

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF PORT ORCHARD**

In the Matter of the Application of)	No. SUBDIV 08-02
)	
Chuck Childress)	Williams Plat
)	
)	FINDINGS, CONCLUSIONS,
<u>For Approval of a Preliminary Plat</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat to subdivide 2.71 acres into 18 single-family lots on property located on the east side of Sidney Avenue, approximately 700 feet south of the Sidney Avenue/Goldenrod Street intersection, in Port Orchard, Washington, is **GRANTED**, with conditions.

SUMMARY OF RECORD

Request:

Chuck Childress requests a preliminary plat to subdivide 2.71 acres into 18 single-family lots. The property is located on the east side of Sidney Avenue, approximately 700 feet south of the Sidney Avenue/Goldenrod Street intersection, in Port Orchard, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on July 17, 2008.

Testimony:

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

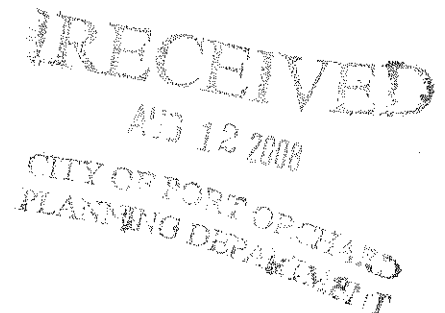
- Tom Bonsell, City Planner
- James Weaver, City Planning Director
- Mark Kuhlman, P.E., for Applicant
- Jerry Arnett
- Mark Dorsey, City Public Works Director

Exhibits:

The following exhibits were admitted into the record:

1. Pre-Application meeting letter, dated September 17, 2008
2. Application submittal including:
 - a. Transmittal letter, received May 21, 2008
 - b. Rezone application, received May 21, 2008
 - c. Project Narrative, received May 21, 2008
 - d. Preliminary Plat application, May 21, 2008

*Findings, Conclusions, and Decision
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- e. Legal Description
- f. Certification Letter, received May 21, 2008
- g. Map and list of neighboring property owners, undated
- h. Preliminary storm drainage report, dated April 24, 2008
- i. Traffic Impact Analysis
- j. SEPA checklist
- k. Title Report, received May 21, 2008
- l. Site plans (12 sheets), dated May 5, 2008
3. Property ownership verification: four Kitsap County parcel maps and property reports, searched May 22, 2008
4. Application transmittal letter, dated May 21, 2008
5. Letter of Completeness and Determination of Completeness, dated June 6, 2008
6. Affidavit of mailing and posting of Notice of Application, dated June 6, 2008
7. Comments from Jerry Arnett, received June 18, 2008
8. Response letter to Jerry Arnett from Associate Planner Tom Bonsell, dated June 25, 2008
9. SEPA Distribution – Determination of Non-Significance, dated June 25, 2008
10. Emails between Associate Planner Tom Bonsell and City Engineer Mark Dorsey dated June 2, 2008
11. Email from Associate Planner Tom Bonsell to Mark Kuhlman, dated June 2, 2008
12. Affidavit of Publication of SEPA comment period, dated June 11, 2008
13. Email from Alison O’Sullivan, Suquamish Tribe, to Ellen Ferguson, dated June 23, 2008, with Suquamish Tribe comments on Leora Park II Preliminary Plat, dated October 12, 2005
14. Comments from South Kitsap Fire and Rescue, dated June 25, 2008
15. Affidavit of mailing and posting of Notice of Public Hearing, dated June 27, 2008
16. Affidavit of publication of Determination of Non-Significance, dated June 28, 2008
17. Memorandum from Assistant City Engineer Andrea Archer, dated July 1, 2008
18. Affidavit of publication of Notice of Public Hearing, dated July 2, 2008
19. Staff report for hearing date of July 17, 2008
20. Comments from Pastor Jamie Greening, First Baptist Church, received July 7, 2008
21. Memorandum from Jennifer Haro, Associate Planner, City of Port Orchard, to File, dated July 16, 2008
22. Zoning map and legend, found at http://cityofportorchard.us/docs/planning/Zoning_hr.pdf

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

FINDINGS

1. Chuck Childress (Applicant) requests a preliminary plat to subdivide 2.71 acres into 18 single-family lots. The property is located on the east side of Sidney Avenue approximately 700 feet south of the intersection of Sidney Avenue/Goldenrod Street

intersection, in Port Orchard, Washington.¹ The Applicant submitted a separate application (File No. R-1171) to rezone the subject property from R4.5 to R12 concurrently with the preliminary plat application. *Exhibit 2.b; Exhibit 2.c; Exhibit 2.d; Exhibit 19, Staff Report, page 1.*

