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

Regarding an application by Clark Land Design, PLLC for approval of a preliminary plat to divide 5.16-acres into 18 lots in the R-5 zone at 1414 SW 20th Avenue, in the City of Battle Ground	)	**FINAL ORDER**
	)	
	)	**PR 66-2019**
	)	**(New Century Subdivision)**

A. SUMMARY

1. The applicant, Clark Land Design, PLLC, requests approval to divide the 5.16-acre site into 18 residential lots and open space tracts for wetlands/open space and stormwater facilities. The site is located at 1414 SW 20th Avenue; also known as Tax Assessor Parcel 192622-000 (the "site").

a. The site and abutting properties to the north and west, are zoned R-5 (Residential, 5 units per acre maximum density). Properties to the south are zoned R-3 (Residential, 3 units per acre maximum density). Properties to the east, across SW 20th Avenue, are zoned R-12 (Residential, 12 units per acre maximum density).

b. There is a seasonal, non-fish bearing (Type Ns) stream and a Category 3 wetland in the northwest corner of the site. The stream extends offsite to the west and the wetland extends offsite to the south and west. The applicant proposed to retain the stream and the majority of the wetland and associated buffer within an open space tract. The proposed development will not impact the stream. Impacts to the wetland and buffer are limited to a portion of SW 14th Street and a portion of the stormwater detention pond. The applicant will mitigate for these impacts by purchasing mitigation bank credits. There is an Oregon White Oak tree in the southeast corner of the site, which will be retained.

c. The site is currently developed with a single-family residence and associated outbuildings. The applicant proposed to remove all of the existing structures and develop a new single-family detached dwelling on each of the proposed lots. All proposed lots comply with the dimensional requirements of the R-5 zone.

d. The applicant will construct half-width frontage improvements along the site's SW 20th Avenue frontage. The applicant will extend a new half-width public street into the site from SW 20th Avenue, proposed SW 14th Street, located on the north boundary of the site. The applicant will extend a stub street, proposed 21st Avenue, between SW 14th Street and the south boundary of the site to provide access to proposed Lots 4-7 and to allow for further extension and cross-circulation when abutting properties to the south redevelop.

e. The proposed SW 20th Avenue/SW 14th Street intersection is located roughly 157 feet south of the existing intersection of SW 20th Avenue and SW Scotton Way. The applicant requested a modification to the intersection spacing requirements for this new intersection. The applicant will construct the proposed SW 20th Avenue/SW 14th

Street intersection as a right-in/right-out only access to limit conflicts with the SW 20th Avenue/SW Scotton Way intersection to the north.

f. Clark Public Utilities (CPU) will provide domestic water and the City of Battle Ground will provide sanitary sewer service to the site. The applicant will collect storm water from all impervious areas on the site and convey it to one of two proposed storm water facilities located at the east and west edges of the site for treatment and detention. The applicant will discharge treated stormwater into the on-site wetlands (western facility) or the existing ditch on SW 20th Avenue (eastern facility) at less than predevelopment rates.

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 (amended) Staff Report to the Hearing Examiner dated January 23, 2020 (Exhibit 38, the "Amended Staff Report").[1] Contested issues in this case include:

a. Whether the additional traffic generated by the proposed development will exceed the capacity of area streets or otherwise create a hazard;

b. Whether the proposed right-in/right out access will operate safely;

c. Whether the City has the authority to restrict turning movements at existing driveways;

d. Whether the applicant can be required to work with adjacent property owners to develop alternative access to the site;

e. Whether the proposed development will exacerbate flooding problems on adjacent properties;

f. Whether the applicant is required to improve the existing ditch on SW 20th Avenue;

g. Whether the examiner can deny proposed Lots 4 and 7 or restrict the types of homes that can be constructed on those lots;

h. Whether impacts to the privacy of existing residents is relevant to the applicable approval criteria; and

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[1] The City issued a prior Staff Report with the same date (the "Original Staff Report"). The City amended the Original Staff Report in response to issues raised by the applicant (Exhibit 35), resulting in the Amended Staff Report.

i. Whether the applicant is required to coordinate development on this site with development on adjacent properties.

