

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

Regarding an application by North Columbia Homes, LLC for approval of a preliminary plat to divide 18.86-acres into 47 lots in the R5 zone at 3305 SE Grace Avenue in the city of Battle Ground) **FINAL ORDER**
)
) **LUDIII21-0009**
) **(Hi Cedar Crossing Subdivision)**

A. SUMMARY

1. The applicant, North Columbia Homes, LLC, requests approval of a boundary line adjustment and a subdivision on an existing 21.4-acre tract consisting of Tax Assessor Parcels 194348-000 and 194397-000, also known as 3305 SE Grace Avenue.

a. The lot line adjustment will modify the boundary between parcels 194348-000 and 194397-000, reducing parcel 194397-000, to 2.54 acres and increasing parcel 194348-000 to 18.86-acres. Modified parcel 194348-000 (the “site”) surrounds parcel 194397-000 on three sides, abutting the north, east, and south boundaries of parcel 194397-000.

b. The applicant then requests approval to divide the site (modified parcel 194348-000) into 47 residential lots and four tracts for open space, private roads, and stormwater facilities. The site is currently vacant. The applicant will construct a new single-family detached dwelling on each of the proposed lots.

c. Parcel 194397-000 is currently developed with a residence and associated outbuildings. No additional development is proposed on that parcel with this application.

d. The site and abutting properties to the north and southwest are zoned R5 (Residential, 5 units per acre maximum density). Properties to the west, across SE Grace Avenue, are zoned MU-R (Mixed Use - Residential). Properties to the east and southeast are located in unincorporated Clark County and zoned R1-20 (Residential, 20,000 square foot minimum lot size).

e. There are five Category 2 and 3 wetlands totaling roughly 5.81-acres scattered throughout the site. The applicant proposed to fill roughly 1.26-acres and indirectly impact 0.98-acres of lower quality Category 3 wetlands to accommodate the proposed development. The applicant will retain the remaining wetlands and buffers, as well as other upland forested areas, in the proposed open space, Tract D. The applicant will mitigate for the wetland impacts by purchasing credits at an off-site wetland mitigation bank. The site also contains two Oregon white oak trees that will be preserved within the open space Tract D on the eastern portion of the site.

f. The city of Battle Ground will provide public sanitary sewer services and Clark Public Utilities (“CPU”) will provide water services to the site. The applicant will collect storm water from impervious areas on the site and convey it to proposed Tract

B for treatment and detention. The applicant will discharge treated stormwater to the on-site wetlands at less than predevelopment rates.

g. The applicant will dedicate right-of-way and construct half-width improvements along the section of SE Grace Avenue, abutting the west boundary of the site. The applicant will extend three new public streets, proposed SE 33rd, 34th, and 36th Streets, into the site from SE Grace Avenue. As proposed, SE 33rd and 34th Streets will intersect proposed SE 11th Avenue, a new north-south aligned street in the western portion of the site, forming a loop street within the northern portion of the site. The applicant proposed to construct SE 33rd Street as a half-width improvement on the north boundary of the site to allow for further development when the abutting property to the north is redeveloped. SE 36th Street will intersect proposed SE 12th Avenue, a new north-south aligned street in the western portion of the site. SE 12th Avenue will intersect proposed SE 37th Street, a new east-west aligned street in the southeast corner of the site. The applicant will extend SE 37th Street to the east boundary of the site to allow for further extension and connection to NE Cedar Drive via NE 185th Street when the abutting property redevelops.

2. The city issued a Mitigated Determination of Nonsignificance ("MDNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). The SEPA determination was not appealed and is now final.

3. City of Battle Ground Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the preliminary plat subject to conditions. See the Amended Staff Report to the Hearing Examiner dated November 29, 2021 (the "Amended Staff Report"), as modified at the hearing.¹ 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.

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 December 8, 2021.² 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.

¹ The Amended Staff Report replaced the original Staff Report dated November 3, 2021.

² The city originally held a hearing regarding this application on November 17, 2021. However, the city chose to redo the hearing, because the public was unable to access the online hearing due to an error in the link to the online hearing provided in the public notice.

2. City planner James Cramer noted that the city held a prior hearing in this matter on November 17, 2021. However, the public was unable to access the online hearing due to an error in the link to the online hearing provided in the public notice. Therefore, the city chose to hold a new hearing and issued new notice with the correct hearing link. He summarized the Amended Staff Report.

a. The applicant proposed to retain 10.28-acres of the site as protected open space. The remaining 8.58-acres can be developed with a maximum 50 lots, based on the R-5 zoning as modified by the density transfer provisions of the Code. The applicant proposed to subdivide the site into 47 lots.

b. The site contains five wetlands covering 5.81-acres of the site. The proposed development will directly impact 1.26-acres and indirectly impact 0.98-acres of lower quality wetlands. The Washington Department of Ecology issued an administrative order approving the proposed wetland impacts. The applicant will mitigate for the wetland impacts by purchasing 2.81 credits at the East Fork Lewis River wetland mitigation bank.

