

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

In the Matter of the Application of)	No. BP18-00086
)	
Joe Lockhart, on behalf of)	Sound Ridge Preliminary Plat
JTL Investments, LLC)	
)	
For Approval of a Preliminary Plat)	FINDINGS, CONCLUSIONS,
<u>And Residential Cluster Development</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat to subdivide 2.5 acres into 25 single-family lots as a residential cluster development, with associated improvements, at the south end of Sound Ridge Drive 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 May 28, 2019. At the hearing, the Examiner ruled that the record would be left open until June 4, 2019, for the Applicant to provide additional information and for members of the public to provide additional comments on the proposal.

Testimony:

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

Kelli Lambert, City Planner
Suzanne Bernard, Applicant Representative
William Kennish
Michael Gonzales

Exhibits:

The following exhibits were admitted into the record:

1. Application for Preliminary Plat Subdivision, dated August 20, 2018
2. Residential Cluster Development (RCD) Application, dated August 20, 2018
3. Project Plans, received August 20, 2018
 - a. Preliminary Plat (Sheet C-1)
 - b. Preliminary Site Plan (Sheet C-2)
 - c. Drainage Plan (Sheet C-3)

*Findings, Conclusions, and Decision
City of Bremerton Hearing Examiner
Sound Ridge Preliminary Plat
No. BP18-00086*

- d. Preliminary Sanitary Sewer and Water Plan (Sheet C-4)
- e. Preliminary Stormwater Pollution Prevention Plan (Sheet C-5)
- 4. Drainage Report, MAP, Ltd., dated July 25, 2018
- 5. Geotechnical Engineering Report, EnviroSound Consulting, Inc., dated August 1, 2018
- 6. Determination of Incompleteness, dated September 26, 2018
- 7. Conditional Water and Sewer Availability Letter, dated May 9, 2019
- 8. SEPA Environmental Checklist, dated September 12, 2018
- 9. Density Analysis, MAP, Ltd., dated September 13, 2018
- 10. Safe Route to School Analysis, dated September 19, 2018
- 11. Traffic Impact Analysis, Heath & Associates, Inc., dated November 16, 2018
- 12. Ingress and Egress Easement (No. 201901240059), recorded January 24, 2019
- 13. Endorsement, Land Title Company of Kitsap County (No. 72156-215581559), effective date May 7, 2019
- 14. Determination of Completeness, dated January 31, 2019
- 15. Notice of Application and SEPA Determination, dated February 5, 2019
- 16. *Kitsap Sun*, ad proof, dated January 31, 2019; Declaration of Mailing, dated February 5, 2019; Declaration of Posting, dated February 5, 2019
- 17. Email from Cindy Sommerfeld to Kelli Lambert, dated February 5, 2019, with email string
- 18. Email from Michael Gonzales to Kelli Lambert, dated February 19, 2019, with email string
- 19. Critical Area Covenant Form
- 20. Letter from Rhiannon Fiala to Joe Lockhart, dated April 25, 2019
- 21. Email from Paul Wandling to Pat Fuhrer, dated June 6, 2018, with email string
- 22. Determination of Nonsignificance, issued April 26, 2019
- 23. Notice of Public Hearing, dated May 13, 2019
- 24. Staff Report
- 25. Email from *Kitsap Sun* to Kelli Lambert, dated May 7, 2019, with ad copy; Declaration of Mailing, dated May 13, 2019; Declaration of Posting, dated May 13, 2019
- 26. Letter from residents of Sound Ridge Drive, received May 28, 2019
- 27. Site Plan from 2005 Construction Plans, received May 28, 2019
- 28. Letter from Larry Grohn, Kitsap Bank, received May 30, 2019
- 29. Additional letter from residents of Sound Ridge Drive, received June 3, 2019
- 30. Photographs (21) from residents of Sound Ridge Drive, received June 3, 2019

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

FINDINGS

Application and Notice

- 1. Joe Lockhart, on behalf of JTL Investments, LLC (Applicant), requests preliminary plat approval to subdivide 2.5 acres into 25 single-family residential lots, with associated

Findings, Conclusions, and Decision
City of Bremerton Hearing Examiner
Sound Ridge Preliminary Plat
No. BP18-00086

improvements, as a residential cluster development. Twenty-four of the residential structures would be attached (zero lot line) single-family homes, and one residence would be a detached single-family home. Site improvements would include grading of approximately 20,000 cubic yards of material and installation of stormwater control facilities and landscaping. The property is located at the south end of Sound Ridge Drive, a private road, and would end in a cul-de-sac when development is complete.¹ *Exhibit 1; Exhibit 2; Exhibit 3; Exhibit 24, Staff Report, page 1.*

