

**BEFORE THE HEARING EXAMINER  
FOR THE CITY OF ARLINGTON**

In the Matter of the Application of	)	No. PLN#771
	)	
<b>Grandview North, LLC</b>	)	<b>The Lux CUP</b>
	)	
	)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit to allow development of a 132-unit, multi-family housing and commercial mixed-use development, known as “The Lux,” on two parcels totaling 3.2 acres, located between the 20000 and 21000 blocks of Olympic Place NE, is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed use.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on May 4, 2021, using remote technology. The record was left open until May 6, 2021, to allow for the submission of any additional comments.

Testimony:

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

Marc Hayes, City Community and Economic Development Director  
Randy Devoir, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, with Attachment A, The Lux Site Plan; Attachment B, 4th Floor Mitigation Narrative; and Attachment C, Code Requirements, revised May 7, 2021
2. Certification of Public Notice, dated April 27, 2021
3. Land Use Application – Conditional Use Permit, received November 6, 2020
4. The Lux CUP Narrative, received November 6, 2020
5. Letter from Josh Hogan, Cascade Surveying & Engineering, Inc., to City of Arlington, 4th Floor Mitigation Narrative, dated March 8, 2021
6. Vicinity Map, received November 6, 2020
7. City of Arlington, Water & Sewer Availability, dated December 7, 2020
8. Traffic Impact Analysis, Gibson Traffic Consultants, Inc., dated September 2020

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9. Drainage Report, Josh Hogan, Cascade Surveying & Engineering, Inc., dated October 2020
10. Geotechnical Engineering Report, GeoTest Services, Inc., dated October 30, 2020
11. Archaeological Site Alteration, Excavation, and Monitoring Permit Application Coversheet, dated September 15, 2020
12. City of Arlington Unanticipated Discovery of Cultural Resources and Human Skeletal Remains Plan, undated
13. SEPA Environmental Checklist, dated November 18, 2020
14. Complete Streets Checklist, approved December 2, 2020
15. Public Notice mailing labels, received November 6, 2020
16. Conceptual Landscape Plan (Sheets L1 and L2), dated October 13, 2020
17. Plans:
  - a. Site Plan (Sheet 1 of 2), dated March 8, 2021
  - b. Lighting Plan (Sheet 2 of 2), dated March 8, 2021
18. Four elevation drawings sheets (undated), received November 6, 2020
19. Three color rendering sheets (undated), received November 6, 2020
20. Residential grade classic turn of the century lighting specifications (two sheets -undated), received November 6, 2020
21. Site dumpster enclosure photo (undated), received November 6, 2020
22. Notice of Neighborhood Meeting, dated November 17, 2020
23. Neighborhood Meeting (December 1, 2020) Minutes
24. Notice of Application, dated March 25, 2021
25. Notice of Complete Application, dated March 25, 2021
26. Notice of Public Hearing, undated
27. SEPA Threshold Determination – MDNS, dated March 25, 2021
28. Comment email from Elbert H. Esparza, Jr., Snohomish County Department of Public Works, dated March 25, 2021, with email string
29. Comment email from Kerry Lyste, Stillaguamish Tribe of Indians, dated March 26, 2021, with email string
30. Comment email from Stephanie Jolivette, Department of Archaeology & Historic Preservation, dated March 25, 2021, with email string; Archaeological Monitoring Permit No. 2020-52, issued November 9, 2020; letter from Lance Wollwage, Department of Archaeology & Historic Preservation, dated November 9, 2020
31. Letter from Snohomish County PUD No. 1 to City of Arlington, electric system capacity, dated March 30, 2021

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. Grandview North, LLC (Applicant), requests approval of a conditional use permit (CUP) to allow development of a 132-unit multi-family housing and commercial mixed-use

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development, known as “The Lux.” The proposed development would include two, four-story buildings (Buildings 1 and 2) fronting Olympic Place NE that would be connected via a skybridge and would contain ground-floor retail units and residential units on the upper floors, as well as a three-story residential building (Building 3) at the rear of the property. Associated improvements would include a parking lot with 178 parking spaces, drive aisles, and sidewalks; a 17-space parking garage within proposed Building 2; stormwater infiltration facilities; and street frontage improvements along Olympic Place NE. The project would include an outdoor plaza, located between the mixed-use buildings along Olympic Place NE, which would provide a pedestrian entryway from the west and outdoor space for residents. Other associated amenities would include a children’s playground, a basketball court, a dog run, and picnic tables throughout the site. The 3.2-acre property, consisting of two parcels, is located between the 20000 and 21000 blocks of Olympic Place NE.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 3; Exhibit 4; Exhibit 5; Exhibits 16 through 21.*

