



**OLYMPIA
HEARING EXAMINER
DECISION**

Community Planning & Development
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November 10, 2014

Greetings,

**Subject: TANASSE MIXED USE BLDG
Case# 14-0025**

The enclosed decision of the Olympia Hearings Examiner hereby issued on the above date may be of interest to you. This is a final decision of the City of Olympia.

In general, any appeal of a final land use decision must be filed in court within twenty-one days. See Revised Code of Washington, Chapter 36.70, for more information relating to timeliness of any appeal and filing, service and other legal requirements applicable to such appeal. In particular, see RCW 36.70C.040.

Please contact the City of Olympia, Community Planning and Development Department, at 601 4th Avenue E or at PO Box 1967, Olympia, WA 98507-1967, by phone at 360-753-8314, or by e-mail at cpdinfo@ci.olympia.wa.us if you have any questions.

Sincerely,

Catherine McCoy
Associate Planner

BEFORE THE CITY OF OLYMPIA HEARINGS EXAMINER

IN RE:) HEARING NO. 14-0025
)
TANASSE MIXED USE BUILDING,) FINDINGS OF FACT,
) CONCLUSIONS OF LAW
) AND DECISION DENYING APPEAL

APPLICANT: Gretchen Van Dusen
409 Rogers Street N.W.
Olympia, Washington 98502

APPELLANTS: Bigelow Neighborhood Association; John Bay; Maile Bay; and
Tim Walker
1002 Olympia Avenue N.E.
Olympia, Washington 98506

REPRESENTATIVES: Allen T. Miller, Attorney for Appellants
1901 West Bay Drive N.W., Suite 205
Olympia, Washington 98502

W. Dale Kamerrer, Special Counsel for City of Olympia
P. O. Box 11880
Olympia, Washington 98508

PROJECT LOCATION: 924 State Avenue North

SUMMARY OF REQUEST:

Appellants appeal the City of Olympia land use approval and SEPA DNS of July 7, 2014, on the Tanasse Mixed Use Building, Case No. 14-0025.

SUMMARY OF DECISION:

The appeal is **denied**.

BACKGROUND

This matter comes before the Hearing Examiner upon the appeal brought by Bigelow Neighborhood Association and several of its members, John and Maile Bay and Tim Walker, of the City's land use approval and SEPA DNS of July 7, 2014, approving the proposed "Tanasse

*Findings of Fact, Conclusions of Law
and Decision Denying Appeal - I*

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1 Mixed Use Building" at 924 State Avenue North in Olympia. The Appellants appear through
2 their legal counsel Allen T. Miller. The Applicant is identified as Gretchen Van Dusen, architect
3 for the owner of the site, John Tanasse. The City appears through Catherine McCoy of Planning
4 Staff and is represented by special counsel, W. Dale Kamerrer.

5 This appeal presents a number of legal issues relating to code interpretation but relatively
6 few factual disputes. The proposed Tanasse Mixed Use Building (the "Tanasse Building") is a
7 three-story mixed use office and residential building to be located at 924 State Avenue North
8 between Quince and Pear in the Professional Office/Residential Multi-Family (PO/RM) zone.
9 The ground floor and a portion of the second floor will be occupied by a medical office
10 (chiropractic) facility. The remainder of the second floor will be occupied by a two-bedroom
11 residential unit. The third, top floor, will be a three-bedroom residential unit. Access to each
12 floor includes an elevator which will also provide access to the roof. The roof will be
13 configured for use as an uncovered patio with outdoor seating and a roof garden.

14 The building measures 33 feet 3 inches to the height of the roof of the third floor. A
15 structure housing the elevator will rise an additional 14 feet 7 inches, resulting in a total building
16 height of 47 feet 10 inches.

17 City Staff calculates that the proposed use will require ten parking spaces by applying the
18 City's "shared use" policies. This parking requirement will be satisfied by three covered parking
19 stalls, four surface parking stalls, and three street parking spaces along State Avenue.

20 As noted in Appellants' Brief, some additional details of the site/building include: the lot
21 size contains 6,300 square feet and the building footprint covers 2,931 square feet including
22 approximately 800 square feet of garage. The building was designed with side setbacks of 8 feet
23 on the east and 10 feet on the west. The front setback is 10 feet and the rear setback is 23 feet of
24 paved parking area. The building's gross floor area is 7,451 square feet if the garage is included.

1 Access to the garage and surface parking will be via the rear alley. The rear alley between
2 Quince and Pear will be paved as part of the project.

3 The site is within the PO/RM zone. This is a small, somewhat irregular zone primarily
4 located along the east side of State Avenue between Eastside and Plum/East Bay Drive and
5 contains 16 lots. The project site is currently vacant. Other lots within the zone house an
6 eclectic mix of new and old buildings used for commercial, mixed use or apartments.
7 Immediately to the west is a 100-year old former residence now converted to a mixed use
8 building. Immediately to the east (facing Quince) is another older residence that has been
9 converted to a professional (law office) building. It appears that all of the remaining residential
10 properties in the zone have been converted to commercial or mixed uses. Several of the original
11 residences have been removed and replaced with more modern commercial buildings of various
12 sizes and styles. These commercial buildings are generally lower in height and less "modern
13 looking" than the Tanasse Building.

14 There are several older residential structures in the PO/RM zone but none have been
15 placed on the Historic Register or recognized as being historically significant. In contrast,
16 immediately east of the site and the PO/RM zone is the attractive and well-maintained Bigelow
17 Historic District which contains a significant number of historic homes. The Appellants note
18 that within two blocks there are 15 registered historic houses. The Bigelow Neighborhood is
19 zoned R4-8. The dividing line between zones is the alley running behind the subject property.
20 The proposed Tanasse Building is taller and far more modern looking than neighboring
21 properties, particularly those in the Bigelow Neighborhood. The building's design has been
22 described as falling within the "Mid-Century Modern" or "International" style of architecture,
23 while the Bigelow Neighborhood contains mostly Craftsman bungalows along with some
24 Victorian-style residences. There is, without question, a significant contrast between the
25 Tanasse Building and the Bigelow Neighborhood to the north.

1 In addition to the R4-8 residential zone immediately to the north, the PO/RM zone is also
2 surrounded by the Urban Waterfront District (UW), the Downtown Business District (DB), the
3 General Commercial District (GC), the High Density Corridor 1 District (HDC-1), and the
4 Residential Mixed Use District (RMU). It sits between more intense commercial development to
5 the west and east and residential development to the north and south. OMC 18.06.020(B)(9)
6 declares that the PO/RM District is intended to "provide a transitional area, buffering residential
7 areas from more intensive commercial uses. Development within this district should be
8 compatible with residential uses and generate low vehicular traffic characteristic of less intensive
9 uses. The zone should also "provide for a compatible mix of office, moderate-to-high density
10 residential, and small scale commercial uses, in order to provide opportunities for people to live,
11 work and recreate in a pedestrian oriented area."

12 The property is within the Downtown Design Review District and is within both the
13 Olympia Downtown Neighborhood and the Bigelow Neighborhood. The application process
14 included neighborhood meetings with both neighborhoods. The Bigelow Neighborhood
15 meeting elicited significant response, both for and against the project. Because the site is within
16 the Downtown Design Review District it is also subject to review by the Design Review Board
17 according to the Basic Commercial Design Criteria and the Downtown District Design Criteria.
18 On May 15, 2014, the Design Review Board recommended approval of the project subject to a
19 few minor modifications.

20 Following approval by the Design Review Board the application was approved by the
21 Site Plan Review Committee on July 7, 2014. The Appellants timely appealed the administrative
22 decision. The Appellants' challenge the project's consistency with the City's Comprehensive
23 Plan and its compliance with Development Regulations and SEPA. Each challenge will be
24 described more fully below.

