

HILLIER, SCHEIBMEIR, KELLY & SATTERFIELD, P.S.

MARK C. SCHEIBMEIR
BRIAN J. KELLY

WILLIAM T. HILLIER
Retired

ATTORNEYS AT LAW
299 N. W. CENTER STREET
P. O. BOX 939
CHEHALIS, WASHINGTON 98532
PHONE: (360) 748-3386/ FAX: (360) 748-3387
www.centerstlaw.com

ERIN L. HILLIER
SAMUEL D. SATTERFIELD

MICHAEL P. ROEWE
In Memoriam

July 30, 2021

VIA EMAIL

Cheryl Selby, Mayor
Clark Gilman, Mayor Pro Tem
City of Olympia
601 4th Avenue E.
Olympia, Washington 98501

Re: Complaint from Dan Leahy

Dear Mayor Selby and Mayor Pro Tem Gilman:

Your letter of July 16 arrived while I was on vacation, hence the slight delay in responding.

Your letter attaches a July 13 complaint submitted by Dan Leahy in reference to my role as Hearing Examiner and, in particular, my presiding over a December 2018 hearing for the Wellington Heights Subdivision. The following are my responses:

- Although it has been nearly three years since that matter was decided, I have a fairly good recollection of Mr. Leahy, both in terms of his written comments and his oral presentation. I recall that Mr. Leahy was a well informed and articulate advocate for his neighborhood. I have tremendous respect for neighborhood representatives as their task is often difficult and underappreciated – even by those who benefit. I have this same respect for Mr. Leahy and, while I disagree with his complaint, I recognize his right to raise these issues and my obligation to respond. Again, while I disagree with Mr. Leahy's assertions I hope my response demonstrates appropriate respect for him and his positions.

- As you are undoubtedly aware, the Wellington Heights Subdivision sought the residential development of previously undeveloped acreage lying due south of Fern, Division and Cushing Streets. The sole source of access to the site is via these streets to then gain access to collectors/arterials including 14th Avenue S.W., Decatur Street, 9th Avenue and Black Lake Blvd. The site is physically detached from all neighborhoods/roadways to its south. The requested subdivision did not propose to open

Cheryl Selby, Mayor
Clark Gilman, Mayor Pro Tem
July 30, 2021
Page 2

Re: Complaint of Dan Leahy

any streets to the south or provide access to Cooper Point Road. Most importantly, it did not propose any modification to the current disconnection of Decatur Street from Caton Way S.W. As Mr. Leahy notes, the City had clearly expressed a policy of keeping these streets disconnected, both by means of the intervening public pathway as well as by the terms of the City's recently updated Comprehensive Plan.

- For these reasons, the possible southerly extension of Decatur Street was not an issue in the Wellington Heights hearing. There was no suggestion during the hearing that Decatur be opened to Caton. Instead, consideration of the subdivision was solely premised on its traffic flowing to the north, with no discussion of connection between Decatur and Caton Way.

- As you know, my role as Hearing Examiner does not include any authority to regulate the use of City streets (with the exception of streets internal to a development). In other words, as part of the Wellington Heights hearing I had no authority to alter the status of Decatur Street or cause its connection to Caton Way. What's more, I cannot envision any future hearing in which I will have any decision-making with respect to this issue. If Decatur is ever extended it will be done by the City Council, not the Hearing Examiner, with guidance from the Engineering, Public Works and Planning Departments, and without guidance from the Hearing Examiner.

- Any reference to Decatur Street and/or Caton Way in my decision was simply for the purpose of "setting the table", that is, of describing the project in relation to surrounding neighborhoods and streets, including those to which it would have no access (Caton Way). I am attaching a copy of my decision to better explain this.

- With these points in mind, I must confess uncertainty as to the nature of Mr. Leahy's complaint. He correctly identifies my role as registered agent for Mr. and Mrs. Pehl, owner of the Volkswagen dealership in Olympia, etc., and then asserts that this relationship has some bearing on the Wellington Heights matter. But I do not see any connection between the two – now or then. Indeed, I am at a loss as to any connection. It was because there is no connection between the two that no disclosure was felt necessary. I feel the same way about this today as I did three years ago.

- Mr. Leahy wonders if I may have discussed the Wellington Heights hearing with Mr. and Mrs. Pehl. The answer is "no" for the simple reason as there would have been no reason to. At the risk of repetition, there is simply no connection that I can see.

In one respect it is quite unusual for this complaint to be raised nearly three years after the hearing but, in another respect, the delay in raising it allows the passage of time to help demonstrate my points. Three years later, Decatur Street remains disconnected

Cheryl Selby, Mayor
Clark Gilman, Mayor Pro Tem
July 30, 2021
Page 3

Re: Complaint of Dan Leahy

from Caton Way and, I assume, will stay that way indefinitely. The Wellington Heights decision had no bearing on its status then, now or in the future.


It is possible that I am missing Mr. Leahy's point. If so, perhaps he can clarify the nature of his complaint and I will respond further. Otherwise, I hope that this letter provides you with a full response.

Should you have any follow-up questions or comments, certainly let me know.

Very truly yours,

HILLIER, SCHEIBMEIR,
KELLY & SATTERFIELD, P.S.

By



Mark C. Scheibmeir
mark@centerstlaw.com

MCS:klf
Encl.

cc: Mr. Jay Burney, City Manager
Mr. Mark Barber, City Attorney

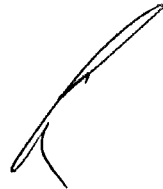
BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE:) HEARING NO. 18-1315
WELLINGTON HEIGHTS)
SUBDIVISION.) ORDER CLARIFYING DECISION

The Decision dated February 19, 2019, contains references to a "neighborhood park" at several locations, including page 2, line 24, page 2, lines 1 and 13, and page 7, lines 14 and 15. The use of the term "neighborhood park" is incorrect. As noted in the Staff Report the proper term should be "pedestrian/bike trail".

NOW, THEREFORE, the Decision is hereby amended such that all use of the term "neighborhood park" as referenced above is corrected to "pedestrian/bike trail".

DATED this 21 day of February, 2019.



Mark C. Scheibmeir
City of Olympia Hearing Examiner

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE:

HEARING NO. 18-1315

WELLINGTON HEIGHTS
SUBDIVISION.

FINDINGS OF FACT, ANALYSIS,
CONCLUSIONS OF LAW
AND DECISION

APPLICANT:

ABS Investments, LLC
P. O. Box 6130
Olympia, Washington 98507

REPRESENTATIVES:

Chris Merritt
Olympic Engineering
P. O. Box 12690
Olympia, Washington 98508

Thomas Westbrook
Rodgers, Kee, Card & Strophy, P.S.
324 W. Bay Drive N.W., Suite 201
Olympia, Washington 98502

SUMMARY OF REQUEST:

The Applicant requests preliminary approval of a subdivision containing 56 single-family residential lots on 9.4 acres, with associated improvements.

LOCATION OF PROPOSAL:

2000 Block of 18th Avenue S.W., Olympia.

SUMMARY OF DECISION:

The proposed subdivision is **approved** subject to conditions.

BACKGROUND

The Applicant seeks preliminary subdivision approval to subdivide 9.4 acres of land into 56 lots for single-family housing together with connecting streets, stormwater facilities and soil and vegetation preservation areas. The project is referred to as the "Wellington Heights Subdivision" or "Wellington Heights".

In 2005, a virtually identical subdivision was proposed (the "2005 Application"). Just as with the current application, the 2005 Application proposed to subdivide the 9.4 acres into 56

1 single-family residential lots. That 2005 Application was approved by then Hearing Examiner
2 Thomas Bjorgen in January 2007 ("Mr. Bjorgen's Decision"). Mr. Bjorgen's Decision notes that,
3 with the exception of a few comments relating to stormwater, there was no public opposition to
4 the application. Mr. Bjorgen concluded that the proposed subdivision would serve the public use
5 and interest and approved the 2005 Application subject to the conditions recommended by City
6 Staff.

