

POULSBO DISTRIBUTION SCHEDULE

RESOLUTION NO. 2020-16

SUBJECT: Vanaheimr Appeal Denial

CONFORM AS TO DATES & SIGNATURES

- ☒ Filed with the City Clerk: 06/30/2020
- ☒ Passed by the City Council: 07/08/2020
- ☒ Signature of Mayor
- ☒ Signature of City Clerk
- ☐ Publication: _____
- ☐ Effective: _____

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Rhiannon Fernandez

City Clerk

07/10/2020

Date

RESOLUTION NO. 2020-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DENYING THE APPEAL BY CYNTHIA BAKER, OF THE HEARING EXAMINER DECISION REGARDING VANAHEIMR MIXED USE BUILDING SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT AND SITE PLAN APPROVAL

WHEREAS, on November 18, 2019, the Poulsbo Hearing Examiner issued Findings, Conclusions and Decision on the Vanaheimr Shoreline Substantial Development Permit (SSDP) and Site Plan application, approving the application subject to conditions (the "Hearing Examiner decision") and identifying parties of record may file a written request with the hearing examiner for reconsideration; and

WHEREAS, on December 1, 2019, Cynthia Baker filed a timely Request for Reconsideration to the Poulsbo Hearing Examiner of his decision on the Vanaheimr SSDP and Site Plan application; and

WHEREAS, on December 5, 2019, the Poulsbo Hearing Examiner issued a Short Order inviting parties of record to submit written responses to the reconsideration request; and

WHEREAS, on December 12, 2019, three City departments provided written responses to the Request for Reconsideration to Hearing Examiner and no other parties of record provided written responses; and

WHEREAS, on December 30, 2019, the Hearing Examiner issued an order denying the Request for Reconsideration; and

WHEREAS, on December 30, 2019, the City Planning and Economic Development issued a Notice of Decision on the Vanaheimr SSDP and SPR, indicating the project has been approved by the Poulsbo Hearing Examiner; and

WHEREAS, the Hearing Examiner decision is a Type III decision; and

WHEREAS, pursuant to section 19.70.020 of the Poulsbo Municipal Code a Type III Hearing Examiner decision is appealable to the Poulsbo City Council; and

WHEREAS, Cynthia Baker ("Appellant"), submitted a timely appeal on January 13, 2020 of the Hearing Examiner decision along with the required appeal fee and issues of appeal; and

WHEREAS, on February 24, 2020, the Hearing Examiner Record was transmitted to the Poulsbo City Council; and

WHEREAS, on March 4, 2020, the City received appeal briefs from the City Departmental Staff/Hearing Examiner's Legal Counsel and the Applicant's Legal Counsel responding to Appellant Baker's appeal issues which were forwarded to the City Council; and

WHEREAS, an appeal proceeding was scheduled for March 18, 2020, and the City provided written notice of the Notice of Closed Record Appeal Proceeding to the parties of record on March 3, 2020; and

WHEREAS, due to COVID-19 and the Governor's Stay Home, Stay Healthy Proclamation, the March 18, 2020 Appeal Proceeding was rescheduled to May 13, 2020, and the City provided written notice of the Notice of Closed Record Appeal Proceeding to the parties of record on April 28, 2020; and

WHEREAS, due to COVID-19 and the phased approach to Governor Inslee's reopening of Washington State, the May 13, 2020 appeal proceeding was rescheduled to June 24, 2020; and

WHEREAS, the City provided written notice of the Notice of Closed Record Appeal Proceeding to the parties of record on June 9, 2020; and

WHEREAS, on June 24, 2020, the City Council held the Closed Record Appeal Proceeding virtual due to Governor Inslee's phased approach to reopen Washington and that Kitsap County was not yet approved for Phase 3; and

WHEREAS, the City Council received oral arguments from Appellant Baker, Applicant Legal Counsel, and City Departmental Staff/Hearing Examiner Legal Counsel; and

WHEREAS, at the conclusion of oral arguments and deliberation, the Poulsbo City Council issued its preliminary decision, to be made final by this resolution;

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON,
DO RESOLVE AS FOLLOWS:**

Section 1. **Jurisdiction.** Section 19.70.020 of the Poulsbo Municipal Code provides that the Poulsbo City Council shall hear appeals of Type III decisions by the Hearing Examiner in a closed record proceeding.

Section 2. **Decision.** After consideration of the record before the Hearing Examiner, the legal submittals of the parties, and the oral argument provided by Appellant Cynthia Baker, Katie Kendall counsel for Applicant, and James Haney counsel for City Departmental Staff/Hearing Examiner, the Poulsbo City Council hereby concludes that the Appellant did not prove that a preponderance of the evidence demonstrates the Hearing Examiner erred in his decision, or was clearly erroneous in approving the Vanaheimr Shoreline Substantial Development Permit and Site Plan. Therefore, the City Council hereby upholds the Hearing Examiner's decision in its entirety.


Section 3. **Findings and Conclusions.** In support of the City Council's decision, the City Council adopts the Findings of Fact and Conclusions of the Hearing Examiner, set forth in the Hearing Examiner decision dated November 18, 2019, and the Hearing Examiner's Order Denying

Reconsideration dated December 30, 2019, both attached hereto as Exhibit "A" and incorporated herein by reference.

Section 4. **Appeal to Shoreline Hearings Board.** The City's final decision on this application may be appealed by filing a petition for review by the Shoreline Hearings Board. Any such petition for review must be filed within the prescribed deadline, as provided in 90.58 RCW and 461-08 WAC, and the petition must meet all requirements as set forth in the statute.

