

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER OF THE
CITY OF OLYMPIA**

CASE NO: 05-0121 (Recommendation on PRD Approval and associated variances for Woodard Lane Co-housing)

APPLICANT: Woodard Lane Co-housing, L.L.C.

SUMMARY OF REQUEST:

The Applicant requests a recommendation of approval for a planned residential development for a co-housing development. The Applicant also requests a number of associated variances.

LOCATION OF PROPOSAL:

Thurston County Assessor's Tax Parcel No. 67400006300 in Sec. 10, T18N, R2W, W.M.

SUMMARY OF DECISION:

The requested variance allowing the Applicant not to plant a tree in the island on the west side of the parking area should be denied.

The requested variance allowing two parking spaces to be placed directly contiguous to the Woodard Avenue right-of-way should be granted, subject to a condition.

The Applicant should not be required to install the streetlight at its driveway entrance. No variance is needed.

The Applicant may place a guest room without kitchen facilities in the common house, without the need for a variance.

The proposed Planned Residential Development should be approved, subject to the listed conditions, with no more than sixteen residential units.

HEARING AND RECORD:

The hearing on this application was held before the undersigned Hearing Examiner on February 11, 2008. The record was left open until February 25, 2008 for the submittal of additional evidence. After the hearing, the Staff discovered that a recording of the hearing was not properly made. The Applicant agreed not to request a new hearing, but to rely on the Hearing Examiner's notes of the hearing, if needed, as the verbatim record.

The following exhibits are admitted as part of the record on the subdivision application.

Exhibit 1. Staff Report by Olympia Community Planning and Development Department for Case No. 05-0121, prepared by Kraig Chalem and issued February 6, 2008. This Exhibit includes the 18-page Staff Report and Attachments A through I listed on p. 18 of the Staff Report.

Exhibit 2. E-mails from Sarah Smyth McIntosh sent February 4 and 8, 2008, with attachments.

Exhibit 3. E-mail from Philip Olsen sent February 10, 2008, with attachments.

Exhibit 4. Aerial photograph. NOT ADMITTED.

Exhibit 5. Two-page document describing the nature of co-housing.

Exhibit 6. Set of slides and testimony by Applicant.

Exhibit 7. Letter dated February 11, 2008 from Sarah Smyth McIntosh to Thomas Bjorgen, dated February 11, 2008, with attachments.

Exhibit 8. Memorandum dated February 20, 2008 from Kraig Chalem, dealing with holding the record open.

Exhibit 9. E-mail from Kraig Chalem to Thomas R. Bjorgen, sent February 27, 2008 with attachment.

Exhibit 10. E-mail from Kraig Chalem to Thomas R. Bjorgen, sent February 27, 2008, with attached submittals from the Applicant and members of the public.

Exhibit 11. E-mail from Kraig Chalem to Thomas R. Bjorgen, sent February 27, 2008, with attached submittals from members of the public. Note: These submittals are not admitted into the record to the extent they deal with the issue of notice, since that is beyond the purposes for which the record was held open. The other evidence in this exhibit arguably deals with matters for which the record was held open and is admitted.

Exhibit 12. E-mail from James Anest to Kroydan Chalem, sent February 25, 2008, with attachment.

Exhibit 13. Memorandum from Jim Anest to Tom Bjorgen, dated February 25, 2008.

Exhibit 14. Letter dated February 22, 2008 from Lawrence E. Hoffman to Thomas Bjorgen; letter dated March 4, 2008 from Lawrence E. Hoffman to Thomas Bjorgen, with attached chart; and note dated March 1, 2008 from Jim Anest to Kraig Chalem, with the same attached chart.

At the hearing, the following individuals testified under oath:

Kraig Chalem, Associate Planner for the City of Olympia
Community Planning and Development Department
837 7th Avenue S.E., P.O. Box 1967
Olympia, WA 98507

Becky Dickinson
Engineering Plans Examiner
Community Planning and Development Department
837 7th Avenue S.E., P.O. Box 1967
Olympia, WA 98507

John Yunker
1623 Hayes NW
Olympia, WA

C J Russo
4511 5th Avenue NW
Olympia, WA

Heather Saunders
305 Division Street NW
Olympia, WA

Jim Anest
1318 Skyline Terrace
Olympia, WA

Steve Yantis, on behalf of himself and George S. Yantis
1616 Woodard Avenue
Olympia, WA

Philip Olsen
1603 Woodard Avenue NW
Olympia, WA

Cindy Weitekamp
1521 Thomas
Olympia, WA

C. Wilson
3043 Central Street SE
Olympia, WA

Ryan Moore
Vector Engineering
309 Washington Street NE
Olympia, WA

Scott Bergford
3016 10th Avenue NE
Olympia, WA

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

A. Description of the proposal and its residential density.

1. The Applicant requests a recommendation of approval of a planned residential development (PRD) consisting of a co-housing development.

2. The development site is approximately 2.88 acres in size and is designated Single Family Residential 4-8 (R 4-8) under the zoning ordinance and the Comprehensive Plan. The Applicant identifies .56 acres of the site as critical areas.

3. The site is bounded on the south in part by single family residences and in part by the Woodard Street right-of-way. On the east, the site is bounded by single family residences beyond which runs Thomas Street. On the north, the site is bordered by the Muirhead Avenue right-of-way, with residences beyond it to the northeast. To the northwest and west, the site is bordered by the undeveloped Schneider Creek ravine.

4. The development would include five residential buildings, shown as Buildings A through E on the site plan, Exhibit (Ex.) 1, Attachment (Att.) H. The Land Use

Review Supplement, Ex. 1, Att. A, states that each residential building would have a maximum of three stories, while the textual overview attached to the PRD Supplement, also at Ex. 1, Att. A, describes each residence as having two stories. Except for Building D, each story is proposed to contain two residential units, ranging in size from 900 to 1700 square feet and with either two, three or four bedrooms. Building D is also proposed at two stories, but with a total of three units. At four units for Buildings A, B, C and E and three units for Building D, these five residential building would have a total of 19 units, which is the number requested in the application. Ex. 1, Att. A. At the hearing the Applicant stated it is requesting a total of 21 dwelling units, with the density bonuses discussed below.

5. The application at Ex. 1, Att. A also includes a shop building and three, two-car garages adjacent to it, with two dwelling units on top of the shop. The Applicant subsequently removed the shop, garages and dwelling units from its proposal. Ex. 10, Anest mem.

6. The Applicant requests a density bonus of either 15% or 20%, which would allow it the requested 21 units on the project site. In addition to these 21 units, the Applicant asks to put a guest room without kitchen facilities in the common house.

7. The Applicant proposes to achieve this increased density without increasing the height or footprints of the proposed buildings. This means space for the units could be found only by adding a third story to some or all of the residences or by decreasing the size of some of the proposed units. The Applicant proposes that one of these units could be in the basement of the common house.

8. The residential units would have limited kitchen facilities and hook-ups for washers and dryers. Ex. 1, Att. A, textual overview.

