

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

Regarding an application by SGA Engineering and Design) **FINAL ORDER**
for approval of a preliminary plat to divide a 67.63-acre)
parcel into 424 lots in the R7 and R12 zones at 702 NE 8th) **LUDIII21-0008**
Way and 1102 NE Grace Avenue in the city of Battle Ground) **(B & G Subdivision)**

A. SUMMARY

1. The applicant, SGA Engineering and Design, requests approval to divide the 67.63-acre tract located at 702 NE 8th Way and 1102 NE Grace Avenue; also known as Tax Assessor Parcels 228982-000, 228990-000, 91051-024, 228957-000, and 229000-252 (the “site”), into 424 residential lots and tracts for open space, shared parking areas, and stormwater facilities, pursuant to the density transfer provisions of the Code. The applicant also requests approval of several road modifications to vary from the intersection spacing requirements of the Code. The applicant submitted several iterations of the proposed plat. Approval of this application is based on the latest version of the plat, identified as Exhibit 72.

a. The majority of the site and abutting properties to the east, west, and south, and parcels abutting the north and south portions of the east boundary of the site are zoned R7 (Residential, seven units per acre maximum density). The east central portion of the site, parcel 228957-000 and the east half of parcel 229000-252, are zoned R12 (Residential, twelve units per acre maximum density). Properties to the north of the site are located in unincorporated Clark County and zoned R1-20.

b. The site is currently vacant. The site contains three wetlands: Wetland A, a Category III wetland in the east portion of the site, Wetland B, a Category III wetland in the west portion of the site, and Wetland C, a Category IV wetland in the southwest corner of the site. The site also contains seven Oregon White Oaks which the Code designates as critical areas. The applicant proposed to preserve all of the oak trees and wetlands and associated buffers in proposed open space tracts A, B and C.

c. The applicant will construct a new single-family attached or detached dwelling 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 one of four or five proposed on-site storm water facilities for treatment and detention.¹ The applicant will discharge treated stormwater from the detention facilities at less than predevelopment rates. The applicant will discharge stormwater from Storm Tracts 1 and 2 to the existing ditches on NE Onsdorff Boulevard, from Storm Tracts 3 to the on-site wetlands, and Storm Tract 4A to the existing ditches one 3rd Avenue.

¹ The applicant’s plans show a “Possible future wetpond” in Storm Tract 4B in the southeast corner of the site.

d. The applicant proposed to dedicate right-of-way and construct the following road improvements:

i. Half-width road improvements for the sections of NE 5th and NE Grace Avenues abutting the west and east boundaries of the site;

ii. The extension of six new east-west roads into the site from the west. Proposed NE 9th, 12th, and 13th Streets, and NE Onsdorff Boulevard will extend the existing streets that are currently stubbed to the west boundary of the site. NE 16th and 17th Streets will extend east from existing NE 5th Avenue on the west boundary of the site.

(A) NE 17th Street and NE Onsdorff Boulevard will extend to the east boundaries of the site; NE Onsdorff Boulevard will intersect NE Grace Avenue and NE 17th Street will stub to the west boundary of tax parcel 602288-000 to allow for further extension when the adjacent property redevelops;

(B) NE 9th and 12th Streets will terminate at their intersections with proposed NE Clark Avenue;

(C) NE 13th and 16th Streets will continue east of NE Clark Avenue, looping through the site to provide access to the proposed lots;

iii. The extension of NE 10th Street between NE Grace Avenue on the east boundary of the site and proposed NE Clark Avenue within the site.

iii. The extension of NE Clark Avenue through the site between its existing terminus at the south boundary of the site and NE 17th Street near the north boundary of the site;

iv. The extension of NE 8th Avenue from its existing terminus at the south boundary of the site to an intersection with proposed NE 11th Street within the site;

v. The extension of NE 3rd Avenue from its existing terminus at the south boundary of the site to an intersection with proposed NE 9th Street within the site;

vi. The extension of NE 10th Street into the site from NE Grace Avenue on the east boundary of the site; and

vii. Additional public streets within the site needed to provide access to the proposed lots.

d. The applicant proposed to provide off-street common parking areas in six locations throughout the site, as well as on-street parking on streets within the site.

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 November 10, 2021 (Exhibit 82, the "Final Staff Report").² The applicant accepted those findings and conditions with certain exceptions. Seven persons testified orally in opposition or with questions and concerns about the development. Other persons testified in writing. Disputed issues or concerns in the case include the following:

- a. Whether the city provided adequate public notice of the application and hearing;
- b. Whether the examiner can extend the open record period to allow the city council to add certain intersection improvements to the city's six-year Transportation Improvement Program ("TIP");
- c. Whether traffic generated by the proposed development will exceed the capacity of areas streets or otherwise create a hazard;
- d. Whether the applicant's traffic analysis adequately accounted for projected traffic growth without current Covid restrictions;
- e. Whether the applicant or the city can reduce the posted speed limit on streets in the area;
- f. Whether the applicant or the city can post stop signs to force drivers to slow down;
- g. Whether this development will direct excessive traffic onto existing NE 17th Street west of the site;
- h. Whether construction activities on the site will have a significant impact on surrounding roads and properties;
- i. Whether the applicant can be required to construct offsite street, sidewalk, and other improvements to remedy existing deficiencies;

² The City issued three prior Staff Reports for this development dated September 24, October 22, and October 27, 2021 (Exhibits 2, 71, and 77). The November 10, 2021 Staff Report (Exhibit 82) reflects changes to the findings and conditions that were discussed at the public hearings on October 1 and 27, 2021.

j. Whether the proposed development provides adequate opportunities for cross-circulation;

k. Whether the development provides adequate parking;

l. Whether the applicant can be required to construct or contribute towards the cost of construction of improvements necessary to mitigate intersections identified in the applicant's traffic study that are projected to fail concurrency requirements under 2025 background traffic conditions;

m. Whether the proposed development will cause or exacerbate flooding issues on adjacent properties;

n. Whether the proposed development should be denied because of its impact on schools in the area;

o. Whether adequate public water is available to serve the proposed development;

p. Whether the proposed development will have prohibited impacts on wildlife;

q. Whether the development complies with the park requirements of the Code;

r. Whether the development will have prohibited impacts on views and the privacy of existing residents;

s. Whether the applicant can be required fence or screen the site from abutting properties;

t. Whether the proposed lot sizes and housing types are consistent with the code; and

u. Whether the city can prohibit the sale of homes to investment companies for use as rental properties or encourage sales to local buyers.

