

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

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|--|---|---------------------------------------|
| In the Matter of the Application of |) | NO. BP06-00009 |
| |) | |
| |) | |
| Sylvan Meadows, LLC |) | Sylvan Way Meadows Preliminary |
| Plat |) | and Residential Cluster |
| Development |) | |
| |) | CLARIFICATION OF CONDITION |
| For Approval of a Subdivision and |) | |
| <u>Residential Cluster Development</u> |) | |

TO: All Parties of Record

PLEASE TAKE NOTICE that, following issuance of the above-referenced decision, it has come to the attention of the Hearing Examiner that a scrivener's error occurred in Condition 22 of the decision. The intent of Condition 22 is to capture an agreement made between the Applicant and a Homeowner's Association regarding construction of a fence between the properties. The condition states a "ten-foot" fence; it should be a "six-foot" fence as provided for in the agreement. The decision has been revised and re-issued with the revision noted.

Done this 14th day of July 2006



THEODORE PAUL HUNTER, Hearing Examiner

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CITY OF BREMERTON
COMMUNITY DEVELOPMENT DEPARTMENT

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

RECEIVED
JUL 17 2006

BREMERON DEPT. OF
COMMUNITY DEVELOPMENT

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| In the Matter of the Application of |) | NO. BP06-00009 |
| |) | |
| |) | |
| Sylvan Meadows, LLC |) | Sylvan Way Meadows Preliminary Plat |
| |) | and Residential Cluster Development |
| |) | |
| For Approval of a Subdivision and |) | FINDINGS, CONCLUSIONS, |
| <u>Residential Cluster Development</u> |) | AND DECISION |

SUMMARY

The request for approval of a preliminary plat and an 11.21 acre residential cluster development (RCD) is GRANTED, subject to conditions.

SUMMARY OF RECORD

Request:

Sylvan Meadows, LLC (Applicant) requests approval of a preliminary plat and RCD for an 11.21 acre site to develop a 44 lot RCD (22 two-story detached housing units in the westerly portion and 22 two-story attached townhouses in the easterly portion) with 88 on-site parking stalls (garage and driveway), 49 accessory parking stalls and 5.42 acres of open space. The development would be located at the west end of Sylvan Way in Bremerton.

Hearing Date:

The Hearing Examiner for the City of Bremerton held an open record hearing on the matter on June 26, 2006.

Testimony:

The following individuals presented testimony under oath:

1. JoAnn Vidinhar, City Dept. of Community Development
2. Adrian Lugo, on behalf of Applicant
3. Roger Meyer
4. Anita Rasmussen
5. William Dean
6. Ronald Krell, on behalf of Reymont Homeowner's Association
7. John Chittenden

Exhibits:

The following exhibits were admitted into the record:

- A. Department of Community Development Staff Report, with the following attachments:
 1. Application for Preliminary Plat and Residential Cluster Development and Pre Submittal Report, received January 25, 2006
 2. Density Calculation

3. Neighborhood Average Lot Area Chart with Stewart Title Mailing Labels
 4. Conditional Water and Sewer Availability Letter, dated August 14, 2001
 5. Environmental Checklist, date submitted January 20, 2006
 6. Hydrologic Analysis prepared by Map, Ltd, March 25, 2005
 7. Geotechnical Report prepared by Zipper Zeman Assoc., October 18, 2004
 8. Wetland Delineation Report and Buffer Modification Proposal prepared by GeoEngineers, November 17, 2004
 9. Traffic Impact Analysis prepared by Heath & Associates, September 2004
 10. Site Plans (Sheets 1-6), January 16, 2006
 11. City of Bremerton Zoning Map
 12. Determination of Completeness, January 31, 2006
 13. Notices of Application January 31 and February 15, 2006; Affidavit of Posting, February 2, 2006; Affidavit of Mailing, February 1, 2006; and Affidavit of Publication, February 23, 2006.
 14. Letter from Lisa Spahr, Department of Natural Resources dated February 8, 2006
 15. Email from Jeff Davis, Department of Fish & Wildlife dated February 9, 2006
 16. Letter from Alison O'Sullivan, The Suquamish Tribe dated February 13, 2006
 17. Letter from S. Cotton and R. Meyer dated February 4, 2006
 18. Letter from John Chittenden dated February 10, 2006
 19. Letter from Reymont Homeowners Association dated February 13, 2006
 20. Letter from Carol Lowrie dated February 13, 2006
 21. Email from Fred & Lee Parkinson dated February 16, 2006
 22. Email from Ron Krell dated February 16, 2006
 23. Email from Ron Krell dated February 20, 2006
 24. Letter from Stacie Bates, Bremerton Community of Christ church dated February 16, 2006
 25. Addendum to Wetland Delineation Report from GeoEngineers dated March 6, 2006
 26. Sanitary Sewer-Line Easement dated March 23, 2006
 27. Addendum to Geotechnical Report from Zipper Zeman Associates, Inc. dated March 29 2006
 28. Determination of Nonsignificance with notice to applicant, Department of Ecology dated April 14, 2006 and notice to interested parties, dated April 17, 2006
 29. Letter from Adrian Lugo dated April 17, 2006
 30. Notice of Public Hearing with Affidavit of Mailing, dated June 1, 2006
- B. Settlement Agreement between Sylvan Meadows, LLC, Reymont Homeowners Association and Angus & Nancy MacDonald, dated June 24, 2006 (5 pages)
- C. Memo from Sydney Costigan Cotton, Roger Meyer and Ridgetop Court N.E. Neighbors to Bremerton City Council dated June 26, 2006 (1 page)

