

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE: ) HEARING NO. 12-0024  
)  
WOODARD LANE CO-HOUSING ) FINDINGS OF FACT,  
TENANTS IN COMMON, ) CONCLUSIONS OF LAW  
) AND RECOMMENDATIONS  
Applicant. )

**APPLICANT:** Woodard Lane Co-Housing Tenants in Common  
1620 Woodard Avenue N.W.  
Olympia, Washington 98502

**REPRESENTATIVES:**

Liv Monroe  
Woodard Lane Co-Housing Tenants in Common  
1620 Woodard Avenue N.W.  
Olympia, Washington 98502

**SUMMARY OF REQUEST:**

Amendment to the previously approved Planned Residential Development to increase the number of approved residential units from sixteen to eighteen pursuant to the acquisition of two Transferable Development Rights (TDR's), OMC 18.04.080(A)(5).

**LOCATION OF PROPOSAL:**

1620 Woodard Avenue N.W., Olympia, Washington 98502

**SUMMARY OF DECISION:**

The Planned Residential Development should be amended to allow two additional residential units for the two TDR's, subject to conditions.

**BACKGROUND**

The Woodard Lane Co-Housing Planned Residential Development ("Woodard Lane") was approved by the Hearing Examiner and City Council in 2008. The approved Planned Residential Development allowed for the construction of up to sixteen residential units in this co-housing project. The Applicant has since arranged for the acquisition of two Transfer

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

**CITY OF OLYMPIA HEARING EXAMINER**  
299 N.W. CENTER ST. / P.O. BOX 939  
CHEHALIS, WASHINGTON 98532  
Phone: 360-748-3386/Fax: 748-9533

1 Development Rights, or TDR's, and seeks to increase the number of allowed units from sixteen  
2 to eighteen pursuant to the TDR's. As explained more fully below, I recommend to the City  
3 Council that the Planned Residential Development be amended to allow two additional  
4 residential units in consideration for the two TDR's, subject to certain conditions.

5 **Initial Public Hearing**

6 The initial public hearing on this request commenced at 6:30 p.m. on July 8, 2013, in the  
7 Planning Hearing Room in the City Hall. The City appeared through Catherine McCoy of  
8 Planning Staff. Woodard Lane appeared through its representative, Liv Monroe. Testimony was  
9 received from the City through Ms. McCoy. Testimony from the Applicant was received from  
10 Liv Monroe. A verbatim recording was made of the public hearing and all testimony was taken  
11 under oath. A total of twenty-three exhibits were introduced during the course of three hearings  
12 as more fully identified on Attachment "A" to this decision.

13 Catherine McCoy of Planning Staff provided a history of the project. Following approval  
14 of the Planned Residential Development in 2008 Woodard Lane undertook construction of a  
15 majority of the approved development including three multi-family residential buildings,  
16 designated as Units B, C and E on site maps, as well as all site improvements including parking,  
17 walkways, driveways, and landscaping. Each of the three constructed residential buildings  
18 provides for four residential units, but the lower floor of Unit E is currently used as the Common  
19 House where meals and other communal activities take place. Thus, while twelve residential  
20 units have been constructed only ten are in current use as residences. The approved Planned  
21 Residential Development recognizes two additional residential buildings, Unit A and Unit D, but  
22 neither of these units has been constructed. Thus, twelve of the sixteen approved units have been  
23 constructed to date.

24 Ms. McCoy explained that the Applicant wants to now construct Unit D to take  
25 advantage of the four remaining approved but un-built units. More importantly, the Applicant

1 also wants to construct Unit A, and to have it include two additional units. The first floor of Unit  
2 A would become the new home of the Common House and the second floor would, if approved,  
3 provide two additional residential units, increasing the total number of units to eighteen.

4 To construct these units the Applicant must first have the project amended to increase the  
5 number of allowed units from sixteen to eighteen. To summarize, the amended project, if  
6 approved, would provide for four four-unit buildings, Units B, C, D and E, and a fifth building,  
7 Unit A, housing the Common House on its first floor and two additional units on its second floor,  
8 for a total of eighteen residential units.