9. A common house is proposed in the location shown as Building CH on the site plan. The common house is proposed to have three-stories, a building footprint of 1750 square feet and gross usable square footage of 3500. See Ex. 1, Atts. G and H. The common house would contain a dining area, kitchen, fireplace room, activity center, laundry, storage room, and other facilities, as shown on the drawing at Ex. 1, Att. G and described at Ex. 1, Att. A. The Applicant estimates that residents of the community would have shared meals in the common house three to four times a week. Test. of Russo. The facilities of the common house would be open to all residents of the development.

10. The configuration of these proposed buildings and other facilities is shown on the site plan at Ex. 1, Att. H, Sheet 6. A more detailed description of their proposed uses and the general philosophy and goals of co-housing is found at Ex. 1, Att. A, Ex. 5 and Ex. 6.

11. The Department has requested and the Applicant has agreed to install fire sprinklers in all residential units.

12. The vehicular entrance to the proposal is from Woodard Avenue, on the south boundary of the site. As shown on the site plan, the parking area for cars is located at the Woodard entrance, contiguous to the Woodard Street right-of-way, and does not extend into the area of the residences. Aside from emergency vehicles and perhaps necessary deliveries, no cars would be allowed in the area of the residences.

13. The application describes the parking area as containing 29 spaces on 10,915 square feet. Ex. 1, Att. A. With the removal of the shop, two spaces would be added for a total of 31. Ex. 10, Anest mem. The Department believes that this will supply sufficient parking for 21 units. Id. Two handicapped parking spaces are proposed.

14. The City has capacity for this proposal's water, fire suppression, sanitary sewer and solid waste needs.

15. A 30-foot utility easement for water and sanitary sewer is proposed, extending south from Muirhead Avenue and the west into the residential area, as shown on the site plan and the water and sewer plan, Ex. 1, Att. H. Extending the utilities from Woodard Avenue to the south would be impractical, due to the slope of the site to the northwest. Test. of Moore.

16. The site plan, Ex. 1, Att. H, and the tree protection plan, Ex. 1, Att. D, conflict as to which trees will be cut and which retained. The site plan shows that all trees in the utility easement will be removed, including those designated as Nos. 9, 11, 13, 14, 15, 16, 17. The tree protection plan shows that those same numbered trees would be retained.

17. The evidence showed that a line of large Douglas Firs stands along the boundary between the project site and the Lyon, Bly and Huston parcels to the east. Ex. 10, Weitekamp e-mail. Some of these large trees are those which the site plan states will be cut and the tree plan states will be retained. Ms. Weitekamp also expressed concern that the removal of trees on the project site, the construction of utilities in the adjacent utility easement, and ground saturation could make the remaining large trees along the east property boundary dangerous in windstorms. Id. Some testimony also suggested that additional trees could be spared in the utility easement if the water and sewer lines were allowed to be closer than ten feet from each other.

18. The tree protection plan at Ex. 1, Att. D, p. 5, acknowledged the presence of trees along the eastern perimeter and stated they could be "impacted" by this development. The plan stated that the trees identified on the grading and erosion control plans will be adequately protected during construction. Id. This analysis does not include an examination of whether the proposed tree removal would make the remaining trees more

vulnerable to windthrow.

19. No business uses are proposed.

20. With the elimination of the garages and shop from the proposal, all structures are proposed to be located more than 20 feet from any property line. All structures are proposed to be at least ten feet from each other.

21. When the buildings are ready for occupancy, ownership of the land and buildings will be changed to a condominium form, as described in Ex. 1, Att. C.

B. Woodard Avenue.

22. The right-of-way for Woodard Avenue is 40 feet wide nearest Thomas Street, adjacent to the Lehman parcel, as show on the site plan at Ex. 1, Att. H. East of that segment, and adjacent to the project site, the right-of-way is 60 feet wide. According to the site plan, the currently paved portion of Woodard Avenue bends slightly to the south just west of Thomas and runs a bit outside the south boundary of its right-of-way before ending at the property line between the Yantis parcel and the project site. This paved portion is generally around 20 feet in width, although in places it is less than that. The pictures at Ex. 3 show difficult parking circumstances on Woodard Avenue.

23. The Applicant proposes to extend Woodard Street in front of its property in the southern portion of the right-of-way, leaving either 20 feet (site plan) or 30 feet (Ex. 1, Att. A) between the paved portion and its property line.

24. The Woodard Avenue right-of-way runs into the Schneider Creek ravine just west of the project site, according to Ex. 1, Att. A. Therefore, connection of Woodard Avenue to the west is unlikely.

25. The number of vehicular trips generated by this development does not meet the threshold requiring a traffic impact analysis.

C. Stormwater and Schneider Creek.

26. The project site is bounded on the west by the Schneider Creek ravine. As shown on the vicinity map at Ex. Att. H, Schneider Creek and its ravine extend north a short distance from the site, at which point they bend to the east and flow into nearby Puget Sound.

27. The ravine slope on the site ranges up to 90%. The top of the ravine at the northwest portion of the site is at an elevation of 166 feet. The bottom of the ravine at the far northwest corner of the site is at 116 feet in elevation. The stormwater report states that the ravine slope on the site appears to be stable and has a mature second growth forest

on it. Ex. 1, Att. E, p. 29. However, the 2003 City Storm and Surface Water Plan, at Ex. 1, Att. E, p. 2 states that the steep ravine walls are highly erosive.

28. The top of the slope of the ravine on the project site is shown on the site plan and on the grading and storm plan at Ex. 1, Att. H. The site plan shows that the proposal observes a 50-foot buffer or setback from the top of the slope. According to the environmental checklist, this project will involve building within 200 feet of Schneider Creek. Ex. 1, Att. B.

29. The Schneider Creek basin has a very high impervious coverage, ranging from 30% to 33%. City Storm and Surface Water Plan, at Ex. 1, Att. E, p. 2. Natural storage has been lost in the basin by filling wetlands and piping the upper half of the creek. Id. This prior development, along with inadequate on-site stormwater systems, has created flooding problems in Schneider Creek. Id. The physical and biological integrity of the creek system has been degraded by the excessive stormwater runoff "that prompts massive bank failures, undermines trees, and chokes the creek with sediment . . ." Id. The creek bottom "is severely scoured, with a highly mobile, unstable substrate." Id. The fish scientist advising the Smyth Landing developer on building the fish steps near the mouth of Schneider Creek states that he is concerned "with the lack of attention to this serious issue of deposits of unconsolidated gravel upstream which mobilize and cause problems to our stormwater systems downstream, not to mention the damage to the fish habitat as well." Ex. 11, e-mail sent 2-25-08 from Sarah Smyth McIntosh.

30. Schneider Creek has good water quality ratings in areas not affected by stormwater runoff. City Storm and Surface Water Plan, at Ex. 1, Att. E, p. 3. However, stormwater discharging into the creek from the conveyance system serving the southern portion of the basin has a high level of contamination. Id. Primary contaminants are suspected to be pollutants from vehicles, sediments and possibly nutrients. Id.

