

## RESOLUTION 2012/031

A RESOLUTION BY THE MONROE CITY COUNCIL ADOPTING THE HEARING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDATIONS, AND CONDITIONS OF APPROVAL FOR PRELIMINARY PLAT (PL201201) OF DENNIS ADDITION.

WHEREAS, Rick Hanson on behalf of Getchell Homes, LLC submitted an application for a Preliminary Plat (PL201201), commonly known as the Dennis Addition for the subdivision of a 4.91-acre parcel located at 16011 Dennis Way (north of Main Street and south of 159<sup>th</sup> Street SE) into 26 single-family lots;

WHEREAS, the Hearing Examiner for the City of Monroe did hold a public hearing on October 19, 2012 regarding said proposed Preliminary Plat (PL201201); and,

WHEREAS, the Hearing Examiner for the City of Monroe, upon due consideration and through the development of Findings of Fact, Conclusions of Law, and Conditions of Approval, and the City's request for reconsideration, recommended to the City Council on November 5, 2012, that said Preliminary Plat (PL200601) be approved with conditions;

WHEREAS, the City Council has considered the recommendations of the Hearing Examiner and has determined to approve said Findings of Fact, Conclusions of Law, and Conditions of Approval for said Preliminary Plat (PL201201);

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE does resolve as follows:

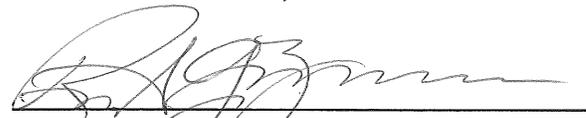
The Hearing Examiner's Findings of Fact, Conclusions of Law, and Recommendation of Approval for the Preliminary Plat (PL201201) of Dennis Addition attached hereto as Exhibit 1 are hereby adopted and the Preliminary Plat Exhibit 2 is hereby approved subject to the following conditions:

1. The Applicant shall dedicate right-of-way for streets as shown on the approved preliminary plat map. Frontage improvements, including curb, gutter, sidewalk and street trees shall be provided for all streets within the subdivision. Traffic control devices and street signs shall be installed prior to final plat approval, and all public roads within the subdivision shall be constructed in accordance with the City's Public Works Design and Construction Standards and installed by the developer to the satisfaction of the City prior to final plat approval.
2. Traffic impact fees assessed in accordance with MMC 20.12 shall be required and paid prior to building permit issuance. Lot 15 is exempt.
3. Park impact fees in accordance with MMC 20.10 shall be required and paid prior to final plat approval, or the Applicant may defer payment to prior to building permit issuance.

4. School impact fees assessed in accordance with MMC 20.07 shall be required and paid prior to building permit issuance.
5. The water system capital improvement charge in accordance with MMC13.04.025 shall be required and paid prior to building permit issuance. Lot 15 is exempt.
6. The wastewater system capital improvement charge in accordance with MMC13.08.272 shall be required and paid prior to building permit issuance. Lot 15 is exempt.
7. Streetlights shall be installed as required under the City of Monroe Public Works Design and Construction Standards and as directed by the City Engineer.
8. Street trees shall be included in the street planter strips. Tree type, spacing, quantity, and location shall be as determined by the City. Street trees shall be planted when a street frontage is fully owner occupied and as directed by the Parks Department. The City will coordinate tree plantings to the most favorable time of the year. All street frontage landscaping/irrigation improvements shall be bonded until such time that housing construction is completed and bonded work may be completed without risk of construction damage.
9. Mail routes shall be approved by the Postmaster, including mailbox types and locations.
10. A homeowners association (HOA) shall be established and include all proposed lots. Conditions, Covenants & Restriction's (CC&R's) governing the HOA shall be submitted to the city for review prior to final plat approval. The CC&R's shall require the property owners to maintain, in a uniform manner, adjacent city right-of-way located between their property and the back of street curbs. and the right-of-way located north of the paved portion of 159<sup>th</sup> Street
11. Well(s) located on the site shall be abandoned in accordance the requirements and criteria set forth by the Washington State Department of Ecology.
12. The Applicant shall retain all trees (if any) located within the setbacks to the western property line of the 4.91 acre parcel. A tree shall be considered within the setback when the entire trunk of the tree is located within the setback.
13. The Applicant shall install six foot fences, or the maximum height allowed by city code, whichever is lower, along the western property line of the 4.91 acre parcel where fences do not already exist.
14. The Applicant shall install a six foot fence, or the maximum height allowed by city code, whichever is lower, along the northerly portion of the 4.91 acre parcel approximately 15 feet north of the centerline of the 159<sup>th</sup> Street right-of-way.

PASSED and APPROVED by the Mayor and City Council of the City of Monroe, Washington, at a regular meeting thereof held this 20<sup>th</sup> day of November, 2012.

CITY OF MONROE, WASHINGTON:

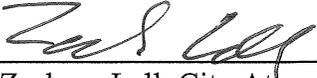


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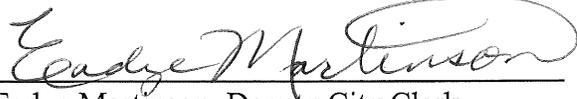
Robert G. Zimmerman, Mayor

EFFECTIVE: 11/20/12

APPROVED AS TO FORM:

  
\_\_\_\_\_  
J. Zachary Lell, City Attorney

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Eadye Martinson, Deputy City Clerk



BEFORE THE HEARING EXAMINER FOR THE CITY OF MONROE

Phil Olbrechts, Hearing Examiner

RE: Rick Hanson  Preliminary Plat PL2012-01	<b>FINDINGS OF FACT, CONCLUSIONS  OF LAW AND FINAL DECISION.</b>
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SUMMARY

The Applicant has proposed to subdivide 4.91 acres into 26 single-family residential lots. Approval of the subdivision is recommended along with several conditions listed at the end of this decision.

There are two major issues of concern regarding the proposal. The first issue of concern is compatibility and it should be addressed by tree retention and fencing. The proposed subdivision will be built at a density that is higher than that of properties adjoining to the west and will include a road (an extension of 159<sup>th</sup> St. SE) directly adjacent to the rear yards of property to the north. For this reason adjoining property owners have written and testified against the project. A petition from 13 property owners and letters from two property owners were submitted in opposition to the project. Fencing and vegetative screening has been requested by neighbors adjoining the north side of the proposal to provide screening from the proposed extension of 159<sup>th</sup> St. SE. Neighbors along the west side of the project have requested that the new homes be limited to one story to prevent their new neighbors from peering down into their backyards and back rooms.

