BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

In the Matter of:	)	HEARING NO. 18-1315
	)	
WELLINGTON HEIGHTS.	)	ORDER ON MOTION TO CONTINUE

The Applicant, ABS Investments, LLC, seeks preliminary plat approval of a project known as "Wellington Heights". The proposed plat would subdivide 9.5 acres into 56 single-family residential lots.

The public hearing on the Wellington Heights application commenced at 6:00 p.m. on Monday, December 10, 2018, in the City Council Chambers. The Applicant was present and appeared through its owner, Alex Vo, and was represented by its attorney, Thomas Westbrook. Approximately 40-50 members of the public were also present along with 8-10 members of City Staff.

Just prior to the commencement of the hearing, City Staff presented the Hearing Examiner with several additional documents relating to the conditions imposed as part of the SEPA MDNS. These documents were identified as additional exhibits and include the following:

Exhibit 28: A Memorandum from Paula Smith, Associate Planner and Tim Smith, Principal Planner, to the Hearing Examiner (the "Memorandum"). The Memorandum advises of a proposed change in the offsite handling of storm drainage. As a result of these proposed changes City Staff recommends to the Hearing Examiner that two (of the four) stormwater management requirements included in Condition No. 3 of the MDNS be eliminated.

Exhibit 29: An email from Bruce Titus, owner of adjoining property to the south, to the City Mayor and Planning Staff requesting a postponement of the public hearing as a result of the City's proposed changes to the conditions of the MDNS.

Exhibit 30: A chain of emails among City Staff discussing whether the public hearing should be continue in light of the proposed changes to the MDNS conditions.

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Exhibit 31: A chain of emails between City Staff and Bruce Titus advising Mr. Titus that the decision whether to continue the public hearing would be left to the Hearing Examiner.

As the public hearing got underway an interested party, Mauri Shuler, appearing through her attorney, Allen Miller, presented a written Motion to Continue Hearing (Exhibit 33) in light of the City's announced intention to recommend to the Hearing Examiner that several of the conditions attached to the SEPA MDNS be removed.

In support of Ms. Shuler's Motion, Mr. Miller argued that the City was, in effect, attempting to modify the conditions imposed as part of the MDNS through the "backdoor", that is, by having the Hearing Examiner impose the modifications rather than having them imposed by Staff. Mr. Miller argued that this approach would deny interested parties an opportunity to appeal the changes to the MDNS. Mr. Miller acknowledged, however, that the Hearing Examiner may not want to continue the hearing in its entirety given that a large audience was present wishing to give testimony. The Applicant's counsel, Mr. Westbrook, agreed and recommended that public testimony proceed and that the Hearing Examiner could determine, at the end of testimony, whether a continuance was needed.

After hearing from all parties the Hearing Examiner announced that the public hearing would proceed but that at the conclusion of all testimony the Hearing Examiner would make a further determination as to whether to continue the hearing.

During the course of testimony City Staff explained that the two MDNS conditions at issue would: (1) require the Applicant to restore an east/west stormwater swale running along the northern boundary of the adjoining property owned by Bruce Titus; and (2) restore the screening buffer surrounding this swale once construction was completed. The purpose of these proposed conditions is to provide better handling of existing stormwater coming from the "Wellington West" neighborhood north of the project site. Just prior to the public hearing the Applicant proposed changes in the conveyance of this stormwater so that it would no longer have

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to be sent to this swale, making the two conditions to the MDNS no longer necessary. The Applicant believes that redirecting the Wellington West stormwater away from this swale will provide a simpler, less expensive, but more effective management of the stormwater. Following review City Staff agreed with the Applicant and therefore recommends that these two conditions be eliminated.

During the public hearing various members of City Staff testified and provided further explanation of these requested changes to the MDNS. In response to this testimony the Hearing Examiner asked Staff if it was merely "recommending" the elimination of these two conditions, or whether their elimination was deemed essential. Cari Hornbein of Planning Staff responded to this question and explained that Staff finds the requested change to be essential, that is, that if the Hearing Examiner chooses to not eliminate these conditions then the City will return the MDNS and formally modify it to eliminate these conditions.

In light of Ms. Hornbein's testimony that the change in the MDNS conditions must be made one way or another, Ms. Shuler's Motion raises a legitimate question as to whether having the change made by the Hearing Examiner is, in fact, an attempt to modify the MDNS without providing opponents an opportunity to respond or appeal. Based upon this threshold showing the Hearing Examiner therefore orders:

1. The Applicant and City shall have until **5:00 p.m. on Monday, December 17, 2018**, to provide any further legal argument they may wish to make as to why the requested changes to the MDNS should be undertaken by the Hearing Examiner rather than by returning the MDNS for modification.

2. The moving party, Ms. Shuler, shall have until **5:00 p.m. on Friday, December 21, 2018,** to respond.

3. The Hearing Examiner shall then render a decision on this procedural question, including a decision as to whether additional public testimony should be allowed.

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DATED this 13 day of December, 2018.

Mark C. Scheibmeir
City of Olympia Hearing Examiner

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