31. The recent decision of the Olympia Hearing Examiner in the request for preliminary subdivision for Devonshire, No. 03-0240, made a number of findings of fact concerning Schneider Creek, which include the segment adjacent to and downstream from this project site. These findings included the following, which are incorporated here:

(a) The main stem of Schneider Creek is classified as a Type 3 (F) stream.
(from Devonshire Finding 17)

(b) The Wild Fish Conservancy is a private organization which contracts with the City of Olympia to survey the Schneider Creek watershed and to develop a plan to evaluate its recolonization by anadromous trout and salmon. Schneider Creek is the most physically degraded watershed in Olympia surveyed by the Wild Fish Conservancy. It displays channel incision, bank erosion, substrate instability, downcutting, reduced summer flows and elevated winter flows. Id.

The Wild Fish Conservancy attributes this damage principally to the "massive delivery of stormwater associated with the paving of much of its headwaters . . ." *Id.* pp. 1-2, and test. of Glasgow. Thom Hooper, a professional fish biologist, testified that stormwater flows can wash out gravel needed for spawning. Mr. Glasgow of the Wild Fish Conservancy testified that the lack of gravel in the upper part of Schneider Creek indicates increased stormwater flow. (from Devonshire Findings 18 and 19)

(c) Historically, Schneider Creek would have supported anadromous populations of coho salmon, chum salmon, steelhead, and cutthroat trout. Presently, it only supports resident populations of sculpin and cutthroat trout. The Wild Fish Conservancy attributes this drastic loss of fish life to the increased stormwater delivery and to a small culvert where the Creek enters the Sound, which acts as a barrier to fish migration. This culvert is to be replaced in 2008 with a larger passage which will allow recolonization by fish species that were present in the past. (from Devonshire Finding 20)

32. The evidence did not disclose the presence of important species or habitats, as defined by the Critical Area Ordinance (CAO), Chap. 18.36 OMC, within 1000 feet of the project site.

33. On July 5, 2002, the Hearing Examiner granted Land Use Approval and a Shoreline Substantial Development Permit in File No. 97-0301 to Smyth Landing, LLC for an office/residential building, parking garage and related improvements on West Bay Drive where Schneider Creek flows into Puget Sound. As part of the application for these permits, Smyth Landing, LLC, the City and Delta Illahee Limited Partnership I entered into an agreement under which Smyth Landing LLC would replace the then existing 36-inch culvert for Schneider Creek with a 72-inch culvert. In addition, Smyth Landing and the City would construct fish steps and headworks for Schneider Creek. See Ex. 7 and Hearing Examiner decision of 7-5-02 in No. 97-0301.

34. The costs for these improvements were allocated under the formula in the agreement at Ex. 7. Part of this formula involved a \$500.00 per acre assessment on land identified as Tier II properties at the time building permit are issued for development on such properties. Tier II properties are those which would contribute runoff to Schneider Creek and thus benefit from the new culvert. The Woodard Lane site is a Tier II property.

35. The Applicant proposes to handle stormwater from the proposed development as described in the revised drainage report at Ex. 1, Att. E. Runoff from the parking lot, sidewalks, pervious paver fire lane and park will be routed to one of two detention tanks. The stormwater report states that water in Detention Tank #2 will be treated, but does not state that water in Detention Tank #1 will be treated. Ex. 1, Att. E, p. 23. Similarly, the Report shows on pp. 15 and 20 that Tank #1 will not have a filter, but that Tank #2 will. This may be because Tank #1 will contain runoff from the park area, not from the

parking lot. Releases from both tanks will receive some degree of treatment by running through grass. Test. of Moore. The tanks are designed to contain the 100-year flow and to release stormwater into the Schneider Creek ravine at a rate less than the predeveloped rate. *Id.* at 23 and 33. Rock pads will be installed onto which water released from the tanks will fall, which will help reduce any resulting erosion. Stormwater from building roofs will be routed to infiltration galleries and infiltrated into the ground. The infiltration galleries and rock pads will be placed within the 50-foot steep slope buffer.

36. City Engineering Plans Examiner Becky Dickinson testified that the Staff has reviewed the stormwater plan carefully and is of the opinion that it complies with applicable City stormwater standards. The Applicant's engineer, Mr. Moore, also testified that the stormwater plan complies with City standards.

CONCLUSIONS OF LAW

A. Nature of the required permits and the standards governing them.

1. The Applicant requests preliminary Planned Residential Development (PRD) approval for a co-housing development in the R 4-8 zoning district. The Applicant also requests a number of variances from standards applicable to its proposal.

2. Under Table 4.01 of OMC Title 18, co-housing is a permitted use in the R 4-8 zone, but is subject to the use standards set out in OMC 18.04.060 F.

3. As a PRD, the proposal is also subject to the standards and requirements governing PRDs set out in Chap. 18.56 OMC, which include compliance with the policies of the Comprehensive Plan and the requirements of the Unified Development Code, OMC Title 18.

4. In addition, the development must comply with other applicable land use requirements of the City code, including, for example, the stormwater manual and the tree protection ordinance.

5. Under OMC 18.56.060, the Hearing Examiner makes a recommendation on the proposed PRD to the City Council. The Hearing Examiner, however, typically makes decisions, not recommendations on variances. See OMC 18.66.020. The Department Staff stated at the hearing, though, that the Hearing Examiner should also make a recommendation on the associated variances. Because the variances are an integral part of the PRD, this interpretation will be followed and a recommendation made also on the variances. If the City Council believes that a decision, rather than a recommendation, should have been made on the variances, this document may be read as making such decisions.

B. OMC 18.04.060 F: use standards for co-housing.

6. Co-housing is defined by OMC 18.02.180 to include developments that

"consist of two or more dwelling units, one or more shared community structures (e.g., containing a meeting hall, dining hall/kitchen, community center, or day care) and perhaps a community garden, recreation area, or similar community oriented use."

This definition also characterizes co-housing as a type of conventional dwelling.

7. Co-housing is a permitted use in the R 4-8 district, subject to the standards in OMC 18.04.060 F. Subsection 1 a of this provision states that

"... no more than two (2) common structures shall exceed eight hundred (800) square feet in size and none shall exceed five thousand (5,000) square feet in size."

This requirement is met.

8. The same subsection 1 a states also that

"[a]t least one (1) common structure shall contain a dining room and kitchen large enough to serve at least fifty percent (50%) of the development's residents at a time (based upon occupancy of one (1) person per bedroom, and at least one (1) of the following: a children's day care center, mail boxes for a majority of the residents, recreational facilities (such as pool tables or exercise equipment), laundry facilities, or a meeting room available for the use of all residents."

This decision recommends conditions to assure that these requirements are met.

9. OMC 18.04.060 F 1 b imposes requirements on the location of structures. These requirements are met.

10. OMC 18.04.060 F 2 imposes requirements on business uses in co-housing developments. No business uses are proposed.

11. OMC 18.04.060 F 3. states that dwelling units in co-housing developments shall only be required to contain minimal kitchen facilities (e.g., a sink and stove or hot plate), consistent with the Uniform Building Code, provided that a common structure provides a fully equipped kitchen and dining area available to all residents of the development. The common house does provide these amenities, and this decision recommends requiring that individual units contain at least minimal kitchen facilities, such as a sink and stove or hot plate.

