



CITY OF STANWOOD NOTICE OF HEARING EXAMINER RECOMMENDATION

Cedarside Commons Mixed-Use Development

The City of Stanwood has issued a Notice of Hearing Examiner Recommendation for a Development Agreement and Preliminary Binding Site Plan as required by Stanwood Municipal Code. The following project has been recommended to be **APPROVED**, with the conditions listed in the Hearing Examiners Decision.

Project Name: Cedarside Commons Mixed-Use Development

Proponent: West Edge Development – Three, LLC

Project Number: 22-0121 (Development Agreement and Preliminary Binding Site Plan)

Description of Proposal: The permittee is proposing a binding site plan to develop three parcels consisting of 21.8 acres located northeast of the intersection of 72nd Avenue NW and State Route 532 with a mixed-use development. The property is zoned Traditional Neighborhood (TN) and the proposal consists of 444 apartment units of varying sizes, and 72 townhome units for a total of 516 residential units in addition to 26,000 square feet of retail and office space, 7,130 square feet of recreational amenities for the residential occupants, and 126,198 square feet of Native Growth Protection Area to preserve the on-site wetlands and stream. The permittee is also requesting a Development Agreement to facilitate development of the site due to the large encumbrance of critical areas including proposed density, height, parking, and critical area buffers for the project. Recreational amenities and open space, storm water management, water and sewer infrastructure, and street and landscaping improvements are all included in the project.

Tax Parcel Number(s): 32042000302000, 32042000302100 & 32042900200300

Hearing Examiner Recommendation: Approve, with Conditions

Notice of Recommendation Date: Friday, November 3, 2023

End of Reconsideration Period: Monday, November 20, 2023

Reconsiderations: Any person who presented or commented at the hearing may file a written request with the hearing examiner for reconsideration within ten (10) business days of the date of the Hearing Examiner's Recommendation. Reconsiderations must be delivered to the City of Stanwood, at 10220 270th Street NW, Stanwood, WA 98292, by **Monday, November 20, 2023 at 4:30 pm**. Reconsiderations must meet the content and grounds requirements of SMC 17.80.380.(8), shall specify the relief requested, and be accompanied by a \$200 non-refundable filing fee.

City Council Consideration: This Recommendation becomes the Examiner's final and conclusive action as **Tuesday, November 21, 2023**, unless reconsideration is timely requested. If reconsideration is timely requested, the order granting or denying reconsideration becomes the Examiner's final and conclusive action. The Examiner's final Recommendation will be considered by the Stanwood City Council in accordance with the procedures for Type IV actions in Chapter 17.80 SMC.

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**BEFORE the HEARING EXAMINER for the
CITY of STANWOOD**

RECOMMENDATION

FILE NUMBER: 22-0121

APPLICANT: West Edge Development – Three, LLC
C/o Andrew McKinley, Managing Member
516 N Olympic Avenue
Arlington, WA 98223

TYPE OF CASE: Consolidated: 1) Development Agreement; and 2) Binding Site Plan (*Cedarside Commons*, a mixed-use development)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER RECOMMENDATION: APPROVE both applications subject to: 1) Revisions to the proposed Development Agreement; and 2) Binding Site Plan conditions

DATE OF EXAMINER RECOMMENDATION: November 3, 2023

INTRODUCTION ¹

West Edge Development – Three, LLC (“WED 3” ²) and the Stanwood Community Development Department (“CDD”) have prepared a Development Agreement to control the development of approximately 21.8 acres located in the northeast quadrant of the 72nd Avenue NW/SR 532 intersection. WED 3 filed an application for Preliminary Binding Site Plan (“BSP”) approval of a preliminary development plan for the 21.8 acres on August 31, 2022, amended on October 16, 2023. (Exhibits 2; 62 ³) CDD determined the application to be complete as of September 15, 2022. (Exhibit 20) CDD issued a Notice of Application on November 29, 2022. (Exhibit 21) On October 16, 2023, WED 3 submitted a formal request that the proposed Development Agreement and the Preliminary BSP be consolidated for review. ⁴

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² The Examiner is using the Applicant’s acronym that is used in the proposed Development Agreement.

³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Recommendation is based upon all documents in the record.

⁴ WED 3 had also submitted a request for vacation of a portion of the 268th Street NW right-of-way. WED 3 and CDD operated throughout the staff review period on the premise that all three requests (Development Agreement, Preliminary BSP, and right-of-way vacation) would be consolidated for review, although the record contains no formal request from

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The street address of the subject property is 26903 72nd Avenue NW. The subject property is composed of three parcels whose Assessor's Parcel Numbers are 32042000302000, 32042000302100, and 32042900200300 (Parcels B, C, and D as listed on Exhibit 9, Legal Descriptions). (Exhibits 1, PDF 1 & 3; 9)

The Stanwood Hearing Examiner ("Examiner") viewed the subject property via Google Earth: Overhead imagery dated August 7, 2022; Street View imagery dated January, 2022.

The Examiner held a remote open record hearing on October 20, 2023, using the "Zoom" platform. CDD gave notice of the hearing as required by the SMC. (Exhibit 25)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 60: As listed on the "Table of Contents" Exhibit List provided with the Staff Report
- Exhibit 61: Letter, Request for Consolidation, October 16, 2023
- Exhibit 62: Revised Permit Application, October 16, 2023
- Exhibit 63: Written comment from Annette Bowden, October 11, 2023

Subsection 17.80.360(3)(a) SMC requires that decisions on Development Agreements and preliminary BSPs be issued within 120 net review days after the application is found to be complete. The Examiner's open record hearing was held beyond that day. The SMC provides that an extension of the timeline may be mutually agreed upon by the City and the applicant. [SMC 17.80.360(3)(a) and (4)(d)] WED 3 waived any irregularities in the application processing timeline. (Testimony)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. WED 3 is proposing a mixed-use development of approximately 21.8 acres located in the northeast quadrant of the 72nd Avenue NW/SR 532 intersection. The proposal consists of 444 apartment units of varying sizes and 72 townhouse units, for a total of 516 residential units, plus 26,000 square feet ("SF") of retail and office space, 7,130 SF of recreational amenities for the residential occupants, and approximately 468,081 SF (10.75 acres or 49% of the subject property) of Native Growth Protection

WED 3 to do so. For example, the Notice of Application and Notice of Hearing both list all three requests. (Exhibits 21; 25) On October 16, 2023, WED 3 formally requested that only the Development Agreement and the Preliminary BSP be consolidated for review. (Exhibits 61; 62) Therefore, the Examiner has no jurisdiction over the right-of-way vacation request because it is a Type V application which is outside of his jurisdiction. This Recommendation will not address the right-of-way vacation other than to mention it in the context of explaining the project. Elimination of the right-of-way vacation request from the consolidation has no adverse legal effect upon the public noticing since the public notices listed more applications than are now before the Examiner. The right-of-way vacation request, a Type V land use application, will be considered by the City Council in accord with Stanwood Municipal Code ("SMC") procedures.

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Area (“NGPA”) to preserve the on-site wetlands and Church Creek as it flows southerly through the subject property. WED 3’s Preliminary BSP proposes to vacate a portion of the 268th Street NW right-of-way and reroute it (more or less) through the center of the subject property. Recreational amenities and open space, storm water management, water and sewer infrastructure, and street and landscaping improvements are all included in the project. WED 3 proposes to develop *Cedarside Commons* in three phases, with each phase taking about two years. (Exhibits 3 – 8; 11 – 14; 18)

A far more detailed description of the *Cedarside Commons* proposal is contained in Appendix I; a rendering of the proposal is contained in Appendix II. The Phasing Plan is set forth in Appendix III. The proposed Development Agreement will be found in Appendix IV.

2. The subject property is a mostly rectangular property with a curved southern border (following the current 268th Street NW right-of-way) and a rectangular “exception” in the northwest corner. The “exception” is an approximate 1.25-acre parcel, approximately 195 feet east-west by 259 feet north-south, currently owned by the City. The “exception” is identified as Parcel A on Exhibit 9. The City and WED 3 were, as of the date of the Examiner’s hearing, in negotiations to enter into a Purchase and Sale Agreement to sell Parcel A to WED 3. Parcel A is not part of the current plan for *Cedarside Commons*. If WED 3 does acquire Parcel A and if it wants to include it in the *Cedarside Commons* development, separate application(s) will be required. (Exhibits 1, PDF 3; 4, Sheet S1; 6, Sheet C1.0; 9; 19, PDF 12 & 13; testimony)
3. The subject property is bordered on the west by 72nd Avenue NW with Stanwood High School across the street. It is bordered on the north by the City’s Church Creek Park.⁵ To the east is undeveloped property located outside the City limits but within the City’s adopted Urban growth Area (“UGA”) whose owner has approached the City regarding a development similar in nature and scope to *Cedarside Commons*. The subject property is bordered on the south by the 268th Street NW right-of-way, to the south of which is the SR 532 right-of-way. South of SR 532 is a large mixed-use development containing commercial and residential uses. (Exhibits 1, PDF 3; 17, PDF 10; testimony)
4. The zoning pattern around the 72nd Avenue NW/SR 532 intersection is diverse. The subject property and Parcel A are both zoned Traditional Neighborhood (TN). They are the only properties in the area so zoned. Church Creek Park to the north is zoned Public Open Space (POS). The mixed-use development across SR 532 from the subject property and the high school is zoned General Commercial with a Mixed-Use Overlay. The high school property is zoned Single Family Residential – 9.6 (SR 9.6). The property to the east of the subject property lies outside the City Limits but within the City’s UGA. Its current anticipated zoning upon annexation is Light Industrial (LI) with a Master Plan Overlay. However, CDD believes that post-annexation designation is likely to change when the 2024 Comprehensive Plan update process occurs. (Exhibit 1, PDF 3; testimony; Official Notice of high school site zoning designation, https://stanwoodwa.org/DocumentCenter/View/4815/ZoningMap_2021?bidId=, last viewed October 29, 2023)

⁵ Interestingly, park users have established disc golf fairways, tee boxes, disc baskets, and paths within the subject property. (Exhibit 11, PDF 2)

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5. The majority of the subject property exhibits a moderate downward slope towards the east and southeast. Church Creek flows through the eastern part of the subject property from north to south in a broad ravine approximately 35 to 40 feet below the elevation of the majority of the site. The Church Creek ravine and the northern portion of the subject property are wooded; the bulk of the site is open grass land. Numerous wetlands exist within the northeastern and eastern portions of the subject property. None of the wetlands will be impacted by *Cedarside Commons*; some wetland buffer averaging and compensatory mitigation, as allowed by the SMC, is proposed. (Exhibits 1, PDF 3; 8; 11; 12, PDF 6 & 37)
6. WED 3 is requesting to enter into a Development Agreement with the City to govern the development of *Cedarside Commons* for up to a 15-year development period. (Exhibit 19) The Development Agreement will set the standards to which *Cedarside Commons* will be vested for the term of the agreement. The Development Agreement will terminate when *Cedarside Commons* is completed or after 15 years, whichever comes first. The Development Agreement proposes that several “deviations” from standard SMC requirements be allowed:
 - A. Increased residential density. The TN zone’s maximum residential density is 20 dwelling units (“DU”) per acre. [SMC 17.60.030] Based on the 21.8 acres comprising the subject property, the maximum residential dwelling unit yield would be 436 DU. WED 3 is seeking approval for 516 DUs, representing a density of 23.67 DU per acre. (Exhibit 3, PDF 3 & 4)

WED 3 seeks this deviation to offset

the high costs that this project will face for the 268th St. NW [right-of-way] relocation and construction, the additional lane improvements along the east frontage of 72nd Ave NW, the new “compact” roundabout at the intersection of SR 532 and 64th Ave NW, and the high cost of offsite utility improvements that have been identified will be required for this project

(Exhibit 3, PDF 3)

- B. Two instead of three housing types. The TN zone requires a mix of three housing types (*e.g.*: single-family detached, townhouse, multi-family, cottage, etc.) unless the development devotes more than 10% of its land area to commercial uses, in which case only two housing types are required. [SMC 17.47.040(1) & (4)] *Cedarside Commons* proposes to devote only 3% of its site area to commercial land uses, but wants to limit the number of housing types to two: Townhouses and apartments.

