



APPEAL OF ADMINISTRATIVE DECISION TO HEARING EXAMINER

OFFICIAL USE ONLY		
Case #: _____	Master File #: _____	Date: _____
Received By: _____	Project Planner: _____	Related Cases: _____

APPELLANT:

Name: Olympia Urban Waters League

Mailing Address: c/o Smith & Dietrich Law Offices, PLLC, 400 Union Ave. SE, Suite 200

City, State, Zip: Olympia, WA 98501

Telephone Number(s): (360) 918-7230

E-Mail Address: walter@smithdietrich.com; steved@smithdietrich.com

REPRESENTATIVE OR ATTORNEY:

Name: Walter Smith & Steve Dietrich

Mailing Address: Smith & Dietrich Law Offices, PLLC, 400 Union Ave. SE, Suite 200

City, State, Zip: Olympia, WA 98501

Telephone Number(s): (360) 918-7230

E-Mail Address: walter@smithdietrich.com; steved@smithdietrich.com

I hereby appeal the administrative (staff) decision described below for those reasons stated herein and as attached hereto, and seek the relief and remedies as stated. I understand that this appeal is not complete without payment of the required filing fee. I understand that this appeal will be considered pursuant to the authority and provisions of Olympia Municipal Code 18.75.020 and 18.75.040.

Filing Fee: \$1,000.00 (plus Hearing Examiner Deposit of \$500.00 when appealing an impact fee)

WMS I understand that an impact fee appellant **is required to pay actual Hearing Examiner costs,**
initials which may be higher or lower than any deposit amount. I hereby agree to pay any such costs.

DECISION APPEALED:

Case Name: East Bay Flats and Townhomes (Westman Mill)

Case Address: 510 State Ave. NE

Case No.: 17-2795

Decision Maker: Cari Hombein, Sr. Planner (SEPA); Catherine McCoy, Assoc. Planner (Land use approval)

Date of Decision: February 15, 2018

COPY OF DECISION APPEALED IS ATTACHED: **YES** **NO**

Basis of Appeal.

1. Please describe how you are or are likely to be harmed by the decision you are appealing. *Please see attached Appeal Brief, the contents of which are incorporated here by reference. The Olympia Urban Waters League is likely to be harmed by the City's decision because the League makes scientific, aesthetic, and recreational use of the East Bay and the surrounding area of downtown Olympia which suffers from various impairments to its water quality that harm habitat and living conditions for local plants and wildlife. The decision would harm the League by exacerbating existing impairments to water quality in the following ways: 1) it would make it difficult to impossible to restore Moxlie Creek from a culvert to an open air estuary, thus exerting probable significant adverse environmental impacts to the water quality in East Bay and the Moxlie and Indian Creek watersheds; 2) it would further exacerbate the ongoing treaty violation represented by the Moxlie Creek outfall culvert; 3) it would permit development in a critical area without completing the applicable legal process first to ensure the environment is protected.*

2. Please describe below, or in attachments, how and why you believe the city staff erred.

Please see attached Appeal Brief, the contents of which are incorporated here by reference.

3. **Remedy or Relief Sought:** If you are successful on appeal, please describe the action you wish the Hearing Examiner to take. Explain how this action would eliminate or reduce harm to you.

Please see attached Appeal Brief, the contents of which are incorporated here by reference. The League requests that the City complete an Environmental Impact Statement to evaluate the proposed development in light of the probable, significant, adverse environmental impacts discussed in the League's brief. The EIS should specifically address how the buildout of the lots adjoining the Moxlie Creek culvert would impact 1) water quality in East Bay and the Moxlie and Indian Creek watersheds, 2) efforts to restore the culvert to a daylighted or natural estuary state, and 3) the apparent existence of a Critical Area surrounding the Moxlie Creek stream adjoining the proposed development. The EIS should examine alternative uses of the land for the proposed development, to include a daylighting or estuary restoration project.

Have you served notice of this appeal on any other parties? YES NO

If yes, please list:

Signed: Walter Hagen
Signature

March 8, 2018
Date



**Notice of Land Use Approval
and State Environmental Policy
Act Determination of Nonsignificance
(SEPA DNS)**

Community Planning & Development
601 4th Avenue E. – PO Box 1967
Olympia WA 98501-1967
Phone: 360.753.8314
Fax: 360.753.8087
cpdinfo@ci.olympia.wa.us
www.olympiawa.gov

Project Name: East Bay Flats and Townhomes (Westman Mill)

Project Number: 17-2795

Project Address: 510 State Avenue NE

Project Description: Construction of three buildings, 86 residential units, parking for 73 vehicles, and approximately 8,500 sq.ft. of commercial space. The project includes a pedestrian pathway along the east property line and long and short-term bicycle parking (short-term, 10 required; long-term, 55 required).

