BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEQUIM

In the Matter of the Application of	)	No. BSP23-001
	)	
Caleb Grubb,	)	**South Olympic View Condominiums BSP**
on behalf of Pointer Properties, Inc.	)	
	)	
	)	REVISED FINDINGS, CONCLUSIONS,
For a Binding Site Plan	)	AND DECISION

SUMMARY OF DECISION

This decision revises the decision issued February 21, 2024, to remove erroneous references to the "County" instead of the "City." The Applicant's request for a binding site plan to allow development of 10-unit townhome project on an undeveloped lot, approximately 33,700 square feet in area, located between Garry Oak Drive and North 5th Avenue, with associated open space, is **APPROVED**. Conditions are necessary to address specific impacts of the proposal.

SUMMARY OF RECORD

Hearing Date:
The Hearing Examiner held an open record hearing on the request on January 16 and February 16, 2024, using remote access technology.

Testimony:
The following individuals presented testimony under oath at the open record hearing:

Kim Mahoney, City Principal Planner
Charisse Deschenes, Deputy City Manager
Shawnie Peters, City Development Engineer
Travis Simmons, City Assistant Planner
Caleb Grubb, Applicant

Exhibits:
The following exhibits were admitted into the record during the December 16, 2023, hearing:

1. Binding Site Plan Application, dated June 30, 2023
2. Design Review Application, dated June 30, 2023
3. Preliminary Site Plan (Original), dated December 15, 2023
4. Preliminary Landscape and Utility Plan (Original), dated December 15, 2023
5. Draft Condominium Declaration, undated
6. Technical Information Report and Hydrology Calculations, prepared by Sisul Engineering, dated June 25, 2023
7. SEPA Checklist, dated May 30, 2023
8. SEPA Determination of Nonsignificance, issued November 3, 2023

9. List of Property Addresses within 300 Feet of Site, undated
10. Lighting Report, prepared by Relux, dated June 15, 2023
11. Soil Analysis, prepared by Zenovic & Associates, Inc., dated November 2, 2022
12. Design Deviation Request, dated December 18, 2023
13. Project Narrative, dated November 21, 2023
14. Abandonment of Easement, recorded January 23, 2023
15. PRE22-009 Preapplication Notes, undated
16. Plan Set (Original), October 25, 2022
17. Notice of Application, dated October 9, 2023
18. Notice of Complete Application, dated September 25, 2023
19. Affidavit of Posting Public Notice, dated November 26, 2023
20. Notice of Public Hearing Statement of Mailing, dated October 9, 2023
21. Color Palette, undated
22. Staff Report, dated January 5, 2023

The following exhibits were admitted into the record during the February 16, 2024, continued hearing:

23. Thompson PUD 1991, dated April 5, 1911
24. Council Minutes, dated October 3, 1990
25. Easement for Parking Area, dated November 28, 2023
26. SEPA DNS Notification List, dated November 6, 2023
27. Classified Proof of Hearing Date, published January 6, 2024
28. Classified Proof of Notice of Application, published October 7, 2023
29. Classified Proof of Notice of DNS, published November 3, 2023
30. Affidavit of Mailing Public Notice, dated October 9, 2023
31. Affidavit of Mailing Public Notice, dated January 5, 2024
32. Thompson PUD Documentation, dated April 5, 1991
33. Revised Preliminary Site Plan, received February 2, 2024
34. Revised Landscaping and Utility Plan, received February 2, 2024
35. Revised Binding Site Plan, dated February 2024
36. Applicant's Request for Separate Review of Design Review Application, dated February 8, 2024
37. Supplemental Staff Report, dated February 7, 2024
38. Annotated Revised Landscaping and Utility Plan, received February 2, 2024, annotated February 16, 2024

The Hearing Examiner enters the following findings and conclusions based upon the testimony at the open record hearing and the admitted exhibits:

FINDINGS

Application and Notice

1. Caleb Grubb, on behalf of Pointer Properties, Inc. (Applicant), requests a binding site plan (BSP) to allow for the development of two multifamily residential condominium buildings, each with five dwelling units, for a total of 10 dwelling units. The subject property is an undeveloped lot, 33,700 square feet in area, located between Garry Oak Drive and North 5th Avenue, part of the Thompson Planned Unit Development, approved in 1991. The proposal would include 20 off-street parking spaces for the use of the future residents, plus eight more parking spaces for the use of one of the commercial neighbors of the project. Frontage improvements along Garry Oak Drive will be required. Open spaces are proposed. *Exhibit 1; Exhibit 22, Staff Report, pages 1–2, 5; Exhibit 32; Exhibit 33; Exhibit 34; Exhibit 35; Exhibit 37, Supplemental Staff Report, pages 1, 3–4*.

