BEFORE THE HEARING EXAMINER FOR THE CITY OF MONROE

Phil Olbrechts, Hearing Examiner

RE: Skyview Ridge Preliminary Plat & PRD 15-PLPR-0002	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.**

SUMMARY

The applicant is requesting preliminary plat and planned residential development approval for the division of an 11.45 acre (498,703sf) property into a two phased development totaling 42 single-family residential lots. Phase 1 will consist of 36 single-family homes on approximately 8.96 acres. Phase 2 will consist of six (6) single-family homes on approximately 2.49 acres. The examiner recommends Council approval of the preliminary plat and planned residential development subject to conditions.

The PRD provides a design superior to that which would be required by the subdivision criteria. As testified by staff at the hearing, the benefits derived from the PRD application are additional park and recreational spaces, trail system and benches and perimeter landscaping. No park improvements or perimeter landscaping would be required if it were just a subdivision application. The proposal also includes a significant amount of open space that is centrally located in the subdivision. Although the open space is already required by the City's critical areas ordinance, the applicant has done a good job in integrating this open space as a central focus of PRD design. The benefit to the developer is a bonus density, which allows 42 lots instead of 36 in this instance.

An adjacent property owner, Susan Davis, argued on behalf of herself and family members who own property adjoining her (Johnsons) that a stub road should connect to her property to facilitate future access and development. The adjacent properties are in the unincorporated Snohomish County and outside of the City of Monroe UGA. As outlined in the conclusions of law of this decision, the City cannot require the stub road because there is no indication that the stub road will be connected to a road system providing secondary access anytime in the foreseeable future. Case law requires that in order to justify an exaction of a road stub from a property developer, the administrative record must establish that the road stub will lead to secondary access to the developer's project and thereby mitigate against the developer's traffic impacts. No such evidence is in this administrative record.

ORAL TESTIMONY

Kristi Kyle, Monroe Senior Planner, summarized the staff report. In response to examiner questions, Ms. Kyle noted that a second access point will be constructed as part of adjoining Eaglemont subdivision development. If Eaglemont doesn't go through, then lots 1-6 won't be developed. Phase 1 could be developed without a second access point if Eaglemont isn't completed, but the conditions of approval require that the homes be sprinklered if that doesn't occur. The code allows up to 30 homes with one access point. The fire department has reviewed and approved the proposed access. The benefits derived from the PRD application are additional park and recreational spaces, trail system and benches and perimeter landscaping. No park improvements or perimeter landscaping would be required if it were just a subdivision application.

Ry McDuffy, applicant, addressed Ex. 11H and 11G. As to 11G, he noted that preliminary site work will start within the next month so any squatters on the property will have to leave at that time. As to 11H, both properties are in the county and have access to County roads. Under current zoning the property owners are entitled to cluster zoning which would give them two lots on one parcel and four on the other. The properties have access to 191st St. and Chain Link Road. The developer has done another high quality development in the city, Chain Link Estates.

Susan Davis, neighboring property owner, testified that her family owns 21.5 acres adjoining the subject property to the north. She noted that according to her father a 30-foot easement along the northern border of the subdivision was intended to be joined with an adjoining 30-foot easement immediately to the north to provide access to her property and the Davis property. The thirty-foot easement serving her property had been reserved for access when her family had transferred the intervening property to the City for its water tower. The two adjoining easements were intended to provide a through connection between 191st and 197th streets. The City decided not to pursue this access route because of pushback from the owners of utility easements located to the east of her family's property – Williams Gas and Bonneville Power. To her understanding that is why the applicant pushed his primary access further south to 132nd Place. She noted that the City is not requiring the extension of roads and utilities to her property because her property, located in the unincorporated county, is not in the City's urban growth area. However, her property is located in the County Rural Urban Transition Area (RUTA) and County policies require that these areas be developed to accommodate future urban growth. The hearing examiner for the Eaglemont development required the developer to provide off-site improvements to 197th Street for its subdivision. Ms. Davis retained the services of a professional planner, Reed Shockey, to address the access problem. He suggested the extension of proposed 194th street through Lot 16 to connect to her property in order to provide for a more coordinated street system.

