

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

In the Matter of the Application of	)	No. PLN #422
	)	
<b>Mario Turner, on behalf of</b>	)	<b>Smokey Point Senior Apartments</b>
<b>AMCAL Multi-Housing, Inc.</b>	)	
	)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a conditional use permit for the development of a 255-unit affordable senior housing development, known as “Smokey Point Senior Apartments,” on 4.05 acres at 3905 172nd St. 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 June 26, 2018.

Testimony:

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

Marc Hayes, City Community and Economic Development Director  
Mario Turner, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 26, 2018
2. Parties of Record List, undated
3. Certification of Public Notice, dated June 19, 2018
4. Land Use Application – Conditional Use Permit, received March 14, 2018
5. Project Narrative, dated March 14, 2018
6. Vicinity Map, received March 14, 2018
7. Water Availability, dated January 31, 2018
8. Letter from Douglas van Gelder, City of Marysville, to Jay Ross, dated January 30, 2018
9. Traffic Impact Analysis, Gibson Traffic Consultants, Inc., dated March 2018
10. Drainage Report, CG Engineering, dated March 12, 2018
11. Geotechnical Engineering Report, Zipper Geo Associates, LLC, dated March 12, 2018
12. Critical Area Study and Habitat Assessment Report, The Watershed Company, dated March 5, 2018

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13. Preliminary Tree Protection Plan, Washington Forestry Consultants, Inc., dated March 6, 2018
14. Cultural Resources Assessment, SWCA Environmental Consultants, dated March 21, 2018
15. Unanticipated Discovery of Cultural Resources and Human Skeletal Remains, received March 15, 2018
16. Public Notice Map 500' Radius, produced March 6, 2018
17. Mailing Labels
18. SEPA Environmental Checklist, dated March 10, 2018
19. Letter from Charles Morgan & Associates, LLC, dated March 14, 2018
20. Architectural Title Sheet (Sheet A0.1), dated March 14, 2018
21. Architectural Site Plan (Sheet A1.1), dated March 14, 2018
22. Architectural Elevations (Sheet A4.1), dated March 14, 2018
23. Existing Site Conditions (Sheet 1 of 1), dated February 12, 2018
24. Cover Sheet and General Notes (Sheet C1.1), dated March 14, 2018
25. Conceptual Temporary Erosion Control Plan (Sheet C2.1), dated March 14, 2018
26. Conceptual Grading and Drainage Plan (Sheet C3.1), dated March 14, 2018
27. Conceptual Water and Sewer Plan (Sheet C4.1), dated March 14, 2018
28. Conceptual Site and Street Improvement Plan (Sheet C5.1), dated March 14, 2018
29. SPR Landscape Plan (Sheet 1 of 3), dated March 12, 2018
30. SPR Landscape Plan (Sheet 2 of 3), dated March 12, 2018
31. Landscape Notes and Details (Sheet 3 of 3), dated March 12, 2018
32. Elevations, North, South, East & West (Sheet A4.1), dated May 11, 2018
33. Color Rendering, dated May 20, 2018
34. Notice of Neighborhood Meeting, undated
35. Neighborhood Meeting Sign-In Sheet, undated
36. Notice of Complete Application, dated April 11, 2018
37. Notice of Application, dated April 25, 2018
38. SEPA Threshold Determination – Mitigated Determination of Nonsignificance, dated April 25, 2018
39. SEPA Agency Distribution List
40. Email from Kerry Lyste, Stillaguamish Tribe of Indians, to Kristin Foster, dated April 26, 2018, with email string
41. Letter from Alexandra Ramsden to Marc Hayes, Sustainability Frameworks & Energy Efficiency Measures, dated April 26, 2018
42. Notice of Public Hearing, undated