Upon consideration of the testimony and exhibits admitted at the open record hearing, the Hearing Examiner enters the following Findings, Conclusions and Decision:

FINDINGS

1. Sylvan Meadows, LLC (Applicant) requests approval of a preliminary plat to subdivide an 11.21 acre site into a 44 lot residential cluster development (RCD). The RCD includes 22 two-story detached housing units in the westerly portion and 22 two-story attached townhouses in the easterly portion with 88¹ on-site parking stalls (garage and driveway), 49 accessory parking stalls and 5.42 acres of open space. The development would be located at the west end of Sylvan Way in Bremerton.² The City of Bremerton determined that the preliminary plat and RCD application to be complete on January 31, 2006.³ *Exhibit A, Staff Report, page 1; A-1 to A-30.*
2. The City was designated as lead agency for review of environmental impacts caused by the requested preliminary plat. The City received the Applicant's environmental checklist on January 25, 2006. Notice of the land use and SEPA (State Environmental Policy Act) determination was mailed to a list of individuals on February 1, 2006, posted on site on February 2, 2006, and published in the Kitsap Sun on February 17, 2006. The City considered the environmental checklist, the requirements of City ordinances, and comments received. The City issued a determination of nonsignificance on April 14, 2006. No appeals were filed. *Exhibit A, Staff Report, pp. 1, 14; A-1, Environmental Checklist, p. 1; A13-A24; A-28, SEPA Threshold Determination.*
3. Most of the planned development area on the property is on gently to moderately sloping ground. Steeper slopes (greater than 40 percent) are present in the northern 1/3 portion of the site and associated with existing natural drainage swales. Per Section 21.22.100 of the City of Bremerton Municipal Code (BMC), portions of the northern part of the site would be classified as geologically hazardous (landslide hazard) areas according the applicant's geotechnical evaluation. *Exhibit A, Staff Report, page 2; A-7, Geotechnical Report prepared by Zipper Zeman Associates, p. 2.*
4. Vegetation on the non-wetland portions of the site consists of both deciduous and evergreen trees of variable sizes with a generally thick understory growth of ferns, weeds, and berry vines and appears to have been historically logged. *Exhibit A-7, Geotechnical Report prepared by Zipper Zeman Associates, p. 3. Testimony of Mr. Lugo.*

¹ The Application notes 84 parking stalls, but the plat map indicates 88 parking stalls. The Hearing Examiner will use the number on the plat map.

² A legal description of the property is located in Exhibit A, Staff Report, p. 2 and A-10, Preliminary Plat.

³ At the time of the Applicant's pre-submittal meeting, BMC Chapter 21.02 regulated zoning. Ord. 4950 § 1 (effective December 13, 2005) recodified Title 20 of the Bremerton Municipal Code entitled "Subdivisions" as Title 20, "Land Use," consisting of three parts: Division I entitled "Permitting," consisting of Chapters 20.02 and 20.04; Division II entitled "Land Development," consisting of Chapters 20.10 through 20.18; and Division III entitled "Zoning," consisting of Chapters 20.40 through 20.98. The application was received on January 25, 2006 and deemed complete on January 31, 2006. *Exhibit A-1 (Application); Exhibit A-12*

5. The project site is currently undeveloped and is surrounded by other undeveloped property to the east and north, with a private (gated) single-family residential development to the west. A church and privately owned residential property is to the south and separates the project site from Sylvan Way. *Exhibit A-7, Geotechnical Report prepared by Zipper Zeman Associates, p. 2.*
6. Approximately 1/3 of the property is covered with wetlands and wetland buffers. The project area includes a Type III stream that ultimately empties into the Port Washington Narrows, west of the site. The residential cluster development plan depicts a proposed B Street crossing the stream with a bridge. The project area also includes a 1.1 acre Type II forested wetland (Wetland A), and a 1,079 square foot Type III scrub-shrub wetland (Wetland B). The Applicant's Wetland Delineation Report contained a mitigation plan, including mitigation, a monitoring program and a contingency plan. JoAnn Vidinhar testified for the City that these two wetlands would require a 50' buffer for the Type III wetland (Wetland B) and a 100' buffer for the Type II wetland (Wetland A). She further testified that Tract "P" and Tract "N" are larger than they would otherwise be in order to compensate for reduced buffers in other areas. She further testified that Lots 23-25 have reduced buffers to the stream while compensatory buffers allow greater protection. *Exhibit A, Staff Report, pages 2 and 3; A-5, Environmental Checklist, p. 3, 5; A-8, Wetland Delineation Report and Buffer Modification Proposal prepared by GeoEngineers, pp. 6-8; A-10 (Residential Cluster Development Plan). Testimony of Ms. Vidinhar.*
7. The Suquamish Tribe submitted a letter to the City dated February 13, 2006 recommending that wetland impacts should first be avoided and adequate buffers provided. This letter was submitted prior to the addendum to the wetland delineation report and buffer modification proposal dated March 6, 2006 submitted by the Applicant.⁴ The revised site plan reduces the number of lots requiring buffer encroachment but did not alter the square footage of encroachment. Ms. Vidinhar testified for the City that increased compensatory buffers would be provided and that hydraulic project approval (HPA) under RCW 77.55 and compliance with forest practices under RCW 76.09 would be required. *Exhibit A-14; A-16; A-25; A-28. Testimony of Ms. Vidinhar.*
8. An Open Space Plan would be required, including maintenance responsibilities and guarantees. Ms. Vidinhar testified on behalf of the City that Tracts "P" and "N" are the open space areas and that an open space plan must comply with ordinance requirements, including nature trails and stream protection buffers. *Exhibit A, Staff Report, p. 7. BMC 20.58.060(f)(7)(iii) and (iv). Testimony of Ms. Vidinhar.*

