

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

DECISION

FILE NUMBER: UZDP2019-00562

APPELLANTS: STCA, LLC & STC JV1, LLC
C/o Duana T. Koloušková/Dean Williams
Johns Monroe Mitsunaga Koloušková, PLLC
11201 SE 8th Street, Suite 120
Bellevue, WA 98004
kolouskova@jmmlaw.com/williams@jmmlaw.com
SERVICE BY E-MAIL

and

C/o Steven Roos/T. Ryan Durkan
Hillis Clark Martin & Peterson, PS
999 Third Avenue, Suite 4600
Seattle, WA 98104
steve.roos@hcmp.com/ryan.durkan@hcmp.com
SERVICE BY E-MAIL

RESPONDENT: City of Sammamish
Department of Community Development
ATTN: Lisa Marshall, City Attorney
801 228th Avenue SE
Sammamish, WA 98075
lmarshall@sammamish.us
SERVICE BY E-MAIL

and

C/o Peter J. Eglick/Joshua A. Whited
Eglick & Whited, PLLC
1000 Second Avenue, Suite 3130
Seattle, WA 98104
eglick@ewlaw.net/whited@ewlaw.net
SERVICE BY E-MAIL

APPLICANTS: Same as Appellants

TYPE OF CASE: Appeal from denial of a Unified Zone Development Plan

EXAMINER DECISION: REMAND

DATE OF DECISION: August 30, 2021

INTRODUCTION ¹

STCA, LLC and STC JV1, LLC (collectively “STCA”) appeal from the November 13, 2020, denial by the City of Sammamish Department of Community Development (“Community Development”) of their Unified Zone Development Plan (“UZDP”) application. (Exhibit 1 ²)

STCA filed the subject appeal on December 3, 2020. (Exhibits 9001; 9002) The appeal was timely filed in accordance with Sammamish Municipal Code (“SMC”) 20.10.080(1).

The subject property, an assemblage of five (5) tax parcels, is located on the south side of SE 4th Street, more or less between the future alignments of SE 224th and SE 225th Avenues. Its Assessor’s Parcel Numbers are 3325069024, 3325069085, 3325069016, 3325069138, and 3325069091. (Exhibit 1, B1)

The Sammamish Hearing Examiner (“Examiner”) held two remote prehearing conferences with the principal parties using the “Zoom” computer platform. The first was held on January 13, 2021, and established a schedule for handling potentially dispositive motions. (Exhibit 9005) The second was held on April 1, 2021, and established the schedule for the remainder of the proceedings. (Exhibit 9021)

The Examiner held a remote open record hearing using the “GoToMeeting” computer platform. The hearing commenced on July 12, 2021, and concluded seven (7) hearing days later on the morning of July 20, 2021. The City gave notice of the hearing as required by SMC 20.10.180(2).

Pursuant to City of Sammamish Hearing Examiner Rule of Procedure (RoP) 224(c), the Examiner entered the following administrative exhibits into the hearing record:

Exhibit 9001: Appeal of a Decision of an Administrative Official (Form), filed December 3, 2020
Exhibit 9002: Appeal of Findings/Conclusions/Decision Town Center Phase 1: SW Quadrant, Unified Zone Development Plan, filed December 3, 2020; with Appendix A, catalogued as Exhibit 9002.A

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 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. All exhibits in the record are available electronically. Most of the exhibits were assigned “Bates” page numbers during the cataloguing process. Citations to Bates-numbered exhibits will follow the format “Exhibit *x*, B*n*” where “*x*” is the exhibit number and “*n*” is the Bates page number. Citations to exhibits without Bates page numbers will use PDF page numbers, using the format “Exhibit *x*, PDF *n*”. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 3 of 88

- Exhibit 9002.A: Findings/Conclusions/Decision Town Center Phase 1: SW Quadrant, Unified Zone Development Plan (“UZDP”), File Number: UZDP2019-00562, issued November 13, 2020
- Exhibit 9003: Letter, Hearing Examiner to Principal Parties, December 4, 2020 (Procedural guidance)
- Exhibit 9004: E-mail, Hearing Examiner to Principal Parties, December 9, 2020 (Prehearing conference notice)
- Exhibit 9005: Order Memorializing a Prehearing Conference, issued January 13, 2021
- Exhibit 9006: City’s Motion to Strike and in Limine Pursuant to Hearing Examiner Rule of Procedure 204, filed January 25, 2021, at 3:04 p.m.
- Exhibit 9007: STCA’s Dispositive Motion Regarding Appeal Issues 2, 5 and 7, filed January 25, 2021, at 3:51 p.m.
- Exhibit 9008: Declaration of Stephen Roos in Support of STCA’s Dispositive Motion, filed January 25, 2021, at 3:51 p.m., with Exhibits 1 – 9 to be cited as Exhibits 9008.1 – 9008.9
- Exhibit 9009: STCA’s Response to City’s Motion to Strike and Motion in Limine, filed February 12, 2021, at 3:21 p.m.
- Exhibit 9010: Declaration of Stephen Roos in Opposition to Motion to Strike and Motion in Limine, filed February 12, 2021, at 3:21 p.m., with Exhibits 10 – 13 to be cited as Exhibits 9010.10 – 9010.13
- Exhibit 9011: City’s Response to STCA’s Dispositive Motion Regarding Appeal Issues 2, 5, and 7, filed February 12, 2021, at 4:14 p.m., with Appendices A & B, to be cited as Exhibits 9011.A & 9011.B
- Exhibit 9012: Declaration of Katherine Hilde, filed February 12, 2021, at 4:14 p.m.
- Exhibit 9013: City’s Reply in Support of City’s Motion to Strike and in Limine Pursuant to Hearing Examiner Rule of Procedure 204, filed February 22, 2021, at 4:07 p.m., with Attachment to be cited as Exhibit 9013.A
- Exhibit 9014: STCA’s Reply in Support of Dispositive Motion Regarding Appeal Issues 2, 5 and 7, filed February 22, 2021, at 4:36 p.m.
- Exhibit 9015: Declaration of Peter Brennan in Support of STCA’s Dispositive Motion, filed February 22, 2021, at 4:36 p.m., with Exhibits 1 – 4, to be cited as Exhibits 9015.1 – 9015.4
- Exhibit 9016: E-mail, Hearing Examiner to Principal Parties, February 23, 2021, at 11:03 a.m. (Request for response to six questions)
- Exhibit 9017: STCA’s answers to the Hearing Examiner’s six questions, filed March 1, 2021, at 4:08 p.m.
- Exhibit 9018: City’s answers to the Hearing Examiner’s six questions, filed March 1, 2021, at 4:23 p.m.
- Exhibit 9019: Interlocutory Order on Motions, issued March 5, 2021
- Exhibit 9020: E-mail chain, Principal Parties and Examiner, April 2 – 9, 2021 (Evidence pre-filing and page limits)
- Exhibit 9021: Order Memorializing a Prehearing Conference, issued April 15, 2021
- Exhibit 9022: Letter, Duana Koloušková to Hearing Examiner, June 18, 2021, with Attachments 1 - 3, to be cited as Exhibits 9022.1 - 9022.3

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 4 of 88

- Exhibit 9023: Letter, Eglick to Hearing Examiner, June 22, 2021, with three Attachments (marked only with “bullets”) to be cited as: Exhibit 9023.A: June 18, 2021, 4:54 p.m. e-mail from Peter Eglick to Hearing Examiner with attachment; Exhibit 9023.B: City’s Motion to Strike and In Limine Pursuant to Hearing Examiner Rule of Procedure 204, dated January 25, 2021; and Exhibit 9023.C: City’s Reply in Support of City’s Motion to Strike and In Limine Pursuant to Hearing Examiner Rule of Procedure 204, dated February 22, 2021
- Exhibit 9024: E-mail chain among Principal Parties, beginning with Leona Phelan on Friday, June 11, 2021, at 8:37 a.m. (transmitting Respondent’s initial record) and ending with Peter Eglick on Wednesday, June 23 2021, at 10:00 a.m. (objecting to Dean Williams’ e-mail of Wednesday, June 23, 2021, at 8:32 a.m.). The Williams e-mail has two attachments, marked here as Exhibit 9024.A (Tondini to Koehnen e-mail of June 14, 2021) and Exhibit 9024.B (Hankins to Donovan to Stickney e-mails of September 1, 2020)
- Exhibit 9025: E-mail, Hearing Examiner to Principal Parties, June 24, 2021, at 9:40 a.m. (Response to June 18, 2021, Request for Subpoenas)
- Exhibit 9026: Declaration of Darci Donovan, filed June 29, 2021 at 6:45 p.m.
- Exhibit 9027: E-mail, Hearing Examiner to Principal Parties, June 29, 2021, at 8:38 p.m. (Response to submission of Exhibit 9026)
- Exhibit 9028: Documents regarding testimony of Evan Maxim
- Exhibit 9028.1: Letter, Koloušková to Hearing Examiner, July 7, 2021, filed via e-mail at 8:58 a.m. with two unnumbered attachments, labeled here (using labels assigned in Koloušková’s e-mail) as: Exhibit 9028.1.A: Maxim email string; and Exhibit 9028.1.B: STCA PRR documents from Sea-Tac
- Exhibit 9028.2: E-mail, Eglick to Hearing Examiner, July 7, 2021, at 9:37 a.m.
- Exhibit 9028.3: E-mail, Hearing Examiner to Principal Parties, July 7, 2021, at 12:26 p.m.
- Exhibit 9028.4: E-mail, Eglick to Hearing Examiner, July 7, 2021, at 12:54 p.m.
- Exhibit 9028.5: E-mail, Hearing Examiner to Eglick, July 7, 2021, at 2:16 p.m.
- Exhibit 9028.6: E-mail, Evan Maxim to Hearing Examiner, July 7, 2021, at 8:19 p.m.
- Exhibit 9028.7: Letter, Eglick to Hearing Examiner, filed via e-mail on July 8, 2021, at 4:11 p.m.
- Exhibit 9028.8: Letter, Koloušková to Hearing Examiner, July 9, 2021, filed via e-mail at 10:31 a.m.
- Exhibit 9028.9: E-mail, Eglick to Hearing Examiner, July 9, 2021, at 11:08 a.m.
- Exhibit 9028.10: E-mail, Hearing Examiner to Principal Parties, July 9, 2021, at 1:57 p.m.
- Exhibit 9029: Subpoena to Evan Maxim, July 11, 2021
- Exhibit 9030:³ Anant Mithal, written statement to accompany July 19, 2021, hearing testimony
- Exhibit 9031: Don Gerend, written statement to accompany July 19, 2021, hearing testimony
- Exhibit 9032: Scott Hamilton, written statement to accompany July 19, 2021, hearing testimony with attachment to be cited as Exhibit 9032.1

³ The Examiner announced during the public testimony on July 19, 2021, that public witnesses could submit written statements to accompany their oral testimony and other members of the public could submit written statements through 5:00 p.m. on Wednesday, July 21, 2021. The “9000 series” exhibits which follow were submitted pursuant to that authorization. Many of these comments were e-mailed to the City prior to the public testimony on July 19th, but were not catalogued for entry into the record until after the close of the hearing. Documents in this group were made available to the principal parties by Friday, July 23, 2021. Late arriving documents were not admitted into the record.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 5 of 88

- Exhibit 9032.1: Scott Hamilton, letter, August 9, 2020
- Exhibit 9033: Transmittal e-mail for Exhibit 9033.1
- Exhibit 9033.1: Richard Aramburu, attorney for Walter Pereyra, July 21, 2021, written statement to accompany July 19, 2021, hearing testimony
- Exhibit 9034: Paul Stickney, July 19, 2021, e-mail to accompany July 19, 2021, hearing testimony with attachments A – K to be cited as Exhibits 9034.1 – 9034.12 ⁴
- Exhibit 9035: Karen Moran, July 21, 2021, written statement to accompany July 19, 2021, hearing testimony
- Exhibit 9036: Patrick Daniels, comment e-mail, filed July 15, 2021
- Exhibit 9037: Galina Jakobson, comment e-mail, filed July 15, 2021
- Exhibit 9038: The Folletts, comment e-mail, filed July 16, 2021
- Exhibit 9039: Melanie Ball, comment e-mail, filed July 16, 2021
- Exhibit 9040: John and Jo Ann Pennock, comment e-mail, filed July 16, 2021
- Exhibit 9041: Denis Malone, comment e-mail, filed July 16, 2021
- Exhibit 9042: Alejandro Campos, comment e-mail, filed July 16, 2021
- Exhibit 9043: Jill Corriveau, comment e-mail, filed July 17, 2021
- Exhibit 9044: Rayna Vogel, comment e-mail, filed July 17, 2021
- Exhibit 9045: Karen McKorkle, comment e-mail, filed July 17, 2021
- Exhibit 9046: Mar Ka, comment e-mail, filed July 18, 2021
- Exhibit 9047: Rich Benack, comment e-mail, filed July 18, 2021
- Exhibit 9048: Ramiro Valderrama-Aramayo, comment e-mail, filed July 18, 2021
- Exhibit 9049: Lisa Steele, comment e-mail, filed July 18, 2021
- Exhibit 9050: Melanie Kelsey, comment e-mail, filed July 18, 2021
- Exhibit 9051: Cheryl Hooper, comment e-mail, filed July 18, 2021
- Exhibit 9052: Kevin Glasse, comment e-mail, filed July 18, 2021
- Exhibit 9053: Ilene Stahl, comment e-mail, filed July 18, 2021
- Exhibit 9054: Mary Hyatt Doerrer, comment e-mail, filed July 18, 2021
- Exhibit 9055: Seth Eliot, comment e-mail, filed July 18, 2021
- Exhibit 9056: Jennifer Kim, comment e-mail, filed July 18, 2021
- Exhibit 9057: Santiago Lozano, comment e-mail, filed July 18, 2021
- Exhibit 9058: Maria Piñeirúa, comment e-mail, filed July 18, 2021
- Exhibit 9059: Barbara Villeda, comment e-mail, filed July 18, 2021
- Exhibit 9060: The Guse family, comment e-mail, filed July 18, 2021
- Exhibit 9061: Daniella Toledo, comment e-mail, filed July 19, 2021
- Exhibit 9062: Debbie Treen, comment e-mail, filed July 19, 2021
- Exhibit 9063: James Jordan, comment e-mail, filed July 19, 2021, with attachment to be cited as Exhibit 9063.1
- Exhibit 9064: Jason Ritchie, comment e-mail, filed July 19, 2021
- Exhibit 9065: Kara Hobbs, comment e-mail, filed July 19, 2021
- Exhibit 9066: Patty Simone, comment e-mail, filed July 19, 2021
- Exhibit 9067: Linda Uno, comment e-mail, filed July 19, 2021
- Exhibit 9068: Jane McGrane, comment e-mail, filed July 19, 2021

⁴ Exhibit 9034.11 is a non-substantive transmittal e-mail.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 6 of 88

- Exhibit 9069: Megan Bigbee, comment e-mail, filed July 19, 2021
Exhibit 9070: Sarah Kimsey, comment e-mail, filed July 20, 2021
Exhibit 9071: Transmittal e-mail for Exhibit 9071.1, filed July 20, 2021
Exhibit 9071.1: Karen Herring, comment letter, filed July 20, 2021
Exhibit 9072: Marishka Lenova, comment e-mail, filed July 21, 2021
Exhibit 9073: Don Gerend, comment e-mail, filed July 21, 2021 (at 11:14 a.m.)
Exhibit 9074: Sally Farrell, comment e-mail, filed July 21, 2021
Exhibit 9075: Kerry Bosworth, comment e-mail, filed July 21, 2021
Exhibit 9076: Mardie Rhodes, comment e-mail, filed July 21, 2021
Exhibit 9077: Doug Nelson, comment e-mail, filed July 21, 2021
Exhibit 9078: Jay Krauss, General Manager, Sammamish Plateau Water and Sewer District, comment e-mail, filed July 21, 2021, with seven attachments to be cited as Exhibits 9078.1 – 9078.7
Exhibit 9079: Paul Stickney, comment e-mail, filed July 21, 2021, with eight attachments to be cited as Exhibits 9079.1 – 9079.8
Exhibit 9080: Tom Vance, comment e-mail, filed July 21, 2021
Exhibit 9081: Sarah Auckland, comment e-mail, filed July 21, 2021
Exhibit 9082: Paul and Karen Gardiner, comment e-mail, filed July 21, 2021
Exhibit 9083: Sam Vatslov, comment e-mail, filed July 21, 2021
Exhibit 9084: Heather Murphy-Raines, comment e-mail, filed July 21, 2021
Exhibit 9085: Norm Bottenberg, comment e-mail, filed July 21, 2021
Exhibit 9086: Wilda Luttermoser, comment e-mail, filed July 21, 2021
Exhibit 9087: Karen Moran, comment e-mail, filed July 21, 2021⁵
Exhibit 9088: Beau Raines, comment e-mail, filed July 21, 2021
Exhibit 9089: Joyce Bottenberg, comment e-mail, filed July 21, 2021
Exhibit 9090: Don Gerend, comment e-mail, filed July 21, 2021 (at 4:53 p.m.)
Exhibit 9091: Masha Yana, comment e-mail, filed July 21, 2021
Exhibit 9092: Mary Wictor, comment e-mail, filed July 21, 2021
Exhibit 9093: Stacey Peters, comment e-mail, filed July 18, 2021

Pursuant to RoP 224(d), Respondent Community Development pre-filed Exhibits 1 - 48 and provided an index listing of those exhibits. Appellant STCA did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from Community Development as follows:

- Exhibit 49.a - .b: Early Town Center concepts from Shook Kelley, Inc.
Exhibit 50: Conceptual Town Center development video
Exhibit 51: STCA's Pre-Application submittal package
Exhibit 52: City Council Agenda Bill for November 6, 2018, *in re* Memorandum of Understanding with STCA

⁵ This is a duplicate of Exhibit 9035.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 7 of 88

Pursuant to RoP 224(e), Appellant STCA pre-filed Exhibits 1001 - 1032 and provided an index listing of those exhibits. Respondent Community Development did not object to entry of those exhibits. The Examiner entered those exhibits into the hearing record. Pursuant to RoP 224(i) the Examiner accepted additional exhibits during the hearing from STCA as follows:

Exhibit 1033: STCA's assessment of Exhibit 50

Respondent and Appellant opted to prepare written closing statements and agreed on a schedule to do so. (Exhibit 9021, B3 & B4, § 7) The closing statements are entered into the record as follows:

Exhibit 53: Respondent City of Sammamish's Closing Brief, filed August 3, 2021

Exhibit 1034: Appellants' Post-Hearing Brief, filed August 17, 2021

The hearing closed with receipt of Exhibit 1034 on August 17, 2021.

The Hearing Examiner Clerk has the record copy of all exhibit index lists and exhibits.

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.

LEGAL FRAMEWORK ⁶

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A UZDP is classified as a Type 2 land use application. [SMC 20.05.020, Exhibit A] An appeal from Community Development's action on a Type 2 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.05.100(1)(c), 20.10.240, 20.10.250, and 20.10.260]

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

⁶ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

The review criteria for a UZDP are set forth at SMC 21B.95.060:

The City will evaluate UZDP applications and approve them only if they meet the following criteria.

- (1) The applicable procedural and technical requirements of this title and SMC Title 21A;
- (2) Adherence to unified zone development planning principles, SMC 21B.95.050;
- (3) The City's roadway standards: infrastructure plans (including the adopted Town Center Infrastructure Plan for the TC-A-1 zone), stormwater management plans, the City's parks, open space and trails plans and other public plans and requirements; and
- (4) The goals and policies of the Town Center Plan.

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, the Type 2 application involved in this appeal is vested to the development regulations as they existed on November 4, 2019, the date STCA filed its complete UZDP application. (Exhibit 14)

Standard of Review

The standard of review is preponderance of the evidence. The appellant has the burden of proof. [RoP 316(a)]

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.

INTEGRATED ⁷ FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Foundation

1.1. *Findings of Fact*

- 1.1.1. This appeal pertains to STCA's UZDP application for an approximate 8 acre assemblage of parcels located on the south side of SE 4th Street.

The proposed development site consists of five King County tax parcels, comprising [approximately] 8.09 acres. The project site is located west of 228th Ave SE, south of SE 4th Street, north of the Lower Sammamish Commons Park between 222nd Avenue SE and 226th Avenue SE and within the portion of Southeast Quarter Section 33, Township 25 North, Range 6 East, W.M. King County Assessor Tax parcels included with this proposal are: 3325069024, 3325069085, 3325069016, 3325069138, and 3325069091.

The subject parcels that make up the project site were previously developed with either single-family residences or large storage structures, many of which have been demolished prior to application. Rural residential parcels generally surround the project site except to the south and northeast. South of the project site is the Lower Sammamish Commons Park. Northeast of the project site is *The Village*, a mixed-use residential and commercial development.

(Exhibit 1, PDF 9 & 10, figure reference omitted) Community Development denied STCA's UZDP application on November 13, 2020 (Exhibit 1); STCA timely appealed (Exhibits 9001; 9002 ⁸).

⁷ Because of the large number of individual, active issues in this appeal (19) the Examiner has elected to integrate the Findings of Fact and Conclusions of Law. Conclusions of Law will follow the Findings of Fact on an issue-by-issue basis, thus making it easier for the reader to relate the Conclusions of Law and Findings of Fact on each issue.

⁸ Exhibit 9001 is the required appeal form; Exhibit 9002 is the statement of appeal. The Examiner will hereafter refer to the appeal by citing only Exhibit 9002.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 10 of 88

- 1.1.2. STCA has divided the UZDP property into five large “blocks” for reference purposes. Blocks 3 and 4 are along the west edge of the property, west of the future 224th Avenue SE right-of-way. Blocks 5 and 6 span the middle of the site between future 224th and 225th Avenues SE. Block 7 occupies the eastern remainder of the site, east of the future 225th Avenue SE right-of-way. (Exhibit 35.p, B34)

STCA’s current plan (Exhibit 35.p) envisions: 48 townhomes of three- and four-stories located west of future 224th Avenue SE on Blocks 3 and 4; two large, C-shaped mixed-use buildings on Blocks 5 and 6 containing 42,000 square feet (“SF”) of commercial uses on the ground and daylight basement floors with 300 apartment units in five stories above; and a commercial building on Block 7 containing 30,000 SF of commercial uses and 10,000 SF of restaurant uses on two floors. Underground parking structures would be located beneath Blocks 5 – 7. (Exhibit 35.p, especially B34 - B41; and Hermansen testimony)

- 1.1.3. A prehearing conference was held remotely on January 13, 2021, which resulted in the establishment of a schedule for consideration of motions. (Exhibits 9003 – 9005) Respondent Community Development and Appellant STCA each filed a motion, response, and reply with supporting declarations. (Exhibits 9006 – 9015) Before ruling on the motions the Examiner posed six questions to the parties to which each provided written answers. (Exhibits 9016 – 9018) On March 5, 2021, the Examiner issued an Interlocutory Order on Motions. (Exhibit 9019) As that Order was not fully dispositive of the entire appeal, a second prehearing conference was held on April 1, 2021, to establish a schedule for the remainder of the case. (Exhibit 9021) Document production and pre-filing disagreements occurred between about April 2 and June 29, 2021. (Exhibits 9020 – 9027) On July 7, 2021, STCA asked the Examiner to issue a subpoena to compel the testimony at hearing of Evan Maxim (“Maxim”), a former City employee. (Exhibit 9028.1) After considering arguments for and against issuance of the requested subpoena (Exhibits 9028.2 – 9028.10), the Examiner issued a limited subpoena on July 11, 2021 (Exhibit 9029). Maxim testified on July 14, 2021, the third hearing day.

- 1.1.4. STCA raised 22 separate appeal issues. (Exhibit 9002, B13 – B20) Three of those issues (Appeal Issues 2, 5, and 7) were summarily dismissed prior to hearing. (Exhibit 9019) Of the remaining 19 appeal issues, four (Appeal Issues 1, 3, 4, and 6) are general, overarching procedural challenges which are best considered after the other 15 issues have been addressed.

The 19 remaining appeal issues will be addressed in the order raised in the appeal, beginning with Appeal Issue 8 and concluding with Appeal Issues 1, 3, 4, and 6.

- 1.1.5. The Findings of Fact in this Decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the Decision as a whole.

- 1.1.6. Any Conclusion of Law in this Decision deemed to be a Finding of Fact is hereby adopted as such.

