

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

In the Matter of the Application of)	No. BP09-00026
)	
Port Washington Park, LLC)	Port Washington Park
)	
)	
For a Preliminary Plat and)	FINDINGS, CONCLUSIONS,
<u>Residential Cluster Development</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat and residential cluster development to subdivide approximately 6.39 acres into 38 lots on property located on the south side of Sylvan Way opposite Sulphur Springs Lane, in Bremerton, Washington is **APPROVED**. Conditions of approval are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD

Request:

Bill Broughton, on behalf of Port Washington Park, LLC, requests a preliminary plat and residential cluster development to subdivide 6.39 acres into 38 lots. The property subject to the request is located on the south side of Sylvan Way opposite Sulphur Springs Lane, in Bremerton, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on April 23, 2012. The Hearing Examiner continued the open record hearing until May 21, 2012, to receive and consider additional evidence and testimony from the Applicant and the City concerning fire sprinklers, street trees, and a boundary line adjustment that would impact open space provided within the subdivision.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Bill Broughton, Applicant Representative
Allison Daniels, City Planner
Michael Six, Bremerton Fire Marshal
Paul Wandling, P.E., City Public Works

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Exhibits:

The following exhibits were admitted into the record:

1. Project Narrative, received April 8, 2010
2. Section of City Zoning Map, received April 8, 2010
3. Preliminary Subdivision Application, received April 8, 2010
4. Preliminary Residential Cluster Development Application, received April 8, 2010
5. Density Calculation, received April 16, 2009
6. Water & Sewer Availability Letter, dated April 4, 2012
7. SEPA Checklist, received April 8, 2010
8. Hydrologic Analysis, received April 16, 2009
9. Geotechnical Report, received January 28, 2010
10. Plat Map, received August 25, 2011
11. Setback Analysis Spreadsheet, received August 25, 2011
12. Determination of Completeness, received June 21, 2010
13. Notice of Application and SEPA Determination with Affidavit of Posting, Mailing and publication, received June 25, 2010
14. Revised Notice of Application and SEPA Determination with Affidavit of Posting, Mailing and publication, received February 16, 2012
15. Comment letter from Kitsap County Assessors, received February 28, 2012
16. Comment letter from Fish and Wildlife, received March 19, 2012
17. Email from Ron Krell, received March 5, 2012
18. Determination of Non-Significance with Notice and Mailing, received April 2, 2012
19. Notice of Public Hearing with Notice and Affidavit of Posting & Mailing, received April 9, 2012
20. Staff Report, received April 11, 2012
21. Example of Hold Harmless Agreement, received April 11, 2012
22. Letter from Ronald Krell, dated April 14, 2012
23. Letter from William H. ("Bill") Broughton, Broughton Law Group, Inc., P.S., dated April 19, 2012
24. Plat/RCD of Port Washington Park, Proposed Boundary Line Adjustment, dated April 2012
25. Plat/RCD of Port Washington Park, Proposed Revisions, dated April 2012, and Application for Preliminary Plat Subdivision (Revised), received April 30, 2012
26. Residential Cluster Application (Revised), received April 30, 2012
27. Boundary Line Map, received May 1, 2012
28. City Department of Community Development Addendum to Staff Analysis and Conclusion, dated May 11, 2012

The Hearing Examiner enters the following Findings and Conclusions based upon the exhibits admitted at the open record hearing:

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FINDINGS

Application and Notice

1. Bill Broughton, on behalf of Port Washington Park, LLC (Applicant), requests a preliminary plat and residential cluster development (RCD) to subdivide 6.39 acres into 38 lots. The property subject to the request is located on the south side of Sylvan Way opposite Sulphur Springs Lane, in Bremerton, Washington.¹ Mr. Broughton testified that he is a member of Port Washington Park, LLC. *Exhibit 25; Exhibit 26; Testimony of Mr. Broughton.*
2. The Applicant submitted an initial preliminary plat and RCD application on April 8, 2010 for subdivision of approximately 7.46 acres into 38 lots. *Exhibit 3; Exhibit 4.* The City of Bremerton (City) determined the application was complete on June 21, 2010.² *Exhibit 12.* On February 17, 2012, the City published notice of the preliminary plat and RCD application in *The Kitsap Sun*; posted notice of the application on the subject property; and mailed notice to the Applicant, City departments, agencies, interested parties, and owners of property within 300 feet of the subject property. *Exhibit 14.* On April 9, 2012, the City posted notice of the open record hearing associated with the application on the subject property. On April 11, 2012, the City mailed notice of the hearing to the Applicant, City departments, agencies, interested parties, and owners of property within 300 feet of the subject property. *Exhibit 19.* At the April 23, 2012 open record hearing, Allison Daniels, City Planner, testified that she would provide additional notice of the May 21, 2012 continued hearing with attached Plat/RCD of Port Washington Park, Proposed Boundary Line Adjustment, dated April 2012 (Ex. 24). The City received a revised preliminary plat and RCD application on April 30, 2012. The amount of land to be subdivided was reduced in the revised preliminary plat and RCD application from approximately 7.46 acres to approximately 6.39 acres. *Exhibit 25; Exhibit 26; Testimony of Ms. Daniels.*