⁴ Under the January 16, 2006 preliminary plat, Lots 19-22, Lots 23-25 and Lots 29-30 are shown as intruding into the stream/wetland buffers. *Exhibit A-10 (Preliminary Plat).*

9. Adrian Lugo testified on behalf of the Applicant that access roads would have a 5' sidewalk to Sylvan Way where there is school bus service. He testified that the stream through the site was not a fish bearing stream, but does filter water that flows to other streams. He testified that the buffers along Lots 23-25 would be heavily planted to enhance the wildlife habitat and that the small wetland in the southwest corner of Tract "V" would be connected to the larger wetland to the east. He testified that while he would prefer a higher density of housing units, it should not come at the expense of the wetlands on site. These on-site wetlands have been degraded by past logging activities and the wetland/buffer plan is designed to help restore the wetland areas. He testified that a stormwater detention pond would be placed in Tract "P" and storm water vaults in Tract "K" and "M."⁵ *Exhibit A-10, Preliminary Drainage Plan. Testimony of Mr. Lugo.*
10. Mr. Lugo testified that the proposed houses would meet state energy codes and that development is oriented on an east/west axis where houses would have a south facing side for solar energy. *Testimony of Mr. Lugo.*
11. Mr. Lugo testified that no sewer lift station would likely be needed for the west lots, but a sewer lift station would be needed for the east lots. According to the Applicant's response to comments, the sewer lift station would be granted over to the local sewer district. Mr. Lugo testified that he will obtain a "pre-engineered" sewer lift station for lots 34-44. *Exhibit A-29. Testimony of Mr. Lugo.*
12. Mr. Lugo submitted a settlement agreement between Sylvan Meadows, LLC, Reymont Homeowners Association and Angus & Nancy MacDonald dated June 24, 2006 (5 pages) concerning a boundary fence and maintenance, termination of a drainfield easement and installation of water meter and sewer connections, and preservation of trees. The settlement agreement was entered into the record as Exhibit B. The Applicant and City agreed that the settlement agreement would be referenced on the face of the final plat map. *Exhibit B, Testimony of Mr. Lugo.*
13. A memo from Sydney Costigan Cotton, Roger Meyer and Ridgetop Court N.E. Neighbors to Bremerton City Council, dated June 26, 2006 (one page) was submitted by Roger Meyer and entered into the record as Exhibit C. The memo expressed concerns of these neighbors about environmental impacts and lack of mitigation. They urged that the area be preserved as greenspace. *Exhibit C. Testimony of Mr. Meyer.*
14. Anita Rasmussen and William Dean testified on behalf of the Community of Christ church concerning potential impacts from stormwater drainage, requesting a fence along Lots 1-4 and access to church property while construction is underway. *Testimony of Ms. Rasmussen and Mr. Dean.*

⁵ The preliminary drainage plan shows storm vaults in Tract "P," and west of Tract "M" and southeast of Tract "A" in the roadway. *Exhibit A-10. Preliminary Drainage Plan.*

15. Ronald Krell testified on behalf of the Reymont Homeowners Association concerning how the homeowners association had come to a settlement agreement with the Applicant. *Exhibit B. Testimony of Mr. Krell.*
16. John Chittenden testified that he is a property owner along the northwest corner of the proposed plan. His property is an historic site where boats were built from lumber milled on the site. To protect the site, he requested that a six (6) foot high fence be constructed by the Owner/Applicant along north property line from the NW corner of Tract "W," to the NW line of Tract M. *Exhibit A-10 (Preliminary Plat); A-18; Testimony of Mr. Chittenden.*
17. Ms. Vidinhar testified that the public notice was given by posting, publication & mailing. No testimony was received challenging the public notice given by the City. *Exhibit A-30. Testimony of Ms. Vidinhar.*
18. Ms. Vidinhar testified that BMC 15.04 adopts the Department of Ecology's Surface Water Manual. She testified that the Applicant would be required to comply with all Federal and state laws pertaining to Archaeological and Historical Preservations. She testified that she had sent a notice to the nearest school and had received no response regarding a need for safe walking. *Exhibit A-30. Testimony of Ms. Vidinhar.*
19. Mr. Lugo responded to comments from the public. The large amount of buffer areas would provide wildlife habitat, stormwater will go north, down slope (away from Community of Christ church property) and the southern stormwater vault is on a road purchased from the church. *Testimony of Mr. Lugo.*
20. The City Council approved Ordinance 4917 adopting an updated Comprehensive Plan effective December 17, 2004. The Plat/RCD application was received on January 25, 2006. The applicable Comprehensive Plan designation for the site was Low Density Residential and the zone classification was Residential Low-density (R-10, 5-10 dwelling units per acre). *Exhibit A, Staff Report, pp. 1, 3; A-1 Application, p. 1.*
21. The following Comprehensive Goals and Policies are relevant to subdivisions:
 - Goal LU1 "Identify and enhance distinctive neighborhoods, communities, and Centers through the city."
 - Policy LU1K "Promote neighborhoods which foster interaction among residents, contribute to well-being of citizenry, and create and sustain a sense of community and personal safety."
 - Goal LU3 "Create an environment that will promote growth."
 - Policy LU3E "Provide development incentives and flexibility within the Zoning Code to encourage desirable design elements with flexibilities within the Zoning Code provisions for all new development and redevelopment."
 - Goal H3 "Provide a variety of housing types and densities to meet changing needs of Bremerton residents."

