

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

In the Matter of the Application of)	No. CUP 2-22
)	
Reid Dickinson, Inland Group,)	Walnut Street Housing CUP
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Conditional Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a conditional use permit to construct an age-restricted (55+) residential development consisting of a four-story building containing 170 age-restricted dwelling units, six garage buildings, a pool/community building, and 315 parking spaces, with associated improvements, on four parcels totaling approximately 7.29 acres, at the intersection of South Walnut Street and East McCorquedale Road, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on May 23, 2022, using remote access technology.

Testimony:

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

Brad Johnson, City Community Development Director
Reid Dickinson, Applicant
Joey Launceford
Brad Windler, Skagit Area Transit Planning and Outreach Supervisor

Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, Recommendation, and SEPA Determination, dated May 2, 2022
2. Aerial Photograph, undated
3. Critical Areas and Floodplain Habitat Assessment Report, Wet.land, LLC, dated March 29, 2022
4. Notice of Complete Application, dated April 4, 2022
5. Notice of Permit Application and Public Comment Period, dated April 5, 2022
6. Certification of Posting, dated April 14, 2022
7. Posted Notice Photograph
8. Project Narrative, dated April 4, 2022

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9. City Road Extension Plan
10. Preliminary Plan Set (31 Sheets), dated March 31 and April 1, 2022
11. Site Plan, dated March 31, 2022, with City Staff Notations on Recommended Pedestrian Access
12. Traffic Impact Analysis, Transpo Group, dated April 2022
13. Fire Marshal Memorandum, dated February 2, 2022
14. Zoning Map, undated
15. SEPA Environmental Checklist, dated April 4, 2022, with City Staff Notations
16. Land Use Permit Application, dated April 1, 2022
17. Notice of Public Hearing
18. Posted Notice of Hearing
19. Email from Brad Johnson to Reid Dickinson, dated May 4, 2022, with email string

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Application and Notice

1. Reid Dickinson, of Inland Group (Applicant), requests a conditional use permit (CUP) to construct an age-restricted (55+) residential development consisting of a four-story building containing 170 age-restricted dwelling units, six garage buildings, a pool/community building, and 315 parking spaces. The 170 dwelling units would consist of 8 studio units, 78 one-bedroom units, and 84 two-bedroom units. Common area amenities would include a secured building entry, resident lounge, internet café, movie theater, pub, library, game room, craft room, fitness center, dog wash, and indoor pool. Outdoor amenities would include a community garden, pickleball court, and dog park. Other associated improvements would include landscaping, internal drive lanes providing access to parking areas from South Walnut Street, pedestrian access paths, stormwater management facilities, and utilities. The currently vacant subject property consists of four parcels totaling approximately 7.29 acres and is located directly southeast of the intersection of South Walnut Street and East McCorquedale Road.¹ South Walnut Street and East McCorquedale Road are constructed to current City of Burlington standards, with full-width paving, curbing, sidewalks, and stormwater improvements, and, therefore, the Applicant would not be required to construct offsite street improvements. The Applicant would, however, be required install street frontage landscaping consisting of a minimum 10-foot-wide strip with street trees at intervals of 30 feet, as well as a midblock crosswalk providing access across East McCorquedale Road to a planned Skagit Area Transit (SKAT) bus stop. *Exhibit 1, Staff Report, pages 1, 2, and 6 through 8; Exhibit 2; Exhibit 8; Exhibit 10; Exhibit 11; Exhibit 16.*

¹ The property is identified by Skagit County Tax Parcels Nos. P116581, P116580, P116579, and P116583. *Exhibit 1, Staff Report, page 1.* A legal description of the property is provided with the preliminary plan set. *Exhibit 10.*

2. The City of Burlington (City) determined that the application was complete on April 4, 2022. The next day, the City provided notice of the application consistent with the requirements of Burlington Municipal Code (BMC) 14A.05.090 by mailing notice to property owners within 600 feet of the site and by publishing notice in the *Skagit Valley Herald*, with a comment deadline of April 19, 2022. On April 14, 2022, the Applicant posted notice on-site. Because notice of the application was not posted on-site until April 14, 2022, the City extended the public comment period to April 28, 2022. On or before May 9, 2022, the City provided notice of the open record hearing associated with the application by publishing notice in the *Skagit Valley Herald* and by posting notice on the City website. The City did not receive any comments on the proposal in response to its notice materials. *Exhibit 1, Staff Report, page 3; Exhibits 4 through 7; Exhibit 17; Exhibit 18.*

State Environmental Policy Act

3. The City acted as lead agency and analyzed the environmental impacts of the project as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City utilized the optional process provided for by Washington Administrative Code (WAC) 197-11-355 and consolidated notice of the SEPA review and application comment periods, with a SEPA comment deadline of April 19, 2022. The City did not receive any comments on the environmental review of the proposal. The City reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the City issued a Mitigated Determination of Nonsignificance (MDNS) on May 2, 2022, with an appeal deadline of May 16, 2022. The MDNS was not appealed. *Exhibit 1, Staff Report, pages 15 through 17; Exhibit 5; Exhibit 15.*
4. The MDNS includes the following findings and mitigation requirements:
 - With the exception of the impacts identified below, all of the impacts associated with this proposal will be adequately mitigated through the application of Burlington Municipal Code requirements. Therefore, all construction, work, clearing, grading, filling, excavation, and other development activities shall be in full compliance with applicable Burlington Municipal Code requirements and the conditions [imposed as part of the conditional use permit approval].
 - This project is located in a floodplain. The National Marine Fisheries Service has determined that development in floodplains can negatively impact species protected by the Endangered Species Act (ESA). The applicant has provided a habitat assessment and mitigation plan (exhibit 3). This plan was prepared in accordance with the guidelines and recommendations identified in the "Floodplain Habitat Assessment and Mitigation" guidance prepared by FEMA Region 10. In order to mitigate

any floodplain ecological impacts to a level of non-significance all clearing, grading, construction, and development activities shall be consistent with the design specifications, management recommendations, or other mitigation measures identified in the habitat assessment.

