



City of Tacoma
Hearing Examiner

July 30, 2019

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Re: HEX2019-012 (LU18-0127) Applicant: Vladmir Kubay

Dear Parties,

In regard to the above reference matter, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered on July 30, 2019.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1): Findings, Conclusions, and Decision

Cc: First Class Mail Delivery
Vloudimir Kubay, 3512 NE 17th Place, Renton, WA 98056-3226

Electronic Mail Delivery
Evan Mann, Entitlement Manager, SoundBuilt Homes (evan@soundbuilthomes.com)

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED July 30, 2019, at Tacoma, WA.

Louisa Legg

OFFICE OF THE HEARING EXAMINER
CITY OF TACOMA
FINDINGS, CONCLUSIONS AND DECISION

APPLICANT: Vladimir¹ Kubay (the “Applicant”).²

HEARING EXAMINER FILE NO: HEX 2019-012 (LU18-0127).

SUMMARY OF REQUEST:

The Applicant has requested approval to subdivide two (2) existing parcels of real property totaling approximately 3.55³ acres in area into fourteen (14) single-family residential lots, together with a private roadway tract, stormwater/drainage tract, and a wetland tract.

Ancillary to the preliminary plat request, the Applicant was required to apply for a wetland minor development permit (under TMC 13.11.220.B.2), and approval (or finalization) of that permit is also addressed here.

LOCATION:

The subject site is located principally at the address of 2216 65th Avenue NE, and includes Pierce County tax Parcel Nos. 0321254069 and 0321254029 (the “Site” or the “Subject Property”).

DECISION:

The requested preliminary plat is hereby approved subject to the conditions and requirements set forth herein at section 9 of the Conclusions of Law below.

The wetland minor development permit is also approved/finalized subject to conditions set forth at section 9 of the Conclusion of Law below, based on the determination that the requirements of

¹ The Applicant’s signature reflected in Ex. 9, Property Owner’s Authorization, appears as “Vloudimir Kubay;” however, Pierce County Assessor-Treasurer records reflect an alternate spelling of the Applicant’s first name as “Vladmir.” As the record owner of the Subject Property, Mr. Kubay granted authority to act on his behalf, relevant to the processing of the present preliminary plat application, to C.E.S. NW Inc., and Soundbuilt Homes (and its affiliate Copper Ridge, LLC), which has the Subject Property under contract to purchase, among others (*See Ex. 9*). Mr. Kubay and the entities he authorized are collectively referred to herein as the “Applicant.”

² For purposes of compliance with conditions herein, the term “Applicant” includes the Applicant’s employees, agents, contractors and assigns as well.

³ Other information in the record shows the Subject Property as being both larger and smaller than the 3.55 acre figure, but the Applicant indicated in testimony that the latest survey work produced the above number, and that is why it is used herein. *Craig Deaver Testimony*.

Tacoma Municipal Code (“TMC”) 13.11.220.B.2 have been or will be met through subdividing and developing the Subject Property as set forth and conditioned herein.

PUBLIC HEARING:

After reviewing the Preliminary Report (the “Report”) of the City’s Planning and Development Services Department (“PDS”) and reviewing information on file, the Hearing Examiner convened a public hearing on the rezone request on June 27, 2019.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION:

FINDINGS OF FACT:

1. The Applicant has requested approval of the proposed preliminary plat dubbed “Norpoint Place,” which would subdivide the Subject Property into fourteen (14) single-family dwelling lots ranging in size from 5,001 square feet to 5,987 square feet. The proposed residential lots will average 5,317 square feet in size achieving an overall net density for the subdivision of approximately 5.19 dwelling units per acre. This density calculation does not include a proposed wetland tract. A critical areas minor development permit was also required to address protection of wetlands on the Subject Property. *Ex. 1, Ex. 2, Ex. 4, Ex. 8.*