RESOLVED this 8th day of July, 2020.

APPROVED:


DEPUTY MAYOR JEFF MCGINTY

ATTEST/AUTHENTICATED:


CITY CLERK RHIANNON FERNANDEZ

FILED WITH THE CITY CLERK: 06/30/2020
PASSED BY THE CITY COUNCIL: 07/08/2020
RESOLUTION NO. 2020-16

EXHIBIT A
to Resolution denying appeal of Hearing
Examiner Decision on the Vanaheimr SSDP
and Site Plan

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

In the Matter of the:
**Vanaheimr Mixed Use Building
Project** – Consolidated Site Plan
Review and Shoreline Substantial
Development Permit Application:

**MIKE BROWN / SOUND WEST
HOLDINGS, INC., APPLICANT**

LOCATION: 367 NE HOSTMARK STREET, IN THE CITY
OF POULSBO, WA, ZONED COMMERCIAL/C-1
DOWNTOWN IN THE SOUTHEAST CORNER WHERE FJORD
DRIVE/4TH AVENUE INTERSECTS WITH HOSTMARK/
FRONT STREET, UPHILL FROM LIBERTY BAY, THE
POULSBO MARINA, AND COMMERCIAL SHOPS AND
BUSINESSES THAT RUN ALONG FRONT STREET.

**ORDER DENYING
REQUEST FOR
RECONSIDERATION**

I. BACKGROUND.

On November 18, 2019, the undersigned Hearing Examiner issued a Decision approving the above-named applicant's consolidated site plan review and shoreline substantial development permit application for the Vanaheimr Mixed Use Building project. On December 2, 2019, Cynthia L. Baker, a local resident who lives at 18750 Fjord Drive but did not appear at the public hearing, submitted a request for reconsideration of such Decision. In accord with City practices, the Hearing Examiner's designated staff clerk forwarded Ms. Baker's reconsideration request to the Examiner before close of business on the same date. Upon reviewing the Requesting Party's (Ms. Baker's) submittal, the Examiner issued a short Order on December 5th, inviting parties of record to submit written responses to the reconsideration request by no later than December 12th. Three city officials/departments submitted written materials opposing reconsideration, in the form of memos and materials transmitted to the Examiner on December 12th by the designated clerk from the Planning and

**ORDER DENYING REQUEST FOR
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1 Economic Development Department, the Engineering Department, and the City Attorney's
2 Office. No other parties of record offered any response to the reconsideration request. In the
3 responses received, no one challenged the request based on timeliness or other procedural
4 grounds, like her possible failure to serve the written request on all other parties of record.
5 On December 13th, staff forwarded additional materials offered by the Requesting Party,
6 which appear to focus on the timeliness and other possible procedural defects in her
7 reconsideration submittal [NOTE: Because no one challenged the pending reconsideration
8 request based on how it was submitted or served on other parties, the Requesting Party's last
9 submittal is moot, and neither supports or undermines her pending request. This Order is not
10 based on procedural defects associated with how Ms. Baker submitted or distributed her
11 reconsideration request.] Copies of all materials referenced above are on file with the City
12 and shall be maintained as part of the record for this matter.

13 II. DISCUSSION.

14 The pending request for reconsideration continues arguments and refers to materials
15 that were available or could have been presented by project opponents at the time of the
16 hearing, dealing with topics and issues that were fully discussed and explored as part of the
17 hearing process based on sworn testimony from hearing witnesses, including several local
18 residents with personal view-impact concerns and other opposition arguments that appeared
19 to be skewed by self-interest and unsubstantiated claims of possible significant adverse
20 environmental impacts. The request for reconsideration merely seeks to repeat the same
21 arguments and unfounded opposition claims. It also mischaracterizes the Decision on several
22 issues, ignoring facts and credibility determinations that the Requesting Party does not appear
23 to accept. Finally, it includes a request for political relief, in the form of changes to zoning
24 and development regulations, or the application thereof, or changes to a purchase and sale
25 agreement, which the Requesting Party finds to her liking. The Examiner is without authority
26 to rewrite zoning codes, height limits, development regulations, or real estate transactions
that were fairly and impartially applied or considered with respect to the project application
at hand.

Local residents who expressed concerns similar to those raised by the Requesting
Party diligently and earnestly expressed their personal concerns about the project at the
hearing and in written comments submitted throughout the review process. Requests for
Reconsideration are not an opportunity for an absentee-opponent to submit a written
statement in the hopes that the same message provided by others at a public hearing is more
persuasive if offered in writing. Witness credibility matters, and it is closely linked to the
witness her/himself and their own testimony, candor and demeanor at a given hearing. The
Request for Reconsideration is not based on any sworn testimony, certified records, or other
evidence that is more persuasive, credible, or reliable than that already included in the record
created during the hearing process, upon which the challenged Decision approving the
Shoreline permit and site plan review was based.