2. The City of Port Orchard (City) received the preliminary plat application on May 20, 2008. *Exhibit 5.* The City transmitted notice of the application to relevant agencies on May 22, 2008. *Exhibit 4.* The City determined that the application was complete on June 6, 2008. *Exhibit 5.* On June 6, 2008, the City mailed notice of the application and associated environmental determination to owners of property surrounding the subject property and posted notice on the subject property. On June 11, 2008, the City published notice of the application in the *Port Orchard Independent*. *Exhibit 6.* On June 27, 2008, the City mailed notice of the open record hearing associated with the application to surrounding property holders in accordance with City ordinances. The City published notice of the hearing in the *Port Orchard Independent* on July 2, 2008. *Exhibit 15.*
3. The City acted as lead agency to analyze the environmental impacts of the proposed preliminary plat together with a concurrently submitted rezone application (No. R-1171), as required by the State Environmental Policy Act (SEPA).² The City determined that with compliance with federal, state, and local regulations, the rezone and preliminary plat proposals together would not have a probable significant adverse impact on the environment, and issued a Determination of Nonsignificance (DNS) on June 28, 2008. The City issued the DNS pursuant to an optional process combining the comment period with the notice of application.³ The City published notice of the DNS in the *Port Orchard Independent* on June 28, 2008. The optional DNS comment period ended July 14, 2008. No appeals of the DNS were filed. *Exhibit 16; Exhibit 19, Staff Report, page 5.*
4. The current zoning classification of Parcel No. 022301-2-081-2004 is Residential Mobile Home Park, and the current zoning classification of the remaining parcels that make up

¹ The subject property is identified by tax parcel numbers 022301-2-081-2004; 022301-2-082-2003; 022301-2-083-2002; 022301-2-137-2008. *Exhibit 2.d; Exhibit 19, Staff Report, page 2.* A legal description of the subject property is included with the preliminary plat application. *Exhibit 2.e.*

² The Washington Supreme Court endorsed this combined threshold review process when it found impacts of a specific development proposal can be a useful yardstick to measure rezone impacts. *See Citizens Alliance v. Auburn*, 126 Wn.2d 356, 365 (1995). Combined threshold review is consistent with Port Orchard Municipal Code (POMC) 16.06.110; is a more efficient use of City, applicant and public resources; and promotes SEPA policies. *See* 126 Wn.2d at 366 (“The SEPA rules underscore flexibility and gauge the level of detail according to the proposal at issue”).

³ The Washington Administrative Code provides for an optional Determination of Nonsignificance (DNS) process, which is an integrated project review process and comment period to obtain comments on the notice of application and the likely DNS threshold determination for the proposal. *WAC 197-11-355.*

the subject property is R4.5.⁴ *Exhibit 2.b; Exhibit 2.d*. The surrounding property to the north, east, and south is zoned R4.5 and contains single-family residences. Properties to the west are zoned High Density Residential (R20) and contains a church and multi-family residences. *Exhibit 19, Staff Report, page 2*.

5. The R4.5 zone allows for development at a density of up to 4.5 dwelling units per net usable acre.⁵ The primary purposes of the R-4.5 zone are to “(a) provide for an urban residential environment that is consistent with the traditional image of the Port Orchard area and (b) to implement comprehensive plan goals and policies for housing quality, diversity, and affordability, and to efficiently use residential land, public services, and energy.” *Port Orchard Municipal Code (POMC) 16.13.120*. The R4.5 zone requires a minimum lot size of 6,000 square feet; maximum lot coverage of 45 percent; and minimum landscaping site coverage of 55 percent. *POMC 16.40.025 Table 9*.
6. The subject property is currently designated Medium Density Residential (MDR) by the City Comprehensive Plan, as is surrounding property to the north, east, and south. Property to the west is designated High Density Residential. *Exhibit 2.d; Exhibit 19, Staff Report, page 2*.
7. The City Council enacted the Medium Density Residential (MDR) Comprehensive Plan designation in 2000 through City Ordinance No. 1807.⁶ According to the Ordinance, the MDR designation allows for housing density of 8 dwelling units per net acre, and potentially up to 12 dwelling units per net usable acre. The ordinance requires that areas designated MDR contain adequate water, sewer, and drainage services, among other requirements. MDR areas are intended to allow infill and redevelopment with strict design guidelines, intended to be pedestrian oriented, and intended to be compatible with existing development. *City Ordinance No. 1807*.

⁴ James Weaver, City Planning Director, testified that there is no Residential Mobile Home Park zoning classification set forth within the City Code or within the City Comprehensive Plan, so the Residential Mobile Home Park classification is known as “holdover zoning”, equivalent to the R4.5 zoning classification that does appear within the City Code. *Testimony of Mr. Weaver*. Mark Kuhlman, P.E., testified for the Applicant that he assumed the current zoning classification for the subject property is R4.5, because all property surrounding the subject property is also zoned R-4.5. *Testimony of Mr. Kuhlman*.

⁵ Net usable site area is defined as “the total site area less sensitive environmental features (equal to gross useable site area) and dedications as these areas are defined elsewhere in this code.” *POMC 16.40.040*.

⁶ The Ordinance states that the land use designations “have been developed as a result of extensive public participation and planning goals.” *City Ordinance No. 1807, Section 1*. With adoption of the ordinance, the City Planning Commission determined that the addition of the Medium Density Residential land use designation “is not detrimental to the health, safety, and welfare of the community and is proposed to be within the character of the Growth Management Act, Comprehensive Plan, and the community.” *City Ordinance No. 1807, Attachment A*.

