

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

Regarding an application by Wyndham Enterprises, LLC) **FINAL ORDER**
for approval of a preliminary plat to divide 2.57- acres)
into 24 lots in the R12 zone southwest of 20th Avenue) **LUDIII20-0004**
& NW Onsdorff Boulevard in the City of Battle Ground)(Wingate Pointe Subdivision)

A. SUMMARY

1. The applicant, Wyndham Enterprises, LLC, requests approval to divide the 2.57-acre parcel located southwest of the intersection of NW 20th Avenue and NW Onsdorff Boulevard, known as Tax Assessor Parcel 228513-000 (the “site”), into 24 residential lots.

a. The site is zoned R12 (Residential, 12 units per acre maximum density). Properties northeast of the site are zoned R10 (Residential, 10 units per acre maximum density). All other surrounding properties are zoned R7 (Residential, 7 units per acre maximum density).

b. The site is currently vacant. The applicant will construct a new single-family attached or detached dwelling on each of the proposed lots.

c. There is a Category IV wetland in the northwest corner of the site. The applicant proposed to retain the wetland and associated buffer in proposed Tract A.

d. 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 the existing stormwater facilities within the Parkview Trails Phase 1 development west of the site, across NW 21st Place, for treatment and detention. This existing stormwater facility was designed to accommodate runoff from the site.

e. The applicant will extend a new east-west public street, proposed NW 14th Way, into the site from NW 21st Place, which abuts the east boundary of the site. The applicant will extend “Public Alley 21 NW” into the site from its existing terminus at the south boundary of the site. NW 14th Way will form a “T” intersection with Public Alley 21 NW near the east boundary of the site and Public Alley 21 NW will terminate near the north boundary. The applicant will provide sidewalks, street trees, and landscaping as necessary along the existing streets abutting the site.

2. The City issued a Determination of Nonsignificance (“DNS”) 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 and Recommendation to the Hearing Examiner dated March 9, 2021, as amended on March 10, 2021 (the “Staff Report”), as further amended at the hearing. The applicant accepted those findings and conditions, as amended, with certain exceptions. Three persons submitted written testimony regarding the application. Other than public service providers and agencies, no one else testified orally or in writing. Contested issues in this case include:

- a. Whether traffic generated by the proposed development will exceed the capacity of area streets or otherwise create a hazard;
- b. Whether a traffic signal is warranted at the intersection of NW 20th Avenue and NW Onsdorff Boulevard;
- c. Whether the existence of wetlands precludes development of the site;
- d. Whether the proposed development density and dimensions are consistent with the Code requirements for the R12 zone and whether the proposed development is required to be compatible with the surrounding area generally.
- e. Whether the proposed development will exceed the capacity of schools serving this site;
- f. Whether the development makes adequate provisions for public water;
- g. Whether the applicant is required to provide a turnaround at the northern terminus of Public Alley 21 NW;
- h. Whether the applicant is required to extend water and sanitary sewer lines to the property lines of the site;
- i. Whether the applicant is required to provide traffic calming measures on NW 14th Way; and
- j. Whether the applicant can be required correct existing deficiencies at the stormwater facility serving the Parkview Trails Phase 1 development.

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 an online public hearing about this application on March 16, 2021. 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. Assistant city planner James Cramer summarized the Staff Report.

a. He noted that the site is zoned R12. Properties to the northeast are zoned R10 and all other abutting properties are zoned R7. The applicant proposed to subdivide the 2.75-acre site into 24 lots for attached or detached homes, both of which are allowed in the R12 zone.

b. There is a wetland in the northwest corner of the site. The applicant proposed to retain the wetland and its associated buffer within proposed Tract A.

c. He noted that the finding for BGMC 17.106.035 should provide, “The applicant has not proposed to utilize density transfer.”