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 online public hearings about this application on October 1 and 27, 2021. All exhibits and records of testimony are filed at the city of Battle Ground. At the beginning of the second 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. The following testimony was offered at the initial public hearing on October 1, 2021:

a. City planner Emily Lutz noted that the applicant requested a continuance of the hearing until 11:00 a.m. on October 28, 2021, in order to respond to issues raised in the Staff Report and public comments.

b. Planner Scott Taylor appeared on behalf of the applicant, SGA Engineering and Design. He noted that the applicant received and reviewed all of the public comments. The applicant responded to the public comments in Exhibit 58. The applicant intends to submit revised plans and additional traffic analysis to address the issues raised in the Staff Report prior to the continued hearing.

i. The revised plans will modify the onsite section of NE 17th Street to align with the existing street on the west side of NE 5th Avenue. The road will then curve north to abut the north boundary of the site, where there is an existing 60-foot wide easement. The road can then turn south to align with proposed NE 17th Street on the east side of NE Grace Avenue when tax parcel 602288-000 to the east of the site redevelops. The proposed development will create new opportunities for east-west and north-south traffic circulation in the area, allowing traffic to disperse onto multiple routes.

ii. The applicant will submit a traffic memo addressing all of the intersections affected by this development and the improvements planned for those intersections.

iii. The traffic counts used in the applicant's transportation report were conducted in April, when school was in session. The applicant's traffic engineer utilized prior, pre-Covid, traffic counts and then applied an annual growth rate to determine current traffic volumes. The traffic analysis also included traffic volumes generated by previously approved developments in the area.

iv. He opined that this development will not generate significant traffic on existing NE 17th Street west of the site. Proposed NE 5th and NE Clark Avenues and NE Onsdorff Boulevard will provide the most direct routes for the majority of drivers traveling from the north and east. Existing NE 17th Street west of the site will require longer travel times as this street is narrower with curb bulbs and parking allowed on both sides of the street. These restrictions encourage slower travel speeds, resulting in longer travel times on this route.

v. The applicant will not develop the intersection of NE 17th Street/NE Grace Avenue with this development. That intersection will be constructed in

the future when the abutting property east of the site, tax parcel 602288-000, is redeveloped and extends NE 17th Street to NE Grace Avenue.

vi. The applicant will pay Traffic Impact Fees (“TIFs”) which the city can use to fund planned road improvements, including improvements to the congested intersections noted by neighboring residents.

vii. The applicant intends to begin construction on the site in the spring/summer of 2022. Phasing of the development will depend on market demand. The applicant may build multiple phases at once, or seven separate phases over a longer period. The applicant may begin by constructing the phases in the southern portion of the site where existing stormwater, sewer and other utility connections are currently available.

viii. The applicant will direct construction traffic to utilize NE Onsdorff Boulevard and/or NE Grace Avenue to access the site.

ix. The applicant will likely develop single-family detached homes on the larger lots in the northern portion of the site, Phases I and II, and single-family attached dwellings in the eastern portion of the site, generally in the R12 zoned areas of the site. Each attached dwelling unit will be located on a separate lot, allowing for separate ownership. The applicant is unlikely to construct townhome style dwellings with up to six attached units, although the Code allows this type of development.

x. The majority of homes will provide two-car garages with additional parking in the driveway in front of the garage. The applicant will also provide additional off-street guest parking on the west side of proposed NE 10th Avenue, abutting open space Tract A. The 30-foot wide Local roads within the site can also accommodate on-street parking.

xi. The proposed development will not increase, and may reduce, existing flooding issues on adjacent properties. The applicant will collect runoff from all impervious areas of the site and convey it to proposed stormwater facilities for treatment and detention. The applicant will release treated stormwater to the on-site wetlands or existing conveyance ditches at less than predevelopment rates, replicating the existing conditions. The applicant will also collect all existing stormwater that currently flows onto the site and convey it through the site. The applicant will release some clean stormwater runoff (roof runoff) into the wetlands on the site in order to maintain the wetland hydrology.

c. Stephen Smith expressed concern that the proposed development will generate additional traffic on existing NE 17th Street west of the site. The majority of traffic from this site will travel to the west and drivers will take the most direct route, which is NE 17th Street for residents in the north portion of the site, especially if the on-site section of NE 17th Street aligns with existing NE 17th Street west of the site. Residents of the site are likely to use this street as a cut-through route in order to avoid

congestion at the intersection of NE Onsdorff Boulevard and N Parkway Avenue. Topography and vegetation limit sight distance at this intersection; drivers must pull partially into the intersection to see oncoming traffic. Recent development on the section of NE Onsdorff Boulevard west of the site will also add traffic to this intersection. The roundabout planned for this intersection is needed to accommodate traffic from the proposed development and other ongoing development in the area. Speeding is a significant problem under existing conditions. There is a need for increased traffic enforcement in the area to control speeding. He questioned where construction vehicles and equipment will access the site.

d. Amy Strickland questioned whether the traffic counts used in the applicant's traffic analysis were performed when school was in session and therefore reflect actual traffic volumes on area roads. There is significant congestion on roads in this area under existing conditions; it often takes several minutes to make a left turn onto N Parkway Avenue. She argued that the city should require a higher intersection Level Of Service ("LOS"). Congestion allowed by the current LOS D standard will deter people from coming to the area.

e. Ron Points also questioned whether the traffic counts used in the applicant's traffic analysis were performed when school was in session.

f. Angela Robertson agreed with prior witnesses' concerns with increased traffic on area streets. It is very difficult to access N Parkway Avenue under existing conditions. The intersection of NE Grace Avenue and E Main Street is operating at LOS F under existing conditions and the additional traffic generated by this development will make that intersection even worse.

g. Viki Eierdam agreed with prior testimony regarding traffic. The section of Parkway Avenue north of Main Street is very congested under existing conditions. Additional traffic generated by this development will add more congestion. Existing traffic issues should be resolved before homes are constructed on the site.

h. Ed Anderson noted that the section of NE Onsdorff Boulevard west of the site is only constructed as a half-width improvement. Considerable development has been proposed and approved in the northeast portion of the city, which will add additional traffic to this and other roads in the area.

i. City engineer Ryan Jeynes responded to the concerns raised in the public testimony:

i. Each phase of the development will have a single construction entrance which must be approved by the city.

ii. The applicant will construct the on-site section of NE Onsdorff Boulevard as a "Major Collector" roadway which requires: a 64-foot wide right-of-way and 46 feet of pavement to allow two travel lanes, a center median or turn lane, and five-

foot wide bicycle lanes on both sides of the roadway. Curbs, four-foot landscaping strips, and five-foot sidewalks are also required on both side of the roadway.

iii. The city council is responsible for setting speed limits on city streets, subject to a minimum speed limit to 20 mph required by state law. The default speed limit for local roadways is 25 mph, but speed limits are based on engineering standards that consider the 85th percentile speed of the roadway, traffic volumes, topography, the roadway crash history, and other issues.

iv. The traffic counts used in the applicant's transportation study were performed during the school year. Because current traffic volumes are lower than usual due to Covid restrictions the applicant used older, pre-Covid, traffic volumes and applied an annual growth rate estimate current traffic volumes.

v. The plat for the Meadow Wood 4 subdivision abutting the west boundary of the site includes a ten-foot wide stormwater easement.

vi. The intersection of NE Grace Avenue and E Main Street is currently in concurrency failure, operating at LOS F. The city is in the process of redesigning this intersection to eliminate the offset alignment and install a traffic signal. The applicant will be required to contribute funds towards the cost of constructing these improvements.

j. At the conclusion of the October 1, 2021 hearing, the examiner orally continued the hearing to 11:00 a.m. on October 28, 2021.