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

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1. Mario Turner, on behalf of AMCAL Multi-Housing, Inc. (Applicant), requests a conditional use permit (CUP) to allow development of a 255-unit affordable senior housing development, known as “Smokey Point Senior Apartments,” on an undeveloped 4.05-acre parcel at 3905 172nd St. NE.<sup>1</sup> The proposal would include a single, four-story building incorporating the 255 housing units, as well as two internal courtyards incorporating multiple outdoor amenities, including two fitness walks, a fire pit, garden plots, a barbeque area, and a passive recreation area, as well as several interior amenities. Access to the site would occur from a new road, 40th Avenue NE. *Exhibit 1, Staff Report, page 1; Exhibit 4; Exhibit 28.*
2. The City of Arlington (City) determined that the application was complete on April 11, 2018.<sup>2</sup> On April 25, 2018, the City provided notice of the application by mailing notice to property owners within 500 feet of the property, posting notice on-site and at designated City locations, and publishing notice in *The Herald*. On June 11, 2018, the City provided notice of the open record hearing associated with the application by mailing notice to parties of record, affected agencies, and property owners within 500 feet of the property. The next day, the City posted notice on-site and at designated City locations. On June 14, 2018, the City published notice of the hearing in *The Herald*. The City received no comments in response to its notice materials. *Exhibit 1, Staff Report, page 5; Exhibit 3; Exhibit 16; Exhibit 17; Exhibit 36; Exhibit 37; Exhibit 42.*

State Environmental Policy Act

3. The City Department of Community and Economic Development (DCED) acted as lead agency and analyzed the environmental impact of the proposal as required by the State Environmental Policy Act (SEPA), chapter 43.21C RCW. 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 Determination of Nonsignificance (MDNS) on April 25, 2018, with a May 9, 2018, comment period. DCED received one comment in response to its SEPA determination: the Stillaguamish Tribe requested that Tribal Monitors be present during grading and excavation activities associated with the project. The MDNS was not appealed. *Exhibit 1, Staff Report, page 5; Exhibit 18; Exhibit 38; Exhibit 39; Exhibit 40.*
4. The MDNS requires the Applicant to:
  - Implement Best Management Practices (BMPs) during construction in accord with Department of Ecology (DOE) requirements.

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<sup>1</sup> The property is identified by tax parcel number 31052100306300. *Exhibit 4.* A legal description is provided with the site plans. *Exhibit 24.*

<sup>2</sup> On March 20, 2018, a public meeting was held on the application as required by Arlington Municipal Code (AMC) 20.16.130. *Exhibit 3.*

- Implement dust control measures during construction.
- Properly address stormwater during construction and ensure that all stormwater is treated and infiltrated on-site using Low Impact Design (LID) techniques.
- Comply with the City's noise ordinances during construction.
- Comply with all requirements related to the Airport Protection Subdistrict B.
- Ensure design standards are met.
- Install street trees as required by Arlington Municipal Code (AMC) 20.76.110.
- Submit an Unanticipated Discovery Plan prior to construction activities to ensure that cultural resources are protected, if found, and allow Tribal Monitors from the Stillaguamish Tribe to be present during grading and excavation activities.
- Pay traffic impact fees.
- Plant native trees as outlined in the Preliminary Tree Protection Plan.

*Exhibit 38.*

#### Existing Site and Critical Areas

5. The Watershed Company prepared a Critical Area Study and Habitat Assessment Report (CAR) for the Applicant, dated March 5, 2018. The CAR notes that the site largely consists of open grass field mixed with a weedy assemblage of common herbaceous plants ubiquitous to urban and suburban areas. There are some forested areas on the site consisting of second- and third-growth Douglas fir and immature deciduous trees, including alder and paper birch, with a thick scrub-shrub understory. The CAR determines that there are no wetlands or streams on-site, no species or habitats of local importance, and no evidence of listed state or federal endangered, threatened, or sensitive species. *Exhibit 12.*
  
6. The Applicant also submitted a Cultural Resources Assessment, prepared by SWCA Environmental Consultants, dated March 21, 2018. The Assessment notes that no cultural resources have been identified on-site and that no further investigation is required. As noted in the MDNS, however, Tribal Monitors from the Stillaguamish Tribe would be present during grading and excavation activities. In addition, the Applicant prepared an Unanticipated Discovery Plan detailing what should occur if cultural resources or human remains are discovered during construction. *Exhibit 14; Exhibit 15; Exhibit 38; Exhibit 40.*

