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

Regarding an application by Quail Construction, LLC for approval of a preliminary plat to divide 9.47-acres into 8 lots in the R5 zone at SW 25th Way, south of SW 11th Street, in the City of Battle Ground	))))	**FINAL ORDER** **SUB: 01-17** **(Quail Firs Subdivision)**

A. SUMMARY

1. The applicant, Quail Construction, LLC, requests approval to divide the 9.47-acre site into 8 residential lots and open space tracts for wetlands/open space and stormwater facilities.[1] The site is located at the southern terminus of existing SW 25th Way, south of SW 11th Street in the Horse Thief Canyon subdivision. The legal description of the property is Tax Assessor Parcel: 192629-000[2] (the "site").

a. The site and abutting properties to the south and east, are zoned R5 (Residential, 5 units per acre maximum density). Properties to the north are zoned R7 (Residential, 7 units per acre maximum density). Properties to the west are located in unincorporated Clark County and zoned R1-10 (Residential, 10,000 square foot minimum density). All proposed lots comply with the dimensional requirements of the R5 zone, as modified by the density transfer ordinance. The site is currently vacant. A new single-family detached dwelling will be built on each of the proposed lots.

b. The site is an east-west aligned rectangular shape, with a stream in the west portion of the site and wetlands in the west and east. The applicant proposed to develop 1.55-acres of the site and retain the remaining 7.92-acres as undeveloped open space. In order to minimize impacts to the wetlands and stream, the applicant will concentrate the proposed development in the upland areas in the center of the site, extending SW 25th Way through to the south boundary with lots on either side of the street and a stormwater facility to the west of the lots. The applicant will preserve the wetlands and the majority of the associated buffers in proposed open space tracts in the eastern and western portions of the site. The site contains two Oregon White Oak trees, which the applicant will remove to accommodate the development. The applicant will plant additional Oregon White Oak trees on the site at a 2:1 ratio to mitigate for removal of the existing trees.

c. The City of Battle Ground will provide domestic water and sanitary sewer service to the site. The applicant will collect storm water from roads, sidewalks and driveways on the site and convey it to the proposed storm water facility west of Lots 1-4 for treatment and detention. The applicant will discharge treated stormwater to the on-site

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[1] The applicant initially proposed to divide the site into 11 lots. After the hearing, during the open record period, the applicant submitted a revised preliminary plat proposing to divide the site into 8 lots. Attached to Exhibit 24.

[2] Incorrectly listed as Tax Assessor Parcel: 192591-088 in the Staff Report.

wetlands at less then predevelopment rates. Runoff from roofs will be infiltrated on the site.

d. With the revised plat, the applicant will construct a temporary hammerhead turnaround near the south end of the proposed SW 25th Way extension. The applicant will also construct a five-foot wide pedestrian trail from the south end of the SW 25th Way extension to a viewing area west of the stormwater facility. The applicant proposed to install benches at the end of the trail to provide opportunities for residents to sit and view the wetlands and open space on the west portion of the site.

2. The City issued a Mitigated Determination of Nonsignificance ("MDNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). The SEPA determination was not appealed and is now final.

3. City of Battle Ground Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the preliminary plat subject to conditions. See the Staff Report to the Hearing Examiner dated July 26, 2017 (the "Staff Report") as modified by Exhibit 33. The applicant accepted those findings and conditions, as modified, without exceptions. Six persons testified orally with questions and concerns about the proposed development. Other persons testified in writing. Disputed issues or concerns in the case include the following:

a. Whether the City provided adequate notice of the hearing and proposed development;

b. Whether this application can be denied for failure to comply with the application submittal requirements;

c. Whether the proposed lots are compatible with the character of the area;

d. Whether the applicant is required to demonstrate compliance with the residential design standards prior to preliminary plat approval;

e. Whether a landscape plan is required for this development;

f. Whether the proposed development will cause or increase flooding on adjacent properties;

g. Whether the proposed development will cause prohibited impacts on wildlife;

h. Whether alleged privacy impacts of the development are relevant to the applicable approval criteria;

i. Whether clearing on the site will cause prohibited impacts on adjacent properties;

j. Whether the applicant must resolve Mr. Brooks' adverse possession claim prior to approval;

k. Whether, and to what extent, the applicant is required to extend streets and utilities through the site;

l. Whether the applicant is required to coordinate development on this site with the development of adjacent properties;

m. Whether construction on the site will cause prohibited impacts to adjacent properties and residents;

n. Whether the applicant is required to fence the site;

o. Whether alleged impacts on the value of surrounding properties are relevant to the applicable approval criteria; and

p. Whether the development complies with the parks and open space standards of BGMC 17.158.

