

EXHIBIT A

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

1			
2	IN RE:)	HEARING NO. 13-0039
3	BRIGGS VILLAGE MASTER PLAN)	FINDINGS OF FACT,
4	AMENDMENT,)	CONCLUSIONS OF LAW
5)	AND RECOMMENDATION

6 **APPLICANT:** Briggs Village, LLC
 7 27200 Agoura Road, Suite 210
 8 Calabasas, California 91301

9 **REPRESENTATIVES:**

10 Attorney: Heather L. Burgess
 11 Attorney at Law
 12 Phillips, Wesch, Burgess, PLLC
 13 724 Columbia Street N.W., Suite 140
 14 Olympia, Washington 98501

15 Principal Planner: Jean Carr
 16 Shea Carr Jewell
 17 2102 Carriage Drive S.W., Bldg. H
 18 Olympia, Washington 98502

19 Architect: Ron Thomas
 20 Thomas Architecture Studio
 21 109 Capital Way North
 22 Olympia, Washington 98501

23 Real Estate Consultant: Ryan Haddock
 24 Kidder Matthews
 25 1550 Irving Street S.W., Suite 200
 Olympia, Washington 98512

Traffic Engineer: Perry Shea
 SCJ Alliance

SUMMARY OF REQUEST:

Amendment of the Briggs Urban Village Master Plan, Ordinance No. 6299 to allow the following:

*Findings of Fact, Conclusions of Law
and Recommendation - 1*

CITY OF OLYMPIA HEARING EXAMINER
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1 Ten years later, several hundred single and multi-family residential units have been
2 constructed in the north portion of the Village and an apartment complex has been constructed in
3 the south portion, and senior housing units are currently under construction east of Henderson
4 Boulevard. But with the exception of the YMCA facility at the Henderson Boulevard/Yelm
5 Highway intersection, no commercial development has taken place and the Village Center is
6 wholly undeveloped.

7 The Applicant's proposed amendments fall into two broad categories: Its first request is
8 to change the mix of residential units while still retaining a total residential unit count of 810.
9 This request is generally not controversial with the possible exception of the number of
10 residential units located above retail/office space in the Village Center.

11 The second, more controversial request proposes to significantly reduce the square
12 footage for office and retail use. More specifically, the Applicant seeks to reduce office space
13 from 113,850 square feet to a range of 5,000 to 31,000 square feet; reduce retail space from
14 60,240 square feet to a range between 33,700 square feet and 60,750 square feet; and reduce the
15 grocery store from 50,000 square feet to 30,285 square feet (to recognize the actual size of the
16 permitted but unbuilt grocery store). These requested changes have secondary consequences:
17 They would reduce the number of needed parking stalls by 302 (including a 272 stall
18 underground parking lot) and would reduce the required number of residential units located
19 above commercial uses in the Village Center from 26 units to 10 units.

20 In addition to the significant reduction in office/retail square footage the Applicant asks
21 to reduce the overall height and number of stories for commercial buildings. Instead of two and
22 three-story commercial buildings, the buildings surrounding the Village green would generally
23 have only one useable floor except for those having second floor residential units. In return,
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1 building facades would be at least 24 feet high (and at least 30 feet at corners) to give the
2 impression of multiple stories.

3 City Staff recommends approval of the requested amendments subject to four conditions
4 found on page 16 of the Staff Report. The Applicant does not object to these conditions subject
5 to slight modification of Conditions 2 and 3, and City Staff has no objection to the Applicant's
6 proposed modifications.

7 There is considerable opposition to the requested amendments. Interestingly, most of the
8 opposition comes from former members of the Planning Commission and City Council who
9 were involved in the original planning for urban villages dating to 1993, or with approval of the
10 Briggs Village Master Plan in 2003. The opponents raise a number of technical challenges to the
11 application but their primary objection is that the requested amendments undermine the
12 fundamental goals and vision of the urban village concept.

13 A more complete description of the proposed changes and the City Staff's response, as
14 well as a more complete description of the opponents' positions, is set forth below. After taking
15 into consideration all of the opponents arguments I conclude that the proposed amendments are
16 well reasoned and I recommend to the City Council that Ordinance No. 6299 be **amended as**
17 **requested** subject to the conditions suggested by the City Staff and accepted by the Applicant.

18 **PUBLIC HEARING**

19 The public hearing commenced at 6:30 p.m. on December 16, 2013, in the City Council
20 Chambers in the City Hall. The City appeared through Steve Friddle, Senior Planner. The
21 Applicant appeared through its attorney, Heather L. Burgess; its architect, Ron Thomas; its
22 principal planner, Jean Carr; its traffic engineer, Perry Shea; its real estate broker, Ryan Haddock
23 of Kidder Matthews; and the company President, Joseph Amoroso. A verbatim recording was
24 made of the public hearing and all testimony was taken under oath.

1 In advance of the public hearing Mr. Friddle presented the City Staff Report (Exhibit 1)
2 prepared on behalf of both the City Staff as well as the Design Review Board. Just prior to the
3 commencement of the hearing ten additional documents (Exhibit 2-11) were presented including
4 letters both supporting and opposing the application along with the Applicant's pre-hearing
5 briefing. During the course of the hearing six additional documents were presented (Exhibits 20-
6 25) and during the week that followed the hearing ten additional documents were submitted
7 (Exhibits 26-35) including letters and briefing from the Applicant, the City and the opponents. A
8 complete list of the exhibits is appended to this Decision.

9 **TESTIMONY OF STEVE FRIDDLE**

10 The public hearing commenced with testimony from Mr. Friddle, Principal Planner for
11 the City. Mr. Friddle provided a relatively brief summary of his detailed Staff Report. The
12 following is a summary of Mr. Friddle's report and testimony:

13 Briggs Village Master Plan was approved in 2003 by Ordinance No. 6299. The Plan
14 covers approximately 133 acres and provides for 810 residential uses of various types along with
15 more than 200,000 square feet of retail, office and grocery space mostly positioned around the
16 "Village Center" located off of Henderson Boulevard. Briggs Village is designated as an "Urban
17 Village" - the only one of its kind in the City limits - and its development is regulated by its
18 enabling ordinance, Ordinance No. 6299, as well as by Chapter 18.05 (General Standards for
19 Urban Villages) and Chapter 18.57 (Standards for Master Plan Development) of the Olympia
20 Municipal Code.