#### Comprehensive Plan and Zoning

7. The property is designated Highway Commercial under the City Comprehensive Plan. The Highway Commercial designation consists primarily of a suburban commercial fabric with large-format commercial uses, and the designation is meant to provide a setting for large-scale commercial uses that typically locate on major thoroughfares and attract a regional customer base. *City Comprehensive Plan, Sec. 5.3.* Recently, however, the City has adopted a Mixed Use Overlay (MU) designation that is applicable to the subject

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property. The MU designation allows a blend of residential high-density and commercial uses subject to a regulating plan, administrative site plan review, and design review. *City Comprehensive Plan, Sec. 5.6*. The purpose of the MU designation is to foster development of pedestrian-oriented, mixed uses where residences are located in close proximity to retail and office facilities. The City intends the MU designation to: (a) enhance the pedestrian environment, (b) increase additional street level activity, (c) reduce automobile trips, (d) create a “sense of place,” (e) allow for the efficient use of land and resources, (f) promote economic vitality and provide for diverse housing opportunities, and (g) provide a transition between adjacent neighborhoods and commercial areas. *City Comprehensive Plan, Sec. 5.6. Exhibit 1, Staff Report, pages 4 and 7*.

8. The project site is Parcel E of a larger, approximately 8.4-acre site that is part of a binding site plan (BSP), the Baker-Mor Binding Site Plan, currently being reviewed by the City. The additional portion of the area addressed by the BSP, essentially the southern half of the larger 8.4-acre parcel, will be developed with commercial/retail uses, satisfying the intent of the MU Overlay designation. Properties to the south, east, and west are also designated Highway Commercial under the Comprehensive Plan. The property to the north is designated Medium Density Residential. Accordingly, the project would provide a buffer between strictly residential and strictly commercial development, as envisioned by the MU designation. Nearby amenities include a job center, a healthcare clinic, banks, a pharmacy, a coffee shop, a dental office, a grocery store, several eateries, and a Wal-Mart. *Exhibit 1, Staff Report, page 4 and 7; Exhibit 5*.
9. The property is located in the City’s Highway Commercial (HC) zoning district. The zone is designed to accommodate the widest range of commercial activities. Uses allowed within the zone include those allowed in other commercial districts, but also those that require highway access or that should be separated from residential uses. *AMC 20.36.020*. As with the Comprehensive Plan, however, the City has adopted a Mixed Use Overlay District (MU) in its zoning ordinances that is applicable to the site. The MU zone allows “for a mix of diversified residential development to co-exist within a proportionate share of the commercially zoned areas” of the city, including the HC zoning district, “where typical retail and other support services would be located, thus creating a walkable neighborhood concept.” *AMC 20.36.080*. As is discussed in detail below, the City has adopted separate development regulations, Chapter 20.110 AMC, governing mixed-use proposals in the MU zoning district. The City determined that the proposed use would (in conjunction with the additional development of the Baker-Mor BSP) constitute mixed-use development compatible with the MU zoning district. Properties to the south, east, and west are zoned for commercial development, and the property to the north is zoned residential. *Exhibit 1, Staff Report, page 4*.
10. The City adopted new 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 highly quality public realm by using physical form (rather than separation of uses) as the organizing principle for the code.” *AMC 20.110.012(b)*. Under Chapter 20.110 AMC, the project site is located within a “Place Type” that is designated “Mixed Use Urban Center.” Under the form-based code, Place Types are further categorized by “Use Intensity Transects.” The subject project, classified as “multi-family residential housing,” is located within the Transect 5 Neighborhood, Large Volume zone (T5N-LV). *AMC 20.110.014(c)(4)*. The purpose of the T5N-LV zone is to “provide an urban form that can accommodate a very diverse range of uses to reinforce walkable neighborhoods and to provide a mix of uses on the ground floor, including residential, thus providing a vibrant mix of activities to energize the streets.” *AMC 20.110.014(c)(4)*. Multi-family residential housing is allowed within the T5N-LV zone with a CUP.<sup>3</sup> *AMC 20.110.014(c)(4)*. *Exhibit 1, Staff Report, page 3*.