State Environmental Policy Act (SEPA)

3. The City acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), Ch. 43.21C RCW. The City determined that the proposal would not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance (DNS) on April 2, 2012. *Exhibit 18.* The DNS was not appealed. *Exhibit 20, Staff Report, page 1.*

¹ The property is identified by parcel numbers 032401-4-030-2000. *Exhibit 25; Exhibit 26.* A legal description is provided in the residential cluster development (RCD) application. *Exhibit 26.*

² The Applicant first submitted a preliminary plat and RCD application on April 8, 2010 requesting subdivision of approximately 7.46 acres into 38 lots. *Exhibit 3; Exhibit 4.*

City Comprehensive Plan and Zoning

4. The subject property is designated Low Density Residential (LDR) under the City Comprehensive Plan. *City of Bremerton Land Use Map (effective 2006)*. The City of Bremerton adopted its Comprehensive Plan pursuant to the Growth Management Act (GMA), RCW 36.70A. *City Comprehensive Plan, Intro-4*. The LDR designation calls for low-rise, detached single-family housing compatible with the surrounding neighborhood, including zero-lot line housing. The policy direction for the LDR designation is to protect the character of single-family neighborhoods by infilling at compatible densities and focusing higher intensity land uses in designated centers and corridors. *City Comprehensive Plan, Land Use Designations, page LU-47*.
5. Comprehensive Plan Land Use Element goals and policies relevant to the proposal³ call for identification of distinctive neighborhoods, communities and centers; the promotion of neighborhoods that foster interaction, promote well-being, and create and sustain community and personal safety; creation of an environment that will promote growth, with development incentives and flexibility for desirable design elements; provision for neighborhood walk-ability, with street design and orientation that encourages pedestrian and bicycle use; and planning for expected population growth within the Urban Growth Area for the next 20 years. *Comprehensive Plan, Land Use Element, pages LU-28, LU-30, and LU-42*. Comprehensive Plan Housing Element goals and policies relevant to the proposal call for provision of a variety of housing types and densities, with housing for all incomes, ages and family types; building strong, cohesive neighborhoods where a majority are home-owners; and promoting safe, attractive, livable neighborhoods that will attract homeowners. *Comprehensive Plan, Housing Element, pages HS-13, HS-16, and HS-17*.
6. The subject property is located within the City's Low Density Residential (R-10) zoning district. *Exhibit 2*. 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. *Bremerton Municipal Code (BMC) 20.60.010*. Development of single-family detached dwelling units and single-family attached (zero lot line) dwelling units is allowed within the R-10 zoning district. *BMC 20.60.020(i) and (j)*.⁴

³ City staff identified Comprehensive Plan Land Use Element Goals LU1, LU3, LU4, and LU20 and policies LU1K, LU3E, and LU4C as relevant to the proposal. City staff also identified Housing Element Goals H3, H6, and H7 and policies H3C and H6A as relevant to the proposal. *Exhibit 20, Staff Report, page 3*.

