

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

2                                   Phil Olbrechts, Hearing Examiner

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RE: Overlake Golf and Country Club  Non-Administrative Variance for Height Increase  File No. P-24-0079	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND</b>
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8                                   **INTRODUCTION**

9                                   The Overlake Golf and Country Club (OGCC) seeks a height variance to increase the  
10                                  25-foot maximum height limit for its driving range to 50 feet. The variance is denied.

11                                The primary basis for denial is the highly sensitive aesthetics of the City’s Sylvan and  
12                                built environment. As noted in the staff report, the proposed fence “*would be far and*  
13                                *above the tallest structure in Medina.*” As referenced multiple times in its  
14                                comprehensive plan and reflected in its strict variance criteria, the high quality and  
15                                pristine aesthetics of the Medina environment are critically dependent upon strict  
16                                adherence to its zoning code. The OGCC in substantial part likely owes its prestige  
17                                reputation to the beauty and high-end development of its surroundings. The  
18                                surrounding residents in turn rely upon the natural beauty of the golf course to maintain  
19                                the value of their high-end development. The zoning code serves as a mutual compact  
20                                between the golf course and the community to protect them both. The proposed  
21                                variance is a violation of that compact.

22                                The aesthetic impacts of the proposal by themselves are indisputable grounds for  
23                                denial. No other grounds are necessary. OGCC does have a legitimate safety reason  
24                                for the variance. The effectiveness of the current fence has likely been rendered  
25                                obsolete due to advances in golf clubs and balls. Correcting that safety problem cannot  
26                                come at the expense of the Medina community. Fortunately, OGCC has not suggested  
27                                that the driving range is necessary to maintain its feasibility. OGCC will have to  
28                                explore other options to maintain a safe course, which may include discontinuing the  
29                                use of the range.

30                                   **ORAL TESTIMONY**

31                                A computer-generated transcript of the hearing has been prepared to provide an  
32                                overview of the hearing testimony. The transcript is not intended to provide a precisely  
33                                accurate rendition of testimony but generally identifies the subjects addressed during  
34                                the hearing. The transcript is provided for informational purposes only as Appendix  
35                                A. Citations to the transcript pages are referenced as “Tr X.”

## EXHIBITS

The 354 page agenda packet for the subject application with Exhibits 1-24, including Ex. 18a-18ee was admitted into the record during the May 15, 2025 and June 10, 2025 hearings as well as post-hearing as authorized by the Examiner. In addition the following exhibits were also admitted during the hearing and post-hearing:

25. Atty Jennifer Robertson's response to the HEX about Atty Terry Danysh's email
26. Atty Terry Danysh's response to the HEX about earlier emails
27. Atty Aaron Smith's response to the HEX regarding the HEX Rules
28. Atty Terry Danysh's response to the HEX regarding Atty Smith's email.
29. Atty Zachary Griefen's response to the HEX regarding the HEX Rules
30. Heija Nunn's add info (a PDF) for the record, 5-13-25
31. Atty Aaron Smith's email submittal of a new comment letter
32. Atty Zackary Griefen's email with Jessica Rossman – Peter Berger comments
33. Curriculum Vitae Kessler
34. Curriculum Vitae Wilcox
35. Aerial Maps
36. Not used.
37. Samantha Smiley Presentation Outline
38. Crossett Curriculum Vitae
39. Shultz video
40. Tanner Presentation Outline
41. Tanner Rebuttal Table
42. Declaration of Posting for Notice of Hearing, (2nd day), June 4, 2025
43. Staff Presentation
44. Motions to Develop Record
  - a. City
  - b. Smith – Party of Record
45. Post Hearing Briefs
  - a. City
    - i. Ordinance No. 1033
  - b. Applicant
  - c. Smith – Party of Record
    - i. Chamberline Review of Sidor Comments
  - d. Berger-Rossman

## FINDINGS OF FACT

### Procedural:

1. Applicant/Agent. Terrence I. Danysh and R. Charles Beckett, Attorneys/Agents, for Overlake Golf and Country Club, property owners
2. Hearing. A hybrid virtual and in-person hearing was held on the application on May 15, 2025, at 10:00 am and continued to June 10, 2025. The record was left open through June 30, 2025 for written closing.

### Substantive:

3. Site/Proposal/Project Description. OGCC has applied for a Non-Administrative Variance to MMC 16.23.050 to increase the maximum height limit of its driving range fence from 25 feet to 50 feet. The current fence around the driving range is 12 feet. The proposed new fence would be approximately 1,500 linear feet long supported by 18 poles tapering up to 50 feet in height. The proposed fence would have a total surface area of approximately 75,000 square feet. Half of that area would be over the 25' height limit for the zone. The current 12-foot-tall fence area is approximately 18,000 square feet in surface area.

The subject property is 140 acres in area and is developed with an 18-hole golf course, a club house, sport courts, swimming pool, driving range, a parking lot, pro-shop, and multiple natural features. The property is landscaped with significant mature trees and plantings. The property operates under a special use permit for use as a Golf Course.

4. Characteristics of the Area. The project site is surrounded on all sides by residential development with the City of Clyde Hill bordering to the east. As far as can be ascertained from aerial photographs in the record, there are no structures approaching 50 feet in any proximate area surrounding the golf course. No power or other utility poles or lines are visible. The surrounding streets and lots are heavily wooded. See Ex. 4 and 6 aerial photographs.
5. Adverse Impacts. The proposal would create significant adverse aesthetic impacts to the Medina community. The record also establishes a reasonable likelihood that those aesthetic impacts will adversely affect property values. Aesthetics and property values are addressed in more detail below:
  - A. Aesthetics. The proposed fence variance will create material adverse aesthetic impacts to the surrounding community. The proposal is completely out of

1 character with the surrounding Sylvan<sup>1</sup> and high-quality built environment of the City  
2 of Medina. No similar structures are allowed or currently exist in the City. The City  
3 has a highly sensitive aesthetic environment the integrity of which is dependent upon  
strict adherence to zoning code height limits. The proposal is not consistent with  
those objectives.

