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MEMORANDUM

Date:	July 18, 2013
To:	Mark Scheibmeir, Olympia Hearing Examiner
From:	Todd Stamm, Planning Manager – Community Planning and Development
Subject:	TDR Bonus in R 4-8 Zone

The Woodard Co-Housing project presents what I believe is an interpretation question of 'first impression' for Olympia. This memo summarizes my observations regarding the issue.

Although Table 4.04 says the maximum housing density in R 4-8 is 8 units per acre, it references OMC 18.04.080A. OMC 18.04.080(A)(4) and (5) together provide that in this zone – and subject to certain exceptions – transferable development rights (TDRs) must be obtained to exceed 7 units per acre. To the best of my knowledge the 2.34 acre Woodard Co-housing is the first project to propose exceeding 7 units pursuant to this clause. (The proponents previously sought an exception by variance, which was denied, in part because the TDR option was unavailable.) Unlike most codes, Olympia's is not explicit regarding the TDR arithmetic. In my opinion there are three possible approaches to applying this code section:

1. To exceed 7 units per acre, and instead have an 8 unit per acre maximum for the entire project, an applicant must obtain at least <u>one, and only one, TDR unit</u>. This interpretation would lead to the anomalous result that a developer of 10 acres would obtain ten 'bonus' units by purchasing 1 TDR while an owner of 4 acres would obtain only four bonus units. This approach would significantly skew the TDR market since sellers would seek to sell only to larger developers. In my opinion this clearly was <u>not</u> the intent of this clause.

2. An applicant must obtain <u>one TDR for each acre</u> that they propose to develop beyond 7 units per acre. TDRs are discrete measurements, i.e., one cannot purchase a fractional unit, and thus are subject to Olympia's rounding clause -- OMC 18.02.080(H). Thus, to increase the density for this 2.34 acre parcel 2 TDRs must be obtained. The two TDRs results in the project being eligible for the 8 unit per acre maximum density and – applying that rounding clause – the new maximum density is 19 units (8 x 2.34 =18.72 rounded up to 19).

   This interpretation presents two problems. First, depending on the acreage it would result in one 'extra' round-up-unit for some projects and not for others, thus like the interpretation above it results in certain projects obtaining more (or less, see below*) bonus units than others as a result of purchasing the same number of TDR. Second, it

presents the question of whether the rounding clause can result in slightly exceeding the express limits of a zone, such as the 8-units-per-acre maximum density. (As explained below, I think this last issue need not be reached in this instance and here express no opinion on the topic.)

3. An applicant must obtain 1 TDR-unit for each bonus (over 7 per acre) unit they wish to build. Here the applicant has obtained 2 TDRs, which would increase their allowed density from 16 units (2.34 x 7=16.38 rounded to 16) to 18 units (16+2). This type of constant TDR-to-bonus ratio is the most common TDR mechanism in TDR codes and, although not explicit, in my opinion this is probably the intended and correct interpretation of Olympia's program. (Were the applicant to obtain 3 TDR it would raise the question of whether 2.34 acres can be 'rounded up to 19 units' pursuant to the rounding clause of 18.02.080(H) as discussed above. However, since only 2 TDRs are proposed in this instance that question is not presented here and I would urge the Examiner not to address hypotheticals.)

*For example, in contrast with the case at hand where in theory purchasing 2 TDRs would result in a 3 unit bonus, interpretation #2 when applied to 1.51 acres could result in a requirement to purchase 2 TDRs to be eligible for 8 units per acre (1.51 rounds up to 2), but yields only one bonus unit (7 x 1.51 = 10.57 which rounds to 11; while 8 x 1.51 = 12.08 which rounds to 12).