Sydney Fee, neighboring property owner, testified that property along the access route to the proposal has been taken over by squatters.

Roxanne Batter asked questions of staff and the applicant.

Kristi Kyle, in rebuttal, stated that she had discussed the 194th Street extension proposed by Ms. Davis with the City Engineer. The City Engineer had stated that the City has no road circulation plan extending beyond city limits. In response to questions from the examiner, Ms. Kyle noted that she is not aware of any adopted city circulation plan, but that the circulation plan for the proposed subdivision and adjoining Eaglemont was developed during project review.

Mr. McDuffy stated that he has reviewed the title reports regarding the 30-foot easement along the north edge of the proposed subdivision and the easement doesn't provide any access to the Johnson properties. The adjoining 30-foot easements were not intended to be combined. In response to examiner questions, Mr. McDuffy noted that if 194th were punched through to Lot 16, there would be no benefit to his project, it would not create any secondary access to his proposed subdivision. He noted that the Johnson property has access to 191st through its 30-foot easement and can get to 197th through an adjoining property to the east. He acknowledged that if connections were made to 191st or 197th that the proposed 194th street extension would then give him secondary access.

Ms. Davis noted that the County's cluster and RUTA regulations should be entered into the record. The examiner said he could take judicial notice of these development standards. Ms. Davis noted that she has an ownership interest in the adjoining Johnson property to the east and that this property is 14 acres in size. Ms. Davis noted that the Davis and Johnson properties don't have access to 191st, 197th or Chain Link Road due to gas and power easements and proximity to the existing intersection of 136th and 197th Street.

EXHIBITS

Exhibits 1-17 in the "List of Exhibits" attached as Exhibit A to this decision and the following were admitted into the record during the hearing:

Exhibit 11G:	Letter from Reid Shockey dated March 22, 2016
Exhibit 11H:	Email from Tamara Krache dated March 28, 2016
Exhibit 11I:	Aerial photograph along with written comments from Susan Davis dated March 31, 2016
Exhibit 11J:	Eaglemont Plat decision
Exhibit 11K:	Assessor map of the site

FINDINGS OF FACT

Procedural:

1. Applicant. The applicant is Hansen Homes at Skyview Ridge. Ry McDuffy of Orca Land Surveying is the applicant's agent.

2. Hearing. The examiner held a hearing on March 31, 2016 at 10:00 am at the Monroe City Hall in the Council Chambers.

Substantive:

3. Site Proposal/Description. The applicant is requesting preliminary plat and planned residential development approval of an 11.45 acre (498,703sf) property into a two phased development totaling 42 single-family residential lots. Phase 1 will consist of 36 single-family homes on approximately 8.96 acres. Phase 2 will consist of six (6) single-family homes on approximately 2.49 acres. The property is located at 13207 and 13221 191st Avenue SE in Monroe. The subject property has an existing single-family residence and a vacant parcel.

The site is located east of 191st Avenue SE, north of the Eaglemont Plat. The entire property consists of three parcels totaling 11.45 acres or 498,703. The existing site is irregular in shape and is approximately 1,320-feet long running east-west and 330 to 660 feet running north-south. The grades on the site are moderate.

The property has street frontage on 191st Avenue SE. Frontage improvements will be required along 191st Avenue SE including pavement, widening, curb, gutter, planter and sidewalk. In addition, a road extension for 194th Drive SE will be required to connect these projects improvements to the future road improvements within the Eaglemont Plat at the intersection of 194th Drive SE and 133rd Street SE.

A Puget Sound Energy (PSE) transmission line easement crosses a portion of the properties and a Williams Gas pipeline easement runs through the tip of the northwest corner of the site.

Puget Sound Energy provides gas service. Electricity is provided by Snohomish County PUD No. 1. Comcast and Verizon provide cable/internet and telephone service, respectively. Republic Services provides garbage service. It is also within the Monroe Public Schools district.

Under strict application of MMC 18.10.050 and 18.10.140, the maximum number of dwelling units permissible on the site would be 36 single-family lots. Under the PRD provisions, the developer can achieve up to 47 units by dedicating additional open space (MMC 18.84.150 and MMC 18.84.080(D). However, due to the presence of critical areas on site, the applicant is proposing a Planned Residential Development totaling 42 single-family lots. Monroe's code does not set a minimum density. The project is consistent with the zoning code in that the proposal is below the maximum density for the zone. As proposed, the project meets all other bulk and dimensional requirements.

