

*Spokane Office*  
Bank of America Financial Center  
601 W. Riverside, Suite 1900  
Spokane, Washington 99201-0695

Phone: (509) 838-6131  
Fax: (509) 838-1416  
website: [www.winstoncashatt.com](http://www.winstoncashatt.com)

*Winston & Cashatt*

L A W Y E R S

*A Professional Service Corporation*


*Winston & Cashatt has offices in Spokane, Washington  
and Coeur d'Alene, Idaho*

## MEMORANDUM

**Date:** December 6, 2018

**To:** City of Spokane, Tami Palmquist  
Hearing Examiner, David Hubert

**CC:** Greenstone Corporation

**From:** ELIZABETH A. TELLESSEN 

**Subject:** File No. Z18-598PUD  
Preliminary Plat and Planned Unit Development (PUD) - Garden District

### 1) Application—Background

The Applicant, Greenstone Corporation, has applied for a planned unit development (PUD) and preliminary plat (collectively the “Application”) to develop 24.9 acres of property commonly referred to as the Garden District. A PUD is an overlay, which is not required to comply with the base zone’s development standards.<sup>1</sup> Rather, it is approvable because of its “superior or innovative design.” SMC 17A.020.160(V)(1). “The City may permit a variety of types, design, and arrangement of structures and enable the coordination of project characteristics with features of a particular site in a manner consistent with the public health, safety, and welfare.” SMC 17A.020.160(V)(2). Greenstone has provided narratives detailing how the Garden District achieves the City’s development standards and PUD goals and policies.

The preliminary plat shows “the general layout of streets, alleys, lots, blocks, and other elements of a subdivision.” SMC 17A.020.160(Z)(1). “The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.” SMC 17A.020.160(Z)(2). The Application requests limited deviations from the underlying zones in order to achieve a superior and innovative urban-neighborhood design that transitions between, and maintains compatibility with, the existing single-family residential development to the south and west, and the multi-family and commercial uses to the north and east.

<sup>1</sup> The zones that underlie the Garden District PUD are Center and Corridor Zone (CC1 Zone) and Residential Single-family (RSF Zone). The CC1 Zone promotes pedestrian orientation by limiting auto-oriented activities. 17C.122.020(A). The RSF Zone is a low-density zone, but where appropriate “more compact development patterns are permitted.” 17C.110.030(B).

Beverly L. Anderson  
Patrick J. Cronin <sup>1D</sup>  
Kevin J. Curtis  
Darren M. Digiacinto <sup>1D</sup>  
Timothy R. Fischer <sup>1D</sup>  
David P. Gardner <sup>1D MT</sup>  
Scott A. Gingras <sup>1D MT</sup>

Erika B. Grubbs <sup>1D</sup>  
Natasha L. Hill <sup>1C1</sup>  
Michael T. Howard <sup>1D</sup>  
Collette C. Leland <sup>1D</sup>  
Lisa A. Malpass <sup>1D</sup>  
Benjamin H. Rascoff <sup>1D</sup>

Jeffrey R. Ropp  
Gabrielle C. Roth  
Kammi Mencke Smith <sup>1D</sup>  
Jenna M.K. Strohmeier <sup>FL PA</sup>  
Elizabeth A. Tellessen <sup>1D</sup>  
Nicholas R. Ulrich

*Of Counsel*  
C. Matthew Andersen <sup>1D</sup>  
Courtney R. Beaudoin  
Greg M. Devlin <sup>1D</sup>  
Stephen L. Farnell  
Kenneth B. Howard <sup>1D</sup>

Carl E. Hueber  
Nancy L. Isserlis  
Fred C. Pflanz  
Richard W. Relyea  
Lucinda S. Whaley

One of the key components is the focus on creating a transportation system through the development that prioritizes pedestrian and bicycle traffic, while maintaining connectivity to the adjoining streets for vehicle access. The City has taken some issue with this approach, asserting Crestline Street must connect to Southeast Boulevard as a major urban collector street through the proposed project and the existing single-family neighborhood ("Crestline Connection"). However, the Applicant has not proposed a connection in the preliminary plat. The only evidence of a connection is on the existing plat of the area, but this only establishes a 60 ft. right of way, not the 65 ft. right of way required for a collector street.