1 This matter came on for hearing at 6:00 p.m. on Wednesday, October 8, 2014, in the City
2 Council Chambers. The Applicant, Gretchen Van Dusen, was present appearing pro se and was
3 accompanied by the property owner, John Tanasse. The Appellants were present and were
4 represented by Allen T. Miller. The City appeared through Catherine McCoy and was
5 represented by special counsel, W. Dale Kamerrer. Prior to the hearing the City Staff submitted
6 its Staff Report including 23 attachments (Exhibit 1). The exhibits set forth on the attached
7 Exhibit "A" were introduced during the hearing. The Appellants and the Applicant submitted
8 prehearing briefing. All three parties submitted testimony from one or more witnesses.
9 Catherine McCoy testified on behalf of the City, Jay Elder, Richard Christian, Geoff Glass, Tim
10 Walker, and John Bay testified on behalf of the Appellants, and Gretchen Van Dusen, Garner
11 Miller, Chris Cramer, and Karen Messmer spoke on behalf of the Appellants. All testimony was
12 taken under oath and subject to cross examination.

13 The Appellants' witnesses express their opposition to the project and their concerns with
14 its design. Jay Elder, who resides on Olympia Avenue and is Past President of the Neighborhood
15 Association, explained that the Association was formed to encourage the historic preservation
16 and renovation of the neighborhood and stop the conversion of residential lots into commercial
17 buildings. The neighborhood achieved historic designation in 2006. As a member of the
18 Bigelow Neighborhood Mr. Elder is concerned that the project is surrounded by older houses and
19 that it will tower above this historic district. He acknowledges that the building is well designed
20 but is inappropriate for its location. Mr. Elder believes that the Comprehensive Plan and the
21 Development Regulations require more harmonious development in the area. He identified
22 several recently constructed commercial buildings nearby, including the Master Builders Office
23 and the new veterinary cancer clinic, as examples of new, commercial architecture that properly
24 fits with this older neighborhood. Mr. Elder noted that the project will be twice as tall as
25

1 surrounding buildings, will block the view for some neighbors, and has no design characteristics
2 similar to any surrounding buildings.

3 Another resident of the Bigelow Neighborhood, and a retired architect, Richard Christian,
4 provided similar testimony in opposition. Mr. Christian concluded that the project's architectural
5 style is not compatible with the Bigelow Neighborhood. The proportions, window trims,
6 paneling, roof pitches, overhangs, porch railings, and trim work found in the Bigelow District is
7 completely different than proposed for the Tanasse Building which will offer clean lines, no
8 detail and minimal window trim. Mr. Christian also believes that the elevator structure on top of
9 the roof is inappropriate and is of far greater size than its basic purpose requires.

10 Geoff Glass, another Bigelow resident and a professional engineer, acknowledges that the
11 building and site are professionally designed but is inappropriate to the site. The development
12 will rely upon existing retaining walls to the east and west, and the retaining wall to the east
13 appears to have failed. Mr. Glass also notes that the site development will require additional fill
14 to be removed, placing further stress on the retaining walls. In addition he is concerned that the
15 project will increase traffic through the alley, placing greater demand for its maintenance. He
16 also believes the project will place undue stress on the stormwater collection system and the
17 nearby catch basin.

18 Tim Walker, another resident of the Bigelow Neighborhood and Vice President of the
19 Association, finds that the project does not fit into the neighborhood and that it defeats the
20 PO/RM zone's intended purpose to serve as a buffer and transitional zone. Mr. Walker is
21 concerned that the project's divergent look will negatively impact the value of the nearby historic
22 homes and that its massive size and modern aesthetics are inconsistent with its surroundings.

23 John Bay, who resides on Olympia Avenue and also owns the property adjacent to the
24 project site at 912/916 State Avenue, has similar concerns regarding the site's retaining walls, the
25

1 condition of the alley and the capacity of the stormwater collection system. He is also concerned
2 that parking for the project is inadequate and will increase the burden on surrounding residential
3 streets. Mr. Bay also believes that the parking stalls have been incorrectly designed causing
4 them to overlap. He believes that the building design is too big and that it overwhelms his
5 building to the west. He also notes that other recent commercial construction has been on larger
6 lots, with lower roofs and more compatible materials. Mr. Bay also notes that the elevator
7 project does not require any equipment on the roof as the elevator will be hydraulically operated
8 from below, not above. He therefore questions the appropriateness of a rooftop structure used to
9 allow the elevator to reach the roof. As with other Appellant witnesses Mr. Bay believes that the
10 project does not achieve the PO/RM zone's purpose of providing a buffer between commercial
11 and residential neighborhoods.

12 The City's and Applicant's witnesses testified in response in a manner consistent with the
13 City's Staff Report (Exhibit 1).

14 At the conclusion of testimony on October 8, the hearing was kept open at the Hearing
15 Examiner's request to obtain certain information relating to the prior application (if any) of the
16 pertinent Development Regulations in the PO/RM zone. This request produced supplemental
17 briefing from the City and the Appellants.

18 The hearing was continued until Wednesday, October 29, 2104, for discussion of the
19 supplemental information and for closing arguments. At the conclusion of closing arguments the
20 Hearing Examiner issued his oral ruling denying the appeal along with a brief explanation for his
21 decision.

22 ANALYSIS

23 The Appellants challenge the administrative approval of this project on several bases.
24 This analysis will examine each challenge in the same order as it is found in the Petitioners'
25 Appeal.

*Findings of Fact, Conclusions of Law
and Decision Denying Appeal - 7*

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1 1. **"The project fails to comply with the Olympia Comprehensive Plan because**
2 **it is incompatible with surrounding structures in neighborhood, blocks scenic views, and**
3 **denigrates historic neighborhoods and is specifically inconsistent with, among others: LU**
4 **1.3; LU 2.1; LU 2.2; LU 2.7; LU 7A.1; LU 7A.3; LU 7A.4; LU 7A.6; LU 8.2; LU 8.4; HP**
5 **10.1."**

6 "All development within the City incorporated boundary and the Urban Growth Area
7 shall be consistent with Olympia's Comprehensive Plan." OMC 18.02.100. In order to
8 determine whether this project is consistent it must be examined in light of the portions of the
9 Comprehensive Plan referenced by Appellants as well as by those portions cited by the Applicant
10 or the City. The following is an examination of those portions of the Plan cited by the various
11 parties.

12 The Appellants cite to the following portions of the Plan:

13 **LU 1.3 "Increase the overall housing densities in Olympia, and ultimately in the**
14 **unincorporated growth area, in order to efficiently use the remaining buildable land while**
15 **considering environmental constraints; to enable efficient, cost effective provisions of City**
16 **facilities, services, and to enable provision of affordable housing."**

17 This project increases overall housing density, makes efficient use of remaining buildable
18 land while considering environmental constraints, and enables efficient, cost effective provisions
19 of City facilities, etc. The project is consistent with the goals of LU 1.3.

20 **LU 2.1 "Establish building and site design standards that will result in commercial,**
21 **public and residential structures that compliment or enhance their surroundings, appeal to**
22 **and accommodate pedestrians, and help facilitate transit use. Consider issuing design**
23 **awards for the year's most outstanding commercial and residential projects and**
24 **structures."**

1 This goal speaks to building and site design "standards", not to individual structures, and
2 Appellants' reference to it appears misplaced. Nonetheless, to the extent that this goal
3 encourages enhancing surroundings, appealing to pedestrians and facilitating transit use, the
4 project is consistent with these goals.

5 **LU 2.2 "Protect, to the greatest extent practical, scenic views of the Capitol Dome,**
6 **Budd Inlet, Mt. Rainier, the Black Hills, Capitol Lake, and the Olympic Mountains from**
7 **designated viewing points and corridors."**

8 Catherine McCoy testified that the City has established designated viewing corridors and
9 scenic views. One of the designated corridors is along State Avenue looking west toward the
10 Black Hills and southwest toward the Capitol. The project site lies north of either of these views
11 and does not interfere with the view of either the Capitol or the Black Hills from the designated
12 scenic corridor. The Appellants provide evidence that the building will block the view of the
13 Capitol from a single location in front of the residence at 1002 Olympia Avenue but this street is
14 not a designated view corridor. Further, neither the Comprehensive Plan nor the Development
15 Regulations prohibit the impairment of scenic views from private property. The project is
16 consistent with LU 2.2.

