indicate, either on the plans or by separate document, the engineer retained to provide certification of all improvements. Approval shall expire five years from the date of initial preliminary plat approval. OHMC 21.30.020(2).
14. A performance bond in the amount of 112 percent of the cost to construct required and uninstalled improvements may be posted in lieu of the complete installation of improvements; provided, that such bond is recommended by the city engineer. All deferred improvements shall be completed within two years from the date a bond has been accepted or the city will use securities to complete. The performance bond shall specify exactly what improvements are included, accompanied by a time schedule for completion. In lieu of the performance bond, the developer may provide for other security approved by the city council at the next regularly scheduled council meeting following the city engineer's approval of construction plans. OHMC 21.30.020(3)(c).
15. Before acceptance of the improvements by the city, a maintenance bond or other security acceptable to the city shall be posted by the developer jointly obligating the developer, or some other party acceptable to the city, and a security, acceptable to the city, guaranteeing these improvements from any defects caused by faulty workmanship, materials, or design or combination thereof for a period of two years from the date of written acceptance of the improvements. The amount of bond or other security requested shall be determined by the city engineer, but in no event shall the amount be less than 10 percent of the cost of the improvements. OHMC 21.30.020(3)(f).
16. Stormwater facilities are subject to final civil and construction plan review and may be subject to revisions based on submitted calculations and sizing of said facilities.

17. Transportation and park impact fees shall be paid before building permits are issued per the standards of OHMC 3.63.020.

**DECIDED** this 26<sup>th</sup> day of September 2023.



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ANDREW M. REEVES  
Hearing Examiner  
City of Oak Harbor

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF OAK HARBOR**

In the Matter of the Application of	)	Nos. 2306-0039; 2305-0028
	)	
	)	
<b>The City of Oak Harbor</b>	)	<b>Angel de la Creatividad</b>
	)	<b>Conditional Use Permit and</b>
	)	<b>Site Plan Review</b>
	)	
For a Conditional Use Permit and	)	FINDINGS, CONCLUSIONS,
<u>Site Plan Review</u>	)	AND DECISION

**SUMMARY OF DECISION**

The City of Oak Harbor’s request for a conditional use permit and site plan review to allow for the installation of a 37-foot-tall sculpture at Flintstone Park, located at 1370 SE Bayshore Drive, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 29, 2023.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Ray Lindenburg, City Senior Planner
- Dennis Lefevre, City Senior Planner
- Gideon Cauffman, Applicant Representative and City Project Manager
- Richard Nash
- Ken Murphy
- Michael Thelen
- Gray Giordan
- John Kingsbury
- Terry LeDesky

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report

*Findings, Conclusions, and Decision  
City of Oak Harbor Hearing Examiner  
Angel de la Creatividad CUP & SPR  
Nos. 2306-0039 & 2305-0028*

2. Application Materials:
  - A. Conditional Use Permit Application, undated; Summary Application, dated June 7, 2023; Aerial Shoreline Map; Sculpture Rendering; Critical Area Identification Form, undated; Joint Aquatic Resources Permit Application Form, dated May 17, 2023
  - B. Aerial Map
  - C. Site Plan
  - D. City of Oak Harbor City Council Agenda and Meeting Packet, dated February 21, 2023
  - E. City of Oak Harbor City Council Agenda and Meeting Packet, dated June 6, 2023
3. Zoning and Vicinity Map
4. Notice Materials:
  - A. Affidavit of Posting (Notice of Application), dated July 25, 2023
  - B. Notice of Public Hearing, dated August 12, 2023
  - C. Notice to Adjacent Property Owners Notice of Application, undated
  - D. Notice of Application, dated July 26, 2023
5. Public Comments:
  - A. Comment from Gray and Dee Giordan, dated August 4, 2023
  - B. Comment from Gina Shaffer, dated August 4, 2023
  - C. Comment from Gray Giordan, dated July 31, 2023
  - D. Comment from Michael Thelen, dated July 31, 2023
6. Artist's Renderings of Art Piece

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## **FINDINGS**

### Application and Notice

1. The City of Oak Harbor (Applicant) requests a conditional use permit (CUP) and site plan review (SPR) to allow for the installation of a 37-foot sculpture at Flintstone Park.<sup>1</sup> The proposed art piece would consist of a footing (base) and a sculpture known as the “Angel de la Creatividad” (“Angel of Creativity”), created by the artist Sebastian, that would be installed atop the base. The City of Oak Harbor City Council issued final approval for the location of the sculpture in Flintstone Park at a City Council meeting

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<sup>1</sup> The Hearing Examiner reviewed the Applicant’s accompanying requests for a Shoreline Substantial Development Permit and Shoreline Variance, concurrently with the CUP and SPR requests, and issued a decision approving them concurrently with this decision. The Hearing Examiner’s decision to bifurcate the two decisions—while still holding a single open-record hearing as required by state law—is discussed further below. *Hearing Examiner’s Findings, Conclusions, and Decision for Approval of a Shoreline Substantial Development Permit and Shoreline Variance (Nos. 2305-0024; 2306-0032), dated October 6, 2023.*



held on June 6, 2023. City Council also approved designation of the art piece as cultural/historic or sculpture/artistic. Associated work would include minor landscaping. Flintstone Park provides existing vehicular and pedestrian access, parking, public restrooms, seating, and other amenities. Flintstone Park is located at 1370 SE Bayshore Drive.<sup>2</sup> *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 3.*