- The proposed development will include outdoor lighting and could result in glare and light impacts, both on adjacent developments and the residents of proposed development. Therefore, exterior lighting shall be directed downwards and screened, hooded, or optically focused so the light source is not visible beyond the property boundaries and to direct light away from individual residential units. Manufacturer's specifications shall be submitted for each exterior lighting fixture type demonstrating compliance with this condition and documentation shall be provided demonstrating compliance with all applicable Washington State Energy Code requirements. All exterior lighting fixtures and outdoor lighting shall be consistent with the approved lighting plan. No final occupancy or final building permit inspection shall be granted until the exterior lighting has been inspected for consistency with the approved lighting plan.
- Large multifamily developments located within walking distance of commercial services and public amenities may generate significant pedestrian traffic, additional demands for bicycle amenities, and demand for improved transit connections. Because the proposed development can be expected to generate additional demands for pedestrian, bicycle, and transit amenities the following conditions shall apply:
 - a. At least two additional pedestrian connections shall be provided between the proposed development and the existing public sidewalk along South Walnut, and at least one additional pedestrian connection shall be provided between the proposed development and the existing public sidewalk along East McCorquedale Road. The additional pedestrian connections should be located approximately as shown on [the March 31, 2022, site plan containing City staff notations on recommended pedestrian access (Exhibit 11)].
 - b. If authorized by the City's Public Works Department a mid-block crosswalk shall be installed along the northern site boundary to provide access to the planned SKAT bus stop. If authorized the mid-block crosswalk shall be equipped with pedestrian activated crossing lights.
 - c. [B]icycle racks shall be provided adjacent to the proposed building. The bike racks shall be located within 20 feet of the primary building entrances and shall be sufficiently sized to provide one rack space for every four dwelling units. Interior bike storage may be provided in place of exterior rack space, provided that at least ten exterior rack spaces are provide[d] adjacent to the

main entrance. Exterior bicycle racks shall be mounted on a concrete pad, or other approved hard surface. If provided, interior bike storage space shall be located in a communal space accessible to all building occupants and shall be designated on the building plans.

- d. The civil engineering and building plans submitted for review shall reflect the requirements outlined above and all of the required improvements shall be completed prior to final occupancy approval.
- In order to prevent surface and ground water contamination, and to ensure compliance with Burlington Municipal Code requirements (BMC 14.05.070, 17.70.110.I, and 13.04.110), a covered trash enclosure equipped with a drain connected to the City’s sanitary sewer system will be required to prevent food waste and other contaminants from mixing with storm-water and to prevent storm-water from entering the sanitary sewer system. The trash enclosure shall be covered, and shall be graded or equipped with curbing to prevent storm-water from entering the enclosure. The required trash enclosure shall be shown on the final civil engineering and building plans submitted for review and shall be completed prior to final occupancy approval.

Exhibit 1, Staff Report, pages 15 through 17.

Comprehensive Plan and Zoning

5. The City Comprehensive Plan designates the subject property as “Heavy Commercial and Industrial.” City staff identified the several Comprehensive Plan policies as relevant to the proposal and determined that the proposed use would be consistent with these policies. The Comprehensive Plan policies identified by City staff as relevant to the proposal are listed below, together with City staff’s analysis (in italics):
 - Housing Policy 4.B: Provide opportunities for infill development of market rate housing in a variety of housing types to meet the needs of different income levels, different age groups, and life styles. *The proposed development would include a variety of unit types, including age-restricted units, studios, and larger one- and two-bedroom units. Age restricted housing focused on the needs of retirees and the elderly is a type of housing that has not been constructed in the City of Burlington recently, and a larger apartment building would fill a critical need for market rate housing suitable for retirees, the elderly, and older adults without children.*
 - Housing Policy 6.A: All new residential developments and multifamily housing must provide for quality of life of residents, with carefully planned amenities for all age groups. Amenities shall be required, including but not limited to the following: playground, park area, recreation facility, meeting facility. *The proposed development would include a wide variety of amenities including a pool, recreation facilities, a dog park, an on-site eating and drinking establishment,*

and a community courtyard area. In addition, the development would be located across the street from Walnut Pond Park. More general park and open space needs would be addressed through the payment of park impact fees.

- *Housing Policy 6.B: Location and design of parking shall be carefully examined to ensure that pedestrian safety, building aesthetics, access to common areas, accessory storage areas, and landscaping are accommodated efficiently and safely. The parking areas would be distributed throughout the site, which would eliminate the appearance of large overwhelming paved areas and minimize the distance between parking spaces and residential buildings. A complete network of pedestrian paths would be provided to link each of the buildings, parking areas, and community spaces, and to provide connections to adjacent streets and developments. Additional pedestrian connections would be required between the proposed building and the adjacent street frontages.*
- *Housing Policy 7: Provide opportunities for housing developments in Downtown and in other commercial areas that are of appropriate design and materials to encourage density near public transit and places of employment. The proposed development would be located in an employment area and, upon the completion of the city-street connection between South Walnut Street and Burlington Boulevard, the project would be located within one-quarter mile of a dense concentration of shopping and services.*
- *Housing Policy 7.E: Single purpose residential is allowed in commercial areas that are better suited for residential than commercial uses. The Applicant's project narrative addresses this policy.*
- *Housing Policy 10.B: Pedestrian and transit links shall be encouraged to provide good public access to open space, parks, and recreation areas. The proposed use would be located adjacent to the City-owned Walnut Pond open space area.*
- *Business, Commercial, and Industrial Policy 1.A: Development and redevelopment of vacant and underutilized land shall be encouraged and guided to complement the existing land use base where the land is fully utilized. The proposal would result in the development of a site that has remained vacant and undeveloped for nearly 20 years.*
- *Business, Commercial, and Industrial Policy 1.B: Mixed-use development is encouraged to create a balance of incomes, jobs, and housing. The development site is comprised of 7.29 acres located in a binding site plan. Several other lots in the binding site plan have been developed for commercial uses, and the surrounding area consists of a mix of commercial, office, and residential uses. The proposed development would create a better mix of housing and employment in the area.*
- *Business, Commercial, and Industrial Policy 3.D: Street trees shall be encouraged as part of new development and changes in existing*