2. The City of Sequim (City) received the application on September 8, 2023. The City determined the application was complete on September 25, 2023. The City issued notice of the application on October 9, 2023 by publishing notice in the *Peninsula Daily News* newspaper, posting on-site, posting on the City's projects website, and mailing to property owners within 300 feet of the subject property. The notice set a public comment deadline of October 29, 2023. Notice of the public hearing was published on January 6, 2024, again by means of posting onsite, publishing in the newspaper, mailing to property owners, and posting on the City's website. No comments were received in response to any of the notices. *Exhibit 9; Exhibit 18; Exhibit 19; Exhibit 20; Exhibit 22, Staff Report, page 2; Exhibits 27; Exhibit 28, Exhibit 30; Exhibit 31; Testimony of Travis Simmons*.

Environmental Review

3. The City acted as lead agency and analyzed the environmental impacts of the project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City analyzed the Applicant's environmental checklist and other available information and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Determination of Nonsignificance (DNS) on November 3, 2023, with a public comment and appeal deadline of November 14, 2023. Notice of the DNS was published on November 3, 2023, with publication in the newspaper, posting onsite, posting on the City's website, and mailing to property owners within 300 feet. In addition, the DNS was sent to the Department of Ecology, other agencies with jurisdiction, and local tribes. No comments or appeals were received. *Exhibit 8; Exhibit 9; Exhibit 26; Exhibit 29; Testimony of Travis Simmons*.

Comprehensive Plan and Zoning

4. The property is within the "Lifestyle District" (LD) Comprehensive Plan designation and the LD zoning district. The purpose of the LD zoning district is to "[p]romote growth of lifestyle options for seniors in a neighborhood setting that provides a broad range of housing types, services, mobility options and healthcare facilities to support "living-in-

place" through the many stages of senior life." *Sequim Municipal Code (SMC) 18.20.130. Exhibit 22, Staff Report, page 2*.

5. City staff identified the following Comprehensive Plan goals and policies as relevant to the proposal:
   - Increase the number of housing options and opportunities to meet the needs of a diverse, growing community. [Goal H 6.1]
   - Encourage townhomes in the Downtown District, the Lifestyle District and in other areas near Sequim's Downtown such as the downtown mixed-use districts and the community mixed use district. [Policy H 6.1.6]
   - Ensure that the City grows with a range of urban living environments to attract the diverse lifestyles, age groups, and family types that make Sequim more interesting, creative, productive, inclusive and capable of adjusting to demographic and market changes. [Goal LU 3.3]

   Exhibit 22, Staff Report, pages 8 and 11.

6. The Applicant also noted that Comprehensive Plan Chapter 6, Housing, contains the following policy discussion:

   > As Sequim's population increases by a projected 40% or more by 2035 with a broader demographic profile of more families and young professionals, changes to current housing and subdivision patterns are needed. Variety in housing options offers choice to citizens and attracts a diverse range of homeowners and renters. Townhomes, cottage housing, ADUs and live/work units offer housing choices that are rare or non-existent. Infill in existing neighborhoods and slightly higher density in new low-density neighborhoods creates new choices in living but also help the affordability of utilities and other city services.
   >
   > …
   >
   > [H]ousing needs of the community include housing types that serve all lifestyles, ranging from single-family homes on large lots to cottage housing, townhomes, accessory dwelling units, multiplexes, assisted living and apartments and condominiums.

   Exhibit 13; Exhibit 22, Staff Report, pages 11 and 12.

7. Analyzing the project against the goals and policies summarized above, City staff came to the following conclusions:
   - The proposed project is found to comply with Sequim's Comprehensive Plan, particularly as it promotes a variety of housing types and enhancing lifestyle opportunities in the LD.
   - The proposed project would contribute toward the City's vision for a range of urban living environments, providing the opportunity for

community members to own townhomes (a traditionally less expensive housing type than single-family residences) proximal to local businesses and recreational opportunities on the Olympic Discovery Trail. In this manner, the proposed project is aligned with land use goals and policies adopted in the Comprehensive Plan.

- As the project proposes a binding site plan for the future development of 10 townhomes in the LD district, the proposal aligns with the housing goals and policies set forth in the Comprehensive Plan.

Exhibit 22, Staff Report, pages 11 and 12.

8. As noted above, the property is zoned LD. City staff identified the following zoning code requirements in SMC 18.20.130, each of which staff determined the project would meet:[1]
   - No size limitations for residential uses.
   - Maximum building height of 40 feet.
   - Front yard setbacks must be between zero and 20 feet.
   - Side-yard setbacks at least six feet; rear yard setbacks at least 10 feet.
   - Minimum 1.5 parking spaces per unit.
   - Development must meet stormwater management standards in chapter 13.104 SMC and landscaping requirements in chapter 18.22 SMC and SMC 18.24.130.

   Exhibit 22, Staff Report, page 5.

Existing Property, Surrounding Area, and Critical Areas

9. The property has an area of 33,700 square feet, or approximately 0.78 acres. The property is currently undeveloped. There is approximately 12,375 square feet of existing impervious asphalt on the site. Up to eight vehicles from the broadband business to the east are parked on the eastern portion of the subject property. Soil conditions consist of zero to eight inches of topsoil overlaying cobbly sandy gravel. There is no standing water and no other indication of a high groundwater table. Sewer, water, and street access already exist. No critical areas exist on or near the site. *Exhibit 6; Exhibit 11; Exhibit 22, Staff Report, page 5; Testimony of Shawnie Peters*.

