

1 **BEFORE THE HEARING EXAMINER FOR THE CITY OF ROY**

2 Phil Olbrechts, Hearing Examiner

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<p>4 RE: Oakview</p> <p>5 Preliminary Plat and</p> <p>6 Variances</p> <p>7 PPL-22-0001, MVA-RMDG-</p> <p>8 22-01, MVA-RMDG-22-02,</p> <p>9 MVA-RMDG-22-03</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION.</p>
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10 Roy Meadows Development Group, LLC requests approval of a preliminary plat and
11 three variances for development of a 79-lot subdivision for a 38.4-acre site located at
12 29401 SR 507 South. The three variances seek (1) waiver of a cul-de-sac prohibition
13 to enable two cul-de-sacs; (2) waiver of sidewalk and on-parking requirements for
14 292nd; and (3) a 60% reduction in the number of replacement trees required for the
15 Applicant’s proposed removal of 427 significant trees. The preliminary plat and
16 variance applications are approved except for waiver of 292nd sidewalk installation,
17 subject to conditions.

18 Overall, through the variance applications the City and Applicant have negotiated a
19 well-balanced compromise between the Applicant’s development rights and the unique
20 Oregon White Oak that are protected by the City’s tree retention standards. The
21 property is zoned for five dwelling units per acre, but the Applicant has settled for 2.05
22 units per acre by dedicating 26% of the project area to open space that will be filled
23 with the oak trees and replacement trees.

24 The most serious issue of concern is the City’s water quality. PFAS compounds, which
25 cause cancer, have been found at levels exceeding regulatory levels for long term
consumption in one of the City’s two wells. Under current standards, if the Roy PFAS
levels are maintained or exceeded, state regulations require the City to notify water
customers of the contamination.

It is legally questionable whether cities as a part of subdivision review have authority
to consider potable water quality beyond inquiring about health department approval.
This is because the City’s authority may be preempted by laws granted extensive

1 authority to other agencies to regulate and oversee potable water quality. Even if there
2 is such authority, the extensive expertise of those other agencies is determinative in
3 reaching the conclusion that the potable water supplied by the City qualifies as
4 “appropriate” under City subdivision standards. The Environmental Protection Agency
5 (EPA), Washington State Office of Drinking Water and the County’s Department of
6 Health are tasked with regulating water quality and/or identifying when a water source
7 should not be used for potable water. According to City staff testimony, the EPA has
8 issued a draft document on PFAS treatment. Regulations are being considered for when
9 and what treatment will be required. Most important, state and federal regulators have
10 not found PFAS contamination to be urgent enough to merit an immediate ban on use
11 of PFAS contaminated waters for existing or new development.

12 In sum, it is concluded that the City’s supply of potable water is “appropriate” as
13 required by City subdivision standards because (1) the County’s department of health
14 has approved use of City potable water for the project, (2) agencies with potable water
15 expertise and regulatory oversight are undertaking measures to address the problem,
16 and (3) PFAS impacts are considered long-term.

17 Neighboring property owners also had a concern about water pressure. Water pressure
18 for the neighboring Oak Heights neighborhood is very low according to the testimony
19 of some residents from that area. They are concerned that the addition of the project to
20 the water system will further reduce water pressure. The City’s engineer testified that
21 the affects of the project on neighboring water pressure would be negligible if any. He
22 also noted that water pressure impacts will be modelled prior to final plat approval to
23 assess whether state mandated water pressure levels will be maintained for the
24 surrounding area.

25 One of the more contested parts of the proposal was the Applicant’s request to waive
sidewalk requirements along 292nd. Some people were concerned about sidewalk
impacts to rural aesthetics/character and adjoining Oregon White Oak. Ultimately,
public safety must prevail when weighing these factors. There is little doubt that people
will walk along 292nd and that the proposal will increase that number. Separation
between vehicles and pedestrians is necessary to assure pedestrian safety. The
conditions of approval, however, authorize staff to waive some sidewalk design
standards, excluding width, to accommodate snow parking, protect significant trees and
preserve rural character.

As always in projects of this size, traffic was also a concern of some neighbors. The
most significantly affected area will be the intersection of SR 507 and 292nd. The
Applicant’s traffic engineer has determined that a left turn lane should be placed on SR
507 at this intersection. The Washington State Department of Transportation
(WSDOT) makes the final decision on whether such a left-turn lane is necessary. In

1 that review, WSDOT will also be considering whether a reduction in the speed limit is
2 also necessary.

3 TESTIMONY

4 A computer-generated transcript of the hearing has been prepared to provide an
5 overview of the hearing testimony. The transcript is provided for informational
6 purposes only as Appendix A.

7 EXHIBITS

8 Exhibits 1-42 as identified at pages 31-32 of the March 22, 2023 staff report were
9 admitted into the record during the March 29, 2023 public hearing. Exhibit 43, the
10 Applicant's PowerPoint presentation, was admitted during the hearing. Exhibit 44,
11 Bethel School District Notice of Appeal of Mitigated Determination of Non
12 Significance, was also admitted during the hearing. In addition, a SEPA addendum
13 dated April 4, 2023 was admitted into the record on that date as authorized at the
14 hearing.

15 FINDINGS OF FACT

16 **Procedural:**

17 1. Applicant. The Applicant is Roy Meadows Development Group, LLC,
18 Attn: Camille Minogue, 1000 2nd Ave, Ste. 3200 Seattle, WA 98104-1074.