7 Approval of the 2005 Application remained in effect for ten years, or until 2017. No
8 action was taken to commence development by 2017 causing the 2005 Application to lapse.
9 Not long after the earlier subdivision approval lapsed, ABS Investments, LLC submitted the
10 current application. It effectively seeks reapproval of the earlier project.

11 Although the 2005 Application had little or no public opposition, the current application
12 has encountered a firestorm of public hostility. Hundreds of nearby residents have expressed
13 opposition by written statement, petition or oral testimony. The Southwest Olympia
14 Neighborhood Association, SWONA, and the Wellington Heights Homeowner's Association are
15 also opposed. Similarly, several past or current City Council Members have expressed their
16 dislike of the project. There has been no public expression of support.

17 Members of the public have identified several reasons for their opposition. The most
18 prominent ones are traffic-related. These traffic-related concerns can be further divided into three
19 principal categories: (1) impacts to streets, traffic and pedestrian travel in adjoining
20 neighborhoods, particularly the Wellington West neighborhood; (2) impacts to regional traffic
21 including 14th Street, 9th Street, Decatur Street, Fern Street and Black Lake Blvd., and all
22 associated interchanges; and (3) the possible extension of the subdivision's internal streets to
23 Decatur Street. This third concern can be again divided into several individual concerns: (1) an
24 entry point onto Decatur at or near the existing neighborhood park; (2) increased traffic on
25

1 Decatur; and (3) the possible loss of the neighborhood park and the conversion of Decatur into a
2 major arterial, allowing access south to Cooper Point Road. Members of the public have also
3 expressed concerns over the loss of this mostly forested area as a buffer from the adjoining auto
4 mall to the south. Separately, the adjoining property owner to the south, Bruce Titus, has
5 expressed concerns regarding the project's stormwater impact on his adjoining commercial
6 properties.

7 During project review the Applicant's traffic engineers and City Staff proposed various
8 traffic "calming" devices to lessen neighborhood and regional traffic impacts. The Applicant's
9 engineer concludes, and the City Staff agrees, that by implementing these devices the project will
10 not have a significant impact on levels of service at critical streets and intersections. City Staff
11 has also repeatedly stressed that just because the project identifies a possible future extension of
12 its internal streets to Decatur does not mean that that extension will necessarily occur; or that it
13 will affect the neighborhood park; or that it will lead to the conversion of Decatur into a major
14 arterial connecting south to Cooper Point Road.

15 Also during the course of the application, the Applicant's stormwater engineers proposed
16 changes to the management of the existing stormwater running through the property from the
17 Wellington West neighborhood to the north. City Staff has reviewed these changes and
18 concludes that they will result in a simpler yet more effective stormwater system that will lessen
19 stormwater impacts to adjoining commercial properties.

20 After considering the public's concerns relating to traffic, stormwater and other issues,
21 City Staff finds that the project complies with the City's Municipal Code, Development
22 Regulations and Engineering Codes, and recommends approval of the subdivision subject to a
23 list of conditions.
24
25

PUBLIC HEARING

Prior to the public hearing I undertook an independent site visit lasting two-plus hours. My visit included a walk through the interior of the project site; a walk through surrounding neighborhoods; and a drive through all surrounding neighborhoods.

The public commenced at 6:00 p.m. on Monday, December 10, 2018, in the Council Chambers in the City Hall. The City appeared through Paula Smith of Planning Staff. Several other members of City Staff were also present. The Applicant appeared through its owner, Alex Vo and the project engineer, Chris Merritt. The Applicant was represented by Thomas Westbrook. An Interested Party, Mauri Shuler, appeared in person and was represented by her attorney, Allen Miller. Several dozen members of the public were also present.

Testimony was received from the City through Ms. Smith, Cari Hornbein, Tim Smith, Jeff Fant, Steve Thompson and Dave Smith. Testimony from the Applicant was received from Mr. Vo and Mr. Merritt. Eight to ten members of the public testified. A list of those providing testimony is attached hereto. All members of the public providing testimony were opposed to the project. A verbatim recording was made of the public hearing and all testimony was taken under oath.

Documents considered at the time of the hearing were the City Staff Report including Attachments 1 through 27 (becoming Exhibits 1 through 27) totaling several hundred pages. Of particular note is Exhibit 13: a collection of all written public comment received in advance of hearing. It includes more than 100 public comments, all in opposition to the project as well a petition in opposition signed by 134 neighbors. Also of note is Exhibit 5: Mr. Bjorgen's Decision approving the 2005 Application. Several more exhibits were submitted during the hearing bringing the total number of exhibits at the hearing to 33. A list of these exhibits is attached.

1 At the commencement of the hearing Ms. Shuler, through her attorney, Mr. Miller,
2 submitted a Motion to Continue (the "Shuler Motion"). The Shuler Motion pointed out that just
3 prior to the public hearing the City gave notice that it would ask the Hearing Examiner to revise
4 several stormwater-related conditions imposed as part of the SEPA MDNS. The Shuler Motion
5 argued that having the Hearing Examiner revise these conditions, rather than having the MDNS
6 returned for further review and revision by City Staff, would effectively deny interested parties
7 the opportunity to appeal these changes. The Motion asks that the hearing be continued so that
8 the MDNS can be returned to the City for further review. In light of there being a large audience
9 present and ready to testify, the Hearing Examiner concluded that the Motion should be deferred
10 to the end of the hearing to give all present an opportunity to speak that evening.

11 At the conclusion of all testimony the Hearing Examiner returned to the Shuler Motion.
12 After considering the positions of the parties, the Hearing Examiner ordered that the Applicant
13 and City would be given additional time to provide written response to the Motion, followed by
14 an opportunity for Ms. Shuler to reply. Ultimately the City agreed to return the MDNS for
15 further consideration/revision. As a result, the Hearing Examiner ordered the SEPA
16 Determination to be returned to City Staff for consideration of modification of the conditions of
17 approval. Any revisions to the SEPA Determination would be subject to the comment and appeal
18 periods as required by Olympia Municipal Code. The Hearing Examiner further ordered that
19 once review of the SEPA Determination had been completed the public hearing would be
20 resumed together with any appeal of the revised SEPA Determination (if made).

21 Following this Order, City Staff returned the SEPA Determination decided to revise the
22 stormwater-related conditions imposed through the SEPA MDNS. The neighboring property
23 owner to the south, Mr. Titus, through his attorney, Jim Tomlinson, submitted a written appeal of
24 the revised SEPA MDNS. Mr. Titus did not, however, pay the required filing fee within the
25 allowed time and City Staff declared that the appeal was not perfected.

1 Since Mr. Titus' appeal of the revised MDNS was not perfected, the public hearing
2 resumed on Monday, February 4, 2019, at 6:00 p.m. in the Council Chambers in the City Hall
3 solely to hear additional testimony in response to the revised SEPA MDNS. The City again
4 appeared through Paula Smith of Planning Staff together with a number of other staff members.
5 The City was represented by Michael Young, Deputy City Attorney. The Applicant again
6 appeared through Mr. Vo and Mr. Merritt and was represented by Mr. Westbrook. Ms. Shuler's
7 counsel, Mr. Miller, and Mr. Titus' counsel, Mr. Tomlinson, did not appear and neither party
8 submitted any additional materials.

9 In advance of the continued public hearing on February 4, City Staff submitted a
10 Supplemental Staff Report consisting of 12 attachments (submitted as Supplemental Exhibits 1
11 through 12). At the commencement of the hearing three additional supplemental exhibits were
12 submitted. A list of all supplemental exhibits is attached. Included among the supplemental
13 exhibits is the revised MDNS (Supplemental Exhibit 5) as well as approximately 100 more
14 public comments in opposition to the project (Supplemental Exhibit 6).