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1 The bulk of the reconsideration request focuses upon perceived adverse view impacts
2 that Ms. Baker dislikes if the project moves forward. Washington case law is very clear that
3 there is no view protection in common law; nor are general views, from uphill properties
4 down toward the waterfront or from the open water into uplands above a shoreline, protected
5 in City Codes at issue in this appeal. See *Asche v. Bloomquist*, 132 Wn. App. 784, 133 P.3d
6 475, 2006 Wash. App. LEXIS 434 (Div. II, 2006). While disappointing to some who seek to
7 preserve their status quo, a neighbor does not have a common law right in a view across their
8 neighbor's property. Given the address provided in her written request for reconsideration,
9 it appears as though Ms. Baker lives directly across the street, just uphill, from where the new
10 project would be constructed. Her preference for the existing site conditions or something
11 similar in scale, is not the yardstick by which development applications in the area can or
12 should be measured. Development regulations exist for a reason – to provide property owners
13 and applicants with standards upon which their proposals and plans will be considered,
14 approved, denied, and/or conditioned. The issue of building heights is of particular interest
15 in this situation, because virtually all of the surrounding parcels in the area enjoy the same
16 opportunity to maintain or construct projects at a building height that would be higher than
17 that proposed for this current project. Zoning and building standards like this are not made
18 in the dark or without extensive public notice and opportunities for public input. As explained
19 in responsive materials provided by city staff, the City of Poulsbo does not have specific view
20 protection standards that would apply to the pending project application, other than the
21 height, bulk, setback and associated standards that were fully addressed during the review
22 process.

23 Here, the challenged project complies with applicable Poulsbo development
24 regulations regarding height and size limitations on the construction of structures at and near
25 the project site. Opponents assert that the new structure will be too tall, and too large, and
26 generally that it will somehow interfere with their preferred aesthetic, and previous views
down towards the water from their own properties or uphill viewpoints and roadways they
like to use. While not a perfect comparison, the Washington Supreme Court decision in
Durland v. San Juan County, 182 Wn.2d 55, 340 P.3d 191 (2014), is persuasive authority on
some issues raised in the reconsideration request. Durland argued that county building codes
about the height and size of a proposed garage on a neighboring property created a property
interest because they were intended to protect neighbors' views of the water. The Supreme
Court rejected Durland's arguments, because the local codes did not contain mandatory
language requiring the county to consider a neighbors' views of the water before issuing
building permits for garage construction. Similarly, the project opponents, including the
Requesting Party, failed to direct attention to any city code provisions that would essentially
serve as a basis to consider their preferred aesthetic for shorter, smaller structures that are
designed to preserve their preferred view corridors down towards and/or up from the
shoreline.

Reconsideration may not be granted based on any challenges that seek to reopen
review of alleged adverse environmental impacts associated with the project, related to views,

**ORDER DENYING REQUEST FOR
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FOR THE CITY OF POULSBO**

1 traffic, Geotech issues, Norwegian Small Village goals, or other topics raised in the
2 reconsideration request. First, as stated above, the reconsideration request fails to bring
3 forward any material evidence or information that was not available or already addressed at
4 the time of the hearing. Second, no one challenged the SEPA threshold determination issued
5 for this project, as they could have done under applicable city codes. And third, Ms. Baker
6 did not show that any alleged impact would rise to the level of a “significant” impact.

7 The Record establishes that Ms. Baker received notice of the City’s SEPA threshold
8 determination issued for this project, and that she did not submit any written comments
9 regarding the SEPA determination, meaning that she would have no standing to appeal such
10 determination. (*See WAC 197-11-545, re: failure or agencies or members of the public to*
11 *provide timely comment is construed as lack of objection to environmental analysis*). More
12 significantly, although the Poulsbo Municipal Code allows for an appeal of a SEPA threshold
13 determination, no one submitted such appeal, including Ms. Baker. *See PMC 16.04.250*.
14 There is no dispute that the SEPA notice and review requirements for this project were fully
15 satisfied and that such SEPA process stands unchallenged for purposes of the Decision issued
16 approving the requested Shoreline Permit and site plan review for the project. This
17 reconsideration request may not be used as a collateral challenge of the SEPA review and
18 threshold determination issued for this project.

19 Well established Washington caselaw establishes that a collateral attack on previous
20 land use decisions, like height limits, setbacks, bulk and other development standards, and
21 SEPA determinations, though masked as something else, like a request for reconsideration,
22 cannot stand. *See* lengthy discussion and summary of relevant caselaw in *Twin Bridge Marine*
23 *Park, LLC v. Dep't of Ecology*, 162 Wn.2d 825, 175 P.3d 1050 (2008)(summarizes the well-
24 established principle of Washington law that prohibits collateral attacks of prior government
25 decisions to give closure and clarity to interested citizens where agencies and public had
26 sufficient notice to resolve any dispute in court or another forum but did not do so); *See, e.g.,*
Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn.2d 169, 4 P.3d 123 (2000) (a
challenge to a Chelan County decision concerning residential development permits under the
Growth Management Act, chapter 36.70A RCW, must be brought under LUPA); *Skamania*
County v. Columbia River Gorge Comm'n, 144 Wn.2d 30, 26 P.3d 241 (2001) (construing a
federal act, 16 U.S.C. § 544m(a), no collateral attack on a local final land use decision can
be made when no timely appeal is filed); and *Chelan County v. Nykriem*, 146 Wn.2d 904,
931-33, 52 P.3d 1 (2002)(holding that land use decisions are final after available appeal
period expires and cannot be collaterally attacked).

27 Moving forward, it is worth noting that the exhaustion of administrative remedies
28 doctrine is explicitly incorporated into the Land Use Petition Act (LUPA), barring judicial
29 review of land use decisions where available administrative remedies have not been
30 exhausted. RCW 26.70C.060(2)(d). In other words, just as this reconsideration request
31 cannot be granted based on issues that could have been but were not addressed in any SEPA
32 comments or administrative appeal of the SEPA threshold determination issued for this

33 **ORDER DENYING REQUEST FOR**
34 **RECONSIDERATION**

BEFORE THE HEARING EXAMINER
FOR THE CITY OF POULSBO

1 project application, any future LUPA challenge would also fail if based on issues that could
2 have been addressed in the available administrative appeal that was never pursued.