2. The City of Bremerton (City) determined the application was complete on January 31, 2019. On February 5, 2019, the City mailed or emailed notice of the application to property owners within 300 feet of the subject property and to reviewing departments and agencies, including the Bremerton School District, the Washington State Department of Fish and Wildlife (WDFW), the Department of Ecology (DOE), and Kitsap Transit. The same day, the City posted notice of the application on the property and published notice in the *Kitsap Sun*. On May 13, 2019, the City provided notice of the open record hearing associated with the application by mailing or emailing notice to property owners within 300 feet of the property and to reviewing departments and agencies. The same day, the City posted notice of the hearing on the property and published notice in the *Kitsap Sun*. As discussed in detail below, the City received written comments from area residents expressing concern about the proposal. *Exhibit 15; Exhibit 16; Exhibit 24, Staff Report, page 9; Exhibit 25; Exhibit 26; Exhibit 29; Exhibit 30.*

State Environmental Policy Act

3. The City Department of Community Development (DCD) acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The City consolidated the application and SEPA comment periods under the Optional Determination of Nonsignificance (DNS) process provided for by the Washington Administrative Code (WAC) 197-11-355, with a comment deadline of February 19, 2019. Notice materials stated that DCD expected to issue a DNS for the proposal. No comments specific to SEPA were received.² Following the comment period, 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 April 26, 2019. The DNS was not appealed. *Exhibit 16; Exhibit 22; Exhibit 24, Staff Report, page 1.*

¹ The property is identified by tax assessor ID number 282401-1-059-2003. *Exhibit 24, Staff Report, page 1.* A legal description of the property is provided with the application materials. *Exhibit 2.*

² Area resident Michael Gonzales referenced the Applicant's SEPA Checklist in his written comments. His letter, however, addressed general aspects of the proposed development and did not challenge the City's SEPA determination specifically. His comments are discussed, in detail, below. *Exhibit 18.*

Comprehensive Plan, Zoning, and Surrounding Property

4. The property is designated Low Density Residential (LDR) under the City Comprehensive Plan. The purpose of the LDR designation is to “create new and support existing single-family neighborhoods.” *Bremerton Comprehensive Plan, page LU-31*. Comprehensive Plan Land Use Element goals and policies relevant to the proposal include: planning for Bremerton’s population and employment growth; designating neighborhoods, communities, and centers throughout the city and encouraging the implementation of design guidelines for new development; protecting Bremerton’s natural environment; promoting land use patterns and development to minimize impacts on natural systems, maximize returns on infrastructure investment, and reduce greenhouse gas emissions; and promoting infill development in order to preserve rural areas, open spaces, and ecologically functioning lands within the city. Comprehensive Plan Housing Element goals and policies relevant to the proposal include: encouraging the development of a variety of new housing options and densities to meet the changing needs of the city’s residents; promoting a sense of community, or gathering places, within new neighborhoods by creating spaces where residents can interact; and supporting access to quality and affordable housing.³ *Exhibit 24, Staff Report, pages 6 and 7*.
5. The property is located within the City’s Low Density Residential (R-10) zoning district. The intent of the R-10 zoning district is to accommodate single-family housing by infilling at a range of lot sizes consistent with urban growth patterns. Some attached single-family housing may be appropriate when responding to sensitive areas or accommodating innovative design. Residential development at higher densities is encouraged at the edge of designated centers. *Bremerton Municipal Code (BMC) 20.60.010*. Development of single-family detached dwelling units and single-family attached (zero lot line) dwelling units is allowed within the R-10 zoning district. *BMC 20.60.020(j)(1) and (2)*. *Exhibit 24, Staff Report, page 1*.
6. Property to the north is also zoned R-10 and includes an undeveloped, 15-foot parcel, encumbered with easements for utilities and access, and other developed and undeveloped residential lots along Sound Ridge Drive. Property to the east and west is zoned R-10 as well. The Highland View plat is currently under construction to the west and will consist of 27 single-family residences when complete. Property to the east is currently undeveloped. Property to the south is zoned “Urban Medium Residential Density” and is developed with condominiums. *Exhibit 3; Exhibit 24, Staff Report, pages 1 and 2*.

³ City staff specifically identified Comprehensive Plan Land Use Element Goals LU1 and LU3, and Policies LU1A, LU3C, and LU3I, as relevant to the proposal. City staff also identified Housing Element Goals H2 and H3 and Policy H2F as relevant. *Exhibit 24, Staff Report, pages 6 and 7*.