10. The subject property is part of the larger Thompson PUD, approved in 1991. The surrounding properties are all zoned LD. To the west of the subject property are an eye clinic and vacant property. To the north is a dentist office. To the northeast is a broadband office building. Directly to the east is another office building. To the south is yet another office building and one single-family house. The nearest townhouses are approximately a block and a half or two blocks away. The broadband office building uses eight parking spaces on the subject property, a use which is proposed to continue via

[1] Originally, City staff also determined that there was no open space requirement. This issue is discussed in more detail below.

a parking agreement between the Applicant and the broadband business. *Exhibit 1; Exhibit 13; Exhibit 14; Exhibit 22, Staff Report, pages 2, 3, and 6; Exhibit 25; Exhibit 32; Testimony of Charisse Deschenes*.

Binding Site Plan

11. A city, town, or county "may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures" normally required for the subdivision of land under the State Subdivision Act. *RCW 58.17.035*. A BSP, as opposed to a standard subdivision, is allowable when the proposal is for a condominium. *RCW 58.17.035; RCW 58.17.040(7); SMC 17.24.020(A)(4)*.

12. In Sequim, a proposed BSP must meet each of the following criteria:
    A. Each use of the land resulting from the adoption of the binding site plan conforms with the comprehensive plan and with zoning regulations, including lot coverage, setbacks, building heights, off-street parking requirements, landscaping buffering and permitted uses within zoning districts;

    B. Adequate provisions for on- and off-site circulation and connection with the surrounding road net have been proposed, consistent with adopted city standards;

    C. Curb, gutter, sidewalk, trail connections, transit stops, streets, storm drainage, sanitary sewer lines, water lines and other utilities will be installed at the expense of the applicant and meet city specifications and applicable ordinances and the city engineer has certified or approved the proposed plans for the construction;

    D. The applicant has provided, if necessary, easements to the city to accommodate the establishment of municipal utilities;

    E. Private property necessary for public use as street rights-of-way have been dedicated to the city by an acceptable deed of dedication or by preparing a plat to be recorded;

    F. A bond meeting city requirements (Chapter 3.78 SMC) has been posted to ensure completion of those unconstructed improvements required consistent with the criteria found in this chapter;

    G. Adequate public facilities are provided as required by the adopted capital facilities plan; these facilities may include, but are not necessarily limited

to, parks, playgrounds, schools, open spaces, transit stops, and trails and trail connections;

H. All requirements of the environmentally sensitive areas and wetlands sections of the SMC and the State Environmental Policy Act (SEPA) have been met;

I. No development can occur which causes a flooding hazard, and until any development occurring within an identified floodplain has been properly mitigated;

J. The public interest will be served by the proposal;

K. All the requirements of Chapter 58.17 RCW have been met; and

L. All proposed project phasing schedules meet the requirements contained in SMC 17.20.090

SMC 17.24.090.

Soils and Stormwater

13. Zenovic Associates submitted a soil analysis. Zenovic dug one test pit to determine the soil profile:
    - 0 - 8" Topsoil
    - 8- 30" Very Cobbly Loamy Sandy Gravel
    - 30 - 72" Very Cobbly Sandy Gravel

    Zenovic determined that "No water was encountered or other indication of high groundwater table. No restrictive layer was observed." *Exhibit 11*.

14. According to Sisul Engineering, there is approximately 12,375 square feet of existing impervious asphalt on the site currently. The new impervious area (buildings, sidewalk, and pavement areas) will be approximately 18,000 square feet, and the remaining existing impervious area on the site will total approximately 8,000 square feet. The landscape area will total approximately 7,718 square feet. Sisul Engineering submitted a preliminary stormwater plan for the proposed development. The plan calls for a single row of 12 Stormtech SC-740 chambers beneath the proposed parking lot, which will allow for infiltration of stormwater from the property. The City's reviewing engineer accepted the proposed stormwater plan as consistent with the 2019 Stormwater Manual. *Exhibit 6; Testimony of Shawnie Peters*.

Parking, Access, and Traffic

15. The Applicant proposes 20 off-street parking spaces, exceeding the 15 required for a 10-unit development in the LD zone. The property is subject to a condition of approval in

the 1991 Thompson PUD, which requires the Applicant to provide parking required by City ordinance as the development of the PUD progresses. Currently, the Applicant provides eight parking spaces for the broadband business next door, which is also part of the Thompson PUD. That use is proposed to continue, so the eight parking spaces would continue to be provided in addition to the 20 spaces proposed for the future residents. Even if the Applicant were to rescind its parking agreement with the broadband company, Applicant Representative Caleb Grubb testified that there is ample existing parking at the commercial properties to the east. *Exhibit 22, Staff Report, page 6; Exhibit 14; Exhibit 25; Exhibit 32; Testimony of Caleb Grubb*.