15 At the February 4 hearing testimony was received from Paula Smith, Steve Thompson
16 and Jeff Fant of City Staff; Chris Merritt on behalf of the Applicant, and from three members of
17 the public: Kate Fehsenfeld, Mark Toy and Steve Karl. All testimony was again taken under
18 oath. City Staff continues to recommend approval of the proposed subdivisions subject to the
19 revised conditions imposed under the SEPA MDNS together with the additional conditions set
20 forth in the Staff Reports.

21 After consideration of the testimony and exhibits described, above the Hearing Examiner
22 makes the following Findings of Fact, Analysis, Conclusions of Law and Decision.
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FINDINGS OF FACT

1. Any Findings of Fact contained in the foregoing Background section are incorporated herein by reference and adopted by the Hearing Examiner as his own Findings of Fact.

General Findings.

2. The Applicant seeks preliminary plat approval to subdivide 9.4 acres of land into 56 lots for single-family housing with connecting streets, stormwater facilities and soils and vegetation preservation areas. Maps identifying the location of the project site are found on pages 2 and 3 of the Staff Report. Additional maps of the subdivision are provided as Attachment 11 to the Staff Report.

3. The project is bounded on the south and west by the Olympia Auto Mall. To the north is a single-family residential neighborhood referred to as "Wellington West". To the east and northeast are undeveloped or underdeveloped residential areas including a smaller development known as Ellis Estates. Further east is a small park and pedestrian/bike trail that also serves to disconnect Decatur Street from Caton Way. This park prevents traffic on Cooper Point Road from using Caton Way/Decatur Street to gain access to Harrison Avenue, etc.

4. The project site has a zoning designation of Residential Two Family (R6-12). The proposed use is a permitted use within this zoning designation subject to subdivision approval.

5. The project site is undeveloped and currently has no internal road system. It is generally flat with the exception of a steep bluff along the entire south boundary, separating the project site from the commercial auto mall immediately to the south. The project site is a mix of forested and brushy areas with the perimeter being largely ringed by large trees. The interior consists mostly of brush and brambles. A number of informal footpaths course through the property and there is a great deal of evidence that the site is used for homeless encampments.

1 6. Vehicle access is gained by three north/south residential streets: Fern, Division
2 and Cushing Streets. Each of these streets currently terminates at cul-de-sacs along the north
3 boundary of the project site.

4 7. The project would extend Fern, Division and Cushing Streets southward to a
5 connection with a new 18th Avenue Street, allowing traffic to loop through the subdivision.

6 8. The new 18th Avenue Street will be stubbed at the east boundary of the project to
7 allow for future eastward extension to Decatur Street. The future expansion of 18th Avenue, and
8 its connection to Decatur Street, are envisioned in the Transportation 2030 Street Capacity and
9 Connectivity Map (Exhibit 3) found in the current City Comprehensive Plan.

10 9. In addition to associated roadways, the project will provide:

- 11 • Curbs, gutters and sidewalks.
- 12 • Two soils and vegetation protection areas.
- 13 • Two open space/storm tracts with associated landscaping.
- 14 • Street trees.
- 15 • Utilities for sewers, water and stormwater.

16 10. There is currently a storm drainage system running north to south through the
17 project site. This existing storm drainage ditch allows stormwater from the Wellington West
18 Subdivision to be conveyed south through the project site to an east/west drainage ditch along
19 the north boundary of the adjoining commercial property. The east/west drainage ditch conveys
20 the Wellington West stormwater westward until it reaches another north/south drainage ditch
21 which continues the stormwater south to Percival Creek. The existing drainage system for
22 Wellington West has, on occasion, been insufficient to manage all of the Wellington West
23 stormwater, causing stormwater impacts to the auto mall properties south of the project.

1 Findings Relating to Public Notices and Meetings.

2 11. Notification of the initial public hearing was mailed to the parties of record,
3 property owners within 300 feet and recognized neighborhood associations, posted on the site
4 and published in The Olympia on November 2, 2018, in conformance with OMC 18.78.020.

5 12. Notification of the renewed public hearing on February 4, 2019, together with the
6 revised MDNS, was mailed to property owners within 300 feet of the subject property, parties of
7 record, and recognized neighborhood associations on December 27, 2018. The continuation of
8 the hearing was published in The Olympia on January 3, 2019, and posted onsite.

9 13. Prior to submitting the preliminary plat application, the Applicant had a pre-
10 submission conference with the Site Plan Review Committee in October of 2017. City Staff
11 soon began to receive public comments in opposition to the proposal.

12 14. The preliminary plat application was submitted and deemed complete on
13 March 30, 2018.

14 15. The City and the Applicant co-hosted a neighborhood meeting on April 23, 2018
15 with a significant number of comments in opposition to the project.

16 16. Following the neighborhood meeting, City Staff determined that it needed
17 additional information in order to proceed with the application. This led to a revised set of plans
18 and reports in August 2018. After a second review several amendments were made to the
19 preliminary plat map (Exhibit 11) and the preliminary drainage plan (Exhibit 12). Following
20 these changes City Staff recommended approval of the plat on October 24, 2018.

21 17. At all stages of the review process there has been significant public opposition,
22 mostly from residents of the Wellington West and other nearby residential neighborhoods. The
23 commonly voiced concerns include: increased traffic; pedestrian safety; a future street
24 connection to Decatur Street; a possible future connection between Caton Way and Decatur

1 Street; the conversion of Decatur Street to a major arterial; stormwater management; and the loss
2 of a vegetative buffer between the auto mall properties and nearby residential neighborhoods.

3 Findings Relating to General Subdivision Requirements.

4 18. The project is subject to the requirements of Chapter 18.60 OMC regarding tree
5 densities and tree protection. The Applicant has dedicated two soil and vegetation protection
6 areas to satisfy the requirements for tree protection, as well as a Street Tree Plan. City Staff
7 finds that the project, as conditioned, complies with the requirements for tree, soil and native
8 vegetation protection and replacement and for street trees.

9 19. City Staff finds that, as conditioned, the project will satisfy the requirements of
10 OMC 17.16.090.B for public dedications. This requirement is satisfied through dedication of
11 lands for street rights of way as well as through payment of transportation, park and school
12 impact fees.

13 20. The site is shown to be within Zone X, labeled as Areas of Minimal Flood
14 Hazard. As earlier noted, the existing storm drainage system currently running through the
15 property had led to flooding of the parking areas to the south during intense stormwater events.
16 The project is conditioned upon improvements to this existing stormwater system to protect
17 downstream property owners, as well as proper management of onsite stormwater.

18 21. The project has several lots that are less than 5,000 square feet. These lots are
19 subject to the Garage Placement and Widths Standards found in OMC 18.04.060.EE. City Staff
20 finds that the project, as designed, satisfies these Garage Placement and Width Standards.

21 22. The project is subject to the Residential Development Standards found in OMC
22 18.04.080 Table 4.04. The proposed density of 56 units meets the minimum density standards
23 and does not exceed the maximum units allowed in the R6-12 District. All lots within the plat
24 meet the minimum lot size and lot width.

1 23. As the project proposes more than 10 new lots, it must satisfy the requirements of
2 OMC 18.04.080.G.2 for variation in housing design to avoid monotonous development patterns.
3 City Staff finds that the project, as designed, satisfies these requirements.

4 24. Pursuant to OMC 18.12.140, Cultural Resources shall be protected from damage
5 during construction and all other development activities. City Staff finds that the project has a
6 low risk of encountering archaeological items. City Staff further finds that the project, as
7 conditioned, will comply with the requirements of OMC 18.12.140.