8. The Applicant requested a rezone of the subject property from R4.5 to R12, concurrent with the preliminary plat application. POMC 16.30.080 provides that development of single-family detached dwelling units is a permitted use within the R4.5 and R12 zoning districts. *POMC 16.30.080 Land Use Table*. The R12 zone allows development at a density of up to 12 dwelling units per net usable acre. The primary purposes of the R12 zone are to “(a) define areas that allow a greater dwelling unit density - particularly in locations that are well served by the arterial circulation system and community facilities in general, (b) implement comprehensive plan goals and policies for housing quality, diversity, and affordability, and (c) efficiently use residential land, public services, and energy.” *POMC 16.13.130(1)*. The R12 zone purposes are accomplished by providing a mix of housing types and densities, and allowing only such accessory and complementary nonresidential uses as are compatible with higher density communities. *POMC 16.13.130(2)*. The R12 zone requires a minimum lot size of 3,630 square feet; maximum lot coverage of 85 percent; and minimum landscaping site coverage of 15 percent. Other development standards, including setbacks and building height, are the same for both the R4.5 and R12 zoning districts. *POMC 16.40.025 Table 9; Exhibit 2.b; Exhibit 2.d*.
9. If the concurrent rezone application is approved, R12 zoning district development standards would apply to the proposed plat. As proposed, all lots would be greater than 3,630 square feet in size. The preliminary site plan submitted with the plat application does not depict proposed lot coverage, landscaping, setbacks, or building height. *Exhibit 2.1*.
10. According to the project narrative submitted by the Applicant, the proposed plat would include a dedication of 0.46 acre of public right-of-way, 0.08 acre of private road tract, 0.33 acre of stormwater tract and 0.07 acre of open space. Stormwater Tract C, Open Space Tract D, Public Road A, and Private Road Tract B are depicted on the preliminary site plan submitted by the Applicant. With the dedication by the Applicant of public right-of-way, a private road tract, a stormwater tract, and open space within the proposed plat, the development density within the proposed plat would be 9.94 dwelling units per net usable acre.⁷ *Exhibit 2.c; Exhibit 2.1*.
11. The site plan map submitted by the Applicant showing existing conditions within the subject property depicts four mobile homes located on the subject property. Mark Kuhlman, P.E., testified for the Applicant that the subject property currently contains three mobile homes, one of which is owned by the owner of the subject property. Mr. Kuhlman testified that the subject property is not a mobile home park, because individual

⁷ The net usable acre calculation subtracts the dedications proposed by the Applicant from the total site area, for a total of 1.81 acres. The development density calculation multiplies the allowable dwelling units per net usable acre by the number of net usable acres. If the concurrent rezone application is approved to allow 12 dwelling units per net usable acre, development of 21.7 dwelling units would be allowed upon the subject property. The calculation is 12 dwelling units per net usable acre x 1.81 net usable acres = 21.7 dwelling units. *Exhibit 2.c*.

homes are not currently placed on individual lots within the subject property.⁸ The City staff report states that the existing mobile homes on the subject property would be removed prior to the development of the property. The preliminary site plan submitted by the Applicant with the preliminary plat application shows that existing mobile homes would be removed prior to site development. *Exhibit 2.1; Exhibit 19, Staff Report, page 2; Testimony of Mr. Kuhlman.*

12. The City received four comments on the proposed rezone and plat applications. Alison O’Sullivan, Biologist for the Suquamish Tribe, commented that the proposed project is within the usual and accustomed fishing area of the Suquamish Tribe, and expressed concern regarding the potential for water quality impacts to Blackjack Creek and Sinclair Inlet and cumulative impacts from the proposed site development and other subdivisions in the area. The South Kitsap Fire and Rescue’s Prevention and Education Office submitted comments concerning the lack of fire hydrants indicated on site plan for associated development; access for fire department vehicles; and the need for on-site fire flow test. Jerry Arnett submitted comments noting increased density on the subject property may alter groundwater drainage patterns, potentially causing undesirable flooding; inquiring about water supply for development on the subject property; inquiring about impervious surface limits upon associated development; and inquiring if associated development would destabilize slopes in Blackjack Canyon. Pastor Jaime Greening, First Baptist Church, 216 Prospect Street, Port Orchard, submitted a letter expressing support for the proposed rezone as a positive and welcome change to the neighborhood. *Exhibit 7; Exhibit 13; Exhibit 14; Exhibit 20.*
13. No critical areas have been identified on the subject property. The Applicant stated in the project SEPA checklist that no groundwater would be withdrawn as part of proposed development, nor would water be discharged to groundwater. Blackjack Creek and the associated ravine are located approximately 1,300 feet to the east of the subject property. *Exhibit 2.j; Exhibit 19, Staff Report, page 7.*
14. Jerry Arnett testified to express his concerns about stormwater runoff drainage from the proposed plat and its effects on neighboring properties. Mr. Dorsey responded for the City that the City’s proposed conditions of plat approval require the plat to comply with City requirements to control stormwater in effect at the time the City received the complete preliminary plat application. The off-site storm drainage plan and pond sections submitted with the preliminary plat application depict a tight-lined connection

⁸ RCW 59.30.020(9) defines “mobile home park” as “any real property that is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, park models, or recreational vehicles for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purposes only and is not used for year-round occupancy.” RCW 59.30.020(9). RCW 35.21.684, RCW 35A.21.312, and RCW 36.01.225, as amended, govern placement and location of manufactured homes. RCW Chapter 59.20, the Manufactured/mobile home landlord-tenant act, applies to rental agreements regarding mobile home lots, cooperatives, or subdivisions. RCW 59.20.040.

from a proposed on-site stormwater detention pond to an off-site storm sewer pipe within a 15-foot wide utility easement. The pipe within the easement extends east from the subject property to an outlet within a bioswale. *Exhibit 2.l; Testimony of Mr. Arnett; Testimony of Mr. Dorsey.*