The record in this matter establishes that the Application satisfies the applicable code provisions. There is no requirement in the development code or the comprehensive plan, nor a factual basis to require a Crestline Connection, and such a condition to approval would be improper.

**2) Approval of the Application shall include the DRB's unanimous recommendations as conditions of approval.**

A unanimous recommendation from the DRB shall become a part of the approval unless the hearing examiner finds that it is (1) inconsistent with the design criteria; (2) the DRB exceeded its authority, (3) the recommendation conflicts with regulatory requirements; or (4) it conflicts with state or federal law. SMC 17G.040.080(D)(1)-(4). The Staff Report glosses over the extensive design review process that took place in this matter. Although the City has included all of the DRB's recommendations as proposed conditions, there is an inherent conflict between the DRB recommendations and Staff's insistence on a Crestline Connection.

The Staff Report's recitation of the Procedural Requirements leaves out the substantial design review process that took place prior to submission of the Application. Staff Report, III.H, p. 3. Greenstone was required to submit its Plan to the City's Design Review Board (DRB).<sup>2</sup> The Uniform Development Code ("UDC"), Title 17 SMC, establishes the basis for design review, and the particular design review criteria for a PUD are set out in SMC 17G.040.100 – .150.

The City's design review process included two public meetings, each of which lasted more than 3 hours. Dozens of written comments were submitted and testimony taken, the vast majority of which objected to a Crestline Connection. (Attachment A) Greenstone submitted to the DRB the Garden District Open Space Plan ("Plan") (Attachment B) that focuses on pedestrian and bicycle movement, and connects to adjoining public streets (Martin, 29<sup>th</sup>, and Southeast). Greenstone learned during its pre-application meetings with the community that there is strong opposition to a Crestline Connection. Consequently, Greenstone presented the Plan to the DRB, without a Crestline Connection. The exclusion of a Crestline Connection was the subject of much discussion by the DRB. (Attachment C - DRB Audio, 00:45:00-46:30; 01:40:00-43:50; 01:49:00- 02:02:00; 02:06:00-2:07:30) The Plan allows the development to achieve many of the innovative, aesthetic, and energy efficient elements required and encouraged under the PUD ordinance.

---

<sup>2</sup> See SMC 17G.070.200(C)(9) [PUD application requirements]; SMC 17G.040.020(H) ["other developments...that require design review"]; 17G.060.060(C) [begin design review before permit applications]; and SMC 17G.070.100 et seq. [PUD Design Standards].

For more than an hour, the DRB deliberated and analyzed the Plan. (DRB Audio 02:05:00-02:52:00). Ultimately, the DRB found the Plan satisfied the PUD design criteria, and voted unanimously to recommend approval. (DRB File No. 1812, Recommendation, June 13, 2018; DRB Audio 02:52:15) Since the DRB's recommendation is unanimous, "the [hearing examiner] shall issue a decision that makes compliance with the board's recommendation a condition of permit approval." SMC 17G.040.080(D). Given the DRB's unanimous recommendation, the Plan is the Plan included in the Application and the **only** Plan before the hearing examiner.

In the absence of a regulatory requirement or factual basis to support a Crestline Connection, the DRB considered the balance of the PUD design standards, and recommended approval of the Open Space Plan. In particular, the DRB found:

3. The project as proposed preserves the healthy urban forest canopy and supports a pedestrian friendly environment.

*Please See SMC Section 17G.070.120 Significant Features, SMC Section 17G.070.145 Circulation, and Section 17G.070.140 Community Environment.*

4. The applicant shall preserve the existing alley of trees in the center of the site.

*Please see SMC Section 17G.070.120*

The DRB valued the Applicant's efforts to prioritize pedestrian and bicycle access and preserve the healthy urban forest canopy, a significant feature that would be removed if a Crestline Connection is required. SMC 17G.070.010(5) (DRB Audio at 1:58:00-02:02:00; and 02:06:00-07:30) The Applicant requests the hearing examiner issue a decision that incorporates the DRB's recommendations as conditions of approval.

