



Notice of Hearing Examiner Decision

7/28/2017

To: Interested Parties and Parties of Record

RE: Project Name: Red Barn Lane Preliminary Plat and Performance Based Development
 Applicant: Nathan Glen Properties LLC
 3599 NW Carlton St STE 201
 Silverdale, WA 98383
 Application: Preliminary Plat and Performance Based Development
 Permit Number: 16 05582 and 16 05584

Enclosed is the Decision issued by the Kitsap County Hearing Examiner for the above project.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at:

http://www.kitsapgov.com/dcd/lu_env/he/HE%20Rules%20for%20Kitsap%20County%20-%2006-23-09.pdf

The Decision of the Hearing Examiner is final, unless appealed, as provided under Washington law.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review at the Department of Community Development, Monday through Thursday, 8:00 AM to 4:00 PM and Friday 9:00 AM to 1:00 PM, except holidays. If you wish to view the case file or have other questions, please contact Help@Kitsap1.com or (360) 337-5777.

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**KITSAP COUNTY HEARING EXAMINER
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

**Red Barn Lane Preliminary Plat
and Performance Based Development
File Nos. 16 05582 and 16 05584**

July 27, 2017

The Hearing Examiner makes the following Findings of Fact, Conclusions of Law, and Decision.

1. FINDINGS OF FACT

1.1 Proposal. The Applicant requests approval of a Performance Based Development Preliminary Subdivision. The proposal subdivides 7.27 acres into 68 urban lots. Sixty-five townhomes will be located on 1,733-3,596 square foot lots, while three single family residences will remain on 3,506-5,381 square foot lots. The plat includes sidewalks, curb, gutter, and widening along NW Hogan Lane road frontage. Two private access roads, stormwater treatment and detention control facilities, and utilities will serve the lots. The Applicant/property owner and site location are as follows.

Applicant/Property Owner: Nathan Glen Properties, LLC, 3599 NW Carlton Street, Suite 201, Silverdale, WA 98383.

Site Location: The site is located at the northwest corner of Nels Nelson Road NW and NW Hogan Lane. (Assessor Parcel Nos. 152501-3-095-2009 and 152501-3-096-2008).

1.2 Hearing. An open record public hearing was held on July 13, 2017. The Department of Community Development (DCD) provided sworn testimony addressing plat compliance with code requirements. With the proposed mitigation and conditions, DCD recommended approval. The Applicant also provided sworn testimony through several representatives.

Several members of the public provided sworn testimony. Concerns focused in particular on stormwater drainage, transportation impacts, solid waste management, wildlife impacts, and the increased densities. Many of the comments received elaborated on concerns raised earlier in written comment. A request was made for an independent third party review of stormwater concerns. DCD and the Applicant provided additional testimony addressing a number of these concerns. However, to provide the public an opportunity to provide additional input, the Examiner held the written record open through July 18, 2017.

1.3 Administrative Record. Prior to the hearing, the Hearing Examiner reviewed Exhibits 1-35 which included the Staff Report. At the hearing, Exhibits 36-39 were proposed for addition, which included a power point, DCD/Applicant language revising proposed Condition

38, a photograph taken by a citizen, and the sign in sheet for public comment. The Examiner then authorized two comment extension periods, one at the hearing (through July 18), and a second (through July 24), as detailed below.

- Exhibits 40-42 were submitted by the July 18 deadline established at the hearing, and included e-mailed public comment and numerous photographs. The photographs illustrated stormwater and traffic impact concerns.
- Exhibits 43-45 were submitted after July 18, and included a public comment, along with two single sentence joinders in other comment.
- The Examiner entered an order on July 20 (Exhibit 46), accepting the late comment, and per Hearing Examiner Rule 1.8.3, providing for notification to parties of record who had testified at the hearing that they had an opportunity to respond to same by noon on July 24.
- Exhibit 47, public comment from Mr. and Ms. Reynolds, was received on July 21.
- Exhibit 48 is a two page responsive comment from the Applicant's engineer. The comment was late (received on July 25 at 7:40 AM). The reason given was lack of notice. As Mr. Olson provided sworn testimony at the hearing, the Examiner's Order provided for his notification on the opportunity to comment on Exhibits 43-45. Thus, the comment, which otherwise complies with the Order, is accepted.

The Examiner has reviewed and admitted all submitted exhibits, numbered 1-48.

1.4 SEPA. The SEPA comment period occurred concurrent with the Notice of Application, consistent with WAC 197-11-355.¹ DCD issued a Determination of Non-Significance (DNS).² The DNS included the following condition:

The proposal will be conditioned for Stormwater Control per Kitsap County Code Title 12. The proposal will also be conditioned to follow the recommendations of the Limited Geotechnical Engineering Report written by EnviroSound Consulting, Inc. dated March 17, 2017.³

1.5 Public Notice. Public notices were issued per KCC requirements at several stages of the plat review process. The notice of application was published and mailed to

¹ Exhibit 1.

² Exhibit 23.

³ Exhibit 23.

surrounding property owners; the SEPA determination was published; and the notice of public hearing was published, posted, and mailed to surrounding property owners.⁴

1.6 Public Comment Submitted Before the Hearing. Prior to the hearing, DCD received written comment from several neighboring property owners with concerns about the project proposal.⁵ These concerns are summarized below.