2. The City of Oak Harbor (City) determined that the application was complete on July 20, 2023. On July 24, 2023, the City provided notice of the application by mailing or emailing notice to property owners within 500 feet of the property and to reviewing agencies and by posting notice on-site and at City Hall, with a comment deadline of August 9, 2023. On July 26, 2023, the City published notice of the application in the *Whidbey News Times*. On August 11, 2023, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to property owners within 300 feet of the property and to interested parties and by posting notice at City Hall. The next day, the City published notice of the hearing in the *Whidbey News Times*. *Exhibit 1, Staff Report, page 8; Exhibit 4.*
3. The City received several comments on the proposal from members of the public in response to its notice materials. Gray and Dee Giordan expressed concerns that the proposed sculpture would obstruct views and about road conditions adjacent to the project site. Gray Giordan also raised concerns about impacts to the natural environment. Gina Shaffer expressed concerns about the design of the proposed sculpture and the compatibility of the proposed development with the surrounding area. Michael Thelen recommended that the Applicant improve ingress and egress into Flintstone Park, provide additional parking, and provide access to public beaches adjacent to the sculpture location. Mr. Thelen echoed concerns about road conditions adjacent to the project site and recommended the proposed sculpture be relocated to Windjammer Park. *Exhibit 1, Staff Report, page 8; Exhibit 5.*

#### State Environmental Policy Act

4. The City determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), as provided in Washington Administrative Code (WAC) 197-11-800, which provides an exemption for minor new construction. *Exhibit 1, Staff Report, page 4.*

#### Comprehensive Plan and Zoning

5. The property is designated “Public Facilities” by the City Comprehensive Plan. The Public Facilities designation “accommodates public facilities and institutional uses such as schools, colleges, churches, governmental offices, public works yards, utility

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<sup>2</sup> The property is identified by tax parcel number S6565-00-00C09-0. *Exhibit 1, Staff Report, page 1.*

structures and public parks.” *City Comprehensive Plan, page 26*. City staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Enhance and protect the waterfront as an asset and implement the Waterfront Redevelopment, Branding and Marketing Program. [Land Use Element Policy 3.e]
- These policies may include public art plans and street furniture design guidelines that add visual and tactile interest throughout the city. [Urban Design Element Policy 4.a]

*Exhibit 1, Staff Report, pages 1, 6, and 7.*

6. The property is zoned “Public Facilities” (PF). Properties to the north and west are zoned Central Business District (CBD). Oak Harbor Bay is located to the east and south of the property. The PF zoning district is intended to “accommodate public facilities and institutional land uses, including but not limited to public parks, schools, churches, governmental offices, public works yards, utility structures, hospitals, and other similar public and quasi-public uses.” *Oak Harbor Municipal Code (OHMC) 19.20.770*. The PF zoning district was established to “aid the city in planning for public facilities, while preventing conflicts between incompatible land uses.” *OHMC 19.20.770*. Public parks are permitted outright in the PF zoning district. *OHMC 19.20.1050*. The proposed art piece would be secondary and subordinate to the use of the property as a public park. Structures located within the PF zoning district are subject to a maximum height of 35 feet. *OHMC 19.20.795*. As noted above, the proposed sculpture is 37 feet in height. However, if the City Council determines that a structure is culturally significant, artistic, or sculptural, the structure may extend over the height limit in parks within the PF zoning district with approval of a conditional use permit in accordance with *OHMC 19.28.065*. *OHMC 19.28.055*. Accordingly, the Applicant is requesting a conditional use permit (and site plan review) to construct the sculpture. *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 3.*

#### Existing Property and Surrounding Development

7. The property is generally flat and bounded by riprap and non-native shoreline associated with Oak Harbor Bay to the south and east. The property was created by deposition of dredge materials in the mid-20th century and has been used as an open space or a City park since that time. The property is currently developed with public restrooms, a long-extant flagpole memorial, a public fishing dock, gazebo, and other park amenities. Property to the north is developed with mixed-use commercial and residential. Property to the west is developed with retail stores and City park. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3.*

#### Conditional Use Permit

8. As noted above, the Applicant requests a CUP to construct a 37-foot sculpture within the PF zoning district. City staff reviewed the proposal and determined that it would meet

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Angel de la Creatividad CUP & SPR  
Nos. 2306-0039 & 2305-0028*

the specific criteria for approval of a conditional use permit for a sculpture located in the PF zoning district under OHMC 19.28.065, noting:

- The safety of the structure is dependent on the base plinth holding the art piece. Its location near Oak Harbor Bay would subject the piece to wind and water, and the nature of the site being fill material from dredging would require specific structural calculations and construction methods. The Applicant has contracted to work with Davido Consulting Group to provide engineered plans for the base structure, which would then be reviewed and approved by the City Engineer and Building Official.
- The location of the sculpture is on the landward side of the existing walkway, at the end of a walkway leading to the dock. This location is approximately 100 feet from the nearest property line to the west and at least 100 feet from property lines in all other directions.
- The impact of the proposed sculpture on the view of surrounding properties would depend significantly on the viewer's location near or within the park. From the street and adjacent public sidewalk, the 37-foot-tall structure would appear to be a thin narrow column widening at the top. It would not occupy more than two degrees of sight to the water and does not constitute a significant visual impediment to the view of the Oak Harbor Bay, marina, Maylor's Point or points further. In this particular area, the hill on Maylor's Point obscures the view of faraway features such as Mt. Rainier or the higher peaks of eastern Snohomish and King Counties. Nearer to the structure, the view would be upward toward the abstract angel figure. Viewing the sculpture from the dock or on the water would be similar, with the piece occupying little of the viewer's field of sight and not providing an impediment to the view of the city or surrounding environs.
- Existing mature trees are located on the north side of the park, nearest SW Bayshore Boulevard, and an existing flagpole is located at a similar height to the north and west of the proposed location. Buildings of an equivalent height are located on the property immediately adjacent to the park to the west. Those buildings do not have significant windows facing toward the proposed location.
- Review of the proposal does not consider the artistic or aesthetic merits of the art, merely the ability of the piece to be taller than the established height limit. Some comments from previous public meetings, social media posts and other forums has referenced the appearance of the artwork, which is not germane to this application.
- Constructed of metal on a concrete base, the sculpture should not be a significant risk for fire.