21 As previously noted, the Applicant asks to amend the Master Plan in two broad ways: (1)
22 by adjusting the makeup (but not count) of residential units, and (2) by reducing the square
23 footage and size of commercial buildings.

1 **Changes to Residential Uses.** The Master Plan provides for the construction of 810
2 residential units consisting of six types of housing. The proposed amendments would not change
3 the total number of residential units but they would alter the number of each type of housing unit
4 while also adding condominiums as a seventh type of housing. There would be a small reduction
5 in the number of detached single-family residences to allow for slightly larger lots in the west
6 phase. Apartments east of Henderson Boulevard would be replaced by 72 condominiums. A
7 new 23-unit apartment building would be added near the Village Center. The number of
8 residential units located above retail/office buildings in the Village Center would be reduced
9 from 26 to 10. These proposed changes to the residential makeup are unopposed with the
10 exception of the reduced number of second story residential units in the Village Center.

11 **Commercial Changes.** The Master Plan recognizes three types of commercial use:
12 grocery, retail and office. The Plan provides for up to 50,000 square feet of grocery space but a
13 permit has already been approved for a grocery store with 30,285 square feet. The Applicant
14 proposes to reduce the square footage for grocery to the size of the permitted store, or 30,285
15 square feet.

16 The Applicant proposes to reduce retail space from 60,250 square feet to a range with a
17 minimum of 33,700 square feet and a maximum of 60,750 square feet. The Applicant proposes
18 to reduce office space from 113,800 square feet to a range with a minimum 5,000 square feet and
19 a maximum of 31,000 square feet.

20 If all three changes are approved the commercial square footage would be reduced to a
21 maximum of 94,985 square feet (30,285 for grocery store, 33,700 for retail and 31,000 for office)
22 and with a minimum office/retail square footage of 64,700 square feet. These changes represent
23 a reduction in general commercial space of 129,115 square feet.

1 City Staff supports the requested reductions in commercial square footage. The Staff's
2 position is partially based upon the information provided by the Applicant (Attachments 8, 9, 10
3 and 11 to the Staff Report), and the independent analysis by the Thurston County Economic
4 Development Council that in the third quarter of 2013 the area had 942,000 square feet of
5 surplus commercial space, or a seven to ten-year supply without considering any new
6 development. The staff's position is also based upon independent analyses supporting a
7 reduction in the commercial scale of Briggs Village. These independent sources of data include
8 the Thurston Regional Planning Council's December 2013 "Creating Places and Preserving
9 Spaces - A Sustainable Development Plan for the Thurston Region"; the Eason/Bowen Report
10 "Creating Walkable Neighborhood Business Districts" and "Investment Strategy - City of
11 Olympia Opportunity Areas" by ECONorthwest. City Staff supports the proposed reduction in
12 commercial space for the reasons that: (1) the project has been unable to attract any commercial
13 development during its first ten years; (2) the substantial inventory of vacant commercial space
14 in the region will discourage larger scale commercial development at Briggs Village; and (3)
15 independent studies show that there is no foreseeable demand for significant commercial square
16 footage at Briggs Village.

17 The amount of parking required for Briggs Village is related to the amount of its
18 commercial square footage. The reductions in commercial development would support a
19 significant reduction in the amount of needed parking. The Applicant asks to eliminate 272
20 underground parking stalls and approximately 30 off-street parking spaces, or a total reduction of
21 302 parking spaces. This would leave 621 parking spaces.

22 The Master Plan requires that commercial buildings in the Village Center have 2 to 3
23 stories of usable floors. This was intended to enhance the appearance of the commercial area
24 relative to the surrounding residential areas and increase the intensity of activity in the Village
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1 Center. The Applicant asks to amend the Master Plan to allow one-story commercial structures.
2 Mr. Friddle explains that this request was a significant concern to City Staff. But as review of
3 the application got underway City Staff met with former Mayor Gadbow, former Mayor Foutch
4 and former Council Members Hawkins and McPhee to more carefully consider this proposal.
5 These meetings resulted in an alternate proposal that would allow one-story commercial
6 buildings but would require the buildings to have a minimum 24 foot exterior façade (and 30 feet
7 at corners) and would also allow the possibility in the future to convert these buildings to 2 and 3
8 story mixed use buildings if market conditions improve. In addition, the Master Plan would
9 continue to allow up to 175,000 square feet of commercial space (the maximum possible given
10 the size of the grocery store) provided that the ten percent residential requirement and parking
11 requirements were satisfied. The Applicant does not oppose these changes.

12 City Staff believes that reduction in the number of required stories is in keeping with the
13 reduction in commercial square footage. Without a reduction in building size the reduced square
14 footage would result in only a handful of commercial buildings in the Village Center. This
15 would be inconsistent with the intended look of the Urban Village and would further discourage
16 commercial development. At the same time, requiring exterior facades of at least 24 feet will
17 give commercial structures a needed sense of scale relative to the surrounding residential
18 buildings.

19 There is an important legal question relating to the required number of stories for
20 commercial buildings. Opponents to the proposed amendments correctly note that, pursuant to
21 another City Ordinance, OMC 18.05.080(M)(1), Urban Village "buildings . . . which front onto
22 the required park, green or plaza . . . shall be at least two stories in height." Opponents argue that
23 reducing commercial buildings to one-story violates this requirement. Mr. Friddle disagrees. It
24 is his belief that the referenced City ordinance merely requires that commercial buildings be at
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1 least two stories tall, not that they have at least two stories of floor space. Mr. Friddle argues that
2 if the City Council had intended otherwise it would not have added the words "in height" at the
3 end of the regulation. The addition of the words "in height" suggests that commercial buildings
4 must be at least two stories tall but need not have two stories of floor space. Mr. Friddle adds
5 that his opinion is shared by City Staff and by the Department Director.

6 The proposed reduction in commercial square footage would also decrease the number of
7 required residential units located above commercial uses from 26 units to 10 units. OMC
8 18.05.050(C) requires that in the Village Center at least ten percent of the square footage must be
9 devoted to residential units above commercial uses. The proposed changes will reduce
10 commercial space to 94,985 square feet. The 10 residential units will have 11,000 square feet
11 and thus meet the ten percent requirement.