11. The mixed-use development regulations (AMC 20.110.014) provide specific guidelines on appropriate building types and frontages, and specific standards related to: blocks, rights-of-way, thoroughfares, 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 Applicant has proposed a decorative wall and landscape element along 40th Avenue and a decorative wall and landscaping along the frontage proposed for 173rd Street. This would serve the general intent of the frontage standards.
  - The proposed building is similar in character to two building forms that are acceptable in the T5N-LV zone: a Stacked-Flat building or a Mid-Rise building. A Stacked Flat is a medium-to-large sized structure consisting of multiple dwelling units accessed from a courtyard or series of courtyards with either individual or common entries. It is appropriately scaled to fit adjacent to neighborhoods serving main streets and walkable urban neighborhoods. A Mid-Rise building is a medium-to-large structure, built on a large lot, that can be used as a single-use building, typically for service or residential uses where ground floor retail is not appropriate.
  - The proposal would meet the four-story maximum height requirement in the T5N-LV zone. Because the building is for senior housing, the interior corridors must be

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<sup>3</sup> Community and Economic Development Director Marc Hayes testified that there is a scrivener’s error in the newly adopted code. AMC 20.110.014(c)(4) indicates that multi-family residential development requires a Special Use Permit within the T5N-LV zone. Mr. Hayes explained that the code should state that a CUP is required and that this error will be fixed in the near future. *Testimony of Mr. Hayes*.

contiguous for both the safety and connectivity of the residents. There is typically a maximum building length of 280 feet in the T5N-LV zone. Although the proposed building would exceed this length, the building would be designed with recesses into the exterior wall plane to create small courtyards and a visual separation of the building, satisfying the intent of the building length requirement. The building would essentially resemble two Stacked Flat buildings oriented with courtyards facing each other, being internally connected by common “socialization” areas and hallway corridors, allowing for a safe, secured environment for the senior residents.

- Block, right-of-way, and thoroughfare standards would be reviewed during the review process for the Baker-Mor BSP.
- No public civic spaces are proposed, but courtyards and patios would be provided to residents.
- The design would assist in meeting the T5N-LV standard of having buildings located close to adjacent street. The east and south property lines would meet required screening requirements.
- The Applicant has submitted preliminary stormwater plans that indicate that LID techniques would be employed to treat and disperse stormwater.
- The project would comply with outdoor lighting standards.
- Future development within the Baker-Mor BSP will be conditioned to ensure architectural compatibility with the current proposal.

*Exhibit 1, Staff Report, pages 11 through 13.*

#### Conditional Use Permit

12. As noted above, the Applicant seeks a CUP to allow development of multi-family, affordable housing for seniors. Specifically, the proposal would provide for 175 one-bedroom, one-bathroom units and 80 two-bedroom, one-bathroom units. All units would be age-restricted to seniors and would only be available to households earning 60 percent of the area median income. The internal courtyards would incorporate multiple amenities, including two fitness walks, a fire pit, garden plots, a barbecue area, a dog play area, and a passive recreation area. Interior amenities would include a social room, media room, activity room, fitness room, yoga room, two private dining rooms, and a business center. The project design would meet the requirements for certification under the Evergreen Sustainable Development Standard, a requirement for affordable housing projects applying for state funds through the Washington State Housing Trust Fund. As such, the proposal would employ more stringent energy efficiency strategies than required by the Washington State Energy Code. *Exhibit 1, Staff Report, pages 1 and 2; Exhibit 5; Exhibit 41.*
13. The site is located within the City’s Airport Protection Subdistrict B. *AMC 20.38.060.* The purpose of the airport protection (AP) district 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