4. Characteristics of the Area. Property to the north is in unincorporated Snohomish County and is zoned Rural Residential 5. Properties to the south and east of the site are zoned R4 and share the subject property's adopted Comprehensive Plan land use designation. The property to the west of the subject property is zoned Urban Residential (UR-9600). All of the surrounding properties are developed with single-family residences, though the parcels to the south and east of the site are part of the proposed Eaglemont Plat and together will be developed with eight single-family residences.

5. Adverse Impacts. There are no significant adverse impacts associated with the development. The primary focus in subdivision is adequacy of infrastructure and as determined in Finding of Fact No. 6 the proposed subdivision will be served by adequate infrastructure. The SEPA review staff concluded that the proposal will not create any significant adverse environmental impacts.

Beyond infrastructure impacts, the only other potentially significant impacts evident from the record are wetland impacts. As conditioned, no adverse impacts to wetlands are anticipated. Critical areas on the site are limited to one Category 3 wetland located near the center of the development in Tract 994. The subject site is not within a floodplain or the shoreline jurisdiction as defined in the City's Shoreline Master Plan. Per MMC 20.05.080(D), the wetland requires a 75-foot buffer and a buffer fence (MMC 20.05.070(D)). The applicant submitted a Critical Area Study (Ex. 14) which addressed the buffer averaging and mitigation plan requirements of the City's codes. As determined in the critical area study, there will be no direct wetland impacts. Buffer impacts are proposed but as conditioned will be mitigated. No significant functional loss is anticipated.

6. Adequacy of Infrastructure/Public Services. The project will be served by adequate and appropriate infrastructure and public services. All applicable level of service standards for services and facilities are met as identified at pages 10-12 of the staff report. Adequacy is more specifically addressed as outlined below:

A. Water and Sewer Service. The City of Monroe will provide water, sewer and stormwater service. As noted in the staff report, there is sufficient capacity available in the City's public water and sanitary sewer system to serve the proposed subdivision. All lots will connect to the City's water and sewer system. Sanitary sewer and water lines will be constructed in the proposed public rights-of-way in accordance with the City's Public Works Design and Construction Standards (Ex 15).

B. Fire and Police Protection. Fire protection would be provided by Monroe Fire District No. 3. Police protection will be provided by the City of Monroe Police Department. Neither the Fire District nor the police chief cited any concerns when they reviewed the proposal.

C. Drainage. Stormwater runoff from the new public road and future lots will be collected (catch basins) and conveyed to the detention/water quality system for

the project. Roof runoff from each future single-family will directed to an individual perforated stub out connection before discharging into the conveyance system within the future road right-of-way (Ex. 16).

As part of the civil plan review process, the applicant will install improvements to the stormwater system. Stormwater management will be designed to meet the requirements of the Department of Ecology Storm Water Management Manual for Western Washington (2005) as administered by the City Engineer.

D. Parks/Open Space. The project proposes three neighborhood parks and one pedestrian access tract within the development. Tract 997 combined with Tract 988 (9,377 combined sq. ft.) will contain a tot lot and recreational open space that includes an access trail. Tract 996 (19,009 sq. ft.) is proposed to be passive recreation with no amenities. Tract 998 (17,552 sq. ft.) will contain a trail and benches as well as recreational open space (Ex. 13).

Impacts to the City park and recreation system from the anticipated additional public park users are mitigated through mitigation programs. In accordance with the City's park impact mitigation fees established under MMC Chapter 20.12, impact fees require a standard fee amount per dwelling unit as a condition of residential development within the city. Park impact fees shall be paid in accordance with MMC 20.10. Park impact fees shall be based on the fee amount in effect at the time of payment.

E. Schools. Impacts to the Monroe Public Schools and the Snohomish School District in the form of additional students are mitigated through mitigation programs. The City of Monroe has adopted the Monroe School District 2012 - 2017 Capital Facilities Plan, and imposes impact fees for schools in accordance with the plan and MMC 20.07. School mitigation fees require a standard fee amount per dwelling unit as a condition of residential development within the city. School impact fees are be based on the amount in effect at the time of payment.