Residential Cluster Development

7. The intent of the residential cluster development (RCD) provisions of the municipal code is to accommodate urban densities of the underlying zoning district while allowing residential development to utilize less land area. These provisions aim to allow greater flexibility in the design of subdivisions to ensure development is in harmony with the natural characteristics on-site and to preserve features such as critical areas, open space, recreation areas, or scenic vistas. *BMC 20.58.060(a)*. An RCD may be applied to all subdivisions as permitted in Chapter 20.12 BMC. *BMC 20.58.060(b)*. The maximum and minimum density of the underlying zone applies, and unbuildable critical areas may be included in the area for calculating density. *BMC 20.58.060(d)(1)*. The minimum required density in the R-10 zoning district is five dwelling units per acre (du/ac), and the maximum density is 10 du/ac. *BMC 20.60.065*. With 25 lots proposed on 2.5 acres, the gross density of the project would be 10 du/ac, consistent with the zoning code. *Exhibit 9; Exhibit 24, Staff Report, page 2*.
8. Within the R-10 zoning district, minimum lot size is normally 4,300 square feet. *BMC 20.65.065(d)*. With an RCD, however, minimum lot size may be reduced to 2,500 square feet, provided all lots are buildable. *BMC 20.58.060(d)(2)*. Here, the minimum lot size proposed is 2,510 square feet. The largest proposed lot would be 4,107 square feet, and the average lot size would be 2,813 square feet. All lots would be buildable as proposed, satisfying the requirements of BMC 20.58.060(d)(2). *Exhibit 3; Exhibit 9; Exhibit 24, Staff Report, page 3*.
9. Minimum front and rear setbacks are 15 feet and minimum side yard setbacks are five feet in the R-10 zoning district. *BMC 20.60.060(a)(1)*. With an RCD, however, these requirements may be modified to encourage innovate site design so long as all structures and parking areas within the RCD maintain a 10-foot minimum setback from all perimeter property lines. *BMC 20.58.060(d)(3)*. Here, no buildings or parking areas would be located within the required 10-foot perimeter property line setback. Twenty of the 25 lots would meet the typical 15-foot rear setback required in the R-10 zoning district. Due to site topography, however, City staff determined the following rear setbacks would be allowed to encourage innovative site design:
 - The rear setback on Lot 21 would be reduced to 14 feet.
 - The rear setback on Lot 11 would be reduced to 6 feet.
 - The rear setbacks on Lots 1, 12, and 13 would be reduced to 10 feet. Moreover, on these particular lots, the required 10-foot site perimeter setback would be co-terminus with the reduced 10-foot rear setback.*Exhibit 3; Exhibit 24, Staff Report, page 3*.
10. Minimum lot width in the R-10 zoning district is 30 feet. With an RCD, however, deviations are permitted. *BMC 20.58.060(d)(4)*. Here, City staff reviewed the proposal and determined that the proposed lot widths are appropriate for the attached, zero lot line

buildings and development within a cul-de-sac. Moreover, all proposed lots are buildable as designed. *Exhibit 3; Exhibit 24, Staff Report, page 3.*

11. Total development coverage is limited to 50 percent of the total site area, including open space, and each RCD must provide a minimum of 20 percent of the gross site area for common open space, set aside on separate tracts. *BMC 20.58.060(d)(5) and (8).* The total development coverage proposed is 44 percent, and the proposed plat would contain approximately 0.5 acres of open space on three separate tracts, satisfying these requirements. The Applicant would submit a final open space plan with the Site Development Permit. In addition, the Applicant would identify common open space areas on separate tracts, restrict them in perpetuity from further subdivision or development, and include these restrictions on the face of the final plat. *Exhibit 3; Exhibit 24, Staff Report, pages 3 and 4.*
12. BMC 20.58.060(d) requires two off-street parking spaces for each residence. Here, each lot would include a garage and paved driveway, accommodating two parking spaces per residential lot. *Exhibit 24, Staff Report, page 3.*

Critical Areas

13. Kitsap County Critical Areas Maps illustrate that portions of the site contain moderate geologically hazardous areas. There are no other critical areas on-site. The Applicant submitted a geotechnical report, prepared by EnviroSound Consulting in August 2018, reviewing geotechnical considerations for the site. The report determined that, with appropriate measures taken to ensure slope stability, the proposal would comply with the requirements of BMC 20.14.600, related to geologically hazardous areas. The report further noted that slope stability for any residential structures proposed on Lot 1 should be further evaluated to determine if pile foundations are necessary. The City Building Official reviewed the geotechnical report and noted that additional geotechnical inspections should occur during future development of the site, including inspections related to structural fill and compaction, soil bearing, placement of retaining walls and rockeries, ongoing site monitoring during wet weather construction, and final grading. In addition, the Applicant would record a “Notice to Title and Hold Harmless Agreement” recognizing the geological hazards and holding the City harmless of any related, future claims. *Exhibit 3; Exhibit 5; Exhibit 24, Staff Report, pages 4 and 5.*

Landscaping

14. All new development is subject to Chapter 20.50 BMC landscaping requirements. *BMC 20.50.020.* BMC 20.50.040 and BMC 20.50.050(a)(1) require landscaped front yard setback areas; street trees along public and private streets at a standard of one tree for every 25 linear feet of street frontage, unless otherwise required by BMC 20.50.050(c); and preservation of existing vegetation on undeveloped portions of property, excluding noxious weeds and invasive species. The Applicant submitted preliminary plans

addressing these requirements. The plans show that approximately 21,780 square feet of native landscaping would be installed or preserved in the open space tracts and that street trees would be planted along the Sound Ridge Drive frontage, as required by Chapter 20.50 BMC. The Applicant would submit a final landscaping plan with the Site Development Permit. All common areas, including open spaces, would be maintained by a homeowner's association (HOA) following development, and this requirement would be shown on the face of the final plat. *Exhibit 3; Exhibit 24, Staff Report, pages 4 and 9.*