**3) There is no requirement in the development code, nor a factual basis to require a Crestline Connection.**

The PUD code permits a development to achieve a more innovative design by allowing flexibility and deviation from street design standards. SMC 17G.070.010(A) While street design is governed by the comprehensive plan and city design standards, the standards relied upon by the City do not mandate a Crestline Connection. The Staff Report relies on SMC 17G.070.145; SMC 17G.080.070(A)(1); SMC 17H.010.030(P); SMC 17H.010.080, and an undefined concept of connectivity to advocate for a Crestline Connection. What is lacking is any basis in the Application or other evidence to support a Crestline Connection.

**3.1 The Comprehensive Plan does not require a Crestline Connection.**

The intent underpinning the Transportation Chapter of the City's Comprehensive Plan is "the priority of designing to protect and serve pedestrians first, next consider the needs of public transit and non-motorized modes, and then consider the needs of automobile users." Comp. Plan, §4.3 (2017). This intent prevails throughout the transportation chapter's goals and policies, the following are a few examples:

**TR Goal A, Intent** – “Transportation systems can facilitate a good sense of place by including design features that are sensitive to the context of the place and are tied to surrounding land uses with appropriate streetscape features and elements that meet local community expectations.”

**TR Goal B, Intent** – “The objective is to support the desires of the community to have transportation options by providing options for commuting, recreation and short trips using transit and active modes like walking and biking, as well as other choices...”

**TR Goal C, Intent** – “Creating prosperous and walkable neighborhoods that offer opportunities for people to meet and connect means thinking of streets as people places as much as vehicle spaces.”

**TR Goal E, Intent** – “Spokane recognizes the importance of evaluating transportation projects using objective criteria to reflect community standards and desires. The city looks to improve livability in residential settings by protecting communities and neighborhoods by encouraging context-appropriate landscaping...”

**TR Goal F** – “Promote healthy communities by providing and maintaining a safe transportation system with viable active mode options that provides for the needs of all travelers, particularly the most vulnerable users.”

The comments from the City’s engineer asserts the Application “does not meet the connectivity aspect” of the Comprehensive Plan, without citation to any particular goal or policy. There is some direction in the Comprehensive Plan to consider connectivity, but there is no mandate to prioritize vehicular connectivity over other modes of transportation. E.g. Policies TR 2; and TR 7.

The Staff Report cites several of the Land Use policies in support of its envisioned vehicular connectivity. What the Staff’s analysis ignores is the guidance favoring the preservation of neighborhood character and compatibility of in-fill development. Comp. Plan LU1.3, Goal LU5; and DP 1.2. The community has voiced its overwhelming objection to making such a connection. The Staff’s proposal supplants all of the goals and policies focused on neighborhood compatibility, open space, and livability, for the singular purpose of vehicular connectivity.

Greenstone has heeded the comments and requests of the surrounding neighborhood and submitted an Application that advances the goals of the Comprehensive Plan related to neighborhood preservation, compatible in-fill development, and multi-modal transportation, prioritizing pedestrian and bicycle access. The Garden District preserves the sense of place that neighbors have grown accustomed to; supports a variety of transportation options to and through the development, including a safe walkable and bicycle friendly route that does not require users to compete with vehicle traffic; and connections to adjacent properties and streets on all sides. The Application is consistent with and furthers the intent of the Comprehensive Plan and should be approved.

3.2 SMC 17G.070.145 does not require a Crestline Connection.

The design criteria for circulation within a PUD are found in SMC 17G.070.145. There are two required standards that the PUD must meet: (1) “[a]ll buildings and common spaces shall be served by a pedestrian circulation system...”; and (2) “connect with the existing or planned street system...” SMC 17G.070.145(B)(1)&(2). The Staff Report advances an incorrect and selective reading of this provision. As the DRB concluded, and a plain reading of SMC 17G.070.145 reveals, the Plan satisfies the purpose, the required standards, as well as the other presumptions and considerations set out in SMC 17G.070.145(B).