Neighbors along the north end of the proposal will be separated from the lots of the proposal by the extension of 159<sup>th</sup> St. as well as street trees along the southern side of 159<sup>th</sup>. Fencing (as already volunteered by the Applicant) is a reasonable request to provide for privacy and compatibility, but no additional screening is necessary given the street separation and street trees.

The requested buffering for the homes adjoining to the west of the proposal presents a difficult situation. The homes to the west are built at a significantly lower density than the homes in the existing surrounding neighborhood. This lower density is largely achieved by building homes on double lots. The higher density proposed by the Applicant arguably creates a compatibility problem that necessitates some sort of screening. However, since it is the western neighbors that have the out of place density, it is the existing neighbors that have created the compatibility problem. From a legal standpoint the owners of the western residences cannot create an island of low density development and then expect their neighbors to pay the costs of protecting these unique development choices. By the same token, the Applicant has

1 compacted so many homes onto his 4.91 acre parcel that he doesn't even have room  
2 to spare to install some vegetative screening along the five foot setbacks to his  
3 western property line. Setback screening is normally considered a nominal  
4 accommodation that fairly buffers new development from established neighborhoods.  
5 In order to resolve this situation in a legally defensible manner, it is recommended  
6 that the Council require the Applicant to retain trees located within the five foot  
7 setback. City development standards require the retention of trees "to the greatest  
8 extent possible". Requiring tree retention within a setback achieves minimal  
9 compliance with this tree retention requirement.

10 The second issue of concern is Dennis Way. Dennis Way is one of two access points  
11 to the subdivision. It connects the subdivision to Main Street and is one of two access  
12 roads to the subdivision. Dennis Way is narrow and has no sidewalks. It clearly  
13 does not meet current street standards and it is currently accessed by only five homes.  
14 The proposal would most likely generate the most traffic on the road and the City  
15 would normally have a legal basis for requiring the Applicant to pay for a large  
16 proportion of improvements. Several schools are within walking distance and it is  
17 expected that children will use the road to walk to and from school. Despite these  
18 shortcomings no sidewalks or other improvements could be reasonably required of  
19 the Applicant because there is insufficient right of way width. Staff also testified that  
20 Dennis Way is not long enough at 150 feet to create any safety concern for its use by  
21 school children.

#### 22 ORAL TESTIMONY

23 Mark Landkammer, City of Monroe planner, summarized the staff report and  
24 answered questions from the Examiner. Mr. Landkammer noted that the proposal  
25 will treat and retain all stormwater on-site by infiltration. In response to emails from  
the Examiner Mr. Landkammer acquired an email from Mike Fitzgerald, fire marshal,  
stating that the shared driveways proposed for the subdivision would provide  
sufficient fire apparatus access. It is anticipated that students will walk to school  
using the existing portion of Dennis Way. Although Dennis Way is narrow and has  
no sidewalks, staff have determined it is not considered a safety hazard because  
Dennis Way outside the subdivision that is without sidewalks is only 150 feet long,  
the length of two lots. Dennis Way right of way is also not wide enough to  
accommodate both sidewalks and paved roadway. Mr. Landkammer acknowledged  
that his "first blush" assessment is that there is sufficient space on the proposed lots to  
provide some tree screening along the west side of the proposal, but that this  
screening shouldn't be required given that the density proposed by the Applicant is  
consistent with the zoning code and there is no requirement in the code for screening.  
Mr. Landkammer noted that no detailed analysis of concurrency is necessary because  
it is very clear that there is capacity "in abundance" for utilities and municipal  
services for the project. The adjoining school adjoining the property to the east is a  
private school for grades 1-8. Proposed lots are a third to half the size of the lots  
adjoining the proposal to the west.

1 Brad Feilberg, City Engineer, clarified for the Examiner that no traffic level of  
2 service analysis was required for the project because the City's traffic impact fee  
3 covers any improvements necessary to meet traffic concurrency. The traffic fees will  
4 cover the construction costs of any arterial improvements necessary to maintain level  
5 of service required for the project. Mr. Feilberg also confirmed that only one access  
6 point is required for subdivisions with less than 30 dwelling units. He also clarified  
7 that although only half street improvements are required for 159<sup>th</sup> street that full street  
width will be required for two lanes of traffic. The paved portions of the streets have  
sufficient width to accommodate on-street parking. The northwest home adjoining  
the property is 8,276 square feet in area according to the Assessor's Office. Dan  
Williams noted that the lot on the southwest is 24,000 square feet in area.

8 Joe Smeby, project engineer, testified that the Applicant was in agreement with the  
9 staff report. He noted that a preliminary plat has been approved for the property in the  
10 past but that subdivision modifications have been made triggering new preliminary  
11 plat approval. The prior preliminary plat proposed three duplexes and a separate  
12 stormwater tract. The three duplexes have been replaced with six single-family  
13 homes in response to concerns from the neighbors and the stormwater detention  
14 facility has been replaced with an infiltration system, which allowed replacement of  
15 the stormwater tract with two additional homes. The net result is an increase from 24  
16 to 26 dwelling units. In response to questions from the Examiner, Mr. Smeby noted  
17 that the proposal includes the installation of a six foot high fence and that requiring  
any additional screening in the form of tree retention or landscaping would interfere  
with drainfields and usable or buildable areas. He noted that the lots are slightly  
smaller than adjoining lots, but that they are consistent with zoning code  
requirements. Most of the larger lots along the western property line are 7,000 square  
feet. Some of the houses on the west side are built on two lots but that doesn't mean  
they have to stay on two lots.

18 Dan Williams, adjoining property owner on the west, noted that he has worked with  
19 the Applicant and City staff and they have all been helpful. He said he would like to  
20 see homes along the west side of the property limited to one story. He noted he has  
21 spoken to a realtor and has been told that the loss of privacy created by the proposal  
22 would reduce his land value. He also had concerns about safety along 159<sup>th</sup>. He  
23 noted that it too is a narrow road without sidewalks and that many people, including  
school children, walk along the road. Mr. Feilberg confirmed that Park Place Middle  
School is located two blocks to the west along Main Street and that the Wagner  
school complex is located within walking distance to the south. Mr. Williams noted  
that 159<sup>th</sup> is also breaking down significantly.

24 Shirley Blick, adjoining property owner to the west, supported the comments of Mr.  
25 Williams. Her concern was having a two story home looking into her backyard and  
reducing her privacy and reducing her property values. She felt that the two story  
homes should be built along the eastern side of the proposal. All of the adjoining  
homes on the west side of the project are one story in height.

