BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF BATTLE GROUND, WASHINGTON

Regarding an application by Olson Engineering, Inc. for approval of a preliminary plat to divide10-acres into 77 lots at 3416 SE Grace Avenue in the City of Battle Ground	))))	**FINAL ORDER** **LUDIII: 19-0007 (Cedar Heights North)**

A. SUMMARY

1. The applicant, Olson Engineering, Inc., requests approval to divide the 10-acre site into 75 lots for single-family residential development, two lots for commercial development, and a private street tract. The site is located 3416 SE Grace Avenue. The legal description of the site is Tax Assessor Parcel 194334-000 (the "site").

a. The site and properties to the north are zoned MU-R (Mixed Use - residential). Properties to the south and east are zoned R5 (Residential, 5 units per acre maximum density). Properties to the west are zoned R7 (Residential, 7 units per acre maximum density).

b. There are three small Category 4 wetlands along the south boundary of the site, an isolated and exempt Category 4 wetland near the center of the site, and an Oregon white oak tree near the southeast corner of the site. The applicant must remove the oak tree to accommodate required widening of SE Grace Avenue. The applicant must fill the wetlands to construct SE 35th Street, a planned neighborhood collector street that is required by the City's Capital Facilities Plan. The applicant will mitigate these impacts by planting two new Oregon white oak trees within the open space tract of the proposed Cedar Heights development south of the site and by purchasing mitigation credits within an off-site wetland mitigation bank.

c. There is an existing single-family residence in the north central portion of the site. The applicant intends to retain the existing residence on proposed Lot 28 and develop a new single-family detached dwelling on each of the remaining lots. All proposed lots comply with the dimensional requirements of the R5 zone.

d. The applicant will construct half-width frontage improvements along the site's SE Grace Avenue frontage and extend a new public street, proposed SE 35th, Street along the south boundary of the site in conjunction with the previously approved Cedar Heights development to the south. The applicant will extend three new streets north from SE 35th Street: proposed SE 6th and 8th Streets and SE 9th Place. The applicant will extend SE 6th and 8th Streets to the north boundary to allow for further extension when the abutting property redevelops. SE 9th Place will extend north, then curve east, terminating in a cul-de-sac turnaround near the east boundary of the site. The applicant will also provide an east-west road, proposed SE 34th Street, between SE 6th and 8th Streets. See the applicant's revised preliminary plat, Exhibit 23.

e. The City of Battle Ground will provide domestic water and sanitary sewer service to the site. The applicant will collect storm water from all impervious areas on the site and convey it to the proposed storm water facilities in the previously approved Cedar Heights development south of the site for treatment and detention. The applicant will discharge treated stormwater to the on-site streams in Tract G of Cedar Heights at less than predevelopment rates.

2. The City issued a Mitigated Determination of Nonsignificance ("MDNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). The SEPA determination was not appealed and is now final.

3. City of Battle Ground Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. City staff recommended the examiner approve the preliminary plat subject to conditions. See the Staff Report to the Hearing Examiner dated June 18, 2019, (the "Staff Report") as amended by Exhibit 24. One persons testified orally with questions and concerns about the proposed development. Disputed issues or concerns in the case include the following:

a. Whether the development will exceed the capacity of area streets or create a hazard;

b. Whether the applicant's traffic study adequately considered the traffic impacts of the development

c. Whether adequate sight distance will be available at the proposed intersection of SE 35th Street and SE Grace Avenue; and

d. Whether the applicant is required to address existing speeding issues on SE Grace Avenue;

4. Based on the findings provided or incorporated herein, the examiner approves the revised preliminary plat (Exhibit 23) subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at a public hearing about this application on June 26, 2019. All exhibits and records of testimony are filed at the City of Battle Ground. At the beginning of the hearing, the examiner described how the hearing would be conducted and how interested persons could participate. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner Emily Lutz summarized the Staff Report. She noted that the applicant submitted an amended preliminary plat, Exhibit 23, which extends NE 8th Avenue to the north boundary of the site in compliance with the City's cross-circulation

requirements. She requested the examiner add a condition of approval as set out in Exhibit 24.

3. City engineer Ryan Jeynes noted that the applicant's traffic analysis did not identify any safety concerns based historic crash data. The proposed SE 35th Street/SE Grace Avenue intersection will not conflict with the driveway on the east side of SE Grace Avenue. The existing driveway carries low volumes of traffic. Condition E.1 requires that stormwater facilities must be in place within the Cedar Heights development prior to creation of new impervious surfaces on this site.

a. The City can conduct a speed study on SE Grace Avenue to determine existing speeds. However, City staff have no authority to reduce the posted speed limit. That is within the jurisdiction of the City Council.