9 In order to be granted two additional residential units the Applicant has arranged for the  
10 acquisition of two Transfer Development Rights, or TDR's, from a Thurston County property  
11 owner. Ms. McCoy testified that City Staff had calculated that these two TDR's would allow the  
12 Applicant an additional three residential units based upon the amount of acreage involved. If this  
13 calculation is correct the Applicant would be eligible for an increase from sixteen to nineteen  
14 units. Although the Applicant had only sought two additional units, it asked for approval of this  
15 third (nineteenth) additional unit to be utilized if/when it later constructed a final residential  
16 building (Unit F).

17 The project as constructed includes a twenty-nine stall parking area, bike storage shed  
18 and a communal kitchen. Each of these improvements is noteworthy as their size is based upon  
19 the approved sixteen-unit development. Ms. McCoy testified that an increase in allowed units  
20 from sixteen to eighteen (or nineteen) would not require a modification of the parking lot, bike  
21 storage shed or communal kitchen as all of these improvements are of sufficient size for the  
22 requested increase.

23 Ms. McCoy also testified that the proposed new construction will not require additional  
24 stormwater analysis; will not involve any construction within shorelines jurisdiction; and will not  
25 impact any critical areas.

1 The one significant impact of an enlarged project is on the handling of trash and  
2 recyclable materials. The project currently relies upon standard-sized wheeled containers for  
3 both trash and recyclables, and these containers are stored at the north end of the parking lot,  
4 well away from neighboring properties. The increased size of the project will necessitate  
5 conversion to a trash dumpster. Ms. McCoy explained that she has conferred with other City  
6 Staff and waste management officials and concludes that the only appropriate location for this  
7 dumpster would be at the northeast corner of the project site in close proximity to an adjoining  
8 residence owned by Debra Van Tuinen.

9 As noted in Ms. McCoy's Staff Report the City had received comments from several  
10 neighboring homeowners in advance of the public hearing. Not surprisingly, the requested  
11 amendment has served as something of a referendum on the development as a whole. Neighbors  
12 express unhappiness with the scale and massing of the buildings, traffic and noise congestion,  
13 on-street parking problems and the proposed location of the waste and recycling receptacles.

14 Ms. McCoy concluded her testimony by confirming that City Staff recommends approval  
15 of the requested amendment subject to certain conditions set forth on Page 8 of the Staff Report.  
16 The City's proposed conditions would allow for the addition of three residential units (two on the  
17 second floor of Unit A and a third to be held for later construction of Unit F) on the conditions  
18 that the Applicant submit proposals for a better buffering between its development and single-  
19 family residences to the east; that it provide greater detail for the location of solid waste  
20 receptacles along Muirhead Avenue including screening; and that if a Unit F is later constructed  
21 on Lot 4 that the Applicant first be required to submit design plans for staff level detailed design  
22 review.

23 At the conclusion of Ms. McCoy's presentation Liv Monroe spoke on behalf of Woodard  
24 Lane. Ms. Monroe provided a brief history of the project since its approval in 2008. She then  
25 explained that Woodard Lane wishes to proceed with construction of the previously approved

1 Unit D, bringing the number of constructed units to the allowed sixteen. The proposed  
2 amendment would allow Woodard Lane to construct two additional units on the top of Unit A.  
3 Unit A would then be constructed to house the Common House on its first floor and these two  
4 additional units on its second floor, bringing the total number of residential units to eighteen. To  
5 accomplish this Woodard Lane has arranged for acquisition of two TDR's from a rural  
6 landowner in Thurston County.

7 Ms. Monroe admitted that she was surprised by the City's calculations that the two TDR's  
8 would allow Woodard Lane an additional three units. Ms. Monroe had anticipated that the two  
9 TDR's could be converted to two additional residential units, not three. If Woodard Lane was  
10 allowed this third additional unit it would be held in reserve for the later construction of the final  
11 building (Unit F) identified on the project's site map.

12 Ms. Monroe acknowledged that the project has had some issues with its neighbors in the  
13 single-family neighborhood immediately east of the site. In order to alleviate some of these  
14 concerns Woodard Lane offers to construct a six-foot high solid fence to improve the buffering  
15 between the project and the residences to the east. Due to the existence of several large trees  
16 along this boundary the fence would be constructed so as to not cause the removal of the trees.  
17 In other words, the fence would be constructed from tree to tree rather than as a single  
18 continuous fence.