3. The following testimony was offered at the continued public hearing on October 28, 2021:

a. Ms. Lutz summarized the Staff Report dated October 27, 2021 and the changes included in the Final Staff Report dated November 10, 2021. She noted that the majority of the site is zoned R7, with an area in the east central portion that is zoned R12. The site contains three wetlands; a category IV wetland in the southwest corner, south of NE 9th Street, near the west boundary of the site, between NE 9th and 11th Streets, and a category III wetland in the forested eastern portion of the site. The site also contains Oregon white oak trees. The applicant proposed to subdivide the site to create 424 lots for attached and detached homes. The proposed development will avoid all impacts to the oak trees, wetlands and wetland buffers, as modified through buffer averaging.

b. Mr. Jeynes noted that the revised plat deleted the proposed intersection of NE 13th Street and Grace Avenue, as it is not feasible to construct this road in compliance with the intersection spacing requirements of the Code. He requested the examiner hold the record open to allow an opportunity to amend the road modification findings to reflect changes in the proposed preliminary plat.

i. This development will be served by gravity flow sewers discharging to the city's Salmon Creek treatment plan. It will not impact or require a sewer pump station. The applicant will install a 12-inch diameter sewer line in NE Onsdorff Boulevard and eight-inch lines in NE 10th Street and NE 3rd and Clark Avenues. The applicant will extend sewer stubs to the boundaries of the site to allow for further extension when abutting properties redevelop.

ii. The intersection of SW Scotton Way at S Parkway Avenue is projected to fail under 2025 traffic conditions. Traffic from this development will impact that intersection. Therefore, the applicant can be required to mitigate that impact. The applicant proposed to change this intersection to a three-way stop control, which will allow the intersection to continue to operate at an acceptable LOS with the traffic from this development.

iii. The eastbound and westbound approaches to the NE 17th Street/NE 5th Avenue intersection will be stop controlled. This intersection does not meet engineering warrants to limit it to left-turn only movements.

iv. The city cannot require the applicant to construct off-site improvements, including additional traffic calming measures on existing NE 17th Street, except as necessary to address concurrency failures. Traffic calming measures on existing NE 17th Street would not address any concurrency failures and therefore cannot be required. Residents can request that the city install traffic calming measures.

v. The city operations department is responsible for maintaining vegetation within rights-of-way, including vegetation restricting sight distance at the intersection of N Parkway Avenue and NE Onsdorff Boulevard and plans to clear the existing vegetation at this intersection to improve sight distance. The city has no authority to remove the rock wall at the northwest corner of this intersection, as it is located outside of the city's right of way.

vi. The Code requires that all intersections impacted by traffic from the proposed development meet minimum LOS requirements. Based on the applicant's traffic study, this development will generate traffic at intersections that will not meet LOS requirements under 2025 background traffic conditions, without the additional traffic from this development. Therefore, the applicant cannot send additional traffic through those intersections without contributing a proportionate share of the cost of improvements necessary to mitigate the concurrency failure.

(A) Changing the N Parkway Avenue/NE Onsdorff Boulevard intersection to a four-way stop control, as suggested by area residents, would not cure the projected concurrency failure and meet minimum LOS requirements. A roundabout is needed at this intersection to meet concurrency requirements. He is not aware of an existing crash hazard at this intersection that would warrant installation of a four-way stop control. The Manual on Uniform Traffic Control Devices ("MUTCD") requires evidence of five or more crashes within a twelve month period to warrant

mitigation for crashes. He agreed to review the crash history of the intersection to see if any changes are warranted.

(B) The intersection of NE Onsdorff Boulevard and SR 503 is currently in concurrency failure; operating below the city's minimum LOS standard. The city's current Transportation System Plan ("TSP") and six-year Transportation Improvement Program ("TIP") require an additional southbound through lane at this intersection. However, the applicant's traffic engineer determined that additional improvements are needed to bring this intersection into compliance with minimum LOS requirements based on projected background traffic volumes in the year 2025. Therefore, the conditions of approval require the applicant to request that the city council add these additional improvements to the TSP and/or TIP and the applicant contribute a proportionate share of the cost of these improvements.

(C) The applicant's traffic study identifies other intersections that are impacted by traffic from this development and that are projected to fail concurrency requirements under 2025 background traffic conditions. Some, but not all, of those intersections are listed on the city's current TSP and/or TIP. Therefore, the conditions in the Staff Report require that the applicant seek city council approval to add these projects to the TSP and/or TIP and pay a proportionate share of the cost of the improvements.

ix. The conditions proposed in the Staff Report are consistent with the city's past practice. Where developments have identified concurrency failures and improvements necessary to mitigate the failure, staff presented the issue to the city council who have the authority to add the projects to the TSP and/or TIP and the developments paid a proportionate share of the cost of the improvements. In the alternative, the applicant could put this project on hold, seek city council approval to add the concurrency projects to the TSP and/or TIP. The city could then approve the development subject to a condition requiring payment of the proportionate share. Staff cannot require proportionate share payments for projects that are not currently included in the TSP and/or TIP, because there is no certainty about the scope and cost of required improvements.

c. Mr. Taylor summarized the applicant's revised development plan, Exhibit 72.

i. He noted that the applicant proposed to create 383 lots subject to the city's "narrow lot" standards. Therefore, the applicant is required to provide 383 additional parking spaces, on the street or in a common parking area. The revised plat provides 385 parking spaces located on Local streets within the subdivision and in common parking area throughout the site. The applicant will provide landscaping within the guest parking areas as required by the Code.

ii. All of the proposed narrow lots will utilize shared driveways.

iii. The applicant modified the on-site section of NE 17th Street to align with existing NE 17th Street to the west of the site, shifted NE 16th Street to the south and eliminated the curve in the western section of this street, and restored the previously proposed intersection of NE 9th Avenue and NE Onsdorff Boulevard. Street access to NE Grace Avenue is limited to NE Onsdorff Boulevard and NE 10th Street. The applicant proposed two pedestrian accessways connecting NE 10th and NE Grace Avenues between NE Onsdorff Boulevard and NE 10th Street.

d. Attorney Steve Morasch appeared on behalf of the applicant and summarized his written testimony, (Exhibit 67). He argued that the city has no authority to impose “Prior to Final Plat Approval” conditions 7 through 11, which require mitigation of five intersections that are in concurrency failure but are not included in the city’s current TSP or TIP.

i. The conditions of approval require the applicant to seek city council approval to add these intersections to the TSP and/or TIP and pay a proportionate share of the cost of the improvements, construct the entire improvement, or provide alternative improvements sufficient to mitigate the impact of the proposed development on the intersections. The cost of these improvements would greatly exceed this development’s impact on these intersections. This development is only responsible for a small portion (one to nine-percent) of the total traffic at these intersections. However, unless the city council agrees to add these intersections to the TIP the applicant would be required to construct more than \$2 million in intersection improvements. That would constitute an unconstitutional taking under the U.S. Supreme Court’s holdings in *Dolan v. Tigard* and *Koontz v. St. Johns River Water Mgmt. Dist.* Therefore, the examiner should delete these conditions or modify the conditions to require the applicant to pay a mitigation fee in the amount listed in the Memorandum from the applicant’s traffic engineer dated October 14, 2021 (Exhibit 38), similar to condition E.2 of the city’s decision in PR 26:2020 (Woodin Creek Station). Although these intersections are not currently failing, they are projected to fail in 2025, with or without traffic from this development. There is no evidence that the additional traffic from this development will cause or exacerbate any safety hazards at these intersections. The historic crash rate is well below the city’s action level of one crash per million entering vehicles.

ii. Based on Exhibit 38, mitigation is not needed at the intersection of NE Onsdorff Boulevard at NE 132nd Avenue/Parkway Avenue. This intersection is only in concurrency failure for 15 to 20 minutes of the a.m. peak hour period due to school related traffic. Outside this brief period the intersection operates at LOS C.