16. City staff recommended a condition of approval to ensure that the final design of the parking complies with SMC 18.24.160(B)(2), which requires that "Parking lot design must include detailed information on nonmotorized and pedestrian access to and through the development. Demarcation shall be required by utilizing a combination of: (a) change in paving surface materials, (b) landscaping, or (c) safety and directional lighting." City staff also recommended that the parking area should use traffic calming techniques for pedestrian safety and must be well-signed for pedestrian queuing and movement, as per SMC 18.24.160(B)(7) and (12). *Exhibit 22, Staff Report, page 15*.

17. City staff reviewed the proposed project for consistency with adopted standards and requirements relative to on- and off-site circulation and connection with the surrounding road networks and determined that the proposed project would provide adequate provisions for both. City staff recommended conditions of approval to require frontage improvements along Garry Oak to "Local" Street Standards, as detailed in City Standard 4-02, SMC 17.32.170, and SMC 18.24.180(B)(1). Improvements in the right-of-way for curb, gutter, sidewalk, transit stops, utilities and stormwater drainage would also be required as part of construction permitting. *Exhibit 12; Exhibit 13; Exhibit 22, Staff Report, pages 7 and 16*.

18. The Applicant did not submit a traffic impact analysis (TIA). City staff recommended that a TIA be prepared at the construction permit phase but did not believe a TIA would be necessary at the BSP phase, given the small number of new dwelling units. *Testimony of Shawnie Peters*.

Open Space

19. In the original staff report, City staff determined that the open space requirements set forth in SMC 18.22.060 and SMC 17.28.050(A)(3) did not apply. This issue will be discussed in greater detail below, in the sections of this decision summarizing the testimony at the hearing and the post-hearing documents. *Exhibit 22, Staff Report, page 5*.

Binding Site Plan Approval Criteria

20. City staff analyzed the proposal against the criteria for approval set forth in SMC 17.24.090 and made the following observations:

- The use of land resulting from the adoption of the proposed binding site plan conforms with the germane regulations of SMC Title 18, Zoning, and the Comprehensive Plan. City Council minutes from October 3, 1990, public hearing for the approval of Thompson PUD state that applicants, "will have to provide adequate parking required by ordinance as the development progresses." Applicant has shown adequate parking for proposed use and provided parking agreement between them and neighboring business that further addresses parking needs.
- Staff has reviewed the proposed project for consistency with adopted standards and requirements relative to on- and off-site circulation and connection with the surrounding road networks. The proposed project would provide adequate provisions for on- and off-site circulation and connection with the surrounding road and network, should the Hearing Examiner incorporate staff's recommended conditions of approval into a decision of approval.
- Staff has reviewed the applicant's permit materials against all relevant provisions of the SMC and Public Works Standards. If the Hearing Examiner preliminarily approves this project and adopts Public Works' recommended conditions of approval provided in this staff report, the City's Public Works Department would require a site construction permit. Under this permit, the Applicant must meet all city specifications related to curb, gutter, sidewalk, trail connections, transit stops, streets, storm drainage, sanitary sewer lines, water lines, and other utilities, which could be approved by the City Engineer.
- As proposed and with the adoption of recommended conditions of approval, the applicant will have provided necessary easements to the city to accommodate the establishment of municipal utilities.
- As proposed and with the adoption of recommended conditions of approval, any private property necessary for public use as street rights-of-way will be dedicated to the city by an acceptable deed of dedication or by the recording of the project's final binding site plan.
- Pursuant to SMC 17.64.010(A), bonds in a form consistent with the requirements set forth in SMC 3.78 is required before approval of a final plat and/or final binding site plan.
- Staff has reviewed germane elements of the capital facilities plan against the proposal; should the Hearing Examiner adopt the conditions of approval recommended by staff in this staff report, the proposed project would provide adequate public facilities required by the capital facilities plan.

- Having reviewed the applicant's SEPA Checklist and other studies and resources available to inform the potential for the project to adversely affect the environment, Sequim's SEPA Responsible Official issued a Determination of Non-Significance on November 3, 2023.
- As the proposed project is not located within a floodplain or flood hazard area, development of the project would not reasonably cause a flood hazard and would not require mitigation for development within a floodplain.
- The project proposes the land division and development of 10 multifamily residential units, which aligns with housing goals and policies of the Sequim Comprehensive Plan to provide a variety of housing, and particularly to provide townhomes in Sequim's LD zone (Policy H 6.1.6, Comprehensive Plan 2015-2035). Furthermore, Sequim's Public Works Department staff have reviewed the proposed project, subject to the conditions of approval recommended by the Public Works Department . . . [T]he proposed project would provide adequate public facilities, improvements, and provisions to serve the public interest. Given Sequim's interest to provide denser and more varied housing near its downtown area to expand attractive lifestyles to a growing and diversifying community, and given the project's proposed public improvements, the project would serve the public interest if approved, as conditioned consistent with staff's recommended conditions of approval.
- As conditioned, this proposal would be consistent with Chapter 58.17 RCW. The SMC is consistent with Chapter 58.17 RCW and does not omit any of the requirements provided therein.
- The requirements set forth in SMC 17.20.090 are inapplicable to the proposed project as the project does not propose a phased approach to the development.

