

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

In the Matter of the Application of)	No. BP13-00056
)	
Kurt Wiest, on behalf of the Bremerton Housing Authority)	Bay Vista Preliminary Plat Amendment
)	
<u>For a Preliminary Plat Amendment</u>)	FINDINGS, CONCLUSION, AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat amendment to revise the original plat to create 15 lots, open space and park within the Bay Vista Subdivision, on property located between Oyster Bay Avenue, Kitsap Way and State Route 3, in Bremerton, Washington is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on December 16, 2013.

Testimony:

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

Allison Daniels, City Senior Planner
Kurt Wiest, Executive Director of Bremerton Housing Authority, Applicant Representative

Exhibits:

The following exhibits were admitted into the record:

1. Hearing Examiner Decision for Preliminary Plat, dated July 10, 2009
2. 2012 Bay Vista Sub-Area Plan
3. Preliminary Plat Amendment Application and Narrative from Applicant, dated August 7, 2013
4. Original Preliminary Plat Map approval in 2009, dated November 12, 2013
5. Proposed Preliminary Plat Map (titled "Phase 5"), dated November 12, 2013
6. Preliminary Plat Map with Proposed Map Overlay, dated November 26, 2013
7. Adoption of Existing Environmental Documents, dated November 26, 2013
8. Notice of Application and Public Hearing with Affidavit of Mailing and Posting, and Classified Proof of publishing in Kitsap Sun, dated November 25, 2013
9. Resolutions from Previous Final Plat Approvals, dated May 2010 – Feb 2012

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10. Comment email from Ward Yohe, dated December 1, 2013
11. Receipt Payment from City of Bremerton for signal timing modification, dated October 5, 2011
12. Letter from School District, dated October 14, 2013
13. Letter from Health Department, dated November 24, 2009
14. Staff Report, dated December 10, 2013

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

FINDINGS

1. Kurt Wiest, on behalf of the Bremerton Housing Authority (BHA) (Applicant), requests approval of a preliminary plat amendment to create 15 lots, open space and a park within the Bay Vista Subdivision, on property located between Oyster Bay Avenue, Kitsap Way and State Route 3.¹ The request is governed by the Bay Vista Sub-Area Plan, under Section 20.80.040 of the Bremerton Municipal Code (BMC). *BMC 20.80.040; Exhibit 2; Exhibit 3; Exhibit 14, Staff Report, page 1.*
2. The Hearing Examiner approved the Bay Vista Subdivision Preliminary Plat on July 10, 2009. The subdivision created 1,007 lots on the 82 acre site. *Exhibit 1.* Four phases of the approved preliminary plat are complete and received final plat approval. *Exhibit 9.* These approved final plats would not be affected by the proposed plat amendment. The proposed plat amendment affects the remaining 11 acres that are not yet developed. *Testimony of Ms. Daniels.* Notice of the hearing on the proposed plat amendment was given by posting, publication and mailing. *Exhibit 8.*
3. Environmental review of the proposed plat amendment was conducted by the City of Bremerton (City) as lead agency under the State Environmental Policy Act (SEPA). A Final Environmental Impact Statement was approved on May 15, 2007. Two EIS Addenda were approved January 2009 and December 2012. The City adopted the existing environmental documents on November 26, 2013. *Exhibit 7.*
4. Development of the area affected by the proposed plat amendment is governed by the Bay Vista Subarea Plan. This plan was originally adopted in 2009, and was amended by the City Council in December 2012. The amendment made the following changes (summarized):
 - Provided flexibility for different housing types in the residential areas, the medium and low density zones have been combined as the Residential zone.

¹ The property is identified by parcel numbers 162401-4-085-2009, 162401-4-089-2005, 3748-001-013-0004, and 3748-001-014-0003. legal description is provided in the application and in the staff report. *Exhibit 3; Exhibit 14, Staff Report, page 1.*

- Combined Mixed-Use 1 and Mixed-Use 2 zones to simplify as Mixed-Use zone and relocated the zone from the properties adjacent to the highway to the current Subarea Plan location near the existing senior housing complexes. It was difficult to market residential adjacent to the highway.
- Expanded the Village Commercial zone to the properties that use to be zoned Mixed-Use 1 and Mixed-Use 2 adjacent to the highway.
- Created a Senior Housing zone for the existing senior housing buildings and neighboring lot. The neighboring lot does have land use approval and building plans for another senior housing complex (per BMC 20.46.090).
- As Periwinkle Park and Bay Vista Preserve was expanded in size to accommodate the land-fill gas mitigation for Periwinkle Park and instead of having pocket parks throughout the 82-acres, it was deemed appropriate for the proposed park acreage from the initial Planning Effort (West Park) be accommodated within the Bay Vista Preserve (instead of the pocket parks).