4. Engineer Kurt Stonex testified on behalf of the applicant. He accepted the findings and conditions in the Staff Report, as revised by Exhibit 24, without exceptions. He noted that there is good sight distance available at the existing driveway on the east side of SE Grace Avenue. Drivers leaving the driveway can see oncoming vehicles in either direction and the proposed SE 35th Street/SE Grace Avenue intersection will be clearly visible. Based on the applicant's traffic analysis, adequate sight distance is available at the proposed intersection on the west side of SE Grace Avenue. Residents or the City may need to trim vegetation to maintain sight distance on the east side of the road in order to ensure adequate sight distance is available.

5. Sharon Murphin testified that it is difficult to exit her driveway onto SE Grace Avenue under existing conditions. SE Grace Avenue is a narrow county road and drivers frequently exceed the posted 55 mph speed limit. The hill to the south blocks views of northbound vehicles. She has had several near misses on this road. She had to widen her driveway in order to safely access SE Grace Avenue. The UPS driver is afraid to deliver to her home.

6. The examiner closed the record at the conclusion of the hearing and announced his intention to approve the application subject to the conditions in the Staff Report, as amended by Exhibit 24.

C. DISCUSSION

1. City staff recommended approval of the revised preliminary plat (Exhibit 23), based on the affirmative findings and subject to conditions of approval in the Staff Report (as amended by Exhibit 24. The applicant accepted those findings and conditions, as modified, without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the revised preliminary plat (Exhibit 23) does or can comply with the applicable standards of the Battle Ground Municipal Code (the "BGMC") and the Revised Code of Washington, provided that the applicant complies with recommended conditions of

approval as modified herein. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the following findings.

3. This development will generate additional traffic on streets in the area. That increased traffic will be perceptible to area residents. However, based on the applicant's traffic analysis, it will not exceed the capacity of the streets nor create a hazard. All affected intersections will continue to operate at acceptable levels of service. There is no substantial evidence to the contrary.

a. The applicant's engineer also reviewed the City and WSDOT accident data for all affected intersections. The crash rate at all intersection is well below the City's "action level" of 1.0 accidents per million entering vehicles.

b. Adequate sight distance is available to meet the requirements of BGMC 12.116.220.B at the proposed SE 35th Street/SE Grace Avenue intersection. This section requires 500 feet of sight distance to the north and south of the intersection, based on the posted 50 mph speed limit on this section of SE Grace Avenue. The engineer measured sight distance as specified in this Code section, from a driver's eye height of three and one-half feet above the roadway surface, at least fifteen feet from the edge of the street, to an object height four and one-half feet above the roadway surface.

c. The applicant cannot be required to remedy existing speeding issues on SE Grace Avenue. The applicant can only be required to remedy problems that are caused by or made worse by the proposed development. This development is unlikely to generate high speed traffic on the section of SE Grace Avenue abutting Ms. Murphin's driveway. Residents of this site will be slowing to turn into or out of the site. These turning vehicles will force through traffic to slow down as well, which may reduce the overall speed on this road to some extent. The applicant will also widen the section of SE Grace Avenue abutting the site, providing more maneuvering room for drivers turning on and off of SE Grace Avenue.

d. The examiner acknowledges that more traffic on area streets will increase congestion and resulting delays and may pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volumes create a marginally higher risk for pedestrians and bicyclists. It may well warrant a heightened degree of attentiveness to traffic when driving, cycling or walking in the neighborhood. However those risks are consistent with the location of the site in the urban area where City plans call for the sort of development being proposed. Reasonably prudent drivers will observe the posted speed limit and if necessary, further reduce their speed to accommodate changing road conditions, narrower roadways, inclement weather, and other conditions. Unfortunately not all drivers are prudent. Nevertheless, there is no evidence that the development proposed in this application will contribute a disproportionate share of imprudent drivers. If necessary the City can address such issues by providing increased enforcement on streets in the area. In addition, the City can review existing speeds and the City Council can consider reducing the speed limit or implementing other traffic calming measures.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that the revised plat (Exhibit 23) of LUDIII: 19-0007 (Cedar Heights North Subdivision) should be approved, because it does or can comply with the applicable standards of the Battle Ground Municipal Code and the Revised Code of the State of Washington, subject to conditions of approval necessary to ensure the final plat and resulting development will comply with the Code.