development. Trees shall be carefully selected to enhance rather than detract from businesses. *The Applicant's landscaping plan includes street trees along both street frontages.*

Exhibit 1, Staff Report, pages 2, and 12 through 14.

6. The subject property is zoned “Heavy Commercial District” (C-2). The purpose of the C-2 zoning district is “to provide for the location of and grouping of enterprises which may involve some on-premises retail service but with outside activities and display or fabrication, assembling, and service features.” *BMC 17.55.030*. The C-2 zone is “intended to accommodate uses which are oriented to automobiles either as the mode or target of producing the commercial service.” *BMC 17.55.030*. Multifamily dwellings are allowed in the C-2 zone with a conditional use permit, provided that the site is better suited for housing than commercial development and that the development would comply with the multifamily residential standards of *BMC 17.25.050* and the maximum density standards of *BMC 17.25.090.B*. *BMC 17.55.070.A*. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 14.*
7. The Applicant submitted a project narrative addressing the requirement that the site be better suited for housing than commercial development, which notes:
 - The current owner of the site has received interest over the years to develop the vacant property with various commercial and industrial uses, but developers have decided to establish their commercial and industrial development on larger properties or on properties further from the city’s commercial core.
 - Potential developers of the site have concluded that their commercial and industrial uses would be more appropriate at sites located at the outskirts of the city.
 - The ability to provide a residential community infilled in a location that would provide residents access to nearby amenities is a great opportunity and a characteristic that the Applicant sought when searching for potential project locations for the 55-and-older resident demographic.
 - With Burlington Boulevard being the main commercial strip in the city, the site’s location is set back just enough to provide some privacy for our residents, while also providing them with the opportunity to experience and contribute to the nearby commercial and retail developments.
 - The east side of I-5 in Burlington has seen plenty of commercial development, with some of the commercial development currently vacant and looking for tenants, particularly the big box spaces. Additionally, there is still an adequate amount of commercially zoned land that is vacant on both the east and west side of I-5.
 - The opportunity to add high-density residential development in the urban core not only adds a community of residents that will utilize the commercial and retail

amenities within Burlington but would also provide residents with many retail and dining options to experience, many within walking distance.

Exhibit 8.

8. City staff reviewed the proposal and agreed that the site would be better suited for housing than commercial development, noting that the subject parcels were created by a binding site plan recorded in 2000 and that, despite being available for sale, have remained undeveloped for 22 years. City staff further notes that, although there has been some incremental light industrial development to the north and south of the site, the immediate surrounding area appears more suitable for commercial and residential uses. Recent nearby development includes a hotel, office buildings, and a mixed-use residential project. In addition, City staff notes:
- In the interest of managing transportation demand and improving convenience and accessibility, the City has made efforts to promote residential development in commercial areas and to encourage housing in areas close to employment and services. The City is currently in the process of extending East McCorquedale Road from its present terminus to intersect with Burlington Boulevard near Costco Drive. The planned street extension will bring the proposed development within one-quarter mile of the Burlington Boulevard corridor and a dense concentration of shopping and services.
 - There is a tremendous demand for housing, particularly for smaller housing units suitable for seniors, singles, and couples without children. The proposed development would address a pressing need for additional housing and would satisfy a unique segment of the housing market by providing housing opportunities for the 55-and-over population.
 - By the year 2036, the City anticipates that 60 percent of new housing units will need to be attached units, and the City further anticipates that the bulk of these units would be provided in large multiunit buildings located in commercial areas.
 - The City has documented a decline in average household size and a corresponding increase in the number of small households and households without children. These demographic trends support an increased need for smaller attached housing units.
 - This development site is uniquely located to take advantage of the planned extension of East McCorquedale Road, which would provide a direct route for pedestrians and cyclists to access the City's commercial core along the Burlington Boulevard corridor.
 - The City has been coordinating with SKAT on the development of a circulator route that will include a bus stop on East McCorquedale Road adjacent to the proposed development. The planned circulator route will provide service to the Library, Senior Center, the downtown core, and SKAT's regional transit center. As such, the development site is uniquely situated to utilize the planned circulator route.

- The site abuts Walnut Pond, which is held by the City for park, conservation, and stormwater management purposes. The Walnut Pond property includes a walking path and picnic table, and it would provide a unique open space amenity for the proposed development.

Exhibit 1, Staff Report, pages 2 and 3; Exhibit 9.

