



PO Box 12690
Olympia, WA 98508
360.705.2474
www.olyeng.com

EXHIBIT

TO BE PROVIDED TO
HEARING EXAMINER

January 30, 2019

Paula Smith, Associate Planner
City of Olympia
PO Box 1967
Olympia, WA 98507

Re: Wellington Heights - #18-1315
Response to Skillings-Connolly Drainage Evaluation, dated January 10, 2019
OE No. 17096

Dear Ms. Smith:

This letter is in response to the Drainage Evaluation prepared by Skillings-Connolly (hereinafter "Drainage Evaluation"), dated January 10, 2019, for Mr. Titus.

1. The Drainage Evaluation states that the surface water from the Wellington Heights parcels has historically "infiltrated uniformly across the development property" and that the Wellington Heights project will now be collecting, concentrating, and directing that surface water into drywells and/or the development's stormwater pond.

Response

Based on the soils that were logged across the site, a restrictive layer (glacial till) exists, on average, approximately 39" below-grade. The depth to the restrictive layer is fairly consistent indicating that it generally follows the slope of the surface down towards Mr. Titus' parcel.

While surface water has historically infiltrated uniformly across the site, this infiltration can only temporarily take place in the surface soils above the restrictive layer. The soils would become saturated and water cannot infiltrate through the restrictive layer. As a result, it can be expected that the water will flow laterally along the restrictive layer until it finds a break in the restrictive layer and/or until it daylight out. Mr. Titus has reported that he has witnessed some seepage in the cut slope along the north side of his parcel and this can be attributed to water flowing along the restrictive layer where it daylight out onto the cut slope.

The Wellington Heights project will be infiltrating stormwater runoff from all new public roadway areas along with the roof areas from Lots 38-56 into a below-grade stormwater facility located in proposed Tract E, below the restrictive layer. As a result, runoff from approximately 21% of the overall parcel area will be directed to beneath the restrictive layer. All proposed sidewalks, driveways, and the private access lanes will be constructed of permeable pavement which is intended to directly infiltrate rainfall (store and spread out the infiltration). All new lawn/landscape areas will contain soils meeting the city's soils requirements. These soils are intended to help reestablish natural infiltration, water storage/transmission, pollutant decomposition, etc.

A report prepared by Materials Testing & Consulting (MTC) states that the lateral projection of water infiltrating out of the proposed stormwater infiltration facility will fall below the toe of the slope along Mr. Titus' parcel. Therefore, infiltrated water from this facility will not impact Mr. Titus' parcel.

Per WWHM computer modeling software, the post-developed surface water runoff rate will be less than the pre-developed runoff rate. This is due to the existing soil type (poor soils have a higher runoff rate), existing ground cover (a partially forested site has a higher runoff rate than a fully forested site), and by infiltrating a significant amount of runoff beneath the restrictive layer.

Additionally, while not required, the project will meet the Low Impact Development (LID) Performance Standard based on current WWHM results. This Standard is intended to mimic natural hydrologic conditions, especially for smaller storm events, and is the highest achievable standard in the city's storm drainage manual.

The proposed stormwater measures will lessen the amount of water being directed towards Mr. Titus' parcel, especially to the existing cut slope along the north side.

2. The Drainage Evaluation states that the existing ditch on Mr. Titus' parcel does not have capacity to carry the pass-through flow of 44-cfs plus the anticipated emergency overflow from the Wellington Heights stormwater infiltration facility and there are concerns about scouring. The Drainage Evaluation recommends the existing ditch be redesigned and reconstructed to carry the anticipated flow, including cleaning and regrading of the north ditch to restore positive drainage in the ditch from east to west, and that a downstream analysis from the development site to Percival Creek be completed.

Response:

Condition/Mitigation #3 in the city's MDNS clearly states that "to mitigate off-site stormwater impacts, the applicant shall make improvements to an existing conveyance system so that it can convey the existing pass-through flows..., provide an emergency overflow route for the proposed on-site infiltration system, and protect downstream properties from stormwater impacts."

As such, the affected portion(s) of the ditch(es) located on Mr. Titus' parcel will be upgraded as needed to meet these requirements. As mentioned in the city's MDNS, the existing ditch along the north side of Mr. Titus' parcel will be bypassed; therefore, mitigation is not necessary for this ditch. However, the developer is proposing to regrade the western portion of this ditch as needed to ensure it has positive drainage into the westerly ditch (which it currently does not have).