19 Ms. Monroe also defended the proposed location of the trash dumpster at the northeast  
20 corner of the project. She explained that the current size of the project allows for trash and  
21 recyclables to be maintained in standard size carts but that Woodard Lane will be forced to go to  
22 a dumpster with its increase in population. The current location of trash and waste receptacles is  
23 within the footprint of the intended Unit A and therefore must be relocated. She agreed that the  
24 most appropriate site for relocation is at the northeast corner of the project along Muirhead.  
25

1 Following Ms. Monroe's testimony the hearing was opened for public comment. Debra  
2 Van Tuinen, an adjoining neighbor, spoke in opposition. Ms. Van Tuinen's residence is located  
3 at the southwest corner of the North Thomas/Muirhead Avenue intersection. The proposed site  
4 of the trash dumpster is within a few feet of her boundary line and just a short distance from her  
5 house. She is strongly opposed to the relocation of trash receptacles to this site and asked that  
6 the City be required to re-examine this question and consider alternatives, including relocation to  
7 Woodard Avenue as was originally proposed in 2008. Ms. Van Tuinen also testified as to  
8 various problems resulting from the lack of buffering between the project and its single-family  
9 neighbors as well as with individuals using Muirhead Avenue as a parking area.

10 At the conclusion of public testimony I advised Ms. McCoy that I was unclear on how  
11 the City had calculated that two TDR's would convert to three additional residential units for  
12 Woodard Lane. I also explained that I shared Ms. Van Tuinen's concerns with the proposed  
13 location of the trash dumpster next to her property. In light of these two concerns I recessed the  
14 public hearing until July 17, 2013 to receive additional information on (1) the City's calculations  
15 on the number of additional units available to Woodard Lane as a result of two TDR's, and (2)  
16 further investigation of the best site for the trash dumpster, provided, however, that its relocation  
17 would not cause the reduction of available parking stalls.

### 18 **Second Public Hearing**

19 Prior to the hearing scheduled for July 17 I was notified by City Staff that the requested  
20 information would not be available in time. The hearing was therefore further continued to July  
21 24 at 5:30 p.m. In advance of the July 24 hearing I received a Memorandum from Todd Stamm,  
22 Planning Manager for the City (Exhibit 17) confirming that, upon further consideration, the City  
23 agrees that each TDR would equate to one additional residential unit for Woodard Lane. The  
24 two TDR's to be acquired by Woodard Lane would therefore result in two additional available  
25 units, not three as earlier calculated.

*Findings of Fact, Conclusions of Law  
and Recommendations - 6*

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1 Also in advance of the July 24 hearing I received a letter from Jason Whalen (Exhibit  
2 18), an attorney representing Debra Van Tuinen. On behalf of Ms. Van Tuinen Mr. Whalen  
3 expressed continuing opposition to the proposed location of the dumpster next to her property;  
4 asked that no additional parking be allowed along Muirhead Avenue; requested that any  
5 amendment be conditioned upon improved landscaping and buffering; and agreed with the  
6 Hearing Examiner's position that each TDR would equate to one additional residential unit and  
7 hence the two available TDR's would equate to two additional units, not three.

8 The public hearing resumed on July 24 at 5:30 p.m. Ms. McCoy was present on behalf of  
9 the City and Ms. Monroe and Ms. Van Tuinen were also present. Ms. McCoy reviewed the  
10 Memorandum prepared by Todd Stamm and confirmed that the City's position had changed and  
11 that it now believed that the Applicant's two available TDR's would justify two additional  
12 residential units, not three as earlier proposed. Ms. Monroe responded and admitted that these  
13 revised calculations were consistent with her initial expectations and that she would accept that  
14 the two available TDR's would equate to two additional units, not three.

15 Ms. McCoy also testified that additional meetings had taken place regarding the location  
16 of trash and recycling receptacles but unfortunately a written report was not yet ready. The  
17 hearing was therefore again recessed until August 12 so that this report could be completed and  
18 made available to all interested parties.