4 The aesthetic landscape of the Medina community and the centrality of the project  
5 site to those aesthetics is well summarized in the staff report and as testified by  
planning staff, Tr. 20<sup>2</sup>:

6 *Granting a variance to install poles twice the maximum permitted*  
7 *height (50 feet instead of 25 feet) and approximately 75,000 square feet*  
8 *of surface area (37,500 square feet of which would be above the height*  
9 *limit and 57,000 square feet of which would be new fence surface area)*  
10 *would be materially detrimental to surrounding property owners by*  
11 *significantly impacting their views and the residential feel of the City.*  
12 *This structure would be far and above the tallest structure in Medina*  
13 *and thus has an impact on the public at large, particularly given how*  
14 *it will be visible from far away, even outside the City limits. Thus, the*  
15 *granting of this variance would be materially detrimental to the public*  
16 *welfare, be injurious to the property in the vicinity, as well be a*  
17 *deviation from the City's Comprehensive Plan.*

18 The centrality of the project site to the aesthetics of the Medina community is  
19 further documented in the City's Comprehensive Plan, which provides at Page 8 as  
20 follows:

21 *Overlake's golf course is an attractive, open green space located in a*  
22 *shallow valley, which runs through the center of the City. The golf*  
23 *course serves as a visual amenity for surrounding homes, passers-by*  
24 *who view it from city streets, and residents of Clyde Hill.*

25 Policy CD-G3 of the Comprehensive Plan further recognizes the aesthetic  
importance of the golf course by recognizing that equally important to preserving

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<sup>1</sup> OGCC's closing brief focuses on the removal of trees in addressing impacts to Sylvan character. More significant is the impact of the height of the fence to that Sylvan character. For the most part, anything over zoning code height limits in the City are trees. The height variance introduces a new artificial aesthetic element to that almost entirely natural environment. That is the primary aesthetic impact of concern when assessing consistency with the City's Sylvan character. As addressed in Footnote 5, the proposed removal of trees may only be relevant to the variance criteria to the extent that it adds to the need for the variance.

<sup>2</sup> The staff report is a little unusual in that it was written by the City Attorney as opposed to planning staff. In this regard the staff report can't be taken as planning staff testimony or given deference based on planner expertise. However, planning staff did introduce portions of the staff report under oath a part of their own testimony. The staff report presented under oath by planning staff is found to be based upon planning staff knowledge and expertise.

1 the perimeter landscaping of the golf course is “*maintaining view corridors which*  
2 *contributes a sense of added open space in the heart of the community.*”

3 In the broader context the golf course is located in a highly sensitive, high quality  
4 aesthetic environment. As identified in the Applicant’s appraisal, the mean sales  
5 price for the 40 home sales within the city in the past year was \$5,246,463. The  
6 homes closest to the golf course for obvious reasons would have even higher selling  
7 prices. Ex. 18dd, pdf p 323. Attorney Smith<sup>3</sup>’s appraisal identified that numerous  
8 properties that would have their property values directly affected had property  
9 values ranging from \$4,000,000 to \$13,000,000. Ex. 18cc pdf 306.

10 The value of the surrounding highly priced homes is likely in large part attributable  
11 to the pristine Sylvan environment of the community overall. As identified in the  
12 Comprehensive Plan:

13 ...  
14 *Medina finds itself in the center of an increasingly urban metropolitan area.*  
15 *The City is attempting to maintain its identity in the face of exploding*  
16 *growth that has been occurring all through King County. Medina’s unique*  
17 *character is due in part to its lake front location. With approximately five*  
18 *miles of waterfront, the City is graced by premium single-family residential*  
19 *development along the lakeshore, and a mixture of modest homes in the*  
20 *north-central portion of the City, establishing the character of the City as a*  
21 *high-quality residential community.*

22 *Medina also has a distinctive and sylvan quality that is typified by semi-*  
23 *wooded and heavily landscaped lots that provide visual and acoustic*  
24 *privacy between neighbors and abutting city streets. Many of the residences*  
25 *are situated in open settings, which take advantage of the attractive lake*  
*and territorial views. Additional contributing factors are elaborately*  
*landscaped lots as well as the large tracts of open space, which can be seen*  
*from city streets...*

Medina Comprehensive Plan, Setting and Character, p. 8.

The City’s distinctive natural character is recognized and protected in several  
additional comprehensive plan policies as follows:

**Goal LU-G1:** *To maintain Medina’s high-quality residential setting and  
character, while considering creative housing solutions to accommodate  
community members of all socioeconomic groups.*

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<sup>3</sup> Aaron Smith represented some of the residents opposed to the variance.

1           **Goal CD-G2:** *Maintain the informal, natural appearance and safety of*  
2           *the Medina’s street rights-of-way and public areas.*

3           **CD-P1:** *Preserve and enhance trees as a component of Medina’s*  
4           *distinctive sylvan character.*

5           **CD-P9:** *The City's design objective is to maintain the City's natural, lower-*  
6           *density, and informal appearance. Medina’s highly visible streets as*  
7           *identified in the Landscaping Plan should be heavily landscaped with*  
8           *native trees and shrubs arranged in an informal manner.*

9           **H-P2:** *Maintain the informal, sylvan residential character of*  
10           *neighborhoods. Encourage residential site development and*  
11           *redevelopment to plan for the retention or preservation of existing trees.*

12           Of particular significance in the staff report quoted above is Mr. Kessler’s  
13           testimony, City planner, that the proposed structure would be “*far and above the*  
14           *tallest structure in Medina...*” Tr. 20. The comparative height of the proposed  
15           fence to other proximate structures is of course highly pertinent to an evaluation  
16           of aesthetic impacts. OGCC pointed out that cell towers and a school exceed the  
17           25 foot height limit, but the added cell tower height is mandated by federal law  
18           and the added height for the school is expressly authorized by Medina’s zoning  
19           code. Beyond the general observations from the comprehensive plan and staff  
20           report, there is little other information on the presence of other tall structures in  
21           the City. The aerial photograph in Ex. 3, pdf. 30 shows that the surrounding area  
22           has no power or telephone poles. This is consistent with the City’s  
23           Comprehensive Plan Utility goals and policies, which encourage the  
24           undergrounding of utility lines where feasible. Comp Plan p. 96.

