

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

Regarding an application by Steve Burnett for approval of a preliminary plat to divide 9.9-acres into 40 lots in the R5 zone at 24101 NE 132<sup>nd</sup> Avenue in the City of Battle Ground ) **FINAL ORDER**  
)  
) **SUB: 03-17**  
) **(Stonewood Haven 2)**

**A. SUMMARY**

1. The applicant, Steve Burnett, requests approval to divide the 9.9-acre site into 40 residential lots and three tracts. The site is located at 24101 NE 132<sup>nd</sup> Avenue; also known as Tax Assessor Parcel 226706-000 (the “site”).

a. The site and abutting properties to the south, west, and northwest are zoned R5 (Residential, 5 units per acre maximum density). Properties to the east and northeast are outside the City limits and zoned Clark County R1-20 (Low Density Residential, 20,000 square foot minimum lot size).

b. The applicant proposed to divide the site into 40 lots, a 0.51-acre park tract, a temporary street tract, and a stormwater tract, pursuant to the density transfer provisions. A new single-family detached dwelling will be built on each of the proposed lots. The City of Battle Ground will provide domestic water and sanitary sewer service to the site. The applicant will collect storm water from impervious areas on the site and convey it to a storm water facility in proposed Tract A for treatment and detention. The applicant will infiltrate the majority of treated stormwater on the site. The applicant will discharge excess stormwater to the existing ditch on the east side of North Parkway Avenue at less than predevelopment rates.

c. The applicant will extend a new half-width public street, proposed NE 21<sup>st</sup> Way, along the south boundary of the site, intersecting with proposed NE 5<sup>th</sup> Avenue, a proposed half-width north-south street at the east boundary of the site. The applicant will provide a temporary street connection between the west end of proposed NE 21<sup>st</sup> Way and NE Parkway Avenue. This temporary street will be converted to a pedestrian/bicycle access when abutting properties redevelop and provide additional access in the future. The applicant will extend four additional north-south streets between NE 21<sup>st</sup> Way and the north boundary of the site. These streets will be further extended when the abutting property to the north redevelops. The applicant proposed to provide 20-foot alleys between the north termini of these streets to facilitate emergency access. In addition, the applicant will dedicate right-of-way and construct half-width frontage improvements along the site’s NE Parkway Avenue frontage.

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 April 4, 2018<sup>1</sup> (the "Staff Report"). The applicant accepted those findings and conditions without exceptions. Two persons testified with questions and concerns about the application. The only contested issue in this case is whether the applicant must resolve Mr. Hazen's prescriptive easement and adverse possession claims prior to preliminary plat approval.

4. Based on the findings provided or incorporated herein, the examiner approves the preliminary plat 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 April 11, 2018. 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 Sam Crummett summarized the Staff Report. He noted that the proposed intersection of NE Parkway Avenue and NE 21<sup>st</sup> Way is a temporary intersection that will be closed in the future when additional access is provided to the site. The applicant volunteered to provide a park on the site. However, the park does not meet City standards. Therefore, the park will be owned and maintained by a homeowners association. The owner of the abutting property south of the site claims a prescriptive easement over a portion of the site and adverse possession of additional portions of the site.

3. Planner Ed Greer and attorney Earl Jackson appeared on behalf of the applicant.

a. Mr. Greer accepted the findings and conditions in the Staff Report without the exceptions.

b. Mr. Jackson noted that RCW 58.17.165 requires the signature of all property owners on the final plat. Pursuant to *Halverson v. City of Bellevue*, 41 Wash.App. 457 (1985), persons claiming adverse possession of a subdivision parcel are "owners" under RCW 58.17.165. However, this requirement only applies at the time of final plat. The examiner can approve the proposed preliminary plat prior to resolution of the adverse possession claims. The proposed development will not affect Mr. Hazen's prescriptive easement claim. The applicant will construct a public street within the area claimed by Mr. Hazen, which will not interfere with his use of the easement.

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<sup>1</sup> The Staff Report incorrectly lists the date of the Staff Report and the public hearing as 2017. The Staff Report was issued and the public hearing conducted in 2018.

5. Brad Hazen testified that he has a prescriptive easement over portions of the site where the west end of his existing driveway crosses on to the site. He also claimed adverse possession over other portions of the site where the east end of his existing driveway and parking area extend onto the site. He submitted maps and photos to illustrate his testimony. Exhibits 16 and 17. He also submitted an excerpt from *Halverson v. City of Bellevue*, 41 Wash.App. 457 (1985). He testified that the western portion of his driveway, up to the “historical driveway” line on Exhibit 16, was in existence when he acquired his property. He built the eastern portion of the driveway, between the “historical driveway” line and his residence. He argued that the applicant failed to demonstrate that the proposed development is feasible, given his prescriptive easement and adverse possession claims. The City cannot grant preliminary approval of this application until his claims have been resolved, citing *Halverson*.