### 19 **Third Public Hearing**

20 In advance of the rescheduled hearing on August 12 I received a Memorandum from Ms.  
21 McCoy (Exhibit 20) explaining that City Staff had been successful in establishing better  
22 locations for the waste and recycling receptacles. The new proposed locations are identified on a  
23 revised site map (Exhibit 21) and are to be located not far from their current location and well  
24 away from adjoining residences. More specifically, the trash dumpster would be located at the  
25 northwest corner of the parking area; the recycling carts would be located just south of proposed



1 Unit A and a solid waste cart would be located near the northeast corner of the parking lot  
2 adjacent to an existing gardening area.

3 The public hearing reconvened on August 12 at 5:30 p.m. and once again Ms. McCoy,  
4 Ms. Monroe and Ms. Van Tuinen were present. Ms. McCoy explained the proposed relocation  
5 of these facilities and Ms. Monroe confirmed Woodard Lane's willingness to have the facilities  
6 relocated to these sites. Ms. Van Tuinen expressed thanks to the City and Woodard Lane for the  
7 relocation of these facilities as proposed. She then made the additional request that Woodard  
8 Lane be required to also relocate some small composting receptacles, currently positioned near  
9 her property, to the same general area as the yard waste cart and garden.

10 Although it has taken three public hearings to complete this process the extra time and  
11 effort has proven worthwhile as it has resulted in agreements among the City, the Applicant and  
12 the adjoining landowner on all key issues.

13 Ms. Van Tuinen also asked that an additional condition be imposed requiring Woodard  
14 Lane to relocate the existing small composting receptacles to the same area as the yard waste cart  
15 and garden. This is a sensible recommendation, and one that Woodard Lane may want to follow,  
16 but I do not believe that it is significant enough to impose as a condition.

17 At the conclusion of the third hearing Woodard Lane asked about the possibility of being  
18 allowed to develop the six available units (four previously approved units and the two new ones)  
19 in a different configuration than previously proposed. Stated differently, Woodard Lane  
20 wondered whether it was required to construct Unit D as a two-story, four-unit building and Unit  
21 A as the new Common House with two upstairs units, or whether it could make Unit D a three-  
22 story, six-unit building or otherwise construct the new units in a different manner than originally  
23 proposed. I was not previously aware of any such desire and I do not believe that the  
24 neighborhood has been given adequate notice of this alternative. I therefore recommend that  
25 approval of the two additional units be on the condition that the new buildings be constructed as



1 proposed on Exhibit 21. Any modification to this plan should be by formal application with  
2 notice to the public and an opportunity to respond.

3 Accordingly, I make the following:

4 **FINDINGS OF FACT**

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

6 1. Woodard Lane requests an amendment to the previously approved Planned  
7 Residential Development to increase the number of approved residential units from sixteen to  
8 eighteen through the use of two available Transferrable Development Rights (TDR's).

9 2. The proposed site is zoned Single-Family Residential (R4-8).

10 3. Pursuant to the State Environmental Policy Act, a Determination of Non-  
11 Significance (DNS) was issued on December 28, 2007, as a component of project review for the  
12 Woodard Lane Co-Housing Planned Residential Development proposal, 05-0121. Further  
13 environmental review is not required for this proposed amendment.

14 4. Notification of public hearing was mailed to the parties of record, property  
15 owners within 300 feet, and recognized neighborhood associations, posted on the site and  
16 published in The Olympian in conformance with Olympia Municipal Code 18.78.020.

17 5. Staff recommends that the City Council approve the proposed amendment subject  
18 to several conditions.

19 6. The Staff Report, Page 2, contains Findings relating to the property. The Hearing  
20 Examiner has reviewed those Findings and adopts them by reference.

21 7. The Staff Report, Pages 2 and 3, contains Findings relating to the history of the  
22 original Planned Residential Development Application and its approval; the proposed  
23 amendment and public comment regarding the amendment. The Hearing Examiner has reviewed  
24 those Findings and adopts them by reference with the exception of any Finding that the

25 Applicant proposes to convert the two available TDR's into three additional dwelling units. The

1 Hearing Examiner instead finds that the Applicant proposes to convert the two TDR's into two  
2 additional units; that City Staff initially concluded that the TDR's would allow for three  
3 additional units; that subsequently City Staff reconsidered its calculations and now concludes  
4 that the two TDR's would translate to two additional units; and that the Applicant concurs with  
5 this result.