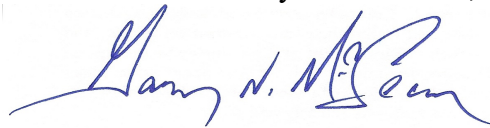
3 The state's SEPA statute – at RCW 43.21C.075(4) – expressly mandates: “If a person
4 aggrieved by an agency action has the right to judicial appeal and if an agency has an
5 administrative appeal procedure, such person shall, prior to seeking any judicial review, use
6 such agency procedure if any such procedure is available, unless expressly provided
7 otherwise by state statute.” “SEPA does not demand a particular substantive result in
8 government decision making; rather it ensures that environmental values are given
9 appropriate consideration.” *Glasser v. City of Seattle*, 139 Wn. App. 728, 742 (2007). For
10 this project, the material issues raised in the pending reconsideration request were already
11 fully vetted, analyzed, reviewed and considered in the staff review process, the Planning
12 Commission review, and as part of the Hearing Examiner's open-record hearing process.
13 While the Requesting Party's issues were considered, they do not serve as a basis to revise
14 or reverse the decision issued approving the project.

15 The Record for this matter fully supports the decision and conditions of approval.
16 The reconsideration request fails to provide any legal or factual basis to reverse or modify
17 such decision.

18 III. DECISION.

19 Based on the record, including the reasons and evidence summarized in the written
20 response materials received from the Planning and Economic Development Department, the
21 Engineering Department, and the City Attorney's Office, Ms. Baker's Request for
22 Reconsideration is denied.

23 ISSUED this 30th Day of December, 2019



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Gary N. McLean
Hearing Examiner



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

**FINDINGS, CONCLUSIONS AND DECISION
APPROVING THE**

***“VANAHEIMR MIXED USE BUILDING”*
SITE PLAN REVIEW AND
SHORELINE SUBSTANTIAL DEVELOPMENT APPLICATION**

APPLICANT: MIKE BROWN, SOUND WEST HOLDINGS, INC.,
AGENT: MILES YANICK, PROJECT ARCHITECT/DESIGNER
PO BOX 2553
POULSBO, WA 98370

APPLICATION: SITE PLAN REVIEW AND SHORELINE SUBSTANTIAL DEVELOPMENT
PERMIT FOR A 3-STORY MIXED-USE BUILDING WITH UNDERBUILDING,
TO INCLUDE 1,748 SQ.FT. OF COMMERCIAL SPACE, 933 SQ.FT. OF
STAIRS, LOBBY, MECHANICAL AND STORAGE AREA, 5 STUDIO UNITS,
20 ONE- AND TWO-BEDROOM UNITS, 2 HOSPITALITY UNITS, AND 38
PARKING STALLS, TO BE CONSTRUCTED ON THE SITE OF THE CITY’S
FORMER POLICE STATION.

LOCATION: 367 NE HOSTMARK STREET, POULSBO, WA

TAX PARCEL NUMBER: 232601-2-236-2000

ZONING: COMMERCIAL/ C-1 DOWNTOWN

STAFF RECOMMENDATION: APPROVAL, SUBJECT TO CONDITIONS

PLANNING COMMISSION REC.: APPROVAL, SUBJECT TO CONDITIONS RECOMMENDED IN STAFF
REPORT

SUMMARY OF DECISION:

APPROVED, SUBJECT TO CONDITIONS

DATE OF DECISION:

NOVEMBER 18, 2019

CONTENTS OF RECORD

Exhibits entered into evidence as part of the record, and an audio recording of the public hearing, are maintained by the City of Poulsbo, in accord with applicable law.

Exhibits:

The City of Poulsbo “Staff Report” and recommendation (of APPROVAL) to the Planning Commission, dated October 1, 2019, with Addendum addressed to the Hearing Examiner dated October 9, 2019, regarding the pending project, including Exhibits A-K as described and numbered on page 36 of the original Staff Report provided to the Examiner. Several additional exhibits were entered into the record during the course of the public hearing.

City Staff maintains a complete copy of all exhibits in the file, including without limitation the following items:

A. Application

1. Vanaheimr Application Form (Master Land Use Application, Site Plan Application)
2. Legal Description by MAP LTD (February 29, 2016)
3. Neighborhood Meeting Notice, Sign In Sheet, Comment Sheets (Meeting held April 26, 2017)
4. Pre-Application Conference Letter (April 6, 2017)
5. JARPA Form (Signed May 18, 2017)
6. Ordinary High Water Mark Survey, MAP L33TD (5-4-16)
7. Title Report by Pacific Northwest Title (June 25, 2015)

B. Site Plan Sheets (Aug. 20, 2019)

1. Site Plan Sheets A-0 to A-14
2. Landscape Plan Sheets L-1 to L-2
3. Civil Sheets C-1 to C-3

C. Traffic Impact Analysis, Heath and Associates (Revised July 16, 2019)

1. Addendum Traffic Impact Analysis, Heath and Associates (August 14, 2019)
2. Transportation Concurrency Application (July 25, 2017)