3. City engineer Ryan Jaynes noted that BGMC Table 12.16.040.D requires a turnaround at the north end of Public Alley 21 NW, as it is a dead-end alley more than 150 feet in length. The driveway serving proposed Lot 13 could serve as a hammerhead turnaround. The City can review that issue during final engineering. Public Alley 21 NW cannot connect to NW Onsdorff Boulevard as this street is a major collector street with limited access.

a. He requested the examiner delete the sentence on page 7 of the Staff Report stating, “If the transfer of property doesn’t occur then Clark Public Utilities water standards will need to be met and approved by them prior to City approval.”

b. Improvements to sewer line CD-1 are not needed to serve this development. He requested the examiner modify the findings and conditions in the Staff Report to that effect. Improvements to sewer line CD-2 are included on the City’s Capital Facilities Plan and will be implemented in late 2021/early 2022. It is unclear whether the City can require developers to make proportionate share contributions towards this improvement. Improvements to sewer line CD-2 are subject to SDC credit. He requested the examiner modify condition A.2.o to provide, “Showing improvements to sewer lines ~~CD-1 and CD-2~~ as shown in the General Sewer Plan, or as otherwise approved by the City.”

c. He agreed that there is no need to extend sewer and water lines beyond what the applicant proposed. There are no existing or planned water lines south of the site that the applicant can connect to and no sewer lines to the north.

d. BGMC 12.116.080.A requires that all preliminary plats provide traffic calming as an integral part of the design. BGMC 12.116.080.B requires traffic calming measures for all residential streets. The Code does not provide an exception for shorter streets.

4. Engineer Ed Greer appeared on behalf of the applicant, Wyndham Enterprises, LLC.

a. He noted that the Fire Marshall did not require a turnaround at the north end of Public Alley 21 NW. Fire trucks can access homes abutting this alley from NW 20th Avenue. Public Alley 21 NW is not needed for emergency access.

b. He argued that there is no need for traffic calming measures on proposed NW 14th Way. This street is only 200 feet long between Public Alley 21 NW and NW 21st Place. The short length of this street prevents drivers from speeding. In addition, the design of this street will function as a narrow street and provide traffic calming. Parking is allowed on both sides of this street, which reduces this street to a single 14-foot wide travel lane.

c. This development will not impact sewer line CD-1. Several previously approved developments will impact sewer line CD-2 and all of those projects should be required to contribute proportionally to the cost of improving that sewer line.

d. This development will discharge stormwater runoff to the existing stormwater facilities within the Parkview Trails Phase 1 development west of the site. That facility was designed and constructed to accommodate stormwater runoff from this site. The stormwater facility was dedicated to the public. Therefore, the City, not the applicant, is responsible for the cost of mowing, removal of trees, trash, and other items and correcting any other deficiencies in the existing facility.

e. The applicant will extend the on-site water line to the north boundary of the site in order to connect to the existing water main in NW Onsdorff Boulevard, creating a looped water system. There are no existing water lines to the south of the site. Therefore, there is no need to extend a water line south of proposed Lot 24. There is no need to extend sewer lines beyond Lot 15 to the north and Lot 24 to the south for the same reason.

5. No one else appeared at the public hearing. At the conclusion of the hearing the examiner held the record open for two weeks, subject to the following schedule:

a. For one week, until March 23, 2021, for anyone to submit additional written testimony and evidence in this matter; and

b. For a second week, until March 30, 2021, to allow the applicant to respond to any new evidence submitted during the first week.

6. No new testimony or evidence was submitted during the first week of the open record period. Therefore, the examiner close the record at 5:00 p.m. on March 23, 2021.

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 at the

hearing. The applicant accepted those findings and conditions, as modified, with certain exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the proposed preliminary plat does or can comply with the applicable standards of the Battle Ground Municipal Code (the “BGMC”) and the Revised Code of Washington (the “RCW”), provided that the applicant complies with recommended conditions of approval. 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.

4. The applicant cannot install a traffic signal at the intersection of NW 20th Avenue and NW Onsdorff Boulevard as requested by neighboring residents, as traffic volumes at this intersection will not meet the required warrants to change it from a four-way stop to a signalized intersection.

5. There is a wetland in the northwest corner of the site. The applicant will preserve the wetland and associated buffer within proposed Tract A. The remainder of the site is upland and zoned for urban development.