2. Resulting new home sites will have access off a newly created 28-foot-wide, paved access road that terminates in a cul-de-sac (22nd Street Ct. NE), with curb, gutter and sidewalk. The private access road will extend westward from its intersection/connection with 65th Avenue NE. 65th Avenue NE is a 62-foot wide local access road with an improved pavement width of 24 feet (24'). There is curb, gutter and sidewalk on the east side of the street, but not on the west side adjacent to the Site. City staff recommends, and the Examiner agrees, that 65th Avenue NE should be improved adjacent to the Site with a ½ street improvement with new asphalt pavement, curb, gutter and sidewalk to tie in with the existing alignment of sidewalks on adjacent parcels as part of the development of the Subject Property. In addition to the fourteen (14) single-family dwelling lots, the proposed plat includes three tracts: Tract A is the private access roadway, which is intended to remain private, Tract B, which is a stormwater tract, and Tract C, which consists of the herein referenced wetland and its buffer.⁴ All residential lots will have their access exclusively through the Tract A internal private roadway. All tracts will be maintained by a homeowners association to be created. *Deaver Testimony, John Harrington Testimony, Shannon Brenner Testimony; Ex. 1, Ex. 4, Ex. 8, Ex. 12.*

3. The westerly 1.05 acres of the Subject Property contains a Category IV wetland with a code required 50-foot buffer. No improvements are proposed in the wetland or buffer; however, the City’s environmental specialist considers the wetland to function as a stormwater flow control facility and a wetland minor development permit (“WMDP”) was required. The WMDP is being considered for issuance/finalization ancillary to this preliminary plat approval process and can be approved by the

⁴ Plans for a fourth Tract D for emergency access purposes, were abandoned by the Applicant prior to hearing and Tract D is no longer part of the proposed plat. *Deaver Testimony.* Ultimately, emergency vehicle access will have to comply with City standards.

Hearing Examiner when the development proposed for the preliminary plat will result only in a minor or *de minimis* impact on the wetland. *Harrington Testimony, Brenner Testimony; Ex. 1, Ex. 4.*

4. The Site is comprised of two long rectangular shaped parcels containing approximately 3.55 acres of total area,⁵ with 247 feet of frontage on 65th Avenue NE and extends 626 feet west of 65th Avenue NE. The previously-existing single-family house and outbuildings on the Subject Property have been removed. There are remnants of the former structures such as concrete and debris and the Applicant indicated that these will be removed as the Subject Property is developed. There are no known existing wells or septic systems on the Site. If any are discovered, the Applicant further indicated that these would be decommissioned per health department standards. *Ex. 1, Ex. 11; Harrington Testimony, Deaver Testimony.*

5. The Site and surrounding area was originally zoned “R-2” VSD Single-Family Dwelling District (est. 1953) with View-Sensitive Overlay (est. 2002). There have been no subsequent zoning changes in the area. The proposed lot sizes, residential density, and intended single-family dwelling land use are permitted within the “R-2” VSD zoning. *Ex. 1, Ex. 11.*

6. The Site is fairly flat, covered with grasses, shrubs, and trees, and gently slopes downward in an east-west direction (at about 3-4% range) dropping off the Site into a steeper ravine area. The steeper ravine area is not immediately adjacent to the Site, however, and therefore, the proposed development is not impacted or limited by any related setbacks. There are few trees on the Site presently. The Applicant plans to save any that exist and the planting of street trees is recommended by the City as a condition of development. The westerly quarter of the Subject Property has denser stands of trees and bushes in the wetland area. *Deaver Testimony, Harrington Testimony; Ex. 1, Ex. 11, Ex. 14.*

7. A vacant parcel borders the Site to the west. Bordering the Site on the north and south, and across 65th Avenue NE to the east, are developed single-family lots. Subdivision lots in the area improved with a single-family residence have been estimated at values ranging from \$310,000 to \$475,000 according to Zillow. There is a Puyallup Tribal Housing Authority development to the south. As mentioned above, a wetland and associated 50-foot (50') buffer and steep slopes are to the west. *Deaver Testimony, Harrington Testimony, Ex. 1, Ex. 2, Ex. 8.*

8. Sanitary and storm sewer, water and power utilities run north-south adjacent the Site in 65th Avenue NE. There will be extensions of the water and power lines into the new subdivision within the new private roadway/cul-de-sac (Tract A) to provide service to the new lots. There are no off-site utility extensions required for the proposed subdivision. Stormwater will be collected and conveyed to the southwest corner of the Site where a detention pond is proposed (Tract B). The stormwater is proposed to be released from the pond and be treated for water quality before entering the wetland buffer/wetland (Tract C). The Applicant does not expect to move materials or grade within the wetland buffer or wetland. The detention pond system will regulate flow and volume requirements for the wetland. *Deaver Testimony, Harrington Testimony, Brenner Testimony; Ex. 1, Ex. 2, Ex. 8.*

⁵ Again, total area figures in the record have varied, but the 3.55 acre figure was testified to as being accurately based on the Applicant's latest survey information.