1.2. *Conclusions of Law*

- 1.2.1. The arguments supporting and the striking of about three pages of Exhibit 9002 as set forth in the March 5, 2021, Interlocutory Order on Motions (Exhibit 9019) are incorporated herein by reference as if set forth in full.
- 1.2.2. The arguments supporting and the summary dismissal of Appeal Issues 2, 5, and 7 as set forth in the March 5, 2021, Interlocutory Order on Motions (Exhibit 9019) are incorporated herein by reference as if set forth in full.
- 1.1.3. The Conclusions of Law in this Decision are grouped by topic only for the reader's convenience. Such groupings do not indicate any limitation of applicability to the Decision as a whole.
- 1.2.4. Any Finding of Fact in this Decision deemed to be a Conclusion of Law is hereby adopted as such.

2. **Historical chronology**

2.1. *Findings of Fact*

- 2.1.1. June 19, 2006. The Massets deeded to the City for right-of-way purposes Tract A in 1983 King County short subdivision No. 1179017. Tract A was a 30-foot wide easement extending southerly from SE 4th Street which had been created to provide access to Lots 2 and 3 in the short subdivision. (Exhibit 6) The northern portion of that 30-foot wide right-of-way passes through the boundary of STCA's UZDP application.
- 2.1.2. June 9, 2008. After several years of study, public involvement, public meetings, and public hearings, the City Council ("Council") adopted the "Town Center Plan" ("TCP") as a sub-area plan within the City's Comprehensive Plan.⁹ [Ordinance No. O2008-232; see also TCP, PDF 5 – 7, 12] The TCP area encompasses some 240 acres, a more or less square area roughly centered on the 228th Avenue SE/SE 4th Street intersection. [TCP, PDF 5 & 7] The TCP fleshes out a preferred alternative concept adopted by the Council in 2017. [TCP, PDF 14] That concept includes

[a] larger "core" mixed-use development area is centralized within the western quadrants of the Town Center and focused near SE 4th Street around an open space spine and encircled with multi-family residences. The city's most intense development (up to 6 stories) is encouraged in this primary mixed-use "core." ... Land use intensity steps down substantially from the core mixed-use area much like a wedding cake so that land uses and design treatments on the perimeter of the Town Center are compatible with surrounding single-family neighborhoods.

[TCP, PDF 19; see also PDF 20 and 26 (Strategy: Envisioned Land Use Pattern)] The "open space spine" later became known as the "Green Spine" and runs south-north from Lower Sammamish Commons Park ("Lower Commons") north to end in the mixed use core at SE 4th

⁹ The TCP was amended in 2020, but that amendment only changed the zoning classification of property not anywhere near STCA's UZDP property. [Official notice]

Street. [TCP, PDF 20] The figures in the TCP which graphically depict the preferred alternative are prominently labelled as “Conceptual Only” and “Concept map.” [TCP, PDF 14 & 20]

Many of the recommendations call for more planning or analytical work. While most subarea plans require further analysis and detailed planning work for their implementation, this plan includes requirements for master planning and design for the mixed-use centers, trail systems, and environmental systems. These are particularly important for successful Town Center redevelopment because of the complexity of and opportunities posed by ecological systems, the constraints imposed by the road network and topography, the configuration of individual land ownership patterns, and the diversity of public facilities desired. Achieving the City’s vision will take a sophisticated, strategic approach and sustained, coordinated actions.

[TCP, PDF 24, emphasis added]

The TCP includes 29 planning Goals and 96 planning Policies. Of the 96 Policies, 41 (43%) direct the City to take some action, as opposed to providing project guidance. [TCP, PDF 34 – 37, 45 – 53, 64 – 65, 76 – 78, 85 – 87, 93 – 97, and 113 – 114]

As noted earlier, development of the Town Center to fit the community’s vision is complicated by the area’s numerous, relatively small property ownerships. ... Therefore, the implementation and regulatory framework requires master planning in each of the mixed-use nodes. Master planning will be accomplished in conjunction with the City and may be initiated by a single, large property owner or a coalition of owners of several smaller properties.

[TCP, PDF 29]

... [D]evelopers of properties in the mixed-use nodes must master plan the zone prior to any redevelopment. Owners of any of the adjacent B zone properties would be encouraged to be included in the master planning so that they can more actively participate in the design process and receive some of the benefits accruing to master planned A zone properties.

Each resulting master plan will essentially result in an agreement in which the City and property owners agree to a development layout indicating:

- Amounts and locations of proposed land uses.
- Roads and connections to activities.
- Open space and pedestrian connections.
- Surface water management facilities and practices.
- Maximum height and bulk of buildings.
- Landscape concept or guidelines.
- Architectural concept or guidelines.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 13 of 88

The master plan will also include a process for amending the development plan to allow some flexibility as development proceeds.

[TCP, PDF 30, emphasis added]

- 2.1.3. October 19, 2010. The Council passed Resolution No. R2010-431, which adopted “Interim City of Sammamish Town Center Street Design Standards, (dated July 7, 2010)” (“TC Interim Standards”).¹⁰ (Exhibit 1007) Table 1 in the TC Interim Standards contains design specifications for streets in the Town Center; it is denoted as a “Supplement to Public Street Design Standards.” One of the columns in Table 1 is headed “Alley/Service.” Most of the Design Standard rows in the “Alley/Service” column are marked “TBD” (To Be Determined) or “N/A” (Not Applicable). The “Right-of-Way” and “Travel Lane” width entries in the Alley/Service column are both marked “TBD.” (Exhibit 1007, B6)
- 2.1.4. October 26, 2010. The Council enacted Ordinance No. O2010-293 which did three things: It enacted Title 21B SMC, Town Center Development Code; it applied Town Center zoning designations to the land within the TCP area; and it adopted the Town Center Infrastructure Plan (“TCIP”). Provisions of Title 21B SMC relevant to the issues in this appeal will be included throughout this Decision.

The adopted zoning (as it existed at the time) looked like this:¹¹

¹⁰ Section 21B.96.010 SMC, adopted October 26, 2010, incorporated the TC Interim Standards into the Town Center Development Code. Subsection 21B.96.010(2) SMC provides that the TC Interim Standards “supplant” the regular Public Works Standards (now known as the “2016 PWS”) for use in the Town Center. Section 21B.96.020 SMC states that “[i]n case of inconsistency or conflict between the [TC Interim Standards] and other provisions of the Sammamish Municipal Code and the City of Sammamish [2016 PWS], the most restrictive provision shall apply.”

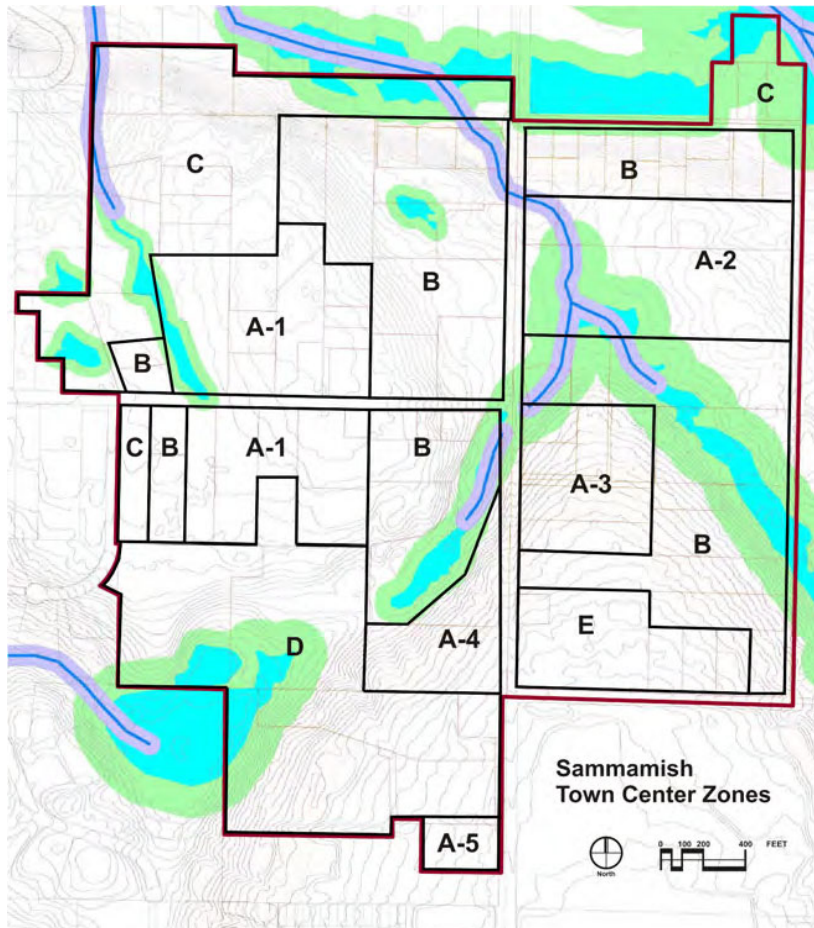
¹¹ The northern 2.4± acres of the TC-E zone was rezoned to TC-B on or about June 8, 2020. [Official notice, ZONR2019-00061]

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 14 of 88



[TCP, PDF 29] STCA’s UZDP encompasses all of the TC-A-1¹² zone south of SE 4th Street except for the right “leg.” The TC-D-zoned area between the two “legs” of the TC-A-1 zone south of SE 4th Street is referred to in the record as the “Notch.” The Notch is owned by the City. The northern portion of the TC-D zone south of the TC-A-1 zone contains Lower Sammamish Commons (“The Commons”). (Exhibit 1029, B4)

“The Sammamish Town Center Infrastructure Plan is focused on the Core Mixed Use (CMU) area identified in the Town Center Plan as the A-1 Zone.” [TCIP, PDF 3]

A central component of the Plan is a “Green Spine”, which is a public open space system which connects the Commons area with the CMU. This open space system also forms the backbone of a network of soft and hardscape areas, that connect outward towards the adjacent residential neighborhoods. Furthermore, this open

¹² The SMC identifies this zone as the “TC-A-1” zone. [SMC 21B.10.030(1)(a)] Most documents in the record refer to it as the “TC-A1” zone. The Examiner will use “TC-A1” when that form is used in a quotation, but will otherwise use the official SMC form (“TC-A-1”).

space system could incorporate integrated stormwater management techniques, offering district-wide opportunities for sustainable, cost-effective design solutions.

...

This document [the TCIP] gives guidance to private entities regarding the framework structure of the CMU, core principles of the Plan, and selected guidelines to achieve the desired outcome. There is great flexibility in the details, allowing a market-responsive approach to development, since economic viability is paramount to the success of the Plan.

The City may undertake selected catalytic actions in support of the Plan framework, demonstrating commitment to the Plan by investing in key infrastructure components adjacent to and supportive of private development.

[TCIP, PDF 3, emphasis added]

Beginning south of 4th Street at the north edge of The Commons, a central open space allows existing public open space to penetrate the CMU, and provide a unique amenity that will support the social and financial welfare of the Town Center; [sic] The Green Spine. The Green Spine is composed of a hierarchy of spaces and is categorized into three zones; [sic] Primary, Secondary, and Neighborhood Transitions. While each zone provides a unique pedestrian experience, all are stitched together by a common thread to create a seamless public amenity.

...

Framed by bustling storefronts, cafes, and businesses spilling into the public realm to activate the space, the Primary Open Space is reminiscent of the old-world town square or piazza as the heart of the City. It is highly visible and functionally accessible as an integral extension of the Spine's pedestrian network. It is the most urban public open space of the Town Center and incorporates a variety of forms, colors, and textures; including sculptures, fountains, and a range of different places to sit such as walls, stairs, nooks, and corners at the edges that provide both physical and visual relief. Site amenities and features including benches, seatwalls, lighting, and plantings are arranged to provide versatility accommodating large regional events (e.g. farmer's market) while encouraging casual, more impromptu daily gatherings and social interaction.

...

The Secondary Zone has a linear park like character. Outdoor cafes and retail front the park providing an "audience" as people stroll by, gather in small pocket plazas, and relax along vegetated eddies of quiet, more secluded outdoor rooms.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 16 of 88

Maintaining pedestrians through the thoughtful application and arrangement of integrated management practices, such as stormwater planters, constructed wetlands, and native/adaptive plantings, this zone achieves a softer quality with significant ecological function.

...

At the north end of the Green Spine is the neighborhood transition zone. This area has a local flavor where residents gather more personally as a small community; a different character than that found in the larger, more regional Primary Zone. A small, open plaza anchored by a focal feature such as a fountain, sculptures or clock that speaks to the identity of the neighborhood provides a soulful, iconic element at the terminus of the spine.

[TCIP, PDF 5 & 6, italics in original]

A City Park adjacent to SE 4th will be developed, integrating a stormwater detention and treatment facility. Stormwater runoff from developments in the CMU may be able to obtain stormwater credits from this facility.

[TCIP, PDF 6]

The TCIP presents

three possible plan concepts that could result from an application of the planning principles and guidelines contained in this document. It is important to recognize that these are not offered as recommended plans, but as illustrations of a variety of ways in which the principles could give form to the town center.

[TCIP, PDF 7, emphasis added] The three “possible plan concepts” are depicted at PDF 8, 13, and 14 where they are referred to as “Composite Schemes.”

The central form-giving feature of Town Center is “CitySquare”. Centrally located and adjoining SE 4th Street, this highly public civic open space establishes the scale, character, and function of the Core area. At approximately 300 feet per side, it establishes a block pattern and size that is pedestrian-friendly, walkable, and comparable with numerous successful town and city centers. “CitySquare” will be a gathering place for residents and visitors to Sammamish, offering a peaceful, softscape core, with increasingly active and hardscape edges, as you move to the surrounding retail sidewalks. To the north, east, and west, at mid-block are highly connective pedestrian street crossings, allowing the character and function of the active open space to cross over the low-volume feeder streets. To the south, there are direct, at-grade connections to the Commons.

The Green Spine connects across CitySquare to the north and south, linking the Commons to the more intimate spaces of the retail core. With a combination of soft- and hardscapes, the Green Spine creates a web of public space that acts as the connective tissue of the Core.

[TCIP, PDF 7, emphasis added ¹³] It is important to note that the “approximately 300 feet per side” dimension for CitySquare essentially matches the distance between the 224th and 225th Avenues SE intersections with SE 4th Street as was then anticipated. [TCIP, PDF 8 – 14] The expectation obviously was that CitySquare would fill the majority of an entire 300’ x 300’ Town Center block.

The TCIP includes Development Guidelines, but neither planning Goals nor planning Policies. [TCIP, PDF 15 – 19] The Development Guidelines describe the Primary Open Space as

[f]ramed by bustling storefronts, cafes, and businesses spilling into the public realm to activate the space, the Primary Open Space is reminiscent of the old-world town square or piazza as the heart of the City. It is highly visible and functionally accessible as an integral extension of the Spine’s pedestrian network. It is the most urban public space of the Town Center

[TCIP, PDF 17] The Development Guideline for the width of the Primary Open Space is: “Minimum width of 40 feet. Maximum width of 200 feet (Measure from average perimeter building face)” [TCIP, PDF 18, italics in original; underlining added]

In addition to the three “Composite Schemes,” the TCIP includes three additional, different “Concept Plans.”

The alternatives presented here ... were created to explore possible outcomes of a planning and development process based on draft Principles, and are not proposed as specific solutions. Inevitably, the final outcome of the planning and development process will be based on market realities and financing constraints. Adherence to the principles and guidelines presented here, will, over time result in the kind of vibrant, economically viable Town Center envisioned by the citizens of Sammamish.

Concept 1

This Concept is based on a warped grid of streets which are also inflected to give closure to views. ... The core area is made up of blocks that are between 200 feet and 350 feet per side. Buildings line the street/sidewalk with no setbacks, creating a tight, pedestrian-friendly streetscape into which retail activities can spill. The Green Spine is a major open space feature running through the middle of the core, and exiting

¹³ The spelling “CitySquare” in this quote is accurate. Most documents in this record spell it “City Square.” The Examiner will use the source spelling unless quoting a document which uses the alternative spelling.

northward into the residential district. A public plaza forms a central feature of the core, engaging the retail uses, the streetscape, and the natural system.

Concept 2

This Concept utilizes the existing SE 4th street right of way, but interjects two round-a-bouts with a boulevard connector as the central organizing feature of the civic center. To the north, the Green Spine is a park-like softscape edged with hardscape pedestrian areas, and contained within a large open space room formed by adjacent buildings. ... To the south of SE 4th Street a public plaza connects from the Commons to the Green Spine, with parking resources to the east and west, serving both commercial and public facility uses.

Concept 3

Concept 3 offers a classic Central Park, ringed by commercial uses and public facilities. A walkable block size of approximately 330 feet on centerlines, forms the basis for outdoor space organization. ... SE 4th is retained in its current right of way, edged with retail functions and made part of the Central Park spatial experience, with extensive tree-scaping and strong pedestrian connections at intersections and mid-block. The southern edge of the formal Central Park opens onto the Commons open space creating a direct link for the Green Spine, as it heads north into the core area.

...

[TCIP, PDF 21, Preliminary Concepts Appendix, bold headings in original]

- 2.1.5. August 12, 2013. IS Sammamish SEQ, LLC filed a UZDP application to develop 4.42 acres in the southeast quadrant of the Town Center into 13 live/work townhomes and 62 straight townhomes (*Southeast Village*). The site is zoned TC-A-3. Access to the 75 units is a combination of private woonerfs and alleys. Community Development approved *Southeast Village* on August 8, 2014, subject to 44 conditions. (Exhibits 1001; 1001.A)
- 2.1.6. June 30, 2014. The then-Acting Community Development Director issued a Director's Interpretation pursuant to authority under SMC 21A.05.090 regarding commercial square footage allocated to TC-B zone properties (the "2014 Interpretation"). Pursuant to SMC 21A.100.055(7) & (8) and SMC 21A.100.060(2)(a), a Director's Interpretation is final and binding on all persons (including the Examiner) if not appealed unless subsequently modified or nullified by the Council or the subject code section(s) is(are) subsequently amended by the Council. This Director's Interpretation was not appealed. The 2014 Interpretation noted that SMC 21B.95.020(2)(c) provides that

Properties directly adjacent to the applicable TC-A zone may be included in the UZDP area provided they are part of a plan that includes properties in the TC-A zone. A TC-B property may include up to 10 percent of a UZDP's commercial development application for contiguous TC-A zone development.

Subsection 21B,20.080(1) SMC allows retail commercial uses in the TC-B zone only if the property is part of a UZDP. The 2014 Interpretation ruled that not only TC-B parcels “directly adjacent” to TC-A-zoned properties but also TC-B parcels abutting TC-B parcels which are “directly adjacent” to TC-A parcels may share up to 20% of the adjacent TC-A zone commercial allocation, including any bonus allocations. [Official notice ¹⁴]

- 2.1.7. December 17, 2014. TRF Pacific, LLC filed a UZDP application and a BSP application to develop approximately 6.44 acres in the northwest quadrant of the 228th Avenue SE/SE 4th Street intersection as a mixed-use development with underground and surface parking, multiple buildings containing about 102,000 SF of commercial uses stair-stepping up the steeply sloping site, and a mixed-use building on the plateau at the west end of the site with about 13,000 SF of commercial space on the ground floor and 159 apartment units above (*The Village*). The site consisted of four parcels. The westerly two parcels, totaling 1.52 acres (24% of the site), are zoned TC-A-1; the easterly two parcels, totaling 4.92 acres (76% of the site), are zoned TC-B. ¹⁵ Of the approximately 115,000 SF of commercial uses in *The Village*, all but about 13,000 SF are located within the TC-B zone. Community Development approved *The Village* on May 12, 2015, subject to 76 conditions. ¹⁶ (Exhibits 1003; 1003.A; 1003.B)
- 2.1.8. December 23, 2014. PNW Holdings, LLC filed a UZDP application to develop 2.84 acres in the northeast quadrant of the Town Center as a single-building, mixed-use development with underground and surface parking, 14,245 SF of commercial uses on the ground floor, and 92 apartments on four upper floors (*Plateau 120*). The site is zoned TC-A-2. Community Development approved *Plateau 120* on August 5, 2015, subject to 60 conditions. (Exhibits 1002; 1002.A; 1002.B)
- 2.1.9. 2014 – 2015. The City completed the design work for a capital improvement project to reconstruct SE 4th Street from 228th Avenue SE west to approximately 222nd Place SE. (Hankins testimony) That project, which widened the street and established roundabouts on SE 4th Street at 222nd Place SE, 224th Avenue SE, and 225th Avenue SE has recently been completed. The spacing and location of the roundabouts do not match the locations depicted in TCP or TCIP concept plans, nor do they provide the block length desired by the TCIP and SMC regulations. (Exhibit 1029, B1, B2, & B4)
- 2.1.10. 2015. STCA began acquiring ownership and/or the right to develop parcels within the TCP area. As of testimony offered on July 13, 2021, STCA currently owns or controls about 90 acres of the

¹⁴ The 2014 Interpretation is cited in Exhibit 1003, B5, Finding 22.

¹⁵ According to a representative of TRF Pacific, *The Village* began as a desire to locate a Metropolitan Market in the northwest corner of the 228th Avenue SE/SE 4th Street intersection. Because that site was zoned TC-B, the only way they could get the market in was to acquire land to the west until they had some contiguous TC-A-1-zoned land in their assemblage. (Parks testimony)

¹⁶ Community Development’s decision clearly states that *The Village* was a consolidated UZDP and BSP application. (Exhibit 1003, B1, Decision section) No BSP application number is apparent in the project documents entered into this record. (Exhibits 1003; 1003.A; 1003.B) Community Development’s decision does not separate UZDP analysis and conditions from BSP analysis and conditions. (Exhibit 1003)

240 acre TCP area (38%), including all the TC-A-1 zone south of SE 4th Street, the TC-B and TC-C-zoned areas west of that TC-A-1 zone, and most of the TC-A-1 zone on the north side of SE 4th Street. (Exhibit 1031, B8, Figure 6: STCA owns or controls all of the properties labeled with a Block number) (Brennan testimony)

- 2.1.11. June, 2016. Community Development held its first meeting with STCA to discuss future Town Center applications. (Hilde and Zinser testimony)
- 2.1.12. May 2, 2017. A Code Interpretation was issued by a former Community Development planner, presumably acting on behalf of the Community Development Director (the “2017 Interpretation”).¹⁷ The 2017 Interpretation addressed how to calculate allowable residential yield within the TC zones. (Exhibit 4)
- 2.1.13. October 3, 2017. “[T]he City Council adopted emergency Ordinance 02017-445, which established a six-month moratorium on the acceptance of certain applications for land use, development and building permits or approvals”. (Exhibit 52, B3, fifth Recital) One of the exceptions to the moratorium was

Permits and approvals within the Town Center (TC) Sub—Area Plan boundary for those properties which are subject to an executed Memorandum of Understanding (MOU) with the City of Sammamish.

(Exhibit 52, B6, § 3(r)) The Council sequentially renewed the moratorium; the moratorium was repealed effective July 21, 2021. (Pyle testimony)

- 2.1.14. April to August, 2018. Community Development, City Parks, and consultants developed the “Sammamish Town Center: Green Spine Design Companion” (“Design Companion”) and the “Guide to Assist with the Development of the Green Spine” (“Guide”). (Exhibits 1004 and 1005, respectively) Neither of these documents have ever been presented to the Council for adoption. (Hilde testimony) As such, they remain unofficial Community Development documents.

The Design Companion is essentially an elaboration of Green Spine elements within the TCIP with some additional specifics not found in the TCIP. The Design Companion says of the “Primary Zone:”

... The Primary Zone is considered the Town Center's "City Square". This block-size, highly active pedestrian public open space incorporates a variety of forms, colors, and textures, including public art, water features, and a range of different places to sit and gather.

¹⁷ The 2017 Interpretation is unsigned and does not bear the Director’s name. Only the name of the “Staff Member Assigned” is provided. (Exhibit 4; bold omitted)

The Primary Zone is significantly paved for intensive use, and planting is appropriate for intensive uses, be it small "area rugs" of lawn, or planting areas that might have a more maintained and ornamental nature to them (and more deliberately protected from human and pet activity).

Site amenities and features include benches, seatwalls, lighting, and plantings arranged to accommodate large regional events (e.g. Sammamish Farmer's Market) while encouraging casual, more impromptu daily gatherings and social interaction.