D. Drainage Report for Sound West Group Vanaheimr Apartments, MAP LTD (May 16, 2017)

1. Drainage Report Addendum for Sound West Group Vanaheimr Mixed Use, MAP LTD (February 8, 2018)

*Findings, Conclusions and Decision Approving
Vanaheimr Mixed Use Building Site Plan Review
and Shoreline Permit Applications –
File No. P-11-19-18-01*

- E. Geotechnical Report, EnviroSound Consulting Inc. (June 22, 2017)
 - 1. Addendum Letter to Geotechnical Engineering Report, EnviroSound Consulting (December 10, 2018)
- F. Photometric Report by Pro Design (February 12, 2018)
 - 1. Photometric Report by Pro Design, including composite photometric plan (July 16, 2018)
- G. Notice of Application
 - 1. NOA Affidavit
 - 2. NOA Affidavit Published
- H. SEPA MDNS Determination, Issued August 23, 2019
 - 1. Environmental Checklist, Miles Yanick and Company (June 5, 2019)
 - 2. Environmental Checklist Reviewed (August 23, 2019)
 - 1. SEPA Cover Memo and Mitigations, PED and Engineering (August 19, 2019)
 - 2. Memo City's Duty to Protect Private Views, Ogden Murphy Wallace, PLLC (May 17, 2018)
 - 3. Memo City's Obligation to Protect Private Views Under SEPA, Ogden Murphy Wallace, PLLC (May 17, 2018)
 - 4. View Impact Analysis Part 1, Rice Fergus Miller (November 30, 2018)
 - 5. View Impact Analysis Part 2, Rice Fergus Miller (November 30, 2018)
 - 6. Affidavit SEPA distribution (August 23, 2019)
- I. Public Comment Letters from NOA
 - 1. Lynn Myrvang Letter (April 6, 2018)
 - 2. Cindy Baker consolidated emails and letters (February 23, 2016 to March 29, 2018)
- J. Technical Review Memo
 - 1. Engineering Department, Anthony Burgess (September 18, 2019)
 - 2. Public Works Department, Anthony Burgess (March 15, 2018)
- K. Vested Commercial Districts Ordinance, Chapter 18.80 (Ord 2013-4)
- L. Comment materials submitted at the public hearing,
 - 1. Joan Hett comment letter, with attachments
 - 2. Lynn Myrvang comment letter, with attachments
 - 3. Cindy Baker comment letter, with attachments
- M. [Reserved]
- N. Planning Commission Findings of Fact, Conclusions and Recommendation of Approval, October 8, 2019
 - 1. Draft Meeting Minutes from Planning Commission Meeting on October 8, 2019
 - 2. Comment letter from Mr. Jewett
- O. Affidavit of Public Hearing Notice

Testimony/Comments/Site Visit:

All people who provided factual information were sworn and provided testimony under oath at the open-record public hearing, including Marla S. Powers, an Associate Planner for the City of Poulsbo and the primary staff representative at the public hearing; Anthony Burgess, Senior Engineering Technician for the City of Poulsbo; Michael Bateman, Development Review Engineer for the City; Karla Boughton, Director of the City's Planning and Economic Development Department; Miles Yanich, the applicant's agent, project architect and designer; Joan Hett, local resident; Jean Charters, local resident; Lynn Myrvang, local resident; Mike Myrvang, local resident; and Aaron Van Aken, the applicant's traffic engineer. Staff summarized key features and issues considered during the review process. Local residents expressed their concerns, including potential traffic and parking problems, and possible impacts on views. After close of public comments, applicant representatives and staff responded, and answered questions from the Examiner. Before and after the public hearing, the Examiner visited the project site and the surrounding street network, up and downhill, to gain a better understanding of issues raised in public comments and the staff review process.

APPLICABLE LAW

Jurisdiction.

There is no dispute that relevant provisions of the Poulsbo Municipal Code expressly provide the hearing examiner with jurisdiction and authority to review most Type III land use matters, which includes Shoreline Substantial Development Permit applications. See PMC 19.20.010(C) and Table 19.20.020. Ordinarily, the City's Site Plan Review process is a Type II matter (See Table 19.20.020), however, where two or more land use applications for a given development are submitted for consolidated review, the review shall be conducted using the highest numbered process type applicable to any of the land use applications; provided, that each land use application shall only be subject to the relevant decision criteria applicable to that particular development application. See PMC 19.20.040(B). For example, a development proposal that includes a Type II application and a Type III application shall be reviewed using the Type III process, but the Type II application shall be decided based on the relevant decision criteria applicable to the Type II application. *Id.*

Criteria for Approval of the requested Shoreline Substantial Development Permit.

PMC 16.09.110 explains that a shoreline substantial development permit may only be granted by the City when the proposed development is consistent with all of the following:

*Findings, Conclusions and Decision Approving
Vanaheimr Mixed Use Building Site Plan Review
and Shoreline Permit Applications –
File No. P-11-19-18-01*

- A. The policies and procedures of the Shoreline Management Act;
- B. The provisions of Chapter 173-27 WAC;
- C. Chapter 16.08 PMC;
- D. Any conditions attached by the city to the permit approval as necessary to ensure compliance with the Act and Chapter 16.08.

Criteria for Site Plan Review approval:

In the City of Poulsbo, all new developments and modifications to existing developments shall require site plan review and approval prior to the issuance of any building permits, establishment of any new uses, or commencement of any site work unless otherwise exempted. *PMC 18.270.020*. Developments subject to site plan review shall comply with the Poulsbo Municipal Code and all other state statutes and applicable laws and regulations. *Id.*

The approval criteria for site plan review is found in PMC 18.270.050, and reads as follows:

- A. Compliance with Applicable Standards. The proposed development shall comply with all applicable design and development standards contained in this title and other applicable regulations.
- B. Adequacy of Public Facilities. The applicant shall demonstrate availability of adequate public services, e.g., roads, sanitary and storm sewer and water, available to serve the site at the time development is to occur, unless otherwise provided for by the applicable regulations.