12. The Applicant is processing its request pursuant to Chapter 18.56, as required by OMC 18.04.060 F 4.

13. OMC 18.04.060 F 5 requires that a note be added to the site plan, which establishes common areas and precludes their conversion to another use. Compliance with this is achieved through the recommended conditions, below.

14. OMC 18.04.060 F 6 a imposes requirements when platting is proposed for co-housing. This proposal involves no platting.

15. OMC 18.04.060 F 6 b imposes setback requirements when platting is not proposed. With the removal of the garage/shop from its proposal, these requirements are met.

16. OMC 18.04.060 F 6 c imposes requirements for building separation. These requirements are met.

C. Residential density in the R 4-8 zone.

17. As found, the Applicant desires to have 21 residential units as part of its proposal.

18. According to OMC 18.04.080 A 1 a,

"[t]he maximum housing densities specified in Table 4.04 are based on the total area of the entire site, including associated and/or previously dedicated right-of-way, but not including streams, wetlands, landslide hazard areas, "important habitat areas," and "important riparian areas" and land to be dedicated or sold for public parks, schools or similar non-residential uses."

The Findings show that under this rule, 2.3 acres is the basis for density calculations for this proposal.

19. According to OMC 18.04.080 A 5, transferable development rights (TDR) must be obtained from an eligible property owner in a Thurston County TDR sending zone in order to develop above seven units per acre in an R 4-8 District. The evidence did not show that any TDRs have been transferred to this parcel. Therefore, the maximum density allowed on this property is seven units per acre. Multiplying 2.3 acres by seven units per acre results in 16.24 units, which is rounded to 16 under OMC 18.02.080. Thus, sixteen residential units is the maximum allowed under this basic density calculation.

20. Ex. 1, Att. A contains a request for a variance by the Applicant under OMC

18.66.020, requesting, among other things, a "density bonus". However, none of the supporting material submitted by the Applicant addresses the requirements of OMC 18.66.020 for such a variance. Apart from that, it is plain that there are no special circumstances relating to the size, shape, topography, location, or surroundings of the subject property such that density must be increased to provide the property with use rights and privileges permitted to other properties in the vicinity. With that, the central requirement for a variance, found in OMC 18.66.020 A 2, is not met.

21. At the hearing, representatives of the Applicant testified that it was requesting a density bonus, because the co-housing use is similar to cottage housing or townhouses, and density bonuses are available for such uses. Cottage housing is defined by OMC 18.02.180 as four or more small, detached dwelling units sharing a commonly owned courtyard/common area and parking area. OMC 18.04.060 H 3 states that cottage housing shall include no more than twelve dwelling units per courtyard. If this proposal is to be deemed cottage housing, the "courtyard" must be the lawn around which the dwelling units are clustered. The Applicant desires 20 units around this courtyard, far in excess of the maximum of twelve for cottage housing. Thus, this proposal is not for cottage housing.

22. A townhouse is defined by OMC 18.02.180 as a

"single-family dwelling unit which is part of a group of two or more such units separated by a completely independent structural wall (including utilities in separate walls), extending from the ground to the roof in accordance with the Building Code and which has no doors, windows or other provisions for human passage or visibility through the wall."

No evidence was offered to show that these criteria are met. To the contrary, the Applicant made clear that its proposal was not for townhouses. See Ex. 14, p. 2 and test. of Saunders.

23. This proposal is for neither cottage housing nor townhouses. It is for co-housing, which is a specific use defined in the zoning ordinance and authorized in the R 4-8 zone. The density bonuses for cottage housing and townhouses are not available for co-housing.

24. The Applicant also asks in Ex. 1, Att. A that the City waive the requirement noted above that transferable development rights be obtained to achieve densities over seven units per acre. The reasons for this request center around the low-impact type of development, the need to keep housing prices down and the presence of critical areas. Ex. 1, Att. A. There is, however, no legal basis for granting this waiver for the reasons expressed. The requirement to obtain TDRs is an express requirement of OMC 18.04.080 A 5 to develop over seven units per acre in this zone. No variance from this requirement was requested. No evidence was offered to show that the requirements for a variance would be met for this request. The City cannot waive an express requirement of

the code simply because the proposal is beneficial.

25. Finally, the Applicant argued that densities could be reduced through the flexibility residing in the PRD process. As discussed in more detail below, the basic standard for a PRD is that "[a]ll requirements of the underlying use district . . . shall apply within the PRD unless specifically modified pursuant to the provisions of this chapter." OMC 18.56.140 B and C specifically allow deviations from the requirements of the underlying zone for minimum lot size and lot coverage. No deviations from the underlying density requirements are expressly authorized. Further, OMC 18.56.140 A 2 b states that exceptions from the standards of the underlying district must be warranted by the design and amenities incorporated in the development plan and program. This could be read as authorization to deviate from any underlying standard, such as density, as long as warranted by design and amenities. It could just as easily be read as a requirement for making use of the expressly allowed deviations from lot size and lot coverage requirements.

26. According to OMC 18.56.020, the purposes of a PRD are to permit greater flexibility and more creative and imaginative design, to promote urban infilling and more economical and efficient use of the land, to provide a development which is compatible with the surrounding neighborhood, to provide a harmonious variety of housing choices and a higher level of urban amenities, and to preserve natural topography, unique geological features, and open space. It is also intended to encourage the provision of more usable and suitably located recreation facilities and other public and common facilities, to enable clustering of development, and to optimize siting, orientation, layout and design of structures to protect natural vegetation, wetlands, drainage areas, slopes and other natural features.

27. These purposes are almost exclusively concerned with the design of the development. To allow density increases over those prescribed for the underlying zone if they are "warranted by design and amenities" would allow developments at densities contrary to the purposes of both the underlying zone and the PRD chapter. Such an interpretation would also purport to allow unconfined density increases under a soft and difficult standard to apply. Unless modified by expressly authorized bonuses, variances or exceptions, the density of the underlying zone should apply to PRDs. Under that density, a maximum of sixteen dwelling units are allowed for this proposal.

D. The requirements of Chap. 18.56 OMC governing PRDs.

28. The standards for approval of a PRD are set out in OMC 18.56.140. Subsection A 1 of that section states that

"[a]ll requirements of the underlying use district and other city ordinances, including but not limited to urban design guidelines, connecting streets, tree protection and drainage design and erosion control shall apply within the PRD unless specifically modified pursuant to the provisions of this chapter."

Subject to the Conclusions of Law herein on specific subjects and as recommended to be conditioned below, this proposal meets these requirements.

29. OMC 18.56.140 A 2 a requires that the PRD be in conformance with the Comprehensive Plan. As recommended to be conditioned below, this requirement is met.

30. OMC 18.56.140 A 2 b requires that exceptions from the standards of the underlying district be warranted by the design and amenities incorporated in the development plan and program. The Staff Report, Ex. 1, p. 10, states that the only standard subject to this requirement is that regarding the number of units in a building. The design of the development and the amenities it provides warrant the use of four-plexes. This requirement is met. As held above, this provision does not allow density increases.