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a safe and secure flying environment. *AMC 20.38.010(a)*. Proposed conditions would ensure that no use of the property could or would interfere, by electrical interference, emissions, or lighting conditions, with the use of the airport or foster an increased bird population. In addition, as required by the MDNS, the Applicant would dedicate an avigation easement over their property to the City. *Exhibit 1, Staff Report, pages 7 and 14.*

14. The property would be accessed from a new local collector street, 40th Avenue NE. This north-south road would connect the existing street to the south, 172nd Street NE, with 173rd Street NE, a planned east-west local collector that will be built by the City in the near-future, connecting Smokey Point Boulevard to 43rd Avenue NE. The construction cost of 40th Avenue NE would be developer-borne, and required as a condition of the Baker-Mor BSP. Chapter 20.56 AMC provides various requirements related to streets and sidewalks. Under AMC 20.56.060, developments of more than 49 dwelling units require more than one access point to neighboring streets. The property would provide adequate means of ingress and egress for emergency vehicles, via two access points to 40th Avenue NE, and would provide vehicular, pedestrian, and bicycle access, as required by AMC 20.56.030. Under AMC 20.56.070, streets must be related appropriately to existing topography and designed to facilitate the drainage and stormwater runoff objectives of Chapter 20.64 AMC. The private internal driveways and access lanes, as proposed, would satisfy this requirement. In addition, the site is essentially flat. The driveways to the site would meet the requirements of AMC 20.56.120, and the City and the Applicant have agreed on the design of 40th Avenue NE, including channelization, as required by AMC 20.56.170. *Exhibit 1, Staff Report, pages 7 and 8; Exhibits 20 through 33.*
15. AMC 20.56.190 and 20.90.040 require residential developments to pay a traffic impact fee. Gibson Traffic Consultants prepared a Traffic Impact Study (TIS) for the Applicant, dated March 2018. The TIS estimates the proposal would generate 944 new daily trips and 66 new PM peak hour trips. The City requires a fee of \$3,355 per new PM peak hour trips, or a total of \$221,430 for the proposed project. The TIS also determined that the level of service analysis shows that the development would not cause any intersections in the vicinity to operate at a deficient level of service. *Exhibit 1, Staff Report, pages 9 and 10; Exhibit 9.*
16. The Applicant would provide adequate parking, including handicap accessible spaces, as required by AMC Table 20.72-1. Because the proposal involves senior housing, the City determined that 244 spaces would be sufficient to serve the 255 apartments (rather than the 335 spaces that would normally be required). The TIS concurs with the City's assessment that the proposed number of spaces would adequately serve the development. To ensure the security of the property and the residents using the facility, the proposed project would sufficiently illuminate the parking lot and common areas, while not unnecessarily illuminating any other lot or public right-of-way. *AMC 20.60.400*. There is

a Community Transit center within a quarter-mile of the site, allowing increased mobility for residents, without the need for automobiles. *Exhibit 1, Staff Report, pages 2, 8, and 12; Exhibit 9.*