9. The proposed sanitary sewer plan intends to add an east-west collector in the new access roadway that will then flow north between Lots 5 and 6 to the existing sewer line in 64th Avenue NE. Storm water generated by the new subdivision will be conveyed to drains and collectors along the Tract A access roadway to the detention pond on the south side of the roadway cul-de-sac in Tract B. *Harrington Testimony, Deaver Testimony; Ex. 1, Ex. 2, Ex. 12.*

10. The proposed development would connect to existing water mains within 65th Avenue NE. The Applicant anticipates two new fire hydrants will be installed to serve its proposed development—one within the private roadway and the other within 65th Avenue NE serving the Site. The new access roadway/cul-de-sac has been designed to meet turn radius requirements for emergency vehicles and all other vehicles which may service the planned lots i.e., delivery trucks. *Deaver Testimony.*

11. The Applicant proposes off-street parking for each lot consisting of two vehicles in the driveway and two in the garage. *Deaver Testimony.*

12. Applicant testimony indicated that there is no intention to break the development of the Subject Property into phases. *Deaver Testimony.*

13. The nearest Pierce Transit bus stop is for the Route 63 – NE Tacoma Express – approximately .75 miles northwest of the Site near the intersection of 29th Street NE and 59th Ave NE. This bus cycles every hour during peak service. King County Metro bus line (Route 182) with service into Federal Way, also has a stop within ½ mile north of the Site (356th Street and 21st Avenue SW). The only mode of transit currently running on these routes is local bus. *Ex. 1, Ex. 5.*

14. A traffic impact analysis was performed by Heath and Associates concluding that impacts from the development proposed by the preliminary plat would be “mild” and that no mitigation was necessary. *Ex. 5; Deaver Testimony.*

15. Educational facilities that will serve K-12 students living in the new subdivision (with distance and direction from the site) are: Northeast Tacoma Elementary (.95 miles – northwest), Meeker Middle School (3.9 miles - northwest) and Stadium High School (10.1 miles - west). There were no comments submitted by the Tacoma School District for this project. *Harrington Testimony; Ex. 1, Ex. 15.*

16. Tacoma Metro Parks within a mile of the Site are Northeast Tacoma Playfield next to Northeast Tacoma Elementary School .95 miles northwest of the site. Other parks in the area are Madrona Park (Federal Way) - .68 miles northeast of the Site, and Alderwood Park (Tacoma) – 1.8 miles northeast of the Site. There were no comments submitted by Metro Parks for this project. *Ex. 1.*

17. The proposed subdivision is within the North East Neighborhood District. There were no comments submitted by the North East Neighborhood Council for this preliminary plat application. *Ex. 1.*

18. In accordance with the requirements of TMC 13.04.100.C and 13.05.020 regarding notice of preliminary plat applications and shoreline permits, written notice of the application was mailed to all owners of property within 1,000 feet of the Site, the appropriate neighborhood council, and qualified neighborhood groups on April 26, 2019. A second public notice postcard was sent on May 29, 2019 to add

the WMDP and SEPA to the notice for the subdivision. Public notice signs were posted on the Site referencing the subdivision and wetland. Notice was also posted on the City's internet website, and notice of the hearing was published in the Tacoma News Tribune on April 26, 2019. *Harrington Testimony, Ex. 1.*

19. As part of the preliminary plat review process, PDSs provided notification of the proposed preliminary plat request and intended development to various City departments, and outside governmental, and non-governmental agencies. Departmental comments and suggested requirements regarding this proposal are included in the City's Report, and as appropriate, are made conditions herein. *Ex. 1.*

20. The Applicant agreed to the conditions of approval recommended by reviewing City departments and outside agencies, with the following notable exceptions:

(a) The Applicant apparently disagreed with the City over the need for the WMDP because no "development" is proposed to occur in the Tract C wetland/wetland buffer. The Applicant is also concerned over the characterization of the function of the Tract C wetland/wetland buffer and the labelling thereof. These concerns notwithstanding, it did appear, during the hearing that the Applicant agreed with the City's characterization of the wetland functioning as a "flow control facility." *Deaver Testimony, Brenner Testimony; Ex. 4.*

(b) Although part of the existing zoning paradigm, and not a separate condition of this preliminary plat consideration process, the Applicant voiced displeasure over the City's refusal to consider a blanket height variance for the Subject Property at this stage of the entitlements process. No height variance was before the Hearing Examiner for consideration as part of this proceeding. *Deaver Testimony.*