E. DECISION

Based on the findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves the revised plat (Exhibit 23) of LUDIII: 19-0007 (Cedar Heights North Subdivision), subject to the following conditions of approval:

Conditions of Approval

A. Prior to Engineering Approval:

1. Submit final engineering plans, for review and approval by staff, pertaining to transportation, sewer, water, grading, erosion control, stormwater, driveways, street lighting, and landscaping prepared and stamped by a registered engineer in the state of Washington.
2. Submit final engineering plans:
   a. Showing adequate half-street improvements, based on pavement testing, for SE Grace Avenue, "Major Collector Option 1", including sidewalk, planter strip, curb/gutter, and asphalt.
   b. Showing adequate half-street improvements, for SE 35th Street, "Neighborhood Collector", including sidewalk, planter strip, curb/gutter, and asphalt.
   c. Showing full width improvements to SE 6th Avenue to "Neighborhood Collector" standards, including sidewalk, planter strip, curb & gutter, and asphalt.
   d. Showing full width improvements to SE 34th Street (east side) and SE 8th Avenue to "Local A" standards, including sidewalk, planter strip, curb & gutter, and asphalt.
   e. Showing SE 34th Street (east side) and SE 8th Place meeting the applicable private street requirements in BGMC 12.116.140 based on 5 or more lots/units.
   f. Showing SE 34th Street (Tract "A") and (Tract "B") meeting the applicable private street requirements in BGMC 12.116.140 based on 3-4 lots/units.
   g. Showing additional 2-feet of ROW dedicated to the City for SE Grace Avenue.
   h. Containing a combined landscaping and driveway plan.
   i. Showing sight distance and vision clearance triangles.
   j. Containing a signing and striping plan.
   k. Containing a street lighting plan having LED decorative cobra type units for

SE Grace Avenue and LED acorn units for the other streets.

l. Showing traffic calming devices on all public streets.
m. Showing driveways that meet the requirements of BGMC 12.116.243 and 12.116.246.
n. Showing traffic mitigation at SR 503 & NW Onsdorff Boulevard, Grace Avenue & East Main Street, SR 503 & SW Eaton Boulevard, and SW 20th Avenue & SW Eaton Boulevard or indicating that mitigation fees will be paid in lieu of the improvements.
o. Showing water lines extending to extreme property lines.
p. Showing each residential lot having its own individual water service
q. Showing FE-26 (30-inch), FE-27 (27-inch), a portion of FE-28 (15-inch), if applicable, depending on northern termination of FE-27 sewer lines being installed in SE Grace Avenue and a portion of FM-D (12-inch).
r. Showing sewer lines extending to extreme property lines.
s. Showing each lot having its own individual sanitary lateral.
t. Showing each commercial lot having a sampling manhole and applicable easement.
u. Showing fire hydrants meeting spacing requirements throughout the subdivision.
v. Showing a stormwater facility that meets the requirements of BGMC 18.250.
w. Showing grading and erosion control in conformance with applicable city standards and standard construction details.

3. Provide a photometric plan for all access points, intersections, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.
4. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
5. Submit a SWPPP that meets Department of Ecology requirements.
6. Submit proof of engineering plan approval by Clark Public Utilities for the water improvements.
7. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department.
8. Following the City Engineer's acceptance and approval of the construction cost estimate, pay the required engineering plan review and construction inspection fee that is two (2) percent of the estimated costs of construction.
9. A development plan with the criteria outlined in the City's narrow lot standards (BGMC 16.125.090).

B. <u>Prior to Final Plat Approval:</u>

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. Construct the mitigation measures for the failing intersection of SR 503 & NW Onsdorff Boulevard or pay the mitigation fee of $4,576.23.
3. Construct the mitigation measures for the failing intersection of Grace Avenue & East Main Street or pay the mitigation fee of $17,217.70.
4. Construct the mitigation measures for the failing intersection of SR 503 & SW