6. Concerns were expressed about the density of development proposed and its impact on the character of the area. However, the density proposed for this site is within the range permitted by the comprehensive plan map designation and zoning of the site. Although the proposed lots are smaller than adjacent lots, the uses are not incompatible.

a. The applicant is proposing to provide single-family attached or detached residences adjacent to existing single-family development. Even if the subdivision will have an adverse impact on property values --- and there is no substantial evidence to that effect in the record --- protection of property values and consistency with adjoining lot sizes are not relevant to the applicable approval criteria.

b. The examiner understands residents’ displeasure with the growth around them, but this growth was foreseeable and is in the broader public’s interest. The site is zoned R12. As large lots are sold, presumably they will be developed to the maximum extent allowed.

c. Development on the site must comply with all applicable dimensional standards, including setbacks and minimum lot sizes. In addition, construction on the site must comply with all applicable requirements of the building and fire codes.

7. The proposed development will not exceed the capacity of schools in the area. The City considered school capacity when it adopted the zoning for this site. The proposed development density is consistent with the current zoning. This development

will have an impact on the School District. By paying school impact fees, the proposed subdivision adequately mitigates its impact on schools as a matter of law. The School District can adjust attendance boundaries and practices as necessary to fulfill student needs.

8. The examiner finds that this development makes adequate provisions for public water. As discussed in the Staff Report, the City has sufficient water capacity to serve the proposed development. However, the combination of previously approved developments and this development will create enough additional demand to exceed the limits of the existing sewer and water systems. The City has plans to provide additional water capacity in the future as outlined in the Battle Ground Water Master Plan.

9. BGMC Table 12.16.040.D prohibits alleys over 150 feet in length, except where access controls or topography preclude connection to another street. In this case, NW Onsdorff Boulevard is a major collector street with limited access. Therefore, the applicant cannot extend Public Alley 21 NW to intersect this street. The resulting dead-end alley is more than 150 feet in length. Therefore, BGMC Table 12.16.040.D requires a turnaround at the end of this street. As Mr. Jeynes noted, the driveway serving Lot 13 may be able to function as a hammerhead turnaround, fulfilling this requirement. The City engineer can determine compliance with this standard through the final engineering review process.

10. BGMC 16.130.030 requires that the applicant extend water and sanitary sewer lines “[t]o the extreme property lines of the site unless the applicant demonstrates to the decision body that such extension is undesirable, impractical or unfeasible.” As discussed at the hearing, it may be undesirable, impractical or unfeasible to extend these utilities beyond what is proposed in the application, as most adjacent properties are fully developed and there are no existing sewer or water lines to which the proposed facilities can connect. The City engineer will determine the need for such extensions as part of the final engineering review process.

11. The applicant objected to the requirement to provide traffic calming measures on NW 14th Way. BGMC 12.116.080.A requires that all preliminary plats provide traffic calming as an integral part of the design. BGMC 12.116.080.B requires traffic calming measures for all residential streets. The examiner acknowledges that traffic calming may not be warranted on this relatively short street. However, the examiner has no authority to waive this requirement. The Code does not provide an exception for short streets. It is up to the City engineer to determine what calming measures required through the final engineering review process.

12. The City has no authority to require that the applicant correct existing deficiencies at the stormwater facility serving the Parkview Trails Phase 1 development. This stormwater facility is a public facility owned by the City. Therefore, the City is responsible for maintenance. The applicant cannot be required to remedy existing deficiencies that are not created or exacerbated by the proposed development.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that LUDIII20-0004 (Wingate Pointe Subdivision) should be approved, because it does or can comply with the applicable standards of the BGMC and the RCW, 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 LUDIII20-0004 (Wingate Pointe 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 full width improvements to NW 14th Way to “Local A” standards, including sidewalk, planter strip, curb & gutter, and asphalt.
 - b. Showing full width improvements to north-south alley to two-way alley standards per BGMC Table 12.116.040(D).
 - c. Containing a combined landscaping and driveway plan.
 - d. Showing sight distance and vision clearance triangles.
 - e. Containing a signing and striping plan.
 - f. Containing a street lighting plan having LED decorative cobra type units for NW 20th Avenue LED acorn units for the other streets.
 - g. Showing traffic calming devices on all public streets as approved by the City engineer.
 - h. Showing driveways that meet the requirements of BGMC 12.116.243.
 - i. Showing traffic mitigation at SR 503 & NW Onsdorff Boulevard, 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.
 - j. Showing water lines extending to extreme property lines.
 - k. Showing connection of new water line to existing water line in NW Onsdorff Boulevard.
 - l. Showing each residential lot having its own individual water service.
 - m. Showing sewer lines extending to extreme property lines, except to the extent that the City engineer determines that such extensions are undesirable, impractical or unfeasible.
 - n. Showing each lot having its own individual sanitary lateral.
 - o. Showing improvements to sewer line CD-2 as shown in the General Sewer Plan, or as otherwise approved by the City.
 - p. Showing fire hydrants meeting spacing requirements throughout the

