

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

Regarding an application by Sterling Design Inc.) **FINAL ORDER**
for approval of a preliminary plat to divide)
20.12-acres into 112 lots in the R10 zone at 1903) **LUDIII21-0003**
NW 20th Avenue, in the City of Battle Ground) **(Amira’s Song Subdivision)**

A. SUMMARY

1. The applicant, Sterling Design Inc., requests approval to divide the 20.12-acre site into 112 residential lots and open space tracts for critical areas and stormwater facilities. The site is located at 1903 NW 20th Avenue; also known as Tax Assessor Parcel 228737-000 (the “site”).

a. The site and abutting properties to the south and east are zoned R10 (Residential, 10 units per acre maximum density). Properties to the north and west are zoned R7 (Residential, 7 units per acre maximum density). Properties to the northwest are located in unincorporated Clark County and zoned County AG-20 (Agriculture, 20-acre minimum lot size).

b. There are two Category III wetlands and 15 Oregon white oak trees in the eastern portion of the site. The applicant proposed to retain the wetlands and the majority of the associated buffers within open space tracts. Proposed lots 97-104 will impact a portion of the wetland buffer. The applicant also proposed to remove three of the oak trees. The applicant will mitigate for impacts to the wetland buffer through buffer averaging and purchasing credits at an off-site wetland mitigation bank. The applicant will plant six new oak trees on the site to mitigate the proposed tree removals.

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 attached dwelling on each of the proposed lots in a duplex configuration. All proposed lots comply with the dimensional requirements of the R10 zone.

d. The applicant will dedicate right-of-way and construct new roads within and abutting the site including: Extending NW 239th Street through the site between NW 20th Avenue and the eastern boundary of the site;¹ Two new north-south streets, proposed NW 17th and 18th Avenues, extending south from the on-site section of NW 239th Street; A new east-west road, proposed NW 19th Street, connecting NW 17th and 18th Avenues and, in combination with proposed NW 19th Avenue and NW 21st Street, creating a new loop street in the western portion of the site; Another north-south street, proposed NW 17th Place, extending south from NW 19th Street to intersect NW 18th Street abutting the south boundary of the site; and half-width frontage improvements along the section of existing NW 18th Street abutting the site. The applicant also proposed a pedestrian path

¹ This development will provide a half-width improvement for this roadway. The abutting property to the north, the proposed Walker Field subdivision, will construct the remainder of the roadway.

through proposed Tract B, between NW 17th Avenue and NW 18th Street. In addition, the City is requiring that the applicant extend NW 15th Avenue as a half-width “Neighborhood Collector” street along the east boundary of the site. The applicant has requested a road modification to waive this requirement.

e. The City of Battle Ground will provide domestic water and 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 in the northwest and southwest corners of the site for treatment and detention. The southern stormwater facility will discharge treated stormwater into the existing stormwater facility serving the Sunset Landing and Florence subdivisions south of the site. The northern stormwater facility will discharge treated stormwater into the stormwater facility serving the proposed Walker Fields subdivision north of the site. Both stormwater facilities will discharge runoff from the site at less than predevelopment rates, replicating existing conditions.

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 June 21, 2021 (the “Staff Report”). The applicant accepted those findings and conditions with certain exceptions. Two persons testified orally and in writing with questions and concerns about the proposed development. Disputed issues or concerns in the case include the following:

a. Whether the proposed development will have a probable significant adverse environmental impact and whether alleged errors and omissions in the SEPA checklist warrant the preparation of an Environmental Impact Statement (“EIS”) for this development;

b. Whether construction traffic, exhaust, and dust generated by this development will cause significant adverse environmental impacts;

c. Whether the applicant is required to provide a park or other recreational opportunities on the site;

d. Whether the development will have a significant impact on schools;

e. Whether the proposed development will cause prohibited impacts to wildlife and wildlife habitat;

f. Whether the proposed development will have a significant adverse impact on existing views;

g. Whether the applicant can be required to comply with the conditions of approval prior to preliminary plat approval;

h. Whether the proposed development will cause prohibited impacts to wetlands and buffers on the site;

i. Whether the applicant is required to preserve all of the Oregon white oak trees on the site; and

j. Whether traffic from the development will exceed the capacity of area streets or otherwise create a hazard;

k. Whether the applicant is required to extend NW 17th Place into the site;

l. Whether additional stop controls are required at the intersection of NE 239th Street and NW 20th Avenue;

m. Whether construction activities can block existing streets;

n. Whether the examiner may consider the applicant's road modification application in this proceeding; and

o. Whether the applicant is required to bear a portion of the cost of upgrading the existing CD-2 sewer line serving the site.

