

POULSBO DISTRIBUTION SCHEDULE

ORDINANCE NO. 2013-11

SUBJECT: Approving Amendment to the Concomitant Agreement for Liberty Bay Marina

CONFORM AS TO DATES & SIGNATURES

- (X) Filed with the City Clerk: 08/07/2013
- (X) Passed by the City Council: 08/14/2013
- (X) Signature of Mayor
- (X) Signature of City Clerk
- (X) Publication: 08/23/2013
- (X) Effective: 08/28/2013
- () Recorded: N/A

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Jill A. Boltz
City Clerk

August 26, 2013
Date

ORDINANCE NO. 2013-11

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, APPROVING AN AMENDMENT TO THE CONCOMITANT AGREEMENT FOR LIBERTY BAY MARINA; ADOPTING THE FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE POULSBO HEARING EXAMINER IN PART AND ADOPTING ADDITIONAL FINDINGS AND CONCLUSIONS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, in 1982 the Liberty Bay Marina property was rezoned through a concomitant agreement from Light Manufacturing to Planned Unit Development, and

WHEREAS, the 1982 concomitant agreement authorized development of the property for a marina according to an approved site plan with specific allowed uses and prohibited uses, and

WHEREAS, the owner of the property at the time did not comply with the approved site plan and the City of Poulsbo engaged in a series of code enforcement actions that resulted in a 1986 amendment to the concomitant agreement and, when the owner continued to violate the concomitant agreement, in the denial of business licenses for some of the tenants at the marina, and

WHEREAS, the current owner, Liberty Bay Marina, LLC, acquired the property in 1999, and the City of Poulsbo and the LLC entered into a voluntary agreement staying code enforcement pending submission of a permanent development agreement, and

WHEREAS, the voluntary agreement has expired, but the marina has continued to operate successfully since the expiration and Liberty Bay, LLC has applied to amend the concomitant agreement in order to recognize the successful operation and to align the concomitant agreement and the marina operation so that all code issues can be resolved, and

WHEREAS, the marina has been zoned Commercial since 2002 and the proposed amendment to the concomitant agreement would maintain that zoning, expand the uses allowed from those provided in the agreement to those currently present at the marina and other consistent uses, and

WHEREAS, the City of Poulsbo's SEPA Responsible Official issued a SEPA determination of non-significance for the proposed amendment, and

WHEREAS, the Poulsbo Hearing Examiner held a public hearing on amendment of the concomitant agreement and, after considering all testimony received, recommended that the amendment be approved, subject to certain modifications and conditions, and

WHEREAS, the Poulsbo City Council considered the Hearing Examiner's recommendation at a public meeting held on August 14, 2013 and determined to approve amendment of the concomitant agreement with certain changes to the Hearing Examiner's recommendation discussed in the findings set forth below, now, therefore,

THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Findings and Conclusions. In support of the actions taken by this ordinance, the Poulsbo City Council adopts Findings 1-18, Findings 29-31, and Conclusion 1 contained in the Poulsbo Hearing Examiner's March 4, 2013 Recommendation to the City Council. The Poulsbo City Council specifically does not adopt Findings 19-28 and Conclusions 2-5 of the Poulsbo Hearing Examiner's Recommendation. In lieu of those findings and conclusions, the Poulsbo City Council adopts the following findings and conclusions which, for ease of reference and for consistency with the adopted findings and conclusions of the Hearing Examiner are numbered as provided below:

A. Findings

32. In his Findings 19-28 and Conclusions 2-5, the Poulsbo Hearing Examiner addressed the compliance of the Liberty Bay Marina with the State Shoreline Management Act (SMA) and the 1976 Poulsbo Shoreline Master Program (1976 SMP). The Hearing Examiner concluded that the non-retail commercial and office uses in the Marine Science Center building were not allowed because the SMA allows only water-dependent overwater uses and the 1976 SMP requires a ten foot setback for commercial uses in shoreline areas unless those uses are water-dependent or water-related. On this basis, the Hearing Examiner concluded that the uses at the Marine Science Center were illegal uses and that approval of the concomitant agreement amendment should be conditioned upon the City seeking approval from the Washington State Department of Ecology of a shoreline exemption letter for the maintenance and repair of the Marine Science Center building.