17 **LU 2.7 "Establish gateways to Olympia with significant, special landscaping,**
18 **establish design standards for the landscaping and buildings along Olympia's entrance and**
19 **exit corridors that reinforce the street's role as the gateway to the Capitol."**

20 The project has been examined by the Design Review Board and the Site Plan Review
21 Committee with this goal in mind. The project is consistent with LU 2.7.

22 **LU 7A.1 "Foster growth management by focusing density and locations that will**
23 **minimize harm to the City's historic fabric and neighborhoods and by improving these**
24 **neighborhoods to make them more appealing."**

1 This goal addresses zoning goals, not individual buildings. The PO/RM zone has been
2 carefully designed to serve as a transition between conflicting residential and commercial areas.
3 The PO/RM's zone provides a buffer between these areas by allowing for more intensive
4 development than is found in nearby residential neighborhoods, but less intensive development
5 than is found in adjoining commercial areas. This zone preserves the integrity of the adjoining
6 residential areas and their historic homes while allowing for more intensive development. The
7 project meets the goals of the PO/RM zone and is consistent with LU 7A.1.

8 **LU 7A.3 "Zoning should be compatible with and conducive to continued**
9 **preservation of the historic neighborhoods and properties."**

10 Again, this goal speaks to zoning policies and not to individual buildings. As noted
11 above, the PO/RM zone is intended to serve as a buffer between residential areas, including
12 those with historic qualities, and more intensive commercial neighborhoods. The PO/RM zone
13 meets this goal and is consistent with LU 7A.3.

14 **LU 7A.4 "Use appropriate design review processes and design guidelines to assure**
15 **integration of new development that is compatible with designated historic buildings."**

16 This project has undergone intensive design review before the independent Design
17 Review Board and by the Site Plan Review Committee, applying procedures and guidelines that
18 reviewed the project for compatibility with designated historic buildings (although there are no
19 designated historic properties within the PO/RM zone).

20 **LU7A.6 "Olympia is also the historic center of the County, with a historic**
21 **downtown and historic neighborhoods. Continued rejuvenation of the downtown would**
22 **help stimulate more jobs in Olympia directly. Historic features may also indirectly**
23 **increase the potential for tourism to bring in added dollars and activity."**

1 The project provides a modern, attractive building along the corridor into the downtown
2 area. Development of this vacant site is consistent with rejuvenation of the downtown. The
3 project is consistent with LU 7A.6.

4 **LU 8.2 "Ensure that new development in established neighborhoods which is**
5 **subject to design standards is of a type, scale, orientation, and design that maintains or**
6 **improves the character, aesthetic quality and livability of the neighborhood."**

7 The Appellants argue that the site is within an "established neighborhood", that is, the
8 Bigelow Neighborhood, and that the proposed development should be of a type, scale,
9 orientation and design that maintains or improves the character, qualities and livability of the
10 Bigelow Neighborhood.

11 The difficulty with this argument is that the Comprehensive Plan does not recognize this
12 site as part of the Bigelow Neighborhood as will be discussed more fully below. Rather, the
13 Comprehensive Plan recognizes that this block is different than the adjoining Bigelow
14 Neighborhood and should be encouraged to develop in a more intensive way. As earlier noted,
15 the three blocks within the PO/RM zone contain an eclectic mix of new and old structures
16 containing commercial offices, mixes uses and apartments. Unlike the Bigelow Neighborhood,
17 whose character is well defined, this zone lacks any similar definition.

18 As there is no neighborhood character to "maintain" the question then becomes whether
19 the project serves to "improve" the neighborhood, its aesthetic quality, and its livability, while
20 keeping in mind that the Comprehensive Plan envisions this neighborhood to have more
21 intensive development than adjoining residential neighborhoods, and with new buildings three to
22 six stories in height. When considering all of these goals the project is consistent with the
23 Comprehensive Plan.

24 **LU 8.4 "Establish zoning and design standards that ensure compatibility of**
25 **adjoining residential and commercial areas, in order to maintain or enhance the**

1 neighborhood's character, livability, and property values. Consider requiring commercial
2 structures to use building scales, roof forms and building materials similar to, or
3 compatible with, the adjoining residential structures; "low key" signage; and carefully
4 controlling site lighting that minimizes offsite impacts."

5 This policy is directed toward recommended zoning and design standards, not individual
6 projects. It recommends, but does not require, commercial buildings to be designed to be
7 compatible to adjoining residential structures, but its application becomes unclear when those
8 adjoining residential structures are no longer used as residences and instead have been converted
9 to commercial use as in this PO/RM zone.

10 In response, the Applicant cites to various other portions of the Comprehensive Plan that
11 speak directly to development within the PO/RM zone and along State Avenue. Among those
12 cited by Applicant are:

13 **LU 1.1 "Focus growth in areas with the capacity to absorb development (i.e. areas**
14 **with vacant or underutilized land and available utility, street, park and school capacity, or**
15 **where such facilities can be cost effectively provided); in areas where development will**
16 **facilitate efficient, effective mass transit service; where adverse environmental impacts can**
17 **be avoided or adequately mitigated; and where development will enhance the area's**
18 **appearance or vitality."**

19 As noted by the Applicant, this is the first policy of land use in the City's Comprehensive
20 Plan. The project utilizes vacant land with available utilities, street, park and school capacity in
21 an area where development will facilitate efficient and effective mass transit service and where
22 adverse environmental impacts can be adequately mitigated. The project will enhance the
23 vitality of State Avenue as it enters the downtown core. The project is consistent with all of the
24 goals of LU 1.1.

1 **"Professional Office/Multifamily". This designation accommodates a wide range of**
2 **offices, services, limited retail uses specifically authorized by the applicable zoning district**
3 **in moderate-to-high density multifamily housing and structures as large as four stories.**

4 **[Page 75 of the Land Use and Urban Design]"**

5 The project meets all of the expressed goals for the Professional Office/Multifamily
6 (PO/RM) areas.

7 **"The commercial corridor along 4th and State Avenues should be encouraged to**
8 **develop in uses similar to the City Center to the west of Pear Street. In this area as well as**
9 **elsewhere downtown, up to two extra stories should be allowed as a bonus, provided the**
10 **added stories are residential. East of Pear Street, retail, office, and residential uses are all**
11 **appropriate, but they should be at lower intensity than to the west, i.e., roughly three to six**
12 **stories. North of State Avenue, the area abuts the residential Bigelow Neighborhood. The**
13 **half blocks along Olympia Avenue which are in residential should remain residential.**

14 **[Page 86 of the Land Use and Urban Design]"**

15 The project is consistent with all of the stated goals for the area along State Avenue east
16 of Pear Street, including building height. It is worth adding that this is the most specific
17 reference to this neighborhood in the Comprehensive Plan and, while it recognizes the Bigelow
18 Neighborhood to the north, it nonetheless recognizes that development on this block is expected
19 to be of greater density with buildings as tall as six stories. The project is consistent with the
20 expressed goals for this neighborhood.

21 Read as a whole, the Comprehensive Plan envisions the area where the project is located
22 to be a transitional area between nearby residential areas, including historic areas, and more
23 intensive commercial areas east and west. The Plan envisions this neighborhood to have more
24 intense development than adjoining residential areas with a mix of commercial and multifamily
25

1 uses located in buildings that are three, four and perhaps six stories tall. The project is
2 consistent with this vision.

3 2. **"The project is located in the PO/RM zone. The project fails to comply with**
4 **the purpose and intent of the zone to provide a transitional area, buffering residential areas**
5 **from more intensive commercial uses." OMC 18.06.020(b)(9).**

6 OMC 18.06.020(b)(9) states: "The PO/RM district is intended to:

7 (A) Provide a transitional area, buffering residential areas from more intensive
8 commercial uses. Development within this district should be compatible with residential
9 uses and generate low vehicular traffic characteristic of less intensive uses.