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 28, 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. City planner James Cramer summarized the Staff Report.

a. He noted that the applicant is required to extend NW 15th Avenue along the west boundary of the site, between NW 18th and NW 239th Streets. The applicant will be required to mitigate for the additional wetland impacts caused by construction of this street.

b. This is an application for preliminary approval. The examiner is only required to find that it is feasible to comply with all of the applicable approval criteria. The conditions of approval require the submittal of more detailed plans demonstrating

actual compliance with all applicable approval criteria and regulations. The City and other agencies will conduct additional detailed review of the final plans and development on the site to ensure such compliance.

c. The Department of Ecology (“ECY”) and the Army Corps of Engineers (the “Corps”) will review the site and confirm the wetland boundaries identified by the applicant. If necessary, the applicant can modify the plat, including eliminating one or more lots to accommodate any changes to the identified wetland boundary.

3. City public works director Mark Hecceg noted that the City’s transportation plan requires the extension of NW 15th Avenue through the site as a neighborhood collector street. Full-width street improvements are needed on NW 18th Street to provide access to NW 15th Avenue. The applicant could eliminate the planter strip and provide a “curb tight” sidewalk on the portion of NW 18th Street abutting the critical areas in order to minimize wetland and buffer impacts.

a. The extension of NW 15th Avenue through the site will provide an alternative travel route, which may reduce traffic through the neighborhoods to the south. However, the streets within those neighborhoods are public streets that the applicant and future residents of the site have the right to utilize.

b. The applicant’s traffic study utilized traffic counts taken during the summer months, when school was not in session. The applicant will be required to provide a revised traffic study prior to final engineering approval.

c. The applicant’s traffic study reviewed sight distance at the intersection of NE 239th Street and NW 20th Avenue. However, the study did not consider stop controls at this modified intersection. He requested the examiner add a condition of approval requiring analysis and reconfiguration of stop controls at this intersection in consultation with the City.

d. The applicant must increase the size of existing off-site sewer lines in order to provide sewer service to the site, as the existing sewer line lacks the necessary capacity to serve the site. The applicant should bear that cost, as those improvements are necessary to serve the proposed development. The City will bear the cost to further increase the size of the sewer lines beyond what is required to serve this development, which is necessary to serve future development in the area by providing the applicant with System Development Charge (“SDC”) credits.

4. Engineer Joel Stirling and developer Bill Huyette appeared on behalf of the applicant, Sterling Design Inc.

a. Mr. Stirling summarized the proposed development and responded to public testimony.

i. He noted that the applicant submitted a road modification requesting:

(A) Elimination of the required landscape buffer on the site's NW 20th Avenue frontage, or reducing the width of the buffer from nine feet to five feet. Such buffers are usually required due to noise generated by the higher traffic volumes and speeds on collector roadways such as NW 20th Avenue. However, the Daybreak primary and middle schools are located on the west side of NW 20th Avenue, which will result in slower traffic speeds on this section of NW 20th Avenue, reducing the need for a buffer;

(B) Elimination of the extension of NW 15th Avenue through the site. Construction of such a roadway would result in significant impacts to the wetlands and buffers on the site, bisecting wetland A, which extends offsite to the east. The applicant is willing to dedicate right-of-way for this street extension if required by the City. NW 12th Avenue may be extended in the future and provide additional opportunities for north-south circulation without impacting critical areas;

(C) Modifications to the intersection spacing standards for roads within the site. The applicant designed the subdivision to encourage residents to access NW 20th Avenue via NE 239th Street, rather than traveling through the existing neighborhood to the south; and

(D) Reduce the required road centerline radii to encourage slower traffic speeds within the site.

ii. The applicant is required to comply with the conditions of approval prior to final approval of this development. The City will review the final plans and development on the site to ensure such compliance.

iii. The applicant must construct NW 18th Street as a full-width improvement in order to provide needed traffic circulation and emergency access.

iv. The wetland boundary identified by the applicant's consultants is accurate. However, ECY and the Corps will review the site and confirm that consultant's analysis.

v. The applicant designed the proposed development to minimize and avoid impacts to the majority of the wetlands and buffer areas on the site. The Growth Management Act ("GMA") requires that the City maximize development within the Urban Growth Area (the "UGA") and minimize impacts to critical areas. The City must consider both of these requirements in applying the requirements of the critical areas ordinance. Proposed Lots 103-112 are all located entirely outside of the wetland buffers.

