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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Main Holding Company, LLC)	
)	FINDINGS OF FACT, CONCLUSIONS OF
Preliminary Plat)	LAW AND FINAL DECISION
)	
LU1700183/184)	
)	

Summary

The applicant has applied for preliminary plat approval to subdivide three acres located at 11210 & 11320 Military Road S.W into seventeen single family lots. The proposal is approved subject to conditions.

Testimony

Note: This summary of testimony is solely provided for the convenience of the reader, for an overview of testimony. Nothing in this summary should be construed as a Finding of Fact or Conclusion of Law, or signifying any priority or importance to the comments of any individual. No representations are made as to accuracy. For an accurate rendition of the testimony, the reader is referred to the recording of the hearing.

Staff Presentation

Ramon Rodriguez, City of Lakewood Assistant Planner, summarized the staff report. He noted that the Main Holding Company has requested approval for a preliminary plat application splitting the site into 17 family home sites. In the proposal, the lot sizes vary between 5701 square feet and 12301 square feet. The site location is 11210 & 11320 Military Road S.W., two separate lots. The

1 site is relatively flat with the steepest portion by Military Road. The report lists potential erosion
2 related to topography. The applicant will submit a geotechnical report associated with that erosion.

3 The site access is west on Military Road. Based on preliminary examination, the site distance appears
4 adequate. According to the trip generation report, 415-feet of sight distance is needed for the project
entrance from Military Road and the project site accommodates 450 feet of sight distance.

5 The site contains several significant trees which will likely have to be removed for development.
6 Prior to clearing or grading a plan will be generated and a permit consistent with Title 12 of the
Lakewood Municipal Code will be required for approval and review by Lakewood Public Works
7 Department.

8 Surrounding uses are residential uses of both multi and single-family residential. The proposed plat is
9 consistent with density requirements. R-4 is one of the city's primary residential zones. The
10 minimum lot size for R-4 is 5700 square feet and the subject property may be divided into a
maximum of 19 single-family residential lots. A Determination of Non-Significance was issued for
the project on January 18, 2018.

11 In response to examiner questions, Mr. Rodriguez noted that Public Works will review for drainage
12 and storm water and it is not anticipated that changes to plat design will be needed. The trip
13 generation report had no level of service analysis because the trip generation was below the threshold.
14 There is adequate sewer capacity per the Sewer Department. Mr. Rodriguez explained that currently
15 there are no sidewalks on Military Road that would connect to the project frontage. As to proximity
of school bus stops, Mr. Rodriguez noted there's a transit stop located at the intersection of 114th and
Military Road, but he was unaware where the nearest school bus stops would be located.

16 **Applicant Presentation**

17 Wayne Robinson, applicant representative, testified that he is a longtime resident of Lakewood of
18 almost 20 years. He wants to build a nice neighborhood of single-family homes and follow all the
19 necessary regulations regarding this process; no matter how long it takes. He is mindful of the
20 drainage requirements and fully intends to follow all the requirements. He explained that a drainage
21 study will be done soon to help meet these requirements. He understands that neighboring areas may
be upset because of the loss of a beautiful unused space existing on the site but the city needs more
reasonable housing.

22 **Public Testimony**

23 Russell Kellersberger lives almost immediately south of the site on Farwest Drive S.W. He is a
24 retired construction superintendent and appreciates a developer recognizing a need in the city.
25 However, having lived on his lot for 37 years, he has experienced problems with his own property.
26 This includes not meeting perking requirements when putting in a septic tank. The Site Report has an
environmental check-off about drainage which explains that site will mitigate run-off from houses
through infiltration trenches. Mr. Kellersberger wants to know what evidence is there that the land

1 will perk and what studies will be done to prove this is a viable method. He doesn't want the site
2 drainage to come across and through his land. Additionally, he is worried about the removal of trees.
3 Based on the site map that most of the trees will be removed leaving only a sparse few close to his
4 home in the south. This removes all the buffer trees. He wishes they would revisit this for safety
5 reasons. Regarding noise, he doesn't believe that the construction levels won't cause issues. The
environmental checklist says, "none at this time." He suggests that there should be some time limits
because it's a residential area.

6 The Examiner asked Mr. Kellersberger to expand on the drainage issue. He explains there's a slight
7 ridge on southern portion of lot where water comes through and requires minor erosion prevention
8 each year. He is worried because his lot is so close to the project site where many impermeable
9 surfaces, such as a house roofs, will be nearby and could cause a bigger problem if proper studies and
10 drainage mitigation aren't put into action at the applicant's site. The Examiner asked Mr.
Kellersberger to elaborate on the tree problem. He explained that if they remove all those trees to the
north, which act as a natural buffer to the wind, then the ones close to his house could fall onto his
lot.

11 Michael Arnett lives on the property immediately behind the lot. He is worried about the traffic and
12 parking. The intersection at 112th and Military is very accident prone. He is concerned about the
13 increased amount of traffic from these 17 houses. His other main concern is the increase of noise. He
14 is more concerned about the residential noise possibly from renters of these new home. He assumes
15 that there will be rentals. They already have problems with lots of rentals on 105th Avenue and must
16 call the police due to noise and the police and fire are there almost every day.

17 Lillian French was a property owner on 105th Avenue. She lived there for 26 years, but now rents her
18 house out. There is a chain fence bordering the lots at 105th. She wants to know what kind of barrier
19 they will be putting up in place of a chain link fence that is currently in disrepair. She is concerned
20 that teenagers at the new residences may try to explore the houses the chain fence is supposed to
21 block. She is worried about traffic as well. She doesn't see more than one traffic entrance/exit for the
development which leads out to military road. She is concerned about many accidents that occur at
the intersection of 112th and Military. She explained there are hills here which get icy and cause
problems during cold weather. Regarding drainage, she sees an issue along Military Road. All the
drainage causes water to flow across the road. Regarding tree removal, she hopes that they plant one
for everyone they remove.

22 Keith French owns and rents 11325 on 105th Avenue SW with his wife. He would like to know the
23 general square footage of the houses proposed. He explained that hills in the area cause traffic
24 hazards in inclement weather. He explained that some duplexes in the area have access roads which
25 are flat and if they could connect the development to those instead they'd be safer for the site.
26 Regarding traffic, there is no turn lane provision on Military Road with only 2 lanes so anytime a car
needs to turn into this could stop traffic on a large hill. He believes that any left turns could be fatal
during bad weather.

1 Lillian French asked the applicant to consider eliminating proposed Lot 4 to gain access to an access
2 road. This leads to 112th and is a safer option in her opinion.

3 **Staff Rebuttal**

4 Mr. Rodriguez explained that traffic hazards for entering/exit the project site were addressed in the
5 traffic study. Public works found no problems. Regarding hazards from the trees, the perimeter trees
6 exist still because it was uncertain if they were required to still be retained. Depending on the size of
7 the lots being proposed true retention may not be required. Mr. Rodrigues noted that he is unsure
8 about the maximum allowed street grade.

8 **Applicant Rebuttal**

9 Mr. Robinson explained the perimeter trees will likely all be removed. The city doesn't require
10 certain trees to remain. He says he's a tree hugger and would be willing to plant trees in the right
11 place in the right size, but he doesn't want to plant something that will causes problems for the
12 residential lots. He is having a Geotech study done for the property in the next couple of weeks which
13 is required for the final approval. This will give them all the information regarding ground saturation
14 and perking. City code requires that there be no surface runoff and they'll be looking at that very
15 closely. They have discussed it closely with an engineer and will put in whatever possible to prevent
16 runoff. He appreciates comments on noise. The current plan isn't to build houses all at once, which
17 will give a respite from the noise. Regarding traffic, the proposal calls for moving a new city street
18 further downhill from where the current driveway is located and will be further from 112th
19 intersection. The traffic study said there was enough distance and to his understanding the current
20 road will be dug into the hill more and extended more into the subdivision, so the slope will be much
21 less. A 15-degree slope is the maximum permitted. The square footage for each home is currently
22 planned between 1600 and 2200 square feet. The initial plan is for building and selling the homes. If
23 they do rent, they will probably require landscaping to be done by his company. He has other rentals
24 which require renters to sign a safe-street initiative. He wants an attractive neighborhood. Regarding
25 Mrs. French's idea about the access road, it is a private easement and not an access road. They would
26 have to get permission or investigate before committing. They will check it out. Regarding the chain
link fence, this would be the new owners' decision. If they kept them as rentals they would put in
fences. He was not aware that the fence was on his property. They will look at it because he wants a
secure place.

22 **Exhibits**

23 The 19 exhibits identified at pages 10 of the revised March 6, 2018 Staff Report were admitted into
24 the record during the March 7, 2018 hearing. In addition, the following exhibits were admitted
25 during the hearing:

26 Exhibit 20 Revised March 6, 2018 Staff Report

1 Exhibit 21 Kellersberger letter dated June 27, 2017 to Andrea Bell

2 Exhibit 22 Aerial maps of vicinity from Google Maps

3 4 **FINDINGS OF FACT**

5 6 **Procedural:**

7 1. Applicant. Main Holding Company LLC, 8601 Thorne Lane SW, Unit 8, Lakewood
8 WA 98498 attn. Wayne Robinson.

9 2. Hearing. A hearing was held on the subject application on March 7, 2018 in the Lakewood
10 City Hall Council Chambers.

11 **Substantive:**

12 3. Project Description. The applicant has applied for preliminary plat approval to subdivide
13 three acres located at 11210 & 11320 Military Road S.W into seventeen single family lots. The
14 project also includes the creation of a new public road to access each lot and associated utilities. The
15 new access road is proposed to be a public local access road with a cul-de-sac that connects to
16 Military Road SW. The project site is relatively flat with the steepest part of the site next to Military
17 Road SW where slopes approach 50% grade.

18 4. Surrounding Area. Surrounding uses are residential. Properties in the surrounding area are
19 developed with single-family lots ranging from 6,098 sq. ft. (0.14 acre) to 31,798 sq. ft. (0.73 acre)
20 in size. Most of the platted lots within the neighborhood contain lots with 10,000 sq. ft. or greater.

21 5. Adverse Impacts. There are no significant adverse impacts associated with the project. A
22 SEPA Determination of Nonsignificance, Ex. 6, was issued for the proposal on January 18, 2018.
23 Pertinent impacts are addressed as follows:

24 A. Critical Areas. There are no critical areas on the project site.

25 B. Trees. No tree preservation is required by City standards. LMC 18A.50.300 provides tree
26 preservation criteria for certain types of projects. Pursuant to LMC 18A.50.320.B.1.a and LMC
18A.50.320.B.2.b for subdivisions where the proposed lots are less than 17,000 square feet, no
specific tree preservation is required for interior or perimeter trees. A neighbor asserted that
trees on the project site are necessary to create a wind screen to prevent trees on his property
from falling and causing damage. The City can only require the applicant to mitigate impacts
that it creates. *See, e.g., Unlimited v. Kitsap County*, 50 Wn. App. 723 (1988)(County can't
require developer to provide road access to adjoining landlocked property). Like the landlocked
condition in *Unlimited*, if the neighbor has trees that are in danger of falling, the City cannot

1 make the developer responsible for assuring that the neighbor's trees are safe. The neighbor is
2 responsible for the safety of trees on his property. If the neighbor was referring to unsafe trees
3 on the applicant's property, the record does not contain sufficient evidence to conclude that tree
4 removal could potentially result in an unsafe condition. Under the City's subdivision review
5 criteria, the applicant has the burden of proof in establishing that its application makes adequate
provision for the public health, safety and welfare, but more than mere unsubstantiated
assertions are necessary to establish that a potential impact is in need of mitigation.

6 C. Trespass. Requests were made at the hearing for the applicant to repair an existing wire fence
7 along the western property line to prevent trespass of errant teenagers. There is no reasonable
8 basis to conclude that the project will create a potential for trespass by teenagers or any other
9 demographic. City standards do not require fencing and there is no compelling reason to require
fencing for this proposal.

10 D. Noise. Concerns were raised about noise. The City has a noise ordinance that includes
11 provisions specifically directed at construction noise. See LMC 8.36.010. These standards
12 have been found by the Lakewood City Council to adequately assure reasonable noise levels
within the City. The ordinance assures that the project and its construction will not exceed
reasonable noise levels.

13 6. Adequacy of Infrastructure/Public Services. The project will be served by adequate and
14 appropriate infrastructure and public services. Adequacy is more specifically addressed as outlined
15 below:

16 A. Water and Sewer Service. The Applicant has acquired a certificate of water availability, Ex. 7,
17 from Lakewood Water District, which establishes adequate capacity for water service. As best
18 as can be ascertained from the record, the Pierce County Public Works and Utilities
19 Department will be providing sewer service to the project site. The record doesn't contain any
information on the adequacy of sewer capacity, but given the relatively modest size of the
proposal the preponderance of evidence establishes that Pierce County will have adequate
capacity and is willing and able to serve the development.

20 B. Fire and Police Protection As best as can be ascertained from the record, West Pierce Fire and
21 Rescue will be providing fire service to the project. West Pierce Fire and Rescue submitted
22 comments regarding conditions for fire-flow, fire hydrants, emergency vehicle access road and
23 turn-around. These conditions are imposed by this decision and assure that the proposal will
have adequate infrastructure for fire protection services.

24 C. Drainage. The record does not contain any preliminary drainage report, which is unusual for a
25 preliminary plat hearing, but staff testified that the proposed plat design is sufficient to
26 accommodate the drainage infrastructure required by City standards. Drainage was a concern
of several neighbors to the project. However, the City's strict drainage standards prohibit any
increase in any off-site stormwater flows from forested, pre-development conditions. As

1 required by state law, Lakewood has adopted the Stormwater Management Manual for
2 Western Washington, published by the Washington State Department of Ecology. See LMC
3 12A.03.020. The Manual requires detailed calculations on projected stormwater flows and
4 numerous standards pertaining to water quality treatment to ensure that off-site properties are
5 not impacted by any increases in stormwater runoff and that any waters discharged from the
6 site are cleared of pollutants that could adversely affect public waters and environmental
7 resources. The City will not approve the final plat of the project until the Applicant
8 establishes compliance with these standards. The neighbors have not presented any evidence
9 that these detailed standards would be insufficient to protect their property from adverse
10 stormwater impacts.

11
12 D. Parks/Open Space. City regulations do not require any open space dedication for the proposal.
13 In the absence of any evidence establishing that the proposal will create a demand for open
14 space, the City has no legal authority to require any dedication for open space. See *Isla Verde
15 Int'l Holdings v. City of Camas*, 146 Wn.2d 740 (2002)(if a municipality wishes to make a
16 developer set aside land for park purposes, the municipality has the burden of proof in
17 establishing the need for that park space.)The project site is located approximately 0.2 miles
18 from the entrance to Washington Park. Washington is a 3.5-acre park that features a youth
19 baseball field, walking trail, playground equipment, picnic tables and off-street parking.
20 Lakes High School is located approximately 0.7 miles away from the project site and has a
21 large open space area for running, walking, and other recreation.

22
23 E. Schools. Lakes High School is located approximately 0.7 miles to the north of the subject
24 property. Additionally, Lake Louise Elementary School and Mann Middle School are located
25 under half a mile from the subject property. There is no analysis in the record of walking
26 conditions to and from school. State law (specifically RCW 58.17.110(2)) and City
regulations require a finding that walking conditions are safe for students walking to and
from school. The information in the record is not well developed on this issue. As testified
by the neighbors, Military Road is a busy street and staff testified that it currently has no
sidewalks. If any students will be walking to or from school, the adjoining road conditions
are of concern. To assure safe walking conditions, the conditions of approval require the City
and applicant to work with the school district to assure that walking conditions will be safe
as required by state and City regulations.

27
28 F. Streets and Traffic. The subdivision will include the development of a public road that will
29 be accessed from Military Road SW. The proposed access road shall be built to local road
30 standards as outlined in the City of Lakewood Engineering Standards Manual Appendix 2,
31 Table 2 and shall meet the minimum requirements outlined in LMC 18A.50.135. The cul-de-
32 sac shall be designed to be 90 feet in diameter, with a 45-foot radius measured from the
33 center of the radius to the face of curb in accordance with West Pierce Fire and Rescue's

1 requirements for an emergency vehicle turnaround. The local access road will be reviewed
2 by the Public Works Department by way of the site development permit.

3 Two existing single-family units onsite are to be removed prior to project buildout for a net
4 increase of 15 single family units. Access to the site is proposed via one new entrance
5 extending west from Military Road SW. Based on preliminary examinations; sight distance
6 appears to be adequate. According to the Trip Generation and Assessment, Level 1 prepared
7 by Heath & Associates, Inc. 415 feet of Entering Sight Distance (ESD), is needed for site
8 distance both north and south directions exiting from the development. 450 feet is provided
9 for good site distance both north and south directions exiting from the development. The
project is anticipated to be mild generator of new traffic with an estimated net increase of 15
AM and 16 PM peak hour trips. City staff have determined that Military Road has the
capacity to accommodate this increase in traffic.

10 There are currently no sidewalks adjacent to the property's frontage along Military Road SW.
11 This project will necessitate removal of an existing concrete driveway approach serving the
12 two existing single-family homes. The area where the existing driveway approach is
13 removed along Military Road SW shall be replaced with sidewalk, curb and gutter pursuant
14 to LMC12A.09.031. A five-foot wide Type II streetscape landscape strip consisting of
15 ground cover and trees planted 30-feet on center is required to be installed behind the
16 sidewalk adjacent to the development. The development is also required to install a five-foot
17 wide sidewalk along both sides of the new public access road and cul-de-sac. The proposed
18 improvements are consistent with LMC 18A.50.135, and Title 12 LMC.

19 A couple neighbors expressed concern over the steep slope over which the access road will
20 travel to connect to Military Road. As noted in the revised staff report, the slopes approach
21 50%. Neighbors noted that Military Road is a busy road with speeding vehicles and that
22 during inclement weather vehicles exiting the development could slide into oncoming traffic.
These are compelling concerns; however, the City's street standards impose maximum grades
far less than 50% for the access road and these slope standards are designed to assure safe
approaches to intersections. There is nothing in the record to suggest that the slopes required
by City standards would be unsafe. Similarly, neighbors were concerned about sight distance
at the Military Road intersection, but as discussed above the proposed sight distance exceeds
City standards, which are designed to assure safe sight distance. There is no evidence to
suggest that the City's sight distance standards are inadequate to provide for safe sight
distance.

23 G. Transit. According to the SEPA checklist, the closest Pierce Transit stop is located less than
24 a mile away, along Military Road SW and 114th Street SW.

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5 **Conclusions of Law**

6 1. Authority. LMC 18A.02.502 Table 3 classifies preliminary plat applications as Process III
7 applications subject to hearing examiner review.

8 2. Zoning Designations. R4.

9 3. Review Criteria. LMC 17.14.030 governs the criteria for preliminary plat approval.
10 Applicable criteria are quoted below in italics and applied through corresponding conclusions of law.

11 **LMC 17.14.030:** *A proposed subdivision and dedication shall not be approved unless the*
12 *Examiner makes written findings that:*

13 *A. Appropriate provisions are made for the public health, safety, and general welfare, for open*
14 *spaces, drainage ways, streets or streets, alleys, other public ways, transit stops, potable water*
15 *supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all*
16 *other relevant facts, including sidewalks and other planning features that assure safe walking*
conditions for students who walk to and from school; and

17 *B. The public use and interest will be served by the platting of such subdivision and dedication. If*
18 *the Examiner finds that the proposed subdivision and dedication make such appropriate provisions*
19 *and that the public use and interest will be served, then the Examiner shall approve the proposed*
subdivision and dedication.

20 4. As conditioned, the proposal meets the criteria quoted above. The proposal provides for
21 appropriate infrastructure such as streets and water for the reasons identified in Finding of Fact No. 6
22 The proposal makes appropriate provision for public health, safety and welfare because it provides for
23 adequate infrastructure as outlined in Finding of Fact No. 6 without any associated adverse impacts as
24 identified in Finding of Fact No. 5. For the same reasons and the fact that it provides for the
reasonable use of land and accommodates urban growth in urban growth areas as encouraged by the
Growth Management Act, the proposal is in the public interest.

25 **DECISION**
26

1 The proposed preliminary plat satisfies all review criteria as conditioned for the reasons identified in
2 the Conclusions of Law. Consequently, the preliminary plat application is approved subject to the
3 following conditions:

4 1. Prior to final plat approval, the applicant will be required to meet all requirements of the Pierce
5 County Public Works and Utilities Department for the provision of sewer service to the site, including
6 providing new and/or protecting existing easements for sewer lines and equipment.