WED 3 seeks this deviation

based on the significant areas of the site that are reserved as undeveloped critical areas. This has significantly hindered the ability to place a larger portion of the commercial area at the most leasing advantages ground floor

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location. The reserved undeveloped areas coupled with onsite parking requirements, shared activity spaces for the residents, and the enlarged [right-of-way] development has limited the opportunities to develop prime at grade commercial spaces.

(Exhibit 3, PDF 5) Using more than 10% of the subject property for commercial uses is not realistic: The Planning Commission supports this deviation because of the substantial commercial vacancies within the City. (Exhibit 24, PDF 5) In addition, a substantial commercial area is directly across SR 532 from the subject property. WED 3 also notes that a significant demand for apartment dwellings exists in the Stanwood area. (Exhibit 3, PDF 5)

- C. Reduced on-site parking. The SMC would require 1,137 on-site parking stalls to serve the proposed mix of residential and commercial uses. The Institute of Transportation Engineers (“ITE”) Manual calculates only 842 on-site parking spaces for the same mix of uses.⁶ (Exhibit 1, PDF 21)

Subsection 17.105.050(2) SMC allows the CDD Director to administratively reduce the number of required on-site parking spaces when supported by a study by a professional traffic engineer. Parking demand information has been provided by WED 3’s traffic engineer. (Exhibits 15; 59) WED 3’s site plan depicts 900+ on-site parking spaces, some 24% more than recommended by the ITE Manual.⁷ (Exhibit 4, PDF 1)

- D. Tandem parking. Tandem parking is where a double-length parking stall is provided so that one car may park behind another in the same stall. The SMC does not address tandem parking. In WED 3’s experience, “tandem stalls are frequently provided as assigned stalls for the larger 2- and 3-bedroom units in mixed use projects of this scope.” (Exhibit 3, PDF 7) WED 3 proposes to provide 115 tandem parking stalls (230 parking spaces) reserved for use by 2- and 3-bedroom apartment units. (Exhibit 1, PDF 21)

- E. Building height. Two of the proposed apartment buildings (A1 and A2) exceed the SMC’s height limit because of the site’s southerly slope coupled with the requirement that building height be measured at the front (lower grade) façade of the building. Building C (mixed use) also exceeds the SMC’s maximum. Depending on the portion of the roof considered, Buildings A1 and A2 exceed the height limits by between about 4 to 10 feet; the flat-roofed portion of Building C exceeds the height limit by less than one foot. (Exhibit 1, PDF 19)

⁶ WED 3’s Project Narrative, Traffic Impact Analysis, and Parking Management Plan contain slightly different numbers for on-site parking demand. (Exhibits 3, 15, & 59, respectively) Suffice it to say, all four of the record documents which contain calculations for required parking (Exhibits 1; 3; 15; 59) reach the same basic conclusion: The amount of parking required by the SMC is significantly higher than the number recommended by the respected ITE Manual.

⁷ The Parking Management Plan includes 104 on-site parking spaces on Parcel A under the assumption that Parcel A will become part of *Cedarside Commons* with a building pad and parking. (Exhibit 59, PDF 1) Since Parcel A has not been included in the proposed site plan, the Examiner has ignored that possible future occurrence. As noted previously, future addition of Parcel A will require amendment to the site plan.

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The “roof elements are highly articulated with variable height parapets” which “will not only provide more interesting and articulated roof elements but also shield from view the roof top mechanical units planned for these structures.” (Exhibit 3, PDF 14)

7. The City Planning Commission held a public meeting on April 10, 2023, at which it received comments from the public and discussed *Cedarside Commons*. (Exhibits 22 - 24) “The Commissioners support the majority of deviations being requested by the developer including a reduction in commercial density since Stanwood currently has many vacant businesses. However, they have significant concerns about the requested parking deviation.” (Exhibit 24, PDF 5)
8. The City received 24 written comments on *Cedarside Commons* from members of the public, most submitted shortly after the Notice of Application was published in late 2022. (Exhibits 28 – 50; 63) Most of the commenters opposed the location of the project more than the project itself. Primary issues of concern were: Traffic congestion on 72nd Avenue NW in the vicinity of the high school and the SR 532 intersection; potential impact to Church Creek; school overcrowding; out-of-character with the area; and lack of compliance with all TN zone requirements.

There was no testimony from the public at the Examiner’s public hearing.

9. 268th Street NW, a Local street, intersects 72nd Avenue NW, an Urban Major Collector street, approximately 100 feet north of the 72nd Avenue NW/SR 532 signalized intersection. Because of the short distance to the traffic lights, left turns westbound to southbound from 268th Street NW are currently prohibited. WED 3 proposes to realign 268th Street NW through the subject property such that it will intersect 72nd Avenue NW in alignment with the southern high school entrance, about 480 feet north of the 72nd Avenue NW/SR 532 intersection. Full turning movements will be possible at that location. (Exhibits 1, PDF 5; 3, PDF 11; 15, PDF 2)
10. WED 3’s traffic engineers predict that *Cedarside Commons*, when fully developed, will generate an average of approximately 2,790 daily vehicle trips (“ADT”), of which approximately 260 will occur during the morning peak travel hour and approximately 270 will occur during the evening peak travel hour. (Exhibit 15, PDF 7)

The City has established Level of Service (“LOS”) standards for City streets. (Exhibit 15, PDF 7) The only intersection predicted to exceed the applicable LOS is the 64th Avenue NW/SR 532 intersection. (268th Street NW intersects 64th Avenue NW east of the subject property at the outer edge of the currently designated UGA.) WED 3, the City, Snohomish County, and the Washington State Department of Transportation (“WSDOT”) have studied the traffic situation extensively and have concluded that converting the 64th Avenue NW/SR 532 intersection from stop-controlled on the minor (64th Avenue NW) approach to a roundabout will alleviate the deficiency. (Exhibits 15 – 17; 52; 57)

11. Stanwood’s State Environmental Policy Act (“SEPA”) Responsible Official issued a Mitigated Determination of Nonsignificance (“MDNS”) for *Cedarside Commons* on August 1, 2023. (Exhibit 10) The MDNS was not appealed. (Testimony) The mitigation measures within the MDNS relate

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primarily to traffic impact and require construction of a roundabout at the 64th Avenue NW/SR 532 intersection among other traffic-related requirements. Other MDNS mitigation measures address NGPA impacts. All MDNS mitigation measures have been carried forward by CDD as recommended conditions of Preliminary BSP approval. (Exhibit 1, PDF 50 - 52)

12. Church Creek is a Type 2 stream which, under the SMC, requires a 100-foot wide buffer plus a 15-foot building setback. If the required buffer extends beyond a regulated steep slope, then the outer edge of the buffer is 25 feet beyond the top of the slope. (Exhibit 11, PDF 9) The proposed site plan will create an NGPA which will meet or exceed those requirements. (Exhibits 5, Sheet L1.00W; 11, PDF 3)

Eight wetlands are wholly or partially located on the subject property. Wetlands A, F, and G are depressional wetlands located in the wooded portion of the upland part of the subject property; Wetlands B – E and H are riverine wetlands located along the shore of Church Creek. (Exhibit 11, PDF 3 & 10) None of the wetlands will be directly affected by the proposed development; all will be provided with buffers to protect them from incursion by humans. Some buffer reduction and averaging, as allowed by the SMC, are proposed. (Exhibits 1, PDF 31 – 34; 3; 11)

13. The nearest public schools to *Cedarside Commons* are Cedarhome Elementary, Stanwood Middle, and Stanwood High Schools. The Stanwood/Camano School District (“School District”), taken as a whole, has sufficient classroom capacity to accommodate expected enrollment from students living in *Cedarside Commons*. However, some schools in Stanwood are at or over capacity; some schools on Camano Island, in particular, are under capacity. Cedarhome is one of the most crowded schools in the School District. “School assignment is contingent on available space at time of enrollment. School [attendance] boundaries may be changed, therefore, there is no guarantee students will attend [the nearest] school.” (Exhibit 54; testimony) WED 3 pointed out that about 50% of the dwelling units will be studio or one-bedroom, suggesting that those units would not be as likely to generate many students. (Testimony)

The School District does not currently have an impact fee program. (Exhibit 1, PDF 43) CDD held discussions with the School District regarding development of an impact fee program. The result of those discussions was a conclusion that the School District could not legally justify an impact fee program because it still has some available classroom capacity. (Exhibit 1, PDF 48 & 49; testimony)

14. CDD prepared an in-depth Staff Report addressing all criteria for Preliminary BSP approval and responding to the written citizen comments. (Exhibit 1) Nobody challenged CDD’s analyses and conclusions. A few clerical corrections were made to the Staff Report during the hearing:
 - A. PDF 1. The Report lists four Tax Account Numbers. As has been noted, Parcel A (the fourth Tax Parcel Number listed in the Report) is not part of the current application.
 - B. PDF 2, §I.B. The “preliminary plat” reference is incorrect: No preliminary plat is being proposed. Both application dates are incorrect: The submittal date was August 31, 2022; the date of completion was September 15, 2022.

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- C. PDF 3, § C. Parcel A is not part of the application.
- D. PDF 5. The total intersection distances on the two figures do not match. The new intersection distance will be about 360 feet north of SR 532.
- E. PDF 15, bottom row, right hand cell. The “X-X” was a placeholder for “38 – 41.”
- F. PDF 24, row two, right hand column, fourth line. “24recommendation” should be simply “recommendation.”
- G. PDF 43, § C. The “preliminary plat” reference is incorrect: No preliminary plat is being proposed.
- H. PDF 44. Discussion of SMC 16.40.020(9) would logically occur on this page. That SMC section provides that approved Preliminary BSPs are valid for three years. That 3-year term is proposed to be modified by the Development Agreement to match the 15 year term of the Agreement. (Testimony)

Subject to those corrections and the Findings of Fact set forth herein, the CDD analyses and conclusions in Exhibit 1 at PDF 1 – 49 are incorporated herein by reference as if set forth in full.