vi. The Code does not prohibit impacts to Oregon white oak trees. Mitigation is allowed and proposed in this case.

b. Mr. Huyette argued that an extension of NW 15th Avenue through the site will bisect Wetland A, significantly increasing the environmental impacts of this development. In addition, the cost of constructing such a roadway would likely exceed

the roughly proportional impacts of the development on the need for such a road. Eliminating lots from this development in order to reduce critical area impacts will increase the cost of housing in the region.

i. He objected to the requirement that the applicant bear the cost of rebuilding existing off-site sewer lines; only 40-percent of the cost is subject to SDC credits. The lack of sewer capacity is an existing problem which the applicant should not be required to remedy.

5. Charles Khun summarized his written testimony, arguing that the applicant's SEPA checklist is incomplete and the applicant should be required to prepare an environmental impact statement ("EIS") for this project.

a. The SEPA checklist states that this development may generate up to 50,000 cubic yards of cut and fill. Clearing of the site and removal of demolition debris will generate additional truck traffic. Access points and haul routes should be identified for this truck traffic and truck traffic should be considered in the traffic impact analysis.

b. There is no analysis of air pollution emissions generated by construction vehicles operating on and near the site or the additional traffic generated by residents of the site.

c. The proposed development will generate additional demand for parks and recreation but it does not provide any recreational opportunities, other than a walking trail.

d. School impact fees require voter approval.

e. The SEPA checklist does not identify any utility service providers.

f. As ECY noted in their letter dated May 28, 2021, the wetland delineation should have been performed earlier in the growing season, rather than during the driest time of the year.

g. The SEPA checklist did not indicate the requirement for a Construction Stormwater General Permit.

h. There is no opportunity for public review of the revised traffic analysis, utility plans, revised wetland boundary, and other final plans required by the conditions of approval. The City should not approve this application until the applicant has complied with all of the conditions of approval.

6. Jodie Vargas summarized her written testimony.

a. She argued that NW 17th Place should not be extended into the site. Increased traffic from the proposed development will be detrimental to the residents of the Sunset Landing and Florence subdivisions south of the site, as the majority of traffic

generated by this development will travel south through those neighborhoods. Three corner lots within those subdivisions have small children.

b. The intersection of NE 239th Street and NW 20th Avenue should be improved with a crosswalk and additional stop controls.

c. Construction of frontage improvements on NW 18th Street could block access to existing homes.

d. The proposed development will impact wetlands and buffers on the site in excess of what the Code permits. As ECY noted, a wetland assessment performed in August may not accurately identify the hydrology of the site. The wetland report contains numerous typographical errors. The applicant proposed development within the wetland buffer, in violation of the Code. The applicant's critical areas report does not identify any measures to minimize wetland impacts as required by BGMC 18.270.090. In addition, it is unnecessary to remove three Oregon white oak trees on the site. The applicant could avoid impacts to these critical areas by eliminating lots 97 through 106 and eliminating the half-width street improvements on the eastern end of NW 18th Street. There is no support for the proposed buffer averaging.

e. The proposed walking path appears to be located very near the wetland boundary. The path may flood during the wet winter months, carrying bark chips and other contaminants into the wetland. She questioned who will be responsible for maintaining the path.

f. The applicant's SEPA checklist does not identify all of the animals present on the site.

g. The applicant will need to remove some vegetation within the open space tract to construct the proposed trail, contrary to the statement in the SEPA checklist.

h. The proposed development will impact views for residents of the Sunset Landing and Florence subdivisions.

7. No one else testified orally at the online 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 July 7, 2021, for anyone to submit additional written testimony and evidence in this matter; and

b. For a second week, until July 14, 2021, to allow the applicant to respond to any comments submitted during the first week of the open record period.

8. The following exhibits were submitted during the open record period:

a. Written copies of Mr. Khun and Ms. Vargas' oral testimony;

b. An email dated June 29, 2021, from Steve Savage, expressing support for the application;

c. An email from Mr. Huyette dated July 6, 2021, objecting to the extension of NW 15th Avenue through the site and to the requirement that the applicant pay a portion of the cost of the CD-2 Sewer Line replacement; and

c An email from Mr. Stirling dated July 6, 2021, reiterating Mr. Huyette's objections and requesting the examiner close the record.