⁴ The proposed preliminary plat map for the development depicts proposed Lots 1, 2, 4, 5, 6, and 7 as "townhouse" parcels. *Exhibit 10*. The revised RCD application states proposed lots would be developed with 26 two-bedroom dwellings and 12 three-plus bedroom dwellings. *Exhibit 26*. Allison Daniels, City Planner, testified that BMC 28.20.060(d)(7) allows for development of different types of housing, including townhouse lots, but that the

7. The minimum required density in the R-10 zoning district is five dwellings per acre (du/ac), and the maximum density is determined according to neighborhood compatibility, the neighborhood average lot area, and target densities identified within the Bremerton Municipal Code. *BMC 20.60.065*. The Applicant's density calculations state that the neighborhood average lot area is approximately 8,452 square feet in size. *Exhibit 5*. The target density for the average lot size is 6 du/ac. *BMC 20.60.065(b)(1)*. As described within the revised preliminary plat application,⁵ the subject property would be developed at a density of approximately 5.95 du/ac.⁶ *Exhibit 25*.

Residential Cluster Development (RCD)

8. A RCD may be applied to all subdivisions as permitted in Ch. 20.12 BMC. *BMC 20.58.060(b)*. The maximum and minimum density of the underlying zone applies, and unbuildable critical areas may be included in the area for calculating density. *BMC 20.58.060(d)(1)*. Minimum lot size may be reduced to below 2,500 square feet, provided all lots are buildable and additional open space is provided in accord with *BMC 20.58.060(d)(2)*. Except for a setback a minimum of ten feet wide from all perimeter property lines, all other setbacks may be modified to encourage innovative site design. *BMC 20.58.060(2) and (3)*. Total development coverage is limited to 50 percent of the total site area including open space, and each RCD shall provide a minimum of 20 percent of the gross site area for common open space, set aside on separate tracts. *BMC 20.58.060(5) and (8)*. The intent of the residential cluster development (RCD) is to accommodate urban densities of the underlying zoning district while allowing residential development to utilize less land area. These provisions aim to allow greater flexibility in the design of subdivisions to ensure development is in harmony with the natural

application states only single-family housing will be developed. Ms. Daniels testified to propose a condition of approval that any reference to the word "townhouse" on Lots 1, 2, 4, 5, 6 and 7 be removed from the plat map, as the City recommends approval only for 38 single-family dwelling units as stated in the revised application (Ex. 25 and 26). *Testimony of Ms. Daniels*.

⁵ As proposed in the initial preliminary plat and RCD applications, the subject property was 7.46 acres in size. A proposed boundary line adjustment (BLA) of 1.07 acres would decrease the area to be subdivided to 6.39 acres. A letter dated April 19, 2012 from William ("Bill") Broughton states that the proposed BLA would be executed with the DJM Construction Company, which owns adjoining property to the south of the proposed plat. The letter states the BLA would not result in exceeding the maximum allowed development density or failure to meet the City code open space requirement, and that conditions imposed on the preliminary plat would not be applicable to the property transferred to DJM Construction Company through the BLA. A diagram (Ex. 27) shows the proposed BLA would impact the west portion of the subject property by reducing the amount of property frontage along the east side of Tracyton Beach Road. Ms. Daniels proposed a condition of approval that approval of the final plat be contingent upon the Applicant's recording of the proposed BLA. Ms. Daniels proposed an additional condition of approval that the Applicant shall record the proposed BLA with the Kitsap County Assessor no later than December 31, 2012, and the BLA shall be consistent with Exhibit no. 24. *Exhibit 23; Exhibit 24; Exhibit 25; Exhibit 27; Testimony of Ms. Daniels*.

⁶ The calculation is: 38 single-family dwelling units / 6.39 ac = 5.95 du/ac.

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characteristics onsite and to preserve features such as critical areas, open space, recreation areas, or scenic vistas. *BMC 20.58.060(a)*.

9. The proposed plat would contain approximately 131,409 square feet of open space, which translates to approximately 47.2 percent of the plat area. Active open space area would be approximately 30,695 square feet in size, and passive open space, including steep slope and shoreline areas, would be approximately 100,714 square feet in size. According to the City Addendum to Staff Analysis and Conclusion, individual proposed lots would contain setback areas that would add area without development coverage, and the proposed development coverage area would not exceed 50 percent of the total site area. *BMC 20.58.060(d)(2)* requires an additional 10 percent of permanently protected open space beyond the 20 percent gross site area minimum to reduce minimum lot size below 2,500 square feet. As proposed, four lots would be less than 2,500 square feet in size, with the smallest lot proposed to be 2,100 square feet in size. As depicted, all lots would exceed the minimum 30-foot lot width required under *BMC 20.60.060(a)(4)*. As proposed, lots would include 20-foot wide front yard and 10-foot wide side and rear yard perimeter setbacks. *Exhibit 10; Exhibit 20, Staff Report, page 4; Exhibit 24; Exhibit 25; Exhibit 26; Exhibit 28.*