25           The City’s commitment to prevent any structures from exceeding its 35-foot  
            height limitation is well exemplified in in City of Medina v. T-Mobile USA, Inc.,  
            123 Wash. App. 19, 95 P.3d 377 (2004). In that case the City’s hearing examiner  
            approved a height variance for a cell tower. The City appealed that decision up  
            to the Washington Court of Appeals. Ultimately the hearing examiner and Court  
            of Appeals had no choice but to approve the variance request under federal  
            mandates requiring accommodations for cell phone coverage. No such mandate  
            applies to golf driving ranges.

            The significance and severity of the aesthetic impacts to City residents is well  
            documented in the numerous letters and emails opposing the project. All of the  
            community opposition in one form or another is founded upon the aesthetic  
            impacts of the proposal. Some of those comments provided as follows:

            Ty Shultz noted at p. 214:

1       *The driving range occupies an evident and prominent location within the*  
2       *golf course, visible not only to all members and guests entering the club*  
3       *but also to the 27 homeowners within the city of Medina, whose homes*  
4       *are valued at over \$200 million (ref. Zillow), and are in clear view of the*  
5       *range or whose homeowners pass the range while accessing their homes.*  
6       *Additionally, the range is visible from properties in the neighboring city*  
7       *of Clyde Hill, where hundreds of homes overlook the course. The proposed*  
8       *netting and tree removal would significantly alter the visual character of*  
9       *this area, negatively affecting the aesthetic appeal of the golf course and*  
10       *potentially diminishing the value of properties in both Medina and Clyde*  
11       *Hill for decades to come*

12       Jeff Ritchey included in his written materials a picture of the fence around the  
13       Jefferson Park Golf Course from four miles away. The fence was clearly visible  
14       and took up a significant portion of the treed portion of the landscape. See Ex.  
15       18j.

16       Mike and Joan Willingham wrote the following:

17       *...The proposed variance and project design is at odds with Medina's long*  
18       *standing commitment to be responsible stewards of our beautiful*  
19       *landscape.... We live on the golf course with a wonderful view across that*  
20       *property and onto Clyde Hill. This project would create a blight for many*  
21       *view homes in Medina and Clyde Hill. We respectfully ask that you deny*  
22       *this Variance request.*

23       Peter Berger, 231, noted:

24       *We are not adjacent to the golf course, but our nearby home faces the*  
25       *direction of the driving range. If constructed as illustrated in the*  
26       *application, the proposed 50' netting structure – including 16 50' poles –*  
27       *would become our view of sky and horizon from the main living spaces in*  
28       *our home. The quality and character of our property would be*  
29       *substantially diminished.*

30       Heija Nunn, a local real estate agent and resident, wrote the following, 236:

31       *...a variance for a 50 foot structure would create a dangerous precedent*  
32       *in any residential zone, particularly R20 as these properties tend to be in,*  
33       *or near, important view corridors. Exceeding, (almost doubling) existing*  
34       *and carefully considered height restrictions will most certainly create an*  
35       *unnecessary visual impact and detract from the important visual amenity*  
36       *that Overlake Golf Course is to our community as noted in so many city*  
37       *documents.*

1 Ben Magnano, who lives close to the second hole of the golf course, wrote as  
2 follows 239:

3 *..the proposed improvement plan, with 50' poles, will be a horrific eye sore*  
4 *for anyone with a view line into holes #1-4; this includes not only our streets*  
5 *but anyone with a west facing view on Clyde Hill*

6 Chasma and Christin Geron wrote at p. 195 that the proposal “*impacts most*  
7 *of our views looking out on the course and the overall appearance of the club*  
8 *itself.*”

9 Michael and Janice Peters wrote at 209: *Placing a towering 50-foot net*  
10 *structure around the driving range would unnecessarily disrupt the feel of the*  
11 *community, damage views and lower the attractiveness and value of many*  
12 *properties, including ours*

13 Mr. Griefen, another attorney representing some Medina residents, noted at  
14 pdf. 265:

15 *Mr. Berger and Ms. Rossman would be particularly harmed by the*  
16 *proposed 50-foot fence. The Berger/Rossman home is located southerly of*  
17 *the driving range and situated with northerly views into the ‘open end’ of*  
18 *the driving range, but they cannot see the golf course itself, or the driving*  
19 *range, or the existing fence at the driving range. The proposed 1,500-foot-*  
20 *long, 50-foot-high fence, however, would intrude into their views from their*  
21 *home—views currently of trees and sky. None of the proposed mitigation*  
22 *discussed in the record addresses homeowners located south of the driving*  
23 *range, who would look up into the u-shape of the new proposed structure*  
24 *(not merely see one side of it).*

25 Mr. Willingham testified at the hearing as follows:

*We currently enjoy a beautiful view across the entire club property and*  
*onto Clyde Hill. If this 50 foot fence is approved, our entire view of the*  
*course stretching all the way to 84th Street will be completely below the*  
*fence line and obstructed by two layers of netting because we're looking*  
*across both the west and east boundary of the driving range. Tr 178*

OGCC’s primary response on aesthetic impacts is that the netting is designed to be transparent, the poles are tapered and colored to blend in with the environment and that trees will be planted to hide the nets. The Applicant points to Ex. 17 renderings as demonstrating the transparency of the nets. The proposed fence as depicted in those renderings are in fact still visible. The poles supporting the nets are certainly not invisible. There will be up to 18 of the poles that transition from 25 feet to up to 50 feet along the netting. Those poles are 18 inches in diameter at the base and taper down to an eight inch diameter at the top.