- **Traffic.** Comments were concerned with an increase in traffic on Nels Nelson Road NW, ingress/egress to State Highway 303, and Nels Nelson Road's lack of sidewalks, traffic lane markers, and fog lines. Concerns were raised about the sight line from Hogan Lane to Nels Nelson. A question was raised on providing an alternate connection to another main road, to alleviate congestion and pedestrian issues. A request was also made for adding lighting on Hogan Lane to increase safety for school children if bussing is not available. A question was raised on whether public transit will stop at Nels Nelson and/or Hogan Lane, emphasizing a need for same to avoid pedestrian traffic through school property or on Waaga Way, described as "extremely busy."
- **Stormwater.** Increased flooding was a concern, along with whether the retention pond would attract mosquitoes.
- **Noise.** Although zoned for urban densities, lots to the east are larger (lots of 2.5+ acres), and noise from the influx of residents was a concern.
- **Initial Comment.** Concerns were raised about the time frame provided for submission of initial comments on the notice of application.

To ensure the public was provided ample opportunity to further address concerns, the record was kept open as described in section 1.3 above.

1.7 Agency Comment. Agency comment was received regarding regulatory compliance. As long as applicable requirements are met, there were no objections to approval.

1.8 Zoning/Plan Designations. The Comprehensive Plan designation is Urban Medium Residential⁶ and the Zoning designation is Urban Medium Residential.⁷ This zone is designed to:

[P]rovide for higher densities where a full range of community services and facilities are present or will be present at the time of development. This zone is also intended to create energy-efficient residential areas by allowing common

⁴ Exhibits 1, 33 and 34.

⁵ Exhibits 15, 16, 17, and 18.

⁶ Exhibit 29.

⁷ Exhibit 26.

wall construction, as well as to facilitate residential development which utilizes cost-efficient design.⁸

The zone requires minimum/maximum densities of 10-18 dwelling units per acre. For this proposal, that means it must provide a minimum of 33.2 units, and cannot exceed 130.86 units. At 68 units, the project's net density falls roughly in the middle.

Citizen comment raised concerns about the projected density increase. The Applicant emphasized that the densities proposed are consistent with a previously adopted area-wide rezone. The Applicant also noted the increasing local issue of housing affordability. The zoning is designed to provide housing within the means of individuals and families who work within the area. The Applicant, a long time home developer who resides within the County, provided detail on housing prices and the increasing challenges with securing middle class home ownership.

1.9 Surrounding Land Use and Zoning. Residential uses surround the site. To the immediate south and west is Urban Medium Residential zoning. On the north, a portion of the site abuts the Urban Low Density Residential zone. Along a portion of the eastern property line, is the Rural Residential zone (one unit per five acres).

1.10 Physical Characteristics. The proposed subdivision consists of two existing parcels. One parcel is 6.97 acres that is developed with an existing barn. To the west, it is sloped and wooded. The east is cleared and flat. The second parcel is a flat .3 acres with three existing single family residences.

1.11 Utility and Public Services.

- **Water:** Silverdale Water District
- **Power:** Puget Sound Energy
- **Sewer:** Sewer
- **Police:** Kitsap County Sheriff
- **Fire:** Central Kitsap Fire and Rescue
- **Schools:** Central Kitsap School District

1.12 Access and Transportation. The proposed plat has three private roads, two of which are access roads. One access road enters from the east on Nels Nelson Road NW and travels northwest through the development to a hammerhead shaped road on the northern portion of the parcel. The second access road enters the subject property from NW Hogan Lane and connects to the other interior roads. Sidewalks will be constructed on both sides of all the interior roads within the plat and on the perimeter, and a trail will be constructed within the plat.

NW Hogan Lane will be improved to County standards for an urban local road minor, with an 11-foot travel lane, vertical curb, gutter, and five-foot sidewalks across the property frontage. On the site's east side, the sidewalk will connect to the Whispering Meadows development located to the north. To the west of the site, a preliminary plat subdivision, Hogan

⁸ KCC 17.220.010.

Heights, is proposed. The sidewalks from the subject property will connect to the sidewalks of Hogan Heights. Kitsap Transit provides bus service along the SR-303 (Waaga Way) corridor. However, at this time no stops are provided in the immediate area.

Kitsap County traffic impact fees will be collected to address impacts to County road infrastructure. A traffic engineer prepared a traffic impact analysis detailing project impacts. DCD proposed 16 conditions to address impacts. County engineering staff and Public Works reviewed the transportation design, and determined the approach to transportation design was supportable.⁹ The Applicant's engineer summarized the engineering analysis provided on traffic conditions and proposed mitigation, noting the plat's proximity and connectivity with the nearby state highway and Silverdale.

The Traffic Impact Analysis was prepared by Greg Heath & Associates, a very well respected traffic engineer practicing through the Puget Sound area. Mr. Heath is well qualified and understands the traffic issues found in this particular area of the county.

The county chose to zone this site as medium density based on the proximity to the state highway and because of the proximity to the urban center of Silverdale. The project will construct improvements to the fronting roadway that will include sidewalks that will connect to a system of sidewalks to be constructed by the approved project to the west. These improvements will help the pedestrian connectivity as the entire Silverdale urban center continue to develop.¹⁰

1.13 Stormwater. Runoff for the northern third of the property discharges into the storm drainage system for Whispering Meadows to the east. The collection system has a Type 2 catch basin with a beehive grate. The runoff from the southern two-thirds of the property discharges into an existing culvert under Nels Nelson Road on the east side of the basin, through a forested swale, before discharging into Barker Creek. The project will require a SDAP in which stormwater will be further reviewed.