10. The western portion of the subject property contains steep slopes and shoreline. Tracyton Boulevard runs north-south and bisects the subject property in the western portion of the property. Approximately 0.29 acres of proposed plat area are located west of Tracyton Boulevard along the Port Washington Narrows shoreline. As depicted, the 0.29-acre area of proposed plat would be preserved as open space. The City Addendum to Staff Analysis and Conclusion states that plat development is proposed approximately 450 feet inland of the Port Washington Narrows ordinary high water mark (OHWM), and that only the area located within 200 feet of the OHWM is governed by the City's Shoreline Master Program. Ms. Daniels proposed a condition that approval of the final plat be contingent upon the area within the City's shoreline jurisdiction remain as open space, and that approval of the plat would not include approval for shoreline development. If proposed for development, additional permitting would be required for shoreline compliance. Bill Broughton, Applicant Representative, testified that the condition of approval should not be imposed. Ms. Daniels responded that it need not be a condition, but that decision findings should include confirmation that there is no approval of development within the City shoreline jurisdiction. *Exhibit 10; Exhibit 24; Exhibit 25; Exhibit 28; Testimony of Ms. Daniels; Testimony of Mr. Broughton.*

11. *BMC 20.58.060(d)(6)* requires two off-street parking spaces for each residence, but allows deviations to modify setbacks; to apply parking to the entire site rather than to individual lots; to place parking tracts in easily accessible locations; and to clearly mark designated parking spaces. The City staff report states that these deviations are allowed if the alternative parking would provide better site design and would provide clear

benefits to residents. The City staff report also states that site topography, open space protection, and narrower streets proposed within the plat would not provide sufficient room for standard parallel on-street overflow and guest parking. The revised RCD application states that the plat would provide for 23 off-street guest parking spaces and 76 parking spaces within garages. The City Staff Report, issued before receipt of the revised RCD application, states that the plat would provide for 27 on-street parking spaces, including 13 angled back-in stalls along Sylvan Way; eight stalls along the east side of the lower road within the proposed subdivision near the proposed open space; four parallel stalls along the east side of the upper road within the proposed subdivision; and two stalls on the south side of a roadway extension near Lot 12. The Staff Report states the 10-foot wide setback from the property perimeter would be reduced to accommodate for on-street parking demand to benefit residents and provide for better design due to site constraints, and that proposed parking satisfies City parking requirements. *Exhibit 20, Staff Report, pages 5 to 6; Exhibit 26.*

Access, Traffic Impacts, and Surrounding Property

12. Access to the proposed plat would be provided through Sylvan Way, which is located adjacent to the north of the subject property. As depicted on the proposed preliminary plat map, Road Tract A would extend west and south through the subdivision to provide access to proposed lots. Road Tract A is labeled “Private Roads” on the proposed plat map. The proposed plat map depicts sidewalks along both sides of the roadway within Road Tract A. Mr. Broughton testified that a condition of approval is needed to address street maintenance by a homeowners association or transfer to public ownership. Ms. Daniels proposed a condition of plat approval that all streets within the plat shall be maintained by a homeowners association or transferred to public ownership, and if not transferred, a homeowners association shall be formed consistent with applicable laws prior to final plat approval. The City staff report states that if private, the road tract shall provide adequate “No Parking” signs to ensure adequate fire department turn-around area is available at all times, and that if private, a road maintenance agreement for the private street shall be recorded and included in the covenants, conditions and restrictions governing the plat, prior to final plat approval. *Exhibit 10; Exhibit 20, Staff Report, page 9; Testimony of Mr. Broughton; Testimony of Ms. Daniels.*

13. Paul Wandling, P.E., City Public Works, testified that proposed development would result in approximately 395 vehicle trips per day on the surrounding road system. Mr. Wandling testified that the vehicle trips generated by proposed development would not exceed two percent of baseline traffic, as determined by the City Engineer, and that Sylvan Way would continue to experience low traffic volumes following development of the proposed plat. Mr. Wandling added that there is sufficient spacing between each of two subdivision entry/exit driveways along Sylvan Way. *Testimony of Mr. Wandling.*

