

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

Regarding an application by Elwood Holdings LLC) **FINAL ORDER**
for approval of a preliminary plat to divide 5.03-)
acres into 19 lots in the R7 zone in the 1300 block) **PR15-2020**
of S. Parkway Avenue in the City of Battle Ground)(Creekview Pointe II Subdivision)

A. SUMMARY

1. The applicant, Elwood Holdings LLC, requests approval to divide the 5.03-acre parcel located in the 1300 block of S. Parkway Avenue, known as Tax Assessor Parcels 91102152 and 91102192 -315 (the "site"), into 19 residential lots.

a. The site and abutting properties to the east, west, and north are zoned R7 (Residential, 7 units per acre maximum density). Properties to the south are zoned NC (Neighborhood Commercial).

b. The site is currently vacant. The applicant will construct a new single-family detached dwelling on each of the proposed lots.

c. Woodin Creek flows from north to south on the western portion of the site and a Category III wetland is present the southwest portion of the site. The applicant proposed to retain the creek and associated buffer in a separate parcel. The applicant proposed to fill the wetland to accommodate required street extensions and the proposed development. The applicant will mitigate for the wetland impacts as required by the Code.

d. 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 proposed on-site bioretention facilities within the street rights-of-way for treatment and detention. The applicant will discharge treated stormwater to Woodin Creek at less than predevelopment rates.

e. The applicant will extend SE 1st and 2nd Avenues into the site from their existing termini at the north boundary of the site. The applicant will extend SE Scotton Way as a half-width improvement along the south boundary of the site. The applicant will terminate SE 1st Avenue in a hammerhead turnaround on the site. SE 2nd Avenue will intersect SE Scotton Way near the southeast corner of the site. The applicant will dedicate right-of-way for SE Scotton Way to the east boundary of the site. However, the street improvements will end at the SE 2nd Avenue intersection.

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 July 16, 2020 (the "Staff Report"). The applicant accepted those findings and conditions without exceptions. Other than public service providers and agencies, no one else testified orally or in writing. Contested issues in this case include:

- a. Whether the applicant is allowed to fill the wetland on the site; and
- b. Whether the proposed development will cause erosion and degrade water quality in Woodin Creek.

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 an online public hearing about this application on July 29, 2020. 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.

a. She noted that prior to 2018 the southern half of the site was zoned NC and the northern half was zoned R7. The City rezoned the entire site R7 in October 2018.

b. There is a wetland in the southwest portion of the site and Woodin Creek flows from north to south in the eastern portion of the site. The applicant proposed to retain Woodin Creek and its associated buffer in its existing condition. The applicant proposed to fill the wetland to accommodate required street extensions and the proposed development.

3. City engineer Ryan Jaynes noted that the City denied the applicants request for a road modification to reduce the right-of-way width for the proposed streets in order to accommodate stormwater bioretention facilities within the rights-of-way. The road modification application does not comply with the applicable approval criteria in BGMC 12.116.290(1). There are no topographic constraints or other physical conditions that preclude compliance with the City standards and there is sufficient area on the site to accommodate the required right-of-way widths. The proposed lot sizes are larger than the minimum standard. Reducing the lot depth by one foot to accommodate the required rights-of-way will have a minimal impact on the buildable area of the lots. The applicant can locate the bioretention facilities within the rights-of-way without the proposed road modification.

a. The design detail for hammerhead turnarounds in the City's engineering standards is based on the International Fire Code (the "IFC"). BGMC 12.116.295 provides that in the event of a conflict, the IFC prevails, with the exception of private road standards.

4. Wetland biologist Francis Naglich and engineer Byron Jolma appeared on behalf of the applicant, Elwood Holdings LLC.

a. Mr. Naglich testified that the wetland on the site is an isolated Category III wetland with no hydrologic connection to Woodin Creek; the wetland drains to groundwater. The wetland is marginally functional and dry much of the year. Construction of the required street extensions will render the remainder of the wetland non-functional, cutting off the majority of stormwater runoff that currently flows into the wetland, eliminating the wetland hydrology. Therefore, it is not feasible to retain the wetland on this site. The applicant will mitigate the wetland impacts by purchasing credits at an off-site wetland mitigation bank.

b. Mr. Jolma accepted the findings and conditions in the Staff Report with one exception. He objected to the City's denial of the road modification. Reducing the right-of-way width will result in reduced building envelopes on the site and increase the amount of impervious pavement. Low Impact Development ("LID") principles support reductions in paved surfaces. In addition, narrower roadways reduce traffic speeds and limit on-street parking, which is frequently occupied by derelict vehicles.

i. He noted that the design detail for hammerhead turnarounds in the City's engineering standards is inconsistent with the standards in the IFC.