*Exhibit 1, Staff Report, pages 2 and 3.*

### Site Plan Review

9. Site plan review is required for applications requiring approval of a CUP. *OHMC 19.48.020.2.c*. City staff reviewed the proposal and determined that it would meet the specific criteria for site plan review approval under *OHMC 19.48.037*, noting:
- The proposed project is located within the Public Facilities land use category. The City Council has determined that the art piece has cultural and artistic merit. Many other art pieces are located within city parks in the Public Facilities land use category. As noted in the Comprehensive Plan, the City of Oak Harbor fosters art along with concerts, parades, and family-friendly festivals, furthering the livability of the community.
  - The proposal is located in the PF zoning district. The proposed development's location in an existing public park is consistent with other city parks that house public art pieces, such as the "Flintstone car," the "Dutch boy" in Windjammer Park, and the windmill replica in Holland Gardens Park. Public art is considered a consistent and subordinate use in parks.
  - The proposed project is located within the Shoreline Jurisdiction, but in an existing developed urban neighborhood. No SEPA review is required for the proposed development.
  - No water is required for the proposed sculpture.
  - No wastewater would be generated by the proposed development.
  - The structure consists of very little impervious surface and the overall project would reduce the amount of impervious surfaces within the park. Any construction would be required to comply with the Western Washington Stormwater Manual.
  - No fire protection is required for the proposed development.
  - No additional street improvements or other facilities would be required for the project. The Applicant does not propose to alter existing walkways.
  - The subject property is owned by the City of Oak Harbor. No easements, dedications or other property-related transactions would be required.
  - Park maintenance would be provided by the City of Oak Harbor.
  - The placement of the statue in the park may be expected to increase visitation to the park, however existing public streets, parking areas, sidewalks and restroom facilities are available and sufficient for such a development.
  - The Applicant has not proposed a phasing plan.
  - Slight changes in the site plan may be required after final review of construction plans and commencement of construction. City staff would review any changes to determine if they are in conformance with the approved site plan. If there are significant changes, City staff may require

the Applicant to submit an amendment to the site plan to be reviewed by the Hearing Examiner.

*Exhibit 1, Staff Report, pages 3 through 5.*

Testimony

10. City Senior Planner Ray Lindenburg testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive, zoning ordinances and the specific criteria for a conditional use permit. He explained that the City Council made a determination that the proposed sculpture is a cultural or artistic piece, which allows the proposed development to exceed the maximum height permitted in the PF zoning district with approval of a conditional use permit. He stated that the proposed development would be part of a highly developed urban park on the waterfront. He noted that there is an existing boardwalk and walkway that runs along the beach in Flintstone Park. He explained that the sculpture was gifted to the City by a sculptor and art collector. He stated that the City initially contemplated locating the proposed art piece in Windjammer Park. Mr. Lindenburg stated that the Applicant provided engineering plans which demonstrate that the proposed art piece would not present any hazards. He explained that the proposed development would not occupy a significant portion of the field of view. He noted that the sculpture would be obscured from the roadway during the summer by a line of existing mature street trees. He explained that the proposed art piece is not being reviewed for aesthetic merit as part of the application. *Testimony of Mr. Lindenburg.*
11. City Senior Planner Dennis Lefevre testified about the City's Shoreline Master Program and explained that sculptures fall under landscaping, which is permitted in recreational developments. He stated that recreational developments are permitted in the Urban Public Facility shoreline designation. He explained that the Applicant requires a shoreline variance because the proposed sculpture exceeds the maximum allowed height in the Urban Public Facility shoreline designation by two feet (as detailed in the companion decision to this matter). *Testimony of Mr. Lefevre.*
12. Applicant Representative and City Project Manager Gideon Cauffman explained that the proposed sculpture would impose a limited obstruction to the field of view. He stated that the site location was chosen by a committee comprised of members of the Parks Board, City Council Arts Commission, City staff, and other community members. He noted that geotechnical testing was completed for the project site. *Testimony of Mr. Cauffman.*
13. Richard Nash, Sculpture Northwest, explained that necessary structural improvements to the art piece have been completed. He noted that the installation of the art piece in Flintstone Park would be the first time the sculpture is displayed for enjoyment by the public at large. *Testimony of Mr. Nash.*

14. Ken Murphy expressed concerns about the engineered design for the footing of the proposed structure and the location of the sculpture on dredging fill. *Testimony of Mr. Murphy.*
15. Michael Thelen raised concerns about the cost of the proposed development. He also expressed concerns about seismic hazards at the site location and the stability of the proposed structure. *Testimony of Mr. Thelen.*
16. Gray Giordan echoed concerns about engineering costs. *Testimony of Mr. Giordan.*
17. John Kingsbury, Sculpture Northwest, explained that Sculpture Northwest would be paying for the installation of the proposed structure, including trucking and repair work. *Testimony of Mr. Kingsbury.*
18. Terry LeDesky explained that he is on Island County’s Historic Review Committee and , which envisioned creating an attraction in downtown. He noted that the site has a significant slope, which would eliminate adverse impacts of the height of the proposed structure. *Testimony of Mr. LeDesky.*

Staff Recommendation

19. Mr. Lindenburg testified that City staff recommends the approval of the conditional use permit and site plan review, with conditions. Moreover, Mr. Lindenburg and other members of City staff concurred with the Hearing Examiner’s suggestion that he produce two separate decisions on the proposal—one specific to the shoreline permits and one related to the land use permits—given some of the concerns raised by members of the public about the proposal allowing for a simplification of any appeal process *Exhibit 1, Staff Report, pages 8 and 9; Testimony of Mr. Lindenburg.*

**CONCLUSIONS**

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a conditional use permit and site plan review. *OHMC 18.20.220.2; OHMC 18.20.250; OHMC 18.40.100; 19.28.065.*

Criteria for Review

*Conditional Use Permit*

OHMC 19.28.065 sets forth the following criteria for approval of a conditional use permit for structures deemed as cultural/historic, or a sculpture/artistic in the Public Facilities district:

- (1) Conditional use permits for artistic and culturally significant structures enumerated in OHMC 19.28.055 and exceeding the height limitation of the district may be granted so long as the following conditions are met:
  - (a) It can be demonstrated to be safe;

- (b) It is located more than 30 feet away from the nearest property line or point thereon;
  - (c) It does not materially impair the view of surrounding properties; and
  - (d) It does not materially increase fire or other safety risks for the property or surrounding area.
- (2) The Hearing Examiner may require reasonable conditions to be met for granting a conditional use permit to exceed the height limitations, including but not limited to specifying the location, design, lighting, construction and use.

