

**CITY OF OLYMPIA  
HEARING EXAMINER  
STAFF REPORT  
April 21, 2014**

**Case:** Olympia Vista Short Plat, File No. 14-0013

**Applicant/  
Representative:** Dave Sinnett  
American Property Development  
110 110<sup>th</sup> Avenue NE, Suite 550  
Bellevue, Washington 98004

**Type of Request:** Deferral of short plat public improvements.

**Project Location:** 1000 Yaeger Way SE / 3600 Forestbrooke Way SW

**Legal Description:** Lot B of Boundary Line Adjustment No. BLA-07-0048-OL, recorded December 10, 2008, as Recording No, 4049751, Records of Thurston County, Washington.

**SEPA Determination:** Exempt

**Public Notification:** Public notification for this hearing was initially mailed to property owners within 300 feet of the subject property and recognized neighborhood association(s), and posted on-site on March 14, 2014. Public notification was published in *The Olympian* on March 17, 2014.

The hearing was rescheduled to April 21, 2014. Public notification was mailed to property owners within 300 feet of the subject property and recognized neighborhood associations on April 8, 2014; and posted on-site and published in the *Olympian* on April 9, 2014. The public notice requirements in the Olympia Municipal Code (OMC) 18.78.020 have been met.

**Staff Recommendation:** Approve the deferral request subject to conditions.

**Lead Planner:** Cari Hornbein, Senior Planner  
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**I. BACKGROUND INFORMATION**

**Project Description:**

On August 22, 2014, the City of Olympia issued land use approval for a 141-unit senior multifamily

project (known as Olympia Vista) located south of Forestbrooke Way SW and east of Yauger Way SW in west Olympia. The project occupies five acres of a 22-acre parcel for which the applicant is seeking preliminary short plat approval, which is an administrative review by city staff (see Attachment 2, Preliminary Short Plat Application). The applicant is also seeking approval of a deferral agreement to delay construction of all plat improvements until after the final short plat is recorded (see Attachment 3, Request for Deferral Agreement). The deferral agreement requires review and approval by the Hearing Examiner following a public hearing.

**Required Improvements:**

Required improvements for this development are shown on Attachment 4 and include:

1. Reconstruction of the south side of Forestbrook Way SW to a major collector standard;
2. Construction of half street improvements along the eastern property line of proposed Lot 1 to neighborhood collector standards including;
3. Construction of water and sewer mains;
4. Construction of stormwater improvements; and
5. Installation of street lights, landscaping, and street trees.

For a detailed list of all improvements, see the attached cost estimate worksheets (Exhibit C in Attachment 5, Draft Deferral Agreement).

**Timing of Improvements:**

In accordance with OMC 17.32.140, the construction of public improvements must be completed prior to final approval of a short plat. Due to their financing structure, the applicant is seeking approval of a deferral agreement to postpone construction of improvements until after final plat approval.

**II. REGULATORY FRAMEWORK**

Deferral of public improvements for plats is allowed under OMC 17.44. Deferral of major improvements requires a public hearing before the Hearing Examiner and a finding that applicable provisions in OMC 17.44 are met. OMC 18.82.120 also identifies subdivision improvement deferral agreements as being within the Hearing Examiner's jurisdiction.

**III. ANALYSIS**

This section contains an analysis of applicable provisions in OMC 17.44. Staff's review is based upon the Draft Deferral Agreement, Estimate Worksheets, and Off-site Improvement Plans, all of which are attached to this staff report. Staff responses and findings are noted in italics.

**OMC 17.44.020 Improvements – Agreement to Perform in Future – Financial Guarantee**

This section requires that the developer construct required improvements and repair any existing streets and other public facilities damaged in the development of a subdivision. In lieu of completing these improvements and/or repairs, OMC 17.44.020.E gives a developer the option of requesting deferral of actual construction of major improvements or repair by entering into a

subdivision improvement deferral agreement with the City. Such requests must be made to the Public Works Director and include such improvements as sanitary sewer, domestic water system, streets and appurtenances, and storm drainage.

**Finding:** *The developer has submitted a request to the Public Works Director to enter into a Subdivision Improvement Deferral Agreement (Draft Deferral Agreement) for major improvements (see Attachment 2, Deferral Agreement Request Letter). Financial guarantee will be in the form of a surety bond. The City Engineer and Engineering Program Manager have been designated to represent the Public Works Director on this matter.*

**17.44.020.E:**

"Prior to entering into such agreement, it shall be reviewed by the Hearing Examiner after public notice and a hearing pursuant to OMC Chapter 18.82."