Access and Traffic Impacts

15. As noted above, the development would be accessed from Sound Ridge Drive, a private road. Sound Ridge Drive would terminate as a cul-de-sac within the development, and each lot would have access to Sound Ridge Drive from a paved driveway. The Applicant would install frontage improvements on Sound Ridge Drive within the plat, as required by BMC 11.12.110, including curbs, gutters, sidewalks, ADA-compliant sidewalk ramps, street trees, and associated pavement restoration. The City Public Works Department determined that street lighting and planter strips would not be required for the proposal. The road within the plat would remain private and be maintained by the HOA in the future. This requirement would be shown on the face of the final plat. *Exhibit 3; Exhibit 21; Exhibit 24, Staff Report, pages 5 and 9.*
16. The Applicant submitted a Traffic Impact Analysis (TIA), prepared by Heath & Associates, Inc., in November 2018, assessing traffic impacts from the development. The TIA determined that the proposal would generate 25 additional PM peak hour trips per day and would not cause existing levels of service (LOS) at intersections in the vicinity to be negatively impacted or fall below the City's adopted standard of LOS E. Accordingly, the TIA determined that no off-site mitigation would be necessary for the proposal. *Exhibit 11.*

Stormwater

17. The City Public Works and Engineering Department reviewed the proposal and determined that stormwater quantity and quality mitigation, under Chapter 15.04 BMC, would be required. MAP, Ltd., prepared a preliminary storm drainage analysis for the proposal, dated July 25, 2018. The report states that the site drains to an existing storm conveyance system that discharges directly into Sinclair Inlet. All stormwater from impervious roadway surfaces on-site would be detained and treated for water quality, through use of a modular wetland system, prior to being discharged into the existing storm conveyance system. The report further notes that low-impact development (LID) techniques are not feasible on the site due to existing topography. The Applicant would ensure that natural drainage systems and outfalls are preserved and that stormwater flow is maintained on-site. The Applicant would submit a Temporary Erosion and Sedimentation Control Plan and obtain a Department of Ecology water quality

construction permit prior to issuance of a Site Development Permit. *Exhibit 2; Exhibit 3; Exhibit 4; Exhibit 20; Exhibit 24, Staff Report, pages 5 and 10.*

Utilities and Services

18. The City Public Works and Utilities Department issued a letter, dated May 9, 2019, noting that the City of Bremerton has facilities and adequate capacity and supply to provide sewer and water service to the proposed development. The Applicant would coordinate with Waste Management regarding trash collection and with the U.S. Postal Service regarding mail delivery prior to Site Development Permit approval. *Exhibit 7; Exhibit 24, Staff Report, pages 7 and 8.*
19. The Public Works and Utilities Department also noted that all public utilities must meet current standards at the time of Site Development Permit submittal; all utilities must be accessible by service vehicle and installed within the public right-of-way or within a utility easement; fire truck access must be available for all fire hydrants; and all connection fees must be paid prior to final occupancy approval. In addition, all utility easements and open space dedications would be noted on the face of the plat. The City Fire Marshal also reviewed the proposal and determined that a fire sprinkler system must be installed in each residence, the minimum width of the cul-de-sac must be 96 feet, and appropriate fire lanes must be maintained within the plat. *Exhibit 20; Exhibit 24, Staff Report, pages 5 and 6.*
20. In January 2019, the City of Bremerton granted an easement for access across Sound Ridge Drive to the property owners on Sound Ridge Drive, including the Applicant. Subsequently, the Applicant submitted a title report (Exhibit 13) showing that ingress and egress to the property is assured. *Exhibit 13; Exhibit 24, Staff Report, page 8.*
21. The Bremerton School District would serve the project site. Students within the plat would attend West Hills Elementary, Mountain View Middle School, and Bremerton High School. An existing bus stop at the intersection of Roosevelt Boulevard and Sound Ridge Drive, approximately 720 feet north of the property, already serves the area, and paved sidewalks would provide safe walking routes to the bus stop. *Exhibit 10; Exhibit 24, Staff Report, page 6.*

Written Comments

22. As noted above, the City received comments from area residents in response to its notice materials. Specifically, Michael and Jessica Gonzales, who live at the south end of Sound Ridge Drive, adjacent to the proposed development, wrote to the City with the following concerns:
 - The proposed development would obstruct or alter views of existing properties adjacent to the site. This would include obstructing existing views of Mt. Rainier and the western portion of Sinclair Inlet from the Gonzales's property and

partially obstructing or altering views of Sinclair Inlet for at least half of the other, current residents of Sound Ridge Drive.