Policy H3C “Stimulate the production of new housing for all incomes, ages and family types.”

Goal H6 “Build strong, cohesive neighborhoods with a majority of Bremerton households owning their own homes.”

Policy H6A “Increase opportunities for home ownership within the City of Bremerton.”

Goal H7 “Promote safe, attractive, livable neighborhoods that will attract homeowners.”

The proposed application supports these goals and policies. Desirable design elements with flexibility would be used to preserve on site wetlands and buffers. The proposed application will promote a safe attractive and liable neighborhood and increase opportunities for home ownership with the City of Bremerton. *Exhibit A, Staff Report, p. 3; A-2; A-10.*

22. The City of Bremerton has not adopted a subdivision ordinance. The City relies on the requirements set forth in RCW 58.17. JoAnn Vidinhar testified for the City that RCW 58.17 and BCC 20.02.40 are the City’s criteria to review the application. *Exhibit A, Staff Report, p. 4. Testimony of Ms. Vidinhar.*
23. Approval of an RCD application constitutes an overlay to the underlying zone. The purpose of a Residential Cluster Development is to accommodate urban densities of the underlying zoning district while allowing residential development to utilize less land area, to preserve open space, to allow for innovative design and reduce impacts to sensitive environmental areas. The underlying zoning district is Low Density Residential as set out in BMC Chapter 20.60. *Exhibit A, Staff Report, pp. 1 and 4. BMC 20.58.060(a).*
24. BMC Chapter 20.60 sets out the requirements for Low Density Residential zones. The intent of the low density residential (R-10) zoning district is to accommodate single-family housing by infilling at a range of lot sizes consistent with urban growth patterns. Some attached single-family housing may be appropriate when responding to sensitive areas or with innovative design. Residential development at higher densities is encouraged at the edge of designated centers. Subsection 20.60.060(a) establishes development standards for a maximum structure height of 35’ and a minimum lot width of 30’. This subsection also establishes other development standards for the R-10 zone including building coverage, zero lot line development, detached structures, garage door setbacks, and lot area for parks and schools; however exceptions may be granted through an approved RCD. For the perimeter lot line setback a minimum rear yard setback of 15’ is required. The proposal complies with these standards.⁶ *Exhibit A, Staff Report, p. 5; A-10 (Residential Cluster Development Plan); BMC 20.58.060(f)(3); BMC 20.60.060(a).*

⁶ It is noted that the preliminary plat map shows a rear setback line of 10 feet. A 15 foot setback is required under City development codes.

25. BMC 20.60.065(a) establishes the minimum density at 5 dwelling units per acre with a maximum density being subject to a neighborhood compatibility and neighborhood average lot areas calculation. JoAnn Vidinhar testified for the City that she reviewed the lot sizes and property use on surrounding neighborhoods from public records. The neighborhood average lot area was determined to be 7,816 square feet. Thus, subsection 20.60.065(b) establishes the density for Neighborhood Average Lot Area of 7,501 square feet or greater to be 6 dwelling units per acre maximum. Ms. Vidinhar testified that the Sylvan Way Meadows proposal is five units per acre and is compatible with surrounding neighborhoods. The maximum lot size under subsection 20.60.065(c) is 8,712 square feet; however exceptions may be given through an approved RCD. The minimum lot size under subsection 20.60.065(d) is 7,200 square feet; however exceptions may be given through an approved RCD. The proposed minimum lot size for the Project RCD is 2,353 square feet. *Exhibit A, Staff Report, pp. 4 and 5; A-2; A-3; A-10 (Residential Cluster Development Plan). BMC 20.60.065(a-e). Testimony of Ms. Vidinhar.*

26. The RCD Scope of Approval includes:

- (1) Approval of a RCD constitutes an overlay to the underlying zone and allows modifications to development standards.
- (2) Approval of a RCD constitutes a limitation on the design to only those designs and standards specifically included. . . .

BMC 20.58.060(e).

27. The BMC 20.58.060(f) RCD Development Standards include:

(1) Lot Requirements.

(i) Density. The minimum and maximum density of the underlying zone shall apply. Within the low density residential (R-10) zone the density shall be determined pursuant to the provisions in BMC 20.60.065, 20.60.066, and 20.60.068. For the purposes of the RCD, unbuildable environmentally sensitive areas as defined in BMC 20.14.280 shall be included in the area for calculating density. A right-of-way assumption shall be deducted from the total area of the environmentally sensitive area. The assumed right-of-way deduction is a percentage of the total environmentally critical area equal to the percentage of the developable site devoted to rights-of way.

(ii) Minimum Lot Size. The minimum lot area is:

(A) Three thousand (3,000) square feet within the low density residential (R-10) zone. Reductions to the lot size may be allowed if an environmentally sensitive area is located on the property and the reduction is the minimum necessary to comply with the minimum density requirements set forth in subsection (f)(1)(i) of this section.

(B) Zero (0) within other zones.