8 25. Pursuant to OMC 18.36.040.J, all stormwater drainage ponds, swales and other
9 stormwater facilities shall be located where they will not unreasonably impede pedestrian access
10 to or between buildings, and shall be attractively landscaped with native or well adapted drought
11 tolerant plants and integrated into the site design. The Applicant has submitted a Landscaping
12 Plan which City Staff generally finds acceptable. Final landscaping plans will be submitted at
13 time of engineering plan review. City Staff finds that the project, as conditioned, complies with
14 the landscaping requirements of Chapter 18.36 OMC.

15 9. Pursuant to 18.40.060.I, each lot shall have a minimum of 30 feet of frontage on a
16 public or private street. The director may allow street frontage to be reduced or eliminated if
17 necessary. Four of the proposed lots will not have lot widths of at least 30 feet of frontage from
18 a private or private street. Two of these lots, Lot 13 and 15, are accessed from a private access
19 lane. The other two lots, Lots 5 and 56, may require an easement for ingress and egress. After
20 review of lot design City Staff finds that the project will satisfy the minimum street frontage
21 requirements of Chapter 18.40.060.I.

22 27. As several proposed lots are less than 5,000 square feet in size, they will be
23 subject to design requirements outlined in Chapter 18.175 OMC, Infill and Other Residential
24 Requirements. These requirements will be considered during later staff level review at time of
25

1 building permit. City Staff finds that as conditioned the project will comply with Chapter OMC
2 18.100.

3 28. The City Staff Report, at pages 13-16, addresses Engineering Design and
4 Development Standards (EDDS), as well as Drainage Design and Erosion Control Manual
5 Requirements (DDECM). The Hearing Examiner has reviewed these proposed Findings and
6 adopts the Staff's Findings relating to sewer facilities, water facilities, frontage improvements,
7 street trees, and solid waste and adopts them as his own Findings of Fact. Findings relating to
8 traffic impacts and storm drainage will be addressed in later Findings.

9 29. As set forth in EDDS 2.040.B.18 and RCW 58.17.110, the schools serving this
10 project are located more than a mile away and the Olympia School District will be providing bus
11 service to its students attending Hansen Elementary, Marshall Middle School and Capital High
12 School. City Staff therefore finds that the project satisfies the Safe Walking Requirements for
13 students. The project will also extend and connect to the existing sidewalk system in the
14 Wellington West development which already provides access and safe walking routes to the bus
15 stops serving these schools.

16 30. The Staff Report, at page 16, identifies various other agency comments and
17 recommendations, including comments from the Department of Ecology as well as Thurston
18 County Health Department. City Staff finds that all of these agencies issues have been
19 adequately addressed through the conditions of approval.

20 31. OMC 17.16.090.A requires that in order for a subdivision to be approved the
21 Hearing Examiner shall determine if appropriate provisions are made for, but not limited to,
22 public health, safety and general welfare, open space, drainage ways, streets, alleys, other public
23 waste, water supplies, sanitary waste, parks and playgrounds, sites for schools and school
24 grounds, fire protection and other public facilities, and shall consider all other relevant facts,
25

1 including the physical characteristics of the site and determine whether the public interest will be
2 served by the subdivision and the mitigation. As set forth at pages 9 and 10 of the Staff Report,
3 City Staff finds that all of these requirements have been satisfied.

4 Findings Relating to SEPA.

5 32. Pursuant to the State Environmental Policy Act, the City, as lead agency, issued a
6 Mitigated Determination of Non-Significance (MDNS) on October 26, 2018 (Exhibit 17). No
7 appeal was filed.

8 33 Attached to the MDNS are three conditions and mitigating measures. The first
9 two conditions are related to the project's traffic impacts. The third condition addresses
10 stormwater impacts and imposes four additional conditions for stormwater management. These
11 four conditions require the development of a safe and dependable onsite conveyance system of
12 stormwater from the project as well as restoration of, and improvement to, the existing
13 stormwater drainage system for water coming from the Wellington West neighborhood through
14 the project and onto the Bruce Titus property below.

15 34. Prior to the public hearing the Applicant recommended changes to these
16 stormwater conditions in order to simplify the Wellington West stormwater conveyance system.
17 These changes are described in later Findings. City Staff agreed to these proposed changes and
18 asked the Hearing Examiner to modify the MDNS accordingly. As noted in the Background
19 Section, Mauri Shuler brought a motion to have the MDNS instead returned to City Staff for
20 further review and possible modification. City Staff ultimately agreed and returned the MDNS
21 for further review.

22 35. After further review City Staff issued a revised MDNS on December 27, 2018
23 (Supplemental Exhibit 5). As noted in the Background Section, an appeal of the revised MDNS
24 was filed but not timely perfected through the payment of the necessary fee.
25

1 Findings Relating to Stormwater.

2 36. As noted in previous Findings, stormwater collected from the Wellington West
3 neighborhood to the north flows from a detention pond in that neighborhood south through the
4 project site in an existing drainage ditch located within a drainage easement. At the southern
5 boundary of the project the stormwater from this drainage ditch flows into an east/west drainage
6 ditch. Water in the east/west ditch flows west and connects to another north/south drainage
7 system near the southwest corner of the project site. It then continues south through the drainage
8 to Percival Creek.

9 37. As noted in the Staff Report, this existing stormwater drainage system for the
10 Wellington West stormwater has proven inadequate during high water events, resulting in
11 flooding in the parking area of the auto mall to the south.

12 38. The original MDNS, described in earlier Findings, would have required various
13 improvements to the existing stormwater drainage system for the Wellington West
14 neighborhood. It required improvements to the north/south conveyance ditch along the west side
15 of the Bruce Titus property; restoration of the east/west ditch along the north boundary of the
16 Bruce Titus property; and restoration of a screening buffer once ditch improvements had been
17 made (Exhibit 17).

18 39. Shortly before the public hearing the Applicant recommended, and the City
19 agreed, that stormwater from the Wellington West neighborhood would be better managed
20 through a redesign of the existing drainage. This led to a revised MDNS (Supplemental Exhibit
21 5) requiring the installation of a 36-inch diameter stormwater pipe along the south boundary of
22 the project site, effectively eliminating the need for the existing east/west ditch. The stormwater
23 conveyed through this new pipe will then enter the existing north/south drainage ditch at the
24 southwest corner of the project and then continue south toward Percival Creek. Further

1 improvements will be made to this north/south ditch in order to accept greater flow, minimize
2 water velocities and avoid scouring. In addition, the stormwater system's performance will be
3 reviewed after one wet season to confirm its effectiveness, and the Applicant will be required to
4 make any improvements deemed necessary. The Applicant will also be required to post a two
5 year performance bond.

6 40. The project's stormwater will be managed separately from the existing stormwater
7 drainage system for the Wellington West neighborhood.

8 41. Management of the project's stormwater is explained in the Applicant's
9 Stormwater Plan, Exhibit 16. Its primary features are:

10 • Stormwater from roadways will be collected and routed to a catch basin
11 for stormwater treatment and then to a below-grade infiltration trench. The amount of stormwater
12 coming from roadways will be reduced by the use of permeable pavement on two private access
13 lanes and the public sidewalks.

14 • Stormwater from the roofs will be routed to downspouts and then into the
15 infiltration trench.

16 • Individual driveways will be constructed of permeable pavement while
17 stormwater runoff from walkways, patios, etc. will be "sheet flow disbursed".

18 • The primary component of the stormwater system is the infiltration trench,
19 identified as "Open Space and Storm Tract E" on site maps, located between Lots 50 and 51.
20 Project-related stormwater will be collected and sent to this infiltration trench to be detained and
21 then disbursed below ground. This design will avoid adding the project's stormwater to the
22 existing stormwater coming from Wellington West.

