BEFORE THE LAND USE HEARING EXAMINER
OF CITY OF BATTLE GROUND, WASHINGTON

Regarding an application by Earl Jackson for approval of a zone change from R3 to R7 on three parcels totaling 23 acres located at 24303, 24101 and 23919 NE 132nd Avenue in the City of Battle Ground, Washington	))))	**FINAL ORDER** **File No. ZC:02-16** **(East Parkway Zone Change)**

A. SUMMARY

1. Attorney Earl Jackson (the "applicant") requests approval of a Zone change from "R3" (Residential, 3 units/acre) to R7 (Residential, 7 units/acre) on three parcels located at 24303, 24101 and 23919 NE 132nd Avenue in the City of Battle Ground, Washington; also known as Tax Lots 226704-000, 226706-000, and 226707-000 (the "site"). The site and surrounding properties have a comprehensive plan designation of Urban Low. The site, the intervening property between 24303 and 24101 NE 132nd Avenue abutting NE 132nd Avenue, the abutting property east of 23919 NE 132nd Avenue, and properties abutting the northwest corner of the site are currently zoned R3. Properties to the west, across NE 132nd Avenue, are zoned R5 (Residential, 5 units/acre). All other abutting properties are located in unincorporated Clark County. Properties north of the site, north of NE 244th Street, are zoned Clark County R1-6 (Residential, 6,000 square foot minimum lot size). All other abutting unincorporated properties are zoned Clark County R1-20 (Residential, 20,000 square foot minimum lot size). In addition, all of the surrounding County zoned properties are also subject to the UH (Urban Holding) overlay zone. See Figure 4 of the Staff Report. The City lifted the UH overlay on the site and other recently annexed properties when the properties were brought into the City.

2. Hearing Examiner Joe Turner (the "examiner ") conducted a public hearing to receive testimony and evidence about this application. City staff recommended denial of the application. See the City of Battle Ground Staff Report to the Hearing Examiner dated March 15, 2017 (the "Staff Report"). The applicant and three other persons testified orally in support of the application. Eight persons testified orally in opposition. Other persons testified in writing. Disputed issues or concerns in the case include the following:

a. Whether the proposed zone change is consistent with the comprehensive plan goals, policies and objectives, BGMC 17.146.040.D(1);

b. Whether the proposed zone change is meets the locational criteria for the R7 district;

c. Whether the proposed zone change constitutes illegal "spot zoning;"

d. Whether the applicant can be required to fund an addendum to the City's General Sewer Plan;

e. Whether the proposed zone change will increase revenue for the City;

f. Whether the proposed zone change will enhance traffic circulation in the area;

g. Whether the Fire District can serve the types of development allowed by the proposed R7 zoning; and

h. Whether the proposed zone change will exceed the capacity of area schools.

3. Based on the findings provided or incorporated herein, the examiner concludes that the applicant failed to sustain the burden of proof that the proposed zone change is consistent with the approval standards of the Battle Ground Municipal Code (the "BGMC"). Therefore the examiner recommends the City Council deny the zone change and retain the existing R3 zoning on the site.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at the public hearing about this application on March 22, 2017. All exhibits and records of testimony are filed at the City of Battle Ground. The examiner announced at the beginning of the hearing the rights of persons with an interest in the matter, including the right to request that the examiner continue the hearing or hold open the public record, the duty of those persons to testify and to raise all issues to preserve appeal rights and the manner in which the hearing will be conducted. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Sam Crummett summarized the Staff Report and the applicable standards. The City annexed five properties in this area on March 9, 2017. All five properties were zoned R3 with the annexation. This application is requesting a zone change from R3 to R7 for three of the five properties. Properties to the north of the site are located in unincorporated Clark County and zoned County R1-6, which equates to the City's R5 zone. Properties to the south and west are zoned County R1-20, which equates to the City's R3 zone. He recommended the examiner deny the proposed zone change.

a. The proposed zone change is inconsistent with Livability Goal 3, which requires thoughtful transitions between housing types and densities, and Goals 5 and 6, which require protection of existing neighborhoods. The City's future plan for this area calls for R3 zoning except on properties to the north. This zone change would create an area of higher density, R7, zoning surrounded by lower density zoning with no transition. R7 zoning on the site is inconsistent with the existing and planned development pattern in the area.

b. R7 zoning in this area is inconsistent with the locational criteria for the zone. The existing R3 zoning only allows single-family detached dwellings. The proposed R7 zoning would allow attached dwellings and multi-family developments,

which would conflict with the existing character of the area. The higher density R7 zoning should be limited to areas that are in close proximity to goods and services.

c. There is no need for more land or greater density in the City. Based on page 3-9 of the comprehensive plan, the existing Urban Growth Area ("UGA") is adequate to accommodate the projected population growth in the City. Therefore, there is no need to upzone the site to provide additional housing.

