

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MILL CREEK**

In the Matter of the Application of)	No. BS 12-63
)	
Andrew Bernard, on behalf of)	
Polygon NW Home Builders North, LLC)	East Gateway Urban Village
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Binding Site Plan</u>)	AND DECISIONS

SUMMARY OF DECISION

The Hearing Examiner **GRANTS** a Binding Site Plan to subdivide three existing parcels and construct a multifamily residential development with 122 townhomes and 180 apartments, a commercial development, and a 1.26-acre public neighborhood park. The property is located at 4522, 4510, and 4406 132nd Street SE, Mill Creek, Washington. The Hearing Examiner **GRANTS** a reduction from 380 to 349 apartment parking spaces. Conditions are necessary to address specific impacts of the proposed project.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 26, 2013.

Testimony:

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

Christine Amrine, Senior City Planner
Scott Smith, City Engineer, Public Works Department
Mary VanderMolen
Edward Dunn
Kim Walior
Shanley Halverson
Chuck Farr
Linda Martian-Trent
Derek Straight, for Applicant
Gary Sharnbroich, P.E., for Applicant
Andrew Bernard, for Applicant

City Attorney Shane Moloney represented the City.

*Findings, Conclusions, and Decisions
City of Mill Creek Hearing Examiner
Polygon NW Home Builders North, LLC, Binding Site Plan
No. BS 12-63*

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report
2. The Master Permit Application, dated August 6, 2012, including project narrative
3. Project Plan Set, including:
 - a. Title Sheet – C1 of 15, revised May 8, 2013
 - b. Binding Site Plan – Sheet C2 of 15, revised May 8, 2013
 - c. Topographic Survey – Sheets C3 and C4 of 15, revised May 8, 2013
 - d. Parcel Map – Sheet C5 of 15, revised May 8, 2013
 - e. Parking Plan – Sheet C6 of 15, revised May 8, 2013
 - f. Preliminary Grading and Utility Plan – Sheets C7 and C8 of 15, revised May 8, 2013
 - g. Detention Vault Plan and Sections – Sheets C9 and C10 of 15, revised May 8, 2013
 - h. Public Right-of-Way and Spine Road Profile – Sheet C11 of 15, revised May 8, 2013
 - i. Preliminary Landscape Plan – Sheet L1 and L2 of 15, revised April 24, 2013
 - j. Preliminary Plant Schedule and Photos – Sheet L3 of 15, revised April 24, 2013
 - k. Open Space Exhibit – Sheet L4 of 15, revised April 24, 2013
4. Determination of Complete Application for BS 12-63, dated August 28, 2012
5. Affidavit of Public Notification, dated August 28, 2012, and Notice of Development Application
6. City Council Ordinance 2013-758, effective March 22, 2013; and Development Agreement, recorded April 19, 2013; including Reid Middleton preliminary Engineering Design Study, dated November 2010, and DKS Associates Traffic Analysis and Development Standards, dated November 2010
7. Technical Review Committee Comments issued on October 3, 2012 with attachments:
 - a. The Reserve Preliminary Binding Site Plan
 - b. Preliminary Development Impact Mitigation Checklist
 - c. Memorandum from City of Mill Creek Public Works Department, dated September 27, 2012
 - d. Email from City of Mill Creek Police Department, dated September 28, 2012
 - e. Letter from Snohomish County PUD, dated September 13, 2012
 - f. Letter from Silver Lake Water and Sewer District, dated September 14, 2012
 - g. Email from Everett School District, dated September 10, 2012
 - h. Letter from Community Transit, dated September 24, 2012
 - i. Letters from Edward and Catherine Dunn, received September 14, 2012
8. Letter from Christi Amrine to Andrew Bernard, dated January 2, 2013
9. Letter of Consistency with “LEED Equivalent” Requirement from Christi Amrine to Andrew Bernard, dated November 2, 2012, and attachments
10. City Council Resolution 2011-477, Park Mitigation Fees
11. Preliminary Storm Drainage Report dated May 21, 2013; Geotechnical Engineering Study, dated July 18, 2012
12. Snohomish County Fire Department Seven letters dated November 14, 2012 and April 17, 2013

Findings, Conclusions, and Decisions

City of Mill Creek Hearing Examiner

Polygon NW Home Builders North, LLC, Binding Site Plan

No. BS 12-63

13. Transportation Engineering NorthWest Traffic Assessment Update, dated April 24, 2013
14. Emails from Debra Werdal to Scott Smith, dated April 4, 2013, with email string
15. Letter from Everett School District to Christi Amrine, dated May 15, 2013
16. SEPA MDNS, issued May 15, 2013; Environmental Checklist, dated April 23, 2013
17. East Gateway Clearing and Grading Permit Set for Mill Creek EGUV, L.L.C., revised April 23, 2013
18. Affidavit of Public Notification, Public Hearing Notice, for posting and publishing, dated June 10, 2013; Affidavit of Posting, dated June 10, 2013
19. Public Comments
 - a. Email from Bluegrass Meadows HOA to Christi Amrine, dated June 24, 2013, with five photos
 - b. Written comment from Jesse and Shanley Halvorson, undated
 - c. Email from Mary VanderMolen to Christi Amrine, dated June 24, 2013, with four photos
 - d. Email from Christi Amrine to Lisa Haney, dated June 26, 2013, with email string, and eight photos
 - e. Email from Christi Amrine to Steven Lindle, dated June 25, 2013, with email string
 - f. Written comment from Greg Macke, undated
20. City power point presentation, 25 slides
21. City staff revised Condition 24

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

FINDINGS

Application and Notice

1. Andrew Bernard, on behalf of Polygon NW Home Builders North, LLC, (Applicant), requests approval of a Binding Site Plan (BSP)¹ to subdivide three existing parcels and construct a multifamily residential development with 122 townhomes and 180 apartments, a commercial development, and a 1.26-acre public neighborhood park. The property is 18.45 acres and located at 4522, 4510, and 4406 132nd Street SE, Mill Creek,

¹ City Attorney Shane Moloney stated that the City considers the proposal a preliminary binding site plan. *Statement of Mr. Moloney*. MCMC 17.19.020 provides that development in the East Gateway Urban Village District requires approval of a detailed master development plan that shall include a binding site plan. MCMC 14.03.030.B provides that the City Council shall review and act on approval of final binding site plans, which are then filed and recorded with the Snohomish County Auditor. Because the City code refers to a binding site plan and final binding site plan, this decision will refer to the proposal as a binding site plan.