17. The CAR determined that the property is located within the Quilceda Creek Sub-Basin and the Snohomish Water Resource Inventory Area (WRIA #7). The Applicant submitted a preliminary Drainage Report, prepared by CG Engineering, addressing stormwater on-site. The Drainage Report notes that stormwater would be infiltrated on-site and that all runoff from developed areas of the project would be directed to infiltration trenches around the perimeters of the site designed to fully infiltrate runoff volumes. In addition, overflow pipes would, if needed, direct overflow discharges from the infiltration trenches to the public stormwater main in 172nd Street NE. Two geotechnical reports were also prepared for the proposal, one by GeoTest Service, Inc., and another by Zipper Geo. Both reports determined that the proposed stormwater infiltration would be feasible. The proposed development would comply with the 2014 Stormwater Management Manual for Western Washington, including Best Management Practices. *AMC 13.28.140.* In addition, the Applicant would adhere to a Stormwater Pollution Prevention Plan (SWPPP) and Temporary Erosion Sedimentation Control (TESC) during construction and obtain coverage under the Washington State Department of Ecology's Construction Stormwater General Permit. *Exhibit 10; Exhibit 11; Exhibit 12.*
18. AMC 20.60.100 and AMC 20.16.300 require that every unit within the development be served by a sewage disposal system and water supply system. The City verified in a signed "Water & Sewer Availability" letter, dated January 30, 2018, that the City has capacity to provide water to the site. The City of Marysville indicated in a letter, dated January 30, 2018, that sewer service would be available for the site. *Exhibit 1, Staff Report, page 8; Exhibit 7; Exhibit 8.*
19. The City would provide police and fire protection, Waste Management NW would provide garbage service, Cascade Natural Gas would provide gas service, and Snohomish County PUD #1 would provide electricity. The Applicant would underground all existing, extended, and new electrical power lines. *Exhibit 1, Staff Report, pages 8 and 9; Exhibit 18.*
20. Washington Forestry Consultants, Inc., prepared a Preliminary Tree Protection Plan for the proposal, dated March 6, 2018. The Plan states that there are 71 healthy trees that would be removed during development, and, under Chapter 20.76 AMC, the Applicant would replace these trees at a 3:1 ratio or pay into the City's tree mitigation in-lieu fund under AMC 20.76.120(e). *Exhibit 1, Staff Report, page 12; Exhibit 13.*
21. AMC 20.76.050 requires the development to have Type B screening (at a five-foot depth) bordering the existing single-family residences to the north and Type A screening (at a

five-foot depth) along all other borders of the property, including 40th Street NE. Project plans show that this requirement would be satisfied. In addition, under AMC 20.60.490, screening would be provided to prevent solid waste collection dumpsters from being viewed from public streets, sidewalks, or rights-of-way. *Exhibit 1, Staff Report, pages 9 and 10; Exhibits 20 through 33.*

22. AMC 20.76.110 requires the development to provide street trees at an average of at least one tree per 30 feet of street frontage. The Applicant submitted a landscape plan showing that this requirement would be satisfied. *Exhibit 1, Staff Report, page 11; Exhibits 29 through 31.*
23. AMC 20.52.020 requires “mini parks” of certain designs to be located in multi-family developments. Because the project would be designated exclusively for senior housing, the Applicant has requested that the outdoor courtyards with amenities and the several interior and outdoor active spaces serve to satisfy this requirement. In addition, the Applicant would pay \$42,876 into the City’s in-lieu park and open space fund. *Exhibit 1, Staff Report, pages 9 through 13; Exhibit 19.*

#### Testimony

24. Community and Economic Development Director Marc Hayes testified generally about the application, the proposed development, and the CUP criteria. He explained that this is the first project the City has analyzed involving the new Mixed Use Overlay zoning designation and explained how the MU Overlay interacts with other sections of the municipal code. Specifically, Mr. Hayes noted that, for developments involving mixed-use development, the provisions of the MU zone should be analyzed, as opposed to the provisions related to the underlying zoning district. Accordingly, because this project is part of the Baker-Mor BSP, a mixed-use proposal, the MU zoning regulations are applicable as opposed to the Highway Commercial zoning regulations. Mr. Hayes explained that the City adopted the new Mixed Use Overlay, as part of both the Comprehensive Plan and zoning code, because, while attempting to update the City’s Comprehensive Plan in 2015, the City realized it would not be able to expand its Urban Growth Area and that it needed some other way to meet buildable-land requirements under the Growth Management Act. Because the City has excess commercial property, it determined that a Mixed Use Overlay would allow for increased residential development while still meeting buildable land requirements. In addition, the overlay would satisfy several goals of the Comprehensive Plan, including allowing for greater urban densities, creating walkable neighborhoods, potentially reducing the City’s carbon impacts, creating more transit-oriented areas, and providing for a variety of housing types, including affordable housing. Mr. Hayes also explained that a more generic SEPA determination (a DNS) was provided for the entire Baker-Mor BSP but that the City determined it would be best to require individual SEPA analysis of each component of the BSP, as it begins development, to ensure that all impacts are adequately addressed. He also explained that

the project site was previously part of unincorporated Snohomish County and that, historically, the City of Marysville provided sewer and water service to the area. For this proposal, the City of Arlington would provide water to the site, but Marysville would continue to provide sewer service, as evinced by the letters of sewer and water availability. Finally, Mr. Hayes noted that the project would involve “green” building methods and would receive certification under the Evergreen Sustainable Development Standard program—a standard that, in many ways, is more stringent than LEED certification.  
*Testimony of Mr. Hayes.*