iii. The failure of the intersection of SW Scotton Way at S Parkway Avenue can be mitigated by the installation of stop signs on the northbound and southbound Parkway Avenue approaches resulting in an all-way stop controlled intersection. The applicant is willing to provide this mitigation.

e. Mr. Smith argued that the original street design, with the offset east and west legs of the NE 17th Street/NE 5th Avenue intersection would encourage these drivers

to continue south to NE Onsdorff Boulevard. The proposed alignment of NE 17th Street directly across from existing NE 17th Street west of the site will encourage westbound traffic to continue west on existing NE 17th Street, increasing the volume of traffic on this street. Although NE 17th Street is narrow, it provides a direct route to N Parkway Avenue, NE Onsdorff Boulevard, and SR 503. Proposed NE 5th and NE Clark Avenues also provide direct access to NE Onsdorff Boulevard. However, existing NE 17th Street may provide a more direct route for drivers traveling west on the on-site section of NE 17th Street. Drivers are likely to continue straight rather than turn left onto NE 5th or NE Clark Avenues. The westbound NE 17th Street intersection approach should be limited to left turn movements only. In the alternative, a “Local Traffic Only” sign should be installed on the west leg of NE 17th Street/NE 5th Avenue intersection or additional traffic calming measures provided to discourage cut-through traffic on existing NE 17th Street west of the site.

i. He questioned whether the applicant will provide mitigation at the intersection of NE Onsdorff Boulevard and N Parkway Avenue. The eastbound and westbound legs of this intersection are “challenging” and unsafe under existing conditions due to limited sight distance to the north and south. Drivers must pull into the intersection to see oncoming traffic. Other previously approved developments to the north of this intersection will generate additional traffic on N Parkway Avenue, which will exacerbate the existing hazard at this intersection. Additional crashes will occur at this intersection unless improvements are made.

ii. He questioned how the three-way stop proposed at the intersection of Scotton Way at S Parkway Avenue, located 1.5 miles away, is relevant to the traffic impacts of this development.

f. Leo Koskiniemi questioned which sewer pump station will serve this development.

g. Frank Charbonneau, the applicant’s transportation engineer, summarized his Memorandum dated October 27, 2021 (Exhibit 74). The traffic study assumed a 424 lot subdivision. Background traffic was estimated based on traffic counts conducted in 2016 and 2017 and adjusted to 2021 by applying a two-percent annual growth rate. The traffic study identified five intersections that will be in concurrency failure in 2025 that are not fully included in the city’s current TSP and/or TIP. An additional southbound through lane at the Onsdorff/SR 503 intersection is included, but additional improvements are needed to bring the intersection into compliance with minimum LOS requirements. This development will generate three-percent or less of the total traffic at all but one of these intersections; this development will generate nine-percent of the traffic at the NE Onsdorff Boulevard/N Parkway Avenue intersection. Therefore, the applicant is only proposing to provide mitigation at the SW Scotton Way/S Parkway Avenue intersection, installing stop signs to convert this intersection to an all-way stop control.

h. At the conclusion of the October 28, 2021 hearing, the examiner held the record open subject to the following schedule:

i. For two weeks, until November 12, 2021, for anyone to submit additional written testimony and evidence;

ii. For a third week, until November 19, 2021, to allow anyone to respond to any comments submitted during the first two weeks of the open record period; and

iii. For a fourth week, until November 26, 2021, to allow the applicant to submit a final written argument.

4. The following exhibits were submitted during the open record period:³

a. An email from Viki Eierdam dated October 28, 2021, regarding the oak trees on the site (Exhibit 81);

b. A memorandum from City public works director Mark Herceg dated November 12, 2021 (Exhibit 83);

c. An email from Mr. Morasch dated November 12, 2021 (Exhibit 84);

d. A revised proportional share analysis from Mr. Charbonneau November 12, 2021 (Exhibit 85);

e. An email from Mr. Taylor dated November 22, 2021 noting a typographical error in Prior to Engineering Approval condition 2.e (Exhibit 84); and

f. The applicant's final argument (Exhibit 87).

C. DISCUSSION

1. City staff recommended approval of the revised preliminary plat in Exhibit 72, based on the affirmative findings and subject to conditions of approval in the Final Staff Report. The applicant accepted those findings and conditions, with certain exceptions.

2. The examiner adopts the affirmative findings in the Final Staff Report, except to the extent they are inconsistent with the following findings.

3. The examiner finds that the city provided adequate public notice of the application and hearing and the public was provided with an adequate opportunity to review and comment on the application either orally at the hearings or in writing before

³ Exhibit 82 is the revised Staff Report dated November 10, 2021, which Ms. Lutz summarized at the hearing.

and after the hearings. The city mailed notice of the initial public hearing to the owners of properties within 500 feet of the site and published notice of the hearing in the newspaper as required by BGMC 17.200.070.F. Notice was posted on the site as required by BGMC 17.200.070.F. The Code does not require that notice be mailed to the owners of properties that are more than 500 feet from the site. Multiple forms of notice are required, in part, to provide a measure of overlap, so that if notice in one form is not effective (e.g., when a mailed notice is not required or received), another form of notice will be effective (e.g., posted notice). The examiner continued the initial hearing and held the record open after the second hearing to accept additional testimony and evidence. The neighborhood was well represented at the hearings and in the written record. Residents of the neighborhood testified clearly and succinctly regarding issues of concern to them.

4. During the open record period the city requested that the examiner extend the open record period to allow the city council to consider adding certain intersections to the TSP and/or TIP. (Exhibit 83). The applicant objected to the extension of the open record period. (Exhibit 87). As the applicant notes, RCW 58.17.140, WAC 365-196-845(10), and BMC 17.200.070.H require that the city issue a final decision on this application within 120 days from the date the application is deemed technically complete. Any extension of this timeline must be agreed upon by the applicant and the city. BMC 17.200.070.H(4). In this case the applicant objected to any further extension of the 120 clock. Therefore, the examiner must deny the city's request to extend the open record period.

5. The proposed development will increase the volume of traffic on area streets. That increase in traffic will be perceptible to area residents. However, based on the applicant's traffic analysis, as confirmed by city engineering staff, it will not, with exceptions discussed below, exceed the capacity of the streets nor create a hazard. There is no substantial evidence to the contrary. Neighbors' unsupported concerns about the impacts of increased traffic are not substantial evidence sufficient to overcome the expert testimony of the traffic engineers for the applicant and the city.

a. The traffic analysis accounted for decreased traffic volumes caused by Covid restrictions and increased traffic generated by ongoing development in the area, "in-process traffic."

i. As several persons noted, current traffic volumes on area roadways are lower than normal due to changes in travel practices resulting from Covid. Therefore, the traffic counts used in the applicant's transportation analysis were based on traffic counts conducted in 2016 and 2017 and adjusted by applying an annual growth rate to determine current and future non-Covid traffic volumes. (See exhibits 16 and 68).

ii. The volume of in-process traffic is determined based on the number of lots proposed by all vested or approved developments within the analysis area that were not generating traffic when the pre-Covid traffic counts used in the analysis were performed.

iii. Future traffic volumes are estimated by combining adjusted counts of existing, in-process traffic, and site generated traffic.