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 January 31, 2020. 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 Emily Lutz summarized the Staff Report.

a. She noted that the 5.16-acre site is zoned R-5. The applicant proposed to subdivide the site into 18 lots for single-family detached homes. There is an Oregon white oak tree near the southeast corner of the site and a wetland and stream in the northwest corner.

b. The applicant will extend a new public street, proposed 14th Street, into the site from SW 20th Avenue, roughly 157 feet south of the existing intersection of SW 20th Avenue and SW Scotton Way. The applicant requested a road modification to reduce the intersection spacing requirements for this new intersection from 500 feet to 157 feet.

c. She noted that the applicant requested certain changes to the Original Staff Report (Exhibit 35): deleting the requirement that the applicant improve SW 25th Avenue and allowing an alternative sewer connection, subject to City approval. The City agreed with the proposed changes and issued an Amended Staff Report addressing those issues (Exhibit 38).

3. City engineer Ryan Jaynes testified that the applicant and the City will work together to design a median for SW 20th Avenue to prevent left-turn movements in and out of the site. The applicant will be required to provide a physical barrier, not just pavement striping or signage.

4. Planner James Clark and engineer Paul Williams appeared on behalf of the applicant, Clark Land Design, PLLC.

a. Mr. Clark accepted the findings and conditions in the Amended Staff Report without objections.

i. The applicant may detain stormwater runoff on the site in surface ponds or in underground pipes or vaults.

ii. The proposed right-in/right-out only access to SW 20th Avenue is an interim measure. When one or more of the abutting properties redevelops and provides alternative access to the site, the intersection of SW 14th Street/SW 20th Avenue will be closed, or restricted to emergency vehicles only.

(A) The applicant cannot preclude drivers from making U-turns in driveways to the south of the site. However, most drivers will find it faster and safer to continue south on SW 20th Avenue to SW Eaton Boulevard rather than attempting to make a U-turn. Limiting SW 14th Avenue to right-in/right-out only access creates a safer intersection.

(B) The applicant tried working with Joneses to negotiate access to the site through their property, but they were unable to reach an agreement. The applicant is willing to continue talking with the Joneses regarding the extension of sidewalks across their property.

(C) The median on SW 20th Avenue will not block access to Ms. Cox's property south of the site. The median will only affect access to SW 14th Street and the existing shared driveway providing access to the Jones and Brooks properties, both of which are located near the north boundary of the site. Ms. Cox's driveway is located south of the site.

(D) The applicant will install a minimum six-inch high concrete median in the center of SW 20th Avenue, which will provide a physical barrier to prevent left turns in and out of the site.

iii. Clearing and grading the existing ditch on SW 20th Avenue would exceed the roughly proportional impacts of this development. The applicant will not increase, and will likely reduce the volume of stormwater discharged into that ditch.

iv. The proposed development will not increase flooding issues on adjacent properties. The site is currently developed with a residence and outbuildings, all of which discharge surface stormwater onto downstream properties without detention. The applicant is required to collect and detain stormwater runoff from impervious areas within the proposed development and discharge it at a rate equal to or less than the runoff rate for the historic forested conditions on the site, less than the current rate of runoff. In addition, current Low Impact Development ("LID") stormwater facilities allow greater infiltration and dispersal of stormwater runoff than older detention facilities and stormwater ponds.

v. This 5-acre site could be developed with 25 homes on 40-foot wide lots under the current R-5 zoning. The applicant proposed to develop the site with 18 larger lots and plans to build one story homes on those lots. The planned homes are intended to serve retirees who prefer all of their living space on a single level. The applicant had to shift development on the site to the east in order to minimize impacts to the wetlands, reducing the buildable area on the site. Therefore, the applicant must build

lots 4-7 abutting SW 21st Avenue in order to maintain the density and financial feasibility of the development.

vi. The applicant will dedicate right-of-way as needed and construct half-width frontage improvements, including sidewalks and additional pavement, on the site's SW 20th Avenue frontage. This roadway will be further improved as other parcels abutting this street are developed. In the alternative, the City may choose to construct frontage improvements on this arterial street as part of its capital facilities plan, as funds are available.