9. Pursuant to the applicant's request, the examiner closed the record at 5:00 p.m. on July 6, 2021.

C. DISCUSSION

1. City staff recommended approval of the preliminary plat, based on the affirmative findings and subject to conditions of approval in the Staff Report, as amended at the hearing. The applicant accepted those findings and conditions, as amended, 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 City determined, based on the application materials and public and agency comments, that there are no probable significant adverse environmental impacts associated with this proposal that cannot be avoided or mitigated through the conditions of approval included in the MDNS. Therefore, the City, as the lead agency, determined that an environmental impact statement was not needed and issued an MDNS for this project. Opponents objected to the City's issuance of an MDNS for this development. However, the City's SEPA determination was not appealed within the 15 day deadline set out in BGMC 18.145.030. Therefore the City's SEPA determination is final.

a. Even if the City's SEPA determination were subject to review, the examiner is required to give "substantial weight" to the City's determination. (WAC 197-11-680(3)(a)(viii) implementing RCW 43.21C.090). The examiner must uphold the SEPA determination unless he is "left with the definite and firm conviction that the County made a mistake." *Preserve Our Islands v. Shorelines Hearings Board*, 133 Wn. App. 503, 539 (2006). (Internal citations omitted).

b. The purpose of the SEPA process is to ensure consideration of environmental issues that are not addressed by the Code.

SEPA is a procedural statute designed to ensure that local governments consider the environmental and ecological effects of major actions to the fullest extent. SEPA's purpose is to provide decision makers with all relevant information about the potential environmental consequences of their actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed project against its potential adverse effects.

City of Des Moines v. Puget Sound Reg'l Council, 108 Wn.App. 836, 849, 988 P.2d 27 (1999). An EIS is only required where the City determines that the proposed development will have a “[p]robable significant, adverse environmental impact.” RCW 43.21C.031(1).

c. In this case, the majority of the concerns raised by opponents of this application are addressed by the Code. The issues raised in the comments were fully considered in the findings related to the applicable code provisions. The proposed development complies with the Code, based on the findings in the Staff Report and this Final Order. Other potential environmental and ecological effects were considered through the SEPA process and the MDNS. The examiner finds that the City satisfied its burden of demonstrating *prima facie* compliance with SEPA’s procedural requirements.

i. Opponents argue that the SEPA checklist is incomplete. However, the checklist expressly requires brief responses. The examiner finds that any errors in the checklist were procedural and did not preclude the City’s review. City staff are well aware of many of the issues raised by opponents, such as the specific utility providers serving the site, the types of permits required, etc. and the City considered those issues in its review.

ii. Any other development in the City, will generate additional traffic, including large trucks and heavy equipment during construction. However, such impacts are short term, temporary, and not significant enough to require specific limitations other than those imposed by State law and the City Code. The City must review and approve a construction plan that will identify the location of construction access to the site. The applicant is not required to consider construction traffic in the traffic analysis, as the volume of construction vehicles generally far less than the traffic volumes generated by the completed development. In addition, much of the construction traffic occurs during non-peak hours, when traffic volumes are lower on local roadways.

iii. Air pollution generated by construction activities, including vehicle emissions and dust, is regulated by the Southwest Washington Clean Air Agency (“SWCAA”). The City considered the impact of air pollution from traffic generated by the proposed development when the site and surrounding properties were annexed into the city and zoned for development.

iv. The applicant is not required to provide a park or other recreation area on the site. As noted in the Staff Report, the Daybreak Middle and Elementary Schools are located west of the site, across NW 20th Avenue and provide recreation facilities. In addition, the applicant will be required to pay Park Impact Fees

("PIFs") as required by BGMC 3.60.066, which the City can use to purchase additional park facilities.

v. The applicant is also required to pay School Impact Fees ("SIFs") as required by BGMC 3.60.064, which the City can use to fund additional school facilities. All developments that will impact schools are required to pay school impact fees. Unlike school bond funds, such fees are not subject to voter approval.

vi. Clearing and 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 urban area. Their presence is less likely after the site is developed, but that is to be expected. There is no substantial evidence that any endangered or threatened species exist on the site.

vii. Ms. Vargas argued that the proposed development will "[a]lter and obstruct the view of the sunset for the residents of NW 18th Street and possibly for residents of other nearby streets in The Sunset Landing/Florence Subdivision." To the extent this impact will occur, it is not a significant adverse impact. Any development on the site will alter existing views, as the current vacant field and scattered trees will be replaced with homes. While the examiner understands residents' displeasure with the growth around them, this growth was foreseeable and is in the broader public's interest. The site is zoned R10 which allows a maximum building height of 35 feet. As large lots are sold, presumably they will be developed to the maximum extent allowed.