In reviewing the comment and photographs submitted from neighbors to the east, it is apparent that stormwater runoff is a significant issue within this area. An e-mail accompanying the photographs (Exhibit 42), states:

Here are some pictures of flooding on our property. These were taken early on with the Whispering Meadows development (about 4 yrs ago).... Each year the water flow has gotten more severe. The direction these pictures are take[n] is to the North. The water is coming from the west side of our property (East border of Whispering Meadows and adjacent to the east border of the proposed Red Barn project.).¹¹

⁹ Exhibit 25.

¹⁰ Exhibit 48.

¹¹ Exhibit 42.

The Applicant's engineer addressed the water crossing the properties to the east at the hearing. He confirmed that a "lot of water" does cross the properties. He testified that the flow stems, in part, from previous development, including in particular projects not constructed to more recent and stricter stormwater requirements. With respect to this plat, the Applicant's engineer testified that while the project will use the culverts addressed in testimony, due to regulatory requirements the plat would not increase stormwater flows through those culverts, and would not increase flooding issues on downstream properties. This testimony was also explained through an engineering memo.

[T]he civil engineering design for the project is in compliance with the strict rules and requirements of the 2010 Kitsap County Stormwater Manual. On that basis, the site must be considered as it was "prior to settlement" (thus same as Old Growth Forest) for the purposes of calculating stormwater control requirements. Because the current site is a mixture of existing houses, barns, compacted pastures and second or third growth forest, the design for controlling stormwater from the development is very conservative relative to the existing conditions. We should expect a reduction in flow magnitude discharging from the developed property when compared to the existing conditions on the site. ...

[T]he existing flows that the neighbors living downstream currently experience are a result of past development that wasn't required to control stormwater to the same extent that the current project must.¹²

As addressed at the hearing and application materials, to manage stormwater and protect against flooding, two stormwater ponds will be incorporated into the plat. While such ponds are sometimes fenced off, the Applicant testified that the two ponds will instead be designed and landscaped to serve as project amenities.

DCD addressed the issue at the hearing and through the Staff Report, proposing 11 conditions specific to stormwater. The conditions require additional permitting and review, stormwater facilities to be designed consistent with Kitsap County Code (KCC), Title 12, as effective on December 19, 2016, when the application was deemed complete. A civil engineer must prepare the submittal documents and stormwater facility maintenance must be provided for.

Citizen comment after the hearing did not include any proposed additional conditions to address stormwater, other than significant reductions to density or plat denial. Based on the Examiner's review of the engineer's sworn testimony and technical analysis, the proposed conditions, DCD review, and the County's Title 12 stormwater requirements, the evidence provided supports a finding that the plat will not add to stormwater flooding issues for downstream property owners. However, to confirm same, and for clarification, the Examiner has added a condition (Condition 57) requiring engineer review following completion of the stormwater facilities to confirm, consistent with the engineer's testimony, that the facilities have been constructed consistent with relevant requirements and the facilities have been designed to avoid increasing stormwater flows over neighboring downstream properties.

¹² Exhibit 48.

1.14 Sewer Service. The Public Works Waste Water Division confirms that sewer service will be available to serve the Preliminary Plat.¹³ The plat is consistent with code requirements for providing an urban level of sanitary sewer service.

1.15 Water Service. The plat will be served by Silverdale Water District for water service. The Applicant has received a non-binding letter of water availability from the water utility.¹⁴

1.16 Schools. Central Kitsap School District will serve the Red Barn Lane subdivision. During review of the SDAP to construct the plat, Kitsap County will coordinate with the school district to determine if special provisions are required for a bus stop on Central Valley Road.

1.17 Lighting. Urban residential plats generally include illumination of internal roadways and street lighting at the intersection where private roads intersect with County right-of-way, pursuant to KCC 11.40 Street Lighting. The developer is usually responsible for installing lighting at the County's intersection, which is then conveyed to the County. If desired, the developer and/or Home Owners Association (HOA) install the internal street lighting. The individual property owners are billed through the local purveyor for lighting, with the HOA responsible for maintenance.

1.18 Fire Protection. The Fire Marshal's Office has reviewed the project, included conditions of preliminary approval, and forwarded a copy of the plans to Central Kitsap Fire and Rescue No. 1. The Fire Station on Silverdale Way is the primary responder for this preliminary plat. The Fire Marshal's Office conditioned the project to provide a 20-foot unobstructed fire access designed to support a 60,000 pound fire apparatus, an approved turnaround, and a minimum fire flow.

1.19 Landscaping and Recreational Amenities. The project will be conditioned to provide a landscaping plan in accordance with KCC 17.500, with the SDAP. The project's recreational amenities include a playground, restored barn, picnic bench, gazebo and pond lookout, and a trail system. Under PBD requirements, 390 square feet per unit of such amenities is required. A total of 26,707 square feet is proposed, exceeding the 26,520 square feet required. In total, 19.74% of the site will be in open space, with 8.43% (.61 acres) in recreational open space. The common open space is centrally located, consistent with the scale and character of the proposed plat, and no common open space is within any critical areas. To maintain the open space, landscaping, and access, the Applicant is required to create a Home Owners Association or equivalent. The frontage improvements and sidewalks along Hogan Lane provide community connectivity and support the recreational amenities provided. The approach to open space and recreational amenities is consistent with County PBD requirements.¹⁵

¹³ Exhibit 8.