b. Mr. Williams noted that the site slopes downhill to the east and west from a high point in the eastern portion of the site, near the location of proposed SW 21st Avenue. The existing residence, outbuildings, and driveway on the eastern portion of the site currently discharge stormwater runoff to the existing ditch abutting SW 20th Avenue. The remainder of the site drains to the wetland in the northwest corner of the site. The applicant will collect and detain stormwater runoff from all impervious areas on the site, discharging it at a rate equal to or less than the runoff rate from the historic forested condition. In addition, proposed grading will shift the high point to the east, allowing more of the site drain to the west. Only proposed Lots 1 and 2 will drain to the east, at less than current rates.

i. The applicant may place additional fill on the site to elevate the site as necessary to provide gravity flow sewer service.

ii. The accident rate at the SW Scotton Way/SW 20th Avenue intersection is based on reported accident. The Police Department documents accidents based on accident reports. The City engineering department calculates the accident rate based on intersection traffic volume and the number of reported accidents over the prior five-year period. Based on those records, there have been five accidents at this intersection over the past five years. One accident occurred before the SW Scotton Way/SW 20th Avenue intersection was constructed. Two accidents were caused by malfunctioning accelerators, unrelated to the design of the intersection. Three accidents were collisions. The resulting accident rate is less than the City's action rate of one accident per million entering vehicles ("1.0/mev"). Therefore, no mitigation is required.

5. Dr. Michelle Newcomer summarized her written testimony, Exhibit 36.

a. She expressed concern with increased traffic generated by the proposed development. The existing intersection of SW Scotton Way and SW 20th Avenue is hazardous under existing conditions. She has observed two accidents at this intersection.

b. The neighborhood south of the site, including her property abutting the south boundary of proposed Lot 4, and the private road serving the neighborhood, SW 16th Street, are frequently flooded under existing conditions. Flood waters have eroded driveways in the neighborhood south of the site. Construction of the Walmart development northwest of the site significantly increased the volume of runoff and the

extent of flooding in this area. This area cannot accommodate any increase in stormwater runoff.

i. The site is located at a higher elevation than her property, causing stormwater to flow from the site onto the northeast portion of her property her property. She installed French drains to route this runoff away from her property.

ii. Development on this site may cause additional flooding. Some stormwater infiltrates on the site under existing conditions, reducing the amount of surface runoff in the area. The proposed development will replace the existing pasture with homes, driveways, streets and other impervious areas, significantly reducing the amount of stormwater infiltration and increasing surface runoff and flooding. The proposed SW 21st Avenue street stub will drain onto her property.

iii. Offsite wetland mitigation will do nothing to alleviate increased stormwater runoff on this site.

c. The Code allows construction of a home on proposed Lot 4 within five feet of the north boundary of her property, which will impact the privacy of her home. She requested the applicant limit development on Lot 4 to a single-family residence to reduce such impacts.

6. Joel Ramey testified that there is an existing ditch/canal in the pasture on his property located south of SW 16th Street. An existing culvert in the ditch on his property is currently under water. Recent upstream developments, including the Walmart development, significantly increased the extent of flooding in this area. Flooding has rendered his pasture unusable. Recent development on the property south of his property directed stormwater runoff onto his property and a neighbor to the north modified a ditch to direct runoff onto his property. He submitted photos of recent flooding in the neighborhood south of the site, Exhibit 37.

a. SW 20th Avenue is a busy street under existing conditions. He has to wait one to two minutes to exit his driveway onto SW 20th Avenue under existing conditions. There is no shoulder on SW 20th Avenue, making pedestrian and bicycle travel impractical and unsafe. Construction of 18 new homes on this site will add even more traffic to this road. SW 20th Avenue should be improved with bicycle lanes and sidewalks prior to approval of this development.

b. The proposed right-in/right-out only access to the site will direct all outbound traffic from the site past his home. Residents of the site will use his driveway as a turnaround in order to travel north on SW 20th Avenue.

c. The intersection of SW Scotton Way and SW 20th Avenue is unsafe under existing conditions.