- The proposal would increase traffic along Sound Ridge Drive, a private street that was not intended to provide access to 25 additional homes.
- Open space tracts identified on the project plans should be protected from further development or subdivision in perpetuity.
- The Traffic Impact Analysis did not assess traffic impacts from the proposal beyond intersections in the immediate vicinity or assess traffic impacts from the proposal on the existing residents of Sound Ridge Drive.
- Assurances should be made about construction hours.
- The proposal would impact wildlife in the area, including bald eagles, hawks, and black-tailed deer.
- Stormwater on-site currently pools as a pond in the southeastern quadrant of the proposed development and impacts to this pond have not been considered.

Exhibit 18.

23. In addition to the letter submitted by the Gonzaleses, a collection of the existing residents on the developed portion of Sound Ridge Drive submitted a letter, dated May 28, 2019, expressing similar concerns over the proposal. In addition to reiterating concerns over impacts to existing views and wildlife, the letter focused extensively on issues with Sound Ridge Drive itself. Specifically, the letter noted that existing residents of Sound Ridge Drive believed they owned the road and, until this proposal occurred, did not realize the road was owned by a bank that obtained it in foreclosure. These residents are concerned that tripling the number of residents that use Sound Ridge Drive will cause a dangerous situation; that costs to maintain the road will increase, and no road maintenance agreement (RMA) currently exists addressing this issue; and that existing residents should have been informed that they did not own the road, and they should be reimbursed for maintaining it in the past. *Exhibit 26.*

24. City staff provided a written response to some of the concerns raised in the public comments. Staff noted:

- The municipal code does not have codes to protect views. Further, the Applicant maintains that views would not be obstructed, due to existing site topography.
- The subject property has ingress/egress easement rights over Sound Ridge Drive. The cul-de-sac would provide an emergency vehicle turnaround, a benefit to the entire neighborhood.
- All R-10 lots within the city that are large enough have the right to subdivide and the Comprehensive Plan encourages infill development.
- The Applicant would be required to submit additional plans and documentation prior to final plat approval, including submitting a final open space plan.
- The submitted TIA shows that traffic impacts from the proposal would be minimal and would not impact adopted LOS in the vicinity.

- The municipal code does not limit construction hours to weekday work hours. Construction sites must comply with the City’s noise level regulations (Chapter 6.32 BMC).
- WDFW was notified of the proposal and had no comments. Critical areas maps do not indicate the presence of eagle nests in the vicinity.
- The water that is retained on the property is a man-made sediment pond from past grading activities on the site.

Exhibit 24, Staff Report, pages 10 and 11.

Testimony

25. City Planner Kelli Lambert testified generally about the application, about the history of the site, and about how the current proposal would comply with the City Comprehensive Plan, zoning ordinances, critical areas ordinances, and the criteria for plat approval under BMC 20.12.100. She also explained how the proposal would comply with the requirements for a residential cluster development under BMC 20.58.060. Ms. Lambert noted that, although access from Sound Ridge Drive and ownership of Sound Ridge Drive has been raised as a concern, the Applicant has documented its right to ingress and egress to and from the property via Sound Ridge Drive. *Testimony of Ms. Lambert.*
26. Applicant Representative Suzanne Bernard also testified generally about the proposal and explained that the property was previously cleared for development in the past. She explained that, currently, there is no road maintenance agreement (RMA) related to Sound Ridge Drive but that all developed lots along Sound Ridge Drive have access to the road. The Applicant hopes that the bank that owns the road will deed it to the Applicant and the other property owners along Sound Ridge Drive. *Testimony of Ms. Bernard.*
27. Area resident William Kennish testified that he prepared the letter signed by several residents of Sound Ridge Drive (Exhibit 26, discussed above). He noted that, because the notice was only mailed to property owners within 300 feet of the property and the notice was posted at the end of Sound Ridge Drive (on the property), many residents on Sound Ridge Drive were unaware of the proposal. Mr. Kennish stressed that, through this process, the homeowners along Sound Ridge Drive have now learned they do not own the road they have been maintaining and that this seems unfair. He stressed that all the homeowners would like to see an RMA put in place prior to development, to ensure that Sound Ridge Drive is maintained in the future, and that the Applicant would be responsible for the bulk of traffic that would impact the road. *Testimony of Mr. Kennish.*
28. Michael Gonzales reiterated many of the concerns raised by Mr. Kennish and, further, the concerns he and his wife raised in their written comments (Exhibit 18, discussed above). *Testimony of Mr. Gonzales.*