9. As noted above, multifamily dwelling uses in the C-2 zone are subject to the density standards of BMC 17.25.090.B, which provides for a maximum density of one unit per lot plus one additional unit for every 3,000 square feet of lot area, with additional density allowed through the agricultural heritage credit program. The site is comprised of four lots with a combined area of 7.29 acres (317,714 square feet), allowing for 110 units to be constructed on the property. The Applicant proposes to construct 170 dwelling units and, therefore, would be required to purchase 60 credits through the agricultural heritage program. *Exhibit 1, Staff Report, pages 4 and 5; Exhibit 8; Exhibit 10; Exhibit 16.*
10. The C-2 zoning district does not have minimum building setback requirements. *BMC 17.55.090.C.* It does, however, generally require that buildings be set back a maximum of 10 feet from front property lines and streets, subject to several exceptions, including exceptions to accommodate irregularly shaped lots, wider sidewalks, additional landscaping, or architectural design features. *BMC 17.55.090.D.* City staff determined that the proposed development would qualify for an exception from the maximum setback requirement, noting that the project would be located on an irregularly shaped corner lot. With regard to the setback from East McCorquedale Road, the project would include garage buildings located as close as possible to the adjacent street frontage. With regard to the setback from South Walnut Street, the proposed building would be set back at a distance necessary to provide a unique entrance featuring a drive aisle, ADA parking spaces, and a covered drop-off area. Additionally, landscaping proposed along the South Walnut Street frontage would exceed the City's minimum landscaping requirements. The C-2 zoning district provides for a maximum building height of 45 feet, with an additional foot of height allowed for each foot that the building would be set back from the property line. *BMC 17.55.090.E.* The Applicant's site plan indicates that the proposed residential building would be set back 80 feet from the nearest property line, resulting in a maximum building height limit of 125 feet. The proposed building would be approximately 52 feet in height, in accord with this requirement. *Exhibit 1, Staff Report, pages 5 and 7; Exhibit 10; Exhibit 11.*
11. The project is required to comply with the landscaping requirements of Chapter 17.80 BMC. *BMC 17.55.090.H.* Development projects in the C-2 zone are required to provide landscaping on a minimum of 10 percent of the gross site area. *BMC 17.80.070.A.* The Applicant proposes to provide 106,000 square feet of landscaping, well above the minimum 31,771 square feet of landscaping that would be required for the 7.29-acre site. The Applicant's landscaping plan also demonstrates that the project would provide required street frontage landscaping along East McCorquedale Road and South Walnut

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Street, which would include a minimum 10-foot-wide landscaping strip with street trees at intervals of 30 feet. *BMC 17.80.080.B*. In addition, the Applicant's landscaping plan demonstrates that the project would comply with the perimeter landscaping requirements of *BMC 17.80.090* and would significantly exceed the parking lot landscaping requirements of *BMC 17.80.100.A*. The Applicant's landscaping plan includes an irrigation system design, in accord with the requirements of *BMC 17.80.060.H*. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 10*.

12. Development projects in the C-2 zone are also required to comply with the off-street parking requirements of *BMC 17.85.060*. City staff determined that the age-restricted residential development project would be required to provide one off-street parking space for each one- and two-bedroom dwelling unit plus one additional guest off-street parking space for every three units, as well as one off-street parking space for each studio unit without any additional guest parking spaces. Based on the proposal to develop 8 studio dwelling units, 78 one-bedroom dwelling units, and 84 two-bedroom dwelling units, the Applicant would be required to provide a minimum of 224 off-street parking spaces. The Applicant proposes to exceed this requirement by providing a total of 315 off-street parking spaces. *Exhibit 1, Staff Report, pages 7 and 8; Exhibit 10*.
13. The project would be required to provide pedestrian access from all adjoining streets, at intervals of 100 feet, and pedestrian access should be designed to provide a logical circulation system between adjoining developments. *BMC 17.85.120*. City staff reviewed the Applicant's site plan and determined that, as proposed, the development would not meet pedestrian access requirements. Specifically, City staff notes that the site plan shows only a single pedestrian access point near the north east corner of the site connecting to East McCorquedale Road and that the project would be required to provide at least one additional pedestrian path connecting to East McCorquedale Road and provide at least two additional pedestrian access paths connecting to South Walnut Street, as well as a crosswalk to provide safe pedestrian access to a planned SKAT bus stop on the north side of East McCorquedale Road. City staff provided notations to the Applicant's site plan showing the approximate location of where these pedestrian access improvements would be required. *Exhibit 1, Staff Report, page 8; Exhibit 11*.
14. Multifamily housing projects in the C-2 district are required to comply with the multifamily development standards of *BMC 17.25.050.A*, which provide requirements for parking area screening, pedestrian access circulation, screening of trash and recycling areas, common open space amenities, and exterior lighting. City staff reviewed the proposal and determined that, with conditions, the proposal would comply with these standards. City staff specifically notes that significant landscaping would be provided around the perimeter of the site, in excess of street frontage landscaping requirements; conditions would ensure that the proposal provides adequate pedestrian circulation; the development would include a common open space area located in a courtyard formed by the north and south wings of the proposed building; and the Applicant's lighting plan

demonstrates compliance with applicable exterior lighting requirements. City staff notes that the Applicant's site plan does not currently depict a trash enclosure and, therefore, the final civil engineering and landscaping plans would be required to depict a trash enclosure meeting applicable screening requirements. City Community Development Director Brad Johnson testified at the hearing that the Applicant intends to provide trash and recycling areas within the enclosed residential building and stated that this would meet the requirements for screening trash and recycling areas. *Exhibit 1, Staff Report, pages 6, 7, and 12; Exhibit 10; Exhibit 11; Testimony of Mr. Johnson.*