10 (B) Provide for compatible mix of office, moderate to high density residential,
11 and small scale commercial uses, in order to provide opportunities for people to live,
12 work and recreate in a pedestrian-orientated area."

13 As noted by the City, the Applicant's intended use as a medical office and multifamily
14 residential are both permitted uses for the PO/RM zone. And as will be discussed later, the
15 project satisfies all of the density, height, parking and other requirements of the PO/RM zone.
16 And, while the project is more intensive than neighboring residential areas, it is less intensive
17 than nearby commercial areas. In summary, the intended uses are permitted; the project meets
18 all Development Regulations for the zone; and it provides a transitional use between neighboring
19 residential and commercial areas. It is compatible with residential uses and generates low
20 vehicular traffic. Further, it provides for compatible mix of office and residential uses providing
21 opportunities for people to live, work and recreate in a pedestrian-oriented area. The project
22 complies with OMC 18.02.020(b)(9).

23 3. **"The project fails to comply with OMC 18.100.100 and OMC 18.175.020**
24 **through 18.175.060 requiring infill to be compatible with adjacent residential structures."**
25

1 OMC 18.100.100 "How to Use Design Criteria" sets forth the design criteria to be
2 applied to a project. The City has applied the design criteria applicable to the Downtown Design
3 Review District, OMC 18.100.060 and 18.100.080, as well as the basic Commercial Design
4 Criteria, OMC 18.110, and the districts' specific requirements of the Commercial Design Criteria
5 Downtown, OMC 18.120. Stated slightly differently, the City finds that the site is within the
6 Downtown Design Review District; that the proposed use within this district is a commercial
7 use; and that commercial uses within this district, at this location, are subject to the basic
8 Commercial Design Criteria and the Downtown District Design Criteria. Based upon these
9 design criteria the Design Review Board and the Site Plan Review Committee have found that
10 the design of the building is compliant after minor modifications were made to the design.

11 The Appellants argue that the project is a "residential use" and must therefore also meet
12 the Residential Design Criteria found in OMC 18.175.020 through 18.175.060. In response, the
13 City notes that per OMC 18.100.100 these residential design criteria only apply "on substandard
14 lots, duplexes, triplexes, four-plexes, and townhouse buildings of four units or less throughout
15 the City".

16 In order for the residential criteria to apply to this project it must be a "duplex, triplex,
17 four-plex, or townhouse" building. The Appellants argue that the project is a "duplex" because
18 it has two residential units and, therefore, the Residential Design Criteria apply.

19 The City responds, correctly, that the project is not a duplex and the residential criteria do
20 not apply. The mere fact that this building includes two residential units as part of its mix of
21 office and residential use does not make it a "duplex". The City explains that the term "duplex"
22 is a term of art and defined as "one building containing two single-family dwelling units totally
23 separated from each other by a one-hour fire wall floor." OMC 18.02.180(D) The project
24 clearly does not meet the definition.

1 To summarize, the project is not a "duplex" nor is it a triplex, four-plex or townhouse
2 building. The Residential Design Criteria therefore do not apply to the project. The City has
3 applied the proper design criteria pursuant to OMC 18.100.060, 18.100.080, 18.110 and 18.120.

4 4. **"The Design Review Committee failed to consider and apply OMC**
5 **18.100.100 and Sections 18.175.020 through 18.175.060 which require infill to be**
6 **compatible with adjacent residential structures to the Tanasse Mixed Use Building."**

7 Again, the Residential Design Criteria found in 18.175.020 through 18.175.060 do not
8 apply to this project for the reasons previously stated. The Design Review Board applied the
9 correct design criteria.

10 5. **"The Design Review Committee failed to discharge its duties and**
11 **responsibilities under OMC 18.100.040 by, among other things, failing to act to preserve**
12 **the special character and quality of Olympia by maintaining the integrity of those areas**
13 **which have a discernable character or are of special historic significance."**

14 OMC 18.100.04 declares that the purposes of design review are:

15 (A) To promote those qualities in the natural environment which bring value
16 to the community.

17 (B) To foster the attractiveness and functional utility of the community as a
18 place to live and work.

19 (C) To preserve the special character and quality of Olympia by maintaining
20 the integrity of those areas which have a discernable character or are of special historic
21 significance.

22 (D) To raise the level of community expectations for the quality of the built
23 environment.

24 (E) To encourage originality and creativity in site planning and architecture.

25

1 (F) To communicate those purposes to the applicant and to assist the applicant
2 in achieving those purposes.

3 (G) To preserve and enhance property values.

4 (H) To ensure that new developments maintain or improve neighborhood
5 character and livability.

6 (I) To consider the applicants needs and goals and a broader public impact of
7 any proposal.

8 The Appellants argue that the Design Review Board failed to fully consider Subsection
9 (C) on this list.

10 As noted in the Staff Report, the Design Review Board is an independent board and its
11 members are appointed by the City Council. The Board is comprised of building and landscape
12 architects, citizens, building representatives and a planning commission member. The board is
13 charged with making recommendations to the Site Plan Review Committee relating to the
14 appearance and character qualities of proposed developments, OMC 18.76.010. "With respect to
15 design review criteria, the recommendation of the board shall always be accorded substantial
16 weight by the decision maker." OMC 18.72.080(c).

17 On May 15, 2014, the Design Review Board convened a regular meeting to consider this
18 project. Seven board members, City Staff, the Applicant and members of the public attended the
19 hearing and a written record of the meeting was maintained.

20 Members of the Bigelow Neighborhood presented the same arguments relating to the
21 project's design as are now being made on appeal. As shown on Attachment 5 to the Staff
22 Report, the Design Review Board considered each of the required design criteria to determine if
23 the project was in compliance (Attachments 5 and 7 to the Staff Report). By a vote of 7-0 the
24 Design Review Board found the design to be in compliance with design review criteria with a
25 few minor modifications (Exhibit 8 to the Staff Report).

1 While the Appellants have a different view as to how to best to preserve the integrity of
2 those areas which have a discernable character or are of special historic significance, the Design
3 Review Board considered the Appellants' arguments and found the project to be in compliance.
4 The Design Review Board has properly carried out its duties and responsibilities.

5 6. **"The project fails to comply with Basic Commercial Design Criteria,**
6 **Chapter 18.110 and OMC 18.110.060 - View Preservation - by Blocking Views of the**
7 **Capital Building from Public Rights of Way."**

8 OMC 18.110.060 - View Preservation declares:

9 "In order to protect the existing outstanding scenic views which significant
10 numbers of the general public have from public rights of way, applicants for
11 development must consider the impact their proposal will have on views of Mt.
12 Rainier, the Olympic Mountains, Budd Inlet, the Black Hills, the Capitol
13 Building, and Capitol Lake or its surrounding hillsides. All development must
14 reserve a reasonable portion of such territorial and immediate views of these
15 features for significant numbers of people from public rights of way, and shall
16 provide lookouts, viewpoints or view corridors so that visual access to existing
17 outstanding scenic vistas is maintained. Refer to the scenic vista overlay zoning
18 maps available at the Community Planning and Development Department."

15 As noted earlier, Catherine McCoy testified to the City's scenic vista overlay zoning
16 maps (Attachment 23 to the Staff Report). These overlay maps identify a view corridor along
17 State Avenue looking west toward the Black Hills and southwest toward the Capitol. As a
18 person travels west along State Avenue his/her view of the Black Hills and the Capitol will not
19 be impaired by the project as it lies outside either view.

20 The Appellants have presented evidence that the view of the Capitol from the sidewalk in
21 front of the house at 1002 Olympia Avenue would be impaired by the new building. Although
22 the sidewalk in front of this residence is a "public right of way", the project will not impair the
23 view "for significant numbers of people" as this one small segment of sidewalk is the only
24 apparent place where public views of the Capitol are impaired. In addition, Olympia Avenue is
25 not a "view corridor". For these reasons the project does not violate OMC 18.110.060.