Based on preliminary calculations, only the northern portion of the existing ditch along the west side of Mr. Titus' parcel will require modifications to carry the anticipated flows. To the best of our knowledge, there have been no reports of problems with the ditch along the west side of Mr. Titus' parcel or within the city's stormwater system downstream of Mr. Titus' parcel. We are only aware of issues with the northerly ditch which will be remedied by rerouting the pass-through flows downstream of this ditch.

The city requested the downstream analysis end at the 48" diam. culvert located beneath Mr. Titus' western driveway approach/connection. Per the city's response memorandum, dated January 24, 2019, to the Drainage Evaluation, to retrofit the downstream storm conveyance system is beyond the expectations of what the city would require of a developer. Additionally, the only increase in stormwater runoff that would be directed to Mr. Titus' western ditch would be an emergency overflow of a complete failure of the Wellington Heights stormwater facility located in Tract E. Based on preliminary calculations, the 100-year flow rate from a complete

failure of this stormwater facility would only be 1.75-cfs. For reference, 44-cfs of existing pass-through flow is currently being discharged to Mr. Titus' ditch (per Wellington West Drainage Report prepared by Howard Godat & Associates, dated April 1, 1998).

The proposed stormwater infiltration facility is currently oversized by approximately 20% and is based on a conservative design infiltration rate calculated by MTC. Additionally, the facility is currently designed to provide 2.2-feet of freeboard depth, 1.2-feet more than the minimum requirement of 1-foot, and there is space to expand the facility if needed. As required by the city's drainage manual, the proposed stormwater infiltration facility will be monitored through at least one wet season to evaluate its performance. If it is found to be underperforming, the facility will be expanded as needed.

The project would only increase stormwater runoff to Mr. Titus' ditch during a complete failure of the Wellington Heights stormwater facility and this increase is minimal compared to what is currently being discharged to the ditch and downstream system. The city's MDNS conditions and proposed stormwater measures adequately address the concerns.

3. The Drainage Evaluation states that insufficient measurements were taken to establish the groundwater table and resulting groundwater mounding height below the bottom of the proposed stormwater infiltration facility and is recommending a thorough analysis of the seasonal water table variation be conducted.

Response:

MTC found no evidence of groundwater on-site to a depth of 30-feet below-grade in February 2018. A boring conducted by Geotechnical Testing Laboratory (GTL) in March 2006 for the residential development abutting the north side of Wellington Heights found no evidence of groundwater to a depth of 35-feet below-grade. Two borings by GTL for the business park abutting the south side of Wellington Heights found no evidence of groundwater to depths of 31-feet. A boring was conducted in March 2018 for Mullinax Ford to the south of Wellington Heights and there was no evidence of groundwater to a depth of 50-feet. MTC researched other well logs in the general area and the logs suggest that the regional groundwater table is at least 35-feet below-grade, even in the wet season.

The groundwater mounding calculations prepared by MTC indicate at least 20-feet of vertical separation between the mounding stormwater and the slope surface and their report states that the analysis represents a generalized worst-case scenario.

All of the above-mentioned borings were conducted in the wet season. The collected data is more than sufficient, no further analysis is warranted, and the mounding calculations prepared by MTC do not require revision.

4. The Drainage Evaluation is recommending a French Drain be installed along the top of the slope above Mr. Titus' parcel to intercept seepage.

Response:

Per MTC, there is no current or past evidence of slope instability. The amount of runoff directed towards the slope will be reduced as a result of the proposed stormwater measures (mainly from infiltrating a large portion of the stormwater runoff from the site into a facility located below the restrictive layer). The developer is proposing to regrade the western portion of the

Ms. Smith
1/30/19
Page 4

east-west ditch as needed to ensure it has positive drainage into the westerly ditch (which it currently does not have).

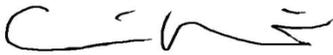
Given the proposed stormwater measures and reduced runoff rate, a French Drain is not warranted.

Again, the city's MDNS conditions/mitigations already address the majority of the Skillings-Connolly concerns and we have adequately addressed the remaining concerns. The proposed mitigating stormwater measures will have no negative impact to Mr. Titus' parcel.

Please let me know if you have any questions or comments.

Sincerely,

Olympic Engineering

A handwritten signature in black ink, appearing to read 'Chris Merritt', with a stylized flourish at the end.

