

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

In the Matter of the Application of)	No. BP18-00031
)	
Southwind Custom Homes, Inc.)	Greystone Preliminary Plat
)	
For Approval of a Preliminary Plat)	FINDINGS, CONCLUSIONS, AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat to subdivide 2.29 acres into 15 single-family lots within the City of Bremerton’s Low Density Residential (R-10) zone on Sylvan Way near Pine Road is **APPROVED**. Conditions are necessary to mitigate specific impacts of the proposed development.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on August 27, 2018.

Testimony:

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

Kelli Lambert, City Planner
John Schumacher
Mike Wnek

Exhibits:

The following exhibits were admitted into the record:

1. Application for Preliminary Plat Subdivision, dated March 22, 2018
2. Preliminary plat map plans (Sheets 1 to 3 of 3), dated March 1, 2018
3. Drainage Report, Wnek Engineering, dated February 28, 2018
4. Drainage plans, revised February 28, 2018
 - a. Site Plan (Sheet C1)
 - b. Road Plan Profile (Sheet C-2)
 - c. Storm & Utility Plan (Sheet C-3)
5. Determination of Incompleteness, dated March 29, 2018
6. City of Bremerton, Conditional Water & Sewer Availability, dated March 16, 2018
7. SEPA Environmental Checklist, dated April 2, 2018

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- 8 Title Report, Pacific Northwest Title, Guarantee Number 5003353-0002176e
- 9 Determination of Completeness, dated April 18, 2018
10. Notice of Application and SEPA Decision, dated April 24, 2018
11. Public notice
 - a. Notice of publication, *Kitsap Sun*, with ad copy, published April 24, 2018
 - b. Declaration of Mailing, dated April 24, 2018
 - c. Declaration of Posting, dated April 24, 2018
12. Email from Kelli Lambert to southwindch@comcast.net, dated April 25, 2018, with email string
13. Letter from Aaron Leavell, Bremerton School District, to Department of Community Development, dated May 8, 2018
14. Email from Southwind Custom Homes, Inc., to Kelli Lambert, dated May 18, 2018, with email string
15. Letter from Aaron Leavell, Bremerton School District, to Kelli Lambert, dated May 31, 2018
16. Letter from Paul Wandling, City Public Works & Utilities, to Mike Wnek, dated May 31, 2018
17. Revised plans, revised June 25, 2018
 - a. Site Plan (Sheet C1)
 - b. Road Plan Profile (Sheet C2)
 - c. Storm & Utility Plan (Sheet C3)
18. Site Plan (Sheet C1), dated February 28, 2018, with additional markings
19. Landscape Plan (Sheet L1), revised June 25, 2018
20. Determination of Nonsignificance, dated July 16, 2018
21. Notice of Hearing, undated
22. Staff Report, dated July 17, 2108
23. Public notice
 - a. Notice of Public Hearing, *Kitsap Sun*; published notice, August 10, 2018
 - b. Declaration of Posting, dated August 9, 2018
 - c. Declaration of Mailing, dated August 8, 2018, with mailing labels and parcel map
24. Email from Aaron Leavell of Bremerton Schools to Kelli Lambert, dated August 28, 2018*
25. Email from Doug Newell of Central Kitsap Schools to Kelli Lambert, dated September 6, 2018*
26. Email from Jason McCord of Central Kitsap Schools to Kelli Lambert, dated August 31, 2018.*

*These emails were submitted to the City following the hearing, but prior to the close of record of the hearing. All parties to the hearing were made aware of these emails, and no objection to their admission was made.

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

FINDINGS

Application and Notice

1. Southwind Custom Homes, Inc. (Applicant), requests approval of a preliminary plat to subdivide 2.29 acres into 15 single-family lots with associated development, including stormwater control facilities, parking, and landscaping, within the City of Bremerton's Low Density Residential (R-10) zone. The property is located on Sylvan Way near Pine Road.¹ *Exhibit 1; Exhibit 2; Exhibit 4; Exhibit 17; Exhibit 22, Staff Report, page 1.*

2. The City of Bremerton (City) determined the application was complete on April 18, 2018. On April 24, 2018, the City mailed or emailed notice of the application to property owners within 300 feet of the subject property and to applicable departments, agencies, and tribes, with a comment deadline of May 8, 2018. The same day, the City posted notice of the application on the subject property and published notice in the *Kitsap Sun*.