4. Based on the findings provided or incorporated herein, the examiner approves the preliminary plat subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at a public hearing about this application on August 2, 2017. All exhibits and records of testimony are filed at the City of Battle Ground. At the beginning of the hearing, the examiner described how the hearing would be conducted and how interested persons could participate. 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.

a. He noted that the site is designated UL (Urban Low density) in the comprehensive plan and zoned R5, which allows residential development at a maximum density of five units per acre, an average lot size of 6,300 square feet, and lots as small as 4,000 square feet. The density transfer ordinance allows an average lot size of 4,600 square feet.

b. The majority of the site contains wetlands, which limit development opportunities on the site. Therefore, the applicant proposed to utilize the City's density transfer ordinance to concentrate development on the uplands in the center of the site. The density transfer ordinance allows the applicant to transfer up to 20-percent of the permitted density from the undevelopable portions of the site (areas encumbered by wetlands and other critical areas) to the developable upland portion. The development

will impact some wetland buffer areas on the site and indirectly impact 0.38 acres of wetlands by reducing the required buffer width. The applicant will mitigate those impacts by enhancing the remaining wetland buffers on site and by purchasing wetland mitigation credits from the East Fork Lewis wetland bank. The applicant will be required to create separate tracts for the stormwater facilities and wetlands as part of the final plat.

c. The east-west dimension of the site is more than ¼ mile. Therefore Section 17.128.010.B(3) of the Battle Ground Municipal Code (the "BGMC") requires the applicant to provide parks and open space areas on the site, consistent with BGMC 17.128.040.

d. He argued that the application complies with the dimensional requirements of the R5 zone. Therefore it is *per se* compatible with the character of the area. BGMC 16.115.040.F(3).

3. City associate civil engineer Marit Ernst noted that sanitary sewer and water have been stubbed to the north boundary of the site, within existing SW 25th Way. The applicant will extend those utilities through the site, within the proposed extension of SW 25th Way. The applicant is not required to extend sewer lines to the east and west of the on-site roadway, because those portions of the site are not developable.

a. The applicant will construct the extension of SW 25th Way as a neighborhood collector street.

b. The applicant will collect stormwater runoff from the site and convey it to a proposed stormwater facility in the western portion of the site for treatment and detention. The applicant will release treated stormwater into the on-site wetlands at less than predevelopment rates. Water levels in the stormwater pond will fluctuate throughout the year and deep water in the pond could pose a hazard for children. Therefore, City policy requires the applicant fence the stormwater facility.

c. This development must comply with the stringent requirements of the City's stormwater manual, which requires that developments maintain existing drainage patterns. There is an existing culvert beneath SW 11th Street that carries water from this site to the north.

d. The proposed development will not increase flooding in the area. The applicant is required to detain stormwater runoff from the site and release it at the rate runoff flowed off the site during the predevelopment forested condition.

e. The City inspects existing roadways before and after development and can require developers to repair any damage caused to those existing roads.

4. Fred Garmine and wetland biologist Francis Naglich appeared on behalf of the applicant.

a. Mr. Garmine accepted the findings and conditions in the Staff Report without objections. He noted that the proposed trail ends at the west boundary of proposed Lot 3. He agreed to try to extend the trail around the stormwater pond, to provide views over the wetlands. However, the location of the on-site wetlands may preclude such an extension. He requested the examiner hold the record open to allow an opportunity to address the compatibility issue.

b. Mr. Naglich testified that there is little or no additional development potential on the east and west portions of the site. The wetlands on the site are more extensive than shown in the City's maps. Required wetland and stream buffers further limit potential development. The applicant is required to avoid wetland impacts wherever possible. Mitigation is only allowed where avoidance is not feasible. He observed standing water in the central portion of the site at maximum depths of 1.5 to 2 feet during the winter months.

5. John Handy testified that surface water in this area flows from south to north. There is an existing "drainage canal" behind his residence. The applicant should be required to maintain the flow of this canal to prevent flooding on his property.

6. Dr. Michelle Newcomer summarized her written testimony, Exhibit 16. She owns a one-acre lot located one block southeast of the site. She purchased her home because of the low density of development in the area, which provides open space and privacy. The proposed development is inconsistent with the existing low-density character of the area and does not comply with BGMC 16.115.040.F(3), which requires that new lots be "[c]ompatible with the character of the area in which they are located." Lots to the east, west, and south of this site are all one-acre or larger lots. The only smaller lots in the area are in the Horse Thief Canyon subdivision north of the site. The 1.55 developable acres of this site should be divided into a maximum one or two lots in order to be compatible with the existing character of the area.

7. Kelly Jones argued that the applicant could create a more dispersed low density development, similar to developments south of the site, by developing homes on the upland areas scattered throughout the site rather than concentrating development in the center of the site as proposed. The City promised that development in this area would be consistent with the existing character of the area when this area was incorporated into the City.

8. Joe Worthy also objected to the proposed density and small lot sizes, arguing that the proposed development is inconsistent with the existing character of the area. He argued that higher density development will create problems with litter. The wetlands on the site should be protected. The proposed trail and viewing area over a fenced stormwater pond cannot substitute for a park.

9. Tom Brunney expressed concerns that development on this site will exacerbate existing flooding problems in the area. The wetland areas on the site are dry in the summer, but contain areas of standing water six to ten feet deep in the winter. Runoff

from this development may increase the extent of such flood waters and cause flooding on adjacent properties.