RCW 58.17.110(2) requires the City to make a finding that the proposed subdivision assures "safe walking conditions for students who only walk to and from school". Students will be bussed from the development to the school by the Monroe School District. The public streets created within the subdivision include sidewalks on all sides of the street where residential lots front public roadways as well as sidewalk along the property frontage along the west side of 191st Avenue SE.

F. Streets and Traffic. Access to the development is proposed via 191st Avenue SE. Internal access to individual lots will be provided through public roads with a narrow right-of-way. The roads will accommodate two 15-foot wide drive aisles and five foot wide landscape strips and five foot wide sidewalks on each side. This public road section is not a City standard road section, but has been

administratively approved by the City Engineer as allowed by the City's Public Works and Design Construction Standards.

Frontage improvements along 191st Avenue SE include curb and gutter, a landscape strip with street trees, and a five-foot wide sidewalk along the entire length of the site frontage.

Based on the Traffic Impact Study dated May 1, 2015 and the revised traffic summary dated March 14, 2016 (Ex. 17), the development is anticipated to generate approximately 42 PM peak-hour trips. The level of service analysis shows that all of the study intersections in the TIA are anticipated to operate within acceptable thresholds.

Impacts to the City's transportation system are mitigated through the collection of traffic mitigation fees. In accordance with the City's traffic impact mitigation fee program as established under MMC Chapter 20.12, impact fees require a standard fee amount per dwelling unit as a condition of residential development within the City. Traffic impact fees shall be paid in accordance with MMC Chapter 20.12 and shall be based on the amount in effect at the time of payment. Frontage improvements and paving, including curb, gutter, sidewalk, and street trees shall be installed along all public streets within the subdivision in accordance with the City's Public Works Design and Construction Standards.

G. Davis/Johnson Requested Road Stub. The record does not establish that the Lot 16 road stub requested by Ms. Davis will materially improve upon any traffic impacts created by the proposal. This is because there is no compelling evidence that such a stub road would serve as a secondary access to the Skyview Ridge development in the foreseeable future.

Overview. As an overview of this issue, and as outlined in Conclusion of Law No. 17, the City can only take property away from the applicant in order to create a stub road if such a road would help alleviate a problem caused by the development. Secondary access to the Skyview Ridge development in Phase I is dependent upon the completion of the Eaglemont project. Consequently, a stub road would arguably improve upon traffic flow and safety by serving as a backup access point should Eaglemont not be completed. However, there is no evidence to suggest that the stub road will ever provide secondary access anytime in the near future as there was no evidence presented on the timeframe for anticipated development of the Davis properties. Without indication as to when development will occur, it cannot be determined that the proposed stub road would provide any material mitigation to the traffic impacts of the proposal.

Background. As background, during the hearing, the examiner was presented for the first time with a request that the applicant extend proposed 194th St. through proposed Lot 16 to end in a stub road to provide access to parcels owned by Susan Davis and related family members, the Johnsons. This request was submitted via

the admission of Ex. 11G and 11I (the Davis properties are identified as Johnson and Davis in the aerial). The Davis parcels adjoin the subject property to the north and are best depicted in the aerial photograph of Ex. 11I. The parcels apparently total 21.54 acres. The parcels are located outside the City's urban growth area, but are located within the County's Rural Urban Transition Area ("RUTA") designation, which anticipates future inclusion of the designated properties in an urban growth area. Ms. Davis also notes that her family's properties could currently be divided into a cluster subdivision pursuant to Chapter 30.41C Snohomish County Code and that land must be set aside under these cluster regulations for potential urban development should the property be re-designated as within an urban growth area.

As further background, as depicted in the aerial of Ex. 11I, the Johnson property fronts 191st Ave SE with a narrow 30-foot wide panhandle. This panhandle is a 30-foot easement that provides access to the Davis and Johnson properties. The subject property has an adjoining 30-foot wide easement immediately to the south. According to Ms. Davis, the intent behind this easement was to merge them into a 60-foot wide access road that connects 191st Ave to 197th Ave. The applicant testified there is nothing recorded to support this position. According to Ms. Davis, the City determined that the access easement along the north of the property could not serve as access to the project because of utility easements that cross the easement to the east of the Davis properties. According to Ms. Davis, this is why the applicant proposed its primary access road as 132nd Pl. SE, to the south.