Chris Merritt, PE
Principal Engineer

Paula Smith

From: Dan Leahy <danleahy43@yahoo.com>
Sent: Wednesday, January 30, 2019 8:16 PM
To: mscheibmeir@localaccess.com
Cc: Steve Hall; Cheryl Selby; Bruce Titus; James R. Tomlinson; tjw@buddbaylaw.com; kfriend@localaccess.com; Tim Smith; Cari Hornbein; Steve Thompson; Jeff Fant; David Smith; mlucente@dpearson.com; Nathaniel Jones; Paula Smith
Subject: File No. 18-1315. Public Hearing. February 4th
Attachments: wellington. Schmeibmeir.doc; ATT00001.htm

Mark Scheibmeir, Hearing Examiner

City of Olympia February 4th Public Hearing

Dear Mark,

The City of Olympia's Staff Report, available on Monday of this week, made no reference to nor any response to the fact that their determination of non-significance was procedurally flawed and invalid as is their request for plat approval.

The staff's determination of non significance is procedurally invalid for the below listed reasons and should have been withdrawn by the City of Olympia before the appeal deadline of January 17, 2019. The fact that this determination and the project itself is before you is a travesty of justice and due process which any Superior Court judge will surely recognize.

Staff Support for an Administratively Dissolved LLC.

The staff has been presenting to me, the other 147 parties of record, SWONA and to the Hearing Examiner a project by an entity without the legal right to do business in the State of Washington. The staff's presentation of this non-entity as if it is a legal entity with the authority to operate a business in Washington State and to pursue a preliminary plat approval is fraudulent.

The City knew by April 12, 2108 that ABS Investments LLC status in the State of Washington expired June 30, 2018. In my response to the submitted Environmental Checklist, I asked the City to check on this. **The City did not act on this for the next eight and a half months.**

ABS Investments LLC was administratively dissolved by the State of Washington on November 3, 2018. It had been administratively dissolved when the staff issued its report on December 10th, when the staff participated in the Hearing Examiner's public hearing on December 10th and when the staff re-issued its SEPA MDNS on December 27th. It remained dissolved during the comment period which made the very SEPA "comment" process a fraudulent charade.

Staff Engaged in Improper Influence, Conflict of Interest and Appearance of Fairness

The purpose of the Hearing Examiner is to "ensure procedural due process and appearance of fairness" (18.82.020 B)

Also, under 18.82.80 Improper influence, conflict of interest and appearance of fairness, it states "No City official, elective or appointive, shall attempt to influence the Hearing Examiner in any matter officially before him as as to constitute a violation of the Appearance of Fairness Doctrine."

When the City staff on December 6th attempted to make changes "substantive in nature" to the MDNS dated October 26, 2018 without re-issuing the MDNS, without re-issuing a staff report and without informing the 147 parties of record, they violated procedural due process enshrined in the SEPA/MDNS process and the City of Olympia's own development procedures, as testified to by Mayor Pro Temp Nathaniel Jones.

In addition, the staff associated with this December 6th attempt (Jeff Fant, Tim Smith, Cari Hornbein, Paula Smith and Steve Thompson) by attempting to sidestep these procedures on behalf of “ABS Investments LLC” had already exposed a bias, violated the appearance of fairness doctrine and should have recused themselves from all involvement in this project (Email from Jeff Fant to Bruce Titus, December 6, 2018) including this re-issued MDNS. Nevertheless, they did not recuse themselves, thus invalidating this entire process.

Staff Denial of the Bruce Titus Appeal: Thirty nine days to one day!

When Alex Vo and Chris Merritt attempted to change the MDNS on December 4, 2018, they had missed their right to comment on the October 26, 2018 MDNS **by 39 days**. Nevertheless the staff attempted to respond to their request by inappropriately bringing it to you on December 10th. When this action was exposed by the intervention of Ms. Mauri Shuler, the City recognized their illegitimate attempt and retreated.

Now in a blatant demonstration of their continued lack of any appearance of fairness or impartiality, they have denied Mr. Titus' SEPA appeal not based upon his timely submission, but based on the \$1000 fee apparently arriving one day later.

No Hearing Examiner charged with providing “an efficient and effective land use regulatory system” and establishing “clear and understandable rules governing the land use decision-making process” can tolerate this type of egregious procedural bias.

The Staff is Asking you to Change the Comprehensive Plan. This is the City Council's Jurisdiction, not yours.