1 Rick Hanson, Applicant, argued it would be unfair to require screening or a limit on  
2 height as that hasn't been required of any other new development. He noted that of  
3 the last eleven homes he has built ten have been ramblers. He felt that landscaping  
4 requirements would unreasonably limit usable yard space and interfere with  
stormwater infiltration. He noted that having to retain trees within the five foot  
setback would interfere with infiltration and yard space.

#### 5 EXHIBITS

- 6 1. Staff Report
- 7 2. Application information
- 8 2-A Combined land use application
- 9 3. Letter of Completeness
- 10 4. Maps
- 11 4-A Vicinity map
- 12 4-B 2 pages - Preliminary Plat Maps (Reduced & Full Size)
- 13 5. Title Report
- 14 6. Traffic Report
- 15 7. SEPA Determination
- 16 7-A SEPA Checklist
- 17 7-B DNS 2012-08
- 18 8. Affidavits of Publishing in the Monroe Monitor
- 19 8-A Notice of Application
- 20 8-B SEPA determination
- 21 8-C Public Hearing notice
- 22 9. Affidavits of Mailing
- 23 9-A Notice of Application with list of surrounding property owners
- 24 9-B SEPA determination
- 25 9-C Public Hearing notice with list of surrounding property owners
10. Affidavits of Posting
- 10-A Notice of Application
- 10-B SEPA determination
- 10-C Public Hearing notice
11. Comments
- 11-A Letter from Shirley Blick (August 21<sup>st</sup> 2012)
12. Four 10/18/12 emails from Examiner to planning director requesting staff to  
provide information at hearing on (1) emergency access; (2) screening; (3)  
concurrency of infrastructure; (4) clarification on traffic report; and (5) safety of  
Dennis Way for children walking to and from school.
13. Aerial Photo
14. Plat Maps.
15. 10/18/12 Email from Fire Marshal to Mark Landkammer
16. August 28, 2012 letter from Dan Williams, submitted to Examiner 10/19/12.
17. Petition from neighboring property owners, submitted to Examiner 10/19/12.

1 18. Letter from B. Gourley dated 10/23/12 (Applicant's attorney) and submitted to  
2 Examiner on 10/25/12.

3 19. Request for reconsideration from Brad Feilberg dated November 5, 2011.

### 4 FINDINGS OF FACT

#### 5 Procedural:

6 1. Applicant. The Applicant is Rick Hanson of Getchell Homes.

7 2. Hearing. The Hearing Examiner conducted a hearing on the application at  
8 10:00 am at Monroe City Hall in the Council Chambers on October 19, 2012. The  
9 hearing was left open through October 20, 2012 in order for Dan Williams to provide  
10 a letter that he stated he had previously delivered to the City but had not been  
11 forwarded by staff to the Examiner. The Applicant was given until October 24, 2012  
12 to provide a response to Mr. William's letter. Subsequent to the hearing on October  
13 19, 2012 the staff emailed the letter from Mr. Williams, which was stamped as  
14 received by the City on August 28, 2012. Accompanying the letter was a separate  
15 petition also stamped as received by the City on August 28, 2012. The Applicant  
16 submitted a response to the letter and petition stamped as received by the City on  
17 October 23, 2012. The Applicant's response was forwarded to the Examiner on  
18 October 25, 2012.

#### 19 Substantive:

20 3. Site/Proposal Description. The Applicant has proposed to subdivide 4.91  
21 acres into 26 single-family residential lots. The site is generally located 500 feet  
22 north of Main Street on Dennis Way, Monroe. Proposed lots range from 6,000 square  
23 feet to 9,784 square feet. A minimum of two parking spaces will be provided per lot.  
24 The project site is relatively flat, with a less than 3% slope down towards the south  
25 west. The site was formerly occupied by a single-family home, detached garage and  
outbuilding, but all these structures have been recently demolished.

Dennis Way terminates on the south end of the project site and 159<sup>th</sup> St. terminates on  
the western end. These two streets will be extended into the subdivision to form a  
"T" intersection where they connect. 159<sup>th</sup> St. will be extended to the eastern side of  
the project site, where it will end as a stub road.

The project is more than 200 feet from any shoreline of the state or associated  
wetland.

4. Characteristics of the Area. The project site is surrounded by detached  
single-family homes on the north, south and west. Fields of a school border to the  
east.

1 5. Adverse Impacts. There are no adverse impacts associated with the  
2 development. The primary focus in subdivision is adequacy of infrastructure and as  
3 determined in Finding of Fact No. 6 the proposed subdivision will be served by  
4 adequate infrastructure. There are no critical areas on site and in the SEPA review  
5 staff concluded that the proposal will not create any significant adverse  
6 environmental impacts. No other impacts are reasonably inferred from the project.  
7 Impacts identified in public written comments on the project are more specifically  
8 addressed below.

9 Shirley Blick, an adjoining property owner, argued in Exhibit 11-A that new  
10 residential development should be directed to rural areas instead of being “crammed”  
11 into the City of Monroe. The densities proposed by the Applicant are required under  
12 state law to avoid what the state legislature has deemed to be adverse impacts  
13 associated with urban sprawl in rural areas. Ms. Blick’s position directly contradicts  
14 the policies and requirements of the Washington State Growth Management Act  
15 (“GMA”), Chapter 36.70A RCW, which requires new development to be  
16 concentrated within cities and similar areas of high density. The policy basis of the  
17 GMA is that growth should be avoided in rural areas because of the adverse impacts  
18 of “urban sprawl”, which includes harming sensitive environmental resources and  
19 inefficient use of infrastructure.

20 In the implementation of the policy to direct new growth to cities, the GMA requires  
21 cities to zone their residential districts at densities that can accommodate population  
22 projections assigned to them by their counties. As discussed in LU23-24 of the City’s  
23 comprehensive plan, the City’s residential zoning designations provide for a tight fit  
24 to the densities required by Snohomish County’s growth projections. The City must  
25 maximize density to the extent permitted by its zoning regulations in order to meet its  
26 population targets. In short, the densities proposed by the Applicant are consistent  
27 with the densities authorized for the site and the densities essentially found to be  
28 necessary and required under the GMA to avoid the adverse impacts associated with  
29 urban sprawl in rural areas.