(Exhibit 1004, B11, emphasis added) The Guide says that

The images included in the Green Spine Design Companion Manual represent a design concept that could result from an application of the planning principles and guidelines contained in the TCIP and highlighted in this user guide. It is important to recognize that these are not offered as recommended design solutions, but as illustrations of a variety of ways in which the principles could give form to the Green Spine. Since the large majority of the land area contained within the CMU will be developed by the private sector, the eventual development will be informed not only by the principles, but also by market conditions, land availability, financial climate, and other factors in place at the time of development.

(Exhibit 1005, B1, emphasis added) The Guide paraphrases the Design Companion in its description of the Primary Zone. (Exhibit 1005, B2, Primary Zone)

- 2.1.15. November 12, 2018. The City and STCA entered into a Memorandum of Understanding ("MOU") governing what is referred to therein as STCA's "Phase 1" project, the boundary of which is shown on Exhibit 7, B5. The MOU establishes a 506 dwelling unit residential cap and a 100,000 SF commercial use cap for Phase 1. The City and STCA agreed "to continue discussions to focus and refine the terms for addressing each of" five issues (Exhibit 7, B2, § II.C): 1) "the width and types of uses to be included in the Green Spine"; 2) the percentage of tree canopy to be provided; 3) the potential for establishing a transit center within the Phase 1 area; 4) "the appropriate location for one or more regional storm water facilities"; and 5) the use of solar power within the Phase 1 area. (Exhibit 7, B2 & B3, § II.C) The City and STCA also agreed "to negotiate in good faith the terms of a Development Agreement or other appropriate agreement(s) that include the issues and terms described in sections C.1. - C.5 above. The Parties will seek to present such agreement(s) to the City Council on or before March 31, 2019." (Exhibit 7, B3, § II.D)

The discussions called for by MOU § II.C apparently never occurred; the agreement(s) envisioned by MOU § II.D never materialized.

- 2.1.16. April 8, 2019. STCA submitted its Preapplication materials for Phase I ("Pre-App Submittal"). (Exhibit 51) "Phase I of the Sammamish Town Center [] comprises 9 parcels spanning TC-C, TC-B and TC-A1 zones." (Exhibit 51, B2) STCA's Pre-App submittal

focus[d] on the Core Mixed-Use area of the Town Center in the TC-A1 zone south of SE 4th Street. It also includes single-family homes in the TC-C zone and townhomes that span the TC-C, TC-B and TC-A1 zones. The entire application is for 414 multi-family units, 10 single family homes and 82,000 sf [sic] of commercial.

(Exhibit 51, B8) STCA's submittals depicted single-family detached and townhouse subdivision of the TC-B and TC-C zoned properties; townhouses along the western edge and south west quarter of the TC-A-1 zone, commercial/mixed use on the rest of the TC-A-1 zone, and the City Square located on the City's Notch property. (Exhibit 51, B18 *et al.*)

- 2.1.17. May 23, 2019. STCA held its Preapplication Review meeting with City staff at which time prepared preapplication review comments were provided to STCA. (Exhibit 9) Those comments were later supplemented by City staff with a few additions which are noted in Exhibit 9 by red type face.
- 2.1.18. August 14, 2019. Public Works issued a Certificate of Concurrency for STCA's UZDP application. The Certificate of Concurrency was issued for up to 82,000 SF of commercial and 357 "Multi-Family" residential units (with credit for four single-family residences that would be removed). (Exhibit 10)
- 2.1.19. November 4, 2019. STCA filed four applications (the "Initial Submittal"):
- A. UZDP2019-00562. The UZDP application included site plans, project narrative and code compliance analysis, technical studies, and supporting materials. (Exhibits 20, B1; 13 – 13.u)
- B. BSP2019-00564. (Exhibit 20, B1) The record contains one sheet of the four which apparently constitute the BSP plan. (Exhibit 1023) From that sheet it would appear that the BSP covers only Blocks 5, 6, and 7 together with rights-of-way within the UZDP for 225th and 226th Avenues SE and SE 5th Street.
- C. PSUB2019-00563, *Brownstone East*. This proposed preliminary subdivision covers the townhomes proposed within Blocks 3 and 4 of the UZDP and, based on Exhibit 1023, the 224th Avenue SE right-of-way abutting Blocks 3 and 4. (Exhibits 13.j, B2; 20, B1; see Exhibit 1023 which appears to exclude 224th Avenue SE from the BSP)
- D. PSUB2019-00561, *Brownstone West*. This proposed preliminary subdivision covers the townhouses and single-family residences proposed west of the boundary of the UZDP on parcels zoned TC-B and TC-C. (The Initial Submittal had no single-family residences in *Brownstone West*.) (Exhibits 13.j, B2; 20, B1; 35.p, B2 & B34)
- 2.1.20. November 27, 2019. Community Development informed STCA that the UZDP, BSP, and *Brownstone East* applications were deemed complete as of November 4, 2019, and would be

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 23 of 88

processed together “in accordance with the procedures for a Type III [*sic*]” application.¹⁸ (Exhibit 14) The *Brownstone West* application was not consolidated with the rest; the hearing record does not contain further documents regarding its review or status.

- 2.1.21. December 2, 2019. Community Development issued a Notice of Application for the UZDP, BSP, and *Brownstone East* applications. (Exhibit 15)
- 2.1.22. March 10, 2020. City staff issued its review comments on STCA’s Initial Submittal (“Review #1”). Review #1 addressed all four applications. (Exhibits 20; 20.a – 20.j)
- 2.1.23. June 22, 2020. STCA submitted revised plans and materials (the “Resubmittal”) for all four applications in response to City Staff’s Review #1. (Exhibits 35; 35.a – 35.aa; 1031) Except for Exhibit 35.a, the documents cited herein pertain almost exclusively to the UZDP application.
- 2.1.24. July 13, 2020. Community Development informed STCA that the UZDP, BSP, and *Brownstone East* Resubmittals were deemed complete and would be processed together under the procedures for a Type 3 application. (Exhibit 36)
- 2.1.25. July 20, 2020. Community Development issued a Notice of Revised Application for the UZDP, BSP, and *Brownstone East* applications. (Exhibit 37)
- 2.1.26. September 1, 2020. Community Development’s Special Projects Coordinator’s response to an e-mail from a citizen included this statement: “As part of the review process, a Public Comment Response Matrix will be prepared and provided to applicant for response along with Round 2 of Review Comments.” (Exhibit 1013, emphasis added)
- 2.1.27. September 30, 2020. Community Development informed STCA

that the City of Sammamish will not complete its review of the revised applications within 60-days from the date these applications were deemed complete on July 20, 2020 as initially estimated. The completeness letter dated July 13, 2020 provided STCA an estimate of 60-days for the City to complete its review of STCA’s responses to the first round of review comments provided by the City on March 10, 2020.

... Pursuant to SMC 20.05.100(4) the City is providing notice that this review of STCA’s proposal is now estimated to be completed by ***November 13, 2020.***

(Exhibit 38, bold and italic in original)

- 2.1.28. November 13, 2020. Community Development denied STCA’s UZDP application. (Exhibit 1)

¹⁸ Section 20.05.020 SMC uses Arabic, not Roman, numerals for application types. The Examiner will follow the SMC unless quoting from a document.

Analysis

Originally, the City intended to bundle and process the applications for a Unified Zone Development Plan (UZDP2019-00562), Preliminary Subdivision [*Brownstone East*] (PSUB2019-00563), and Binding Site Plan (BSP2019-00564) concurrently in accordance with the procedures for a Type 3 Land Use Decision Permit and pursuant to SMC 20.05.020(2). ...

Conclusion

The Preliminary Subdivision and Binding Site Plan applications are contingent on an approved UZDP pursuant to SMC 21B.95.040(2). The denial herein of the UZDP accordingly results in the cessation of Preliminary Subdivision and Binding Site Plan review.

(Exhibit 1, B12)

2.2. *Conclusions of Law*

2.2.1. The TCIP's "plan concepts" are just that – concepts. They are not prescriptive plans. The plan depicted first in the TCIP is not the preferred plan; it is simply one of six conceptual plans in the TCIP. The language of the TCIP makes it clear that the three depicted concepts are not the only possible concepts.

To the extent that Community Development has elevated the first depicted concept to the position of the TCIP plan, it has wrongly interpreted the TCIP and accorded not only that plan but also the other five depicted concepts a degree of importance and authority that they do not have given the contextual language associated with them in the TCIP.

2.2.2. Neither "City Square" nor "CitySquare" are found anywhere in the SMC. Nor is either term found in the TCP. CitySquare is a concept created and used only in the TCIP. And its relationship to the "Primary Open Space" is not entirely clear in the TCIP. Community Development has concluded that CitySquare is the Primary Open Space. But the dimensions and descriptions of the two are so different as to raise more than a serious doubt as to the correctness of that position. It seems to the Examiner that while CitySquare is to be located within the Primary Open Space, the two are not coterminous: CitySquare is larger than the Primary Open Space and, thus, could best be described as a node on the Primary Open Space portion of the Green Spine.

2.2.3. Since CitySquare is a concept of the TCIP which is not addressed in Title 21B SMC, regulation does not trump policy and evaluation of a UZDP application for compliance with the TCIP regarding CitySquare is both appropriate and required.

2.2.4. The party responsible for failing to comply with MOU §§ II.C and II.D (See Finding of Fact 2.1.15, above.) cannot be determined from this record. Likely both parties bear some

responsibility to one extent or another. The envisioned follow-on agreement is desperately needed and should be consummated before this UZDP enters another review cycle.

3. **Issue 8: Ownership; right-of-way vacation timing**

3.1. *Findings of Fact*

3.1.1. Community Development concluded that STCA failed to comply with SMC 20.05.040(1)(r). (Exhibit 1, B12 & B13, § III.A.2)

The UZDP (both original and revised documents) include development of City owned public right-of way, which extends from SE 4th Street to the northern boundary of the Lower Sammamish Commons Park property (**Exhibit 6**). STCA indicated on the UZDP application form dated November 4, 2019 that they were in complete control of all parcels in the application (**Exhibit 13**). STCA has not obtained permission from the City to include the 30' wide public right-of-way as part of the UZDP nor have they initiated the street vacation process as described in the 2016 Public Work Standards, Appendix I.

(Exhibit 1, B13, bold in original)

3.1.2. STCA asserts that

the Analysis and Conclusion were erroneous because the Department had already determined that the UZDP application was complete for processing and therefore satisfied the application requirements of SMC 20.05.050, and because the appropriate time to proceed with any relocation and/or vacation of the right-of-way would be after the UZDP and Binding Site Plan approval,

(Exhibit 9002, B14, § IV.8)

3.1.3. Former SMC 20.05.040(1)(r) read as follows in November, 2020: ¹⁹

(1) The department shall not commence review of any application set forth in this chapter until the applicant has submitted the materials and fees specified for complete applications. Applications for land use permits requiring Type 1, 2, 3, or 4 decisions shall be considered complete as of the date of submittal upon determination by the department that the materials submitted meet the requirements of this section. Except as provided in subsection (2) of this section, all land use permit applications described in SMC 20.05.020, Exhibit A, shall include the following:

¹⁹ Section 20.05.040 SMC was amended in December, 2020, after STCA's applications were filed and also after Community Development's November, 2020, denial decision was issued. [Ordinance O2020-523] One of the amendments in that ordinance deleted former Subsection (1)(e) which in turn moved all the subsequent subsections "up" one letter. Former subsection (1)(r) is now subsection (1)(q) without any other change.

...

(r) Verification that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has a right to develop the site and that the application has been submitted with the consent of all owners of the affected property; provided, that compliance with subsection (2)(d) of this section shall satisfy the requirements of this subsection (1)(q);

3.1.4. The Initial Submittal was accompanied by a certificate that STCA was “the legal owner(s) of the Project Property described above”. (Exhibit 13.a, B2) The “Property described above” was Parcels 9024, 9085, 9016, 9138, and 9091. (Exhibit 13.a, B3)

3.1.5. Parcels 9016 and 9138 are separated by the 30-foot wide deeded public right-of-way. (Exhibit 13.b, B2; see Finding of Fact 2.1.1, above) That right-of-way is not included in the legal description of either Parcel 9016 or Parcel 9138. It is a legally separate entity. (Exhibit 13.b, B1)

3.1.6. Community Development deemed STCA’s Initial Submittal complete on November 27, 2019. (Exhibit 14) Community Development deemed the Resubmittal complete on July 13, 2020. (Exhibit 36)

3.1.7. The 30-foot wide right-of-way is shown on the Initial Submittal plan set. (Exhibit 13.j, B8) It is clear from the plan set that STCA intended that the 30-foot wide right-of-way would be vacated and replaced by new right-of-way in a different location. (Exhibit 13.j, B2 *et al.*)

3.2. *Conclusions of Law*

3.2.1. STCA disclosed the existence of the 30-foot wide right-of-way in its Initial Submittal. STCA never claimed that it owned the 30-foot wide right-of-way. The Initial Submittal plans clearly showed an intent to vacate the 30-foot wide right-of-way and replace it with new right-of-way in a different location, aligned with the new City-built 225th Avenue SE roundabout. (Exhibit 13.j)

3.2.2. Community Development’s position that the 30-foot wide right-of-way must be vacated before a UZDP application may even be filed is, frankly, nonsensical. When one seeks vacation of a public right-of-way, one is expected to compensate the municipality for the value of the vacated right-of-way. Why would one pay for right-of-way that might never be needed if a future land use application were not approved? And once vacated, it would seem highly unlikely that the municipality would be interested in refunding the compensation it received and re-acquiring the right-of-way.

3.2.3. This is a classic “chicken and the egg” dilemma: Which come first, vacation of the right-of-way or approval of a project that proposes its vacation and which provides replacement right-of-way? It would seem that the most logical answer would be approval of the proposed project (no vacation is needed unless the project is approved) contingent on vacation of the 30-foot wide right-of-way (the project could not be built without its vacation).

- 3.2.4. It cannot go without comment that the present situation was created, at least in part, by the City's choice of location for the new 225th Avenue SE roundabout approximately 46 feet east of the existing 30-foot wide right-of-way. (Exhibit 1029, B2) STCA (or any developer of the subject property) must work with the existing location of the 225th Avenue SE roundabout, especially given the existence of *The Village*'s new apartments across SE 4th Street at the roundabout. The Examiner is quite sure that Public Works would strongly oppose creation of a 46-foot long block on SE 4th Street. The 30-foot wide right-of-way must go.
- 3.2.5. This should not have been a basis for denial of STCA's UZDP application. An appropriate condition of approval could have and should have been crafted to require vacation of the 30-foot wide right-of-way prior to some specific step in the site development process. If the UZDP were treated as the master plan that the SMC clearly intends, such a condition could have required the vacation before consideration of a BSP, for example.²⁰ If the Council denied the needed vacation, the project could not go forward as designed.
- 3.2.6. This issue could have been addressed in the follow-on agreement called for by MOU §§ II.C and II.D. (See Finding of Fact 2.1.15, above.)

4. **Issue 9: Critical Aquifer Recharge Area ("CARA") omission**

4.1. *Findings of Fact*

- 4.1.1. Community Development concluded that STCA failed to comply with SMC 20.50.130, a code section which requires submittal of a critical area study ("CAS") whenever critical areas are present on a development site. (Exhibit 1, B13, § III.A.3)

A critical area study must disclose to the City the presence of critical areas such as Critical Area Recharge Areas (CARA), on the project site.

(Exhibit 1, B13) "[A] Class 2 CARA, 10-year TOT [Time of Travel] Wellhead Protection Zone for a Group A water supply well has been identified on the northeast corner of [Parcel 9091]." (Exhibit 1, B13; see Exhibit 1024)

- 4.1.2. STCA asserts that

[STCA] does not propose infiltration as it is deemed infeasible, (ii) stormwater facilities have been designed in accordance with applicable stormwater standards, (iii) the project's stormwater design was separately deemed compliant, and (iv) the existence of the CARA in a portion of the northeast portion of the project would not necessitate any changes to the project, including its stormwater design.

(Exhibit 9002, B14, § IV.9)

²⁰ There are likely other scenarios that would be equally acceptable. It is not the Examiner's position to craft a UZDP agreement for STCA and Community Development.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 28 of 88

- 4.1.3. The northeast half of Parcel 9091 (approximately 5,000 SF) is mapped as a Class 2 CARA with a 10-year TOT. (Exhibit 1024, B2 & B3)
- 4.1.4. Community Development's Pre-App Review Comments advised STCA of the existence of the CARA in the northeast corner of the 8+ acre site. Community Development said "[a] portion of the site is within a Class 2 Critical Aquifer Recharge Area (CARA). Follow requirements noted in SMC 21A.50.280." (Exhibit 9, B14, Environmentally Critical Areas §1) The Pre-App Review Comments also included the following:
- A portion of the site is within a Class 2 Critical Aquifer Recharge Area (CARA). Follow requirements noted in SMC 21A.50.280 that include restrictions for construction activities and fully built design. Example of a consideration is to avoid placement of any underground injection control (UIC) within a Class 2 CARA.
- (Exhibit 9, B18, Stormwater § 14) Neither comment requested or required any change in STCA's proposal. "With exception of a Class 2 CARA, the development site does not appear to contain critical areas based on the site plan submitted and the City of Sammamish Sensitive Areas Map." (Exhibit 9, B15, Environmentally Critical Areas § 2)
- 4.1.5. The CAS which STCA submitted with its Initial Submittal did not mention the CARA. (Exhibit 13.e)
- 4.1.6. The City's Geotech Review #1 Comments dismissed CARA as an issue: "Page 14 of the Pre-Application Review Comments dated May 23, 2019 notes a CARA in the Southwest Quadrant. This Class 2, 10-year time of travel CARA is located on the easternmost parcel and is not a part of this development proposal." (Exhibit 20.c, B1, Row 3) The City's Technical Information Report ("TIR", a drainage report) Review #1 Comments did not mention CARA. (Exhibit 20.e, B1) SEPA Review #1 Comments did not mention CARA. (Exhibit 20.g, B1)
- 4.1.7. STCA's Resubmittal did not address CARA. (It did address a wetland impact issue raised in Review #1 Comments. (Exhibit 35.d)
- 4.1.8. STCA's Initial TIR was prepared in two parts: CORE prepared the TIR for the *Brownstone East* preliminary subdivision application and for UZDP Blocks 3 and 4 (Exhibit 13.m, B1 – B84); Coughlin Porter Lundeen ("CPL") prepared the TIR for UZDP Blocks 5 – 7 (Exhibit 13.m, B85 – B257). The CARA designation affects only the CPL portion of the site. CPL noted the existence of the Class 2 CARA in the northeast corner of the site. (Exhibit 13.m, B100, § 3.2.4) "A geotechnical analysis of site soils found that the conditions onsite are not compatible with stormwater infiltration." (Exhibit 13.m, B124)
- 4.1.9. The TIR included with the Resubmittal consolidated the drainage analysis into one report. (Exhibit 35.x, B4, ¶ 1) That TIR stated that infiltration is not feasible due to the soil conditions beneath the site. (Exhibit 35.x, B15)

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 29 of 88

4.1.10. Public water and sewer service in this area are provided by the Sammamish Plateau Water and Sewer District (“Sammamish Plateau Water”). Sammamish Plateau Water obtains approximately 80% of its water from groundwater sources. Sammamish Plateau Water opposes infiltration or injection of stormwater due to the potential to pollute its water sources. (Exhibit 9078) STCA has advised Sammamish Plateau Water that it is not proposing infiltration or injection of stormwater. (Exhibit 9078.7) STCA’s preliminary drainage plan depicts discharge of detained and treated stormwater to the southwest and south. (Exhibit 35.p, B7, B9, & B10)

4.1.11. The entirety of *The Village* is within a CARA designation: Part of the site is within the same Class 2 CARA as is the northeast corner of STCA’s UZDP; the remainder is within an abutting Class 1 CARA with a 5-year TOT. (Exhibit 1024, B2) *The Village’s* project narrative’s discussion of stormwater does not mention the CARA designation. (Exhibit 1003.A, B36) The project narrative states that the underlying soils do not allow for infiltration. (Exhibit 1003.A, B65)

Community Development’s approval of *The Village* mentions in passing the Class 1 CARA: “The northeastern corner of the eastern most lot is partially located within a mapped Class 1 Critical Aquifer Recharge Area (CARA) - 5 year WHPA and is subject to the provisions of SMC 21A.50.280.” (Exhibit 1003, B3, Finding of Fact 11) No condition of approval expressly addresses the CARA designation. (Exhibit 1003, B11 – B18)

4.1.12. The City’s CARA regulations are contained in SMC 21A.50.280. The first general regulation is that infiltration of 75% of a project’s stormwater is required for properties within a designated CARA. [SMC 21A.50.280(1)(a)] However, “[i]f infiltration is not feasible or required, then storm water facilities shall be constructed in accordance with City standards.” [SMC 21A.50.280(1)(b)] The second general regulation is that a development within a CARA may not “result in a significant increased risk of contamination of drinking water supplies”. [SMC 21A.50.280(2)(a)] The third general regulation is that hazardous materials in commercial and industrial land uses must be identified and will be subject to regulation by the State Department of Ecology. [SMC 21A.50.280(3)] The fourth general regulation is that certain hazardous or potentially hazardous uses are prohibited on CARA-designated properties. None of the listed uses are within STCA’s proposal. [SMC 21A.50.280(4)]

4.2. *Conclusions of Law*

4.2.1. This issue presents a case of inconsistent application of review criteria. CARA was essentially completely ignored in the review and conditioning of *The Village’s* UZDP, but it became a basis for denial of STCA’s UZDP. The two sites abut one another. *The Village* is completely encumbered with a combination of Class 1 and Class 2 CARA designations; only about 5,000 SF of STCA’s UZDP site (just slightly over 1% of the site), tucked off in one corner, is affected by the CARA Class 2 designation.

4.2.2. The evidence in this record does not demonstrate any conflict with SMC regulations that are applicable at this stage of the review process. Infiltration of stormwater runoff is simply not feasible here – any more than it was feasible on *The Village*. Compliance with the remaining

regulations in SMC 21A.50.280 would be addressed when specific buildings and uses are later proposed, not during the master planning phase.

4.2.3. This should not have been a basis for denial of STCA's UZDP application.

5. **Issue 10: Neighborhood context**

5.1. *Findings of Fact*

5.1.1. Community Development concluded that STCA failed to comply with SMC 21B.95.020. (Exhibit 1, B15, § III.A.5)

The UZDP does not identify a conceptual development plan for adjacent parcels on a Neighborhood Context Map or other such document. More specifically, the UZDP does not address future build-out of Blocks 8 and 9 ... and the impacts that development may have on the area of the Lower Sammamish Commons Park commonly referred to as the "Notch" property (Exhibit 35.g). The little that is shown in the summary document identifies a potential north-south street connection between SE 5th Street and SE 6th Street. This connection does not comply with minimum intersection spacing requirements in the 2010 Town Center Interim Street Design Standards.

(Exhibit 1, B15)

5.1.2. STCA asserts that "the proposed infrastructure and circulation systems could serve other properties, including Blocks 8 and 9, in a manner consistent with the City's plans and applicable standards and the adopted Town Center Infrastructure Plan." (Exhibit 9002, B15, § IV.10)

5.1.3. Section 21B.95.020 SMC reads as follows:

(1) An approved UZDP is required for all development in Town Center-A zones and as otherwise required in Chapter 21B.20 SMC in order to:

(a) Establish the level and intensity of new commercial and residential development;

(b) Provide for coordinated infrastructure such as roads and utilities and public open space;

(c) Define street types and orientation to street of new development; and

(d) General location of buildings and site improvements and provision of open space, parking, environmental restoration and nonmotorized circulation.

(2) An application for UZDP may be submitted for:

(a) The first UZDP application in each TC-A zone, a property or collection of properties that comprises at least 40 percent of the applicable TC-A zone;

(b) A property for which the proposed development can be achieved without compromising options for circulation, infrastructure and open space improvements on surrounding properties. The proposal must comply with the City's adopted Town Center Infrastructure Plan and must accommodate a portion of the zone's infrastructure, as determined by the director; or

(c) Properties directly adjacent to the applicable TC-A zone may be included in the UZDP area provided they are part of a plan that includes properties in the TC-A zone. A TC-B property may include up to 10 percent of a UZDP's commercial development application for contiguous TC-A zone development. The director may place special constraints and/or increase the percentage of commercial development allowed on an applicable TC-B property to 20 percent in order to meet the intent of the Town Center Plan and this title. All residential uses in a TC-B zone remain subject to the defined density and dimensions for a TC-B zone (set forth in Chapter 21B.25 SMC).