Washington.² The Applicant also requests a reduction from 380 to 349 apartment parking spaces. *Exhibit 1, Staff Report, page 1; Exhibit 3; Exhibit 5; Exhibit 15.*

2. The City of Mill Creek (City) determined the application was complete on August 28, 2012. The City posted notice of the application at City Hall on August 28, 2012; posted notice at the City library on August 29, 2012; and posted notice on the property on August 31, 2012. The City published notice in the *Everett Herald* on August 31, 2012. On June 10, 2013, the City posted notice of the open record hearing associated with the application at the subject property and at City Hall, and posted notice at the City library on June 11, 2013. The City mailed notice to owners of property within 500 feet of the subject property on June 12, 2012, and published notice of the hearing in the *Everett Herald* on June 12, 2013. The City staff report states that all City notice requirements have been satisfied. *Exhibit 1, Staff Report, page 2; Exhibit 4; Exhibit 5; Exhibit 18.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The City reviewed the Applicant's environmental checklist and other information on file with the City, and determined that, with 25 mitigation measures, the proposed project would not have a probable significant adverse impact on the environment. The City issued a Mitigated Determination of Non-Significance (MDNS) on May 15, 2013. The conditions to mitigate environmental impacts concern earth, air, water, plants, animals, environmental health, transportation, recreation, and public services and are included as conditions of approval. No appeal of the MDNS was filed prior to the May 29, 2013, appeal deadline. *Exhibit 1, Staff Report, page 2; Exhibit 16.*

Comprehensive Plan and Zoning

4. The property is designated Town/Village Center by the City Comprehensive Plan. Senior City Planner Christine Amrine testified that the East Gateway Urban Village (EGUV) master plan was adopted by the City Council in 2008. She testified that property to the south and the Advent Lutheran Church to the west of the northwest corner of the property are also designated Town/Village Center, while the Bluegrass Meadows subdivision to the west of the southwest corner of the property is designated Residential Low Density. *Exhibit 1, Staff Report, page 1; Testimony of Ms. Amrine.*
5. City Comprehensive Plan Land Use Element and Housing policies are relevant to the proposal. Land Use Element policies include coordination with planned transportation improvements; encouraging urban village design to reflect an urban character, with a public place as focal point; adherence to sustainable design principles; encouraging

² The property subject to the application is identified by Assessor's Tax Account numbers 28053300101500, 28053300101800, and 28053300101900. A legal description of the subject property is provided in Exhibit 2.

streets with pedestrian amenities; and incorporating buffers around the perimeter of the East Gateway Urban Village. Housing Element policies include strategies that encourage development of a variety of housing choices. *Exhibit 1, Staff Report, pages 22 to 23.*

6. City Comprehensive Plan Capital Facilities, Utilities, Transportation, Streetscape, and Environmental Features Element policies are also relevant to the proposal. Capital Facilities Element Policy 2.04 requires a condition of development approval that stormwater management facilities incorporate treatment consistent with the current Department of Ecology (DOE) Stormwater Manual. Utilities Element policies prohibit approval of urban development where services are not available and require new utility facilities to be located underground where possible. Transportation Element policies require street lighting; preservation of the Level of Service at or above established standards; use of shared access; locating access points where there is safe sight distance, minimum traffic disruption, and no safety issues; and connection of public sidewalks with trail systems where appropriate. Transportation Element policies also encourage road improvements to enhance vehicle circulation; separation of sidewalks from streets with planting strips; and use of meandering design with barrier-free access. Streetscape Element policies provide for five-foot wide landscaping between the street and sidewalk, where possible, and a 35-foot buffer between commercial areas and 50-foot buffer between residential areas and the street right-of-way edge, with retention of existing vegetation to the greatest extent possible. Environmental Features Element policies encourage use of low-impact development techniques, stormwater facilities that meet or exceed the current DOE Stormwater Management Manual, and minimization of erosion and sedimentation.³ *Exhibit 1, Staff Report, pages 21-26.*
7. The property is located within the City's East Gateway Urban Village (EGUV) zoning district. The purpose of the EGUV zoning district is to implement the planned urban village policies and EGUV Illustrative Development Plan contained in the City Comprehensive Plan. This district is intended to accommodate pedestrian-oriented mixed-use commercial, office, residential, and public uses that conform to the design and layout of an approved detailed master development plan and adopted design guidelines. *Mill Creek Municipal Code (MCMC) 17.19.010. Exhibit 1, Staff Report, page 1.*
8. Development is allowed within the EGUV zoning district with approval of a detailed master development plan, which may be for all or a portion of the site and shall be substantially consistent with the EGUV Illustrative Development Plan. The master development plan shall include a binding site plan and a development agreement between

³ City staff identified Comprehensive Plan Land Use Element Policies 1.06, 1.11, 4.02, 4.06, 4.07, and 4.10; Housing Element Policy 1.04; Capital Facilities Element Policy 2.04, 2.05, and 4.01; Utilities Element Policy 1.01 and 1.10; Transportation Element Policies 1.03, 2.02, 3.03, 3.04, 4.01, 4.02, and 4.04; Streetscape Element Policies 2.02, 3.01, 3.02; and Environmental Features Policies 1.02 and 4.01 as applicable to the proposal. *Exhibit 1, Staff Report, pages 21-26.*

the owner and City setting forth conditions for development. *MCMC 17.19.020*. The City Council approved the development agreement (Ordinance No. 2013-758) on March 12, 2013. *Exhibit 1, Staff Report, page 4; Exhibit 6*.

9. Structures within the EGUV district must be less than four stories and must not exceed 50 feet in height, except for mixed-use residential buildings, which shall be a maximum of five stories and 60 feet in height. Roadway buffers of 35 feet for nonresidential uses and 50 feet for residential uses adjacent to arterial street right-of-ways are required. *MCMC 17.19.070 and .085*. The proposed townhomes would be a maximum of 35 feet in height, and apartment buildings would be a maximum of 50 feet in height. All buildings would provide 35-foot and 50-foot buffer tracts. *Exhibit 1, Staff Report, page 14; Exhibit 3.b*.
10. Property to the north, across 132nd Street SE (SR 96), is located in unincorporated Snohomish County, zoned PRD-7,200, and developed with single-family homes. Property to the east, Irish Meadows subdivision, and south and west, Bluegrass Meadows subdivision, is zoned Low Density Residential and developed with single-family homes. Other property to the west along 132nd Street is zoned EGUV and is developed with a church facility. *Exhibit 1, Staff Report, page 3; Exhibit 3.b*.

Existing Conditions and Surrounding Property

11. The property is the former Henry's Plant Farm, a wholesale facility, with greenhouses, an office, a single-family structure, and outbuildings. The City issued permits to demolish the existing buildings and to grade the site. The original grade elevation was 452 (feet) and a maximum of 456 (feet) after grading. A T-Mobile wireless communication facility and equipment shelter is located in the center of the site. Along the north side of the property, 132nd Street SE (SR 96) runs east/west. Three driveways from 132nd Street SE provide access to the site. Seattle Hill Road runs southwest/northeast to the south of the site. A row of mature arborvitae is located down the eastern property boundary and also south of the wireless communication facility. The southern boundary of the site contains deciduous and evergreen trees. *Exhibit 1, Staff Report, pages 3 and 4; Exhibit 3.b; Exhibit 20*.

Olympic Pipeline

12. A 30-foot wide Olympic Pipeline easement is located on-site along the eastern property boundary and would be adjacent to proposed residential buildings A1, A8, A9, and T7. The easement is 25 feet wide adjacent to proposed residential building T8. The Applicant proposes to construct a six-foot wide concrete circulation path within the Olympic Pipeline easement. Ms. Amrine testified that Applicant would provide low-growing landscaping in the Olympic Pipeline easement. The Erosion Control Plan for the Clearing and Grading Permit Set contains the following note: "OLYMPIC PIPELINE Contractor should use extreme caution within easement area. Coordinate with Olympic Pipeline on any grading or excavation. Emergency Number: 1-888-271-8880." *Exhibit 3.b; Exhibit 17; Testimony of Ms. Amrine*.