- 15. CDD recommends approval of the Development Agreement and approval with conditions of the Preliminary BSP. (Exhibit 1, PDF 50 – 55)

WED 3 supports the CDD Staff Report and recommended conditions. (Testimony)

- 16. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁸

The Examiner is legally required to prepare this recommendation within the framework created by the following principles:

Authority

A proposed development Agreement is a Type IV application which is subject to an open record hearing before the Examiner who forwards a written recommendation to the Council. The proposed binding site plan is a Type III application which is subject to an open record hearing before the Examiner whose decision is final subject to reconsideration and judicial appeal. [SMC 17.80.230, Table 1; SMC 17.80.310, Table 3A]

⁸ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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When an applicant elects to consolidate the processing of two or more applications of different types, the process for the highest numbered component application controls the consolidated applications. [SMC 17.80.250] WED 3 formally elected to consolidate the development agreement and binding site plan applications. (Exhibit 61) Therefore, the consolidated applications have been processed as Type IV applications.

Review Criteria

Development Agreement

The SMC contains no specific review criteria for Development Agreements. [SMC 17.60.060] In the absence of specific review criteria, the Examiner will consider whether the public use and interest of the City and its citizens would be served by entering into the proposed Development Agreement.

Preliminary Binding Site Plan

The review criteria for preliminary binding site plans are contained in SMC 16.40.020(6) and .040(1):

The city shall review the proposed binding site plan to determine whether it meets the following criteria:

- (a) Comprehensive Plan – whether the proposed binding site plan and development of the parcel conforms to all elements of the Comprehensive Plan.
- (b) Zoning – whether the proposed binding site plan meets the zoning regulations.
- (c) Physical setting – whether the binding site plan properly takes into account the topography, drainage, vegetation, soils and any other relevant physical elements of the site.
- (d) Public services – whether adequate services are available, including:
 - (i) Adequate water supply.
 - (ii) Adequate sewage disposal.
 - (iii) Appropriate storm drainage improvements.
 - (iv) Adequate fire hydrants.
 - (v) Appropriate access to all anticipated uses within the plan.
 - (vi) Provisions for all appropriate deeds, dedications, and/or easements.
 - (vii) Examination of the existing streets and utilities and how the proposed binding site plan relates to them.
- (e) Environmental issues – examination of the project through the SEPA process and a determination of whether the proposed binding site plan complies with the SEPA requirements.

[SMC 16.40.020(6)]

No binding site plans shall be approved unless appropriate provisions are made for, but not limited to:

- (a) The public health, safety and general welfare.
- (b) Public use reservations.
- (c) *Street right-of-way, realignment, dedication or widening.* If the city concludes that the street right-of-way adjacent to a proposed binding site plan is inadequate for

widening, and realignment of the existing street is necessary as a direct result of the proposed development, then the city may require a dedication of necessary right-of-way and improvement of that right-of-way. Nothing herein shall prohibit voluntary agreements with the city that allow a payment in lieu of dedication of land or to mitigate a direct impact that has been identified as a consequence of a binding plan as authorized by Chapter [82.02](#) RCW.

(d) All applicable provisions of the zoning code.

[SMC 16.40.040(1)]

Vested Rights

“An application for a permit or project permit listed as a Type I – V permit, except those which seek variance from land use regulations, shall be considered under the development regulations in effect on the date of a complete application. ...” [SMC 17.80.210(1); exceptions are set forth in SMC 17.80.210 (3) – (8)]

Therefore, this application is vested to the development regulations as they existed on September 15, 2022.

Standard of Review

The standard of review is preponderance of the evidence; the applicant has the burden of proof. [SMC 17.80.370(3)(a)] “All findings and conclusions necessary to the issuance of a decision shall be based upon reliable evidence.” [SMC 17.80.370(3)(c)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. The design of *Cedarside Commons* is consistent with the the City’s vision for this end of the City as reflected by the existing zoning. Those who want the subject property to evidence a low density, low-rise, small town character are envisioning something that is not consistent with the existing and planned zoning of the area. The TN zone, even in its basic character without the flexibility provided by a Development Agreement, is a relatively high density zone which allows buildings up to 65 feet high. (Exhibit 1, PDF 17) The currently planned, post-annexation LI zoning for the acreage to the east of the subject property does not evidence a rural, bucolic vision. The existing mixed-use development across SR 532 from the subject property can hardly be called small town, rural.

Development Agreement

2. The Examiner believes that it would be outside his purview to advise the Council on legal aspects of the proposed Development Agreement. That should rightfully be the purview of the City Attorney. Based on that belief, this Recommendation will not address those aspects of the Agreement.

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3. The Examiner has a number of changes to the Draft Development Agreement that he believes the Council should consider. There are two major suggestions and a number of minor suggestions. Each will be explained chronologically as they appear in the text. The proposed changes are depicted on the annotated copy of the Draft Development Agreement contained in Appendix IV:

A. First page, second Recital. The third line refers to *Cedarside Commons* as a “516-unit multi-family project”. The SMC defines “multi-family” residence as one for three or more families. [SMC 17.20.140] The SMC defines a “townhouse” as a residence attached to two or more other residences, with none above one another. [SMC 17.20.210] Thus, there could be some overlap in the definitions. But *Cedarside Commons* most definitely has both multi-family apartments and townhouses. The Examiner suggests that “516-unit multi-family project” be changed to “516-unit multi-family/townhouse project” in each place where that term appears.

B. Section 1. This section describes the project in words, but it does not tie it to the Preliminary BSP plans that were reviewed during the Examiner’s hearing. The Examiner believes that the Development Agreement should specifically and clearly tie the Development Agreement and Preliminary BSP together. The Examiner suggests wording to do that in the first paragraph of this section.

Also in the first paragraph and in many other locations throughout the Draft Development Agreement, the word “townhome” is used. This is a very minor point, but since the SMC uses the word “townhouse,” not “townhome,” the Examiner believes that “townhouse” should be used throughout the Development Agreement to avoid a possible source of confusion or future dispute.

C. Section 8, last line. The term “multi-family” should be replaced with “multi-family/townhouse” for the reason explained previously.

D. Section 10, “Traffic Mitigation.” The reference to “64th Street N.W.” should be changed to “64th Avenue NW.”

Of major importance is a conflict between the Development Agreement and the SEPA MDNS regarding the 64th Avenue NW/SR 532 roundabout. The MDNS states that traffic from *Cedarside Commons* will cause that intersection to operate below the established LOS. It states unequivocally that mitigation is required. The last paragraph in the right-hand column of the “Traffic Mitigation” section states that if the roundabout has not been completed when the developer seeks occupancy of buildings in *Cedarside Commons*, the developer need only pay all traffic mitigation fees and proceed without the roundabout.

WSDOT wanted the City to block 268th Street NW at the east edge of *Cedarside Commons* until the roundabout was complete. (Exhibit 57, especially PDF 2) However, Stanwood Public Works objects to blocking 268th Street NW. (Testimony)

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Subsection 17.148.070(3)(c)(iii) SMC provides that if a project will result in an LOS below the established standard, the developer has several options, one of which is to “Mitigate the impacts of the project to ensure concurrency;”.

Given the above facts, the Examiner believes that the last paragraph in “Traffic Mitigation” should simply state that the roundabout must be completed before issuance of any certificates of occupancy.

- E. Section 11. The word “Developers” which appears twice in this paragraph is incorrect. WED 3 and CDD agree that they intended to use the word “Development.”
- F. Section 15.3. The term “multi-family” which appears twice in this section should be “multi-family/townhouse” for reasons stated previously.
- G. Section 15.3. The way this section is written could be interpreted to require submittal of only one final site development plan. Such an interpretation would be contrary to the phased development approach desired by WED 3 and supported by CDD (and the Examiner). The BSP process is a two-step review: Preliminary site plan followed by final site plan. [SMC 16.40.020 & .030] The text of this section should be revised to make clear that final BSPs may be submitted in phases.
- H. Section 16.1. This section states that curbs, gutters, and sidewalks are to remain outside of the dedicated 268th Street NW right-of-way through *Cedarside Commons*. WED 3 testified that this provision was intended to allow it to control the irrigation system within the planter strips. The preliminary plans indicate that those facilities will be within the dedicated right-of-way. (Testimony) Private ownership of curbs, gutters, and sidewalks would be very unusual; the Examiner sees no public use or benefit from such private ownership. The Examiner recommends that that provision be stricken.
- I. Section 24. This section includes wording to implement an authority granted by RCW 36.70B.170(4), sentence 3: “A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.” Here, however, the Development Agreement would allow the Council to impose regulations for that purpose only during the first five years of the 15-year agreement term.

Such a five-year limitation of the Council’s authority is not required by the authorizing RCW, nor would it serve the public use and interest. The Examiner believes that the Council should reserve the right to amend regulations to address “a serious threat to public health and safety” through the entire term of the Development Agreement. The Examiner recommends a simple text change to effect that change.

- 4. The SMC contains no review criteria for development agreements. Section 17.80.100 SMC does contain five requirements for development agreements, the relevant portions of all of which are fully met by the current proposal:

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- A. Subsection (1): “The city may enter into a development agreement with a person having ownership or control of property within the city’s jurisdiction. The city may enter into a development agreement for property outside its boundaries as part of a proposed annexation or service agreement..”

Analysis: WED 3 owns the approximate 21.8 acres of land, located inside the City Limits, which is the subject of the proposed Development Agreement. This requirement (essentially a precondition) is met.

- B. Subsection (2): “A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the property for the duration specified in the agreement.”

Analysis: Sections 1 – 16 of the Draft Development Agreement contain specific development standards and procedures that will govern the development of *Cedarside Commons*. This requirement is met.

- C. Subsection (3): “ A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. The city and project applicants may include provisions and agreements whereby applicants are reimbursed over time for financing public facilities.”

Analysis: Off-site improvements to the City water and sewer systems are necessary to satisfactorily serve *Cedarside Commons*. (Exhibit 18) Those requirements need not be in the Development Agreement. The MDNS allows other developers to share the cost of the off-site 64th Avenue NW/SR 532 roundabout under certain conditions. This requirement is met.

- D. Subsection (4): This subsection is procedural only and imposes no requirements on the Development Agreement *per se*: “The city shall only approve a development agreement by ordinance or resolution after a public hearing.”

- E. Subsection (5): “A development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.”

Analysis: Section 24 of the proposed Development Agreement, as recommended for amendment by the Examiner, reserves the City’s authority under RCW 36.70B.170(4) to impose new or different regulations to the extent required by a serious threat to public health and safety. This requirement is met.