The largest number of comments received on the update of the City's Comprehensive Plan in 2014 concerned keeping the southern end of Decatur closed to automobile traffic and keeping 16th and Fern closed to automobile traffic. In response to this, the City Council, under the leadership of Mayor Stephen Buxbaum, deleted both of these automobile connections from the Comprehensive Plan in December 2014 and slowly over the next two years this connection was deleted from various City planning documents.

The staff, Mr. Vo and Chris Merritt's placement of a “Future Road Connection” from 18th Avenue to the middle of the neighborhood created Decatur Pedestrian and Bike Pathway is an attempt to override the City Council, the Comprehensive Plan and Olympia citizens who participated fully in the construction and approval of this Plan. It was the Council and not the subordinate Hearing Examiner who approved the Plan.

Procedurally, you need to recognize that the decision about whether or not the Future Road Connection into Decatur SW is a violation of the Comprehensive Plan belongs to the legislative body, the Mayor and City Council.

Financially Irresponsible: Taxing Property without Consent.

The staff's promotion of a project sponsored by ABS Investments LLC is financially irresponsible and injurious to the City's tax payers. Regardless of the personal opinion of Keith Stahley, the City has a fiduciary responsibility to examine the financial capabilities of entities like ABS Investments LLC before devoting staff and community time to a proposed project. This has not been done.

The staff has not examined ABS Investments LLC's Chapter 11 bankruptcy's filing in the United States Bankruptcy Court in the Western District of Washington on September 23, 2010. ABS had creditors holding secured claims of \$1,750, 738 dollars and creditors holding unsecured claims of \$458,472. Many of these creditors live in Thurston County. The staff did not contact any of these creditors and get their judgment about the viability of ABS Investments LLC.

The staff has been asking us to comment on a non-entity with a track record of bankruptcy whose proposed project threatens a viable business that sends \$1.3 million to the City in sales tax revenue from its Chrysler/Jeep dealership. When the staff exempts developers from property tax or acts in a way that removes substantial tax revenue from the City, such as in the case of the Toyota dealership, the staff is, in effective, raising the property tax on its city's residential property tax payers.

Until the Hearing Examiner certifies the financial viability of the entity itself, there is no legitimate procedural basis upon which to proceed. Mr. Vo is not building the project, ABS Investments LLC is the one seeking approval and purporting to build the project. It cannot deny this history of bankruptcy.

In addition, if there is no determination of financial viability, the City planning staff is in essence inappropriately attempting to lend the credit of the city by granting an asset, a plat approval, to a developer with history of bankruptcy.

No Transparency. No Decision. Absence of Property Title and Site Ownership.

The City staff has spent the last 15 months considering a project even though the two entities that own the 9.4 acres are not a part of the City's review. Neither Alex Vo, Nick Leung or ABS Investments LLC own the 9.4 acres which is the site of this proposed project.

Whatever agreement there is between the actual owners and ABS Investments LLC has never been a part of this 15 month process. Without the knowledge of this agreement, its terms and duration, there can be no valid SEPA MDNS procedure, nor regulatory judgment made by the Hearing Examiner. At the minimum, before any legitimate planning process can continue, this agreement must become transparent and public. Whatever agreement ABS Investments LLC may have had with the two LLCs that own the 9.4 acres could, for all you know, already be terminated.

Until the Hearing Examiner has checked to see that there is an agreement to sell this proposed site to ABS Investments LLC is still in effect, there is no legitimate procedural basis to proceed with this project's approval.

Contradictory Basis for Threshold Determination: October 26th or December 27th.

Prior to the issuance of MDNS on October 26th, the City was in receipt of a preliminary drainage plan that was "submitted on October 11, 2018." With this plan in hand, the City issued a MDNS that contained four mitigating conditions for off-site stormwater impacts they believed to be necessary.

Then, the City in its December 27th MDNS, cited, without presenting any new data, this same October 11th document to say that two of these mitigating conditions are no longer necessary. Both assertions can't be true. The Hearing Examiner must interrogate this contradiction.

The Conduct of the Traffic Impact Analysis.

This MDNS references traffic mitigation and also a Traffic Impact Analysis (TIA). The TIA conducted for this project violated the City's own procedures, should have been rejected and provides no legitimate basis upon which an MDNS can be based or a project approved.

1. TIA Guidelines for New Developments (Ordinance No. 7110) states the TIA "must follow the City of Olympia guidelines for a Traffic Impact Analysis".