b. The additional traffic generated by this subdivision may pose an increased risk for drivers, cyclists and pedestrians in the area. Higher vehicular traffic volume creates 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 plans call for the sort of development being proposed. Reasonably prudent drivers will observe posted speed limits, stop signs, and other applicable traffic regulations and if necessary, further reduce their speed to accommodate other road conditions. Unfortunately, not all drivers are prudent. However, 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 traffic violations by providing increased enforcement of traffic laws on all streets in the area.

i. The applicant has no authority to reduce the speed limit on streets in the area. That is within the exclusive jurisdiction of the city. Area residents can petition the city to review the posted speed limits and consider reductions. However, the posted speed limit is based on a variety of engineering and other considerations, including the design and classification of the roadway, actual traffic speeds, and other factors.

ii. The applicant cannot install additional stop signs to control speeding. Stop signs are only allowed where certain engineering warrants are met as set out in the Manual on Uniform Traffic Control Devices (MUTCD). As noted in Exhibit 58, factors such as street or highway classification, traffic volumes, sight distance, safety, and crash history, etc. are basic elements in assessing and determining the need for stop signs at candidate locations. Stop signs installed where warrants are not met can create a hazard, as drivers become accustomed to there being no opposing traffic and they fail to obey the stop signs.

7. Neighbors expressed concern that this development will generate additional traffic on existing NE 17th Street west of the site.

a. The examiner understands this concern. However, the Code does not prohibit such impacts. Additional development will generate additional traffic, some of which may travel on NE 17th Avenue. There is no evidence that this additional traffic will exceed the capacity of this street or create a hazard. NE 17th Street is designated a “Local A” street that is intended to carry up to 1,000 Average Daily Trips (“ADT”).

b. In addition, this development is unlikely to generate a significant increase in traffic on NE 17th Avenue. Although existing NE 17th west of the site may provide a direct east-west route for some drivers, the narrow width, curb bump outs and on-street parking on this Local street will force drivers to slow down, making this route slower and less inviting. Reasonable drivers will use the fastest, most direct route to their destinations. NE Onsdorff Boulevard, a Major Collector roadway with wider pavement

and expected higher speed limit, is likely to provide a faster east-west route. Proposed extensions of NE 5th and Clark Avenue as Neighborhood Collector roadways will provide direct connections between NE 17th Street and NE Onsdorff Boulevard. Although the section of Onsdorff between NE 5th and N Parkway Avenues is only developed as a half-width improvement, it provides a 25-foot paved section with no parking allowed on either side, allowing ample room for two-way traffic without the restrictions that occur on NE 17th Street.

7. Construction on the site will generate additional traffic, including heavy vehicles and equipment. However, such impacts are short term, temporary, and not significant enough to require specific limitations other than those imposed by State law and the City Code. The City must review and approve a construction plan that will identify the location of construction access to the site. The applicant is not required to consider construction traffic in the traffic analysis, as the volume of construction vehicles are generally far less than the traffic volumes generated by the completed development. In addition, much of the construction traffic occurs during non-peak hours, when traffic volumes are lower on local roadways.

a. The applicant will be required to obtain city approval of a construction Traffic Control Plan (“TCP”) which will govern all work within or impacting the public transportation system. The city will review construction vehicle access to the site through its plan review process. Construction activities may impact area residents by temporarily altering the travel surface of the roads, causing traffic congestion, short-term delays, etc. However such impacts are temporary, while construction is occurring, and are merely one of the inconveniences of living in a developing urban area.

8. Concerns were expressed with the existing condition of NE 18th Street west of the site. Similar to NE 17th Street, curb bulbs and on-street parking limit some sections of this roadway to a single travel lane. However, based on aerial photos, it appears this roadway was constructed as a half-width improvement, with the remainder to be developed in the future when the abutting properties to the north redevelop. On-street parking is generally restricted on such half-width local streets due to the limited pavement width. Residents should contact the city to request the installation of “No Parking” signs on this roadway. However, this is an existing condition that the applicant is not required to remedy. In addition, this development is unlikely to generate any additional traffic on this street, as it currently functions as a loop street and does not provide a direct route to most destinations in the area.

9. The applicant cannot be required to remedy all existing or perceived problems in the area: extending sidewalks, widening roadways, enhancing sight distance, etc. The need for such improvements is one that which all adjoining properties contribute, not just the development proposed in this case. The city cannot require this applicant to bear the full cost of such additional improvements, because the costs would exceed the roughly proportional impact of the proposed development and it is a need to which all of the properties in the area contribute. There is no substantial evidence in the record that additional improvements are necessary to remedy a hazard caused or exacerbated by the

proposed development. The applicant will pay traffic impact fees that the city can use to fund additional road improvements in the area. In addition, as discussed below, the applicant is required to contribute additional funds to help pay for improvements to certain intersections that are impacted by traffic from this development and are projected to fail minimum LOS requirements in 2025.

a. The existing sight distance restrictions at the intersection of Parkway Avenue and Onsdorff Boulevard noted by area residents does not create a hazard, based on the historic crash rate at this intersection. Therefore, the applicant cannot be required to modify this intersection. However, the applicant is required to contribute funds towards planned improvements for this intersection.

b. As Mr. Jeynes noted, the city is currently designing improvements to the NE Grace Avenue/E Main Street intersection to eliminate the existing street offset and install a traffic signal. The applicant and other developments in the area are required to contribute funds towards the cost of these planned improvements.

10. The proposed development will create new opportunities for east-west and north-south traffic circulation in the area, which will allow traffic to disperse onto multiple routes, reducing traffic volumes and congestion on other streets in the area. However, the applicant cannot meet east-west cross-circulation requirements by providing an additional street on NE Grace Avenue between NE Onsdorff Boulevard and NE 10th Street due to the location of the wetland in Tract A. The city approved a road modification allowing the applicant to vary from this requirement. The applicant will mitigate for the lack of cross-circulation by providing two bicycle/pedestrian paths between proposed NE 10th and NE Grace Avenues.

11. The proposed development will comply with the parking requirements of the Code. BGMC Table 17.133-1 requires a minimum of two off-street parking spaces per dwelling unit. In addition, BGMC 16.125.095.B(7) requires one additional parking space per “narrow lot,” located on the street or in a common parking area.⁴ Of the 424 lots proposed, 383 are “narrow lots.” The applicant proposed to provide 385 additional parking spaces, either on-street or in one of six proposed common parking areas located throughout the site. The city cannot require the applicant to provide more parking than the Code requires.