12 **Comprehensive Plan.** Mr. Friddle acknowledges that any amendment to Ordinance No.
13 6299 must be consistent with the City's Comprehensive Plan. Chapter 1 of the Comprehensive
14 Plan (Land Use) contains Goal LU 10 and Policies LU 10.1 through 10.9 relating to Urban
15 Villages. Mr. Friddle believes that the requested changes are consistent with these goals and
16 policies of the Comprehensive Plan, especially Policy LU 10.3: "Establish requirements for
17 Villages that provide a pleasant living, shopping, and working environment; pedestrian
18 accessibility; a sense of community; adequate, well located open spaces; an attractive, well
19 connected street system; and a balance of retail, office, multi-family, single-family and public
20 uses," and also Policies LU 10.6, LU 10.6(d), LU 10.8, LU 10.9 and LU 10.9(c)

21 **Design Review Board.** As noted in Mr. Friddle's Staff Report, the Design Review Board
22 was asked to review the proposed amendments on July 25, 2013 and August 8, 2013 and
23 recommended approval of the proposed amendments at the Board's August 29, 2013, public
24 meeting, subject to the conditions earlier noted. The Design Review Board also recommends
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1 significant changes to the design guidelines. These changes to the Design Review Guidelines are
2 universally supported, even by opponents to the other amendments.

3 **TESTIMONY OF APPLICANT**

4 The City's approval of the proposed amendments is subject to four conditions, two of
5 which involve improved access between Briggs Village and the YMCA property. These two
6 conditions would require direct connection between the YMCA parking lot and the Village via
7 Maple Lane, and reconstruction of the existing ninety degree turn along Maple Lane to provide a
8 three-way intersection with sufficient width for proper turning. Prior to the hearing the
9 Applicant opposed these two conditions primarily because it no longer owns the YMCA property
10 and questioned the City's right to impose conditions on property owned by a third party. At the
11 beginning of its presentation the Applicant announced that it was no longer opposed to these two
12 conditions provided that their wording was slightly changed as set forth in Exhibit 22. City Staff
13 agrees with the Applicant's proposed changes to the conditions.

14 The Applicant presented testimony through five witnesses. The Applicant's owner, Joe
15 Amoroso, testified to completions of Phases I through III of the Master Plan including
16 construction of residential units in the north area, widening of Henderson Boulevard,
17 construction of trails and the park, and the installation of all roads and sidewalks, followed by
18 construction of the Park View Apartments one and a half years ago. Mr. Amoroso added that the
19 required senior residential units are now under construction (through separate ownership) and the
20 trail improvements through the arboretum will be completed this spring. Mr. Amoroso believes
21 that the Applicant has performed its obligations but needs amendment of the Master Plan in
22 order to ensure the Village's vitality.

23 The project's architect, Ron Thomas, provided a PowerPoint presentation (Exhibit 21)
24 identifying each change to the residential units and commercial units. Mr. Thomas noted that
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1 these changes will not cause any adjustments to existing roads and sidewalks. Mr. Thomas also
2 provided artists renderings of the new commercial buildings and explained how their scale will
3 be complimentary to surrounding residential units. Mr. Thomas' testimony was followed by the
4 testimony of Jean Carr, principal planner for the project. Like Mr. Thomas, Ms. Carr stressed
5 that despite the significant reduction in commercial square footage the Village Center will retain
6 its vitality and will be properly scaled relative to the surrounding residences. The Applicant's
7 traffic engineer, Perry Shea, explained how the reductions in commercial square footage will
8 significantly reduce traffic impacts with 276 fewer PM peak hour trips than under the existing
9 Master Plan. Mr. Shea also explained how the reductions will allow for the elimination of the
10 underground parking area as part of a 302 stall reduction due to the smaller commercial
11 footprint. The Applicant's broker, Ryan Haddock of Kidder Mathews, explained how the current
12 surplus of available commercial space, coupled with existing commercial centers within a five
13 mile radius, impose enormous challenges for significant development at Briggs Village. Mr.
14 Haddock believes that the Village Center will only become a vital component of the
15 development if it is properly scaled in light of these economic realities. Mr. Haddock added that
16 the required second story residential units over commercial units, while popular in the downtown
17 area, will prove to be problematic in the Village Center as the development is not intense enough
18 to encourage such units and their occupants will compete for important parking stalls desired by
19 the patrons of retail tenants.

20 **OTHER SUPPORT FOR THE APPLICANT**

21 The YMCA fully supports the proposed amendments. The West Olympia Business
22 Association also supports the changes (Exhibit 4). David Schaffert, President and CEO of the
23 Thurston County Chamber of Commerce, testified orally and in writing (Exhibit 25) in support
24 of the changes and notes that they provide needed flexibility to the project. Michael Cade,
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1 Executive Director of the Thurston County EDC, provided oral and written testimony (Exhibit
2 11) explaining not only why the EDC supports the changes but also providing current data on the
3 surplus of commercial space in the area and why the Village Center, if not modified, will simply
4 be unfeasible. Although no residents of Briggs Village testified at the hearing roughly a half
5 dozen have provided letters supporting the changes.

6 OPPONENTS TO THE AMENDMENTS

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8 Three individuals, Lynne McGuire, Karen Messmer and Bob Jacobs, testified in
9 opposition to the project both orally and in writing. A fourth individual, Jim Lazar, was unable
10 to be present but testified in writing (Exhibits 3 and 32). Three other individuals also submitted
11 brief letters in opposition. What is noteworthy about the four primary opponents to the
12 amendments is their extensive involvement in the City's government and planning, particularly
13 during the time when the Briggs Village Master Plan was conceived and approved. Each
14 opponent provided a somewhat different reason for his/her opposition, although it is fair to say
15 that all of the opponents support all arguments made in opposition. The following is a brief
16 discussion of each opponent's principal reasons for opposition. This summary is not meant to
17 suggest that these are the only reasons for their opposition, nor is it meant to suggest that the
18 other opponents do not share in these arguments. It is merely meant to give a "voice" to each of
19 the various arguments advanced in opposition to the requested changes.

