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

WHIDBEY ENVIRONMENTAL
ACTION NETWORK

Plaintiff,

v.

CITY OF OAK HARBOR

Defendant.

NO.

COMPLAINT FOR DECLARATORY
JUDGMENT AND
CONSTITUTIONAL WRIT OF
CERTIORARI

I. INTRODUCTION

1. On August 13, 2024, the Oak Harbor City Council voted against the will of the people to pass Ordinance 1999, which greatly impacts an election provision in the city code that previously gave the citizens of Oak Harbor the right to vote any time the City proposes to sell or transfer public park lands to a private entity. Ordinance 1999 took away this important right of the people, as an alleged “impediment” to a private developer’s proposal to pave over a significant portion of Hal Ramaley Memorial Park in downtown Oak Harbor, for use as a hotel parking lot.

2. This lawsuit challenges the City’s passage of Ordinance 1999, a true and correct copy of which is attached hereto as Attachment A.

1 **II. PARTIES**

2 3. This lawsuit is brought by WHIDBEY ENVIRONMENTAL ACTION NETWORK
3 (“WEAN”), a Washington nonprofit organization dedicated to promoting healthy ecosystems in and
4 beyond Island County. Founded in 1985 and recognized as a 501(c)(3) nonprofit in 1991, WEAN
5 works to achieve an Island County whose protected environment supports myriad species in harmony,
6 and whose engaged community recognizes the interdependence of all life and actively participates in
7 stewardship of, and advocacy for, our shared home. WEAN is a member organization which primarily
8 serves Island County, including Whidbey and Camano Islands, the cities of Oak Harbor, Coupeville,
9 and Langley, and the towns of Clinton, Freeland, and Greenbank. Oak Harbor is the largest city in
10 WEAN’s service area, with multiple households in WEAN’s member network. WEAN’s membership
11 includes households active in the Oak Harbor Garden Club, which stewards the Hal Ramaley
12 Memorial Park at issue in this lawsuit.
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15 4. Central to WEAN’s organizational interests is the preservation of public park lands,
16 which are essential to keeping our cities safe, welcoming, healthy, and biodiverse. Urban parks serve
17 vital ecological and social functions—greening our urban environments, supporting biodiversity and
18 pollinator populations amidst urban pressures, cleaning the air, providing vital cooling and shade, and
19 providing equal access to the outdoors and its benefits to all community members. Even a small park
20 can have a big impact on the health of city residents, and these benefits are ever-more essential under
21 conditions of climate change, housing insecurity, and population pressure.
22

23 5. The defendant is the CITY OF OAK HARBOR, Washington. The Oak Harbor City
24 Council passed the challenged ordinance—Ordinance 1999—by a 5 to 1 vote on August 13, 2024.
25 Ordinance 1999 was signed by Mayor Ronnie Wright on August 20, 2024.
26

1 to Windjammer Park; the original 1936 boundary included City Beach. Hal Ramaley Memorial Park
2 has been home to a Permaculture Food Forest since 2012, and was adopted by Oak Harbor Garden
3 Club members who have contributed thousands of hours of skilled volunteer labor to steward this free
4 public resource.

5
6 10. As later recounted by Ray Lindenberg, a senior planner with the City of Oak Harbor,
7 City staff nixed the developer’s initial mixed-used proposal stating that the City needed a “bigger,
8 more impactful project.”¹ As a result, the developer changed the proposal to one for an up-scale hotel.
9 After additional prodding by the City, the proposal was enlarged again to include a conference center
10 and rooms equipped with kitchens for longer stays. The project was enlarged to the point that it would
11 require the City to sell or otherwise transfer a substantial portion of Hal Ramaley Memorial Park for
12 use as the hotel’s parking lot.