15. The Applicant stated in the project SEPA checklist that houses, driveways and other impervious surface would cover approximately 54 percent of the subject property as a result of proposed development. Proposed plat development would incorporate stormwater runoff control measures in compliance with the Department of Ecology Stormwater Management Manual and City Code in effect at the time of preliminary plat application. Stormwater runoff from the proposed development would be managed and treated in an on-site detention pond, and further treated after exit from the detention pond in an off-site bioswale located within a utility easement on the neighboring Gazebo Plat to the northeast. Following treatment in the pond and bioswale, stormwater runoff would be released to an existing storm drainage system within the Gazebo Plat consisting of closed storm drainage pipe and open ditch conveyance, connecting to a storm drainage system containing a regional detention pond in the neighboring Flower Meadows Plat. Finally, treated stormwater would be released from the detention pond to an HDPE outfall flowing to Blackjack Creek, which flows north two miles to Sinclair Inlet. A condition of preliminary plat approval proposed by the City would require that the project proponent install any necessary off-site, downstream drainage improvements as identified within the downstream analysis submitted with the preliminary plat application. *Exhibit 2.h; Exhibit 2.j; Exhibit 2.l; Exhibit 19, Staff Report, page 7.*
16. The subject property is relatively flat, averaging approximately three percent grade, with the steepest slope at approximately 13 percent grade. The site slopes from east to west. The Applicant would submit a temporary erosion and sedimentation control plan for City approval prior to beginning construction. *Exhibit 2.j.*
17. The City of Port Orchard would provide water and sewer service to the property. Puget Sound Energy Services would provide electric service to the property. City staff proposed a condition of preliminary plat approval that the development shall contain fire hydrants; that hydrants shall be depicted on site plan maps; that the Applicant or developer shall provide for an on-site fire flow test; and that the Applicant shall provide for fire department vehicle access on the subject property. *Exhibit 2.j; Exhibit 19, Staff Report, pages 7 - 9.*
18. Significant trees lie in or adjacent to the Sidney Avenue right-of-way, located adjacent to the west of the subject property.⁹ Mr. Kuhlman testified for the Applicant that there are

⁹ POMC 16.08.712 defines "significant tree" as "an existing tree which is: 1) any healthy tree with a diameter at breast height (DBH) of 18 inches or greater with adequate live crown to maintain tree vigor and aesthetics; or 2) any tree identified as providing wildlife habitat for threatened or endangered species; or 3) any tree of historical or cultural significance as defined within the comprehensive plan." *POMC 16.08.712.*

currently different interpretations by City staff and the Applicant regarding tree retention requirements for the proposed preliminary plat. Mr. Kuhlman testified that the Applicant interprets City code to provide credit for tree retention not tree replacement, contrary to a July 16, 2008 memorandum by Jennifer Haro, City Associate Planner,¹⁰ and contrary to a proposed City condition of preliminary plat approval. The Applicant submitted a tree retention plan, dated May 5, 2008, stating that five of seven total on-site significant trees would be removed. The Applicant's tree retention plan proposed planting three replacement trees, based on credit for retaining two existing on-site significant trees. *Exhibit 19, Staff Report, pages 7 – 8; Exhibit 21; Testimony of Mr. Kuhlman.*

19. The City staff report includes a proposed condition of preliminary plat approval requiring the Applicant to plant 17 replacement trees, based on retention of two of the seven significant trees located on the subject property.¹¹ Tom Bonsell, City Planner, testified to retract City staff's proposed condition of preliminary plat approval that would require the Applicant to plant 17 replacement trees.¹² *Exhibit 19, Staff Report, page 8; Testimony of Mr. Bonsell.*
20. According to POMC 16.08.712, a significant tree is an existing tree that (1) is healthy with a diameter at breast height (DBH) of 18 inches or more with adequate live crown for tree vigor and aesthetics; (2) any tree identified as providing wildlife habitat for threatened or endangered species; or (3) any tree of historical or cultural significance as defined within the City Comprehensive Plan. *POMC 16.08.712.* POMC 16.50.180 provides that significant trees shall be retained in all zones within any required buffer area or required landscape planting area to the extent practical and feasible. *POMC 16.50.180.* POMC 16.50.200 gives a credit in a ratio of up to two trees for retention of each significant tree located outside a perimeter buffer landscaping area. *POMC 16.50.200.* POMC 16.50.220 requires replacement of significant trees when the required number of significant trees cannot be retained. When required retention cannot occur,

¹⁰ Ms. Haro's July 16, 2008 memorandum stated that the City's significant tree ordinance would require the Applicant to plant 66 replacement trees within the proposed preliminary plat to offset the proposed removal of 50 trees within the subject property. Ms. Haro's July 16, 2008 memorandum refers to a tree retention plan for the proposed plat submitted by the Applicant, dated March 26, 2008. The March 26, 2008 plan called for removal of 50 significant trees, retention of 42 significant trees, and no planting of replacement trees. *Exhibit 21.*

¹¹ The calculation provided in the City's proposed condition of preliminary plat approval requiring planting of replacement trees was stated by City staff as follows: "Total on-site number of significant trees = 7, required replacement ratio of 3 to 1 = 21 replacement trees, tree retention incentive 2 for each tree retained = four trees. Therefore, 21 replacement trees minus 4 incentive trees = 17 replacement trees required." *Exhibit 19, Staff Report, pages 7 – 8.*