6. Debbie Kelley, Mr. Hazen’s sister, read her written testimony, Exhibit 19. She noted that Mr. Hazen has filed a lawsuit against the applicant claiming ownership of portions of the site through adverse possession and prescriptive easement. The applicant plans to sell the site with the subdivision approval, rather than developing the site himself. Therefore, any future buyer will merely “buy into” the lawsuit. If Mr. Hazen’s claims are upheld, the applicant or future buyer will be required to significantly modify the proposed development. She urged the examiner to delay approval of this application until the Superior Court rules on Mr. Hazen’s claims.

7. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the conditions in the Staff Report.

### **C. DISCUSSION**

1. City staff recommended approval of the application, based on the affirmative findings and subject to conditions of approval in the Staff Report. The applicant accepted those findings and conditions, without exceptions.

2. The examiner concludes that the affirmative findings in the Staff Report show that the proposed preliminary plat does or can comply with the applicable standards of the BGMC and the Revised Code of Washington, if the applicant complies with recommended conditions of approval. The examiner adopts as his own the affirmative findings in the Staff Report.

3. Mr. Hazen claimed ownership of a portion of the site pursuant to adverse possession and prescriptive easement. The examiner has no authority to consider or resolve Mr. Hazen’ claim. These claims are subject to the exclusive jurisdiction of the Superior Court. However, it is not necessary to resolve these claims prior to preliminary plat approval.

a. BGMC 17.200.035.B provides, in relevant part, “All applications shall be signed by the property owner, or accompanied by a letter of authorization signed by the property owner.” The Code does not define the terms “owner” or “property owner.” The examiner finds that the most reasonable definition of that term is the property owner

of record, based on the deed records for the property. Steven D. Burnett and Kay L. Burnett are the record owners of the site. *See* Exhibit 3. Mr. Burnett signed the application as owner and applicant. *See* Exhibit 1. In addition, the Code requires the signature or authorization of “the property owner” not “all property owners.” Mr. Burnett is clearly a property owner of the site, based on the County deed records. Therefore the examiner finds that the application complies with BGMC 17.200.035.B. Assuming Mr. Hazen’s adverse possession claim is valid; Mr. Hazen is also “an owner” of the site based on the Court’s holding in *Halverson*. However, the Code does not require his signature on the preliminary plat application.

b. The applicant must resolve the adverse possession claim prior to final plat approval. RCW 58.17.165 requires that the final plat must be signed, “[b]y all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.” An adverse possession claim qualifies as “any ownership interest” as that term is used in RCW 58.17.165. *Halverson* at 459. Consequently, Mr. Hazen has an “ownership interest” in the subject property pursuant to his adverse possession claim. The applicant must resolve the adverse possession claim through a quiet title action or other proceeding prior to final plat approval. A condition of approval is warranted to that effect.

c. The examiner finds that it is feasible to develop the site as proposed. If Mr. Hazen’s claims are upheld and the boundaries of the site are modified to remove those areas claimed by Mr. Hazen, the applicant can seek approval of a modification of this preliminary plat approval pursuant to the City’s Post Decision Review process, BGMC 17.200.104.

d. Ms. Kelley is correct that the applicant could sell the site to another party that will construct the approved development. However, any future buyer will take ownership of the site subject to Mr. Hazen’s claims and will need to resolve those claims prior to final plat approval.