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21 **Lynne McGuire.** Lynne McGuire appeared in person and was represented by her
22 attorney, Robert Shirley. Ms. McGuire testified orally and also provided written testimony
23 through her attorney in the form of briefing on various legal issues (Exhibits 9, 27 and 34). Ms.
24 McGuire served on the City's Planning Commission from 1995 through 1999. Her first meeting
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1 on the Commission involved a discussion about Urban Villages and what distinguished them
2 from other development. Ms. McGuire expressed two primary reasons for her opposition to the
3 amendments: (1) she is dismayed by the dramatic reduction in commercial space and believes
4 that it violates the requirement of a mix of uses as mandated by the goals and policies of the
5 Comprehensive Plan, and (2) she believes that the removal of second and third story floors to the
6 commercial buildings will defeat the Master Plan's intent to increase density within the Village
7 Center. Without this density Briggs Village will no longer have anything that creates an urban
8 setting.

9
10 Ms. McGuire's attorney, Mr. Shirley, offered several legal challenges to the proposed
11 changes. Mr. Shirley argues that OMC 18.05.050 requires all commercial buildings facing the
12 Village green to have at least two stories of usable floor space. He argues that a reduction to one
13 story, even with a two-story façade, is a clear violation of this ordinance. As previously noted,
14 City Staff disagrees.

15 Mr. Shirley offers a second, somewhat tortured, argument in opposition to the changes.
16 He argues that once the appeal period for a Land Use Petition Act (LUPA) expired in 2003, the
17 Master Plan was fixed and cannot be changed. But Mr. Shirley's argument fails to distinguish
18 between an "appeal" and a later "amendment". Contrary to Mr. Shirley's arguments, OMC
19 18.57.080 clearly allows amendment of Master Plans to ensure that they remain dynamic and
20 vital.
21

22 **Karen Messmer and Jim Lazar.** The arguments of Jim Lazar and Karen Messmer are
23 sufficiently similar to be joined together. Mr. Lazar is a consulting economist and has served on
24 various City committees involved with Briggs Village. As previously noted, Mr. Lazar testified
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1 in writing (Exhibits 3 and 32). Karen Messmer is a professional planner and has been a member
2 of both the City's Planning Commission and City Council from 2006 to 2009. Ms. Messmer
3 testified orally and in writing (Exhibits 24, 33 and 35).

4 Mr. Lazar and Ms. Messmer believe that the proposed changes are in violation of the
5 Comprehensive Plan, particularly LU 10.2 and LU 10.3. They argue that the goals of the Plan
6 require a mix of uses and that the proposed changes all but eliminate this mix.

7 Ms. Messmer is most troubled by the proposed reduction in the height of commercial
8 buildings to one-story. She contends that this will give the Village Center a "strip mall"
9 appearance and will eliminate all variety and urban intensity. She believes that the reductions
10 will deprive the commercial core of any critical mass and that it will lack the intensity needed to
11 flourish.

12 Mr. Lazar is most troubled by the dramatic reductions in office square footage. He
13 argues that the discussion about a huge surplus of available commercial space is misleading as he
14 believes that there is an actual shortage of smaller scale, storefront-type professional office
15 space, particularly in southeast Olympia. Mr. Lazar believes that there is a market for such
16 space, particularly for smaller size professional offices. He believes that the Village should be
17 required to retain significant office space and that doing so will increase the vitality of the
18 Village Center.

19 In supplemental statements (Exhibits 32 and 33) Mr. Lazar and Ms. Messmer raise
20 several legal arguments in opposition to the amendments. They argue that OMC
21 18.05.050(C)(6)(b)(ii) requires the City to analyze whether or not the reduced commercial space
22 will provide sufficient scale to serve "households within a one and one-half mile radius with
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1 frequently needed consumer goods and services." What Mr. Lazar and Ms. Messmer fail to
2 acknowledge, however, is that this provision applies only to the initial siting of an Urban Village,
3 not to later amendment of its Master Plan.

4 Mr. Lazar and Ms. Messmer also argue that OMC 18.05.050(C)(2) requires "an
5 independent market study accepted by the City" before any amendment can be approved. They
6 assert that none of the witnesses provided "independent" analysis as they were all connected to
7 the Applicant. Again, the opponents fail to understand that this provision simply does not apply.
8 An independent market analysis is only required if the Applicant proposes to reduce the number
9 of residential units above commercial units to less than ten percent of the total square footage in
10 the Village center. The Applicant does not propose such a reduction and instead proposes to
11 maintain at least ten percent residential square footage in the Village Center. The cited
12 ordinance therefore has no application.

14 **Bob Jacobs.** Bob Jacobs was a member of the City Council at the time the Briggs
15 Village Master Plan was approved in 2003. Mr. Jacobs disagrees with the proposed reduction in
16 residential units located above commercial space from 26 units to 10. He believes that these
17 units are essential for a vital Village Center and will discourage theft and vandalism in the
18 commercial core.

19 Mr. Jacobs also disagrees with the substantial reductions in commercial and office space.
20 He acknowledges that a 5% to 10% reduction would be reasonable and in keeping with the
21 Comprehensive Plan, but the Applicant requests a 44% reduction in retail space and as much as
22 96% reduction in office space. Mr. Jacobs believes that the only reasons for these changes is the
23 current market surplus, but the Briggs Village Plan is intended to be carried out over decades.
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1 He believes that in the long term there will be support for the current retail/office requirements.
2 He argues that the Applicant was well aware in 2003 that there were significant economic risks
3 involved and that it also knew that the buildout would extend over many years. Mr. Jacobs
4 believes that the Applicant is using a brief economic problem to support dramatic and long term
5 changes to the Village's vision.