The staff procedure on this TIA did not follow the guidelines thereby **foreclosing** the right of the parties of record access to a record/analysis upon which they could enter on substantive grounds the mandated Hearing Examiner's public hearing.

On Page 1 of the Guidelines there is a description of "Traffic Impact Analysis Scoping Meeting." The staff did not hold a scoping meeting for this project. Despite numerous assurances to the parties of record that such a meeting would be held in the future (Paula Smith, March 15, 2018; Dave Smith, March 19, 2018) it was not held. On March 22, 2018, Assistant Planner Paula Smith informed us that, "A meeting was not held."

In the absence of such a meeting, the parties of record are denied a subsequent written report. We received such a post meeting report on the Storm Water Scoping meeting, but not on the TIA. The absence of this written record on a TIA scoping meeting forecloses the right of the parties of record to comment before the Hearing Examiner at the mandatory public hearing.

2. The TIA Guidelines call for an analysis "on the surrounding transportation system" (p. 2) and that it "shall be a thorough review of the immediate and long range effects of the new development on the transportation system." (page 3).

The staff directions to the consultant ensured that this "thorough review" would not & could not be accomplished. Thus, both the Hearing Examiner and the Parties of Record are denied a substantive basis upon which to both critique and make judgments about the effects of this application for a preliminary plat by Mr. Vo.

As is well documented by the City's own "West Olympia Access Study," or the Westside portion of the City's recent mapping for its "Transportation 2030," the "surrounding transportation system" is much greater than what the staff determined the consultant should review for this TIA. (These studies need to be included in the record for the Hearing Examiner).

The staff limited this TIA to a minor part of West Olympia. The study, therefore, did not include any traffic flows down 9th Avenue to Percival or through the rest of the northern cut-through streets such as Decatur, Milroy or Cushing. It did not include the major intersection of Harrison and Division, let alone the traffic up and down 4th avenue.

The absence of such an analysis forecloses the ability of the Hearing Examiner and the parties of record to enter the mandated hearing on a substantive basis or for the Hearing Examiner to make legitimate judgments in the presence of accurate information.

3. The City staff did not email the TIA to the parties of record thus again foreclosing their right to participate in the mandated public hearing on substantive grounds.

The City staff did email the materials from the Storm Water Scoping meeting to the parties of record as required, but it did not email the TIA to the parties of record. The City staff noted that the TIA was available on the City's website via a link that was broken and dysfunctional. Nevertheless, the availability of the City's website is not what is legally required to meet the City's obligation to notify parties of record. This obligation requires direct communication of substantive materials to the parties of record. This did not happen with the TIA.

4. City of Olympia Transportation Engineer David S. Smith indicated to the consultant that he "discuss future connection to Decatur." (March 21, 2018). This promotion by a City staff member of a flagrant violation of the City's Comprehensive Plan which deleted this connection in 2014. The promotion by this staff member calls into question again not only the integrity of the City's procedure, but also the legitimacy and purpose of the TIA itself.

The connection to Decatur that Engineer Smith and City staff are promoting is an automobile connection from the proposed 18th Avenue inside Mr. Vo's preliminary plat design east to Decatur SW. This automobile connection would exit across Mrs. George Johnson's property and into the middle of a 273 foot Bike/Pedestrian Pathway. Not only does the City have no right to cross Mrs. Johnson's property, but this Pathway is permanently closed to automobile traffic, as decided by the City Council and included in the Comprehensive Plan update of 2014.

Such an option can not legitimately come before the Hearing Examiner unless the City Council has changed its Comprehensive Plan. It has not.

5. The Southwest Olympia Neighborhood Association (SWONA) was denied what they believe to be observation rights to scoping meetings thus frustrating and foreclosing its ability to participate in the public hearing process on a substantive basis.

When SWONA was informed by CP&D Director Stahley that scoping meetings were not "public meetings" and therefore SWONA representatives would not be informed in advance or allowed to observe, SWONA asked for the City's legal opinion upon which Mr. Stahley's assertion was based. The City's attorney never provided SWONA with that opinion nor did the City Council direct the City attorney to respond.

In the absence of any written legal opinion justifying the exclusion of parties of record or SWONA from these scoping meetings by Mr. Stahley, the parties of record have unjustly been denied information pertinent to their ability to participate on a substantive basis in the public hearing.

Respectfully submitted,

Dan Leahy, Party of Record

1415 6th Avenue SW

Olympia, WA. 98502