1 7. **"The project fails to comply with Basic Commercial Design Criteria, Chapter**
2 **18.110 and OMC 18.110.080 by using design elements to maintain a human scale on the**
3 **street that is similar to the neighborhood buildings and failing to use design features to**
4 **reduce the apparent size of such a large building."**

5 OMC 18.110.080 - Maintaining Human Scale requires that "the design of buildings must
6 use design elements to maintain a human scale at the street. Projects requiring a conditional use
7 permit in a residential zone must incorporate elements that relate to existing buildings in the
8 neighborhood." The City correctly notes that this project does not require a conditional use
9 permit and the second sentence of this code section therefore does not apply.

10 The Design Review Board examined the project for "human scale" and found the
11 building to be in compliance with the design criteria. The Site Plan Review Committee
12 undertook a similar examination of the project to determine compliance with the human scale
13 requirement and also found it to be compliant. As noted in the Staff Report, "the building's
14 massing, or organization of the building's overall volume, is broken into various wall sections
15 that are well modulated and articulated; material choices are durable and attractive; the
16 pedestrian connection from the sidewalk to the private practice is maintained through thoughtful
17 placement of landscaping, infrastructure such as bicycle parking, seating, ornamental yard
18 features; and visibility into the building is provided. Additionally, the sidewalk in front of the
19 office will be widened and tree grates or planter boxes will be placed around the street trees."
20 The project also meets or exceeds all setback requirements.

21 The Appellants have a different view of human scale. It must be remembered, however,
22 that substantial deference must be accorded both the Design Review Board and the Site Plan
23 Review Committee when applying the design review criteria. Both have carefully considered
24 this requirement and found the project to be compliant. The requirements of OMC 18.110.080
25 have been satisfied.

1 8. **"The project fails to comply with commercial design criteria downtown,**
2 **Chapter 18.120 and OMC 18.120.060 by failing to maintain the character of existing**
3 **downtown buildings."**

4 OMC 18.120.060 - Building Materials requires that materials must maintain the character
5 of the existing downtown buildings by using similar enduring materials such as stone, brick and
6 stucco.

7 City Staff reminds us that the design review program consists of two stages of review, the
8 "concept " stage and the "detailed" stage of review. At the concept stage the Design Review
9 Board reviews the preliminary site plan, the preliminary landscape plan, and preliminary
10 building elevations, etc. "The board is generally interested in the overall programing of the site -
11 the interplay of multiple elements such as site suitability, proposed locations and configurations
12 of parking and the building, and evaluating issues and opportunities with the conceptual
13 design. . . . It is at the detailed design review stage that the board considers the building
14 materials, colors, planting choices, framing and glazing, door details, roof details, light fixture
15 details, building trim and so on." (Staff Report) City Staff notes that the detailed design review
16 packet for this packet has not yet been submitted for review and, therefore, the Design Review
17 Board has yet to review the detail elements of the proposal.

18 Nonetheless, preliminary architectural drawings note the use of corrugated metal siding,
19 cedar siding and cement board panels, all of which are materials found on downtown buildings,
20 particularly newer ones such as the new City Hall.

21 This challenge is not yet "ripe" as the project has not yet advanced to the stage where
22 final building materials are selected and their suitability to the downtown area is confirmed.

23 9. **"The project exceeds the allowable height limits set forth in development**
24 **standards under OMC 18.06.080 and 18.06.100 in that (a) the roof of the structure is**
25 **greater than 35 feet above the grade plan and the rooftop structures are greater than 48**

1 feet above the grade plan, and (b) that portions of the structure exceeding 35 feet are not
2 only and exclusively mechanic and elevator equipment and are being used to create
3 storage, rooftop gardens and/or habitable space."

4 OMC 18.06.080 - Commercial District Development Standards (General) adopts the
5 standards contained in Table 6.02 (Commercial District Development Standards) for lot area,
6 building setbacks, development coverage, building coverage, and building height. Pursuant to
7 OMC 18.06.080 and Table 6.02, in the PO/RM zone the maximum building height is up to 35
8 feet if any portion of the building is within 100 feet of R4, R4-8 or R6-12 Districts; and up to 60
9 feet otherwise. As the project is within 100 feet of the R4-8 zone the 35 feet height maximum
10 applies.

11 The maximum height of the building is modified by OMC 18.06.100 - Commercial
12 District's Development Standards - Specific where, under Subsection (A):

13 "Roof structures for the housing of elevators, stairways, tanks, ventilating fans,
14 and similar equipment required to operate and maintain the building, fire or
15 parapet walls, skylights, towers, flagpoles, chimneys, smoke stacks, wireless
16 masts, TV antennas, steeples and similar structures may be erected above the
17 height limits prescribed in this title, provided that no roof structure, feature or any
18 other device above the prescribed height limit shall be allowed or used for the
19 purpose providing additional floor space. . . . Provided, further, that no roof
20 structure or architectural feature shall be erected more than 18 feet above the
21 height limited of the district, whether such structure is attached to it or free
22 standing."

19 To summarize all of the above, OMC 18.060.080 requires that the basic height of this
20 building shall be no more than 35 feet, but the building may rise an additional 18 feet, or no
21 more than 53 feet total, for a roof structure for the housing of elevators required to operate and
22 maintain the building, provided that this roof structure is not used for the purpose of providing
23 additional floor space.

24 The building's height to the roof of the third floor is 33 feet and 3 inches. The basic roof
25 height therefore satisfies the height limitation of 35 feet. Rising from the roof will be

1 a structure housing the elevator. This elevator structure will rise an additional 14 feet 7 inches
2 which complies with the 18-foot limitation found in OMC 18.06.100. The basic height, and the
3 extended height, therefore satisfy the height limitations if the additional roof structure is of the
4 type and purpose allowed under OMC 18.06.100.

5 The design of the building provides for a flat roof that will allow for it to be used as an
6 uncovered patio with outdoor seating and roof garden. The elevator will provide access to the
7 roof area. The only portion of the roof that is enclosed is the elevator structure.

8 At issue, then, is whether this added structure is for the housing of an elevator "required
9 to operate and maintain the building" and is not "used for the purpose of providing additional
10 floor space."

11 Appellants argue that the elevator structure is not "required" as this is a hydraulic elevator
12 and there is no equipment located above it. In other words, if all the elevator needs to do is reach
13 the third floor then there is no need for a structure above the roof. Further, the appellants argue
14 that even if the structure is "required" it is being improperly used to provide additional "living
15 space", that is, the outdoor patio on the roof.

16 The City disagrees with both of the Appellants' arguments. The City notes that nothing
17 in the Development Regulations prohibits the elevator from providing access to the roof. In fact,
18 according to the Applicant's engineer, Garner Miller, ADA requirements mandate this if the roof
19 is used as an outdoor area. The roof structure is therefore "required" to properly operate and
20 maintain the building. Further, the City concludes that the use of the elevator to access the roof
21 is not for the purpose of providing "habitable" space. The City cites to the International Building
22 Code (IBC 202) which defines habitable space as: "The space in a building for living, sleeping,
23 eating or cooking." The project's roof does not provide space for any of these activities and is
24 therefore not a habitable space. IBC 202 further defines "occupiable spaces" as "a room or
25 enclosed space designed for human occupancy in which individuals congregate for amusement,

1 educational or similar purposes or in which occupants are engaged at labor and which is
2 equipped with means of ingress and light and ventilation facilities meeting the requirements of
3 this code." The City notes that occupied roofs are specifically permitted per the IBC regulations
4 where roofs have the minimum required number of exits. Other examples of occupiable rooftop
5 space include City Hall and the Department of Enterprise Services building (DES).