31. OMC 18.56.140 A 2 c requires that the system of ownership and means of developing, preserving and maintaining open space are suitable, as provided in OMC 18.56.140 D. This latter provision first requires a bond or other assurance acceptable to the City Council that any improvements made in the common open space will be completed. This decision recommends a condition to assure compliance with this requirement.

32. OMC 18.56.140 D also requires the Applicant to execute and record covenants, deeds, homeowners' association bylaws or other documents guaranteeing maintenance, construction, common fee ownership, if applicable, of open space, community facilities, stormwater facilities, private roads and drives, and all other commonly owned and operated property. OMC 18.56.140 further requires that open space which is available for the common use of the residents be either:

"a. Conveyed to a public agency which will agree to maintain the common open space and any buildings, structures, or improvements which have been placed on it; or

b. Owned in common by the property owners within the MPD or a Homeowners' Association."

33. To comply with these requirements, the Department asks that the proposed condominium be revised to specify that all owners have an undivided share in the common property, to include more specific requirements for the ownership and maintenance of open space and critical areas, and to strike all provisions for dissolution and expiration, resulting in perpetual existence for the condominium association. Ex. 1, p. 10.

34. The condominium declaration at Ex. 1, Att. C creates an owners' association to be held as a nonprofit corporation, the members of which are the owners of units in the development. The condominium declaration at Ex. 1, Att. C designates all property other than the individual dwelling units as "common elements", which

would include open space and critical areas. The common elements would apparently not be owned by the association, but through undivided interests of the residential unit owners, allocated according to the formula in Sec. 5.4 of the declaration. Subsequent to the hearing, the Applicant stated that it would "make it clear that all critical areas and common areas will be owned as an undivided interest and maintained by the condominium association." Ex. 10, Anest mem. OMC 18.56.140 allows open space, including critical areas, to be owned by a listed type of organization or in common by the property owners. The proposed condominium declaration provides for common ownership. Therefore, there is no need to revise the declaration, as the Staff Report requests, to provide for common ownership.

35. The condominium declaration states at Sec. 9.3 that the association is responsible for the maintenance and repair of common elements, which includes all open space and critical areas. The Staff Report asks for "more specific requirements" for the maintenance of open space and critical areas, but neither the Staff Report nor the testimony disclosed what those were. In the absence of this, the clear duty to maintain and repair in Sec. 9.3 is sufficient.

36. The Staff Report also asks that provisions for dissolution and expiration of the condominium should be deleted and the condominium association made perpetual. This requirement would directly conflict with RCW 64.34.268, which allows condominiums to be terminated. Further, requiring that a certain property interest be held in its present form forever could deprive those with interests of the right to dispose of property, even though they could sell their interest in that form at any time. For these reasons, the Staff Report's request for a perpetual condominium cannot be granted.

37. The Staff Report's concern for on-going care of the open space and critical areas is well taken. This can be accomplished through a condition recommended below requiring that if the condominium is ever terminated or changed to another ownership form, the legal duty to maintain and repair the open space and critical areas be transferred to an entity acceptable to the City.

38. As recommended to be conditioned, this proposal complies with OMC 18.56.140 A 2 c and OMC 18.56.140 D.

39. The proposal is appropriately clustered pursuant to OMC 18.56.140 A 3.

40. OMC 18.56.140 A 4 does not apply, because no plat is involved.

41. OMC 18.56.140 B and C do not apply to this proposal.

42. OMC 18.56.140 D 1 is met by this proposal.

43. The Conclusions above show that the requirements of OMC 18.56.140 D 2, 3 and 5 are met by this proposal, as conditioned.

44. OMC 18.56.140 D 4 requires that all common open space be landscaped in accordance with the landscaping plan submitted by the applicant and approved by the City. In response to this, the Staff Report states on p. 12 that the Applicant should be required to stabilize all denuded soils and asks that a revised landscape plan be submitted for Staff review and approval. If the only defect in the landscape plan is the need to stabilize soils, there is no need to require the Applicant to prepare a new landscape plan and to reopen the Staff review of that entire landscape plan. All that need be done is require the stabilization of denuded soils to the satisfaction of the Department. That is recommended as a condition.

45. OMC 18.56.140 E requires that the perimeter of a PRD be designed to minimize undesirable impacts of the PRD on adjacent properties and undesirable impacts of adjacent land use on the PRD. With the critical area, its buffer and existing vegetation maintained on the borders with developed areas, this requirement is met.

46. OMC 18.56.140 F, pertaining to nonresidential uses, does not apply.

E. Compliance with standards for the R 4-8 zone and other land use ordinances and standards.

1. The requirements of the R 4-8 zone.

47. As recommended to be conditioned, this proposal complies with the underlying requirements of the R 4-8 zone.

2. Frontage and other improvements on Woodard Avenue.

48. Section 2.040 A of the Engineering Design and Development Standards (EDDS) requires that streetside improvements be constructed in accordance with EDDS standards for any development requiring a State Environmental Policy Act (SEPA) checklist or creating an additional impact of more than 20 average daily vehicle trips. This development meets both of these criteria. The required streetside improvements vary according to the classification of the street.

49. Section 4B.020 of the EDDS states that required pavement and right-of-way widths also depend on the classification of the street.

50. According to Sec. 4B.030 of the EDDS, city streets are classified either as arterial, major collector, major commercial collectors, minor collector, neighborhood collector, or local access. The Staff Report does not state the classification of Woodard Avenue. The EDDS table in Chapter 4 showing the classification of streets does not show Woodard Avenue. Due to its short length, narrow pavement and small number of houses served, it is likely that Woodard is a local access street.

51. Table 1 of Chapter 4 of the EDDS sets out the minimum requirements for local access streets. Among these are five-foot sidewalks on both sides, curbs, twelve-foot lane widths, one six-foot parking lane, and a 48-foot right-of-way.

52. From the site plan and other evidence, it appears that the Applicant's proposal complies only with the required minimum right-of-way. The Staff Report at Ex. 1, p. 17 lists the site access, the hammerhead turn-around and taper as required improvements. At the hearing, Mr. Chalem of the Department asked that the Applicant build a five-foot sidewalk on the north side of Woodard Avenue, provide a 20-foot paved surface, build a six-inch curb, and straighten Woodard Avenue. This leaves the twelve-foot lane widths (24-foot paved total) and six-foot parking lane, which are also required by Table 1 of Chap. 4 of the EDDS.

53. As found, the segment of Woodard nearest Thomas Street has a 40-foot right-of-way and 20-foot total pavement width. It may be that following the 20-foot pavement with a 24-foot pavement adjacent to the proposal would cause safety or engineering problems. This should be evaluated by the Department. No reason was given for not requiring the six-foot parking lane required of local access streets by the EDDS. To ensure compliance with the EDDS, this decision recommends that the Department review whether this proposal should provide two 12-foot lanes and a parking lane on Woodard Avenue, as required by Table 1 of Chapter 4 of the EDDS. If the Department decides that either is not required, it should justify that decision to the City Council under the EDDS.