10. Bill Brooks summarized his written testimony, Exhibits 17 and 18. He owns a 4.5-acre parcel immediately south of the site. The proposed SW 25th Way extension will terminate at the north boundary of his property.

a. He argued that the public notice for the application was inadequate, because the map only showed a small portion of the site. The notice should have included a vicinity map to illustrate the development in the context of the existing neighborhood. The majority of residents in the surrounding area are opposed to this development. He submitted a neighborhood map showing persons opposed to the development, Exhibit 21.

b. He argued that the 11 lots proposed on this site are inconsistent with the character of the existing Horse Thief Canyon subdivision. This site should be developed with a maximum six lots in order to comply with the compatibility requirements of BGMC 16.115.040.F(3). As proposed, homes on this site will be located within five feet of the rear lot lines and within eight feet of patios of homes in Horse Thief Canyon. This development will not maintain the existing character of the area and it will have a significant adverse impact on property values.

c. The alignment of the proposed SW 25th Way extension violates BGMC 12.116.230, because the future extension of this road will require removal of an existing shed on his property. The applicant failed to address this criterion.

d. He disputed the boundaries of the site. A portion of his shed extends onto the site and he has maintained other portions of the site as his lawn for the past twelve years. Therefore, he owns a portion of the site pursuant to adverse possession.

e. The application should have been deemed incomplete, because it does not include all of the information required by BGMC 16.115.040.D, including a vicinity map, accurate property boundaries, the location of existing structures on the site (his shed that straddles the boundary of the site), and existing drainage patterns.

f. There are areas of standing water on the site that are not included in the applicant's wetland maps. Exhibits 19 and 20.

g. The proposed lots are not compatible with the character of the area, BGMC 16.115.040.F(3). The applicant is proposing 40-foot wide lots adjacent to existing 60-foot wide lots in the Horse Thief Canyon subdivision. The proposed lots can only be developed with 30-foot wide "snub houses," where the majority of the building frontage is consumed by garage doors. The applicant is likely to develop the site with identical "cookie cutter" homes as shown in Exhibit 22. The applicant should be required to provide elevation drawings illustrating compliance with the design standards of BGMC 17.106.040.B and a landscape plan as required by BGMC 17.131.015 in order to demonstrate that future homes on the site will be compatible with the area.

h. The proposed SW 25th Way extension will cause vehicle headlights to shine into his residence in violation of BGMC 17.131.100.

i. The applicant should be required to provide a future street plan illustrating how the surrounding area can redevelop consistent with the block size requirements of BGMC 16.125.060.

j. Tree removal and development on this site will impact wildlife. The site is currently occupied by pileated woodpeckers and great horned owls.

11. At the end of the hearing the examiner held open the public record for two weeks, until August 16, 2017, to allow all parties an opportunity to submit additional written testimony and evidence. The examiner held the record open for a third week, until August 23, 2017, to allow all parties an opportunity to respond to what was submitted during the first two weeks. The examiner held the record open for a final week, until August 30, 2017, to allow the applicant to submit a closing argument. By email dated August 23, 2017, the applicant waived his final argument and requested the examiner close the record. Exhibit 35. The record in this case closed on August 24, 2017.

C. DISCUSSION

1. City staff recommended approval of the revised preliminary plat (Exhibit 34), based on the affirmative findings and subject to conditions of approval in the Staff Report, as modified by Exhibit 33. The applicant accepted those findings and conditions, as modified, without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report, as modified by Exhibit 33, show that the revised preliminary plat (Exhibit 34) does or can comply with the applicable standards of the BGMC and the Revised Code of Washington, provided that the applicant complies with recommended conditions of approval as modified herein. The examiner adopts the affirmative findings in the Staff Report, as modified by Exhibit 33, as his own, except to the extent they are inconsistent with the following findings.

3. The examiner finds that the City provided adequate notice of the hearing. The City published and posted notice of the hearing and mailed notice of the hearing to the owners of properties within 500 feet of the site and other listed persons as required by BGMC 17.200.070.F. The notice included all of the information required by 17.200.070.E. See Exhibit 5. BGMC 17.200.070.E requires that the notice include "A map showing the subject property in relation to other properties *or* a reduced copy of the site plan." (Emphasis added). The notice provided in this case included a reduced copy of the site plan, which is sufficient to comply with the Code.

4. Mr. Brooks argued that the application was incomplete and must be denied because the applicant's existing conditions plan did not include all of the items listed in BGMC 16.115.040.D. However the examiner finds that BGMC 16.115.040.D is a submittal requirement specifying what information must be contained in the application.

It does not include any standards for review of the required information and it is not an applicable approval criterion. The City accepted the application as complete. The examiner has no authority to review the City's completeness determination or to deny the application for failure to comply with the submittal requirements. If the listed information is necessary to demonstrate compliance with an applicable approval criterion, and there is no other evidence in the record to demonstrate compliance, then the application may be denied. But mere failure to comply with a submittal requirement is not a basis for denial of this application.