30 Since the densities authorized by the City’s zoning district are designed to avoid  
31 adverse impacts created by urban sprawl, the focus on mitigating impacts to  
32 development should be placed upon measures other than reducing the density. The  
33 concerns of Ms. Blick and (and also those of Mr. Williams in his August 28, 2012  
34 letter) are based upon compatibility and privacy issues with the low density  
35 development of the surrounding neighborhoods. As shown in Ex. 4-B, the two homes  
36 adjoining the property on the southwest (owned by Ms. Blick and Mr. Williams) are  
37 each on two lots totaling more than 16,500 square feet<sup>1</sup> for each home. The two other  
38 adjoining homes along the west side of the proposal are on approximately 8,276

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39 <sup>1</sup> The area of the double lots is based upon testimony from Brad Feilberg, who  
40 testified that a lot of similarly appearing area (as shown in the plat maps, Ex. 4-B)  
41 within the same block to the north was 8,276 square feet.

1 square foot lots as well. The lots proposed by the Applicant are only 7,000 square  
2 feet in area along the west end. All four neighboring homes are only one story in  
3 height. The Applicant is essentially proposing the construction of a block of 13  
4 homes, all of which could potentially be two stories in height, adjacent to the back  
5 yards of the four adjoining property owners on the west side.

6 There is no question that the density proposed by the Applicant will be in stark  
7 contrast to the existing density along its western property line and that a series of two  
8 story homes along this property line has the potential for invading the privacy of the  
9 neighboring homes.

10 Although the impacts are fairly clear, the difficult legal question is who is responsible  
11 for mitigating those impacts. Case law requires that development can only be  
12 required to mitigate impacts that it has created. *Burton v. Clark County*, 91 Wash.  
13 App. 505 (1998). What must be resolved, therefore, is who has created the problem  
14 here? Have the neighbors created the problem by creating an island of rural density  
15 that is incompatible with what can be built around them, or is the Applicant building  
16 something completely out of character with the surrounding neighborhood? An  
17 examination of the aerial photograph of the vicinity, Ex. 13, reveals the former.  
18 Housing along the west side of Alden Street and along Park Lane is densely packed.  
19 The neighboring homes along the west side of the proposal, two of which are  
20 sprawled over two lots, are out of character with the surrounding residential  
21 development. It would be legally difficult to justify any mitigation under these  
22 circumstances. A property owner cannot build a haven of rural development within a  
23 more densely developed area and then reasonably expect everyone around them to  
24 protect their unique development choices when developing their own properties.

25 One aspect of the Applicant's proposal that is potentially out of character with the  
surrounding neighborhood is the construction of two story homes. Unfortunately, the  
record is incomplete on this issue. The neighboring homes along the west side of the  
property are all one story high, but there is no information in the record on the height  
of other homes within the neighborhood. Although the Applicant usually has the  
burden of proof in establishing compliance with permitting criteria, the government  
has the burden of proof in requiring conditions that without proper justification could  
constitute an unconstitutional taking of property without just compensation. 91 Wash.  
App. at 516-517 (1998). In this case requiring the Applicant to set aside property for  
vegetative screening<sup>2</sup> would most likely qualify as a takings if not property justified.  
Since there is no information in the record on the height of neighboring homes, there

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<sup>2</sup> As an alternative to requiring screening, the government may not have the burden of  
proof in setting a height restriction on the properties because height restrictions  
arguably do not constitute a taking without justification. However, as testified by  
staff the zoning code already sets the height limit for the subject parcel and the record  
does not justify a more restrictive standard, whether or not the burden of proof is on  
the City.

1 is insufficient justification to conclude that the height of the proposed homes is out of  
2 character with the surrounding neighborhood in need of mitigation.

3 Despite the legal limitations on the City's ability to provide relief to the neighbors to  
4 the west, there are still some measures that can be taken. MMC 17.16.050 requires a  
5 subdivider "to the greatest extent possible" to preserve existing trees and shrubs. No  
6 apparent effort has been made to retain any existing trees in the proposed subdivision.  
7 At the very least, trees within the setback to the western property line can be retained,  
8 as they will not interfere with any building potential and will serve the dual purpose  
9 of providing some screening from adjoining properties. The Applicant also testified  
10 that part of their proposal included a six foot perimeter fence. Fencing is not  
11 identified in any of the materials submitted into the record, but as volunteered by the  
12 Applicant it will be made a condition of approval.

13 Ms. Blick also asserts that the residential lots will not provide for adequate parking.  
14 The Applicants will provide for two off-street parking spaces as required by MMC  
15 18.86.050. The extension of Dennis street through the subdivision will provide  
16 additional on-street parking for parties and similar activities held in the proposed  
17 homes. There is adequate parking proposed for the development.

18 In his August 28, 2012 letter, Mr. Hanson requested that the fencing proposed by the  
19 Applicant along the western perimeter jog around an existing tree fort located on the  
20 Applicant's property. For reasons previously discussed, the City cannot legally  
21 require the Applicant to correct problems created by third parties, which would  
22 include the trespass situation created by persons responsible for the tree fort. Mr.  
23 Hanson will have to work that issue out privately with the Applicant.

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

26 A. Water and Sewer Service. The City of Monroe will be providing sewer and  
27 water to the project. The staff report notes that the City has adequate capacity to  
28 provide these services.

29 B. Fire Protection. Fire protection would be provided by Monroe Fire District  
30 No. 103.

31 C. Drainage. Stormwater management will be designed to meet the  
32 requirements of the Department of Ecology Storm Water Management Manual for  
33 Western Washington (latest edition) as administered by the City Engineer. All  
34 residential runoff will be contained and infiltrated within the confines of each  
35 parcel. Street runoff will be mitigated with a series of infiltration systems. All  
36 plans shall be subject to approval by the City Engineer.

1 D. Parks/Open Space. The Applicant will have to pay park mitigation fees  
2 for the project as required by Chapter 20.12 MMC. The park fees are designed to  
fund park facilities and open space that meet the needs of the proposal.

3 E. Interior Pedestrian Circulation. Sidewalks are proposed along both sides of  
4 the Dennis Way extension into the subdivision as well as the southern side of the  
5 159<sup>th</sup> St. SE extension. These sidewalks provide make adequate provision within  
the subdivision for school children walking to and from school.

6 F. Interior Vehicle Circulation. The Dennis Way extension into the  
7 subdivision is 60 feet wide and will provide adequate space for both vehicular  
8 circulation and on-street parking. The Applicant will only be required to construct  
half-street improvements for the extension of 159 St. SE, but this will include a full  
paving width to accommodate two lanes of traffic.