5. The Examiner concludes that execution of the proposed Development Agreement, with the amendments recommended by the Examiner, will serve the public use and interest. The deviations to standards that are reflected in the Agreement appropriately address issues that affect a large, complex development such as *Cedarside Commons*. The Agreement will provide consistency and predictability over the lengthy build-out period of this project. Such consistency and predictability

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are valuable to both WED 3 and the City. The notion that a development agreement may include deviations from normal standards is a built-in element of the development agreement process. The Examiner concludes that that flexibility has not been abused in this application.

6. Approval of the proposed Development Agreement, with the amendments recommended by the Examiner, will serve the public use and interest of Stanwood and its citizens.

Preliminary Binding Site Plan

7. The CDD Staff Report contains a lengthy analysis of Comprehensive Plan conformance. (Exhibit 1, PDF 4 – 11) That analysis and its conclusions were not challenged and are incorporated herein by reference as if set forth in full. The proposed Preliminary BSP complies with the approval criteria in SMC 16.40.020(6)(a).
8. Subject to the provisions within the associated Development Agreement, the BSP complies with zoning code requirements. The proposed Preliminary BSP complies with the approval criteria in SMC 16.40.020(6)(b).
9. The proposed design and layout work with and respect the most sensitive features of the subject property. Nearly 50% of the subject property is to be set aside as permanent NGPA to preserve the on-site wetlands and streams. The proposed Preliminary BSP complies with the approval criteria in SMC 16.40.020(6)(c).
10. Water and sewer services are available subject to developer-funded off-site improvements. The preliminary plans for stormwater runoff control show compliance with the City's adopted regulations. The proposed internal drive system will provide appropriate access to all on-site parking stalls. The relocation of 268th Street NW will result in a net benefit to the community by significantly increasing the separation of the 268th Street NW and SR 532 intersections on 72nd Avenue NW. Aligning the 268th Street intersection with the High School intersection is also a major benefit, both for the short term and the long term (potential to install traffic signals if ever warranted). The proposed Preliminary BSP complies with the approval criteria in SMC 16.40.020(6)(d).
11. The proposal avoids direct impact to all of the on-site wetlands and provides code-compliant buffers for all wetlands, Church Creek, and Stream A. Preservation of nearly 50% of the total site as permanently protected NGPA demonstrates a strong commitment to environmental consciousness. The proposed Preliminary BSP complies with the approval criteria in SMC 16.40.020(6)(e).
12. The evidence, as discussed previously throughout this Recommendation, demonstrates compliance with the criteria in SMC 16.40.040(1).
13. The Preliminary BSP for *Cedarside Commons* meets all criteria for approval.
14. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:

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- A. A clear and direct linkage between this Preliminary BSP and the associated Development Agreement should be a part of the Preliminary BSP conditions. A new condition to accomplish that will be added.
 - B. The Examiner normally holds to the position that changes to MDNS conditions may not be considered absent an overt appeal from the threshold determination (which would give the Examiner authority to consider changes). The Examiner does not believe that position prevents the Examiner from making minor, non-substantive changes that make the MDNS conditions blend better with the remaining conditions. In addition, CDD testified that Recommended Conditions 11 and 12 are now moot as their requirements have already been fulfilled. The Examiner agrees with that testimony. Therefore, those two conditions will be omitted and minor, non-substantive wording changes in other MDNS conditions will be made.
 - C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 1, 4, 7.b, 7.d, 7.e, 8, 10.b, 13.a, 13.b, 15, 20, 24, 29, 32, 33, 36 - 38, 41, and 42 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
15. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

RECOMMENDATION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner recommends that the City Council:

- A. **APPROVE** the proposed Development Agreement as set forth in Appendix IV hereto; and
- B. **APPROVE** the proposed Preliminary Binding Site Plan **SUBJECT TO THE ATTACHED CONDITIONS.**

Recommendation issued November 3, 2023.

/s/ John E. Galt

John E. Galt
Hearing Examiner

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HEARING PARTICIPANTS ⁹

Carl Pirscher
Tansy Schroeder

Dan Nelson
Andrew McKinley

NOTICE OF RIGHT OF RECONSIDERATION

This Recommendation is subject to the right of reconsideration pursuant to SMC 17.80.380(8). “Any person who presented or commented at the hearing may file a written request” for reconsideration. [SMC 17.80.380(8)] Requests for reconsideration must be filed in writing with the City Clerk/receptionist within ten (10) business days of the date of mailing of this Decision. See SMC 17.80.380(8) for additional information and requirements regarding reconsideration.

NOTICE of COUNCIL CONSIDERATION

This Recommendation becomes the Examiner’s final and conclusive action as of the eleventh business day after the date of mailing of the Recommendation unless reconsideration is timely requested. If reconsideration is timely requested, the order granting or denying reconsideration becomes the Examiner’s final and conclusive action. The Examiner’s final Recommendation will be considered by the Stanwood City Council in accordance with the procedures for Type IV actions in Chapter 17.80 SMC. Please contact the Department of Community Development for information regarding the scheduling of Council consideration of this Recommendation. Please have the applicant’s name and City file number available when you contact the City.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

⁹ The official Parties of Record register is maintained by the City’s Hearing Clerk.

CONDITIONS OF APPROVAL
22-0121
CEDARSIDE COMMONS

This Preliminary Binding Site Plan is subject to compliance with all applicable provisions, requirements, and standards of the Stanwood Municipal Code, standards adopted pursuant thereto, and the following special conditions:

Site Development Approval:

1. This Preliminary Binding Site Plan is subject to all terms, conditions, and requirements of the approved, associated Development Agreement entered into between the City and the Developer.
2. The Preliminary Architectural Plans and Site Plan, Preliminary Landscape and Planting Plan, and Preliminary Civil Construction Plans (Exhibits 4 - 6) shall be the approved plans. Minor modifications to the plans may be approved by the Community Development Director or Public Works Director if the modifications do not: 1) involve more than a 10% increase in the area or scale of the development, 2) have a significantly greater impact on the environment and facilities, and 3) change the boundaries of the originally approved plan.
3. All applicable components of the Stanwood Municipal Code shall be followed.
4. The approved permit shall expire in accordance with SMC 17.80.395.
5. Binding site plan and Development Agreement approval authorizes the permittee to proceed with application for necessary permits to construct the required improvements and to prepare construction drawings in accordance with the determinations made and conditions imposed.
6. No permits and construction pursuant to the proposed development shall begin or be authorized until expiration of the project's appeal period.
7. All solid waste disposal and storage areas shall be enclosed with block or wood fencing and be screened from all public areas.

MDNS Conditions:

8. Pursuant to the traffic study, the approximately 517 new residential units from this development are anticipated to degrade the level of service (LOS) of the 64th Avenue NW and State Route 532 intersection below adopted service levels. As such, the Developer must provide mitigation to meet traffic concurrency. The below mitigation measures are required to meet concurrency.

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- a. A roundabout shall be installed as a traffic-management measure at the intersection of 64th Avenue NW and SR 532 to meet the level of service standards at the intersection from the approximately 517 new residential units that will utilize this intersection.
 - b. The Developer will provide a performance bond in the amount of 150% the cost of the roundabout within 60 days after completion of the Intersection Control Evaluation (ICE) with WSDOT.
 - c. The City will prepare and submit the WSDOT permit for construction of the roundabout.
 - d. The Developer will begin construction of the roundabout within thirty days after the issuance of the right-of-way permit from WSDOT.
 - e. If another development unrelated to this project impacts the design of the roundabout prior to construction of the roundabout beginning, then the Developer shall enter into an agreement with the City and the other development proponent to facilitate final design and construction of the roundabout.
9. The City will grant the Developer a credit against the traffic mitigation fees in an amount equal to, but not greater than, the cost of construction of the roundabout. The aggregate of said credits shall not exceed the maximum amount payable in impact fees.
10. A construction access plan shall be submitted and approved by the City prior to issuance of a civil construction permit.
- a. The construction access plan shall be designed to reduce traffic conflicts with traffic from the high school, including avoiding construction truck access during school drop off and pick up windows.
 - b. If at any time during construction, the streets are not kept clean and clear, all work shall stop until the streets are cleaned and maintained in a manner acceptable to the Public Works Director.
11. A sight distance analysis shall be submitted and approved by the City prior to approval of civil construction plans and landscaping plans.
- a. The sight distance analysis shall address sight distances for the proposed parking lots off of the re-located 268th Street NW to ensure there are no structures, landscaping, or design features that would impede sight distance.
 - b. The sight distance analysis shall also address the intersection of 268th Street NW and 64th Avenue NW.

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12. A contiguous, safe walking path shall be constructed by the applicant from the subject property to Cedarhome Elementary School and Stanwood High School.
 - a. The areas of most pedestrian safety concern to the school district are the entrance to the high school across from this development, the intersection between 72nd Avenue NW and 272nd Street NW, and the pedestrian crossing on SR 532. To reduce the number of pedestrian street crossings across 72nd Avenue NW, the Developer shall provide a safe, contiguous walking path through the development that connects to the Church Creek Park trail system and safe pedestrian crossings at 276th Street NW and 68th Avenue NW, unless deemed unnecessary by the Public Works Director, for students from the proposed development to access Cedarhome Elementary.
 - b. The Developer shall provide a safe pedestrian crossing across 72nd Avenue NW for students from the proposed development to access the high school.
13. No signage shall be allowed along SR 532 for the proposed development.
14. The Developer shall provide a green space buffer between buildings A3 and A4 and SR 532 to reduce visual impacts from the requested height deviations.
 - a. The buffer shall be no less than 15 feet wide and consist of at least three rows of plantings that shall be installed in a staggered manner, 10 feet on center.
 - b. The tree species selected shall be 15 feet to 20 feet in height at the time of planting and shall attain a height of at least 30 feet at maturity. Such landscaping shall include one tree for each 30 lineal feet or fraction thereof.
15. Temporary NGPA signage and fencing shall be installed along the perimeter of the critical area buffer prior to grading activities on the property. This shall include staking the boundary, installing construction orange fencing, installing temporary signage for workers on-site, and installation of significant tree protection for the retained trees within the buffer area. This shall be completed prior to any construction activities on-site.
16. Permanent NGPA signage and split rail fencing shall be installed prior to certificate of occupancy. The City of Stanwood uses Snohomish County sign specifications. The permanent NGPA boundary shall include a split rail fence along the entire border of the critical area, signs shall be placed no greater than 100 feet apart around the perimeter of the NGPA. This shall be completed prior to final certificate of occupancy.
17. The binding site plan shall show a 15-foot building setback from the edge of the NGPA on the face of the binding site plan.