3. City engineer Ryan Jeynes noted that proposed SE 33rd and 34th Streets do not comply with minimum intersection spacing requirements on SE Grace Avenue. He requested the examiner add a condition of approval requiring that the applicant modify the proposed street layout to meet spacing requirements or obtain city approval of a road modification allowing reduced intersection spacing.

a. He noted that a turnaround at the east end of SE 36th Street is only required if NE 185th Street is not extended to the east boundary of the site prior to final plat approval. He agreed with the changes Mr. Mason proposed to conditions A.2.f and s.

b. He requested the examiner add a condition of approval requiring that the applicant extend a private street to Parcel 194397-000 constructed to the city's "Local A" standard to allow for further development of this parcel in the future.

4. Mason Wolfe appeared on behalf of the applicant, North Columbia Homes, LLC. He accepted the findings and conditions in the Amended Staff Report, as modified at the hearing, with two exceptions.

a. He requested the examiner modify condition A.2.f by adding "or other option acceptable to the city and fire district."

b. He requested the examiner modify condition A.2.s by adding "or other option acceptable to the city."

5. No one else testified orally or in writing regarding the application at the public hearing. At the conclusion of the hearing, the examiner closed the record and announced his intention to approve the application, subject to the conditions of approval in the Amended Staff Report, as modified at the hearing.

C. DISCUSSION

1. City staff recommended approval of the application, based on the affirmative findings and subject to conditions of approval in the Amended Staff Report, as modified at the hearing. The applicant accepted those findings and conditions, as modified.

2. The examiner concludes that the affirmative findings in the Amended Staff Report, as amended, 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 Amended Staff Report as his own and approves the proposed development.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that LUDIII21-0009 (Hi Cedar Crossing 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 LUDIII21-0009 (Hi Cedar Crossing 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 adequate half-street improvements, based on pavement testing, for SE Grace Avenue, “Major Collector Option 1”, including sidewalk, planter strip, curb/gutter and asphalt.
 - b. Showing adequate half-street improvements, for SE 33rd Street and SE 37th Street, “Local A”, including sidewalk, planter strip, curb/gutter and asphalt.
 - c. Showing full-street improvements, for SE 34th Street, SE 11th Avenue, and SE 12th Avenue, “Local A”, including sidewalk, planter strip, curb/gutter and asphalt.
 - d. Showing access to lots 12 & 13 and 28 & 29 meeting the applicable private street requirements in BGMC 12.116.140 based on 1-2 lots/units.
 - e. Showing additional 2-feet of ROW dedicated to the City for SE Grace Avenue.

- f. Showing temporary turnaround at the end of SE 37th Street if NE 185th is not extended to eastern property line at time of Engineering Approval, or other option acceptable to the city and fire authority.
 - g. Containing a combined landscaping and driveway plan.
 - h. Showing sight distance and vision clearance triangles.
 - i. Containing a signing and striping plan.
 - j. Containing a street lighting plan having LED decorative cobra type units for SE Grace 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 and 12.116.246.
 - m. Showing traffic mitigation at SR 503 & SW Eaton Boulevard and SW 20th Avenue & SW Eaton Boulevard or indicating that mitigation fees will be paid in lieu of the improvements.
 - n. Showing water lines extending to extreme property lines.
 - o. Showing each residential lot having its own individual water service
 - p. Showing a portion of FE-28 (12-inch), if applicable, depending on northern termination of FE-27 sewer line being installed in SE Grace Avenue.
 - q. Showing sewer lines extending to extreme property lines.
 - r. Showing each lot having its own individual sanitary lateral.
 - s. Showing accessible maintenance road where sanitary sewer and stormwater lines are shown located between the two phases, or other option acceptable to the city.
 - t. Showing fire hydrants meeting spacing requirements throughout the subdivision.
 - u. Showing a stormwater facility that meets the requirements of BGMC 18.250.
 - v. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
 - w. Showing Tracts A and C are designed to the standards of a private street to ensure lots 12, 13, 28 and 29 meet the lot access requirement of BGMC 16.125.070.
 - x. Showing a private street to at least a “Local A” standard extended to the boundary of Parcel 194397-000 to allow for future development of that parcel.
3. Provide a photometric plan for all access points, intersections, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.
 4. Demonstrate proposed SE 33rd and 34th Street meet spacing requirements of BGMC Table 12.116.040(B)(1), obtain city approval of a road modification allowing reduced intersection spacing, or receive approval via other option acceptable to the city and fire district.
 5. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
 6. Submit a SWPPP that meets Department of Ecology requirements.
 7. Submit proof of engineering plan approval by Clark Public Utilities for the water improvements.
 8. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department