5. There is a dispute about whether the proposed development complies with BGMC 16.115.040.F(3). This section requires the examiner find that "The design, shape, size and orientation of the proposed subdivision lots are appropriate to the proposed use for which the lots are intended and are compatible with the character of the area in which they are located."

a. As Mr. Hornstein noted, the City recently amended the Code to eliminate the requirement that the size of lots on the perimeter of a subdivision be within 25-percent of the adjacent size of lots. However the City did not eliminate BGMC 16.115.040.F(3). Therefore, the applicant must demonstrate compliance with this criterion.

b. The City argued that, because the application complies with the dimensional requirements of the R5 zone, it is *per se* compatible with the character of the area. However such an interpretation would render BGMC 16.115.040.F(3) meaningless. If compliance with the dimensional requirements equals compatibility, there is no need for BGMC 16.115.040.F(3). *Stroh Brewery Co. v. State Dept. of Rev.*, 15 P.3d 692, 104 Wash.App. 235 (Wash. App., 2001) (Ordinances must be interpreted to give effect to all of the language, rendering no portion meaningless or superfluous).

c. The applicant is not required to demonstrate that future homes on the lots are compatible with the area. By its terms, the compatibility requirement of BGMC 16.115.040.F(3) is based on the design, shape, size and orientation of the lots.

d. Concerns about setbacks are also irrelevant to this standard. Setbacks are not related to the design, shape, size and orientation of the lots. BGMC Table 17.106-2 allows five-foot side yard setbacks in the R5 zone regardless of the size of the lots.

e. BGMC 17.103.176 provides:

> "Compatibility" means the characteristics of different uses or activities that permit such uses or activities to be located near each other in harmony and without conflict. Some elements affecting compatibility include: intensity of occupancy as measured by dwelling units per acre or gross square footage per acre; pedestrian or vehicle traffic generated; volume of goods handled; and environmental effects such as noise, vibration, odor, glare, air pollution, visual pollution and radiation.

f. The examiner finds that the design, shape, size and orientation of the lots proposed in the revised preliminary plan, Exhibit 34, are compatible with the character of the surrounding area. The uses can be located near each other in harmony and without conflict. The applicant is proposing lots for single-family detached residences adjacent to existing single-family development. Although the proposed lots are somewhat smaller than the immediately adjacent lots, they are not incompatible with the character of the area. The proposed lot widths are similar to the width of existing lots on the north side of SW 11th Street.

g. The applicant is not required to demonstrate compatibility with surrounding acreage lots. This area was recently brought into the urban area and zoned for urban development. Therefore, the character of this area is urban, not rural. As larger lots are sold they will be divided into smaller lots consistent with the applicable urban zoning. To require compatibility with surrounding acreage lots would defeat the purpose of incorporation; to allow larger properties to be developed for urban uses.

h. It is not feasible to create a more dispersed development on this site. Development on this site is severely constrained by the presence of wetlands and a stream. See Exhibit 3. The applicant must concentrate development on the upland portions of the site. The area in the northwest corner of Exhibit 3 that is not designated "scattered wetlands" is outside the boundaries of the site.

6. The applicant is not required to demonstrate compliance with the housing design standards of BGMC 17.106.040.B at this stage of review. As discussed above, the compatibility requirement only applies to the proposed lots. The applicant is not required to demonstrate that future homes on the site will be compatible with the character of the area. The applicant submitted illustrations of potential homes demonstrating the feasibility of compliance with this standard. Exhibit 24. Condition of approval 4.f requires that all future homes on the site comply with this standard. The City will ensure compliance with the housing design standards through the building permit review process.

a. The Code does not impose any limitations on the number or size of garage doors, nor does it limit the percentage of the building frontage that can be committed to garage door. However, compliance with the design standards will minimize the visual impact of garage doors to some extent, by breaking up the mass of the structures and providing more visually interesting building facades.

7. BGMC 17.131.015.A requires a landscape plan containing "[l]andscaping and buffering [sic] with the applicable design standards, based on Table 17.131-1 and other applicable provisions of this chapter." As discussed below, "Table 17.131-1 and other applicable provisions of this chapter" do not require landscaping for the development proposed in this case. Therefore, the examiner finds that the applicant is not required to provide a landscape plan, because no landscaping is required for this development.

a. The site is zoned for single-family residential development and abuts properties zoned for single-family residential development. Therefore, BGMC Table 17.131-1 does not require landscaping between this site and abutting properties.

b. BGMC 17.131.016 provides an exemption from the parking lot landscape standards for single-family homes. This development will create lots for single-family homes. Therefore, this section does not require landscaping and screening on this site.

c. BGMC 17.131.020 provides an exemption from the outdoor storage screening standards for single-family homes. This development will create lots for single-family homes. Therefore, this section does not require landscaping and screening on this site.

d. No loading bays or loading berths are proposed or required on this site. This is a subdivision for single-family lots. Therefore, BGMC 17.131.030 is inapplicable.

e. As discussed above, BGMC Table 17.131-1 does not require landscaping or buffering where single-family residential zoning abuts single-family residential zoning. Therefore, landscape strips are not required by BGMC 17.131.050.

8. The proposed development will not cause or increase flooding on adjacent properties. As noted in Exhibit 7, stormwater falling on the upland portion of the site, where development is proposed, currently flows west into the on-site wetlands, which then drain offsite to the north through existing drainageways. The proposed development will replicate this existing condition, collecting runoff from streets, sidewalks and driveways and directing it to the on-site stormwater facility for treatment and detention. The applicant will release stormwater from the detention facility to the wetlands on the western portion of the site at less than pre-development rates (at the rate stormwater left the site during the pre-development forested condition). Runoff from roofs will be infiltrated into the ground.

a. Concerns with areas of ponded water in the western portion of the site are irrelevant because no development is proposed in that portion of the site. The noted ponding is an existing condition that will not be impacted by this development.