Exhibit 22, Staff Report, pages 6 to 9.

Testimony at the January 16, 2024 Hearing

21. Kim Mahoney, Principal Planner with LDC, under contract with the City of Sequim to represent the Department of Community Development, testified generally about the proposal and how the City reviewed the proposal for consistency with the Comprehensive Plan, zoning ordinances, and the criteria for a binding site plan. She explained that the Applicant had, originally at least, consolidated the request for a BSP with a request for a design review decision by the Hearing Examiner. The proposal was for two, five-unit townhouse structures on a single lot, currently vacant. Ms. Mahoney referred to the analysis in the staff report for an explanation of how the proposal complies with the zoning code and Comprehensive Plan. Ms. Mahoney testified that all properties adjacent to the subject property share the "Lifestyle District" zoning, but she deferred further responses about surrounding uses to Charisse Deschenes (summarized below).

Ms. Mahoney testified that the proposal was for 20 off-street parking spaces, more than the 15 spaces required by code. She acknowledged that some of the surrounding commercial users have been parking on the subject parking. She cited Exhibits 23 and 24 to show that the parking uses had been part of an earlier planned unit development, the Thompson PUD, which had included shared access and parking. However, per Exhibit 14, the neighboring properties had abandoned their access easement. The cars that currently park at the subject property would have to park at the other, neighboring properties that were part of the Thompson PUD.

Ms. Mahoney testified that setbacks in the Lifestyle Zone have to be somewhere between zero and 20 feet. The proposed townhouses are within 20 feet. Side setbacks must be six feet on the side and 10 feet in the rear, which this proposal meets. Fire regulations require a separation between buildings of 12 feet, which the two proposed townhouses meet.

Ms. Mahoney testified that the Applicant was not proposing to supply open space and that the claim in the original staff report of 1,624 square feet of open space was a mistake.

Ms. Mahoney pointed out that the subject property is just one block south of the Olympic Discovery Trail, which would provide recreational opportunities for the future residents.

Ms. Mahoney agreed with a suggestion by the Hearing Examiner that it would be possible to bifurcate the design review from the BSP application. She also agreed to hold the record open for more materials related to the open space issue. *Testimony of Kim Mahoney*.

22. Charisse Deschenes, Deputy City Manager, testified that the properties across the street to the west are an eye clinic and vacant property. To the north is a dentist office. To the northeast is a broadband office building. Directly to the east is another office building. To the south is yet another office building and one single-family house. The nearest townhouses are approximately a block and a half or two blocks away.

Ms. Deschenes testified that the Lifestyle Zone is intended to deliver a mixture of commercial services and residential uses. She believed the area surrounding the proposed townhouses was striking the appropriate balance between commercial and residential uses. She was pleased to see more multifamily homes coming into the neighborhood, because much of the residential development that had occurred recently in the city had been single-family residences.

Ms. Deschenes testified that the City has not been applying the code requirements for open space. The open space requirements in the code do not have "level of service standards," by which she meant that the requirements are just a flat percentage of open space required, divorced from any site-specific considerations. Ms. Deschenes believed there was a possibility that a flat-rate open space requirement might constitute a taking. She thought the code needed to be revised and likely would be revised, but for the moment, she believed the best thing was simply not to apply the open space requirement. *Testimony of Charisse Deschenes*.

23. Shawnie Peters, City Development Engineer, testified that the 1991 Thompson PUD decision, Exhibit 32, did not impose any conditions that would preclude the proposed townhouse BSP.

Ms. Peters testified that there is already dedicated access, and no further dedications of access are proposed. Underground infiltration of stormwater is proposed, with a chamber underneath the paved parking area. Ms. Peters testified this scheme, detailed in Exhibit 6, is consistent with the 2019 Stormwater Manual.

Ms. Peters did not believe that any additional public infrastructure would be needed as a result of the proposed townhouses. Sewer, water, and streets are all already in place. She did believe a traffic impact analysis (TIA) should be prepared, but did not think it needed to be prepared at this phase. Given only 10 new dwelling units, she did not think traffic impacts would be significant enough to warrant any changes to the roads, and therefore, there was no need for a TIA at this phase. The TIA might lead to traffic impact fees but would not likely impact site design. *Testimony of Shawnie Peters*.

24. Travis Simmons, City Assistant Planner, testified that there had been no public comments on the BSP. He testified that the notice of development application had occurred October 9, 2023, when it was published in the *Peninsula Daily News* newspaper, mailed to property owners within 300 feet of the subject property, posted on the current projects page on the City website, and posted on the subject property on a notice board sign. The notice of application included notice that a SEPA review would be performed. The notice set a public comment deadline of October 29, 2023. The SEPA DNS was published on November 3, 2023, again with publication in the newspaper. The DNS was also sent to the City's DNS notification list of agencies and tribes. Notice of the public hearing was published on January 6, 2024, again with posting onsite, publication in the newspaper, mailing to property owners, and posting on the website. The Department of Ecology and local tribes also received notice of the application and SEPA DNS.