14. Port Washington Narrows is located west of the subject property. Single-family residences are located to the north and south of the property. A church is also located to the north. Undeveloped land is located to the south and east. Surrounding property in all directions is located in the City's R-10 zoning district. *Exhibit 2; Exhibit 20, Staff Report, page 2.*

Critical Areas and Landscaping

15. The subject property is currently undeveloped. The site slopes from the southwest to a high point in the northeast portion of the parcel, with a total elevation change of approximately 125 feet. The west portion of the property contains slopes of greater than 40 percent grade with vertical relief greater than 10 feet high. Areas with slopes greater than 40 percent grade with vertical relief of 10 or more feet are defined as areas of high geologic hazard under the City critical areas ordinance. *BMC 20.14.620(a)(1)*. Under the City critical areas ordinance, no construction of a structure or other impervious surface is allowed within 50 feet of the top and toe of slope in a high geologic hazard area, unless modifications supported by a geotechnical report are approved. *BMC 20.14.630(a)(1)*. In addition, native vegetation shall be in place from the toe of the slope to 25 feet beyond the top of slope, unless modifications supported by a geotechnical report are approved. *BMC 20.14.630(a)(2)*. A Geotechnical Engineering Study, dated January 21, 2010 and prepared by Aspect Consulting, states that the slope is sufficiently stable to allow construction of the proposed development and that structures set back 35 to 50 feet from the top of the natural steep slope areas are also sufficiently safe and will not impact the lower slope. Aspect Consulting concluded that the proposed project is feasible from a geotechnical perspective, as long as report recommendations are incorporated in design and construction. *Exhibit 9; Exhibit 20, Staff Report, page 7.*
16. All new development is subject to Ch. 20.50 BMC landscaping requirements. *BMC 20.50.020*. *BMC 20.50.040* and *BMC 20.50.050(a)(1)* require landscaped front yard setback areas; street trees along public and private streets at a standard of one tree for every 25 linear feet of street frontage, unless otherwise required by *BMC 20.50.050(c)*; and preservation of existing vegetation on undeveloped portions of property, excluding noxious weeds and invasive species. An alternative landscaping plan may be approved, provided the City finds there is public benefit and the total area of landscaping shall be equal to or exceed that created by adherence to the standard landscaping and buffer requirements. *BMC 20.50.040(f)(2)*. Ms. Daniels proposed a condition of approval that a total of 98 street trees shall be planted prior to final plat approval in a manner consistent with *BMC 20.50.040(f)*, approved prior to final plat approval. A letter from William H. ("Bill") Broughton, dated April 19, 2012, stated the property being developed is view property, including views of the Washington Narrows, the Bremerton Yacht Club, and the Olympic Mountains. He requested that no view blocking trees be required in areas where the view would be blocked by trees. Mr. Broughton testified to express concern that otherwise required street trees would negatively impact views from subdivision lots,

and requested the opportunity to submit an alternative landscaping plan for City review. *Exhibit 23; Testimony of Ms. Daniels; Testimony of Mr. Broughton.*

Utilities and Services

17. The Hydrologic Analysis for Port Washington Park, dated January 5, 2009 and prepared by Tim G. Wallis, P.E. of MAP Ltd., states stormwater runoff from proposed development would be collected and managed through existing sanitary sewer and storm sewer conveyance systems located at the subject property's south boundary. The existing closed conveyance systems are currently stubbed out to the property's south boundary. Permeable pavement would be used for internal subdivision roads and driveways to minimize stormwater runoff. Water quality would be ensured through use of a Stormwater Management Stormfilter. All on-site stormwater runoff from the proposed development and a portion of upstream runoff would be collected and conveyed through the existing systems to the Washington Narrows for direct discharge. The Hydrologic Analysis states that existing systems have sufficient capacity to manage stormwater from proposed development and upstream runoff, there are currently no downstream flooding problems, and no flooding problems are expected to occur as a result of proposed development. *Exhibit 8.*

18. The City of Bremerton has facilities and adequate capacity and supply to provide sewer and water service to the proposed development. Water service is conditionally available within an easement running north-south on the subject property, with a required main relocation and main extension. A sewer main extension would also be required. Wastewater sewer service is conditionally available at the man hole located on the south boundary of the subject property. The City staff report states utility access easements are required for review and approval prior to final plat approval, and such easements shall be recorded and shown on the face of the final plat. *Exhibit 6; Exhibit 20, Staff Report, page 9.*