12. The applicant’s traffic study identified eight intersections that will be affected by traffic from this development and will not meet the city’s “concurrency” requirements, because these intersections will not meet the city’s minimum LOS requirements in 2025. As discussed in detail in Exhibit 83, “concurrency” requirements set out in RCW 36.70A.070(6)(b) and BGMC 12.120170 prohibit approval of a development that causes an intersection or other transportation facility to fall below the adopted minimum LOS,

⁴ BGMC 16.125.095.A defines “narrow lots” as any lot with less than fifty feet of frontage.

unless improvements are planned and funded that will achieve or maintain the acceptable LOS no later than six years after approval of the development based on the current TIP.

a. Improvements to four of the failing intersections are included in the city's six-year TIP: 1) SR 503/SW Eaton Boulevard, 2) NW 10th Avenue (SR 503)/NW Onsdorff Boulevard, 3) SW 20th Avenue/SW Eaton Boulevard, and 4) NE Grace Avenue/E Main Street. Improvements to these intersections are planned and funded. The applicant is required to contribute a proportionate share of the cost of improvements to these intersections. This contribution is required by "Prior to Engineering Approval" condition of approval 2.p in the Final Staff Report. Therefore, with one exception noted below, this development, as conditioned, can meet concurrency requirements at these intersections.

b. The four remaining intersections - 1) W Main Street (SR 502) and NW 29th Avenue, 2) N Parkway Avenue and Onsdorff Boulevard, 4) S Parkway Avenue and Rasmussen Boulevard, and 4) S Parkway Avenue and SW Scotton Way - are not listed on the city's current TSP and/or TIP. In addition, the applicant's traffic study found that the additional improvements to the NW 10th Avenue (SR 503)/NW Onsdorff Boulevard intersection beyond those listed in the current TIP are needed to meet concurrency requirements in 2025. Therefore, BGMC 12.120.110 requires that the applicant construct improvements necessary to bring these intersections into compliance with minimum LOS requirements.

c. The applicant agreed to install additional stop signs at the S Parkway Avenue/SW Scotton Way intersection, converting this intersection to an all-way stop, which will improve the intersection operation enough to meet minimum LOS requirements. This mitigation is required by "Prior to Engineering Approval" condition of approval 2.t in the Final Staff Report. Therefore, as conditioned, this intersection will meet concurrency requirements.

d. The applicant did not propose additional mitigation at the four remaining intersections noted above and improvements necessary to meet concurrency at these intersections are not included in the city's current TIP. Therefore, these intersections do not meet concurrency requirements.

i. The applicant argues that no mitigation is needed at these intersections, because the intersections will fail due to growth in background traffic and "in-process" trips generated by other previously approved developments, regardless of the additional traffic generated by this development. The applicant further argues that two intersections (N Parkway Avenue/Onsdorff Boulevard and NW 10th Avenue (SR 503)/NW Onsdorff Boulevard) will only fail for relatively short periods during the a.m. peak hour, due to surges in school related traffic.

ii. The examiner finds that improvements to these intersections are reasonably necessary as a result of this development. Contrary to Mr. Morasch argument in Exhibit 87, the applicant's traffic engineer did not conclude that no improvements are

necessary at these intersections. The analysis merely states “No mitigation is proposed in conjunction with the B & G Properties Subdivision development.” (pages 2-3 of Exhibit 74). Although traffic from this development will not cause these intersections to fail, it will add trips to these failing intersections, increasing the degree of the failure, resulting in additional congestion and delays. Therefore, absent the cited improvements, the intersections will not meet concurrency requirements.

(A) Concurrency requirements do not include an exemption for “short term” failures caused by surges in school related traffic.

(B) The proposed development will not add trips to the failing westbound approach to the S Parkway Avenue/Rasmussen Boulevard intersection. However, the development will add trips to S Parkway Avenue, which will increase the volume of north-south traffic and limit traffic breaks needed for east-west movements, increasing delays on the westbound approach.

e. BGMC 12.120.110 requires that the applicant construct improvements necessary to alleviate the concurrency failure or, if the improvements are listed on the city’s current six-year TIP, the applicant may be required to pay a proportionate share of the cost of the improvements. RCW 36.70A.070(6)(b) and BGMC 12.120170 prohibit approval of this development unless these improvements are provided or funded.

f. However, RCW 82.02.020 and the U.S. Supreme Court decisions in *Dolan v. City of Tigard*, 512 US 374, 386-94, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994) require that in order to impose a condition requiring that the applicant fund these improvements, the city must demonstrate that the cost of the improvements are “roughly proportional” to the impacts of the proposed development. The proportionality requirement is applicable to conditions imposed to ensure compliance with local and state laws. In addition, the U.S. Supreme Court decisions in *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 133 S.Ct. 2586, 186 L.Ed2d 697 (2013) provides that the city may not deny the application to avoid proportionality.

g. The examiner finds that the conditions of approval proposed by the city do not meet the requirements of *Dolan* and *Koontz*.

i. The conditions proposed by the city require that the applicant seek city council approval to add improvements to the current TIP and, if the city approves, that the applicant pay a proportionate share of the cost of the improvements or that the applicant construct the necessary mitigation or other measures necessary to meet concurrency. If the city council adds these improvements to the TIP, these conditions would comply with *Dolan* and *Koontz*. However, there is no guarantee that the city council will approve adding these intersections to the TIP. As the applicant notes, “[t]he City Council has absolute discretion whether to amend the Six-Year TIP.” (page. 6 of Exhibit 87). If the council decided not to add these improvements to the TIP then the applicant would be required to bear the full cost of the improvements.

ii. Based on the analysis by the applicant's traffic engineer, traffic from this development will contribute less than three-percent of the traffic at three of the four intersections. This development will contribute 8.31-percent of the traffic at the N Parkway Avenue/Onsdorff Boulevard intersection. (Exhibit 85). Therefore, requiring the applicant to bear the full cost of these improvements would violate RCW 82.02.020 and result in an unconstitutional taking under *Dolan*.

iii. The city cannot deny this application for failure to comply with concurrency requirements, based on the Supreme Court's holding in *Koontz*. There is no evidence that these intersections are hazardous. Mitigation is only needed to improve intersection operations, alleviating congestion and delay. The cost of the improvements is not roughly proportional to the impact of the development. Therefore, denial based on failure to comply with concurrency would violate *Koontz*.

h. The examiner finds that the applicant can be required to pay a proportionate share of the cost of the improvements if the city council adds these projects to the TIP. By definition, payment of a proportionate share would be roughly proportional to the impact of the development. If the city council chooses not to add these intersections to the TIP, then this application must be approved without these improvements, because the city has no authority to deny the application based on the development's failure to comply with concurrency as discussed above.

i. The examiner finds that the city must amend its TIP to add these intersection improvements in order to accept the applicant's proportionate share contribution. If these intersections are not added to the TIP, there is no guarantee that the necessary improvements would be funded and constructed.

i. The applicant proposed specific dollar amounts as their proportionate share of the cost of the required improvements. The proportionate share is based on cost estimates from the applicant's civil engineer and proportionate share analysis by the applicant's traffic engineer. The city failed to provide any evidence to the contrary. Therefore, the examiner finds, based on the evidence in the record, that a condition of approval is warranted requiring that the applicant pay the following proportionate share amounts if the city council amends the TIP to include these intersections:

(A) \$9,730 for the mitigation measures at the intersection of NW 29th Avenue and W Main Street (SR 502);

(B) \$49,860 for the mitigation measures at intersection of N Parkway Avenue and Onsdorff Boulevard;

(C) \$6,400 for the mitigation measures at intersection of Parkway Avenue and S Rasmussen Boulevard; and

(D) \$7,000 for the mitigation measures at the intersection of SR 503 and NW Onsdorff Boulevard.

13. The applicant is not required to remedy existing flooding problems in the area. However, the applicant is prohibited from making such problems worse. The applicant will collect runoff from streets, sidewalks, roofs and driveways and direct it to the on-site stormwater facilities for treatment and detention. The applicant will release stormwater from the detention facilities to the existing ditches or on-site wetlands at less than pre-development rates, thereby ensuring that this development will not increase the rate of stormwater runoff from this site. The applicant is prohibited from increasing or concentrating stormwater runoff onto adjacent properties. The applicant testified that the weight of the homes on the site will not affect ground water levels in the area. There is no evidence to the contrary. In addition, groundwater is not regulated by the city.