On August 8, 2018, the City mailed or emailed notice of the open record hearing on the application to property owners within 300 feet of the property and to applicable departments. On the following day, the City posted notice of the hearing on the property. On August 10, 2018, the City published notice of the hearing in the *Kitsap Sun*. *Exhibit 5; Exhibit 9; Exhibit 11; Exhibit 21; Exhibit 22, Staff Report, page 9; Exhibit 23.*

3. The Engineering Division of the City's Public Works and Utilities Department provided comments in response to the Notice of Application and the State Environmental Policy Act (SEPA) determination (discussed below). The Engineering Division comments include the following:
 - All water, sanitary sewer, and storm sewer utility service connection requirements must be completed and meet the standards of Title 15 of the Bremerton Municipal Code (BMC).
 - Existing water, sanitary sewer, and storm drainage services that are to be abandoned and not used by the project must be recorded through the project engineer's as-built record drawings, and all water services to be abandoned shall be shut off and capped at the main.
 - A looped water system is required.
 - Stormwater mitigation is required.
 - Frontage improvements are required along Sylvan Way and Pine Road, as well as along the proposed street within the subdivision. Sidewalks are required for

¹ The property is identified by tax assessor ID number 022401-4-082-2008. A legal description is included with the staff report. *Exhibit 22, Staff Report, pages 1 and 3.*

access to Lot 14 and Lot 15. Driveway approaches must be added to the preliminary plan drawings.

- Street lighting is required along all public streets.
- Detailed landscape and street tree plans are required at the time of Site Development Plan submittal.
- ADA-compliant sidewalk ramps would be required.
- Traffic Impact Analysis is not required because traffic volumes are insignificant and would not require mitigation.
- All work would need to meet the City's engineering standards.
- A Temporary Erosion and Sedimentation Control Plan (TESC) is required, as well as a Washington State Department of Ecology Construction Permit prior to issuance of a Site Development Permit.
- All utility plan review and connection fees must be paid prior to final occupancy approval.
- Right-of-way permits need to be obtained prior to working within public rights-of-way.

Exhibit 16; Exhibit 22, Staff Report, pages 5, 6, and 9.

Kitsap Transit provided comments in response to the Notice of Application and SEPA determination. It requests that space be left on the Sylvan Way frontage to relocate a nearby bus stop, if needed. Proposed Condition 20 requires the developer to coordinate with Kitsap Transit, prior to final plat approval, to address this concern.

The Bremerton School District provided comments expressing concern about potential impacts to the School District. It asked that impact fees be assessed. The Applicant responded that impact fees had not been assessed for other plat proposals and, therefore, should not be assessed for this proposal. The City suggested that the Applicant and School District work together to come to an agreement about impact fees. The Applicant and School District reached an agreement that was noted by the Applicant at the hearing. John Schumacher testified on behalf of the Applicant that the amount of \$1,335.77 per lot was acceptable as a negotiated outcome for school impact fees. He noted, however, that it would be best if an applicant knew of the possibility of an assessment of impact fees early in the process of seeking land use approval because a prospective developer needs to take that into account when making a purchase offer. *Exhibit 10; Exhibit 12; Exhibit 13; Exhibit 14; Exhibit 22, Staff Report, page 2; Testimony of Mr. Schumacher.*

Following the hearing date, it was determined by the Bremerton School District that the proposed project is actually within the Central Kitsap School District. The City Planner coordinated with the Central Kitsap School District and the Applicant to reach agreement that the impact fee would be paid to Central Kitsap School District and not the Bremerton School District. *Exhibits 24 & 25.*

State Environmental Policy Act

4. The City Department of Community Development (DCD) acted as lead agency to analyze the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C RCW. The City consolidated the application and SEPA comment periods under the Optional DNS process provided for by the Washington Administrative Code (WAC) 197-11-355, with a comment deadline of May 8, 2018. Notice materials stated that DCD expected to issue a Determination of Nonsignificance (DNS) for the proposal. City Planner Kelli Lambert testified that, although the staff report noted that no critical areas were identified on the property, it is located in a Category II Critical Aquifer Area. She testified, however, that no special protection, is required under City ordinances or under SEPA. DCD reviewed the Applicant's Environmental Checklist and other information on file and determined that the proposal would not have a probable significant adverse impact on the environment. Accordingly, DCD issued a DNS on July 16, 2018. The DNS was not appealed. *Exhibit 7; Exhibit 10; Exhibit 20; Exhibit 22, Staff Report, pages 1 and 5; Testimony of Ms. Lambert.*