19 2. Hearing. A public hearing was held on the application in Roy City Hall on
20 March 29, 2023 at 9:00 am. The record was left open through April 4, 2023 for the
21 City, Applicant and Bethel School District to submit an agreed upon SEPA addendum
22 to address the timing of school mitigation fees and/or associated briefing and/or
23 associated briefing. The public was given until April 6, 2023 to provide a written
24 response and the Applicant until April 10, 2023 to provide a written reply. No response
25 or reply was provided.

26 **Substantive:**

27 3. Site/Proposal Description. Roy Meadows Development Group, LLC
28 requests approval of a preliminary plat and three variances for development of a 79-lot
29 subdivision for a 38.4-acre site located at 29401 SR 507 South. A 3,000 square foot
30 structure exists on-site, which will be removed prior to new construction. Access to
31 the site is proposed via two new roadways extending south from 292nd Street S.

1 The three variance requests are detailed as follows:
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- 3 A. Street Width Variance. Section 2.1.3 of the Street Standards
4 requires neighborhood streets to be at least 28 feet wide. Section
5 2.1.3 requires 7 to 8 feet of that width to be used for parking and ten
6 feet for five-foot sidewalks on both sides of the street. RCC 11-47-
7 4.C also requires sidewalks on both sides of the street. The
8 Applicant requests that the 28-foot requirement be reduced to 24 feet
9 so that the existing 292nd St. 24-foot width can be maintained. The
10 Applicant also requests waiver of the sidewalk and parking
11 requirements.
- 12 B. Cul-de-Sac Variance. Section 2.1.3 of the Street Standards provides
13 that “[c]ul-de-sacs are permitted only when site topography,
14 property configuration or other physical constraints require their
15 use to provide adequate access to portion of a site.” The Applicant
16 proposes to install two cul-de-sacs.
- 17 C. Tree Retention Variance. The Applicant seeks a 60% reduction in
18 the number of trees that the City’s tree retention ordinance, RCC 11-
19 24-10, requires to be planted as a result of the removal of 427 trees
20 that qualify as a significant. RCC 11-24-10 requires the Applicant
21 to plant 2,139 replacement trees and the
22 Applicant proposes to limit that number to 856.

23 4. Characteristics of Area. The site is surrounded by single-family residential
24 development on the north, east and south. The Oakview Heights neighborhood, with
25 about 80 homes, is located to the north. The McKenna Meadows neighborhood, with
over 50 homes, is located to the south. The site borders Chehalis Western Railroad
tracks to the west and further west is SR 507.

5. Adequacy of Infrastructure and Public Services. The project will be served
by adequate infrastructure and public services as follows:

- 21 A. Sanitary Waste. Tacoma Pierce County Health Department has approved on-
22 site sewage disposal for the plat, per George Waun, RS, June 15, 2022. See Ex.
23 22. The lots of the plat will be served with a combination of individual and
24 community drain fields. See Ex. 31,p. 10. The plat includes three open space
25 areas (Tracts B, D, and F) that serve as primary and reserve drain fields.
Concerns were raised that the groundwater level of the project site was shallow,
thus incompatible with septic drain fields. However, septic regulations

1 administered by the Health Department include separation requirements
2 between drain fields and groundwater. See Chapter 246-272A WAC. These
3 regulations are designed to protect groundwater water quality. There is nothing
in the record to suggest these standards are inadequate to protect groundwater
water quality at the project site.

4 B. Water. The City of Roy has issued a Certificate of Water Availability. Tacoma
5 Pierce County Health Department has approved drinking water for the plat, per
Michelle Harris, June 28, 2022. See Ex. 22, p. 2.

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7 Thomas Baker referenced a Seattle Times article noting that Roy’s drinking
8 water is contaminated with PFAC compounds exceeding state mandated levels.
9 Ex. 41. PFAC contamination has been found in one of the City’s two wells.
10 PFAC chemicals cause cancer from what studies referenced in the Times article
11 as “*long term exposure*.” According to the Seattle Times article, the City will
12 be required to notify water customers of the high levels if a second test confirms
13 that the mandated levels are exceeded. According to staff testimony, the EPA
14 is also considering stricter standards that may require further action and it has
issued a draft document on proper treatment. City staff testified that they are
still monitoring the situation because the PFAS levels are fluctuating. Staff are
also working with the state’s Office of Drinking Water to determine what next
steps need to be taken. Staff acknowledged that the regulations under
consideration may require some kind of treatment.

15 Overall, as outlined in the Conclusions of Law below, it must be determined
16 whether the project site will be provided with “appropriate” potable water. As
17 previously noted, the Tacoma Pierce County Health Department has approved
18 the water supply, which it has found to conform to state and federal drinking
19 water standards. State and federal drinking water regulators are well aware of
20 the hazards of PFAS contamination, but have not found it serious enough to
21 mandate immediate treatment or cessation of use. Instead, contaminated waters
22 are allowed to continue to be used, including for new development, as
23 regulations and treatment options are under consideration. There is nothing in
the record to suggest that the state’s approach to addressing PFAS will put new
residents of the project site in any immediate danger of illness or disease for the
time it takes the state and local authorities to address the situation. Ultimately,
in the absence of any evidence to the contrary, the expertise of state regulators
in what is an acceptable level of risk on PFAC contamination prevails as to
what qualifies as an “appropriate” provision of potable water.

24 Mr. Baker also pointed out that the City’s water system suffers from high levels
25 of manganese, which make the water brown and causes staining of household

1 items. Mr. Baker acknowledged that the water has not been rendered unsafe to
2 drink because of the manganese under City testing and there is nothing in the
3 record to otherwise suggest that the manganese is hazardous to health. The City
4 has been attempting to acquire grant funding to filter out the manganese since
5 2017. Given that the manganese is not a health hazard, the water supply is
6 found to qualify as “appropriate” for residential use.