Project Proposal

13. As depicted on the BSP and parcel map, the Applicant would divide three existing parcels as follows: Parcel A is identified as a 73,368 square foot area in the northwest portion of the property for a future 22,500 square foot retail area with 70 parking stalls.⁴ Parcel B would be approximately 289,019 square feet in the northeast portion of the property containing apartment buildings A-1 to A-10; a leasing office, A-12; and 35,000 square feet of open space. Parcel C, approximately 136,962 square feet in the southeast portion of property, would contain townhome buildings T-1 to T-10. Parcel D, approximately 150,216 square feet in the southwest portion of the property, would contain townhome buildings T-11 to T-15, and T-21 and T-22. Five additional structures are depicted along with 10,000 square feet of open space. Parcel E is identified as 54,800 square feet (1.26 acres) of open space north of Parcel D. A new public road (spine road) would provide access from 132nd Street SE (SR 96) connecting to internal streets. The existing T-Mobile wireless communication facility would be retained on a separate lot with new fencing and landscaping. A separate access easement for the facility has been recorded. *Exhibit 1, Staff Report, pages 4, 7, and 9; Exhibit 3.b; Exhibit 3.d; Exhibit 3.e; Exhibit 3.i.*

General Provisions, Design Standards, and EGUV Design Guidelines

14. The City code contains general provisions and standards that apply to all uses and structures in all zoning districts. *Chapter 17.22 MCMC*. All lots and developments shall be generously landscaped, consistent with the natural environment of Mill Creek, and appropriate to the planned use. Retention and enhancement of natural landscaping is encouraged. Landscaping design objectives and standards are contained in chapter 17.34 MCMC. *MCMC 17.22.020*. The Applicant proposes landscaping as described below. The Applicant proposes to provide 119,140 square feet of open space, consistent with the requirements of MCMC 17.22.060. All new utilities would be placed underground as required by MCMC 17.22.110. The City Staff determined that the proposed development would be consistent with the City's Comprehensive Plan and would not cause a reduction in transportation or neighborhood park facilities as set out in the City's capital facilities plan. *MCMC 17.22.120. Exhibit 1, Staff Report, pages 14-16.*
15. The City code also contains design standards that apply to development projects. *Chapter 17.34 MCMC*. The City staff determined that the Applicant has designed the BSP layout to be consistent with the site-design requirements of MCMC 17.34.040.A. These include site design; parking lot design and screening; tree preservation; storm

⁴ This Binding Site Plan would create the commercial development lot and allow interim site improvements. The development of the commercial lot is not part of this Binding Site Plan and would be subject to future City SEPA review and by the Design Review Board. *Exhibit 1, Staff Report, page 4.* Derek Straight testified for the Applicant that the Development Agreement contains a commercial development deadline of 2015. *Testimony of Mr. Straight.*

drainage; vehicular entrances; sidewalks, trails, and pedestrian walkways; and screening of utilities and service areas. The Applicant would orient buildings toward the street, screen parking areas from the public road, retain desirable trees in the perimeter buffer where practicable, and incorporate any retained trees in the planting scheme. The Applicant would also design stormwater vaults located under open space areas and minimize impervious surface by requesting a parking reduction modification; provide a sign easement for a future sign and entry marker at the 44th Avenue SE intersection for the project; provide connecting walkways to surrounding neighborhoods, including ADA compliance where appropriate; and screen utility areas, meters, and vaults. The Applicant would submit trash enclosure building materials and color for review and approval by the City Design Review Board. *Exhibit 1, Staff Report, pages 17 to 21, 29; Exhibit 3.b.*

16. The City Council adopted the EGUV Design Guidelines on July 1, 2008. The City staff identified the following project features that address the guidelines: road access to adjacent properties, landscaping with 50-foot and 35-foot wide roadway buffers, pedestrian linkages to adjacent neighbors, twenty-foot wide perimeter landscape buffers with six-foot wide asphalt trails, perimeter fencing and screening, open space, bus shelters, and Leadership in Energy and Environmental Design (LEED) consistency. *Exhibit 1, Staff Report, page 6.*

Leadership in Energy and Environmental Design (LEED)

17. The City's Comprehensive Plan and Development Regulations require development within the East Gateway Urban Village to be either certified as meeting LEED requirements for sustainable design, or incorporate design features that would be equivalent to achieving a LEED certification. The City would review the BSP, construction (civil) plans, and buildings permits for consistency with the 2009 LEED Neighborhood Design requirements. *Exhibit 1, Staff Report, page 30; Exhibit 9.*

Access and Traffic Impacts

18. The Applicant would provide access to the site from a new signalized intersection along 132nd Street SE (SR 96) at 44th Avenue SE. City Engineer Scott Smith testified that the Washington State Department of Transportation approved the proposed traffic signal at this intersection on May 16, 2013. A new public road would enter the site at this new intersection and extend to the south edge of the project site, with future access to adjacent properties to the west and south. This public road could be extended to Seattle Hill Road to the south upon development of the adjacent property. *Exhibit 1, Staff Report, pages 4 and 5; Exhibit 3.b; Testimony of Mr. Smith.*
19. Transportation Engineering NorthWest prepared an updated traffic assessment (TA) for the Applicant, dated April 24, 2013. The proposed development, including apartment units, townhouse units, and 22,500 square feet of commercial space, would generate approximately 2,831 net new daily trips, including 164 AM peak hour trips and 235 PM

peak hour grips. The City Engineer determined that the proposed project would not reduce Levels of Service (LOS) below established standards.⁵ *Exhibit 1, Staff Report, page 24; Exhibit 13.*

20. Under the Development Agreement, the City would not impose traffic mitigation payments in return for the Applicant's construction of intersection improvements, including traffic signal improvements at the intersection of 132nd Street SE and 44th Avenue SE, installation of 132nd Street SE corridor signal interconnect between 25th Avenue SE and Seattle Hill Road, intersection right-turn and bus-lane construction, and intersection ADA ramp/curb upgrades. In addition, the Applicant would dedicate to the City the full width of the portion of 44th Avenue SE depicted on the proposed BSP. The Applicant would also construct the full width of the public right-of-way improvements within the 44th Avenue SE right-of-way. The Applicant would pay \$508,118 for road impacts within Snohomish County. Mr. Scott testified that the trip calculations for future commercial use is calculated using a generic retail category based on square footage. *Exhibit 1, Staff Report, pages 10 and 11; Exhibit 6; Testimony of Mr. Smith.*