4. This is an application for preliminary plat approval. At this stage of review the applicant is only required to demonstrate that it feasible to comply with all of the applicable approval criteria. The preliminary engineering plans are conceptual, and analysis of all technical details is not required. To require complete, detailed plans prior to preliminary approval would require re-working the entire design any time amendments or modifications of the project are required. This would be highly inefficient and is not necessary to protect the public interest. Conditions of approval are imposed to ensure that the final development actually complies with those criteria. The City will review the applicant's final plans and monitor construction on the site through the inspection processes to ensure such compliance.

5. There is a dispute regarding the specific boundaries of the wetlands on the site. The applicant submitted a Critical Areas Report of this site that analyzed the functions and values of the wetland pursuant to the Washington State Department of Ecology wetland rating system as required by VMC 20.740.140.A(2). (Exhibit K). The delineation was based on expert observations of conditions occurring on the site. Although some of the wetland analysis was performed during the summer months, when groundwater levels are lower, indicators of seasonal groundwater elevations such as watermarks and soil mottling remain, allowing the professional biologists to determine the location of wetland boundaries on the site. Additional review by ECY is required to confirm the exact location of the wetland boundaries on the site. If necessary, the applicant can modify the

proposed development to accommodate any changes in the wetland boundary identified by such review.

6. The examiner finds that the proposed development complies with the wetland protection requirements of the Code. The Code does not prohibit all critical area impacts. It only requires that the applicant “[s]eek to avoid all impacts that degrade the functions and values of (a) the critical area(s),” minimize unavoidable impacts, and “[m]itigate to the extent necessary to achieve the activity’s purpose and the purpose of this chapter.” BGMC 18.260.115. The Code expressly requires consideration of “[t]he activity’s purpose...” BGMC 18.260.115.B. In this case, the purpose of the activity is to develop the site with residential uses at densities allowed by the Code. This is consistent with the purpose of the wetlands and critical area ordinances, to “Balance the need for the protection of natural resources with private property rights and economic development,” BGMC 18.270.010.E, and “[p]rotect [critical] areas and their functions and values while also allowing for reasonable use of private property,” BGMC 18.260.010. In order to accomplish these purposes, any determination of feasibility must consider the financial feasibility of the project as well as the City’s housing goals. In this case the applicant designed the preliminary plat to avoid wetland impacts to the extent feasible by concentrating development in the western portion of the site.

a. With the possible exception of the NE 15th Avenue extension discussed below, the proposed development will not directly impact any wetlands on the site. The development will only cause indirect impacts by reducing the required buffer widths in some areas of the site.

b. The applicant must extend NE 239th and NE 18th Streets through the site to comply with the City’s cross-circulation and emergency access requirements and the City’s Transportation Plan. The extension of these streets will cause unavoidable direct impacts to the wetland buffers and indirect impacts to the wetlands. BGMC 18.270.070.B expressly allows such impacts for the extension of streets. The applicant can further reduce the impact of these roadways to some extent by building curb-tight sidewalks on those street sections that abut wetland buffers. A condition of approval is warranted to that effect.

i. During the open record period Mr. Huyette argued that the applicant should only be required to install a sidewalk on the north side of existing NW 18th Street east of proposed Lot 102; the applicant should not be required to construct additional street improvements on this section of roadway in order to minimize impacts to the critical areas on the site and because the eastern section of this roadway is not needed to serve the proposed development. The examiner finds that this request must be addressed through an application for road modification, which would allow the City to consider and respond to the applicant’s arguments. Condition of approval A.4.b should be modified to allow for such a road modification request.

c. The proposed trail through the wetland will impact Wetland A where it crosses the wetland. The applicant minimized the impact of this crossing by locating it at the narrowest point of the wetland and installing a bridge over the wetland. The trail is required by the City as an extension of the City’s existing trail system. The preliminary

plan shows a conceptual alignment for this path. The applicant will finalize the alignment during the final engineering review, based on ECY's approval of the wetland boundary, in order to minimize impacts within the buffer.

i. The applicant did not identify who will be responsible for ownership and maintenance the proposed pedestrian path and associated open space, Tract B. The applicant should be required to create and fund a homeowners association that will own and maintain Tract B and the pedestrian path unless the City accepts dedication of these facilities. A condition of approval is warranted to that effect.