23 42. The property owner to the south, Bruce Titus, is concerned that the infiltration
24 trench is not sufficiently designed to manage all of the project's stormwater. This is explained in

1 a report prepared by his engineer, Thomas Skillings of Skillings, Connolly, Inc. In his report Mr.
2 Skillings recommends that: (1) the east/west ditch be restored to provide positive drainage from
3 east to west; (2) steps be taken to prevent the north/south ditch along the Titus property from
4 being damaged from scour; (3) a complete downstream analysis be completed; (4) a "French
5 drain" be constructed along the south boundary of the project site, just above the steep bank, to
6 intersect any seepage not caught by the project's stormwater system; and (5) the developer
7 should be required to conduct a thorough analysis of the water table to ensure that the infiltration
8 trench will not be seasonally affected by high groundwater.

9 43. Both the City (Supplemental Attachments 10 and 12) and the Applicant
10 (Supplemental Exhibit 11) responded to Mr. Skillings' concerns. They collectively note that the
11 north/south ditch along the Titus property will be significantly improved in order to handle both
12 the existing stormwater coming from the Wellington West neighborhood along with any 100-
13 year emergency overflows from the project site. In addition, this ditch will be reconstructed to
14 include a layer of filter fabric and quarry spalls to dissipate water energy and prevent scouring.

15 44. The Applicant and City agree with Mr. Skillings that the east/west ditch currently
16 lacks positive flow, but find that this problem can be easily corrected through minor regrading of
17 the ditch. As the east/west ditch will no longer have significant importance, they find that no
18 other improvements need to be made to it and the proposed French drain is unnecessary.

19 45. With respect to Mr. Skillings' concerns over the completeness of testing for
20 seasonal groundwater levels, the Applicant and the City agree that there have been a substantial
21 number of boring logs on surrounding properties, taken during the winter, which confirm that the
22 winter groundwater table remains well below the proposed infiltration trench even in the rainy
23 season.

1 46. The Applicant's engineer concludes, and the City agrees, that development of the
2 project will reduce the impacts of stormwater on Mr. Titus' property.

3 47. City Staff adds that the stormwater system will be reviewed after the first wet
4 season to confirm that it is operating according to the engineering standards and, if not operating
5 correctly, to be improved as necessary. The Applicant will be required to post a two-year
6 performance bond to ensure payment of any improvement necessary for code compliance.

7 Findings Relating to Traffic Impacts.

8 48. Traffic access to the site is from the north primarily via Fern Street S.W. and
9 Division Street S.W.

10 49. Fern Street S.W. is a two-lane north/south Neighborhood Collector with a speed
11 limit of 25 miles per hour. Lane travel width is around 10 feet with parking in areas. Shoulders
12 typically include curbs, gutters and sidewalks, although sidewalks are currently missing in some
13 areas.

14 50. Division Street S.W. is a two-lane north/south roadway with curbs, gutters and
15 sidewalks. On street parking is allowed on the west side of the roadway.

16 51. Slightly east of the project is Decatur Street S.W. Decatur Street is a two-lane
17 north/south Major Collector with a speed limit of 25 miles per hour. Decatur currently has
18 traffic calming measures in places in the form of small traffic islands as well as speed bumps and
19 signs suggesting that travels be limited to 15 miles per hour. The west side of Decatur typically
20 has curbs, gutters and sidewalks while the east side has graveled shoulders.

21 52. The above-described north/south streets intersect with 9th Avenue S.W. to the
22 north. 9th Avenue is a two-lane, east/east Major Collector with a speed limit of 25 miles per
23 hour and 11-foot travel lanes. It includes curbs, gutters and sidewalks in most locations as well
24 as a bike lane.

1 53. Traffic heading west on 9th Avenue soon intersects with Black Lake Blvd. S.W.
2 Black Lake Blvd. is a southwest-northeast multilane arterial with a speed limit of 25 miles per
3 hour, two lanes of travel each direction and a center left turn lane. It includes 11-foot lanes with
4 curbs, gutters and sidewalks and bike lanes.

5 54. The project would extend Fern Street and Division Street (and Cushing Street
6 S.W.) southward. The southerly extension of Fern Street would then turn east and become 18th
7 Avenue and intersect with the extensions of Division and Cushing. 18th Avenue would continue
8 eastward and stub at the east boundary line of the project. This stub would allow for the possible
9 future extension of 18th Avenue to Decatur Street.

10 55. The extension of Fern Street and the new 18th Avenue would be designed to
11 Neighborhood Collector standards. The extensions of Division Street and Cushing Street would
12 be to Local Access standards.

13 56. All traffic coming from the project will ultimately converge onto Fern and
14 Division Streets. It may then travel north to 15th/14th Avenues to gain access to Decatur Street
15 and then other points north, especially Harrison Avenue, or it may continue on Fern Street to its
16 intersection with 9th Avenue and turn west toward Black Lake Blvd. These are the same traffic
17 choices as those currently available to the Wellington West neighborhood. Some of the existing
18 neighborhood traffic also disburses (generally northward) through a number of secondary
19 residential streets (Cushing, Decatur, Thomas, Percival, Milroy, Plymouth and Rogers Streets)
20 primarily to gain access to Harrison Avenue. It is anticipated that some portion of the project's
21 traffic may do the same but, again, most traffic is expected to travel north on Fern and then east
22 on 15th Avenue/14th Avenue to Decatur, or to 9th Avenue and then west to Capital Lake Blvd.

23 57. As part of its application the Applicant submitted a Traffic Impact Analysis
24 performed by Gregory Heath of Heath & Associates, Inc. (Exhibit 15) (the "Traffic Impact
25 Analysis").

1 58. The Traffic Impact Analysis recognizes Fern Street, Division Street, Decatur
2 Street, 9th Avenue and Black Lake Blvd. as the streets and intersections most affected by the
3 project.

4 59. The Traffic Impact Analysis determines that these streets and their intersections
5 will be mostly impacted by the project during the PM peak period between 4 PM and 6 PM.

6 60 Current Levels of Service (LOS) as well as current intersection delays at Black
7 Lake Blvd. and 9th Avenue; 9th Avenue and Fern Street; 9th Avenue and Decatur Street; 14th
8 Avenue and Decatur Street; and Fern Street and 15th Avenue are set forth at pages 9 and 10 of
9 the Traffic Impact Analysis. Current LOS at Black Lake and 9th Avenue is either LOS C or
10 LOS D in all directions. At 9th Avenue and Fern Street, northbound traffic experiences an LOS
11 of C but all other traffic enjoys an LOS of A. All traffic at 9th Avenue and Decatur; 14th
12 Avenue and Decatur; and Fern Street and 15th Avenue currently enjoys an LOS of A.

13 61. To summarize, the intersections at 9th Avenue and Fern Street; 9th Avenue and
14 Decatur; 14th Avenue and Decatur; and Fern Street and 15th Avenue all currently operate at
15 LOS A with the exception of northbound traffic at 9th Avenue and Fern (LOS C). A LOS
16 between A and C is deemed satisfactory. Meanwhile, all traffic at Black Lake and 9th Avenue
17 currently experiences a LOS of either C or D. LOS D is deemed satisfactory for this intersection
18 in accordance with the City's Traffic Impact Guidelines for new development.

19 62. The project's anticipated Trip Generation is determined in accordance with the
20 publication "Trip Generation 9th Edition". The manual estimates that this project will generate
21 an additional 56 vehicle trips per hour during the PM peak period. The distribution of these
22 additional trips is then modeled in accordance with modeling provided by Thurston County.