Parking and Parking Modification

21. Parking would be provided throughout the site in garages, driveways, open parking lots, and on the public road. The Applicant has provided a parking plan. MCMC 17.27.020 requires 420 parking spaces for the apartments and 305 parking spaces for townhomes. City code allows up to 30 percent of the apartment parking to be provided on the street. Thus, the Applicant would need to provide 380 on-site apartment parking spaces because 40 on-street parking spaces are available when the proposed public park use is minimal. *Exhibit 1, Staff Report, pages 7 and 8; Exhibit 3.e; Exhibit 13.*
22. The Applicant proposes an apartment parking reduction by an additional 31 spaces from 380 to 349 through the MCMC 16.12.040 modification provisions. City code allows for zoning requirement modifications that further the Planned Area Development (PAD) purposes of chapter 16.12 MCMC, such as minimizing impervious surfaces or preserving open space. *MCMC 16.12.040.* The Applicant submitted a Traffic Assessment Update prepared by Transportation Engineering NorthWest, dated April 24, 2013. This assessment determined that the Applicant's proposal to provide 349 parking spaces (1.94 spaces per dwelling unit) would be sufficient to accommodate peak parking demands. City staff determined that reducing the number of required parking spaces allows for additional common open space/landscaped areas and reduces the amount of impervious surface, and therefore recommends approval of the reduction. *Exhibit 1, Staff Report, pages 7 to 9; Exhibit 3.e; Exhibit 13.*

⁵ Congestion at intersections is measured in terms of Level of Service (LOS). LOS is determined by measuring individual intersections and ranges between "A" and "F", where "A" has the shortest delay and "F" has the longest delay. *City Comprehensive Plan, Transportation Element, page X-5 (October 19, 2012).*

Open Space and Landscaping

23. Ms. Amrine testified that under the City code residential projects without yards require 250 square feet of open space per unit. The proposed project requires 75,500 square feet of open space. The Applicant would provide approximately 120,000 square feet of open space. This would include dedication of Parcel E (1.26 acres) to the City for a public neighborhood park with park improvements, including a restroom and a public access easement. Ms. Amrine testified that the Applicant would also provide an additional 1.48 acres of open space, including a private park, landscaping, and a perimeter trail. The Applicant would also pay Community Park mitigation fees prior to issuance of the first building permit. *Exhibit 1, Staff Report, page 9; Exhibit 3.b; Testimony of Ms. Amrine.*
24. The Applicant would provide a 35-foot commercial buffer and a 50-foot residential roadway buffer tract with an eight-foot wide meandering sidewalk and streetlights along 132nd Street SE (SR 96). The Applicant would also provide frontage improvements along the Advent Lutheran Church 132nd Street SE (SR 96) frontage and provide church parking lot improvements. The Applicant would provide a minimum 20-foot wide landscape buffer with a six-foot wide pedestrian trail along the perimeter of the site as required by the EGUV Design Guidelines. Existing evergreen and deciduous trees within the 20-foot perimeter buffer adjacent to the Bluegrass Meadows subdivision would be retained where possible and practical. An existing arborvitae hedge within the east perimeter buffer would be retained. The private open space and parking areas would be landscaped. The Applicant would plant street trees and provide street furnishings along the new internal public roadway, as required by the EGUV Design Guidelines. The Applicant has submitted a preliminary landscape plan. All proposed landscaping would be submitted to the City's Design Review Board for review and approval prior to installation. Ms. Amrine testified that the Development Agreement requires the commercial portion of the site to be landscaped with grass. *Exhibit 1, Staff Report, page 7; Exhibit 3.b; Exhibit 3.i; Exhibit 3.j; Testimony of Ms. Amrine.*

Geotechnical

25. Earth Solutions NW, LLC, prepared a Geotechnical Engineering Study for the Applicant, dated July 18, 2012. The site's topography is relatively level, with five percent maximum slope on a small portion of the site. This study found that the proposed construction of multifamily and retail buildings can be supported on conventional continuous and spread-footing foundations bearing on competent native soils, competent existing fill, re-compacted native soils, or structural fills. The study provides recommendations for foundation design, site preparation, drainage, and other pertinent geotechnical recommendations. Condition 64 requires that a geotechnical report to address the construction of improvements, including fill under the roadways, building pads, retaining walls, and stormwater facilities be submitted to the City. *Exhibit 1, Staff Report, pages 2 and 34; Exhibit 3.c; Exhibit 11; Exhibit 17.*

Stormwater Management

26. Core Design prepared a Storm Drainage Report (SDR) for the Applicant, revised May 2013. There is no upstream drainage to the subject property. The majority of the site currently sheet-flows to the southwest to a Type 1 catch basin and a wetland in the Bluegrass Meadows subdivision to the south. From there, flows continue to Penny Creek, which joins North Creek approximately $\frac{3}{4}$ mile downstream of the project site. The SDR identified four sub-basins on the property. Sub-basin A (6.50 acres) is located in the east central portion of the site. The Applicant would construct a stormwater vault under the open space in Parcel B to collect and manage runoff. Sub-basin B (12.66 acres) is located along the western portion of the site. A stormwater vault for this sub-basin would be constructed under the proposed public park in Parcel E and sized to include future development for other parcels to the south. A cartridge filter system, together with a storm water flow control device would be used to treat and control stormwater discharges from the Sub-basins A and B to the Bluegrass Meadows wetland. Mr. Smith testified that stormwater would be collected along the roadways and tightlined to the vaults.

Sub-basins C (0.54 acres) and D (1.14 acres), along the north property line, would continue to naturally discharge to an existing tightline system within 132nd Street SE. The proposed development would result in a net reduction of impervious surface from 75 percent to 65 percent. The developed runoff flow rate would be less than the existing, pre-developed runoff rate. No adverse downstream impacts were identified. The Applicant would design the detention and water quality facilities to Washington State Department of Ecology's Stormwater Management Manual for Western Washington, February 2005 edition. The Applicant would submit a final drainage report to the City for review and approval. A Stormwater Pollution Prevention Plan (SWPPP) and Erosion Control Plans would be submitted for review and approval by the City Engineer. These plans would be approved and Best Management Practices (BMPs) installed prior to commencement of any site work. *Exhibit 1, Staff Report, pages 5, 6, 23, and 24; Exhibit 3.g; Exhibit 11.*

27. The Comprehensive Plan (Environmental Features Element, Policy 1.01) encourages low-impact development (LID). The Applicant carried out an analysis of LID facilities as part of the Preliminary Storm Drainwater Report. This report determined that the site is not well suited to LID practices due to slow infiltration rates caused by underlying Alderwood type soils. *Exhibit 1, Staff Report, page 5; Exhibit 11.*

Utilities and Services

28. Silver Lake Water & Sewer District would provide water and sewer service to the proposed development. A 12-inch water main route is available to connect water facilities in Seattle Hill Road through the proposed project site to facilities in 35th Avenue SE. Snohomish County Public Utility District No. 1 would provide electric power. *Exhibit 7.e; Exhibit 7.f.*