The proposed RCD application meets these development standards. The R-10 zone requires a minimum-density of 5 dwelling units per acre. The maximum density of six is based on neighborhood compatibility and average lot area. The proposal for 44 lots meets the minimum density required. The proposal includes lot sizes from 2,353 square

feet (because of environmentally sensitive areas located on the property) to 4,800 square feet. *Exhibit A, Staff Report p. 5; A-2.*

- (2) Height. The maximum building height of the underlying zone may be increased, provided the height of buildings are compatible with the scale of the surrounding neighborhood, do not adversely affect existing scenic views, and ensure a reasonable balance of light and shadow on adjacent properties. Increased setbacks and location of structures may be used to ensure compatibility.

The proposed application meets this standard. The maximum building height has not been increased from that allowed under the underlying zone. *Exhibit A-10 (Residential Cluster Development Plan).*

- (3) Other Standards. Exceptions may be granted to the underlying zone development standards such as setbacks, lot area, building coverage, and development coverage as prescribed in subsection (e)(1) of this section.
- (4) Perimeter Setbacks. Structures shall comply with the setbacks of the underlying zone along the outer perimeter lot lines of the site.

The proposed application includes reduced development standards and the use of townhouses to accommodate the density requirement of the underlying zone. Twenty-two (22) two-story attached townhouses are proposed for the easterly portion of the property. As depicted on the preliminary plat map, three lots (Lots 6, 7, and 13) do not meet the Code's minimum 15' rear yard setback. *Exhibit A, Staff Report, p. 6; A-1; A-10.*

- (5) Circulation.
 - (i) All streets within the development and rights-of-way shall be designed and constructed in accordance with the City street standards pursuant to BMC Title 11. Private streets shall be located on road tracts at least twenty (20) feet wide.
 - (ii) Provisions shall be made for a functional pedestrian circulation system that assures the safe movement of pedestrians both on the site and between nearby properties and activities.
 - (iii) All streets and parking areas shall contribute to the overall aesthetic design of the project while minimizing traffic congestion and the amount of impervious surface area.
 - (iv) The provision for adequate parking, loading, access and circulation facilities within the RCD shall be those contained in the parking requirements as set forth in Chapter 20.48 BMC. The Director may modify these standards to best meet needs and objectives of the project, provided parking will not spill over into nearby neighborhoods.

The proposed application is for private streets. The proposed application provides for sidewalks and nature trails within the development. BMC 20.48.060(h) requires two off-street parking spaces per single-family residence. The residential cluster development plan map identifies 88 parking spaces with an additional 49 accessory parking spaces. Therefore, the proposed application meets the Code requirements. *Exhibit A, Staff Report, p. 6; A-2; A-10 (Residential Cluster Development Plan).*

- (6) Screening. All utility facilities, loading areas, trash containers, and outdoor storage areas shall be screened from surrounding properties. Solid fences, walls, and blank walls of buildings shall be softened through the use of trees and/or other landscaping materials if their impact cannot be minimized through architectural design or orientation.

This requirement is for community type uses. If during the development stage such uses are proposed, screening from surrounding properties will be required. *Exhibit A, Staff Report, p. 6.*

- (7) Open Space.
 - (i) Open Space Designation. The remaining land not developed for a use shall be dedicated as open space. Open space areas shall be located on a separate tract or tracts and shall be developed for recreational uses or set aside to preserve environmentally sensitive areas. Open space shall not include land for streets, driveways, parking or other infrastructure improvements.
 - (ii) Development. Facilities and other improvements that enhance recreational use may be located in an open space. A single residential detached dwelling may be allowed within an open space tract if the open space contains an environmentally sensitive area and development complies with all other requirements.
 - (iii) Open Space Plan. An open space plan is required to identify all improvements, environmentally sensitive areas, significant trees pursuant to Chapter 20.50 BMC and other vegetation to be preserved. A management plan outlining maintenance responsibility shall be included as part of the plan.
 - (iv) Guarantee. A legal instrument approved by the City and recorded with the County Auditor, which shall include a notice on the title referencing the legal instrument, is required. The legal instrument may include, but is not limited to, the following guarantees:
 - (A) Retention of the open space per the open space plan prescribed in subsection (f)(7)(iii) of this section;
 - (B) Provision of permanent maintenance of the open space and commonly owned facilities;
 - (C) Grants to or reservations for the use of property owners of all open space and commonly owned facilities within the development;
 - (D) Conveyances to property owner associations or corporations.

The proposed application includes 11 separate tracts for open space purposes. An Open Space Plan would be required for maintenance responsibilities and guarantees prior to final plat approval. *Exhibit A, Staff Report, pp. 6 and 7; A-10 (Residential Cluster Development Plan).*

28. The purpose of Chapter 20.14 is to protect the public health, safety, and welfare by establishing provisions to classify, protect, and preserve Bremerton's critical areas; by providing standards to manage development in association with these areas; and by designating some of these areas as environmentally sensitive in accordance with the State Environmental Policy Act (SEPA).⁷ The geotechnical evaluation and addendum letter was prepared under the pre-identified portions of the northern 1/3 of the property with slopes with inclinations of 40%, which would be considered landslide hazard areas under BMC 20.14.100. As designed, the proposed application would not adversely impact the slopes on site or an adjacent property. The Wetland Delineation report identifies a Type

⁷ The Wetland Delineation Report and Buffer Modification Proposal was dated November 17, 2004 and prepared under the previous Chapter 21.22 (Critical Lands Ordinance). Ord. 4950 § 1 (effective December 13, 2005) re-codified Chapter 21.22 (Critical Lands Ordinance) as Chapter 20.14 (Critical Areas). The application was received on January 25, 2006 and deemed complete January 31, 2006. This decision uses the new Chapter 20.14 citations. *Exhibit A-1 (Application); A-8; A-12.*