7 Another water concern raised by several people is water pressure. Residents of
8 Oakville Heights feel that their water pressure is at unacceptable low levels and
9 they are concerned that the additional water use and piping added by the
10 proposal will further lower the pressure. However, as testified by the City’s
11 engineer, water pressure is more a function of the elevation of water source and
12 recipient as opposed to number of users. Water supply regulations specify
13 minimum water pressure standards. The water pressure impacts of the new
14 connections associated with the proposal will be modelled to ensure that the
15 water pressure of other users will not be lowered below state mandated
16 standards. Should state standards be violated, measures can be taken to correct
17 the situation. City staff testified that it’s unlikely that the proposal will have
18 any appreciable impact on the water pressure of surrounding residents.

19 C. Parks and Open Space. As proposed, the project will provide for adequate parks
20 and open space.

21 The City has no regulations specifically requiring open space set asides for
22 residential subdivisions. In the absence of evidence in the record clearly
23 establishing the need for open space to mitigate against project demand, generic
24 requirements for open space cannot be imposed upon the Applicant. *See Isla
25 Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wash.2d 740, 755-56
(2002)(City has burden of establishing that open space dedication is reasonably
necessary as a direct result of a proposed development).

Despite the limitations created by the *Camas* ruling, an applicant is always free
to voluntarily dedicate open space. Open space can also result from
conformance to specific development standards, such as tree retention
standards, critical area regulations and utility standards. A significant amount
of open space has been dedicated in this project due to those specific
development standards and possibly voluntary efforts by the Applicant as well.
The preliminary plat includes a 4.94-acre Oregon White Oak Conservation area
(Tract A), and a 4.84-acre open space/wetland/wetland buffer area (Tract C).
Combined recreational/environmental conservation open space totals 10.01
acres, roughly 26.1% of total site area. The plat includes three additional open
space areas (Tracts B, D, and F) that serve as primary and reserve septic drain
fields, an additional open space area (Tract E) that serves as a storm facility,

1 and a cell tower site (Tract G). These additional utility open space areas total
2 3.19 acres, roughly 8.3% of total site area.

- 3 D. Streets and Roads. As conditioned, the proposal provides for adequate and
4 appropriate streets and roads.

5 The City's public works director has determined, as pertinent to the conceptual
6 level of preliminary plat review, the proposed street design complies with the
7 City's Design Standards and Guidelines for Streetscape Elements and RCC
8 Chapter 8-2 Street Construction standards, except for the variances approved
9 by this decision.

10 City staff have also found the proposal to conform to Comprehensive Plan
11 Policy TI. 1, which establishes a congestion level of service (LOS) C for
12 intersections and roadways on arterials and minor streets where they intersect
13 with an arterial street. The applicant's Traffic Impact Analysis (Heath and
14 Associates, June 15, 2022) found that after build-out affected intersections
15 would operate at LOS C during both AM and PM peak hours. However, the
16 study did find that a left turn lane was necessary at the intersection of SR-507
17 S & 292nd Street S under forecast 2027 PM peak hour conditions. The timing
18 and design of the left turn lane will be based upon discussions with WSDOT who
19 has final approval authority on the left turn lane. Construction of the lane is
20 required by the SEPA MDNS.

21 Concerns were also raised about the speed limit at the SR 507/202nd
22 intersection. According to staff testimony, WSDOT will be reviewing the speed
23 limit at the time it is reviewing the need for the left turn lane. WSDOT has final
24 approval authority over the speed limit on SR 507.

- 25 E. Transit Stops. The City of Roy is not currently served by transit, so no
proportional transit mitigation can be required of the developer.

- F. Schools. As conditioned, the proposal makes appropriate provision for schools
and walking conditions to and from school.

The SEPA MDNS requires the Applicant to pay school mitigation fees in the
amount of \$4,440.00 per home, due by the time of home sale to the Bethel
School District. The timing of payment had not yet been resolved between the
District, Applicant and City by the time of hearing. That issue was resolved by
submission of a SEPA addendum after close of the hearing, which was left open
for that purpose.

1 School mitigation arose as an issue when the Bethel School District commented
2 on the SEPA MDNS for the project. The District commented that the proposal
3 would create a significant adverse impact on the District 's ability to house its
4 students. The District identified that the Oakview Plat would generate 27 more
5 elementary students at Roy Elementary School and 11 more high school
6 students Bethel High School, directly. Both schools are already at over-
7 capacity.

8 To accommodate the additional elementary and high school students generated
9 by the proposal, the District must provide temporary housing through the
10 acquisition and siting of additional portable classrooms. The District has
11 calculated a sum of \$7,115.00 per lot as the pro rata share of the cost per student.

12 The District proposed to address the impact created by the Oakview Plat in the
13 same fashion as other developments of typical residential development within
14 the jurisdictional boundaries of Pierce County. The District has identified the
15 appropriate payment amount from the Applicant as \$4,440.00 per lot for single-
16 family residential development based upon the current Growth Management
17 Impact Fee amount assessed within unincorporated Pierce County. This amount
18 represents a 38% reduction from the District's calculated cost of housing each
19 student generated by the Oakview Plat within new portable classrooms at two
20 overcapacity schools, namely Roy Elementary School, and Bethel High School.