6 8. The Staff Report, Page 4, contains proposed Findings relating to the calculation of  
7 the number of additional units available to the Applicant as a result of obtaining two TDR's. The  
8 City has since reconsidered these calculations and no longer proposes adoption of the proposed  
9 Findings found on Page 4 of the Staff Report. Instead, the City now concludes that the Applicant  
10 must obtain one TDR for each additional residential unit requested, and that two available TDR's  
11 would equate to two additional residential units, all as set forth more fully in Exhibit 17. The  
12 Hearing Examiner has reviewed the proposed Findings found in Exhibit 17 and adopts them as  
13 his own Findings of Fact.

14 9. The Staff Report, Pages 5-7, contains proposed Findings relating to compliance  
15 with the Planned Residential Development Ordinance, OMC Chapter 18.56. The Hearing  
16 Examiner has reviewed those Findings and adopts them as his own Findings of Fact with two  
17 exceptions: (a) two available TDR's would allow for two additional residential units, not three,  
18 as more fully explained in the previous Finding, and (b) the City no longer recommends  
19 relocation of solid waste and recycling facilities off of Muirhead Avenue N.W. and now  
20 recommends them to be relocated to an internal site as more fully identified on Exhibit 21.

21 10. The Staff Report, Pages 7 and 8, contains Findings relating to compliance with  
22 the transfer of development rights, OMC Chapter 18.90. The Hearing Examiner has reviewed  
23 those Findings and adopts them as his own Findings of Fact.

24 11. The Applicant has stipulated to the requirement of constructing a six-foot high  
25 solid fence along its east boundary as a condition of amendment approval. The fence will be

constructed in a manner to avoid the removal of existing trees and will therefore be constructed from tree to tree rather than on a single continuous line.

12. City Staff recommends approval of the proposed amendment but subject to different conditions than originally proposed at Page 8 of the Staff Report. City Staff now recommends approval of the proposed amendment on the following conditions:

a. The Applicant shall construct a fence along its east boundary as described more fully in the previous Finding;

b. The Applicant shall relocate waste and recycling receptacles to interior locations as identified on Exhibit 21;

c. When and if a building is proposed for construction on Lot 4 (Unit F) the Applicant will be required to submit design plans for a staff level detailed design review. The design will need to demonstrate a strong effort at mitigating, to the extent possible, negative building and site design impacts on adjacent properties;

d. The PRD shall be referenced on the official zoning map by adoption of an ordinance amending the map to include a reference to the binding site plan;

e. Prior to land use approval the Applicant shall provide signed and recorded Transfer of Development Rights Certificate for each unit of density on the receiving parcel(s) in the Residential 4-8 district;

f. A signed and recorded Document of Attachment of the development rights to the subject parcel(s).

13. The Applicant does not object to the revised conditions of approval.

14. An adjoining landowner, Debra Van Tuinen, initially objected to the proposed amendment for reasons described more fully in the Background Section. Ms. Van Tuinen now concurs with approval of the proposed amendment subject to the conditions proposed by City Staff.

15. Ms. Van Tuinen also recommends that small composting receptacles currently located near her property be relocated to the site's garden area. While these suggestions are sensible they are not significant enough to be imposed as conditions.

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

## CONCLUSIONS OF LAW

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

2. The requirements of SEPA have been met.

3. Any Conclusions of Law contained in the foregoing Background Section or foregoing Findings of Fact are hereby incorporated by reference and adopted by the Hearing Examiner as Conclusions of Law.

4. Each available Transfer of Development Right (TDR) would equate to one additional residential unit. Upon acquisition of two TDR's the Applicant would be entitled to amendment of the Planned Residential Development to allow two additional units subject, however, to such reasonable conditions as are imposed by City Council. To the extent that the City's Memorandum, Exhibit 17, contains proposed Conclusions of Law relating to the conversion of TDR's into additional available residential units, the Hearing Examiner adopts these Conclusions as his own Conclusions of Law.

5. The proposed amendment, as conditioned, satisfies the requirements of the Planned Residential Development Ordinance, OMC Chapter 18.56.

6. The proposed amendment, as conditioned, satisfies the requirements of the Transfer of Development Rights Ordinance, OMC Chapter 18.90.