23 63. Based upon the number of estimated additional trips generated by the project, and
24 its distribution among the various streets, the resulting impacts to levels of service and delay

1 times at the above-mentioned intersections is set forth at page 17 of the Traffic Impact Analysis.
2 As set forth in Table 4 on page 17, the project will have a slight impact to the LOS at Black Lake
3 and 9th Avenue, and no meaningful impact at any of the other intersections. More specifically,
4 the level of service for all traffic at Black Lake and 9th Avenue will be LOS D with delay
5 periods nearly identical to current delays. Levels of service at the other four intersections will
6 remain the same (LOS A with the exception of LOS C for northbound at 9th Avenue and Fern
7 Street) and delay times will be nearly identical to current times. Based upon these Findings the
8 Traffic Impact Analysis makes the following conclusions at page 18:

9 "The site will be a mild generator of new trips in the area with roughly 533 total
10 daily trips expected to be generated on a typical workday with 42 trips during the
11 AM peak hour and 56 trips during the PM peak hour."

12 "Existing delays at the key intersections studied near the site are in the LOS A to
13 LOS D range. Future delays will remain at LOS D or better. Overall, project
14 traffic was found to have no significant impact on the surrounding roadway
15 system."

16 64. The Traffic Impact Analysis recommends that the Applicant pay appropriate
17 Traffic Impact Fees in accordance with the City's Transportation Impact Fee Rate Schedule and
18 also recommends that the intersection at Fern Street and 15th Avenue be made a two-way stop
19 controlled intersection with stop signs on 15th Avenue.

20 65. City Staff responded to the Applicant's Traffic Impact Analysis by letter from
21 Dave Smith, the City's Transportation Engineer (Exhibit 21). Mr. Smith accepts the Traffic
22 Impact Analysis and its Findings subject to two additional requirements:

23 • In the EDDS, Fern Street is functionally classified as a Neighborhood
24 Collector. Streets in this classification are expected to have daily traffic volumes ranging from
25 500 to 3,000 vehicles per day. The City is aware that the current level of traffic on Fern and just
south of 9th Avenue is currently 4,000 vehicles per day, and is expected to rise to 4,475 vehicles

1 per day as a result of this project and other growth. Recognizing that traffic on Fern would
2 exceed normal limits for Collector Streets, the City requests additional traffic mitigation by
3 means of three traffic calming devices along Fern between 14th Avenue and 9th Avenue. These
4 devices are expected to both slow traffic on Fern Street and encourage drivers to rely more
5 heavily on Decatur Street, thus reducing the traffic counts on Fern.

6 • The Traffic Impact Analysis notes the lack of intersection control at Fern
7 and 15th Avenue. Although there is currently a traffic calming circle at this intersection, City
8 Staff recommends yield signs on all three approaches to this intersection.

9 66. City Staff has imposed these two conditions on the project by means of the SEPA
10 MDNS. Subject to these additional conditions, City Staff finds that the project will adequately
11 address its traffic impacts.

12 67. Closely related to traffic is the issue of pedestrian travel. The project will
13 provide neighborhood sidewalks which, like its road system, will primarily funnel pedestrians
14 north along Fern Street. A number of members of the public have noted that portions of Fern
15 Street further north currently lack sidewalks. They argue that the project therefore fails to
16 adequately provide for the needs of pedestrians. City Staff responds that the portions of Fern
17 Street further north currently without sidewalks are scheduled to have them installed during
18 2019. As a result, by the time this project commences development there will be continuous
19 sidewalks from the project along Fern to 9th Avenue.

20 Findings Relating to the City Comprehensive Plan.

21 68. The project is designated as Low Density Neighborhood in the City's
22 Comprehensive Plan.

23 69. A component of the City's Comprehensive Plan is the "Transportation 2030 Street
24 Capacity and Connectivity Map" (Exhibit 3). This map identifies a "Future Neighborhood
25

1 Collector" running south from the current terminus of Fern Street through the project site, then
2 turning east and becoming 18th Avenue, and then continuing east to an intersection with Decatur
3 Street.

4 70. The project's internal road system is consistent with the Future Neighborhood
5 Collector identified in the Transportation 2030 Map, including the extension of 18th Street to the
6 project's east boundary.

7 71. In the Staff Report, at pages 6 through 8, City Staff finds that the project, as
8 conditioned, is consistent with and will further the Goals and Policies of the City's
9 Comprehensive Plan including Goal GI 1 and Policies PL 1.1, 1.5, 16.1, and the Future Land Use
10 Designations Table and the Future Land Use Map; Goal GT 4 and Policies PT 4.3, 4.7 and 4.10;
11 Goal GT 9 and Policies PT 9.1 and 9.2; and Goal GU 10 and Policies PU 10.1, 10.3 and 10.6.

12 Findings Relating to Other Conditions.

13 72. In its Staff Report the City Staff recommends approval of the project subject to 22
14 conditions. During the hearing Staff noted that these conditions failed to address the possibility
15 of zero lot line development. To address this possibility, City Staff recommends an additional,
16 23rd, condition of project approval set forth as Exhibit 32.

17 ANALYSIS

18 As this project has become a matter of considerable public interest, and a great deal of
19 public opposition, it may be helpful to more fully examine and discuss certain issues that have
20 arisen:

21 1. Public Opposition. Hundreds of comments have been received from the public in
22 opposition to this project as well as from SWONA and the Wellington West Homeowner's
23 Association. Conversely, there has been no public support for the project. It is clearly evident
24 that the surrounding neighborhood strongly opposes this development. Nonetheless, it is

1 important to remember that subdivision approval is not based upon public opinion, nor is it a
2 political process. To the contrary, subdivision approval is a fact finding process based solely on
3 analysis of the project in accordance with the City's Municipal Code, Development Regulations,
4 and Design Standards, without consideration of the project's popularity. Indeed, to factor the
5 project's popularity into the decision making would be a clear violation of the Hearing
6 Examiner's authority.

7 This is not to suggest that the vast amount of public comment has been found to be
8 unimportant or irrelevant. Much to the contrary, every one of the hundreds of comments has
9 been carefully read and considered. The purpose of carefully reviewing them is to discern
10 whether they demonstrate *factual* issues which preclude subdivision approval. Ultimately I
11 conclude that, while these many hundreds of public comments express a great many
12 understandable and reasonable concerns, they do not evidence facts which preclude subdivision
13 approval, as will be explained a bit more fully below.

14 2. Comments Made by City Council Members. Several members of the public have
15 quoted comments made by past or present City Council Members expressing a dislike for this
16 project. Once again, the opinions expressed by individual Council Members have no relevance
17 in this decision making process. The City speaks through its City Council *as a whole*. It does
18 not speak through its individual Council Members and their opinions are treated no differently
19 than the opinions of any other City resident. Stated slightly differently, the Hearing Examiner is
20 bound to follow the ordinances, regulations and rules adopted by the Council but is not to give
21 special consideration to the opinions of individual Council Members.

22 3. Protection of the Existing Greenbelt. A great many members of the public have
23 urged that the subdivision be denied so that the property can remain in its current state, thereby
24 maintaining a buffer between the auto mall and Wellington West and nearby neighborhoods.

1 This desire is a wholly understandable one. Unfortunately, to do so would be to deny the
2 development of private property for the benefit of the public. This result is precluded by both
3 our State Constitution and the US Constitution as it would result in a "taking" of private
4 property. As a matter of law, the Hearing Examiner is prevented from considering this request.

5 4. Stormwater Impacts. A considerable number of individuals have urged that the
6 project not be approved due to the current stormwater problems encountered by the auto mall.
7 These problems are, of course, not caused by the project but are instead the legacy of the
8 Wellington West development. As conditioned, the project will address the current problems
9 caused by Wellington West while providing a separate, independent stormwater system for
10 Wellington Heights. This separate system is designed to disburse the project's stormwater into
11 the ground without adding it to the Wellington West stormwater. The Applicant's stormwater
12 proposals are well supported by expert testimony and have the concurrence of the City's
13 engineering staff. The Applicant argues, and the City agrees, that the project will actually
14 improve stormwater management throughout the neighborhood.