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Civil Construction:

18. Prior to clearing or fill and grade beginning, construction plans consistent with city standards, including a stormwater plan, clearing and grading, site utility/infrastructure improvements, road improvements, landscaping and other plans and/or information required by the Community Development Department shall be submitted for review and approval. All design and construction shall comply with the Stanwood Municipal Code, the Stanwood Street and Utility Standards, and Appendix D of the fire code.
19. The Developer and contractor shall attend a pre-construction meeting with city staff to discuss expectations and limitations of the permit before starting construction.
20. The on-site project manager shall be a Certified Erosion and Sediment Control Lead.
21. Prior to clearing or fill and grade beginning, the permittee shall notify the Stillaguamish Tribe of Indians of ground disturbance for purposes of tribal monitoring.
22. If historical, cultural, or archaeological sites or artifacts are discovered in the process of development, work on that portion of the site shall be stopped immediately, the site secured, and the find reported as soon as possible to the planning director. The property owner also shall notify the Washington State Department of Archaeology and Historic Preservation and affected tribes.
23. The Developer shall follow all recommendations and BMP's as described in the Drainage Report dated August 19, 2023 prepared by David W. Harmsen, P.E. (Exhibit 12)
24. All civil and building construction shall adhere to the following measures to minimize impacts to wetlands;
 - a. Direct construction lights away from wetland
 - b. Locate activity that generates noise away from wetland
 - c. Route all new untreated runoff away from wetland
 - d. Infiltrate or treat, detain and disperse into buffer new runoff from impervious surfaces and new lawns
 - e. Follow Best Management Practices for dust control
 - f. Install privacy fencing or landscaping to delineate buffer edge and to discourage disturbance or wildlife by humans and pets
 - g. Non-native plants to be removed and replaced with native vegetation per an approved planting plan; and restoration to be bonded and monitored per SMC 17.114.250
25. A wetland mitigation plan pursuant to Stanwood Municipal Code 17.125.090, including wetland replacement/creation, shall be approved by city staff prior to civil construction permit issuance.
26. Wetland buffer planting species shall all be appropriate, non-invasive species appropriate for Stanwood's climate.

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27. All new trees will be required to be a diameter of two inches at four and one-half feet above the ground at time of installation and details shall be shown on the final landscaping plans. Ground cover shall be planted between street trees.
28. The Developer shall coordinate with PUD in the event of potential conflicts with existing PUD facilities or necessary upgrades of PUD facilities.
29. Construction hours of operation are limited to 7:00 am to 10:00 pm on weekdays, 8:00 am to 6:00 pm on Saturdays, Sundays, and state recognized holidays.

Building Permits:

30. All projections and mechanical details shall be treated or painted to match the color of the adjacent material or a complementary color.
31. All mechanical equipment for the buildings shall be either screened or placed in areas that are not visible from public streets or adjacent residential units.

Binding Site Plan Approval:

32. A Final Binding Site Plan shall be submitted to the City for review and approval consistent with SMC 16.40.030.
33. Provide a note on the Final Binding Site Plan which states that Impact fees for traffic, parks, and schools will be required at the time of building permit issuance.
34. Provide a note on the Final Binding Site Plan for any Sewer credits received for eligible off-site improvements and Traffic Impact Fee credits received for eligible intersection/street improvements.
35. The location and limitations associated with the Native Growth Protection Area (NGPA) and its buffer shall be shown on the face of the Final Binding Site Plan and shall be recorded with Snohomish County Assessor's Office. The recorded document shall also include the following language: "All property lying within Tract ____ shall be designated as Native Growth Protection Area / Easement and shall remain in a substantially natural state. There shall be no clearing, excavation, building, or fill within a Native Growth Protection Area. Only dead, dying, diseased or hazardous trees may be removed, subject to an arborist's report or risk assessment and with the approval of the City of Stanwood. Removal of drainage obstructions may be permitted with approval by the Public Works Director and Community Development Director."
36. Provide a note on the Final Binding Site Plan that states "The building designs for each residence shall meet the architectural standards of Stanwood Municipal Code section 17.112 Architectural Design Standards. "

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37. All easements associated with the binding site plan, including recording number(s), shall be identified on the Final Binding Site Plan.
38. Dedications of streets and/or public rights-of-way shall be required on the Final Binding Site Plan.
39. All current and delinquent taxes and assessments must be paid to the Snohomish County Treasurer prior to the recordation of a binding site plan. Upon receipt of all payments due, the Snohomish County Treasurer will issue an official verification that all taxes and assessments have been collected. This official verification is required by the Snohomish County Auditor in order to allow a binding site plan to record.
40. For the Final Binding Site Plan to become effective upon recordation, the following items will need to be submitted to the Snohomish County Auditor:
 - a. Affidavit of Binding Site Plan;
 - b. Attachment of certified legal descriptions;
 - c. Attachment of Binding Site Plan map(s); and
 - d. Record of Survey
41. A conformed copy of the recorded Final Binding Site Plan shall be submitted to the City of Stanwood.

Utilities:

42. The project is subject to applicable water, sewer, and stormwater general facility (plant investments) fees and hookup fees. These fees are payable at the levels in effect at the time of building permit submittal and will be collected at the time of building permit issuance.

Other:

43. Business Licenses for all contractors working on the site shall be required to obtain a Stanwood Business License endorsement on their State Business License.

APPENDIX I:
CEDARSIDE COMMONS PROJECT DESCRIPTION
Source: Excerpted and modified from Exhibit 3, PDF 1 – 5, 11, & 12

Vision Statement

The Cedarside Commons project is envisioned as an all-inclusive development of residential housing, boutique commercial personal services and small retail shops with an emphasis on shared opportunities for formal and informal interactions and experiences as a community. The central organizing design element is what WED 3 calls the “Commons Building.” This is a dedicated facility offering the Cedarside Commons residents and guests meeting rooms, games rooms, exercise facilities with a dedicated yoga studio and a quiet library for reading or study. In addition, the Cedarside Commons project offers a variety of linked outdoor spaces that includes trails, sport courts, outdoor movie venues, wildlife viewing platforms, gazebos, and children’s play areas that will further foster the neighborhood associations and human interactions so important to WED 3’s vision for this project. Also integral to WED 3’s vision is the strong visual associations developed between the building forms designed for this project that include complimentary use of exterior materials and colors, the exuberant modulation of building facades and roof lines, and the insertion of small courtyards, terraces, plazas, and arcades throughout the project to further link the interior private building spaces to the outdoor shared community spaces. WED 3 also wants to foster the connection to the land and the Church Creek Park. With the proximity of Church Creek, associated wildlife areas and the park, special attention was given to integrating the project with the surrounding natural areas. Nature trails and outdoor activity spaces will create a bridge between indoor and outdoor recreation, leading to a project attuned with the natural beauty of its location. The result is a coherent, connected assemblage of architectural forms, and spaces that will contribute to a shared sense of community, conservation, and neighborhood association.

Project Description

General overall:

This is a mixed-use project on 21.82 acres, consisting of 444 studio, one-, two- and three-bedroom apartment units, and 72 two- and three-bedroom townhome units for a total of 516 residential units. There will be 26,510 square feet of retail and office space and 7,234 sq. ft. central commons building, providing fitness, gathering, BBQ, library, game room and administrative spaces. Parking is provided for more than 900 vehicles in parking structures and on the surface. (See Exhibits 4 – 6.)

A pedestrian only shopping and dining street is planned. Two retail buildings face each other across a pedestrian only street leading to an open plaza. Both structures have extended roofs to create dry walkways along the store fronts. The plaza at the end of the street is intended for use as a farmers’ market, Saturday market, or in the annual Camano art tour. The possibilities for the plaza space go beyond however and could become part of an outdoor restaurant space, music venue, or public playground.

Parking is provided for more than 900+ vehicles in both parking structures and surface parking areas. Approximately one third of the total property acreage will be reserved as riparian habitat to protect and preserve the Church Creek stream corridor and adjoining buffers. The project intends to achieve LEED Certification.

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Specific Building/Site Discussions:

Building siting and orientation is meant to emphasize street frontage associations and cross connections, to facilitate and enhance pedestrian access, and provide pedestrian amenities as outlined in Stanwood's building design standards. A pedestrian boutique shopping and dining "street" venue is planned to front the arterial of 72nd Ave. NE that will link to the other mixed-use, commons and residential structures being developed. The two retail buildings face each other across a pedestrian only lane. Both structures have extended roofs to create dry walkways along the store fronts. The end of the street has a large plaza for use as a farmers' market, Saturday market, or as part of the annual Camano art tour. The intent is to create a living, working, shopping and recreation community for the tenants and residents. Siting is also meant to facilitate views to the adjacent woodlands to the north and east, and views to the south and west; and to integrate the residential, commercial, and commons components of the project, as well as tie the site into the larger fabric of Stanwood, especially to the commercial areas to the south, the high school to the west and the City Park to the north.

The central node of the developed project will consist of the Commons Building which will served as the neighborhood gathering center and its strong axial cross street connection with the central radius mixed-use building on the south frontage of the realigned 268th Street NW right-of-way. The Commons Building is a 7,234 sq. ft. central single-story building, providing fitness, meeting rooms, BBQ, library, game room and administrative spaces. The Commons Building shares a strong architectural vocabulary with the radiused mixed-use structure as well as other planned structures. This pair of structures mark the projects "gateway" and the integration of public to more private spaces. The relocation of the 268th Street NW right-of-way from its current location which would represent an edge condition to the proposed central public pathway thru the project not only mitigates a problematic traffic condition identified by the City of Stanwood's traffic consultants, but also provides a connecting spine that helps more thoroughly integrate this project into the larger Stanwood community. Easily accessible public parking is proposed to front both sides of the realigned ROW (see attached site plans) which will greatly enhance the viability of the proposed commercial spaces and also serve as additional guest parking for the residential densities proposed.

The higher density residential structures are planned to radiate outward from the gateway elements as described above and are generally aligned perpendicularly to the proposed 268th Street NW realignment. The lower density townhome portion of the proposed development is located towards the Church Creek stream channel and associated wetlands and buffers. The townhome structures are dispersed, 4-to-6-unit buildings that will allow for increased open space around this lower density portion of the project. WED 3 feels this transition to a lower more distributed unit density is more appropriate adjacent to the sensitive Church Creek environment.

The varying heights of the buildings work with the site grades to build up from the SE towards the west and north and back down to lower scaled retail structures along 72nd Avenue NW, allowing for reasonable density while still respecting the scale of the adjacent neighborhoods. Care was taken in design to avoid monolithic structures that would dominate the hillside or obscure the natural surroundings. The project materials and forms evoke a contemporary Northwest vocabulary, and a warm and tactile palate of materials in primarily earth tones, with wood accents, and complimentary colors, while breaking up the volumes into smaller areas with variation in depth to give a sense of human scale to all the various elements. Design was carefully considered to ensure an attractive and inviting space that does not dominate nearby structures or

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landmarks. Wood is used liberally where appropriate, to add a warmer texture to those areas where people may spend significant time, such as private decks. Durable and complimentary materials are used throughout the various buildings and site work, again in keeping with Stanwood's building design standards but upscaled compared to all nearby structures.

Cedarside Commons will provide well over an acre of common outdoor gathering and recreational space in the form of open plazas, sports courts, play areas, dog parks and agility areas, as well as a walking path and educational signage along the adjacent wetlands and steep slope areas, which comprise about 10 acres of the site. The walking path will incorporate gazebos and art installations to enhance its allure and use. The site also abuts and will have paths connecting it to the existing Church Creek Park and its trail system and amenities. The site is designed to emphasize the green space, and beautiful views, provided by the adjacent wetlands, resulting nature preserve and stream, while minimizing and mitigating adverse impacts.