Applicant: 3rd Gen Investment Group, LLC
PO Box 7534
Olympia WA 98507-7534

Lead Agency: City of Olympia

SEPA Official: Cari Hornbein, Senior Planner

Lead Planner: Catherine McCoy, Associate Planner

Date of Issue: February 15, 2018

Comment Deadline: 5:00 p.m., March 1, 2018

Appeal Deadline: 5:00 p.m., March 8, 2018

Threshold Determination: The lead agency for this proposal has determined this action probably will **not** have a significant adverse impact upon the environment. Therefore, an Environmental Impact Statement is **not** required under RCW 43.21C.030(2)(c). The environmental review and SEPA threshold determination of this proposed action are based upon plans and reports submitted October 26, 2017 and January 11, 2018, which include the Site Plan, the Civil Plan Set, the Landscape Plan, the Preliminary Drainage and Design Report, the SEPA Checklist, the Transportation Impact Analysis & Signal Warrant, the Urban Forestry Report, the Design Review Context Plan Set and review comments from numerous local, state and federal agencies. This information is available to the public on request.

This Determination of Nonsignificance (DNS) is issued under Washington Administrative Code 197-11-340. If conditions are added, deleted or modified during or following the 14-day comment period, a new threshold determination may be required. This determination is based on a presumption that this project will include all mitigation measures proposed to be implemented by the applicant and will conform to all applicable standards and regulations and to the conditions listed herein.

This DNS is **not** a permit. No construction permits will be issued for this proposal prior to the appeal deadline. The applicant shall not begin work until after the appeal deadline has expired and any other necessary permits have been granted. Comments regarding this Determination of Non-Significance (DNS) should be directed to the SEPA Official at the address above.

Land Use Approval: The proposed project, the Eastbay Flats and Townhomes Development (Westman Mill), File 17-2795, is approved by the Director subject to the conditions listed below. These conditions must be met prior to issuance of construction permits, or Certificate of Occupancy, or as specifically noted in the condition.

CONDITIONS

PLANNING

1. **Port of Olympia Binding Site Plan.** The Olympia Area Rowing Binding Site Plan Amendment 3, File 17-4938, shall be approved by the Community Planning and Development Department (CPD) and recorded with the Thurston County Auditor's Office, prior to Land Use Approval by the Director.
2. **Approved Site Plan.** Development shall be substantially as shown on the approved land use site plan, which consists of two sheets: Site Plan - Project, Sheet A1.01 and the Utility Plan, Sheet UT-01. The approved site plan shall be attached to the engineering and building permit plan sets at the time of submittal.
3. **Effect of Approval.** This Land Use Approval will be in effect for two years from the date of issuance, with a possible two-year extension. OMC 18.72.140.D.
4. **Inadvertent Discovery Plan (IDP).** A signed IDP shall be submitted at the engineering permit stage of review, which outlines how the project proponent and site crew will respond in the event that cultural resources are uncovered during the project. Contact Michelle Sadlier, Historic Preservation, for the IDP template and assistance completing the form: (360) 753-8031, msadlier@ci.olympia.wa.us.
5. **Land Management and Addressing.** All three buildings shall carry the main address of 510 State Avenue NE.
 - A. Building A: First floor retail spaces shall be numbered #101-106; Second floor through fifth floor apartments shall be numbered # 201-520
 - B. Building B: Townhouses fronting on Jefferson shall be #101-106
 - C. Building C: Townhouses fronting east towards the adjacent lot shall be #101-106
6. **Landscaping.** A final Landscape Plan, prepared in accordance with OMC 18.36, shall be submitted for review and approval at the time of engineering permit application submittal. The plan shall address the following conditions:
 - A. Depict all utility lines on the Landscape Plan to ensure no conflicts between plantings and utility lines exist.
 - B. Adjust the location of trees and/or utilities, mechanical equipment, hydrants and lights to avoid conflicts between trees and these elements.