14. Neighbors argued that the proposed development will exceed the capacity of schools in the area. The City considered school capacity when it adopted the zoning for this site. The proposed development density is consistent with the current zoning. This development will have an impact on the school district. By paying school impact fees, the proposed subdivision adequately provides for schools as a matter of law. Although the schools serving this site may be approaching capacity, the school district is required by law to accommodate students who live there. The district states that it can adjust attendance boundaries and practices as necessary to fulfill student needs.

15. The examiner finds that it is feasible to provide potable water to the site. The city of Battle Ground is the public water purveyor for properties within the city limits. As noted in the Final Staff Report, “[a]s a result of anticipated near term water capacity issues, the city of Battle Ground does not guarantee, or set aside, water service capacity for any new development, redevelopment, or expansion, which increase water usage within the city of Battle Ground Service Area until such time as additional water capacity becomes available as outlined in the Battle Ground Water Master Plan.” For the moment, water capacity is sufficient. Besides several water wells, the City also gets water from Clark Public Utilities via the Intertie Pump Station located at the intersection of W Main Street and NW 92nd Avenue. Additionally, in the next few years the City will connect to the Paradise Point Water Field.

16. Development on this site will eliminate habitat for wildlife, including deer. But the Code does not prohibit such an effect. To the contrary, it is an inevitable consequence of concentrating new development in the urban area. None of the animals observed on this site are listed as endangered or threatened. They are commonly observed in the area. Their presence is less likely after the site is developed, but that is to be expected. The applicant will retain the existing wetlands and buffers on the site, which will continue to provide some habitat for wildlife.

17. As noted in the Final Staff Report, the site is located within “Neighborhood Service Area 5” of the City’s Parks Plan. This service area calls for a three to five acre park. There are two existing parks within this boundary: Oak Meadows Park and Whispering Pines Park. These parks total approximately 1.2 acres; therefore, this subdivision is required to provide parks and open space. The applicant is proposing to

establish a series of smaller pocket parks, natural areas, and trail systems on the site as allowed by BGMC 17.128.040.A(1)(b). The larger park is located on a public street, NE 11th Street, east of NE Clark Avenue, within Tract A. The smaller park is located in Tract B, west of NE Clark Avenue and north of NE 9th Street. Access to this park is provided by a pedestrian pathway connecting to NE Clark Avenue. The applicant will install play equipment, picnic tables, and benches in the proposed parks. The development also proposed over 5,000 feet of new trails within the site. The applicant will also be required to pay Park Impact Fees (“PIFs”) pursuant to BGMC 3.60.066, which the City can use to purchase additional park facilities.

18. There is no dispute that the proposed development will impact existing views from and the privacy of adjacent residences. What is now largely an open field with forested areas in the east and northeast portions of the site will be developed with 424 new homes. But the BGMC does not prohibit development from having an impact on views and privacy. The intensity of the proposed development is consistent with the current zoning of the site, as modified by the density transfer ordinance.

a. The applicant is not required to install fencing or landscaping to screen the development from adjacent properties. BGMC 17.131.080 establishes standards for landscaping and screening. Based on Table 17.131-1, screening and buffering are not required when development is proposed on R7 zoned property. Table 17.131-1 requires a ten-foot wide B2 buffer where development on R12 zoned property abuts the back yard of properties zoned R3 through R7. In this case, the R-12 zoned portion of the site only abuts NE Grace Avenue and proposed lots within the site. This area of development will not abut the rear yard of any properties zoned R3-R7. Therefore, no screening or buffering is required. The applicant or future residents may choose to construct fences to screen the site or individual lots from abutting properties, but the Code does not require that the applicant provide such screening in this case.

19. The hearings officer understands residents’ displeasure with the growth around them, but this growth was foreseeable and is in the broader public’s interest. This area has been zoned R7 and R12 for many years and the proposed lot sizes and setbacks are consistent with the development standards of the Code for those zones. As large lots are sold, presumably they will be developed to the maximum extent allowed. The Code does not authorize the City to require larger lots so that they are consistent with the size of surrounding lots. The Code allows applicant’s to transfer density from unbuildable areas of the site (wetlands and associated buffers) in order to achieve the City’s density goals. Although the proposed lots are smaller than adjacent lots, the uses are not incompatible. The applicant is proposing to provide single-family detached and attached residences adjacent to existing single-family development. All of the proposed homes will be located on individual lots. Even if the subdivision will have an adverse impact on property values --- and there is no substantial evidence to that effect in the record --- protection of property values and consistency with adjoining development are not relevant to the applicable State or City standards. The examiner must base the decision on the laws of the City of Battle Ground and Washington State.

20. The current code does not prevent the applicant or future owners from selling lots or homes to investment companies for use as rental properties as suggested in Exhibit 40. Such restrictions could result in constitutional violations. The city council could consider providing incentives to developers to sell to local buyers/investors instead of national corporate investors. However, that is a policy choice for the city council. The current code does not include such a requirement.

21. The plat will result in a few parcels that are “split zoned,” subject to both R7 and R12 zoning based on current zoning boundaries. “Prior to final plat approval” condition 7 in the Final Staff Report requires the applicant to work with city staff in its annual comprehensive plan updates to update the comprehensive plan and zoning map to align the zoning boundaries with the proposed lot boundaries, eliminating the split zoned lots. The applicant agreed to work with staff to remedy the split zoning issue, but expressed concern that this condition could delay recording of the final plat. The city failed to identify any authority for requiring correction of the split zoning issue prior to final plat approval. The site is split zoned under existing conditions, with parcel 229000-252 zoned R& and R12. Therefore, the examiner finds that this condition should be modified as the applicant proposed in Exhibit 87.

D. CONCLUSION

Based on the above findings and discussion, the examiner concludes that LUDIII21-0008 (B & G 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 LUDIII21-0008 (B & G Subdivision), subject to the following conditions of approval:

Conditions of Approval

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 Grace Avenue, a “Minor Arterial”, including sidewalk, landscape strip, curb and gutter and asphalt and additional right-of-way dedications as necessary.

- b. Showing extension of NE Onsdorff Boulevard built to “Major Collector – Option 1” standards including sidewalk, landscape strip, curb/gutter and asphalt as described above in the findings section.
- c. Showing extension of NE Clark Avenue, NE 9th Street, NE 10th Street, and NE 12th Street built to “Neighborhood Collector” standards, including sidewalk, landscape strip, curb and gutter, and asphalt.
- d. Showing NE 5th Avenue built to “Neighborhood Collector” standards including sidewalk, landscape strip, curb and gutter, and asphalt as described above in the Final Staff Report.
- e. Showing extension of NE 13th Street, NE 3rd Avenue, and NE 8th Avenue built to Local “A” standards, including sidewalk, landscape strip, curb and gutter, and asphalt.
- f. Showing extension of NE 17th Street built to Local “A” standards including sidewalk, landscape strip, curb and gutter, and asphalt as described above in the findings section.
- g. Showing full width improvements to all other streets to “Local A” standards, including sidewalk, planter strip, curb and gutter, and asphalt.
- h. Showing the path from Oak Meadows Phase III between Lots 2 and 3 extended into the development.
- i. Showing an additional five feet of right-of-way dedicated to the City for NE Grace Avenue.
- j. Containing a combined landscaping and driveway plan.
- k. Showing sight distance and vision clearance triangles.
- l. Containing a signing and striping plan.
- m. Showing LED decorative cobra type units for NE Grace Avenue and NE Onsdorff Boulevard and LED acorn units for the other streets.
- n. Showing traffic calming devices on all public streets.
- o. Showing driveways that meet the requirements of BGMC 12.116.243.
- p. Showing traffic mitigation at SW Eaton Boulevard and SR 503; NW Onsdorff Boulevard and SR 503; Grace Avenue and E. Main Street; and SW 20th Avenue and SW Eaton Boulevard; or indicating that mitigation fees will be

paid in lieu of the improvements.