6 It is worth noting that OMC 18.06.100 prohibits the use of roof structures for the purpose
7 of providing additional "floor space". The term "floor space" is unusual and is not defined in the
8 Development Regulations. The parties interpret this term quite differently. The Appellants
9 argue that the term "floor space" should be interpreted to mean "living space", that is, an area
10 where users of the building gather for recreation or other pursuits (that is, "occupiable space").
11 The City argues that the term "floor space" should be interpreted to mean "habitable space" and
12 given the definition mentioned in the previous paragraph. In light of the fact that roof areas can
13 be used as occupiable space in the downtown area, it would seem unlikely that the City Council
14 intended to prohibit their use in the PO/RM zone, and the City's interpretation of this term is the
15 more reasonable one.

16 It is important to remember that the "Hearing Examiner shall afford due deference to the
17 expertise and experience of the staff rendering such decision." OMC 18.75.040(f). Accordingly,
18 deference must be given to City Staff in the interpretation of its Development Regulations. The
19 City's determination that the elevator structure is required to operate and maintain the building is
20 a reasonable one. Further, the City's determination that this roof structure does not provide
21 additional habitable space ("floor space") is also reasonable. Therefore, the project does not
22 violate the height standards set forth in OMC 18.06.080 and 18.06.100.

23 10. **"The project fails to comply with the commercial district development**
24 **standards set forth in Section 18.06.080 that require the side yard setback of 15 feet**
25 **minimum plus 5 feet for each building floor above two stories next to an R4-8 District."**

1 As noted previously, Table 6.02 contains the commercial development standards for the
2 PO/RM zone including front, rear and side yard setbacks. The Appellants argue that this project
3 violates the side yard setbacks imposed in Table 6.02.

4 Table 6.02 states that there is no minimum side yard setback in the PO/RM zone except if
5 the project is "next" to a R4, R4-8, or R6-12 district, in which case there is a 15-foot minimum
6 plus 5 feet for each building floor above two stories.

7 Appellants argue that this project is next to a R4-8 district (that is, the rear lot line adjoins
8 the R4-8 zone) and therefore it must have 20-foot side setbacks (15 feet plus an additional 5 feet
9 for the third floor).

10 The City has a different interpretation of the words "next to" as applied to side yard
11 setbacks. The City asserts that the increased setbacks apply only if the side setback is next to the
12 R4-8 zone, not the project itself. Thus, since neither side setback on the project site is next to a
13 property zoned R4-8 the exemption does not apply and the site is not subject to side setback
14 requirements. I agree.

15 The City's interpretation is persuasive for several reasons. City Staff must be given
16 substantial deference when interpreting its own Development Regulations. Additionally, in its
17 supplemental briefing the City has demonstrated that it has applied this interpretation in a
18 consistent manner. In its supplemental briefing the City cites to the "Finn Building" located at
19 1107 West Bay Drive; the "Woodard Building" at 1441 West Bay Drive, and the "West Bay
20 Plaza Building" at 1115 West Bay Drive as examples of projects within the PO/RM zoning
21 where increased side setbacks were not imposed even though the projects were adjacent to
22 residential zones.

23 It is also worth noting that all of this PO/RM zone is next to one of the various residential
24 zones requiring greater side setbacks. The Appellants' interpretation of this requirement would
25

1 mean that the "exception would swallow the rule" and eliminate the basic regulation. This does
2 not appear to be what the Council intended.

3 Finally, the City's interpretation is consistent with the Comprehensive Plan. Policy LU
4 8.4(b)(5) of the Plan expresses the goal that Development Regulations should "establish
5 requirements for building setbacks from property lines, which adjoin a significantly lower
6 density district, that increase with the height and bulk of the structure." This policy speaks only
7 to the line adjoining a lower density district, not to the property. The City Staff's interpretation
8 of the Development Regulation is therefore consistent with the Comprehensive Plan. And as
9 earlier discussed, the Comprehensive Plan envisions that State Avenue east of Pear will
10 experience moderately intensive, mixed use development with buildings three to six stories in
11 height. This envisioned land use is problematic, if not impossible, if the Appellants'
12 interpretation is accepted, as the lots in this area are not wide enough to allow for this
13 development while accommodating large side setbacks. Again, the City's interpretation is
14 consistent with the Plan's envisioned development of this neighborhood.

15 11. **"The project 'will harm the Appellants' Bay by blocking the air and light to**
16 **their property at 916 State Avenue N.E., reducing its potential for solar energy and**
17 **therefore diminishing its value and the use and enjoyment of that property by its residents**
18 **and users.'"**

19 Immediately west of the project site is a two-story, 100 year old former residence that has
20 been converted to a mixed use building containing a professional office and several apartments.
21 This building is owned by the Appellants, Mr. and Mrs. Bay (the "Bay Building"). The Tanasse
22 Building will be significant taller than this building and will be located 10 feet from their
23 common boundary. The Bays protest that the design and its location will block air and light to
24 their building.

1 The Appellants have not cited to any Development Regulation in support of their
2 challenge.

3 The Comprehensive Plan expresses concern about the shading of smaller residences by
4 larger, multi-story structures. LU 8.4(b)(2) recommends that building floors above three-stories
5 to be tiered as necessary to ensure that the adjoining residences are not shaded in winter for more
6 than a few hours per day. But the Tanasse Building is not more than three-stories and the policy
7 does not apply. And even if the elevator structure was considered an additional story it is located
8 at the center of the top of the building, well away from the building perimeter.

9 In addition the Applicant submitted a solar study for the project (Attachment 16 to the
10 Staff Report) demonstrating that:

11 "The south facing roof surfaces (possible locations for PV panels) of the two
12 adjacent buildings will continue to receive direct solar gain during most hours of
13 the day through the year. The south facing main roof of the adjacent property to
14 the east will be partially shaded in the late afternoon during the fall and winter
15 months. The [Bay property] has south facing roof surfaces on the porch and
16 garage. The porch roof will continue to have full sun exposure. The garage roof
17 will be shaded in the early morning of the winter months.

18 Direct solar gain through existing windows of the adjacent property will be
19 altered on the building elevations that face the site at 924 State Avenue N.E. The
20 south and west elevations of the building to the east will receive adequate and
21 generous daylight, but less direct sunlight in the afternoon hours. On the east
22 elevation of the adjacent [Bay Building] the existing east facing windows will
23 continue to receive daylight from the approximately 15 foot space between the
24 buildings, but will receive less direct sunlight in the morning hours."

25 To summarize, although the project will have some minor impact on the amount of
sunlight reaching the Bay property the project does not violate any Development Regulation or
the Comprehensive Plan.

12. **"The project fails to meet the minimum parking requirements set forth in
OMC 18.38 in that the uses do not qualify for the 'shared use' exceptions in that the plans,**

1 as drawn, do not comply with minimum space sizes and/or are not feasible on the actual
2 project site."

3 This section of the Appellants' appeal contains two separate challenges to the parking:
4 (1) the City's application of the "shared use" policy is inappropriate and a greater number of
5 parking stalls should be required for the project, and (2) the garage and surface parking stalls to
6 the rear of the building have been improperly allowed to overlap, thus preventing their intended
7 use.

8 (A) Application of the shared used policy. As explained in the Staff Report
9 the City has calculated that, based upon the Gross Leasable Area (GLA) for the business/general
10 office area of the building, the project must have 1 space for each 300 square feet of GLA or
11 10.11 stalls (rounded to 10 parking stalls) for commercial use. (Table 38.01). The parking
12 requirements for the residential units are 2 spaces per unit, or a total of 4 parking stalls for the
13 two residential units. This total of 14 parking stalls can be reduced, however, if the shared
14 parking credit applies. Pursuant to OMC 18.38.180(A)(2)(a): "Shared Parking. (i) When two or
15 more land uses, or uses within a building, have distinctly different hours of operation (e.g. office
16 and church), such uses may qualify for a shared parking credit. Requiring parking shall be based
17 on the use that demands the greatest amount of parking."

18 The City concludes that the commercial use and residential use of this building have
19 "distinctly different hours of operation" and that the shared parking credit therefore applies. As
20 the commercial activity has the greater parking demand the commercial parking requirement
21 applies, and the project requires 10 parking stalls.