¹⁴ Exhibit 9.

¹⁵ KCC 17.450.040(B).

1.20 Central Mail Boxes in Urban Plats. The trend is to move away from traditional rural boxes and install clustered mailbox design for efficiency, security, and aesthetics. Consistent with KCC 16.24.040(C)(1)(d) Urban Standards, where clustered mailboxes are proposed, clear zone requirements must be met.

1.21 Parking. Two off-street parking spaces are required per residential lot and 0.5 per lot for overflow on-street parking. With 68 units, the Applicant is providing 34 overflow parking spaces, meeting the requirement of 0.5 spaces per lot. As provided in Exhibit 32, the "Typical Driveway Layout," the Applicant shows an 18' by 20' driveway for two off-street parking spaces per lot.

1.22 Solid Waste Management. Citizens voiced concerns about collecting solid waste within a central area, given the volume of waste anticipated, coupled with existing collection issues. To address the issue, DCD's Staff Report proposed a condition which requires further review, including coordination with Waste Management to ensure storage requirements are met, access is adequate, and all Waste Management requirements are met. The Applicant also confirmed that "[t]he plans for garbage collection ... will be reviewed by Waste Management prior to final approval to ensure the garbage collection will be handled in a responsible manner."¹⁶ As conditioned, waste management is adequately planned for.

1.23 Performance Based Development Standards.

1.23.1 PBD Requirements

PBD requirements are designed to improve project design. A PBD allows clustering to:

preserve open space, encourage the creation of suitable buffers between differing types of development, facilitate the residential densities allowed by the zone, provide for increased efficiency in the layout of the streets, utilities and other public improvements and to encourage the use of low-impact development techniques and other creative designs for the development of land.¹⁷

A PBD may be used to modify requirements on lot size, width, and depth, as well as height (if within a UGA), and setbacks. A PBD may not be used to modify minimum and maximum densities.¹⁸ The Applicant's request here was to modify lot size, width and depth, and side yard setback requirements, in order to create open space for recreational amenities. Modification of the 45' height limit and other setbacks ranging from 5-20 feet was not requested. Without PBD approval, the restrictions would be as follows:

- Minimum Lot Area: 2,400 square feet for single family
- Minimum Lot Width: 40 feet
- Minimum Lot Depth: 60 feet

¹⁶ Exhibit 48.

¹⁷ KCC 17.450.010.

¹⁸ KCC 17.450.010.

- Side Yard Setback: 5 feet, or 10 feet if the garage/carport opens on an alley

A residential PBD is subject to a series of specific requirements, which focus on transportation, access, pedestrian circulation, open space, and recreational amenities. With regard to transportation, a PBD must have "adequate pedestrian and vehicle access and parking commensurate with the location, size, density and intensity of the proposed development," access cannot be "unduly detrimental to adjacent areas," and increases in traffic must be considered.¹⁹ In addition, there must be "adequate road access, connected road network, safe pedestrian access, and emergency vehicle access."²⁰ As addressed in sections 1.12 and 1.21 above, access (including vehicles, pedestrian, and emergency vehicle) and parking have been adequately addressed. The parking spaces provided are consistent with KCC 17.490.030.²¹ Also, as addressed in sections 1.12 and 1.19 above, "[a]dequate pedestrian circulation facilities," are provided, which are "durable, serviceable, safe, convenient to the buildings and separated by curb or other means from the vehicle traffic facilities."²²

Transportation impacts were analyzed by a traffic engineer and DCD, with mitigation proposed, including conditions requiring sidewalks and other right-of-way improvements, as well as payment of a transportation impact fee.

As addressed above, the common open space meets all requirements. The open space "location, shape, size and character" (which is not within any critical areas) is suitable for the plat; exceeds 15% of the plat's gross acreage; the open space areas exceed 500 square feet; and the areas are appropriate for the plat's "scale and character," topography, and density.²³ The maintenance requirements, including development of an association to ensure same, meet PBD requirements.²⁴

The recreational area must meet specific PBD requirements. It must be at least 5% of the site's gross acreage, all areas must be exceed 500 square feet unless "the area provides a reasonable functional or aesthetic benefit to the residents of the PBD."²⁵ These requirements are met. Also, the area is outside perimeter buffers and not within any critical areas; will be commonly owned and available for the residents' use; covenants will provide for "perpetual maintenance."²⁶ More than one amenity is provided for "every two lots/units," and over 390 square feet per lot is provided; the amenities are "centrally located," "clearly visible," suitably located, and consistent with grade requirements (active recreational areas on a 5% grade or less).²⁷

¹⁹ KCC 17.450.040(A)(1).

²⁰ KCC 17.450.040(A)(2).

²¹ KCC 17.450.040(A)(3).

²² KCC 17.450.040(A)(4).

²³ KCC 17.450.040(B) (1-3).

²⁴ KCC 17.450.040(B)(4).

²⁵ KCC 17.450.040(C)(1).

²⁶ KCC 17.450.040(C)(1).