9 G. Off-Site Traffic Improvements and walking conditions for school children.  
10 The roads accessing the proposal, Dennis Way and 159<sup>th</sup>, are of some concern.  
11 Dennis Way in particular is clearly a substandard road, as shown in the  
12 photographs in the traffic report, Ex. 6. Dennis Way is very narrow and has no  
13 sidewalks. Staff acknowledged that Dennis Way will be used by students walking  
14 to and from school, as three schools are within walking distance of the proposed  
15 subdivision. Since Dennis Way is accessed by only five homes, it is clear that most  
16 of the traffic on the road will be from the proposed subdivision once it's developed.  
17 For this reason the City could legitimately require the developer to pay for most,  
18 but not all, of the costs of improving Dennis Way. The problem with requiring any  
19 off-site improvements, in particular sidewalks, is that there is insufficient right way  
to add any improvements to the roadway. Staff testified that in their opinion the  
road does not create a safety hazard for school children and other pedestrians  
because it is only 150 feet long from its connection point to the proposed  
subdivision to Main Street and the speed limit is 25 mph. Given these  
circumstances, Dennis Way exterior to the subdivision is marginally adequate for  
both vehicular and pedestrian traffic, including school children walking to and from  
school.

20 Mr. Williams also noted in his August 28, 2012 letter and during the hearing that  
21 159<sup>th</sup> is also inadequate due to narrow streets and no sidewalks. As depicted in the  
22 traffic report, Ex. 6 and the aerial photograph, 159<sup>th</sup> is fairly narrow and has no  
23 sidewalks, but it does not appear to be too unusual in the context of the surrounding  
24 street grid as shown in the aerial photograph, Ex. 13. 159<sup>th</sup> appears to provide for  
25 more paved street width than Dennis Way, but it is still likely deficient under  
current street standards. As correctly acknowledged by Mr. Williams during his  
testimony at the hearing, the problems with 159<sup>th</sup> St. are not something that the  
developer can be required to fix. Any improvements to 159<sup>th</sup> street outside the  
subdivision required of the developer would have to be proportional to its impacts  
and reasonable. Given that the proposed subdivision will probably only account for  
a modest proportion of the traffic along 159<sup>th</sup> and that any meaningful sidewalk

1 improvements would have to be extended for several blocks, the City would not be  
2 able to require any extensive 159<sup>th</sup> improvements from the Applicant. School  
3 children will have the option of using Dennis Way to walk to and from school and  
4 staff determined this is a safe route to take. 159<sup>th</sup> will have to be considered  
adequate for vehicular and pedestrian access to the subdivision as it is reflective of  
the prevailing street grid in the area and the proposal will not be adding any  
significant amount of traffic to it.

5 H. Concurrency. At hearing, Mr. Landkammer noted that no detailed analysis  
6 of concurrency is necessary because it is very clear that there is capacity “in  
7 abundance” for utilities and municipal services for the project. The staff report  
8 notes that the proposal will not lower the level of service adopted by the  
comprehensive plan for potable water, wastewater, stormwater drainage, police and  
fire protection, parks and recreation, arterial roadways or schools.

## 9 10 CONCLUSIONS OF LAW

### 11 **Procedural:**

12 1. Authority of Hearing Examiner. MMC 21.20.050(F) provides that the  
13 Examiner shall hold hearings and make recommendations to the City Council on  
applications for preliminary plat approval.

### 14 **Substantive:**

15 2. Zoning and Comprehensive Plan Designation. The subject property is  
16 zoned UR-6,000 and the comprehensive plan land use map designation is R5-7.

17 3. Review Criteria and Application. Subdivision criteria are specifically  
18 governed by MMC 17.12.030(H). In addition, MMC 21.50.030(C) imposes standards  
19 that apply to all development reviewed by the hearings examiner. MMC 21.10.030  
20 defines development to include subdivisions. Applicable code provisions are quoted  
below in italics and applied through corresponding Conclusions of Law.

21 **MCC 17.12.030(H):** ... *The hearing authority shall inquire into how the public*  
22 *interest of future residents of the preliminary plat are to be served by the subdivision*  
23 *and its dedications. It shall determine if provisions are made to protect the public*  
24 *health, safety and general welfare by the provision of open spaces, drainage ways,*  
25 *streets, alleys, other public ways, water supplies, sanitary waste, parks, playgrounds,*  
*sites for schools and school grounds and shall consider all other relevant facts and*  
*determine whether the public interest of the future residents of the subdivision will be*  
*served by the dedications therein:*

*1. The hearing authority shall consider if the proposed subdivision conforms to the*  
*comprehensive plan and the Shoreline Master Program;*

1 2. The hearing authority shall consider the physical characteristics of a proposed  
2 subdivision site and may recommend disapproval of a proposed plat because of  
3 improper protection from floods, inundation or wetland conditions;

3 3. All identified direct impacts must be mitigated or meet concurrency as set forth in  
4 MMC Title 20.

4 4. Adequate provisions are made for infrastructure and there are adequate public  
5 services available as determined in Finding of Fact No. 6. Beyond infrastructure and  
6 public service needs, the project adequately provides for the public health, safety and  
7 general welfare because there are no significant adverse impacts associated with the  
8 proposal as determined in Finding of Fact No. 5 and the high density of the proposal  
9 serves to satisfy the City's obligations to accommodate its growth population targets  
10 assigned by Snohomish County under the GMA. The project is consistent with the  
11 comprehensive plan as outlined in the staff report. The project is more than 200 feet  
12 from any shoreline of the state or associated wetland and is, therefore, not subject to  
13 the jurisdiction of the Shoreline Management Act. The site does not contain any  
14 wetlands and is not in a floodplain. The proposal meets all applicable level of service  
15 standards as determined in Finding of Fact No. 6 and 7.

12 **MCC 21.50.030(C): Required Findings. In drafting a recommendation, the hearing  
13 examiner shall address the following, as required in the findings of fact:**

14 1. The development is consistent with the comprehensive plan and meets the  
15 requirements and intent of this code.

15 2. The development makes adequate provisions, if appropriate, for open space,  
16 drainage ways, streets and other public ways, transit stops, water supply,  
17 sanitary wastes, parks and recreation facilities, playgrounds, sites for schools  
18 and school grounds.

17 3. The development adequately mitigates impacts identified under Chapters  
18 17.12, 18.84, and 20.04 MMC, and the sensitive area guidelines adopted by  
19 resolution.

19 4. The development is beneficial to the public health, safety and welfare and is in  
20 the public interest.

20 5. The development does not lower the level of service on the following public  
21 facilities and services below the minimum standards established within the  
22 comprehensive plan:

- 22 a. Potable water;
- 23 b. Wastewater;
- 24 c. Storm water drainage;
- 25 d. Police and fire protection;
- e. Parks and recreation;
- f. Arterial roadways; and
- g. Public schools.