1 Tyron Francis, the general manager of Northwest Turf Solutions, provided the  
2 Applicant's testimony on the visual impacts of the netting. Northwest Turf  
3 Solutions is the contractor the Applicant is using to install the netting. Mr.  
4 Francis testified that the netting is "*virtually invisible*" 50-75 yards away. No  
5 renderings or photographs of other golf courses were presented to substantiate  
6 this point. All of the photographs and renderings submitted by the Applicant  
7 clearly depict the netting. The one photograph depicting netting at a distance  
8 shows the netting for the Jefferson Golf Course clearly visible from four miles  
9 away. Ex. 18i pdf 220. Even if the net is "*virtually invisible*" that is a far cry  
10 from totally invisible. Just the edges of the massive structure are enough to  
11 subvert the natural surrounding aesthetic that is exclusively limited to trees at  
12 that height. Further, the poles themselves, though blended, will still always be  
13 visible against the changing colors of the sky.

14 As far as can be ascertained from the Applicant's renderings the only way the  
15 fence will ever be completely shielded may be when the trees have grown taller  
16 than the 50-foot fence. It will take more than ten years to reach this level. The  
17 Ex. 15 tree renderings state that in approximately ten years the trees will have  
18 reached heights of 10-35 feet and after 25-30 years will reach heights of 15-70  
19 feet. Even if all the proposed trees do eventually exceed the 50-foot fence height,  
20 it's unknown if they are closely spaces enough to form a completely opaque  
21 screen.

22 B. Property Values. The proposal has a reasonable likelihood of materially affecting  
23 surrounding property values. OGCC has not submitted substantial evidence to the  
24 contrary.

25 OGCC and Attorney Smith submitted competing appraisals on property value  
impacts, with Attorney Smith submitting an appraiser response to OGCC's critique  
of his appraisal report. Ex. 18cc, 18dd, 45c.i. Both appraisals are equally credible  
in the expertise of their conclusions. Both fail to identify any market studies  
establishing whether the addition of a driving range fence or similar structure to an  
open space can impact property values to surrounding homes. Attorney Smith's  
appraisal raised a prima facie case of property value impact. OGCC failed to refute  
that position. Substantial and a preponderance of evidence must establish no  
material impact to property values. The record doesn't meet this standard.

Aaron Smith's appraisal and appraisal response was prepared by Robert  
Chamberlin. Mr. Chamberlin has been a residential property appraiser for 55 years  
and has served as an expert trial witness over 155 times. He has appraisal  
experience in Medina and Hunts Point. He also has golf course specific experience  
of residential appraisals adjacent to the OGCC, Broadmoor, Sahalee, Canterwood  
and Sun Cordia courses in Washington. The report he prepared for Ms. Smith  
assessed specific impacts on four properties located on 77th Avenue NE and NE  
21st Street, each with direct views of the OGCC.

1 Mr. Chamberlain concluded that the proposal could result in a 5-10% decrease in  
2 property value for the 17 homes most directly affected by the proposal. Ex. 18cc,  
3 pdf 306. Mr. Chamberlain's report focused on two issues. The first issue was the  
4 removal of the trees and the approximately 35 years needed for the replanted trees  
5 to reach maturity and screen portions of the proposed fence. The second issue was  
6 the psychological impact on proposed home buyers in the area and the effect on  
7 probable market value impacts.

8 In the existing condition, the driving range and its 12-foot-tall fence are screened  
9 from most residential views by landscaping trees. Mr. Chamberlain stated these tree  
10 and manicured open space provide an economically quantifiable view amenity to  
11 adjacent residences. If the variance is approved, construction of the proposed 50-  
12 foot net would require the removal of 77 ornamental trees that currently block views  
13 into the driving range. Mr. Chamberlain noted OCGG estimates maturation of the  
14 replanted trees will take approximately 35 years. Prior to maturation, the proposed  
15 fencing will be visible to surrounding residences.

16 In his report Mr. Chamberlain notes the *"positive relationship between view  
17 amenities and property values has been extensively studied and is well established."*  
18 though the impact of the particular view amenity varies by the type of amenity and  
19 the quality of the view. The view amenity in this case is uninterrupted, sweeping  
20 views of the golf course. He noted *"buyers in this area place significant value on  
21 the preservation of the neighborhood's existing aesthetic elements, including the  
22 view corridor provided by the golf course."*

23 Stan Sidor, an appraiser for Kidder Mathews, wrote a response to Mr.  
24 Chamberlain's report. Mr. Sidor has substantial experience appraising golf course  
25 properties and high-end single-family properties abutting golf courses. Mr. Sidor  
noted that Mr. Chamberlain's assessment was anecdotal without providing specific  
impact analysis or reference to relevant studies. He noted that driving ranges and  
associated netting are typical of golf courses and that *"[b]uyers of residential  
properties abutting golf courses still usually buy their properties due to their  
proximity to the golf course itself, regardless of the presence of a driving range  
with netting in place,"* Ex. 18dd pdf 320.

Mr. Chamberlain prepared a response to Mr. Sidor's critique of Mr. Chamberlain's  
report. Ex. 45.c.i. Mr. Chamberlain notes there is no market data relating to similar  
situations because the proposed structure has not been constructed. While a  
property specific appraisal could be performed, the scope was to provide a broader  
approach. He stated he's performed numerous appraisals on properties with view  
impacts, both positive and negative. The impacts are obvious and long-lasting.  
Even if the netting is nearly invisible, the poles are not. The reasonable expectation  
based on the code is that there will be treed or clear views above 25 feet.

Neither appraiser provided references to studies demonstrating the economic  
impact, or lack thereof, caused by the addition similar to the proposed fence in a  
highly aesthetic environment such as that surrounding and including the OGCC  
golf course. While Mr. Sidor is likely correct that the OGCC course as a whole is  
likely the primary driver in enhancing property value, it would appear that the fence

1 would affect the relative desirability of homes along the golf course, i.e. homes with  
2 views most impacted by the fence would become less desirable than those least  
3 impacted. There is also the long-term, cumulative impact to property values to be  
4 considered.<sup>4</sup> Approving the OGCC variance will set a precedent for similar other  
5 variance requests, resulting in more large structures throughout the Medina  
6 community. Such an impact overall would make the Medina community less  
7 desirable when compared to others that would have more successfully maintained  
8 their Sylvan low rise aesthetic. That type of property value impact, though highly  
9 speculative, could have an extraordinary property value impact given the high value  
10 of Medina homes.