21 The \$4,400 mitigation fee was imposed by the City as an MDNS mitigation
22 measure. The timing of payment was originally required prior to building
23 permit issuance. However, after the close of the public hearing on March 22,
24 2023 the City, Applicant and District submitted a SEPA addendum that
25 extended the payment date to closing date of home sale or 18 months after
issuance of building permit, whichever is later.

The proposal provides for safe walking conditions to and from school. As
required by the conditions of approval, the applicant will install a school bus
stop at the Oakview Plat's easternmost internal street intersection at 292nd
Street South. Oakview students riding a school bus to or from a District school
will be picked up or dropped off at this bus stop. The proposed plat design
includes sidewalks on all internal streets. The applicant has requested a major
variance to eliminate the requirement for a sidewalk on the south side of 292nd•
Students walking to and from Roy Elementary would travel approximately 0.9
to 1.3 miles each direction.

G. Police and Fire. The plat will be served by Roy City Police and South Pierce
Fire and Rescue District.

1 6. Adverse Impacts. As conditioned, there are no significant adverse impacts
2 associated with the proposal. A modified Mitigated Determination of Non-
3 Significance (MDNS) was issued on February 23, 2023. Condition 9 of the MDNS,
4 mitigating school impacts, was revised in a SEPA addendum issued April 4, 2023. As
5 discussed in Finding of Fact No. 5, as conditioned, the proposal provides for adequate
6 infrastructure and is served by adequate public services. Specific issues are as follows:

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8 A. Critical Areas. The proposal adequately mitigates impact to critical areas.
9 Protection of the critical areas conforms to the City's critical areas ordinance
10 and for that reason is found to adequately protect those environmental
11 resources.

12 The SEPA checklist identifies the only environmentally sensitive area of the
13 site as a Class III wetland. See Ex. 11, Section II9h. The site has also been
14 assessed for the presence of state protected Oregon White Oak and federally
15 protected Mazama pocket gopher. The Oak have not been found to meet the
16 criteria for protection and the gopher are not currently present. These issues and
17 geologically hazardous areas are addressed in more detail as follows:

18 1. Wetlands. The applicant has submitted a Wetland Delineation and
19 Habitat Conservation Areas Assessment (Habitat Technologies, March
20 30, 2022) that identifies a single wetland at the southeastern portion of
21 the project site. The assessment classifies the wetland as a Category III
22 wetland, which is subject to a standard buffer width of 105 feet
23 measured perpendicular from the wetland boundary. The wetland and
24 its buffer will be separated from the rest of the plat development in Tract
25 C. The wetland buffer would be separated from the nearest residential
lots and developed area of the plat by approximately 420 feet of open
space within conservation Tract C. This non-wetland/buffer portion of
Tract C would be heavily planted with replacement trees. No specific
measures to protect or enhance the wetland or buffer are required or
warranted.

2. Mazama Pocket Gopher. Federally protected pocket gophers have been
observed at the project site more than ten years ago but not since then.
The State of Washington Priority Habitats and Species (PHS) Mapping
identified the occurrence of a Mazama pocket gopher within the
southwestern portion of the project site. The gopher is a federally listed
threatened species. The Applicant submitted a wetlands and habitat
assessment, Ex. 30, prepared by Habitat Technologies, a specialist in
environmental permitting. The report concluded that the gopher had
been identified at the site from 2008-2012, but more recent assessments
did not identify the gopher within the project site.

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The most recent evaluation for the presence of gophers was made in 2018. Comments at the hearing suggested that a more recent evaluation should have been made. However, the gopher assessment was made by a qualified professional and part of the basis for concluding that a more recent visit was not necessary is because the project site has become unsuitable for gopher habitat due to the presence of moles and invasive plant species. Given these factors, the preponderance of evidence establishes that gophers are not longer present at the project site.

3. Oregon White Oak. Oregon White Oak are subject to protection as state priority habitat if they meet criteria set by the Washington State Department of Fish and Wildlife. The applicant's Biological Assessment, Ex. 39, assesses the Oregon White Oak trees on and in the vicinity of the project site. The study concludes that although some oak stand characteristics meet some of the criteria for priority habitat, the stands do not qualify due to (1) the lack of oak trees that are 20 DBH and larger and showing signs of decadence; and (2) the presence of invasive blackberry. Although the oak will not be protected as a critical area, they will still be protected as significant trees under the City's tree retention standards, as discussed below.

4. Geologically Hazardous Areas. As previously noted, the SEPA checklist identifies wetlands as the only environmentally sensitive part of the project site. Geological hazardous areas are considered environmentally sensitive, so the checklist is construed as providing that no geologically hazardous areas are contained within the developed portion of the project site. The SEPA checklist notes that a portion of the project site has 40% slopes, which would normally be considered geologically hazardous areas. However, these areas are outside the developable area per Section IIIf of the checklist. The absence of geological hazardous areas is consistent with the geotech report prepared by the Applicant. Th geotechnical report was not submitted into the record. However, as summarized in Section III d of the checklist, the project site has exhibited no evidence of significant surficial erosion active soil movement, active landslide activity, or deep-seated slope instability

B. Drainage. No adverse impacts from storm drainage are anticipated because the proposal will be made to conform to detailed stormwater standards formulated by the Washington State Department of Ecology.