First, the Plan focuses on improving the existing dirt pathways through the property, which the surrounding residents presently rely upon. Many of the streets through the surrounding neighborhoods do not have sidewalks (notably Crestline from 37<sup>th</sup> to 34<sup>th</sup> does not have sidewalks), making the improvement of the existing trail system an amenity for the existing neighborhood as well as those that will reside in and visit the Garden District.

Second, the Plan does connect to the existing street system at 37<sup>th</sup>, Martin, 29<sup>th</sup> and Southeast Blvd.; it just does not establish a collector vehicle access from Crestline to Southeast Boulevard. The Staff Report relies on Comprehensive Plan Map TR-12 to support its argument that a Crestline Connection is “planned”, and thus required. But, there is no plan to connect Crestline to Southeast, especially not as a collector street. Map TR-12 identifies a Crestline Connection as a “*Proposed Urban Major Collector*,” and goes on to disclaim the legal veracity of the map stating “THIS IS NOT A LEGAL DOCUMENT.”<sup>3</sup> In fact, the City Council has adopted Resolution No. 2018-0061 (Attachment D), which resolves:

...Amendment of the Proposed Arterial Network Map (Map TR 12)...to remove the proposed new urban major collector arterial on Crestline Street between 37<sup>th</sup> Avenue and Southeast Boulevard at 31<sup>st</sup> Avenue.<sup>4</sup>

The Comprehensive Plan sets out a “20-year Arterial Strategy” and identifies a number of Street Rebuilds, Transportation Projects and Capacity Improvement Projects, which the Citywide Capital Improvement Program (CIP) implements. See Comp. Plan, Ch. 4, pp. 4-61 – 4-71; Citywide Capital Improvement Program, 2018-2023. The Growth Management Act plainly requires cities to adopt capital improvement plans that implement the transportation element of the comprehensive plan. RCW 36.70A.120; RCW 36.70A.070(6); and WAC 365-196-430. However, a Crestline Connection does not appear anywhere in the CIP, the Official Arterial Street Map,

---

<sup>3</sup> The current version of the Comprehensive Plan was adopted by City Council in June 2017. There is no indication in the file of any process that was followed prior to changing TR 12 to include Crestline and a “Proposed Urban Major Collector.” Further, Lincoln Heights Neighborhood Council was without any information regarding the change. Comment, Hartse, Merri, November 15, 2018. It is believed this designation was added by staff without the benefit of public notice and comment.

<sup>4</sup> Councilmember Beggs has commented regarding his support “for considering removal of the designation of Crestline as an arterial....” Beggs, November 15, 2018.

SMC 12.08.040, and it is not part of the City's "planned street system."<sup>5</sup> Significantly, neither the built portion of Crestline (from 37<sup>th</sup> to 34<sup>th</sup>), nor the existing plat (with 60 ft. right of way) evidence a plan for construction of a collector street.<sup>6</sup> Consequently, it cannot be concluded that a Crestline Connection has been planned, nor is such required by SMC 17G.070.145.

3.3 A Crestline Connection is not required under the provisions of SMC Chapter 17H.010, and a condition imposing it would be an unlawful exaction.

The Staff principally relies on SMC 17G.080.070(A)(1); 17H.010.030 and .080 for the proposition that permanent dead-end streets should not be allowed. But, the Applicant is not requesting vacation of Crestline's platted right of way from 32<sup>nd</sup> to 31<sup>st</sup>. The Application simply avoids building a street that is unwanted and unnecessary, and only serves the purpose of creating an alternative route for through traffic. Expert, Todd Whipple of Whipple Consulting Engineers, Inc., has evaluated the trips generated and distributed through the site and concluded that the development will not reduce the level of service at any of the intersections in the immediate vicinity. This conclusion holds true regardless of a Crestline Connection, and the Staff Report concedes as much.