2. The City of Arlington (City) determined that the application was complete on March 25, 2021.<sup>2</sup> The same day, the City provided notice of the application by mailing or emailing notice to property owners within 500 feet of the site and to reviewing departments and agencies, publishing notice in the *Everett Herald*, and posting notice on-site, with a comment deadline of April 8, 2021. The City provided notice of the open record hearing associated with the application by posting notice on-site on April 15, 2021; by mailing or emailing notice to property owners within 500 feet of the site and to reviewing departments and agencies on April 16, 2021; and by publishing notice in the *Everett Herald* on April 19, 2021. The City did not receive any comments from members of the public in response to its notice materials prior to the close of the record on May 6, 2021.. *Exhibit 1, Staff Report, pages 3 and 5; Exhibit 2; Exhibit 24; Exhibit 25; Exhibits 28 through 31.*

#### State Environmental Policy Act

3. The City Department of Community and Economic Development (DCED) acted as lead agency and analyzed the environmental impacts of the proposal under the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington. DCED reviewed the Applicant’s Environmental Checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, DCED issued a Mitigated

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<sup>1</sup> The property is identified by tax identification numbers 00847300001200 and 00847300001300. *Exhibit 1, Staff Report, page 3.* A legal description of the property is included with the site plan. *Exhibit 17.a.*

<sup>2</sup> On November 19, 2020, the City provided notice of a pre-application neighborhood meeting associated with the proposal, as required by the municipal code, by mailing notice to property owners within 500 feet of the site, posting notice on-site, and publishing notice in the *Everett Herald*. The pre-application neighborhood meeting on the proposal was held on December 1, 2020. *Exhibit 1, Staff Report, pages 3 and 5; Exhibit 2; Exhibit 22; Exhibit 23.*

Determination of Nonsignificance (MDNS) for the proposal on March 25, 2021. The MDNS requires the Applicant to:

- Implement Best Management Practices (BMPs) during and after construction in accord with Washington State Department of Ecology (DOE) requirements for Stormwater Pollution Prevention and Temporary Erosion and Sediment Control (TESC).
- Submit a Construction Management Plan to ensure dust control measures are implemented during construction.
- Follow the current edition of the DOE Stormwater Management Manual for Western Washington.
- Plant native grasses and street trees in compliance with Chapter 20.76 of the Arlington Municipal Code (AMC).
- Comply with Washington State Energy Code requirements.
- Comply with current code requirements for reducing or controlling environmental health hazards.
- Comply with City noise ordinances during construction.
- Comply with the specific requirements for allowing four-story buildings to be constructed in the Transect 4 Flex area of the Mixed Use Village Center place type.
- Install street trees along all streets associated with the development in accordance with AMC 20.76.110.
- Install light fixtures that are down shielded to mitigate for potential light pollution.
- Provide required on-site usable open space and pay required community park mitigation fees.
- Stop construction activity, notify local authorities, and follow the submitted unanticipated discovery plan if any potential evidence of archeological resources is discovered on the site.
- Replace existing driveways not being used with curbs, gutters, and sidewalks; replace any non-ADA compliant sidewalk; and install new on-site drive aisles and sidewalks to improve pedestrian, bicycle, and vehicular access to and within the site.
- Pay traffic and school mitigation fees.
- Connect to City water and wastewater systems.

*Exhibit 27.*

4. The City provided notice of the MDNS on March 25, 2021, by mailing or emailing notice to property owners within 500 feet of the site and to reviewing departments and agencies, publishing notice in the *Everett Herald*, and posting notice on-site, with a comment deadline of April 8, 2021. The MDNS was not appealed but the City received the following comments from reviewing agencies during the SEPA process:

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- Snohomish County Public Works submitted a comment stating that the proposal would not impact county roads or county capital improvement projects and, therefore, would not be subject to mitigation under the interlocal agreement between Snohomish County and the City.
- The Stillaguamish Tribe of Indians noted that the Applicant should be required to obtain an archaeological site excavation permit from the Washington State Department of Archaeology and Historic Preservation (DAHP) and requested that the Applicant provide the Tribe with notice of when field work at the site would take place.
- DAHP submitted a comment noting that it had reviewed relevant materials, including cultural resources requirements in the MDNS, and had issued an archaeological monitoring permit for the project.
- Snohomish County Public Utility District No. 1 (PUD) submitted a comment noting that it currently has sufficient electric system capacity to serve the project but that existing PUD facilities in the area may require upgrading. PUD also noted that the Applicant would be required to provide PUD with suitable easements on all parcels where electrical facilities would be installed to serve the proposed development.

*Exhibit 1, Staff Report, pages 3, 5, 6, and 11; Exhibit 2; Exhibit 11; Exhibit 13; Exhibits 27 through 31.*

#### Comprehensive Plan and Zoning

5. The property is designated “General Commercial” under the City Comprehensive Plan. The purpose of the General Commercial designation is to provide a setting for commercial, office, and professional service uses of a moderate sized format that rely on motor-vehicle traffic. *City Comprehensive Plan, sec. 5.3.* The General Commercial designation is intended to be situated along arterials and to serve as a transition area between Highway Commercial designations and residential designations. *City Comprehensive Plan, sec. 5.3.* It is generally characterized as an active automobile and pedestrian environment with commercial buildings situated toward high-volume thoroughfares with parking located to the sides of buildings. *City Comprehensive Plan, sec. 5.3.* The General Commercial designation encourages mixed-use development, subject to master plan and design review. *City Comprehensive Plan, sec. 5.3.* City staff determined that the proposal would be consistent with the following goals and policies of the City Comprehensive Plan:
  - “Ensure the development of new multi-family housing and small single-family units occur within close proximity to commercial areas within the City.” [Goal GH-2]
  - “Multi-family housing should be located close to commercial and employment centers, transportation facilities, public services, schools, and park and recreation areas.” [Policy PH-2.1]

- “Utilize Mixed Use mechanisms to incentivize housing within close proximity to commercial uses.” [Policy PH-2.3]
- “Encourage the development of special needs housing within the city.” [Goal GH-4]
- “Site design and building architecture in residential and commercial developments should be human-scaled (i.e., pedestrian friendly) and conducive to social interaction.” [Policy PO-6.1]
- “Land-use developments should be conducive to social interaction.” [Policy PO-6.4]

*Exhibit 1, Staff Report, page 3.*

6. The property is located in the City’s General Commercial (GC) zoning district. The GC zone is designed to accommodate a mix of intensive commercial activities and high-density residential uses and is intended to be located along arterials to cater to commuters or as a transition in some areas between a highway commercial zone and a residential zone. *AMC 20.36.020(d)*. Under AMC Table 20.40-1, mixed-use, multi-family housing developments are an allowed use in the GC zone with a conditional use permit, subject to compliance with mixed-use development regulations under Chapter 20.110 AMC. As discussed in more detail below, the Applicant proposes to utilize the City’s mixed-use overlay, which allows commercially zoned properties to site retail, commercial, professional, and certain manufacturing uses along street frontages while allowing for higher density residential uses to occur on the remainder of the property. The property is also located within Subdistrict C of the Airport Protection (AP) District Overlay. The purpose of the AP district overlay is to protect the viability of the Arlington Municipal Airport as a significant resource to the community by encouraging compatible land uses and densities, reducing hazards to lives and properties, and ensuring a safe and secure flying environment. *AMC 20.38.010(a)*. The Applicant would ensure that the project complies with requirements for development within Subdistrict C of the AP district overlay. *Exhibit 1, Staff Report, pages 2, 4, 8, 16, and 17.*
7. The City has adopted mixed-use development regulations to “establish clear policies, implementation strategies, and design standards to guide public and private investment in a coordinated manner.” *AMC 20.110.012(a)*. In doing this, the City has adopted an “alternative approach to conventional zoning called ‘Form Based Code,’” a concept that reinforces “walkable, sustainable mixed-use environments and development that builds upon community character.” *AMC 20.110.012(b)*. The purpose of form-based codes is to “foster predictable built results and a high-quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code.” *AMC 20.110.012(b)*. The project site is located within a “Place Type” that is designated “Mixed Use Village Center.” *AMC 20.110.014(c)(3)*. Under the form-based code, Place Types are further categorized by “Use Intensity Transects.” The property is located within Transect 4 Flex (T4-F), which allows a “[m]ix of medium density building types with a variety of forms which decrease in size and intensity of use toward the outer

boundary of the center.” *AMC 20.110.014(c)(3)*. The intent of the T4-F area is to provide “an appropriate transition from a neighborhood main street environment into the residential areas, and to provide flexible buildings that can allow a mix of residential and walkable local serving commercial and service uses.” *AMC 20.110.014(c)(3)*. *Exhibit 1, Staff Report, pages 2, 3, and 12.*

8. The City’s mixed-use development regulations (AMC 20.110.014) provide specific guidelines on appropriate building types and frontages, with specific standards related to blocks, rights-of-way, thoroughfares, parking, civic and open spaces, landscaping and screening, low-impact design (LID) for stormwater management, outdoor lighting, and architecture. City staff analyzed the proposal and determined that these requirements would be met, noting:

- The Lux mixed-use apartment project would be located in the T4-F use intensity transect, which allows a mix of medium-density building types with a variety of forms that decrease in size and intensity of use toward the outer boundary of the center.
- The project would be consistent with the stated intent of the T4-F area.
- The project would be consistent with permissible uses in the T4-F transect of the Mixed Use Village Center place type.
- Proposed frontage improvements and landscaping along the frontage of Olympic Place NE would serve the general intent of frontage standards under AMC 20.110.014(d).
- The proposed buildings are similar in character to the Stacked Flat and Courtyard buildings forms listed as acceptable in the T4-F area. The Applicant proposes a Stacked Flat building type for proposed residential Building 3 and Courtyard building forms for proposed mixed-use Buildings 1 and 2. The Stacked Flat building type is described as a medium- to large-sized structure consisting of multiple dwelling units accessed from a courtyard or series of courtyards. Each unit may have its own individual entry or may share a common entry. The Stacked Flat building type is appropriately scaled to fit adjacent to neighborhood-serving main streets and walkable urban neighborhoods. The Courtyard building type is described as a medium- to large-sized building typically located at the front of a lot. The structure consists of multiple stacked and/or adjacent units accessed primarily from a courtyard defined on three sides by the building and open on one side to the fronting street. The shared courtyard provides a place of common yard or gathering space and would be best suited along a main street or in higher density neighborhoods.
- The T4-F transect of the Mixed Use Village Center place type limits buildings to three stories, with four-story buildings allowed for affordable housing development, Leadership in Energy and Environmental Design (LEED) or equivalent certified buildings, or if the development would provide on-site civic space with the same square footage as the additional floor or would pay a fee in lieu of on-site civil space amounting to 25 percent of the construction costs for the

additional floor. The project would meet these requirements by providing 10,700 square feet of on-site civic space as mitigation for the fourth floor of proposed Building 2 and by paying a \$283,649.08 fee in lieu of on-site civic space as mitigation for the fourth floor of proposed Building 1.

- The project would be consistent and compatible with applicable block standards under AMC 20.110.014(f)(1) by orienting proposed Buildings 1 and 2 toward Olympic Place NE and by providing for a walkable community and connectively with surrounding uses.
- The project would be consistent and compatible with applicable right-of-way standards under AMC 20.110.014(f)(2) by placing street trees along Olympic Place NE in accordance with AMC 20.76.110.
- The T4-F transect of the Mixed Use Village Center place type requires a minimum of one parking space per 1,500 square feet of residential uses and one parking space per 1,500 square feet of retail or service uses greater than 3,500 square feet. The Applicant proposes to install 195 parking spaces, exceeding the minimum 78 parking spaces required for the project.
- Several amenities would be provided, including a children's playground, a basketball court, a dog run, and picnic tables throughout the site.
- The project's proposed landscaping along the frontage of Olympic Avenue NE would meet landscape screening standards of AMC 20.110.014(i).
- The Applicant has submitted stormwater management plans that cite Table 2.5.1 of the Western Washington Stormwater Manual, which covers the means of compliance with Low Impact Development Performance Standards and Best Management Practices. The City will review the stormwater plans for compliance with these standards.
- The project would be conditioned to require compliance with outdoor lighting standards for LZ-4 lighting zones.
- The project has been verified to show consistency and compatibility of design, including four-sided design, shielding of roof top mechanical structures, and compatible materials for all structures being developed.

*Exhibit 1, Staff Report, pages 12 through 14.*

#### Existing Site and Proposed Development

9. The approximately 3.2-acre property is generally flat and is undeveloped, apart from an existing paved access driveway located within an access easement along the south property line and an existing gravel road that traverses the property and provides access to Portage Creek to the north and east of the site. The remainder of the property consists of a maintained grass pasture, with no significant trees on-site. The property is bounded by Olympic Place NE to the west, a vacant lot and Portage Creek to the north, Portage Creek to the east, and two retail businesses and a vacant lot to the south. The property does not contain any critical areas. *Exhibit 1, Staff Report, pages 2 and 11; Exhibit 9; Exhibit 10.*



10. As noted above, the Applicant seeks approval of a CUP to allow development of a 132-unit, multi-family residential and commercial mixed-use development consisting of three major structures. Buildings 1 and 2 would front Olympic Place NE, would be connected via a skybridge, and would contain 75 residential units on the upper levels and 14,500 square feet of commercial space on the first floor, with a 17-space parking garage in Building 2. The Applicant submitted a Fourth Floor Mitigation Narrative addressing the requirements under AMC 20.110.014(c)(3) for allowing Buildings 1 and 2 to be constructed with four stories. As noted above, the Applicant proposes to meet the requirements for constructing four-story buildings in the T4-F transect of the Mixed Use Village Center place type by providing 10,700 square feet of on-site civic space to mitigate for the fourth floor of Building 2 and by paying \$283,649.08 as a fee in-lieu to mitigate for the fourth floor of Building 1, consistent with the requirements of AMC 20.110.014(c)(3). Building 3 would be three stories and would contain 57 residential units. The project would also include several associated amenities, including an outdoor plaza between Buildings 1 and 2, a 178-space parking lot with drive aisles and pedestrian walkways, a children's playground, a basketball court, a dog run, and picnic tables throughout the site. *Exhibit 1, Staff Report, pages 1, 2, 12, and 13; Exhibit 3; Exhibit 4; Exhibit 5; Exhibits 16 through 19.*
11. Property to the north of the subject property is zoned GC and Residential High Capacity and consists of vacant land, Portage Creek, and residential development (across Portage Creek). Property to the east is zoned GC and consists of Portage Creek. Property to the south is zoned GC and consists of two auto parts stores and vacant property. Property to the east is zoned GC and contains a Safeway grocery store. *Exhibit 1, Staff Report, page 4; Exhibit 6.*

#### *Stormwater*

12. Cascade Surveying and Engineering, Inc., prepared a Preliminary Drainage Report for the Applicant, dated October 2020. All stormwater runoff would be fully infiltrated on-site. Stormwater runoff from roof areas, the courtyard, and the sports court would be routed to individual infiltration trenches, and stormwater runoff from pollution-generating surfaces would be routed to infiltration trenches with 18 inches of underlying amended soils for water quality treatment. The City would review the Applicant's final stormwater management plan for compliance with the LID standards required for mixed-use development projects under AMC 20.110.014. *Exhibit 1, Staff Report, page 14; Exhibit 9.*

#### *Access and Traffic*

13. Vehicular access to the site would be provided by drive aisles located within a parking lot around the perimeter of Buildings 1 and 2, which would connect to Olympic Place NE at two locations, with one access point located north of Building 2 and the other located south of Building 1. The parking area would contain pedestrian walkways providing safe

pedestrian access to and from all three buildings to Olympic Place NE. Additional pedestrian access to the site would be provided by a walkway within the courtyard area along Olympic Place NE. The Applicant completed a complete-streets checklist addressing requirements related to channelization, pavement conditions, pedestrian infrastructure, bicycle infrastructure, transit infrastructure, freight infrastructure, street trees and landscaping, and urban design and planning, which was approved by the City. City staff reviewed the Applicant's proposed street and sidewalk design and determined that it would comply with code requirements for street classification, lot access, street entrances, the relationship of streets to topography, street intersections, and right-of-way improvements. *Exhibit 1, Staff Report, pages 2 and 9; Exhibit 14; Exhibit 17; Testimony of Marc Hayes.*

14. Gibson Traffic Consultants, Inc., prepared a Traffic Impact Analysis (TIA) for the Applicant, dated September 2020. The TIA noted that the proposed development would generate 970 new average daily trips with 61 AM peak-hour trips and 84 PM peak-hour trips. The TIA determined that all studied intersections currently operate at an acceptable level of service (LOS) and would continue to operate at an acceptable LOS with the proposed development. As noted above, Snohomish County Public Works reviewed the proposal and determined that it would not impact county roads or county capital improvement projects, and, therefore, the Applicant would not be required to pay traffic impact fees to the County pursuant to an interlocal agreement between the City and the County. The Applicant would be required to pay traffic impact fees to the City, however, which are currently calculated at \$281,820. *Exhibit 1, Staff Report, page 11; Exhibit 8.*

#### *Landscaping and Open Spaces*

15. City staff reviewed the Applicant's site and landscaping plans and determined that the project would satisfy code requirements for the provision of recreational facilities and open space areas, screening, street trees, and tree shading. *Chapter 20.52 AMC; Chapter 20.76 AMC.* The Applicant would be required to pay community parks impact fees currently calculated at \$197,604. *AMC 20.90.400. Exhibit 1, Staff Report, pages 9 through 11.*

#### *Utilities and Services*

16. The City would provide water and sewer services to the property. The City provided the Applicant with a water and sewer availability letter on December 7, 2020, indicating that that the City presently has sufficient water and sanitary sewer to service the project. The property would be served by the Arlington School District, and the Applicant would be required to pay school impact fees, currently calculated at \$93,285, under AMC 20.90.230. Compliance with requirements for utility service infrastructure, fire hydrants, and fire protection would be reviewed upon submission of site civil construction drawings. *Exhibit 1, Staff Report, pages 9 through 11; Exhibit 7.*

### Conditional Use Permit

17. Mixed-use, multi-family apartments are allowed in the GC zone with a conditional use permit. *Chapter 20.40 AMC*. As noted above, the Applicant requests a CUP to allow construction of a 132-unit, multi-family housing and commercial mixed-use development utilizing the City's mixed-use development regulations under Chapter 20.110 AMC. City staff reviewed the application materials and determined that, with conditions, the criteria for a CUP would be satisfied, noting:
- The City Comprehensive Plan identifies this area as General Commercial, and the subject property is zoned General Commercial. The property is also located within the Mixed Use Overlay area and is identified as Transect T4-F under the mixed use regulations of Chapter 20.110 AMC. The proposed development, as conditioned, would be consistent with policies governing the proposed commercial and residential uses and would be allowed in that zoning district.
  - The City determined the application to be complete on March 25, 2021. Subject to conditions, the application contains all the information necessary for the City to decide whether the development, if completed as proposed, would comply with all requirements under Title 20 AMC.
  - The City issued an MDNS on March 25, 2021, and the requirements of SEPA have been met.
  - The requested CUP, as conditioned, would be consistent with all Title 20 AMC requirements; permit processing procedures; and all other applicable plans, regulations, and policies.
  - The project would not materially endanger public health or safety.
  - The project's impacts on surrounding properties would not materially harm adjoining or abutting property.
  - The design and use of the proposed development would meet the nature and intent of Transect T4-F of the City's Mixed Use Regulations and would be compatible with the commercial developments to the north, south, and west of the site, as well as residential development to the east. Screening and buffering would be provided to protect the aesthetics and tranquility of The Lux project.

*Exhibit 1, Staff Report, pages 14 and 15.*

### Testimony

18. DCED Director Marc Hayes testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive Plan, zoning ordinances, mixed-use development regulations, and the criteria for approval for a CUP. He noted that this would be the seventh development project in the city to utilize the mixed-use overlay, which allows commercially zoned properties to site retail, commercial, professional, and certain manufacturing uses along the street-level frontage while allowing for higher density residential uses to occur on the remainder of the property. Mr. Hayes explained that City staff reviewed the proposed building designs for compliance with the City's mixed-use development regulations to ensure that the

buildings' form, position, and site configuration would integrate elements of the form-based code that provide predictable outcomes in both current and future development. He noted that the City had approved the Applicant's complete streets checklist, that the project is anticipated to meet all applicable stormwater requirements, and that students residing at the property would have safe walking conditions to schools or school bus stops serving the development. Mr. Hayes also explained how the proposal would meet the requirements to construct Buildings 1 and 2 as four-story buildings, as described in the above findings. *Testimony of Mr. Hayes.*

19. Applicant Representative Randy Devoir of Cascade Surveying and Engineering testified that all stormwater would be fully infiltrated on-site, noting that runoff from pollution-generating surfaces would be collected via catch basins in the parking lot and channeled to an infiltration bed under the drive aisle at the northern portion of the site. *Testimony of Mr. Devoir*

#### Staff Recommendation

20. City staff, having determined that the proposed development would comply with the City Comprehensive Plan and all applicable development regulations, recommend approval of the Applicant's request for a CUP, with conditions. *Exhibit 1, Staff Report, pages 3 and 7 through 17.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner is granted the authority to hear and decide the applications for a conditional use permit, a building height variance, and a boundary line adjustment variance. *Revised Code of Washington (RCW) 36.70.970; AMC 20.12.230; AMC 20.16.170.*

#### Criteria for Review

In considering whether to approve an application for a conditional use permit, the hearing examiner shall proceed according to the following format:

- (1) The hearing examiner shall consider whether the application is complete. If no evidence is presented that the application is incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the hearing examiner that the application is complete.
- (2) The hearing examiner shall consider whether the application complies with all of the applicable requirements of this title. If a finding to this effect can be made, the hearing examiner need not make further findings concerning such requirements. If such a finding cannot be made then a finding shall be made that the application be found not in compliance with one or more of the requirements of this title. Such a finding shall specify the particular requirements the application fails to meet. Separate findings may be made

with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the hearing examiner to be unsatisfied through this process.

(3) If the hearing examiner concludes that the application fails to comply with one or more requirements of this title, the application shall be denied. If the hearing examiner concludes that all such requirements are met, he shall issue the permit unless he denies the application for one or more of the reasons set forth in Section 20.16.140 (Special Use Permits and Conditional Use Permits). Specific findings for such a denial must be made, based upon the evidence submitted, justifying such a conclusion.

*AMC 20.16.170(e).*

Subject to Subsection (d) [of AMC 20.16.140], the designated decision-maker shall issue the requested permit unless it concludes, based upon the information submitted at a hearing if there is a hearing or by signed letter if there is not, that:

- (1) The requested permit is not within its jurisdiction according to the table of permissible uses, or
- (2) The application is incomplete, or
- (3) If completed as proposed in the application, the development will not comply with one or more requirements of this title (not including those the applicant is not required to comply with under the circumstances specified in Chapter 20.32, Nonconforming Situations), or
- (4) The proposed project has not complied with SEPA, or
- (5) The proposed project is not in conformance with the comprehensive plan, transportation plan, or other adopted plans, regulations, or policies.

*AMC 20.16.140(c).*

Even if the permit-issuing authority finds that the application complies with all other provisions of this title, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (1) Will materially endanger the public health or safety, or
- (2) Will materially harm adjoining or abutting property,
- (3) In terms of design and use will not be compatible with the area in which it is located.

*AMC 20.16.140(d).*

The criteria for review adopted by the Arlington 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.*

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### Conclusions Based on Findings

**With conditions, the proposal would satisfy the requirements for approval of a conditional use permit.** Mixed-use, multi-family housing developments are an allowed use in the GC zone with a conditional use permit, subject to compliance with the City's mixed-use development regulations under Chapter 20.110 AMC. The proposal to construct a 132-unit, multi-family housing and commercial mixed-use development is an appropriate use in Transect 4 Flex of the Mixed Use Village Center place type and would be compatible with neighboring commercial developments. City staff reviewed the proposal and determined that, with conditions, it would comply with all applicable zoning regulations, including mixed-use development regulations pertaining to blocks, rights-of-way, thoroughfares, parking, civic and open spaces, landscaping and screening, low-impact design for stormwater management, outdoor lighting, and architecture. The Hearing Examiner concurs with this assessment. The proposal would be consistent with goals and policies of the City Comprehensive Plan encouraging mixed-use, multi-family development within commercial areas designed to be conducive to social interaction. The elements necessary for a complete application are defined by the City, and the City has discretion to suit the requirements to the specific project. *AMC 20.16.040*. This application was deemed complete by the City on March 25, 2021.

The City Department of Community and Economic Development (DCED) analyzed the environmental impacts of the proposal and determined that, with mitigation measures, the proposal would not have a probable significant impact on the environment. Accordingly, DCED issued an MDNS for the proposal on March 25, 2021. Compliance with the MDNS conditions has been made a condition of issuance of the CUP. The City provided reasonable notice and opportunity to comment on the proposal and on the MDNS. The City did not receive any comments on the proposal or MDNS from members of the public and the MDNS was not appealed. The Snohomish County Public Works department confirmed that no mitigation would be required under an interlocal agreement between the City and Snohomish County. Snohomish County PUD noted that it has sufficient electric system capacity to serve the project. The Stillaguamish Tribe of Indians provided a comment requesting the Applicant to obtain an archaeological excavation permit from the Washington State Department of Archaeology and Historic Preservation (DAHP). DAHP provided a comment noting that it had issued an archaeological monitoring permit to the Applicant. The Applicant's Preliminary Drainage Report indicates that all stormwater runoff would be fully infiltrated on-site in accordance with applicable stormwater management requirements. The City would review the Applicant's final stormwater management plan for compliance with the low-impact design standards required for mixed-use development projects under AMC 20.110.014.

The property does not contain and critical areas or associated buffers. Area intersections would continue to operate at acceptable levels of service with the proposed development. City staff reviewed the Applicant's proposed street and sidewalk design and determined that it would comply with code requirements for street classification, lot access, street entrances, the relationship of streets to topography, and street intersections. The City reviewed the Applicant's complete streets checklist and determined that the proposed development would meet City

complete-street standards. The Hearing Examiner concurs with these determinations. The proposed development would not endanger the public health or safety, or adversely affect abutting properties. As detailed below, conditions are necessary to ensure that the proposal complies with MDNS conditions and with all requirements associated with approval of a conditional use permit. *Findings 1 – 20.*

### DECISION

Based upon the preceding findings and conclusions, to allow development of a 132-unit, multi-family housing and commercial mixed-use development, on two parcels totaling 3.2-acres, located between the 20000 and 21000 blocks of Olympic Place NE, is **APPROVED**, subject to the following conditions:<sup>3</sup>

1. All development shall be in substantial conformance with the site plan received on March 8, 2021, subject to any conditions or modifications that may be required as part of the permit and construction plan review
2. An on-site water main shall be 12” Ductile Iron and be looped through the site per the constructions plans, PWD#2408.
3. The development shall meet all the standards addressed in the City staff report.
4. The developer shall comply with all conditions of the SEPA MDNS issued on March 25, 2021:
  - a. In order to mitigate for potential earth impacts, the Applicant shall implement Best Management Practices per Department of Ecology for Stormwater Pollution Prevention and TESC Controls to prevent erosion during and after construction.
  - b. In order to mitigate for potential air impacts, the Applicant shall implement dust control measures to reduce fugitive dust emissions during construction. A Construction Management Plan shall be submitted to the City prior to commencement of construction to ensure these measures. Construction equipment emissions shall comply with all State and Federal regulations for emissions.
  - c. In order to mitigate for potential impacts to ground water, the Applicant shall employ best design practices meeting the current Department of Ecology’s Stormwater Management Manual for Western Washington.
  - d. In order to mitigate for potential impacts to water runoff, the Applicant shall follow the current edition of the Department of Ecology’s Stormwater Management Manual for Western Washington and Best Management Practices used to protect groundwater.

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<sup>3</sup> Conditions include those required to reduce project impacts as well as those required to meet City codes.