29. Snohomish County Fire Protection District No. 7 would provide fire protection services to the proposed development. The Fire District submitted a letter dated November 14, 2012, with nine comments, including adequate fire flow, hydrants, Fire Department connection, road sign posting, building addresses, and fire mitigation fees.⁶ Because the Binding Site Plan does not show actual commercial structures, the Fire District reserves the right to review the commercial properties. The Fire District also requests a wider roadway at the eastern terminus of the public road to facilitate maneuvering of fire apparatus. *Exhibit 1, Staff Report, page 11; Exhibit 12.*
30. The Everett School District (School District) submitted comments on the proposal, dated May 15, 2013. The proposed project is within the enrollment boundaries of Penny Creek Elementary School, Gateway Middle School, and HM Jackson High School. The elementary and high schools are over capacity. The School District projected total school mitigation fees of \$300,101.48. The Applicant would enter into a voluntary mitigation agreement with the School District and pay mitigation fees at the time of issuance of the first building permit. The School District determined that students would not be picked up or dropped off along the 132nd Street SE (SR 96) frontage. The School District requests three hard-surfaced student waiting areas within the development with safe student walkways. One would be located along the public right-of-way nearest to Parcel D and two others within Parcels B and C. *Exhibit 1, Staff Report, page 12; Exhibit 15.*
31. The Applicant would accommodate an existing Community Transit bus stop on the southeast corner of SR 96 and 44th Avenue SE by constructing a minimum six-foot by 16-foot bus pad at the southeast intersection corner. Street landscaping would not interfere with buses. *Exhibit 1, Staff Report, pages 11 and 31.*

Public Comments and Response

32. Residents of the adjacent Bluegrass Meadows subdivision to the southwest submitted comments raising concerns that the clearing and grading has elevated the project site and would result in lack of privacy from future 35-foot high townhomes. *Exhibits 19.a.-f.* Mary VanderMolen lives within the Bluegrass Meadows subdivision. She testified and raised concerns about the townhouse height, drainage, wetland impacts, and loss of property values. Ed Dunn owns property adjacent to the proposed development. He testified regarding the parking reduction proposal and expressed concerns that garages were often used for storage, not parking. He requested privacy slats on his fence. Kim Walior and Shanely Halverson both live in Bluegrass Meadows subdivision residences and testified about future traffic and flooding concerns. Ms. Halverson also expressed

⁶ The City adopted a separate interlocal agreement with Snohomish County Fire Protection District No. 7 concerning appropriate mitigation fees and conditions affecting the proposed development. Fire Protection District No. 7 reviewed the application and provided comments to the City. City staff has included the Fire Protection District comments as proposed conditions. *Exhibit 1, Staff Report, page 11.*

concerns about school overcrowding and requested a fence with arbor on her property line. Chuck Farr lives in Bluegrass Meadows and testified concerning future traffic, and increased construction and traffic noise. Linda Martian-Trent lives in Bluegrass Meadows and also testified about lack of privacy due to the proposed three-story townhomes and construction noise. *Exhibit 19.a.-f; Exhibit 21; Testimony of Ms. VanderMolen, Mr. Dunn, Ms. Walior, Ms. Halverson, Mr. Farr, and Ms. Martian-Trent.*

33. Ms. Amrine presented an amendment to proposed Condition 24 to require that a new six-foot cedar fence be installed at the highest finished grade along the perimeter adjacent to the Plat of Bluegrass Meadows. She testified that this would provide additional screening for Bluegrass Meadows lots 14 to 16, 28, and 29. Ms. Amrine later testified that all perimeter fence heights should be 6½ feet. Derek Straight testified for the Applicant. He agreed with the proposed height increase and suggested the proposed fence should be located as close as possible to the adjacent property line, taking into consideration the grade change. *Testimony of Ms. Amrine; Testimony of Mr. Straight.*
34. Mr. Straight testified that drainage of the property under the previous use was uncontrolled. The property was graded in part to assure that drainage would occur toward the stormwater vault. He testified that the Applicant's Traffic Assessment was reviewed by the City's traffic consultant. He testified that the Applicant would comply with the City's construction time periods and noise ordinances. He noted that the project design is still subject to review by the Design Review Board and that no low-income housing is proposed. Gary Sharnbroich, P.E., testified for the Applicant that the Bluegrass Meadows has one contiguous wetland. The Applicant would place riprap and a flume at the discharge pipes into the wetland to minimize water backing up. He testified that the stormwater plan is designed to store and treat water as if the entire site were forested. Andrew Bernard testified for the Applicant that there would be no shared parking between the proposed commercial space and the apartments and that apartment parking could be accommodated with on-street parking. Mr. Straight testified that the Applicant has no objections to the proposed conditions. *Testimony of Mr. Straight; Testimony of Mr. Sharnbroich; Testimony of Mr. Bernard.*

Staff Recommendation

35. Ms. Amine testified that the City staff determined that, with proposed conditions, the proposed development would be consistent with the City Comprehensive Plan, City Land Use Map, City Code, and development requirements. The City staff recommends approval of the Binding Site Plan. *Exhibit 1, Staff Report, pages 3 to 33; Testimony of Ms. Amine.*

CONCLUSIONS

Jurisdiction

The City of Mill Creek Hearing Examiner is authorized to hear and decide binding site plan applications. The Hearing Examiner may grant, deny, modify, or grant with conditions, modifications, or restrictions. *Chapter 4.34 Mill Creek Municipal Code (MCMC); MCMC 14.03.080.A-C.*

Criteria for Review

The application shall be compatible with the City Code, Comprehensive Plan, and other regulations, laws, policies, goals, and objectives of the City; and compatible with applicable state laws and regulations. *Mill Creek Municipal Code (MCMC) 14.03.080.C.*

MCMC 16.12.080 - .110 sets forth submittal requirements, a project description, owners' association documents, and separate approvals for phased development, if applicable.

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 City 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

1. **With conditions, the proposed Binding Site Plan would be consistent with the City Code, Comprehensive Plan, and other City policies, goals, and objectives.** The City provided adequate notice of the application and opportunity to comment. Consistent with Comprehensive Plan policies, the proposed project would reflect a mixed-use development, including residential, retail commercial, and open space, and would be compatible with surrounding residential land uses, with buffers, landscaping, and fences. The City would review the BSP, construction (civil) plans, and buildings permits for consistency with the 2009 LEED Neighborhood Design requirements. The proposed BSP would also provide two stormwater vaults for collecting and managing stormwater runoff, street lighting, frontage improvements to 132nd Street SE (SR 96), sidewalks and pedestrian facilities, landscaping, open space, a street buffer along 132nd Street SE (SR 96), and a perimeter landscape buffer. The Applicant reviewed low-impact development techniques and the City determined that LID techniques were not suitable due to the on-site soil types. The Applicant prepared an Environmental Checklist and the City issued a Mitigated Determination of Nonsignificance with 25 mitigation measures.