Specifically, in all cases, the applicant will need to demonstrate that infrastructure and circulation systems can be constructed to serve other properties in the area in a manner consistent with the City's plans and standards and the adopted Town Center Infrastructure Plan

[Emphasis added]

- 5.1.4. The Pre-App Submittal included the development of Blocks 8 and 9, and incorporated development of the "Notch" as the City Square. (Exhibit 51, B18)
- 5.1.5. The Pre-App Review Comments stated that "[t]he project proposal does not clearly address the UZDP planning principles referenced in Chapter 21B.95 SMC" (Exhibit 9, B3), but did not specifically note any deficiencies regarding compliance with SMC 21B.95.020. (Exhibit 9, B14, "Unified Zone Development Plan (UZDP)" section).
- 5.1.6. STCA's Initial Submittal included significant changes to the southern portion of the proposed plan: Block 9 was omitted; the Notch was not noted for any specific use. (Exhibit 13.j, B2 *et al.*)
- 5.1.7. Section 21B.95.020 SMC was not cited by Community Development as a "Reference" in any of the 168 Design Companion Review Matrix comments (Exhibit 20.a) or in any of the 196 Plan Set Review Matrix comments (Exhibit 20.b). Therefore, STCA had nothing to respond to. (Exhibits 35.g/h²¹; 35.q)

²¹ Exhibits 35g and 35h are STCA's responses to the staff's review comments. The responses are the same in both exhibits. The difference is that one exhibit includes graphics depicting STCA's points.

- 5.1.8. The Resubmittal: dropped Block 8 and eliminated the chicane in 224th Avenue SE; included two street stubs into the *Blackstone West* subdivision to the west; proposed SE 6th Street along the south edge of Block 4; aligned 224th Avenue SE along the west edge of Block 8; proposed SE 5th Street along the north edge of the Notch and Block 9; and placed 226th Avenue SE along the east edge of the UZDP property. (Exhibit 35.p, B2)
- 5.1.9. Hermansen testified that Exhibit 1031, B8 (a part of the Resubmittal package) shows possible extensions of the streets just described. He said that if the 30-foot wide right-of-way west of Block 9 were vacated, Block 9 could be split to serve properties to the east and south. (Hermansen testimony)
- 5.1.10. *The Village* project narrative mentioned that 225th Avenue SE, along its western edge, would be part of a future connector street to the north and east. However, it provided no drawings. (Exhibit 1003.A, B13)
- 5.1.11. *Plateau 120's* submittal package included a sketch of future connector streets in the area. (Exhibit 1002.B, B5)
- 5.2. *Conclusions of Law*
- 5.2.1. The STCA UZDP Resubmittal does not include an area circulation sketch like *Plateau 120* provided. However, Exhibit 1031, B8, does clearly depict numerous potential opportunities for street connections to the east and south: Both borders feature public streets running along the site's perimeters. The site plan includes connections into *Brownstone West* to the west; the City-constructed roundabouts along SE 4th Street control public street connections to the north.
- 5.2.2. Exhibit 1031, B8 adequately fulfills the duty to depict connections to serve development of adjacent properties.
- 5.2.3. This should not have been a basis for denial of STCA's UZDP application.
6. **Issue 11: Project boundary**
- 6.1. *Findings of Fact*
- 6.1.1. Community Development concluded that STCA failed to comply with SMC 21B.95.040(2). (Exhibit 1, B15 & 16, § III.A.6)

The gross site area identified on the revised UZDP Site Plan dated June 22, 2020, does not equal the total gross site areas of the Binding Site Plan and Preliminary Subdivision applications (Exhibit 35.p). More specifically, both the Binding Site Plan and Preliminary Subdivision applications include project areas located outside of the project boundary identified on the UZDP. The Binding Site Plan includes two tracts outside of the UZDP project area, Tract M and Tract N, with no use identified, which by itself fails to meet SMC 19A.20.030. The Preliminary Subdivision also identifies Tract N but refers to it as Tract L and describes it as future development.

(Exhibit 1, B15)

6.1.2. STCA asserts that

the City staff instructed the Applicant to exclude these two development tracts [referring to Tracts M and N] from the UZDP, the UZDP project boundaries are clearly defined, the density calculations were based solely on the property within the UZDP project boundaries, any concerns about the inclusion of additional tracts in the Binding Site Plan and Preliminary Subdivision could have been addressed in that review process, and the UZDP boundaries are described with enough detail that the Department could determine whether the UZDP planning principles were met and future applications would be consistent.

(Exhibit 9002, B15, §IV.11)

6.1.3. Subsection 21B.95.040(2) reads as follows:

(2) The documents and plans must be in sufficient detail for the City to determine that the UZDP planning principles in SMC 21B.95.050 are met and that future permit applications are consistent with the approved UZDP.

Since Community Development's compliance issue here relates to asserted lack of precision regarding gross site area and not to asserted substantive inadequacy of compliance with the eight subsections of SMC 21B.95.050 (which is addressed in separate sections later in Community Development's decision), those subsections are not quoted here.

6.1.4. Community Development's Pre-App Review Comments do not raise this issue, most likely because the site plan submitted for the Pre-App Review included more area than did either the Initial Submittal or the Resubmittal site plans. (Exhibit 9)

6.1.5. The Initial Submittal clearly delineated the external boundaries of the UZDP application (Exhibit 13.b, B2) and provided legal descriptions of the properties subject to the proposed UZDP (Exhibit 13.b, B1). The UZDP application itself listed the five parcels in the application and stated their combined gross area to be 8.94 acres. (Exhibit 13.a, B2) However, the submitted site plans deleted what were at the time referred to as Blocks 4 and 8 (not to be confused with current Blocks 4 and 8), whereas the legal description included then Block 4 in the project site. (*Cf.* Exhibit 13.b with Exhibit 13.c, B8, Figure 6) Therefore, the site area was apparently inaccurate.

6.1.6. The Review #1 Comments summary did not raise this issue. (Exhibit 20)

6.1.7. Review #1 Design Companion Review Matrix Comments reference SMC 21B.95.040(2), but for different concerns. (Exhibit 20.a, Comments 7 (on B1), 141 (on B7), and 145 (on B7))

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 34 of 88

- 6.1.8. Review #1 Plan Set Review Comments also reference SMC 21B.95.040(2), but largely for different concerns. (Exhibit 20.d, Comments 10 (on B1) and 21 & 22 (on B2))
- 6.1.9. Resubmittal plans exclude current Blocks 8 and 9 from the UZDP, provide a clear delineation of the external boundary of the UZDP area, and reduce UZDP gross area from 8.94 acres to 8.088 acres, but appear to retain the same legal description as provided with the Initial Submittal. (Exhibit 35.p, B1, 5, & 6; 35.g, B1, Figure 1.F)
- 6.1.10. STCA's response to Review #1 Design Companion Review Matrix Comment 7 states that the UZDP boundary has been revised to exclude current Blocks 8 and 9. (Exhibit 35.g, B2, Comment 7) STCA's response to Review #1 Design Companion Review Matrix Comments 141 and 145 address the issue raised in the comments. (Exhibit 35.g, B64 ff. & B72)
- 6.1.11. The existing 30-foot wide deeded right-of-way running north-south between SE 4th Street and the south end of the Notch is not a part of any of the parcels in the UZDP and has never been included in any of the submitted legal descriptions. (Exhibits 13.b; 35.b) Whether the area of the 30-foot wide right-of-way strip through the UZDP area has been included within the submitted gross area figures cannot be determined from the available evidence.
- 6.2. *Conclusions of Law*
- 6.2.1. It would appear that the legal description of the UZDP property was not updated when current Blocks 8 and 9 were excluded from the UZDP application.
- 6.2.2. It would appear that the portion of the 30-foot wide deeded right-of-way running through the UZDP property was never included in the legal description of the UZDP property and, presumably, never included in the gross area figures provided by STCA.²²
- 6.2.3. Community Development's conclusion is correct. Unfortunately, this specific problem was never expressly laid out by Community Development in its Review #1 Comments.
- 6.2.4. If this shortcoming is critical, and Community Development apparently believes that it may affect residential yield calculations, it should have been overtly raised in Community Development's Review #1 Comments.
- 6.2.5. That Community Development did not overtly raise the issue in its Review #1 Comments does not mean that the issue can be ignored. STCA must provide an accurate gross area figure for use in all required yield calculations. That figure must include the portion of the 30-foot wide right-of-way within the UZDP boundaries and must exclude any areas within the five parcels not included within the current UZDP application. The evidence does not indicate that such has occurred.

²² Exhibit 35.p, B1, lists the areas of each of the five parcels and states their combined area to be 8.088 acres. The 30-foot wide right-of-way strip is not included in that total.

7. Issues 12, 13, and 19: Density, Bonus density, and Affordable housing count

7.1. Findings of Fact

7.1.1. Issues 12, 13, and 19 all relate to the allowable residential yield for STCA's UZDP.²³ Community Development concluded that STCA failed to comply with Chapter 21B.25 SMC (especially SMC 21B.25.040(2)(b)), Chapter 21B.75 SMC (especially SMC 21B.75.020), and SMC 21B.95.050(7). (Exhibit 1, B16 & B17 (§ III.A.8) and B26 – B28 (§ III.B.7))

7.1.2. STCA asserts that Community Development misunderstood and misconstrued its submittal. (Exhibit 9002, B15, B16, and B18)

7.1.3. Subsection 21B.25.040(2)(b) reads:

(2) Bonus Commercial and Residential Development Capacity. SMC 21B.25.030 and Figure 21B.25.040c specify commercial floor area allocations by zones and sub-zones with an additional 120,000 square feet of commercial floor area available through bonus incentives. Subsections (2)(a) and (b) of this section provide the distribution and criteria for allocating bonus commercial floor area, respectively. Subsection (2)(b) of this section also includes provisions for allocating bonus residential dwelling units. Subsection (2)(c) of this section provides for the opportunity for additional commercial or residential development capacity through the City's TDR program. Subsection (2)(d) of this section provides an option for the City to sell units from its TC-D residential density allocation to other properties within the Town Center.

...

(b) Design Criteria for Awarding Bonus Commercial and Residential Development Capacity. Developments requesting available bonus commercial and residential development capacity (where awarded by the City from its TC-D residential density allocation) shall achieve a higher level of design performance than those specifically required in the Town Center development regulations. In order to qualify for bonus floor area or dwelling units, developments shall incorporate at least five of the development features listed below as determined in the unified zone development plan or other applicable review process.

(i) An extensive pedestrian network connected to the City's trail system with lighting, landscaping, and other amenities.

²³ The Examiner recognizes that the SMC and all the documents in the hearing record refer to residential "density" when discussing these issues. In the true sense of the word, residential "density" is a measure of the number of dwelling units per some unit of area, most typically (at least in the United States) expressed as dwelling units per acre. Neither the SMC nor the parties to this appeal are talking about allowable dwelling units per acre; rather, they are talking about the number of dwelling units allowed in STCA's proposed UZDP. That concept is more correctly called "yield." The Examiner is more comfortable referring to it as such.

- (ii) Creative and effective vehicular circulation system that minimizes impacts of motorized vehicles on the pedestrian environment.
- (iii) A unique multi-use central open space with special amenities and activities.
- (iv) Increased use of structured parking.
- (v) Enhanced off-street pedestrian routes that connect to the existing/planned trail system.
- (vi) Special accommodation of transit services.
- (vii) Extensive environmental restoration and/or tree retention.
- (viii) Environmental certification of all structures (LEED, Built Green or other similar certification).
- (ix) Enhanced commitment for affordable housing.
- (x) Includes a use or uses that will expand the range of activities in the Town Center. Such use or uses might include a gym, dance studio or health center, cultural or performing arts facilities, educational facilities, artists' studios, medical clinics, assembly areas, small business centers and similar uses that will encourage economic diversity, additional local services, pedestrian activity and/or support for other business or community activities.
- (xi) Other significant features that exceed the development standards and regulations.
- (xii) Low impact development site planning principles/practices that minimize stormwater runoff generated by the development. Such principles may include limited site disturbance, protection of natural drainage paths/features, minimize soil disturbance/compaction and/or restoration of compacted soils back to their original state.

The City shall maintain documentation of bonus floor area awarded in UZDP applications and which development features were utilized to obtain the bonus.

Section 21B.75.020 reads in part:

- (1) Baseline Affordable Housing. In any residential development (e.g., multiple-family developments (rental or ownership), single-family subdivisions, mixed-use

developments) not less than 10 percent of the allocated residential density dwelling units pursuant to SMC 21B.25.030 must be affordable housing units.

Subsection 21B.95.050(7) reads:

(7) Affordable Housing. Consistent with Chapter 21B.75 SMC that provides regulatory guidance for compliance with affordable housing requirements, the director may review innovative and creative approaches to affordable housing that fulfill the requirements of Chapter 21B.75.

7.1.4. On May 2, 2017, Community Development issued a Director's Interpretation of SMC 21B.25.030 and 21B.75.020 pursuant to authority under SMC 21A.05.090 relating to calculation of residential yield, including bonus units. (Exhibit 4) Pursuant to SMC 21A.100.055(7) & (8) and SMC 21A.100.060(2)(a), a Director's Interpretation is final and binding on all persons (including the Examiner) if not appealed unless subsequently modified or nullified by the Council or the subject code section(s) is(are) subsequently amended by the Council. This Director's Interpretation was not appealed. (Exhibit 1, B16) The Director's Interpretation included "Density [Yield] Calculator Templates" which based all yield calculations on "Total Buildable Acreage." (Exhibit 4, B8 – B10)

7.1.5. The Residential Density Calculation Worksheet, a Community Development-generated form dated October 15, 2019, bases yield calculations on "Total Net Area." (Exhibits 13.f; 35.e) The "Total Net Area" was stated as 8.17 acres in Exhibit 13.f and 8.09 acres in Exhibit 35.e.

7.1.6. The term "Total Buildable Acreage" does not appear anywhere in the SMC. The term "Total Net Area" appears in only one place in the SMC: SMC 15.10.160(1)(b)(i) relating to flood control regulations.

7.1.7. The TCP states that

Residential densities are based on a "gross buildable" land area that includes property used for new roads, open space, and other public and private improvements but not critical areas and their buffers. This is because roadways will be built on some properties, and it is not intended that road construction should limit the allowable development that a property owner would otherwise have.

[Town Center Plan, PDF 33] The TCIP does not discuss residential yield.

7.2. *Conclusions of Law*

7.2.1. The accuracy of the 8.09 acre figure as representative of "Total Buildable Acreage" or "Total Net Area," whatever either is supposed to be, is in substantial doubt as that number appears to represent the gross area of all five parcels without counting the 30-foot wide right-of-way strip (Exhibit 35.p, B1)

- 7.2.2. Whether there is a difference between “Total Buildable Acreage” and “Total Net Area” is not discussed in the hearing record. Why the 2017 Director’s Interpretation used “Total Buildable Acreage” and the 2019 Community Development Residential Density Calculation Worksheet used “Total Net Area” is not discussed in the record. Why neither used “Gross Buildable Land Area” (rather well defined in the TCP) is also not disclosed in the record.

This may seem like a picky, minor point, but one of the fundamental tenets of statutory construction is that the use of different terms within a legislative enactment evidences a difference in intent. [*Cazzanigi v. General Electric Credit*, 132 Wn. 2d 433, 446, 938 P.2d 819 (1997)] Intent is determined “from the statutory context as a whole.” [*Peacock v. Public Disclosure Commission*, 84 Wn. App. 282, 287, 928 P.2d 427 (1996)] Since none of the three terms are defined in the SMC, one cannot determine what they are supposed to represent nor whether they differ.

- 7.2.3. The Examiner declines to further analyze these three residential yield issues when the fundamental acreage figure is uncertain and important terminology differences are not explained.

8. **Issue 14: Pedestrian circulation – ADA and CPTED**

8.1. *Findings of Fact*

- 8.1.1. Community Development concluded that STCA failed to comply with 21B.95.050(1). (Exhibit 1, B17 & B18, § III.B.1) The asserted inconsistency regards ADA (“Americans with Disabilities Act”) and CPTED (“Crime Prevention Through Environmental Design”) requirements in Subsection (1)(d). (Exhibit 1, B17)

- 8.1.2. STCA asserts that Community Development is wrong regarding when ADA and CPTED detail information is required. (Exhibit 9002, B16, §IV.14)

This conclusion was baseless and again reflects the Department’s failure to consider Exhibit 1031. ... STCA’s application contains extensive details that far exceed what was required in prior UZDPs. The Department’s conclusion should be reversed.

(Exhibit 1034, PDF 20)

- 8.1.3. Subsection 21B.95.050(1)(d) reads:

The City of Sammamish will use the following principles and criteria in the review of UZDPs for applicable Town Center-A zones as noted in SMC 21B.95.060. The principles address fundamental site planning objectives from the Town Center Plan.

The principles employ the word “should” as a directive for specific elements and characteristics. The term “should” is taken to mean “is required unless the City determines that there is a compelling reason to the contrary, based on the objectives and policies of the adopted Town Center Plan.” The intent of this language is to allow the City and proponent the flexibility to achieve the Town Center Plan’s and

these principles' objectives through other means than those specified below. The UZDP proponent shall be required to demonstrate that the following are met to the City's satisfaction.

(1) Pedestrian Circulation.

...

(d) The pedestrian and bicycle network must conform to Americans with Disabilities Act (ADA) standards and should incorporate crime prevention through environmental design (CPTED) guidelines

8.1.4. The Pre-App Review Comments include the following statement about ADA compliance: "The proposal must satisfy ADA requirements in the current federal standards at time of complete application." (Exhibit 9, B17, Transportation § 14)

8.1.5. Community Development's Review #1 Design Companion Review Matrix Comments 41 (on B3), 42 (on B3), 78 (on B4), and 90 (on B5) all stated that ADA compliance had to be shown on the site plans. (Exhibit 20.a)

STCA's Response to Review #1 Design Companion Review Matrix Comments 41, 42, and 90 was:

Accessible Access for the vertical transition between 224th Avenue SE and the Secondary Zone – Green Spine open space shall be publicly accessible and conform to the American [*sic*] with Disabilities Act with the implementation of public elevators (see DC page 2-9 & 2-10). Final design shall shall [*sic*] be reviewed for compliance during the permit review process accordingly.

(Exhibit 35.g, B34 & B48) STCA's Response to Review #1 Design Companion Review Matrix Comment 78 was "Updated per comment." (Exhibit 35.g, B45)

8.1.6. Community Development's Review #1 Design Companion Review Matrix Comments 87 (on B5), 109 (on B5), and 123 (on B6) all asked how proposed alleys would provide safe pedestrian connections and comply with CPTED guidelines. (Exhibit 20.a)

STCA's Response to Review #1 Design Companion Review Matrix Comments 87, 109, and 123 included the following statement: "Alleys will implement several CPTED measures including: access and window transparency, balconies, site lighting, and layered approaches to landscaping." (Exhibit 35.g, B48, B53, B54)

8.1.7. Both the Initial Submittal and the Resubmittal included two identical paragraphs addressing ADA and CPTED compliance:

The pedestrian and bicycle network shall conform to the Americans with Disabilities Act (ADA) standards.

Crime Prevention Through Environmental Design (CPTED) guidelines will be incorporated and throughout the Project with an enhanced environmental design approach, which encourages visible ownership of spaces with 'eyes on the street' and includes:

- ▶ variety of street types including pedestrian-oriented and mixed-use streets each designed to foster pedestrian and bicycle circulation;
- ▶ range of building typologies, programmed and designed with uses and features, providing frontage, access and window transparency, and outdoor patios and balconies along public streets and open spaces;
- ▶ multiple, overlapping lighting sources including streetlights, building lighting, open space decorative lighting (see Landscape Plans for conceptual lighting locations); and,
- ▶ layered approach to landscaping arranged with trees and understory shrubs arranged appropriately to facilitate natural surveillance and eliminate secluded spaces.

(Exhibits 13.c, B31; 1031, B35)

8.1.8. The *Southeast Village* Code Compliance Narrative addressed CPTED:

The design of the site is consistent with CPTED guidelines, as discussed in greater detail in the open space section below.

(Exhibit 1001.A, B4, §A.1 (Circulation), ¶3)

The design of community, including the architecture, open spaces and landscape, use a variety of strategies to meet the guidelines for Crime Prevention Through Environmental Design (CPTED):

- ▶ The architecture has windows, doors, porches and decks, on all sides, and pedestrian travel will be emphasized, so that there will be passive surveillance or 'eyes on the street' on the common spaces.
- ▶ The site and landscape design of the open spaces are designed to avoid dark hiding spaces, overgrown shrubby areas where people could hide, and potential entrapment areas. Appropriate site lighting, choices of planting material, and providing alternate means of egress, respectively, are methods to address those potential conflicts.
- ▶ Circulation routes will be lit in accordance to the City of Sammamish standards, and additional site lighting will be added to alleviate any dark areas or corners of the site.

(Exhibit 1001.A, B5, §A.3 (Open Spaces), ¶5) The Code Compliance Narrative had no specific ADA discussion.

Community Development's UZDP approval discussed neither ADA nor CPTED in detail, rather simply stating that the Compliance Narrative was incorporated in its decision. A condition of approval was imposed requiring that the project

shall be designed to be in full compliance with the 2010 ADA Standards for Accessible Design (www.ada.gov/2010ADAstandards_index.htm). The 2010 ADA Standards primarily consist of the 2004 ADAAG. Along with alt requirements inside the building, the following items shall be addressed for the building site:

(Exhibit 1001, B16, Condition 17) The "following items" were accessible route, curb ramps, and parking spaces. (*Ibid.*)

8.1.9. The *Plateau 120* Design Companion addressed compliance with SMC 21B.95.050(1)(d) without mentioning ADA or CPTED. (Exhibit 1002.B, B24) In a review comment response letter the applicant stated:

A pedestrian bridge connecting the site to 228th Ave SE will be incorporated in the future site development permit application as the preferred design solution. This pedestrian path will be ADA-compliant to the extent feasible, as determined by analyses on existing site topography constraints.

(Exhibit 1002.A B2, §2.a, ¶ 3, emphasis added) Later in the letter the applicant addressed Community Development's CPTED concerns in two paragraphs:

The nature of this project and respective design is that the most active users of the site will be its tenants. With resident and tenant safety at the forefront of concerns for mixed-use buildings of this magnitude, all areas of the site have direct views from tenant spaces and apartments. The westerly entrance benefits from its adjacency to active amenity spaces such as the fitness center and lounges, while the southerly entrance has constant movement from employees, customers and guests passing through its main entrance. With views to these entrances visible from the surface lot as well as from those at the active outdoor areas, the design hinges upon internal surveillance as a primary means of passive security, with secondary passive surveillance increasing exponentially as traffic in this quadrant continues to grow. Supplementary surveillance strategies such as security equipment are also being considered as a secondary means of security.

An additional visual graphic has been added to the Design Companion on page 16. The graphic serves to illustrate and outline CPTED strategies employed within the southern open space amenity. The plantings proposed at this area create convenient

places of respite for pedestrians. Seating arrangements provide a buffer from the parking lot and work together with the plantings to frame a naturally-lit active pedestrian zone. Site lighting works together with the overall site plan to ensure that no dark spaces are created by the plantings.

(Exhibit 1002.A, B5 & B6, §2.e, bold omitted)

Community Development's UZDP approval discussed neither ADA nor CPTED in detail, rather simply stating that the Compliance Narrative was incorporated in its decision. (Exhibit 1002, B8) A condition of approval identical to *Southeast Village* Condition 17 was imposed. (Exhibit 1002, B11, Condition 24)

- 8.1.10. *The Village* Code Compliance Narrative contains an extensive discussion of circulation which does not mention ADA or CPTED. (Exhibit 1003.A B5) The Open Space discussion in that Narrative mentions both ADA and CPTED:

The project intends to explore the use of photovoltaic cells as a part of our use of Low Impact Development techniques. The well-lit space, will follow CPTED design standards to provide "eyes on the street" to the space with the 24/ 7 operations of the grocery use. ... While the pavilion is located adjacent to the at grade parking field, contradictory to 21B.95.050.4(b) , Surrounding the pavilion are various hardscape and landscape elements to make it pleasant and inviting, as well as providing full ADA access.

... All of these Open spaces will utilize CPTED design techniques to keep them accessible and visible to the surrounding uses and streets. Site and landscaping treatments will be designed to avoid dark hiding spaces and potential entrapment areas. Multiple points of egress, transparency of common areas and circulation routes along with ample site lighting will be provided in accordance with City of Sammamish standards.