7. The proposed amendment, allowing for the addition of two additional residential units (increasing the number of available units from sixteen to eighteen); the construction of Units "D" and "A" as identified more fully on Exhibit 21, should be approved subject to the following conditions:

*Findings of Fact, Conclusions of Law  
and Recommendations - 12*

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1           a.       The Applicant shall construct a fence along its east boundary as described more  
2 fully in the previous Finding;

3           b.       The Applicant shall relocate waste and recycling receptacles to interior locations  
4 as identified on Exhibit 21;

5           c.       When and if a building is proposed for construction on Lot 4 (Unit F) the  
6 Applicant will be required to submit design plans for a staff level detailed design review. The  
7 design will need to demonstrate a strong effort at mitigating, to the extent possible, negative  
8 building and site design impacts on adjacent properties;

9           d.       The PRD shall be referenced on the official zoning map by adoption of an  
10 ordinance amending the map to include a reference to the binding site plan;

11          e.       Prior to land use approval the Applicant shall provide signed and recorded  
12 Transfer of Development Rights Certificate for each unit of density on the receiving parcel(s) in  
13 the Residential 4-8 district;

14          f.       A signed and recorded Document of Attachment of the development rights to the  
15 subject parcel(s).

16               Having entered his Findings of Fact and Conclusions of Law, the Hearing Examiner  
17 recommends to the City Council that the proposed amendment be **APPROVED**; that the number  
18 of available residential units be increased from sixteen to eighteen; and that construction of Units  
19 D and A as identified on Exhibit 21 be permitted subject to the following conditions:

20          a.       The Applicant shall construct a fence along its east boundary as described more  
21 fully in the previous Finding;

22          b.       The Applicant shall relocate waste and recycling receptacles to interior locations  
23 as identified on Exhibit 21;

24          c.       When and if a building is proposed for construction on Lot 4 (Unit F) the  
25 Applicant will be required to submit design plans for a staff level detailed design review. The

1 design will need to demonstrate a strong effort at mitigating, to the extent possible, negative  
2 building and site design impacts on adjacent properties;

3 d. The PRD shall be referenced on the official zoning map by adoption of an  
4 ordinance amending the map to include a reference to the binding site plan;

5 e. Prior to land use approval the Applicant shall provide signed and recorded  
6 Transfer of Development Rights Certificate for each unit of density on the receiving parcel(s) in  
7 the Residential 4-8 district;

8 f. A signed and recorded Document of Attachment of the development rights to the  
9 subject parcel(s).

10 DATED this 15 day of August, 2013.

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14 Mark C. Scheibmeir  
15 City of Olympia Hearing Examiner  
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**CASE 13-0024**

**LIST OF EXHIBITS**

1. Staff Report and Attachments
2. Overview of Woodard Co-Housing dated July 1, 2013
3. Site Plan, Sheet 6 of 12 05-0121 mark up
4. Transfer Development Rights Document Dated July 8, 2013
5. Photos of Area- Presented by Liv Monroe
6. Photos of Area- Proposed Dumpster Site, Presented by Liv Monroe
7. Photos of Area- Proposed Fence, Presented by Liv Monroe
8. Site Plan- Showing Relocation of the Garbage Container Site
9. Site Plan indicating Screening
10. Plan Sheets 1-12 from Vector Engineering Dated February 20, 2013
11. Photos (collectively) A6, A3, A5, A7 and A8 Presented by Debra VanTuinen
12. Photo A1 Presented by Debra VanTuinen
13. Photo A2 Presented by Debra VanTuinen
14. Photo A 4 Posting Notice Presented by Debra VanTuinen
15. Photos (collectively) A9, A10, A11, A12, A13 and A14 Presented By Debra VanTuinen
16. Written Testimony by Debra VanTuinen
17. Memorandum from Todd Stamm, Planning Manager dated July 18, 2013
18. Correspondence to Mark Scheibmeir, Hearing Examiner from Mr. Whalen, legal rep. for Debra VanTuinen dated July 24, 2013
19. Message from Alan Murley to Debra VanTuinen
20. Email from Catherine McCoy, Associate Planner to Mark Scheibmeir, Hearing Examiner dated July 25, 2013.
21. Site Plan dated July 28, 2013 Showing Locations of Refuse Container Placement
22. Photo of worm composting location Presented by Debra VanTuinen
23. Photo of Food Waste Bucket Location Presented by Debra VanTuinen