3. The applicant, attorney Earl Jackson, summarized his written testimony, Exhibit 22, and submitted oversized Exhibits 17 - 21.

a. The proposed zone change will make the most efficient use of the land. The City expects to need an additional 6,708 additional dwelling units by 2035. Allowing higher density development on this site will help achieve that goal and accommodate the expected population increase. In addition, this site fronts on NE 132nd Avenue/N Parkway Avenue, an arterial street with existing water, sewer and other public utilities available. The current R3 zoning under utilizes the existing infrastructure in this area.

b. The proposed R7 zoning would provide a logical transition between the existing R5 zoning to the west and north and the existing R7 zoning to the south of the site. The unincorporated lands that are outside the current city limits, the white areas without labels on Exhibit 17, are not relevant to the analysis for this zone change. The analysis should focus on annexed properties located within the City, which is primarily limited to the site. The City is not required to match County zoning outside of the existing City limits. In addition, R3 zoning is generally limited to areas on the periphery of the City. This site is located near the center of the City, surrounded by urban lands and abutting an arterial road. Lands to the north of the site, which are further away from the City center are zoned R5.

c. R7 zoning would encourage affordable housing and a variety of housing types, allowing smaller lots, greater density, and a range of housing types that would be affordable to a broader range of the population. Affordable housing is Goal 1 of the comprehensive plan. The R3 zone only allows single-family detached dwellings on large lots. The R7 zone allows attached dwellings, multi-family housing, and other accessory dwellings in addition to single-family detached dwellings. R7 zoning would also encourage redevelopment of smaller parcels. It is not cost effective to tear down an existing residence on a one-acre lot in order to divide the property into three new lots. Such properties could be divided into 7 lots with R7 zoning, which may encourage redevelopment.

d. R7 zoning will facilitate traffic circulation by providing additional funding for planned roadways in the area. The greater development density allowed by the R7 zoning will also generate more tax revenues for the City.

e. The proposed rezone complies with the comprehensive plan. The Urban Low comprehensive plan designation is implemented by the R3, R5, or R7 zoning.

f. The proposed zone change does not constitute "spot zoning" based on the findings in *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969). The proposed R7 zoning is consistent with existing City zoning to the north, south, and west of the site and it is consistent with the comprehensive plan designation for the site.

g. The City has no authority to require an addendum to the sewer plan as a condition of approval of this zone change. BGMC sets out four criteria for review of zoning map amendments, none of which requires review of existing utilities. In addition, there is no nexus between such a condition and this application. Because no development is proposed, the zone change will have no impact on sewer capacity.

h. There is a need for additional density on this site. The site is the first property to be annexed in this area in 20 to 30 years. There is no guarantee that additional annexations will occur and fulfill the City's housing needs. There is also a need for affordable housing in the City.

4. Norma Kennedy, the owner of 23919 NE 132nd Avenue testified in support of the application. She testified that she cannot afford to maintain her existing residence and three-acre property. Rezoning her property to R7 would allow her to sell it for development. In addition, the R7 zoning would help the City achieve its affordable housing goal. This site is located closer to goods and services than the Townhomes at Battle Ground Village development. This site is located within walking distance of three schools and 1.5 miles from the Safeway store. There are no full-service grocery stores, churches, schools, or similar facilities in proximity to the Battle Ground Village development.

5. Brad Hazen testified that he owns the flag lot west of Ms. Kennedy. Although he opposed the annexation, now that it has occurred, the site should be zoned for higher density development. The existing one to three-acre lots in this area are unlikely to redevelop under R3 zoning; it is not cost effective. Higher density is needed to generate sufficient funds for needed roads and utilities. There is existing R7 zoning 600-700 feet south of the site.