Street Improvements:

1. The reconstruction of 268th Street NW will move its intersection with 72nd Avenue NW approximately 270 feet north of its current location and give approximately 480 feet of distance from the signal at SR 532. This additional room will decrease conflicts at the intersection.
2. The new intersection will be located across from the exit from the high school to form a single intersection, again reducing the potential for turning conflicts.
3. 268th Street NW will be constructed with curb and gutter as well as on-street parking through the development site. Bike lanes in each direction will be provided as well as sidewalks and planters on each side per the attached plans.
4. New frontage improvements on 72nd Avenue NW along the project frontage include a sidewalk and right turn north bound drop lane to 268th Street NW. In addition, a south bound left turn lane pocket to 268th Street NW will be constructed, along with associated curb, gutter, and sidewalk.
5. The traffic impact analysis and comment response analysis shows that the development will need to construct a northbound partial right-turn lane along 72nd Avenue NW from SR-532 to the newly aligned 268th Street NW intersection. The intersection of 72nd Avenue NW at 268th Street NW will operate at an acceptable level of service with the minor legs being stop controlled with the westbound approach having a right-turn pocket and a shared left-through lane. It is anticipated that the development traffic will not significantly impact SR-532 operations.
6. The Developer of this project will design and construct a "compact" roundabout at the intersection of SR 532 and 64th Avenue NW. Contingent upon the City of Stanwood obtaining WSDOT permits for construction of said roundabout. Also contingent upon the City of Stanwood allowing sequential construction of Cedarside development to continue in the event of any delay in construction or design of said roundabout. The funding for this roundabout construction will be through the traffic mitigation fees assessed to this project.

Utilities:

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1. The project will upsize sections of the downstream sewer system, increasing flow capacity. In addition this project will add a new sewer lift station that will not only serve the proposed project site but future development in the City of Stanwood's GMA to the east of the site.
2. With the relocation of 268th Street NW, a new waterline will be constructed, upsizing the current 8" line to 12".

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**APPENDIX II:
AERIAL RENDERING OF *CEDARSIDE COMMONS***

Source: Exhibit 4, Sheet P1.2 (Exhibit 4, PDF 40)

Viewing direction is towards the northeast from a point above the 72nd Avenue NW/SR 532 intersection.
The Stanwood High School driveway is at center left; McDonald's is at lower right.



**APPENDIX III:
PROPOSED PHASING PLAN**

Source: Exhibit 3, PDF 9 & 10

The overall project will be constructed in three (3) consecutive distinct phases each taking approximately 2 years to construct. The first phase of the project which will commence shortly after Land Use and Phase I building permits are issued.

Phase I Site Improvements:

1. Preliminary grading and stabilization of the approximately 21.82 acre site to rough grades. Construct erosion control measures.
2. Complete construction of ROW improvements for the relocation of a portion of the 268th St. NW as shown on the attached plans. This will include adjoining sidewalk and landscaping elements and all associated inground utilities, parking stalls and 2 bike lanes.
3. Construction of the wetland buffer mitigation elements per the attached landscape and civil engineering plans, including removal and replacement of a yet indeterminate sq. ft. of invasive vegetation
4. Construction of storm water detention and conveyance elements for the entire project.
5. Construction of the water and sewer distribution elements to serve the overall project including a sewer lift station at the SE limit of the site.
6. Construction of the parking areas, connecting sidewalks, landscaping, immediate building and parking lot landscaping required for Phase I building occupancy.
7. Construction of site amenities such as the pedestrian trail system, sport courts, dog parks, playgrounds, fire pits, refuse enclosures, etc.
8. Slope stabilization and hydroseeding of all site areas outside of the Phase I development.

Phase I Building Construction Improvements: (Building labels are shown on Exhibit 4, Sheet G1.1.)

1. Construction of the Commons Building.
2. Construction of apartment Buildings B1 and B2.
3. Construction of apartment Building B3 & associated parking garage.
4. Construction of the mixed use commercial and apartment building C1.

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Phase II Site Improvements:

1. Fine grading to rough under slab and under paving elevations for construction of the Phase II site and building elements.
2. Construction of storm water appurtenances and conveyance elements for connection to the project storm water facilities constructed as part of Phase I.
3. Construction of the water and sewer distribution elements to serve the Phase II project structures.
4. Construction of the parking areas, connecting sidewalks, landscaping, and the immediate building and parking lot landscaping required for Phase II building occupancy.
5. Construction of additional Phase II site amenities such as the further enhancements to the pedestrian trail system, sport courts, refuse enclosures etc.
6. Maintenance of native plants in buffer enhancement/mitigation area, including exclusion of non-native vegetation.

Phase II Building Construction Improvements:

1. Construction of apartment Buildings A1, A2, A3 and A4.
2. Construction of the two commercial marketplace buildings.

Phase III Site Improvements:

1. Fine grading to rough under slab and under paving elevations for construction of the Phase III site and building elements.
2. Construction of the remaining storm water appurtenances and conveyance elements for connection to the project storm water facilities constructed as part of Phase I.
3. Construction of the remaining water and sewer distribution elements to serve the Phase III project structures.
4. Construction of the parking areas, connecting sidewalks, landscaping, and the immediate building and parking lot landscaping required for Phase III building occupancy.
5. Construction of the remaining Phase III site amenities such as the further enhancements to the pedestrian trail system, sport courts, refuse enclosures, pergolas, fire pits, etc. to complete all final site work for the overall project.
6. Maintenance of native plants in buffer enhancement/mitigation area, including exclusion of non-native vegetation.

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Phase III Building Construction Improvements:

1. Construction of townhouse apartment Buildings E1 – E8 (6-unit townhouse apartments) and F1 – F6 (4-unit townhouse apartments).

**APPENDIX IV:
ANNOTATED DRAFT DEVELOPMENT AGREEMENT**
Source: Exhibit 19.

This copy of the Draft Development Agreement includes textual changes which the Examiner is recommending to the City Council. Recommended deletions are denoted by ~~striketrough~~; recommended additions are denoted by double underlining. Bold text and single underlining are in the original text and have not been changed by the Examiner. The Examiner has omitted the “Exhibits” pages for efficiency; the Examiner is not recommending changes to those pages.

DEVELOPMENT AGREEMENT

THE DEVELOPMENT AGREEMENT is made and entered into this _____ day of _____, 2023, by and between the **CITY OF STANWOOD**, a non- charter, optional code Washington municipal corporation (hereinafter the “City”) and **WEST EDGE DEVELOPMENT – THREE**, a Washington limited liability company (hereinafter “WED 3”).

RECITALS

WHEREAS WED 3 is the owner of real property located at 26903 72nd Avenue NW, Stanwood, WA 98292 (hereinafter the “Subject Property”), identified as Snohomish County Assessor Parcel Nos. 32042000302000, 32042000302100 and 32042900200300, and legally described on the attached Exhibit A; and

WHEREAS WED 3 has submitted to the City an application to develop the subject property under a Binding Site Plan (“BSP”), which application is for the development of a 516-unit multi-family/townhouse project, together with associated commercial development (the “Project”); and

WHEREAS WED 3 has worked with the City, Snohomish County, and Washington State Department of Transportation to propose a traffic mitigation plan agreeable to all parties; and

WHEREAS, WED 3’s proposal is acceptable to the City under certain conditions, established herein; and

WHEREAS, pursuant to RCW 36.70B.170(4) and SMC 17.60.060, the Parties recognize and agree that the execution of a development agreement is a proper exercise of the City’s police power and contract authority, that a development agreement may obligate a party to fund or provide services, infrastructure, or other facilities, and that a development agreement shall reserve to the City the authority to impose new or different regulations to the extent required by a serious threat to public health and safety; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, “development standards” includes, but is not limited to, all of the standards listed in RCW 36.70B.170 (3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170 (1)); and

WHEREAS, this Development Agreement by and between the City and the Owner (hereinafter the “Development Agreement”), relates to the real property described on Exhibit A hereto, of the development known as Cedarside, which is generally located at: 26903 72nd Avenue NW, Stanwood, WA 98292 (hereinafter the “Subject Property”); and

WHEREAS, pursuant to RCW 36.70B.200 and SMC 17.60.060 (5), on _____ [DATE OF HEARING], the City held a public hearing regarding the form and substance of this Agreement before the City Council, and the City Council has approved a resolution authorizing the Mayor to enter into this Agreement; and

WHEREAS, after due consideration of the terms of this agreement, public hearing and City Council review, the City and Owner have agreed to enter into this Development Agreement, which shall be used to establish the appropriate density, property use, access, development standards, roadway standards and terms for the Property;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

GENERAL PROVISIONS

1. **The Overall Project.** The Project is the development and use of the Property, consisting of approximately 21.82 acres in the City of Stanwood, consisting of 444 studio, one-, two- and three-bedroom apartment units, and 72 two- and three-bedroom ~~townhome~~ townhouse units for a total of 516 residential units. There will be 26,000 square feet of retail and office space and a 7,130 sq. ft. central commons building, providing fitness, gathering, BBQ, library, game room and administrative spaces.

Exhibits 3 (Project Narrative), 4 (Preliminary Architectural Plans), 5 (Preliminary Landscape and Planting Plan), and 6 (Preliminary Civil Construction Plans) for the Preliminary Binding Site Plan approved under City File No. 22-0121 are the preliminary plans associated with this Development Agreement.

Project is to consist of 3 separate Phases numbered 1-3. 1 & 2 each contain mixed use and multifamily buildings. Phase 3 consists only of ~~Townhomes~~ townhouses. Each phase is expected to take 24 months to construct. Phases may be started out of order and may have delays in between phases (may not start immediately after each other). Our proposed housing type mix is 86% multifamily and 14% Single family (~~townhomes~~ townhouses).

A pedestrian only shopping and dining street is planned. Two retail buildings face each other across a pedestrian only street leading to an open plaza. Both structures have extended roofs to create dry walkways along the store fronts. The plaza at the end of the street is intended for use as a farmers' market, Saturday market, or in the annual Camano art tour. The possibilities for the plaza space go beyond however and could become part of an outdoor restaurant space, music venue, or public playground.

Parking is provided for more than 900+ vehicles in both parking structures and surface parking areas. Approximately one half of the total property acreage will be reserved as riparian habitat to protect and preserve the Church Creek stream corridor and adjoining buffers. The project intends to achieve LEED Certification. The building detailed site plans, landscape plans, floor plans, elevations and 3D models of the project are included with the Application packet to provide additional detailed information.