19. City Fire Marshal Michael Six testified that all residences within the subdivision will require fire sprinklers due to a potential access problem to the dwellings within the proposed plat. The City staff report included Fire Department comment that fire sprinklers are required due to site constraints such as road slope, reduced access, and private road length. A letter from William H. ("Bill") Broughton, dated April 19, 2012, expresses concern that there is no rationale for requiring fire sprinklers and that a sprinkler requirement is not supported by law. At the hearing, Mr. Broughton proposed a condition of approval that fire sprinklers may be required for each home, which shall be determined at the time of building permit review. Ms. Daniel testified that the determination at the time of building permit review should be made by the City Fire Marshal. *Exhibit 20, Staff Report, page 10; Exhibit 23; Testimony of Fire Marshal Six; Testimony of Mr. Broughton.*

20. The City staff report states the City mailed notice of proposed development to Kitsap Transit and Bremerton School District, but neither agency submitted comment on the proposal. Mr. Wandling testified that safe walking conditions to a bus stop approximately one-quarter mile from the subdivision are provided along a gravel shoulder adjacent to Sylvan Way. Mr. Wandling testified that the gravel shoulder would be wide enough for safe pedestrian access because traffic volumes along Sylvan Way would be low. Mr. Wandling added that the proposed development would include improvements along its Sylvan Way frontage. *Exhibit 20, Staff Report, page 12; Testimony of Mr. Wandling.*

Public Comment

21. Ronald Krell, President of the Reymont Homeowners Association, sent an email dated March 5, 2012, expressing concern that the City formal comment period be extended until a complete file including changes requested by the City on June 21, 2011 is included in the request; proposed parking along Sylvan Way would create a traffic hazard for Reymont development residents; community mailboxes and site-wide waste pickup without a designated area for pickup by Waste Management would also create a traffic hazard on Sylvan Way; and that adequate off-street parking cannot be provided within the development due to low lot widths. The email also expressed concern that stop signs be required at vehicle exit/entrances along Sylvan Way serving the proposed development; that hydrological impacts of proposed development are addressed; that the sewer system serving proposed development be identified as a gravity-flow or pumped system; that the existing sewer system to serve the proposed development has sufficient capacity; and that the lack of street lights along Sylvan Way would create unsafe walking conditions when it is dark. The email requested that plans for electricity, natural gas, cable television and telephone serving the subject property be made part of the record. *Exhibit 17.*
22. Ronald Krell submitted written comment, dated April 14, 2012, expressing concern whether the USPS will deliver mail to each household or require that communal mailboxes be employed, and concern whether Waste Management would pick up from individual homes or require pick up from common areas. Mr. Krell recommended pull-outs within the proposed development to avoid obstructing traffic while collecting mail from communal mailboxes, and delineation of common waste management areas on the face of the final plat. Mr. Krell also expressed concern that the proposed development would not provide two off-street parking spaces for each residence that are workable in practice, resulting in illegal street parking. *Exhibit 21.*
23. City staff responded in the City staff report that all proposed street and right-of-way design, including proposed back-in parking and street lighting, complies with BMC Title 11. According to the staff report, the City does not support illegal driving and the City Police Department can issue citations for that activity. All signage and channelization for

traffic controlling devices would need to comply with the current Manual on Uniform Traffic Control Devices (MUTCD). All garbage and recycling would need to comply with Ch. 6.04 BMC, and private utilities such as telephone, gas, and cable are provided by carriers and would need to comply with all state and City regulations for installation. *Exhibit 20, Staff Report, page 12.*

Staff Recommendation and Applicant Response

24. Ms. Daniels testified that City staff agrees with proposed plat revisions and additional conditions. Ms. Daniels testified that City staff recommends approval of the revised plat and RCD application, with conditions of approval as revised during the continued hearing. *Testimony of Ms. Daniels.* Mr. Broughton testified that the Applicant has read, understands, and agrees with proposed conditions, as revised. However, he also requested that a condition provide that an alternate landscape plan, without street trees, may also be approved. *Testimony of Mr. Broughton.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide preliminary plat requests. *Bremerton Municipal Code (BMC) 20.12.090(a)(2)(i).*