Existing Site, Critical Areas, and Surrounding Uses

15. The 7.29-acre site is undeveloped, flat, and covered with grasses and herbaceous weeds over a gravel base. The property is bound by East McCorquedale Road to the north, South Walnut Street to the west, and commercial development to the east and south. The City owns a small strip of land to the west of site, across South Walnut Street, which is used as a park and contains a walking path, regional stormwater infrastructure, and a protected wetland, Walnut Pond. Wet.land, LLC, prepared a Critical Areas and Floodplain Habitat Impact Assessment Report for the proposed development, dated March 29, 2022. The report identified the offsite Walnut Pond as a Category III wetland with a standard 150-foot protective buffer.² Approximately 14,966 square feet of the buffer associated with Walnut Pond extends onto the subject property, 6,157 square feet of which would be impacted by the construction of access roads and drive aisles required for the proposed development. This portion of the Walnut Pond buffer is unvegetated and dominated by weedy species over a gravel substrate. Additionally, this portion of the buffer is functionally separated from the wetland by South Walnut Street. To mitigate for the impacts to the on-site buffer area, the Applicant would restore and replant a portion of the wetland buffer on the City-owned property. City staff reviewed the Applicant's mitigation plan and determined that it would meet the wetland buffer alteration requirements of BMC 14.15.210.A and BMC 14.15.220.J. The property is also located within an A-7 flood zone and has a base flood elevation of 31 feet. Therefore, the proposed development would be subject to the City's flood development elevation and construction standards under BMC 14.15.420 and BMC 14.15.430, as well as floodplain habitat assessment requirements under BMC 14.15.431. The Critical Areas and Floodplain Habitat Impact Assessment Report determined that the subject property does not contain any listed species or habitat. No other critical areas were identified on the subject property. *Exhibit 1, Staff Report, pages 2 and 3; Exhibit 3.*
16. Properties to the east and north of the subject property are zoned Heavy Industrial (M-1). Properties to the south are zoned C-2 and M-1. Properties to the west are zoned General Commercial and M-1. Surrounding land uses consist of offices, healthcare facilities,

² The City staff report identifies Walnut Pond as a Category II wetland with a standard 300-foot protective buffer. *Exhibit 1, Staff Report, page 2.* Mr. Johnson clarified at the hearing, however, that the staff report incorrectly stated that Walnut Creek is a Category II wetland and that it should be classified as a Category III wetland consistent with the wetland report. *Testimony of Mr. Johnson.*

contractor offices, apartments, a hotel, and the City-owned park containing Walnut Pond. *Exhibit 1, Staff Report, page 2; Exhibit 14.*

17. Transpo Group prepared a traffic impact analysis (TIA) for the proposed development, dated April 2022. The TIA determined that the proposal would generate 516 new average daily trips, with 33 AM peak-hour trips and 43 PM peak-hour trips. The TIA further determined that traffic generated by the proposed development would not cause any studied intersection to operate at a deficient level of service. City staff reviewed the TIA and determined that the proposed use would generate traffic at levels comparable to, or less than, other uses permitted outright in the C-2 zone, such as retail stores, eating and drinking establishments, hotels, car lots, and hospitals, but would generate larger demands for pedestrian, bicycle, and transit access. City staff further determined that the project's inclusion of pedestrian access points, bicycle parking, and pedestrian crossing to the planned SKAT bus stop would adequately address this larger demand. The City Fire Marshal provided a memorandum detailing several fire safety requirements for the proposed development. City staff has recommended a condition requiring the Applicant to comply with requirements identified in the Fire Marshal's memorandum. *Exhibit 1, Staff Report, pages 9 and 10; Exhibits 10 through 13.*

Conditional Use Permit

18. As noted above, the Applicant requests a conditional use permit to allow construction of the proposed age-restricted multifamily residential development. City staff analyzed the proposal and determined that it would meet the specific criteria for approval of a CUP under BMC 14A.05.140.D, noting:
 - The proposed use would not result in vehicle traffic impacts that differ significantly from other uses permitted in the C-2 zone. The proposed use may generate pedestrian and transit impacts that are greater than other uses permitted in the C-2 zone. These impacts, however, can be adequately mitigated by providing additional pedestrian access points, bicycle racks, and by providing a connection to the planned SKAT bus stop along McCorquedale Road.
 - The proposed use would generate waste volumes less than other uses permitted in the C-2 zone, would include screening for all garbage enclosures, and would not have any outdoor service or storage area.
 - Adequate utilities would be required as a condition of approval, and all utility connections and upgrades must be constructed as a condition of the development permit process. As a condition of approving the Applicant's grading permit, engineered plans for all sewer, water, and fiber optic communications infrastructure would be required, and any upgrades necessary to prevent service impacts will be required.
 - The proposed development would meet or exceed the landscaping requirements for other permitted uses in the C-2 zone.
 - The proposed use is primarily residential. Residential uses are not associated with vibration, fumes, odor, or dust impacts. Multifamily development frequently

includes outdoor lighting. Outdoor lighting can generate light and glare that impacts adjoining properties, public areas, and individual residential units. These impacts, however, can be mitigated through the design of the outdoor lighting system.

- The proposed use would not be inconsistent with the Comprehensive Plan.
- The proposed use would comply with all applicable code requirements.
- The properties surrounding the development site are zoned for a variety of commercial and light industrial uses, including storage buildings, car lots, contractor offices, and retail stores. Aesthetically, the proposed development would feature higher quality finishes and more detailed facades, and would be less bulky than large-format retail or light industrial buildings otherwise permitted in the C-2 zone. The proposed use would have little, if any, impact on the design, character, or appearance of the area.
- The proposal would have little or no impact on public infrastructure. Traffic volumes associated with residential uses are typically lower than those associated with commercial and industrial uses, the Applicant submitted a traffic impact assessment demonstrating that the proposal would have no significant impact, and a range of street and sidewalk improvements would be provided with the proposed development.