- subdivision.
- q. Containing a photometric plan for all access points, intersections, streets, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.
 - r. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
 - s. Clearly show the location of all new and existing fire hydrants in accordance with the above requirements.
 - t. Showing a turnaround at the northern end of Public Alley 21 NW, as required by BGMC Table 12.16.040.D
3. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
 4. Submit a SWPPP that meets Department of Ecology requirements.
 5. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department
 6. 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.
 7. The applicant shall be responsible for coordinating with the Department of Ecology to obtain their approval, provide the City with the final approval and update plans accordingly.
 8. The applicant shall be responsible for supplying the City with a copy of the final wetland delineation report and mitigation plan prior to Engineering Approval.
 9. Prior to Engineering Approval and/or any land disturbance activities, the applicant shall be responsible for providing staff with analysis of the proposed wetland buffer width averaging and compliance with BGMC 17.270.100.

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 & NW Onsdorff Boulevard or pay the mitigation fees of \$9,152.46.
3. Construct the mitigation measures, 100-foot eastbound right turn lane and a second westbound left turn lane, for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of \$3,066.66.
4. Construct the mitigation measures, second southbound left turn lane and receiving lane on SW Eaton Boulevard, for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of \$2,927.22.
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. That shows where any control monuments have been placed.
 - e. With the following note: "The City of Battle Ground has no responsibility to improve or maintain the private streets contained within, or private streets

- providing access to, the property designed in this development.”
- f. With a note describing the maintenance responsibilities of each lot owner for the private streets.
 - g. That shows the dedication of any public roads or alleys
6. Provide certification that private streets were built per BGMC 12.116.140.
 7. Submit a private maintenance agreement for private streets.
 8. Add a note indicating all new structures to comply with the setbacks and building height of the R12 zoning district to the final plat.
 9. Add a note indicating all new development shall comply with the design standards of BGMC 17.106.040 to the final plat.

C. Prior to Engineering Acceptance:

1. Provide “No Parking-Fire Lane” signage on both sides of all alleys and fire apparatus turnarounds.
2. Construct all required public improvements mentioned above in the findings, if applicable, and go on a walkthrough with City of Battle Ground Engineering Staff and correct any deficiencies as determined by City staff.
3. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
4. Submit a signed Bill of Sale for sewer, stormwater, and water systems, as applicable.
5. Submit a letter from the applicant showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.
6. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for all completed and accepted public improvements.
7. 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 Mylar set, one 11x17 paper set of As-Built record drawings and one compact disc version of the as-built drawings in AutoCAD, PDF, and TIF formats.

D. 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.

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 Construction:

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 15.105.180 of this Staff Report.
3. All new development shall comply with the setbacks and building height of the R12 zoning district.
4. All new development shall comply with the design standards of BGMC 17.106.040.

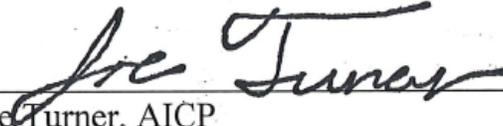
G. Prior to Certificate of Occupancy:

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

H. Other

1. Prior to Engineering Approval and/or any land disturbance activities, the applicant shall be responsible for providing staff with analysis of the proposed wetland buffer width averaging and compliance with BGMC 17.270.100.
2. 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.
3. Coordinate any air quality recommendations and receive applicable permits in reference to SWCAA's e-mail received February 16, 2021.
4. Applicant shall limit construction hours per BGMC, which states construction activity for commercial development may occur from 7 am to 9 pm Monday through Friday, 8 am to 9 pm on weekends.
5. Any lots using an alley for vehicular access shall affix suitable numbers and letters to include the direction (NW, SW, etc.), street name (Main, 8th, etc.), and type of street (Avenue, Street, etc.), on the alley or double-frontage side of the home or building.

DATED this 14th day of April 2021.



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