Comprehensive Plan, Zoning, and Surrounding Property

5. The subject property is designated Low Density Residential (LDR) under the City's Comprehensive Plan. The purpose of the LDR designation is to create new and support existing single-family neighborhoods. *Bremerton Comprehensive Plan, page LU-31; Exhibit 22, Staff Report, page 1.* City staff analyzed the proposal for consistency with the Comprehensive Plan, specifically noting that:
- Development should account for the city's population and employment growth.
 - The natural environment should be protected.
 - Land use patterns and development phasing should be promoted to minimize impacts on natural systems, maximize returns on infrastructure investment, and reduce greenhouse gas emissions.
 - Infill and concurrent infrastructure improvements should be promoted in areas that are already developed in order to preserve rural areas, open spaces, and ecological functioning lands within the city.
 - A variety of new housing options and densities should be encouraged.
 - A sense of community, or gathering places, should be promoted within new neighborhoods by creating spaces where residents can interact.
 - Quality and affordable housing should be accessible for all residents.²
- Exhibit 22, Staff Report, pages 6 and 7.*
6. The property is zoned Low Density Residential (R-10). The intent of the R-10 zoning district is to accommodate single-family housing by infilling in a range of lot sizes

² City staff specifically identified Comprehensive Plan Land Use Element Goals LU1 and LU3, and Policies LU1A, LU3C, and LU3I, and Housing Element Goals H2 and H3, and Policies H2D and H2F, as relevant to the proposal. *Exhibit 22, Staff Report, pages 6 and 7.*

consistent with urban growth patterns. Some attached single-family housing may be appropriate when responding to sensitive areas or using innovative design. Residential development at higher densities is encouraged at the edge of designated centers. *BMC 20.60.010*. Detached single-unit dwellings are a permitted use in the R-10 zone. *BMC 20.60.020; BMC 20.58.060(d)(7)*. The overall net density for the proposal would be 9.25 dwelling units per acre, within the permitted maximum net density of 10 dwelling units per acre. *BMC 20.60.065. Exhibit 22, Staff Report, page 4.*

7. Surrounding properties to the east, north, and west contain single-family residential properties. The site is bordered on the south by Sylvan Way. Property across Sylvan Way is zoned Multifamily Residential (R-20), with single-family residences and multifamily properties. *Exhibit 22, Staff Report, page 3.*

Landscaping

8. The proposed development is subject to Chapter 20.50 BMC landscaping requirements. *BMC 20.50.020*. The Applicant submitted a landscape plan showing 31 trees along the new street and 25 street trees along Sylvan Way/Pine Road. *See BMC 20.50.050(a)*. All landscaping would be completed prior to Site Development Permit approval. The Applicant voluntarily proposes approximately 10,000 square feet of landscaping within two open spaces. All common areas would be the responsibility of the developer until such responsibility is transferred to a Homeowners Association. *Exhibit 19; Exhibit 22, Staff Report, pages 4, 5, and 8.*

Access and Traffic Impacts

9. A private street is proposed for access from Sylvan Way. City Development Engineer Paul Wandling determined that a traffic analysis and impact fees are not required. *Exhibit 16; Exhibit 17.b; Exhibit 22, Staff Report, page 3.*

Stormwater

10. Wnek Engineering prepared a Drainage Report (DR) for the Applicant, dated February 28, 2018. The DR identified the soils on-site as Kapowsin Gravelly ashy loam and Alderwood gravelly sandy loam. The proposed preliminary plat would be located in the Port Washington Narrows watershed and within a Category II Critical Aquifer Area. The site discharges stormwater to the south that is then collected by the Sylvan Way stormwater system. The Applicant would direct all stormwater to a bio-infiltration swale designed to treat 91 percent of all pollution-generating runoff. A portion of the runoff would be infiltrated on-site, while the remainder would be discharged to the existing stormwater system in Sylvan Way. *Exhibit 3; Exhibit 17.c.*