It is important to point out that the Staff Report falsely asserts, "there is no direct access from the main residential portion of this development to the arterial network." This is contrary to the Plan, and has no basis in the record. The Staff Report goes on to reveal its true intent for a Crestline Connection—to "maintain capacity on the arterial street system." Staff Report, pp. 6, 8. While this may be a viable intent, it cannot be furthered in the context of this Application.

The City does not have the authority to impose a condition on the approval that would require the Applicant to fix an existing defect in the road system, nor build a road that is not directly or indirectly required by the proposed development. Such a condition of approval is an unlawful exaction lacking an essential nexus or rough proportionality to the impacts of the proposed development. See Nollan v. California Coastal Commission, 483 U.S. 825 (1987) and Dolan v. City of Tigard, 512 U.S. 374 (1994); and RCW 82.02.020.

Conditions must be reasonable and commensurate with the direct or indirect impacts of a particular development. To satisfy the "essential nexus" test of Nollan, the exaction of property must address some problem *created* by the development under consideration. See Luxembourg v. Snohomish County, 76 Wn. App. 502, 505, 887 P.2d 446 (1995) (holding that the County could not condition approval of a subdivision upon the dedication of an access to neighboring property because the need for access did not arise due to the development). The burden is on the City to show the specifics of the impacts that the development will cause, and to establish that the proposed exactions are proportional to those impacts. Dolan v. City of Tigard, 512 U.S. 374 (1994); and see

---

<sup>5</sup> There are many planned street improvements across the City that appear in the CIP, and appear, as designated in the Comp Plan and CIP on TR 12, but a Crestline Connection is not among them. See Comp. Plan, Ch. 4, pp. 4-69-70; CIP pp. 410-411; 442-443; and (Attachment E)

<sup>6</sup> A number of the public comments reference the current status of Crestline north of 37<sup>th</sup>. For instance, Mr. Charles Milani notes the hazards that presently exist where Crestline intersects with 36<sup>th</sup> and 34<sup>th</sup>. Comment, Milani, C., November 13, 2018.

also, 17 William B. Stoebuck, Washington Practice, Real Estate: Property Law § 4.9, at 211 (2004) (explaining the significance of Dolan). This is the “rough proportionality” element of the exaction analysis. The burden of establishing that a condition is reasonably necessary as a direct result of the proposed development, and thus appropriate under RCW 82.02.020, is on the local government. Isla Verde Int’l Holdings v. City of Camas, 146 Wn.2d 740, 755-756, 49 P.3d 867 (2002).

The Staff seems to acknowledge that it does not have any evidence or facts to support its desired intent to “maintain capacity” as it states “[i]f the proposed roadway network changes, further traffic analysis and mitigation may be required.” The City cannot cite any evidence to support a Crestline Connection. And, its position is inconceivable considering the City has issued a DNS based on the Plan; has accepted the Applicant’s traffic analysis and not required any further study; and has no existing plan to create a Crestline Connection.

**4) The PUD code authorizes adjustment of otherwise applicable development standards to further its purpose and the City’s vision as articulated in the Comprehensive Plan. The Application satisfies all applicable decision.**

One cannot overstate the purpose of the PUD code, as it is the authority that permits this Application to be made. The City’s focus seems to be on applying the code as it would to a conventional development. This is not a conventional development. The Application seeks to benefit from:

1. Flexibility...design that maintains and improves the character, economic development and aesthetic quality and livability of the neighborhood.
2. Efficiency. Design that facilitates the efficient use of land, urban infill, transportation alternatives that promotes pedestrian, bicyclist and public transit and encourages energy conservation.
3. Affordable Housing....accomplished through the provision of flexibility in utility design standards, road design standards, site development standards...
- ...
6. Economic Feasibility. Increase economic feasibility and encourage revitalization and investment by fostering the efficient arrangement of land use allowing flexible site circulation and road standards...