9. Development on this site will eliminate habitat for wildlife. But the Code does not prohibit such an effect. To the contrary, it is an inevitable consequence of concentrating new development in the urban area. None of the animals observed on this site is listed as endangered or threatened. They are commonly observed in the area. Their presence is less likely after the site is developed, but that is to be expected. The applicant will retain the existing wetlands and the majority of wetland buffers in the east and west portions of the site, which will continue to provide some habitat for wildlife as well as connections to other habitat areas in the area.

10. Development of this site will also cause an incremental loss of privacy for existing residents in the area. What is now a vacant forest will be developed with eight new homes. But the Code does not prohibit development from having an impact on privacy. The intensity of the proposed development is consistent with the current zoning

of the site, as modified by the density transfer ordinance. The examiner understands residents' displeasure with the growth around them, but this growth was foreseeable and is in the broader public's interest. As large lots are sold, presumably they will be developed to the maximum extent allowed.

11. The examiner acknowledges that the existing vegetation on this site may serve to buffer adjacent properties from strong winds. Clearing on this site will eliminate that buffer effect, potentially exposing trees on adjacent properties to greater wind impacts and increasing the possibility that trees will be blown down during storms. However the applicant has no duty to retain trees on site in order to protect offsite trees from wind impacts and the Code does not require consideration of such potential impacts. The site is zoned for residential development. Removal of trees on the upland portions of the site is necessary to develop the site consistent with the R-5 zoning. The examiner finds that, although clearing on this site may increase the potential for blowdown, the risk is not relevant to the applicable approval criteria.

12. Mr. Brooks claimed ownership of a portion of the site pursuant to adverse possession. The examiner has no authority to consider or resolve Mr. Brooks' claim. The adverse possession claim is subject to the exclusive jurisdiction of the Superior Court.

a. BGMC 17.200.035.B provides, in relevant part, "All applications shall be signed by the property owner, or accompanied by a letter of authorization signed by the property owner." The Code does not define the terms "owner" or "property owner." The examiner finds that the most reasonable definition of that term is the property owner of record, based on the deed records for the property. The applicant, Quail Construction, LLC, is the record owner of the site. Mr. Girod signed the application on behalf of Quail Construction, LLC. In addition, the Code requires the signature or authorization of "the property owner" not "all property owners." Quail homes, represented by Mr. Girod, is clearly "a property owner" of the site. Assuming Mr. Brooks' adverse possession claim is valid, Mr. Brooks is also "an owner" of the site. Therefore the examiner finds that the application complies with BGMC 17.200.035.B.

b. However the applicant must resolve the adverse possession claim prior to final plat approval. RCW 58.17.165 requires that the final plat must be signed "[b]y all parties having any ownership interest in the lands subdivided and recorded as part of the final plat." An adverse possession claim qualifies as "any ownership interest" as that term is used in RCW 58.17.165. *Halverson v. City of Bellevue*, 41 Wn. App. 457, 459, 704 P.2d 1232 (1985). Consequently Mr. Brooks has an "ownership interest" in the subject property pursuant to his adverse possession claim. Therefore, the applicant must resolve the adverse possession claim through a quiet title action or other proceeding prior to final plat approval. A condition of approval is warranted to that effect.

c. The applicant will be required to survey the site prior to final plat approval. BGMC 16.120.040.B.

13. SW 25th Way has been stubbed to the north boundary of the site. Therefore, the applicant is required to dedicate right-of-way and extend this street into the site.

BGMC 12.116.230.B. The applicant must extend this street to the south boundary of the site to allow for further extension and compliance with city cross-circulation standards when the abutting property redevelops. BGMC 12.116.230. The applicant cannot terminate this street prior to the boundary line.

a. BGMC 12.116.230.A does not require the applicant to modify the alignment of SW 25th Way in order to avoid the existing shed on Mr. Brooks' property. This standard prohibits future construction that may conflict with the extension of stub streets. It does not require that stub streets be designed to avoid existing structures.

b. The examiner understands Mr. Brooks' concerns that the headlights of vehicles operating on SW 25th Way will shine into his residence. However, the Code does not regulate impacts from vehicle headlights. This is one of the results of living in an urban area where City plans call for the type of development being proposed. BGMC 17.131.100 does not apply to the headlights of vehicles operating on public streets. This section prohibits casting of glare onto streets, not from such streets. The second portion of this provision is clearly limited to outdoor light fixtures, not headlights.

c. The applicant is not required to construct or assist in constructing a driveway to Mr. Brooks' residence from SW 25th Way. Mr. Brooks' residence has existing access. The proposed development will not impact that existing access in any way. SW 25th Way will be a public street. Therefore, Mr. Brooks may be able to obtain City approval for a driveway from this street stub once it has been completed.

d. The applicant is not required to provide a future street plan or shadow plat demonstrating compliance with the block standards of BGMC 16.125.060 or the circulation standards of BGMC 12.116.230. Some jurisdictions impose such a requirement, but the City of Battle Ground does not. BGMC 16.125.060 only applies to proposed streets within the development.