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RCC 10-6A-10A adopts the latest edition of the Ecology’s Stormwater Management Manual. These standards are periodically updated to include “*all known available and reasonable methods of treatment, prevention and control.*” (AKART; RCW 90.52.040 and RCW 90.48.010). The Applicant has submitted a preliminary drainage report, Ex. 31, which is prepared by a stormwater engineer and applies those standards as necessary for the preliminary plat stage of development review, i.e. ensuring that subdivision design can appropriately accommodate stormwater requirements. Most significantly, the stormwater standards require that off-site flows generated by the proposal do not exceed pre-development, forested conditions. The standards also include strict requirements for water quality treatment. To comply with these standards, most of the drainage from the developed plat will be collected by catch basins and conveyed to an infiltration pond located along the western boundary of the site (Tract E) for water quality/quantity control.

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C. Tree Retention. The proposal is found to adequately mitigate for removal of trees by its conformance to the City’s tree retention ordinance, as modified by the Applicant’s approve tree retention ordinance variance. As this Finding of Fact addresses adverse impacts, the analysis of this sub-finding is limited to the impacts of the requested reduction in required tree replacement.

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The City’s tree retention standards require retention of trees that qualify as significant. RCC 11-24-10A defines trees as significant that are “*[h]ealthy evergreen or deciduous trees that have a minimum caliper of 12 inches dbh, and Garry Oak, a/so known as Oregon White Oak, which have a minimum caliper of 9 inches dbh.*” RCC 11-24-10B requires retention of significant trees to the extent practicable.

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RCC 11-24-10F provides replacement ratios for the removal of significant trees. The ratios are based on the size and type of significant trees being removed and in some instances the size and type of replacement tree. The code’s minimum tree replacement ratio table provides the applicant with latitude to plant fewer larger trees or additional smaller trees to achieve the same tree replacement goals.

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The Applicant’s tree retention variance application states that 427 significant trees would be removed from the site, triggering a requirement for replacement with either a mixture of 1,923 large and small trees or 2,139 small trees. The Applicant requests a 60% reduction in the number of required replacement trees. This would result in a replacement requirement of either a mix of 769 large and small trees or 856 small trees.

1 Bradley Design Group, Inc. has prepared a preliminary tree replacement plan
2 that shows the types and locations where replacement trees could be planted.
3 The plan calls for 671 deciduous trees and 185 conifers (856 total) to be planted
4 within the Oregon White Oak Conservation area (Tract A), the wetland buffer
5 in Tract C, rear yards, and as street trees within the street ROWs. There may be
6 additional planting opportunities available on-site, including within allowable
7 building setbacks, but these are likely limited due to potential conflicts with
8 septic drainfields and utilities, and other physical constraints. City staff believe
9 the preliminary tree replacement plan represents a reasonable assessment of on-
10 site tree planting capacity.

11 Overall, it is difficult to quantify whether the proposed reduction in required
12 replacement trees will be significantly adverse or materially detrimental to the
13 public or environment. As noted in the staff report, 26.1% of the project site,
14 10.1 acres, will be dedicated to recreational/environmental conservation open
15 space. The removal of 427 significant trees is off-set by the retention of 430
16 healthy significant trees and the planting of 856 small trees. The primary
17 purposes for tree protection as outlined in RCC 11-24-1 are aesthetics,
18 stormwater mitigation, privacy and habitat protection. Stormwater impacts are
19 comprehensively and effectively addressed by the City's stormwater standards.
20 The extensive amount of open space and large number of retained and
21 replacement trees reasonably assures aesthetics, privacy and habitat protection.
22 Given these factors and the fact that the total amount of on-site trees will
23 increase as a result of the development, in the absence of any contrary evidence
24 it is concluded that proposed replacement tree reduction will not create any
25 significant adverse impacts or be materially detrimental to the public.

7. Variance Findings. Findings pertinent to the three variance requests are made as follows;

A. Street Width Variance. As detailed below, most factual findings necessary to support the street width variance are supported by the record, except that waiving the requirement to install a sidewalk would be detrimental to public welfare and is not necessary to support a substantial property right:

i. Special Circumstances. The existing 24-foot width of the 292nd road segment under review, the 24-foot width of the road segments that connect to it and the proximity of Oregon White Oak that could potentially be damaged by any street widening all qualify as special circumstances for the property that differ from other properties.

1 ii. Substantial Property Right. The granting of a variance to the
2 requirement for a sidewalk is not necessary for the preservation
3 and enjoyment of a substantial property right possessed by other
4 property in the same vicinity. The Applicant correctly identifies
5 in its variance application that there are not sidewalks on the
6 portions of 292nd connecting to it on both ends. However, the
7 staff report notes that other streets in the vicinity have been
8 developed with sidewalks, including 295th Street South. The
9 staff report was written by the City's works director, who
10 presumably is very familiar with the City's street system.

11 The waiver of street width, parking and sidewalk design
12 standards (excluding sidewalk width) to accommodate winter
13 snow parking is found necessary to protect a substantial property
14 right. Without the sidewalk design waiver, the Applicant would
15 have to include additional width for on-street parking to
16 accommodate winter snow parking. In conjunction with a
17 requirement for sidewalks this would necessitate a significant
18 encroachment into the adjoining oak¹ trees, which in turn would
19 add to the Applicant's substantial burden to replace trees. The
20 staff report, written by the public works director, notes that
21 approving the road width variance (excluding sidewalk
22 installation) would allow the development and use of the
23 property in a manner consistent with how similar neighborhoods
24 are configured and used.