25. Applicant Representative Mario Turner testified that the City has been a pleasure to work with and that this is the Applicant’s first development project in Washington. The Applicant, however, has built both affordable and market-rate housing in California for 40 years and, recently, has expanded into Texas because the need for affordable housing for seniors has risen so dramatically there. He noted that this site was selected because this area also has a growing need for affordable senior housing and, further, because the adoption of the MU Overlay zone provided a unique opportunity to develop the project in an efficient and expedited manner. *Testimony of Mr. Turner.*

#### Staff Recommendation

26. Mr. Hayes testified that City staff reviewed the application and recommend that, with conditions, the CUP be approved. Mr. Turner testified that the Applicant concurs with the City’s assessment and would comply with the approval conditions, including the conditions required by the MDNS. *Exhibit 1, Staff Report, pages 14 through 16; Testimony of Mr. Hayes; Testimony of Mr. Turner.*

### **CONCLUSIONS**

#### Jurisdiction

The Hearing Examiner is granted the authority to hear and decide the application for a conditional use permit. *RCW 36.70.970; AMC 20.12.230(a)(2); 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

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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).*

Also:

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).*

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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.*

#### Conclusions Based on Findings

- 1. The requested CUP would involve a use that is permissible under the City's adopted regulations.** Multi-family housing units are a permitted use with a conditional use permit in the T5N-LV zone within the Mixed Use Overlay zoning district. *Findings 1 and 10.*
- 2. The application is complete.** 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 April 11, 2018. *Finding 2.*
- 3. With conditions, the proposed development would comply with identified zoning requirements.** The proposed 255-unit affordable senior housing development is an appropriate use within the T5N-LV zone under the MU Overlay zoning district. The proposed use would meet all required design and performance guidelines under the newly adopted mixed-use regulations (Chapter 20.110 AMC). Conditions are necessary to ensure that the proposal complies with municipal code requirements and all requirements of the MDNS and to ensure: the Baker-Mor BSP is recorded, development substantially conforms with the submitted plans, appropriate water and sewer connections are designed, a 10-foot utility easement is provided on the east side of the 40th Avenue NE right-of-way, and the proposal is constructed in a timely manner. *Findings 1, 3 – 26.*
- 4. With mitigation measures, the proposed development would comply with the State Environmental Policy Act.** The City evaluated the environmental impact of the proposed development as required by SEPA and issued a Mitigated Determination of Nonsignificance (MDNS). The MDNS was not appealed. Compliance with the MDNS conditions has been made a condition of issuance of the CUP. *Findings 1, 3, and 4.*
- 5. With conditions, the proposed development conforms to the City Comprehensive Plan and all other applicable regulations.** The City gave reasonable notice of the application and associated public hearing. The proposed use is permitted within the Mixed Use designation under the Comprehensive Plan and within the MU Overlay zoning with a conditional use permit. The proposed 255-unit affordable senior housing development complex would meet the City's criteria for building design, density and dimensional standards, recreational facilities and open space, streets and sidewalks, utilities, parking, and screening. As detailed in Conclusion 3, conditions are necessary to ensure that the proposal complies with code requirements. *Findings 1 – 26.*

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6. **With conditions, the proposed development would not endanger the public health or safety, would not adversely affect adjoining or abutting property, and would be compatible with design and use of the area where it is located.** The City evaluated the environmental impact of the proposed development as required by SEPA and issued a Mitigated Determination of Nonsignificance (MDNS). The MDNS was not appealed. Compliance with the MDNS conditions has been made a condition of issuance of the CUP. As stated above in Conclusion 5, the proposed 255-unit affordable senior housing development complex would meet the City’s standards. The development would not endanger the public health or safety, or adversely affect abutting properties. As detailed in Conclusion 3, conditions are necessary to ensure that the proposal complies with code requirements. *Findings 1, 3 – 26.*