²⁷ KCC 17.450.040(C)(2).

1.23.2 PBD Specific Findings. In addition to addressing the PBD code requirements, the Examiner must find that all of the following conditions exist:

- A. The design of the PBD meets the requirements of this section, other sections of the county code and the goals and policies of the Comprehensive Plan and the site is adequate in size and character to accommodate the proposed development;
- B. The design of the PBD is compatible with neighboring conforming land uses. An assessment of compatibility shall include, but not be limited to, the consideration of association with adjacent land uses and the proposed project's effects on existing views, traffic, blockage of sunlight, and noise production;
- C. If the development is phased, each phase of the proposed development shall meet the requirements of this chapter;
- D. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use;
- E. The proposed and/or existing public facilities and utilities are adequate to serve the project; and
- F. The establishment, maintenance, and/or conduct of the use for which the development plan review is sought will not, under the circumstances of the particular case, be detrimental to the health, safety or welfare of persons residing or working in a neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare, injurious to property or improvements in said neighborhood, or contrary to orderly development.
- G. Innovations and/or public benefits shall be commensurate with the code modifications proposed.²⁸

The plat is consistent with these criteria. As addressed above, the PBD meets all code requirements. It is consistent with the Comprehensive Plan, which provides for urban development at this location, with adequate supporting infrastructure, attractively designed development, with supporting urban amenities.²⁹ PPD design is compatible with neighboring land uses. The properties to the east are more rural in nature, so citizens residing there raised compatibility concerns. However, the uses to the east are residential in nature. So while there is a transition in densities, and the plat is a departure from the site's mostly undeveloped nature, there is still general compatibility between the uses. The question of appropriate densities for the area was addressed during the legislative process, and while the zoning allows considerably greater densities, the Applicant's project is within the mid-range of what is allowed. Also, the

²⁸ KCC 17.450.050.

²⁹ See Staff Report identifying Comprehensive Plan policies providing for urban development adequately supported by urban infrastructure and facilities, and attractively designed. For example, Land Use Policies 1, 3, 14, 21, 22, 29, and 61 and Land Use Goal 3.

project is proximate to Silverdale and a state highway, and is consistent with the development patterns occurring in this area.

The Applicant testified as to the efforts made to design landscaping and amenities attractively, to improve overall aesthetics. The amenities provided are addressed above. There will be an increase in traffic, but those impacts are addressed, as also noted above. With respect to noise, it is expected to increase, but applicable noise requirements, including during construction, will be met, and noise will be consistent with the residential nature this area is planned for. There were no concerns raised about the blockage of sunlight and the development is not phased. Transportation impacts have been analyzed by a traffic engineer. With the mitigation proposed, the transportation system is adequate to accommodate the project. Public facilities and utilities are also adequate, as detailed above. Stormwater is a serious concern. The evidence presented identified mitigation to protect downstream properties and it will be confirmed these requirements are met, as addressed in section 1.13 above. With this mitigation, the evidence supports a finding that this criterion is met.

The plat/PBD design will provide attractively designed residential development consistent with zoning code requirements. With mitigation, the impacts will not be "detrimental to the health, safety or welfare of persons residing or working in a neighborhood," and will not "be detrimental to the public welfare, injurious to property or improvements in said neighborhood, or contrary to orderly development."³⁰

While the densities proposed do mark a change in use intensity at this site, this type of redevelopment and densification is a process which has been gradually occurring over the years within the area, which is planned for urban densities. Under GMA, it is the state's policy for residents to live proximate to employment, and at urban densities in areas designated for same. The project is consistent with that legislative direction and policy, and with the policies and regulations adopted per GMA, so cannot be said to be detrimental to the public welfare or injurious to property, as long as the plat is properly mitigated and supported by adequate infrastructure.

The evidence supports a finding that the infrastructure provided is adequate to support the proposed use. And, given the open space and recreational amenities provided, along with the attendant infrastructure improvements, the benefits provided are commensurate with the code modifications proposed. The County's PBD requirements have been met.

1.24 Urban Standards – KCC 16.24.040. KCC urban standards requirements are met.

- Access. *See* above, including section 1.12. As noted, the site is accessed off of Nels Nelson Road NW and NW Hogan Lane.
- Public Transit. The neighborhood is served by a Kitsap Transit route. At present there are no immediate stops.

³⁰ KCC 17.450.050.

- Non-Motorized Facilities. *See* above, including section 1.12, which details sidewalk improvements which will connect to other existing and adjacent developments.
- Off-Street and On-Street Parking. *See* section 1.21 above.
- Fire Protection. *See* section 1.18 above.
- Landscaping Requirements. *See* section 1.19 above.
- Utilities - Water Supply. Silverdale Water District will provide water service. The Applicant received a non-binding letter of water availability from the water utility.³¹
- Recreation. The plat will include recreational open space amendments consistent with subdivision and PBD standards.

1.25 Appropriate Provisions for Facilities and Improvements - KCC 16.04.080.

Appropriate provisions for facilities and improvements have been made consistent with KCC 16.04.080, to ensure the plat serves the public interest.

