

**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 a 12.88-)
acre parcel into 78 lots in the R7 zone at 24013) **LUDIII21-0004**
NE 112th Avenue in the City of Battle Ground) **(Walker Field Subdivision)**

A. SUMMARY

1. The applicant, Sterling Design Inc., requests approval of a boundary line adjustment to modify the boundaries of the 9.77-acre Tax Assessor Parcel 226932-000 and the 14.23-acre Tax Assessor Parcel 226933-000 (collectively known as 24013 NE 112th Avenue) to create a 12.88 acre “development parcel” and an 11.12-acre “remainder parcel.” The boundary line adjustment will locate all streams, wetlands and associated buffers on the remainder parcel. The applicant also requests approval to divide the adjusted 12.88 acre development parcel (the “site”) into 78 residential lots and a stormwater/open space tract.

a. The site, the remainder parcel, and properties abutting the southwest corner of the site are zoned R7 (Residential, 7 units per acre maximum density). Properties to the south are zoned R10 (Residential, 10 units per acre maximum density). All other surrounding properties are located in unincorporated Clark County; properties to the northwest and east are zoned MX (Mixed Use), properties to the north are zoned R-5 (Rural, five-acre minimum lot size), and properties to the west are zoned AG-20 (Agriculture, 20-acre minimum lot size). The property south of the site is proposed for development of a 112 lot subdivision, Amira’s Song subdivision.

b. The proposed remainder parcel north of the site contains a creek and wetland. The creek, wetland, and associated buffers will all be retained on the remainder parcel. There are eight Oregon white oak trees on the site. The applicant proposed to remove three of the trees to accommodate the proposed development. The applicant will mitigate the tree removal by planting 18 new oak trees within upland areas on the remainder parcel.

c. The site is currently developed with a single family residence and associated outbuildings. The applicant proposed to remove the accessory structures and retain the existing residence on proposed Lot 78. The applicant will construct a new single-family detached dwelling on each of the remaining lots.

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 an on-site storm water facility within proposed Tract A for treatment and detention. The applicant will discharge treated stormwater to the existing drainageway at less than predevelopment rates.

e. The applicant will construct half-width improvements for a new east-west aligned public street, proposed 239th Street, on the south boundary of the site, between NE 112th Avenue and the east boundary of the site. The applicant will extend three new north-south aligned public streets north of NE 239th Avenue - proposed NE 113th, 114th, and 115th Avenues - which will intersect a proposed east-west aligned public street, NE 240th Way, located near the north boundary of the site. The applicant will terminate NE 240th Way in a private cul-de-sac on the west end and extend the east portion to the east boundary of the site to allow for further extension when the abutting property redevelops.

f. The applicant has submitted a road modification request to waive frontage improvements along the site's NE 112th Avenue frontage, eliminate or reduce the required landscape buffer abutting NE 112th Avenue, eliminate the extension of NE 15th Avenue through the site, and to modify the intersection spacing requirements. The road modification request is not before the examiner. The city engineer will review that application.

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") as modified at the hearing. The applicant accepted those findings and conditions, as modified, without exceptions. Other than public service providers and agencies, no one else testified orally or in writing. Disputed issues or concerns in the case include the following:

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

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

c. 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 requested approval of a boundary line adjustment to locate all of the critical areas on a single parcel.

b. The applicant proposed to remove three Oregon white oaks on the site and mitigate for that removal by planting 18 new oak trees in upland portions of the adjusted remainder parcel.

c. He requested the examiner modify the finding for section 17.106.035 of the Battle Ground Municipal Code (the "BGMC") on page 14 of the Staff Report to state "The applicant has not proposed density transfer."