33. Liberty Bay Marina, LLC, contends that the Poulsbo Hearing Examiner erred in his conclusion that the non-retail commercial and office uses in the Marine Science Center building were not allowed under the 1976 SMP. The LLC points to an interpretation of the 1976 SMP made by the City of Poulsbo Planning Director, acting as the City's Shoreline Administrator, on December 12, 2012. At issue in that interpretation was the relationship between subsections II.F and II.I of the 1976 SMP and the application of those subsections to the Liberty Bay Marina. Subsections II.F and II.I of the 1976 SMP read as follows:

F. COMMERCIAL DEVELOPMENT.

1. Except as provided in paragraph 2 below any commercial development, facility or use, except one which requires or is dependent on direct, contiguous access to the water, shall be set back from the ordinary high water mark by ten (10) feet. Only parking incidental to the commercial use activity shall be permitted on the shoreline. This activity is subject to a Conditional Use Permit in the conservancy and Semi-Rural environments.

2. Any water-dependent or water-related commercial development, structure, facility or use located within the following described shoreline areas, to wit:

South of the boat repair grid of the Port of Poulsbo; west of First Street, City of Poulsbo; North of the Port of Poulsbo fixed pier and floating moorage;

which satisfies the needs of the boating tourists and recreational public, including but not necessarily limited to the following uses: delicatessen, marine book store, souvenir shop, boat supplies, sales and/or repair, marine sporting goods, dive shop, bicycle shop, marine realty, fresh seafood market, tourist recreation facilities, restaurant, coffee shop, cocktail lounge, galley supply sales shall not be subject to the ten (10) foot setback requirement specified in paragraph 1 above.

...

I. MARINAS

1. Marinas shall be designed:
 - a. To protect fish and shellfish resources that may be harmed by the construction and operation of the facility; and
 - b. In such a manner that is aesthetically, physically and visually compatible with adjacent areas.
2. No boat sewage shall enter the water. Sewage pumpouts and treatment facilities or a hookup into public sewage lines or a sewage disposal system is required.
3. This activity is subject to a Conditional Use Permit in the Conservancy and Semi-Rural environment.

34. The question posed in the interpretation was whether the "Marina" use category in II.I was intended to include only boat moorage facilities or whether also included accessory uses such as commercial and office uses within the marina development. For the reasons set forth in the interpretation, which appears in the Hearing Examiner's record as Exhibit 6, the Poulsbo Planning Director/Shoreline Administrator determined that non-retail commercial and office development within marinas was an allowed use under Section II.I of the 1976 SMP governing marinas, and was not required to meet the use and location restrictions set forth in Section II.F of the 1976 SMP for general commercial uses. The Planning Director/Shoreline Administrator noted that the City Council had approved overwater commercial uses as part of the original 1982 site plan for the Liberty Bay Marina, leading to the conclusion that the marina category was seen as including those uses without the restrictions otherwise applicable to commercial development in shoreline areas. Under the Planning Director/Shoreline Administrator's interpretation, overwater non-retail commercial and office uses were an allowed use in marinas under the 1976 SMP, regardless of whether they were water-dependent or water-related.

35. As applied to the Liberty Bay Marina, the effect of the interpretation was to acknowledge that the existing non-retail commercial and office uses in the Marine Science Center were allowed uses under the 1976 SMP. While the City's 2012 SMP prohibits all

overwater commercial activities other than certain water-related and water-dependent uses, the non-retail commercial and office uses located in the Marine Science Center were allowed under the 1976 SMP and became legal nonconforming uses upon approval of the 2012 SMP by the Washington State Department of Ecology.