11 Ultimately, the extensive experience of both appraisers presents compelling  
12 opposing viewpoints on property value impacts. In the absence of specific market  
13 studies for comparable situations those well-qualified opinions must still be  
14 considered speculative. Mr. Chamberlain's analysis is marginally more compelling  
15 given the incongruous nature of the fence with surrounding aesthetic features. The  
16 most concrete pertinent conclusion that can be reached is that Mr. Chamberlain's  
17 analysis establishes a reasonable likelihood of adverse impacts to property values  
18 and Mr. Sidor has not presented substantial evidence to discredit that conclusion.

- 19 6. Feasibility. The OGCC golf course can still be feasibly used as a gold course  
20 without the variance.

21 Perhaps the most important evidence on feasibility is the acknowledgement of the  
22 OGCC general manager that the OGCC would continue to operate the golf course  
23 with or without the variance. Tr 52. OGCC witnesses have at no point indicated  
24 that OGCC couldn't feasibly operate without a driving range or a substitute range  
25 such as an electronic range.

The most compelling argument that OGCC advances on feasibility is that it would  
no longer qualify as a permitted use without the driving range. MMC 16.12.080  
defines golf course as it is used in the zoning use table of MMC 16.21.030 for the  
R20 zone. That definition requires a driving range for a use to qualify as a golf  
course. Development Services Director Wilcox testified that the City will permit

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<sup>4</sup> Medina's variance criteria includes a puzzling restriction on using past variance decisions as precedent. See MMC 17.72.030E. Such a requirement deprives the City of establishing past code enforcement conduct to merit deference. Deference is due a city's interpretation of its land use code when that interpretation is based upon an established practice of enforcement. *Ellensburg Cement Prods., Inc. v. Kittitas Cnty. & Homer L. (Louie) Gibson*, 317 P.3d 1037, 1046 (Wash. 2014). Further, the failure of the City to apply its variance criteria in a consistent manner can lead to accusations of arbitrary and capricious decision making in violation of Chapter 64.40 RCW. It will be difficult to reconcile MMC 17.72.030E with these competing legal constraints. The problems that this provision will cause the City is already demonstrated in this case, where Attorney Smith's reliance (from the City perspective) upon the helpful Yang variance is prohibited by MMC 17.72.030E. A likely result, however, is still that some semblance of consistency in variance decision making will emerge despite MMC 17.72.030E and approval of the subject variance will facilitate approvals of future height variance requests to further detract from the City's Sylvan character.

1 the continued use of OGCC as a golf course with or without the presence of a  
2 driving range. Tr 25. Mr. Wilcox didn't identify the basis for his conclusion. It is  
3 debatable whether Mr. Wilcox or any City staff could single-handedly waive code  
4 requirements such as the use restrictions of MMC 16.21.030. The City may be hard  
pressed to defend Mr. Wilcox's position in the event of third-party litigation  
seeking to terminate the golf course use, although some nonconforming use  
arguments may help save the day.

5 Although it's debatable whether OGCC could legally operate without a driving  
6 range, it's highly unlikely that OGCC would ever be compelled to shut down  
7 without one. At the very worst, the City Council would almost certainly agree to  
8 amend the golf course definition as necessary to keep the golf course in place. Short  
9 of that OGCC could substitute an electronic range for the driving range, reconfigure  
the golf course, prohibit golf course use during driving range limited hours or  
strictly enforce rules regarding use of the range.

10 7. Safety. The proposed variance is necessary for safe operation of the driving  
11 range as it is currently used.

12 At the outset it should be recognized that there's no question that there's a risk of  
13 serious injury due to driving range golf balls clearing the range fence. However,  
14 there's a risk of that occurring anywhere else on the golf course as well from use of  
15 the 18 holes. There is clearly some level of risk assumed by patrons of golf courses.  
16 The operative question is whether the permitted 25-foot fence height creates more  
than an acceptable level of risk. The evidence on this issue is a little mixed but it  
is concluded that overall substantial evidence establishes that a 25-foot fence would  
create an unacceptable level of risk.

17 When the driving range was developed the designers didn't anticipate technological  
18 changes that resulted in farther, faster shots. Those advances in golf technology  
19 have significantly reduced the effectiveness of the 12-foot fence as testified by the  
OGCC errant golf ball expert, Mr. Tannar. Tr. 106.

20 To address the safety problems with the 12-foot fence, OGCC contracted with Ken  
21 Tannar of Probable Golf Instruction Ltd. to do a ball flight study to assess the  
22 minimum fence height for an acceptable level of risk. Mr. Tannar has a bachelor of  
23 Science from University of British Columbia in physics and mathematics. He has  
24 advised in over 100 cases involving errant golf balls on golf courses, driving ranges  
and adjacent properties outside the course (Ex. 12). He concluded that a 50-foot-  
high fence was the minimum height necessary to provide for a minimum acceptable  
level of risk. Tr 69-70. He's been an errant golf ball expert for 25 years and his  
entire focus is on injury and damage protection from errant golf balls. Tr. 105.

25 Mr. Tannar testified that he's never seen such a low fence for a driving range  
outside of a range wide enough to accommodate such a low height. Tr. 106. In  
comparing driving range balls to golf course balls, Mr. Tannar noted that far more

1 balls are hit in a driving range than in the surrounding fairways. At a golf hole  
2 you've got a maximum four or eight golfers playing a golf hole at one time. If they  
3 hit an errant ball they're likely to yell fore to notify anyone who may get hit. In  
4 contrast in a driving range there can be 10-20 people, depending upon how many  
tee bases there are. Tr.107. Mr. Tannar noted that in the United States 5,000 people  
per year are treated in emergency rooms due to being hit with errant golf balls. Tr.  
106-107.

5 Mr. Brown, OGCC's golf course superintendent, testified there were numerous  
6 close calls from errant balls witnessed by OGCC staff. The balls arrive quickly and  
7 without warning into the adjacent cart path and on Fairways One and Two. He  
8 stated that most of the maintenance team had witnessed or experienced near misses.  
9 Reports from the Pro Shop and the professional staff are also frequently reporting  
near misses Tr 69. However, Mr. Brown stated no golfers have reported being hit  
by an errant ball from the range in at least a decade Tr. 76.

10 Mr. Tannar's analysis estimated that restricting play to a 90% flight restricted ball  
11 would result in 1.2 % escapement for a 50-foot fence verses 10% for a 25-foot  
12 fence. Ex. 13, pdf 148. Golf Course Superintendent Cory Brown testified that he  
13 believed about 50-100 balls leave the driving range's 12-foot fence in any given  
14 day Tr 72. The total number of golf balls hit in any given day at the driving range  
15 remains unclear. Mr. Brown postulated based on the buckets of balls staff fill daily  
16 at the range that as many as 22,000 balls are hit daily Tr 79. Mr. Schultz identified  
17 in cross-examination of OGCC general manager Ms. Inman this was highly  
18 unlikely given this would take 880 golfers in a single day to hit if the golfers each  
19 hit 25 balls Ms. Inman acknowledged this was vey unlikely. There are only 470  
members of the OCGG. Tr 55. However, Mr. Schultz didn't identify how he came  
up with the nominal amount of 25 balls per golfer. Mr. Brown testified that "some"  
golfers hit 25 balls to warm up but that people now often hit 100 balls in a devoted  
practice session. Tr. 69. It's completely plausible that golfers hit 50-100 golf balls  
at the range as opposed to just 25. Mr. Brown's estimate of 2,200 balls may be on  
the high side, but potentially not completely inaccurate.

20 Mr. Schultz resides in a home along the golf course. He did his own study by  
21 counting the number of balls that landed outside of the cart path surrounding the  
22 driving range every evening. There are two holes near the driving range. For Hole  
23 1, Mr. Schultz found an average of 7.3 balls per day from multiple visits. Tr. 164.  
24 Mr. Schultz acknowledged in cross-examination that golfers often throw or hit balls  
they encounter on the fairway back into the driving range. Tr 165. Mr. Brown  
testified that golf staff remove balls from around the driving range multiple times a  
day. Tr. 192. Mr. Schultz disagreed, saying he did not see that activity going on  
from his home along the golf course. Tr. 165

25 Given the absence of an accurate count on the number of balls hit at the driving  
range, the exact number of golf balls escaping the driving range is not evident from  
the record. However, substantial evidence does establish that the number of balls

1 is at a higher than acceptable risk. As testified by Mr. Tannar, a 12-foot-high fence  
2 is something he's never seen before for a driving range as narrow as the one at  
3 issue. As further testified by Mr. Tannar, a driving range involves significantly  
4 higher counts of errant balls than out on the fairway. It must also be recognized  
5 that OGCC doesn't have any apparent motive for undertaking such a controversial  
6 and expensive upgrade for anything other than safety. Errant golf balls are clearly  
7 dangerous. The currently existing fence is clearly lower than most golf courses  
8 would use to control them. Substantial evidence supports the finding that the  
9 current fence height is not safe for golf course use.

- 10 8. Trees<sup>5</sup>. The useful life of the existing trees is not found to materially add to the  
11 safety issues of the driving range.

12 OGCC cites the alleged declining health of its trees as a reason for the variance.  
13 OGCC asserts that several cypress trees are ending their useful life and will have  
14 to be removed, thus eliminating the added protection they provided from errant  
15 driving range balls. Mr. Danysh, Applicant's counsel, stated the OGCC had 550  
16 lineal feet of Leyland Cypress that need to be removed because they are nearing  
17 their lifespan based on the opinion of OGCC's in-house arborist, Samantha  
18 Smiley's opinion. Tr 224.

19 The driving range is surrounded by a site obscuring trees with heights ranging from  
20 10-feet to 65-feet with an average of 45-feet. Leyland Cypress represents 36% of  
21 those trees. The cypress were planted by OGCC to serve as hedgerows on the inside  
22 perimeter of the range. Ex. 10, pdf 58. Ms. Smiley stated the Leyland Cypress  
23 hedge was planted in the early 2000s to help improve the cover and safety of the  
24 driving range. Tr. 135. These trees are approximately 37 feet tall. These are fast  
25 growing plants with weak structure that is prone to breakage.

Ms. Smiley stated they start seeing major faults in trees starting at about 30 years  
which means the current cypress will start to exhibit weakness in 5-10 years Tr 134.  
Ms. Smiley stated that while the subject Leyland Cypress are currently healthy,  
they will continue to decline in the near future. However, she stated at the moment,  
the Leyland Cypress are in very good health. A problem is that they are in a

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<sup>5</sup> This decision only addresses OGCC's contention that the fence is necessary because the surrounding trees will have to be removed. It doesn't address whether the removal of trees serves as an adverse impact resulting from the variance. It is debatable whether the proposed removal should be considered an impact of the variance. If the variance impacts are limited to the excess fence height proposed by the applicant, the tree removal arguably is not an impact. The trees would apparently still have to be removed for installation of a permitted 25 foot fence so the variance itself arguably isn't the cause of the removal. However, viewed differently, the project and associated tree removal wouldn't occur but-for the availability of the variance. Given that denial of the variance is well justified with or without the tree removal impact, it was not found necessary to address the issue. Tree removal is considered an adverse impact in the staff report comprehensive plan analysis adopted by this decision. However, even excluding the tree impacts the proposal still violates numerous comprehensive plan policies due to its other aesthetic impacts.

1 mutually supportive hedge structure so if one or two fall, the others will also fall  
2 like dominoes. Tr 140.

3 The grim outlook as testified by Ms. Smiley was belied by a second OGCC's  
4 arborist report and testimony from the City arborist. To independently assess the  
5 removal of trees for the proposed fence, OGCC submitted an arborist report from  
6 Bartlett Consulting. Ex. 10 and 11. The Bartlett report found that all of the Leyland  
7 Cypress slated for removal under the variance are currently in good health. Ex. 10,  
8 pdf 76-79. The City's arborist, Andrew Crossett, testified that based upon the  
9 Bartlett report and his professional experience, he believes the subject Leyland  
10 Cypress trees are likely to live another 50 years. He noted a lifespan of 50-70 years  
11 for the Cypress is typical. He stated the Cypress rarely topple Tr 156-160. Mr.  
12 Corsett has not been on-site to inspect the trees.

13 Given the above, Mr. Tannar supplied a rebuttal table with estimates of errant ball  
14 counts if the Leyland cypresses were removed. He reviewed scenarios with the use  
15 of drivers versus irons, and with fence heights of 12-feet, 25-feet and 50-feet. Ex.  
16 40. Mr. Tannar's worst-case scenario for errant balls escaping the range areas where  
17 the Leyland cypresses are slated to be removed is 1,100 balls daily, provided the  
18 fence is only the existing 12-foot tall and the golfers are all using drivers. Mr.  
19 Tannar stated with the use of irons only, the estimate of errant balls in the areas of  
20 the removed Leyland cypresses and with the existing 12-foot fence would amount  
21 to 770 errant balls leaving the range daily. If the fence height was 25 feet, and the  
22 golfers all used irons, the estimated number of errant balls escaping from the range  
23 would be 385 balls. If the fence were 50-feet high, with irons only, errant balls from  
24 the removal of the cypresses would drop to 39 balls/day. Mr. Tannar's estimates  
25 were based upon Mr. Brown's testimony of 2,200 balls hit daily at the driving  
range, but do nonetheless show that permanent removal of the Cypress trees could  
significantly increase escapement.

18 The Cypress trees do not appear to create a pressing need for a new fence. Ms.  
19 Smiley's testimony is credible given her continuous in-house work with those trees,  
20 but all those trees are in good condition and have decades left in their typical life  
21 span. Given a timeline of decades, the plantings could be strategically replaced  
22 while protecting the majority of the existing trees to maintain their function of  
23 deterring errant balls.

## 22 CONCLUSIONS OF LAW

### 23 Procedural:

- 24 1. Authority of Hearing Examiner. MMC 16.72.100(C) and MMC 16.80.060(C)  
25 authorize the Hearing Examiner to hold hearings and issue final decisions on Non-  
Administrative Variance applications.

### Substantive:

Pursuant to **MMC 16.72.030.F**, A Non-Administrative Variance may only be approved if the following criteria are met:

**MMC 16.72.030.F.a**, *The Variance does not constitute a granting of special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the subject property is located.*

2. Criterion Met. The criterion is arguably met. As noted in OCGG's prehearing brief, the criterion quoted above applies to use limitations, not bulk and dimensional limitations. See *Hoberg v. City of Bellevue*, 76 Wash. App. 357, 360, 884 P.2d 1339, 1341 (1994)(ruling the criterion quoted above "restricts the granting of use variances."). Limited to issues of use, the requested variance can be construed as necessary for OCGG to provide safe premises for its guests and patrons. That is an entitlement that is reasonably expected of any land use. The criterion is only arguably met, however, because the driving range isn't arguably necessary to operate the golf course. As determined in FOF No. 6, the golf course likely can be feasibly and legally operated without the driving range.

**MMC 16.72.030.F.b**, *The variance is necessary to make reasonable use of the property and such necessity is because of special circumstances relating to the size, shape, topography, or other factors on the lot such as the presence of critical areas or buffers that substantially constrain development of the subject property such that the property owner cannot develop the property consistent with allowed uses in the zone in which the subject property is located.*

3. Criterion Not Met. The criterion is not met. OGCC likely can make feasible and reasonable use of the property without the driving range or make alternative arrangements to the driving range as outlined in FOF No. 6.

In its prehearing briefing the Applicant appropriately cites *Buechel v. Dept. of Ecology*, 125 Wn.2d 196, 884 P.2d 910 (1994) for a judicial construction of reasonable use. *Buechel* is the only Washington court decision that interprets the reasonable use term as used in variance criteria. In applying a "reasonable use" term in Mason County's shoreline variance standards, the *Buechel* court largely used the same factors employed by the US Supreme Court in its *Penn Central* takings analysis. In *Buechel*, the applicant requested a shoreline variance to build a home within a shoreline setback along Hood Canal. The Mason County shoreline variance criteria required the applicant to establish that if he complied with shoreline regulations, "...he cannot make any reasonable use of his property." Without the variance there was no space for a single-family home. The subject lot only had 1,000 square feet of developable space because the rest of the property was submerged. The property was zoned for residential use. The County denied the variance request.

The State Supreme Court sustained the County's denial on the basis that the property could be used for recreational use, such as for a dock or boathouse. Although the



1 Supreme Court did not directly identify takings law in its assessment, the factors it  
2 applied are largely the same used in a *Penn Central* takings analysis, probably not  
3 coincidentally. In assessing whether recreational use qualified as a reasonable use, the  
4 Buechel court noted that “[t]he size, location, and physical attributes of a piece of  
5 property are relevant when deciding what is a reasonable use of a particular parcel of  
6 land.” 125 Wn.2d at 208. Other factors the *Buechel* court found relevant was  
7 investment backed expectations, including the zoning of the property at the time of  
8 purchase. *Id.*

9 In the *Buechel* case the size of the developable portion of the property was small, the  
10 property had significant regulatory and physical constraints at the time of purchase and  
11 the use of many surrounding waterfront properties was limited to recreational use. For  
12 all these reasons, the Court determined that recreational use was a reasonable use of the  
13 property and, therefore, the Applicant was not denied all reasonable use because he  
14 wasn’t allowed to build a home.