6. Steve Burnett testified that he contacted City staff prior to purchasing one of the lots in the site. Staff told him that adequate public services were available to serve the site at that time. Therefore, there is no need for the proposed sewer study.

7. Peter Roberts argued that Battle Ground is the only area of the County that is "affordable." Homes in the town of Yacolt start at $300,000 because sewer service is not available in the area.

8. Dan Griffids argued that the existing R3 zoning fits with the existing development in the area. The site is located near the outskirts of the City, where infrastructure is limited. The Fire Department has trouble serving existing development. Allowing higher density and multi-family development would exacerbate that problem. The Fire District does not have a ladder truck that would be necessary to reach taller

multi-family structures. The area around the Walmart store is appropriate for higher density development this site is not.

9. Tom Whittingham argued that it is feasible to pay for the extension of utilities to the site. The Whispering Pines development, which is zoned R3, managed to cover the cost of utilities. Homes in that development are selling in the high $300,000 dollar range. R7 zoning in this area would conflict with the existing character of the area. Higher density development would not serve the needs of Battle Ground residents, which tend to be families who need yards for their children to play in.

10. Albert Christensen noted that recent development in the area extended sewer, water and other utilities close to the site, which will reduce the cost of extending these services to the site. Homes in the existing R3 developments in the area sell for $400,000, which would generate sufficient revenue to fund the extension of roads and utilities. Higher density development would reduce the livability of the area.

11. Sharon Whittingham argued that there is a need for larger lot, R3, development in the City. The majority of Battle Ground is zoned and developed at higher densities. There is a limited amount of R3 zoned land. In addition, higher density development on this site would have a greater impact on the City's schools, which are already operating at or near capacity. She submitted a petition in opposition to the proposed zone change. Exhibit 11.

12. Lance Mona argued that there is not sufficient infrastructure available in the area to support R7 development.

13. Connie Curtain noted that there are a large number one and two-acre lots in the area. Higher density R7 zoning would conflict with that existing development.

14. Dan Griffin cited a university study showing a correlation between density and violent crime.

15. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the conditions in the Staff Report.

C. DISCUSSION

1. BGMC 17.146.040.D(1) requires a finding that "The proposed amendment shall be consistent with the comprehensive plan goals, policies and objectives." The comprehensive plan provides the following relevant goals and objectives:

a. **Livability Goal 3:** *An integrated mix of housing types and densities.*

Objectives
LO3.1 Encourage a wide range of living choices in all neighborhoods while respecting existing housing.

LO3.2 Promote residential design and location that provides transitions between housing types.
LO3.3 Encourage master planning of new residential neighborhoods.

b. **Housing Goal 1:** *The City will encourage a range of housing types and prices to meet the needs of all citizens of Battle Ground.*

Objectives
HO1.1 The City will provide the opportunity to develop an adequate supply of housing to meet the needs and preferences of Battle Ground's households now and in the future.
HO1.2 The City will support the creation of a variety of housing types that are attractive and affordable to potential homebuyers at all income levels.
HO1.3 The City will work to balance density goals and housing type targets with other City goals and objectives.
HO1.4 The City will encourage housing that supports sustainable development patterns, resource efficient design and construction, and the use of renewable energy resources (EO1.1).
HO1.5 The City will work to ensure neighborhood stability through a variety of homeownership and rental housing options and the preservation of existing housing (LUO6.1).
HO1.6 The City will treat residential structures occupied by persons with handicaps the same as similar residential structures occupied by a family or other unrelated individuals.
HO1.7 The City will treat residential structures occupied by group care for children that meets the definition of "familial status" the same as similar residential structures occupied by a family or other unrelated individuals.

c. **Land Use Goal 5:** *The City will identify the appropriate quantity and location of residential development.*

Objectives
LUO5.1 The City will work to insure that new residential development occurs using neighborhoods as the building blocks for new development.
LUO5.2 The City will work to insure that all neighborhoods within the city work together, and provide the appropriate types and densities of housing in the appropriate locations.
LUO5.3 The City will encourage infill and increased density to occur in and around commercial zones.

d. **Land Use Goal 6:** *The City will protect the stability of existing neighborhoods.*

Objectives
LUO6.1 The City will work to plan new land uses in a manner that protects existing neighborhoods.