Exhibit 1, Staff Report, pages 8 through 15.

Testimony

19. City Community Development Director Brad Johnson testified generally about the proposal and how, with conditions, it would comply with the City Comprehensive Plan and zoning ordinances and would satisfy the specific criteria for approval of a CUP. He provided a detailed description of the project site, surround area, and proposed development, consistent with the findings above. Mr. Johnson noted that multifamily residential uses are allowed in the C-2 zone with a conditional use permit and that the Applicant would purchase credits through the agricultural heritage program to allow for the 60 dwelling units proposed in excess of the 110 units that would typically be allowed for the 7.29-acre property. He explained that the purpose of the agricultural heritage program is to allow for the transfer of development rights from rural areas outside the city to allow for increased density within the city. Mr. Johnson noted that a Category III wetland commonly known as Walnut Pond is located offsite on City-owned land across South Walnut Street, with a 150-foot protective buffer that extends onto the western portion of the subject property. He stressed that the Applicant would mitigate for impacts to the on-site buffer area by restoring and enhancing wetland and buffer areas on the City-owned property, in compliance with the requirements of the City's critical areas code. Mr. Johnson detailed an email correspondence between the City and the Applicant (admitted into the record as Exhibit 19) clarifying certain aspects of, and requirements for, the proposal but explained that City staff's recommended conditions of approval would not need to be modified in light of these clarifications. For example, he noted that the correspondence clarified that the Applicant would comply with recommended

conditions related to trash enclosure requirements by labeling the building plans to indicate that trash would be collected and stored in the building, the Applicant would comply with recommended conditions related to bicycle rack requirements by depicting a bike storage room on the building plans, and solar powered crossing lights would be permitted for the required mid-block crosswalk providing access to a SKAT bus stop.
Testimony of Mr. Johnson.

20. Applicant Reid Dickinson, of Inland Group, introduced the Applicant team and briefly testified that he agrees with City staff's analysis of the proposal as detailed in the staff report and as clarified in the email correspondence with Mr. Johnson. *Testimony of Mr. Dickinson.*
21. Joey Launceford, of Inland Group, testified that Inland Group is based in Spokane and focuses on affordable housing and senior living development projects. He explained that the current proposal is for a market-rate, multifamily, age-restricted development designed for active residents, with several amenities that would include a pub, wood shop, and pickleball court. Mr. Launceford stated that he is excited about the project and that Inland Group would be the developer, property owner, and operator of the proposed facility. *Testimony of Mr. Launceford.*
22. Skagit Transit Planning and Outreach Supervisor Brad Windler noted that SKAT would install a covered shelter at the planned bus stop location on the north side of East McCorquedale Road, which would benefit future residents of the proposed development. *Testimony of Mr. Windler.*

Staff Recommendation

23. Mr. Johnson testified that City staff reviewed the proposal and determined that, with conditions, it would comply with all applicable code requirements and would meet the specific criteria for CUP approval. Mr. Dickinson testified that the Applicant understands and would comply with City staff's recommended conditions. *Exhibit 1, Staff Report, pages 17 through 21; Testimony of Mr. Johnson; Testimony of Mr. Dickinson.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is vested with the duty and authority to hold public hearings and render decisions on Type III land use decisions, including conditional use permit requests. *BMC 14A.05.060.C.7; BMC 14A.05.140; BMC 17.120.120.*

Criteria for Review

The Hearing Examiner shall only approve a request for a conditional use permit if it is consistent with the following criteria:

1. The use will have no more adverse effect on the health, safety or comfort of persons living or working in the area, and will be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration; and
2. The proposal is in accordance with the goals, policies and objectives of the comprehensive plan; and
3. The proposal complies with all the requirements of this title; and
4. The proposal can be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provides a high quality of development; and
5. The proposal will not adversely affect the public infrastructure.

BMC 14A.05.140.D.

In addition to the above criteria, proposals for multifamily dwelling uses in the C-2 zoning district must demonstrate that the project site is better suited for housing than commercial development. *BMC 17.55.070.A.*

The criteria for review adopted by the City Council are designed to implement the requirement of Chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

1. **With conditions, the use would have no more adverse effect on the health, safety or comfort of persons living or working in the area, and would be no more injurious, economically or otherwise, to property or improvements in the surrounding area, than would any use generally permitted in the C-2 zoning district.** The City provided reasonable notice and opportunity to comment on the proposal. The City did not receive any comments in response to its notice materials. The City analyzed the environmental impacts of the proposal and determined that, with mitigation measures, the proposed use would not have a probable significant adverse impact on the environment. Accordingly, the City issued an MDNS, which was not appealed. The MDNS would require the Applicant to comply with the design specification, management recommendations, and mitigation measures identified in the Critical Areas and Floodplain Habitat Impact Assessment Report prepared by Wet.land, LLC; install outdoor lighting consistent with

*Findings, Conclusions, and Decision
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an approved lighting plan; construct required pedestrian and bicycle amenities; and enclose trash receptacle areas. An offsite Category III wetland (Walnut Pond) is located on City-owned property adjacent to the subject property across South Walnut Street, with a standard 150-foot protective buffer that extends onto the western portion of the site and would be impacted by the proposed development. The portion of the buffer area on the site is degraded and functionally separated from the wetland by South Walnut Street. To mitigate for the project's impacts to the on-site buffer area, the Applicant would restore and replant a portion of the wetland area on the City-owned property consistent with the buffer alteration requirements of the municipal code. The project area is also located with an A-7 flood zone and, therefore, the proposed development would be required to comply with the City's flood development elevation and construction standards. No other critical areas were identified on the subject property.