15 OGCC selectively relies upon the investment backed expectations *Buechel* factor to  
16 argue no reasonable use. As outlined above, *Buechel* involved much more than  
17 investment backed expectations. Particularly relevant to this case is the fact that location  
18 was one of the most significant factors considered by the *Buechel* court. The *Buechel*  
19 court in part found that limiting the use of the property to recreational use was reasonable  
20 because surrounding uses were limited to recreational use. Similarly, the surrounding  
21 properties of the project site are limited to structures much less than 50 feet in height.  
22 Further, comparatively speaking the *Buechel* denial was much more onerous than denial  
23 of the subject variance. The *Buechel* property owner was left with only recreational use  
24 for a residentially zoned lot. OGCC is still left with a viable and prestige golf course.  
25 Under *Buechel*, the denial of the subject variance clearly does not deprive OGCC of  
reasonable use.

17 **MMC 16.72.030.F.c**, *The Variance is necessary to relieve a material hardship that*  
18 *cannot be relieved by any other means such that the material hardship must relate to*  
19 *the land itself and not to problems personal to the applicant.*

20 *Hardship defined. It shall not be deemed a hardship if the applicant can develop the*  
21 *property for its allowed use under the zone without the granting of a variance.*

22 4. Criterion Not Met. The criterion is not met because as identified in Finding of Fact  
23 No. 6 OGCC can still feasibly and legally operate its golf course without the driving  
24 range. In the unlikely event that the City Council declined to amend its golf course  
25 definition to accommodate OGCC, OGCC would have the option of creating an  
electronic driving range to meet the definition. Other options are also available to use  
the existing driving range in a more controlled manner, although the effectiveness of  
those options was disputed by OGCCs witnesses at the variance hearing. Regardless, at  
the very least OGCC can likely feasibly operate the use of the property, i.e. golf course,  
without the driving range or in a worst case use an electronic range to meet the golf

course use definition.

**MMC 16.72.030.F.d**, *The granting of such Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.*

5. Criterion Not Met. The criterion is not met because it will create significant adverse impacts to surrounding properties and the community as a whole for the reasons identified in Finding of Fact No. 5.

**MMC 16.72.030F.e**, *Alternative development concepts in compliance with the existing code have been evaluated and undue hardship would result if such adherence to code provisions is required.*

6. Criterion Not Met. The criterion is not met. A feasible alternative development concept is operating without the driving range. OGCC has also not established by a preponderance or substantial evidence that feasible and safe alternatives to the driving range are not available, such as an electronic driving range.

**MMC 16.72.030F.f**. *The variance is consistent with the purpose and intent of the relevant city ordinance and comprehensive plan.*

7. Criterion not met. The criterion is not met for the reasons identified in the staff report, Ex. 1, pdf 12-14.

OGCC's prehearing brief and the staff report have opposing views on how to apply Policy LUP5 and LUP6. LUP5 identifies that existing nonresidential uses are "encouraged to be maintained." The golf course is listed as one of those uses. LUP6 in contrast provides that non-residential uses may be redeveloped "*in a manner compatible with surrounding properties.*" The staff report position is found the more compelling.

OGCC asserts in this prehearing briefing that LUP5 is more specific than LUP6 and thus trumps LUP6. That rule of statutory construction applies only if, after attempting to read statutes governing the same subject matter in pari materia, the court concludes that the statutes conflict to the extent they cannot be harmonized. *O.S.T. ex rel. G.T. v. BlueShield*, 181 Wash. 2d 691, 701, 335 P.3d 416, 421 (2014). LUP5 and LUP6 don't conflict. The golf course can still be encouraged to be maintained while at the same time requiring that any redevelopment must be compatible with the surrounding community. As determined in FOF No. 6, OGCC can still be feasibly operated with or without the driving range. It thus can be "maintained" while also remaining compatible with surrounding uses.

OGCC in its prehearing brief claims that CD-G3 only applies to OGCC perimeter landscaping. OGCC is correct as to the first sentence of CD-G3. However, the second sentence provides that "*equally important*" to the perimeter landscaping are the view

1 corridors into the golf course, “*which contributes a senses of added open space in the*  
2 *heart of the community.*” The proposed fence will do significant aesthetic harm to this  
3 view corridor as identified in FOF No. 5. The proposal is clearly inconsistent with  
4 CD-G3.

5 OGCC contests the applicability of Policy CD-P15 and CD-P27. CD-P15 encourages  
6 landscape buffers between different uses. CD-P27 encourages screening vegetation  
7 to protect adjacent residential use in part to protect those uses from visual impacts.  
8 The proposal clearly violates CD-P27 by removing vegetation and creating a structure  
9 that isn’t fully screened by vegetation. CD-P15 encourages landscape buffers  
10 “between” uses, which suggests perimeter landscaping. However, landscaping along  
11 the driving range is still in between the driving range and surrounding homes. In this  
12 regard the proposal is inconsistent with CD-P15.

13 **MMC 16.72.030F.h.** *The basis for the variance request is not the result of deliberate*  
14 *actions of the application or property owner.*

15 8. Criterion met. The criterion is met. The need for the variance is due to changes in  
16 golf technology that result in much higher ball trajectories that have rendered the  
17 current fence obsolete. The Applicant may have built the fence in 1953, but at that time  
18 it could not have reasonably anticipated the need for a higher fence.

19 **MMC 16.72.030F.i.** *The variance granted is the minimum necessary to provide*  
20 *reasonable use of the property.*

21 9. Criterion not met. The criterion is not met. As identified in COL No. 3, the OGCC  
22 has reasonable use even without the golf course or an alternative such as an electronic  
23 driving range.

## 24 **DECISION**

25 The OGCC application for Variance File No. P-24-0079 is denied on the basis that the  
application does not meet all of the variance criteria as outlined in the Conclusions of  
Law above.

Dated this 15<sup>th</sup> day of July 2025.

*Phil Olbrechts*

Phil Olbrechts,  
City of Medina Hearing Examiner

## Appeal and Valuation Notices

This variance decision is a final land use decision of the City of Medina. Appeals must be filed and served within 21 days of issuance as regulated by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

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