Among the standards this project must satisfy are those applied in the City's Design Review Process, which is mandated for all development proposals and new construction in various parts of the City, including the C-1 zoning district, where this proposal is located. *PMC 18.120.020*.

Burden of Proof.

The applicant bears the burden of proof to establish by a preponderance of the evidence that application is consistent with state law, city codes and standards. *Rule 3.9, HEx Rules of Procedure*.

ISSUE PRESENTED

Whether a preponderance of evidence demonstrates that the applicant has satisfied its burden of proof to satisfy the criteria for approval of the requested Shoreline Permit and Site Plan Review?

Short Answer: Yes, subject to conditions of approval.

FINDINGS OF FACT

Upon consideration of all the evidence, testimony, codes, policies, regulations, and other information contained in the file, the undersigned Examiner issues the following findings, conclusions and Decision approving the Shoreline Substantial Development Permit and Site Plan Review for the Vanaheimr Mixed Use Building as set forth below.

1. Any statements in previous or following sections of this document that are deemed findings of fact are hereby adopted as such and incorporated by this reference.
2. The applicant in this matter is Mike Brown, with Sound West Holdings Inc., represented by their designated Agent, the project architect Miles Yanick, with offices in the City of Poulsbo. (*Staff Report, page 5; Ex. A-1, application materials*).
3. The project site is currently owned by the City of Poulsbo and housed the city's police department until 2011. The vacant building on the property is in a condition and general appearance that is well below that of most other structures in the surrounding downtown Poulsbo area. (*Staff Report, page 6; Site visit observations by the Examiner*).
4. The site is zoned Commercial/C-1 Downtown and is now addressed as 367 NE Hallmark Street, in the southeast corner where Fjord Drive/4th Avenue intersects with Hostmark/Front Street, uphill one or two blocks from Liberty Bay, the Poulsbo Marina, and the City's thriving commercial shops and businesses that run along Front Street.
5. The City entered into a Purchase and Sale Agreement with the applicant, Sound West, at August of 2016. (*Staff Report, page 6*). Since that time, the applicant engaged in public review processes that culminated in the pending applications.
6. If approved, the requested approvals would facilitate demolition of the existing eyesore of a building, to be replaced with construction of a new 3-story mixed use building with underbuilding, to include: 1,748 sq.ft. of commercial space, 933 sq.ft. of stairs, lobby,

mechanical and storage area, 5 studio units, 20 one- and two-bedroom units, 2 hospitality units, and 38 parking stalls. (*Description of Proposal on page 5 of Staff Report*).

7. The Staff Report explains that the project application was submitted in July of 2017, followed by several revision requests and resubmittals. In any event, a building permit application was reviewed and deemed complete on or about June 29, 2018, vesting the entire project to city development regulations in effect at such time, including zoning code standards found in PMC Ch. 18.80, some of which were amended in August of 2018. (*Staff Report, page 34*).
8. None of the project property or proposed structures abuts the Liberty Bay shoreline. In fact, the project site is removed and separated from the shoreline by several existing buildings that stand on multiple parcels located downhill between the site and Liberty Bay. Nevertheless, the City's shoreline jurisdiction applies to all development proposals located within 200 feet of the shoreline. Approximately 8,169 square feet of the 24,829 square foot project site lies within the City's designated shoreline jurisdiction. (*Staff Report, page 27, Figure 33; and project site plans at Sheet A-3*). There is no dispute that the proposed project requires a shoreline substantial development permit.
9. As noted above, all new developments and modifications to existing developments are required to obtain site plan review and approval prior to the issuance of any building permits, establishment of any new uses, or commencement of any site work unless otherwise exempted. *PMC 18.270.020*.
10. As required by City codes, the two applications were consolidated for purposes of review and public noticing. The Examiner is delegated authority to conduct public hearings and issue decisions such as this for Type III permit processes, which includes consolidated matters.
11. The Planning and Economic Development Department's Staff Report and Recommendation of Approval, shared with the Examiner in the week before the hearing, (*the "Staff Report"*), includes a number of specific findings and conditions that credibly establish how the underlying permit applications satisfy provisions of applicable law and how the project is designed or conditioned to comply with applicable shoreline codes and policies, as well as city development standards and guidelines that apply to the Site Plan Review for this project.
12. Public comments were received following several outreach efforts and public notices issued in various steps of the application review process, all as summarized in the Staff Report. All written comments are included as part of the record and were considered by Staff if submitted before issuance of the Staff Report, and/or were considered by the

Examiner if submitted at any point before the end of the public hearing for this matter. The main topics raised in written comments as well as those provided from local residents at the public hearing focused on possible traffic and parking problems, and concerns about perceived impacts on existing views. As part of the review process, Staff required the applicant to provide a Visual Impact Analysis and a detailed traffic impact report.