2. **Specific Building/Site Proposal.** Building siting and orientation is meant to emphasize street frontage associations and cross connections, to facilitate and enhance pedestrian access, and provide pedestrian amenities as outlined in Stanwood's building design standards. A pedestrian boutique shopping and dining "street" venue is planned to front the arterial of 72nd Ave. NW that will link to the other mixed-use, commons and residential structures being developed. The two retail buildings face each other across a pedestrian only lane. Both structures have extended roofs to create dry walkways along the store fronts. The end of the street has a large plaza for use as a farmers' market, Saturday market, or as part of the annual Camano art tour. The intent is to create a living, working, shopping and recreation community for the tenants and residents. Siting is also meant to facilitate views to the adjacent woodlands to the north and east, and views to the south and west; and to integrate the residential, commercial, and commons components of the project, as well as tie the site into the larger fabric of Stanwood, especially to the commercial areas to the south, the high school to the west and the City Park to the north.

The central node of the developed project will consist of the Commons Building which will served as the neighborhood gathering center and its strong axial cross street connection with the central radius mixed-use building on the south frontage of the realigned 268th St. NW ROW. The Commons building is a 7,130 sq. ft. central single-story building, providing fitness, meeting rooms, BBQ, library, game room and administrative spaces. The Commons building shares a strong architectural vocabulary with the radiused mixed-use structure as well as other planned structures. This pair of structures mark the projects "gateway" and the integration of public to more private spaces. The relocation of the 268th St. NW ROW from its current location which would represent an edge condition to the proposed central public pathway thru the project not only mitigates a problematic traffic condition identified by the City of Stanwood's traffic consultants (this is discussed more thoroughly in the attached traffic report) but provides a connecting spine that helps more thoroughly integrate this project into the larger Stanwood community. Easily accessible public parking is proposed to front both

sides of the realigned ROW (see attached site plans) which will greatly enhance the viability of the proposed commercial spaces and also serve as additional guest parking for the residential densities proposed.

The higher density residential structures are planned to radiate outward from the gateway elements as described above and are generally aligned perpendicularly to the proposed 268th St NW realignment. The lower density ~~townhome~~ townhouse portion of the proposed development is located towards the Church Creek stream channel and associated wetlands and buffers. As shown on the attached plans the ~~townhome~~ townhouse structures are dispersed, 4-to-6-unit buildings that will allow for increased open space around this lower density portion of the project. We feel this transition to a lower more distributed unit density is more appropriate adjacent to the sensitive Church Creek environment.

The varying heights of the buildings work with the site grades to build up from the SE towards the west and north and back down to lower scaled retail structures along 72nd Avenue NW, allowing for reasonable density while still respecting the scale of the adjacent neighborhoods. Care was taken in design to avoid monolithic structures that would dominate the hillside or obscure the natural surroundings. The project materials and forms evoke a contemporary Northwest vocabulary, and a warm and tactile palate of materials in primarily earth tones, with wood accents, and complimentary colors, while breaking up the volumes into smaller areas with variation in depth to give a sense of human scale to all the various elements. Design was carefully considered to ensure an attractive and inviting space that does not dominate nearby structures or landmarks. Wood is used liberally where appropriate, to add a warmer texture to those areas where people may spend significant time, such as private decks. Durable and complimentary materials are used throughout the various buildings and site work, again in keeping with Stanwood's building design standards but upscaled compared to all nearby structures.

3. **The Subject Property.** The Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference, and shall hereafter be referenced as the "Subject Property."

4. **Definitions.** As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

4.1. "Adopting Resolution" means the Resolution which approves this Development Agreement, as required by RCW 36.70B.200.

4.2. "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

4.3. "Council" means the duly elected legislative body governing the City of Stanwood.

4.4. “Director” means the City’s Community Development Director and/or Public Works Director.

4.5. “Effective Date” means the effective date of the Adopting Resolution.

4.6. “Existing Land Use Regulations” means the ordinances adopted by the City Council of Stanwood in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Subject Property, including, but not limited to the Comprehensive Plan, the City’s Official Zoning Map and development standards, the Public Works Street and Utility Standards, SEPA, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards.

4.7. “Fees” means all monetary payment of permit fees, impact fees or fees collected for non-land use regulations. The fee resolution that is adopted by the Stanwood City Council at the time of **complete building** permit submittals will be the fee schedule in place.

4.8. “Landowner”, “Owner” or “Developer” means the owner or the party who has acquired any portion of the Subject Property from the Owner who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The “Owner” is identified in Section 5 of this Agreement. The terms “Landowner”, “Owner” or “Developer” may be used interchangeably in this Agreement.

4.9. “Project” means the anticipated development of the Subject Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

5. **Exhibits**. Exhibits to this Agreement are as follows:

- 5.1. Exhibit A – Legal description of the Subject Property.
- 5.2. Exhibit B – Vicinity Map.
- 5.3. Exhibit C – Enlarged Site Plan.
- 5.4. Exhibit D – Vested Studies.
- 5.5. Exhibit E – Legal Description of Property to be sold by City.
- 5.6. Exhibit F – Purchase and Sale Agreement.
- 5.7. Exhibit G – Termination of Right of First Refusal.

6. **Parties to Development Agreement**. The parties to this Agreement are:

6.1. The “City” is the City of Stanwood, 10220 270th St NW, Stanwood, WA 98292.

6.2. The “Developer” or “Owner” is WEST EDGE DEVELOPMENT

– THREE, LLC, a Washington limited liability company which owns the Subject Property in fee, and whose principal location is currently located at P.O. Box 430, Arlington, Washington, 98223.

6.3. The “Landowner.” From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property. The terms “Landowner”, “Owner” or “Developer” may be used interchangeably in this Agreement.

7. **Project is a Private Undertaking.** It is agreed among the parties that the Project is a private development. The City has interest in the private development to ensure compatibility with the Stanwood Municipal Code and Zoning requirements that are currently adopted.

8. **Term of Agreement.** This Agreement shall commence upon the effective date of the Adopting Resolution approving this Agreement and shall continue in force for a period of 15 years, unless the property is developed to the terms of this agreement or unless revoked by mutual agreement of the Parties and approved by an adoption of a Resolution of the City Council. A covenant shall be recorded against the subject property stating the property is to be developed pursuant to this development agreement and with a **maximum** of five hundred sixteen (516) multi-family/townhouse units.

9. **Vested Rights of Developer.** During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Subject Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer.

10. **Permitted Uses.** The property uses shall be those set forth in this Agreement, the permits and approvals identified herein, and all Exhibits incorporated herein.

COMPONENT	ORDINANCE	DEVIATION REQUEST
Density	SMC 17.60.030 allows 20du/acre. This would allow 436 dwelling units.	The proposal is for a total dwelling unit count of 516 units i.e., 444 apartment units and 72 townhome <u>townhouse</u> units. This would represent a unit density of approximately 23.77 units per acre. We feel that this very modest request for a slight increase in unit density should be considered and approved by the City considering the high costs that this

		<p>project will face both for the 268th St. NW ROW relocation and construction but also the high cost of offsite utility improvements that have been identified and will be required for this project (these improvements both for scale and costs are more fully described in the attached documentation supporting this Development Agreement Application and in the preliminary grading, drainage and utility plans submitted.)</p> <p>In addition, rental housing is in significant demand in the Stanwood (and greater Stanwood area) and this proposed project will help support the residential needs that exist both now and in the future as the additional phases of this project are completed.</p>
<p>Dwelling Unit Mix Types</p>	<p>SMC 17.47.040.4 allows for multiple types of dwelling units if a project in the TN zone has 10% or more of commercial application.</p>	<p>Our proposal has 26,510 GSF of Commercial. This accounts for 3.43% of the project. Given the nature and design of the commercial space being proposed we believe this is an acceptable request. The marketplace buildings could meet the 10% requirement but would lose the pedestrian walking street and farmers/Saturday market. We believe that having those elements are a better fit, and of more benefit, for the community of Stanwood than the additional commercial space. To that end we are requesting a departure from code in the amount of 6.57%.</p>
<p>Parking</p>	<p>SMC 17.05.140 would require 1,254 stalls consisting of the following:</p> <ul style="list-style-type: none"> • 1 space per 200 SF of commercial – 26,510SF = 133 spaces. 	<p>The number of parking stalls this project is proposing to provide is 1,039 total stalls. The on-site parking stalls proposed will include 41 Handicapped stalls, 256 compact stalls, and 105 tandem stalls. The parking stalls proposed to be constructed as structured parking</p>

	<ul style="list-style-type: none"> • 2 spaces for every 2-bedroom townhouse – 44 units = 88 spaces • 2.5 spaces for every 3-bedroom townhouse – 28 units = 70 spaces • 1 guest space for every 5 2 or 3-bedroom townhouse unit – 72 units = 14 spaces • 1.5 spaces are required for every studio/1-bedroom apartment – 264 units = 396 spaces • 2 spaces for every 2-bedroom apartment unit – 150 units = 300 spaces • 2.5 spaces for every 3-bedroom apartment – 30 units = 75 spaces • 1 guest space for every 5 apartment units – 444 units = 89 spaces 	<p>(under building) will be stalls assigned to the individual units. The approximately 86 stalls that we are planning to construct along with the ROW improvements are anticipated to be public stalls that will serve both patrons of the proposed commercial spaces as well as guest parking for the residential units. While we recognize that the City of Stanwood does not provide design standards for tandem stalls it has been our experience that tandem stalls are frequently provided as assigned stalls for the larger 2- and 3-bedroom units in mixed use projects of this scope. Additional information on the tandem stalls is in the traffic addendum and in the parking management plan.</p> <p>A parking analysis has been provided as part of the Traffic Impact Analysis (TIA) by Kimley-Horn Associates which is attached for reference as part of the SEPA Checklist. Kimley -Horn also provided a parking management plan to address peak parking times and specifics on interplay between residential and commercial demand. The parking analysis provided as part of the TIA is as follows:</p> <p>Per data from ITE’s Parking Generation Manual, 5th Edition, the average parking demand rates for the various land uses are:</p> <ul style="list-style-type: none"> • 2.39 vehicles per 1,000 SF of office – 15,910 SF = 38 vehicles • 1.95 vehicles per 1,000 SF of shopping center – 10, 600 SF = 21 vehicles
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		<ul style="list-style-type: none"> • 1.21 vehicles per unit for multifamily (low-rise) – 72 units = 87 vehicles • 1.31 vehicles per unit and multifamily (mid-rise) – 444 units = 582 vehicles <p>Per ITE data, the Cedarside Commons development has a parking demand of 728 vehicles utilizing ITE parking demand data. The development is proposing to construct 1,000+ parking spaces on- site, exceeding ITE’s parking demand requirements by approximately 28%.</p> <p>Per Stanwood Municipal Code 17.105.050, as the development meets ITE Parking Generation Manual requirements, a reduction in the required number of parking spaces to the proposed number of spaces would be allowed. In keeping with the Owner’s vision of a nature- oriented development we believe that reducing the amount of parking allows for the inclusion of more natural space and will limit large areas of open empty concrete that cause hot spots and other undesirable effects.</p>
<p>Height limitations</p>	<p>SMC imposes a height limitation of 55’ taken from the average frontage grades of the buildings</p>	<p>Of the twenty-four structures proposed for the project only buildings A1, A2 and Building C slightly exceed the height limit of 55’ taken from the average frontage grades of the buildings. The average grade at the frontage for Building C for example, is 55’ 6” to the parapet. The finished elevation at the low sloped roof is at height of 43’ 6”. The roof elements are highly articulated with variable height parapets that exceed the allowable</p>