If the development results in a level of service lower than those set forth in the  
comprehensive plan, the development may be approved if improvements or  
strategies to raise the level of service above the minimum standard are made

1 concurrent with the development, subject to the requirements of Chapter 20.06  
2 MMC.

3 6. The area, location, and features of land proposed for dedication are a direct  
4 result of the development proposal, are reasonably needed to mitigate the effects  
5 of development, and are proportional to the impacts created by the development.

6 5. As determined in Conclusion of Law No. 4, the proposal is consistent with the  
7 comprehensive plan and provides for adequate infrastructure. As conditioned, there  
8 are no significant adverse impacts associated with the proposal as determined in  
9 Finding of Fact No. 5. Since there are no significant adverse impacts associated with  
10 the proposal and the high densities of the proposal help to accommodate GMA  
11 required growth targets, the proposal is beneficial to public health, safety and welfare  
12 and is in the public interest. The streets required for dedication are necessary to  
13 provide safe access to the lots proposed by the subdivision and are, therefore, needed  
14 to mitigate the effects of the proposal. As the dedicated right of way is only  
15 necessary because of the proposed development and will be almost entirely and  
16 exclusively used by vehicles accessing or departing the proposed subdivision, the  
17 required right of way is proportional to the impacts created by the development.

18 Level of service for the services and infrastructure identified in MMC 21.50.030(5)  
19 are met as determined in Finding of Fact No. 6 and 7. However, it should be noted  
20 that MCC 21.50.030(C)(5) is unique amongst Washington cities in its extensive  
21 concurrency<sup>3</sup> requirements for a wide range of public infrastructure and services. The  
22 GMA only mandates concurrency for transportation facilities and leaves it up to cities  
23 and counties to determine what other facilities and services they would like to subject  
24 to concurrency. Monroe has taken the high road on this issue and required  
25 concurrency with almost all public infrastructure and services, specifically requiring  
that a determination that each infrastructure and service meet level of service  
standards set by the comprehensive plan. It appears that in adopting this requirement  
the City Council wanted to use the subdivision review process as a checkpoint in  
assessing how new development is taking up the capacity of public services and  
infrastructure. A broad based conclusion by staff that concurrency is met for all  
facilities and services without any information on where that capacity currently stands  
arguably does not follow through on the Council's intent. Of course, when the City  
Council adopted MCC 21.50.030(C)(5) development was occurring at a much more  
rapid pace. If the Council feels that under the current development climate a more  
detailed concurrency analysis is merited, it should make its wishes known to staff.

23 <sup>3</sup> "Concurrency" is simply a requirement that development cannot be approved unless  
24 adopted level of service standards are maintained. For example, Monroe's  
25 comprehensive plan could have a level of service standard of x police officers per  
thousand residents for its police department. If a proposed development would add  
population to the city that would result in less than x police officers per thousand  
residents, the development would have to be denied or the number of police officers  
increased.

1 6. Screening. In Ex. 18 the Applicant's attorney takes the somewhat remarkable  
2 position that the City has no code authority to address privacy and compatibility  
3 issues. MCC 21.50.030(C)(4), as quoted above, requires a subdivision to be  
4 beneficial to the public health, safety and welfare and to be in the public interest. A  
5 subdivision that unreasonably robs adjoining property owners of their privacy is  
6 neither beneficial to the public welfare or in the public interest. As discussed in  
7 Finding of Fact No. 5, the Applicant cannot be required to install any screening  
because the loss of privacy in this case is largely attributable to the unique  
development choices made by the neighbors. Retention of trees is required in lieu of  
screening in the conditions of approval because retention is specifically required by  
MMC 17.16.050 to the greatest extent possible.

8 7. Sidewalks for School Children. The MMC covers most of the requirements of  
9 state subdivision laws, but neglects to specifically require safe walking conditions to  
10 and from school as mandated by RCW 58.17.110. RCW 58.17.110(2) expressly  
11 states that a City cannot approve a preliminary plat unless it makes specified findings,  
12 including that appropriate provisions are made for "planning features that assure safe  
walking conditions for students who only walk to and from school". As determined  
in Finding of Fact No. 6(E) and (G), the proposal makes adequate provisions for  
students walking to and from school.

### 13 DECISION

14 The proposed preliminary plat is found to be consistent with all applicable  
15 development regulations and, therefore, it is recommended that the Council approve  
16 the preliminary plat application subject to the following revised<sup>4</sup> conditions:

17 <sup>4</sup> The conditions of approval were revised as the result of a request for reconsideration filed by the City on November 5, 2012.  
18 During the hearing staff submitted a revised staff report that contained numerous revisions to the both the findings of the staff  
19 report as well as the recommended conditions of approval. The revised staff report was admitted into the record as a  
replacement of the originally submitted staff report. The Examiner did not notice that the recommended conditions had been  
revised by staff and did not include those revisions in his final decision, issued and dated October 30, 2012. The conditions of  
approval have been revised to be consistent with the revised conditions of the revised staff report.

20 Mr. Feilberg had also phoned the Examiner the week of October 29, 2012 to inquire as to how to request revision of the October  
30, 2012 decision. In that conversation Mr. Feilberg noted that there were no trees on the property within the five foot western  
21 property line setback and that some portions of the property lines already contained a fence erected by adjoining property  
owners. The conditions of approval have been revised as a result to provide that trees within the setback "if any" must be  
retained and that fencing is only required where it does not already exist.

22 It should be made clear that the fact that there may not be any trees within the western property setbacks does not in any way  
23 change the conclusions or requirements of this decision. As discussed in the decision, the Examiner has no legal authority to  
require the Applicant to mitigate aesthetic and compatibility problems along the western property line. Tree retention was only  
24 required because it was already required for other reasons by MMC 17.16.050 and fencing was required because it was  
volunteered by the Applicant. There is nothing else the Examiner could have done to address the situation and if it turns out  
there are no trees within the setback area that does not change the conclusions or requirements of the originally issued decision.

