

**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 37 lots in the R5 zone at 24303 NE 132nd Avenue in the City of Battle Ground) **FINAL ORDER**
)
) **SUB: 02-17**
) **(Stonewood Haven 1)**

A. SUMMARY

1. The applicant, Steve Burnett, requests approval to divide the 9.9-acre site into 37 residential lots and a stormwater tract. The site is located at 24303 NE 132nd Avenue; also known as Tax Assessor Parcel 226704-000 (the "site").

a. The site and abutting properties to the west and southwest are zoned R5 (Residential, 5 units per acre maximum density). Properties to the north are outside the City limits and zoned Clark County R1-6 (Low Density Residential, 6,000 square foot minimum lot size). Properties to the east and southeast 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 37 lots and a stormwater tract. 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 25th Street, into the site from NE Parkway Avenue to proposed NE 5th Avenue, a proposed half-width north-south street at the east boundary of the site. The applicant will extend a second east-west half-width street, proposed NE 24th Avenue, between NE 5th Avenue and the east boundary of Tract A. The applicant will extend four additional north-south streets north of NE 24th Avenue. Two of these streets, proposed NE 1st and 3rd Avenues, will intersect NE 25th Avenue. The two remaining streets, proposed NE 2nd and 4th Courts, will be dead-end streets with pedestrian/bicycle connections to NE 25th Avenue. 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, 2018¹ (the “Staff Report”). The applicant accepted those findings and conditions without exceptions. One persons testified with questions and concerns about the application. The only issue in this case is whether, and to what extent, the applicant can be required to preserve existing off-site trees.

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.

3. City associate civil engineer Ryan Jaynes noted that the City recently amended its engineering standards to require five-foot sidewalks on all public streets. The City requires that all half-width roadways provide a minimum 25-foot paved width. Therefore the half-width street improvements required for a “Neighborhood Collector” and a “Local A” street are identical.

4. 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 testified that state law allows the applicant to cut back tree roots and branches that extend onto the site, up to the boundaries of the site.

5. Lance Mona expressed concern that construction of proposed NE 25th Street on the north boundary of the site will impact the large cedar trees on the south boundary of his property, which abuts the site. The trees are located on his property, between the north boundary of the site and NE 244th Street, the private street serving his residence.

6. 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 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.

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, provided that the applicant complies with recommended conditions of approval. The examiner adopts as his own the affirmative findings in the Staff Report.

3. Grading and construction on the north boundary of the site may adversely affect trees on Mr. Mona's property by damaging roots that cross the property line. However, the Code does not regulate such impacts. The Code does not regulate tree removal outside of critical areas. State law provides that the applicant has a right to cut any branches or roots that extend onto this site. Owners of adjoining properties have a right of remedy in superior court if the applicant's actions cause damage to adjoining properties. They should consult a lawyer to advise them about such rights. However, it is in the applicant's interest to protect trees on adjacent properties to the extent feasible in order to avoid potential liability.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that SUB: 02-17 (Stonewood Haven 1 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: 02-17 (Stonewood Haven 1 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 NE 132nd Avenue, a Minor Arterial, including sidewalk, planter strip, curb and gutter and asphalt.
- b. Showing adequate half-street improvements, for NE 5th Avenue, a Neighborhood Collector, including sidewalk, planter strip, curb and gutter and asphalt.
- c. Showing adequate half-street improvements, for NE 25th Street, a Major Collector, including sidewalk, planter strip, curb and gutter and asphalt.
- d. Showing adequate half-street improvements, for NE 23rd Street, a Local A, including sidewalk, planter strip, curb, gutter, and asphalt.
- e. Showing full width improvements to NE 1st Avenue and NE 3rd Avenue to Local "A" standards, including sidewalk, planter strip, curb & gutter and asphalt.
- f. Showing NE 2nd Court and NE 4th Court meeting the applicable private street requirements in BGMC 12.116.140 based on 5-8 lots/units.
- g. Showing additional 5-feet of ROW dedicated to the City for NE 132nd Avenue.
- h. Containing a combined landscaping and driveway plan.
- i. Showing sight distance triangles.
- j. Containing a signing and striping plan.
- k. Containing a street lighting plan having LED decorative cobra type units for NE 132nd Avenue & NE 25th Street 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
- n. Showing bollards with a Knox Padlock at the emergency and pedestrian access areas of NE 2nd Court and NE 4th Court.
- 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 water lines throughout the subdivision and extending 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.
1. 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.
 2. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
 3. Submit a SWPPP that meets the requirements of BGMC 18.250.050(B).
 4. Submit a construction cost estimate for required public and applicable private improvements for review and approval by the City Engineering Department
 5. 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 shall be provided by the applicant 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 recorded Stormwater Facility Maintenance Agreement meeting 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 \$10,733.31.
3. Construct the mitigation measures for the failing intersection of NW Onsdorff Boulevard & SR 503 or pay the mitigation fees of \$45,762.30.
4. Construct the mitigation measures for the failing intersection of East Main Street & Grace Avenue or pay the mitigation fees of \$5,165.31.
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. With a note specifying that NE 132nd Avenue and NE 25th Street are access controlled and cannot have direct access from lots.
 - g. With a note specifying the party/s responsible for long-term maintenance of stormwater facilities.
 - h. That shows where any control monuments have been placed.
 - i. That shows the dedication of any public roads.
 - j. With a note stating: "All new structures shall conform to the setbacks and building heights of the R5 zoning district."
 - k. With a note stating: "All houses shall conform to the neighborhood design standards as listed in BGMC 17.106.040."