*Site Plan Review*

OHMC 19.48.037 sets forth the following criteria for site plan review approval:

An application that does not comply with these criteria shall be denied by the city:

- (1) Comprehensive Plan. The proposed site plan and other application information proposed for development shall be consistent with the city's comprehensive plan;
- (2) Zoning. The proposed site plan and other required application information shall meet the requirements of this title;
- (3) Natural Environment. The site plan and other required application information shall meet the requirements of environmentally sensitive area regulations of OHMC Title 20 and the State Environmental Policy Act, Chapter 197-11 WAC;
- (4) Public Services. The proposed project shall be designed to meet the following:
  - (a) Adequate water supply to city standards as listed in OHMC Title 13;
  - (b) Adequate sewer facilities to city standards as listed in OHMC Title 14;
  - (c) Appropriate surface water management to city standards as listed in OHMC Title 12;
  - (d) Adequate fire protection and hydrants to city standards as listed in OHMC Title 8;
  - (e) Appropriate street improvements (including sidewalks) or site access facilities to city standards for or to all anticipated uses within the project as listed in OHMC Titles 11 and 17 and Chapter 21.40 OHMC;
  - (f) Provisions for all appropriate deeds, dedications and all other easements; and
  - (g) Provisions made for access to and maintenance of all common facilities;
- (5) Existing Public Facilities and Services. The proposed project shall be designed to not adversely impact the public facilities and services which the city has adopted a level of service for without providing for additional mitigation means meeting the city's approval. Mitigation measures, if necessary, must be proposed by the applicant and designed by a certified professional in that applicable field;
- (6) Phasing Plan. In lieu of requiring the completion of all public/private improvements for the entire site prior to occupancy of any structure on the site, the city may approve a phasing plan. The city may require suitable guarantees as provided in Chapter 19.90 OHMC. The public/private improvements in each phase must be designed to stand on their own as required by the city. A phasing

plan can only be approved if each city department responsible for the conditions of the permit agrees on the phased development plan. In most cases, those departments are development services, public works, and fire.

The criteria for review adopted by the Oak Harbor City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

### Conclusions

#### *Conditional Use Permit*

- 1. With conditions, the proposed use would be consistent with the requirements for a conditional use permit under OHMC 19.28.065.** The City provided reasonable notice and opportunity to comment on the proposal. The City received several comments on the proposal in response to its notice materials and several members of the public testified at the open record hearing associated with the application. Members of the public expressed concerns about view obstruction, the proposed location of the art piece, road conditions adjacent to the project site, design of the proposed sculpture, and structural stability.

The City Council approved the location of the proposed development in Flintstone Park and the designation of the proposed sculpture as cultural/historic or a sculpture/artistic. The property is zoned “Public Facilities” (PF). The proposed sculpture would be permitted outright in the PF zoning district except that the structure exceeds the maximum height allowed in the PF zone by two feet. The City determined that the proposal is categorically exempt from SEPA environmental review. Flintstone Park provides existing vehicular and pedestrian access, parking, public restrooms, seating, and other amenities, that would be adequate to serve visitors to the proposed development.

The Applicant has contracted with Davido Consulting Group to provide engineered plans for the base structure to ensure stability of the sculpture on the site, which is comprised of dredging fill material. The engineered plans which would then be reviewed and approved by the City Engineer and Building Official.

The proposed structure would be located landward of the existing walkway, approximately 100 feet from the nearest property line to the west, and at least 100 feet from all other property lines. The art piece would not occupy more than two degrees of sight to the water and would not constitute a significant visual impediment to the view of the Oak Harbor Bay, marina, Maylor’s Point, or other points of interest. At the proposed location, the hill on Maylor’s Point obscures the view of features such as Mt. Rainier or the higher peaks of eastern Snohomish and King Counties. Flintstone Park is currently



developed with a flagpole that is similar in height to the proposed structure. Buildings of a similar height are also located on the property immediately adjacent to Flintstone Park. The sculpture is constructed of metal and would not pose a significant risk for fire. Conditions, as detailed below, are necessary to ensure that the proposal meets the specific criteria for conditional use permit approval and complies with all other applicable municipal code requirements. *Findings 1 – 19.*

#### *Site Plan Review*

- 2. With conditions, the proposed development would be consistent with the criteria for site plan review approval.** The property is designated “Public Facilities” by the City Comprehensive Plan and located in the PF zoning district. The proposed development would be consistent with the purpose of the Public Facilities land use designation to accommodate public facilities and institutional uses. The proposed structure would also be consistent with City Comprehensive goals and policies which provide for the enhancement and protection of the waterfront as an asset; implement the Waterfront Redevelopment, Branding and Marketing Program; and provides for public art that add visual and tactile interest throughout the City. Many other public parks in the City are developed with art pieces. Public art is considered a consistent and subordinate use in parks.

The proposal is exempt from SEPA review. As noted in Conclusion 1, Flintstone park provides adequate vehicular and pedestrian access, parking, public restrooms, seating, and other amenities. No street improvements or other facilities would be required to serve the proposed the development. The Applicant does not propose to alter any existing walkways. The proposed art piece does not require any water service. The proposed development would result in the reduction of impervious surfaces and would not generate any wastewater. Fire protection is not required for the proposed structure. The property is owned by the City of Oak Harbor, and no easements, dedications or other property-related transactions would be required. The City would provide park maintenance. The proposal does not include a phasing plan. City staff would review any changes to determine if they are in conformance with the approved site plan. Conditions, as detailed below, are necessary to ensure that the proposal meets the specific criteria for site plan review approval and complies with all other applicable municipal code requirements. *Findings 1 – 19.*

#### **DECISION**

Based on the above findings and conclusions, the request for a conditional use permit and site plan review to allow for the installation of a 37-foot-tall sculpture at Flintstone Park, located at 1370 SE Bayshore Drive, is **APPROVED**, with the following conditions:

1. The proposed Angel de la Creatividad statue shall be located consistent with the submitted site plan and constructed to a total height of no more than 37 feet.