22 The Appellants argue that the City has improperly applied this exemption and that the
23 two uses of the building do not have distinctly different hours of operation. The Appellants site
24 to OMC 18.38.180(A) which states that:
25

1 "The Site Plan Review Committee shall require an applicant to provide proof that
2 shared parking is feasible when adjacent land uses have different hours of
3 operation. Mixed use and shopping center developments with similar operating
4 hours may also be required to submit a parking demand study to determine if
5 parking can be combined."

6 But a careful reading of this ordinance makes clear that the first sentence "requiring an
7 applicant to provide proof that shared parking is feasible" only applies if an application involves
8 "adjacent land uses". This project does not involve adjacent land uses. The second sentence,
9 covering mixed uses, is applicable. Instead of requiring the applicant to provide proof of
10 different hours of operation it states that the City "may" require additional evidence if it deems
11 necessary. Exercising this discretion, the City has determined that the commercial and
12 residential uses are distinctly different in their hours of use and the shared use exemption
13 therefore applies.

14 Once again the "Hearing Examiner shall afford due deference to the expertise and
15 experience of the staff in rendering such decision." OMC 18.75.040(f). The Site Plan Review
16 Committee has the training, skills and expertise to determine whether these uses qualify for the
17 shared parking exemption without requiring further proof. Stated differently, the Staff's
18 conclusion is reasonable.

19 Some additional support can be found in the 2006 "Smyth Landing Building" project at
20 1801 West Bay Drive. That project, which only involved administrative approval, was a similar
21 mixed use building with commercial and residential tenants. An issue arose as to the proper
22 number of parking stalls for the project. In the course of project review City Staff acknowledged
23 that this mix of residential and commercial offices had distinctly different hours of use and
24 would qualify for the shared use parking credit. As it turned out, however, another method of
25 calculation was preferred by the parties and applied. While this project has no precedential value
it shows a consistent interpretation of the Development Regulations by City Staff.

1 (B) Calculation of square footage for commercial parking stalls. At the
2 conclusion of the regular public hearing the Hearing Examiner asked the City to investigate
3 whether various building regulations at issue had been encountered in previous projects in the
4 PO/RM zone. In response the City produced the Hearing Examiner's Decision for the "Finn
5 Building" project, Case No. 02-1226 as proof that it has consistently interpreted the side setback
6 requirements. The Appellants then relied upon the Finn Decision to assert a new challenge to the
7 City's calculation of the necessary parking stalls. The Appellants point out that this Decision,
8 which also involves a mixed use building, required that covered parking area be included with
9 the building's "Gross Floor Area" when calculating the necessary number of parking stalls. If
10 this standard was applied to the Tanasse Building the commercial use of the building would
11 require 13 stalls, not 10. The Appellants therefore argue that under the Finn Decision the City
12 has undercalculated the required number of commercial parking stalls.

13 This new challenge, raised only a few hours prior to final arguments, is arguably
14 untimely. More importantly, it is incorrect. Although the Finn Decision involved a mixed use
15 building it was applying the 2002 version of Table 38.01. It appears that the 2002 version of this
16 table did not include a provision for "mixed uses" as the Hearing Examiner made no reference to
17 a mixed use category and instead applied the general commercial standards. In contrast, the
18 current version of Table 38.01 has a separate category for "mixed uses". The mixed use category
19 excludes covered parking area from the parking calculations. The City has correctly applied the
20 current parking stall calculations to this project and the 2002 Finn Decision is not relevant.

21 (C) Overlapping parking stalls. The Appellants further argue that, even if the
22 number of parking stalls has been correctly calculated, the stalls have been improperly designed
23 and are not useable. Exhibit 4 is a diagram of the rear portion of the project site. It identifies
24 three covered parking stalls (Stalls 4, 5 and 6) and four uncovered stalls (Stalls 6, 7, 8 and 9),
25 located between the covered stalls and the alley. As this diagram demonstrates, the end of Stall

1 7 (and, by extension, the end of Stall 8) extends past the entry to Stall 4. The Appellants argue
2 that this overlapping design is improper and that it effectively makes Stall 4 unusable and,
3 therefore, the project does not provide the required 10 parking stalls.

4 Although the parking stall design is not a model of efficiency the Appellants have not
5 cited to any portion of the Development Regulations which prohibits this design, nor have they
6 demonstrated that the actual use of Stall 7 will prevent the use of Stall 4. Stall 7 is 16 feet in
7 length--long enough to allow a vehicle to park in it without impeding access to Stall 4. Again,
8 while this design is not preferred it has not been shown to be in violation of the Development
9 Regulations.

10 The City adds that if any portion of its parking calculation is found inadequate there is
11 likely an available remedy in the form of a "shared parking agreement" with another nearby
12 property. This decision does not require that remedy.

13 13. **"The project, 'fails to comply with the minimum lot size requirements of the**
14 **Commercial District Development Standards set forth in OMC 18.06.080.'"**

15 As earlier discussed, Table 6.02, sets forth the development standards for Commercial
16 Districts including the PO/RM zone. In the PO/RM zone the minimum lot size requirements are:
17 "no minimum except 1,600 for cottage, 3,000 for zero lot, 1,600 square foot minimum, 2,400
18 square foot average for townhouse, 6,000 square feet for duplex, 7,200 square feet for
19 multifamily, 4,000 for other." The City and the Appellants agree that there is no minimum lot
20 requirements for commercial buildings.

21 The project site contains 6,300 square feet. The Appellants argue that the project
22 therefore violates the minimum lot size requirements because the project should be considered
23 "multifamily" and subject to a minimum lot size requirement of 7,200 square feet. The
24 Appellants' reasoning is found in their brief. The Appellants' acknowledge that "multifamily" is
25 defined as more than two residential units but argue that the building meets this definition as it

1 contains two residential units plus two commercial units, making it the "functional equivalent" of
2 a four-unit residential structure.

3 The Development Regulations do not recognize the Appellants' notion of "functional
4 equivalency". The project is either a multifamily project or it is not. The Tanasse Building is
5 not a multifamily project, nor is it any of the other land uses requiring specific minimum lot
6 requirements in the PO/RM zone. The project is therefore in compliance with the minimum lot
7 requirements for the PO/RM zone.

8 14. **"The project 'will create excessive stormwater runoff that will cause harm
9 and erosion to the downslope properties and in the alley right-of-way and otherwise do not
10 meet stormwater control standards.'"**

11 The Appellants' challenge to the project's stormwater management is more fully
12 described in their brief. The Appellants' argue that the development of this site, the proposed
13 paving of the alley and the slope of the neighborhood will combine to cause uncontrolled
14 stormwater runoff.

15 In response, the Applicant's engineer, Chris Cramer, testified that the Appellants'
16 concerns were premised upon only a portion of the alley being paved, but the plan calls for the
17 entire alley to be paved. The project also calls for additional catch basins so that stormwater is
18 collected onsite and properly conveyed downslope.

19 The Appellants and their witnesses are intelligent, well-educated individuals and their
20 concerns about stormwater management are understandable. Nonetheless, the Appellants have
21 not presented any expert testimony that the preliminary stormwater design is inadequate or
22 inconsistent with regulations.

23 15. **"The project 'fails to meet American for Disabilities Act (ADA) 42 U.S.C.
24 12181-12189 requirements for access for mixed use facilities.' There is among other
25 challenges, no apparent compliant Clear Path of Access (CPA) to the front door or to either**

1 **street and there is no apparent ADA compliant access to the second story commercial**
2 **space."**

3 This challenge was not discussed in the Appellants' briefing nor pursued in their
4 testimony. It therefore appears to have been stricken from the list of challenges.

5 Nonetheless, the City responds that the review of the project for ADA compliance did not
6 begin until after the City granted preliminary land use approval on July 7. Since then the project
7 has received a preliminary building permit review and found to meet the standards of the
8 International Building Code for accessible circulation routes (Attachment 15 to the Staff Report).