As proposed and conditioned herein, the proposed multiunit, age-restricted residential development would be compatible with surrounding land uses, which include offices, healthcare facilities, contractor offices, apartments, a hotel, and the City-owned park containing Walnut Pond. The proposed development would include significant landscaping features exceeding municipal code requirements, including perimeter landscaping that would screen the development and associated parking areas from adjacent land uses. The Applicant would provide a total of 315 off-street parking spaces, which would exceed the minimum 224 off-street parking spaces required for the proposed development. In addition, the proposed development would include pedestrian connections to the adjoining streets of East McCorquedale Road and South Walnut Street, as well as a crosswalk to provide safe pedestrian access to a planned SKAT bus stop on the north side of East McCorquedale Road, in accord with pedestrian access requirements of the municipal code. A TIA prepared for the proposed development determined that it would generate 516 new average daily trips, with 33 AM peak-hour trips and 43 PM peak-hour trips. The TIA further determined that traffic generated by the proposed development would not cause any studied intersection to operate at a deficient level of service. City staff reviewed the proposal and determined that the anticipated traffic impacts of the proposed use would be similar to, or less than, the traffic impacts of other uses permitted outright in the C-2 zone. City staff further determined that the proposed use would generate less waste than other uses permitted in the C-2 zone and that the proposed multifamily residential use would not generate significant vibration, fume, odor, or dust impacts. Outdoor lighting impacts would be mitigated by the requirement that the project comply with an approved lighting plan.

Conditions are necessary to ensure that the Applicant completes the development in a timely manner and complies with the approved plans, requirements of the municipal code, and all applicable building, fire, and safety code requirements. *Findings 1 – 4, 6, 9 – 23.*

2. **The proposal would be in accord with the goals, policies, and objectives of the City's Comprehensive Plan.** The Comprehensive Plan designates the subject property as Heavy Commercial and Industrial. The proposal would be consistent with several goals and policies of the Comprehensive Plan by providing needed age-restricted housing with a variety of amenities, off-street parking, landscaping, and pedestrian-friendly features on a vacant and undeveloped property within an employment area of the city that would be close to shopping and services upon completion of a planned city-street connection between South Walnut Street and Burlington Boulevard. *Findings 1, 5, 7 – 23.*
3. **With conditions, the proposal would comply with all the requirements of the municipal code.** As conditioned, the proposed multiunit residential use would meet all development standards applicable to the C-2 zoning district, including: maximum building setbacks when accounting for the property's irregularly shaped lot and the proposed building's architectural design features; maximum density through the purchase of credits from the agricultural heritage program; maximum building height; off-street parking; landscaping; and the specific development standards applicable to multifamily residential developments, including standards related to parking area screening, pedestrian access circulation, screening of trash and recycling areas, common open space amenities, and exterior lighting. Conditions, as detailed below, are necessary to ensure that the proposal complies with all requirements of the municipal code. *Findings 1, 6 – 23.*
4. **The proposal would be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and would provide a high quality of development.** The area surrounding the subject property is characterized by a variety of commercial and light industrial uses and building types. The proposed multiunit residential development would feature higher quality finishes and more detailed facades, and would be less bulky, than large-format retail or light industrial buildings otherwise permitted in the C-2 zone and would include significant perimeter landscaping screening the development and parking lot areas from surrounding land uses. The proposed development would therefore not significantly impact the existing character and appearance of the surrounding area. *Findings 1, 6 – 23.*
5. **The proposal would not adversely affect the public infrastructure.** The proposed multiunit residential use would not adversely affect the public infrastructure. As addressed above in Conclusion 1, the development would generate traffic impacts similar to, or less than, other uses permitted outright in the C-2 zoning district, including retail stores, eating and drinking establishments, hotels, car lots, and hospitals. Although the proposed use would have greater impacts on pedestrian, bicycle, and transit infrastructure than commercial and light industrial uses typical for the C-2 zone, the proposal would include features and improvements to mitigate for these impacts, including pedestrian

access points to adjoining streets, bicycle parking, and a pedestrian crossing to a planned SKAT bus stop. *Findings 1, 6 – 23.*

- 6. The subject property is better suited for housing than commercial development, as required for multifamily housing uses in the C-2 zone under BMC 17.55.070.A.** The subject property has remained undeveloped for commercial uses for over 22 years. The City is currently in the process of extending East McCorquedale Road to Burlington Boulevard, an area of the city containing a dense concentration of shopping and services that could serve residential development at the subject site. The City has identified a present demand for additional housing in the area, particularly for smaller housing units suitable for seniors. In addition, the City has been working SKAT on developing a circulator route that would include a bus stop on East McCorquedale Road adjacent to the subject property. This planned circulator route and bus stop would provide a valuable amenity to residential development on the property. The property is also located next to City-owned property containing Walnut Pond, a walking path, and a picnic table, which would serve as a valuable open space amenity for residents. Taken together, these factors support the conclusion that the property is better suited for residential development than commercial development. *Findings 1, 7, and 8.*

DECISION

Based on the preceding findings and conclusions, the request for a conditional use permit to construct an age-restricted (55+) residential development consisting of a four-story building containing 170 age-restricted dwelling units, six garage buildings, a pool/community building, and 315 parking spaces, with associated improvements, on four parcels totaling approximately 7.29 acres, at the intersection of South Walnut Street and East McCorquedale Road, is **APPROVED**, with the following conditions:³

1. This approval shall not be construed to authorize any development or site modifications beyond those described in the application and shown on the approved plans. The approved plans shall be the plans and other project documents attached to, or referenced in, this decision.
2. Except as otherwise required by the conditions of approval identified in this decision and the associated SEPA threshold determination, all work, construction, and development activities shall conform to the approved plans. The approved plans shall be the plans and other project documents attached to, or referenced in, this decision. Minor modifications necessary to implement any changes requested by the Building Official, Fire Marshall, or City Engineer are permitted when necessary to ensure compliance with established regulatory requirements.