Utilities and Services

11. City Development Engineer Paul C. Wandling issued a letter, dated March 16, 2018, noting that the City of Bremerton has adequate capacity and supply to provide sewer and

water service to the proposed development. The requested services are conditionally available, subject to compliance with the Comprehensive Plan and zoning ordinance; providing a looping water system; providing appropriate sewer main hook-ups; and making payment of assessments and fees. *Exhibit 6.*

12. The Central Kitsap School District would serve the project site. The Applicant would provide frontage improvements, including sidewalks along Sylvan Way and a portion of Pine Road. Sidewalks are also required for access to Lot 14 and Lot 15. *Exhibit 13; Exhibit 16.*

Testimony

13. Ms. Lambert testified generally about the application and how the current proposal would comply with the City's Comprehensive Plan, zoning ordinances, and the criteria for plat approval under BMC 20.12.100. She noted this is an in-fill development. She testified that the City does not have an interlocal agreement with the Bremerton School District. Mr. Schumacher testified that an elementary school is within a mile to the south and that students would be bussed to the local middle and high schools. The proposed subdivision would include internal sidewalks as well as sidewalks along the Sylvan Way frontage, but no sidewalks beyond the property boundaries. All public school students residing within the proposed plat would have public school bus transportation available from bus stops nearby the property. *Exhibit 25; Testimony of Ms. Lambert; Testimony of Mr. Schumacher.*

Staff Recommendation

14. City staff determined that, with conditions, the proposed development would comply with the Comprehensive Plan, the City's zoning and critical areas ordinances, and the applicable building and development regulations under the municipal code. Mr. Schumacher testified that the Applicant agrees with the proposed conditions. *Exhibit 22, Staff Report, pages 1, 2, and 6 through 10; Testimony of Mr. Schumacher.*

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

The Hearing Examiner may approve a preliminary plat if it meets the following criteria:

- (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 [ensure] 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.

The above criteria carry out the state subdivision criteria, codified at Chapter 58.17 RCW, as follows:

A proposed subdivision and dedication shall not be approved unless the City, town, or county legislature body makes written findings that: (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 sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) the public use and interest will be served by the platting of such subdivision and dedication.

RCW 58.17.110(2).

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The criteria for review adopted by the 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.*

Conclusion Based on Findings

1. **With conditions, the proposed plat would comply with BMC 20.12.100.** The proposed development of detached single-family residential dwellings is consistent with the property's designation under the City Comprehensive Plan. The Applicant would install frontage improvements and street lighting -- consistent with Comprehensive Plan Land Use and Housing Element goals and policies-- to create walkable and safe neighborhoods. Safe walking conditions to schools would be provided within the subdivision to Sylvan Way. The City would provide water and sewer service to the property. Low-impact development techniques would be used, where feasible, to treat stormwater on-site and to meet water quality storage requirements of the current Washington State Department of Ecology Stormwater Management Manual for Western Washington. The Applicant would also submit a Temporary Erosion and Sedimentation Control Plan (TESC) and obtain a Department of Ecology water quality construction permit prior to issuance of a Site Development Permit. Provisions have been made for roads, utilities, street lighting, and street trees within the proposed subdivision, consistent with the zoning code, the applicable development standards, and the City's Engineering Standards. No traffic impact mitigation is required. The Applicant would provide approximately 10,000 square feet of landscaping within two open space areas.

Conditions are necessary, including those to ensure that building envelopes are shown on the final plat; that site work be completed, or bonded for, prior to final plat approval; that lots have two off-street paved parking spaces; that the Applicant submit a final open space plan for the site development permit, prior to final plat approval; that street trees are planted along the frontage with Sylvan Way and a portion of Pine Road; that the develop coordinate with Kitsap Transit for siting of bus stops prior to final plat approval; and that the Applicant enter an agreement with the Central Kitsap School District to provide school impact mitigation fees. *Findings 1, 3, 5-14.*