(Exhibit 1003.A, B7 & B8) ADA is also mentioned on page B30:

ADA accessibility will be provided throughout the development, from the eastern lower Level 1 all the way west to 225th Place SE. Via elevators, ramps and paths, the site will conform to the American with Disabilities Act.

(Exhibit 1003.A, B30, ¶ 4)

Community Development's UZDP approval discussed neither ADA nor CPTED in detail, rather simply stating that the Compliance Narrative was incorporated in its decision. (Exhibit 1003, B9) A condition of approval identical to *Southeast Village* Condition 17 and *Plateau 120* Condition 24 was imposed. (Exhibit 1003, B12, Condition 17)

8.2. *Conclusions of Law*

8.2.1. This issue presents a case of inconsistent application of review criteria. STCA provided the same type of verbiage about ADA and CPTED compliance as did the developers of *Southeast Village*, *Plateau 120*, and *The Village*. While those three UZDPs were approved by Community Development with a boilerplate condition, this issue was used as a basis for denial of STCA's application.

8.2.2. This should not have been a basis for denial of STCA's UZDP application.

8.2.3. This issue also brings to the fore the question of how much detail is required for UZDP approval. A UZDP is, according to the SMC, supposed to be a plan, an agreement to serve as a guide for review and approval of subsequent development permits. Not only by its very title, but also by code language, a UZDP is not a permit – it is a plan, based upon which one may seek various permits to actually develop land.

9. **Issues 15 and 21: Vehicle circulation; Pedestrian-oriented streets requirement; Alleys**

9.1. *Findings of Fact*

9.1.1. Community Development concluded that STCA failed to comply with 21B.95.050(2). (Exhibit 1, B18 & B19, § III.B.2) The asserted deficiencies relate to two separate issues. The first is street type:

In both the Preapplication Meeting Minutes dated May 23, 2019 (Exhibit 9) and the City's Plan Review Summary dated March 10, 2020 (Exhibit 20.d), the City specifically reminded STCA that all streets within the TC-A1 zone must be designated as pedestrian-oriented only. ... [I]n order to implement the Town Center Infrastructure Plan, all streets within the TC-A1 zone must be pedestrian-oriented streets and must comply with the design requirements outlined in SMC 21B.30.030(1), 21B.30.040(2)(b), and 21B.30.120(2). ...

As previously stated, the Town Center Infrastructure Plan provides a clear vision for the TC-A1 zone. The pedestrian-oriented street designation supports this vision whereas the mixed-use street designation does not.

(Exhibit 1, B18, § III.B.2) The second problem is asserted lack of compliance of the proposed alleys with the 2015 International Fire Code ("IFC") and the 2016 Public Works Standards ("2016 PWS"), Chapter 9:

STCA has not demonstrated compliance with the 2015 International Fire Code and Chapter 9 of the 2016 Public Works Standards, instead proposing an alley design that does not meet the minimum width requirements to accommodate a fire truck, and that, contrary to what is required, provides primary vehicle access to residential lots without full frontage on a public street, and includes intersections and 90-degree bends. ...

... Pursuant to Chapter 9.3.A and G of the 2016 Public Work Standards, alleys are only allowed for primary access when lots served have full frontage on a public street.

(Exhibit 1, B19, § III.B.2) The asserted alley non-compliance is also fundamentally the crux of Appeal Issue 21, thus the discussion of that Issue is consolidated here. (See Exhibit 1, B29, § III.C.1, and Exhibit 9002, B19.)

9.1.2. STCA asserts that

(i) the Code and other applicable standards and plans do not require all streets in the A-1 zone to be pedestrian-oriented as opposed to mixed-use, and the Applicant notified the Department in its June 22, 2020 submittal that it was nevertheless willing to make all streets in the A-1 zone pedestrian-oriented if required by the Department after review of additional information presented in the application materials; (ii) STCA did provide a 20-foot alley width; and (iii) the Decision improperly applied Section 9.3 of the 2016 Public Works Standards to the UZDP application after the Department previously informed the applicant that Section 9.3 did not apply to projects in the Sammamish Town Center.

(Exhibit 9002, B16 & B17)

9.1.3. Subsection 21B.95.050(2) reads:

(2) Vehicle Circulation.

(a) Town Center mixed-use nodes should feature a network of vehicle access roads and drives that conforms to the intent of the Town Center Transportation section and the Conceptual Sammamish Town Center Street Layout, Figures 32 and 33 of the Town Center Plan, although the actual street and vehicular access may vary from those shown in the figures. For the TC-A-1 zone, the adopted Town Center Infrastructure plan takes precedence over the specific sections and visualizations shown in the Town Center Plan;

(b) The proponent must demonstrate how the vehicular access network can potentially connect to adjacent areas in the Town Center so that access is provided to those properties;

(c) The vehicular access network should provide more than one route in or out of a site within the mixed-use node to provide improved emergency vehicle access and ease local congestion;

(d) The vehicular access network should include street trees, landscaping and streetscape elements. Primary circulation routes for through traffic should be routed around high pedestrian areas and not impact central open spaces; and

(e) The use of innovative street and access configurations (such as “woonerfs” which mix low speed local vehicular traffic with pedestrians) is encouraged where it furthers the objectives of the Town Center Plan and is consistent with the Town Center Infrastructure Plan.

9.1.4. SMC 21B.30.030(1), cited by Community Development in the quote in Finding of Fact 9.1.1, above, provides standards for buildings located along pedestrian-oriented streets. The term “pedestrian-oriented street” is introduced in the lead paragraphs of SMC 21B.30.020:

The streetfront orientation standards for Town Center properties vary depending on the type of street(s) or public open space the property fronts on. These standards provide for five different street types: (1) pedestrian-oriented streets (and corridors) – which are intended to be lined with storefronts, (2) mixed-use streets – which could include storefronts or a combination of retail, office, civic, and/or residential uses with modest landscaped setbacks, (3) residential streets – which include residential streets with modest landscaped setbacks; (4) connector streets – which are treated similar to residential streets but with some extra flexibility; or (5) 228th Avenue SE – where trees and other landscaping elements should be emphasized along the streetfront.

Figure 21B.30.030a illustrates an example configuration of street types based on the vision illustration in the Town Center Plan. Pedestrian-oriented streets and mixed-use street designations shall be designated by the adopted unified zone development plans (see Chapter 21B.95 SMC) for TC-A zoned properties. The criteria for designating street types are set forth in SMC 21B.30.040(2). The standards herein thus apply to developments that front onto these street types.

[SMC 21B.30.020, ¶¶ 1 & 2, emphasis added] SMC Figure 21B.30.030a, cited above, appears to depict a single pedestrian-oriented loop street through the TC-A-1 zone south of SE 4th Street with no mixed-use streets within that TC-A-1 zone. But Figure SMC 21B.30.030a “illustrates an example configuration of street types,” not a mandatory requirement.

SMC 21B.30.040(2), cited by Community Development in the quote in Finding of Fact 9.1.1, above, and also referenced in the preceding quoted code section, reads:

(2) Provide for a Hierarchy of Streets. Provide for a hierarchy of streets, including:

(a) Connector roads that provide for automobile, service, bicycles, and pedestrian circulation throughout the Town Center. Development in the Town Center shall accommodate connector streets in the northwest, northeast, and southeast quadrants consistent with the goals and policies of the Town Center Plan.

(b) Pedestrian-oriented streets. TC-A-1, A-2, and A-3 zoned areas shall include designated pedestrian-oriented street segment, as determined by the City through the unified zone development planning process. Pedestrian-oriented streets are intended to be streets featuring continuous storefronts or plaza spaces, wide sidewalks, street trees, bioretention, and on-street parking. Designations for pedestrian-oriented streets could cover an entire street, a single block, or a portion of a block, depending upon the area. Pedestrian-oriented street designations are intended for areas where a concentration of pedestrian activity is desired. See SMC 21B.30.030(1) for related development frontage standards.

(c) Mixed-use streets, which are all other new streets besides connector roads and pedestrian-oriented streets within the TC-A zones. These are localized streets which should include generous sidewalks, street trees, bioretention, on-street parking (to the extent possible), and slow moving traffic.

(d) Residential streets, which are all other new streets besides connector roads within the TC-B and TC-C zones. These are localized streets within residential neighborhoods and should contain sidewalks, planting strips with street trees or bioretention, on-street parking on one or both sides, and slow moving traffic.

(e) Alleys are encouraged where useful to access parking or service areas.

[Emphasis added] Finally, SMC 21B.30.120(2), cited by Community Development in the quote in Finding of Fact 9.1.1, above, reads in relevant part:

(2) Streetscape Amenity Requirements for Pedestrian-Oriented and Mixed-Use Streets. Streetscape amenities shall be included along all designated pedestrian-oriented streets and mixed-use streets. For each 100 cumulative lineal feet of pedestrian-oriented street frontage, at least three of the desired amenity elements listed below shall be included. At least one element shall be seating. Along designated mixed-use streets, at least two amenity elements shall be included unless otherwise noted. The type, location, and design of chosen amenities shall contribute to a well-balanced mix of features on the street, as determined by the director. All amenities below are valued at one amenity element unless otherwise noted. Desired amenities include:

9.1.5. The TCP never uses the terms “pedestrian-oriented” or “mixed-use.”

9.1.6 The TCIP also never uses the terms “pedestrian-oriented” or “mixed-use.”

As you enter the Core Area, the streetscape becomes more and more highly pedestrianized as you approach CitySquare. To the north and south, highly pedestrianized, complete streets (“A” streets) form a network of vibrant public spaces joining commerce with open space and ecological function. In support of this,

the “B” streets (service streets) and mixing zones allow for access to service areas and parking resources in support of the land uses.

[TCIP, PDF 7] The figures on PDF 8, 13, and 14 depict a mixture of “A” and “B” streets within the TC-A-1 zone.

9.1.7. Community Development’s Pre-App Review Comments include the following statements regarding street types and alleys:

Streets in the TC-A1 zone must include entirely pedestrian-oriented segments. Refer to the Town Center Infrastructure Plan and Resolution R2010-431 for guidance. Consider designing streets crossing the green spine as festival streets.

(Exhibit 9, B4, Comment 2.c, emphasis added)

- b. The Town Center Plan identifies the street network within the TC-A1 zone (SE 4th Street, SE 6th Street, Street A, 222nd Place SE, 224th Place SE and 225th Place SE) as pedestrian-oriented streets and corridors (including park edges) for design review. Properties adjacent to pedestrian-oriented streets are subject to requirements set forth in SMC 21B.30.030(6).
- c. The proposed street grid includes Streets A-E. The UZDP application should identify the intended street types for each of the new streets (pedestrian-oriented, mixed-use, residential, etc.) and should contain adequate information about frontages, pedestrian activity, and similar design requirements for City staff to determine if they meet the intent of the Town Center Plan, Town Center Infrastructure Plan and Chapter 21B.30 SMC.
- d. The requirements for properties fronting on pedestrian-oriented streets and corridors are set forth in SMC 21B.30.030(1). The requirements for properties fronting on mixed-use streets are set forth in SMC 21B.30.030(2). The requirements for properties fronting on residential streets are set forth in SMC 21B.30.030(3).
- e. Pursuant to SMC 21B.30.040 (2)(b), Pedestrian-oriented streets are intended to be streets featuring continuous storefronts or plaza spaces, wide sidewalks, street trees, bioretention, and on-street parking except for SE 4th Street and adjacent to a public open space where on-street parking is not allowed.
- f. Pursuant to SMC 21B.30.040(2)(c), mixed-use streets are localized and intended to include generous sidewalks, street trees, bioretention, on-street parking, and slow-moving traffic.
- g. More than one designation may apply to a particular street, depending on the uses adjacent to the street in any given location. The final determination will be made by the City during review of the UZDP application

(Exhibit 9, B10, Comments 1.b – 1.g, emphasis added)

Single-Family – Subdivision Design

The project plans must demonstrate compliance with the standards found in the section and subsection(s) of SMC 21B.30.260 Single-Family – Subdivision Design.

...

b. Alleys.

- i. The use of alleys is encouraged to minimize the appearance of garages from the street. If a development is to be constructed in phases, then this requirement applies to each phase of construction.
- ii. Alleys shall be designed to incorporate landscaping and lighting elements. Specifically:
 - A. Landscaping elements may be used as an alternative to fencing to separate private yard space from the alley;
 - B. Fences shall be set back at least three feet from the alley (pavement) to provide for landscaping to soften the fence. See Figure 21B.30.260a for a good example of how landscaping can enhance the design of an alley; and
 - C. Garages shall feature building-mounted lighting to provide illumination of alleys for safety.

(Exhibit 9, B12 & B13, Comment 8, underlined title in original)

The placement of any alley must meet the 2016 Public Works standards. As shown, several alleys are marked as woonerfs but function as alleys.

(Exhibit 9, B17, Comment 10)

The East Side Fire and Rescue Assistant Fire Marshal submitted this comment: “Required fire lanes shall be minimum 20 foot wide. [*sic*]” (Exhibit 9, B22)

- 9.1.8. STCA’s Initial Submittal included both pedestrian-oriented and mixed-use streets. Proposed townhomes were arranged to access east-west streets (that would extend into *Brownstone West*), Three east-west alleys were proposed, each 20 feet wide with a 16-foot pavement width. (Exhibit 13.j, B2, B4, B31, B35, and B36)
- 9.1.9. Community Development restated its position on pedestrian-oriented versus mixed-use streets in its Review #1 Comments cover letter: “All streets or segments of streets within the TC-A1 zone are required to be pedestrian-oriented pursuant to SMC 21B.30.040(1)(B).”²⁴ (Exhibit 20, B1, Comments 6 and 7) The cover letter also contained comments regarding the length of the proposed alleys. (Exhibit 20, B3)

²⁴ The code citation in this quote contains a scrivener’s error: It should be SMC 21B.30.040(2)(B), not SMC 21B.30.040(1)(B).

9.1.10. The Review #1 Design Companion Review Matrix Comments addressed street types:

As noted in the projects preapplication meeting notes dated May 23, 2019, streets in the TC-A1 zone must include entirely pedestrian-oriented segments. Update description and site plan to show only pedestrian-oriented streets.

(Exhibit 20.a, B5, Comment 91) Comments 98 (on B5), 113 (on B6), 115 (on B6), and 126 (on B6) are similar.

Only one comment in the Review #1 Design Companion Review Matrix addresses alley width: “If the alleys are being proposed to accommodate off street parking, an additional 8 feet in alley width will be required” (Exhibit 20.a, B9, Comment 167)

9.1.11. The Review #1 Plan Set Review Comments included a number of comments regarding street types:

All streets or segments of streets within the TC-A1 zone are required to be pedestrian-oriented (224TH AVE SE, 225TH PL SE, 226TH AVE SE, SE 5TH ST). Please revise and provide details as necessary.

(Exhibit 20.d, B1, Comment 6) Similar comments are contained in Comment 4 (on B1), 7 (on B1), and 135 (on B9).

No comments expressly address alley width. Comment 47 (on B4) says “All roads are fire lanes and shall be 20 foot [*sic*] wide minimum. All vaults and road surfaces shall be designed to support fire ladder truck outriggers.”²⁵ It is unclear whether “road” includes “alley” since each are regulated differently. And the comment does not distinguish between alley right-of-way width and alley pavement width.

9.1.12. STCA’s Resubmittal includes pedestrian-oriented and mixed-use streets and residential alleys. (Exhibit 35.p, B4; see also B38) STCA’s cover letter accompanying the Resubmittal discussed both street typology and alleys. (Exhibit 35.a, B4 – 6)

Unlike other parts of the City that tend to be served by front-yard garages, the Town Center Development Code specifically encourages the use of alleys to access parking. We have incorporated that design into our residential units. The City has confirmed that the 2010 Town Center Street Design Standards govern alleys rather than Section 9.3 of the 2016 Public Works Standards. See STCA Questions—City Response Matrix, May 14, 2020 Meeting (Question # 4); SMC 21B.96.010(2). The City did request that no more than 30 units be served by an individual alley length. We have accommodated that request in our revised Site Plan.

²⁵ The same comment is repeated at Comment 105 on B7.

(Exhibit 35.a, B4) The alley unit count concern was addressed by rotating the townhome area's orientation 90° with a single alley running north-south. That configuration created a situation where 18 townhomes would front only on the alley, without any public street frontage. (Exhibit 35.p, B2) The north-south alley was 20 feet wide with a 16-foot pavement width. (*Ibid.*)

The street typology in the A-1 zone is guided by SMC 21B.30.040 and the Town Center Infrastructure Plan. We note that while the street designations in SMC 21B.30.040 are development standards outside the A-zone, they are only guidelines within the A-zone. See SMC 21B.30.040. In other words, there is flexibility in the designation of streets in the A-1 zone. ... We would respectfully note that although the SMC guidelines state that the A-1, A-2, and A-3 zones shall "include" pedestrian-oriented streets, that does not mean every single street and segment in the A-1, 2, and 3 zones must uniformly be pedestrian-oriented. The guideline is that these zones shall include pedestrian-oriented streets, not that they shall only or exclusively contain pedestrian-oriented streets. ...

All of this said, we do acknowledge the City staff's desire to make 224th Ave SE pedestrian-oriented. Therefore, as requested, we have designated the entire length of 224th Ave SE as pedestrian-oriented on both sides. ...

For reasons explained in detail in the Response Matrix, our re-submittal does retain a mixed-use designation along a segment of SE 6th Street, two segments of SE 5th Street and a segment of 226th PL SE. ...

We respectfully ask that the City carefully review these and other points in the Response Matrix re A-1 street designations. If after reviewing these points, the City still believes every street and segment in the A-1 zone (and A-2 and A-3 zones) must have exclusively pedestrian-oriented designation, we will modify the plans so that all the A-1 streets and segments are pedestrian-oriented, and make the necessary adjustments to adjacent building setbacks.

(Exhibit 35.a, B5 & B6, emphasis added)

9.1.13. STCA addressed street typology at length in its response to Review #1 Design Companion Review Matrix Comment 91, a portion of which follows:

After careful review of this issue, we respectfully ask the City to reconsider the statement that no streets or segments in the A-1 zone are allowed to have a mixed-use designation. We understand the Code contains a guideline that the A-1, A-2, and A-3 zones "shall include" pedestrian-oriented streets, but in our view "include" does not mean exclusively or solely include. ...

If after reviewing these points, the City still believes that every street and segment in the A-1 zone (and A-2 and A-3 zones) must have exclusively pedestrian-oriented designation, we would appreciate at least a brief additional explanation as to why the City does not agree with the points below. We will then modify the plans to make

them all pedestrian-oriented, and to make the necessary adjustments to adjacent buildings.

(Exhibit 35.h, B25, emphasis added) STCA’s response to Review #1 Site Plan Review Matrix Comments regarding street typology cross-referenced to its comments on the topic in the Review #1 Design Companion Review Matrix. (See, *e.g.*, Exhibit 35.q, Comments 4 (on B1), 6 (on B2), 7 (on B2), and 135 (on B19).)

9.1.14. STCA responded to CD’s Review #1 Plan Set Review Comment 47 by simply stating “Comment noted.” (Exhibit 35.q, B10, Comment 47 Response)

9.1.15. Subsection 21B.96.010(2) states that the TC Interim Standards “supplant those adopted under Ordinance O2018-466 under Chapter 14A.01 SMC”, the latter of which are the 2016 PWS. [SMC 14A.01.010(1)]

9.1.16. The 2016 PWS contains alley requirements in §9.3, provisions of which relevant to this case are:

Alleys are considered private roads and are governed by the following criteria.

A. Allowed for primary access only when lots served have full frontage on a public street.

B. Serves a maximum of 30 lots, with a maximum length of 400 feet, no cul-de-sacs, and no dead ends if serving more than four lots.

...

D. Minimum alley tract (easement if circumstances require) width of 20 feet with a pavement surface of 16 feet (including thickened edge), based on a ten-foot structure setback from property line or edge of tract (easement). For differing structure setback requirements, alley configuration shall be designated to provide for safe turning access to properties.

E. Alleyways shall be provided with a paved surface, a thickened edge on one side and cross slope in one direction.

F. Alleys will be allowed only when lots have frontage on a public street.

...

I. Alleys shall contain no intersections or any 90-degree bends. Any alignment other than straight shall be approved by the Public Works Director

2016 PWS Standard Detail #1-08, Roadway Section Typical Alley, depicts a 16-foot pavement width centered within a 20-foot wide right-of-way. [2016 PWS, PDF 252]

9.1.17. On May 14, 2020, Community Development told STCA that “Section 9.3 of the [2016 PWS] does not apply.” (Exhibit 26, B1 & B7, Question 4, City Response)

9.1.18. The City has adopted the International Fire Code (“IFC”). [SMC 16.05.130] Subsection 16.05.130(21) SMC amends IFC 503.2.1 to read: “ Fire apparatus access roads shall have an unobstructed width of not less than 20 feet”.

9.1.19. STCA interprets the SMC and IFC provisions to require that the alleys had to have a 20-foot wide right-of-way with a 16-foot pavement width. (Hermansen testimony) Community Development interprets the SMC and IFC provisions to require that alleys which serve as a fire access road must have a 20-foot pavement width. (Hankins testimony) STCA said that it could widen the alley pavement to 20-feet within the proposed 20-foot wide alley right-of-way. (Hermansen testimony)

9.1.20. *Southeast Village's* townhomes are served by a private road, woonerfs, and alleys. Twelve of the 75 townhomes have access only onto an alley. An additional eight townhomes are corner units which, although they have frontage on the private road or on one of the woonerfs, take their actual vehicular access from one of the alleys. (Exhibit 1001, B2) There is no evidence in this record that a PWS variance or deviation was required. (Exhibit 1003)

9.2. *Conclusions of Law*

9.2.1. Nothing in the TCP, TCIP, or SMC requires that all streets in the TC-A-1 zone must be pedestrian-oriented. Community Development's assertions to that effect are simply wrong. Neither the TCP nor the TCIP use the term "pedestrian-oriented", so those documents cannot be the basis for Community Development's position. The SMC specifically indicates that mixed-use streets may be located within the TC-A-1 zone.

9.2.2. Applying proper grammatical analysis, Community Development's Pre-App Review Comment sentence "Streets in the TC-A-1 zone must include entirely pedestrian-oriented segments" does not tell STCA that all streets in the TC-A-1 zone must be pedestrian-oriented. What it actually says is that there must be segments of streets within the TC-A-1 zone which are entirely pedestrian-oriented. Including segments is not the same as the entire street being pedestrian-oriented. So while neither the TCP, TCIP, nor the SMC support the notion of all streets being pedestrian-oriented, the directive that Community Development thought it was giving did not require that.

The appropriate mix of pedestrian-oriented and mixed-use streets within a TC-A-1 zone UZDP is a topic for discussion and resolution in the UZDP process, applying the guidance contained in the SMC. There is no one hard and fast answer.

9.2.3. None of Community Development's review comments directly raised the alley issue that Community Development cited as a basis for denial of STCA's UZDP. Having never been raised during the review process, it should not have been used as a basis for denial without at least an advance opportunity for STCA to respond.

9.2.4. "Supplant" means to supersede. [<https://www.merriam-webster.com/dictionary/supplant>, last visited August 27, 2021] Thus, the TC Interim Standards supersede the 2016 PWS, but only for a requirement for which the TC Interim Standards provide a specific standard. A "TBD" entry in the TC Interim Standards does not establish a standard and, therefore, does not supersede a 2016 PWS specification for that item.

9.2.5. Since the TC Interim Standards do not establish a minimum alley pavement width, the 2016 PWS provisions control (unless the IFC becomes involved, in which case the more stringent controls).

9.2.6. The 16-foot wide alley pavement width called out by 2016 PWS Detail #1-08 applies in “Typical” situations, but it does not apply where an alley also serves as a fire access road. In that latter case, the minimum pavement width must be 20 feet pursuant to the IFC.

9.2.7. 2016 PWS Detail # 1-08 indicates that the right-of-way within which an alley is to be constructed must be wider than the proposed pavement width. The Detail requires a 2-foot “shy space” or “shoulder” on each side of the pavement. Such a space is reasonable and common in street construction: Maintaining the edge of a 20-foot wide paved alley is hard, if not impossible, if the edge of the pavement is also the edge of the right-of-way.

If STCA retains alleys that also serve as fire access lanes, they must be at least 24-feet wide with a 20-foot pavement width.