Access to 191st Avenue from the Davis/Johnson Properties. Mr. Shockey raises a compelling point in Ex. 11G that Skyview Ridge is at least partially responsible for access limitations to the Davis properties. As shown in the plat map included in Exhibit 11I, 132nd St. will connect to 191st Ave less than 75 feet south of the Davis 30-foot access easement. Mr. Shockey asserts in Ex. 11G that this distance between intersections would be too small to be authorized by the City. Mr. Shockey does not identify any code citation to support his claim. However, the City does not dispute this claim and Mr. Shockey is a professional planner. If the Davis properties are fully subdivided through clustering (or subdivision if the properties later become designated urban growth areas), it is plausible that City engineering staff would consider the Davis easement connection with 191st as unsafe. Arguably, therefore, the applicant's 191st connection could be considered as a contributing factor to the access problems of the Davis properties. However, a greater contributing factor appears to be the utility easements and the lack of street frontage along 191st.

Johnson/Davis Properties Not Landlocked. Ultimately, the primary "problem" created by a proposed subdivision that would justify a secondary access would be the need for multiple access points for emergency access, multiple egress/evacuation routes, and multiple access points to distribute traffic volume. As noted elsewhere in this recommendation, Phase I of the subdivision is

dependent upon the development of Eaglemont for its second access point. It is therefore possible, although unlikely, that Eaglemont may not be completed and Phase I would be left with one access point. Consequently, a second access point through Lot 16 as proposed by Ms. Davis would arguably mitigate Skyview Ridge traffic impacts if there was some compelling evidence that the stub road would be developed into a second connection into the surrounding road system, ultimately leading to 191st, 197th or Chain Link Road. Ms. Davis argued against her interest on this point[1], appearing to testify during the hearing that her property would be completely landlocked without a connection to Skyview Ridge, asserting that utility easements and the proximity of other intersections do not make any other connections possible. However, Ms. Davis' planner, Reid Shockey, acknowledged in his written submission, Ex. 11G, that a single connection could be made to 197th without Skyview Ridge. Given the large size of the Davis parcels, their extensive street frontage along 197th and Chain Link Road and the expertise of Mr. Shockey, it is determined that the Davis properties will not in fact be landlocked absent a connection to Skyview Ridge.

Development Timeline is Uncertain Outside of Designated UGA. Although it certainly appears to be within the realm of possibility that the Lot 16 stub road could someday be extended to 191st, 197th or Chain Link Road, there is nothing in the record to support a finding that this will be done any time in the foreseeable future. Although development has certainly been occurring at a steady pace within the adjoining UGA, there was no evidence presented to show that RUTA properties in the area are being developed at any significant rate. In point of fact, one may expect an owner of RUTA property to wait until its property is designated a UGA in order to take advantage of the greater densities allowed for UGA properties. No evidence was presented that such a re-designation would occur any time soon. To exacerbate matters, the Davis properties aren't in the City of Monroe. This split in jurisdictional review increases the possibility that if the Davis properties are developed, Snohomish County may decide to not even use the stub road as a connection point with Skyview Ridge due to its different development standards and different engineering staff.

7. Superior Design. The PRD provides a design superior to that which would be required by the subdivision criteria. As testified by staff at the hearing, the benefits derived from the PRD application are additional park and recreational spaces, trail system and benches and perimeter landscaping. No park improvements or perimeter landscaping would be required if it were just a subdivision application. The proposal also includes a significant amount of open space that is centrally located in the subdivision. Although the open space is already required by the City's critical areas

[1] It violates the takings clause to make a developer give up property to provide to landlocked properties. See *Luxembourg Group v. Snohomish County*, 76 Wn. App. 502, review denied, 127 Wn.2d 1005 (1995).

ordinance, the applicant has done a good job in integrating this open space as a central focus of PRD design.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. MMC 21.20.050(F) provides that the Examiner shall hold hearings and make recommendations to the City Council on applications for preliminary plat and PRD approval.