13. After reviewing the SEPA Checklist, application materials, and numerous other documents and environmental information, including without limitation – public comments generated in connection with a neighborhood meeting held on April 26, 2017 and after the Notice of Application issued on or about March 23, 2018 and detailed project site plans, design features, a Traffic Impact Analysis and Addendum dated July 16th and August 14, 2019, a Geo Technical Report and Addendum prepared for the project, a Lighting Review and Photometric Report for the project, a View Impact Analysis, a storm water report, a JARPA form, and legal memos from the City Attorney’s Office generally explaining that city codes do not mandate view preservation from private properties under SEPA or otherwise – the City issued its SEPA threshold determination for this project, which was a Mitigated Determination of Non-Significance (MDNS) issued on August 19, 2019 (*Ex. H-3*). The MDNS included five specific mitigation measures addressing Earth topics, mostly derived from recommendations in the Geotech reports for the project, Surface Water/ Backwater Analysis, Lighting, and payment of school impact fees to mitigate impacts associated with new residential units on the North Kitsap School District. Notices related to the SEPA MDNS were issued in accord with applicable law, and no one offered any comments. (*Staff Report, page 34; Testimony of Ms. Powers; Noticing details in Ex. H.8*).
11. By operation of WAC 197-11-545 (re: Effect of no comment), if a consulted agency does not respond with written comments within the time periods for commenting on environmental documents, the lead agency may assume that the consulted agency has no information relating to the potential impact of the proposal as it relates to the consulted agency's jurisdiction or special expertise; further, lack of comment by other agencies or members of the public on environmental documents within the applicable time period shall be construed as lack of objection to the city’s environmental analysis. Again, the record establishes that the no one submitted any timely comments regarding the MDNS or appealed the determination.
12. Since that time, no one submitted comments or documentation that would serve as a basis to reopen the SEPA process. There have been no changes to the project that are likely to have any significant adverse environmental impacts, and there has been no showing that the applicant misrepresented any pertinent facts or failed to make any material disclosures that would have relevance in the SEPA review process. If anything, the record establishes that the applicant worked closely with staff and carefully considered public comments to

generate a design that enhances public access to the shoreline, and to address and/or suggest solutions to specific concerns.

13. None of the public comments offered into the record were supported by professional reports or studies of comparable weight to those submitted by the applicant or relied on by City officials, nor were they supported by credible evidence to establish that the project will result in any significant adverse impacts of the sort that require additional mitigation beyond that included in the SEPA MDNS issued for this project of the conditions of approval recommended by City Staff and the Planning Commission.
14. A copy of the Staff Report and a Notice of Public Meeting was issued at least 7 days prior to a Poulsbo Planning Commission meeting that occurred on October 8, 2019. No one challenged the fact that all notices were issued in accord with applicable requirements. *(See Ex. G, Notice of Application materials; Ex. H, SEPA MDNS materials, including confirmation of noticing/distribution; and Ex. O, Notice of Public Meeting & Notice of Public Hearing for Planning Commission Meeting and Hearing before the undersigned Examiner, with confirmation materials attached).* Following their meeting, the Planning Commission recommended approval of the pending mixed-use project, with a 5-0 vote, subject to conditions of approval recommended in the Staff Report. *(Testimony of Ms. Powers; Ex. N, Planning Commission Findings and Recommendation; Ex. N.1, Draft Planning Commission minute).*
15. Shortly thereafter, on October 15, 2019, the undersigned Hearing Examiner conducted a duly-noticed public hearing regarding the Vanaheimr Mixed-Use project applications, at Poulsbo City Hall, where applicant representatives, project-review staff, and interested members of the public were present and provided an opportunity to provide input regarding the final project proposal, as shown on the most updated site plans and application materials. The Examiner visited the site of the proposed project and the surrounding street network on the day of the hearing, and via online mapping resources, to observe existing conditions, site lines onto adjacent properties where some commenters reside, the street network design in the vicinity, views from points uphill, down below along the shoreline, and from public roads abutting several commenter's properties, and the character of the surrounding neighborhood.

As designed and conditioned, the Vanaheimr Mixed-Use Project application satisfies applicable approval criteria.

16. The SEPA Mitigated Determination of Non-Significance (MDNS) issued for this project included 5 specific mitigation measures. No one submitted any comments questioning or challenging any part of the MDNS in a timely manner, and as noted above, no one

submitted the type of new information that would serve as a basis to withdraw the city's SEPA threshold determination for this project.

17. No one appealed the SEPA threshold determination for this project, i.e. the MDNS. As a matter of law, the mitigation measures imposed in the MDNS stand unchallenged and shall also be included as conditions of approval issued as part of this Decision.
18. Evidence in the record, including without limitation the summary of relevant reports and analyses provided in the unchallenged Staff Report, and testimony by applicant witnesses, fully supports a finding that the Project has been designed or can be conditioned to satisfy applicable approval criteria for the requested Shoreline Substantial Development Permit and Site Plan Review approval. *(See Staff Report, discussion and analysis of relevant portions of City Shoreline regulations and those applicable to the requested Site Plan Review approval).*
19. Local residents who appeared at the public hearing mostly reiterated concerns shared in written comments already included in the record, and all exhibited personal interests and bias that tended to make their comments on view-impact and traffic/parking concerns less credible than those presented in the traffic impact analysis and view impact analysis included in the record and analyzed by City staff in the Staff Report. No one submitted any credible evidence or legal authority to rebut the findings and analysis provided in the Staff Report, or the applicant's professional consultant reports that are included in the record.
20. The Staff Report and recommendation of approval includes a number of specific findings and proposed conditions that establish how the pending project application satisfies provisions of applicable law, is consistent with the city's Comprehensive Plan, and is designed or can be conditioned to comply with applicable development standards and guidelines. Except as modified in this Decision, all Findings, recommended findings, and statements of fact contained in the Staff Report, are incorporated herein by reference as Findings of the undersigned hearing examiner.¹
21. The Conditions of Approval included as part of this Decision are reasonable, consistent with applicable law, supported by the evidence, and capable of accomplishment.
22. No one presented any testimony or evidence that would justify denial of the pending shoreline permit and site plan review application.