II and a Type III wetland on site, as well as a type III stream. The proposed application has been reconfigured to avoid the on-site wetlands. A proposed entry road would be constructed in the southern portion of the property within approximately 20 feet of the Type III wetland buffer. BMC.20.14.220(c) allows for buffer modifications. The wetland mitigation plan in the GeoEngineers' report would set aside a larger and more connected buffer area with the preserved buffer onsite exceeding the required buffer area by nearly 1 acre. The wetland mitigation plan would expand the wetland and stream buffer in the northern portion of the property to protect the steeply sloping area, connect the two wetlands, plant cedars along the stream corridor, plant grass strips along interior roads, and install beams, signage and fencing in selected areas to limit intrusions. The proposed application is consistent with the City of Bremerton's critical areas ordinance requirements. *Exhibit A, Staff Report, pp. 7 and 8; A-7; A-8. BMC.20.14.220(c).*

29. BMC 20.50.030 exempts single family residential development from landscaping requirements. *Exhibit A, Staff Report, p. 7. BMC 20.50.030.*
30. BMC 15.04.042(C)(10) requires all development projects to conduct an analysis of off-site water quality impacts resulting from the project requires mitigation of these impacts. A hydrological analysis was prepared by Map, Ltd dated March 25, 2005. This report identified a west and east basin area, as well as a small south basin at the entrance to the proposed project. The west basin would drain to approximately 300 feet of 10-foot diameter detention pipe with water quality treatment provided by a Vortechincs Model 1000 vault. Stormwater discharge would take place from the west basin to a ravine located in the north central portion of the site, draining off-site to the north. The east basin would drain to a detention pond located at the northeastern portion of the site with water quality treatment provided by another Vortechincs vault. Discharge would also be to the ravine. The south basin would drain to approximately 300 feet of 4-foot diameter detention pipe to a third Vortechincs vault and then to the wetland located in the southeast portion of the site, which drains off-site to the north. The proposed application is consistent with the City's stormwater requirements. *Exhibit A, Staff Report, p. 9; A-6, pp. 4 and 5. BMC 15.04.042(C)(10).*
31. Under BMC 15.02 and 15.03, City water and wastewater service is conditionally available to new developments. This project relies on an 8-inch water main in the Sylvan Way right-of-way and a 20' sewer easement to the west of the property. The City of Bremerton's Public Works and Utilities issued a Conditional Water and Sewer Availability on August 14, 2001. An extension to the water main and sewer line will be required. *Exhibit A, Staff Report, p. 9; A-4. BMC 15.02 and 15.03.*
32. A detailed street lighting plan will be required to be submitted and approved by the City Engineer to comply with street lighting requirements under BMC 11.12.130 and 11.12.200. *Staff Report, p. 9. Exhibit A-1 (Pre-Submittal Report).* All private streets will be required to meet the City of Bremerton Engineering Standards per BMC Title 11. A curb, gutter, and sidewalk would be required on both sides of the street with some site

discretion by the Director of Public Works. *Exhibit A, Staff Report, p. 9. BMC 11.12.110(b).*

33. All proposed development would be required to meet the City of Bremerton's Fire Code, BMC Chapter 18.02, and noise ordinance, BMC Chapter 6.32.
34. A Traffic Impact Analysis (TIA) was prepared by Heath & Associates dated September 2004. The TIA was performed using an earlier larger proposal of 52 units. Sylvan Way, an east-west two-lane road borders the south side of the project and dead-ends just to the west. Pine Road NE is a north-south two-lane roadway with transit service that lies to the east of the project. Wheaton Way is a north-south multi-lane road that lies further east of the project. The analysis concluded that the project would be a mild generator of new trips in the area. On a daily basis, an average of 368 total trip movements would typically enter and exit the site. Fairly heavy evening peak hour volumes presently exist along Wheaton Way. Future traffic created by the project would be expected to create minor increases in delay for the key intersection approaches, with intersection delays in the LOS B to LOS D range. Pedestrian/bicyclist volumes along nearby roadways is presently mild. No off-site mitigation for traffic is proposed. *Exhibit A, Staff Report, p. 10; A-9, pp. 6, 15-16.*
35. The City provided adequate notice of application, notice of SEPA threshold determination, and notice of public hearing by mailing, publication, and posting on-site, consistent with the requirements of BMC 20.02.100-.110. *Exhibit A-13 (Notice of Application with Affidavits of Posting, Mailing and Publication); A-30 (Notice of Public Hearing with Affidavit of Mailing).*

CONCLUSIONS

Jurisdiction

Pursuant to Sections 2.13.070, 2.13.080 and 20.02.040 of the Bremerton Municipal Code (BMC), the Hearing Examiner has jurisdiction to hold open record hearing on preliminary plat applications and Residential Cluster Development and to approve, approve with conditions, or deny the application. *BMC 2.13.110.*

Criteria for Review – Preliminary Plat

The criteria for approval of a Preliminary Plat are found in Chapter 58.17 of the Revised Code of Washington.⁸ Pursuant to RCW 58.17.110(2), a Preliminary Plat application may not be approved unless:

- (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation,

⁸ As of the date of this application, the City had not enacted a subdivision ordinance. *Exhibit A, Staff Report, page 4.*

playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and

- (b) The public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

Criteria for Review - RCD

The decision-making authority may grant a RCD only if it is found that:

- (1) The location, design, and uses are consistent with the goals and policies of the Comprehensive Plan, the Shoreline Master Program (when applicable), the City's development codes and other City plans and ordinances;
- (2) The residential development integrates with its surroundings and is designed to harmonize with existing or proposed development in the neighborhood;
- (3) The traffic generated by the development can be accommodated safely and within acceptable levels of service for affected streets;
- (4) All development will adequately be served by existing or planned facilities and services; and
- (5) The development makes adequate and appropriate provision for the preservation of the environment, both natural and manmade, and the conservation of energy.