Substantive:

2. Zoning and Comprehensive Plan Designation. The project site is zoned Residential four dwelling units per acre (R4) with a vested Comprehensive Plan land use designation of Residential 2-5 dwelling units per acre. Under the recently adopted Comprehensive Plan (December 8, 2015), the site's land use designation is Low Density SFR.

3. Review Criteria and Application. Subdivision criteria are specifically governed by MMC 17.12.030(H). PRD standards are governed by MMC 18.84.080. In addition, MMC 21.50.030(C) imposes standards that apply to all development reviewed by the hearings examiner. Applicable code provisions are quoted below in italics and applied through corresponding Conclusions of Law.

Subdivision Criteria

MMC 17.12.030(H): *... The hearing authority shall inquire into how the public interest of future residents of the preliminary plat are to be served by the subdivision and its dedications. It shall determine if provisions are made to protect the public health, safety and general welfare by the provision of open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary waste, parks, playgrounds, sites for schools and school grounds and shall consider all other relevant facts and determine whether the public interest of the future residents of the subdivision will be served by the dedications therein:*

> *1. The hearing authority shall consider if the proposed subdivision conforms to the comprehensive plan and the Shoreline Master Program;*

2. The hearing authority shall consider the physical characteristics of a proposed subdivision site and may recommend disapproval of a proposed plat because of improper protection from floods, inundation or wetland conditions;
3. All identified direct impacts must be mitigated or meet concurrency as set forth in MMC Title 20.

4. Adequate provisions are made for infrastructure and there are adequate public services available as determined in Finding of Fact No. 6. Beyond infrastructure and public service needs, the project adequately provides for the public health, safety and general welfare because there are no significant adverse impacts associated with the proposal as determined in Finding of Fact No. 5 and the proposed infill serves to satisfy the City's obligations to accommodate its growth population targets assigned by Snohomish County under the GMA. The project is consistent with the comprehensive plan as outlined in the staff report and also for the reason that the proposal provides for residential development with design features that assure its compatibility with surrounding residential uses. The project is more than 200 feet from any shoreline of the state or associated wetland and is, therefore, not subject to the jurisdiction of the Shoreline Management Act. The site is not in a floodplain. Wetlands are adequately protected as determined in Finding of Fact No. 5. The proposal meets all applicable level of service standards as determined in Finding of Fact No. 6.

MMC 21.50.030(C): *Required Findings. In drafting a recommendation, the hearing examiner shall address the following, as required in the findings of fact:*

1. The development is consistent with the comprehensive plan and meets the requirements and intent of this code.
2. The development makes adequate provisions, if appropriate, for open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds.
3. The development adequately mitigates impacts identified under Chapters 17.12, 18.84, and 20.04 MMC, and the sensitive area guidelines adopted by resolution.
4. The development is beneficial to the public health, safety and welfare and is in the public interest.
5. The development does not lower the level of service on the following public facilities and services below the minimum standards established within the comprehensive plan:
a. Potable water;
b. Wastewater;

c. Storm water drainage;
d. Police and fire protection;
e. Parks and recreation;
f. Arterial roadways; and
g. Public schools.

If the development results in a level of service lower than those set forth in the comprehensive plan, the development may be approved if improvements or strategies to raise the level of service above the minimum standard are made concurrent with the development, subject to the requirements of Chapter 20.06 MMC.

6. The area, location, and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of development, and are proportional to the impacts created by the development.

5. As noted in Finding of Fact No. 6, the proposal does not lower level of service standards for public services below adopted levels. The proposal is consistent with the densities required by the applicable comprehensive plan land use designation as outlined at pages 3-4 of the staff report. As demonstrated in the staff report and this decision, the proposal is consistent with all applicable code requirements. As conditioned, there are no significant adverse impacts associated with the proposal as determined in Finding of Fact No. 5. Since there are no significant adverse impacts associated with the proposal and proposed infill help to accommodate GMA required growth targets, the proposal is beneficial to public health, safety and welfare and is in the public interest. The streets required for dedication are necessary to provide safe access to the lots proposed by the subdivision and are, therefore, needed to mitigate the effects of the proposal. As the dedicated right of way is only necessary because of the proposed development and will be largely used by vehicles accessing or departing the proposed subdivision, the required right of way is proportional to the impacts created by the development.