29. In response to the testimony of Mr. Kennish and Mr. Gonzales, Ms. Bernard stressed that the Applicant has clear and legal access to the property from Sound Ridge Drive and that no other site access would be possible. She also noted that, according to the title report, the site is not encumbered by any view corridors. Ms. Bernard noted, however, that the Applicant would repair any damage to Sound Ridge Drive that occurs because of construction. She further noted that, until Kitsap Bank divests itself of the rights to Sound Ridge Drive, the Applicant has no control over it, and it would not be possible to create a new RMA without clear title. In response to an inquiry from the Hearing Examiner, Ms. Bernard stated that the Applicant would agree to keep the record open until June 4, 2019, to see if additional information from Kitsap Bank could be obtained addressing this issue. Ms. Lambert also noted that the City would concur with keeping the record open to allow interested members of the public to provide additional comments on the proposal. *Testimony of Ms. Bernard; Testimony of Ms. Lambert.*

Additional Written Submittals

30. After the hearing, the Applicant submitted a letter from Larry Grohn, SVP Corporate Real Estate Director of Kitsap Bank. The letter notes that there are currently 27 lots that were created through the boundary line adjustment process, in addition to the project site, that have easement rights over Sound Ridge Drive for access and utilities. Mr. Grohn points out that the prior owner of the property created each of the parcels and installed Sound Ridge Drive. That owner intended to dedicate Sound Ridge Drive to the City as a public roadway. Since Sound Ridge Drive was installed in approximately 2007, however, the City's standards for acceptance of roadway improvements have changed, and Sound Ridge Drive would not meet the City's current standards. Mr. Grohn also explained that Kitsap Bank does not intend to retain ownership of Sound Ridge Drive, which it came to own through a foreclosure action, and would like to work with the lot owners that have easement rights, including the Applicant, to transfer ownership to them. *Exhibit 28.*
31. William Kennish also submitted additional comments after the hearing, along with photographs. In an email dated June 3, 2019, he noted:
- The existing residents along Sound Ridge Drive would prefer that the road be deeded to them and that the present proposal for 25 new residences be denied.
 - Recognizing that the "preferred" alternative is unlikely, those residents that Mr. Kennish were able to consult agree that, if the proposal moves forward, speed tables should be installed along Sound Ridge Drive to prevent speeding, each plot should be awarded a proportional share of the responsibility for Sound Ridge Drive, and an RMA should be put in place and managed by the HOA of the new development. The existing homeowners would prefer that they not be required to pay for future maintenance of Sound Ridge Drive (in light of their efforts to maintain the road in the past without being legally required to do so) but agree that all new homes built along Sound Ridge Drive would be required to pay

appropriate dues under the RMA for future maintenance of the road. Residents would also like to be included as parties to the RMA.

Exhibit 29.

Staff Recommendation

32. 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. *Exhibit 24, Staff Report, pages 11 through 13.*

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).

Residential Cluster Development

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

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 the requirements for preliminary plat approval under BMC 20.12.100 and RCW 58.17.110.** The Applicant requests preliminary plat approval to subdivide 2.5 acres into 25 single-family residential lots, with associated improvements, as a residential cluster development. Twenty-four of the residential structures would be attached (zero lot line) single-family homes, and one residence would be a detached single-family home. The proposed development of clustered single-family residential dwellings is consistent with the property's Low Density Residential designation under the City Comprehensive Plan. For

*Findings, Conclusions, and Decision
City of Bremerton Hearing Examiner
Sound Ridge Preliminary Plat
No. BP18-00086*

instance, the Comprehensive Plan promotes infill development in order to preserve rural areas, open spaces, and ecologically functioning lands within the city and encourages the development of a variety of new housing options and densities to meet the changing needs of the city's residents. The proposed lots are also appropriate for residential use within the City's R-10 residential zoning district, which encourages density of between 5 and 10 dwelling units per acre. Here, the proposal would provide for 10 dwelling units per acre, consistent with the zoning code.

The City acted as lead agency under SEPA and determined that the proposal would not have probable significant adverse environmental impacts. The determination was not appealed. Safe walking conditions would be provided within the subdivision and along Sound Ridge Drive for student pick up from a proposed transit stop in the vicinity. The City would provide water and sewer service to the property. All stormwater from impervious roadway surfaces on-site would be detained and treated for water quality, through use of a modular wetland system, prior to being discharged into an existing storm conveyance system. The Applicant would ensure that natural drainage systems and outfalls are preserved and that stormwater flow is maintained on-site. The Applicant would also submit a Temporary Erosion and Sedimentation Control Plan and obtain a Department of Ecology water quality construction permit prior to issuance of a Site Development Permit. Provisions would be made within the proposed subdivision for roads, utilities, and street trees consistent with the City zoning code and engineering standards. The Applicant would also provide recreational opportunities within preserved open space tracts.

Slope areas on-site are sufficiently stable to allow construction of the proposed development. The City received and reviewed the Applicant's geotechnical, traffic impact analysis, and storm drainage reports and determined that adequate measures related to slope stability and stormwater would be provided. All common areas, including paths, recreation, and parking areas would be the responsibility of the developer until such time as responsibility is transferred to a homeowners' association (HOA).