Mr. Simmons also testified about the Thompson PUD. He testified that parking would be addressed at the time of development of the individual buildings. Parking requirements would be satisfied on an individual lot basis, not shared among all the buildings within

the Thompson PUD. Any parking that occurs on the subject property is a private matter, not something that arises out of the Thompson PUD.

Mr. Simmons agreed with the testimony of Ms. Deschenes about the open space requirement. The legal problem, as he saw it, was the flat-rate requirement for open space, regardless of the size or surroundings of the property. *Testimony of Travis Simmons*.

25. Caleb Grubb, Applicant, testified that employees of the broadband business to the east currently park on the subject property. He has a parking agreement with the broadband business to that effect, which was admitted after the hearing as Exhibit 25. The eight parking spaces he provided through that agreement, however, are separate from the 20 parking spaces proposed for the townhouses. Even if Mr. Grubb were to rescind the parking agreement, he testified that there is sufficient room on the commercial properties to the east to accommodate the parking of the broadband business. Mr. Grubb testified he had held a public meeting about the proposed townhouses, with notice of the meeting provided by mailers to property owners within 300 feet. The only people who appeared at the meeting, according to Mr. Grubb, were three people from the broadband business, who were all supportive and did not anticipate any adverse effects related to parking or traffic.

Mr. Grubb confirmed Ms. Mahoney's testimony that the statement in the staff report about 1,624 square feet of open space was an error. No open space was proposed. However, open space could be provided if the Hearing Examiner deemed it necessary. *Testimony of Caleb Grubb*.

Documents Submitted Following the January 16, 2024 Hearing

26. At the Hearing Examiner's request, the parties submitted documents related to the issues of design review and open space. The Applicant requested that the design review decision be bifurcated from the BSP decision, leaving the Hearing Examiner to make the BSP decision and City staff to make the design review decision. *Exhibit 36*.

27. The Applicant provided revised site plans and landscaping plans to address the open space issue. The revised plans show a total of 3,850 square feet of open space, with more than 200 square feet of open space for each dwelling unit. Part of the open space is a play area for children. *Exhibit 33; Exhibit 34; Exhibit 35; Exhibit 38*.

28. In a supplemental staff report dated February 7, 2024, City staff revised its proposed conditions of approval to remove three conditions aimed at design review. City staff reviewed the proposed open space and determined that the requirement for 10 percent of the site's area to be open space had been met, as had the requirements for 200 square feet

of open space per unit and a safe play area for children. *Exhibit 37, Supplemental Staff Report, pages 1, 3, and 6*.

Testimony at the February 16, 2024, Hearing

29. Ms. Mahoney described the changes that had been made to the application following the hearing on January 16, 2024. First, the Applicant had requested the design review decision be made by City staff, not the Hearing Examiner. Second, the Applicant had now provided open space. Ms. Mahoney testified there was a total of 3,850 square feet of open space, exceeding the 3,377 square feet that were required under the 10 percent open space requirement. In addition, although Ms. Mahoney believed the requirement for 200 square feet of open space per unit and the requirement for a safe children's play area were both reviewable at the building permit stage, not the BSP stage, she testified that the project would meet those requirements, as well. Ms. Mahoney presented an annotated version of the Applicant's revised site plans, admitted as Exhibit 38, in which she demonstrated that each of the units' front yards exceeds 200 square feet. *Testimony of Kim Mahoney*.

30. Ms. Deschenes testified that the City was still working on the question of whether to amend the open space requirement in the City's code. She believed the code, as it currently exists, was applicable to the project. The City was not prepared to amend the code at this time, so the existing code should simply be applied. *Testimony of Charisse Deschenes*.

31. Mr. Grubb testified that he believed the project satisfied all three open space requirements: 200 square feet per unit, 10 percent open space coverage, and a safe space for children. He did not object to any of City staff's proposed conditions of approval, nor to the application of the open space requirements to this project. *Testimony of Caleb Grubb*.

Staff Recommendation

32. Ms. Mahoney testified that the City staff recommends approval of the binding site plan, with conditions. Mr. Grubb testified that the Applicant understands and would adhere to the recommended conditions of approval. *Testimony of Kim Mahoney; Testimony of Caleb Grubb*.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and grant preliminary approval of binding site plans. *SMC 17.24.100; SMC 20.01.030, Procedural Framework Table.* The Hearing Examiner may attach conditions of approval to binding site plan approval. *SMC 17.24.110, -120(R), -140; SMC 20.01.100(J).*

Criteria for Review

The Hearing Examiner may approve a preliminary binding site plan only if it is found to be consistent with each of the following requirements:

A. Each use of the land resulting from the adoption of the binding site plan conforms with the comprehensive plan and with zoning regulations, including lot coverage, setbacks, building heights, off-street parking requirements, landscaping buffering and permitted uses within zoning districts;