BMC20.58.060(g)

Conclusions Based on Findings

- 1. **With conditions, the proposed application is consistent with RCW 98.17.110(2).**

A. **With conditions, the project would make appropriate provisions for public health, safety, and general welfare.** The project would provide dedicated open spaces including a nature trail. All runoff from new impervious surfaces would be collected, treated, and discharged consistent with City standards and drainage ways provided. All internal streets would be provided with street lighting and sidewalks. Transit is available on nearby Pine Road NE. The internal streets would connect to Sylvan Way. No traffic impacts requiring mitigation were found. Access to City sewer service and potable water mains are available and water and sanitary sewer service would be extended to each of the lots. The City has issued a Conditional Water and Sewer Availability determination. Conditions of approval would ensure that potable water main and sewage hookups to each lot would occur. Sidewalks would be constructed within the proposed development. No nearby school within walking distance was identified. The physical characteristics of

the site have been considered, including critical areas and such characteristics would not prevent development of the site as proposed. *Findings 8-9, 11, 18, 27, 29, 30-34.*

B. With conditions, the public use and interest will be served by the platting of the proposed subdivision. The project would develop land consistent with the City of Bremerton's Comprehensive Plan. The proposed lots would be consistent with the dimensional and other development standards of Bremerton Municipal Code. Conditions of approval would ensure compliance with the critical areas geologically hazardous areas and wetland/buffer standards. Over five acres of the site would be kept in open space. With conditions, the project would not have negative impacts on the on-site stream or wetlands or adverse water quality impacts downstream. The project was reviewed for compliance with SEPA and a DNS was issued. *Findings 2-3, 6-7, 19-28, 35.*

2. **With conditions the proposal is consistent with the provisions of BMC 20.58.060(g) for Residential Cluster Development (including the requirements for Low Density Residential zones).**

A. With conditions, the location, design, and uses are consistent with the goals and policies of the Comprehensive Plan, the City development code and other City plans and ordinances;

With conditions, the proposal will be consistent with the goals and policies of the Comprehensive Plan, the City development codes (R-10 development standards with allowed modifications through the RCD and the RCD development standards), Critical Areas Ordinance, Street and Road standards, Water and Wastewater and Stormwater requirements. Conditions of approval are necessary to ensure that the private roads will be developed consistent with Title 11 of the BMC; that water and wastewater services are developed consistent with Chapter 15.03; that wetland mitigation and monitoring will be consistent with the wetland mitigation, monitoring and contingency Plan (Exhibit A-8); and that stormwater drainage will be consistent with the recommendations in the geotechnical report (Exhibit A-6). *Findings 2-3, 6-9, 11, 18-35.*

B. The residential development integrates with its surroundings and is designed to harmonize with existing or proposed development in the neighborhood;

BMC 20.60.065 requires compatible levels of density within existing neighborhoods. The intent is to allow infill residential development at densities equal to or slightly higher than existing residential densities in the vicinity, to encourage neighborhood compatible infill over time. The Code establishes maximum densities for neighborhood average lot areas. This proposed application falls within the average lot area for a maximum six dwelling unit per acre compatibility density. Therefore, the proposal for five dwelling units per acre is compatible with the surrounding neighborhood and designed to be harmonious with existing or proposed development. *Findings 23-25, 27.*

C. The traffic generated by the development can be accommodated safely and within acceptable Levels of Service for affected streets;

A traffic impact analysis was prepared by the Applicant and reviewed by the City Engineer. The proposed application meets acceptable Levels of Service for affected streets without mitigation. *Findings 27, 34.*

D. The development will adequately be served by existing or planned facilities and services.

A Conditional Water and Sewer Letter was issued by the City of Bremerton on August 14, 2001 and hookup to existing City water and sewer lines would be required. *Finding 31.*

E. With conditions, the development makes adequate and appropriate provision for the preservation of the environment, both natural and man-made, and the conservation of energy.

The proposed application has been reduced from 52 to 44 lots to provide adequate provisions for the preservation of the environment and the conservation of energy. An expanded buffer area in the northern portion of the property would be provided. This buffer will include a relatively steep vegetated slope on the northeast portion of the property. The proposal contains 5.42 acres of open space with pedestrian connectivity through nature trails. The proposed houses would meet state energy codes and the lot orientation would allow for a south facing side for solar energy. Conditions of approval are necessary to ensure that a final Open Space Plan will be provided. *Findings 2-8, 10-13, 16, 18-19, 28-31, 34-35.*

DECISION

Based upon the preceding Findings and Conclusions, the request for approval of a preliminary plat and an 11.21 acre Residential Cluster Development (“RCD”) site to develop a 44 lot RCD (22 two-story detached housing units in the westerly portion and 22 two-story attached townhouses in the easterly portion) with 88 on-site parking stalls (garage and driveway), 49 accessory parking stalls and 5.42 acres of open space is **GRANTED**, subject to the following conditions:

1. Approval of the Residential Cluster Development constitutes an overlay to the underlying zone and allows modification to development standards.
2. Approval of the Residential Cluster Development is limited to only those designs and standards specifically indicated in the application.
3. All perimeter lots shall meet a 15’ minimum rear yard setback.