2. The proposed increase in density from R3 to R7 would achieve some of the City's goals and objectives. It would:

- Provide a mix of housing types and densities, Goal 3;
- Encourage a wide range of living choices, LO3.1;
- Provide a range of housing types and prices, Housing Goal 1;
- Increase the supply of housing to meet resident's needs and preferences, HO1.1; and
- Expand the variety of housing types and increase affordability, HO1.2.

a. The proposed zone change would increase the range of densities, housing types, and living choices available in the area. The existing R3 and R5 zoning on the site and surrounding area allows a very limited range of densities and housing types. The R7 zoning would allow higher densities (increasing the housing supply) and different housing types (attached and apartment housing) that are currently prohibited in this area. The zone change could also provide more affordable housing; smaller homes on smaller lots are more affordable.

3. The examiner further finds that the proposed increase in density would be inconsistent with the following goals and objectives:

- Respect existing housing, LO3.1;
- Provide a transition between housing types, LO3.2;
- Ensure neighborhood stability and preservation of existing housing, HO1.5;
- Use neighborhoods as the building blocks for new development, LUO5.1;
- Insure neighborhoods work together to provide appropriate types and densities of housing in the appropriate locations, LUO5.2; and
- Encourage infill and increased density to occur in and around commercial zones, LUO5.3

a. This area is currently developed with very low density residential development. Although the site consists of larger, three to ten-acre parcels, there are many smaller, one to two-acre, properties in the surrounding area. The existing R3 zoning would preserve this existing housing and neighborhood character.

i. The applicant argued that surrounding unincorporated properties are not relevant and should be ignored when considering this application. However, those properties are included in the City's UGA and planned for future annexation and urban development. The zoning and development on this site will clearly impact future development on surrounding properties when they are annexed and zoned for urban

development. Therefore, the City should review this application in context and consider all of the surrounding properties within the UGA.

b. The proposed zone change would not provide a gradual transition in density; it would be a sudden jump from R3 zoning or equivalent on abutting properties to the north, south and west to R7 on the site. There is R5 zoning to the west, but these properties are separated from the site and buffered by NE 132nd Avenue, an arterial street. In addition, R3 zoning provides a better transition between to rural densities outside the UGA. Although the site itself does not abut the UGA, it is part of a larger area of R3 or equivalent zoning that abuts the UGA to the east.

c. The site is not located in proximity to any commercial uses or public services. The site is located near the outskirts of the City. The R5 zoning noted by the applicant to the north of the site is further away from the city center, but it abuts a large area of employment zoning, which may provide goods, services and employment opportunities to support higher density development.

4. The comprehensive plan goals and objectives must be read and applied in context and balanced against one another. The City's density and affordable housing goals must be balanced with neighborhood stability and preservation, the desire for transitions between housing types, and the desire to locate higher density near commercial uses and services. This balance is set out in Livability Goal 3, which requires "An *integrated* mix of housing types and densities." (Emphasis added). Neither the comprehensive plan nor the Code define the term "integrated." Therefore, the examiner must refer to the dictionary definition. The dictionary defines "integrated" as "combining or coordinating separate elements so as to provide a harmonious, interrelated whole;" and "organized or structured so that constituent units function cooperatively" Integrated [Defs. 1 & 2]. (n.d.). In *Dictionary.com,* Retrieved April 8, 2017, from http://www.dictionary.com/browse/integrated?s=t.

a. The proposed zone change would be inconsistent with the goal of providing an integrated mix of housing. Approval of this application would create an island of R7 zoning in sea of R3 that is removed from commercial, employment, and other services. The sudden jump between R3 and R7 zoning would ignore the goal of providing a gradual transition in density and R7 zoning would be inconsistent with the existing low-density development in the area.

b. Retaining the existing R3 zoning would help achieve the housing goals of providing a range of housing types and prices to meet resident's needs and preferences for living choices. The applicant focused on the need for more high density housing choices. However there is also demand for the type of larger, lower density, housing provided by the existing R3 zoning. There is a relatively limited amount of R3 zoning in the City; R3 zoning is limited to this site and surrounding properties, many of which have yet to be annexed into the city, two small areas near the southwest corner of the UGA, and a large expanse in the southeast corner of the UGA. See Exhibit 20.