¹ For purposes of brevity, only certain Findings from the Staff Report and recommendation of approval are highlighted for discussion in this Decision, and others are summarized, but any mention or omission of particular findings should not be viewed to diminish their full meaning and effect, except as modified herein.

23. Substantial and credible evidence in the record, including without limitation unrebutted findings and analysis provided in the Staff Report, the Application materials, the traffic analysis, the view impact analysis, the SEPA review process, including the MDNS issued for this project, the findings and recommendation of approval issued by the Planning Commission, establishes that the applicant has met its burden to prove that the pending application satisfies all criteria for approval of a Substantial Development Permit and the requested Site Plan Review. Specifically, the applicant has met its burden to establish that: the proposal is consistent with the policies of the Shoreline Management Act and its implementing regulations, Chapter 90.58 RCW and Chapter 173-27 WAC, as amended; the proposal is consistent with the policies and regulations of the City's Shoreline Master Program; the proposal is consistent with applicable provisions of the Poulsbo Municipal Code, including without limitation those found in Chapter 16.08 PMC; and the proposal is consistent with the goals and policies of the City's Comprehensive Plan.
24. The record also includes substantial and credible evidence establishing that the Project has been designed or can be conditioned to comply with the approval criteria for site plan review, found in PMC 18.270.050, including without limitation compliance with all applicable design and development standards contained in city codes and regulations, and unrebutted traffic impact analyses and city engineering testimony confirming the availability of adequate public services, e.g., roads, sanitary and storm sewer and water, available to serve the site at the time development is to occur, with conditions or requirements imposed on project construction to address such needs.

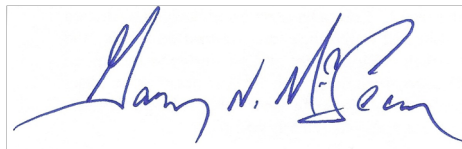
CONCLUSIONS OF LAW

1. Based on the Findings as summarized above, the undersigned examiner concludes that the proposed Vanaheimr Mixed-Use Building Project, as conditioned herein, conforms to all applicable shoreline, zoning and land use requirements and appropriately mitigates adverse environmental impacts. Upon reaching such findings and conclusions as noted above, the Project meets the standards necessary to obtain approval of the requested Shoreline Substantial Development Permit and Site Plan Review.
2. Any Finding or other statements in previous or following sections of this document that are deemed Conclusions of Law are hereby adopted as such and incorporate herein by reference.

DECISION AND CONDITIONS OF APPROVAL

Based upon the preceding Findings of Fact and Conclusions of Law, evidence presented through the course of the open record hearing, all materials contained in the contents of the record, and several site visits, the undersigned Examiner APPROVES the Vanaheimr Mixed-Use Building Project, subject to compliance with all mitigation measures imposed in the SEPA MDNS issued for this project and the recommended Conditions set forth on pages 37–43 of the Staff Report, all of which are adopted as Conditions of Approval for the Project and incorporated herein by this reference.

Decision issued: November 18, 2019.



Gary N. McLean
Hearing Examiner for the City of Poulsbo

Notice of Rights to Request Reconsideration or Appeal This Decision

Reconsideration –

Sec. 2.22 of the Poulsbo Hearing Examiner Rules of Procedure reads as follows:

“Reconsideration –

(a) The Hearing Examiner may reconsider a decision on an application, if it is filed in writing within 14 calendar days of the date of issuance. Designated parties to the appeal who participated in the hearing may have standing to seek reconsideration. Any request for reconsideration shall be served on all parties of record and to any party’s designated representative or legal counsel on the same day as the request is delivered to the Hearing Examiner. The Examiner will seek to accept or reject any request for reconsideration within 3 business days of receipt. If the Examiner decides to reconsider a decision, the appeal period will be tolled (placed on hold) until the reconsideration process is complete and a new decision is issued. If the Examiner decides to reconsider a decision or recommendation, all parties of record shall be notified. The Examiner shall set a schedule for other parties to respond in writing to the reconsideration request and shall issue a decision no later than 14 calendar days following the submittal of written responses. A new appeal period shall run from the date of the Hearing Examiner’s Order on Reconsideration.”

Appeal –

PMC 19.70.020 explains that all decisions of the hearing examiner on Type I and II appeals, and all decisions of the hearing examiner on Type III permits may be appealed to the city council. PMC 16.09.130(B) explains that a Shoreline substantial development permit shall be processed as a Type III quasi-judicial permit application, with the hearing examiner serving as the decision maker, whose decision may be appealed to the city council.

The city council will make a final decision on such matters in a closed record appeal proceeding in which no new evidence may be submitted. The deadline and filing requirements for appeals are detailed in the city’s code, including without limitation PMC 19.70.020.

NOTE: The Notice provided on this page is only a short summary, and is not a complete explanation of fees, deadlines, and other filing requirements applicable reconsideration or appeals. Individuals should confer with advisors of their choosing and review all relevant codes, including without limitation the city code provisions referenced above and the Land Use Petition Act (Chapter 36.70C RCW) for additional information and details that may apply.