The Application incorporates a variety of uses, densities and design standards to in-fill an otherwise fully developed area. Significant effort has gone into proposing the Plan that the surrounding neighborhood supports, that the DRB unanimously recommends, and that is appealing to the Applicant. In furtherance of this, the Application contains narrative and technical documents, as well as site plans, photographs and concept images to evidence its satisfaction of the applicable Decision Criteria. The following citations to the record are an aid and should not be considered as an exhaustive list of the evidence in the record that supports each criterion.

**4.1 17G.060.170(C)—Decision Criteria-General, Type III Application**

1. The proposal is allowed under the provisions of the land use codes.

*See PUD Application and CCI and RSF Development Standards, with requested adjustments.*

Response to Staff Discussion: Staff and Applicant agree this criterion is satisfied.

2. The proposal is consistent with the comprehensive plan designation and goals, objectives and policies for the property.

*See Sonneland Property PUD and Preliminary Plat Narrative, Section 7.*

Response to Staff Discussion: The Applicant does not believe there is a genuine basis to conclude the Application is inconsistent with the Comprehensive Plan when the plan is viewed and applied as a whole to this Application.

The Staff Report incorrectly concludes that the Comprehensive Plan requires a Crestline Connection. The Comprehensive Plan sets out the guiding goals and policies that are implemented through the development code, thus the development code, not the comprehensive plan, should be used to make specific land use decisions. Timberlake Christian Fellowship v. King County, 114 Wn. App. 174, 183 (2002).

The Staff Report also incorrectly states “there is no direct access to the arterial network from the main residential portion of this development proposal.” The residences proposed for the southern portion of the site will have direct access to Crestline and south to 37<sup>th</sup>. The residences on the north portion of the site will have access to both Martin, 29<sup>th</sup>, and Southeast.

3. The proposal meets the concurrency requirements of chapter 17D.010 SMC.

*See Whipple Consulting Engineers, Inc., Revised Traffic (Trip) Distribution Letter (August 14, 2018).*

Response to Staff Discussion: The Application was deemed complete, in part, because it satisfies the concurrency requirements. The connection from Martin to Southeast via 30<sup>th</sup>/31<sup>st</sup> will be public, and the Applicant is not requesting vacation of any platted right of way.

4. If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape, location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic, or cultural features.

*See Sonneland Property PUD and Preliminary Plat Narrative; Sonneland Property, The Garden District: Project Overview; The Garden District Vision; Garden District PUD, Consistency with the Purpose of PUD; Garden District PUD, Compliance with PUD Design Standards; TechCon, Inc., Phase I Environmental Site Assessment Report (December 7, 2009); and Garden District Open Space Illustrative Photographs.*

Response to Staff Discussion: The Application utilizes the PUD code to obtain flexibility in design of the streets, a design that is unanimously supported by the Design Review Board. Further, there is no basis to conclude the provisions cited by Staff require a Crestline Connection be made.

5. The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effects or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use.

*See Determination of Nonsignificance, File No. Z18-598PPUD (November 19, 2018).*

Response to Staff Discussion: It is important to note that the DNS does not indicate any need to mitigate an adverse environmental impact related to traffic. This conclusion is consistent with the record, which establishes that the project will not have material impacts on traffic in the area.

#### **4.2 17G.060.170(D)(4)—PUD Criteria**

##### **a. Compliance with All Applicable Standards.**

*See PUD Application; and CCI and RSF Development Standards, with requested adjustments.*

Response to Staff Discussion: Staff's only objection relates to a Crestline Connection. Applicant's position is there is no standard that requires a Crestline Connection, and thus, the Application complies with all applicable standards.

##### **b. Architectural and Site Design.**

*See Garden District PUD, Compliance with PUD Design Standards; Design Review Board – Garden District PUD; Program Review/Collaborative Workshop (April 25, 2018); and Design Review Board Recommendation (June 13, 2018).*

Response to Staff Discussion: Staff and the Applicant agree that the Plan demonstrates the use of innovative, aesthetic, and energy-efficient architectural and site design, and the DRB's unanimous recommendation is appropriately made a condition of approval.