15 5. Traffic Impacts. A good deal of comment has been made regarding the impact of
16 traffic on neighborhoods to the north. These concerns are understandable, reasonable and
17 intuitive. Indeed, everyone recognizes that this new subdivision will impose some level of traffic
18 burden on surrounding neighborhoods. But in order to deny the subdivision there must be a
19 factual showing that the project will *unduly* burden the City's streets and intersections and cause
20 levels of service to fall below acceptable standards. Again, while the public's concerns are
21 reasonable and intuitive, they do not overcome the expert findings contained in the Traffic
22 Impact Analysis. Expert testimony cannot be overcome by conjecture. There has been no
23 factual showing that the Traffic Impact Analysis is based on incorrect data or reaches incorrect
24 conclusions.

1 6. Future Connection to Decatur Street. The majority of the public comments have
2 been focused on the project's extension of 18th Avenue to the subdivision's east boundary,
3 allowing for the possibility of future extension of 18th Avenue to Decatur Street. But this
4 project does not connect 18th Avenue to Decatur Street and, even if it did, such a connection
5 would be in keeping with the City's current Comprehensive Plan. Stated slightly differently, the
6 project's design does nothing more than what the current Comprehensive Plan requires.

7 Whether 18th Avenue eventually connects to Decatur Street is not presently being
8 decided. The City's current transportation planning concludes that this is a sensible idea, but
9 whether it actually occurs will await the development of properties to the east of Wellington
10 Heights.

11 Based upon the foregoing Findings of Fact and Analysis, the Hearing Examiner makes
12 the following:

13 **CONCLUSIONS OF LAW**

14 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.

15 2. Any Conclusions of Law contained in the foregoing Background Section,
16 Findings of Fact or Analysis are incorporated herein by reference and adopted by the Hearing
17 Examiner as his Conclusions of Law.

18 3. The requirements of SEPA have been met.

19 4. Appropriate provisions are made for the public health, safety and general welfare,
20 for open spaces, drainage ways, streets, alleys, and other public ways, water supplies, sanitary
21 waste, parks, playgrounds, sites for schools and school grounds, fire protection, and other public
22 facilities.

23 5. After considering all of the relevant facts, including the physical characteristics of
24 the site, the public interest would be served by the subdivision and dedication.

- 1 6. All requirements of OMC 17.16.090.A have been satisfied.
- 2 7. The requirements for the dedication of land and/or payment of fees pursuant to
- 3 OMC 17.16.090.B have been satisfied.
- 4 8. All other requirements of OMC 17.16.090.D have been satisfied.
- 5 9. The project is in compliance with the purposes of the R6-12 Zoning Designation.
- 6 10. Development of single-family residences is a permitted use within the R6-12
- 7 Zoning Designation.
- 8 11. The project, as conditioned, is in compliance with Residential Development
- 9 Standards set forth in Table 4.04. OMC 18.04.080
- 10 12. The project is in compliance with the requirements for lot widths as set forth in
- 11 OMC 18.04.080.G.2.
- 12 13. The project, as conditioned, satisfies the requirements of OMC 18.12.120.C
- 13 relating to the inadvertent discovery of archaeological material.
- 14 14. The project, as conditioned, satisfies the requirements of Chapter 18.36 OMC for
- 15 site landscaping. Final landscaping plans will be submitted at engineering plan review.
- 16 15. The project, as conditioned, is in compliance with Chapter 18.40 OMC, property
- 17 development and protection standards, including minimum street frontage.
- 18 16. The project, as conditioned, is in compliance with OMC Chapter 18.100 Design
- 19 Review.
- 20 17. The project, as conditioned, is in compliance with the EDDS for sewer, water,
- 21 frontage improvements, traffic impacts, street trees, solid waste, storm drainage, and all other
- 22 requirements of the EDDS.
- 23 18. The project, as conditioned, is in compliance with the Safe Walking Conditions
- 24 contained in the EDDS and Chapter 58.17 RCW.
- 25

1 19. The project, as conditioned, is in compliance with all other subdivision
2 requirements contained in Chapter 17.16 OMC, Subdivision Authority.

3 20. Approval of the preliminary plat shall be effective for five years from the date of
4 approval by the Hearing Examiner during which time a final plat or plats may be submitted.
5 During this time the terms of the conditions upon which the preliminary approval is given will
6 not be changed except as provided for in Chapter 17.20 OMC.

7 21. The project is consistent with the City Comprehensive Plan including the
8 Transportation 2030 Map as well as the following Goals and Policies: Goal GI 1 and Policies PL
9 1.1, 1.5, 16.1, and the Future Land Use Designations Table and the Future Land Use Map; Goal
10 GT 4 and Policies PT 4.3, 4.7 and 4.10; Goal GT 9 and Policies PT 9.1 and 9.2; and Goal GU 10
11 and Policies PU 10.1, 10.3 and 10.6.

12 22. The project should be approved subject to the 22 conditions recommended in the
13 Staff Report together with the additional condition proposed as Exhibit 32 (Zero Lot Line
14 Development).

15 **DECISION**

16 The Applicant's request for preliminary approval of subdivision containing 56 lots on a
17 9.4 acre site, with associated improvements, shall be **approved** subject to the following
18 conditions:

19 1. **Approved Plat Map.** The preliminary plat shall be substantially in conformance
20 with the preliminary plat map dated October 10, 2018 (Attachment 11) and revised civil plans
21 (Attachment 20), as modified by the conditions of approval herein, and as modified by the
22 Hearing Examiner.

23 2. **Plat Approval.** Preliminary approval of the preliminary plat shall be effective
24 for five (5) years from the date of approval by the Hearing Examiner, during which time a final
25

1 plat or plats may be submitted. During this time the terms and conditions upon which the
2 preliminary approval is given shall not be changed, except as provided for in Section 17.20.040.
3 (OMC 17.20.010)

4 3. **Landscape Plan.** A final landscape plan prepared in compliance with OMC
5 18.36 shall be submitted in conjunction with the engineering permit application.

6 4. **Vegetation Maintenance Bond.** A vegetation maintenance bond (or other
7 assurance) shall be provided following City acceptance of the landscape installation, including
8 street trees prior to final plat. The bond amount shall be 125% of the cost estimate submitted
9 with the final landscape plan and approved by the City.

10 5. **Minimum Lot Width.** The lot width adjacent to the private access lane shall be
11 no less than 30 feet for Lots 13 and 15. An easement for ingress and egress and utilities will be
12 needed for Lots 5 and 56 and shall be shown on the final plat map.

13 6. **Hours of Construction.** Pursuant to OMC 18.40.080(C)(7), construction activity
14 is restricted to the hours between 7:00 a.m. and 6:00 p.m.

15 7. **Design Review and Garage Placement and Width Requirements.** It shall be
16 noted on the face of the final plat map that lots less than 5,000 square feet in area are subject to
17 Design Review and must also meet 18.04.060.EE for Garage Placement and Width requirements.

18 8. **Inadvertent Discovery Plan.** A signed Inadvertent Discovery Plan (IDP) which
19 outlines how the project proponent and site crew will respond in the event that archaeological
20 resources are uncovered during the course of project work shall be submitted by the Applicant at
21 the time of Engineering plan submittal (OMC 18.12.140).

22 9. **Impact Fees.** In accordance with OMC Title 15, City of Olympia impact fees for
23 transportation, parks, and schools shall be paid at time of building permit issuance.
24
25

1 10. **Construction Codes.** The project shall comply with the City of Olympia
2 Construction Codes as adopted through the Olympia Municipal Code, Chapter 16.04.

3 11. **Street Trees.** Specific street tree locations shall be modified as deemed
4 necessary by the Urban Forester and/or City Engineer.

5 12. **Tree Density.** Minimum required tree units for this plat is 30 units per buildable
6 acre and shall be located in a soils vegetation protection area. Location and species of additional
7 tree planting to meet the minimum required tree density will be determined at the time of
8 engineering permit review.