14. The applicant is also required to extend utilities within the SW 25th Way right-of-way to allow for further extension when the abutting property redevelops. BGMC 16.130.030. The applicant will be required to locate these utilities at depths necessary to serve adjacent parcels, to the extent feasible. The depth of such utilities and the feasibility of extension is largely determined by the depth of existing utilities that will be extended on this site. The City will review this issue during the final engineering review process.

15. The applicant is not required to coordinate development on this site with development on adjacent properties and the City cannot delay approval of this development in order to allow such coordinated development. The applicant submitted an independent application to develop his property. If that application complies with the applicable approval criteria, it must be approved.

16. Construction on this site will temporarily cause increased noise, dust, traffic and other impacts on adjacent properties. However, this is only one of the many consequences of living in an urban area. The examiner finds that, while construction on the site may cause some adverse impacts on surrounding properties, such impacts are

short lived and not significant enough to require specific limitations on construction other than those imposed by State law and the Code.

a. As Ms. Ernst testified at the hearing, the City inspects existing streets prior to and after construction and requires contractors to repair any damage that occurs.

b. Construction workers have the right to park on public streets in the area, subject to relevant restrictions on duration and location. Parking is permitted on public streets on a first-come, first-served basis. On-street parking is not reserved for abutting residents and their guests.

17. It was argued that the applicant should be required to fence the site to separate the proposed development from adjacent properties. BGMC 17.131 establishes standards for landscaping and screening. Based on Table 40.320.010-1, no screening or buffering is required where land zoned for single-family detached residential development adjoins other land zoned for single-family detached residential development. There is no basis for concluding residents of the proposed subdivision will pose a hazard to the use of abutting properties or will be reasonably likely to trespass on abutting properties. The owners of abutting properties have adequate legal (civil) recourse to address any trespass problems that may arise. Also owners of most surrounding properties are free to install a fence along on their properties to reduce the potential for trespass.

18. The proposed development will attract additional people to the immediate area, which may increase the amount of trespass, litter, vandalism, and other illegal activities. However, the examiner finds that there is no substantial evidence in the record that the future residents of this development are any more or less likely to engage in nuisance or illegal activities than other people.

19. Even if the development will have an adverse impact on surrounding property values --- and there is no substantial evidence to that effect in the record --- protection of property value is not relevant to the applicable approval standards for this development.

20. The proposed development will comply with the Park and Open Space requirements of BGMC 17.128.

a. Based on County GIS maps, the east-west dimension of the site is ¼ mile. Therefore, this development is subject to the park and open space ordinance. BGMC 17.128.010.B(3).

b. The site is located in Neighborhood Parks Service Areas (NPSA) 19, which has a shortage of parks. Therefore BGMC 17.128.030.B requires that this development provide parks consistent with the standards contained in BGMC 17.128.040.

c. The applicant will provide a public trail and natural area viewing space with seating located near the edge of the wetlands on the western portion of the site. The examiner finds that the proposed improvements are adequate to comply with the size and

location requirements of with BGMC 17.128.040.A(1)(b) and the design standards of BGMC 17.128.040.A(2)(b).

d. The applicant should be required to dedicate the trail and viewing area to the City or record a public access easement over these areas and complete construction of the proposed park improvements prior to final plat approval, as required by BGMC 17.128.040.D and E. Conditions of approval are warranted to that effect.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that the revised plat (Exhibit 34) of SUB: 01-17 (Quail Firs Subdivision) should be approved, because it does or can comply with the applicable standards of the Battle Ground Municipal Code and the Revised Code of the State of Washington, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves the revised plat (Exhibit 34) of SUB: 01-17 (Quail Firs Subdivision), subject to the following conditions of approval:

Conditions of Approval

A. Prior to Engineering Plan Approval:

1. Submit final engineering plans, for review and approval by staff, pertaining to transportation, sewer, water, grading, erosion control, stormwater, driveways, street lighting, landscaping, and park and trail improvements prepared and stamped by a registered engineer in the state of Washington.

2. Submit final engineering plans:

   a. Showing full width improvements to SW 25th Way to Neighborhood Collector standards, including sidewalk, planter strip, curb & gutter, and asphalt.

   b. Containing a combined landscaping and driveway plan.

   c. Containing a signing and striping plan.

   d. Containing a street lighting plan.

   e. Showing traffic calming devices on all public streets.

f. Showing driveways that meet the requirements of BGMC 12.116.243

g. Showing traffic mitigation at SW Eaton Boulevard & SR 503 and SR 503 & NW Onsdorff Boulevard or indicating that mitigation fees will be paid in lieu of the improvements.

h. Showing an 8-inch water line in SW 25th Way extended to extreme southern property lines.

i. Showing each residential lot having its own individual water service

j. Showing an 8-inch gravity sewer line extending to southern property lines.

k. Showing each residential lot having its own sanitary lateral.

l. Showing fire hydrants meeting spacing requirements throughout the subdivision.

m. Showing a stormwater facility that meets the requirements of BGMC 18.250.

n. Showing grading and erosion control in conformance with applicable city standards and standard construction details.

o. Showing open space and trail improvements consistent with those shown in Exhibit 34 and the City's standard details and construction requirements, or as otherwise approved by the City.