9 16. **"The land use approval and SEPA DNS of July 7, 2014, contain incomplete**
10 **and misleading information, including Environmental Checklist Item 6.b denying that the**
11 **impact would affect the potential use of solar energy by adjacent properties, and Item 13a**
12 **denying that there are any places or objects listed on, or proposed for, national, state, or**
13 **local preservation registers known to be on or next to the site."**

14 The Applicant's initial answers to the SEPA Checklist (Attachment 6 to the Staff Report)
15 included the following:

16 **Question 6.b** Would your project affect the potential use of solar energy by adjacent
17 properties? If so, generally describe.

18 **Answer:** No. Southern expose remain open on adjacent properties.

19 **Question 13a.** Are there any places or objects listed on, or proposed for, national, state
20 or local preservation registers known to be on or next to the site? If so, generally describe.

21 **Answer.** No.

22 **Question 13b.** Generally describe any landmarks or evidence of historic,
23 archaeological, scientific, or cultural importance known to be on or next to the site.

24 **Answer:** No.

1 **Question 13c.** Proposed measures to reduce or control impacts, if any:

2 **Answer:** No.

3 The Appellants argue that these answers are at best deficient and at worse untrue. At the
4 same time, however, Appellants concede in their briefing that these deficiencies in the checklist
5 are not material to the issuance of the DNS. Rather, Appellants argue that these deficient
6 answers are "indicative of the larger issues regarding how the City has mishandled this
7 application and ignored its physical and regulatory context." To the extent that the Appellants
8 are still raising a SEPA challenge, the City responds by noting that City Staff also concluded that
9 the initial checklist responses were incomplete. As a result, on April 7, 2014, the Staff sent the
10 Applicant a request for additional information (Attachment 11 to the Staff Report) which
11 included a number of SEPA Checklist Items that required additional response. The Applicant
12 responded by letter dated June 26, 2014 (Attachment 13 to the Staff Report). The Staff found the
13 amended responses to be sufficient to complete the SEPA review process, resulting in the
14 issuance of the SEPA DNS on July 7, 2014.

15 16. **Other Challenges.** The Appellants presented testimony and photographs
16 indicating that the retaining walls on one or both sides of the project site are failing, and that
17 these failures may preclude the required parking or other project requirements. This may be true
18 and the project may be impacted as a result, or they may be remedied and the project will
19 proceed as planned. But while these site conditions may prove to be problematic this issue is
20 outside the scope of this appeal.

21 Accordingly, I make the following:

22 **FINDINGS OF FACT**

23 1. The Findings of Fact contained in the foregoing Background section are
24 incorporated herein by reference and adopted by the Hearing Examiner as his own Findings of
25 Fact.

1 2. The Findings of Fact contained in the foregoing Analysis section are incorporated
2 herein by reference and adopted by the Hearing Examiner as his own Findings of Fact.

3 3. The Hearing Examiner has reviewed the Staff Report and the Findings contained
4 therein are adopted to the extent not inconsistent with the Hearing Examiner's Findings in the
5 Background and Analysis sections.

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

7 **CONCLUSIONS OF LAW**

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

9 2. Any Conclusions of Law contained in the foregoing Background, Analysis or
10 Findings sections are incorporated herein by reference and adopted by the Hearing Examiner.

11 3. The Hearing Examiner must accord due deference to the expertise and experience
12 of the City Staff rendering the decision. OMC 18.75.040(f).

13 4. The project's approval is consistent with the City's Comprehensive Plan.

14 5. The project's approval satisfies the requirements for the PO/RM zone. OMC
15 18.06.020.

16 6. The project's approval complies with OMC 18.100.100.

17 7. The project is not a duplex, triplex, four-plex or townhouse. The Residential
18 Design Criteria found in OMC 18.175.020 through .060 do not apply to the project.

19 8. The project is a commercial use within the Downtown District Design Review
20 District and subject to the Basic Commercial Design Criteria and the Commercial Design
21 Criteria Downtown. OMC 18.100.060; 18.100.080; 18.100.060(b); Chapter 18.110 OMC; and
22 Chapter 18.120 OMC.

23 9. The project is subject to design review by the Design Review Board. OMC
24 18.76.010.

25 *Findings of Fact, Conclusions of Law
and Decision Denying Appeal - 34*

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1 10. The Examiner shall give substantial weight to the recommendation of the Board.
2 OMC 18.75.040(f).

3 11. The project approval does not violate the view preservation requirements of OMC
4 18.100.060 as the project does not impair scenic views which significant numbers of the general
5 public have from public rights-of-way.

6 12. The Design Review Board and Site Plan Review Committee reviewed the project
7 for compliance with OMC 18.110.080 - Human Scale - and found the project to be compliant.
8 The decisions of the board and committee should be accorded substantial weight.

9 13. The Appellants' challenge to the project's compliance with OMC 18.120.060 -
10 Building Materials - is not ripe as the project has not reached the stage where building materials
11 have been determined.

12 14. The project does not violate the height limitations for the site. OMC 18.06.080
13 and .100.

14 15. The elevator structure on the roof is a structure for the housing of an elevator
15 required to operate and maintain the building.

16 16. The elevator structure on the roof is not being used for the purpose of providing
17 additional floor space.

18 17. The term "floor space" as used in OMC 18.06.100 is correctly interpreted by the
19 City to refer to "habitable space".

20 18. The term "next to" as used in the side setback requirements of OMC 18.06.080
21 and Table 6.02 is properly interpreted by the City to apply to only the lot line adjacent to the
22 affected zone and not the entire property, that is, the additional side setback requirements for the
23

1 PO/RM zone are triggered if the site's side lot lines are adjacent to another zone, but not if
2 another lot line (e.g. the rear lot line) is adjacent to that zone.

3 19. The project site's side lot lines are not next to another zone. The project therefore
4 does not have any required side yard setbacks.

5 20. The project does not improperly block air and light to adjoining properties.

6 21. The City has properly calculated the required number of parking stalls using the
7 "shared use" parking credit. OMC 18.38.180(A)(2)(a). The City's determination that the uses
8 within the building (professional office and residential) have distinctly different hours of
9 operation is reasonable.

10 22. The minor overlap of parking stalls (Stalls 4 and 7) does not preclude their use
11 nor does it reduce the number of stalls provided by the project.

12 23. The Appellants have not demonstrated that the project's stormwater collection
13 system is in violation of the Development Regulations.

14 24. The Appellants have not demonstrated that the project does not comply with the
15 requirements of the Americans with Disability Act (ADA).

16 25. The Applicant's SEPA Checklist, as amended, is not materially deficient.

17 26. Pursuant to OMC 18.75.040(f): (1) The Staff has not engaged in unlawful
18 procedures or failed to follow the prescribed procedure; (2) the Staff's decision is not an
19 erroneous interpretation of the law; (3) the decision is supported by substantial evidence within
20 the context of the whole record; (4) the decision is not a clearly erroneous application of the law
21 to the facts; (5) the decision is not outside the authority or jurisdiction of the decision maker; (6)
22 the decision does not violate the constitutional rights of the party seeking relief; and (7) the
23 decision is not clearly in conflict with the City's adopted plans, policies or ordinances.
24
25

27. The Appellants' appeal of the land use approval and SEPA DNS should be denied.

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

DECISION

The appeal of land use approval and SEPA DNS of July 7, 2014, on the Tanasse Mixed Use Building, Case No. 14-0025, is **denied**.

DATED this 7 day of November, 2014.

Mark C. Scheibmeir
City of Olympia Hearing Examiner

EXHIBIT "A"

1. Staff Report.
2. City's Witness List.
3. Additional Submitted Written Comments to City.
4. Parking Map.
5. Material Submitted by Appellants (identified as A1-A9 by Appellants).
6. Applicant's Additional Materials (identified as A-L by Applicants).
7. Documents Presented with Karen's Messmer's Testimony.