25 Note also that the evidence in the record strongly suggested that trees were located within the western property line setback.  
During the hearing the Examiner noted that the aerial photograph, Ex. 13, taken in July, 2012, showed the lot as heavily treed.  
The Applicant confirmed that the southern portion of the lot was heavily treed. Twice during the hearing the Examiner asked the  
Applicant if he would have a problem with retaining some of those trees within the five foot setback. Twice the Applicant  
responded that he would have a problem doing this, because he needs the space for stormwater purposes and recreational yard  
space. No one noted that there were no trees within the setback area. It is unnecessary to make a formal finding on whether or

- 1 1. The Applicant shall dedicate right-of-way for streets as shown on the approved  
2 preliminary plat map. Frontage improvements, including curb, gutter, sidewalk and  
3 street trees shall be provided for all streets within the subdivision. Traffic control  
4 devices and street signs shall be installed prior to final plat approval, and all public  
5 roads within the subdivision shall be constructed in accordance with the City's  
6 Public Works Design and Construction Standards and installed by the developer to  
7 the satisfaction of the City prior to final plat approval.
- 8 2. Traffic impact fees assessed in accordance with MMC 20.12 shall be required and  
9 paid prior to building permit issuance. Lot 15 is exempt.
- 10 3. Park impact fees in accordance with MMC 20.10 shall be required and paid prior to  
11 final plat approval, or the Applicant may defer payment to prior to building permit  
12 issuance.
- 13 4. School impact fees assessed in accordance with MMC 20.07 shall be required and  
14 paid prior to building permit issuance.
- 15 5. The water system capital improvement charge in accordance with MMC 13.04.025  
16 shall be required and paid prior to building permit issuance. Lot 15 is exempt.
- 17 6. The wastewater system capital improvement charge in accordance with  
18 MMC 13.08.272 shall be required and paid prior to building permit issuance. Lot  
19 15 is exempt.
- 20 7. Streetlights shall be installed as required under the City of Monroe Public Works  
21 Design and Construction Standards and as directed by the City Engineer.
- 22 8. Street trees shall be included in the street planter strips. Tree type, spacing,  
23 quantity, and location shall be as determined by the City. Street trees shall be  
24 planted when a street frontage is fully owner occupied and as directed by the  
25 Parks Department. The City will coordinate tree plantings to the most favorable  
time of the year. All street frontage landscaping/irrigation improvements shall be  
bonded until such time that housing construction is completed and bonded work  
may be completed without risk of construction damage.
9. Mail routes shall be approved by the Postmaster, including mailbox types and  
locations.
10. A homeowners association (HOA) shall be established and include all proposed  
lots. Conditions, Covenants & Restriction's (CC&R's) governing the HOA shall  
be submitted to the city for review prior to final plat approval. The CC&R's shall  
require the property owners to maintain, in a uniform manner, adjacent city right-  
of-way located between their property and the back of street curbs. and the right-

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not there are any trees within the setback area, since there is nothing more that can be done if no trees are present. However, the evidence in the record certainly provided a reasonable basis to conclude that trees may be located within the setback area and this made it worthwhile to require tree retention should any trees be located in that area.

Pursuant to the City's request for reconsideration the condition requiring fencing along the northern property line has been clarified to require that fencing be placed along the northern side of the 159<sup>th</sup> St. extension.

of-way located north of the paved portion of 159<sup>th</sup> Street

11. Well(s) located on the site shall be abandoned in accordance the requirements and criteria set forth by the Washington State Department of Ecology.
12. The Applicant shall retain all trees (if any) located within the setbacks to the western property line of the 4.91 acre parcel. A tree shall be considered within the setback when the entire trunk of the tree is located within the setback.
13. The Applicant shall install six foot fences, or the maximum height allowed by city code, whichever is lower, along the western property line of the 4.91 acre parcel where fences do not already exist.
14. The Applicant shall install a six foot fence, or the maximum height allowed by city code, whichever is lower, along the northerly portion of the 4.91 acre parcel approximately 15 feet north of the centerline of the 159<sup>th</sup> Street right-of-way.

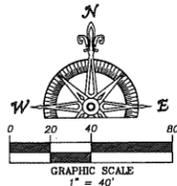
Dated this 5<sup>th</sup> day of November, 2012.



Phil Olbrechts  
City of Monroe Hearing Examiner

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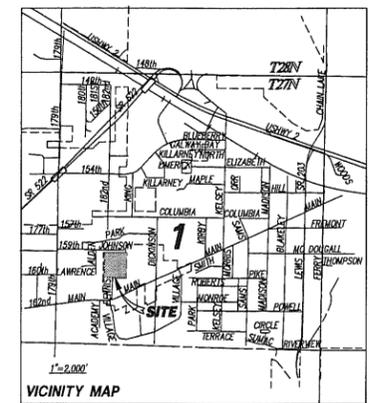
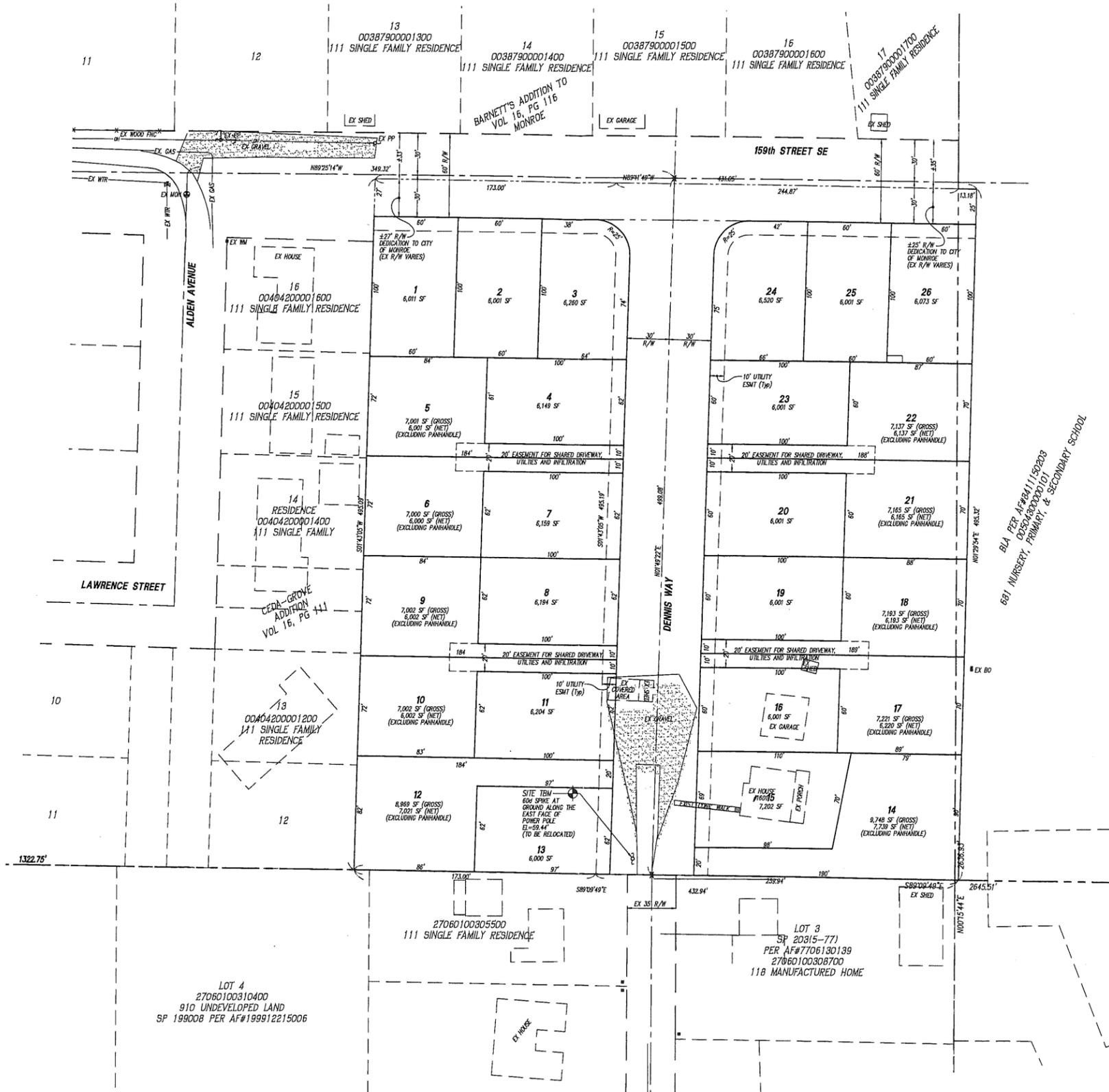
**BASIS OF BEARING:**  
HELD A BEARING OF SOUTH 89°08'48" EAST ALONG THE SOUTH LINE OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M.