##### **c. Transportation System Capacity.**

*See Whipple Consulting Engineers, Inc., Revised Traffic (Trip) Distribution Letter (August 14, 2018); and Spokane Transit Comments (July 30, 2018).*

Response to Staff Discussion: The Staff Report also incorrectly states, "there is no direct access to the arterial network from the main residential portion of this development proposal." The residences proposed for the southern portion of the site will have direct access to Crestline and south to 37<sup>th</sup>. The residences on the north portion of the site will have access to both Martin, 29<sup>th</sup>, and Southeast.

Staff and the Applicant agree that the record establishes there is capacity in the system to support this development.

Staff's comment inferring that the existing development does not have access to the arterial system absent a Crestline Connection is false, and inapplicable to the Application.

d. Availability of Public Services.

*See PUD Application; Sonneland Property PUD and Preliminary Plat Narrative; Sonneland Property, The Garden District: Project Overview; Fire Department Comments (August 1, 2018); and Avista Comments (August 7, 2018).*

Response to Staff Discussion: Staff and the Applicant agree there is sufficient capacity within public services to support this development.

e. Protection of Designated Resources.

*See Sonneland Property PUD and Preliminary Plat Narrative; Sonneland Property, The Garden District: Project Overview; The Garden District Vision; Garden District PUD, Consistency with the Purpose of PUD; Garden District PUD, Compliance with PUD Design Standards; Garden District Open Space Illustrative Photographs; and Design Review Board Recommendation (June 13, 2018).*

Response to Staff Discussion: This criterion is satisfied by the Plan because it permits the existing mature urban forest to remain intact, which a Crestline Connection would eliminate.

f. Compatibility with Adjacent Uses.

*See Sonneland Property PUD and Preliminary Plat Narrative; Sonneland Property, The Garden District: Project Overview; The Garden District Vision; Garden District PUD, Consistency with the Purpose of PUD; Garden District PUD, Compliance with PUD Design Standards; Garden District Open Space Illustrative Photographs; Design Review Board Recommendation (June 13, 2018); Consistency with Lincoln Heights District Plan; and Lincoln Heights Neighborhood Council Comments.*

Response to Staff Discussion: The Staff Report incorrectly concludes there is "a large treed buffer on the southern border." As found by the DRB the buffer between existing single-family residences to the south will be improved by incorporation of confers into the landscape buffer.

Staff and the Applicant appear to agree that the proposed development is compatible with the adjacent uses.

g. Mitigation of Off-site Impacts.

*See Sonneland Property, The Garden District: Project Overview; The Garden District Vision; Garden District PUD, Consistency with the Purpose of PUD; Garden District PUD, Compliance with PUD Design Standards; and Whipple Consulting Engineers, Inc., Revised Traffic (Trip) Distribution Letter (August 14, 2018).*

Response to Staff Discussion: The record is devoid of any evidence that the Application will result in off-site impacts that must be mitigated. The Staff Report's insistence that a Crestline Connection be made is based on Staff's desire to address unidentified and

unstudied system capacity on the South Hill. There is no legal or factual basis to impose a condition on this Application.

**4.3 17G.060.170(D)(5)—Plat Criteria**

*See Preliminary Long Plat Application; Preliminary Plat/PUD for Garden District; Garden District Preliminary Plat – Subdivision Decision Criteria*

- a. public health, safety and welfare;
- b. open spaces;
- c. drainage ways;
- d. streets, roads, alleys, and other public ways;
- e. transit stops;
- f. potable water supplies;
- g. sanitary wastes;
- h. parks, recreation, and playgrounds;
- i. schools and school grounds; and
- j. sidewalks, pathways, and other features that assure safe walking conditions.

Response to Staff Discussion: Staff and Applicant agree that the majority of the Plat Criteria are satisfied. Staff states again the desire for a Crestline Connection in regard to criterion (d), but offers no legal basis or evidence to support the imposition of a condition to create a Crestline Connection. Further, a Crestline Connection will inhibit the Applicant's ability to satisfy criterion (b).