The City gave reasonable notice of the application and opportunity to comment on the proposal. Although some area residents who live along Sound Ridge Drive were not mailed notice of the application or associated hearing because their homes are located further than 300 feet from the project site, the record was left open to allow further comments to be submitted. The primary issue raised by members of the public commenting on the proposal involves the future maintenance of Sound Ridge Drive. As discussed above, the subject property and 27 other lots along Sound Ridge Drive were originally created through the boundary line adjustment process and Sound Ridge Drive was installed approximately 10 years ago. The previous property owner apparently intended on dedicating the road to the City. Due to foreclosure, however, this never

occurred and Kitsap Bank came to own the property underlying Sound Ridge Drive. Accordingly, while each of the 27 other lots along Sound Ridge Drive and the subject property have easement rights for ingress and egress and utilities, none of the individual property owners controls the street itself. The record further reflects that Sound Ridge Drive would not meet the City's currently adopted roadway standards such that the City would accept the roadway through dedication. In light of this, existing residents along Sound Ridge Drive are upset that: they received incorrect or inadequate information about the roadway when purchasing their homes; they have been maintaining Sound Ridge Drive despite having no ownership interest in the road; and the proposed development of 25 additional lots within the plat would substantially increase impacts to the road without any clear requirement that the Applicant, or future residents of the plat, contribute toward road maintenance.

The Hearing Examiner recognized the untenable nature of this situation at the open record hearing and left the record open for additional information to be submitted on this topic. In addition to receiving a letter from Kitsap Bank explaining its desire to divest its ownership of Sound Ridge Drive, several members of the community submitted a proposal: that Sound Ridge Drive be dedicated to those with easement rights (including the Applicant) and that the Applicant create a Road Maintenance Agreement (RMA) that would be managed by the future HOA for the proposed plat. As part of the RMA, speed tables would be installed along Sound Ridge Drive to discourage speeding. In addition, existing properties along the road would not be required to pay additional maintenance fees in the future, in light of their having maintained the road in the past, but all future homes built on the remaining 18 lots outside of the 25 lots associated with the preliminary plat, would be required to pay a proportional share of the future maintenance of Sound Ridge Drive. This solution would result in a single entity (the HOA for the proposed plat) taking care of the road, rather than the piecemeal approach currently being taken by individual property owners, and would ensure that the road is maintained in perpetuity. Moreover, because all HOA members in the new development would have to travel the entire length of the road to reach their residences, they will remain in the best position to determine what road maintenance is necessary in the future.

The Hearing Examiner generally concurs with the approach proposed by the existing residents. He lacks the authority, however, to require homeowners outside the proposed plat to work with the Applicant or Kitsap Bank to ensure that ownership of Sound Ridge Drive is transferred or that an RMA is developed that will ensure future maintenance of the road. RCW 58.17.110 and BMC 20.12.100, however, require that the Hearing Examiner assure that appropriate provisions related to roads and access exist. Here, access to the proposed plat from Sound Ridge Drive must be assured in perpetuity. Accordingly, additional conditions of approval (Conditions 30 and 31) have been added addressing the need for an RMA for Sound Ridge Drive specific to the Applicant and the future HOA for the plat.

City staff reviewed the proposal and determined that the proposed plat would comply with municipal requirements and that the public use and interest would be served by the platting of the subdivision. The Hearing Examiner concurs with this assessment. Conditions unique to the proposal and those required of all preliminary plats, however, are necessary to ensure development meets all requirements of the municipal code and the City's other development standards, and to ensure that all concerns raised by reviewing departments and agencies have been adequately addressed. *Findings 1 – 32.*

- 2. With conditions the proposal would be consistent with the approval criteria for a Residential Cluster Development under BMC 20.58.060.** The intent of the Residential Cluster Development (RCD) provisions of the municipal code is to accommodate urban densities of the underlying zoning district while allowing residential development to utilize less land area. These provisions aim to allow greater flexibility in the design of subdivisions to ensure development is in harmony with the natural characteristics on-site and to preserve features such as critical areas, open space, recreation areas, or scenic vistas. The proposed RCD allows for clustered single-family residences while protecting existing critical areas, including steep slopes, which limit development. An RCD follows the same approvals and timelines as the concurrent subdivision application pursuant to Chapter 20.12 BMC, Land Division. As noted above in Conclusion 1, conditions are necessary to ensure development meets all requirements of the municipal code and the City's other development standards, and to ensure that all concerns raised by reviewing departments and agencies have been adequately addressed. *Findings 1 – 32.*

DECISION

Based upon the preceding findings and conclusions, the request for a preliminary plat to subdivide 2.5 acres into 25 single-family lots, with associated improvements, as a residential cluster development at the south end of Sound Ridge Drive is **APPROVED**, subject to the following conditions:⁴

1. Building envelopes for primary structures for each lot, and the 10 foot parameter setback, shall be illustrated on the face of the final subdivision. All rear yard setbacks shall be 15 feet, except for the following adjusted rear yard setbacks: Lot #21 (14 feet), Lot #11 (6 feet); and Lots #1, #12, and #13 (10 feet). 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 after Final Plat approval.