#### **D. CONCLUSION**

Based on the above findings and discussion, the examiner concludes that SUB: 03-17 (Stonewood Haven 2 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 SUB: 03-17 (Stonewood Haven 2 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 street names as listed in the body of the final order.
  - b. Showing adequate half-street improvements based on pavement testing, for NE 132<sup>nd</sup> Avenue, a Minor Arterial, including sidewalk, planter strip, curb/gutter and asphalt.
  - c. Showing adequate half-street improvements for NE 5<sup>th</sup> Avenue, a Neighborhood Collector, including sidewalk, planter strip, curb/gutter and asphalt.
  - d. Showing adequate half-street improvements for NE 21<sup>st</sup> Way, a Local A street, including sidewalk, planter strip, curb/gutter and asphalt.
  - e. Showing adequate improvements, for Tract C, a temporary access street, including sidewalk, curb/gutter and asphalt.
  - f. Showing full width improvements to NE 1<sup>st</sup> Avenue, NE 2<sup>nd</sup> Avenue, NE 3<sup>rd</sup> Avenue and NE 4<sup>th</sup> Avenue to Local "A" standards, including sidewalk, planter strip, curb & gutter and asphalt.
  - g. Showing additional 5-feet of ROW dedicated to the City for NE 132<sup>nd</sup> Avenue.
  - h. Showing temporary fire apparatus turnaround on NE 5<sup>th</sup> Avenue.
  - i. Containing a combined landscaping and driveway plan.
  - j. Showing sight distance triangles.
  - k. Containing a signing and striping plan.
  - l. Containing a street lighting plan having LED decorative cobra type units for NE 132<sup>nd</sup> Avenue and LED acorn units for the other streets.
  - m. Showing traffic calming devices on all public streets.
  - n. Showing driveways that meet the requirements of BGMC 12.116.243

- o. Showing traffic mitigation at SW Eaton Boulevard & SR 503, NW Onsdorff Boulevard & SR 503 and East Main Street & Grace Avenue or indicating that mitigation fees will be paid in lieu of the improvements.
  - p. Showing traffic mitigation at SE Rasmussen Boulevard & SE Grace Avenue.
  - q. Showing an 8-inch water from current terminus in NE 132<sup>nd</sup> Avenue to development and extended to extreme property lines.
  - r. Showing each residential lot having its own individual water service
  - s. Showing an 8-inch gravity sewer line throughout the subdivision and extending to extreme property lines.
  - t. Showing each residential lot having its own individual sanitary lateral.
  - 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 shall be done 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 the requirements of BGMC 18.250.050(B).
  6. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department
  7. 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 minus the \$500.00 due at engineering plan submittal.

**B. 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.
8. 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.

**C. Prior To Creation Of Impervious Surface:**

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

**D. Prior To Engineering Acceptance:**

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 demonstrating that fire flow requirements of 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 recorded Stormwater Facility Maintenance Agreement meeting the requirements of BGMC 18.250.310(A) (1) for review and/or approval.
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, one (1) full size paper 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.

**E. Prior To Final Plat Approval:**

1. Construct all required public improvements and gain engineering acceptance or provide appropriate bonding.
2. Construct the mitigation measures for the failing intersection of SW Eaton Boulevard SR 503 or pay the mitigation fee of \$12,266.64.
3. Construct the mitigation measures for the failing intersection of NW Onsdorff Boulevard & SR 503 or pay the mitigation fees of \$50,338.53.
4. Construct the mitigation measures for the failing intersection of East Main Street & Grace Avenue or pay the mitigation fees of \$6,887.31.
5. Construct the mitigation measures for the failing intersection of SE Rasmussen Boulevard & SE Grace Avenue.
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 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. That shows the temporary fire apparatus turnaround easements and states “The fire apparatus turnaround is temporary and will revert to the lot owners when the fire access requirements are met by future developments.”
  - g. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
  - h. With a note specifying the party/s responsible for the long-term maintenance of the park.

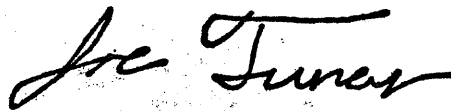


- i. With a note stating: "All new structures shall conform to the setbacks and building heights of the R5 zoning district."
  - j. With a note stating: "All houses shall conform to the neighborhood design standards as listed in BGMC 17.106.040."
  - k. That shows where any control monuments have been placed.
  - l. That shows the dedication of any public roads.
7. Provide certification that private streets were built per BGMC 12.116.140.
  8. Submit a private maintenance agreement for private streets.
  9. Submit a two-year stormwater maintenance contract for review and/or approval.
  10. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
  11. Provide evidence that the adverse possession claim has been resolved confirming the applicant has sole ownership in the property.

**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.

DATED this 18th day of April 2018.



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



**Notes**

1. This 9.94 acre site proposes 40 residential lots for detached homes, and consists of County tax lot number 226706-000 and is addressed as 24101 NE 132nd Ave, and is zoned R5.
2. This project will utilize the Density Transfer code 17.106.035 due to the proposed City Park. The smallest allowed lot area is 4,600 sf. The smallest proposed lot is 5,333 sq ft.
3. A park is not required, however a City Park of 0.51 acre is proposed.
4. The existing residence and outbuildings will be removed prior to site preparation and grading operations.
5. Stormwater runoff will be collected in catch basins and piped to the stormwater facility to be treated and detained prior to releasing.
6. Tract C will provide a 30' wide area for public utilities and temporary vehicular access until the property to the south develops, at which time Tract C will become a pedestrian connection. Tract C will be offered to the City for dedication.