6 Mr. Jacobs concluded his remarks with an expression used by most of the opponents:
7 Allowing the changes will convert this property from an "Urban Village" into a "housing
8 development with a strip mall".
9

10 **CITY/APPLICANT RESPONSE TO OPPOSITION**

11 Following the testimony of the above-mentioned opponents, Kathy McCormick, a
12 member of City Staff, testified in response. Ms. McCormick explained that she was one of the
13 lead staff on this project at its inception and has been on the Regional Planning Council for
14 nearly thirty years. Ms. McCormick explained that the problems currently faced by Briggs
15 Village were foreseeable at the time of its approval in 2003. The Master Plan as approved
16 imposes significant control on the type of required development but lacks the flexibility to adjust
17 to changing circumstances. Ms. McCormick also noted that the percentages of office and retail
18 space required in the 2003 Plan were not based upon hard data. Conversely, today there is hard
19 data, primarily the Eason/Owen "Creating Walkable Neighborhood Business Districts" report.
20 This and other recent studies confirm that the current requirements for commercial space within
21 the Village cannot be supported. These recent studies also reveal that second and third story
22 retail/office space is currently not feasible in any setting other than the City Center. She also
23 notes that the Village's 810 residential units are insufficient to support greater commercial
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1 1. **The proposed reduction in commercial buildings from two and three stories**
2 **to one-story violates the requirement of OMC 18.05.080(M)(1) that buildings fronting on**
3 **the Village green "shall be at least two stories in height"**. This argument has been raised by
4 Mr. Shirley, counsel for Ms. McGuire. City Staff disagrees and notes that if the phrase "in
5 height" at the end of this ordinance is to have meaning that it must be read to require buildings at
6 least two stories tall, but does not require two useable floors of space. I concur with the Staff's
7 interpretation of this requirement. The proposed changes will require commercial buildings at
8 least two stories (24 feet) in height and the requirements of OMC 18.05.080(M)(1) are therefore
9 met.
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11 2. **A Master Plan cannot be changed after the LUPA appeal period has elapsed.**
12 (McGuire and Shirley). For the reasons earlier expressed I find that this argument is not well
13 founded as OMC 18.57.080 expressly allows for the amendment of Master Plans. Master Plans
14 must be subject to amendment if they are to remain dynamic and vital.
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16 3. **OMC 18.05.050(C)(6)(b)(ii) requires proof that commercial space will be of**
17 **sufficient scale to serve "households within a one and one-half mile radius with frequently**
18 **needed consumer goods and services"**. (Lazar and Messmer) The Applicant correctly notes in
19 Exhibit 29 that this requirement only applies to the original siting of the Urban Village and does
20 not apply to subsequent amendments. As stated by the Applicant, "this code provision does not
21 demand that the City or the Applicant perform any specific analysis of the retail radius for
22 purpose of determining compliance". I agree.
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24 4. **OMC 18.05.050(C)(2) requires "an independent market study accepted by**
25 **the City" before the Master Plan can be amended.** (Lazar and Messmer) As previously

1 noted, this requirement is triggered only if the proposed changes reduce the square footage of
2 residential units above commercial units in the Village Center to less than ten percent of the total
3 square footage. The proposed changes do not decrease the square footage of residential units in
4 the Village Center to less than ten percent of the total square footage and thus this regulation
5 does not apply.

6 **5. The Applicant is taking advantage of a brief economic downturn to undo the**
7 **carefully drafted vision of an urban village with a significant commercial core, offering a**
8 **variety of places to shop and to work.** (Jacobs) The Applicant and City Staff respond by
9 noting that this vision has proven to be unrealistic, not merely by the absence of any commercial
10 development during the past ten years but, more importantly, by the testimony of experts as well
11 as several independent studies that the Village cannot sustain commercial activity greater than
12 what is proposed. It is important to note that the opponents have not provide any expert
13 testimony in response. I conclude that the expert testimony and referenced studies support the
14 requested changes, and that the Applicant is not taking advantage of the recent economic
15 downturn.
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17 **6. If the amendments are approved, what had been an "urban village" will now**
18 **become a "housing development with a strip mall".** (All opponents) No one can forecast
19 whether, in perhaps ten or twenty years, economic conditions might support the kind of
20 commercial development currently required in the Master Plan. But the data gathered by the
21 Applicant and the City provides compelling evidence that Brigg Village will never support this
22 level of commercial activity. Today the Village Center is an open field that has remained
23 undeveloped since the Plan was approved ten years ago. Yes, the proposed changes will reduce
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1 the scale and intensity of activity in the Village Center, but in a manner that will preserve to the
2 extent possible a sense of place and a proper scale. The end result will not be a strip mall but
3 rather a smaller Village, having the potential for increased size and scale if economic conditions
4 warrant it.

5 7. **The changes are in violation of the Comprehensive Plan, particularly LU**
6 **10.2 and LU 10.3.** (All opponents) These policies envision an urban village with a mix of
7 living, shopping and work environments, a sense of community and a balance of retail, office,
8 multi-family, single-family and public uses. The Applicant and City Staff disagree with the
9 opponents' argument and assert that, to the contrary, the proposed changes will invite a mix of
10 uses that has not existed during the first ten years of the Village.
11

12 A closer examination of the relevant goals and policies:

13 Goal LU 10: "Establish . . . urban villages . . . with a coordinated, balanced mix of land
14 uses in a pedestrian orientation." Currently the "mix of land uses" in Briggs Village is neither
15 coordinated nor balanced as no commercial development has taken place and the Village Center
16 is nonexistent. Both the Applicant and City Staff argue that this "balanced mix" will not occur
17 unless the commercial development is resized to fit the economic realities.

18 Policy LU 10.2: "Provide for the development of urban villages . . . with potential for
19 accommodating relatively high density residential development and commercial uses scaled to
20 serve the broader neighborhood with needed goods and service." While this policy encourages
21 "high density" it also recognizes that commercial use must be properly scaled to serve the needs
22 of Briggs Village and the surrounding neighborhood. The Applicant's experts and the
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1 independent studies support the proposition that the reduced commercial footprint is the proper
2 scale of commercial use for the neighborhood.

3 Policy LU 10.3: "Establish requirements for villages that provide a pleasant living,
4 shopping, and working environment; pedestrian accessibility; a sense of community; adequate,
5 well located open spaces; an attractive, well connected street system; and a balance of retail,
6 office, multi-family, single-family and public uses." The Applicant and City Staff argue that the
7 original requirements in the 2003 Master Plan created an unrealistic balance of uses and that the
8 proposed amendments, supported by independent data, represent a truer balance of retail, office,
9 and residential uses.
10

11 Policy LU 10.6: "Require that villages contain a neighborhood center offering
12 predominantly neighborhood - oriented shopping and services Base the exact mix and
13 density of land uses on the community context, site conditions, infrastructure and street capacity,
14 market conditions, the frequency of transit service, and the character and density of development
15 in adjacent neighborhoods, consistent with the minimum and maximum densities allowed for the
16 district." The Applicant and City Staff argue that, taking into consideration "community context,
17 site conditions, market conditions, and development occurring in adjacent neighborhoods", the
18 proposed amendments are essential to establish the proper mix of uses and a dynamic urban
19 village.
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21 Policy LU 10.6(D): "Ensure that development standards and project composition . . .
22 allow adequate flexibility to enable developers to respond to market conditions, while
23 maintaining the integrity of the project." The Applicant and City Staff agree that the proposed
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1 amendments are a necessary response to actual market conditions and provide sufficient
2 flexibility in the future to allow for increased commercial development if conditions warrant it.