Conditions are necessary to ensure development occurs as portrayed on the Binding Site Plan and ensure compliance with Design Guidelines and City Code regarding buildings, material composition, colors, signage, landscaping, roadway buffer, lighting, and streetscape design through review and approval by the City Design Review Board. Conditions are also necessary to ensure traffic impact mitigation, stormwater

management system construction that meets the requirements of the 2005 DOE Stormwater Management Manual for Western Washington, erosion control, MDNS mitigation compliance, and fire protection. *Findings 1-35.*

2. **With conditions, the application would comply with chapter 16.12 MCMC submittal requirements.** The proposed Binding Site Plan depicts the location of all proposed structures and includes landscape and planting plans. Conditions are necessary to ensure development occurs as depicted on the Binding Site Plan. *Findings 1-31.*
3. **A reduction from 380 to 349 parking spaces is granted.** A parking space reduction for the proposed apartments is warranted because on-street parking would be available. The Applicant's Traffic Assessment Update determined that providing 1.94 parking spaces per unit would be sufficient to accommodate peak parking demands. This parking space reduction would result in additional open space, one of the desired amenities of a Planned Area Development. *Findings 1, 3; 13, 21-22.*

DECISIONS

Based upon the preceding Findings and Conclusions, the Hearing Examiner **GRANTS** a Binding Site Plan to subdivide three existing parcels and construct a multifamily residential development with 122 townhomes and 180 apartments, a commercial development, and a 1.26-acre public neighborhood park on an 18.45-acre site located at 4522, 4510, and 4406 132nd Street SE, Mill Creek, Washington. The Hearing Examiner **GRANTS** a reduction from 380 to 349 apartment parking spaces, subject to the following conditions:⁷

1. Development shall occur as portrayed on the Binding Site Plan, except as may be modified by the Hearing Examiner following the open record hearing, per chapter 4.34 Mill Creek Municipal Code.
2. All utility, stormwater, drainage, maintenance, and landscaping buffers/easements, together with attendant restrictions and conditions, and dedication of the spine road shall be portrayed on the face of the Binding Site Plan or recorded on a separate page along with the Binding Site Plan.
3. The final Binding Site Plan shall be recorded with the Snohomish County Auditor and a copy provided to the City prior to issuance of a building permit.

⁷ This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards. Proposed Condition 25 was removed because it was duplicative of Condition 23. A Binding Site Plan shall expire unless construction is completed within seven years from the date of approval. *MCMC 16.12.140.*

4. The Developer may assign its rights and obligations under this development approval upon prior written notice to the City identifying the new entity and evidencing the transfer of obligations to the new entity.
5. The terms and conditions contained within the Developer Agreement as recorded under Snohomish County Recording Number 201304190550 shall apply to the Binding Site Plan and shall be noted on the face of the Binding Site Plan.
6. A public access easement allowing public access to, over, and across sidewalks, trails and drive aisles for the purpose of connecting adjacent neighborhoods to the public park and 44th Avenue SE shall be granted to the public. All public access easements, locations, and types shall be described and shown on the face of the BSP with the granting language subject to approval of the City Attorney.
7. Condominium Declaration. No condominium declaration may be signed, approved, or filed of record concerning the Project or Property until (i) the BSP is recorded in accordance with the MCMC; (ii) the proposed condominium declaration has been reviewed by City; and (iii) City has found in writing that the proposed condominium declaration conforms to the MCMC and Master Development Plan.
8. Occupancy and Sale. There shall be no occupancy or use of the Project components, and no sale or lease of any lots, tracts or parcels created by the BSP, until the BSP is recorded in accordance with the MCMC and certificates of occupancy have been issued as required by the MCMC.
9. Certificates of Occupancy. In addition to the requirements of the MCMC and the enforcement provisions set forth in the Development Agreement, the City may withhold certificates of occupancy for all or any part of the Project until all building permit requirements and Project conditions of approval have been met to City's satisfaction.
10. The Binding Site Plan must include on its face a restriction that requires commercial development/use of the Commercial Lot, and prohibits residential and other non-retail uses, unless the uses are located above commercial uses. Permissible commercial uses are those uses listed in MCMC 17.19.040, Sections A, B, C, and J.
11. Future development on the Commercial Lot shall be consistent with the EGUV Design Guidelines and shall be subject to future SEPA review and the review and approval by the Design Review Board.
12. If commercial development of the Commercial Lot has not commenced prior to the occupancy of the first residential unit, the following conditions relative to the Commercial Lot must be met:

Findings, Conclusions, and Decisions
City of Mill Creek Hearing Examiner
Polygon NW Home Builders North, LLC, Binding Site Plan
No. BS 12-63

The Commercial Lot must be improved to be “development ready” including:

- Frontage improvements to 44th Avenue SE;
- Water and sewer utility stubs properly sized for likely commercial uses;
- Storm sewer and natural gas utility stubs;
- Rough grading in a manner suitable for commercial development;
- During the period that the site is vacant, the site will be landscaped with lawn and include benches along 44th Avenue SE. Said temporary landscaping/improvements and a maintenance plan for the landscaping shall be subject to review and approval by the Director of Community Development; and
- The property will be actively marketed for commercial development including a “For Sale” sign.

13. Construction activity will be limited to Monday through Friday, 7 a.m. to 9 p.m., with weekend hours 8 a.m. to 9 p.m.
14. No idling of construction equipment shall be permitted and mufflers will be installed on all construction vehicles.
15. The Developer shall grant a reciprocal parking covenant approved by City for the parking serving the Project’s Commercial Structures/Uses to the other commercially developed properties within the EGUV. The parking covenant shall be shown on the face of the BSP.
16. Developer shall grant a public access easement allowing public access to, over and across all areas open to the public in the commercial portion of the Project and within the residential portion of the project including without limitation sidewalks, paths, 20-foot perimeter landscape buffer and associated 6-foot wide trail, plazas, informal seating areas, access drives, and parking areas. All public access easements, locations, and types shall be described and shown on the face of the BSP with the granting language subject to approval of the City Attorney.
17. Upon the creation of the East Gateway Owners Association, as described in Section 18 of the Development Agreement, the Developer shall record an easement to the East Gateway Owners Association to allow the placement, maintenance, and utilities to serve a future monument entry marker. This obligation shall be shown on the face of the Binding Site Plan as an irrevocable offer to grant an easement to the future East Gateway Owners Association.
18. A requirement to participate in the construction of the monument marker at the SR 96 and 44th Avenue SE intersection to the EGUV shall be noted on the face of the BSP.

19. Existing mature trees within the 20-foot perimeter landscape buffer will be retained where practical and appropriate. The Director of Community Development or designee shall determine the trees to be retained based upon the existing trees' compatibility with future improvements to be constructed in the vicinity. This determination shall be made in the field prior to the commencement of grading activities within the perimeter landscape buffer.
20. Barrier fencing shall be placed around all areas of the site to be retained in a native state, and around the drip lines of the trees to be retained, including trees that may ultimately be designated as not feasible to retain, and at the outside edge of buffers prior to commencing clearing and grading, and shall be maintained until construction is completed in accordance with MCMC 15.10.045.
21. Where trees designated to be retained are damaged, destroyed or removed during the construction of the proposed improvements, a penalty in the amount of \$1,000 will be assessed for each tree. The City may, at its discretion, issue a stop work order for the construction until the penalty is paid. In addition, each tree shall be replaced at a 3:1 ratio. The replacement trees shall be a coniferous species and have a minimum height at planting of twelve feet pursuant to MCMC 15.10.075.
22. The existing arborvitae hedge along the eastern boundary shall be retained and enhanced where necessary. In addition, the arborvitae hedge in the central portion of the site shall be moved and used as part of the 20-foot perimeter landscape buffer along the southern boundary of the site if possible and practical. Arborvitae that does not survive the relocation shall be replaced with a plant of similar size and type.
23. A 6 ½-foot black chain link fence with privacy slats and a solid evergreen hedge shall be installed to replace the existing aging cedar fence between the proposed development and the Dunn properties.
24. The 20-foot perimeter landscape buffer shall contain a 6-foot wide asphalt trail and pedestrian amenities along with perimeter landscaping and directional signage. The landscape plans shall include a mix of evergreen and deciduous trees to be planted around the perimeter of the site to enhance any retained vegetation and to provide a visual buffer between the existing residential uses and the proposed residential buildings. Along the perimeter adjacent to the Plat of Bluegrass Meadows, the Developer shall install a new 6 ½-foot cedar fence at the highest finished grade at the closest feasible point to the adjacent property line.
25. All landscaped areas shall be amended with a minimum thickness of four inches of compost mixed to a minimum depth of six inches.