- Code/Plan Consistency. The project, as conditioned, is consistent with the Comprehensive Plan and County Code. Both provide for attractive urban development adequately supported by urban facilities and services. The Staff Report provided detail on relevant Plan policies, which outline these objectives. No policy or code provision was identified which the project would not be consistent with. With respect to the zoning, the Urban Medium Residential zoning provides for 10-18 dwellings units per acre, and the proposed net density is consistent.
- Adequacy of Access. Section 1.12 above addresses access. County engineering staff and fire personnel have reviewed the proposed access to ensure its adequacy.
- Safe Walking Conditions. Section 1.12 above addresses the provision for and interconnection of sidewalks to ensure safe walking conditions are in place.
- Lot Configuration. Consistent with KCC requirements, the proposed 68 lots run at right angles to the street the lots face.
- Home Owner Associations. Applicable code requirements shall be met. Several conditions are included addressing same. A condition is included for property owner maintenance of certain plat conditions.

³¹ Exhibit 9.

With the proposed mitigation, and as outlined in the application materials and record, the proposed PBD/plat has adequate infrastructure and facilities to support its approval, and is consistent with County Code requirements.

2. CONCLUSIONS OF LAW

2.1 The Hearing Examiner reviews Preliminary Plat applications for consistency with Single-Family Subdivision/Development Standards and relevant platting requirements. These requirements include requirements in KCC 16.04.080 General Provisions, KCC 16.24.040 Urban Standards, and KCC 16.40 Subdivisions. These regulations require that plats meet sizing and related requirements (*i.e.*, density, height, setbacks, and landscaping), and be adequately served with necessary infrastructure and services (*i.e.*, stormwater facilities, sewage, water supply, transportation facilities, recreational facilities, and schools). Setback and lot size minimums may be varied from, if PBD requirements at KCC 17.450 are met.

2.2 The zoning code authorizes the proposed residential use at the densities proposed, which are within the mid-range of what is authorized at this location. As addressed in the findings above, the proposal can meet all platting requirements, including infrastructure requirements. Conditions are imposed to ensure these requirements are complied with.

2.3 The PBD amenities proposed (*i.e.*, open space, including open space recreational areas constituting over 19% of the plat's gross acreage, along with the trail system and use of the stormwater ponds to double as both infrastructure and aesthetic improvements) warrant the flexibility requested on lot size and setbacks, and are consistent with all PBD requirements, as detailed in the findings.

2.4 Conditions are imposed to ensure County transportation, stormwater, and water/sewer service requirements are complied with. Conditions are imposed to directly address concerns identified at the hearing and in public comment. The proposal, as conditioned and as the findings address throughout, includes appropriate provisions to address impacts on drainage; roads, including adequate access and safe walking conditions; water supplies; sanitary wastes; fire protection; landscaping; and other supporting public and private facilities and improvements.

2.5 As mitigated and proposed, the project is consistent with Comprehensive Plan policies providing for attractively designed urban development which is adequately supported by urban facilities and services.

2.6 Given project consistency with applicable requirements and policies, the Hearing Examiner concludes it should be approved.

DECISION

The Hearing Examiner, pursuant to the above Findings of Fact and Conclusions of Law, approves the requested Preliminary Plat, provided the following 57 conditions are adhered to.

Planning/Zoning.

1. All Building permits on these lots will be subject to impact fees pursuant to KCC.
2. A Final Landscape Plan will be required to be submitted consistent with KCC 17.500, during civil site plan review, which depicts natural vegetation, and the planting and irrigation plan. Trees on individual lots are required to be installed prior to Certificate of Occupancy of individual residential units.
3. Include a note on the face of the plat showing building setbacks for the lots as conditioned per the plat approval.
4. Prior to transferring to the Home Owners Association (HOA), the developer will be responsible for irrigation, and maintenance of all landscaping to ensure survival up to two years. The developer or the HOA should maintain all landscaping consistent with Tree Care Industry Association standard practices.
5. Pursuant to KCC Section 21.04.110 Timeline and Duration of Approval, Kitsap County's land use approval for the preliminary plat is valid for a period of up to five (5) years from the decision date of the preliminary plat consistent with RCW 58.17.140 and .170.
6. Land use approval is limited to the uses proposed by the Applicant on the recommended site plan and the SEPA Environmental Determination dated April 26, 2017. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Any modifications or expansion of the project will be subject to further review pursuant to the requirements of the appropriate sections of the KCC.
7. The decision set forth herein is based upon representations made and exhibits contained in the project application (Exhibits 1, 2, and 3). Any change or deviation in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County.
8. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the Applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the Applicant agrees to promptly bring such development or activities into compliance.

9. Any violation of the conditions of approval shall be grounds to initiate revocation of this Plat.

Kitsap Public Health.

10. The Applicant shall comply with all applicable Kitsap Public Health District requirements.

11. The existing residence at 950 NW Hogan Lane is served by an onsite septic system. This lot will need to be hooked to sanitary survey and the existing septic tank abandoned to code. Any wells or septic systems located on the plat must be abandoned per code.

Environmental.

12. The project shall follow the recommendations of the Limited Geotechnical Engineering Report written by EnviroSound Consulting, Inc. dated March 17, 2017.

13. The SEPA Determination of Non-Significance was conditioned to follow KCC Title 17 Stormwater Management. Should the designs change upon future permitting or phasing of the Site Development Activity Permit (Final Plat designs), a revised SEPA Decision may be required by the SEPA responsible official.

Fire.