13
14 11. During the City’s negotiations with the private hotel company, the hotel’s lawyers
15 discovered that the hotel could not acquire its desired portion of Hal Ramaley Memorial Park without
16 submitting the proposed acquisition to a vote of the citizens of Oak Harbor, as required by OHMC
17 1.30.010. The hotel’s lawyers then suggested to City staff that the code be changed, to take the vote
18 away from the people. Mr. Lindenberg later described this request by the hotel’s lawyers in a hearing
19 before the Oak Harbor City Council. In Mr. Lindenberg’s words:

20
21 The attorneys found out that this is going to run into a roadblock here,
22 because there is this requirement in your code that says that you have
23 to have an election, and you should probably work on that, and see if it
24 needs to be fixed. And so that’s what we did.²

25 ¹ See City Council Hearing on Ordinance 1999 (Aug. 13, 2024) at 00:20:45, *available at*
26 <https://www.youtube.com/watch?v=i6CCFMMUVGE&list=PL9TwodnptPx-UEzC-79MYoLb7piMV460&index=3>.

² *Id.* at 01:57:00.

1 12. On May 21, 2024, City staff put forward a formal recommendation that the Oak Harbor
2 City Council amend OHMC 1.30.010 to allow park lands to be sold or transferred without a vote of
3 the people. The staff report accompanying this recommendation described the vote as an
4 “impediment” to the proposed hotel project, and stated that City legal staff only “recently” became
5 aware of the requirement to hold a vote.
6

7 13. At each City Council meeting at which this proposal was considered, the public was
8 overwhelmingly against it. The Council received at least one hundred written and oral public
9 comments asking the City to keep OHMC 1.30.010 as it was, and to keep the people’s voting right
10 intact.
11

12 14. On August 13, 2024, the Oak Harbor City Council passed the proposed ordinance put
13 forward by City staff, which would eliminate the requirement to hold a vote before park land may be
14 sold or transferred to private interests, provided the private recipient of that land offsets the City’s loss
15 and the transaction is approved in a development agreement. This was accomplished through the
16 passage of Oak Harbor Ordinance 1999.
17

18 15. Through its approval of Ordinance 1999, the Oak Harbor City Council effectively
19 granted an exemption to the vote requirement for the proponent of the planned hotel project, allowing
20 the hotel to acquire a portion of Hal Ramaley Memorial Park without submitting its private acquisition
21 of public park land to a vote of the people as required by law. In doing so, the City Council violated
22 Washington’s code of ethics for municipal officers, which provides, in relevant part, that “No
23 municipal officer may use his or her position to secure special privileges or exemptions for himself,
24 herself, or others.” RCW 42.23.070(1) (emphasis added).
25
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1 16. In addition, prior to passing Ordinance 1999, the City did not evaluate the potential
2 environmental impacts of that ordinance under Washington’s State Environmental Policy Act
3 (“SEPA”), chapter 43.21C RCW.

4 17. SEPA is the legislative pronouncement of Washington’s policy regarding the
5 environmental impacts of government decisions, and the mandate that such impacts be timely and
6 thoroughly considered in the decision-making process. *Stempel v. Dept. of Water Resources*, 82 Wn.2d
7 109, 118, 508 P.2d 166 (1973); *ASARCO, Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 707, 601 P.2d
8 501 (1979). In essence, SEPA is an environmental full-disclosure law. *Norway Hill Pres. & Prot.*
9 *Ass’n v. King County Council*, 87 Wn.2d 267, 272, 552 P.2d 674 (1976). It requires state and local
10 agencies to assess potential impacts of their decisions, and if those impacts might be significant, to
11 undertake a thorough environmental study known as an Environmental Impact Statement (“EIS”).
12 RCW 43.21C.030; WAC 197-11-400 to -440.

13 18. By requiring agencies to evaluate environmental impacts up front, SEPA aims to
14 ensure that the future of our environment is shaped by deliberation, not default. *Stempel, supra*, 82
15 Wn.2d at 118. It does so in the widest possible way, requiring consideration of impacts on virtually
16 every element of the natural and built environments, including “parks or other recreational facilities,”
17 “land and shoreline use,” “aesthetics,” “recreation,” and “historic and cultural preservation.” This
18 requirement applies both to so-called “project” actions and “nonproject” actions, the latter of which
19 includes the adoption of ordinances, rules, and regulations. WAC 197-11-704(2)(b); WAC 197-11-
20 774.

21 19. Ordinance 1999 is a nonproject action within the meaning of SEPA. Accordingly, the
22 City of Oak Harbor violated SEPA when it passed Ordinance 1999 without any SEPA review
23 whatsoever.

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27. Such other relief as the Court deems just and equitable under the circumstances.