d. Proposed Lots 97 through 104 will also impact wetland buffers, reducing the adjusted buffer width from 60 feet to 45 feet. Eliminating these lots would likely impact the financial viability of the proposed development as well as reducing the development density, which would conflict with the City's housing goals. In addition, with the exception of Lot 104, the impacted buffer areas will be located within the undeveloped rear yard setback area of these lots. Although these backyard areas no longer qualify as buffers, they will continue to provide buffer functions similar to the existing pasture. The applicant will be required to mitigate for the loss of this buffer area consistent with the requirements of BGMC 18.270.115.

e. No permanent structures are proposed within the remaining wetland buffers, as required by BGMC 18.270.070.D(2). The area within proposed Lots 97 through 104 no longer qualify as "buffers" under the Code. Therefore, these areas are not subject to this standard.

f. The applicant proposed to utilize buffer averaging, increasing the buffer in the northwest corner of the site, south of proposed Lots 103-112, and reducing the buffer in the southern portion of the site, within proposed Lots 97-104. (See Figure 3 of Exhibit K). The examiner finds that the proposed buffer averaging complies with the approval criteria in BGMC 18.270.100.A based on the applicant's critical areas report (Exhibit K). The wetlands on the site contain variations in sensitivity. BGMC 18.270.100.A(2); the expanded buffer in the northwest corner of the site includes trees and shrubs. The reduced buffer in the southern portion of the site is primarily open pasture. The few trees in this portion of the site must be removed to accommodate the required extension of NE 18th Street. Therefore, the proposed buffer averaging will retain more high quality buffer in the northern portion of the site in exchange for reducing the lower quality buffer in the southern portion.

g. The applicant will mitigate for all wetland and buffer impacts by purchasing credits at an off-site wetland mitigation bank, thereby ensuring no net loss of wetland functions within the watershed.

7. The site contains 15 Oregon white oak trees. The oaks on this site consist of single trees or habitat areas of under 1/2 acre. Therefore, the Code expressly allows removal of the trees, provided the applicant mitigates for their removal by planting two trees for each tree removed. BGMC 18.280.040. The applicant proposed to remove three trees to allow for the extension of NE 239th Street and the creation of Lots 102-105. The

applicant will mitigate for removal of those trees by planting six oak trees within the upland portion of proposed Tract B.

8. The proposed development will generate increased traffic on area streets. That increased traffic will be perceptible to area residents. However, the total volume of 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 (Level Of Service ("LOS") D or better).

a. As discussed at the hearing, the traffic count data used in the applicant's traffic study (Exhibit G) did not meet City standards; the traffic counts were performed in the summer months when school was not in session. The applicant is required to provide an updated traffic study as part of its final engineering submittal. However, given the Level Of Service ("LOS") and delays projected for intersections affected by this development, any increase in traffic counts resulting from school related traffic will not cause these intersections to exceed minimum standards.

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.

c. The examiner understands neighbors' objections to the extension of NE 17th Place into the site. However, this extension is required to meet the spacing requirements, cross-circulation, and emergency access requirements of BGMC 12.16.200.

9. As discussed at the hearing, the intersection of NE 239th Street and NW 20th Avenue at the northwest corner of the site is currently a three-leg "T" intersection with 239th Street forming the leg of the T and NW 20th Avenue as the crossbar. This intersection currently has stop signs on the southbound and eastbound legs. The northbound leg is uncontrolled. This development will extend NE 239th Street into the site, creating a four-leg intersection. The applicant should be required to review the need for new stop controls at the modified intersection and install additional stop signs as required by the City. A condition of approval is warranted to that effect.

10. Construction on and near the site, including the extension and widening of abutting streets, 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. However, the applicant cannot block all access to public streets. The applicant may need to block a portion of the road and deploy flaggers to control traffic while construction occurs within rights of way. Prior to undertaking any construction within City rights-of-way, the applicant must obtain City approval of a traffic control plan outlining how access will be maintained, among other issues.

11. Pursuant to BGMC 12.116.290, the applicant requested approval of road modifications as outlined above in the summary of Mr. Stirling's testimony. The examiner has no authority to consider those modification requests in this proceeding. Pursuant to BGMC 12.116.290.B, the city engineer is the initial review authority. The examiner's jurisdiction is limited to consideration of any appeal of the city engineer's decision. However, the conditions of approval should be modified to recognize the pending road modification requests.

12. Condition A.4.c requires that the applicant construct half-width improvements for the extension of NW 15th Avenue along the east boundary of the site. Construction of this street improvement will result in additional critical area impacts that require mitigation. A condition of approval is warranted to that effect if the applicant's road modification request to waive this requirement is denied.