36. Although the Poulsbo Hearing Examiner had the administrative interpretation before him, he did not address the interpretation in his Findings, Conclusions, and Recommendation. Because the interpretation was not appealed, it should have controlled on the issue of whether the non-retail commercial and office uses in the Marine Science Center were allowed uses under the 1976 SMP. Because the Poulsbo Hearing Examiner did not follow the interpretation, the Hearing Examiner erred in concluding that a shoreline exemption was required.

37. The Poulsbo Hearing Examiner also determined that certain language should be added to the concomitant agreement amendments regarding parking. Specifically, the Hearing Examiner recommended that language be added to Subsection VI.F(2) of the amendment in order to allow the Planning Director to require the owner to revise its parking plan if future parking capacity issues arise. The Hearing Examiner also recommended that a new Subsection VI.H(1)(k) be added to the amendment in order to authorize the Planning Director to address potential weekend parking shortages by restricting office tenant weekend usage of the park lot.

38. There does not appear to be any testimony in the record which indicates that the "interim parking control plan" agreed to by the City and Liberty Bay Marina, LLC in January 2000 is not working or that additional controls by the Planning Director are necessary to guard against future parking shortages. In fact, as the Hearing Examiner indicated in Finding 10, the evidence reflected that "the Marina has nonetheless managed to operate successfully under the interim parking control plan since 2000" and "Since then the City has received no further complaints regarding parking at the Marina."

B. Conclusions.

2. The Poulsbo City Council concurs with the interpretation of the Poulsbo Planning Director/Shoreline Administrator that the non-retail commercial and office uses in the old Marine Science Center were allowed accessory uses to the marina and were not required to meet the water-dependent or water-related restrictions or the ten foot setback set forth in Section II.F of the 1976 SMP. Based upon this conclusion, the existing non-retail commercial and office uses were legal under the 1976 SMP and are legally nonconforming under the 2012 SMP. The concomitant agreement amendments should be approved without requiring the City or the property owner to obtain a shoreline exemption to allow the repair and maintenance of the site improvements in the future.

3. The Poulsbo City Council concludes that compliance with the interim parking plan agreed to by the City and Liberty Bay, LLC is sufficient to ensure that adequate parking is available for the existing uses on the site. Should any change of use or occupancy take place, parking could be re-evaluated and additional parking required.

4. The recommendation of the Poulsbo Hearing Examiner should be approved by the Poulsbo City Council, with the following exceptions:

a. The Hearing Examiner's first bulleted condition under his recommendation should not be imposed;

b. The last sentence in the Hearing Examiner's second bulleted condition should not be imposed;

c. The Hearing Examiner's proposed addition of subsection (k) to Section VI.H(1) of the concomitant agreement amendment should not be imposed.

d. The conditions that the Hearing Examiner proposed be added to the amending ordinance should be added to the concomitant agreement amendment.

5. Nothing in the approval of the concomitant agreement amendment relieves the owner from any requirement to comply with City codes. To the extent that construction code enforcement issues continue to exist, the owners and staff should be encouraged to find solutions that would result in the existing structures becoming compliant with the City's construction codes, including the issuance of "after-the-fact" permits upon verification of construction code compliance.

Section 2. Concomitant Agreement Amendment Approved - Required Modifications.
The concomitant agreement amendment presented to the Hearing Examiner is hereby approved and the Mayor is authorized to execute the same on behalf of the City, subject to the following modifications:

A. The following language shall be added at the end of Section VI.F(2):

Unless a revision thereto is approved by the City, onsite parking management shall continued to be governed by the provisions of the letter from Mark A. Craig to Glenn Gross dated April 10, 2000, attached to the 2000 Administrative Code Enforcement Agreement admitted to the hearing record established for the 2013 Concomitant agreement Amendment as Exhibit 4.