B. Adequate provisions for on- and off-site circulation and connection with the surrounding road net have been proposed, consistent with adopted city standards;

C. Curb, gutter, sidewalk, trail connections, transit stops, streets, storm drainage, sanitary sewer lines, water lines and other utilities will be installed at the expense of the applicant and meet city specifications and applicable ordinances and the city engineer has certified or approved the proposed plans for the construction;

D. The applicant has provided, if necessary, easements to the city to accommodate the establishment of municipal utilities;

E. Private property necessary for public use as street rights-of-way have been dedicated to the city by an acceptable deed of dedication or by preparing a plat to be recorded;

F. A bond meeting city requirements (Chapter 3.78 SMC) has been posted to ensure completion of those unconstructed improvements required consistent with the criteria found in this chapter;

G. Adequate public facilities are provided as required by the adopted capital facilities plan; these facilities may include, but are not necessarily limited to, parks, playgrounds, schools, open spaces, transit stops, and trails and trail connections;

H. All requirements of the environmentally sensitive areas and wetlands sections of the SMC and the State Environmental Policy Act (SEPA) have been met;

I. No development can occur which causes a flooding hazard, and until any development occurring within an identified floodplain has been properly mitigated;

J. The public interest will be served by the proposal;

K. All the requirements of Chapter 58.17 RCW have been met; and

L. All proposed project phasing schedules meet the requirements contained in SMC 17.20.090

SMC 17.24.090.

The Revised Code of Washington (RCW) provides for an alternative method of land division – binding site plans:

> A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a binding site plan as an alternative to the procedures required by this chapter. The ordinance must be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and must provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

RCW 58.17.035.

The criteria for review adopted by the City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with lcoal development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040*.

Conclusions Based on Findings

With conditions, the proposal would comply with the requirements for approval of a preliminary binding site plan under SMC 17.24.090. The City provided reasonable notice and opportunity to comment on the proposal. The City received no comments on the proposal, and no member of the public testified at the hearing on the proposal. The City reviewed the proposal's environmental impacts in accordance with SEPA and determined that the proposal would result in no significant, adverse environmental impacts.

The City staff reviewed the application and determined that it would be consistent with the requirements of the City Comprehensive Plan, zoning code, and binding site plan approval criteria. The Hearing Examiner concurs with the City staff's determination. The proposal is consistent with the Comprehensive Plan, especially Policy H 6.1.6, which specifically promotes townhouse developments in the LD zone. The proposal meets all requirements for building

height, setbacks, and lot size in the LD zone. Utility lines and street access already exist, and easements will be provided for any upgrades that may be required. The proposed stormwater plan is compliant with the 2019 Stormwater Manual. Frontage improvements will be made at the time of construction permit issuance.

The Hearing Examiner concludes that open space is a requirement of a binding site plan and that, in the LD zone at least, three relevant open space criteria must be met:

- Each multifamily project comprised of five or more dwelling units shall provide a minimum of 200 square feet of usable open space for each dwelling unit in the project. [*SMC 18.22.060(D)(3).*]
- Multifamily residential projects comprised of five or more dwelling units that are anticipated by their type and anticipated residency to accommodate families shall provide a safe play space for children. [*SMC 18.22.060(D)(4).*]
- Binding site plan developments containing five or more dwelling units shall provide a minimum of 10 percent open space which may provide for either passive and/or active open space, and which may include required landscaped areas, stormwater detention facilities, irrigation ditches and easements, and other environmentally sensitive area open spaces. [*SMC 17.28.050(A)(3).*]

The original site plan, without open space, would not have met these open space requirements, but the revised proposal does meet the open space requirements, as illustrated particularly ably in Kim Mahoney's annotations to the revised landscape and utility plan, Exhibit 38. The Applicant's open spaces satisfy both the zoning code requirements in the LD zone and the criteria for approval of a binding site plan. Conditions, as detailed below, are necessary to ensure that the proposal complies with and is consistent with all necessary requirements for approval of the binding site plan. *Findings 1 – 32.*

DECISION

Based on the preceding findings and conclusions, the request for a binding site plan to allow for development of 10-unit townhome project on an undeveloped lot, approximately 33,700 square feet in area, located between Garry Oak Drive and North 5th Avenue, with associated open space, is **APPROVED,** with the following conditions:

1. The approval of this preliminary binding site plan will expire within three years following approval, per SMC 17.24.110, unless a proposed final binding site plan, in proper form, is submitted to the City department of community development; provided, however, per SMC 20.01A.030(A), after approval of a permit application, within 14 calendar days before the date the permit expires, the property owner may make a written request for an extension of time. The Director of the Department of Community Development, upon consultation with other development review departments, may grant an extension of time for the permit approval, up to but not exceeding one year.

2. All dedications to the public or easements granted to the City and/or the lot owners shall be clearly and correctly indicated on the face of the final binding site plan.

3. A final binding site plan must be approved by the City prior to recording. An electronic version of the final binding site plan shall be submitted to the City of Sequim DCD. The electronic version can be sent to the City in PDF file. Once approved, the Applicant will produce a mylar copy for signature.