9.2.8. A 2016 PWS variance or deviation may be required if townhomes are to be served by an alley only. The City has established a precedent for approval of such a request by its actions in the *Southeast Village* UZDP case.

10. **Issue 16: Open space: CitySquare**

10.1. *Findings of Fact*

10.1.1. Community Development concluded that STCA failed to comply with 21B.95.050(4)(a), (4)(c), and (4)(g)

by failing to include the City Square, the primary zone of the Green Spine as part of the UZDP.

...

As summarized in the Preapplication Meeting Notes dated May 23, 2019, and discussed on June 1, 2020, STCA has neither proposed nor reached an agreement with the City related to the Green Spine or City Square and any financial contribution by the City (**Exhibit 9**). As explained, the Department has no authority to commit the City to such an agreement, which would have had to been proposed by STCA, negotiated with, and approved by the City Council prior to submitting an application.

(Exhibit 1, B20 – B22; quotes from B20 & B22, bold ion original) In short, Community Development asserts that CitySquare must be located within the portion of the TC-A-1 zone represented by STCA’s UZDP proposal and that STCA has failed to include the CitySquare in its application. Community Development is not questioning compliance with other aspects of the Green Spine.

10.1.2. STCA asserts that

the Town Center Infrastructure Plan identifies a location north of SE 4th Street as an acceptable alternative, the Department acknowledged this at a meeting prior to the June re-submittal, and STCA provided a location for the City Square on STCA property in its revised application materials. The Department's Analysis also misconstrues and/or ignores provisions in the Town Center Plan regarding public contributions for the City Square.

(Exhibit 9002, B17)

10.1.3. Subsections 21B.95.050(4)(a), (4)(c), and (4)(g) read as follows:

The City of Sammamish will use the following principles and criteria in the review of UZDPs for applicable Town Center-A zones as noted in SMC 21B.95.060. The principles address fundamental site planning objectives from the Town Center Plan.

The principles employ the word “should” as a directive for specific elements and characteristics. The term “should” is taken to mean “is required unless the City determines that there is a compelling reason to the contrary, based on the objectives and policies of the adopted Town Center Plan.” The intent of this language is to allow the City and proponent the flexibility to achieve the Town Center Plan’s and these principles’ objectives through other means than those specified below. The UZDP proponent shall be required to demonstrate that the following are met to the City’s satisfaction.

...

(4) Open Spaces.

(a) TC-A-1, A-2, and A-3 zones should have at least one central open space that acts as a public gathering space and that also includes a significant landscaping element. The central open space may be in the form of a “town square,” “village green,” central plaza or other form but should be ringed with “active edges” (pedestrian-oriented buildings, uses or features that encourage human activity). The central open spaces should encourage a variety of activities such as picnicking, informal and organized gathering, performances, and passive and active recreation (e.g.: small sports court or children’s play area). The open space must be universally accessible (meet or exceed ADA standards) and should incorporate CPTED guidelines. The central open spaces should also feature:

- (i) Site furniture, special paving and amenities;
- (ii) Lighting to encourage evening activities and provide security;
- (iii) Art or other features to provide a distinct design identity;

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 55 of 88

(iv) As a general rule, one linear foot of seating per 30 square feet of plaza area (not including green space or landscaping); and

(v) Areas that are in full sunlight during most of the day;

...

(c) The central open space for TC-A-1 zone should connect directly to the Sammamish Commons, incorporate low impact development/stormwater management elements based on the watershed sub-basin plan recommendations and take the form of a “green spine” or other configuration that accomplishes similar objectives. See Figure 38 in the Town Center Plan;

...

(g) Open space in the TC-A-1 zone must meet the intent of the adopted Town Center Infrastructure Plan.

- 10.1.4. The TCP introduces and discusses the Green Spine, but not CitySquare. (See Finding of Fact 2.1.2, above.)
- 10.1.5. The TCIP discusses the Green Spine and introduces CitySquare. The TCIP includes three Composite Schemes and three Preliminary Concepts, none of which are a preferred plan. (See Finding of Fact 2.1.4, above.) The three Composite Schemes are depicted in Exhibit 35.g, B1, as Exhibits 1.C – 1.E.
- 10.1.6. The MOU included a specific provision regarding the Green Spine: It’s concept was to be refined through a supplemental agreement. (Exhibit 7, B2, § II.C.1. See Finding of Fact 2.1.15, above.) As noted above, there has been no follow-up on that agreement.
- 10.1.7. STCA’s Pre-App Submittal depicted a CitySquare occupying the Notch. (Exhibit 51, B18)
- 10.1.8. The Pre App Review Comments discussed CitySquare:

Development in the TC-A1 zone must have a least one central open space (Town Square, Village Green or Central Plaza) that acts as a public gathering space and is surrounded with “active edges”. The pedestrian circulation and open space plan submitted by the applicant identifies a “City Square” on city-owned property in the **TC-D zone** with Streets A, B, C and SE 6th Street running adjacent to this central open space. The UZDP application must show a “City Square” surrounded by pedestrian-oriented buildings, uses or other features that encourage human activity. Additionally, the development proposal must be universally accessible and should incorporate CPTED guidelines and design features as outlined in SMC 21B.95.050(4)(a)(i-v).

(Exhibit 9, B5, § 4.a, red type in original)

1. The proposal includes several infrastructure improvements, including street and utility improvements on the City-owned parcel identified as "City Square"

(referred to as the "Town Center Plaza" by the City) on the plans and therefore this parcel needs to be included in the UZDP. Further, any improvements shown on this parcel need to be negotiated through an agreement between the applicant and the City.

...

4. The "City Square/Town Center Plaza" is intended to serve as the primary open space of the Green Spine, framed by bustling storefronts, cafes and businesses spilling into the public realm to activate the space with people, as noted in the Town Center Infrastructure Plan. The proposed site plan shows townhomes and live/work residential units to the west and an open lot with grading and infrastructure only, to the east. Explain how the "City Square/Town Center Plaza" isolated by streets and parking and surrounded by residential uses would serve as an engaging public amenity and enjoy the vibrancy envisioned in the Sammamish Town Center Plan?

...

12. Pursuant to the MOU, the Green Spine is identified as a topic for further discussion and possible future agreements including the width and types of uses to be included in the Green Spine. Any agreement between the city and applicant must be consistent with applicable code requirements.
13. If the applicant wishes to further discuss design alternatives for the Green Spine prior to submitting a UZDP application, the City requests that additional information be provided demonstrating compliance with Title 21B SMC and the Town Center Infrastructure Plan.

(Exhibit 9, B19, red type in original)

- 10.1.9. On July 31, 2019, STCA sent Community Development a CitySquare – Parks proposal for discussion at a scheduled August 7, 2019, meeting with City staff.²⁶ (Exhibit 11) On August 2, 2019, after reviewing STCA's submission, Community Development canceled the August 7, 2019, meeting because "the draft design concept emailed to us on July 31, 2019 does not address the Preapplication Review Comments, dated May 23, 2019. ... Private development proposed on city property will only be considered as part of an agreement approved by City Council." (Exhibit 12)
- 10.1.10. STCA's Initial Submittal depicted CitySquare on the Notch property with the Green Spine extending through Blocks 5 and 6 to SE 4th Street. (Exhibits 13.c, B4, § D, ¶ 2, B8, B9, B26, & B32; 13.j. B34 & B36)
- 10.1.11. The Review #1 Comments Cover Letter mentioned deficiencies in the proposal's Green Spine treatment, but did not specifically mention CitySquare. (Exhibit 20)

²⁶ Exhibit 1025, prepared for STCA on July 26, 2019, depicts CitySquare on the Notch property. It is possible that this plan set is what STCA sent to Community Development on July 31, 2019.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 57 of 88

- 10.1.12. Review #1 Design Companion Review matrix stated that “[t]he City Square is identified in the adopted Town Center Infrastructure Plan just south of SE 4th Street and not on City owned property. Update site plan.” (Exhibit 20.a, B1, Comment 1; see also Comments 5 (on B1), 12 (on B1), 55 (on B4), 62 (on B4), 93 (on B5), 95 (on B5), 120 (on B6), 129 (on B6), and 139 (on B7))
- 10.1.13. Review #1 Plan Set Review Matrix comments do not address CitySquare. (Exhibit 20.d)
- 10.1.14. STCA’s cover letter accompanying the Resubmittal included a lengthy discussion of the Green Spine and CitySquare. In summary, STCA said: the Green Spine through Blocks 5 and 6 would be a Green Spine Secondary Zone, partly public, partly quasi-public; and CitySquare would be located on STCA-owned property in the TC-A-1 zone north of SE 4th Street in a subsequent UZDP. (Exhibit 35.a, B2 & B3)
- 10.1.15. The Resubmittal plans partly depicted that concept: CitySquare was not graphically depicted. (Exhibit 35.p, B37) STCA’s annotated response to Review #1 Design Companion Review Matrix Comment 1 fleshed out the concept, depicting an area north of SE 4th between 224th and 225th Avenues SE as the Primary Zone of the Green Spine. (Exhibit 35.g, B1, Figure 1.F) The Project Narrative and Code Criterion Compliance Summary which was part of the Resubmittal graphically depicted CitySquare on the north side of SE 4th Street. (Exhibit 1031, B8, Figure 6)
- 10.1.16. STCA responded to Review #1 Design Companion Review matrix Comment 1 with the analysis in Exhibit 35.g, at B1, essentially arguing that the TCIP allowed for alternative CitySquare locations, one of which could be north of SE 4th Street as it was proposing.
- 10.1.17. The record contains no guarantee from STCA that it would construct CitySquare on its property north of SE 4th Street.
- 10.1.18. The TCP estimated that the City would need to spend some \$52.6 million (in 2007 dollars) for public infrastructure support of Town Center, including \$4 million for open space acquisition. [TCP, PDF 105]
- 10.2. *Conclusions of Law*
- 10.2.1. Nothing in the TCP, the TCIP, or the SMC requires that City Square be located on the south side of SE 4th Street. As the TCIP text makes abundantly clear, the “Composite Schemes” and “Preliminary Concepts” in the TCIP are simply possible solutions, not preferred or required solutions. What is clear is that CitySquare, having first been mentioned/described in the TCIP, which solely pertains to properties in the TC-A-1 zone, must be located somewhere within the TC-A-1 zone. Exactly where it is to be located and exactly what configuration it will take is not specified.

This appears to be precisely one of the reasons why the TCP envisioned a master planning process for the Town Center: Developers and the City must come to an agreement on the actual configuration of the Green Spine, CitySquare, street system, and land use pattern. Both parties

need to be honest with one another in that process; both parties must recognize that some give-and-take is likely inevitable.

- 10.2.2. The open courtyard in Blocks 5 and 6 certainly meets Green Spine standards, but it does not satisfy the expectations for the CitySquare. The TCIP envisions City Square as a full block, about 300 feet on each side. There is admittedly some conflicting guidance about CitySquare's dimensions, but it seems clear that the TCIP calls for something larger and different from the proposed space in Blocks 5 and 6. Since the SMC does not provide any size parameters for City Square, the TCIP's provisions must form the basis for review of any proposal.
- 10.2.3. The question of who pays for CitySquare was raised by STCA. Section 82.02.020 RCW places a limit on the extent to which a developer may be expected to fund a public facility. That provision in part provides that:

Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat.

CitySquare is intended to be a city-wide, if not regional, gathering and event place. The Examiner doubts that a reviewing court would find its need to be directly attributable to one UZDP, unless that one UZDP encompassed the entire TC-A-1 zone, or the UZDP developer would ultimately be the developer of the lion's share of the Town Center. The TCP envisioned substantial financial contributions by the City to support and encourage private development of the Town Center. The City's \$20 million reconstruction of SE 4th Street is an example of such a contribution.²⁷ Financial participation in the development of CitySquare could be another appropriate contribution.

²⁷ Community Development mentioned a number of other projects in the area which it asserted demonstrated City contributions to facilitate the TCP: the YMCA/Aquatic Center (\$32 million); Lower Commons Park facilities (\$2 million); and City Hall and the King County Library on the Upper Commons. (Hilde testimony) Neither the funding sources for those projects nor their relationship to the TCP were explored during the hearing. The Examiner believes it appropriate to count at least an undetermined portion of the cost of those projects as City contributions in support of the TCP.

10.2.4. This could have been addressed in the follow-on agreement called for by MOU §§ II.C and II.D. (See Finding of Fact 2.1.15, above.)

11. **Issue 17: Natural systems and Environmental quality; Low Impact Development (“LID”)**

11.1. *Findings of Fact*

11.1.1. Community Development concluded that STCA failed to comply with 21B.95.050(5)(b) and (5)(c). (Exhibit 1, B22 – B25) Community Development identified compliance problems related to land use management LID and “exemplary environmental stewardship.” According to Community Development, STCA

only addressed stormwater LID, as discussed above, and did not consider land use management LID under Chapter 21B.85 SMC.

... Though STCA is not required to retain significant trees outside environmentally sensitive areas and associated buffers in the TC-A1 zone pursuant to SMC 21B.35.200(3), they are required pursuant to SMC 21B.85.010(3) to fully incorporate LID into all aspects of the project design including maximizing the retention of trees, native vegetation, understory plants and native soils. Furthermore, pursuant to SMC 21B.95.050(5)(c), STCA is required to incorporate natural areas such as stands of mature trees as amenities as part of their development proposal.

...

The UZDP does not comply with SMC 21B.95.050(5)(b) as it does not fully address and is entirely inconsistent with important land use management LID measures. Therefore, pursuant to SMC 21B.85.020(2) the City cannot approve the UZDP without first verifying compliance with the requirements of Chapter 21B.85 SMC.

... [STCA] fail[ed] to incorporate exemplary environmental stewardship into the development proposal ... as it does not propose any sustainable measures that implement the environmental strategies described in the Natural Systems Chapter of the Town Center Plan. These include, but are not limited to, incorporating LID, regional stormwater facilities, rain gardens, green roofs, retaining native vegetation, and reducing building footprints.

(Exhibit 1, B24 & B25)

11.1.2. STCA asserts that Community Development

unfairly and incorrectly applied SMC 21B.95.050(5) in light of other objectives and goals in the Town Center Plan for the TC-A1 zone, failed to acknowledge aspects of the proposed UZDP that support the goals of low impact development and/or will preserve the natural environment, and failed to identify what "natural areas" or

"natural systems" could be reasonably incorporated or exploited in this particular site area [] given other required and beneficial aspects of the proposal and other objectives and goals for the A-1 zone.

(Exhibit 9002, B17, § IV,17)

11.1.3. Subsections 21B.95.050(5)(b) and (5)(c) read as follows:

The City of Sammamish will use the following principles and criteria in the review of UZDPs for applicable Town Center-A zones as noted in SMC 21B.95.060. The principles address fundamental site planning objectives from the Town Center Plan.

The principles employ the word “should” as a directive for specific elements and characteristics. The term “should” is taken to mean “is required unless the City determines that there is a compelling reason to the contrary, based on the objectives and policies of the adopted Town Center Plan.” The intent of this language is to allow the City and proponent the flexibility to achieve the Town Center Plan’s and these principles’ objectives through other means than those specified below. The UZDP proponent shall be required to demonstrate that the following are met to the City’s satisfaction.

...

(5) Natural Systems and Environmental Quality.

(a) Mixed-use node UZDPs should incorporate and implement stormwater management recommendations from sub-basin plans. Where called for, a regional stormwater management system should be implemented;

...; and

(c) The mixed-use node development should incorporate natural areas such as wetlands, stream corridors, wildlife corridors and stands of mature trees as amenities into the mixed-use nodes where possible. Opportunities for natural system restoration should be exploited. (See Figure 54 of the Town Center Plan.)

Figure 54 in the TCP depicts “A conceptual diagram of the recommended Town Center natural systems strategies.” [TCP, PDF 75] With respect to the property within STCA’s current UZDP, Figure 54 schematically depicts a “Coordinated stormwater approach” discharging southwesterly to a “regional stormwater system”. [*Ibid.*]

11.1.4. Community Development cites several provisions of Chapter 21B.85 SMC in its discussion of this issue. (See Finding of Fact 11.1.1, above.) One such reference is SMC 21B.85.010:

Low impact development (LID) is an approach to land use planning and project design that seeks to:

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 61 of 88

- (1) Increase the ability of a developed site to effectively emulate predevelopment hydrologic conditions, including, without limitation, stormwater retention, water quality treatment, and infiltration functions;
- (2) Minimize overland stormwater runoff from a developed site;
- (3) Maximize the retention of trees, native vegetation, understory plants, and native soils;
- (4) Minimize soil disturbance;
- (5) Minimize the conversion of site surfaces from vegetated to nonvegetated surfaces; and
- (6) Maximize the quantity and use of appropriate native plants on site.

The purpose of this chapter is to require that development proposals within the Town Center sub-area fully incorporate the interim stormwater standards and low impact development into all aspects of project design.

- 11.1.5. Subsection 21B.85.020(2) SMC bars project approval in any TC zone “without first assuring compliance with the requirements of this chapter”; “this chapter” being Chapter 21B.85 SMC.
- 11.1.6. Section 21B.85.030 SMC directs that development within the TC zones must comply with adopted City stormwater standards. Neither Community Development nor Public Works dispute STCA’s preliminary stormwater management plans compliance with those standards. (Exhibit 1, B23 & B24, Staff Analysis: Stormwater LID) The dispute is over application of “land use management LID under Chapter 21B.85 SMC.” (See Finding of Fact 11.1.1, above.)
- 11.1.7. Chapter 21B.85 SMC does not list any “land use management LID” techniques, nor even any LID techniques in general.
- 11.1.8. Section 21B.15.230 defines “LID” as

a stormwater and land use management strategy that strives to mimic predisturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.
- [Emphasis added] That definition is identical to the definition of LID in the King County Surface Water Design Manual. (Heavrin testimony)
- 11.1.9. No environmentally significant features are present on the UZDP site. (Exhibits 35.d; 35.m; 35.t; 35.x; and Heavrin testimony)
- 11.1.10. No significant tree stands are present on the UZDP site. (Exhibit 35.p, B6) Tree retention is not required in the TC-A-1 zone. [SMC 21B.35.200]

- 11.1.11. Community Development raised these concerns in Review #1 Design Companion Review matrix Comments 128, 132, 133, and 136. (Exhibit 20.a, B6 & B7) STCA offered the following response in its Resubmittal package:

Comment noted. As the project site and building design advances, a range of additional sustainable features will be studied for feasible implementation within the Project including solar and green roofs, stormwater capture canopies, green spaces and streetscapes implementing LID Methods. The Project will endeavor to implement as many green design features as reasonably and cost-effectively practicable, and specific features for specific site components and buildings will be identified when the Project advances into future stages of design.

(Exhibit 35.g, B57, Comment 128)

- 11.1.12. STCA's Resubmittal package included graphics depicting "green roofs" (Exhibit 1031, B20 & B21), a mix of hard- and soft-scape in the Green Spine in Blocks 5 and 6 (Exhibit 1031, B23 & B30), and a full-page discussion of stormwater management LID techniques concluding with:

As the Project site and building design advances, a range of additional sustainable features will be studied for feasible implementation within the Project including solar and green roofs, stormwater capture canopies, green spaces and streetscapes implementing LID Methods. The Project will endeavor to implement as many green design features as reasonably and cost-effectively practicable, and specific features for specific site components and buildings will be identified when the Project advances into future stages of design.

(Exhibit 1031, B41) See also Exhibit 35.h, B29, Comment 121.

- 11.1.13. The *Southeast Village* UZDP application stated that infiltration was not feasible due to soil conditions and that green roofs were not feasible due to the nature of the proposed structures (all townhomes). (Exhibit 1001.A, B6) The application listed seven LID Best Management Practices ("BMPs") that would be employed:

- Reduced impervious surfaces
- Rain garden feature
- Roof drain water feature
- Areas of pervious pavement
- Reuse of stormwater for irrigation
- "Green" stormwater vault
- Areas of amended soils

(*Ibid.*)

Community Development's decision accepted the applicant's proposal. (Exhibit 1001, B14, Analysis/Conclusions, § 3(B)) No distinction was made between stormwater and land use LID strategies.

- 11.1.14. The *Plateau 120* UZDP application stated that the project would implement a number of LID strategies "based on their cost/benefit value to the project." (Exhibit 1002.A, B21) LID measures to be considered included pervious paving, rainwater catchment for landscape irrigation, and a partial green roof. (*Ibid.*)

Community Development's decision accepted the applicant's proposal. (Exhibit 1002, B9, Analysis/Conclusions, § 3(B)) No distinction was made between stormwater and land use LID strategies.

- 11.1.15. *The Village* UZDP application listed several LID BMPs (rainwater collection for landscape irrigation and toilet flushing, pervious pavement, and some green roofs; the applicant committed to preserve a grove of trees on the site). (Exhibit 1003.A, B24, B36, and B64 – B66)

Community Development's decision accepted the applicant's proposal. (Exhibit 1003, B9, Analysis/Conclusions, § 3(B)) No distinction was made between stormwater and land use LID strategies.

11.2. *Conclusions of Law*

- 11.2.1. Community Development has not demonstrated a code-based distinction between stormwater LID techniques and land use management LID techniques. The evidence indicates that some stormwater LID techniques incorporate land use management elements, but that no land use management LID techniques exist separate and distinct from stormwater LID techniques.

- 11.2.2. This is another case of inconsistent application of review criteria. *Southeast Village*, *Plateau 120*, and *The Village* each made generalized statements about LID techniques they might use if found to be cost-effective – just as did STCA. Community Development accepted those statements as satisfying the requirements, but denied STCA's UZDP application in part on this basis.

- 11.2.3. The evidence in this record does not demonstrate any conflict with SMC regulations that are applicable at this stage of the review process. A general commitment has been made and depicted on STCA's conceptual renderings, just as was the case in the three prior UZDP applications.

- 11.2.4. This should not have been a basis for denial of STCA's UZDP application.

12. **Issue 18: Building scale and compatibility; townhomes**

12.1. *Findings of Fact*

- 12.1.1. Community Development concluded that STCA failed to comply with 21B.95.050(6). (Exhibit 1, B25 & B26)

By failing to provide pedestrian-oriented retail and civic uses on the ground floor with office and residential uses above, and instead proposing residential only townhomes in the TC-A1 zone with entrance at the ground floor, STCA has not demonstrated compliance with SMC 21B.95.050(6)(b) or SMC 21B.10.030(1)(a).

...

STCA's ... proposal to include residential-only uses in the TC-A1 zone is incorrect and noncompliant. The TC-A1 zone, in its entirety, is the core mixed-use area of the Town Center subarea. It should include multi-story mixed-use buildings with pedestrian-oriented retail on the ground floor and office and residential uses on the upper floors.

Townhomes are not an outright permitted use in the TC-A1 zone. Townhomes are only allowed as part of an approved UZDP pursuant to SMC 21B.20.040(1). STCA's proposal to include residential only townhomes in the TC-A1 zone does not comply with Town Center Plan Land Use Goal 2.3 and Housing Goal 3.1, SMC 21B.10.030(1)(a), 21B.30.030(1), 21B.30.040(2)(b), and 21B.95.050(6)(b).

(Exhibit 1, B26²⁸)

12.1.2. STCA asserts

[T]he City's development regulations and applicable plans specifically state that townhomes are a permitted use in the TC-A1 zone, including along pedestrian-oriented streets with a 30-foot setback, and the Department's Pre-Application Review Comments on the UZDP specifically stated that townhouses are allowed in the TC-A1 zone with a 30-foot setback from pedestrian-oriented streets. The Analysis and Conclusion also failed to consider or recognize other limitations, challenges, and factors that led to the proposed townhouses in the UZDP application.

(Exhibit 9002, B17 & B18, § IV.18)

12.1.3. Townhomes, like virtually every other permitted use in the TC-A zone, are permitted only as part of an approved UZDP. [SMC 21B.20.040] A special Development Condition applies to townhomes: "Except for lobbies or other similar entrances, the use is prohibited within 30 feet of the sidewalk on the ground floor of designated pedestrian-oriented streets or corridors." [SMC 21B.20.040(1), Development Condition 1]

12.1.4. Subsection 21B.95.050(6)(b) SMC reads

²⁸ The nomenclature "Land Use Goal 2.3" and "Housing Goal 3.1" are misnomers: LU 2.3 and H 3.1 are Policies, not Goals. [TCP, PDF 34 *et al.*]

The City of Sammamish will use the following principles and criteria in the review of UZDPs for applicable Town Center-A zones as noted in SMC 21B.95.060. The principles address fundamental site planning objectives from the Town Center Plan.