PRD Criteria

MMC 18.84.120(A): *The city shall*[2] *approve a preliminary development plan if the plan meets the following criteria:*

[2] Curiously, MMC 18.84.120(A) mandates approval of a PRD without reference to compliance with MMC 18.84.080, which sets additional requirements for PRDs. The staff report contains a detailed analysis of compliance with MMC 18.84.080. Although compliance with MMC 18.84.080 is arguably

A. The PRD is in accordance with the comprehensive plan; and

6. As previously concluded, the PRD is consistent with the comprehensive plan.

MMC 18.84.120(B): *The PRD accomplishes a development that is better than that resulting from traditional development and provides a net benefit to the city. A net benefit to the city may be demonstrated by the following:*

1. Conservation of natural features and sensitive area,
2. Placement, style or design of structures,
3. Recreational facilities,
4. Interconnected usable open space,
5. Provision of other public facilities,
6. Aesthetic features and harmonious design, and
7. Energy-efficient site design and/or building features.

7. As determined in Finding of Fact No. 7, the PRD provides for superior design. The benefits derived from the PRD application are additional park and recreational spaces, trail system and benches and perimeter landscaping that would not otherwise be required by the City's subdivision standards. The central location of the open space, its interconnectedness and the integration of trails into the open space should also be considered a superior design feature to some extent, although the location of these centrally located tracts is largely dictated by the City's critical area ordinance, which would also apply to subdivisions. The PRD also provides for superior design because it satisfies the PRD standards set by MMC 18.84.080, for the reasons identified in the staff report.

MMC 18.84.120(C): *The PRD will be served by adequate public facilities including streets, fire protection, water, storm water drainage, and sanitary sewer for acceptable waste controls, as demonstrated by the submittal and review of plans for such facilities as described under MMC 18.84.060; and*

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not required for approval of the PRD given the "shall" language of MMC 18.84.120(A), it is concluded as a matter of law that the PRD complies with MMC 18.84.080 for the reasons identified in the staff report. Further, satisfying the requirements of MMC 18.84.080 is construed as a pre-requisite for a determination that the PRD provides for superior design, as mandated by MMC 18.84.120(B).

8. As determined in Finding of Fact No. 6, the proposal is served by adequate public facilities as required by the criterion above.

MMC 18.84.120(D): *The proposed landscaping within the PRD's perimeter is superior to that normally required by the city; and*

9. The PRD project proposes perimeter landscaping, which according to staff would otherwise not be required for the proposal.

MMC 18.84.120(E): *At least one major circulation point is functionally connected to a public right-of-way; and*

10. All the interior roads ultimately connect to exterior public roads.

MMC 18.84.120(F): *The open space within the PRD is integrated into the design of the project rather than an isolated element; and*

11. The open space of the PRD is well integrated into the PRD design. The open space serves as a central focal point and view enhancement for a majority of the homes in the PRD.

MMC 18.84.120(G): *The PRD is compatible with the adjacent development; and*

12. The PRD is compatible with adjacent development. Surrounding development is predominantly single-family residential. The subject property has an existing single-family residence and a vacant parcel. All of the surrounding properties are developed with single-family residences, though the parcels to the south and east of the site are part of the proposed Eaglemont Plat and together will be developed with eight single-family residences. Eaglemont provides for the same or similar densities to that proposed for the PRD.

MMC 18.84.120(H): *Undeveloped land adjoining the PRD may be developed in coordination with the PRD; and*

13. Access with the pending Eaglement development has been coordinated to the extent that a road from Eaglemont will serve as secondary access to the proposal.

MMC 18.84.120(I): *The PRD is harmonious and appropriate in design, character and appearance to the existing or intended character of development in the immediate vicinity; and*

14. For the reasons identified in Conclusion of Law No. 12, the proposal is harmonious and appropriate in design etc. with surrounding development. The extensive amount of open space and superior landscaping amenities further enhances he compatibility of the proposal.