### DECISION

Based upon the preceding findings and conclusions, the request for a conditional use permit for the development of a 255-unit affordable senior housing development, known as “Smokey Point Senior Apartments,” on 4.05 acres at 3905 172nd St. NE is **APPROVED**, with the following conditions:<sup>4</sup>

1. Recordation of the five-lot Binding Site Plan approved under Project File No. 418 which depicts Parcel E and all dedications and easements as described in this Conditional Use Permit approval.
2. All development shall be in substantial conformance with the revised site plan received March 26, 2018, subject to any conditions or modifications that may be required as part of the permit and construction plan review.
3. Water and Sewer connections shall be designed in accordance with the system design, scheduled for construction in Spring 2019.
4. A 10-foot utility easement will be provided on the east side of the right of way on 40th Avenue NE as provided in the City’s Standard Design Detail R-060.
5. An onsite water main shall be 12” Ductile Iron and extend to the property corners and looped around the buildings.
6. The development shall meet all the standards listed in the Findings of Fact in Section F of the City’s Staff Report.
7. The developer shall comply with all conditions of the SEPA MDNS issued on April 25, 2018:

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<sup>4</sup> Conditions include those required to reduce project impacts as well as those required to meet City codes.

- a. In order to mitigate for potential earth impacts, the Applicant shall implement Best Management Practices per Department of Ecology for Stormwater Pollution Prevention.
- b. In order to mitigate for potential air impacts, the Applicant shall implement dust control measures to reduce fugitive dust emissions during construction.
- c. Construction shall occur in accordance with the stormwater plan prepared by CG Engineering, March 12, 2018, including Low Impact Development, Performance Standard and BMP T5.13 of the 2014 Western Washington Stormwater Manual.
- d. All stormwater shall remain onsite. In order to mitigate for potential impacts to ground water the Applicant shall utilize Low-Impact Design techniques to manage stormwater on-site.
- e. The project will route all on-site stormwater to infiltration trenches to meet DOE requirements for flow control (up to 50 year storm, with an overflow outlet for up to the 100 year storm).
- f. Pollution generating stormwater shall be treated prior to infiltration
- g. Right of way stormwater may be directed to planted medians that will be located on 40th Avenue NE.
- 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 UNLESS specifically permitted by the City's building official.
- i. The Applicant will provide all instruments required of owners within Airport Protection Subdistrict B, including an avigation easement or disclosure and FAA form 7460.
- j. Design standards for the proposed development will meet the criteria for sector T5N-LV in the City's Mixed Use Overlay design manual, except as agreed between the City and owner prior to adoption of the Mixed Use regulations.
- k. Street trees shall be installed along all new and improved streets associated with the plat in accordance with AMC 20.76.110.

- l. In order to mitigate for potential impacts to cultural resources that may exist on-site, the Applicant shall submit an *Unanticipated Discovery Plan* (UDP) to the City prior to any construction activities, and shall coordinate with the Stillaguamish Tribe to allow Tribal Monitors on site during grading and excavation activities associated with this project.
  - m. Payment of a traffic impact fee according to the City's traffic mitigation formula, estimated in March, 2018 as \$221,430.00. Note: to be credited to the construction of 40<sup>th</sup> Ave NE, as described in the Development Agreement for the Baker-Mor Binding Site Plan approval.
  - n. 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.
  - o. 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.
  - p. 213 native trees will be planted as outlined in the Preliminary Tree Protection Plan (March 6, 2018).
8. Pursuant to AMC §20.16.220, this permit shall expire two years after the date of issuance if the Applicant has not worked with diligence toward completion of the proposal.

DECIDED this 11<sup>th</sup> day of July 2018.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center