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.

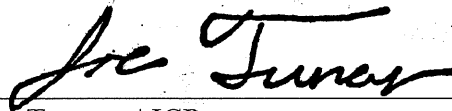
F. Prior to Building Permit Issuance:

1. All required fees, including Transportation, Park and School Impact fees shall be paid.
2. Fire hydrants shall be tested and approved and fire flow letter shall be submitted to the City showing the minimum fire flow has been attained.

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.



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

RECEIVED
DEC 27 2017
ENGINEERING DEPARTMENT

Prepared by: Ed Greer
Greer & Greer, Land Use Planning
13023 NE Hwy 99 Suite 7-126
Vancouver WA 98686
360.904.4964 ed@greer.net

Applicant: Steve Burmatt
19414 NE 89th Ave
Battle Ground WA 98604
360.571.0955
sdbmoose@gmail.com

Stonewood Haven I
a residential subdivision
City of Battle Ground WA

Preliminary
Utility Plan

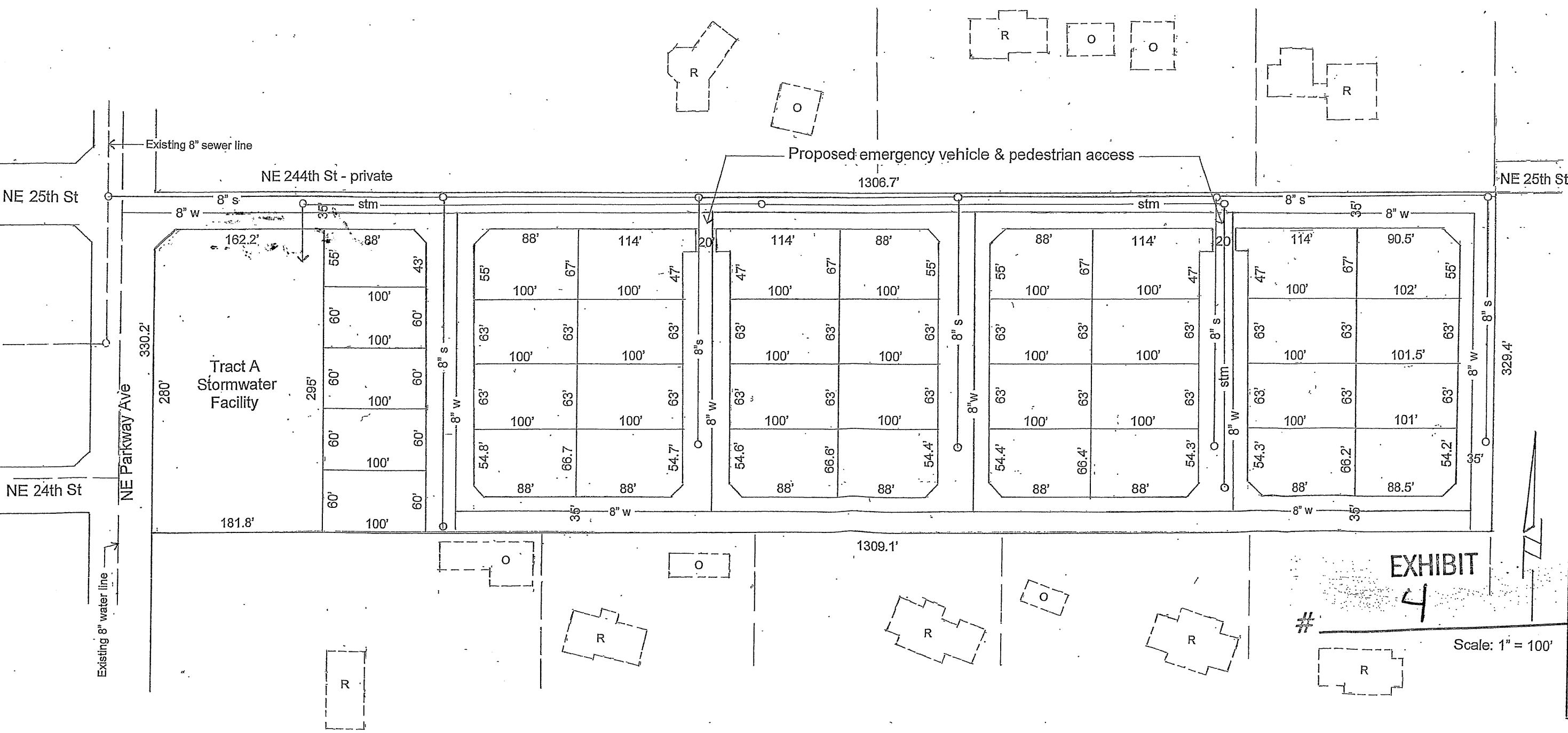


EXHIBIT
4
Scale: 1" = 100'