54. This decision also recommends the Applicant be required to build a five-foot sidewalk and a six-inch curb on its side of Woodard as required by Table 1 of Chapter 4 of the EDDS.

55. No evidence was offered showing that the existing curve on Woodard Avenue causes any safety concern or violates the EDDS. This Applicant is not responsible for correcting the partial alignment of the existing pavement off the right-of-way to the south. Therefore, the Applicant should not be required to straighten Woodard Avenue.

3. Schneider Creek, the Critical Area ordinance, the Shoreline Management Act, and stormwater.

56. The proposal complies with the City's stormwater manual.

57. As found, the Applicant states that its project will involve building within 200 feet of Schneider Creek. Environmental checklist, Ex. 1, Att. B. Under RCW 90.58.030 and .140, any development with a fair market value of \$5000.00 or greater within 200 feet of a shoreline, measured horizontally, may only proceed if a substantial development permit is issued. Shorelines are defined by RCW 90.58.030 to include stream segments with flows greater than 20 cubic feet per second. The Applicant did not obtain a substantial development permit for its proposal.

58. The evidence did not show whether Schneider Creek has a flow greater than 20 cubic feet per second or whether the fair market value of proposed construction within 200 feet of Schneider Creek is \$5000.00 or greater. If both of these questions are answered in the affirmative, the proposal's failure to obtain a substantial development permit violates the Shoreline Management Act. This decision recommends that the Department answer both of these questions and, if answered in the affirmative, require a substantial development permit.

59. The evidence offered did not indicate the stream type for Schneider Creek. As discussed in the Findings, evidence in other cases indicates it is a Type 3 or "F" stream. For streams in ravines greater than ten (10) feet in depth, the CAO requires a 50-foot buffer of existing vegetation from the top of the ravine. This requirement is met.

60. OMC 18.32.110 C states that developments within 300 feet of a critical area are subject to the CAO. Given the smaller dimensions of most buffers, this can only mean that developments within 300 feet are subject to applicable critical area regulations, even if they lie outside the buffers. Any other reading would deprive the 300-foot rule of its express meaning in OMC 18.32.110 C.

61. This development is within 300 feet of Schneider Creek. Therefore, it is subject to the CAO provisions which apply to it.

62. OMC 18.32.110 D prohibits any action which results in any alteration of a critical area or its buffer, except in compliance with the CAO. OMC 18.32.415 prohibits any human activity that changes the existing vegetation, hydrology, wildlife, or wildlife habitat of a stream or its buffer, except as specified in "18.37.070, 18.32.420 - Exempt Uses and Activities, 18.32.425 - Administratively Authorized Uses and Activities, or 18.32.430 - Hearing Examiner Authorized Uses and Activities".

63. As described in detail in the Findings, this development, through its cumulative effect with other developments, risks increasing erosion, channel incision, bank failures, tree failure, sedimentation and bottom scouring in and along Schneider Creek, as well as reduced summer flows and elevated winter flows. The Findings show this damage is attributed principally to the massive delivery of stormwater associated with the paving of much of the headwaters of Schneider Creek. The Findings show these effects damage fish habitat in Schneider Creek. Because much of these effects have occurred while the City has enforced stormwater standards, it cannot be assumed that compliance with the stormwater manual is sufficient to avoid these effects.

64. Because of these effects, the delivery of stormwater from this project into the Schneider Creek drainage comprises "human activity in a stream or its buffer that changes the existing vegetation, hydrology, wildlife, or wildlife habitat" under OMC 18.32.415. None of the exceptions in OMC 18.32.415 are applicable. Therefore,

unless further evaluation is carried out, it must be concluded that this proposal violates the CAO. This decision recommends carrying out such an evaluation.

65. OMC 18.32.630 requires a buffer at the top of a landslide hazard area of one-third the height of the slope. The proposed 50-foot buffer meets this requirement.

66. OMC 18.32.145 states that "permanent fences with signs or other access limiting features may be required on the perimeter of critical area buffers . . ." Such signs, according to this provision, "shall be made of wood or metal and attached to a wood or metal post or another material of equal durability with the following or with alternative language approved by the Director:

(Critical Area)
Protected by Law
Contact City of Olympia Community Planning & Development
for Information"

67. The Staff has requested that permanent fencing with signs every 75 feet be erected around the steep slope critical area buffer. Given the number of individuals living in this development and the slope's steepness and vulnerability to erosion, this requirement is needed to ensure its protection. As the Staff brought out at the hearing, the fence need not be solid.

4. Parking.

68. OMC 18.38.100 states that the specific number of off-street parking spaces prescribed in Table 38.01 of OMC Title 18, plus or minus 10%, shall be provided for specific land uses. Co-housing is not listed. Of those land uses listed, cottage housing and multifamily housing are the closest to this proposal. Table 38.01 requires 1.5 spaces per dwelling unit for each of these types, unless changed through a variance process. At 16 units authorized, the 1.5 ratio would result in 24 spaces. Increasing that by 10% reaches 26.4, which would be rounded off to 26 under OMC 18.02.080 H. Unless a variance is obtained, this is the maximum number of parking spaces allowed.

69. OMC 18.38.100 states that the minimum number of bicycle spaces prescribed in Table 38.01 of OMC Title 18 shall be provided for the specified land uses. The site plan at Ex. 1, Att . H states that the three garages will hold at least five bicycles each. As noted, the Applicant has removed the shop and garages from its proposal, presumably including the bicycle parking. Therefore, additional bicycle parking must be required consistently with OMC 18.38. A condition to accomplish that is recommended below.

70. OMC 18.38.120 requires one handicapped parking space for a lot of this size, unless more are required by the state building code. The two spaces provided meet the numeric requirement in OMC 18.38.120, and this decision recommends that if

the state building code requires more handicapped spaces, that requirement should be met.

5. Tree retention.

71. The Findings show that the Applicant's evidence conflicts as to which trees are to be removed. This decision recommends that the Applicant resolve this conflict by submitting a proposal to the Department showing precisely which trees would be cut and which retained.

72. If the trees are retained as proposed by the tree plan, the minimum tree density required by Chap. 16.60 OMC would be met. Ex. 1, Att. D. If more trees are cut, as proposed by the site plan, the evidence is uncertain as to whether the remaining trees would meet the minimum required tree density. Therefore, this decision recommends that the Department review the submittal required by the immediately preceding Conclusion to determine whether minimum tree density is met.

73. EDDS Sec. 6.130 A requires a minimum horizontal separation of 10 feet between sanitary sewers and potable water lines and a minimum vertical separation of 18 inches between the bottom of the water line and the crown of the sewer. EDDS Sec. 6.130 B allows sewer and water lines to be laid closer than ten feet apart "when local conditions prevent the separations described above" and when other listed conditions are met.