25 iii. Not Detrimental to Public Welfare. Approval of the street width
variance would be detrimental to the public welfare to the extent
that the sidewalk requirement would be waived. Waiver would
jeopardize the safety of surrounding residents. 292nd forms part
of a looped road system with the internal roads of the proposal.
It is reasonable to conclude that numerous residents of the
proposal as well as those of Oakville Heights would take
advantage of those roads to exercise and enjoy the heavily treed
aesthetics of the project area and vicinity. In its application the

¹ It's unclear from the record how much additional area would be necessary to install sidewalks. As noted in the staff report, travel lanes need only be ten feet wide. If all the remaining pavement of the 24 foot paved 292nd is used for sidewalks, then the paved area would only need to be expanded an additional foot to accommodate five foot sidewalks. As shown in Attachment 2 to the Applicant's Tree Protection Plan, Ex. 32, an additional foot of pavement is unlikely to require the removal of any significant trees. However, if an additional 8 feet is added for parking, there are numerous trees shown in Attachment 2 that likely would be affected by such an expansion.

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Applicant identifies that downtown Roy services are located a mile from the project area. That distance is not a barrier to bored teenagers without a driver's license or physically active residents who wish to eschew the use of their vehicle in favor of some modest exercise.

Waiver of the parking and width requirements would not otherwise be detrimental to the public welfare or injurious to other properties except under winter conditions. As noted in the staff report, homes will only front one side of the street so there will not be a demand for street parking as would be associated with streets that have frontage on both sides. Further, since the Applicant is not adding homes with street frontage on 292nd, it is likely not adding to any need for parking on 202nd. Since on-site parking is not necessary, it follows that the additional four foot width required by City standards is also not necessary for the road. The 24-foot width of the currently existing road is more than enough to accommodate the two ten foot wide lanes of travel currently required by City street standards.

The absence of on-street parking could be detrimental to public welfare during winter conditions. The 292nd street segment under review has a grade of up to 12.77%. The City's police chief testified that during winter snow Oakview Heights residents park their vehicles at the bottom of this grade. Especially with the added traffic caused by the proposal, this could result in parked vehicles blocking the roadway. This situation can be ameliorated by waiving some of the design standards for the sidewalk area so that it can be used for parking during snow events.

The staff report already acknowledges that it would be appropriate to alter design standards to allow for more impervious surfaces and to retain rural character. These same considerations can also be used to assure safe parking during winter snow events. Sidewalk design standards are waived to the extent staff finds appropriate to protect significant trees, rural character and safe parking for winter snow events, provided that the sidewalk shall be at least five feet in width to the extent practicable. It is anticipated that staff will be fairly liberal in waiving the planter strip requirements as needed to accommodate winter parking (at least at the base of the hill) as well as to avoid having to remove significant trees.

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The waiver of sidewalk design standards other than width is not found to be detrimental to public welfare. The primary necessity for the sidewalk is to separate pedestrian traffic from vehicular traffic. If staff finds it reasonable to waive sidewalk design standards to preserve rural character and/or protect significant trees, no significant impacts to public welfare are apparent.

iv. Unnecessary Hardship. Except for the requirement for a sidewalk, the street widening requirements (including sidewalk design other than width) create unnecessary hardship. As previously noted, the parking and hence the required 28-foot street width is not necessary because there will not be any homes fronting on the south side of 292nd. Consequently, the width and parking requirements are not necessary and it is an unnecessary hardship to require the Applicant to add pavement to an already existing road for that purpose.

The requirement for a sidewalk would not create an unnecessary hardship or practical difficulty. The sidewalks are a necessary hardship because they are necessary for public safety. They do not create a practical difficulty because as noted in the staff report their accommodation will not result in a significant loss of significant trees and sidewalks are a common feature of other developments in the vicinity. The hardships addressed by the street width variance are not attributable to the owner, but rather a function of the pre-existing road, adjoining road network and proximity of significant trees.

B. Cul-de-Sac Variance. As detailed below, all factual findings necessary to support the cul-de-sac variance are supported by the record:

i. Special Circumstances: The presence of a substantial number of significant trees (Oregon White Oak) when combined with steeply sloping topography in this portion of the site qualify as special circumstances. Because of those factors, a looped road system would either necessitate the removal of a significant number of trees or significantly reduce the development potential of the site.

ii. Substantial Property Right: Requiring a loop street in this location would eliminate numerous additional significant trees or result in the loss of multiple homesites. According to the

1 Public Works Director in the staff report, the use of a cul-de-sac
2 design in this location would be consistent with how adjacent
3 neighborhoods are served by cul-de-sac streets

4 iii. Materially Detrimental. The granting of the variance will serve
5 the public welfare and reduce adverse environmental impacts by
6 reducing the number of trees that must be removed. As noted in
7 the staff report, the use of cul-de-sacs as proposed meets City
8 emergency access standards, which means they do not present a
9 safety hazard. Given the lack of adverse impacts and the
10 environmental benefits served by use of the cul-de-sacs, the
11 proposal will not be materially detrimental to the public welfare
12 or injurious to other properties or improvements.

13 iv. Unnecessary Hardship. Requiring a loop street in this location
14 would eliminate numerous additional significant trees or result
15 in the loss of multiple homesites without any significant public
16 benefit - each of which would be a practical difficulty or
17 unnecessary hardship for the property owner. This hardship is
18 not caused by the owner.

19 C. Tree Retention Variance: As detailed below, all factual findings
20 necessary to support the cul-de-sac variance are supported by the record:

21 i. Special Circumstances: The stand of Oregon White Oak is
22 unique in Roy in terms of the large area it covers and the
23 concentration of a large number of trees.