4. Screening from surrounding properties for community utility, trash and outdoor storage facilities shall be provided per BMC 20.58.060(f)(6).
5. A Final Open Space Plan with monitoring, maintenance and guarantees are required with the Final Plat submittal. The Open Space Plan shall identify all improvements, environmentally sensitive areas, significant trees pursuant to Chapter 20.50 BMC and other vegetation to be preserved. A management plan outlining maintenance responsibility shall be included as part of the plan.
6. Development shall comply with Zipper Zeman Associates recommendations, found on pages 4 – 11 of Exhibit A-7 including:
 - a. Surface runoff shall not flow onto site slopes
 - b. Storm runoff shall be directed to an approved stormwater receptor and shall be controlled and not allowed to flow over the slope crest and down the slope face
 - c. Earthwork activities shall be completed during extended periods of dry weather
 - d. Temporary cuts in the firm native soils be limited to inclinations of 1H:1V or shallower
 - e. Permanent cut and fill slopes shall be constructed no steeper than 2H:1V
 - f. The fill must be compacted throughout the entire slope, including the slope face. Where fill is placed on existing sloped ground, a “benched” (8’ with 2-4’high) grand-and-fill is required
 - g. In pavement areas, the upper 2’ of structural fill should be compacted to at least 95% of the maximum dry density, with flow below 2’ compacted to at least 92% of the maximum dry density
 - h. All footings shall be founded on the native medium dense to dense sand, stiff to hard silt, or on compacted structural fill that extends down to competent materials, or further evaluation and approval is required from the geotechnical engineer
 - i. Perimeter-footing drains with cleanouts shall be installed around residential structures
 - j. Best Management Practices shall be implemented
 - k. All bare soil area shall be planted, hydroseeded, or mulched with temporary erosion protection until vegetation has been re-established.
 - l. Erosion control shall be in compliance with City Municipal Code requirements
7. Development shall comply with GeoEngineers Wetland Mitigation, Monitoring Plan and Contingency Plan (Exhibit A-8). Monitoring is required at least once per year for three year, with a copy of the monitoring report submitted to the Department of Community Development on an annual basis.
8. A hydraulic permit is required from Washington State Fish and Wildlife prior to construction of the bridge. The bridge shall be constructed to handle a fire engine and ladder truck.
9. The applicant is responsible to comply with all Federal and State laws pertaining to Archaeological and Historical Preservations, including RCW 27.44 and 27.53.

10. The Washington Department of Natural Resources (DNR) requires approval of a Forest Practice IV – General application prior to clearing the site. A copy of DNR’s approval of the Forest Practice application shall be submitted to the City before beginning work to clear the site.
11. All frontage improvements shall comply with BMC 11.12.110. Detailed street improvement plans shall be submitted and approved by the City Engineer prior to Final Plat approval.
12. Development shall comply with BMC Title 11, City Street Standards, including curb, gutter, and sidewalks.
13. Development of the water and wastewater service shall be completed in accordance with BMC 15.02 and 15.03, APWA/DOT Specifications, and AWWA Standards, including extending the water and wastewater service mains. Detailed Utility plans shall be required to be submitted and approved by the City Engineer prior to Final Plat approval.
14. A detailed street lighting plan shall be submitted and approved by the City Engineer prior to Final Plat approval if required BMC 11.12.200.
15. The applicant shall obtain addresses from Public Works, which shall be delineated on the Final plat.
16. Fire hydrants with flows meeting International Fire Codes shall be installed or bonded for prior to finalizing Planned Plat. Location of the fire hydrants shall meet International Fire Code requirements and the Fire Marshall’s comments. If bonding is used, the fire hydrants shall be installed prior to any construction above the foundation.
17. Fire sprinkler systems are required in each house if the dead end is over 500’ long. These systems shall meet NFPA 13R requirements.
18. Fire sprinklers are required for all buildings with 5 or more units.
19. Development must comply with BMC 6.32, Noise Ordinance.
20. Access shall be maintained to abutting properties with legal access rights.
21. A Final Plat meeting applicable development standards and conditions shall be submitted to the City for approval within five years of the date of preliminary plat approval.
22. Ten (10) feet of trees shall be preserved as a buffer along the east-west property line. The Owner/Applicant shall construct a ~~ten~~ six-foot chain link fence with slats and/or landscaping along the Reymont side of the fence. This condition shall be enforceable as a private agreement. *(Note: Condition corrected on 7-14-06 by Hearing Examiner).*

23. Owner/Applicant shall place a fence along the west property line from the southwest corner of Lot 16 to the northwest corner of Tract "W" (along the Chittenden property). This condition shall be enforceable as a private agreement.
24. Owner/Applicant shall place a fence along the north property line from the northwest corner of tract "W" to the northwest corner of tract "M." This condition shall be enforceable as a private agreement.
25. Owner/Applicant shall comply with the Bremerton Municipal Code regarding installing of a Sewer Lift Station which shall be granted over to the local sewer district.
26. The agreement between the Sylvan Meadows, LLC (Reymont Homeowners Association), and Angus and Nancy MacDonald dated June 24, 2006 shall be recorded with the County and referenced on the face of the final plat.

Decided this 14th day of July 2006.

Corrected
Conclusion
22 only

DRISCOLL & HUNTER
Hearing Examiners for the City of Bremerton
By:

TPH

Theodore Paul Hunter