74. If laying the water and sewer lines more closely to each other would result in the retention of trees now proposed to be cut along the east property line, the resistance of the remaining trees to windthrow may be strengthened. This should constitute a "local condition" which could justify reduced separation of the two lines. Therefore, this decision recommends that after receiving the report from the Applicant as to which trees will be removed, the Department review whether placing the lines more closely together would spare any additional trees near the eastern boundary, whether that would help the integrity of the remaining trees along the boundary, and whether a reduced pipe separation would be consistent with the remaining requirements of EDDS 6.130. If each of these questions is answered in the affirmative, this decision recommends that a separation reduction be allowed.

F. Assessment under Smyth Landing agreement.

75. As found, as part of its application for certain permits, Smyth Landing, LLC, the City and Delta Illahee Limited Partnership I entered into an agreement under which Smyth Landing LLC would replace the 36-inch culvert for Schneider Creek near its mouth with a 72-inch culvert, and it and the City would construct fish steps and headworks for Schneider Creek also near its mouth. This agreement is found at Ex. 2. Part of this agreement involved a \$500.00 per acre assessment at the time building permits are issued for properties contributing runoff to Schneider Creek. This project site

is such a property. Smyth Landing L.L.C. requests that this project be assessed \$500.00 per acre as a contributing property under this agreement.

76. Section 10 b of this agreement states that the assessment shall be "\$500.00 per acre, or such figure established through the statutory process described below . . ." The only statutory process so described is that of RCW 35.72.050, in Section 10 c of the agreement. Section 10 c states that

"[t]he latecomers agreement shall be processed by the City of Olympia once all costs are known for the construction of the Phase II work, as provided in RCW 35.72.050."

77. This wording plainly contemplates the execution of a subsequent latecomers agreement, after actual costs are determined. Mr. Chalem of the Department testified that the latecomers agreement is not yet completed. The evidence also did not show whether all applicable requirements of Chap. 35.72 have yet been carried out. In this posture, it seems premature to require the payment of a fixed sum at building permit issuance as a condition of this PRD approval. If, in fact, all requirements for this assessment are satisfied by the time building permits are to be issued, Smyth Landing L.L.C. may request the City to impose it at that time.

G. Variances and modifications.

1. Landscape island variance.

78. OMC 18.36.180 C 2 requires a landscape island at the end of each parking row. OMC 18.36.180 C 3 requires one tree for each 200 square feet of landscape island area. The Applicant requests a variance allowing it not to plant a tree in the island on the west side of the parking area.

79. Under OMC 18.66.020 A, a variance may be granted only if it is shown:

1. That the proposed variance will not amount to a rezone or constitute a change in the district boundaries shown on the Official Zoning Map;
2. That because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property the variance is necessary to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located;
3. That the special conditions and circumstances do not result from the actions of the applicant;
4. That granting of the variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and

zone in which the property is located;

5. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated; and

6. That the variance is the minimum variance necessary to provide the rights and privileges described above."

80. No evidence was offered to show any circumstances relating to the size, shape, topography, location, or surroundings of the subject property such that this variance is necessary to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone. With that, the requested variance does not meet requirements 2, 4 or 6 of OMC 18.66.020 A and should be denied.

2. Variance allowing parking spaces adjacent to right-of-way.

81. OMC 18.36.180 B 1 requires a landscaping strip at least ten feet in width between parking lots and street rights-of-way. The Applicant requests a variance allowing two parking spaces to be placed directly contiguous to the Woodard Avenue right-of-way, as shown on the site plan at Ex. 1, Att. H.

82. The Applicant proposes to construct Woodard Avenue in the south part of its right-of-way, which would be roughly in line with the existing segment of Woodard. As found, this would leave either 20 or 30 feet between these parking spaces and the street. As shown on the site plan, the two existing houses on the same side of Woodard are built up to the right-of-way. The Applicant states at Ex. 1, Att. A, that the front yards of these houses are in the right-of-way.

83. With the street itself in the far southern part of the right-of-way and with the two adjacent properties using the right-of-way for their front yards, requiring the Applicant to create an additional 10-foot landscaped strip outside the right-of-way would serve no purpose. Further, with the ravine to the west, it is unlikely that widening of Woodard Avenue will be required in the future. If it is, the Applicants can be required to maintain the ten-foot buffer from the expanded pavement edge.

84. Although not a strong case, one may conclude that these conditions constitute special circumstances relating to the surroundings of the subject property and that requiring the ten-foot strip outside the right-of-way would deprive the Applicant of rights commonly enjoyed by its two neighbors. Further, merely applying for a permit does not make the special circumstances the result of the Applicant's actions. The requirements for a variance are met.

3. Streetlight modification.

85. The Applicant requests to eliminate the streetlight it has proposed at the project entrance on Woodard Avenue, because there is one across the street from it. The Staff agrees. The Staff and Applicant further agree that the Applicant will install a short entry lamppost on each side of the driveway entrance.

86. No legal requirement for this streetlight has been pointed out. Therefore, the Applicant should not be required to install it. No variance is needed.

4. Other requests for variance or modification.

87. The Applicant's request for a density modification or bonus and for a waiver of the TDR requirement are discussed above.

88. The Applicant requested a variance allowing it to place a guest room in the common house. The Department takes the position that this guest room may be allowed in addition to the 16 residential units allowed, as long as it has no kitchen. No variance is needed for this guest room, without kitchen.

RECOMMENDATIONS FOR DECISION


- A. The requested variance allowing the Applicant not to plant a tree in the island on the west side of the parking area should be denied.
- B. The requested variance allowing two parking spaces to be placed directly contiguous to the Woodard Avenue right-of-way, as shown on the site plan at Ex. 1, Att. H, should be granted, subject to the condition that the Applicant maintain at least a ten-foot screening strip immediately north of the edge of the frontage improvements on Woodard Avenue adjacent to its property.
- C. The Applicant should not be required to install the streetlight at its driveway entrance. No variance is needed.
- D. The Applicant may place a guest room without kitchen facilities in the common house, without the need for a variance.
- E. With the above recommendations the proposed PRD should be approved, subject to the following conditions:
 - 1. Proposed Conditions 1, 6, 7, 8, 11, 14, 15 and 16 on pp. 15-17 from the Staff Report, Ex. 1, are incorporated by reference.

2. Proposed Condition 9 from the Staff Report is incorporated by reference, except for its last sentence.
3. Proposed Condition 12 from the Staff Report is incorporated by reference, except for its last sentence.
3. Proposed Condition 13 from the Staff Report is incorporated by reference, except for its last sentence.
4. The remaining conditions from the Staff Report are not incorporated.
5. The Applicant shall install fire sprinklers in all residential units, consistently with City standards.
6. The dining room and kitchen in the common house shall be large enough to serve at least fifty percent of the development's residents at a time, based upon occupancy of one person per bedroom.
7. The common house shall contain at least one of the following: a children's day care center, mail boxes for a majority of the residents, recreational facilities (such as pool tables or exercise equipment), laundry facilities, or a meeting room available for the use of all residents.
8. Individual residential units shall contain at least minimal kitchen facilities, such as a sink and stove or hot plate.
9. The Department shall review whether this proposal should provide two 12-foot lanes and a parking lane on Woodard Avenue, as required by Table 1 of Chapter 4 of the EDDS. If the Department decides that either is not required, it should justify that decision to the City Council under the EDDS.
10. The Applicant shall build a five-foot sidewalk and a six-inch curb on its side of Woodard Avenue, as required by Table 1 of Chapter 4 of the EDDS.
11. The Applicant shall not be required to straighten the existing curve on Woodard Avenue.
12. For the reasons in the Conclusions, the requests by the Staff Report for revisions to the condominium declaration should not be granted. However, if the condominium is ever terminated or changed to another ownership form, the legal duty to maintain and repair the open space and critical areas shall be transferred to an entity acceptable to the City.
13. A maximum of 26 parking spaces shall be provided.