3. Provide a photometric plan for the frontage road to ensure that proposed lighting meets IES RP-8-00.

4. Submit a hydrology report that addresses all requirements found in BGMC 18.250.

5. Submit a SWPPP that meets the requirements of BGMC 18.250.050(B).

6. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department

7. Following the City Engineer's acceptance and approval of the construction cost estimate, pay the required engineering plan review and construction inspection fee that is two (2) percent of the estimated costs of construction minus the $500.00 due at engineering plan submittal.

B. Prior to Final Plat Approval:

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.

2. Construct the mitigation measures for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of $4,599.99.

3. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fees of $11,457.00.

4. Construct the public trail and open space seating/viewing area improvements as shown in the approved engineering plans.

5. Submit a final plat:

   a. That shows easements for public utilities not located in the right-of-way.

   b. With the following note: "All utilities are to be located outside of the sidewalk section and to be underground where possible."

   c. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.

   d. That shows where any control monuments have been placed.

   e. That shows the dedication of any public roads or alleys.

   f. With the note: "All new structures shall conform to the setbacks and building heights of the R5 zoning district."

   g. With the note: "All houses shall conform to the neighborhood design standards as listed in BGMC 17.106.040."

   h. With a note: "Wetland buffer demarcation shall comply with 18.270.050."

   i. That shows easements, as applicable, for the fire turn around.

   j. That shows dedication of the trail and open space viewing area to the City or a perpetual public easement over this area.

6. Submit a recorded two-year stormwater maintenance contract after review and approval.

7. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.

8. Provide a bill of sale for the storm, water and sanitary.

9. Provide evidence that Mr. Brooks' adverse possession claim has been resolved through a quiet title proceeding confirming the applicant has sole ownership in the site, a written agreement with Mr. Brooks waiving his adverse possession claim to the site, or other evidence acceptable to the City.

C. Prior to Engineering Acceptance:

1. Construct all public improvements, if applicable, and go on a walkthrough with City of Battle Ground Engineering Staff and correct any deficiencies as determined by City staff.

2. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for all completed and accepted public improvements.

3. Submit to the City of Battle Ground a recorded Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and/or approval.

4. Submit complete sets of as-built drawings for all required public improvements for streets and roads, stormwater drainage and control, sanitary sewer and water services, as applicable prior to the issuance of the occupancy permit for review and approval by the Engineering Department. Upon acceptance by the Engineering Department, submit prior to the issuance of the occupancy permit, one (1) Mylar set, one (1) full size paper set, two (2) 11x17 paper sets of As-Built record drawings and one (1) 3.5-inch disk (s) or compact disc version of the as-built drawings in AutoCAD, PDF, and TIF formats.

D. Prior to Construction:

1. Receive signed and approved engineering plans from the City of Battle Ground.

2. Receive an approved ROW permit from the City of Battle Ground.

3. Submit a Certificate of Liability Insurance meeting the requirements of BGMC 12.118.120.

4. Erect and conduct erosion control measures consistent with the approved Erosion Control Plan and City of Battle Ground erosion control standards.

5. Submit evidence that an individual on-site has successfully completed formal training in erosion and sediment control by a recognized organization acceptable to the City.

6. Conduct a pre-construction conference with City engineering and planning staff. Contact the Planning Customer Service Clerk at (360) 342-5047 to schedule an appointment.

E. Prior to Creation of Impervious Surface:

1. Except roofs, the stormwater treatment and control facilities shall be installed in accordance with the approved final engineered plans and in accordance with the City of Battle Ground stormwater regulations.

F. Prior to Building Permit Issuance:

1. All required fees, including Transportation, Park and School Impact fees shall be paid.

2. Fire hydrants shall be tested and approved and fire flow letter shall be submitted to the City showing the minimum fire flow has been attained.

3. Per BGMC 18.270.050, permanent marking of all buffer areas shall occur. Such demarcation may consist of logs, a tree or hedge row, fencing made of wood only, or other prominent physical marking approved by the director. Additionally, a sign measuring no more than six square feet in area and no shorter than four feet and no higher than six feet in height shall be posted at approximately every one hundred feet, along the outer perimeter of the wetland buffers, or where practical.

G. Other:

1. If any cultural resources are discovered in the course of undertaking the development activity, the State of Office of Historic Preservation and Archaeology and the City of Battle Ground Planning Department must be notified.

2. Adhere to all recommendations of a final Buffer Mitigation and Bank Use Plan prepared by Ecological Land Services, May 17, 2017.