26. The Developer shall install wheel stops or another form of vehicle stop at the end of all parking stalls that abut a landscape area or walkway to prevent damage to landscaping and to allow full use of pedestrian walkways, pursuant to MCMC Section 17.34.040.H.2.c.
27. The buildings, signage, lighting, streetscape furnishings, pedestrian amenities and directional signage, along with site landscaping shall be designed in accordance with Section 17.34.040, MCMC, the EGUV Design Guidelines and reviewed and approved by the City's Design Review Board prior to installation. Landscaping may be installed in phases but shall be in place prior to the issuance of a Certificate of Occupancy for buildings adjacent to said landscaping.
28. Trash cans and recycling enclosures shall be depicted on the site plan for the apartment buildings, and the trash/recycling enclosures shall have solid doors to fully screen the trash containers per MCMC 17.34.040.8.a-c. Trash enclosure building materials and color are subject to review and approval of the Design Review Board.
29. Street furniture shall include, but not be limited to bicycle racks, planters, pots, benches, tables, trash cans, and shall be provided along the new section of 44th Avenue SE and the SR 96 frontage and shown on the landscape and streetscape plans.
30. The Developer and the City shall enter into an agreement for implementation of the approved landscape plan and enter into a secured performance bond equal to 125 percent of the cost of labor and materials, in accordance with MCMC 16.16.040.
31. Once the Developer has fulfilled the obligations of the landscape performance bond, the Developer shall enter into a two-year maintenance agreement for the approved and installed landscaping in accordance with MCMC 16.16.090.
32. The Binding Site Plan, construction (civil) plans and buildings permits shall be reviewed for consistency with the 2009 LEED Neighborhood Design requirements. Civil Plans will not be issued until the City issues a letter stating that the development meets the LEED ND Standards.
33. In accordance with the Development Agreement, the Engineering Study shall be used as the design and regulatory guideline for the 44th Avenue SE alignment, access management, traffic impacts and analysis, regional drainage facilities, public infrastructure facilities, and utility coordination.
34. The Developer shall construct or pay to construct all intersection and related improvements required by the Washington State Department of Transportation and revised EGUV Traffic Analysis and Development Standards dated September 2012,

including, but not limited to: (1) the traffic signal improvements at the intersection of 132nd Street SE and 44th Avenue SE, (2) installation of 132nd Street SE corridor signal interconnect between 25th Avenue SE and Seattle Hill Road, (3) intersection right turn and bus lane construction, (4) intersection ADA ramp/curb upgrades. The design, construction, and operation of the improvements are subject to the review and approval of the Washington State Department of Transportation.

35. In accordance with chapter 16.14 MCMC, the Developer shall dedicate or cause to be dedicated to the City the full width of the portion of 44th Avenue SE between 132nd Street SE and the southern property boundary. The Developer's dedication shall comply with all terms and provisions for the 44th Avenue SE alignment in the Engineering Study and the requirements of chapter 16.14 MCMC. Dedication shall be completed either by (i) showing the dedication on the face of the BSP for the Project; or (ii) by separate dedication deed approved and accepted by City before the BSP is released for recording.
36. The Developer shall construct the full width of the public right-of-way improvements within the 44th Avenue SE right-of-way between 132nd Street SE and the southern property boundary. The public improvements shall comply with chapter 16.16 MCMC, Design Guidelines, the City's Design and Construction Standard Plans, and the Engineering Study. The public improvements shall consist of: (i) Full width of the street and sidewalk cross section; (ii) On-street parking and raised crosswalks as approved by City; (iii) LED Street and pedestrian lighting (a lighting and electrical plan shall be approved by the Directors of Public Works and Community Development prior to construction); (iv) Stormwater and drainage facilities; (v) Street trees and landscaping (tree wells and planter beds shall incorporate tree grates and contain electrical outlet conduits and irrigation spigots as approved by the City); (vi) Striping and signage, including a "Future Road Connection" (or similar) sign at the south end of 44th Avenue SE.
37. The intersection of 44th Avenue SE and the east-west spine road shall incorporate a distinctive aesthetic surface treatment to meet the City's EGUV Design Guidelines.
38. The Developer shall construct the following to offset impacts to the public transit system for Community Transit: 1) accommodate the existing bus stop located on the southeast corner of SR 96 and 44th Avenue SE by constructing a minimum 6' x 16' long bus pad and shelter at the southeast corner of the new signalized intersection, and 2) ensure street landscaping is adequately set back as to not interfere with buses.
39. At the new bus stop at the signalized intersection of SR 96 and 44th Avenue SE, transit features such as covered bus shelters, benches and trash containers shall be provided and the design shall be compatible with materials and color of adjacent buildings per the EGUV Design Guidelines, Pedestrian Facilities.

40. In accordance with chapter 16.16 MCMC and the Development Agreement, the Developer shall construct frontage improvements along all affected areas of SR 96, including the subject property and the adjacent Advent Lutheran Church. The improvements shall consist of: (i) Removal of all existing SR 96 access points in accordance with the Engineering Study; (ii) Installation of new street lighting to meet WSDOT roadway lighting standards and the City's Design and Construction Standard Plans (a lighting and electrical plan shall be approved by the Directors of Public Works and Community Development prior to construction); (iii) Removal of existing sidewalk and installation of new eight-foot wide meandering concrete sidewalk that connect to the existing adjacent facilities. The location of the sidewalk shall be field located by the Developer and approved by City staff prior to construction.
41. The Developer shall install a six foot wide asphalt trail with amenities and directional signage within the 20-foot perimeter landscape buffer. The location of the trail shall be field located by the Developer and approved by City staff prior to construction. Amenities may include pedestrian lighting and small activity nodes with benches, picnic tables and/or activity, per the EGUV Design Guidelines.
42. The project shall be completed in the time, manner and order set forth in the Development Agreement. A Project Construction Phasing Plan ("Construction Plan") shall be prepared by Developer and approved by City as part of the civil plans prior to the start of construction activities on the Property.
43. All public improvement work shall be adequately secured through a security device (such as a bond, assignment of funds, etc.) acceptable to the Director of Public Works prior to beginning construction in accordance with chapters 16.16 and 16.20 MCMC.
44. The Developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) and Erosion Control Plans for approval by the City Engineer. Said plans shall be approved and Best Management Practices (BMPs) installed prior to commencement of any site work.
45. Pursuant to City regulations, detention and water quality treatment facilities with a conveyance system that meets the requirements of the City of Mill Creek, the February 2005 edition of the Washington State Department of Ecology Stormwater Management Manual for Western Washington, and the City's current NPDES Phase 2 Permit (with appendices) as issued by the Department of Ecology.
46. To ensure that the proposed storm drainage system is adequately designed and that the detention and water quality facilities are adequately sized, a final storm drainage report

(chapter 15.14 MCMC) shall be submitted to the City prior to approval of the civil engineering / site improvement plans.