**Finding:** *Public notice for the May 21, 2014 public hearing was issued pursuant to OMC 18.82.*

"In determining whether to accept, reject, approve, or deny a request, the Hearing Examiner shall decide whether any delay in construction of major improvements and repairs constitutes hazards to the public's health and safety and the conditions necessary to mitigate such hazards, including, but not limited to, withholding building permits until such improvements or repairs are installed and accepted by the City."

**Finding:** *The Draft Deferral Agreement and Estimate have both received extensive review and revisions by the engineering, planning, and legal staff. With the terms of the Draft Deferral Agreement, the estimate, and surety bond, staff is of the opinion that delaying construction of major improvements will not pose a hazard to the public's health and safety as follows:*

- 1. No other development in the area is dependent upon the required improvements;*
- 2. The estimate contained in Exhibit C of the Draft Deferral Agreement was prepared by the City's engineering staff and takes into account the cost for the City to construct public improvements associated with the Olympia Vista development;*
- 3. The applicant will file a surety bond that represents 125 percent of the estimate in Exhibit C, with the Public Works Department prior to preliminary plat approval as spelled out in Section 3 of the Draft Deferral Agreement; and*
- 4. No certificates of occupancy will be issued prior to installation of improvements, as stipulated in Section 9 of the Draft Deferral Agreement.*

"Such an agreement shall contain all of the conditions described in Subsections A through D herein."

**Finding:** *The Draft Deferral Agreement addresses Subsections A through D.*

**17.44.020.A**

"The agreement shall provide that if the work is not completed within one year, plus any approved extension of time not to exceed six months, the city may complete the work and recover the full cost and expense thereof from the developer. In no event shall completion of such work exceed one and one-half years from the execution of such agreement."

***Finding:*** Section 1 of the Draft Deferral Agreement notes this time limit.

“The agreement shall also contain an indemnification supported by liability insurance in an amount determined by the city’s risk manager to be sufficient to cover foreseeable liability for the city and its agents.”

***Finding:*** Sections 5 of the Draft Deferral Agreement addresses this requirement.

“In addition, the agreement must contain a provision whereby the developer will be responsible for the successful growth and/or operation of, and all repairs to, the improvements for a two-year period following their installation.”

***Finding:*** Section 6 of the Draft Deferral Agreement establishes a two year warranty period.

“Costs and reasonable attorney’s fees for the city shall be provided for in the agreement in the event of default.”

***Finding:*** Section 10.c. of the Draft Deferral Agreement addresses attorney’s fees.

“The developer shall also execute and deliver to the Director of Public Works, or the Director’s designee, an easement, in a form acceptable to the city attorney, allowing the city’s agents to enter upon the subject property to perform the necessary improvement in the event of default.”

***Finding:*** Section 2 of the Draft Deferral Agreement addresses easement requirements; an easement will be granted through the Agreement rather than under separate instrument.

**17.44.020.B:**

“The developer shall file with the agreement, to assure his full and faithful performance thereof, one of the following:

1. A surety bond executed by a surety company authorized to transact business in the state in a form approved by the City Attorney;
2. Cash;
3. Letter of credit approved by the City Attorney from a financial institution stating that the money is held for the purpose of development of the stated project;
4. Assigned savings pursuant to an agreement approved by the City Attorney; or
5. Lien agreement approved by the City Attorney.

The agreement and financial assurance shall be filed with the Director of Public Works or the Director’s designee.”

***Finding:*** A surety bond in the amount of \$1,347,550.00 will be filed with the Public Works Director or their designee.

**17.44.020.C:**

“Such assurance of full and faithful performance shall be for 125% of a sum determined by the Director of Public Works, or the Director’s designee, as sufficient to cover the cost of the improvements and repairs, including related engineering, incidental expenses, inflation and contingencies.”

***Finding:*** See above.

**17.44.020.D:**

“If the developer fails to carry out provisions of the agreement and the city has unreimbursed costs or expenses resulting from such failure, the city shall call on the developer’s financial security for reimbursement. If the amount of the developer’s financial security exceeds the cost and expense incurred by the city, the remainder shall be released. If the amount of the developer’s financial security is less than the cost and expense incurred by the city, the developer shall be liable to the city for the difference in addition to all costs, including reasonable attorney’s fees, of recovery of such amount, including, but not limited to, reasonable attorney’s fees.”

***Finding:*** This provision is addressed in Section 4 of the Draft Deferral Agreement.

**IV. RECOMMENDATION**

Approve the deferral request with the following conditions:

1. All terms of the Subdivision Approval Deferral Agreement shall be met.
2. Proof of liability insurance coverage shall be delivered to the Public Works Director or their designee prior to preliminary plat approval.

**Submitted by/  
Staff Contact:**

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**Date Issued:** April 14, 2014

**Attachments:**

2. Preliminary Short Plat Application
3. Major Improvement Deferral Agreement Request
4. Offsite Improvement Plans
5. Draft Deferral Agreement