7. Kelly Jones testified that his property is located on the west side of SW 20th Avenue at SW Scotton Way. The SW Scotton Way/SW 20th Avenue intersection is

hazardous under existing conditions. He observed a bad accident at this intersection two weeks prior to the hearing. He questioned when and how the accident analysis for this intersection was conducted. Construction of the Walmart development significantly increased the volume of traffic and number of accidents at this intersection. It is difficult for him to cross SW 20th Avenue to access his mailbox. Drivers frequently use his driveway as a turnaround under existing conditions.

a. Limiting the proposed SW 14th Street intersection with SW 20th Avenue to right-in/right-out only will result in unintended consequences and create more problems than it solves.

i. Residents of the site desiring to travel north on 20th Avenue and/or west on SW Scotton Way will make U-turns at driveways south of the site, making SW 20th Avenue even more hazardous.

ii. Drivers leaving the Walmart parking lot frequently drive the wrong way on the public street in order avoid the median that is intended to prevent left-turns. Similar illegal turn movements are likely to occur at this intersection.

iii.. The proposed median will prevent him from accessing his driveway with his travel trailer. He cannot turn right into his driveway while hauling a trailer under existing conditions. Restricting his driveway to right-in/right-out only will prevent him from moving his trailer on and off of his property. Residents of the site will have similar issues moving trailers on and off of the site at proposed SW 14th Street.

b. Any turn restriction must utilize a physical barrier. Drivers will ignore painted stripes and signing prohibiting left turn movements.

c. He is willing to work with the applicant and the City to develop an alternative access to the site through his property, extending a new street west from Scotton Way, through his property, then south to the site, or some other design that would eliminate the need for right-in/right-out only access to SW 20th Avenue from the site. The property north of him is planned for development and will construct sidewalks on SW 20th Avenue. Those sidewalks could be extended across his property to connect with the sidewalks on this site and a marked crosswalk could be installed across SW 20th Avenue connecting to the existing sidewalks on SW Scotton Way, enhancing pedestrian safety at this intersection.

8. Bill Brooks argued that the City should develop an overall plan for development in this area, including a traffic signal or four-way stop sign at the SW Scotton Way/SW 20th Avenue intersection and improvements to SW 20th Avenue. It is unsafe to walk on SW 20th Avenue under existing conditions. Additional traffic from this development will make this situation even worse. The proposed median restricting SW 14th Street to right-in/right-out only will also limit access to his residence, as he shares the Joneses driveway on the north boundary of the site. SW 20th Avenue should be improved and SW Scotton Way extended to the east before this development is approved.

a. The site has standing water in the northwest corner for two to three months during the winter.

b. Development on this site will require placement of a significant amount of fill. The property north of his was recently developed and required significant fill, resulting in large amounts of heavy truck traffic traveling to and from the property.

c. Proposed lots 4 and 7 at the southern end of SW 21st Avenue should be denied in order to limit impacts on the properties to the south. These lots provide no yard area for the residents and the homes will be located within five feet of the common boundary.

d. The ditch on SW 20th Avenue is currently clogged by vegetation, which needs to be cleared out and the ditch enlarged to improve flows and accommodate runoff from this site.

9. Marcia Cox questioned whether the proposed median restricting SW 14th Street to right-in/right-out movements will also limit access to her driveway south of the site.

10. 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 Amended Staff Report.

C. DISCUSSION

1. City staff recommended approval of the preliminary plat, based on the affirmative findings and subject to conditions of approval in the Amended Staff Report. The applicant accepted those findings and conditions without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the preliminary plat does or can comply with the applicable standards of the Battle Ground Municipal Code (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 his own, except to the extent they are inconsistent with the following findings.

3. The proposed development will generate increased traffic on area streets. That increased traffic will be perceptible to area residents. However, traffic will not exceed the capacity of those streets nor create a hazard, based on the applicant's traffic study. All intersections impacted by this development will continue to operate at acceptable levels of service.

a. There is no dispute that SW 20th Avenue does not provide optimum travel conditions. There are no sidewalks and the pavement is narrow with little or no shoulder. However this does not mean that the street is unsafe. The historic accident rate on this street is well below the level action level of 1.0 accidents per million entering vehicles. Many streets in the City are in this same condition. These conditions are

obvious. Reasonably prudent drivers will observe the posted speed limit and, if necessary, further reduce their speed to accommodate changing road conditions. Unfortunately not all drivers are prudent enough to observe posted speed limits and road conditions. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. The hearings officer encourages area residents to contact local law enforcement agencies to request enhanced enforcement of traffic laws in this area if necessary to ensure compliance with speed limits and other traffic regulations.