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Nos. 2306-0039 & 2305-0028*

2. Any lighting for the art piece shall be not directed toward neighboring residential properties or create undue glare for pedestrians or motorists on public rights-of-way.
3. The Applicant shall coordinate with City staff on the construction plan review and subsequent approval and ensure that construction is completed in conformance with those plans.

**DECIDED** this 6<sup>th</sup> day of October 2023.



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ANDREW M. REEVES  
Hearing Examiner  
City of Oak Harbor

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF OAK HARBOR**

In the Matter of the Application of )	)	Nos. 2305-0024; 2306-0032
	)	
<b>The City of Oak Harbor</b> )	)	<b>Angel de la Creatividad</b>
	)	<b>Shoreline Permits</b>
	)	
For a Shoreline Variance and Shoreline )	)	FINDINGS, CONCLUSIONS,
<u>Substantial Development Permit</u> )	)	AND DECISION

**SUMMARY OF DECISION**

The City of Oak Harbor’s request for a a shoreline substantial development permit and shoreline variance to allow for the installation of a 37-foot-tall sculpture at Flintstone Park, located at 1370 SE Bayshore Drive, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 29, 2023.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

- Ray Lindenburg, City Senior Planner
- Dennis Lefevre, City Senior Planner
- Gideon Cauffman, Applicant Representative and City Project Manager
- Richard Nash
- Ken Murphy
- Michael Thelen
- Gray Giordan
- John Kingsbury
- Terry LeDesky

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report

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Angel de la Creatividad Shoreline Permits  
Nos. 2305-0024 & 2306-0032*

2. Application Materials:
  - A. Conditional Use Permit Application, undated; Summary Application, dated June 7, 2023; Aerial Shoreline Map; Sculpture Rendering; Critical Area Identification Form, undated; Joint Aquatic Resources Permit Application Form, dated May 17, 2023
  - B. Aerial Map
  - C. Site Plan
  - D. City of Oak Harbor City Council Agenda and Meeting Packet, dated February 21, 2023
  - E. City of Oak Harbor City Council Agenda and Meeting Packet, dated June 6, 2023
3. Zoning and Vicinity Map
4. Notice Materials:
  - A. Affidavit of Posting (Notice of Application), dated July 25, 2023
  - B. Notice of Public Hearing, dated August 12, 2023
  - C. Notice to Adjacent Property Owners (Notice of Application), undated
  - D. Notice of Application, dated July 26, 2023
5. Public Comments:
  - A. Comment from Gray and Dee Giordan, dated August 4, 2023
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  - C. Comment from Gray Giordan, dated July 31, 2023
  - D. Comment from Michael Thelen, dated July 31, 2023
6. Artist’s Renderings of Art Piece

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

## FINDINGS

### Application and Notice

1. The City of Oak Harbor (Applicant) requests a shoreline substantial development permit (SSDP) and a shoreline variance (SVAR) to allow for the installation of an art piece at Flintstone Park.<sup>1</sup> The SVAR would allow the 37-foot sculpture to exceed the 35-foot maximum height for structures in the Urban Public Facility shoreline designation. The proposed art piece would consist of a footing (base) and sculpture, known as the “Angel de la Creatividad” (“Angel of Creativity”), created by the artist Sebastian, and donated to the City. The City of Oak Harbor City Council issued final approval for the location of

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<sup>1</sup> The Hearing Examiner reviewed the Applicant’s accompanying requests for a conditional use permit and site plan review, concurrently with the SSDP and SVAR requests, and issued a decision approving them concurrently with this decision. The Hearing Examiner’s decision to bifurcate the two decisions—while still holding a single open-record hearing as required by state law—is discussed further below. *Hearing Examiner’s Findings, Conclusions, and Decision for Approval of a Conditional Use Permit and Site Plan Review (Nos. 2306-0039 & 2305-0028), dated October 6, 2023.*

the sculpture in Flintstone Park at a City Council meeting held on June 6, 2023. Associated work would include minor landscaping. Flintstone Park provides existing vehicular and pedestrian access, parking, public restrooms, seating, and other amenities. Flintstone Park is located at 1370 SE Bayshore Drive.<sup>2</sup> *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 2; Exhibit 3.*

2. The City of Oak Harbor (City) determined that the application was complete on July 20, 2023. On July 24, 2023, the City provided notice of the application by mailing or emailing notice to property owners within 500 feet of the property and to reviewing agencies and by posting notice on-site and at City Hall, with a comment deadline of August 9, 2023. On July 26, 2023, the City published notice of the application in the *Whidbey News Times*. On August 11, 2023, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to property owners within 300 feet of the property and to interested parties and by posting notice at City Hall. The next day, the City published notice of the hearing in the *Whidbey News Times*. *Exhibit 1, Staff Report, page 8; Exhibit 4.*
3. The City received several comments on the proposal from members of the public in response to its notice materials. Gray and Dee Giordan expressed concerns that the proposed sculpture would obstruct views and about road conditions adjacent to the project site. Gray Giordan also raised concerns about impacts to the natural environment. Gina Shaffer expressed concerns about the design of the proposed sculpture and the compatibility of the proposed development with the surrounding area. Michael Thelen recommended that the Applicant improve ingress and egress into Flintstone Park, provide additional parking, and provide access to public beaches adjacent to the sculpture's location. Mr. Thelen also echoed concerns about road conditions adjacent to the project site and recommended the proposed sculpture be relocated to Windjammer Park. *Exhibit 1, Staff Report, page 8; Exhibit 5.*

#### State Environmental Policy Act

4. The City determined that the proposal is categorically exempt from review under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW), as provided in Washington Administrative Code (WAC) 197-11-800, which provides an exemption for minor new construction. *Exhibit 1, Staff Report, page 4.*