MMC 18.84.120(J): *Roads, streets and sidewalks, existing and proposed, comply with the standards and requirements of this chapter and the Monroe Municipal Code; and*

15. City public works staff have reviewed the plat drawings and found the proposed design for streets and sidewalks to be consistent with applicable City standards.

MMC 18.84.120(K): *Each phase of the PRD, as it is completed, shall contain the required parking spaces, open space, recreation facilities, landscaping, and utility area planned for that phase.*

16. Compliance with the amenities proposed in the PRD shall be required for final PRD approval as required by MMC 18.84.070(C).

Requested Stub Road

17. Davis/Johnson Requested Road Stub. The City cannot legally require the application to provide a stub road at Lot 16 because there is insufficient evidence to establish that the stub road can be used for secondary access to the Skyview Ridge development within the foreseeable future.

The pertinent case on this issue is one of the infamous "road to nowhere" cases, *Unlimited v. Kitsap County*, 50 Wn. App. 723 (1988). As in this application, Kitsap County required the dedication of right of way in *Unlimited* for a proposed subdivision to connect to adjoining undeveloped property. The *Unlimited* court found the dedication to be an unconstitutional taking without compensation, since "*there is no expectation that the Berg/Carlson [adjoining vacant land] is to be developed at the same time as the Unlimited's development, or for that matter, any time soon*." As explained in another "road to nowhere case", in order to justify the taking of road right of way, the government has the burden of proving that the right of way is necessary to solve a problem created by the development and that the solution (taking the right of way) is proportional to the problem. *See Burton v. Clark County*, 91 Wn. App. 505 (1998). *Burton* also found a taking, because the government was unable to establish that the future connection for a required road stub in a planned unit

development would be built anytime in the foreseeable future. 91 Wn. App. at 528-29.

As determined in Finding of Fact No. 6G, the preponderance of evidence does not establish that a connection to the requested Lot 16 stub road would be built anytime within the foreseeable future. This situation is somewhat distinguishable to *Burton* and *Unlimited* in that the applicant of this case might be partially responsible for one of the access limitations of the Davis properties as identified in Finding of Fact No. 6G, but any such contributing factor is relatively modest. The majority of access problems suffered by the Davis properties are not attributable to the Skyview Ridge development and requiring the loss of Lot 16 (as well as probably one other lot) would not be proportional to the scope of the Davis access issues.

DECISION

The proposed preliminary plat and PRD are found to be consistent with all applicable development regulations for the reasons identified in the Conclusions of Law. It is recommended that the City Council approve the Skyview Ridge preliminary plat and PRD applications (15-PLPR-0002) subject to the following conditions:

1. The applicant shall submit housing elevation drawings (similar to those provided at the preliminary stage) concurrent with building permit submittal demonstrating compliance with the housing standards per MMC section 18.84.080(G).

2. The applicant shall provide a copy of the Covenants, Conditions, and Restrictions (CC&R's) to the City for review at the time of submittal of final PRD per MMC section 18.84.080(E).

3. All street frontage landscaping/irrigation improvements shall be bonded until such time that housing construction is completed.

4. Irrigation is required for all street trees and newly planted vegetation within the right-of-way and within Tracts (where applicable and required by the City). The applicant shall submit an irrigation plan prior to construction for review and approval by the City.

5. The NGPE split-rail fencing shall be identified on the landscape and civil plans consistent with the Critical Area Study.

6. The applicant shall post a performance/maintenance bond prior to issuance of a clearing and/or grading permit for the work outlined in the Wetlands Buffer Mitigation Plan per MMC 20.05.130.

7. The applicant shall obtain a General Construction Stormwater NPDES Permit from the WA Department of Ecology (DOE) prior to beginning construction per MMC section 15.01.045.

8. The project shall implement all mitigation measures included in the environmental checklist based on the latest versions of any referenced reports, plans, or supporting documents made record as exhibits accompanying this Staff Report and Recommendation for the project or subsequent versions approved by the City.

9. The applicant shall obtain all the necessary permits associated with the project from the City.

Dated this 14th Day of April 2016.

Phil A. Olbrechts

City of Monroe Hearing Examiner