i. Neighbors argued that the intersection of SW 20th Avenue and SW Scotton Way is hazardous under existing conditions. However, that testimony is inconsistent with the City's accident records for this intersection. There have been accidents at this intersection, but the number of accidents is less than the City's action level of 1 accident per million entering vehicles. The action rate is based on reported accidents. Some accidents are not reported. Therefore the accident history may not reflect all of the accidents in the area. However the action rate of 1 accident per million entering vehicles is based on reported accidents. There is no substantial evidence that this location experiences an unusually high number of unreported accidents. The examiner finds that the reported accident history is the best evidence available regarding the accident history for this area.

ii. The applicant will dedicate right-of-way and construct sidewalks and wider pavement on the section of SW 20th Avenue abutting the site. Additional improvements will be provided in the future as properties abutting this street are developed.

iii. The City may also choose to improve SW 20th Avenue, an arterial street, through its Capital Facilities process. However, the City's ability to construct such improvements is dependent on the availability of funding. As noted in Exhibit 21, the City has applied for grants for such improvements. Unfortunately those requests have not been approved. The examiner encourages neighbors to contact the City to encourage the City to fund improvements to this street.

b. Higher traffic volumes create a proportionally higher risk for drivers, pedestrians and bicyclists. In response reasonably prudent people exercise more care personally and with family members. Those risks are consistent with the location of the site in the urban area where City plans call for the sort of development being proposed. The applicant is not required to construct offsite sidewalks and other road improvements on 20th Avenue because it would be disproportionate to the impact of the development on the need for such facilities. Applicants are not required to remedy all perceived and existing deficiencies in the vicinity of a development. The Code requires an applicant to mitigate impacts a development causes or to which it contributes significantly. Although the proposed development contributes to problems with substandard streets in the area, those problems exist largely because of existing development. It would be inequitable to require an applicant to bear the full burden of improvements where the proposed development is only responsible for a small portion of the problem. The need for sidewalks and other street improvements is one that exists generally along streets in the

area, and is a need to which all adjoining properties contribute, not just the lots being created in this case. Sidewalks and other improvements in the area will interconnect over time as other properties in the area develop, but the applicant is not required to make such connections at this time.

4. The examiner finds that the proposed right-in/right out access will operate safely and will not create a hazard, based on the expert testimony of the engineers for the City and the applicant. Neighbors' unsupported concerns are not substantial evidence sufficient to overcome the expert testimony from the engineers. Restricting this intersection to right-in/right-out movements will prevent conflicts with the existing SW 20th Avenue/SW Scotton Way intersection north of the site.

a. The right-in/right out access is an interim measure to allow this property to develop. This access can be closed or restricted to emergency vehicles only in the future, when abutting properties redevelop and provide alternative access to the site.

b. The applicant will construct a physical barrier (a concrete median or similar obstacle) to prevent drivers making left turns at this intersection. Some drivers may make illegal maneuvers such as driving in the opposing lane in order to avoid this barrier.

c. Some drivers may choose to attempt U-turns elsewhere on SW 20th Avenue in order to travel north on SW 20th Avenue. Such movements are legal, provided the "[m]ovement can be made in safety and without interfering with other traffic." RCW 46.61.295. However, given the traffic volumes and narrow pavement on SW 20th Street, it may frequently be impossible to legally make such movements. U-turns at private streets or driveways would likely constitute an illegal trespass.

d. As noted above, reasonably prudent drivers will observe applicable turn restrictions and other rules of the road. Unfortunately not all drivers are prudent. However there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. These types of illegal maneuver can only be addressed through increased enforcement.

e. The proposed median will also restrict access to the existing shared driveway providing access to the Jones and Brooks properties. Given the location of this driveway, very close to the north boundary of the site where the applicant will construct SW 14th Street, the median must extend past and block right turn access to this shared driveway in order to serve its intended function. That is unfortunate, but it is not prohibited. The City has a right to limit access to its streets.

i. The Joneses testified that the median will prevent them from accessing their driveway with a trailer due to the limited turning radius of their trailer. The applicant and the City may be able to address this issue through the design of the median. Otherwise, the Joneses may need to modify their existing driveway to allow for wider turn movements. The examiner encourages the Joneses to contact the applicant and the City regarding this issue.

5. The Joneses testified that they are willing to work with the applicant and the City to potentially provide access to the site through their property, eliminating the need for the proposed right-in/right-out driveway. The Joneses also raised the possibility of extending a sidewalk along the frontage of their property in order to connect the on-site sidewalks to the sidewalks that will be created by development on the property north of the Joneses. The examiner appreciates the Joneses offer and encourages the applicant to discuss these offers with the Joneses and the City. However, the examiner cannot require such improvements as a condition of this approval.