14. The Applicant shall provide bicycle spaces consistently with Table 38.01 of OMC Title 18 and Chap. 18.38 OMC.
15. If the state building code requires more than the two handicapped spaces proposed, the Applicant shall install such additional spaces.
16. The Applicant shall ensure that denuded soils are stabilized to the satisfaction of the Department.
17. The Applicant shall submit a proposal to the Department showing precisely which trees would be cut and which retained.
18. The Department shall review the submittal required by the immediately preceding Condition to determine whether minimum tree density is met.
19. After receiving the report from the Applicant as to which trees will be removed, the Department shall review whether placing the water and sewer lines more closely together would spare any additional trees near the eastern boundary, whether that would help the integrity of the remaining trees along the boundary, and whether a reduced pipe separation would be consistent with the remaining requirements of EDDS 6.130. If each of these questions is answered in the affirmative, a reduction in the separation should be allowed.
20. After the above conditions relating to trees and the utility separation are answered, the Department shall determine whether any additional examination of the stability of the remaining trees along the eastern boundary of the site should be carried out.
21. The Applicant shall comply with all measures directed or recommended by the Tree Protection Plan, Ex. 1, Att. D.
22. The Applicant shall provide a bond or other assurance acceptable to the City Council that any improvements made in the common open space will be completed.
23. The Department shall determine whether the segment of Schneider Creek within 200 feet of any proposed construction has a flow greater than 20 cubic feet per second, as measured pursuant to the Shoreline Management Act and its rules. If it does, the Department shall determine whether the fair market value of proposed construction within 200 feet of Schneider Creek is \$5000.00 or greater. If it is, this proposal should be denied for failure to obtain a substantial development permit or placed on hold while the Applicant applies for such a permit.

24. The Applicant shall retain a qualified expert to carry out an evaluation of the cumulative effect of the stormwater proposed to be released into Schneider Creek from this proposal. The evaluation shall consider the effects on erosion, bank failures, tree failures, sedimentation and bottom scouring in and along Schneider Creek. It shall evaluate the effect of the stormwater releases on the water quality of Schneider Creek. It shall also evaluate the effect on fish habitat of the hydrology and quality of the stormwater releases. If the evaluation concludes that the proposal will adversely change the existing vegetation, hydrology, wildlife, or wildlife habitat of Schneider Creek or its buffer, it shall recommend measures to fully mitigate that effect. If such effects are not mitigated, the proposal should be denied as a violation of OMC 18.32.415.

Dated this 17th day of April, 2008.


Thomas R. Bjorgen
Olympia Hearing Examiner

BEFORE THE OLYMPIA CITY COUNCIL

IN RE:

**Woodard Lane Co-Housing Preliminary
Planned Residential Development**

**CP and D #05-0121
FINDINGS AND CONCLUSIONS OF
LAW**

SUPPLEMENTAL FINDINGS AND CONCLUSIONS OF LAW

1. The Hearing Examiner held a public hearing regarding the Woodard Lane Co-housing project and issued a decision with findings, conclusions and recommendations related to the project. As part of that decision, the Hearing Examiner tasked staff to follow up on several items and to provide additional information to the Olympia City Council. In Attachment 3 to the Staff Report to the City Council on this matter, staff has provided additional information on each of these items. Attachments 3 through 7 of the Staff Report contain supplemental information that was not available at the time of the hearing, and thus they will be added to the record. The following supplemental findings and conclusions address the questions that were not answered at the time the Hearing Examiner rendered his decision.

2. The Council approves the Woodard Lane Co-housing project preliminary planned residential development as clarified and modified below. The Examiner's recommendations, as clarified and modified below, are adopted as conditions of the preliminary planned residential development approval. The Olympia City Council also accepts the Hearing Examiner's findings and conclusions and adopts them as the Council's own as clarified and modified below. The final planned residential development will not be approved until the preliminary approval conditions are met.

3. The Council agrees with what appears to be the Hearing Examiner's suggestion that only the Hearing Examiner has authority to render decisions regarding variances. Council does not have authority to decide variances. See OMC 18.66.020, 18.72.100 and 18.82.120. As referenced by the Hearing Examiner under Conclusion of Law A-5, the Hearings Examiner's findings and conclusions regarding the proposed variances are final decisions regarding those variances. The City Council adopts those decisions in its determination to grant preliminary approval of the planned residential development.

4. Under Recommendation #9 in the Decision, the Hearing Examiner requested that the Department of Community Planning and Development determine the appropriate width of the travel and parking portion of Woodard Avenue. The Department, in its response submitted to Council, said that EDDS standard plan 4-2J is the appropriate depiction of the curb-to-curb street cross-section along with a planter strip. The Council agrees. Standard Plan 4-2J shall be used to govern the form of the street cross-section as well as the planter strip along the project's side of Woodard Avenue.

5. Under recommendations #18 to 20 of the Hearing Examiner's Decision, the Hearing Examiner asked the Department to evaluate whether a reduction in the 10-foot setback between

the water and sewer lines could be permitted. The Department's response to the City Council states that the standards do not permit a reduction in the 10-foot separation. The City Council agrees. A reduction in the 10-foot separation would not be consistent with the requirements in EDDS 6.130(A). In light of the denial of reduction of that 10-foot separation, the Department shall review the proposal to ensure that the tree density requirements are met prior to final approval.

6. Under recommendation #23, the Hearing Examiner requested that the Department examine whether any portion of Schneider Creek on site is subject to Shoreline Management Act jurisdiction. Based on an email from Steve Morrison, a planner from Thurston Regional Planning Council, the Department concluded that no portion of the site is within Shoreline Management Act jurisdiction. See attachment 7 to the staff report. The City Council concludes that no portion of the site is within Shoreline Management Act jurisdiction.

7. Under recommendation #24, the Hearing Examiner required that the Applicant retain a qualified expert to evaluate impacts of stormwater discharges to Schneider Creek. If the evaluation concluded that the stream will be adversely affected, the report shall recommend measures to fully mitigate that effect. The applicant hired a qualified expert to evaluate the impacts to Schneider Creek. The report provided various options that could mitigate impacts to Schneider Creek. The actual stormwater design will be evaluated at the time of engineering permitting to ensure that the proposed project will not adversely impact Schneider Creek as described by the Hearing Examiner recommendation #25.

DATED this _____ day of July 2008.

DOUG MAH
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY