BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON

RE: Complete Construction Planned Urban Development LUA11-091, ECF, PPUD, FPUD	FINAL DECISION

Summary

The Applicant has filed an application for a Preliminary and Final Planned Urban Development (PUD) for the construction of a 125,539 square foot, 75-unit apartment building located at 1250 South Puget Drive. The Preliminary PUD is approved subject to conditions. It is unclear from the record whether the final PUD plans have been revised to incorporate all of staff's recommended conditions of approval so final PUD approval is deferred until staff can make a finding that the final plans are in conformance with all preliminary PUD conditions of approval. The modifications requested to Chapter 4-3 design standards are not approved because the Examiner has no authority to review them as outlined in detail in Conclusion of Law No. 4. Staff are invited to approve the requested modifications through RMC 4-3-100(F), 4-9-250(D) or whatever other modification process City staff determine appropriate[1]. The approval of the proposed preliminary/final PUD in this decision encompasses any staff approvals of the requested Chapter 4-3 RMC modifications identified in Table A below. The proposed/preliminary PUD satisfies all of the applicable decision criteria with or without any combination of the modifications. Staff approval of any of those modifications will not necessitate any amendment to this decision or any need for re-application.

[1] Included in this "other" option is a determination that the judicial doctrine of substantial compliance will enable staff to make its approval of design modifications after submission of PUD preliminary plans as opposed to before. Substantial compliance with a statutory directive requires actual compliance in respect to substance essential to the statute's reasonable objective, such that the purpose of the statutory requirement is generally satisfied. *Humphrey Industries, Ltd. v. Clay Street Associates*, LLC, 170 Wn.2d 495 (2010). The Examiner does not find that substantial compliance would authorize his review of the requested modifications, since this would represent a significant change in the review process.

Testimony

Vanessa Dolbee, planner for Renton, stated that the hearing is for a preliminary and final urban development application for the construction of 125,000 sq. ft. 75-unit apartment building, located at 1250 South Puget Drive. The site is located on the north side of Puget Drive. It is zoned CA (Commercial Arterial). The site is approximately 1.5 acres and is currently vacant. Regency Woods Apartments are located to the north of the site in residential multi-use zone. Heritage Hills Apartment is located to the east and zoned commercial arterial. Sunset Ridge Condominiums are located to the south. A commercial and office mixed development is located to the west (CA zone). The environmental review committees issued a determination of non-significance mitigated with 4 mitigation measures for the project. The appeal period commenced on March 2, 2012 and ended on March 16. No appeals have been filed. The mitigation measures deal with geotechnical hazards including steep slopes, coal mine hazards, landslides, and erosion hazards. Exhibit 4 is the site plan (north is to the right in the exhibit).

Ms. Dolbee noted that PUD applications have two principle purposes: Regulations preserve and protect natural features of the land, and encourage innovation in residential developments by permitting a variety of design and improvements. In order to accomplish these purposes, the PUD section of the code establishes a permit development which is not limited by the strict application of the zoning and regulations when it demonstrates the new development is superior to the traditional development. Items that are not modifiable include density and use. The proposed development meets both density and use requirements. The CA density range is 10-60 units per acre; the Applicant has proposed 59 units per acre.

Ms. Dolbee remarked that zoning districts and street standards can be modified according to code sections 4.6 and 4.7. Table A of the staff report identifies requested modifications from the Applicant and requested modifications from Design District D. The Applicant has requested a modification from the requirement to provide ground-floor commercial space in the CA zone. Instead, the Applicant wishes to create a stand-alone residential structure. Additionally, the Applicant is requesting a modification of the maximum front-yard setback from 15ft to 45ft. The Applicant is requesting a maximum building height of 60 ft. for the structure; despite it being only residential use (the code allows mix-use structures to be 60 ft.). Design District D requests that the front of the building to be located on the eastside of the building. The Applicant is requesting that the recreation center along Puget Drive accommodate the open parking requirement, instead of requiring open space in the structured parking garage. The Applicant has requested that they only be required to provide awnings over the building entries, rather than over 75 percent of the building. Building roof lines are required to have a slope of 1 to 4, according to code. The Applicant is requesting a modification for a flat roof with projected crevices.

Ms. Dolbee commented that PUD applications require that the proposed development be superior to that which would result without a PUD and the development cannot be unduly detrimental to the surrounding properties. The proposal is superior because the site is zoned commercial, but in order to

create a commercial site, many of the protected slopes on the property would have to be graded. The current proposal reduces traffic and critical area impacts. The proposed design provides for a significant amount of landscaping. The plan provides for passive and active recreation that goes beyond the code standards. The proposal provides opportunities to both the future residents of the new building and current residents of the Heritage Hills Apartments to the east. The Applicant has provided for a portion of the site to have a level of low impact development by using paving with emergency access.

Ms. Dolbee testified that the Applicant must demonstrate that the proposal will provide a public benefit that significantly outweighs any adverse impacts. Table B of the staff report addresses the public benefits of the site which include three critical areas, sustainable development, and overall design. Exhibit 3, the slope analysis, shows the protected slopes in brown. There is an extensive amount of vegetation proposed along the steep boundary slopes. In the southeastern corner, the Applicant has proposed some landscaping; staff has requested a condition of approval be for full landscaping of this area. The landscaping along the Westside of the property provides screening from the commercial uses. Grass cell paving will be provided as an emergency access roadway which gives an open space feel with emergency use. The site has a large amount of recreation space provided: Three open space areas (1,000 sq. ft., 1,600 sq. ft., 1,800 sq. ft.), an additional 5,000 sq. ft. pedestrian walkway, a rooftop terrace (8,000sq ft.), and a proposed recreation center on the first floor (28,000sq ft.). Overall, the development significantly exceeds the open space requirement. The Applicant plans to remove the invasive species that are on the hillside currently.

In regard to site and building design, Ms. Dolbee stated that the building has been designed to be consistent with the existing buildings to the east. It blends with the surrounding area in size and scale. The overall design of the building includes horizontal and vertical modulation which reduces the bulk of the building, visually. The Applicant has proposed to use a variety of building materials for the façade. The goal of the building is to feel as if it is the same project as the existing Heritage Hills project. The access to the site will be via the existing Heritage Hills Development. The parking garage will be located at the north side of the site. There is a secondary emergency access that would come off of South Puget Drive to the east of the building. Street improvements are required along South Puget Drive. The Applicant has proposed a pedestrian connection (a sidewalk that would connect to the street sidewalk). There are also sidewalks on the east and west side of the building. Staff has recommended a condition of approval to improve the pedestrian connectivity of the site. Based on traffic analysis, no safety concerns in terms of vehicular circulation have been found. Traffic analysis found that the design is sufficient in being able to accommodate the traffic increase. Additionally, there is sufficient separation between vehicles and pedestrians. Along South Puget Drive, there is a metro-bus stop, so the pedestrian walkways would provide access to public transportation. Water and sanitary sewer services would be provided by the city of Renton. Fire services would be provided by Renton as well. The site is separated into two discharge areas. Discharge area 1 is to the north of the site, and stormwater is proposed to be held in 2 detention vaults (one would hold water quality treatment). Discharge area 2 would have an oil and water separator for pollution services.

In regard to building clustering, Ms. Dolbee said the subject site is a narrow site and contains protected slopes. In addition to landscaping, the Applicant has provided more than sufficient open space around the entire development. Exhibit 11, floor plans, notes that 50 percent of the building will have a roof terrace that provides views of the Renton Valley. All units of the building would have access to the roof terrace. The parking is proposed to be located under the building (2 levels). Parking regulations require a minimum of 1 space per unit, and the Applicant has proposed 75 parking spaces with 75 units. Bicycle parking is also required by code, thus staff has recommended, as a condition of approval, that the Applicant provide plans for the inclusion of bicycle parking. The Applicant has proposed screening for portions of the parking garage with landscaping, but staff is recommending, as a condition of approval, that the Applicant be required to provide screening for the whole garage. The required open space is approx. 3750 sq. ft. and the Applicant has provided over 16,000 sq. ft. beyond the code requirements. There is a minimum of 15 ft. in every dimension standard private open space for each unit, and the Applicant has proposed approximately 40 sq. ft. in patio or deck for each unit. This does not meet the minimum standard, thus staff has recommended a condition of approval to meet the minimum code. The structure meets the minimum lot coverage standard required by code. Refuse/recycling areas have been provided in the parking garage areas and exceed the minimum standard requirement. Landscaping is only proposed for 50 percent of the frontage, thus staff has recommended a condition of approval that landscaping be required along the entire frontage. A 15 ft. wide planting strip is required between the site and the residential multi-family residence to the north. The staff report, subsection 6, asks that all conditions requested by Design District D be made compliant with the code.

Ms. Dolbee concluded that staff recommends approval of the PUD subject to 21 conditions of approval. Upon questioning by the hearing examiner, she stated that the landscaping would not be required for a variance. Code requires 15 ft. of landscaping on the north side of the property. The Applicant is not required to landscape the western portion of the site, but they have proposed to do so. Exceeding the 50 ft. height limit does not fall under public benefit. However, the height limit modification must be balanced with public benefit.

Greg Sparhawk testified that the Applicant maintains management of all of their properties and is not merely a developer. The project is an investment, and the Applicant is attempting to maintain the character of the area and ensure the new building fits well with the existing structures. The Applicant accepts all conditions set by the staff.

Exhibits

The March 15, 2012 staff report Exhibits 1-26 identified at pat 3 of the staff report were admitted into the record during the hearing in addition to the staff report itself. The following additional exhibits were also admitted into the record during the hearing:

Ex. 27: Aerial Photograph

FINDINGS OF FACT

0.5 Applicant. The Applicant is Complete Construction.

Procedural:

1. Hearing. The Examiner held a hearing on the subject application on March 27, 2012 at 1:00 pm in the City of Renton Council Chambers.

2. Project Description. The Applicant is requesting review of an application for both a Preliminary and Final Planned Urban Development (PUD) for the construction of a 125,539 square foot apartment building. The new 4-story apartment building would contain 75 units, consisting of a variety of studio, one bedroom and two bedroom units. All parking is proposed within a 75-stall two-level parking garage, which would be partially underground. Due to site topography a portion of the parking would be visible above ground. The apartment building would include such amenities as a fitness center, storage units, roof terrace and garden, and an outside courtyard. The proposed development would result in a density of 59.5 dwelling units per acre and no commercial component is proposed.

The subject site is located at 1250 South Puget Drive. The site is 1.56 acres in size and contains 9,921 square feet of protected slopes. This vacant parcel contains 161 lineal feet of frontage along South Puget Drive, of which approximately 50 percent is comprised of protected slopes (slopes with a 40 percent grade or greater). The remainder of the 9,921 square feet of protected slopes is along the west property boundary between the strip commercial development and the proposed apartment building.

Access to the proposed apartment building would be via the internal vehicular circulation system on the property to the north, Heritage Hills Apartments. The existing Heritage Hills Apartments gain access from along South Puget Drive. An extension to the existing Heritage Hills internal vehicular circulation system would be added to access the subject site along the north property line. A secondary gated emergency access point would be provided directly off of South Puget Drive. In addition to vehicular access the Applicant is proposing to provide street improvements along South Puget Drive along with a pedestrian connection to the public sidewalk and to the apartment complex to the north.

The development would result in approximately 6,590 cubic yards of cut, and no fill. Minor grading work would extend off the subject site to the north onto Parcel No. 2023059118. Stormwater is proposed to be detained in two detention vaults located on site.

As identified on the City of Renton Sensitive Area Maps, the subject site contains "protected slopes", Low, Medium and High Landslide Hazard Area, and Medium Coal Mine Hazards. With the

application the Applicant submitted a Geotechnical Report, addressing the above mentioned geological hazards.

The subject site is currently primarily vegetated with grasses and invasive species. Eight trees are located on the site, of which one is proposed to be retained. The Applicant provided a landscaping plan with the application. Based on the provided plan the Applicant would be planting 84 new trees, 550 shrubs, and groundcover grasses and small shrubs. Overall 16,452 square feet or 24 percent of the site would be landscaped.

The Applicant requests the following modifications as part of its PUD application:

Table A

REQUESTED MODIFICATIONS FROM RENTON MUNICIPAL CODE (RMC)		
RMC #	***Required per RMC***	***Requested Modification***
RMC 4-2-080 Conditions Associated With Zoning Use Tables, Note 18.	Residential uses are only permitted within a structure containing commercial uses on the ground floor. Commercial space must be reserved on the ground floor at a minimum of thirty feet (30') in depth along any street frontage. Residential uses shall not be located on the ground floor, except for a residential entry feature linking the residential portion of the development to the street.	Permit stand alone residential with units located on the ground floor.
RMC 4-2-120A: Maximum Front Yard Setback	15 ft.	45 ft.
RMC 4-2-120A: Maximum Building Height	50 ft., except 60 ft. for mixed use (commercial and residential) in the same building.	60 ft. for residential buildings.
REQUESTED MODIFICATIONS FROM DESIGN DISTRICT D		

RMC 4-3-100: Building Entries	**Minimum Standard:** A primary entrance of each building shall be located on the facade facing a street, shall be prominent, visible from the street, connected by a walkway to the public sidewalk, and include human-scale elements.	The front entry may be located on the east side of the building, due to the presence of protected slopes and lack of access from South Puget Drive.
RMC 4-3-100: Structured Parking Garages	**Minimum Standard:** Parking structures shall provide space for ground floor commercial uses along street frontages at a minimum of seventy five percent (75%) of the building frontage width.	Residential recreation center to accommodate commercial frontage requirement.
RMC 4-3-100: Pedestrian Amenities	**Minimum Standard:** Provide pedestrian overhead weather protection in the form of awnings, marquees, canopies, or building overhangs. These elements shall be a minimum of 4-1/2 feet wide along at least 75 percent of the length of the building facade, a maximum height of 15 feet above the ground elevation, and no lower than 8 feet above ground level.	Overhead weather protection in the form of awnings is only required over building entrances.
RMC 4-3-100: Building Roof Lines	**Minimum Standard**: Buildings containing predominantly residential uses shall have pitched roofs with a minimum slope of one to four (1:4) and shall have dormers or interesting roof forms that break up the massiveness of an uninterrupted sloping	Predominately flat roof with projected cornices.

	roof.	

3. Surrounding Area. To the north is an existing multi-family development located in the Residential Multi-family zone (RM-F). To the east is the currently developed Heritage Hills Apartments, located in both the CA and RM-F zones. In addition to the multi-family development a high voltage electric transmission line is located to the northeast of the subject site. To the south (across South Puget Drive) is a multi-family condominium development, zoned RM-F. To the west is Eagle Ridge Place, a mixed use office and retail area zoned CA.

3. Adequacy of Infrastructure/Public Services. The project will be served by adequate infrastructure and public services as follows:

A. Water and Sewer Service. Water and sanitary sewer service for the development would be provided by the City of Renton. There is an existing 8-inch water line on the north side of the property. There is also a 16-inch water line in S. Puget Drive. There is an existing 8-inch sanitary sewer line to the north side of the property. The project site is located in the 490-pressure zone. Static pressure is 80 psi. Fire flow in the from the 16-inch main in S. Puget Drive will provide approximately 5,000 gpm. The Applicant has proposed to connect to this existing 8-inch water line and the 8-inch sanitary sewer line located on the north side of the property to serve the development. Based on the provided utilities plans and the existing infrastructure in the area, the development would be provided with sufficient services.

B. Fire Protection. Fire protection is provided by the City of Renton fire department. Sufficient resources exist to furnish services to the proposed development; subject to the conditions that the Applicant provides Code required improvements and fees.

The Applicant will be required to pay a Fire impact/mitigation fee as required at the time of Construction Permit or Building Permit based on the codes in place at that time.

Along the east side of the proposed building is Road A an emergency access roadway. The Applicant has proposed to develop a large portion of this roadway with grass cell paving. This type of paving system provides for infiltration of stormwater, in turn reducing stormwater runoff and pollution generating impervious services. This area doubles as a visual open space area to the residents of both the proposed apartment

complex and the existing complex to the east. However, this concept has not been approved by the Fire Department. As such, a condition of approval requires that the Applicant receive approval of the grass cell paving system from the Renton Fire Department prior to building permit issuance.

Another issue concerning fire protection is the grade of the fire access road. City development standards do not allow the grade of emergency access roads to exceed 15%. The Applicant did not provide a road profile to determine the grade of the emergency access roadway. As such, a condition of approval requires that the Applicant either design the roadway to not exceed 15% grades, or request a variance for a steeper grade then 15%. The variance approval shall be received from the Renton Fire Department prior to building permit issuance.

C. Drainage. In conjunction with the City's stormwater regulations, the proposal mitigates all significant drainage impacts. Stormwater is proposed to be detained in two detention vaults located on site. The Applicant has submitted a preliminary stormwater drainage report, which has been reviewed and approved by staff.

D. Parks/Open Space. The project provides for more than adequate parks and open space. Demand for park space is satisfied by the payment of park impact fees. The Applicant has provided a variety of recreation and open space throughout the development. The site has three outside open space areas; one is located in the southeast corner and is 1,071 square feet. This open space area not only would provide space for the residents of the proposed apartment complex but would be accessible to the existing development to the east, via a proposed new stairway connection between the two developments. The second location is in the southwest corner of the site and is 1,632 square feet. This area is located outside the indoor recreation space. The third location is in the northwest corner and is 1,852 square feet. Overall there is a total of 4,555 square feet of open space area provided. In addition, there is a 5,110 square foot pedestrian walkway that connects two of the open space areas.

In addition to the open space area the Applicant has proposed to provide a 8,175 square foot roof top terrace. This terrace would provide views of the Renton Valley and would include 3,500 square feet of landscaped planter area.

The first floor of the proposed complex includes a recreation center for the development. This recreation center includes a swimming pool, hot tub, fitness room and restrooms. Overall the area is approximately 2,870 square feet. This area has been designed with two large garage doors along the south wall of the development, opening up to a grassy area (open space) just outside the recreation pool area. As such, on warm summer days, the

pool could be an indoor/outdoor pool space for the residence to enjoy. This area would not only benefit the residents in the new Heritage Hills building but also the existing Heritage Hills development to the east. The two sites are connected by a pedestrian walkway providing access to the new recreation center.

Furthermore, as discussed under "fire protection", supra, the Applicant has proposed to "pave" the fire access road (identified as "Road A" herein) with grass cell paving. This area would add an additional 8,509 square feet of open space to the overall development. In total the development would have 29,219 square feet of open space and recreation area. Which far exceeds the minimum code requirement of 50 square feet per unit (50 SF x 75 units = 3,750 SF) and 10% of the site area (67,855 square feet).

As to private open space, each unit would have either a private balcony or patio for the exclusive use of the occupants of that unit. The ground floor units currently have a 4' x 10' (40 square feet) patio area proposed for each unit. This area does not meet the minimum requirement of 15' in every dimension. As proposed the upper-story units would each have a 4' x 10' (40 square foot) private deck. As proposed the private decks do not meet the minimum standard of 60 square feet with no dimension less than 5 feet. As such, a condition of approval that the Applicant provide revised floor plans identifying compliance with the private open space standard.

E. Pedestrian Circulation. As conditioned, the proposal provides for an adequate pedestrian circulation system. The Applicant is proposing to provide street improvements along South Puget Drive along with a pedestrian connection to the public sidewalk (which provides pedestrian access to commercial development directly west of the development) and to the apartment complex to the north. However, the proposed site plan does not reflect the required street improvements of an 8-foot sidewalk, 8-foot planter strip with curb and gutter, including street lighting and two feet of right-of-way dedication. As a condition of approval, the Applicant is required to provide these improvements or receive a modification from the street improvements standards.

Additional pedestrian circulation is provided by onsite sidewalks along both the east and west side of the building. These walkways almost create a looped walking system around the development with a few minor breaks. In order to improve pedestrian connections throughout the site a condition of approval requires that the walkway from the southwest open space be connected to the lobby and sidewalk along Road A and the exit door from the elevator located on the southeast of the building be connected to the sidewalk along

Road A. At the north end of the development the Applicant shall provide additional sidewalk or pedestrian pathways to connect the pedestrian circulation system around the entire site. The Applicant shall update the site plan to reflect the required additional pedestrian connections, which shall be reviewed and approved by the Current Planning Project Manager prior to construction permit issuance.

F. Interior Vehicle Circulation. The Applicant has proposed adequate and safe interior vehicle circulation. Staff have reviewed the Traffic Impact Analysis and have found no safety problems with the proposed circulation. the Applicant has avoided many potential safety issues by providing access through the existing Heritage Hills Apartments to the east instead of directly off of South Puget Drive at the same location as the Emergency Access Roadway.

The design and layout of the site limits vehicular access, with the exception of Emergency Vehicle Access, to the north end of the site. This design provides sufficient separation between vehicles and pedestrians particularly near the sidewalk and open space areas.

The Applicant has provided internal access between the CA zoned property to the east. Due to the protected slopes to the west, no internal connection is proposed.

G. Off-Site Traffic Improvements. With the payment of traffic impact fees, no additional off-site traffic improvements are necessitated for the project beyond the frontage and access easements identified below. The Applicant submitted a Traffic Analysis, prepared by Transportation Engineering North West dated August 25, 2011. The study concludes that the proposed development is expected to have an insignificant impact on LOS and queuing at this location. Therefore, staff have concluded that the existing street system would accommodate the traffic demand created by the development and would not be unduly detrimental to adjacent areas. Also, as with internal circulation, the Traffic Study has lead staff to determine that the proposal will not create any off-site traffic safety problems.

Vehicular access to the proposed apartment building would be via the internal vehicular circulation system on the property to the east, Heritage Hills Apartments. The existing Heritage Hills Apartments gain access from South Puget Drive. An extension to the existing Heritage Hills internal vehicular circulation system would be added to access the subject site along the north property line. As proposed the extension of the internal circulation system would impact two parcels under the ownership of Puget Sound Energy (202305-9016 and 202305-9013) and a portion of the Thunderhill Condominium property

(864411-0000) in addition to the existing Heritage Hills development. The current access and some surface parking for the existing Heritage Hills site is through/on the Puget Sound Energy property. With the application, the Applicant submitted draft legal documents proposing a 24-foot wide easement for ingress, egress and construction and maintenance of the proposed access road on all three aforementioned parcels. To ensure that vehicular access is maintained for the proposed development, a condition of approval requires that the Applicant finalize and record the access easement documents prior to building permit issuance.

In addition to vehicular access the Applicant is proposing to provide street improvements along South Puget Drive along with a pedestrian connection to the public sidewalk and to the apartment complex to the north. However, the proposed site plan does not reflect the required street improvements of an 8-foot sidewalk, 8-foot planter strip with curb and gutter, including street lighting and two feet of right-of-way dedication. The Applicant is required to provide these improvements or receive a modification from the street improvements standards.

H. Parking. The required parking is proposed to be located within an internal parking garage, located on two levels. Due to site topography a portion of the parking garage is above ground and a portion is located underground. In order to screen those portions of parking garage that are above ground the Applicant has proposed landscaping along these areas. However, based on the provided elevations and landscaping plan there are portions of the garage that have not received a screening treatment. Some of these portions are located on the second level, where landscaping would be a practical way to screen the garage. All portions of the garage that are visible from above ground should be screened from view in order to provide a quality pedestrian environment around the development and increase the aesthetic quality of the building to the site and to surrounding sites. As such, staff recommends as a condition of approval that the Applicant provide an updated landscaping plan identifying landscape screening around all portions of the above ground garage and updated elevation drawings identifying screening for those portions of the parking garage located two stories up. The parking garage screening plan shall be reviewed and approved by the Current Planning Project Manager prior to building permit issuance.

4. Adverse Impacts. There are no adverse impacts reasonably discernible from the record. The project is surrounded by compatible uses, limited to properties both zoned and developed with multifamily and commercial uses. The proposed building has been designed in a manner to be similar in scale and mass to the existing apartment building to the east. The goal is for the proposed

building to feel as though it is a part of the same project as the existing Heritage Hills apartments. The Applicant has indicated that the proposed materials and roof styles are intend to be similar to the existing Heritage Hills development resulting in a cohesive apartment complex when completed. The provided additional landscaping along the west side of the development provides a screen from the lower intensity residential development proposed on the subject site to the existing commercial development located to the west. Furthermore, the surrounding area in both the north and south directions are developed with similar style, scale, and character of development as the proposed building. The building is proposed to be sided with hardi siding, which is non-reflective reducing glare. Each unit would have windows, which could slightly reflect light from the building but not to an extent beyond any typical multi-family development. No one spoke in opposition to the project and no adverse view impacts were evident from the record. As determined in Finding of Fact No. 3, the proposal will be served by adequate infrastructure and public services.

The only critical areas on site are geologically hazardous areas. The site contains many geological hazards including protected slopes. The City's critical areas regulations do not permit development on protected slopes without a variance. The subject site contains protected slopes along the site frontage (South Puget Drive) and to the west towards the existing commercial area. The Applicant's original proposal sought to gain a variance to remove these slopes. This proposal would provide for commercial development along the frontage of South Puget Drive. However, the subject proposal has eliminated this request and in turn has removed the commercial component resulting in the PUD application. Moreover, the subject proposal enhances the protected slopes by adding landscaping to an area that has historically been cleared. The addition of vegetation should improve the stability of the slope in the long term. In addition, the added landscaping along the west slope provides for additional screening between the commercial development to the west and the Heritage Hill Apartments. In order to preserve the protected slopes into the future, a condition of approval requires that the areas for protected slopes be placed in a Native Growth Protection Area (NGPA) using a method of creation identified within Renton Municipal Code 4-3-050(E)(4)(c). prior to building occupancy.

5. Superiority in Design. The proposed PUD design is significantly superior to that which would be allowed without the PUD. The reasons for this superior design are as follows: first, design and configuration of the subject site does not lend itself to a successful location for commercial development, without impacting the protected slopes. In order to make the side viable for commercial development, the protected slopes would need to be graded and direct access would need to be established off of South Puget Drive. In order to accomplish this there would be a combination of critical area impacts as well as traffic impacts. Second, the proposed design provides for a significant amount of landscaping and re-vegetation of the protected slopes that at one time was cleared. Third, the plan provides for both active and passive recreation significantly beyond the standard code requirements. The provided recreation areas would extend benefits beyond the proposed development to the existing development to the east. Finally, the Applicant has provided for some low impact development techniques by utilizing grass cell paving for the emergency access lane. This proposed design can provide for the aforementioned amenities because of the modifications requested in Table A above.

6. Public Benefit. The proposal provides a public benefit by protecting critical areas, using sustainable development techniques and by providing for superior design.

Critical areas are protected by eliminating the need for development within steep slopes as discussed in Finding of Fact No. 4.

Sustainable development techniques are incorporated by grass cell paving of the emergency access as discussed under Finding of Fact No. 3(B).

Superior design in open space is detailed in Finding of Fact No. 3(D).

As to superior site and building design, the building has been designed to be complimentary to the existing apartment building to the east in both character and scale. The goal is for the proposed building to feel as though it is a part of the same project as the existing Heritage Hills apartments. Moreover, the proposed development is consistent with the surrounding land uses in the area in both size and scale blending into the surrounding community.

The overall design of the building includes modulation both horizontal and vertical, visually reducing the bulk and scale of the building. The Applicant has proposed to use a variety of materials including hardi panel siding and narrow and wide hardi siding. The Applicant did not provide a materials board or proposals for paint color, as such staff cannot determine if each material type will be visually different in color or all painted the same color. In order to determine if the variety of siding truly breaks up the bulk of the building, material colors would need to be provided. As such a condition of approval requires that the Applicant provide color elevations to be reviewed and approved by the Current Planning Project Manager prior to building permit issuance.

As to superior design in landscaping, the landscaping proposed by the Applicant significantly exceeds that required by City development standards. The proposed landscaping along the west side of the development would provide screening for the residents and the pedestrian walkway as well as increase slope stability. The proposed planting plan consist of local varieties of plant such as Douglas Fir, vine maples, serviceberry trees and pink rugosa rose, witch hazel, King Edward Flowering Currant and more. The Applicant has indicated that invasive species that currently occupy the hillside would be removed and replaced with the aforementioned plantings.

7. Privacy, Screening and Views. The proposed development would be designed to building code standards for multi-family construction. Each unit would have a separate interior entrance with insulated walls separating the units. All units would have access to light and air, as each unit contains a balcony and windows. Some units along the west side of the building would also have views of the Renton Valley area. The Applicant has indicated in the provided "PUD Compliance Statement" (Exhibit 18) that ground floor units would be provided with privacy fencing and small private patios. In addition, the Applicant has indicated that all units are rented with blinds for shading and privacy.

The proposed landscaping along the west side of the development would provide screening from the commercial development located to the west. In addition, the Applicant has proposed a 15-foot wide landscape buffer along the north property line and additional landscaping between the development and South Puget Drive providing some screening to the units located on the south side of the building.

The proposed building is oriented to enhance view from the site to the Renton Valley (west). Most units would have a view to the west, however some ground floor units and units located on the east side of the building would not have access to such view from their unit. In order to provide view opportunities to all residents, the Applicant has proposed to develop a roof top terrace that would be accessible to all units in the subject building and the exiting Heritage Hills apartment to the east.

The Applicant did not provide details of roof mounted equipment and/or screening identified for such equipment. As such, staff recommends a condition of approval that the Applicant provide a detailed plan set identifying the location and screening provided for roof mounted equipment. However, the Applicant has identified that refuse and recycling would be provided in the underground parking garage. Due to its internal location the refuse and recycling would be screened from all surrounding properties.

Conclusions of Law

1. Authority. RMC 4-9-150(F)(8) authorizes the Examiner to conduct hearings and make final decisions on planned urban development applications. RMC 4-9-150(G)(6) authorizes the Planning Director to approve a final PUD. Final PUD review has been presumably consolidated before the Examiner pursuant to RMC 4-8-080(C)(2) and RMC 4-9-150(H)(1).

2. Zoning/Comprehensive Plan Designations. The site is designated as Commercial Corridor on the Comprehensive Plan Land Use Map and is zoned Commercial Arterial (CA), in addition to being located within the Urban Design District "D" Overlay.

3. Review Criteria. The Renton Municipal Code does not clearly identify the criteria the Examiner must apply in assessing a PUD. RMC 4-9-150 governs preliminary and final PUD criteria. Without any more specific code guidance, the Examiner concludes that he must find that all applicable criteria in RMC 4-9-150 must be satisfied for preliminary and final PUD approval. Applicable standards are quoted below in italics and applied through corresponding conclusions of law.

RMC 4-9-150(B)(2): *Code Provisions That May Be Modified:*

a. In approving a planned urban development, the City may modify any of the standards of chapter 4-2 RMC, chapter 4-4 RMC, RMC 4-6-060 and chapter 4-7 RMC, except as listed in subsection B3 of

this Section. All modifications shall be considered simultaneously as part of the planned urban development.

b. An Applicant may request additional modifications from the requirements of this Title, except those listed in subsection B3 of this Section. Approval for modifications other than those specifically described in subsection B2a of this Section shall be approved prior to submittal of a preliminary planned urban development plan.

4. As shown in Table A, supra, the requested revisions are to Chapter 4-2 and 4-3 RMC. The Chapter 4-2 RMC modifications are clearly authorized for Hearing Examiner PUD review. The Examiner has no authority to consider Chapter 4-3 RMC modifications. RMC 4-9-150(B)(2)(b), quoted above, does allow modifications to Chapter 4-3 RMC, but only if "approved prior to submittal of a preliminary planned urban development plan". From this provision, it is clear that modifications to Chapter 4-3 RMC must be a staff decision prior to submittal of the PUD plans[2].

RMC 4-9-150(B)(2)(b) can be subject to differing interpretations. RMC 4-9-150(B)(2)(b) conflicts with RMC 4-8-080(C)(2), which entitles a developer to opt for consolidated of permit review. However, RMC 4-9-150(B)(2)(b) is the more specific of the two provisions and so would have to be interpreted as superseding the more general consolidation requirement. *See Walker v. Wenatchee Valley Truck and Auto Outlet, Inc., 155 Wn. App. 199 (2010).* RCW 36.70B.060(3) does mandate the consolidation option in local development regulations, but RCW 36.70B.140 also allows cities to waive administrative permits from this consolidation requirement similar to the PUD modifications at issue. The City has arguably exempted staff level PUD modification decisions under RMC 4-89-050 (D)(3) or (16).

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[2] Provisions such as RMC 4-9-150(F)(8) require the review and distribution of a "preliminary plan" to staff prior to is submission to the hearing examiner. A preliminary plan is also obviously necessary to afford the public a meaningful opportunity for comment in the public hearing process. Since the "preliminary plan" needs to be completed prior to hearing examiner review, any decision required "prior to" submittal of a preliminary plan would necessarily have to be a staff decision.

An alternative interpretation could be that a "preliminary land urban development plan" is not a "preliminary plan" as referenced in RMC 4-9-150, but rather engineering/construction drawings submitted after preliminary PUD approval. Such an interpretation would imply that this timing isn't required for modifications to the provisions governed by RMC 4-9-150(B)(2)(a), since the "prior to" timing requirement isn't included in RMC 4-9-150(B)(2)(a). There would be no rational reason for such a distinction. Further, RMC 4-9-150(G) contemplates that engineering/construction drawings are submitted as part of the final plan review process, not the preliminary plan review process. Construing "preliminary land urban development plan" as construction/engineering drawings would lead to absurd consequences that is at odds with the bifurcated preliminary/final PUD plan review process. The "preliminary planned urban development plan" must be construed as the "preliminary plan" term used throughout RCW 4-9-150.

There is also the issue that if PUD are subject to the vested rights doctrine, the requirement for discretionary staff approvals prior to the submission of PUD plans violates due process because it serves as an unreasonable obstruction to the vesting of a permit application. *See West Main Associates v. City of Bellevue,* 106 Wn.2d 47 (1986). However, Washington courts have not addressed whether a PUD, in the absence of a concurrent subdivision application[3], is protected by the vested rights doctrine. Given that the courts have held that site plan applications do not confer vested rights, it's likely that the courts would similarly find no vested rights for PUD applications that are not attached to subdivision applications.

The Examiner has provided a detailed analysis of RMC 4-9-150(B)(2)(b) in order to give the parties as much information as possible in case they would like to request reconsideration and also to alert the City to all relevant issues so that it can more thoroughly address the code provision in future applications. The City may have more information on the policy basis for the provision, which could serve as a further aid to interpretation. On its face, the provision makes little sense. It is difficult to see how City staff can make a fully informed decision on Chapter 4-3 RMC modifications without seeing them in the context of preliminary PUD plans. Unfortunately, the plain meaning of RMC 4-9-150(B)(2)(b) cannot be disregarded simply because the provision brings undesired consequences. The courts have little tolerance for staff and examiners who disregard local regulations out of convenience. In *Graham Neighborhood Ass'n v. F.G. Associates*, 162 Wn. App. 98 (2011), a staff member decided to allow a preliminary plat permit application to remain active despite the fact that the permit had expired under the requirements of a County ordinance. Staff granted the extension because they had been actively working upon stormwater and other permits associated with the preliminary plat application and they didn't feel it would be fair to terminate review. In rejecting the staff's extension, the court found that a staff member had *"...unilaterally assumed an authority not granted to him by the legislative authority..."* and that *"...he acted in direct contravention of the pertinent act passed by the Pierce County Council.."* 162 Wn. At 116. In this case RMC 4-9-150(B)(2)(b) unequivocally requires that Chapter 4-3 RMC modifications be approved "prior to" the submission of preliminary PUD plans. Although this requirement doesn't enable the most efficient or logical review processes, staff and the examiner have no right to unilaterally disregard the requirement because it doesn't make the most rational sense. Any argument for allowing hearing examiner review of Chapter 4-3 RMC PUD modifications would have to include some rational application of the "prior to" language.

In conclusion, Chapter 4-3 RMC design modifications identified in Table A are not addressed or approved by this decision. Staff is invited to review and potentially approve the requested

[3] The courts have ruled that a PUD application submitted along with a subdivision application is vested, but this is because the PUD is construed as "inextricably linked" with the subdivision application, which in turn is granted vested rights by RCW 58.17.033. *See Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185 (2000).

modifications as outlined in the summary part of this decision. The requested modifications to Chapter 4-2 RMC are approved as the proposal with these modifications meets all applicable PUD criteria as outlined below.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

1. Demonstration of Compliance and Superiority Required: Applicants must demonstrate that a proposed development is in compliance with the purposes of this Section and with the Comprehensive Plan, that the proposed development will be superior to that which would result without a planned urban development, and that the development will not be unduly detrimental to surrounding properties.

RMC 4-9-150(A):

A. PURPOSES:

There are two (2) principal purposes of the planned urban development regulations. First, it is the purpose of these regulations to preserve and protect natural features of the land. Second, it is also the purpose of these regulations to encourage innovation and creativity in the development of residential, business, manufacturing, or mixed use developments by permitting a variety in the type, design, and arrangement of structures and improvements.

In order to accomplish these purposes, this Section is established to permit development which is not limited by the strict application of the City's zoning, parking, street, and subdivision regulations when it is demonstrated that such new development will be superior to traditional development under standard regulations. In consideration of the latitude given and the absence of conventional restrictions, the reviewing agencies, Hearing Examiner, and City Council shall have wide discretionary authority in judging and approving or disapproving the innovations which may be incorporated into planned urban developments proposed under this Section.

5. The purpose of RMC 4-9-150 is clearly met by the proposal, since its design is in large part driven by protecting the natural (steep slopes) of the property. The use of grass cell paving for emergency access and the extensive use of open space and building space for passive and active recreation is also an innovative feature of the project. The project is consistent with the comprehensive plan as outlined at Section 5(d) of the staff report, p. 28-31, adopted and incorporated by this reference as if set forth in full. The proposal is superior in design as determined in Finding of Fact No. 5. The proposal will not be unduly detrimental to surrounding properties since there are no significant adverse impacts associated with it as determined in Finding of Fact No. 4.

RMC 4-9-150(D): The City may approve a planned urban development only if it finds that the following requirements are met.

...

2. Public Benefit Required: In addition, Applicants shall demonstrate that a proposed development will provide specifically identified benefits that clearly outweigh any adverse impacts or undesirable effects of the proposed planned urban development, particularly those adverse and undesirable impacts to surrounding properties, and that the proposed development will provide one or more of the following benefits than would result from the development of the subject site without the proposed planned urban development:

> *a. Critical Areas: Protects critical areas that would not be protected otherwise to the same degree as without a planned urban development; or*
> *b. Natural Features: Preserves, enhances, or rehabilitates natural features of the subject property, such as significant woodlands, native vegetation, topography, or noncritical area wildlife habitats, not otherwise required by other City regulations; or...*
> *e. Overall Design: Provides a planned urban development design that is superior to the design that would result from development of the subject property without a planned urban development. A superior design may include the following: ...*

6. The proposal provides significant public benefit as determined in Finding of Fact No. 6, including protection of critical areas, natural topography and superior design. The public benefit far outweighs any adverse impacts of the proposal, since as determined in Finding of Fact No. 4 there are no significant adverse impacts associated with the proposal.

RMC 4-9-150(D): The City may approve a planned urban development only if it finds that the following requirements are met.

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria:

a. Building and Site Design:

i. Perimeter: Size, scale, mass, character and architectural design along the planned urban development perimeter provide a suitable transition to adjacent or abutting lower density/intensity zones. Materials shall reduce the potential for light and glare.

7. As determined in Finding of Fact No. 4, the proposal has been designed in terms of scale, massing and design to be compatible with surrounding uses and landscaping serves as a transition buffer to lower intensity residential development. As further determined in Finding of Fact No. 4, proposed building materials will not create any undue light or glare.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria:

a. Building and Site Design:

...

ii. Interior Design: Promotes a coordinated site and building design. Buildings in groups should be related by coordinated materials and roof styles, but contrast should be provided throughout a site by the use of varied materials, architectural detailing, building orientation or housing type; e.g., single family, townhouses, flats, etc.

8. As determined in Finding of Fact No. 4, the interior site design is designed to be consistent with the design of the adjoining and existing Heritage Hill apartments for a consistent interior design as contemplated in the criterion above.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

...

b. Circulation:

i. Provides sufficient streets and pedestrian facilities. The planned urban development shall have sufficient pedestrian and vehicle access commensurate with the location, size and density of the proposed development. All public and private streets shall accommodate emergency vehicle access and the traffic demand created by the development as documented in a traffic and circulation report approved by the City. Vehicle access shall not be unduly detrimental to adjacent areas.

9. As determined in Finding of Fact No. 3(E)-(G), the proposed facility will be served by adequate pedestrian and vehicle access and circulation, as well as adequate off-site transportation facilities as determined in a traffic and circulation report approved by the City. Adequate emergency access is also provided, although the proposal for grass cell paving will be subject to fire department approval.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

…

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

…

b. Circulation:

…

ii. Promotes safety through sufficient sight distance, separation of vehicles from pedestrians, limited driveways on busy streets, avoidance of difficult turning patterns, and minimization of steep gradients.

10. As determined in Finding of Fact No. 3(F), the Applicant has proposed adequate and safe interior vehicle circulation, including adequate separation between vehicles and pedestrians.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

…

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

…

b. Circulation:

…

iii. Provision of a system of walkways which tie residential areas to recreational areas, transit, public walkways, schools, and commercial activities.

11. The proposal provides for an adequate system of walkways with the connectivity contemplated above as determined in Finding of Fact No. 3(E).

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

…

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

...

b. Circulation:

...

iv. Provides safe, efficient access for emergency vehicles.

12. As conditioned, adequate emergency access will be provided for the proposal as determined in Finding of Fact No. 3(B).

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

c. Infrastructure and Services: Provides utility services, emergency services, and other improvements, existing and proposed, which are sufficient to serve the development.

13. As determined in Finding of Fact No. 3, the proposal is served by sufficient public infrastructure and services.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

...

d. Clusters or Building Groups and Open Space: An appearance of openness created by clustering, separation of building groups, and through the use of well-designed open space and landscaping, or a reduction in amount of impervious surfaces not otherwise required.

14. There is only one building proposed for the site so most of the criterion is inapplicable. However, the proposal still creates a significant degree of openness by significantly exceeding open

space requirements as outlined in Finding of Fact No. 3(D) and by the proposed grass cell paving for the emergency access.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

...

e. Privacy and Building Separation: Provides internal privacy between dwelling units, and external privacy for adjacent dwelling units. Each residential or mixed use development shall provide visual and acoustical privacy for dwelling units and surrounding properties. Fences, insulation, walks, barriers, and landscaping are used, as appropriate, for the protection and aesthetic enhancement of the property, the privacy of site occupants and surrounding properties, and for screening of storage, mechanical or other appropriate areas, and for the reduction of noise. Windows are placed at such a height or location or screened to provide sufficient privacy. Sufficient light and air are provided to each dwelling unit.

15. As determined in Finding of Fact No. 7, the proposal provides sufficient privacy and screening as required by the criterion quoted above.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

...

f. Building Orientation: Provides buildings oriented to enhance views from within the site by taking advantage of topography, building location and style.

16. As determined in Finding of Fact No. 7, building orientation has been designed to enhance views as required by the criterion quoted above.

RMC 4-9-150(D): *The City may approve a planned urban development only if it finds that the following requirements are met.*

...

3. Additional Review Criteria: A proposed planned urban development shall also be reviewed for consistency with all of the following criteria

...

g. Parking Area Design: Provides parking areas that are complemented by landscaping and not designed in long rows. The size of parking areas is minimized in comparison to typical designs, and each area related to the group of buildings served. The design provides for efficient use of parking, and shared parking facilities where appropriate.

17. Parking facilities are designed to be compatible with the building site as required by the criterion above and determined in Finding of Fact No. 3(H).

RMC 4-9-150(D)(4): *Each planned urban development shall demonstrate compliance with the development standards contained in subsection E of this Section, the underlying zone, and any overlay districts; unless a modification for a specific development standard has been requested pursuant to subsection B2 of this Section.*

18. As discussed below, the proposal complies with all development standards imposed by RMC 4-9-150(E). As determined in Section 5(a) and (c) of the staff report, adopted and incorporated by this reference as if set forth in full, the proposal is consistent with the development standards of the underlying zone except for the modifications requested in Table A. As previously noted, the modifications requested to Chapter 4-2 RMC are granted and those to Chapter 4-3 RMC are left to administrative approval.

RMC 4-9-150(E)(1): *Common Open Space Standard: Open space shall be concentrated in large usable areas and may be designed to provide either active or passive recreation. Requirements for residential, mixed use, commercial, and industrial developments are described below.*

a. Residential: For residential developments open space must equal at least ten percent (10%) of the development site's gross land area.

i. Open space may include, but is not limited to, the following:

(a) A trail that allows opportunity for passive recreation within a critical area buffer (only the square footage of the trail shall be included in the open space area calculation), or

(b) A sidewalk and its associated landscape strip, when abutting the edge of a critical area buffer and when a part of a new public or private road, or

(c) A similar proposal as approved by the reviewing official.

ii. Additionally, a minimum area equal to fifty (50) square feet per unit of common space or recreation area shall be provided in a concentrated space as illustrated in Figure 1.

19. As determined in Finding of Fact No. 3(D), the proposal provides open space that exceeds the standard of 50 square feet per unit and 10% of project area and that meets all the other requirements of the criterion quoted above as well.

RMC 4-9-150(E)(2): *Private Open Space: Each residential unit in a planned urban development shall have usable private open space (in addition to parking, storage space, lobbies, and corridors) for the exclusive use of the occupants of that unit. Each ground floor unit, whether attached or detached, shall have private open space which is contiguous to the unit. The private open space shall be well demarcated and at least fifteen feet (15') in every dimension (decks on upper floors can substitute for the required private open space). For dwelling units which are exclusively upper story units, there shall be deck areas totaling at least sixty (60) square feet in size with no dimension less than five feet (5').*

20. As determined in Finding of Fact No. 3(D) and as conditioned, each residential unit will have open space that meets the criterion quoted above.

RMC 4-9-150(E)(3): *Installation and Maintenance of Common Open Space:*

a. Installation: All common area and open space shall be landscaped in accordance with the landscaping plan submitted by the Applicant and approved by the City; provided, that common open space containing natural features worthy of preservation may be left unimproved. Prior to the issuance of any occupancy permit, the developer shall furnish a security device to the City in an amount equal to the provisions of RMC 4-9-060. Landscaping shall be planted within one year of the date of final approval of the planned urban development, and maintained for a period of two (2) years thereafter prior to the release of the security device. A security device for providing maintenance of landscaping may be waived if a landscaping maintenance contract with a reputable landscaping firm licensed to do business in the City of Renton is executed and kept active for a two (2) year period. A copy of such contract shall be kept on file with the Development Services Division.

b. Maintenance: Landscaping shall be maintained pursuant to requirements of RMC 4-4-070.

21. As conditioned.

RMC 4-9-150(E)(4): Installation and Maintenance of Common Facilities:

a. Installation: Prior to the issuance of any occupancy permits, all common facilities, including but not limited to utilities, storm drainage, streets, recreation facilities, etc., shall be completed by the developer or, if deferred by the Planning/Building/Public Works Administrator or his/her designee, assured through a security device to the City equal to the provisions of RMC 4-9-060…

22. As conditioned.

RMC 4-9-150(E)(4): Installation and Maintenance of Common Facilities:

…

b. Maintenance: All common facilities not dedicated to the City shall be permanently maintained by the planned urban development owner, if there is only one owner, or by the property owners' association, or the agent(s) thereof. In the event that such facilities are not maintained in a responsible manner, as determined by the City, the City shall have the right to provide for the maintenance thereof and bill the owner or property owners' association accordingly. Such bill, if unpaid, shall become a lien against each individual property.

23. As conditioned.

RMC 4-9-150(G)(6): *The final plan shall be reviewed by the applicable City departments, in the manner prescribed for preliminary plans, to determine if the final plan is in substantial conformance with the approved preliminary plan and is consistent with the purposes and review criteria of this Section. The Planning Director shall make a decision to approve, approve with conditions or deny the final plan. The decision shall include a description of the elements of the approved planned urban development, including land uses, number of units, phasing, the effective date of approval and of expiration, time limits, required improvements and the schedule for implementation, and any conditions that may apply to the planned urban development.*

24. The staff report doesn't identify whether the final plans prepared for the PUD are in substantial conformance with the approved preliminary plans. This would, of course be challenging given that there were no approved plans at the time staff prepared their recommendation, but nonetheless the application as submitted to the Examiner for final PUD approval. The extensive number of plans that apparently must still be prepared in the staff recommended conditions of approval suggest that a significant amount of work still needs to be done before final PUD plans are in fact final. The conditions of approval will require a staff finding of compliance with the criterion quoted above before the Applicant may apply for any building permits as contemplated in RMC 4-9-150(G)(7)(b).

DECISION

The proposed preliminary PUD is approved subject to the conditions identified below. Requested modifications to RMC 4-3 are left to administrative approval as outlined in the summary of decision, above. Final PUD approval is deferred to a staff finding of compliance with preliminary PUD conditions of approval, as detailed in the Conditions of Approval No. 22 below.

1. The Applicant shall comply with the 4 mitigation measures issued as part of the Determination of Non-Significance Mitigated, dated February 27, 2012.
2. The Applicant shall receive approval of the grass cell paving system from the Renton Fire Department prior to building permit issuance
3. The protected slopes on site shall be placed within a Native Growth Protection Area (NGPA) using a method of creation identified within Renton Municipal Code 4-3-050E.4.c. prior to building occupancy.
4. The Applicant shall provide color elevations and a materials board to be reviewed and approved by the Current Planning Project Manager prior to building permit issuance.
5. The Applicant shall finalize and record the access easement documents. The final recorded documents shall be provided to the Current Planning Project Manager prior to building permit issuance.
6. The Applicant shall either design the emergency access roadway to not exceed 15% grades, or receive a variance for a steeper grade then 15%. The variance approval shall be received from the Renton Fire Department prior to building permit issuance.
7. The walkway from the southwest open space shall be connected to the lobby and sidewalk along Road A and the exit door from the elevator located on the southeast of the building shall be connected to the sidewalk along Road A. At the north end of the development the Applicant shall provide additional sidewalk or pedestrian pathways to connect the pedestrian circulation system around the entire site. The Applicant shall update the site plan to reflect the required additional pedestrian connection, which shall be reviewed and approved by the Current Planning Project Manager prior to construction permit issuance.
8. The Applicant shall submit a detailed plan set identifying the location and screening provided for roof mounted equipment for review and approval by the Current Planning Project Manager prior to building permit issuance.
9. The Applicant shall submit a detailed final landscape plan for review and approval by the Current Planning Project Manager prior to building permit

issuance. The detailed final landscape plan shall include, but is not limited to the following:

a. Screening around all portions of the above ground garage

b. Plants with a maturity height of 6-feet for the entire length of the required 15-foot buffer area

c. 10-feet of landscaping along the street frontage

d. Irrigation plan

10. The Applicant shall provide an updated landscaping plan identifying landscape screening around all portions of the above ground garage and updated elevation drawings identifying screening for those portions of the parking garage located two stories up. The parking garage screening plan shall be reviewed and approved by the Current Planning Project Manager prior to building permit issuance.

11. The Applicant shall provide revised floor plans identifying compliance with the PUD private open space standards. Elevations shall be submitted for review and approval by the Current Planning Project Manager.

12. The Applicant shall provide a bicycle parking plan consistent with RMC 4-4-080F.11.c to the Current Planning Project Manager for review and approval prior to building permit issuance.

13. The Applicant shall provide the Current Planning Project Manager a refuse and recycle plan for review and approval prior to building permit issuance.

14. The Applicant shall provide a detail of the canopy for review and approval by the Current Planning Project Manager prior to building permit issuance.

15. The Applicant shall provide detailed drawings for the ground floor units, showing how access would be provided to the units from the exterior space.

16. The Applicant shall provide site amenities such as outdoor seating. These amenities shall be shown in an updated site plan that shall be provided to the Current Planning Project Manager for review and approval.

17. The Applicant shall submit revised elevations that depict modulation that is compliant with the 40-foot minimum standard. Revised elevations and floor plans shall be submitted to and approved by the Current Planning Project Manager prior to building permit issuance.

18. The Applicant will be required to provide a lighting plan that adequately provides for public safety without casting excessive glare on adjacent properties at the time of building permit review. Pedestrian scale and downlighting shall be used in all cases to assure safe pedestrian and vehicular movement, unless alternative pedestrian scale lighting has been approved

administratively or is specifically listed as exempt from provisions located in RMC 4-4-075 Lighting, Exterior On-Site.

19. Covenants shall be executed that run with the land stating that such property is part of an approved planned urban development, and including the file number thereof and a description of the uses, densities and phases of the approved planned urban development. Such covenant shall also be recorded for each property created through any subsequent subdivisions. The Applicant shall provide the Current Planning Project Manager a copy of such recorded covenant prior to building permit issuance.

20. The Applicant shall record all specification of the final planned urban development, indicating which lots or structures vary from which specific zoning requirement. Covenants shall indicate that such lots or structures shall meet the standard created with the approval of the planned urban development or the current zone in effect at the time of subsequent land use, building or construction permits.

21. For residential planned urban developments, the developer or owner(s) of a planned urban development shall be required to form a legally incorporated property owners' association prior to the occupancy of any portion of a planned urban development. If there is only one owner of the planned urban development, either a property owners' association shall be formed or a covenant running with the land shall be filed requiring the formation of such an association prior to the first subsequent sale of the property, or portion thereof. Proof of compliance with this condition of approval shall be provided to the Current Planning Project Manager prior to building permit final occupancy.

22. Final PUD approval is deferred until staff can make a determination that all final PUD plans comply with all conditions of preliminary PUD approval. The Applicant may not apply for any building permits as contemplated in RMC 4-9-150(G)(7)(b) until staff make this determination. A Staff finding of consistency with preliminary PUD conditions of approval shall constitute final PUD approval.

23. The proposed site plan does not reflect required street improvements along South Puget Drive of an 8-foot sidewalk, 8-foot planter strip with curb and gutter, including street lighting and two feet of right-of-way dedication. Prior to approval of final PUD approval, the Applicant shall incorporate these improvements into the final PUD plans or receive a modification from the street improvements standards.

24. All common area and open space shall be landscaped in accordance with the landscaping plan submitted by the Applicant and approved by the City; provided, that common open space containing natural features worthy of

preservation may be left unimproved. Prior to the issuance of any occupancy permit, the developer shall furnish a security device to the City in an amount equal to the provisions of RMC 4-9-060. Landscaping shall be planted within one year of the date of final approval of the planned urban development, and maintained for a period of two (2) years thereafter prior to the release of the security device. A security device for providing maintenance of landscaping may be waived if a landscaping maintenance contract with a reputable landscaping firm licensed to do business in the City of Renton is executed and kept active for a two (2) year period. A copy of such contract shall be kept on file with the Development Services Division. Landscaping shall be maintained pursuant to requirements of RMC 4-4-070.

25. Prior to the issuance of any occupancy permits, all common facilities, including but not limited to utilities, storm drainage, streets, recreation facilities, etc., shall be completed by the developer or, if deferred by the Planning/Building/Public Works Administrator or his/her designee, assured through a security device to the City equal to the provisions of RMC 4-9-060, except for such common facilities that are intended to serve only future phases of a planned urban development. All common facilities not dedicated to the City shall be permanently maintained by the planned urban development owner, if there is only one owner, or by the property owners' association, or the agent(s) thereof. In the event that such facilities are not maintained in a responsible manner, as determined by the City, the City shall have the right to provide for the maintenance thereof and bill the owner or property owners' association accordingly. Such bill, if unpaid, shall become a lien against each individual property.

EXPIRATION PERIODS:

Final PUD:

Expiration: The Applicant shall prepare and submit building permit applications which are accepted as substantially complete to the Department of Community and Economic Development within six (6) months of the effective date of approval. The developer shall complete the approved planned urban development or any phase thereof included in the approved final plan within two (2) years from the date of the decision to approve the final plan by the Planning Director, unless a shorter time is designated. Failure to complete the planned urban development, or any phase thereof, within this time limit will require the submittal of a new preliminary and final plan application in order to continue construction of the planned urban development. Failure to submit a new application or to complete the planned urban development once construction has begun shall constitute abandonment of the planned urban development subject to subsection J of RMC Section 4-9-150. Expiration of any building permit issued for a planned urban development shall be governed by the provisions of the applicable

Building Code. Construction of any portion of the planned urban development requires a current approved planned urban development and a current building permit.

DATED this 10th day of April, 2012.

\s\ Phil Olbrechts (Signed original in official file)

Phil A. Olbrechts
City of Renton Hearing Examiner

Appeal Right and Valuation Notices

RMC 4-8-110(E)(9) provides that the final decision of the hearing examiner is subject to appeal to the Renton City Council. RMC 4-8-110(E)(9) requires appeals of the hearing examiner's decision to be filed within fourteen (14) calendar days from the date of the hearing examiner's decision. A request for reconsideration to the hearing e examiner may also be filed within this 14 day appeal period as identified in RMC 4-8-110(E)(8) and RMC 4-8-100(G)(4). A new fourteen (14) day appeal period shall commence upon the issuance of the reconsideration. Additional information regarding the appeal process may be obtained from the City Clerk's Office, Renton City Hall – 7th floor, (425) 430-6510.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.