24 ii. Substantial Property Right: Retaining the number of trees
25 required by the City's tree retention ordinance will significantly
reduce the number of lots that can be created for the site,
significantly reducing the development potential of the project
site compared to other parcels in the City. The presence of a
substantial number of significant trees (Oregon White Oak)
makes it difficult to construct a sizable number of lots without
removing a large number of trees. Replacement of trees at the
level required by code is not physically possible on the site as
there is insufficient room to accommodate them. The public
works director notes in the staff report that other properties in
the City are not faced with this tradeoff to the same extent.

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- iii. Materially Detrimental. The requested reduction in required replacement trees will not be materially detrimental to the public welfare for the reasons identified in Finding of Fact No. 6C.
 - iv. Unnecessary Hardship. Strict enforcement would require the installation of a mix of 1,923 large and small trees or 2,139 small trees, whereas the site can only physically support a mix of 769 large and small trees, or 856 small trees. The Applicant would need to pay a cost-prohibitive in-lieu fee to the city for the trees if it was unable to plant or it would need to substantially reduce the number of platted lots, thereby impacting project viability. Given the finding above that reduction in the number of required trees would not be materially detrimental, the substantial burden placed on the Applicant for full compliance would serve as an unnecessary hardship. That hardship is not created by the Applicant, but rather attributable to the unusual number of White Oak located upon the project site.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. RCC 11-4-3 Table A as recently amended by Ordinance No. 1008 classifies preliminary plat applications as a Type III-A application. RCC 11-4-3 Table B requires the hearing examiner to hold hearings and issue final decisions for Type III-A applications. A footnote to Table B identifies that appeals of the examiner decision for preliminary plats is appealable directly to superior court.

Substantive:

2. Zoning Designation. The property is zoned Single Family Residential (SFR).

3. Review Criteria and Application. The review criteria for preliminary plat applications are governed by RCC 11-43-4 and for variances are governed by RCC 11-32-3. Those standards are quoted in italics below and applied via corresponding conclusions of law.

Preliminary Plat

RCC 11-43-4A: *The preliminary plat conforms to Chapter 11-46, General Requirements for Subdivision Approval.*

1 5. The criterion is met. Conformance to 11-46 for preliminary plat review is limited
2 to conforming to the City’s zoning code and comprehensive plan as required by RCC
3 11-46-1. Those provisions, coupled with approval of the variances and conditions of
4 approval, are met for the reasons outlined at pages 5-13 of the staff report.

5 One point of departure from the staff report analysis of regulatory compliance is the
6 staff report’s conclusion that the Applicant’s requests to waive cul-de-sac requirements
7 (as detailed in Finding of Fact No. 3) necessitates a variance. That is arguably not the
8 case. The cul-de-sac standard already includes an imbedded exception for which the
9 project arguably qualifies, specifically, Section 2.1.3 of the Street Standards provides
10 that “[c]ul-de-sacs are permitted only when site topography, property configuration
11 or other physical constraints require their use to provide adequate access to portion of
12 a site.” As determined in Finding of Fact No. 7Bi, the cul-de-sacs are necessary to
13 avoid the further elimination of a large number of Oregon White Oak from the project
14 site. In this regard, the need to preserve as many White Oak as possible arguably
15 qualifies as a “physical constraint” of the project site and for that reason cul-de-sacs
16 instead of a looped network are necessary to provide internal access to all plat lots.
17 Despite this fairly solid basis for approving the cul-de-sacs, this Decision also includes
18 an approval of the requested cul-de-sac variance as a conservative belt and suspender
19 approach since the request squarely meets the variance criteria as well.

20 **RCC 11-43-4B:** *Appropriate provisions are made for, but not limited to, the public
21 health, safety and general welfare, for open spaces, drainage ways, streets or roads,
22 alleys, other public ways, transit stops, potable water supplies, sanitary wastes, power,
23 parks and recreation, playgrounds, schools and school grounds, and for sidewalks and
24 other planning features that assure safe walking conditions for students who walk to
25 and from school.*

6. The criterion is met for the reasons identified in Finding of Fact No. 5.

RCC 11-43-4C: *The public interest will be served by the subdivision and/or
dedication.*

7. The public interest is served by the proposed subdivision since it accommodates
urban growth in an urbanized area as encouraged by the Washington State Growth
Management Act, allows for reasonable use of land, doesn’t adversely affect the
environment or surrounding uses as identified in Finding of Fact No. 6 and will be
served by adequate and appropriate infrastructure as determined in Finding of Fact No.
5.

Variances

1 **RCC 11-32-3A:** *There are special circumstances applicable to the subject property*
2 *or to the intended use such as size, shape, topography, location, or surroundings that*
3 *do not apply to other property or class of use in the same vicinity and zoning*
4 *classification.*

5 8. The criterion is met for all three variance applications for the reasons identified in
6 Findings of Fact No. 7Ai, Bi and Ci.

7 **RCC 11-32-3B:** *The variance is necessary for the preservation and enjoyment of a*
8 *substantial property right or use that is possessed by other property in the same vicinity*
9 *and zoning classification but denied to the subject property because of special*
10 *circumstances.*

11 9. The criterion is met for all three variance applications except as to the requested
12 waiver of installing a sidewalk, as determined in Finding of Fact No. 7Aii, Bii and Cii.

13 **RCC 11-32-3C:** *The granting of the variance will not be materially detrimental to*
14 *the public welfare or injurious to property or improvements in the vicinity and zoning*
15 *classification in which the subject property is located.*

16 10. The criterion is met for all three variance applications except as to the requested
17 waiver of installing a sidewalk, as determined in Finding of Fact No. 7Aiii, Biii and
18 Ciii.