		<p>height limits by in some cases as little as 6” to as much as a proposed 24” parapet extension i.e., 57’. We are also proposing a series of sheds to further articulate the roof lines of Building C. In all cases these shed roofs are above the proposed parapet heights but do not exceed the extra allowable ten feet in building height allowed under the City of Stanwood Zoning Code for sloping roof forms i.e. 65’ above average front grade. It should also be noted that the added parapet height requested will not only provide more interesting and articulated roof elements but also shield from view the roof top mechanical units planned for these structures.</p> <p>Building A1 and A2 are modestly taller than the other structures of the Cedarside project particularly as defined by the allowable height limit of 55’ in the TN zone. The A1 and A2 structures are placed at the higher, natural site elevations to enhance the view potential from the units. The backdrop of the bulk and scale of the nearby Stanwood High School facility a request for added building height above the 55’ for these two buildings is appropriate.</p> <p>Please also note that the entry floor level transitions from an at-grade street condition at the building’s frontages to a basement condition at the north ends of the two building will reduce the visual scale and height of the two structures significantly at the facades that face Church Creek Park and 72nd St.</p> <p>The elevations for Buildings A1, A2 and C and all other structures</p>
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		<p>greater than three-stories, indicate an elevator overrun and roof top stair element that may slightly exceed the maximum height requirements. These are called out on the elevations and will be held to the minimum but should not count towards total elevations per City staff. More information on the elevator over-run dimensions will be finalized when the manufacturer of the elevator is selected. The roof- stair access will be installed for the Fire Marshal and for mechanical maintenance but will not allow public access.</p> <p>An additional 10 feet may be allowed for multifamily, townhouse, and hotel/motels when the TN zone is located within 200 feet of SR 532 if the structure includes a pitched roof and no additional floors are added.</p> <p>Exhibit F attached shows the table of heights for all buildings.</p>
<p>Trails</p>	<p>The City and Developer are interested in creating a public use easement for trail systems inside the proposed development.</p>	<p>The City and Developer intend to create a public use easement across the internal trail systems of the Cedarside project so the trails can be connected with the Church Creek Park trail system. The easement will protect the developer from liability of general public's use of the trail system and will provide additional safe walking paths to nearby schools. It will also enhance the useability of the combined trail system for the current and future residents of Stanwood.</p>
<p>Traffic Mitigation</p>	<p>The City has requested the Developer install a roundabout at the intersection of SR 532 and 64th Street <u>Avenue</u> N.W., which will require a right-of-way</p>	<p>The City shall issue all required permits for the construction of the improvements upon Developer's property.</p> <p>The Developer will install the</p>

	<p>permit from WSDOT.</p>	<p>roundabout, which work will commence within thirty (30) days after the issuance of the right-of-way permit from WSDOT. The City will bear the responsibility of obtaining the WSDOT permit. The City will grant Developer a credit against the traffic mitigation fees in an amount equal to, but not greater than, the cost of construction of the roundabout.</p> <p>In the event permits for the construction of the roundabout have not been issued at the time the property improvements are completed and the Developer is seeking a Certificate of Occupancy, the Developer shall pay the entire amount of the traffic mitigation fees assessed, and Developer shall have no further responsibility for the construction of the roundabout. <u>The roundabout must be completed before any Certificates of Occupancy are issued.</u></p>
<p>Bike Lanes/Pedestrian Access/Parking</p>		<p>Bike lanes and off street parking are planned, but do not need to be installed further east than the townhome turnout. Sidewalks are planned to the east boundary of the project on the north side of the street, but because there will be no residential structures east of the townhomes there is no need for sidewalks further east of the townhomes on the south side of the street.</p>
<p>Additional Property</p>	<p>The City has expressed an interest in selling the 1.25 acres near the northwest corner of the project</p>	<p>In the event this additional property is acquired by the Developer, the Developer will be entitled to develop this property through an amendment to this Developer Agreement, with a density of 25 units per acre with one (1) additional multi-family building,</p>

		along with parking and associated amenities under the same agreements contained in this document.
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11. **Modifications.** Minor amendments to the ~~Developers~~ Development Agreement may be approved administratively by the community development director. Major amendments to the ~~Developers~~ Development Agreement shall be approved by City Council.

11.1. Minor amendments shall include:

- Boundary line adjustment.
- Changes to street standards.

11.2. Major amendments shall include:

- Revisions to the approved permitted uses.
- Increase of density greater than 20 dwelling units per acre.
- Additional buildings.

12. **Further Discretionary Actions.** Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

13. **Existing Land Use Fees and Impact Fees.**

13.1. Land use fees adopted by the City by ordinance or resolution as of the Effective Date of this Agreement may be increased by the City from time to time. All fees shall be those in place at the time of permit submittal or issuance.

13.2. Except as provided in the following Section, all impact fees shall be paid as set forth in the approved permit or approval, or adopted City fee schedule. All impact fees shall be those in place at the time of permit submittal or issuance.

13.3. The Developer will install the roundabout, which work will commence within thirty (30) days after the issuance of the right-of-way permit from WSDOT. The City will grant Developer a credit against the traffic mitigation fees in an amount equal to, but not greater than, the cost of construction of the roundabout. In the event permits for the construction of the roundabout have not been issued at the time the property improvements are completed and the Developer is seeking a Certificate of Occupancy, the Developer shall pay the entire amount of the traffic mitigation fees assessed, and Developer shall have no further responsibility for the construction of the roundabout at the intersection of SR 532 and 64th Ave.

14. **Development Activity.** The parties acknowledge that the most efficient and economic development of the Subject Property depends upon

numerous factors, such as market conditions and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate Developer of the Subject Property to have certain aspects of the development agreed to by both the City and current Owner prior to development, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the following factors will assist in the development of the project:

15. **Property Uses.** The subject property is designated for **Traditional Neighborhood** development and shall construct a maximum of five hundred sixteen (516) dwelling units.

15.1. **Access.** Access to the project will be provided from 72nd Avenue N.W. over a new Right-of-Way to be constructed by Developer.

15.2. **Right-of-Way Dedication.** Right-of-way dedication shall be in accordance with Section 16 below.

15.3. **Development Standards.** The subject property shall be developed as a multi-family/townhouse residential project with mixed use commercial development. The Developer shall submit a site development permit application for each phase of the development consistent with the submittal requirements of the Stanwood Municipal Code in effect at the time of submittal for the City to review and approve. The Developer may submit one overall site development permit application in lieu of three individual phase plans. The site development permit application(s) shall include all applicable submittal requirements in place at the time of development. The multi-family/townhouse residential project shall be designed in accordance with the architectural standards in place at the time of development permit submittal and the buildings shall be designed to reduce the mass of the structures.

15.4. **Vested Studies.** The following studies are vested to the development of the property:

• Traffic Impact Analysis completed by Kimley Horn dated 08/2022
• Critical Areas Study completed by Harmsen & Associates 09/20/2021
• Stormwater Drainage Report completed by Harmsen & Associates 08/19/2022
• SEPA Checklist completed by CDA Architects 09/15/2022

Changes to density, housing types, subdivision of lots, or any changes leading to an increase of development intensity, require the submittal of new documents and shall be subject to review under the regulations in place at the time of development.

15.5. **Roadway Standards.** Road standards shall be in accordance with SMC Street and Utility Standards, Section 2.

16. **Dedication/Vacation of Right-of-Way.** Except as otherwise provided herein, the Developer shall dedicate public right-of-way associated with 268th Street N.W. as follows:

16.1. Dedication of Right-of-Way. Prior to issuance of any certificate of occupancy for the subject property, approximately 72,419 square feet of property shall be dedicated to the City for a public full street constructed to city standards. The dedication shall include the entire improved street, ~~but shall exclude the curbs, gutters and sidewalk that will remain in the Developer's ownership.~~ The required street lighting shall be installed and owned by the Developer, but will be connected to the City street lighting grid.

16.2. Vacation of Right-of-Way. Upon the dedication of the public Right-of-Way as contemplated by the previous section, the City shall vacate approximately 66,991 square feet of the existing Right-of-Way now known as 268th Street N.W. The real property consisting of the existing Right-of-Way now known as 268th Street N.W. shall be conveyed to the Developer upon completion of the vacation of said the existing Right-of-Way now known as 268th Street N.W. referred to in the previous section.

16.3. Construction of Right-of-Way. Developer shall construct the newly created 268th Street N.W. Which will be transferred to the City upon completion and approval of completeness in exchange for the current 268th St that borders the southern portion of the property.

17. **Default.**

17.1. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days' notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

17.2. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Stanwood Municipal Code for violations of this Development Agreement and the Code.

18. **Review.** The City may, during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement.

19. **Termination.** This Agreement shall expire and/or terminate Upon the expiration of the term identified in Section 7 or when the Subject Property has been

fully developed and all of the Owner's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence, any other residential dwelling unit type or any nonresidential building and the lots, parcels, or tracts upon which such residence or building is located, when it has been approved by the City for occupancy.

20. **Effect upon Termination on Owner Obligations.** Termination of this Agreement as to the Owner of the Subject Property or any portion thereof shall not affect any of the Owner's obligations to comply with the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

21. **Effects upon Termination on City.** Upon any termination of this Agreement as to the Owner of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to the existing planning and zoning laws).

22. **Assignment and Assumption.** The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Subject Property, at least 30 days in advance of such action and shall provide copies of the recorded documents that sell, assign, or transfer all or a portion of the Subject Property should such action be finalized and shall provide copies of the recorded documents that sell, assign, or transfer all or a portion of the Subject Property should such action be finalized.

23. **Covenants Running with the Land.** The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Owner, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

24. **Amendment to Agreement; Effect of Agreement on Future Actions.** This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the ~~next five years~~ term of this Development Agreement, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Subject Property. If the City Council approves amendments to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations regarding uses, the approved uses on the subject properties shall be considered legal uses by the terms of this agreement.

25. **Releases.** Owner, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

26. **Notices.** Notices, demands, correspondence to the City and Owner shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5 or as updated pursuant to Section 20. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

27. **Applicable Law and Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Snohomish County Superior Court or the U.S. District Court for Western Washington.

28. **Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

29. **Severability.** If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement,

and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

**WEST EDGE DEVELOPMENT –
THREE**, a Washington limited liability
company

CITY OF STANWOOD

By: _____

Name: Andrew D.A.W. McKinley

Title: Managing Member

Date Executed: _____

By: _____

Date Executed: _____

ATTEST:

By: _____ City Clerk

By: _____ City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this _____day of November, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared ANDREW D.A.W. MCKINLEY, to me known to be the Managing Member of **WEST EDGE DEVELOPMENT – THREE, LLC**, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said limited liability company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this _____day of November, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the Mayor of the City of Stanwood, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said municipal corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____