#### Comprehensive Plan and Zoning

5. The property is designated "Public Facilities" by the City Comprehensive Plan. The Public Facilities designation "accommodates public facilities and institutional uses such as schools, colleges, churches, governmental offices, public works yards, utility

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<sup>2</sup> The property is identified by tax parcel number S6565-00-00C09-0. *Exhibit 1, Staff Report, page 1.*

structures and public parks.” *City Comprehensive Plan, page 26*. City staff identified the following Comprehensive Plan policies as relevant to the proposal:

- Enhance and protect the waterfront as an asset and implement the Waterfront Redevelopment, Branding and Marketing Program. [Land Use Element Policy 3.e]
- These policies may include public art plans and street furniture design guidelines that add visual and tactile interest throughout the city. [Urban Design Element Policy 4.a]

*Exhibit 1, Staff Report, pages 1, 6, and 7.*

6. The property is zoned “Public Facilities” (PF). Properties to the north and west are zoned Central Business District (CBD). Oak Harbor Bay is located to the east and south of the property. The PF zoning district is intended to “accommodate public facilities and institutional land uses, including but not limited to public parks, schools, churches, governmental offices, public works yards, utility structures, hospitals, and other similar public and quasi-public uses.” *Oak Harbor Municipal Code (OHMC) 19.20.770*. The PF zoning district was established to “aid the city in planning for public facilities, while preventing conflicts between incompatible land uses.” *OHMC 19.20.770*. Public parks are permitted outright in the PF zoning district. *OHMC 19.20.1050*. The proposed art piece would be secondary and subordinate to the use of the property as a public park.

Structures located within the PF zoning district are subject to a maximum height of 35 feet. *OHMC 19.20.795*. As noted above, the proposed sculpture is 37 feet in height. However, if the City Council determines that a structure is culturally significant, artistic, or sculptural, the structure may extend over the height limit in parks within the PF zoning district with approval of a conditional use permit in accordance with *OHMC 19.28.065*. *OHMC 19.28.055*. Accordingly, the Applicant is requesting a conditional use permit to construct the sculpture, as detailed in the companion decision to this shoreline-specific decision. *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 3.*

#### Existing Property and Surrounding Development

7. The property is generally flat and bounded by riprap and non-native shoreline associated with Oak Harbor Bay to the south and east. The property was created by deposition of dredge materials in the mid-20th century and has been open space or a City park since that time. The property is currently developed with public restrooms, a long-extant flagpole memorial, a public fishing dock, gazebo, and other park amenities. Property to the north is developed with mixed-use commercial and residential. Property to the west is developed with retail stores and City park. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3.*

Shoreline Management Act and City Shoreline Master Program

8. The proposed art piece would be located within 200 feet of the Oak Harbor Bay ordinary high water mark (OHWM). The State Shoreline Management Act (SMA) and the City Shoreline Master Program govern work within 200 feet of the Oak Harbor Bay OHWM. *RCW 90.58.030(2)(e) and (g); City Shoreline Master Program, page 1-2; City Shoreline Master Program, page A-1.* Any “substantial development” within the shoreline jurisdiction requires approval of an SSDP. *Substantial development* is any development for which the total cost or fair market value exceeds \$8,504 or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3)(e); City Shoreline Master Program, page 6-93.*<sup>3</sup> The Applicant’s Joint Aquatic Resources Permit Application (JARPA) form lists the fair market value of the project as above this threshold and, therefore, approval of an SSDP is required. *Exhibit 1, Staff Report, pages 13 through 16; Exhibit 2.A.*
  
9. The primary goal of the SMA is to protect the public interest in the state’s shorelines through a coordinated development process. The SMA contemplates protecting against adverse effects to the public health, the land, the vegetation, the wildlife, and the waters, and preserving the public’s opportunity to enjoy the physical and aesthetic qualities of the natural shoreline to the greatest extent feasible. Permitted uses in the shorelines must be designed and conducted in a manner to minimize damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water. *RCW 90.58.020.*
  
10. The purpose of the City Shoreline Master Program (SMP) is to carry out the responsibilities imposed on the City of Oak Harbor by the Shoreline Management Act; promote the public health, safety, and general welfare, by providing a guide and regulation for the future development of the shoreline resources of the City of Oak Harbor in a manner that reflects local conditions; further, by adoption, the policies of RCW 90.58, and the policies of the Master Program; and comply with the Shoreline Master Program Guidelines (WAC 173-26), including standards to ensure that development under the SMP will not result in a net loss of ecological functions. *City Shoreline Master Program, pages 1-1 and 1-2.* The SMP establishes seven shoreline environment designations “based on existing development patterns, biological capabilities and limitations, and community objectives.” *City Shoreline Master Program,*

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<sup>3</sup> *Development* is defined as:

a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.

*RCW 90.58.030(3)(a).*

page 2-7. The proposed development would be located within the “Urban Public Facility” environment. The purpose of the Urban Public Facility environment is to: provide for water-oriented public recreational facilities and public access to the shoreline for residents and visitors, in areas that are not encumbered by wetlands or other severe site limitations. A secondary purpose is to provide necessary water-oriented public facilities, such as wastewater treatment plants and stormwater outfalls. Restoration of degraded shoreline areas is also a secondary purpose of this environment designation.