¹² No one present at the open record hearing objected to City staff's testimony to retract the proposed condition of preliminary plat approval that would require the Applicant to plant replacement trees on the subject property in conjunction with site development. However, the City Council may wish to examine City tree retention and replacement ordinances more closely to clarify any ambiguity in code language.

new trees measuring 2.5 inch caliper and 6 feet in height must be planted at a replacement rate of three trees for each significant tree removed. *POMC 16.50.220.*

21. The Applicant submitted a landscape plan depicting landscaping along the perimeter of the proposed stormwater detention tract, street trees along the proposed public and private access roads, retained significant trees along the Sidney Avenue frontage, and landscaping within the proposed open space tract. *Exhibit 2.1.*
22. Vehicles would access the proposed plat through Sidney Avenue, located adjacent to the west of the proposed plat. The Applicant would construct a new public road, Public Road A, connecting to Sidney Avenue and extending to the east to provide access to proposed lots 4 – 10 and 11 – 18. Proposed lots 1 and 3 would have direct access from Sidney Avenue. The Applicant would construct a new private street, Private Road Tract B, extending north from the new public road to provide access to proposed lots 2 and 8, Open Space Tract D, and to Stormwater Tract C. Sidewalks would be constructed on both sides of the proposed public road. *Exhibit 2.1.*
23. Sidney Avenue is a north-south, two-lane roadway with 12- to 14-foot wide lanes and 2- to 4-foot wide shoulders. The Applicant's traffic engineer determined that sight distances for the plat entrance at Sidney Avenue would be 355 feet long or greater, meeting sight distance requirements. Development of the proposed plat would generate an average of 215 vehicle trips per weekday within the surrounding street system, with 22 A.M. peak trips and 23 P.M. peak trips. According to the Applicant's traffic engineer's analysis of future conditions with and without the proposed development, the Sidney Avenue – proposed plat entrance intersection and the Sidney Avenue – Lippert Drive W intersection just to the south of the proposed plat will continue to operate at the same Level of Service (LOS)¹³ with or without development of the proposed plat. The Applicant's traffic engineer determined that the traffic volume that would be generated by development of the proposed plat would not be enough to require construction of a left-turn lane from Sidney Avenue to the proposed plat. *Exhibit 2.i.*
24. Mr. Kuhlman testified to request amendments to some conditions of plat approval, requesting that conditions refer to existing off-site easements; refer to stormwater regulations in effect at the time of complete plat application; delete references to a proposed outfall, as no outfall is currently proposed by the Applicant; note that student residents of the proposed plat would be bused to school from transit stops one block north

¹³ According to the traffic impact analysis submitted by the Applicant, Level of Service (LOS) is a measure of congestion for transportation facilities, calculated by determining the volume to capacity ratio for vehicle movements within an intersection as well as the average control delay for those movements. Control delay includes movements at slower speeds and stops as vehicles approach intersections. Delay generally is used to measure the degree of driver discomfort, frustration, fuel consumption, and lost time. The range for LOS at an intersection is LOS A to LOS F, with LOS A indicating the best operating conditions with low control delays and LOS F indicating the worst conditions with heavy control delays. *Exhibit 2.i.*

of the proposed plat; and require that all homeowners within the proposed plat would be assessed the cost of future improvements to Sidney Road through a no protest LID (Local Improvement District) noted on the face of the final plat. Mr. Kuhlman also testified to request, on behalf of the Applicant, that the City allow less impervious surface area within the proposed private road to be less than required by the City private road standards, and to request a variance from POMC 16.55.030 to eliminate the requirement that the proposed subdivision access road end in a cul-de-sac.¹⁴ Mr. Kuhlman testified that the proposed subdivision access road would eventually connect to adjacent property.
Testimony of Mr. Kuhlman.

25. City Council Resolution No. 1971, effective March 25, 2002, provides that the City Fire Authority may waive the cul-de-sac where there is another method to turn-around fire equipment. The Resolution only allows development of private roads within short plats, unless an exemption is specifically approved by the City Council. The Resolution provides that private roads are limited to serving five dwelling units and shall not be maintained by the City. *City Council Resolution No. 1971, Sections 2.5 and 2.6 (effective March 25, 2002).*
26. James Weaver, City Planning Director, testified that in his opinion, variances are required to approve changes to the private street impervious surface area and to cul-de-sac requirements. Mr. Bonsell testified that POMC 16.55.030 does not give City officials discretion to approve a change to the cul-de-sac requirement unless a variance is requested. Mr. Bonsell testified that City Council Resolution No. 1971 provides for City Council waiver of City private road standards. Mark Dorsey, City Public Works Director, testified that the requested variances seemed appropriate in this case. Mr. Dorsey recommended that all future requests also be reviewed on a case-by-case basis. Mr. Bonsell agreed that variances may be appropriate in this case, but that future requests should be reviewed on a case-by-case basis. Mr. Kuhlman testified that the Applicant would submit applications for variances from private road standards and for constructing proposed plat access with a hammerhead turn-around rather than a cul-de-sac. Mr. Kuhlman testified to request that “as approved by the Public Works Director” be added to the City’s proposed condition of plat approval regarding improvements to Sidney Road and the proposed public access road. Mr. Bonsell testified that he concurred with the requested addition to the condition. *Testimony of Mr. Weaver; Testimony of Mr. Bonsell; Testimony of Mr. Dorsey; Testimony of Mr. Kuhlman.*