6. The examiner finds that the proposed development will not cause or exacerbate flooding and drainage problems on abutting properties. As Mr. Williams testified, the majority of the site slopes downhill to the west and stormwater falling on the western portion of the site flows downhill towards the on-site wetlands under existing conditions. The eastern portion of the site slopes downhill to the east and stormwater falling on this portion of the site flows downhill towards the ditch on SW 20th Avenue. As Dr. Newcomer testified, some portions of the site slope downhill to the south and runoff from these areas flows onto adjacent properties. The applicant is not required to alleviate these existing conditions. This is an existing condition that is not created or exacerbated by the proposed development. However, the proposed development may reduce the volume of water flowing onto adjacent properties and into the ditch on SW 20th Avenue.

a. The applicant proposed to grade the site to shift the topographic high point to the east, reduce the area of the site that drains to the east.

b. In addition, the applicant will collect stormwater from roofs, driveways, roads and other impervious surfaces on the site and direct it to the on-site stormwater facilities for treatment and detention. The applicant will release stormwater from the detention facilities at less than pre-development rates; post-development release rates must be equal to or less than the runoff rate from the historic forested conditions on the site, which is less than the current rate of runoff leaving this site.

7. Dr. Newcomer expressed concern that the proposed stub street abutting the north boundary of the site, proposed SW 21st Avenue, will discharge stormwater onto her property. However, as illustrated in the applicant's preliminary civil plans, Sheet C300 of Exhibit 16, the applicant will install catch basins at the southern end of this street to collect stormwater runoff before it enters adjacent properties.

8. The applicant is not required to clear and grade the existing ditch on SW 20th Avenue. As discussed above, stormwater from the site currently discharges to this ditch and will continue to do so after development, but at a lower rate. Although this ditch may be in need of restoration, that need is created by all of the development in the area that is served by this ditch. The applicant encourages neighbors to contact the City public works department to request clearing of this ditch.

9. The examiner cannot deny proposed Lots 4 and 7 or restrict the types of homes that can be constructed on those lots. The proposed lots meet all applicable Code

standards. Future development on those lots will be required to comply with applicable building height, setback, and lot coverage requirements. Development of this site, especially on these two lots, will also cause an incremental loss of privacy for existing residents in the area. What is now largely a pasture will be developed with 18 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. 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.

10. 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. The City could develop a master plan for development in this area, but it has not done so. The City cannot deny or delay this development while such a master plan is developed.

11. 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.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that PR 66-2019 (New Century 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 PR 66-2019 (New Century 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, and landscaping prepared and stamped by a registered engineer in the state of Washington.

2. Submit final engineering plans:

   a. Showing adequate half-street improvements based on pavement testing, for SW 20th Avenue, "Modified Minor Arterial," including sidewalk, planter strip, streetlights, curb/gutter and asphalt.

   b. Showing adequate half-street right-of-way dedication for SW 25th Avenue, "Neighborhood Collector."

   c. Showing adequate half-street improvements, for SW 14th Street, "Local A," including sidewalk, planter strip, streetlights, curb/gutter and asphalt.

   d. Showing full width improvements to SW 21st Avenue to "Local A" standards, including sidewalk, planter strip, streetlights, curb & gutter, and asphalt.

   e. Showing that cross streets (circulation) requirements of BGMC 12.116.200 are being meet.

   f. Showing right-in/right-out access at the intersection of SW 20th Avenue and SW 14th Street via the construction of a median in SW 20th Avenue.

   g. Showing a hammer-head on SW 14th Street that meets the current adopted fire code.

   h. Showing dedication of ROW for SW 14th Street from the terminus of the hammer-head to the western property line.

   i. Containing a combined landscaping and driveway plan.

   j. Showing sight distance and vision clearance triangles.

   k. Containing a signing and striping plan.

   l. Containing a street lighting plan having LED decorative cobra type units for SW 20th Avenue and LED acorn units for the other streets.

   m. Showing traffic calming devices on all public streets.

   n. Showing driveways that meet the requirements of BGMC 12.116.243.

   o. Showing traffic mitigation at SR 503 & SW Eaton Boulevard and SW 20th Avenue & SW Eaton Boulevard or indicating that mitigation fees will be paid in lieu of the improvements.

   p. Showing water lines extending to extreme property lines.