19 **RCC 11-32-3D:** *Strict enforcement of the provisions of this title would create a*
20 *practical difficulty or unnecessary hardship for the property owner.*

21 11. The criterion is met for all three variance applications except as to the requested
22 waiver of installing a sidewalk, as determined in Finding of Fact No. 7Aiv, Biv and
23 Civ.

24 **RCC 11-32-3E:** *The practical difficulty or unnecessary hardship has not been created*
25 *by the owner or by a predecessor in title. (This finding does not apply if the zoning*
classification for the property has changed and the difficulty or hardship was created
solely as a result of the reclassification.)

12. The criterion is met for all three variance applications except as to the
requested waiver of installing a sidewalk, as determined in Finding of Fact No. 7Aiv,
Biv and Civ.

RCC 11-32-3F: *The granting of the variance will be consistent with the purpose and*
intent of the zoning classification and the comprehensive plan land use designation of

1 *the subject property and will not conflict with other applicable codes, design*
2 *guidelines, and comprehensive plan goals and policies.*

3 13. The criterion is met for all three variance applications as follows:

4 Street Width Variance: With respect to the road width variance request, the requested
5 variance would be consistent with the purpose and intent of the single- family
6 residential zoning designation of the property and would allow its reasonable,
7 productive development in a manner that does not unnecessarily cause the removal of
8 trees, which is another value protected by the City's development regulations. With
9 respect to installation of a sidewalk, the requested variance is inconsistent with the
10 various policies and goals of the Comprehensive Plan that promote pedestrian
11 movement and safety and specifically encourage sidewalks.

12 Tree Retention Variance: The Comprehensive Plan and Land Development Code each
13 support the development of housing to help meet the current and projected demand.
14 They also each support the retention of significant trees to the extent practicable.
15 Granting of the variance will balance these competing goals and objectives in a manner
16 consistent with the purpose and intent of the SFR zoning classification and the LDR
17 comprehensive plan land use designation for the subject property.

18 Cul-de-sac Variance: The Comprehensive Plan and Land Development Code each
19 support the development of housing to help meet the current and projected demand.
20 Granting of this variance will support additional housing construction beyond what
21 would be possible under strict application of the code. The resulting street design will
22 meet all other applicable street design standards and guidelines except as otherwise
23 approved by the variances granted by this Decision.

24 **DECISION**

25 The proposed preliminary plat design as depicted in Ex. 24 and 25 and the three
variances as identified in Finding of Fact No. 3, are all approved as conditioned below,
excepting that the sidewalk variance is limited as further described in Condition 10
below:

1. The proposed utility plans that have been provided by the applicant provide an
overall scheme but will need more detail prior to final plat approval. Utility plans for
final plat approval will need to be at a scale no smaller than 1 inch equals 50 feet with
profiles for all utilities. The utilities will need to meet or exceed applicable City
standards. Final utility design will need to include details showing that the design will
meet City standard details.

1 2. The applicant's Preliminary Drainage Report (March 11, 2022) will need to be
2 updated as the design of the development including individual lots occurs. Without
3 limitation of the foregoing, the Preliminary Drainage Report indicates that some
4 portion of the runoff would be infiltrated at each home site via individual roof
downspout infiltration trenches. This should be quantified and included in the analysis
of the final report including the final sizing calculations for the stormwater pond and
conveyance system.

5 3. The applicant's proposed stormwater system appears to be schematic in plan view.
6 Profiles for each stormwater alignment may reveal a need for more catch basins where
7 slopes change or other conditions dictate. Conveyance calculations for the stormwater
system will need to be included to ensure it is adequately sized.

8 4. More detail will need to be furnished for the storm pond including pond cross
9 sections, emergency overflow detail, and stormwater facility sizing calculations.
10 Details on maintenance facilities will need to be provided along with an O&M plan. A
Stormwater Pollution Prevention Plan will need to be included with the final plat
submittal.

11 5. The applicant's proposed water system as shown may also need some modification
12 in the final design. Waterline profiles may show the need for additional accessories
13 such as air release valves at local high points. In addition, connecting the ends of the
14 two waterlines aligned in the cul-de-sacs to form a loop may be required to meet fire
flow requirements.

15 6. Pursuant to RCC 11-46-4, construction of all improvements shall comply with the
16 City's adopted public works construction standards and subdivision improvement
17 standards, including without limitation the requirements set forth at Chapter 11-47
RCC.

18 7. The applicant shall comply with all conditions of the MDNS issued for the project
19 in addition to the April 4, 2023 MDNS addendum.

20 8. The applicant shall comply with all applicable requirements, standards and
procedures set forth in the Roy City Code and the City's adopted, plans and policies.

21 9. The Applicant shall install a school bus stop at the location designated in Ex. 15.

22 10. The Applicant's request for approval of a variance to the requirement for a sidewalk
23 along 292nd is only granted in part. Sidewalk design standards are waived to the extent
24 staff finds reasonable to protect significant trees, rural character and safe parking for
winter snow events, provided that the sidewalk shall be at least five feet in width to the
25 extent practicable.

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11. Prior to final plat approval the Applicant shall install a school bus stop at the location specified in Ex. 15.

Dated this 17th day of April, 2023.



Phil A. Olbrechts
City of Roy Hearing Examiner

Appeal Right, Reconsideration and Valuation Notices

This land use decision is final and subject to appeal to superior court as governed by Chapter 36.70C RCW. Appeal deadlines are short, and procedures strictly construed. Anyone wishing to file a judicial appeal of this decision should consult with an attorney to ensure that all procedural requirements are satisfied.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.