4. Development of the property must comply with the restrictions on the face of the recorded final binding site plan.

5. Proposed parking must be in strict conformance with Thompson PUD 1991-0649006.

6. The conditions, covenants, and restrictions (CC&Rs) or equivalent document, if necessary, will be provided with the final binding site plan submittal for review by the City. The City's review and approval of the CC&Rs or equivalent document does not imply the City will assume any responsibility for enforcing private covenants between the lot owners nor maintaining any roads or other amenities not specifically dedicated to the City on the public's behalf.

7. The Applicant will coordinate with the U.S. Postal service for the provision of mailboxes.

8. All fire hydrants must satisfy the requirements of Clallam County Fire District #3.

9. Any future signage will require separate review by the Department of Community Development and will be reviewed for compliance with the City's sign regulations in place at the time.

10. The Applicant must obtain design review approval from the Department of Community Development.

11. Prior to approval of the project's final binding site plan, the Applicant must provide a bond in appropriate form to the City, as consistent with SMC 17.64.010(A).

12. City approval of detailed construction plans for the project and all public infrastructures is required for issuance of a site construction permit in accordance with SMC 15.06 (Site Construction and Right-of-Way Permits). Plans must be signed and sealed by a professional, registered engineer licensed in the state of Washington. All improvements shall meet or exceed the City of Sequim development regulations.

13. Final binding site plan approval requires that all required on-site and off-site improvements have been installed and approved by the City and that all outstanding

conditions of the preliminary binding site plan approval have been satisfied. Development permits for on-site buildings and structures (excepting those required to accommodate utility infrastructure) may not be issued until the final binding site plan has been filed by the Applicant for the record with the county auditor.

14. All materials to be permanently incorporated into the project components that are to be dedicated to the City require City approval.

15. A Traffic Impact Analysis is required at the time of the site construction permit application.

16. Ensure that areas for outdoor storage, truck parking, trash collection or compaction, recycling, cargo containers, loading, or other such uses are not visible from abutting properties and are not located within 20 feet of any public street or public walkway.

17. Provide continuous pedestrian ADA-compliant links between buildings, sites, and common areas. Pedestrian access from city sidewalks that do not access through driveways into the site shall be provided. Where possible, pedestrians and vehicles shall be separated through provision of a walkway. Where complete separation of pedestrians and vehicles is not feasible, hazards shall be minimized by using landscaping, bollards, special paving, lighting, and other means to clearly delineate pedestrian areas.

18. Where reasonable and practicable, all development will be designed in a manner that preserves the full use of neighboring properties (i.e., existing and potential structures, parking pads, driveways, roads, etc.).

19. Public improvements in the right-of-way must be completed prior to final binding site plan approval.

20. Frontage improvements along Garry Oak to "Local" Street Standards, as detailed in City Standard 4-02, SMC 17.32.170, and SMC 18.24.180(B)(1), will be required. Existing approaches must be removed and landscaped, as necessary, to achieve compliance with the Local Street Standards.

21. Ensure all public improvements to be dedicated to the City of Sequim are in the Right-of-way.

22. Follow the requirements of Sequim's Inadvertent Discovery Plan.

23. Street lighting design shall be submitted to the City of Sequim Public Works Department and shall be in conformance with Engineering Figures 4-00 and 4-13 and examples identified in the City of Sequim Streetscape Manual.

24. Domestic water supply must meet City standards. Provide design for City potable water service consistent with Sequim's adopted Water System Plan Water (capital facility plan) and utility standards. The proposed design shall include a hydraulic analysis to verify the adequacy of the design to meet Sequim's service and life safety (fire flow) requirements.

25. Fire hydrants and fire water supply shall be supplied separately from domestic water and shall be in accordance with Appendix C of the 2015 International Fire Code.

26. Proposed domestic sewer supply must meet City standards. The Applicant provide a design for City sewer service consistent with Sequim's adopted sewer System Plan and utility standards.

27. Stormwater facilities must meet the requirements of SMC 15.06 and must be placed in a separate stormwater easement. That easement must be shown, dedicated, and recorded on the Final Plat.

28. Stormwater management shall meet the requirements chapter 13.108 SMC. A stormwater site plan must be submitted with the Site Construction Permit application(s).

29. An erosion control and stormwater pollution prevention plan shall be submitted to the City Public Works Department for approval prior to any on-site construction activity.

30. Within the CC&R's, identify homeowners association as responsible for maintenance of the stormwater facilities located outside dedicated City street right-of-way in perpetuity.

31. All plans submitted for final approval shall be titled:

CITY OF SEQUIM, PRELMINARY BINDING SITE PLAN (BSP-23-001)
FOR:
OLYMPIC VIEW CONDOMINIUMS
IN SECTION 19, TOWNSHIP 30 NORTH, RANGE 3 WEST, W.M.
CITY OF SEQUIM, CLALLAM COUNTY

DECIDED this 22nd day of February 2024.



ALEX SIDLES
Hearing Examiner