3 Policy LU 10.8: "Minimize the amount of the Village devoted to parking." The
4 proposed amendments will reduce the required amount of parking by 302 parking spaces, or
5 roughly one-third of the current parking requirement.

6 Policy LU 10.9: "Provide for predictable development" The Applicant argues that
7 without the requested modifications commercial development is unpredictable and unlikely to
8 occur.

9 Policy LU 10.9(B): ". . . specific elements of the project should be phased to ensure that
10 construction of key amenities and commercial and residential components occurs at appropriate
11 stages in the Village's multi-year development. . . . Provide sufficient flexibility to
12 accommodate market conditions, but various completed phases of the project should trigger
13 subsequent phases in order to achieve the overall plan and logical sequence, avoiding haphazard
14 development." The Applicant and City Staff agree that the current requirements of the Master
15 Plan are preventing commercial development and therefore the planned phasing of the Village
16 has lost its logical sequence and has become haphazard.

17 Policy LU 10.9(C): "The City should work closely with the development community and
18 the financial institutions to identify what programs, regulations, and incentives are needed to
19 facilitate development and make urban villages . . . a reality in Olympia." City Staff, working
20 with the Applicant and the development community, concludes that the proposed amendments
21 are needed to facilitate development and make the Village Center a reality.
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1 I agree with the positions taken by the Applicant and City Staff and conclude that the
2 proposed amendments are consistent with, and in furtherance of, the goals and policies of the
3 Comprehensive Plan.

4 In conclusion, I believe that the requested changes are well supported and that the
5 opponents' arguments are not well founded. I therefore recommend that the City Council
6 **approve** the proposed amendments subject to the conditions agreed upon by the Applicant and
7 City Staff.

8 Accordingly, I make the following:
9

10 **FINDINGS OF FACT**

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

13 2. The Applicant, Briggs Village, LLC, asks to amend the Briggs Urban Village
14 Master Plan Ordinance No. 6299 as follows:

15 (a) Reduce the allowed office space from 113,850 square feet to a range
16 between 5,000 square feet (minimum) and 31,000 square feet (maximum).

17 (b) Reduce the allowed retail space from 60,240 square feet to a range
18 between 33,700 square feet (minimum) to 60,700 square feet (maximum).

19 (c) Reduce the allowed grocery space from 50,000 to 30,285 square feet in
20 recognition of the permitted store having that size.

21 (d) Increase the community uses area by 3,900 square feet to recognize the
22 actual size of the YMCA building.
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1 (e) Retain the minimum required parking ratios for residential and
2 commercial areas but reduce the total number of parking spaces by 302 stalls in connection with
3 the reduced commercial space. The eliminated parking spaces would include the 272
4 underground parking stalls and 30 off-street parking spaces.

5 (f) Revise the required commercial building stories from two and three stories
6 to allow one-story buildings but with a minimum 24 foot façade.

7 (g) Retain the currently allowed 810 residential units but adjust the building
8 types by (1) reducing the number of single-family units by 17 units and multi-family units by 78
9 units; (2) increase the number of other housing units by 95; and (3) revise and expand the
10 building design guidelines.
11

12 3. City Staff and the Design Review Board recommend approval of the requested
13 amendments subject to the following four conditions:

14 (1) Amend Ordinance No. 6299 to allow the proposed one-story commercial
15 structures with a minimum 24-foot exterior façade (30-foot on building corners); and, continue to
16 allow 2 or 3 stories commercial buildings to a maximum of 175,000 square feet, pursuant to
17 OMC 18.05.050 provided they contain at least the ten percent residential mix (OMC
18 18.05.050(C)) and meet the parking codes contained in OMC 18.38.

19 (2) The Applicant shall construct the secondary access to the YMCA parking
20 lot to the Briggs Town Center north-south private street (Maple Street).
21

22 (3) The Applicant shall re-construct the existing 90-degree turn along Maple
23 Lane to a three-way intersection and to allow the access to the YMCA parking lot described
24 above. This re-alignment shall be rebuilt to meet Public Works EDDS.
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1 (4) The Applicant shall be required to submit for Land Use Approval and
2 Design Review with each future development and meet applicable requirements to include
3 Briggs Village Master Plan and Amendments, OMC 18.05; 18.05A, 18.57, design review and
4 Public Works EDDS.

5 4. The Applicant proposes modifications to Conditions 2 and 3 as follows:

6 (2) The Applicant shall construct the secondary access to the YMCA parking
7 lot to the Briggs Town Center north-south private street (Maple Lane). This secondary access
8 shall be completed prior to issuance of a Certificate of Occupancy for the Briggs Grocery Store
9 or the next commercial building permit for Briggs Village, whichever occurs first. The City will
10 secure written consent from the YMCA for the Applicant to construct improvements associated
11 with the secondary access on YMCA property. The Applicant shall be relieved of the obligation
12 to construct the secondary access pursuant to this condition if the City does not obtain written
13 consent for the improvements from the YMCA prior to the deadlines specified for completion.

14 (3) The Applicant shall re-construct the existing 90-degree turn along Maple
15 Lane to a three-way intersection and to allow the access to the YMCA parking lot described
16 above. This realignment shall be rebuilt to Public Works EDDS. This re-alignment shall be
17 completed prior to issuance of a Certificate of Occupancy for the Briggs Grocery Store or the
18 next commercial building permit for Briggs Village, whichever occurs first.

19 5. City Staff approves of the Applicant's proposed changes to Conditions 2 and 3.

20 6. Pursuant to the State Environmental Policy Act a Determination of Non-
21 Significance (DNS) was issued on October 3, 2013. The comment deadline passed without
22 comment on October 17, 2013. The appeal period expired on October 24, 2013 and no appeals
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1 were filed. The Applicant modified the proposed amendments on November 27, 2013, to bring
2 the proposal further into compliance with OMC 18.05. The SEPA official determined that the
3 modifications remained within the scope of the original 2003 FEIS and the October 2013 DNS
4 and no further review was required.