¹⁴ POMC 16.55.030(1)(b)(iii) provides “[d]ead-end streets shall be used on access streets only and shall terminate in a cul-de-sac. Streets which dead-end and which would normally be continued if the adjacent property were developed, should be shown as temporary turnarounds. The land beyond the normal right-of-way for such streets shall revert to the abutting property owners when the street is continued.” *POMC 16.55.030(1)(b)(iii).*

CONCLUSIONS

Jurisdiction

The City of Port Orchard Hearing Examiner has authority to conduct an open record hearing on a preliminary plat application, and to grant, grant with conditions, or deny the application based on evidence in the record. *Port Orchard Municipal Code (POMC) 2.76.080; POMC 2.76.100; POMC 2.76.110; POMC 16.01.021(3); POMC 16.06.020; POMC 16.72.190; POMC 16.72.200(3).*¹⁵

City code provides for optional consolidated permit processing, whereby the Applicant may elect to have two or more permit processes be reviewed individually or collectively. If processed individually, the application with the highest type review procedure must be processed prior to the subsequent lower numbered procedure. *POMC 16.06.110*. The preliminary plat/PRD application and concurrent rezone applications are reviewed individually. The rezone application is processed as a recommendation by the Hearing Examiner, with a final decision issued by the City Council. The preliminary plat/PRD application is processed as a final decision by the Hearing Examiner. Thus, a final decision on the rezone application must be issued by City Council prior to issuance of the preliminary plat/PRD decision. *POMC 16.06.110*.

Criteria for Review

The Port Orchard Municipal Code (POMC) provides that whenever any subdivision of land is proposed, the subdividing owner or his or her authorized agent shall apply for and secure approval of the proposed subdivision in accord with the standards and procedures set forth in POMC Chapter 16.72. *POMC 16.72.060*. POMC Chapter 16.72 contains specific requirements for preliminary plat application submittal, payment of an application filing fee, preparation of a report by City staff to accompany the application, consideration of the application at an open record public hearing conducted by the Hearing Examiner, and preparation of written findings, legal conclusions, and a decision on the application by the Hearing Examiner after the close of the public hearing. *POMC 16.72.140; POMC 16.72.160; POMC 16.72.180; POMC 16.72.190; POMC 16.72.200*.

In addition, Revised Code of Washington (RCW) Section 58.17.110 provides that a proposed subdivision shall 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, playgrounds, schools and schoolgrounds and all other relevant facts, including

¹⁵ On December 19, 2007, the Port Orchard City Council passed and the Port Orchard Mayor signed City Ordinance No. 047-07, repealing POMC 2.20.040 in its entirety and adding a new POMC Chapter 2.76 (Hearing Examiner). POMC Chapter 2.76 has not yet been codified and is not currently available on the City website. *City Ordinance No. 047-07*.

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(A); RCW 58.17.110(B).

Conclusions

1. **With conditions, the proposed subdivision would comply with RCW 58.17.110(A).** There are no critical areas found within the subject property. Blackjack Creek and the associated ravine are located approximately 1,300 feet to the east of the subject property. The City acted as lead agency and analyzed the environmental impacts of the proposed preliminary plat together with a concurrently submitted rezone application (No. R-1171), and determined that with compliance with federal, state, and local regulations, the rezone and preliminary plat proposals together would not have a probable significant adverse impact on the environment. The City issued a Determination of Nonsignificance (DNS) on June 28, 2008. No appeals of the DNS were filed.

With City Council approval of a concurrent rezone application to rezone the subject property from R4.5 to R12, the proposed plat would comply with the minimum lot size standard and development density standard of the R12 zoning district. POMC 16.30.080 provides that development of single-family detached dwelling units is a permitted use within the R4.5 and R12 zoning districts. Existing mobile homes on the subject property would be removed prior to site development.

The Applicant would dedicate 0.07 acre of open space within the proposed plat as Open Space Tract D. The proposed plat would provide for stormwater runoff control and drainage in compliance with the Department of Ecology Stormwater Management Manual and City stormwater code in effect at the time of the preliminary plat application. Stormwater runoff from the proposed development would be managed and treated in an on-site detention pond, and further treated after exit from the detention pond in an off-site bioswale located within a utility easement on the neighboring Gazebo Plat to the northeast. Treated stormwater runoff from the proposed plat would travel from the on-site detention pond to the off-site bioswale through a tightlined connection between the on-site pond and off-site storm sewer pipe located within a 15-foot wide utility easement. Following treatment in the pond and bioswale, stormwater runoff would be released to an existing storm drainage system within the Gazebo Plat consisting of closed storm drainage pipe and open ditch conveyance, connecting to a storm drainage system containing a regional detention pond in the neighboring Flower Meadows Plat. Finally, treated stormwater would be released from the detention pond to an HDPE outfall flowing to Blackjack Creek, which flows north two miles to Sinclair Inlet. The Applicant would control any erosion and sedimentation resulting from construction of the proposed

development according to a City-approved temporary erosion and sedimentation control plan.