47. A requirement and easement to maintain the private stormwater facilities in the public park shall be shown and recorded on the face of the Binding Site Plan.
48. The Developer shall include all required public and private drainage improvements in the engineering design plans and stormwater report for the approval of the Director of Public Works. The approved stormwater system shall include the following elements and conditions in accordance with chapter 15.14 MCMC. The applicant shall retain a stormwater utility easement to the dedicated property for the purpose of maintaining, accessing, repairing, and replacing its planned private stormwater retention vault that will be placed under the dedicated Park. The form of the easement is subject to approval of the City Attorney.
49. Property owners are obligated to own, maintain and operate the stormwater system outside the public right-of-way, and stormwater facilities constructed under land that is dedicated to the City for public purposes, to the satisfaction of the City Engineer. Specific maintenance measures shall be indicated on the approved engineering plans and in the final drainage report.
50. A final stormwater drainage report, signed and stamped by a licensed professional engineer, shall be submitted to the City Engineer for review and approval.
51. The Final Binding Site Plan shall provide for maintenance of the stormwater system outside the public right-of-way, and stormwater facilities constructed under land that is dedicated to the City for public purposes, including, but not limited to adequate access to maintenance locations, provisions and easements that allow the City to inspect, maintain, and/or operate the detention and treatment system at its discretion, and adequate easement provisions to ensure uninterrupted function of the facilities for the proposed development.
52. The Developer shall pay mitigation to Snohomish County in the amount of \$505,118 for impacts to roads within the TSA D subarea. In addition, the applicant shall submit a TDM plan to the County. Payment of traffic mitigation fees to the County is required prior to the issuance of the first building permit issued for the Project.
53. In accordance with Development Agreement, the developer shall dedicate the 1.26 acres for a public neighborhood park as shown on the face of the Binding Site Plan. In addition, the applicant shall construct park improvements which will include at a minimum: a restroom (which may include a picnic shelter), children's play equipment, picnic tables, benches, paths, landscaping/lawn, irrigation, all in accordance with a

Master Park Plan to be approved by the City Council after input from the community and the Parks and Recreation Board as required by the Mill Creek Comprehensive Plan. The improvements are to be completed by December 31, 2014.

54. In accordance with Resolution 2011-477, the Developer shall pay \$1,757.98/per condominium/single-family dwelling x 122 dwellings = \$214,473.56 and \$1,275.02 per renter-occupied (multifamily unit) x 180 units = \$229,503.60 to offset impacts to community parks. Pursuant to chapter 17.48 MCMC, the Developer shall pay community park mitigation fees in the amount of \$443,977.16 prior to issuance of the first building permit.
55. Based on the provisions of the interlocal agreement between the City and Fire District No. 7, the Applicant shall pay mitigation in the amount of \$365 per EDU. Assuming 302 EDU, \$110,230 is required to mitigate impacts to the fire district facilities. Proof of payment of the mitigation fees is required prior to issuance of a building permit.
56. The Developer shall enter into a voluntary mitigation agreement with the Everett School District and pay mitigation fees totaling \$300,101.48 and/or in accordance with the fee schedule in effect at the time of issuance of the first building permit. Proof of payment of mitigation fees is required prior to issuance of the first building permit.
57. The Everett School District transportation department has reviewed the proposal and determined that students would not be picked up along the SR 96 frontage and requests that three hard surfaced student waiting areas be located within the development at the following locations:
 - Along the public right-of-way nearest to Parcel D
 - Within Parcels B and C

These hard surfaced student waiting areas shall be approximately 10'x15' in size and linked to the housing units in the development with safe student walkways and located behind the sidewalk.
58. The Developer shall be responsible for all fees and obtaining the required permits and agreements necessary to provide on-site sewer improvement and to extend the water service to the subject site.
59. All new and existing utilities within the project and along all roadway frontage areas shall be placed underground in accordance with MCMC Section 17.22.110. The applicant shall be responsible for all costs associated with undergrounding the utilities. No new utility poles shall be installed in the project site. Appropriate easements or right-of-way for all utilities shall be provided by the applicant as shown on the face of the Final

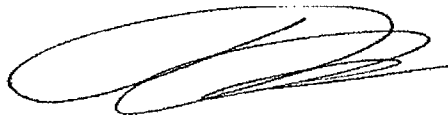
Binding Site Plan. Said Utility Construction Plans shall be submitted to the appropriate service provider for review and approval prior to construction.

60. All utilities shall be adequately sized for future built-out conditions of the entire EGUV area in accordance with the Engineering Study.
61. Dust and erosion shall be controlled by promptly covering exposed stockpiles, watering areas of soil disturbance, using a street sweeper on adjacent roads, and other Best Management Practices as directed by the City Engineer, chapter 15.12 MCMC.
62. Grading, stormwater, and erosion control plans shall be approved by the Directors of Public Works and Community Development prior to any clearing or grading work on the site, chapter 15.12 MCMC. All public improvement work shall be adequately secured through a secured agreement acceptable to the Director of Public Works prior to beginning construction, MCMC 16.16.040.
63. The Developer shall submit a geotechnical report to address the construction of improvements. This includes, but is not limited to fill under the roadways, building pads, retaining walls and stormwater facilities, chapter 15.12 MCMC.
64. All private roadways shall be designed to meet Fire District turn radius and clearance requirements.
65. To ensure adequate fire flow / hydrants, the fire flow shall be based on the largest of the buildings. In accordance with the International Fire Code 2009 the following hydrant locations shall be required:
 - a. West side of bldg. A5
 - b. West side of bldg. A3
 - c. South side of bldg. A1
 - d. Proposed hydrant located south of bldg. A11 to remain.
 - e. Between bldgs. T7/T8
 - f. West of bldg. T10
 - g. Southwest corner of center island, near parking across from bldg. T-15
 - h. Proposed hydrant located west of bldg. T13 to remain.
66. All hydrants required for this site shall be equipped with 4" STORTZ" adaptors.
67. The Fire District shall review the proposed location of the riser room and fire department connections for the proposed fire sprinkler systems.
68. All road signs shall be posted prior to occupancy.
69. Building addresses shall be clearly posted at the site entrance and on each building.

70. KNOX box(s) shall be required to allow fire department access to all sprinkler systems, fire alarm systems, mechanical rooms, etc. Contact the Fire District for number type, size and specific location.
71. No Parking/Fire Lane shall be reviewed and coordinated with the Fire District during civil plan review.
72. Fire mitigation for the residential development of \$110,230 (302 E.D.U.'s X \$365) shall be paid prior to issuance of building permits.
73. The Binding Site Plan shall contain the following statement as set out in RCW 58.17.040(7)(e):

All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.

Decided this 9th day of July 2013.



KIMBERLY A. ALLEN
City of Mill Creek Hearing Examiner
Sound Law Center