The principles employ the word “should” as a directive for specific elements and characteristics. The term “should” is taken to mean “is required unless the City determines that there is a compelling reason to the contrary, based on the objectives and policies of the adopted Town Center Plan.” The intent of this language is to allow the City and proponent the flexibility to achieve the Town Center Plan’s and these principles’ objectives through other means than those specified below. The UZDP proponent shall be required to demonstrate that the following are met to the City’s satisfaction.

...

(6) Building Scale and Compatibility.

...

(b) Mixed-use node UZDPs should include some building organization or unifying design concept to unify the node and provide a distinctive development character. This might be accomplished, for example, through orientation of buildings around open space or other feature, use of axial symmetry, vistas, topography, etc., or a hierarchy of building massing (such as a stepped up “wedding cake” formation).

12.1.5. Subsection 21B.10.030(1)(a) SMC reads:

(1) The purpose of the mixed-use (TC-A) zone is to implement Town Center Plan goals and policies to develop a Town Center core area (TC-A-1) and a number of smaller mixed-use centers (TC-A-2 through A-5). These purposes are accomplished by:

(a) Providing, in the TC-A-1 sub-zone, for a pedestrian-oriented mix of retail, office, residential, and civic uses that functions as the focal point for the Town Center and the City. This sub-zone emphasizes pedestrian-oriented retail and civic uses on the ground floor of core areas and has the greatest allocation of retail floor area of all the Town Center’s mixed-use zones. Office and residential uses are encouraged on upper floors;

12.1.6. Subsection 21B.30.030(1) SMC reads in part:

The streetfront orientation standards for Town Center properties vary depending on the type of street(s) or public open space the property fronts on. These standards provide for five different street types: (1) pedestrian-oriented streets (and corridors) – which are intended to be lined with storefronts, (2) mixed-use streets – which could include storefronts or a combination of retail, office, civic, and/or residential uses

with modest landscaped setbacks, (3) residential streets – which include residential streets with modest landscaped setbacks; (4) connector streets – which are treated similar to residential streets but with some extra flexibility; or (5) 228th Avenue SE – where trees and other landscaping elements should be emphasized along the streetfront.

Figure 21B.30.030a illustrates an example configuration of street types based on the vision illustration in the Town Center Plan. Pedestrian-oriented streets and mixed-use street designations shall be designated by the adopted unified zone development plans (see Chapter 21B.95 SMC) for TC-A zoned properties. The criteria for designating street types are set forth in SMC 21B.30.040 (2). The standards herein thus apply to developments that front onto these street types.

[Figure 21B.30.030a is located here]

(1) Properties Adjacent to Pedestrian-Oriented Streets and Corridors (Including Specified Park Edges).

(a) Buildings shall be located adjacent to (within three feet of) the sidewalk and feature a “pedestrian-oriented facade.” To meet this requirement, the ground floor facade shall incorporate the following characteristics:

[Emphasis added]

12.1.7. Subsections 21B.30.040(2)(b) and (2)(c) SMC read

The Transportation Element of the Town Center Plan includes goals, policies, and actions aimed at producing a connected hierarchy of streets that accommodates desired Town Center land uses and human activities. Streets within the mixed-use nodes will be planned during the unified zone development planning process (see Chapter 21B.95 SMC) with reference to the Town Center Infrastructure Plan. Other streets may be planned either collectively or by individual property owners. The following provisions serve as guidelines for the unified zone development planning process and development standards if the roads are planned by a private property owner in the TC-B or TC-C zones.

Figure 21B.30.040a illustrates a conceptual layout of streets within the Town Center. While it is expected that the network of streets that is eventually built will differ from this configuration, the provisions below are intended to ensure that new streets meet the goals and policies of the Town Center Plan.

...

(2) Provide for a Hierarchy of Streets. Provide for a hierarchy of streets, including:

...

(b) Pedestrian-oriented streets. TC-A-1, A-2, and A-3 zoned areas shall include designated pedestrian-oriented street segment, [sic] as determined by the City

through the unified zone development planning process. Pedestrian-oriented streets are intended to be streets featuring continuous storefronts or plaza spaces, wide sidewalks, street trees, bioretention, and on-street parking. Designations for pedestrian-oriented streets could cover an entire street, a single block, or a portion of a block, depending upon the area. Pedestrian-oriented street designations are intended for areas where a concentration of pedestrian activity is desired. See SMC 21B.30.030(1) for related development frontage standards.

(c) Mixed-use streets, which are all other new streets besides connector roads and pedestrian-oriented streets within the TC-A zones. These are localized streets which should include generous sidewalks, street trees, bioretention, on-street parking (to the extent possible), and slow moving traffic.

[Emphasis added]

- 12.1.8. The two TCP Policies (“Goals”) cited by Community Development in Finding of Fact 12.1.1, above, read as follows:

LU-2.3: Development intensity in the Town Center should emphasize the “wedding cake” approach, with multi-story mixed-use in the core area and transitioning towards surrounding uses at the Town Center perimeter. Each master plan should be developed and refined in coordination with affected landowners to maximize compatibility.

[TCP, PDF 35]

H-3.1: Adopt development regulations that emphasize the “wedding cake” approach by providing for multi-family uses in the mixed-use areas, a combination of multi-family and townhouses in the residential focus areas, and single-family homes and cottage housing in the low-intensity residential areas.

[TCP, PDF 93]

- 12.1.9. STCA’s Pre-App Submittal included 114 townhomes, of which approximately 58 were located within the UZDP boundary. (The rest were located to the west on the TC-B and TC-C-zoned properties.) (Exhibit 51, B18)
- 12.1.10. The Pre-App Review Comments summarized the SMC provisions which allowed townhomes within the TC-A-1 zone, but did not present any objection to STCA’s proposed townhomes. (Exhibit 9, B6)
- 12.1.11. STCA’s Initial Submittal proposed 34 3-story townhomes in Blocks 1 – 3 (not current block numbers) and an additional 56 townhomes in *Brownstone West* on the abutting TC-B and TC-C-zoned properties to the west. (Exhibits 13.c, B6, B8, & B11; 13.j, B31)

- 12.1.12. The Review #1 Comments cover letter clearly indicated Community Development's opposition to any townhomes within the TC-A-1 zone:

The Town Center Planning Concept shown in the Town Center Plan (page 16) indicates properties south of SE 4th Street and within the TC A-1 Zone are primarily mixed-use. This classification is intended to be developed as medium scale mixed-use (4-6 story). As proposed, STCA indicates 2 to 2 ½ story residential townhomes adjacent to 224TH Avenue SE which does not meet the planning concepts for the TC A-1 zone. The plan generally envisions ground floor retail services with residences above or even straight commercial and/or office buildings but not individual townhomes. (See Goal LU-2, LU-2.1, LU-2.2, LU-2.3. Goal LU-4, LU-4.1, LU-4.2 of the Sammamish Town Center Plan).

Townhomes are listed as a permitted use in the TC A-1 Zone pursuant to SMC 21B.20.040. However, townhomes are prohibited within 30-feet of the sidewalk on the ground floor of designated pedestrian-oriented streets or corridors pursuant to both SMC 21B.20.040(1) and SMC 21B.30.030(1). As mentioned above all streets or segments of streets in the TC A-1 zone are required to be pedestrian-oriented. As a pedestrian-oriented street, and by applying the minimum 30-foot separation, the townhomes proposed adjacent to 224th Avenue SE as part of this project proposal are not likely feasible.

Pursuant to SMC 21B.30.030(1) buildings adjacent to pedestrian-oriented streets are required to be located within three feet of the sidewalk and feature a "pedestrian-oriented façade." STCA's proposal to locate townhomes adjacent to 224TH Avenue SE does not comply with this requirement nor is it consistent with the adopted Sammamish Town Center Plan.

(Exhibit 20, B2)

- 12.1.13. Review #1 Design Companion Review Comment 8 addressed townhomes:

The Core Mixed Use (CMU) area described in the Town Center Infrastructure Plan (TCIP) identifies commercial (retail and office) and mixed-use (commercial emphasis) building types in the proposed development area. Townhomes are not identified as a preferred building type on page 10 of the TCIP. Update proposal and UZDP site plan to comply with the CMU development principles described in the TCIP.

(Exhibit 20.a, B1) Review #1 Plan Set Review Comment 19 echoed that position:

The Town Center Planning Concept indicates properties adjacent to 224TH AVE SE are in the Primary Mixed-Use Center classification in the Sammamish Town Center Plan. This classification generally follows the TC-A1 zone and is intended to be developed as Medium scale Mixed-Use (4-6 story). As proposed, the applicant shows 2 to 2 ½ story townhomes adjacent to 224TH AVE SE which do not meet the planning concepts for the Mixed-Use Center. The applicant shall revise their project plans as necessary to demonstrate compliance.

(Exhibit 20.d, B2; see also Comment 18)

12.1.14. STCA responded to the Review #1 Comments:

Please note that the townhouses in the A-1 zone represent only 14% of the proposed residential units in the A-1 zone. The remaining 86% of the units are multi-family units above commercial uses. The inclusion of townhouse as a component of the UZDP is consistent with City plans and regulations. Both the Town Center Plan and the Town Center Infrastructure Plan contemplate a wide mix of uses in the TC-A1 zone. Townhouses are specifically identified in the Town Center Plan as an appropriate component of the mix of uses. **See Town Center Plan, Appendix 1, Table A-2.** The Town Center Infrastructure Plan likewise envisions both residences above retail and ground-level townhouses as part of the balance of uses in the Core Mixed-Use Area (i.e., the TC A-1 zone). See Town Center Infrastructure Plan, Page 4 (noting townhouses as one type of allowed residential use, and that either a “vertical mix of retail and residential” or a “horizontal mix (residences near retail)” may be used” to give variety and definition to the streetscape”). Consistent with these Plans, the Town Center Development Code specifically allows townhouses as a permitted use within all TC-A zones, including the A-1 zone as long as the ground floor is set back 30 feet from the sidewalk of designated pedestrian-oriented streets or corridors. SMC 21B.20.040(1), Development Condition No. 1. The revised Plan provides that setback, and includes additional landscaping within this 30-foot setback. The plan referenced by the City on TCIP page 10 is a concept from which the City has departed with recently completed Village at Sammamish Town Center/Sky Sammamish project.

(Exhibit 35.g, B3, Comment 8 Response, red type in original) STCA’s response to Review #1 Plan Set Review Comment 19 expressed essentially the same position. (Exhibit 35.q, B5, Comment 19 Response)

12.1.15. Resubmittal plans included 48 townhomes in current Blocks 3 and 4. (Exhibit 35.p, B1 & B3) The increased number (48 v. 34) is attributable to elimination of the 224th Avenue SE chicane, resulting in an increase in area of Blocks 3 and 4. (Zinser testimony)

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 70 of 88

- 12.1.16. The subject UZDP represents approximately 34% of the total TC-A-1 zone, the remainder lying across SE 4th Street to the north. (Exhibit 13.c, B6, Figure 1; and Hilde testimony) Under the MOU this UZDP applicant may propose no more than 100,000 SF of commercial uses. (Exhibit 7, B2, § II.A.3) STCA’s current plan proposes 82,000 SF of commercial uses in Blocks 5 – 7.
- 12.1.17. The SMC caps allocated commercial square footage in the TC-A-1 zone at 200,000 SF plus a bonus allocation with an upper limit of 250,000 SF total. [SMC 21B.25.030(1), Development Conditions 6 and 7; see also Exhibit 1028, B2] *The Village* obtained (“exported”) approximately 102,000 SF of its 115,000 SF of total commercial space from the TC-A-1 zone allocation using the 2014 Code Interpretation. (Exhibit 1003.A, B22; 1028, B3) Thus, more than half of the commercial square footage allocated to the TC-A-1 zone was “exported” into *The Village*, most of which was placed on the TC-B-zoned portion of that site adjacent to 228th Avenue SE in an area intended by the TCP to be residential. [TCP PDF 20, Figure 11, *e.g.*].
- 12.1.18. There is approximately 17.3 acres left in the TC-A-1 zone outside of STCA’s UZDP, but only about 53,000 SF of commercial space left to be allocated. (Exhibit 1028, B4) Thus, the available commercial density (in square feet per acre) is far less than currently proposed in this UZDP. (Zinser testimony.)

12.2. *Conclusions of Law*

- 12.2.1. No TCP, TCIP, or SMC provision bans townhomes from the TC-A-1 zone. To the extent that any of Community Development’s Review #1 comments aver, suggest, or imply that such is the case, they are simply wrong. In fact, provisions in those documents expressly state that townhomes (both vertically and horizontally mixed with commercial uses) are permitted in the TC-A-1 zone subject to the same requirement as applies to virtually every other allowed use in the TC-A-1 zone: They must be a part of an approved UZDP. Community Development staff may not want townhomes in the TC-A-1 zone or in this UZDP, but that is quite different than arguing that townhomes are not allowed.
- 12.2.2. Community Development argued that SMC 21B.20.040(1), Development Condition 1, which requires a 30-foot setback for townhomes along pedestrian-oriented streets, effectively bans townhomes from locating along pedestrian-oriented streets because SMC 21B.30.030(1) requires buildings along a pedestrian-oriented street to maintain a 3-foot setback. (Argument of counsel)

The Examiner disagrees. City ordinances are subject to the same rules of interpretation and construction as apply to statutes. [*Tahoma Audubon Soc. v. Park Junction Partners*, 128 Wn. App. 671, 116 P.3d 1046 (2005); *Neighbors v. King County*, 88 Wn. App. 773, 778, 946 P.2d 1188 (1997)] “Statutes are construed as a whole, to give effect to all language and to harmonize all provisions.” [*Ockerman v. King Cy.*, 102 Wn. App. 212, ___ P.2nd ___ (Div. I, 2000)] When SMC 21B.20.040(1) says that townhomes are permitted along pedestrian-oriented streets subject to a 30-foot setback, that special setback takes precedence over the standard 3-foot setback that applies to other uses located along pedestrian oriented streets. To construe it otherwise would nullify the permission granted by SMC 21B.20.040(1).

- 12.2.3. The more commercial square footage that is placed in this UZDP, the less there is to fill the even larger TC-A-1 zone on the north side of SE 4th Street to say nothing of Blocks 8 and 9 on the south side of SE 4th Street. In fact, it seems that there is already too little commercial allocation left to populate that area exclusively with mixed-used commercial structures. That reality is not STCA's fault. Rather, it is directly attributable to the 2014 Code Interpretation which allowed *The Village* to use more than half of the TC-A-1 zone's commercial allocation on a TC-B-zoned parcel that does not even abut the TC-A-1 zone.
- 12.2.14. If CitySquare were located south of SE 4th Street as Community Development desires, then a substantial portion of proposed Block 5 and 6 commercial buildings would be displaced, presumably to be relocated to the north side of SE 4th Street and mixed use could likely occur on Blocks 3 and 4.
- 12.2.15. Community Development's "wedding cake" argument is not particularly persuasive. First, Block 7 is within the TC-A-1 zone and is proposed as a two story commercial building – a far cry from the 4 – 6 stories Community Development argues is required in the TC-A-1 zone – but Community Development has expressed no objection to that part of STCA's design.

Second, the proposed four- and three-story townhomes on Blocks 3 and 4 would create the step-down, wedding cake tier effect envisioned in the TCP. The Examiner finds nothing in the TCP to suggest that each zone must have a uniform elevation across its entire expanse. And where, as here, the adjacent TC-B and TC-C zones are relatively narrow it makes sense to begin the "tiering" around the perimeter of the TC-A-1 zone rather than start it in the TC-B zone.

- 12.2.6. The Examiner is not the project designer. Neither is Community Development. But the SMC does give a substantial amount of discretion to Community Development in its authority over UZDPs.

Community Development must exercise that discretion within the bounds of the SMC, and where not superseded by the SMC, within the bounds of the TCP and TCIP. It cannot rely on mis-statements of authority as has happened with respect to this appeal issue.

13. **Issue 20: Efficient infrastructure systems**

13.1. *Findings of Fact*

- 13.1.1. Community Development concluded that STCA failed to comply with 21B.95.050(8). (Exhibit 1, B28 & B29)

Pursuant to SMC 21B.95.050(8), development proposals are required to incorporate, where effective, innovative infrastructure systems such as water capture and re-use, solid waste management systems, and waste-water treatment.

... STCA has not provided any design details or identified such features on the UZDP site plans to demonstrate compliance with SMC 21B.95.050(8). Instead the

UZDP has “committed” only to future “exploration” of “strategies” and “potential” actions when the exploratory process should have been accomplished and concrete actions formulated before submitting the UZDP.

(Exhibit 1, B28)

13.1.2. STCA asserts that Community Development

unfairly and incorrectly applied SMC 21B.95.050(8) in light of other objectives and goals in the Town Center Plan for the TC-A1 zone, failed to acknowledge aspects of the proposed UZDP and proposed infrastructure plan that support the goals of efficient infrastructure, failed to acknowledge that the City's utility provider had generally accepted the Applicant's proposed sewer and water infrastructure proposal, and failed to allow further dialogue between City staff and the Applicant about what additional specific "systems" could feasibly be incorporated given the other objectives and policies of the Town Center Plan.

(Exhibit 9002, B18 & B19)

13.1.3. Subsection 21B.95.050(8) reads as follows:

The City of Sammamish will use the following principles and criteria in the review of UZDPs for applicable Town Center-A zones as noted in SMC 21B.95.060. The principles address fundamental site planning objectives from the Town Center Plan.

The principles employ the word “should” as a directive for specific elements and characteristics. The term “should” is taken to mean “is required unless the City determines that there is a compelling reason to the contrary, based on the objectives and policies of the adopted Town Center Plan.” The intent of this language is to allow the City and proponent the flexibility to achieve the Town Center Plan’s and these principles’ objectives through other means than those specified below. The UZDP proponent shall be required to demonstrate that the following are met to the City’s satisfaction.

...

(8) Incorporation of Efficient Infrastructure Systems. Incorporate, where it can be demonstrated to be effective, innovative infrastructure systems such as water capture and re-use, solid waste management systems, waste water treatment, etc. If applicable, the applicant may be required to demonstrate that alternate infrastructure systems have been explored. The director may require that the applicant consult with utilities providers to identify possible solutions to the provision of infrastructure services.

- 13.1.4. STCA's Pre-App Submittal included preliminary drainage and utility plans. (Exhibit 51, B16 & B17)
- 13.1.5. Community Development's Pre-App Review Comments noted that "negotiation and execution of a stormwater facilities agreement between the City and STCA, LLC outlining terms and conditions of design, construction and maintenance of these facilities. An executed agreement will be required for a complete application." (Exhibit 9, B2, General Comments, § 3; see also B17, Stormwater, § 1) The record contains no evidence of any such negotiation and agreement between STCA and the City.

In the section containing UZDP-specific comments Community Development included the following:

Not enough information has been provided to determine conformance with the infrastructure requirements set forth in SMC 21B.95.050(8). A Utilities Infrastructure Plan is required with the UZDP application. Please also submit an assessment for the use of innovative infrastructure systems to manage water, wastewater, solid waste, etc.

(Exhibit 9, B6, § 8)

- 13.1.6. STCA's Initial Submittal includes a preliminary drainage plan showing four stormwater detention vaults, two of which would be within proposed public rights-of-way (Exhibit 13.c, B28) and a preliminary water and sewer service plan (Exhibit 13.c, B29). Also in the initial submittal was a page discussing UZDP infrastructure: street system, water capture and reuse, and solid waste/recycling strategy. (Exhibit 13.c, B40)

The Initial Submittal Plans depicted four stormwater detention vaults, two on private property, two within proposed public right-of-way (Exhibit 13.j, B14) and a preliminary water and sewer service plan (Exhibit 13.j, B15).

- 13.1.7. Community Development's Review #1 Cover Letter discusses the stormwater plans at length. The fundamental comment was that private and public stormwater control systems had to be separate. (Exhibit 20, B3)

Review #1 Design Companion Review Matrix Comment 136 asked for discussion of innovative environmental management techniques. (Exhibit 20.a, B7, Comment 136)

- 13.1.8. STCA's resubmittal included a lengthy discussion of rainwater capture and reuse strategies and site design to facilitate solid waste collection. (Exhibit 1031, B40) Stormwater runoff systems serving private and public areas were separated. (Exhibit 35.p. B8 – B10) STCA responded to Review #1 Design Companion Review matrix Comment 136 as follows:

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 74 of 88

Comment noted. As the project site and building design advances, a range of additional sustainable features will be studied for feasible implementation within the Project including solar and green roofs, stormwater capture canopies, green spaces and streetscapes implementing LID Methods. The Project will endeavor to implement as many green design features as reasonably and cost-effectively practicable, and specific features for specific site components and buildings will be identified when the Project advances into future stages of design.

(Exhibit 35.g, B57, Comment 128 Response, cross-referenced from Comment 136 Response)

- 13.1.9. *Southeast Village's* Compliance narrative response to SMC 21B.95.050(8) was a short paragraph:

Water and sewer is provided by Sammamish Plateau Water and Sewer District. Sewer is available in 228th Avenue SE. The project drains to the northwest to a connection point that will be made in 228th. Water is also available in 228th Ave SE, and will be extended within the properties. Water is looped through the project as much as possible. A total of six fire hydrants are provided within the project. Future stubs at property lines are provided for additional looping and connections to support future development. Stormwater was described in the Natural Systems and Environmental Quality section above.

(Exhibit 1001.A, B8, § 7)

Community Development's UZDP decision simply referenced the Compliance Narrative. (Exhibit 1001, B13, Analysis/Conclusions, § 2.B) Conditions 21 and 26 required compliance with the City's adopted stormwater regulations. (Exhibit 1001, B17)

- 13.1.10. *Plateau 120's* Design Companion identified a number of features of its design which responded to this topic:

Efficient site and infrastructure systems were studied and planned for use on Plateau 120. The use of pervious pavement, pervious pavers, rainwater harvesting and re-use for landscaping, and a green roof all combine to reduce the size of the on site retention vault and reduce the amount of storm water runoff into the adjacent stream. The reduced size of the vault utilizes LID features to the maximum extent feasible. The soil conditions on site restricts the use of more site based LID features due to the lack of percolation ability and hard/virtually impervious soils. Additional documentation of these systems can be seen in the Civil and Landscape portion of the Development Set, Infrastructure and Natural systems sections of this Design Companion (pages 19-21) as well as other supporting application documents such as the SEPA and TIR.

(Exhibit 1002.B, B26)

Community Development's UZDP decision simply referenced the Design Companion. (Exhibit 1002, B8, Analysis/Conclusions, § 2.B) Conditions 25 and 30 required compliance with the City's adopted stormwater regulations. (Exhibit 1002, B11 & B12)

- 13.1.11. *The Village's* Code Compliance narrative addressed SMC 21B.95.050(8) by listing features it would incorporate in the reconstruction of SE 4th Street along its frontage. (Exhibit 1003.A, B13)

Community Development's UZDP decision simply referenced the Code Narrative and Letter of Description. (Exhibit 1003, B9, Analysis/Conclusions, § 3.B) Community Development also made the following observation:

The City anticipates that additional design review related to specific details of the site development, the proposed buildings, and general compliance with Title 21B SMC will be required prior to issuance of the anticipated site development permit and building permits.

(Exhibit 1003, B8, Analysis/Conclusions, § 1)

Condition 23 required compliance with the City's adopted stormwater regulations. (Exhibit 1003, B13)

13.2. *Conclusions of Law*

- 13.2.1. This is another case of inconsistent application of review criteria. *Southeast Village, Plateau 120, and The Village* each made generalized statements about infrastructure they might use – just as did STCA. Community Development accepted those statements as satisfying the requirements, but denied STCA's UZDP application in part on this basis.

- 13.2.2. The level of detail which Community Development apparently wants regarding this issue is excessive for the UZDP stage. The UZDP is a plan, a "master plan" as the TCP calls it. It is not a building permit. It is supposed to set the parameters for subsequent permitting activity, not take the place of that subsequent activity.

14. **Issue 22: Town Center Plan Goals and Policies**

14.1. *Findings of Fact*

- 14.1.1. Community Development concluded that STCA's UZDP application "does not adhere to the Town Center Goals and Policies." (Exhibit 1, B29, § III.D) This statement is based on Community Development's Town Center Goals and Policies Compliance Analysis Matrix. (Exhibit 2) That analysis found non-compliance with 36 of the 68 Goals/Policies it evaluated. Community Development concluded that six of the 68 Goals/Policies were not applicable.