14. Fire apparatus access roads are required and must be maintained. Any proposed revision to these roads must be submitted, reviewed and approved by the Kitsap County Fire Marshal's Office. IFC 503 Amended by Kitsap County. Access roads shall comply with the following:

1. Unobstructed width of 20 feet and height of 13 feet 6 inches.
2. Shall be designed and maintained to support a 60,000 pound fire apparatus and be provided with an all weather driving surface.
3. Dead end access roads exceeding 150 feet in length shall be provided with an approved turnaround.
4. Inside turning radius shall be a minimum of 25 feet.
5. Access roads shall extend to within 150 feet of all portions of the exterior walls of the first story of the structure as measured by an approved route around the exterior of the structure or facility.
6. Road shall not be more than 12% grade.

15. The minimum fire flow requirements for one and two family dwellings in subdivisions shall be 500 gallons per minute for thirty (30) minutes.

16. Water line size and location and the location of fire hydrants must be shown on SDAP plans. A letter of water availability indicating available fire flow from the water purveyor is required to be submitted to the Kitsap County Fire Marshal's office prior to the approval of any building permits.

17. A 3-foot clear space shall be maintained around the circumference of fire hydrants. IFC 507.5.5.

Development Services and Engineering.

General.

18. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to plan acceptance.

19. Approval of the preliminary plat shall not be construed to mean approval of the total number of lots or configuration of the lots and tracts. These parameters may be required to be revised for the final design to meet all requirements of KCC Titles 11 and 12.

Stormwater.

20. The information provided demonstrates this proposal is a *Major Development* as defined in KCC Title 12, and as such will require a Site Development Activity Permit (SDAP) from Development Services and Engineering.

21. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the Preliminary Plat application was deemed complete, December 19, 2016. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Ordinances in effect at the time of SDAP application.

22. Should the proponent propose phasing of the project, a phasing plan shall be submitted to Development Services and Engineering for review and approval. The phasing plan shall, as a minimum, address the following items:

Time tables indicating the anticipated time between initial site grubbing/grading activity and the completion of construction, including site stabilization of that specific phase.
The extent of drainage improvements to be installed during the various phases.

23. Any project that includes off-site improvements that create additional impervious surface such as lane widening, sidewalk or shoulder installation, or intersection channelization shall provide stormwater mitigation in accordance with KCC Title 12 effective at the time the Preliminary Plat application was deemed complete, December 19, 2016.

24. The site plan indicates that greater than one acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More information about this permit can be found at: <http://www.ecy.wa.gov/programs/wq/stormwater/construction/> or by calling

Josh Klimek at 360-407-7451, email joshklimek@ecy.wa.gov. This permit is required prior to issuance of the SDAP.

25. If a significant quantity of grading material will be exported from the site, prior to issuing the SDAP an approved fill site(s) must be identified. Any fill site receiving more than 150 cubic yards of material must obtain an SDAP. Fill sites receiving 5,000 cubic yards or more must have an engineered SDAP.

26. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis will be prepared by a Civil Engineer licensed in the State of Washington, knowledgeable in the practice of soils engineering and mechanics. The analysis will address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities will be designed following the recommendations of the geotechnical analysis.

27. The owner shall be responsible for maintenance of the storm drainage facilities for this development following construction. Before issuance of the SDAP for this development, the person or persons holding title to the subject property for which the storm drainage facilities were required shall record a Declaration of Covenant that guarantees the County that the system will be properly maintained. Wording must be included in the covenant that will allow the County to inspect the system and perform the necessary maintenance in the event the system is not performing properly. This would be done only after notifying the owner and giving him a reasonable time to do the necessary work. Should County forces be required to do the work, the owner will be billed the maximum amount allowed by law.

28. The impervious area per lot accounted for in the overall drainage facilities installed shall be indicated on the face of the final plat in a chart as shown below. Additional impervious surfaces created on an individual lot beyond the amount accounted for in the overall drainage facilities shall be mitigated in accordance with KCC Title 12.

	Available Impervious Area Rooftop	Available Impervious Area Driveway
Lot 1		
Lot 2		
Etc. – list each lot		

29. The following conditions shall be added to the face of the Final Plat:
- a. Kitsap County will not be responsible for any damage to any private roads, tracts, and/or easement areas that may occur during routine maintenance activities and that in Kitsap County’s judgment occur, in whole or in part, because of any construction materials or techniques, or any maintenance materials or techniques. This includes, but is not limited to, damage to pavement or vegetated areas caused by maintenance trucks.
 - b. If the per lot impervious area for rooftop or driveway surfaces exceeds that shown in the chart, a SDAP will be required for that lot.

30. If the project proposal is modified from that shown on the submitted site plan dated April 12, 2017, Development Services and Engineering will require additional review and potentially new conditions.

Traffic and Roads.

31. Submit an Application for Concurrency Test (KCPW Form 1601) as required by Chapter 20.04.030, Transportation Concurrency, of the KCC. The KCPW 1601 form reserves road capacity for the project.

32. The following condition shall appear on the face of the Final Plat: All interior roads shall remain private, as proposed by the Applicant. If at any time, the Applicant or his successors or assigns choose to dedicate these roads to Kitsap County, it shall be subject to a further review by Kitsap County Development Services and Engineering and Public Works. For roads to be dedicated to Kitsap County, they must meet all the requirements of the KCC as adopted at the time of dedication. All improvements necessary to bring said roads to the then current Kitsap County standards shall be done at no expense to the County prior to being accepted into the Kitsap County road system.