5 7. Notification of public hearing was posted on the subject site, mailed to property
6 owners of record within Briggs Village and within 300 feet of the Briggs Village subject site and
7 published in The Olympian in conformance with OMC 18.78.

8 8. The Staff Report, at Page 2, provides a description of the existing site conditions
9 including construction to date. The Hearing Examiner has reviewed those Findings and adopts
10 them by reference.

11 9. The Staff Report, at Page 3, contains Findings relating to surrounding land use.
12 The Hearing Examiner has reviewed those Findings and adopts them by reference.

13 10. The Staff Report, at Pages 3 through 5, Section I, contains a detailed description
14 of the proposed changes to the Master Plan's residential, commercial and development standards.
15 The Hearing Examiner has reviewed these Findings and adopts them by reference.

16 11. The Design Review Board has reviewed the proposed amendments at three public
17 hearings on July 24, August 8 and August 29, 2013, and recommends approval of the proposed
18 amendments subject to the conditions previously set forth. The Board further recommends that
19 the City Council initiate a future work program to incorporate many of the new design guidelines
20 into the "City Wide Design Guidelines".
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22 12. Findings Related to the Comprehensive Plan.

23 (a) Chapter 1 - Land Use of the City Comprehensive Plan contains Goal LU
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1 10 and Policies LU 10.1 through 10.9 related to Urban Villages. City Staff believes that the
2 proposed changes comply with the goals and policies of the land use plan including Goal LU 10
3 and Policies LU 10.3, LU 10.6, LU 10.6(d), LU 10.8, LU 10.9, and LU 10.9(c).

4 (b) No amendments are proposed to the Comprehensive Plan.

5 (c) No amendments are proposed to the Zoning Regulations.

6 (d) The proposed amendments retain the overall residential density of 810
7 units while substantially reducing the commercial, office, retail and related parking count. City
8 Staff believes that the amendments will encourage the kind of mix of activities that currently
9 does not exist, in furtherance of the goals and policies of the Comprehensive Plan.

10 (e) The approved grocery store is smaller than 35,000 square feet. Pursuant to
11 OMC 18.50.050 Table 5.02, the smaller size of the grocery store reduces the maximum allowed
12 commercial space to 175,000 square feet. The amendments, as conditioned, will retain the
13 ability to increase commercial space to the maximum 175,000 square feet if warranted.

14 (f) City Staff believes that the proposed amendments, as conditioned, comply
15 with Ordinance No. 18.05 and with the Comprehensive Plan.

16 13. Findings Related to Shorelines. The proposed amendments do not alter
17 development within the jurisdiction of the Shoreline Master Program. Future development must
18 comply with the applicable regulations at the time of permitting.

19 14. Findings Related to Environmental Protection and Critical Areas (OMC 18.32).

20 (a) Briggs Village contains wetlands and steep slopes but the proposed
21 amendments do not alter existing regulations, the site or previous conditions. All existing
22 regulations will remain in effect.
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1 (b) The proposed amendments do not alter or touch upon drinking water and
2 wellhead protection, wetlands or steep slopes. Each future development must comply with the
3 applicable regulations at the time of permitting.

4 15. Findings Related to Zoning (OMC 18.57.080).

5 (a) At the time of original Master Plan approval Briggs Village was to be
6 developed in five phases. The proposed amendments do not affect the phasing of the project.
7 Each phase will be reviewed on its own merits for compliance with applicable City Codes and
8 for compliance with the Master Plan when applications are submitted.

9 (b) There is no time limitation on the approved Master Plan and City Staff
10 does not recommend any such limitation as part of the proposed amendments.
11

12 16. Findings Related to Urban Villages (OMC 18.05).

13 (a) OMC 18.05.020 identifies eleven purposes for Urban Villages including a
14 pattern of design that provides convenience for access from one home to another and from
15 homes to businesses and transit by vehicles, bicycles and pedestrians. It also requires a variety
16 of housing types, location, densities and design compatibility within the Urban Village and with
17 existing neighborhoods. City Staff concludes that the proposed amendments conform with these
18 purposes.

19 (b) OMC 18.05.040 establishes permitted conditional and required and
20 prohibited uses. Included among these requirements is the requirement that at least ten percent
21 of the square footage in the Village Center must be dedicated to residential over commercial
22 units. The proposed amendments reduce the commercial square footage to 94,985 square feet.
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1 The proposed amendments provide for 10 residential over commercial units having a square
2 footage of 11,000 square feet. The ten percent residential requirement has therefore been met.

3 17. Findings Related to General Standards (OMC 18.05.050). The Staff Report at
4 Pages 11 through 13 contains Findings related to compliance with Sections A, B, C, D and E of
5 the General Standards, OMC 18.05.050. The Hearing Examiner has reviewed these
6 recommended Findings and adopts them as his own Findings of Fact.

7 18. Findings Related to Development Standards (OMC 18.04.080, Table 5.04). The
8 Staff Report at Pages 13 and 14 contains recommended Findings related to modifications to the
9 Development Standards including reduction in commercial building heights to not less than 24
10 feet (30 feet at the building corners) but with flexibility to allow two or three-story buildings if
11 later warranted. The Hearing Examiner has reviewed the recommended Findings and adopts
12 them as his own Findings of Fact.

13 19. Findings Related to Urban Village Design Criteria.

14 (a) The Staff Report at Pages 14 and 15 contains Findings related to
15 recommended changes to the Urban Village Design Criteria as proposed by the Design Review
16 Board. The Hearing Examiner defers to the expertise of the Design Review Board with respect
17 to these recommended changes.
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19 (b) The proposed changes to the Urban Village Design Criteria are
20 unopposed.
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22 20. Findings Related to Parking (OMC 18.05.100 and OMC 18.38).

23 (a) No change is proposed in the residential or shopping center standards
24 contained in OMC 18.38, but the reduction in proposed commercial square footage supports a
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1 corresponding reduction in the number of required parking stalls. City Staff agrees that the
2 Applicant's proposed amendments support the elimination of 272 underground parking stalls and
3 an additional 30 surface parking places.