5. The Washington State Department of Ecology ("ECY") objected to the applicant's proposal to fill the wetlands on the site. ECY argued that the applicant should be required to avoid and minimize wetland impacts rather than just mitigating for the proposed impacts. ECY further argued that directing stormwater that currently flows to the wetland to Woodin Creek will cause erosion and degrade water quality in Woodin Creek. (Exhibit 11).

6. No one else appeared at the public hearing. At the conclusion of the hearing the examiner held the record open for two weeks, subject to the following schedule:

a. For one week, until August 5, 2020, for anyone to submit additional written testimony and evidence in this matter; and

b. For a second week, until August 12, 2020, to allow the applicant to respond to any new evidence submitted during the first week.

7. No new testimony or evidence was submitted during the first week of the open record period. Therefore, the examiner close the record at 5:00 p.m. on August 5, 2020.

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, as modified at the hearing. The applicant accepted those findings and conditions with one exception.

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 Battle Ground Municipal Code (the “BGMC”) and the Revised Code of Washington (the “RCW”), provided that the applicant complies with recommended conditions of approval. 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. The examiner finds that the applicant failed to sustain its burden of proof that the proposed road modification complies with the applicable approval criteria, specifically BGMC 12.116.290.A.1. As noted in the Staff Report, there is no evidence of any “[t]opographical or physical conditions such as steep slopes, wetlands, water area, structures, streets, utilities, lot patterns, street patterns, or other conditions that justify departure from strict adherence to the standard to be modified.” The proposed lots are larger than the minimum required and it is feasible to provide the required right-of-way width while maintaining compliance with minimum lot size requirements and providing adequate buildable area on the lots. Mr. Jolma’s assertions that narrower rights-of-way are subjectively better due to reduced stormwater runoff and limiting on-street parking are not relevant to the applicable approval criteria for a road modification. These issues are policy concerns for the City Council to consider.

4. The examiner finds that the proposed wetland fill is necessary to accommodate the proposed development and is permitted by the Code. BGMC 16.125.030 requires that the applicant extend SW 1st and 2nd Avenues and SW Scotton Way through the site. BGMC 18.280.090.B allows road and utility crossings through wetlands, provided such impacts are mitigated. Construction of these roadway extensions will eliminate the majority of the wetlands on the site and cut off stormwater flow to the remainder of the wetlands, which will cause the remaining wetlands to disappear. Therefore, the applicant proposed to fill all of the wetlands on the site and mitigate for those impacts by purchasing credits at an offsite wetland mitigation bank.

5. The examiner finds that the proposed stormwater outfall will not cause erosion and or degrade water quality in Woodin Creek. The applicant will be required to meet all City and State requirements pertaining to discharge of stormwater. This includes discharging of runoff into wetland buffers and designing the stormwater outfall to distribute runoff in a manner that will not cause erosion. Runoff will be treated and released at pre-development rates prior to discharge to the stream buffer associated with Woodin Creek.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that PR15-2020 (Creekview Pointe II Subdivision) should be approved, because it does or can comply with the applicable standards of the BGMC and the RCW, 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 PR15-2020 (Creekview Pointe II 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, for SE Scotton Way, a “Neighborhood Collector”, including sidewalk, planter strip, curb and gutter, and asphalt.
 - b. Showing full width improvements to SE 1st Avenue and SE 2nd Avenue to “Neighborhood Collector” standards, including sidewalk, planter strip, curb and gutter, and asphalt.
 - c. Showing centerline of SE Scotton Way aligning with the centerline of SW Scotton Way.
 - d. Showing SE Scotton Way extending to easternmost property line of parcel/s being developed.
 - e. Containing a combined landscaping and driveway plan.
 - f. Showing sight distance and vision clearance triangles.
 - g. Containing a signing and striping plan.
 - h. Containing a street lighting plan having LED acorn units.
 - i. Showing traffic calming devices on all public streets.
 - j. Showing driveways that meet the requirements of BGMC 12.116.243.
 - k. Showing traffic mitigation at SR 503 and NW Onsdorff Boulevard, Grace Avenue and East Main Street, SR 503 and SW Eaton Boulevard, and SW 20th Avenue and SW Eaton Boulevard or indicating that mitigation fees will be paid in lieu of the improvements.
 - l. Showing water lines extending to extreme property lines.
 - m. Showing each residential lot having its own individual water service.
 - n. Showing connection to existing sewer line in SE 1st Avenue or at the intersection of SE 13th Street and SE 2nd Avenue.
 - o. Showing sewer lines extending to extreme property lines.
 - p. Showing each lot having its own individual sanitary lateral.
 - q. Showing fire hydrants meeting spacing requirements throughout the