- q. Showing the traffic mitigation (all-way stop control) at S Parkway Avenue and SW Scotton Way.
- r. Showing minimum eight-inch diameter water lines looped throughout the subdivision and extending to extreme property lines.
- s. Showing each residential lot having its own individual water service.
- t. Showing an eight-inch gravity sewer line throughout the subdivision and extending to extreme property lines.
- u. Showing each residential lot having its own individual sanitary lateral.
- 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.
- x. Showing landscape parkway for lots 68-76 and 209-270.
- y. Provide “No Parking-Fire Lane” signage at shared driveways and half streets.
- z. Clearly show the locations of required additional hydrants to meet lateral spacing requirements.
- aa. Revise any street names per staff’s review.
- bb. Provide narrow development plans demonstrating compliance with BGMC 16.125.090.
- cc. Proposed shared parking meeting the requirements in BGMC 17.133 and 16.125.095.
- dd. Showing proposed flag lots each have required minimum frontage along a private or public street.
- ee. Showing building envelopes for all parcels. Townhomes should meet the criteria specified in 17.106.080.
- ff. Showing trails meet BGMC 12.116.070.
- gg. Showing a critical areas signage plan meeting the requirements of 18.270.050 and 18.280.070.

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. Photometric plan shall be prepared by an electrical engineer.
4. Submit a hydrology report that addresses all requirements found in BGMC 18.250.
5. Submit a SWPPP that meets the 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.
8. Submit a buffer averaging plan meeting BGMC 18.270.100 and impact minimization measure plan meeting Table 18.270.090-7.

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 Engineering Department at (360) 342-5069 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.

Prior to the Creation of Impervious Surfaces:

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.

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. 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) compact disc or USB flash drive version of the as-built drawings in AutoCAD, and separate/individual PDF, and TIF format files.
6. If LID improvements are incorporated into the project, provide appropriate stormwater covenants.

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 \$114,405.75.
3. Construct the mitigation measures for the failing intersection of SR 503 and SW Eaton Boulevard or pay the mitigation fee of \$99,666.45.
4. Construct the mitigation measures for the failing intersection of SW 20th Avenue and SW Eaton Boulevard or pay the mitigation fee of \$18,331.20.
5. Construct the mitigation measures for the failing intersection of SE/NE Grace Avenue and E Main Street or pay the mitigation fee of \$161,846.38.

6. Install stop signs on the northbound and southbound directions of S Parkway Avenue at SW Scotton Way, as recommended in the Charbonneau Engineering Memorandum, to convert the intersection to an all-way stop.
7. If the city council has amended the six-year TIP to include traffic mitigation improvements for the intersection of NW 29th Avenue and W Main Street (SR 502), pay a proportionate share mitigation fee in the amount of \$9,730.
8. If the city council has amended the six-year TIP to include traffic mitigation improvements for the the intersection of N Parkway Avenue and N Onsdorff Boulevard, pay a proportionate share mitigation fee in the amount of \$49,860.
9. If the city council has amended the six-year TIP to include traffic mitigation improvements for the the intersection of S Parkway Avenue and S Rasmussen Boulevard, pay a proportionate share mitigation fee in the amount of \$6,400.
10. If the city council has amended the six-year TIP to include traffic mitigation improvements for the intersection of 10th Avenue (SR 503) and NW Onsdorff Boulevard, pay a proportionate share mitigation fee in the amount of \$7,000.
11. Submit a signed Bill of Sale for sewer, stormwater, and water systems.
12. Submit a final plat showing:
 - a. Building envelopes.
 - b. Easements for public utilities not located in the right-of-way.
 - c. Where any control monuments have been placed.
 - d. The dedication of any public roads.
 - e. The dedication the sliver area of land of parcel 91051024 that separates the Cedars Estates and Grace Meadows developments to the City of Battle Ground.
 - f. Landscape parkways in a dedicated tract(s) for lots 68-76 and 209-270.
 - g. The trails overlaid with a public access easement.
 - h. Flag lots with a shared access easement.
 - i. Critical areas in separate tracts.
 - j. A note specifying that NE Grace Avenue is access controlled and cannot have direct access from lots.

- k. A note specifying the party/s responsible for long-term maintenance of stormwater facilities.
- l. The following note: “Fences higher than 42-inches will not be allowed in the front yards.”
- m. The following note: “All utilities are to be located outside of the sidewalk section and to be underground where possible.”
- n. The following note: “All households shall conform to the neighborhood design standards as listed in BGMC 17.106.040.”
- o. The following note: “All new structures shall conform to the setback and building heights of the underlying zoning district.”
- p. The following note: “Building permits and impact fees will be calculated and shall be paid at the time of permit issuance.”
- q. A note specifying maintenance responsibilities for the onsite critical area tracts, parks, and open space tracts (it will need to be privately owned and maintained either the HOA, developer, abutting property owners, etc.).
- r. A note specifying perpetual care and maintenance responsibilities for the on-site trails (it will need to be privately owned and maintained either the HOA, developer, abutting property owners, etc.).
- s. A note specifying ownership and perpetual care and maintenance responsibilities for the onsite landscape tracts (it will need to be privately owned and maintained either the HOA, developer, abutting property owners, etc.).

Prior to Building Construction:

1. Acquire the required 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 15.105.180 of this Staff Report.
3. All new structures shall conform to setbacks, design, parking, and building height requirements of the underlying zoning district.

Prior to Certificate of Occupancy:

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

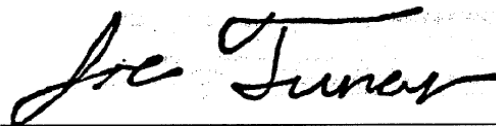
Other:

1. The applicant is required in obtaining any applicable approvals from the CORPS and ECY.
2. If any cultural resources are discovered in the course of undertaking the development activity, Washington State Department of Archaeology & Historic Preservation (DAHP) and the City of Battle Ground Planning Department must be notified.
3. Coordinate any water quality recommendations from Ecology for any necessary reviews or approvals.
4. All grading and filling of land must utilize only clean fill. All other materials may be considered solid waste and permit approval may be required from your local jurisdictional health department prior to filling. All removed debris resulting from this project must be disposed of at an approved site. Contact the local jurisdictional health department for proper management of these materials.
5. Apply for a sign permit, if applicable.
6. Work with planning staff in its annual comprehensive plan and zoning map updates so the resulting parcels do not end up split-zoned.

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 20th day of December 2021.



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