Lot Areas		Lot Areas		Lot Areas	
Lot No.	Sq ft	Lot No.	Sq ft	Lot No.	Sq ft
1	6,018	15	6,061	29	6,000
2	5,994	16	6,371	30	6,000*
3	5,970	17	6,000	31	6,000*
4	5,946	18	6,000	32	6,000
5	5,333	19	6,000*	33	6,381
6	5,393	20	6,000	34	6,073
7	6,000	21	6,000	35	6,384
8	6,000	22	6,000	36	6,000
9	6,000	23	6,000*	37	6,000
10	6,000	24	5,408	38	6,000*
11	6,000*	25	5,413	39	6,720
12	6,000	26	6,000	40	6,720
13	6,000	27	6,000		
14	6,367	28	6,000		

\* Area does not include the 20' access

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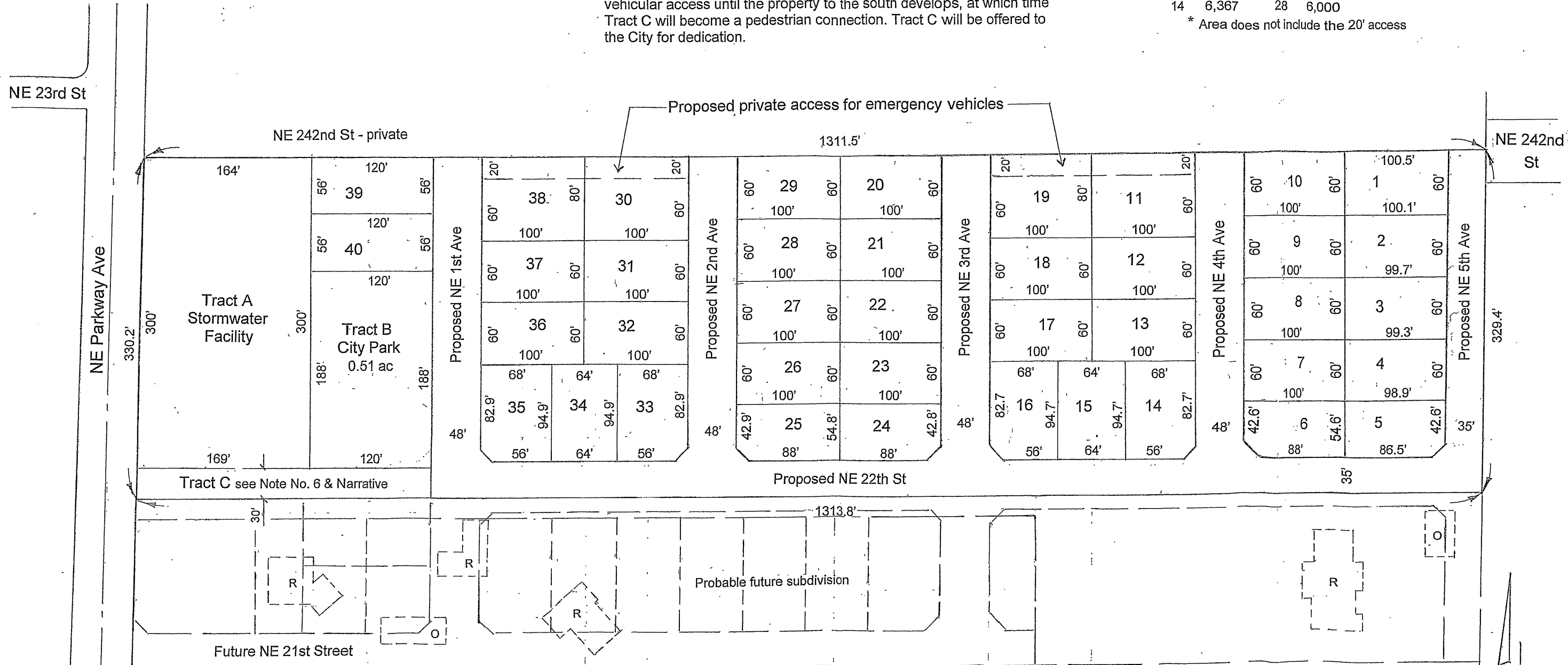
ENGINEERING DEPARTMENT

Prepared by: Ed Greer  
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360.904.4964 ed@greer.net