**VERTICAL DATUM:**  
NAVD 88 (CONVERSION TO NGVD 29 = -3.60')

**PROJECT BENCHMARK:**  
W.S.D.O.T. VERTICAL CONTROL BENCHMARK DESIGNATION GP31002-114  
EL=83.34'

**SITE BENCHMARK:**  
60d SPIKE AT GROUND ALONG THE EAST FACE OF POWER POLE  
EL=89.44'

**NOTES:**  
1. THIS SURVEY WAS BASED UPON INFORMATION CONTAINED IN ORDER NUMBER 1911 DATED 11/11/11.  
2. THE INFORMATION SHOWN HEREON REPRESENTS THE RESULTS OF A SURVEY DONE BY ME ON THE DATE INDICATED AND CAN ONLY BE CONSIDERED AS DEPICTING THE GENERAL SITE CONDITIONS AT THAT TIME.  
3. INSTRUMENTATION FOR THIS SURVEY WAS A LEICA TORA 1105 PLUS TOTAL STATION AND TOPCON GR3 GPS. PROCEDURES USED IN THIS SURVEY WERE FIELD TRAVERSE AND STATIC OCCUPATIONS MEETING OR EXCEEDING STANDARDS SET BY WAC 332-130-030.

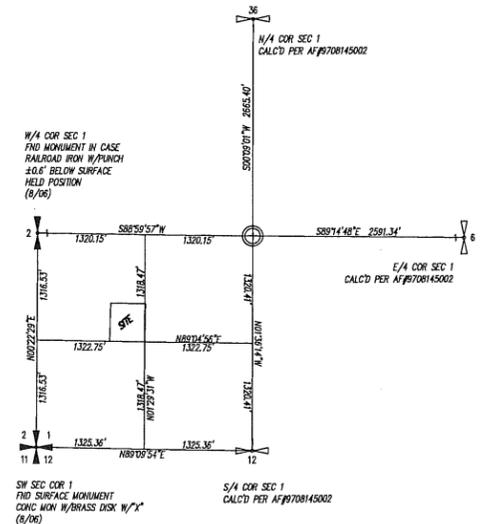


**LEGAL DESCRIPTION:**

**PARCEL A**  
BEGINNING AT A POINT 1085.3 FEET EAST OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON; THENCE NORTH TO SOUTH BOUNDARY OF COUNTY ROAD; THENCE WEST 173 FEET; THENCE SOUTH TO SOUTH BOUNDARY OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON; THENCE EAST 173 FEET TO POINT OF BEGINNING, ALL IN SECTION 1, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON.

**PARCEL B**  
ALL THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:  
BEGINNING AT A POINT 1085.3 FEET EAST OF THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON; THENCE NORTH TO SOUTH BOUNDARY OF COUNTY ROAD; THENCE EAST ALONG SAID SOUTH BOUNDARY TO THE ONE-SIXTEENTH LINE; THENCE SOUTH ALONG SAID ONE-SIXTEENTH LINE TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION; THENCE WEST TO THE POINT OF BEGINNING.

**TOGETHER WITH THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27 NORTH, RANGE 6 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:**  
BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1; THENCE NORTH ALONG THE WEST LINE OF SAID SUBDIVISION 495.30 FEET TO THE SOUTH LINE OF COUNTY ROAD GRANTED BY DEED RECORDED UNDER RECORDING NUMBER 245502; THENCE EAST ALONG THE EASTERLY EXTENSION OF SAID SOUTH LINE TO THE COUNTY ROAD 13.18 FEET; THENCE SOUTHWESTERLY TO A POINT ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 1, SAID POINT BEING 2.49 FEET EAST OF THE SOUTHWEST CORNER OF SAID SUBDIVISION; THENCE WEST 2.49 FEET TO THE POINT OF BEGINNING.



**SITE DATA:**  
TOTAL SITE AREA: 213,839 SF / 4.91 AC  
EXISTING ZONING: URBAN RESIDENTIAL 6000  
WATER DISTRICT: CITY OF MONROE  
SEWER DISTRICT: CITY OF MONROE  
SCHOOL DISTRICT: MONROE SCHOOL DISTRICT NO. 103  
FIRE DISTRICT: NO. 03

**SITE ADDRESS:**  
1601 DENNIS WAY  
MONROE, WA 98272-2009

**TAX PARCEL NUMBERS:**  
27060100304300 & 27060100304100

DATE:	JULY 05, 2012
REV:	
REV:	
REV:	
REV:	



DENNIS ADDITION  
26 Lot Plat  
Preliminary Site Layout

JOB:	12-048
SHEET:	1 OF 2
DRAWN:	DW
CHECKED:	DLW

**CALL 48 HOURS BEFORE YOU DIG 1-800-424-5555**  
THE CONTRACTOR SHALL VERIFY THE LOCATION OF ALL UTILITIES PRIOR TO ANY CONSTRUCTION. AGENCIES INVOLVED SHALL BE NOTIFIED WITHIN A REASONABLE TIME PRIOR TO THE START OF CONSTRUCTION.