³ Conditions include both legal requirements applicable to all developments and those necessary to mitigate the specific impacts of this development.

3. This approval shall expire two years from the date of approval unless the use authorized by this decision is initiated within two years of the date of this decision. The date of approval for this decision shall be the date the Hearing Examiner's decision is signed.
4. This permit does not authorize the location, design, construction, or installation of any signs. No signs may be installed unless authorized by a sign permit.
5. The total impervious surface coverage of the development authorized by this decision shall not exceed 80 percent. For purposes of interpreting this condition the definition of "impervious surface" shall be the definition provided in BMC 17.06.455.
6. Storage, handling, and disposal of hazardous substances shall be limited to minor quantities which are clearly secondary and incidental to the primary use permitted by this decision.
7. The property owner, developer, and all contractors shall be responsible for complying with all applicable laws and regulations pertaining to erosion control and water quality, including obtaining a Washington State Department of Ecology Construction Storm-Water General Permit. Any additional erosion control or construction management practices prescribed by the City Engineer or Building Official shall be immediately implemented.
8. A grading permit is required prior to beginning any clearing, filling, excavation, building, construction, or other site development work.
9. Prior to the issuance of a grading permit, civil engineering plans shall be submitted to, and reviewed by, the City Engineer for compliance with applicable stormwater, site development, and engineering requirements. A stormwater plan shall be included with the civil plans, and the plans shall include LID measures. The civil engineering plans must include the following specific information:
 - a. Vicinity map legal description, survey notes, sheet index, legend, list of contacts, and signature blocks;
 - b. Existing conditions, construction entrance, demolition and TESC plans;
 - c. Details sheet depicting ADA compliant ramps, aprons, and sidewalks;
 - d. Waterline plan and profile;
 - e. Sanitary sewer plan and profile;
 - f. Site grading and drainage plan;
 - g. Waterline specifications;
 - h. Fiber optic conduit and vaults along all street frontages, connecting to any adjacent fiber optic conduit and vaults, and connecting to each building;
 - i. Pedestrian access paths and crosswalks consistent with the SEPA MDNS conditions;
 - j. Covered trash enclosure consistent with the SEPA MDNS conditions; and

- k. The required bicycle racks, pads, and access paths.
 - l. Civil plans shall reflect the requirements identified in the memorandum from the City Fire Marshal, dated February 2, 2022 (Exhibit 13).
 - m. Crosswalks shall be provided throughout the development site in all locations where a pedestrian path crosses a paved area accessible to vehicles. Crosswalks shall be designated with striping or a contrasting pavement type.
10. No grading permit shall be approved or issued until a final landscaping plan has been submitted to, and approved by, the Community Development Department. The final landscaping plan shall be consistent with, and incorporate, any of the changes made to the final civil engineering plans.
11. The following additional outdoor lighting information shall be submitted with the Building Permit application and no building permit shall be issued until the outdoor lighting information has been reviewed and approved by the Community Development Department:
- a. Manufacture's specifications shall be provided for each proposed outdoor lighting fixture type; and
 - b. Documentation shall be provided demonstrating compliance with applicable Washington State Energy Code requirements.
12. The building permit application shall include plans and specifications for the covered trash enclosure required by the SEPA MDNS conditions. The trash enclosures must be located within the building or constructed using a solid site obscuring fence or masonry wall six feet in height. If a fence is used it shall be constructed of solid wood or chain-link fencing with a dark colored coating, such as green or black, and matching privacy slats. If located outdoors, landscaping shall be provided around the perimeter of the trash enclosure.
13. No building permit shall be issued until a sufficient number of density credits have been purchased to permit the proposed density. Based on number of lots comprising the development site (4), the area of the site (317,706 square feet), and the Applicant's proposed development (170 dwelling units), a total of 60 density credits must be purchased through the Agricultural Heritage Program.
14. No final occupancy or final building permit inspection shall be approved until all of the following actions have been completed:
- a. All of the wetland mitigation plantings and mitigation activities identified in the approved mitigation plan shall be completed and inspected by the Community Development Department.
 - b. Open rail fencing shall be installed along the eastern edge of the revised buffer, between the wetland and South Walnut Street. The fencing shall be setback seven feet from edge of the street in order to accommodate future sidewalk construction.

- c. Enamel coated metal signs with the following language shall be installed at intervals of 50 feet around the perimeter of the proposed wetland buffer:

Protected Wetland Area
No Dumping – Do Not Disturb
Thank you

15. The landscape irrigation system and all required landscaping shall be installed prior to final occupancy approval. The landscaping and landscape irrigation system shall be consistent with the landscaping plan required by this decision.
16. All sidewalks, paths, crosswalks, and other pedestrian access improvements shown on the approved plans or required by a condition of approval shall be constructed or installed prior to final occupancy approval.
17. Trash enclosures, consistent with the designs shown on the approved building plans, shall be installed prior to final occupancy approval.
18. All clearing, grading, stormwater improvements, and utilities shall be consistent with the civil engineering plans approved by the City Engineer, and no final occupancy shall be granted until the civil improvements have been inspected by the City Engineer.
19. No final occupancy or final building permit inspection shall be approved until civil engineering “as-built” drawing have been submitted to, and approved by, the City Engineer.
20. All fire and life safety requirements identified by the Building Official and Fire Marshal shall be fully addressed.
21. The Applicant shall comply with all mitigation requirements of the MDNS issued on May 2, 2022.

Decided this 7th day of June 2022.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center