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

r. Showing sewer lines extending to extreme property lines.

s. If applicable, provide an alternative sewer connection for Horsethief Canyon Phase IB.

t. Showing each lot having its own individual sanitary lateral.

u. Showing sewer line CD-2 being fixed for capacity deficiency if it has not been completed by a prior development

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

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

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

y. Showing the placement of wetland buffer signs meeting the standards in 18.270.050.

z. Update plans to show required "No Parking – Fire Lane" signs on at hammerhead turnaround and both sides of SW 14th St.

aa. Showing landscaping along the temporary turnaround per 18.270.070B3.

3. Providing a pump station study for PS #10 that shows it does or does not have capacity for the proposed subdivision. If it does not, construct FE-15, FE-14, FE-13, PS #11, FM11-1, and abandon PS #10 as outlined in the General Sewer Plan.

4. Provide a photometric plan shall be done for all access points, intersections, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.

5.

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

7. Submit a SWPPP that meets Department of Ecology requirements.

8. Submit proof of engineering plan approval by Clark Public Utilities for the water improvements.

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

10. 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.

11. Submit an updated Mitigation Plan:

    a. Submit wetland mitigation plan that assures mitigation requirements of BGMC 18.260.120 and 18.260.130.

    b. Submit a wetland mitigation plan showing that the stormwater facility located in the wetland buffer meets criteria listed in 18.270.070.

    c. Per BGMC 18.260.180 all wetlands and buffer areas over 5,000 square feet shall be included in critical area tracts.

    d. Coordinate with the State Department of Ecology for the proposed wetland impacts and final mitigation plan.

B. <u>Prior to Construction of the Site:</u>

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 surety bond meeting the requirements of BGMC 12.118.110.

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

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

6. 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.

7. Conduct a pre-construction conference with City engineering and planning staff. Contact the Engineering Technician at (360) 342-5074 to schedule an appointment.

C. <u>Prior to Creation of Impervious Surfaces:</u>

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.

D. 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 a letter shall be provided by the applicant showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.

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

4. Submit to the City of Battle Ground a Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and approval prior to recording.

5. 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, 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.

E. 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 $9,199.98.

3. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fee of $16,039.80.

4. Submit a final plat:

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

   b. With the following note: "No fences are allowed in the sight distance triangle."

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

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

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

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

g. With the following note: "All new structures shall conform to the setbacks and building height of the R5 zoning district."

h. With the following note: "All households shall conform to the neighborhood design standards as listed in BGMC 17.106.040."

i. With the following note: "Building permits and impact fees shall be paid at the time of permit issuance."

j. Update plans to show required "No Parking – Fire Lane" signs on at hammerhead turnaround and both sides of SW 14th St.

k. With the following note: "Critical areas shall be maintained and owned by either the developer or HOA."

l. Show permanent signage and fencing per 18.270.050 along the outer perimeter of the wetland buffer.

m. With the following note: "Wetland buffer demarcation shall comply with BGMC 18.270.050."

5. Submit a two-year stormwater maintenance contract for review and/or approval.

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

7. Submit a signed Bill of Sale for sewer and stormwater systems.

8. Provide evidence of wetland mitigation credits.

F. <u>Prior to Building Construction:</u>

1. Acquire the required building permits as outlined in Title 15 above.

2. Provide documentation that the required fire hydrants have been installed, tested, and approved in accordance with City of Battle Ground engineering standards and section 15.105.100 of this Staff Report.

3. All new structures shall conform to setbacks, design, parking, and building height requirements of the R5 zoning district and BGMC's residential chapter.

G. Prior to Certificate of Occupancy:

1. Complete all building permit requirements of the City of Battle Ground Building Division.

H. 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 in the final *Critical Areas Assessment and Mitigation Plan* agreed upon with Department of Ecology and Army Corps of Engineers.

3. Coordinate any water quality recommendations in reference to Ecology's e-mail dated November 21, 2019.

4. Adhere to all recommendations of the final Wetland Delineation and Mitigation Plan.

DATED this 19 day of February 2020.

Joe Turner

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

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.