7. **Landscape Maintenance Estimate.** Provide the following information with the Landscape Plan on a separate sheet of paper: cost estimate for the purchase, site preparation, installation and 3-years of maintenance of all landscaping and irrigation.
8. **Hours of Operation/Construction Noise.** Pursuant to 18.40.080.C.7, construction activity shall be restricted to the hours between 7:00 a.m. and 6:00 p.m.
9. **Design Review.** The following items shall be depicted and/or provided in the detail design review architectural plan set prior to Board level detail design recommendation.
 - A. Provide a full lighting plan that:
 - 1) Depicts the areas of lighting (i.e., parking lot, doorways, walkways, signage, greenscape);
 - 2) Identifies each type of fixture with details and cut sheets;
 - 3) Provides light sources (i.e., bulb type);
 - 4) Indicates the height of lighting on the building and around the site;
 - 5) Indicates the extent to which shut-off or sensors, timers, and/or motion detectors will be used (to direct or shield fixtures); and
 - 6) Use a separate sheet with a key to the types of lighting used around the site. OMC 18.110.160.
 - B. Provide black and white or colored elevations that depict the street-level landscape design – between the retail spaces along the State Avenue frontage, along the boardwalk, between the sidewalk and the townhouse porches/stoops and in the plaza area in the northeast corner of the building (use a separate sheet if necessary). Depict short-term bicycle parking and projections in the right-of-way (e.g., overhead weather protection) in the Landscape Plan. OMC 18.110.180.
 - C. Provide design details of the rear of the buildings, elevations that clearly depict the pedestrian level experience of activities within the parking lot; provide complete pedestrian level views of the back of the buildings. OMC 18.110.030.
 - D. Provide street level renderings that depict a comfortable and engaging experience along the State Avenue frontage. Details of the retail entries, the lobby entrance, planters, signage, benches, corner element, etc. shall be provided. OMC 18.110.080.
 - E. Provide examples of the details and types of windows located on the main building, at the street level and on upper stories. Use a separate sheet if necessary to depict of all the elements of windows, doors and other transparent openings. OMC 18.110.100.
 - F. Reconcile discrepancies of the design of the buildings in the elevations. Provide solar shading around the main building envelope, and on the townhouse buildings. OMC 18.110.140.
 - G. Provide design details of various building mounted and freestanding signs, including under-canopy signage, directional/wayfinding signage, and building address signage at the next stage of design review. Use an additional sheet if necessary. OMC 18.150.100, and 18.150.110.
 - H. Develop articulation of the north sides of the townhouse buildings.

ENGINEERING

10. **Traffic Control Plan.** Prior to issuance of construction permits, submit a traffic control plan detailing how traffic will be routed and what impacts to the street system will occur during construction of the building.

11. **Right-of-Way Obstruction Permit.** A right-of-way obstruction permit shall be provided for any work within the public rights-of-way.
12. **Engineering Permit Application.** Submit an engineering permit application for review and permitting. The permit submittal shall comply with the Engineering Design and Development Standards (EDDS) and the Drainage Design and Erosion Control Manual (DDECM) in effect at the time of application.

BUILDING

13. The project shall comply with the City of Olympia Construction Codes as adopted through the Olympia Municipal Code, Chapter 16.04.
14. The project shall comply with the provisions of Accessibility as required by the International Building Code and ICC A117.1 2009.
15. The project shall comply with the provisions of the City of Olympia Sea Level Rise Ordinance as adopted through the Olympia Municipal Code, Chapter 16.80.
16. The project shall comply with the provisions the City of Olympia Flood Damage Protection Ordinance as adopted by the Olympia Municipal Code, Chapter 16.70.

URBAN FORESTRY

17. Tree protection fence detail and tree protection measures for existing street trees shall be added to the Demolition/Clearing/Grading Plans at the time of engineering plan submittal.
18. Provide alternative tree species for the Acer platanoides and the Zelkova serrata from the City Recommended Street Tree list at the time of engineering plan submittal.

FIRE PREVENTION

19. The fire line serving the main building shall be upsized to 6" to serve sprinkler and standpipes.
20. A new fire hydrant shall be provided on the east side of Jefferson between State Avenue and the driveway, as shown on engineering plans.

BONDING

21. **Vegetation Maintenance Bond.** A vegetation maintenance bond (or other assurance) shall be provided following City acceptance of the landscape installation, including street trees, before issuance of the Certificate of Occupancy. The bond amount shall be 125% of the cost estimate submitted with the Landscape Plan and approved by the City.
22. **Right of Way Performance Bond.** Bonds or other allowable securities shall be submitted to the City to guarantee the performance of work within the subject site and rights-of-way, or maintenance of required public infrastructure intended to be offered for dedication as a public improvement. See both EDDS Section 2.030.F and Volume 1 Section 2.6.1 of the 2016 DDECM for more information.

End of Appealable Conditions

Impact Fee Note

This project will be subject to impact fees. These fees will be due and payable when building permits are issued. Specific impact fees will be determined when a complete building permit application is submitted. Prior to that date, all impact fees are subject to change.

Appeal Period

This Land Use Decision by the Director and this Threshold Determination by the SEPA Official are final unless appealed prior to 5:00 p.m. March 8, 2018. The filing fee for appeals to the Hearing Examiner is \$1,000.00. Any appeal must be submitted in writing to the Community Planning and Development Department on forms provided by the Department. If an appeal is filed, no permits will be issued until the administrative appeal is resolved.

Appeal Procedure

Pursuant to RCW 43.21C.075(3) and Olympia City Code 14.04.150(A), the conditions or lack thereof in a DNS may be appealed by any agency or aggrieved person.

Expiration of Approval

Pursuant to 18.60.240 and 18.72.140.D., this approval will expire two years from the date of the appeal period deadline, unless utilized by an application for unexpired construction permits, or explicitly extended by the Director in response to a written request submitted prior to the expiration date.



Catherine McCoy, Associate Planner
Lead Planner on behalf of Keith Stahley,
Director of Community Planning and
Development



Cari Hornbein, Senior Planner
SEPA Official