7 2. Prior to City of Lakewood's approval of the final plat, the applicant shall comply with each of
8 the following agencies' requirements, as evidenced by their signatures of approval on the final plat:
9 Pierce County Assessor-Treasurer's Office, Pierce County Public Works and Utilities Department,
10 Pierce County Auditor, City of Lakewood Public Works & Community Development Departments and
11 West Pierce Fire and Rescue. The conditions in the comment letters submitted by public agencies, Ex.
12 11-14, shall be considered conditions of preliminary plat approval.

13 3. Prior to final plat approval, the following items shall be required unless altered by the Lakewood
14 Public Works Director:

- 15 a. Prior to any clearing or grading work, a site development permit with plans detailing on and
16 off-site improvements consistent with Title 12 and shall be required for review and
17 approval by the Lakewood Public Works Department. The site development permit shall
18 be reviewed and approved by the Public Works Department prior to work commencing.
- 19 b. All onsite storm water runoff from pollution generating impervious surfaces shall be
20 collected and receive water quality/quantity treatment per LMC 12A.11 and Figures
21 11.1/11.2. All stormwater designs in the City of Lakewood are required to consider low
22 impact development techniques prior to utilizing emerging technologies for stormwater
23 treatment. City of Lakewood stormwater requirements and acceptable designs are based on
24 either the 2015 Pierce County Stormwater Management and Site Development Manual or
25 the 2012 as amended in 2014 Stormwater Management Manual for Western Washington
26 (DOE Manual). Either manual is acceptable for stormwater analysis and design in
Lakewood.
- c. Storm water infiltration testing and soil analysis is required and shall be consistent with the
latest approved stormwater design manuals.
- d. The proposed access road shall be built to local road standards as outlined in the City of
Lakewood Engineering Standards Manual Appendix 2, Table 2.
- e. This project will necessitate rearranging an existing driveway location. Any driveway not
used for this proposal shall be removed and replaced with sidewalk, curb and gutter to
match the required frontage improvements.
- f. During the site development permit the applicant shall submit a geotechnical report
addressing the steepest portion of the site and address potential erosion and landslides.
- g. The plans for all work within the public right of way shall be prepared by a professional
engineer licensed to practice with the State of Washington. The plans shall be submitted
and approved prior to work beginning in the right of way.

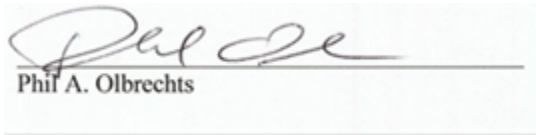
1 4. Pursuant to LMC 18A.50.135.B, a Type II landscape strip consisting of ground cover and street trees
2 planted 30 feet on center is required next to the existing sidewalk on Military Road SW. Prior to
3 issuance of the site development permit for the subdivision, the applicant shall provide a landscaping
4 and irrigation plan that complies with the City’s landscaping requirements outlined in LMC
5 18A.50.400.

6 5. All soils exported from the site shall be taken to a licensed facility approved by the City of
7 Lakewood. Only clean fill shall be used at the site.

8 6. Final subdivision approval shall not be granted until all conditions set forth by this preliminary
9 approval are completed. If the plat is not completed and recorded within five years from the date
10 approval is granted, the preliminary plat approval shall become null and void.

11 7. Prior to final plat approval, the Applicant or City staff shall consult with the school districts that
12 serve the project site to determine if any students that will reside in the subdivision will be walking to
13 school. If students will be walking to school, the Applicant shall install mitigation as necessary to
14 assure safe walking conditions to and from school prior to final plat approval as required by City staff.

15 DATED this 21st day of March, 2018.

16 
17 Phil A. Olbrechts

18 Pro Tem Hearing Examiner for Lakewood

19 **Appeal Right and Valuation Notices**

20 LMC 18A.02.502 Table 3 provides that the final decision of the Hearing Examiner is subject to
21 appeal to superior court. Appeals of final land use decisions to superior court are governed by the
22 Land Use Petition Act (“LUPA”), Chapter 36.70C RCW. LUPA imposes short appeal deadlines
23 with strict service requirements. Persons wishing to file LUPA appeals should consult with an
24 attorney to ensure that LUPA appeal requirements are correctly followed.

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