Criteria for Review

Preliminary Plat

The Hearing Examiner may approve a preliminary plat if it meets the following criteria established by the City Council in BMC 20.12.100:

- (a) The subdivision is in conformance with the Comprehensive Plan, Shoreline Master Program, and any other City-adopted plans;
- (b) Provisions have been made for water, storm drainage, erosion control and sanitary sewage disposal for the subdivision that are consistent with current standards and plans as adopted in City code or ordinance;
- (c) Provisions have been made for roads, utilities, street lighting, street trees and other improvements that are consistent with the zoning code and Engineering Standards;
- (d) Provisions have been made for dedications, easements and reservations;
- (e) The design, shape and orientation of the proposed lots are appropriate to the proposed use. In addition to meeting the minimum lot size density requirement, each residential lot must provide a building envelope. Therefore, corner lots, lots with easements, or lots with environmental constraints may have to be larger than other lots in the subdivision;
- (f) The subdivision complies with the relevant requirements of the zoning code and all other relevant local regulations;
- (g) Appropriate provisions are made to address all impacts identified by any special reports that have been prepared;

- (h) Appropriate provisions for maintenance and monitoring of privately owned common facilities have been made;
- (i) Appropriate provisions, in accordance with RCW 58.17.110, are made for:
 - (1) The public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys or other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds 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
 - (2) The public use and interest will be served by the platting of such subdivision and dedication.

BMC 20.12.100.

Residential Cluster Development

In accord with the Bremerton Municipal Code, the decision-making authority may grant a RCD only if it is approved concurrent with the approval of a subdivision. The RCD shall follow the same approvals and timelines as the concurrent subdivision application pursuant to Chapter 20.12 BMC, Land Division. *BMC 20.58.060(e).*

Conclusion Based on Findings

1. **With conditions, the proposed plat would comply with BMC 20.12.100.** The revised preliminary plat and RCD application, received April 30, 2012, is presented here for decision. The proposal is for development of detached, single-family residential dwellings on property in the vicinity of other single-family residential development, consistent with the property's LDR designation under the City Comprehensive Plan. Conditions are necessary to ensure installation of frontage improvements and street lighting, consistent with Comprehensive Plan Land Use and Housing Element goals and policies to create walk-able and safe neighborhoods. Safe walking conditions exist along Sylvan Way for travel to and from a transit stop in the vicinity of the proposed subdivision. Conditions are necessary to ensure coordination with Kitsap Transit and the Bremerton School District for siting sidewalks, bus stops and bus sheds prior to final plat approval, and coordination with the Postal Service for proper mail service prior to final plat approval. Proposed development would rely on existing storm drainage, water and sanitary sewer systems. The existing closed stormwater conveyance system has sufficient capacity and is stubbed out to the proposed subdivision's south boundary. Conditions are necessary to ensure installation of public water and sanitary sewer mains, recording of a Storm Drainage Maintenance Agreement, drafting of a Department of Ecology Stormwater Pollution Prevention Plan before construction plan approval, adequate fire protection, and recording of utility access agreements. As conditioned, provisions have been made within the proposed subdivision for roads, utilities, street lighting, and street trees consistent with the City zoning code and Engineering Standards. Proposed open space would provide space for active recreation and passive recreation.

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Conditions are also necessary to ensure adequate street maintenance. Traffic impacts of proposed development on the surrounding road system are insignificant. Proposed lots are appropriate for residential use and meet the minimum lot size density requirement for the City's R-10 residential zoning district. The slope area is sufficiently stable to allow construction of the proposed development and that structures set back 35 to 50 feet from the top of the natural steep slope areas are also sufficiently safe and will not impact the lower slope. The City acted as lead agency and determined that the proposal would not have any probable significant adverse environmental impact. The determination was not appealed. The City gave adequate notice of the application and opportunity to comment. *Findings 1 – 24.*

- 2. With conditions, the proposed project would comply with residential cluster development standards.** The subject property contains steep slopes, which limit developable area under the City critical areas code. The portion of the subject property that occurs within the City's shoreline jurisdiction would not be developed and would remain open space. The proposed plat would comply with development coverage area and open space requirements, including open space required to reduce lot size below 2,500 square feet. Either street trees may be required or the Applicant has the opportunity to submit an alternative landscaping plan for City review. The proposed plat would also include deviations from parking requirements in accord with City code. Conditions are required to ensure all new structures comply with City RCD Standards; all primary structures are built within the building envelope; and development is prohibited in open space areas. *Findings 1, 8 – 11, 16, 24.*