33. All traffic control devices on public and private roads shall comply with the Manual on Uniform Traffic Control Devices as amended by the Washington Administrative Code. This is in accordance with 23 Code of Federal Regulations (CFR), Part 655.

34. All rights of access for adjoining properties currently in existence shall be preserved (and documented on the face of the final plat). Any amendment to the existing easement rights of adjoining property owners shall be properly executed and recorded prior to SDAP approval.

35. Provide surveyed cross-sections at 50-foot intervals along the parcel frontage on NW Hogan Lane. The cross-sections shall show existing and proposed pavement, shoulders, ditches and slopes. The cross-sections shall also depict centerline of pavement and right-of-way, the right-of-way lines, and easements.

36. Submit plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with County rights-of-way. Approaches shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the KCC. Existing approaches may need to be improved to meet current standards.

37. Sidewalk ramps shall conform to the current requirements of the Americans with Disabilities Act per WSDOT standard plans at the time of construction.

38. All lots shall access from interior roads only, except for Lots 66, 67, and 68. This note shall appear on the face of the final plat map.

39. The property owners within the plat shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than

roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas. A note to this effect shall appear on the face of the final plat map and the accepted construction plans. In addition, Development Services and Engineering reserves the right to require that covenants be recorded to address special maintenance requirements depending on final design.

40. The interior plat roads, currently labeled Road A, Road B and Road C, shall be improved with vertical curb, gutter and sidewalk on both sides of the roads.

41. NW Hogan Lane shall be improved to current County standards for an urban local road minor with an 11-foot travel lane, vertical curb, gutter, and five-foot sidewalk across the property frontage.

42. Required frontage improvements along NW Hogan Lane shall be coordinated with the frontage improvements required for Hogan Heights Plat development adjoining on the west, to achieve a consistent cross-section along the frontage of both plats.

43. The developer's engineer shall certify that there is adequate entering sight distance at the intersection of Road C and NW Hogan Lane and at the intersection of Road B and Tract F. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the Kitsap County Road Standards. The certification shall also note necessary measures to correct and maintain the minimum sight triangle.

44. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

45. Before SDAP acceptance, the Applicant shall submit a set of drawings and the traffic study to the Washington State Department of Transportation (WSDOT) for review. The Applicant shall notify Development Services and Engineering in writing when these items have been submitted to WSDOT. Development Services and Engineering shall coordinate with WSDOT to determine if WSDOT has any comments to the submittal, but responsibility for obtaining concurrence from WSDOT lies with the property owner.

46. Final plan approval will require documentation of WSDOT approval for impacts to and any required mitigation at the intersections of State Route 303/Ridgetop Boulevard and State Route 303/Central Valley Road. WSDOT point of contact is Dale Severson at:

Washington State Department of Transportation
Olympic Region Development Services, Attn: Dale Severson
P. O. Box 47440
Olympia, WA 98504-7440
(360) 357-2736

Survey.

47. A Final Plat shall be prepared by a licensed Land Surveyor in compliance with KCC Title 16.
48. All private roads shall be labeled as tracts and constructed in accordance to Fire Code requirements. Ten feet for utility easements shall be provided on each side of private road tracts.
49. All potential park areas, common open space, buffers and stormwater management areas shall be labeled as separate tracts. The ownership and maintenance responsibility shall be addressed on the face of the final plat, as well as in the CCRs.
50. Proof of rights of use of the easement shown as providing access to the subject property shall be submitted with the Final Plat application materials.
51. At the time of the Final Plat, please delineate and label each tract and indicate the purpose of each tract.

Wastewater.

52. Kitsap County sanitary sewer is available for the project. The Applicant shall submit an "Application to Construct Sanitary Sewer" to KCPW Sewer Utility Division.
53. Kitsap County sanitary sewer is available for the project. The Applicant shall submit a complete set of sewer plans, profiles, and specifications designed in accordance with KCPW - Sewer Utility Division Standards and Regulations.

Solid Waste.

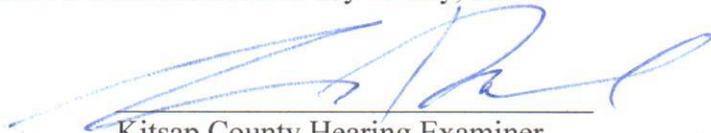
54. Prior to SDAP approval, Waste Management (360) 674-3166 shall be contacted for information on implementing the solid waste/recycling storage requirements influenced by the service provider for the project. Pay particular attention to the access requirements of collection trucks. Documentation shall be provided from the solid waste/recycling service provider that its requirements for this project have been met.

Other.

55. Construction of rock walls or other retaining facilities that exceed four feet in height shall require a building permit.
56. Rock and retaining walls shall meet all applicable setback requirements of KCSDM 11.4.4.

57. Once stormwater facility construction is complete, the Applicant shall have a civil engineer licensed in the State of Washington confirm in a memo submitted to DCD that the stormwater facilities have been constructed and set up to operate consistent with applicable requirements and so are designed to avoid increasing stormwater runoff over neighboring downstream properties.

THIS DECISION is entered this 27th day of July, 2017.



Kitsap County Hearing Examiner
Susan Elizabeth Drummond