*City Shoreline Master Program, page 2-12.*

Recreational development, which includes Flintstone Park and associated water-related recreational facilities are permitted outright in the Urban Public Facility environment. *City Shoreline Master Program, Table 1 – Shoreline Use, page 4-42.* Non-water-oriented recreational facilities are permitted in the Urban Public facility environment as accessory uses. *City Shoreline Master Program, Table 1 – Shoreline Use, page 4-42.* Landscaping, which includes sculptures, are permitted within recreational developments. *Exhibit 1, Staff Report, pages 5 and 6.*

11. Chapter 4 of the SMP provides general policies for shoreline use and planning that apply to all use and development types within the SMP jurisdiction. Chapter 4.D.8 SMP provides general policies for public access and recreation that apply to all use and development activity within the SMP jurisdiction. The Urban Public Facility environment requires a maximum height of 35 feet. *City Shoreline Master Program, Table 2 – Summary of Shoreline Development Standards, page 4-44.* Accordingly, the Applicant requests a shoreline variance to allow for installation of a 37-foot structure in Urban Public Facility environment. *Exhibit 1, Staff Report, pages 5 and 6.*

#### Shoreline Variance

12. Approval of a shoreline variance is required to allow for the installation of structure that exceeds the maximum height permitted in the Urban Public Facility environment by two feet. Under Chapter 6.G.1 SMP, the purpose of a shoreline variance is: strictly limited to granting relief to specific bulk dimensional, or performance standards set forth in the [SMP], and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the [SMP] would impose unnecessary hardships on the applicant or thwart the SMA policies as stated in RCW 90.58.020.  
*City SMP, page 6-96. Exhibit 1, Staff Report, page 6.*
13. The City SMP provides shoreline variance decision criteria specific to development landward of the OHWM. *City SMP, Chapter 6.G.3.a.* City staff reviewed the proposal



and determined that, with conditions, it would satisfy the specific criteria for a shoreline variance under Chapter 6.G.3.a and WAC 173-27-170. Specifically, City staff noted:

- The current use of the property is a park for recreation. The use of the property would not change. Further, works of art are considered a permitted accessory use in the SMP Urban Public Facility environmental designation.
- The Applicant requests a shoreline variance to accommodate the 37-foot height of the sculpture, which is a unique condition of the application.
- Oak Harbor is “[a] town rich in diverse culture” that “fosters art and hosts world renowned races, annual concerts, exciting parades, and family-friendly festivals.” *City Comprehensive Plan, page 7*. Policies “may include public art plans,” *City Comprehensive Plan, page 73*. The proposal was spearheaded by the Oak Harbor Arts Commission. The undertaking meets the needs of low impact development because the impenetrable surface is below the 2,000 square foot threshold to trigger the Western Washington Stormwater requirements. The installation of the sculpture creates employment for local contractors.
- The proposed installation meets the archaeological requirements outlined in the Shoreline Master Program. A cultural resources report, and Archaeological Monitoring Plan were completed for the project and sent to the Washington State Department of Archaeology & Historic Preservation under DAHP Project Number 2021-03-01432. The proposed sculpture is within the Central Business District of Old Town, an area where development is needed as stated in the Comprehensive Plan. *City Comprehensive Plan, page 58*.
- The proposed sculpture would be located within the boundaries of Flintstone Park, which is open to the public during regular park hours from dawn to dusk. The majority of the view is blocked to properties on the north section of Bayshore Drive and windows of the properties to the west are non-viewshed windows.
- The need for requesting a variance is the height, which is approximately two feet greater than what is allowed without seeking a variance.
- The location was chosen by the Angel de la Creatividad Installation Board, which comprised members of the general public, Arts Commission members, Park Board members, and members of Sculpture Northwest, a 501(c)3 non-profit organization. The proposed development would not damage or be detrimental to something else. Notice of application was mailed to neighboring property owners in July 2023.

*Exhibit 1, Staff Report, pages 5 through 7.*

#### Testimony

14. City Senior Planner Ray Lindenburg testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive, zoning ordinances and the specific review criteria for shoreline permits. He explained that the City Council made a determination that the proposed sculpture is a cultural or artistic piece, which allows the proposed development to exceed the maximum height permitted in the PF zoning district

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with approval of a conditional use permit (as detailed further in the companion decision to this shoreline decision). He stated that the proposed development would be part of a highly developed urban park on the waterfront. He noted that there is an existing boardwalk and walkway that runs along the beach in Flintstone Park. He explained that the sculpture was gifted to the City by a sculptor and art collector. He stated that the City initially contemplated locating the proposed art piece in Windjammer Park. Mr. Lindenburg stated that the Applicant provided engineering plans which demonstrate that the proposed art piece would not present any hazards. He explained that the proposed development would not occupy a significant portion of the field of view. He noted that the sculpture would be obscured from the roadway during the summer by a line of existing mature street trees. He explained that the proposed art piece is not being reviewed for aesthetic merit as part of the application. *Testimony of Mr. Lindenburg.*

15. City Senior Planner Dennis Lefevre explained that sculptures fall under landscaping, which is permitted in recreational developments. He stated that recreational developments are permitted in the Urban Public Facility shoreline designation. He explained that the Applicant requires a shoreline variance because the proposed development exceeds the maximum allowed height in the Urban Public Facility shoreline designation by two feet. *Testimony of Mr. Lefevre.*
16. Applicant Representative and City Project Manager Gideon Cauffman explained that the proposed sculpture would impose a limited obstruction to the field of view. He stated that the site location was chosen by a committee comprised of members of the Parks Board, City Council Arts Commission, City staff, and other community members. He noted that geotechnical testing was completed for the project site. *Testimony of Mr. Cauffman.*
17. Richard Nash, Sculpture Northwest, explained that necessary structural improvements to the art piece have been completed. He noted that the installation of the art piece in Flintstone Park would be the first time the sculpture is being displayed for enjoyment by the public. *Testimony of Mr. Nash.*
18. Ken Murphy expressed concerns about the engineered design for the footing of the proposed structure and the location of the sculpture on dredging fill. *Testimony of Mr. Murphy.*
19. Michael Thelen raised concerns about the cost of the proposed development. He also expressed concerns about seismic hazards at the site location and the stability of the proposed structure. *Testimony of Mr. Thelen.*

20. Gray Giordan echoed concerns about engineering costs. *Testimony of Mr. Giordan.*
21. John Kingsbury, Sculpture Northwest, explained that Sculpture Northwest (a non-profit organization) would be paying for the installation of the proposed structure, including trucking and any repair work, such that these costs would not be borne by the City. *Testimony of Mr. Kingsbury.*
22. Terry LeDesky explained that he is on Island County’s Historic Review Committee which envisioned creating an attraction in downtown. He noted that the site has a significant slope, which would eliminate adverse impacts of the height of the proposed structure. *Testimony of Mr. LeDesky.*