Exhibit 2.

5. The initial decision of the Bay Vista Subdivision in 2009 determined that the preliminary plat, with conditions, would be consistent with Comprehensive Plan and Zoning, as well as the criteria for review of plat proposals found in state statute (RCW 58.17.110) and city ordinance (BMC 20.12.100). *Exhibit 1.* The proposed plat amendments, if approved, would reduce the potential impacts on the environment and would not require any additional infrastructure improvements. The uncontroverted testimony of the City Planner is that the application to amend the preliminary plat meets all criteria for approval found in state statutes and local ordinances. Some conditions of preliminary plat approval applied in 2009 remain in effect. The Applicant should continue to be held accountable for these conditions. *Exhibit 3; Exhibits 4 – 6; Exhibits 10 – 13; Testimony of City Senior Planner Allison Daniels.*

CONCLUSION

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide preliminary plat requests. *Bremerton Municipal Code (BMC) 20.12.090(a)(2)(i).* The Hearing Examiner's approval is required after a public hearing for major amendment to a preliminary subdivision approval. *BMC 20.12.140.*

Criteria for Review

Preliminary Plat

The Hearing Examiner may approve a preliminary plat amendment 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;

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- (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.

Subdivision development within Washington is also governed by Revised Code of Washington (RCW) 58.17.100. RCW 58.17.110(2) states that a proposed subdivision shall not be approved unless:

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, 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 the public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

The criteria for review adopted by the Bremerton City Council are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with City development regulations, considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

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Conclusion Based on Findings

With conditions, the proposed plat would comply with the criteria for approval found in, BMC 20.12.100, RCW 58.17.110 and the Bay Vista Sub-Area Plan. The changes the applicant proposes in the amendment to the plat remain consistent with the Comprehensive Plan and City zoning and the criteria for approval found in state statute and city ordinance. Some conditions of approval remain in effect and should be applied to the approval of the plat amendment to help ensure they are implemented. *Findings 1 – 5.*

DECISION

Based upon the preceding Findings and Conclusion, the request for a preliminary plat amendment to create an additional 15 lots, open space and park within the Bay Vista Subdivision, on property located between Oyster Bay Avenue, Kitsap Way and State Route 3, in Bremerton, Washington, is **APPROVED**, subject to the following conditions:²

1. 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.
2. All clearing, grading, and setbacks shall comply with the recommendations of the Landau Associates Draft Geotechnical Report and the GeoDesign, Inc. Geotechnical Report.
- ~~3. Pursuant to U.S. Department of Housing and Urban Development requirements a Noise Barrier wall is required.~~
- ~~4. A mitigation payment of \$37,987 is required prior to building permit issuance for signal timing modification.~~
5. Fire sprinklers are required for all homes and mixed-use structures. This requirement shall be recorded on the Final Plat.
- ~~6. Pursuant to the record established, BHA shall be required to mitigate the impact of an increase of 52 students to the Bremerton School District. Mitigation shall be established by agreement between the Bremerton School District and BHA.~~
- ~~7. No building permits may be issued for structures in Sectors 2B and 3 until a final landfill delineation is submitted to the Kitsap County Health Department and it issues a written determination that there would be no adverse impact to public health or the environment due to development in those two sectors.~~

² Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development. Those that have a strike-through have already been complied with by the Applicant.

8. A detailed Street Lighting Design must be approved by Bremerton Planning prior to performance of utility work on site.
9. An Engineered Temporary Erosion Sedimentation Control Plan is required prior to issuance of clearing and grading permits.
10. All utility fees and assessments must be paid prior to performance of utility work on site.

Decided this 23rd day of December 2013.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center