c. The existing zoning is also consistent with the County's Framework Plan, which encourages higher densities along transit corridors and in the community center, with lower densities planned for established neighborhoods and on the outskirts of the City. See p. 3-1 of the comprehensive plan. This site is much closer to the outskirts of the City than to the community center. Transit service is not available on roads abutting the site.

d. Approval of this zone change is not necessary to accommodate expected population growth. As discussed at pp. 3-8 through 3-11 of the comprehensive plan, the City has adequate capacity to accommodate expected growth. In addition, the City has experienced an increase in multi-family housing development, which will assist in achieving the City's affordable housing goals. See pp. 3-9 and 3-10 of the comprehensive plan.

5. It could be argued that R5 zoning is appropriate for this site. There is existing R-5 zoning to the west, NE 132nd Avenue, and to north of the site. The site abuts NE 132nd Avenue, an arterial roadway that would facilitate access to higher density development on the site. R5 zoning on the site would allow a transition in density, with lower density zoning maintained on properties to the east that are closer to the UGA. In addition, R5 zoning may encourage redevelopment of the smaller, one and two-acre, lots in this area.

6. After considering all of the above goals and objectives the examiner finds that the existing R3 zoning is the most appropriate for this site. The site is not located in proximity to existing commercial or employment zones or other services and activities. NE 132nd Avenue, an arterial street, provides a clear boundary and buffer between the R3 zoning on this site and R5 zoning to the west as well as allowing a transition between urban development within the City and rural development outside the UGA. Higher density is also inconsistent with existing development and the character of the area. Therefore the examiner finds that this application does not comply with BGMC 17.146.040.D(1).

7. BGMC 17.146.040.D(2) requires a finding that "The amendment shall meet any locational criteria for the proposed district as set forth in the zoning text."

a. BGMC 17.106.010 provides the following location criteria for the Residential Districts.

> It is the city's intent that residential neighborhoods be developed and preserved against intrusions by incongruous land uses. These districts are intended to: recognize, maintain and protect established residential areas; establish densities where a full range of community services and facilities are present or will be present at the time of development; and provide for additional related uses such as schools, parks, churches and other uses necessary to serve the immediate residential areas.

> A. The R3, R5 and R7 districts are intended to establish and recognize existing neighborhoods that are predominantly occupied by detached residential structures. These districts allow between three and seven units per acre. New development will be predominantly detached residential with flexibility to provide attached units and allow for a variety of lot sizes. The application of the districts to individual areas will be based on existing development patterns, access to goods and services and environmental constraints.

b. The examiner finds that the proposed zone change is inconsistent with the applicable locational criteria. R7 zoning on this site is inconsistent with the existing development pattern in this area. In addition, the site is not located in close proximity to existing or planned goods and services. There is no evidence of any environmental constraints on the site or surrounding area.

c. The applicant argued that there is a need for multi-family development in the City and R7 zoning on this site would allow the potential for such development through a conditional use permit. However, as staff noted, the City is well on its way to achieving its multi-family housing goals based on recent trends. The City has a target of assuring at least 25% of its housing is multi-family and it currently contains 19%. Multi-family housing development in the City is increasing rapidly, much faster than in other cities in Clark County (see Table 3-5 of the comp plan). Based on current trends, there is no need to further designate more land for multi-family. In addition, multi-family development more suitably located in areas close to needed goods and services where transit is available. As discussed above, the site does not meet these suitability principles.

d. Therefore the examiner finds that this application does not comply with BGMC 17.146.040.D(2).

8. BGMC 17.146.040.D(3) requires a finding that "The amendment shall be consistent with the population projections provided by the Office of Financial Management as allocated by Clark County." As noted in the City's Plan:

> RCW 36.70A.215 requires that "suitable land to accommodate the countywide population projection established for the county pursuant to RCW 43.62.035 and the subsequent population allocations within the county and between the county and its cities and the requirements of RCW 36.70A.110." As noted, Battle Ground must plan for approximately 6,708 additional dwelling units, which translate into a need of 1,118 acres, according to the Clark County Vacant Buildable lands report. The City's existing vacant residential lots, opportunity for infill development, and the land with the existing Urban Growth Boundary can accommodate this demand (Table; Demand for New Housing).
> (p. 4-3 of the comprehensive plan).

a. The proposed zone change is consistent with this standard, because it will increase the potential development density on the site, which will assist the City in accommodating its share of projected population growth. Therefore, the application complies with this approval criterion.