⁴ Conditions include both legal requirements applicable to all developments and requirements to mitigate the specific impacts of this development.

2. A ten-foot perimeter setback of the site must be maintained including no structures or parking areas are allowed to be located in that area. This information must be identified on the Final Plat documents.
3. All driveways and areas used for loading, parking and maneuvering motorized vehicles shall have a paved surface.
4. All units shall have two (2) off-street paved parking spaces.
5. A Site Development Permit is required pursuant to BMC 20.58.090 and should be completed prior to Final Plat approval.
6. The open space areas shall be restricted in perpetuity from further subdivisions and/or land development. This shall be recorded on the face of the plat.
7. A final Open Space Plan per BMC 20.58.060(d)(8)(vi), compliant with the requirements of the landscaping code (BMC 20.50), and with monitoring, maintenance and guarantees, is required for the Site Development Permit approval. This proposal identifies common open space areas on separate tracts, and these must be restricted in perpetuity from further subdivision or development. The Open Space Plan shall be referenced on the face of the Final Plat and recorded with the Final Plat.
8. 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 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 final plat.
9. The open space tracts must be installed prior to Final Plat approval.
10. Landscape plans for areas other than the Open Space tracts, including street trees and irrigation, must be approved with Site Development Permit and installed prior to Final Plat.
11. Development shall comply with the recommendations within the Geotechnical Engineering Report prepared by EnviroSound Consulting, Inc., dated August 1, 2018.
12. An additional geotechnical report must be submitted with Site Development Permit prior to Final Plat, to ensure the structures are no native soil or structural fill that has been placed in accordance with the geotechnical engineer's recommendations.
13. An additional geotechnical report is required for any proposed construction in the vicinity of Test Pit 1, as identified in the EnviroSound Consulting, Inc., geotechnical report. This

additional report is required at time of building permit submittal for Lot 1. Additional geotechnical information may be required at time of building permit submittal for the remaining lots.

14. Prior to the issuance of any building permit, a Notice to Title & Hold Harmless Agreement (example is provided in Exhibit 19) shall be recorded at the Kitsap County Auditor's Office. This requirement shall be referenced on the face of the Final Plat.
15. All required storm drainage infrastructure shall be installed under separate permits prior to Final Plat approval.
16. Public water and sanitary sewer mains are required and shall be designed, installed, and accepted pursuant to BMC Title 15 prior to Final Plat approval.
17. Sound Ridge Drive shall be constructed pursuant to the Local Access Roadway Classification Table.
18. All frontage improvements, (with the exception of planter strips and street lighting), to include curb, gutter, sidewalk, street trees, and associated pavement restoration, shall be installed prior to Final Plat approval.
19. Standard driveway approaches are required, per the Standard Driveway requirement in current City of Bremerton Standards and BMC 11.12.
20. Detailed landscape and street tree plan, including irrigation plan, shall be required for review and approval by Public Works, Utilities & Engineering during the Site Development Permit.
21. ADA sidewalk ramps are required, consistent with City standards.
22. Temporary Erosion and Sedimentation Control Plan is required. Ecology construction permit will be required prior to issuance of the Site Development Permit.
23. Parcel addresses and private street names are required and shall be shown on the face of the plat prior to Final Plat approval.
24. The developer shall coordinate with Waste Management for trash collection and with the US Postal Service for proper mail service prior to Site Development approval.
25. A fire sprinkler system shall be installed in each residence.
26. The cul-de-sac is required to be a minimum of 96 feet.

27. Type II fire lanes are required to be constructed and maintained. This shall be the responsibility of the developer until such time that the responsibility transfers to the Homeowners Association (HOA).
28. The plat must comply with RCW 36.70A.040, the Washington Uniform Common Interest Ownership Act, and this documentation will need to be submitted and approved by the City prior to submittal of the Final Plat.
29. 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 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.
30. The Applicant shall coordinate with Kitsap Bank on transferring Sound Ridge Drive to the Applicant. As part of this process, the Applicant may wish to facilitate the transfer of the road to itself and the other properties that have easement rights to the road (i.e., the additional 27 lots that access Sound Ridge Drive). This, however, is not required. Ownership of Sound Ridge Drive shall be clearly established prior to final plat approval.
31. Following the transfer of ownership of Sound Ridge Drive, the Applicant shall create a Road Maintenance Agreement (RMA) addressing the future maintenance of Sound Ridge Drive. The RMA shall address the installation of calming measures on the private road as well as the maintenance requirements and obligations involving maintenance of the length of Sound Ridge Drive in the future. The Applicant or HOA developed for the plat shall be responsible for executing the RMA. Such agreement shall be created, and all necessary dedications shall occur, prior to final plat approval. The Applicant/HOA may wish to coordinate with other property owners with easement rights to Sound Ridge Drive and include them in the RMA. This, however, is not required and will be left to the discretion of the Applicant.

DECIDED this 18th day of June 2019.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center