Dated this 30th day of August, 2024.

Respectfully submitted,

TELEGIN LAW, PLLC

By: 

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ATTACHMENT A

ORDINANCE NO. 1999

AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON,
AMENDING SECTION 1.30.010 OF THE OAK HARBOR MUNICIPAL CODE;
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE
DATE

WHEREAS, Chapter 1.30 of the Oak Harbor Municipal Code (“OHMC”), entitled “Sale or Exchange of Real Property” was adopted by Ordinance 1578 in 2010 and modified in Ordinance 1728 in 2015 with the intent of requiring voter approval by way of election prior to disposal of certain City property; and

WHEREAS, a requirement for voter approval of the sale or transfer of public park lands has the potential to hinder cooperation between the City and private property owners, the development of park lands and the overall economic development of the community; and

WHEREAS, community apprehension about the sale or loss of park lands has been considered and appropriate mitigations developed to address those concerns; and

WHEREAS, the City Council wishes to remove the requirement for voter approval prior to sale or trade of developed park property under specific circumstances to streamline the process of potential disposal of developed city parks property when it is determined to benefit the city and its citizens;

NOW THEREFORE, the CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. OHMC 1.30.010, Amended. Section 1.30.010 of the Oak Harbor Municipal Code, entitled Requirements for sale or disposition of city real property, is hereby amended to read as follows:

1.30.010 Requirements for sale or other disposition of city real property.

(1) No real property of the city shall be sold, released, leased, demised, traded, exchanged or otherwise disposed of unless the same is authorized by the city council after public hearing. Notice of such public hearing shall be given by publication of the notice in the city’s official newspaper at least 10 days prior to the hearing.

(2) Developed city park property shall not be disposed of in any manner without citizen approval in an election, except when presented, reviewed, and approved at a public hearing that meets at least one of the following criteria:

(a) The city council reviews a development agreement between the city and private entity and determines that; the property exchange is calculated at a one-to-one ratio of land area or greater in benefit to the city, the privately owned

land offered in exchange is of equal or greater market value than the publicly owned land, and the private land offered is an appropriate replacement for the public property to be granted. The city council shall determine that the property exchange is beneficial to the city based on park needs, location, environmental standards and accessibility to park users and in its discretion approve a development agreement.

(b) The city council reviews a development agreement between the city and private entity and determines that the value of physical infrastructure to city park land or improvements to city park land provided by the private entity is at least 150% of the market value of the land granted by the city to the private entity. Such values shall be determined by all parties in a mutually agreed development agreement approved by the city council.

(c) No citizen approval at an election shall be required when the city council determines by resolution that some portion or all of a developed park property is required to accomplish a necessary public purpose including, but not limited to, water, sewer or roadway improvements. In such circumstances the fair market value of the park property dedicated to such necessary public purposes shall be determined by appraisal and the amount of the fair market value of such park property shall be transferred to the city's accounts from the acquiring department's fund to the parks fund, and such proceeds shall be exclusively used to acquire replacement park property. When the language of any instrument by which any park property is acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, the city shall obtain the consent of the grantor or such other person, his or her heirs, successors, or assigns. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. All other requirements of this section shall also be applicable.

(3) The preferred timing for such a hearing is before the property is listed for sale, release, lease, demise, trade, exchange or other disposition. It is, however, recognized that this may not be possible especially in the case where there is litigation pending on the property in question.

(4) A SEPA analysis shall be done on such proposed action and available for public review at least 10 days prior to the hearing.

(5) The mayor shall forward to the city council a report on alternatives to the proposed action with the agenda.

(6) Nothing herein shall be construed as preventing the city from holding an executive session in accordance with Chapter 42.17 RCW as now in effect or hereafter amended.


(7) This section shall not apply to rental of property on a month-to-month basis or the rental of space at the marina done in the normal course of business for storage.

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

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

ADOPTED by the City Council this 13th day of August, 2024.

THE CITY OF OAK HARBOR


By: 
Ronnie Wright, Mayor

Dated: 08/20/2024

ATTEST/AUTHENTICATED:


Julie Nester, City Clerk

Approved as to Form:


Hillary J. Evans, City Attorney

Published: 08/28/2024