9 13. **Tree Protection Fencing.** The timeline for tree protection fence installation shall
10 be added to the civil plan set during engineering plan review. Trees to be saved (on and off-site)
11 shall be site verified by the Applicant's Urban Forester prior to installation of tree protection
12 fencing. Said fencing shall be inspected and approved by Applicant's Urban Forester and the
13 City's Urban Forester prior to any clearing and grading of the site. Where proposed utilities are
14 located within the tree protection fencing (critical root zone), the Applicant's Urban Forester
15 shall inspect and consult with the City's Urban Forester on a course of action to protect and save
16 trees during construction.

17 14. **Engineering Permit Application.** An engineering permit application shall be
18 submitted for review and approval prior to construction. The permit submittal shall comply with
19 the 2017 Engineering Design and Development Standards (EDDS) and the 2016 Drainage
20 Design and Erosion Control Manual (DDECM).

21 15. **Solid Waste.** Curbside solid waste collection shall be set up for one-side road
22 collection on the non-parking side of the street. The solid waste collection route shall be
23 considered prior to determining locations of on-street parking locations at time of engineering
24 plan review.

1 **16. Right of Way Performance Bond.** Bonds or other allowable securities shall be
2 submitted to the City to guarantee the performance of work within the subject site and rights-of-
3 way, or maintenance of required public infrastructure intended to be offered for dedication as a
4 public improvement. See both EDDS Section 2.030.F and Volume 1 Section 2.6.1 of the 2016
5 DDECM for more information.

6 **17. Erosion Control.** Erosion control measures must be in place prior to any
7 clearing, grading, or construction. These control measures must be effective to prevent
8 stormwater runoff from carrying soil and other pollutants into surface water or storm drains that
9 lead to waters of the State. A Construction Stormwater General Permit must be obtained for this
10 site from the Washington State Department of Ecology prior to commencement of any ground-
11 disturbing activities.

12 **18. Contamination.** If contamination of soil or groundwater is encountered during
13 site work and construction, the Applicant shall notify the Department of Ecology's
14 Environmental Report Tracking System Coordinator for the Southwest Regional Office at 360-
15 407-6300.

16 **19. Grading and Filling.** All grading and filling of land must utilize only clean fill,
17 i.e., dirt or gravel. All other materials, including waste concrete and asphalt, are considered to be
18 solid waste. Necessary permits shall be obtained if these materials are used (WAC 173-350-
19 990). All removed debris shall be disposed of at an approved site. Contact the Thurston County
20 Health Department for proper management of these materials.

21 **20. Restrictive Covenant.** A non-public restrictive covenant shall be granted for the
22 existing off-site well located within 100 feet of the property. The covenant must be reviewed by
23 Thurston County Environmental Health prior to being recorded with the Thurston County
24 Auditor's Office. The reference to this covenant shall be shown on the face of the final plat map.

1 21. **Water and Sewer Services.** Configuration of water and sewer construction
2 approval from the City of Olympia shall be submitted to Thurston County Environmental Health
3 prior to final plat approval.

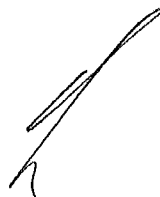
4 22. **Addressing.** The lots and tracts shall be addressed as noted in Attachment 27.

5 23. **Zero Lot Line Development.** If the developer proposes to construct with zero lot
6 line development with reduced side yard setbacks, provision for reduced or zero setbacks shall
7 specifically appear on the face of the final plat.

8 Such plat shall provide that the minimum distance between residences will be six (6) feet.
9 If the distance between a proposed dwelling and a property line is less than three (3) feet, the
10 Applicant shall provide evidence of a maintenance easement, at least three (3) feet in width,
11 which provides sufficient access for the owner of the dwelling to maintain the applicable exterior
12 wall and roof of the dwelling. Side yard setbacks shall not be less than five (5) feet along a
13 property line adjoining a lot which is not developed or approved for reduced setbacks.

14
15 **CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT**
16 **AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE OF FILING AS**
17 **DEFINED IN RCW 90.58.140(6) AND WAC 173-27-130, OR UNTIL ALL REVIEW**
18 **PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF**
19 **SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW**
20 **90.58.140(5)(a)(b)(c).**

21 DATED this 19 day of February, 2019.



22
23
24 _____
Mark C. Scheibmeir
City of Olympia Hearing Examiner

EXHIBITS

1		
2		
3	Exhibit 1	Staff Report
4	Exhibit 2	Notice of Hearing Published November 2, 2018
5	Exhibit 3	Transportation 2030 Westside Map
6	Exhibit 4	Lemon Addition-Plat Map
7	Exhibit 5	05-1256 Wellington Heights HEX Decision January 22, 2007
8	Exhibit 6	Defeasible Road Easement
9	Exhibit 7	Stormwater Easement
10	Exhibit 8	Preliminary Plat Application
11	Exhibit 9	Notice of Application
12	Exhibit 10	Neighborhood Mtg. Summary April 23, 2018
13	Exhibit 11	Revised Preliminary Plat Map Sheet 1 of 5
14	Exhibit 12	Prelim. Drainage Report Amendment October 11, 2018
15	Exhibit 13	Public Comments
16	Exhibit 14	SEPA Checklist-Agency Comments
17	Exhibit 15	Traffic Impact Analysis-Revised August 17, 2018
18	Exhibit 16	Prelim. Drainage Report-Revised August 17, 2018
19	Exhibit 17	Notice SEPA Mitigated Determination of Non-significance
20	Exhibit 18	Flood Hazard Map
21	Exhibit 19	Memo Thompson to Fant October 2, 2018
22	Exhibit 20	Civil Set Sheets 2-5 Revised August 17, 2018
23	Exhibit 21	TIA Letter Smith to Fant October 15, 2018
24	Exhibit 22	Core Requirement 4 Information
25	Exhibit 23	Olympia School District Letter November 9, 2018
26	Exhibit 24	Department of Ecology Letter October 9, 2018
27	Exhibit 25	Thurston County Environmental Health Letter October 4, 2018
28	Exhibit 26	Integrated Pest Management Plan August 17, 2018
29	Exhibit 27	Wellington Heights Address List
30	Exhibit 28	Memorandum from Paula Smith and Tim Smith
31	Exhibit 29	Email from Bruce Titus
32	Exhibit 30	Chain of Emails Among City Staff
33	Exhibit 31	Chains of Emails Between City Staff and Bruce Titus
34	Exhibit 32	Additional Comment-Condition 23 (Zero Lot Line Development)
35	Exhibit 33	Mauri Shuler-Motion to Continue Hearing
36	Supplemental Exhibit 1	Revised Staff Report
37	Supplemental Exhibit 2	Order on Motion to Continue December 13, 2018
38	Supplemental Exhibit 3	Order Continuing Hearing December 18, 2018
39	Supplemental Exhibit 4	Memo to Hearing Examiner December 17, 2018
40	Supplemental Exhibit 5	Revised SEPA MDNS December 27, 2018
41	Supplemental Exhibit 6	Emails (127 Pages)
42	Supplemental Exhibit 7	ABS Investments, LLC - Secretary of State Information
43	Supplemental Exhibit 8	Letters from Department of Ecology Re: Revised SEPA MDNS
44	Supplemental Exhibit 9	Email from Bruce Titus to City January 10, 2019
45	Supplemental Exhibit 10	Memo to City from Steve Thompson January 24, 2019
46	Supplemental Exhibit 11	Chain of Emails Between Paula Smith, Chris Merritt and Alex Vo
47	Supplemental Exhibit 12	Titus Property - Core Requirement Documents (with 12 attachments)
48	Supplemental Exhibit 13	Chain of Emails Among City Staff and Attorneys
49	Supplemental Exhibit 14	Email and Letter from Dan Leahy