

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

Regarding an application by Norma Kennedy for approval of a preliminary plat to divide 2.86-acres into 10 lots in the R5 zone at 23919, 23937, and 23939 NE 132nd Avenue in the City of Battle Ground)) **FINAL ORDER**
)
) **SUB:01-18**
) **(Parkwood Place)**

A. SUMMARY

1. The applicant, Norma Kennedy, requests approval to divide the 2.86-acre site into 10 residential lots and one tract. The site is located at 23919, 23937, and 23939 NE 132nd Avenue; also known as Tax Assessor Parcel 226707-000 (the “site”).

a. The site and abutting properties to the east, north and west - across NE 132nd Avenue - are zoned R5 (Residential, 5 units per acre maximum density). Properties to the south are outside the City limits and zoned Clark County R1-20 (Low Density Residential, 20,000 square foot minimum lot size).

b. The applicant proposed to divide the site into 10 lots and a stormwater tract. The applicant proposed to retain an existing residence on proposed Lot 10 and construct a new single-family detached dwelling on each of the remaining lots. The City of Battle Ground will provide domestic water and sanitary sewer service to the site. The applicant will collect storm water from impervious areas on the site and convey it to a storm water facility in proposed Tract A for treatment and disposal via on-site infiltration.

c. The applicant will extend a new half-width public street, proposed NE 21st Street, along the south boundary of the site between the NE Parkway Avenue on the west and the east boundary of the site. The applicant will extend two north-south streets between NE 21st Street and the north boundary of the site, proposed NE 1st and 3rd Avenues. These streets will be further extended when the abutting property to the north redevelops. In addition, the applicant will dedicate right-of-way and construct half-width frontage improvements along the site’s NE Parkway Avenue frontage, also known as NE 132nd Avenue.

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 May 30, 2018 (the “Staff Report”) as modified by Exhibit 13. The applicant accepted those findings and conditions without exceptions. One person testified with questions and concerns about the application. Contested issues in this case include:

- a. Whether the applicant must resolve Mr. Hazen's prescriptive easement and adverse possession claims prior to preliminary plat approval; and
 - b. Whether the examiner may impose conditions of approval limiting the applicant or future residents' prescriptive easement rights to use Mr. Hazen's driveway.
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 June 6, 2018. 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 and his PowerPoint presentation, Exhibit 14. He requested the examiner modify the finding on page 6 of the Staff Report as set out in his June 6, 2018 memorandum, Exhibit 13. He noted that Brad Hazen, the owner of the property abutting the north boundary of the site, claims ownership of a small portion of the site through adverse possession. The applicant must resolve that claim prior to final plat approval.

3. Planner Ed Greer appeared on behalf of the applicant and accepted the findings and conditions in the Staff Report and staff report change in the June 6, 2018, memorandum without exceptions.

5. Brad Hazen testified that he has an adverse possession claim over a 1,001 square foot portion of the site, where the east end of his existing driveway extends onto the site. He submitted a caselaw excerpt and maps to illustrate his testimony. Exhibits 15, 16 and 17. He requested the examiner include a condition of approval requiring that the applicant resolve this issue prior to final plat approval.

a. He noted that some of the existing homes on the site utilize the western portion of his driveway for access. Construction traffic and residents of the future homes on this site should be prohibited from utilizing his driveway. He requested the examiner add a condition to that effect.

6. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the findings and conditions in the Staff Report, as modified by Exhibit 13.

C. DISCUSSION

1. City staff recommended approval of the application, based on the affirmative findings and subject to conditions of approval in the Staff Report, as modified by Exhibit 13. 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 13, show that the proposed preliminary plat does or can comply with the applicable standards of the BGMC and the Revised Code of Washington, provided the applicant complies with recommended conditions of approval. The examiner adopts as his own the affirmative findings in the Staff Report, as modified.

3. Mr. Hazen claimed ownership of a portion of the site pursuant to adverse possession. The examiner has no authority to consider or resolve Mr. Hazen's claim. These claims are subject to the exclusive jurisdiction of the Superior Court. However, it is not necessary to resolve these claims prior to preliminary plat approval.