Staff Recommendation

23. Mr. Lindenburg testified that City staff recommends the approval of the SVAR and SSDP, with conditions. Moreover, Mr. Lindenburg and other members of City staff concurred with the Hearing Examiner’s suggestion that he produce two separate decisions on the proposal—one specific to the shoreline permits and one related to the land use permits—given some of the concerns raised by members of the public about the proposal allowing for a simplification of any appeal process. *Exhibit 1, Staff Report, pages 8 and 9; Testimony of Mr. Lindenburg.*

**CONCLUSIONS**

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide applications for a shoreline variance and shoreline substantial development permit. *OHMC 18.20.220.2; OHMC 18.20.250; OHMC 18.40.100.*

Criteria for Review

*Shoreline Substantial Development Permit*

Chapter 6, Subsection F.1.a of the City SMP provides that a development, use, or activity shall not be undertaken within the jurisdiction of the SMA, Chapter 90.58 RCW, and the SMP unless it is consistent with the policy and procedures of the SMA, applicable state regulations and the SMP.

*Shoreline Variance*

Chapter 6, Subsection G.3.a of the City SMP sets forth the following criteria for a shoreline variance for development located landward of the OHWM:

- (1) That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes, or significantly interferes with, reasonable use of the property.

- (2) That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Master Program and not, for example, from deed restrictions or the applicant's own actions.
- (3) That the design of the project is compatible with other permitted activities within the area and with uses planned for the area under the Comprehensive Plan and Master Program and will not cause adverse impacts to the shoreline environment.
- (4) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.
- (5) That the variance requested is the minimum necessary to afford relief.
- (6) That the public interest will suffer no substantial detrimental effect.

The criteria for review adopted by the Oak Harbor City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions

##### *Shoreline Substantial Development Permit*

1. **With conditions, the proposed use would be consistent with the criteria for a Shoreline Substantial Development Permit under WAC 173-27-150 and relevant City codes.** The proposal would be consistent with the policies of the SMA because the proposed project would not interfere with the public's use of the water or result in damage to the ecology or environment of the shoreline area. The City SMP designates the subject property as within the Urban Public Facility environment, which permits recreational development, including parks and associated water-oriented recreational facilities.

Landscaping, which includes sculptures, is permitted within recreational developments. The proposed development would be consistent with the purpose of the Urban Public Facility environment by providing for water-oriented public recreational facilities and public access to the shoreline for residents and visitors. The proposed art piece would attract visitors to Flintstone Park, which has an existing boardwalk and walkway that run along Oak Harbor. The proposed development would not require any alterations to these walkways or to other features of Flintstone Park. The proposed development would result in the reduction of impervious surfaces on the property and would not generate any wastewater. The proposed use would not have an adverse impact on the ecological function or value of the Oak Harbor marine system or wildlife. The proposed development is exempt from SEPA review.

The City provided reasonable notice and opportunity to comment on the proposal. The City received several comments on the proposal in response to its notice materials and several members of the public testified at the open record hearing associated with the application. Members of the public expressed concerns about view obstruction, the proposed location of the art piece, road conditions adjacent to the project site, design of the proposed sculpture, and structural stability. The Applicant provided engineering plans to ensure stability of the proposed development, which were reviewed by City staff. The sculpture would not occupy more than two degrees of sight to the water and would not constitute a significant visual impediment to the view of the Oak Harbor Bay, marina, Maylor's Point, or other points of interest. Conditions, as detailed below, are necessary to ensure that the proposal meets the specific criteria for shoreline substantial development permit approval and complies with all other applicable municipal code requirements *Findings 1 – 4, 7 – 23*.

#### *Shoreline Variance*

2. **With conditions, the proposal would be consistent with the specific criteria for a Shoreline Variance under the SMA and City SMP.** As noted in Conclusion 1, recreational development, including parks and associated water-oriented recreational facilities, are permitted outright in the Urban Public Facility shoreline environment. Landscaping, which includes sculptures, is permitted within recreational developments. Accordingly, the proposed development would be permitted outright on the property except that the proposed development exceeds the maximum height permitted in the Urban Public Facility shoreline environment.

The maximum height permitted in the Urban Public Facility environment is 35 feet. The proposed structure would be 37 feet, including an engineered base that would ensure stability of the sculpture on the site. The variance request is the minimum necessary to accommodate the proposed development. The location was chosen by the Angel de la Creatividad Installation Board, which comprised members of the general public, Arts Commission members, Park Board members, and members of Sculpture Northwest. Approval of the variance request would not constitute a grant of special privilege not enjoyed by the other properties in the area. Other parks in the City are also developed with art pieces. The art piece would not occupy more than two degrees of sight to the water and would not constitute a significant visual impediment to the view of the Oak Harbor Bay, marina, Maylor's Point, or other points of interest. The proposed development would not require any alterations or additions to the existing facilities in Flintstone Park and would not alter the use of the property as a public park. The proposed development would also not adversely impact adjacent properties or public access to the Oak Harbor shoreline.

Conditions, as detailed below, are necessary to ensure that the proposal meets the specific criteria for approval of a shoreline variance and complies with all other applicable municipal code requirements. *Findings 1 – 23.*

### DECISION

Based on the above findings and conclusions, the request for a shoreline variance and a shoreline substantial development permit to allow for the installation of a 37-foot-tall sculpture at Flintstone Park, is **APPROVED**, with the following conditions:

1. The proposed Angel de la Creatividad sculpture shall be located consistent with the associated site plans and constructed to a total height of no more than 37 feet.
2. Any lighting for the art piece shall not be directed toward neighboring residential properties or create undue glare for pedestrians or motorists on public rights-of-way.
3. The Applicant shall coordinate with City staff on the construction plan review and subsequent approval and ensure that construction is completed in conformance with those plans.

**DECIDED** this 6<sup>th</sup> day of October 2023.



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ANDREW M. REEVES  
Hearing Examiner  
City of Oak Harbor