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

a. Mr. Stirling accepted the findings and conditions in the Staff Report, as modified at the hearing, with one exception. Page 14 of the Staff Report states, "At 112 proposed units, the project does not exceed the maximum density." This finding should be revised to state, "At 78 proposed units, the project does not exceed the maximum density." The applicant will work with City staff and the state Department of Ecology regarding a potential pedestrian path through the wetland buffer on the remainder parcel. This path is not required by the Code. He noted that the applicant submitted a road modification requesting:

i. Waiver of frontage improvement requirements on the site's NE 20th Avenue frontage. The applicant will dedicate right-of-way along that frontage. However, the topography in that area makes it impossible to construct street improvements without conducting grading activities on the adjacent property;

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

iii. 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 Amira's Song development to the south, bisecting wetland A on that parcel. If that section of NW 15th Avenue is eliminated, there is no need for extension through this site. The applicant is willing to dedicate right-of-way for this street extension if required by the City;

iv. Modifications to the intersection spacing standards for roads within the site; and

v. Reduce the required centerline radius to encourage slower traffic speeds within the site.

b. Mr. Huyette testified that the applicant intends to create a conservation covenant over the remainder parcel and sell the remainder parcel with proposed Lot 78, which contains the existing residence on the site. The applicant will provide legal access to the remainder parcel from NE 244th Street or by extending an easement through proposed Lot 78. He noted that the trail shown on the remainder lot is conceptual at this stage and may be eliminated. The City does not have a trails master plan that requires such a trail in this location and the Department of Ecology discourages trails within critical area buffers.

4. City public works director Mark Herceg noted that the Code requires dead-end streets to be constructed as private streets. The applicant will be required to dedicate a public easement over the private street section of NE 240th Way to allow access to the proposed public stormwater facility.

5. No one else testified 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.

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

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

b. 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.

7. 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 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, 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 modified, as his own, except to the extent they are inconsistent with the following findings.

3. 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.

4. As discussed at the hearing for the Amira’s Song development south of the site, 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.

5. 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. Hecceg 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 LUDIII21-0004 (Walker Field 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 LUDIII21-0004 (Walker Field Subdivision), subject to the following conditions of approval:

Conditions of Approval

A. Prior to Engineering Approval:

1. Clearly show the location of all new and existing fire hydrants in accordance with the above requirements.
2. Provide “No Parking-Fire Lane” signage on both sides of half width street and fire apparatus turnarounds.
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 NE 112th Avenue, a “Major Collector – Option 1”, including sidewalk, planter strip, curb and gutter and asphalt.
 - b. 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.
 - c. Showing half-width improvements to NE 239th Street to “Neighborhood Collector” standards, including sidewalk, planter strip, curb and gutter and asphalt.
 - d. Showing the cul-de-sac as privately owned and maintained, built to “Local A” standards that include a 48-foot right-of-way; 30-feet of roadway, 4-foot landscape strip and 5-foot sidewalk.
 - e. All other streets shall be built to “Local ‘A’” standards that include a 48-foot right-of-way; 30-feet of roadway, 4-foot landscape strip and 5-foot sidewalk.
 - f. Showing additional 2 feet of ROW dedicated to the City for NE 112th Avenue.
 - g. Containing a combined landscaping and driveway plan.
 - h. Showing sight distance triangles.
 - i. Containing a signing and striping plan.
 - j. Containing a street lighting plan having LED decorative cobra type units for NE 112th Avenue and LED acorn units for the other streets.
 - k. Showing traffic calming devices on all public streets.
 - l. Showing driveways that meet the requirements of BGMC 12.116.243.
 - m. 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.
 - n. Showing water lines throughout the subdivision and extending to extreme property lines.
 - o. Showing each residential lot having its own individual water service
 - p. Showing an 8-inch gravity sewer line throughout the subdivision and extending to extreme property lines.
 - q. Showing each residential lot having its own individual sanitary lateral.
 - 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.

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") 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. 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 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 \$27,457.38.
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 \$30,666.60.
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 \$29,272.20.
5. Submit Exhibits Identifying the recorded easement within the "pole" portion of Lot 3 that shall provide access for Lot 4.
6. 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 describing the maintenance responsibilities of each lot owner for the private streets.
- e. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
- f. With a note specifying that NE 112th Avenue is access controlled and cannot have direct access from lots.
- g. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
- h. That shows where any control monuments have been placed.
- i. That shows the dedication of any public roads.

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. 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) 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.

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. Contact
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 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 R7 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. 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.

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 __ day of July 2021.

A handwritten signature in black ink, appearing to read "Joe Turner", written in a cursive style.

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