Eaton Boulevard or pay the mitigation fee of $50,599.89

5. Construct the mitigation measures for the failing intersection of SW 20th Avenue & SW Eaton Boulevard or pay the mitigation fee of $41,245.20.
6. Submit a final plat:
   a. That shows easements for public utilities not located in the right-of-way.
   b. With the following note: "No fences are allowed in the sight distance triangle."
   c. With the following note: "All utilities are to be located outside of the sidewalk section and to be underground where possible."
   d. With the following note: "The City of Battle Ground has no responsibility to improve or maintain the private streets, including streetlights and signs, contained within, or private streets providing access to, the property designed in this development."
   e. With a note describing the maintenance responsibilities of each lot owner for the private streets.
   f. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
   g. That shows where any control monuments have been placed.
   h. That shows the dedication of any public roads or alleys.
   i. Redesign lot 2 to have 50-feet in frontage.
7. Submit a two-year stormwater maintenance contract for review and/or approval.
8. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
9. Provide certification that private streets were built per BGMC 12.116.140.
10. Submit a private maintenance agreement for private streets.
11. Submit a signed Bill of Sale for sewer system.
12. Provide a final wetland mitigation plan.
13. Provide a final Oregon White Oak mitigation plan.

C. <u>Prior to Engineering Acceptance:</u>

1. Construct all public improvements, if applicable, and go on a walkthrough with City of Battle Ground Engineering Staff and correct any deficiencies as determined by City staff.
2. Submit a letter showing that fire flow requirements per BGMC 15.105.180 and 15.105.190 can be met.
3. Submit to the City of Battle Ground a two-year/20-percent maintenance bond for all completed and accepted public improvements.
4. Submit to the City of Battle Ground a Stormwater Facility Maintenance Agreement meeting requirements of BGMC 18.250.310(A)(1) for review and approval prior to recording.
5. Submit complete sets of as-built drawings for all required public improvements for streets and roads, stormwater drainage and control, sanitary sewer and water services, as applicable prior to the issuance of the occupancy permit for review and approval by the Engineering Department. Upon acceptance by the Engineering Department, submit prior to the issuance of the occupancy permit, one (1) Mylar set, two (2) 11x17 paper sets of As-Built record drawings and one (1) 3.5-inch disk (s) or compact disc version of the as-built drawings in

AutoCAD, PDF, and TIF formats.

D. Prior to Construction of the Site:

1. Receive signed and approved engineering plans from the City of Battle Ground.
2. Receive an approved ROW permit from the City of Battle Ground.
3. Submit a surety bond meeting the requirements of BGMC 12.118.110.
4. Submit a Certificate of Liability Insurance meeting the requirements of BGMC 12.118.120.
5. Erect and conduct erosion control measures consistent with the approved Erosion Control Plan and City of Battle Ground erosion control standards.
6. Submit evidence that an individual on-site has successfully completed formal training in erosion and sediment control by a recognized organization acceptable to the City.
7. Conduct a pre-construction conference with City engineering and planning staff. Contact the Planning Customer Service Clerk at (360) 342-5047 to schedule an appointment.

E. Prior to Creation of Impervious Surface:

1. Except roofs, the stormwater treatment and control facilities shall be installed in accordance with the approved final engineering plans and in accordance with the City of Battle Ground stormwater regulations.

F. Prior to Building Construction:

1. Acquire the required building permits as outlined in Title 15 above.
2. Provide documentation that the required fire hydrants have been installed, tested, and approved in accordance with City of Battle Ground engineering standards and section 15.105.100 of this Staff Report.
3. All new structures shall conform to setbacks, parking, and building height requirements of the MU-R zoning district and BGMC's residential chapter.
4. Future commercial uses shall be in compliance with Table 17.122.020-1.
5. Residential buildings shall meet the design standards of BGMC 17.106.040 at building permit issuance.
6. Future commercial buildings on lots 1 and 2 shall submit for site plan review.

G. Prior to Certificate of Occupancy:

1. Complete all building permit requirements of the City of Battle Ground Building Division.

H. Other

1. If any cultural resources are discovered in the course of undertaking the development activity, the State of Office of Historic Preservation and Archaeology and the City of Battle Ground Planning Department must be notified.
2. Adhere to all recommendations in the final *Critical Areas Assessment and Mitigation Plan* agreed upon with Department of Ecology and Army Corps of Engineers.

3. Adhere to the final Oregon White Oak mitigation plan.
4. Coordinate any water quality recommendations in reference to Ecology's e-mail dated May 22, 2019.
5. Applicant shall limit construction hours per BGMC, which states construction activity for commercial development may occur from 7 am to 9 pm Monday through Friday, 8 am to 9 pm on weekends.

DATED this __ day of July 2019.

Joe Turner

Joe Turner, AICP
City of Battle Ground Land Use Hearing Examiner

APPEAL

This Final order may be appealed to the Washington Superior Court per RCW 36.70C within 21 calendar days after the issuance of the decision.