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. Norma Kennedy is the record owner of the site. *See* Exhibit 3. Ms. Kennedy signed the application as owner and applicant. *See* Exhibit 1. In addition, the Code requires the signature or authorization of "the property owner" not "all property owners." Ms. Kennedy is clearly a property owner of the site, based on the County deed records. Therefore the examiner finds that the application complies with BGMC 17.200.035.B. Assuming Mr. Hazen's adverse possession claim is valid, Mr. Hazen is also "an owner" of the site based on the Court's holding in *Halverson*. However, the Code does not require his signature on the preliminary plat application.

b. 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* at 459. Consequently, Mr. Hazen has an "ownership interest" in the subject property pursuant to his adverse possession claim. 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 examiner finds that it is feasible to develop the site as proposed. If Mr. Hazen's claims are upheld and the boundaries of the site are modified to remove those areas claimed by Mr. Hazen, the applicant can seek approval of a modification of this preliminary plat approval pursuant to the City's Post Decision Review process, BGMC 17.200.104.

4. Based on Mr. Hazen's testimony, the existing homes on the western portion of the site have a prescriptive easement right to use the western portion of Mr. Hazen's driveway. The examiner has no authority to determine the existence, scope, or extent of any prescriptive easement rights; i.e., whether the applicant can utilize Mr. Hazen's driveway for construction access or whether future residents of the site may utilize the driveway for access to portions of their lots. Determination of the existence, scope, and extent of any prescriptive easement rights is within the exclusive jurisdiction of the Superior Court. Assuming the applicant and/or future residents of the site have any rights to use Mr. Hazen's driveway, the examiner has no authority to impose conditions of approval limiting those rights.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that SUB:01-18 (Parkwood Place 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 SUB: 01-18 (Parkwood Place Subdivision), subject to the following conditions of approval:

Conditions of Approval

A. Prior To Engineering 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 street names as listed in the body of the final order.
 - b. Showing adequate half-street improvements based on pavement testing, for NE 132nd Avenue, a Minor Arterial, including sidewalk, planter strip, curb/gutter and asphalt.
 - c. Showing adequate half-street improvements, for NE 21st Street, a Local A, including sidewalk, planter strip, curb/gutter and asphalt.

- d. Showing full width improvements to NE 1st Avenue and NE 3rd Avenue to Local "A" standards, including sidewalk, planter strip, curb & gutter and asphalt.
 - e. Showing additional 5-feet of ROW dedicated to the City for NE 132nd Avenue.
 - f. Containing a combined landscaping and driveway plan.
 - g. Showing sight distance triangles.
 - h. Containing a signing and striping plan.
 - i. Containing a street lighting plan having LED decorative cobra type units for NE 132nd Avenue and LED acorn units for the other streets.
 - j. Showing traffic calming devices on all public streets.
 - k. Showing driveways that meet the requirements of BGMC 12.116.243
 - l. Showing traffic mitigation at SW Eaton Boulevard & SR 503, NW Onsdorff Boulevard & SR 503 and East Main Street & Grace Avenue or indicating that mitigation fees will be paid in lieu of the improvements.
 - m. Showing an 8-inch water from current terminus in NE 132nd Avenue to development and extended to extreme property lines.
 - n. Showing each residential lot having its own individual water service
 - o. Showing an 8-inch gravity sewer line throughout the subdivision and extending to extreme property lines.
 - p. Showing each residential lot having its own individual sanitary lateral.
 - q. Showing fire hydrants meeting spacing requirements throughout the subdivision.
 - r. Showing a stormwater facility that meets the requirements of BGMC 18.250.
 - s. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
3. Provide a photometric plan 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.

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 Construction Of The Site:

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 Planning Customer Service Clerk at (360) 342-5047 to schedule an appointment.
8. 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.

C. 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.

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 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 recorded Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A) (1) for review and/or approval.
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, 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.

E. Prior To Final Plat Approval:

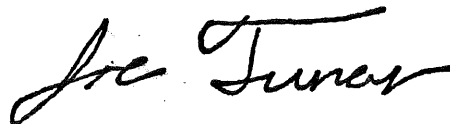
1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. Construct the mitigation measures for the failing intersection of SW Eaton Boulevard SR 503 or pay the mitigation fee of \$3,066.66.
3. Construct the mitigation measures for the failing intersection of NW Onsdorff Boulevard & SR 503 or pay the mitigation fees of \$9,152.46.
4. Construct the mitigation measures for the failing intersection of East Main Street & Grace Avenue or pay the mitigation fee of \$1,721.77.

5. 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.
 - g. With a note stating: “All new structures shall conform to the setbacks and building heights of the R5 zoning district.”
 - h. With a note stating: “All houses shall conform to the neighborhood design standards as listed in BGMC 17.106.040.”
6. Submit a two-year stormwater maintenance contract for review and/or approval.
7. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
8. Provide evidence that the adverse possession claim has been resolved confirming the applicant has sole ownership in the property.

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 21st day of June 2018.



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