13. A section of the existing sewer line, pipe CD-2, does not have sufficient capacity to serve the site. This section of sewer pipe must be enlarged to provide sewer service to the site.

a. The City agreed to allow SDC credits for 44.69-percent of the cost of upgrading the pipe to the current standard required by the City's General Sewer Plan (the "GSP"). Mr. Herceg testified that the applicant should be responsible for the cost of enlarging the pipe to the extent necessary to serve this development. The SDC credit is intended to cover the additional cost of installing a still larger pipe consistent with the GDC, which is necessary to serve future development in the area.

b. The applicant objected to this condition, arguing that the cost of correcting the deficiency exceed the roughly proportional impact of the proposed development.

c. The examiner finds that the cost of the improvement is roughly proportional to the impact. The existing sewer line lacks capacity to serve this site. Therefore, the line must be upgraded to the next larger pipe size to serve this development. It is reasonable that the applicant bear this cost, as the improvement is necessary to serve the proposed development, just as the applicant would be responsible for the cost of extending a sewer line to the site.

i. There is an essential nexus between the need to enlarge the pipe and this development. The existing pipe lacks the capacity and it must be enlarged to provide sewer service to the proposed development.

ii. The cost of enlarging the sewer pipe is roughly proportional to the impact of the development. The applicant must install a larger pipe in order to provide sewer service to the site. The cost of the larger pipe is the minimum necessary to provide sewer service to this site.

iii. The City is requiring the applicant to install a larger pipe than is required to serve this development, consistent with the GSP. The larger pipe is needed to serve future development in this area. However, the applicant is not be responsible for

the additional cost of installing the larger pipe beyond what is necessary to serve this development. The City will allow the applicant an SDC credit for this additional cost. Therefore, the examiner finds that the requirement to upgrade pipe CD-2 is roughly proportional to the impact of the development as the applicant will receive an SDC credit for the portion of the cost that exceeds what is needed to serve the proposed development.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that LUDIII21-0003 (Amira’s Song 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 LUDIII21-0003 (Amira’s Song Subdivision), subject to the following conditions of approval:

Conditions of Approval

A. Prior to Engineering Approval:

1. Provide “No Parking-Fire Lane” signage on both sides of half width streets and fire apparatus turnarounds.
2. Clearly show the location of all new and existing fire hydrants in accordance with the above requirements.
3. Submit final engineering plans, for review and approval by staff, pertaining to transportation, sewer, water, grading, erosion control, stormwater, driveways, and street lighting prepared and stamped by a registered engineer in the state of Washington and landscaping prepared and stamped by a licensed landscape architect.
4. Submit final engineering plans:
 - a. Showing adequate half-street improvements, based on pavement testing, for NW 20th Avenue, a “Major Collector – Option 1”, including sidewalk, planter strip, curb and gutter and asphalt.
 - b. Showing adequate half-street improvements, for NW 18th Street, a “Local ‘A’”, including sidewalk, planter strip, curb and gutter and asphalt, unless revised by an approved road modification. The applicant shall provide a curb-tight sidewalk on the section of NW 18th Street abutting Tract B to minimize critical area impacts.
 - c. Showing adequate half-street improvements, for NW 15th Avenue, a “Neighborhood Collector”, including sidewalk, planter strip, curb and gutter and asphalt along the eastern property line, unless revised by an approved road modification.

- d. Showing half-width improvements to NE 239th Street to “Neighborhood Collector” standards, including sidewalk, planter strip, curb and gutter and asphalt.
 - e. All other streets shall be built to “Local ‘A’” standards that include a 48-foot right-of-way; 30-feet of roadway, four-foot landscape strip and five-foot sidewalk.
 - f. Showing additional two feet of right of way dedicated to the City for NW 20th Avenue.
 - g. Showing an additional 16 feet of right of way dedicated to the City for NW 18th Street.
 - h. Containing a combined landscaping and driveway plan.
 - i. Showing sight distance triangles.
 - j. Containing a signing and striping plan.
 - k. Containing a street lighting plan having LED decorative cobra type units for NW 20th Avenue and LED acorn units for the other streets.
 - l. Showing traffic calming devices on all public streets.
 - m. Showing driveways that meet the requirements of BGMC 12.116.243.
 - n. Showing traffic mitigation at SW Eaton Boulevard & SR 503 and NW Onsdorff Boulevard & SR 503 or indicating that mitigation fees will be paid in lieu of the improvements.
 - o. Showing water lines throughout the subdivision and extending to extreme property lines.
 - p. Showing each residential lot having its own individual water service
 - q. Showing an eight-inch gravity sewer line throughout the subdivision and extending to extreme property lines.
 - r. Showing each residential lot having its own individual sanitary lateral.
 - s. Showing a stormwater facility that meets the requirements of BGMC 18.250.
 - t. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
5. Submit a revised traffic study meeting the City’s requirements per BGMC 12.116.175 and addressing the need for modified stop controls at the intersection of NE 239th Street and NW 20th Avenue.
 6. 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. Photometric plan shall be prepared by an electrical engineer.
 7. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
 8. Submit a Stormwater Pollution Prevention Plan (“SWPP”) that meets Department of Ecology requirements.

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. The applicant shall coordinate with the Department of Ecology to obtain their approval, provide the City with the final approval, and update plans accordingly.
12. The applicant shall work with the Army Corps of Engineers and the State Department of Ecology in finalizing the Wetland Delineation and Mitigation Plan, which shall include mitigation for the extension of NW 15th Avenue unless this requirement is waived through an approved road modification.
13. The applicant shall be responsible for supplying the City with a copy of the final wetland delineation report and mitigation plan.
14. The applicant shall verify Lots 6 and 18 have the required 20-foot frontage on a public right-of-way prior.
15. Submit Exhibits:
 - a. Showing driveway locations and widths
 - b. Showing the locations of the required on-street parking space, or common parking area for each narrow lot.
 - c. Identifying the location of the six mitigation trees for the record.

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 \$59,490.99.
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 \$24,533.28.
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 \$23,417.76.
5. Submit a final plat:
 - a. That shows easements for public utilities not located in the right-of-way.
 - b. With the following note: "Fences higher than 42-inches will not be allowed in the front yards."
 - 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 that NW 20th Avenue is access controlled and cannot

have direct access from lots.

- e. With a note describing the maintenance responsibilities of each lot owner for the private streets.
- f. With a note specifying the party(ies) responsible for long-term maintenance of stormwater facilities.
- g. With a note specifying the party(ies) responsible for ownership and maintenance of Tract B and the associated pedestrian path.
- h. That shows where any control monuments have been placed.
- i. That shows the dedication of any public roads.
- j. Showing the redesign of Lots 7-8 and 19-20 to meet the design standards of a flag lot (include the proposed easement into a lot) and include an access easement for the adjacent lot.
- k. Showing the additional 11 feet of landscaping to the east of the required sidewalk parallel to NW 20th Avenue and provide landscape plan it accordance to the standards of BGMC 16.125.100.
- l. With the note: “development shall conform to the requirements of BGMC 17.106.040”

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. 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 recorded Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and/or approval.
5. Prior to the issuance of the occupancy permit, 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 for review and approval by the Engineering Department. Upon acceptance by the Engineering Department and prior to the issuance of the occupancy permit, submit one (1) Mylar set, one (1) full size paper set, two (2) 11x17 paper sets of As-Built record drawings and one (1) compact disc or USB flash drive version of the as-built drawings in AutoCAD, and separate/individual PDF, and TIF format files.
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. Create and fund a homeowners association responsible for ownership and maintenance of Tract B and the associated pedestrian path, unless the City accepts dedication of the Tract and path.

D. Prior to Construction of the Site:

1. Receive signed and approved engineering plans from the City of Battle Ground.
2. Receive an approved right of way 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 maintain 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 Department at (360) 342-5069 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.

E. Prior to any ground disturbance

1. The applicant shall submit evidence of purchased wetland mitigation credits.

F. 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.

G. Prior to Building Construction:

1. Acquire the required 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 requirements of the R10 zoning district.
4. All new development shall comply with the design standards of BGMC 17.106.040.

H. Prior to Certificate of Occupancy:

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

I. 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. 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.
3. If site disturbance is over an acre or the project reasonably expects to cause a violation of any water quality standards, and stormwater discharges to surface Waters of the State, a CSWGP is required.
4. Supply the City with a copy of the final wetland delineation report and mitigation plan prior to Engineering Approval. Should any modification to the preliminary plans be required it is the responsibility of the applicant to modify the preliminary plans accordingly prior to final approval plat approval.
5. It shall be the responsibility of the applicant to review the submitted letter from the Battle Ground Public School District dated May 6, 2021, and execute any required conditions/fees/etc. identified by their representative.

DATED this __ day of July 2021.



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.