2. **With conditions, the preliminary plat would comply with RCW 58.17.110(2).** The City provided reasonable notice and opportunity to comment on the proposed preliminary plat. Environmental impacts of the proposed plat were considered, as required by SEPA, and the City issued a Determination of Nonsignificance that was not appealed. The City's requirements for plat approval incorporate the preliminary plat requirements under RCW 58.17.110. Accordingly, the Applicant submitted plans that ensure that the subdivision would meet all requirements for plat approval under the municipal code and

the State Subdivision Act. City staff analyzed the proposal and determined that appropriate provisions would be made for the public health, safety, and general welfare and for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, and schools and schoolgrounds, including sidewalks and other planning features that ensure safe walking conditions for students who walk to and from school. Staff also determined that the public use and interest would be served by the platting of such subdivision and dedication. As detailed above in Conclusion 1, conditions are necessary to ensure that the proposal meets all local, state, and federal code requirements and all other requirements of this decision. *Findings 1 – 14.*

DECISION

Based upon the preceding findings and conclusions, the request for a preliminary plat to subdivide 2.29 acres into 15 single-family lots and associated features within the City's Low Density Residential (R-10) zone on Sylvan Way near Pine Road is **APPROVED**, subject to the following conditions:³

1. Building envelopes shall be shown on the final plat. All primary structures must be built within the indicated building envelope. The approval of the final subdivision does not constitute approval to construct a residence on any lot. Application(s) for building permits that include site plan review from the City are required.
2. A Site Development Permit is required pursuant to BMC 20.58.090, and site work shall be completed, or may be bonded for, prior to final plat approval.
3. All driveways and areas used for loading, parking and maneuvering motorized vehicles shall have a paved surface.
4. All lots shall have two (2) assigned off-street paved parking spaces.
5. 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.
6. A final Open Space Plan which complies with the requirements of the landscaping code (Chapter 20.50 BMC), and with monitoring, maintenance and guarantees, is required for the Site Development Permit and prior to final plat approval. This proposal identifies common open space areas on separate tracts, and these must be restricted in perpetuity from further subdivision or development. This provision will be required on the face of the final plat.

³ Conditions include legal requirements applicable to all developments and the requirements necessary to mitigate the specific impacts of this development.

7. The maintenance of the commonly owned areas will be required on the face of the plat as being the responsibility of the property owners. All common areas, including paths, recreation, and parking areas, shall be the responsibility of the developer until such time that the responsibility transfers to the Homeowners Association (HOA). This shall be shown on the face of the plat.
8. Street trees are required along Sylvan Way, a portion of Pine Road near the intersection with Sylvan Way, and the private street. Tree size and species shall be per the Bremerton Approved Street Tree List. A total of 56 street trees shall be planted prior to final plat approval.
9. Any tree located near the sidewalk must install measures to protect the City sidewalk, such as root barrier.
10. All required storm drainage infrastructure shall be installed under separate permits prior to final plat approval.
11. 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 Auditor's office and the Auditor's File Number shall be referenced on the final plat.
12. Public water and sanitary sewer mains are required and shall be designed, installed and accepted pursuant to Title 15 BMC prior to final plat approval.
13. All frontage improvements shall be installed prior to final plat approval.
14. Standard driveway approaches are required, per the Standard Driveway requirement in current City of Bremerton Standards and Chapter 11.12 BMC.
15. Public street lighting shall be installed prior to final plat approval pursuant to BMC 11.12.200.
16. 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.
17. Parcel addresses and private street names are required and shall be shown on the face of the plat prior to final plat approval.
18. The developer shall coordinate with the US Postal Service for proper mail service prior to final plat approval.

19. Location of fire hydrants shall comply with requirements of the Fire Marshal and shall be shown on the Site Development Permit.
20. The developer shall coordinate with Kitsap Transit for the siting of bus stops or bus shelters prior to final plat approval.
21. The Applicant shall enter into an agreement with Central Kitsap School District to provide mitigation funding to the School District for school impacts. Mitigation funding shall be paid to Central Kitsap School District in the amount of \$1,335.77 per dwelling unit, and proof of payment shall be due at the time of building permit issuance.
22. Per BMC 20.12.090(a)(2)(ii), the final formal subdivision shall be submitted to the Director within five (5) years of the date that the preliminary approval became final or as approved through phasing and/or timeline extensions per BMC 20.12.060, *General Provisions*. Should the project fail to comply with these timelines, the formal subdivision shall become null and void.

Decided this 10th day of September 2018.



THEODORE PAUL HUNTER
Hearing Examiner
Sound Law Center