The City of Port Orchard would provide water and sewer service to the property, and Puget Sound Energy Services would provide electric service to the property. The Applicant would retain some significant trees on the property and plant some trees to replace significant trees that would be removed. The proposed plat would include landscaping along the perimeter of the stormwater detention tract, along the public and private access roads through the plat, and within the open space tract. Vehicles would access the proposed plat through Sidney Avenue, an existing street adjacent to the west of the proposed plat, a new public road through the subdivision, and a new private road through the subdivision. There is adequate sight distance for entering and exiting vehicles at the proposed Sidney Avenue/proposed plat entrance intersection. The Sidney Avenue – proposed plat entrance intersection and the Sidney Avenue – Lippert Drive W intersection just to the south of the proposed plat will continue to operate at the same Level of Service with or without development of the proposed plat. Thus, development of the proposed plat would not significantly impact traffic flow in the vicinity of the proposed plat. Sidewalks would be constructed on both sides of the public road within the proposed plat. Student residents of the proposed plat would be bussed to area schools from transit stops located one block north of the proposed plat.

Conditions of preliminary plat approval are necessary to ensure the project proponent install any necessary off-site, downstream drainage improvements as identified within the downstream analysis submitted with the preliminary plat application; ensure the development contains fire hydrants, that hydrants shall be depicted on site plan maps, that the Applicant or developer provides for an on-site fire flow test; and that the Applicant provides for fire department vehicle access on the subject property; and to ensure that the Applicant or developer submits applications to the City for variances from City private street standards and cul-de-sac requirements. Conditions of preliminary plat approval are also necessary to ensure that a concurrent rezone request to rezone the subject property from R4.5 to R12 is approved by the City Council prior to site development, and to ensure sidewalks and associated half-street improvements are constructed along Sidney Avenue as part of proposed development. *Findings 1, 3 – 5, 8 – 26.*

2. **With conditions, the proposed subdivision would serve the public use and interest.** The City provided adequate notice of the preliminary plat application, concurrent rezone application, and associated environmental determination, and adequate opportunity for public comment.

The subject property is currently designated Medium Density Residential (MDR) by the City Comprehensive Plan, as is surrounding property to the north, east, and south. Property to the west is designated High Density Residential. The City Council enacted the Medium Density Residential (MDR) Comprehensive Plan designation in 2000

through City Ordinance No. 1807. The Ordinance states that the land use designations “have been developed as a result of extensive public participation and planning goals.” *City Ordinance No. 1807, Section 1.* According to the Ordinance, the MDR designation allows for housing density of 8 dwelling units per net acre, and potentially up to 12 dwelling units per net usable acre. The ordinance requires that areas designated MDR contain adequate water, sewer, and drainage services, among other requirements. MDR areas are intended to allow infill and redevelopment with strict design guidelines, intended to be pedestrian oriented, and intended to be compatible with existing development. The proposed plat would be developed to contain single-family residential dwellings at a density of 9.94 dwelling units per net usable acre, would contain adequate water, sewer, and drainage services, would contain sidewalks and open space, and would be compatible with surrounding single-family development. A condition of preliminary plat approval is necessary to ensure that the City Council approves the underlying request (No. R-1171) to rezone the subject property from R4.5 to R12 prior to construction of the proposed plat. *Findings 1 – 4, 6, 7.*

DECISION

Based on the above findings and conclusions, the request for approval of a preliminary plat to subdivide 2.71 acres into 18 single-family lots on property located on the east side of Sidney Avenue, approximately 700 feet south of the Sidney Avenue/Goldenrod Street intersection, in Port Orchard, Washington, is **GRANTED**, with the following conditions: ¹⁶

Zoning

1. The preliminary plat application (No. SUBDIV 08-02) is approved contingent upon approval of the underlying rezone application (No. R-1171) by the City Council. Prior to commencement of construction activities, Rezone request No. R-1171 must be approved by the City Council.
2. All conditions identified by City Departments and other agencies must be met prior to final plat approval.
3. Prior to final plat approval, the landscaping must be bonded according to the provisions of POMC Section 16.50.295. The bond is subject to approval by the City Development Director and/or the City Attorney.
4. Prior to commencement of construction activities, tree protection fencing must be installed to the satisfaction of the Planning Department in conformance with the tree retention plan and POMC16.50.210.
5. At the time of site development permit application, the applicant shall obtain City approval of a tree retention plan designed in compliance with City ordinances. The landscape plan submitted with the site development permit application shall be revised accordingly.
6. Although it is not feasible to plant the required street trees prior to final plat approval, bonding shall be in place prior to final plat approval. Prior to final inspection of the residential units, street tree planting for individual lots must be installed.

¹⁶ Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

7. A note shall be placed in the final plat that required street trees are to be maintained by individual lot owners.
8. All future single-family residences constructed within this subdivision shall meet the applicable dimensional bulk zoning requirements in effect at the time of building permit submittal.
9. Prior to final plat approval, the applicant shall submit road names for the interior roads to the city for review and approval.

Fire Prevention Code

10. Maximum spacing of fire hydrants is 400 feet between hydrants. A minimum fire flow of 1,000 gallons per minute, measured at a residual pressure of 20 p.s.i., is required for one- and two-family dwellings not exceeding 3,600 gross square feet. All other buildings (including larger one- and two-family dwellings) require a minimum fire flow of 1,500 gallons per minute and may require more depending on building size and type of construction as per Appendix III-A of the Fire Code.
11. Hydraulic calculations or an On-Site fire flow test conducted shall be provided to the Fire District showing that adequate fire flow can be provided. This information will need to be provided and approved by the Fire District before the District can approve any building permits.
12. Before construction may begin on any lot, fire department vehicle access must be provided. Access roads shall be provided for all structures more than 150 feet from a public access road. Access roads shall be a minimum of 20 feet in unobstructed width, be designed and maintained to support the imposed loads of fire apparatus (45,000 pounds) and must have a surface that provides all-weather driving capabilities.
13. The unobstructed width of a fire apparatus access road shall be not less than 20 feet, and shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.
14. All dead-end fire apparatus access roads in excess of 150 feet in length shall be constructed in accord with approved provisions for the turning around of fire apparatus.
15. The turning radius of a fire apparatus access road shall be a minimum of 25 feet inside diameter and 40 feet outside diameter.
16. The gradient of the fire apparatus access road shall not exceed 12%.