- e. Landscaping amounting to approximately 25 percent of the site will be included as part of the development consisting of native grasses and street trees as required by Chapter 20.76 AMC.
- f. The project will comply with the 2015 Washington State Energy Code requirements.
- g. The Applicant shall comply with current codes to reduce or control environmental health hazards. A spill prevention plan shall be in place according to local, State and Federal policies.
- h. City of Arlington noise standards found in AMC 9.20.060 shall be complied with. Specifically, in section 9.20.060(8) noises resulting from any construction or development activity or the operation of heavy equipment from 7:00pm to 7:00am Monday through Saturday shall be prohibited. The project will generate short term noise associated with construction activities. Construction hours will conform to City requirements. Noise from light vehicle traffic will be generated during business hours at project completion.
- i. The height of the tallest proposed building will be approximately 42' (4-story). The project is designed to meet the development guidelines of the GC (with T4-F Mixed Use Overlay) City of Arlington zoning code. The T4-F transect requires the development to be permitted as affordable housing, LEED certified buildings, or if the development provides the same square footage, as the additional floor, of civic space on-site or pay a fee in-lieu towards identified civic space within the Place type to allow for the fourth floor. The Applicant has provided for on-site civic space for the fourth floor of Building 2, for a total of 10,700 square feet identified for the mitigation of Building 2. The Applicant also proposed to mitigate the fourth floor of Building 1 by paying a fee in-lieu for civic space within the place type at a rate of 25 percent of the construction cost for the additional floor based on the IBC valuation Table, for a total of \$283,649.08 due in mitigation as described in Attachment B of the MDNS. Street trees shall be installed along all streets associated with the development in accordance with AMC 20.76.110.
- j. In order to mitigate for potential light pollution, the Applicant will be required to install light fixtures that are down shielded. The property is located within the Arlington Airport Protection District – Subdistrict C.
- k. A variety of on-site common open space recreation areas are proposed, that will include a child's playground, a basketball court, a dog run, and various picnic tables placed throughout the site. Each residential development shall pay a Community Park Impact fee of \$1,497 per multi-family dwelling unit for a total of \$197,604 in Park Mitigation fees for 132 units. Every Development shall be developed so that at least 5 percent of the total area remains permanently usable open space. In this instance, the open space requirement equals to a total of 6,967 square feet of required open space, where the Applicant has provided 7,128 square feet of common use open space.



- l. A cultural Archaeological study was completed on the site, by David R. Iversen of ASM Affiliates. The extent of investigation from ERCI and the Department of Archaeology and Historic Preservation did identify archeological evidence on or near the subject property. If any potential evidence is encountered during the site work, work will be halted and the local authorities will be contacted, and the submitted unanticipated discovery plan will be followed. An Archaeological Site Alteration, Excavation, and Monitoring Permit has been applied for by the Applicant through the Department of Archaeology and Historic Preservation.
  - m. The proposal will require replacing existing driveways not being used with curb, gutter, sidewalk, and replacing any non-ADA compliant sidewalk. New on-site drive aisles and sidewalks will be installed, improving pedestrian, bicycle, and vehicular access to and within the site.
  - n. Trip generation has been calculated at 84 PM Peak Hour Trips (PMPHT). The City traffic mitigation fee is \$3,355 per PMPHT for a total of \$281,820 in traffic mitigation fees.
  - o. The proposal is within the Arlington School District and will be required to pay \$3,455 for every 2/+ bedroom multi-family dwelling unit for 27 units, for a total of \$93,285 in school mitigation fees.
  - p. The Applicant shall connect to the City of Arlington water and wastewater systems.
  - q. The developers may be obligated to pay their proportionate share for certain State projects for those average daily trips from this development. Traffic mitigation fees, if any, shall be paid to the Washington State Department of Transportation (WSDOT), and the developers shall provide the City of Arlington with documentation of compliance with this state requirement prior to issuance of the Building Permit. WSDOT did not respond during the review comment period.
  - r. Consistent with the terms of the Snohomish County Interlocal Agreement with the City of Arlington, the developers shall mitigate impacts on the capacity of the County road system by making a proportionate share mitigation payment, if any. Traffic mitigation shall be paid to the Snohomish County Department of Planning and Development Services (PDS), and the developers shall provide the City of Arlington with documentation of compliance prior to issuance of the Building Permit. Snohomish County responded during the review comment period that no county roads are impacted by the project; therefore, no Traffic Impact Fees are due.
5. The Applicant will provide all instruments required of owners within Airport Protection Sub-District C, including a navigation easement or disclosure and FAA form 7460.
  6. In accordance with AMC 20.16.220 this Conditional Use Permit shall expire if less than ten percent of the total costs of the development have not been completed on-site within two years.

7. Any development agreement approved by the City Council which addresses agreement between the parties on impacts fees, tree trimming, and other minor project details shall augment and/or supersede conflicting conditions of this approval.

**DECIDED** this 20<sup>th</sup> day of May 2021.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center