9. BGMC 17.146.040.D(4) requires a finding that "The proposed zoning district is allowed by the plan to zone matrix adopted by the city council." The comprehensive plan map designates this site "UL" (Urban Low). The UL designation is implemented by R3, R5, R7, or Neighborhood Center zoning. See Table 3-1 of the comprehensive plan. Therefore, the application complies with this approval criterion.

10. The examiner finds that the proposed zone change does not constitute illegal "spot zoning." Spot zoning is defined as:

> [A]rbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the comprehensive plan.

Smith v. Skagit County, 75 Wn.2d 715, 743, 453 P.2d 832 (1969).

a. As discussed section C.9 above, the proposed R7 zoning is consistent with and implements the site's UL comprehensive plan designation. Therefore, the rezone cannot constitute "spot zoning."

11. The examiner finds that the City has no authority to require the applicant to review the capacity of sewer facilities serving the site. The examiner understands that the City's current General Sewer Plan modeled the site as R3 and the proposed rezone to R7 will significantly increase the potential development on the site, which will increase the impact on the City's sewer and other infrastructure facilities. However, nothing in the City's current zone change approval criteria authorizes the City to require an applicant to review the impact of a proposed zone change on the City's sewer capacity or other infrastructure. Therefore, if the City Council approves this application it may not require the City to fund an amendment to the General Sewer Plan.

12. The applicant argued that the higher density development allowed by the R7 zoning will generate more revenue for the City. That may be true, R7 would allow a greater number of dwelling units on the site. However, the increased population would also generate a proportional increase in demand for City services. There is no evidence that the increased density would result in a net positive fiscal impact on the City.

13. The applicant argued that increased density would facilitate construction of streets, which will facilitate traffic circulation in the area. However, the applicant failed to provide any support for this assertion. Any development on this site will require the extension of streets and utilities to serve the development. In addition, the Code generally requires developers extend streets and utilities to the boundaries of the site to allow for

further extension when abutting properties redevelop. The City must demonstrate that the cost of such extensions are roughly proportional to the impact of the development. However, there is no evidence that the impact of R3 development on the site would not generate sufficient impacts to warrant street and utility extensions. The City has imposed such conditions on other R3 developments in Battle Ground.

14. Concerns were expressed that the Fire District lacks adequate equipment to deal with taller multi-family structures that could be allowed if the site is rezoned R7. However the R3, R5 and R7 zones all impose the same 35-foot height limit for all structures, whether single-family attached or detached or apartments. See BGMC Table 17.106-2. Therefore the examiner finds that the proposed zone change will not exceed the Fire District's ability to serve the site.

15. Concerns were expressed that the proposed rezone will exceed the capacity of schools in the area. However, any development on this site will be required to pay school impact fees. The R7 zoning will allow construction of more homes on the site, which will increase the number of students. However, it will also increase the amount of impact fees generated by development on this site. The payment of school impact fees will mitigate any developments impact on schools as a matter of law. The School District will use the impact fees to fund construction of additional school capacity. There will be some delay as the School District accumulates sufficient impact fees to fund additional construction and new schools are designed and built. However, such delays are not grounds for denial of this application.

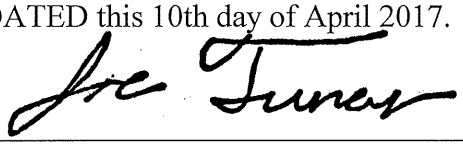
D. CONCLUSION

Based on the findings provided or incorporated herein, the examiner concludes that the applicant failed to sustain the burden of proof that the proposed zone change is consistent with the applicable approval Criteria for amendment of the zoning map in BGMC 17.146.040.D.

E. RECOMMENDATION

The Hearing Examiner recommends the City Council deny File No. ZC:02-16 (East Parkway Zone Change) and retain the existing R3 zoning on the site.

DATED this 10th day of April 2017.



Joe Turner, AICP
City of Battle Ground Hearing Examiner