4 (b) The Staff Report contains additional recommended Findings relating to
5 parking. The Hearing Examiner has reviewed these recommended Findings and adopts them as
6 his own Findings of Fact.

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8 21. Findings Related to Development Guidelines and Public Works Standards. The
9 Staff Report at Pages 15 and 16 contains recommended Findings related to development
10 guidelines and public works standards. The Hearing Examiner has reviewed these recommended
11 Findings and adopts them as his own Findings of Fact.

12 22. City Staff and the Design Review Board recommend approval of the proposed
13 amendments subject to the following revised conditions:

14 (1) Amend Ordinance No. 6299 to allow the proposed one-story commercial
15 structures with a minimum 24-foot exterior façade (30-foot on building corners); and, continue to
16 allow 2 or 3 stories commercial buildings to a maximum of 175,000 square feet, pursuant to
17 OMC 18.05.050 provided they contain at least the ten percent residential mix (OMC
18 18.05.050(C)) and meet the parking codes contained in OMC 18.38.

19 (2) The Applicant shall construct the secondary access to the YMCA parking
20 lot to the Briggs Town Center north-south private street (Maple Lane). This secondary access
21 shall be completed prior to issuance of a Certificate of Occupancy for the Briggs Grocery Store
22 or the next commercial building permit for Briggs Village, whichever occurs first. The City will
23 secure written consent from the YMCA for the Applicant to construct improvements associated
24

1 with the secondary access on YMCA property. The Applicant shall be relieved of the obligation
2 to construct the secondary access pursuant to this condition if the City does not obtain written
3 consent for the improvements from the YMCA prior to the deadlines specified for completion.

4 (3) The Applicant shall re-construct the existing 90-degree turn along Maple
5 Lane to a three-way intersection and to allow the access to the YMCA parking lot described
6 above. This realignment shall be rebuilt to Public Works EDDS. This re-alignment shall be
7 completed prior to issuance of a Certificate of Occupancy for the Briggs Grocery Store or the
8 next commercial building permit for Briggs Village, whichever occurs first.

9 (4) The Applicant shall be required to submit for Land Use Approval and
10 Design Review with each future development and meet applicable requirements to include
11 Briggs Village Master Plan and Amendments, OMC 18.05; 18.05A, 18.57, design review and
12 Public Works EDDS.

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14 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

15 **CONCLUSIONS OF LAW**

16 1. The Hearing Examiner has jurisdiction over the parties and the subject matter.
17 2. Any Conclusions of Law contained in the foregoing Background section or
18 foregoing Findings of Fact are hereby incorporated by reference and adopted by the Hearing
19 Examiner as Conclusions of Law.

20 3. The requirements of SEPA have been met.

21 4. Pursuant to OMC 18.57.080(F) amendments which change the character, basic
22 design density, open space or any other requirements and conditions contained in the Master
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1 Plan shall not be permitted without prior review and recommendation by the Hearing Examiner,
2 and approval by the City Council, of such amendment.

3 5. Pursuant to OMC 18.57.080(C) upon request to approve or amend a Master Plan
4 the Hearing Examiner may (a) recommend terms and conditions of approval, or (b) require the
5 provision, and further public review, of additional information and analyses; or (c) recommend
6 denial.

7 6. The proposed amendments, as conditioned, are consistent with the City's
8 Comprehensive Plan including Goal LU 10 and Policies LU 10.1 through LU 10.9.

9 7. The proposed amendments do not alter development within the jurisdiction of the
10 Shoreline Master Program.

11 8. The proposed amendments do not alter current regulations of wetlands and steep
12 slopes. All regulations imposed on the development pursuant to OMC 18.32 shall remain in
13 effect..

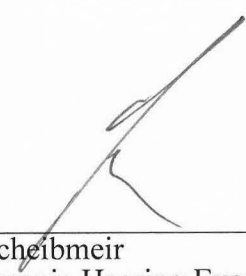
14 9. The proposed amendments, as conditioned, satisfy the requirements of OMC
15 18.57.080.

16 10. The proposed amendments, as conditioned, satisfy the requirements of OMC
17 18.05.020.

18 11. The proposed amendments, as conditioned, satisfy the requirements of OMC
19 18.05.040.

20 12. The proposed amendments, as conditioned, satisfy the requirements of OMC
21 18.05.050.

1 DATED this 31st day of December, 2013.

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5 Mark C. Scheibmeir
6 City of Olympia Hearing Examiner
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APPENDIX - EXHIBIT LIST

1. Staff Report with fifteen attachments.
2. Applicant's response to Staff Report dated December 16, 2013.
3. Letter from Jim Lazar dated December 16, 2013.
4. Letter from West Olympia Business Association dated December 16, 2013.
5. Email from Patrick Mathews dated December 15, 2013.
6. Email from Karen Boyce dated December 11, 2013.
7. Email from Jean Barlin dated December 11, 2013.
8. Email from Christina Clarke dated December 11, 2013.
9. Substantive comments of Lynne A. McGuire (through her attorney Robert Shirley) dated December 9, 2013.
10. Applicant's pre-hearing disclosures including qualifications of expert witnesses dated December 9, 2013.
11. Letter from Thurston County Economic Development Council dated December 9, 2013.
- 12-19 No Exhibits
20. Definition of the word "story".
21. Project overview presentation (PowerPoint).
22. Modified recommended conditions of approval from YMCA access.
23. Site map showing location of proposed daycare facility.
24. Written copy of Messmer testimony.
25. Letter from Thurston County Chamber of Commerce dated December 16, 2013.
26. Letter from Mark Foutch dated December 16, 2013.
27. Supplemental Declaration of Lynne A. McGuire (through Robert Shirley) dated December 17, 2013.
28. Email from Craig Burley dated December 18, 2013.
29. Applicant's responsive statement dated December 20, 2013.
30. Letter from Darren Nienaber, Assistant City Attorney, dated December 20, 2013.
31. Email from Bob Jacobs dated December 20, 2013.
32. Additional comments of Jim Lazar dated December 19, 2013.
33. Additional comments from Karen Messmer dated December 19, 2013.
34. Additional response from Lynne A. McGuire (through Robert Shirley) dated December 20, 2013.
35. Email from Karen Messmer dated December 20, 2013.