B. The following new subsection (j) is hereby added to Section VI.H(1):

(j) Medical uses authorized in IV(H)(2)(v) and (w) of this Agreement may not exceed 7,000 total square feet unless the City Planning Director finds that adequate parking will be available for the proposed future medical uses. If medical uses in excess of 7,000 total square feet are proposed, before committing to any new leases therefore Liberty Bay Marina shall notify the City Planning Director, who shall review the proposal as a Type I application under Pousbo Municipal Code title 19. To assess whether adequate parking is available for proposed medical uses exceeding 7,000 square feet, the City Planning director will review the total parking demand associated with the existing uses and the proposed new medical uses combined to determine whether the existing parking spaces will be adequate. To determine total parking demand, the City Planning Director may use a ratio of one parking stall per 300 commercial square feet or the current parking ratio in effect at the time of the request as guidance, in addition to taking into account site-specific conditions.

C. Within Section V.H(2), subsection (t) shall be removed and existing subsections (u) through (z) shall be renumbered as (t) through (y).

D. The following conditions shall be hereby imposed on the concomitant agreement amendment approval and shall be added to the concomitant agreement amendment in substantially the following form at an appropriate place to be determined by the Mayor, City Planning Director, and City Attorney:

1. Any development previously approved for the Liberty Bay Marina site that was never built retains no vested rights, all permits having expired. Any development that was in existence when the Liberty Bay Marina site plan was approved but which was subsequently removed may be rebuilt only if a new permit is issued pursuant to current regulations.

2. No site parking may be removed without prior City approval.

3. Any existing liveaboards in excess of the approved number (5%) shall be deemed grandfathered, but a liveaboard that leaves the Marina may not be replaced until the total number of liveaboards is in compliance. The term "liveaboard" is defined in the City's shoreline management regulations at PMC 16.08.040.

4. All future development shall comply with current City regulations as reviewed under the applicable land use permit process. All new developments and occupancies shall meet current SMP requirements, including limitations on overwater development, applicable shoreline buffers, and any requirements of the currently approved concomitant agreement.

5. So long as Liberty Bay Marina remains in compliance with the above conditions, no fines or sanctions will be pursued by the City arising out of any unpermitted developments or uses currently existing on the site. However, this condition does not preclude the City from bringing an enforcement action regarding the floating home currently located on the outside tie of C Dock.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance or any code section adopted or amended hereby.

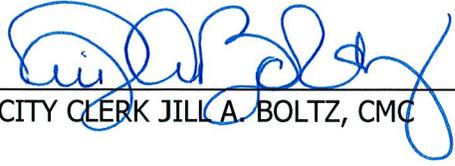
Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after publication of the attached summary, which is hereby approved.

APPROVED:

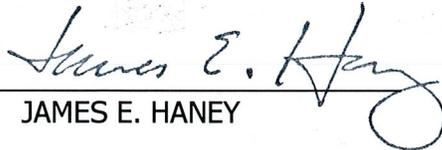


MAYOR REBECCA ERICKSON

ATTEST/AUTHENTICATED:


CITY CLERK JILL A. BOLTZ, CMC

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 
JAMES E. HANEY

FILED WITH THE CITY CLERK: 08/07/2013
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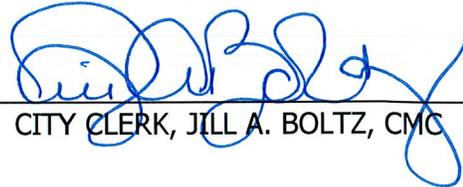
SUMMARY OF ORDINANCE NO. 2013-11
of the City of Poulsbo, Washington

On August 14, 2013, the City Council of the City of Poulsbo, Washington, approved Ordinance No. 2013-11, the main point of which may be summarized by its title as follows:

AN ORDINANCE OF THE CITY OF POULSBO, WASHINGTON, APPROVING AN AMENDMENT TO THE CONCOMITANT AGREEMENT FOR LIBERTY BAY MARINA; ADOPTING THE FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE POULSBO HEARING EXAMINER IN PART AND ADOPTING ADDITIONAL FINDINGS AND CONCLUSIONS; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this ordinance will be mailed upon request.

DATED this 21 day of August, 2013.



CITY CLERK, JILL A. BOLTZ, CMC