9. 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.
10. Clearly indicate the paved width for all roads and driveways.
11. Identify the location of all "No Parking – Fire Lane" signage for roads, driveways, and turnarounds. Provide corresponding details for all signage.
12. Clearly show the dimensions of the required turnaround serving the east end of SE 36th Street.
13. Clearly show the location of all fire hydrants in accordance with the above requirements.
14. The applicant is required to provide an updated mitigation plan prior to final engineering approval to include the following items:
 - a. Submit wetland mitigation plan that assures mitigation requirements of BGMC 18.260.120 and 18.260.130.
 - b. Per BGMC 18.260.180 all wetlands and buffer areas over 5,000 square feet shall be included in critical area tracts.
 - c. Adhere to all recommendations of the final Wetland Delineation and Mitigation Plan.
 - d. Identify required buffer areas and provide buffer modification if applicable.
 - e. Submit evidence of purchased credits.

B. Prior to Final Plat Approval:

1. Construct the mitigation measures for the failing intersection of SR 503 & SW Eaton Boulevard or pay the mitigation fee of \$21,466.62.
2. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fee of \$18,331.20
3. 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 the following note: "The City of Battle Ground has no responsibility to improve or maintain the private streets, including streetlights and signs, contained within, or private streets providing access to, the property designed in this development."
 - e. With a note describing the maintenance responsibilities of each lot owner for the private streets.
 - f. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
 - g. That shows where any control monuments have been placed.
 - h. That shows the dedication of any public roads.
 - i. With the following note: "Building permits and impact fees will be calculated and shall be paid at the time of permit issuance."

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. Submit a letter provided by the applicant showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.
3. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for all completed and accepted public improvements.
4. Submit to the City of Battle Ground a Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and approval prior to recording.
5. Submit complete sets of as-built drawings for all required public improvements for streets and roads, stormwater drainage and control, sanitary sewer and water services, as applicable prior to the issuance of the occupancy permit for review and approval by the Engineering Department. Upon acceptance by the Engineering Department, submit prior to the issuance of the occupancy permit, one (1) Mylar set, (1) 11x17 paper set of As-Built record drawings and one (1) compact disc or USB flash drive version of the as-built drawings in an AutoCAD format and separate/individual TIFF and PDF format files.
6. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
7. Provide certification that private streets were built per BGMC 12.116.140.
8. Submit a private maintenance agreement for private streets.
9. Submit a signed Bill of Sale for sewer system and stormwater system.

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 the Engineering Department at (360) 342-5069 to schedule an appointment.

E. Prior to Approval of Grading to the subject property:

1. A final wetland delineation shall be submitted for review and approval. Submission shall be required to identify required buffer areas and provide buffer modification if applicable.
2. Submit evidence of purchased 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 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 R5 zoning district.
4. All new development shall comply with the design standards of BGMC 17.106.040.
5. Impact fees shall be paid at the time of permit issuance.

H. Prior to Certificate of Occupancy:

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

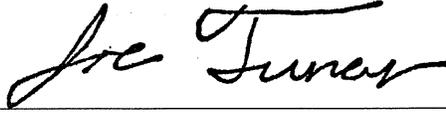
I. Other/General Conditions

1. If any cultural resources are discovered in the course of undertaking the development activity, the Department of Archaeology and Historic Preservation (DAHP) in Olympia and the City of Battle Ground Planning Department must be notified. Failure to comply with these State requirements may constitute a Class C felony, subject to imprisonment and/or fines.
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. The contractor will be required to prepare a Spill Prevention, Control and Countermeasure (SPCC) plan to be used for the duration of the construction project.
3. The critical areas tracts shall be maintained and owned by either the developer or HOA.
4. Applicant responsible for adhering to any and all conditions identified by the Department of Ecology and obtaining any required approvals.
5. Applicant responsible for adhering to any and all conditions identified by the Battle Ground Public Schools and obtaining any required approvals.
6. Applicant responsible for adhering to any and all conditions identified by the Southwest Clean Air Agency and obtaining any required approvals.

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 16th day of December 2021.

A handwritten signature in black ink that reads "Joe Turner". The signature is written in a cursive style with a horizontal line underneath it.

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