DECISION

Based upon the preceding Findings and Conclusions, a preliminary plat and residential cluster development to subdivide 6.39 acres into 38 lots on property located on the south side of Sylvan Way opposite of Sulphur Springs Lane, in Bremerton, Washington, is **APPROVED**, subject to the following conditions:⁷

1. All new structures must comply with the RCD standards and all primary structures must be built within the building envelope. The approval of the final plat does not constitute approval to construct a residence on any lot, or for any construction within the shoreline area. Application(s) for building permits that include site plan review from the City are required.
2. All driveways and areas used for loading, parking and maneuvering motorized vehicles shall have a paved surface.
3. The open space areas shall be restricted in perpetuity from further subdivisions and/or land development. This shall be recorded on the face of the plat.


⁷ Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

4. An Open Space Plan is required prior to Final Plat approval.
5. A total of 98 street trees shall be planted prior to final plat approval -- or an alternative landscaping implemented as approved by the City --- in a manner consistent with BMC 20.50.040(f) and approved prior to final plat approval.
6. Development shall comply with the recommendations within the Geotechnical Engineering Report prepared by Aspect Consulting dated January 28, 2010.
7. Prior to the issuance of any building permit a Notice to Title & Hold Harmless Agreement Shall be recorded at the Kitsap County Auditor's Office. This requirement shall be recorded on the Final Plat.
8. Department of Ecology Stormwater Pollution Prevention Plan is required prior to construction plan approval.
9. All storm drainage plans and requirements shall be provided prior to Final Plat approval.
10. A Storm Drainage Maintenance Agreement shall be submitted for review and approval prior to Final Plat approval. This agreement shall be recorded at the Kitsap County Auditors office and the Auditors File Number shall be referenced on the Final Plat.
11. Site Development Permit is required with the submittal of the site development plans prior to Final Plat approval.
12. Public water and sanitary sewer mains are required and shall be accepted by the Utility prior to Final Plat approval.
13. Public Right-of-Way shall be dedicated as shown on the Plat Map.
14. All frontage improvements shall be installed prior to Final Plat approval.
15. A Street Maintenance Agreement shall be submitted for review and approval prior to Final Plat approval. This agreement shall be recorded at the Kitsap County Auditors office and the Auditors File Number shall be referenced on the Final Plat.
16. The two proposed fire department turnaround area shall be clearly marked with "No Parking" signs to ensure adequate fire department turnaround area will be available at all times.
17. Public Street lighting shall be installed prior to Final Plat approval.
18. Utility access easements are required for review and approval prior to Final Plat approval and shall be recorded and shown on the face of the plat.
19. Address is required prior to Final Plat approval.

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20. Fire sprinkler systems may be required for each house, which shall be determined by the City Fire Marshal at the time of building permit review.
21. Fire hydrants and fire flow are required.
22. Prior to work on the site, documentation is required to verify that the work is in compliance with the Federal Bald and Golden Eagle Protection Act.
23. The developer shall coordinate with the Postal Service for proper mail service prior to Final Plat approval.
24. The developer shall coordinate with Kitsap Transit and Bremerton School District for the siting of sidewalks, bus stop and bus sheds prior to Final Plat approval.
25. Pursuant to BMC 20.12.170, subdivision shall be governed by the statutes, ordinances, and regulations in effect at the time of complete application for preliminary subdivision and will continue to be vested for a period of five (5) years after the final subdivision approval, or as established in RCW 58.17.140. This statement shall be included on the face of the plat.
26. All streets within the plat shall be maintained by a homeowners' association or transferred to public ownership. If not transferred, the homeowners' association shall be formed consistent with applicable laws prior to final plat approval.
27. Applicant shall remove any reference to "townhouse parcel" on Lots 1, 2, 4, 5, 6, and 7. Plat is approved for 38 single-family dwelling units as stated in the application (Ex. 25 and Ex. 26).
28. The Applicant shall record the proposed boundary line adjustment no later than December 31, 2012. The boundary line adjustment must be recorded with the Kitsap County Assessor and must be consistent with Exhibit No. 24.

Decided this 4th day of June 2012.


THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center

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