Applicant: Steve Burnett  
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Battle Ground WA 98604  
360.571.0955  
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**Stonewood Haven 2**  
a residential subdivision  
City of Battle Ground WA

Preliminary  
Plat



Note:  
R represents existing residence  
O represents existing outbuilding

EXHIBIT  
# 4 (1 of 2)

Scale: 1" = 100'

NE 23rd St

NE Parkway Ave

NE 242nd St - private

Proposed private access for emergency vehicles

NE 242nd St

Tract C see Note No. 6 & Narrative

Proposed NE 22th St

Future NE 21st Street

Probable future subdivision

EXHIBIT

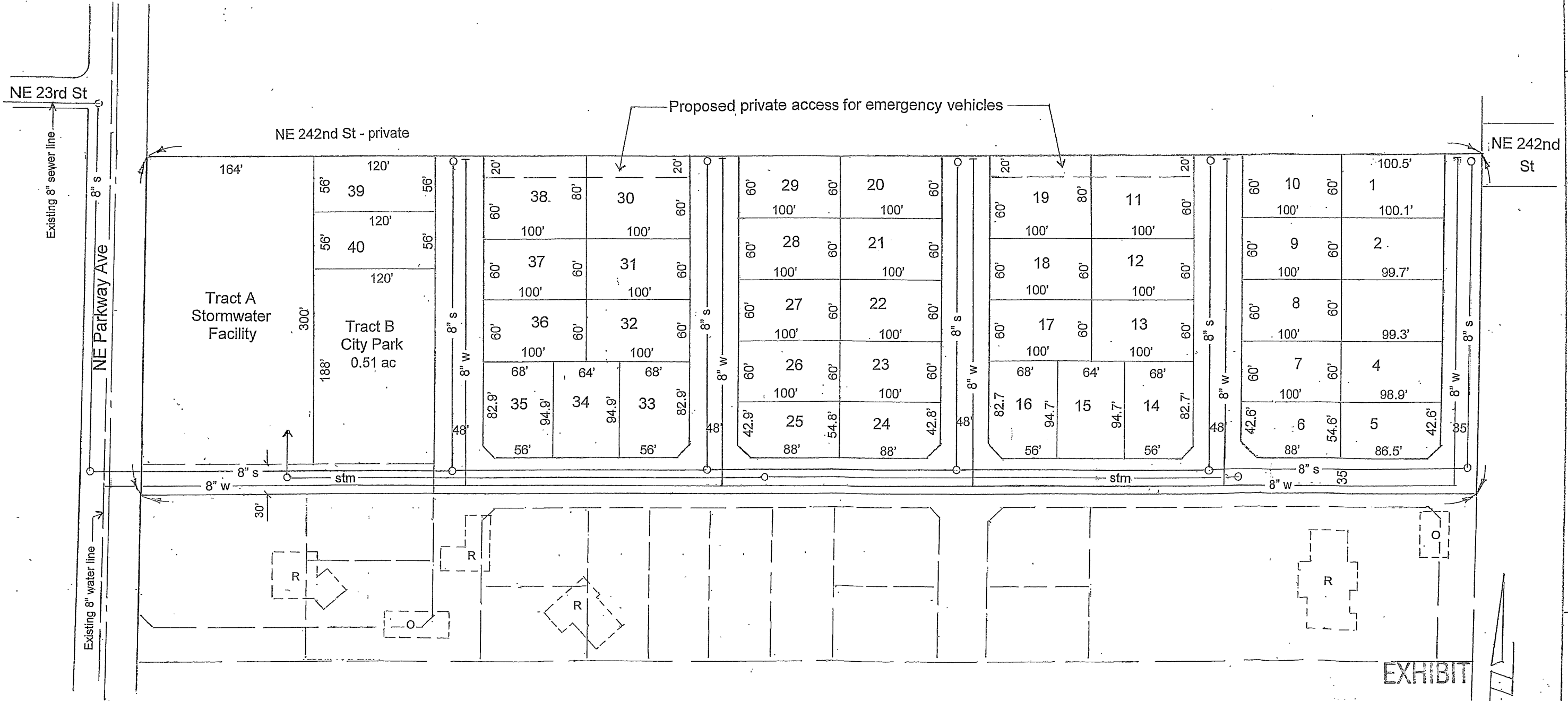
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**Stonewood Haven 2**  
a residential subdivision  
City of Battle Ground WA

Preliminary  
Utility Plan



EXHIBIT

# 4 (2 of 2)

Scale: 1" = 100'