Exhibit 2 does not list all of the TCP Goals/Policies. There are 29 Goals and 96 Policies (125 combined) in the TCP, 41 of which are directives to the City to take some action. [TCP, PDF 34 – 114]

14.1.2. STCA asserts a number of errors in Community Development’s TCP Goals and Policies Analysis, including that the analysis

misconstrues the purpose and role of the Town Center Plan's Goals and Policies in the review of UZDP applications; ... fails to allow further dialogue between the Department and STCA about ways to address goals and policies that are in most cases worded in extremely general and broad terms; ... is erroneous in its specific analysis of each of the 37 goals and policies where it found noncompliance; and/or fail[s] to recognize the necessity to balance the 63 goals and policies, and thus for example, the achievement of certain goals and policies may limit the proponent's ability to achieve other goals and policies.

(Exhibit 9002, B19 & B20 ²⁹)

14.1.3. Community Development did not perform a TCP Goals and Policies Compliance Analysis for *Southeast Village, Plateau 120, or The Village*. ³⁰

14.2. *Conclusions of Law*

14.2.1. The state Supreme Court in *Citizens v. Mount Vernon* [133 Wn.2d 861, 947 P.2d 1208 (1997), *reconsideration denied*] has ruled that “[RCW 36.70B.030(1)] suggests ... a comprehensive plan can be used to make a specific land use decision. Our cases hold otherwise.” [at 873]

Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code’s favor.

[*Mount Vernon* at 873-74, citations omitted, emphasis added]

14.2.2. State law directs that adopted regulations shall trump adopted plans and policies.

During project review, a local government or any subsequent reviewing body shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project or, in the absence of applicable regulations the adopted comprehensive plan. At a minimum, such applicable regulations or plans shall be determinative of the:

²⁹ By The Examiner’s count there are 29 Goals and 96 Policies in the TCP. Community Development evaluated 69 Goals/Policies. (Exhibit 2) The Examiner is unsure of the source of the “63” number used by STCA.

³⁰ Or, if it did, documentation of that activity is not part of the record of this proceeding.

- (a) Type of land use permitted at the site, including uses that may be allowed under certain circumstances, such as planned unit developments and conditional and special uses, if the criteria for their approval have been satisfied;
- (b) Density of residential development in urban growth areas; and
- (c) Availability and adequacy of public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by [the GMA].

[RCW 36.70B.030(2); see also RCW 36.70B.040]

- 14.2.3. It only makes sense given the confluence of statutory and case law that where compliance with a comprehensive plan is listed as an approval criterion for a land use development permit, consideration of comprehensive plan policies must not conflict with application of regulations. Comprehensive plan policies which have been implemented by adoption of development regulations are no longer relevant in project review.
- 14.2.4. Another concern with reliance on Comprehensive Plan Goals and Policies in project permit review is the reality that goals and policies in comprehensive plans, as witness Maxim testified, typically “are in tension and compete with one another.” Policies in one topical area can easily conflict with those in another policy area, especially if they are read strictly. For example, one could not create a city such as New York if one strictly followed a plan policy that said the natural environment must be protected. Conflicting goals and policies must be balanced and decisions made as to which policy(ies) are to prevail in any given situation. Deciding which policy “gets top billing” in any given situation becomes a legislative decision in itself. And that decision is reflected through the implementing regulations which a municipality’s legislative body adopts.
- 14.2.5. Community Development’s analysis of TCP Goal/Policy compliance is significantly affected by its position that CitySquare must be on the south side of SE 4th Street (a mandate not supported by the TCP, the TCIP, or the SMC), that all streets within the TC-A-1 zone must be pedestrian-oriented (a position not mentioned in the TCP and not supported by either the TCIP or the SMC), and that no townhomes are allowed within the TC-A-1 zone (a mandate not supported by the TCP, the TCIP, or the SMC).
- 15. **Issue 1: Community Development improperly truncated review process**
 - 15.1. *Findings of Fact*
 - 15.1.1. STCA asserts that Community Development “erred in issuing a UZDP Type 2 decision rather than a 2nd round of review comments to allow the applicant to address the comments identified in the Decision.” (Exhibit 9002, B13, § IV.1)
 - 15.1.2. The basic steps in the review of STCA’s UZDP application have been described in Part 2, above. Community Development summarized the process as consisting of one review cycle, three meetings with STCA after that review and prior to Resubmittal, and no formal or informal

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 78 of 88

Community Development comments between Resubmittal and denial on November 13, 2020. (Hankins testimony)

- 15.1.3. An e-mail from Community Development’s Special projects Coordinator (Donovan) to a citizen on September 1, 2020, mentioned a forthcoming second round of review comments. (Exhibit 1013) Hankins testified that Community Development was working on a second review round at that time.
- 15.1.4. On September 30, 2020, Community Development advised STCA that it needed more time to complete its review of STCA’s Resubmittal than it had initially estimated. The letter advised that the new estimated date for review completion was November 13, 2020. (Exhibit 38) On October 8, 2020, Community Development issued a formal notice of the new estimated review completion date for STCA’s four applications. (Exhibit 39) At some time between September 1 and November 13, 2020, Community Development decided to change course. The review team felt that STCA simply wasn’t willing to amend its plans to meet Community Development’s requirements and that a second review round would be a waste of time. Thus Community Development (without any advance notice to nor discussion with STCA): Terminated the consolidated Type 3 review process; ceased processing the BSP and *Brownstone East* applications; began treating the UZDP as a stand-alone Type 2 application; ceased conducting SEPA review; and prepared the UZDP Type 2 denial. (Hankins testimony)
- 15.1.5. On November 13, 2020, Community Development issued its denial of STCA’s UZDP application. (Exhibits 1; 40)
- 15.1.6. Community Development frequently employs more than one review round for applications. For example, STCA's *Brownstone West* preliminary subdivision application has had two review rounds and a resubmittal. (Brennan testimony)
- 15.2. *Conclusions of Law*
- 15.2.1. The SMC does not mandate multiple review rounds for land use applications. Town Center SMC provisions certainly contemplate more than one review round: “Staff will continue review as needed to ensure the UZDP meets the applicable standards.” [SMC 21B.95.030(4), emphasis added] But that provision is not an absolute mandate.
- 15.2.2. In the absence of a code requirement for more than one review round, the Examiner cannot say that Community Development erred by not providing additional review rounds. There were several aspects of the proposal where a second review round likely would have solved Community Development’s concerns and there were areas where STCA stated in writing that it would capitulate to Community Development’s position if necessary, but there were also some aspects that likely would not have been resolved by a second review round.
- 15.2.3. The Examiner’s duty is to determine if Community Development’s action violated code, not to substitute the Examiner’s personal approach to an application for that of Community

Development. Community Development's denial after one round of review did not violate any procedural code provision.

16. Issue 3: Community Development failed to consider alternatives to denial

16.1. Findings of Fact

16.1.1. STCA asserts that Community Development

erred in issuing a denial rather than either a conditional recommended approval (if processed as a Type 3 decision) or a conditional approval (if processed as a Type 2 decision). Throughout its Decision, the Department failed to consider approval conditions as an alternative to denial.

(Exhibit 9002, B13, § IV.3)

16.2. Conclusions of Law

16.2.1. The situation here is very analogous to Issue 1. The SMC does not tell Community Development that it must approve or approve with conditions every UZDP application.

16.2.2. In the absence of a code requirement for approval or approval with conditions, the Examiner cannot say that Community Development erred by not approving STCA's application with conditions. There were several aspects of the proposal where Community Development could likely have crafted approval conditions to resolve its concerns and there were areas where STCA stated in writing that it would capitulate to Community Development's position if necessary, but there were also some aspects where conditioning could not have solved Community Development's objections.

17. Issue 4: Community Development failed to follow precedent

17.1. Findings of Fact

17.1.1. STCA asserts that Community Development "erred in issuing a denial based on requirements it did not apply to other previously approved UZDP applications, or applied in a significantly different manner." (Exhibit 9002, B13, § IV.4)

17.2. Conclusions of Law

17.2.1. The evidence in this record contains examples where Community Development clearly treated STCA's application in a manner significantly different from its treatment of *Southeast Village*, *Plateau 120*, and *The Village*. Community Development subjected STCA's application to a more stringent standard in a number of regards: Issue 9: CARA; Issue 14: ADA and CPTED; Issue 17: LID; Issue 20: Innovative infrastructure; and Issue 22: TCP Goal/Policy application.

17.2.2. An agency cannot create an interpretation in the midst of litigation. An interpretation must be based on agency policy established through historical practice. [*Sleasman v. City of Lacey*, 159 Wn.2d 639, 151 P.3d 990 (2007)] That principle logically applies to treatment of applications. Mere personnel changes alone cannot justify abandonment of positions and precedents established by prior staff.

17.2.3. Community Development did not follow the procedural precedent set in its handling of the three prior UZDP applications.

18. **Issue 6: Community Development improperly ceased review of associated preliminary subdivision and binding site plan applications**

18.1. *Findings of Fact*

18.1.1. STCA asserts that Community Development “improperly ceased review of the proposed Preliminary Subdivision (PSUB2019-00563) and Binding Site Plan (BSP2019-00564).” (Exhibit 9002, B13, § IV.6)

18.1.2. STCA did not brief this issue in its Prehearing Brief nor in its Post-Hearing Brief. (Exhibits 1032 & 1034, respectively) It is closely related to Issues 2 and 7 which the Examiner addressed and Summarily Dismissed in the March 5, Interlocutory Order on Motions. (Exhibit 9019) It is also closely related to Issue 1, addressed above.

18.2. *Conclusions of Law*

18.2.1. The Examiner incorporates by reference as if set forth in full for application to this appeal issue the analysis and Conclusions of Law regarding Issues 2 and 7 as set forth in Exhibit 9019 and the Conclusions of Law regarding Issue 1 as set forth above.

19. **Summary Conclusions of Law**

19.1. *Conclusions of Law*

19.1.1.³¹ The term "Unified Zone Development Plan" (UZDP)

Refers to a plan that is required for new development in each TC-A sub-zone per Chapter 21B.95 SMC in order to:

- (1) Establish the level and intensity of new commercial and residential development;
- (2) Provide for coordinated infrastructure such as roads and utilities and public open space;
- (3) Define street types and orientation to street of new development; and
- (4) Identify the general location of buildings and site improvements and provision of open space, parking, environmental restoration, and nonmotorized circulation.

[SMC 21B.15.380]

19.1.2. A “unified zone development plan under Chapter 21B.95 SMC³¹” is a Type 2 application. [SMC 20.05.020(1), Exhibit A] Note “³¹” provides that a UZDP application is “[s]ubject also to the procedural requirements of SMC 20.05.037 and Chapter 21B.95 SMC.”

³¹ Conclusions of Law 19.1.1 – 19.1.6 are largely taken from Exhibit 9019, B11 – B14, §§ II.14 – II.19.

Section 20.05.037 SMC requires that a public “open house” be held prior to approval of a UZDP application.

19.1.3. Chapter 21B.95 SMC, Unified Zone Development Plans, sets out the purpose and process for approval of UZDP applications. Included in that chapter are the following provisions.

The purpose of this chapter is to establish a review process for a unified zone development plan (UZDP) approval process under which a property owner, or group of property owners, may pursue development in the Town Center-A zones. The purpose of this process is to ensure that development in these zones proceeds in an orderly fashion with coordinated infrastructure and open space, appropriate intensities of uses and mutually compatible development in accordance with the adopted Sammamish Town Center Plan. Upon City approval of a UZDP a property owner, or group of property owners, may proceed with obtaining the required permits for individual parcel development. A second purpose is to provide both the City and property owners more certainty regarding the requirements, conditions and means to support new development.

[SMC 21B.95.010, emphasis added] The UZDP application process is summarized as follows:

Pursuant to related standards in Chapter 20.05 SMC.

(1) Preapplication meeting for City staff to determine applicability of SMC 21B.95.020.

(2) Application submittal per Chapter 20.05 SMC and SMC 21B.95.040.

(3) Staff will review, send out the notice of application, provide comments, and the City will conduct an open house per Chapter 20.05 SMC.

(4) Staff will continue review as needed to ensure the UZDP meets the applicable standards.

(5) Director will render decision based on SMC 21B.95.060.

(6) Appeal process will be per Chapter 20.05 SMC Type 2 land use decision type.

[SMC 21B.95.030, emphasis added]

The documents and plans [comprising an approved UZDP] must be in sufficient detail for the City to determine that the UZDP planning principles in SMC 21B.95.050 are met and that future permit applications are consistent with the approved UZDP.

[SMC 21B.95.040(2), emphasis added]

The approved UZDP will result in an agreement between the applicant and the City describing the terms under which permits will be reviewed. Development permit

applications will also be reviewed for conformance to other provisions of the Sammamish Municipal Code.

[SMC 21B.95.070(1), emphasis added]

The [Department] director will determine whether a subsequent development permit is in compliance with the applicable UZDP by determining if the application deviates from the UDZP (*sic*).

[SMC 21B.95.100(1), emphasis added]

- 19.1.4. It is clear from Chapter 21B.95 SMC, especially the provisions quoted immediately above, that a UZDP application is not your typical Type 2 development application: it not a “development permit.” A UZDP is a broad-based plan, a “master plan,” “an agreement” to guide review of “subsequent development permit[s].”³² A UZDP is not the equivalent of a preliminary subdivision or BSP.

An applicant who receives approval of a UZDP application cannot develop or build anything. The approved UZDP only allows the applicant to apply for actual development permits (preliminary subdivision, BSP, building permit, clearing and grading permit, etc.) to actually develop land. All the UZDP holder can do is apply for “subsequent development permit[s].” In the purest sense of the term, a UZDP is not a development permit.

- 19.1.5. The BSP and preliminary subdivision applications never should have been consolidated with the UZDP application. As just stated, a UZDP application is a unique creature in the SMC land use regulatory system. It results in an umbrella “agreement” against which “subsequent development permit” applications must be reviewed. It is not a development permit. The word “may” in SMC 20.05.020(2) provides discretion to the Department as to whether to consolidate applications or not. Given that a UZDP results in a “plan” and “agreement,” not a development permit, and that actual development permit applications are to be “subsequent” to the UZDP, consolidation was not required nor appropriate.

This is a very different situation than consolidation of a preliminary subdivision application with a boundary line adjustment (“BLA”) where the latter is needed to “clean up” or “correct” a boundary that does not match the proposed preliminary subdivision boundary. Here the

³² The undersigned was a planner with the Snohomish County Planning Department in the 1970s when what is now known as the City of Mill Creek was proposed. The County reviewed that multi-thousand acre development through a series of stages, each providing increased levels of detail: master plan, sector plans, division of development plans, and, finally, individual subdivision and development proposals. All of that was done through a development agreement with the County. The purpose was to provide both the applicant (UDC) and the County with certainty regarding the basic framework of the development before more detailed engineering and planning occurred. The UZDP codified in Chapter 21B.95 SMC is very much akin to Mill Creek’s master plan, which was implemented through sector plans, divisions of development, BSPs, and subdivisions. Like Mill Creek’s master plan, a UZDP is not intended to provide the final level of detail. [Official notice]

“subsequent” applications must be reviewed against the provisions and requirements of the UZDP to determine whether they conform with the UZDP.³³ That sequence cannot reasonably be accomplished with concurrent review.

- 19.1.6. In addition, the UZDP process essentially contemplates a negotiation between the applicant and the applicant.

The [Town Center] principles employ the word “should” as a directive for specific elements and characteristics. The term “should” is taken to mean “is required unless the City determines that there is a compelling reason to the contrary, based on the objectives and policies of the adopted Town Center Plan.” The intent of this language is to allow the City and proponent the flexibility to achieve the Town Center Plan’s and these principles’ objectives through other means than those specified below. . . .

[SMC 21B.95.050, emphasis added] The Hearing Examiner process is not designed or intended to negotiate alternative means of achieving City policies. In fact, it is not designed to negotiate anything with an applicant or City staff. The Examiner is a neutral third-party decision maker, not part of the design or review staff. Negotiation requires give and take, most effectively accomplished in a private setting. The Hearing Examiner process cannot provide that setting. While the Examiner is most certainly expected to exercise discretion (the exercise of discretion is a fundamental attribute of a quasi-judicial proceeding), the Examiner is not expected to insert his/her philosophical beliefs into the decision-making process. But that is exactly what the UZDP process requires: Molding a proposal to flexible policies. The Council wisely categorized the UZDP as Type 2, thus providing a proper forum for administrative staff and applicants to discuss and negotiate conformance with rather general policies set out in the Town Center Plan and associated documents.

- 19.1.7. The consolidation of STCA’s UZDP, BSP, and *Brownstone East* applications make it difficult, if not impossible, to determine what criticisms and requirements pertain to which aspect(s) of the consolidation. Virtually all of Community Development’s Pre-App Review Comments and Review #1 Comments are presented on a plan-sheet-by-plan-sheet basis, not on an application-by-application basis. While that is logical from the reviewer’s and the consultant’s point of view, it makes it hard to determine which problems pertain to which permit(s).

Title 21B SMC contains a myriad of highly technical requirements, most of which require building permit-level detail in order to demonstrate compliance. Community Development has required STCA and, to an equal or lesser extent depending somewhat on topic, the three prior UZDP applicants to provide that level of detail at the UZDP stage. Neither the TCP, the TCIP,

³³ It is the same concept as reviewing a Mill Creek sector plan against the Mill Creek master plan. Each sector plan had to conform with the master plan and add additional detail to the development proposal; each division of development plan added even more detail; project permit applications were then reviewed against the requirements of the approved division of development plan.

nor the SMC require that level of detail at the UZDP stage. The Examiner concludes that requiring such detail at the UZDP stage is an incorrect reading of the TCP, TCIP, and the SMC.

19.1.8. According to the TCP, TCIP, and SMC, a UZDP application results in a master plan, not a blueprint with a set of specifications from which one could build a project. According to the SMC, a UZDP establishes the framework upon which one could subsequently develop the detailed plans and specifications. Unfortunately, it appears that that distinction, called for by the SMC, has somehow become lost. If the system is to work as called for in the SMC, that distinction must be found.

19.1.9. Part of the problems the parties experienced in this UZDP review process stems from apparent erroneous interpretations of the TCP, TCIP, and SMC by Community Development. CitySquare is a prime example. Neither the TCP (which doesn't even mention CitySquare), the TCIP, nor the SMC require that CitySquare be located on the south side of SE 4th Street. No such requirement exists in the text of any of those documents. Yet, Community Development insisted that STCA had to locate CitySquare within this UZDP on the south side of SE 4th Street. Had STCA and the City fulfilled the MOU's requirement for a follow-on agreement to address, among other things, CitySquare, it is highly likely that the CitySquare issue would have been front and center. The entire dispute over CitySquare location could and presumably would have been resolved in a binding fashion before the UZDP application was even filed.

Another example is the townhome dispute. Community Development insisted that townhomes are not allowed as stand-alone uses within the TC-A-1 zone, but the SMC and the TCIP clearly say otherwise.

A third example is the street typology conflict. Community Development insisted that all TC-A-1 streets had to be pedestrian-oriented. But here again, neither the TCP, the TCIP, nor the SMC support that position. (And to compound the conflict over this issue, many of the comments Community Development provided to STCA simply did not say that mixed-use streets were prohibited in the TC-A-1 zone, although Community Development thought they did.)

19.1.10. The Council gave Community Development tremendous discretionary authority in its review of UZDP applications; some might even say more than should be associated with a purely administrative, Type 2 process required to rely on very flexible plans. In exercising that authority Community Development must remember that the application is the applicant's, not its. Community Development is not the project designer (any more than is the Examiner in a quasi-judicial application process or in a Type 2 appeal proceeding). The Examiner cannot tell whether any of Community Development's central design positions (CitySquare south of SE 4th Street; all streets pedestrian-oriented; no stand-alone townhomes) resulted from the design preferences of the Community Development review team as opposed to code/policy interpretation. To the extent that it was the former, that would be an unsupportable situation.

19.1.11. One cannot have been involved in the entire process from appeal through the hearing without getting the distinct impression that a troublesome degree of antipathy exists between STCA and

Community Development. If that is not the case, the Examiner apologizes for coming away with that impression. If that is the case, the Examiner urges the parties to mend their relationship. Nearly one-half of the TCP acreage is held by STCA, including virtually all of the remaining TC-A-1-zoned area; the parties will have many more land use applications to work through before the Town Center is complete.

- 19.1.12. The Examiner has read the many citizen comments. Generally speaking, responses are not needed. There are two areas, however, where a response is appropriate.

First, at least eight comments oppose the implementation of Town Center, period. Council adopted the TCP, adopted Town Center regulations (Title 21B SMC), and enacted zoning to implement the TCP. All of those were legislative actions. State law prohibits the Examiner from entertaining any challenges to those regulations. They were adopted legislatively, they can only be changed legislatively.³⁴ Further, the City has enacted “vesting” regulations:

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all of the requirements of this chapter. The department’s issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1), emphasis added] A UZDP application is classified by the City as Type 2. Therefore, STCA’s application must be reviewed against the land use regulations that were in effect when the application was filed in November, 2019. No amendments or repeals enacted after that date would have any effect on this application.

Second, many commenters oppose approval of any deviations or variances from City code for STCA’s application. Some say that STCA should follow the code just as have the prior UZDP applicants. However, the three prior UZDP applications were granted many deviations by Community Development. (See Exhibits 1001, 1002, and 1003.) This is not to say that deviations from standards should be granted willy-nilly, but just to point out that the prior applicants benefitted from the deviation process.

- 19.1.13. It would be better in many respects if STCA simply started over with a clean slate rather than dragging along all the baggage from this process. To achieve that result, the Examiner would have to find for Community Development and deny the appeal. As stated above, the bases for

³⁴ Legislative actions are subject to review under the Growth Management Act. Generally speaking, there is only a very short window after a legislative enactment when a challenge to that action may be taken. [See Chapter 36.70C RCW.] With respect to adoption of the TCP, the TCIP, and their implementing regulations, that time has long passed.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 86 of 88

Community Development's fundamental positions are untenable based on this record. Thus, a decision fully supporting Community Development's decision is not possible.

Conversely, STCA has also erred, so a decision fully in its favor is equally not possible. In addition, since Community Development never issued a SEPA threshold determination, a decision to approve the UZDP is not legally possible since an approval is an action, and an action cannot be taken without a threshold determination. (See Exhibit 9019, B16, § IV.3.)

Therefore, the Examiner is left with but one choice: Remand. The Examiner disagrees with Community Development's position that the Examiner lacks authority to remand. The Examiner has express authority to approve, approve with conditions, or deny. The authority to remand is in that continuum and is thus an implied authority. The Examiner has only that authority "conferred either expressly or by necessary implication." [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984)]

19.1.14. STCA has asked the Examiner to remand and to

direct [Community Development] to engage in good-faith negotiations and collaboration with STCA to implement [STCA's] proposed remand instructions

(Exhibit 1034, PDF 2) The Examiner declines to "direct" Community Development. To do so would amount to stepping over the line and imposing the Examiner's personal design preferences on the parties. As the Examiner has said, this is not the Examiner's application, the Examiner is not the project designer. Throughout this Decision the Examiner has provided his interpretation of Chapter 21B SMC's provisions as he is entitled to under SMC 21B.05.060(2). The Examiner declines the invitation to go further.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **REMANDS** UZDP2019-00562 for further review in accordance with the provisions in this Decision.

Decision issued August 30, 2021.

ls/ *John E. Galt*

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ³⁵

Duana Koloušková, unsworn counsel
Steve Roos, unsworn counsel
Lafe Hermansen
Peter Brennan
Holli Heavrin
Chris Hankins
Elliott Glasse
Kent Treen
Don Gerend
Richard Aramburu, counsel for Walter Pereyra
Paul Stickney
Christie Malchow
Kent Sogge
Frederick R. Parks

Peter Eglick, unsworn counsel
Josh Whited, unsworn counsel
Larry Zinser
Evan Maxim
Curtis Koger
Kellye Hilde
Logan Glasse
Anant Mithal
Scott Hamilton
Jason Ritchie
Julio Richburg
Nandita Kondepudi
Karen Moran

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Cynthia Schaff, Hearing Examiner Clerk, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

³⁵ The official Parties of Record register is maintained by the City's Hearing Clerk.

HEARING EXAMINER DECISION

RE: UZDP2019-00562 (STCA v. Department of Community Development)

August 30, 2021, 2021

Page 88 of 88

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW

This Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act.. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

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.”