- subdivision.
- r. Containing a photometric plan for all access points, intersections, streets, frontage roads out to centerline, and any existing lights to ensure that proposed lights meet IES RP-8-00 standards.
 - s. Showing a stormwater facility that meets the requirements of BGMC 18.250.
 - t. Showing grading and erosion control in conformance with applicable city standards and standard construction details.
 - u. Clearly identify the location of required fire lane signage.
 - v. Clearly identify the location of all required new and existing fire hydrants.
 - w. Revise hammerhead turnaround dimensions to meet fire code requirements.
 - x. Show landscape strip for double frontage lots and provide a landscape plan for review (BGMC 16.125.100).
 - y. Showing lots outside of Woodin Creek and its buffer.
 - z. Provide a wetland mitigation plan for review and approval. If the applicant purchases credits, then evidence of payment is required prior to engineering approval.
 - aa. Showing appropriate buffer signage along Woodin Creek. Include signage details and placement meeting 18.280.070.
 - bb. Provide a fish and wild life mitigation plan for review and approval meeting 18.280.100, if applicable.
 - cc. Provide a geotechnical report showing geological hazards. Any hazards found should be mapped on plans including their buffers.
3. Provide a revised traffic study that incorporates City of Battle Ground crash data.
 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 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.

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.

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 required public improvements mentioned above in the findings, 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 from 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 Covenant meeting requirements of BGMC 18.250.310(B)(2) 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, 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 SR 503 and NW Onsdorff Boulevard or pay the mitigation fees of \$4,576.23.
3. Construct the mitigation measures for the failing intersection of SR 503 and SW Eaton Boulevard or pay the mitigation fee of \$7,666.65.
4. Construct the mitigation measures for the failing intersection of SW 20th Avenue and SW Eaton Boulevard or pay the mitigation fee of \$4,582.80.
5. 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: "All new structures shall comply with the setback and height requirements of the R7 zone."
 - e. With the following note: "All future homes must comply with design standards in BGMC 17.106.040."
 - f. That shows where any control monuments have been placed.
 - g. That shows the dedication of any public roads or alleys.

- h. Show landscape strip for double frontage lots and dedicate to either the HOA or developer for ownership and maintenance.
 - i. Showing Woodin Creek and its buffer in a separate tract. Add a dedication note that either the HOA or developer will own and maintain this area.
6. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.
 7. Submit a signed Bill of Sale for sewer and water systems.

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, design, parking, and building height requirements of the R7 zoning district and BGMC's residential chapter.

G. Prior to Certificate of Occupancy:

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

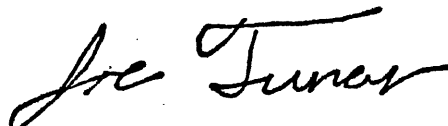
H. Other

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*.
3. Coordinate any waste management and water quality recommendations in reference to Ecology's e-mail dated June 26, 2020.

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 7th day of August 2020.



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

Creekview Pointe II Exhibits

EXHIBIT #	DESCRIPTION	
A	Staff Report and Recommendation for Creekview Pointe II dated July 16, 2020	
1	Application	These Exhibits are contained in the Applicant's Submittal Packet
2	Applicant's Narrative	
3	SEPA Checklist	
4	Development Plans	
5	Deed History	
6	Preliminary Hydrology Report	
7	Critical Areas Report	
8	Traffic Study	
9	Road Modification Request	
10	Comment letter from Battle Ground Public Schools	
11	Comment letter from ECY	