Public Works Conditions

General

17. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to City of Port Orchard for review and acceptance. No construction shall be started prior to said plan acceptance.
18. Approval of the preliminary plat shall not be construed to mean approval of the total number of lots or configuration of the lots and tracts. These parameters may be required to be revised for the final design to meet all requirements of City of Port Orchard Municipal Code.
19. Prior to approval of the construction plan, all off-site easements must be recorded and submitted to the City.

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Stormwater

20. The information provided demonstrates this proposal is a *Major Development* as defined in the City of Port Orchard Developer's Handbook in effect at the time of complete plat application, and as such will require a Stormwater Permit from Public Works.
21. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with the City of Port Orchard Developer's Handbook in effect at the time of complete plat application. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with City of Port Orchard Ordinances in effect at the time of application.
22. The project proponent shall be responsible for installing any necessary off-site downstream drainage improvements as identified within the downstream capacity analysis. Procurement of any permits and/or easements necessary to install said off-site improvements shall be the responsibility of the project proponent. As indicated above, prior to approval of the construction plat, all easements must be recorded and submitted to the City.
23. The site plan indicates that greater than 1 acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling Josh Klimek at 360-407-7451, email jok1461@ecy.wa.gov. This permit is required prior to issuance of the Stormwater Permit.
24. Per WAC 173-175, the construction of pond berms that will impound a volume of ten acre-feet or more of water requires review and approval by the Department of Ecology. This approval must be completed prior to issuance of the Stormwater Permit.
25. The owner or homeowners association (HOA) shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of Occupancy Permits for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant Associated with Maintenance and Operation of Storm Drainage Facilities that guarantees the City that the system will be properly maintained. Wording must be included in the covenant that will allow the City to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner or HOA and giving him/them a reasonable time to do the necessary work. Should City forces be required to do the work, the owner or HOA will be billed at the current City rates.
26. City of Port Orchard shall not be responsible for any damage to any private roads, tracts, and/or easement areas that may occur during routine maintenance activities and that in City of Port Orchard's judgment occur, in whole or in part, because of any construction materials or techniques, or any maintenance materials or techniques. This includes, but is not limited to, damage to pavement or vegetated areas caused by maintenance trucks.

Traffic/Roads

27. Roads shall not exceed 12% grade.
28. Horizontal curves for public roads shall have a minimum 181 foot centerline radii as outlined by

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- the American Association of State Highway and Transportation Officials unless a technical deviation is granted.
29. Construction of handicap access facilities within existing or proposed City right-of-way shall conform to the requirements of the Americans with Disabilities Act.
 30. All lots except 1 and 3 shall access from interior roads only. This note shall appear on the face of the final plat map.
 31. The property owners (within the plat) shall be responsible for maintenance of all roadway improvements and landscaping within the existing and proposed private right-of-way including all storm drainage facilities and traffic signage. A note to this effect shall appear on the face of the final plat map and the accepted construction plans.
 32. Wheelchair ramps shall be provided on both sides of the site approach. Include on the plan set curb ramp details that meet the requirements of the Americans with Disabilities Act per WSDOT Standard Plan F-40, as applicable, cement concrete sidewalk and approach details.
 33. Any required sidewalk shall be constructed prior to roadway paving. This note shall appear on the face of the final construction drawings.
 34. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of Sidney Avenue and Public Road A. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the City of Port Orchard Road Standards. The certification shall also note necessary measures to correct and maintain the minimum sight triangle.
 35. All work, equipment & materials for traffic signal and street lighting installations shall meet and be in compliance with all requirements of the City of Port Orchard Road Standards, Project Contract Provisions of Plans and Specifications accepted for construction by City of Port Orchard, MUTCD Manual on Uniform Traffic Control Devices, NEMA National Electrical Manufacturer's Association, NEC National Electrical Code, WSDOT Standard Specifications & Standard Plans, and the Occupational Safety & Health Administration (OSHA).
 36. Any work within the City right-of-way shall require a permit to perform work on City right-of-way and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted separately. The need for and scope of bonding will be determined at that time.
 37. Half street improvements shall be required as approved by the City Public Works Director along Sidney Road, including, but not limited to paving, curbs, and gutters, as shown for an access road.
 38. The Applicant/developer shall assess the cost of future improvements to Sidney Road, including sidewalks, against all homeowners within the proposed plat through a no protest LID (Local Improvement District) noted on the face of the final plat.
 39. At the time of Site Development Permit application, the Applicant/developer shall submit drawings revising private road Tract B to include a right of way in compliance with City ordinances. The Applicant/developer may request a variance from City private road standards in constructing private road Tract B.

40. Per Port Orchard Municipal Code Section 16.55.030, dead end streets shall end in cul-de-sacs, unless a variance is requested by the Applicant/developer and granted in accord with City ordinances.

Decided this 11th day of August 2008.


THEODORE PAUL HUNTER
Hearing Examiner