3. Comply with water quality recommendations in Ecology's June 21, 2017 letter.

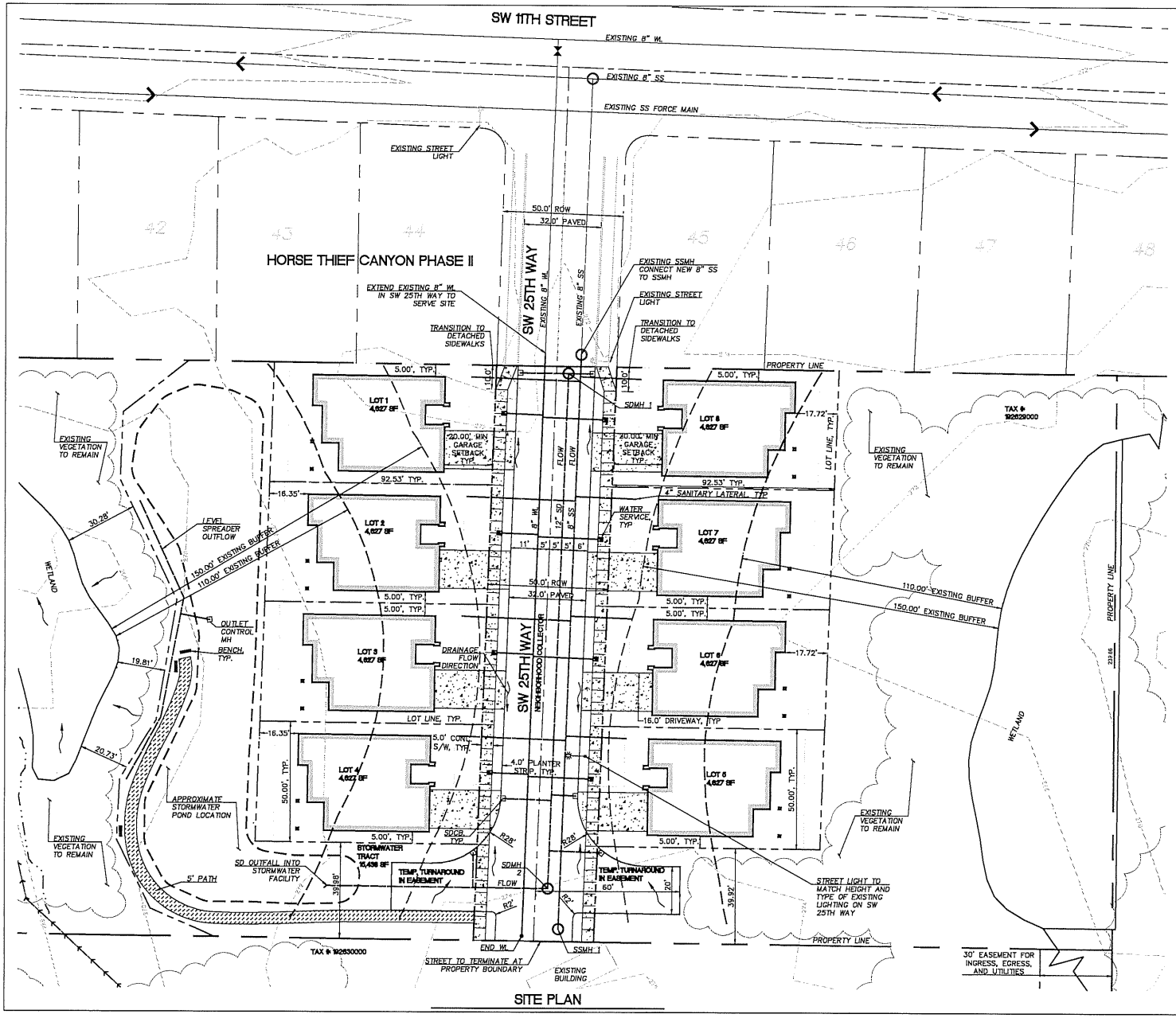
APPEAL

This Final order may be appealed to the Washington Superior Court per RCW 36.70C within 21 calendar days after the issuance of the decision.

DATED this 6th day of September 2017.

Joe Turner

Joe Turner, AICP
City of Battle Ground Land Use Hearing Examiner



SITE PLAN

NOTES

SETBACKS:
20' FRONT GARAGE
10' FRONT
5' SIDE
10' REAR FACING WETLAND

GRADING:
1. SITE GRADING WILL BE CONTAINED TO THE LIMITS OF THE DEVELOPABLE AREA AS DEFINED BY THE WETLAND PERMIT.
2. EXISTING CONTOURS SHOWN ON THIS PLAN ARE APPROXIMATE. SOURCE: CLARK COUNTY MAPS ONLINE

STREET SECTION
NEIGHBORHOOD COLLECTOR

SITE:
AREA: 9.47 ACRES
ZONING: R5
AVERAGE LOT SIZE: 4,627 SF

LANDSCAPING:
1. LANDSCAPTING TO BE IN ACCORDANCE WITH BGMC 17.131 AND 17.143.050.D

GRAPHIC SCALE
0 20 40
1 inch = 20 ft.

400 COLUMBIA STREET
SUITE 160
VANCOUVER, WA 98660
PHONE: 503-939-9750

REVISED SITE PLAN

QUAIL FIRS SUBDIVISION
QUAIL HOMES
4501 NE MINNEHAHA ST. #200, VANCOUVER, WA 98661

REV.	DATE	DESCRIPTION	BY

PROJECT NO.: QUA001-17-01
DRAWN BY: MCP
DESIGN BY: FRG, MCP
REVIEWED BY: FRG
DATE: 08-09-2017

SHEET NO.
C2.0

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