(c) The Applicant has not agreed to Public Works, Traffic Engineering's recommended condition that the development include "A shared use path, minimum 10 ft. with 2 ft. gravel shoulder, between 64th and private road, to meet standards in the Tacoma ROW Design Manual." *Ex. 1.* The Applicant advocated instead for a five-foot (5') wide sidewalk in the same location. This condition is addressed below at section 9.5.b in the Conclusions of Law below. *Ex. 1; Deaver Testimony.*

(d) The Applicant stated disagreement with any requirement to improve the east side street corners at the intersection of the private access roadway and 65th Avenue NE with ADA compliant ramps. This condition is addressed at section 9.4.e in the Conclusions of Law below. *Ex. 1, Deaver Testimony.*

21. Two (2) members of the public appeared at the hearing but elected not to testify. One person had questions for the Applicant that were addressed privately after the hearing.

22. Pursuant to the State's SEPA Rules (WAC 197-11) and the City of Tacoma's Environmental Code (TMC 13.12), the Director of Planning and Development Services issued a Determination of Environmental Non-Significance ("DNS") for the proposed action on May 29, 2019, which was required

due to the presence of the wetland on the Subject Property and the WMDP being part of the mix. The DNS was based on a review of the Applicant's submitted Environmental Checklist, a site survey, a Joint Aquatic Resource Permit Application ("JARPA") checklist review, and other supporting information on file with PDS. The DNS has not been appealed. *Harrington Testimony; Ex. 1, Ex. 3, Ex. 5, Ex. 7, Ex. 8.*

23. PDS's Report in this matter accurately describes the requested preliminary plat and resulting subdivision, as well as the intended, proposed use, general and specific facts about the Site, applicable sections of the City's Comprehensive Plan (the "Comp Plan"), and applicable regulatory codes. The Report is marked as Exhibit 1, and by this reference, is incorporated herein as though fully set forth. In the event of any conflict between the contents of the Report and this Decision, this Decision shall control.

24. Any conclusion of law herein which may be more properly deemed or considered a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction over the subject matter of this proceeding. *See TMC 1.23.050.B.1, TMC 1.23.120, TMC 13.04.100.D, and TMC 13.11.220.B.2.*

2. The requirements of SEPA have been, or will be met, by the City's having issued the DNS, which has not been appealed, and the Applicant's ultimate compliance with the conditions set forth herein. *FoF 22.*

3. Under TMC 13.04.100.D, the applicant for a preliminary plat is required to demonstrate consistency with the following criteria:

1. Appropriate provisions are made for the public health, safety, and general welfare, and for open spaces; stormwater management; streets or roads; alleys; other public ways; bicycle circulation; transit stops; potable water supplies; sanitary wastes; parks and recreation; playgrounds; schools and school grounds; and all other relevant facilities, including sidewalks and other planning features which assure safe walking conditions for students who walk to and from school and for transit patrons who walk to bus stops or commuter rail stations.⁶
2. The public use and interest will be served by the platting of such subdivision and dedication as set forth by the Comprehensive Plan and other Adopted City Ordinances, manuals, design specifications, plans, goals, policies, and guidelines.

TMC 13.04.100.D.1-2. In addition to the foregoing, a proposed preliminary plat must also comply with the requirements set forth in TMC 13.04.120 through 13.04.230.⁷ The Applicant bears the burden of establishing, by a preponderance of the evidence, that the requested preliminary plat conforms to all of the

⁶ Numbering of these subsections is maintained the same as in the TMC.

⁷ These sections and the requirements set forth therein are incorporated herein by this reference even though not reproduced verbatim, and will be addressed below. Many of the listed compliance items in TMC 13.04.100.D.1 have a certain amount of subject matter overlap with the requirements spelled out in TMC 13.04.120~.230.

foregoing criteria. *TMC 1.23.070*. “Approval of the preliminary plat is a tentative approval and does not constitute final acceptance of the plat.” *TMC 13.04.100.D.2*. Much of the compliance required in granting this preliminary approval comes later through the plat finalization process, and even in the actual process of developing the Subject Property in accordance with all required conditions.

Compliance with TMC 13.04.100.D.1; “Appropriate Provisions are made for...”:

4. As set forth in the Findings of Fact above, and as supplemented by the Report,⁸ the preliminary plat of “Norpoint Place” makes appropriate provision for the items listed in TMC 13.04.100.D.1, or those factors are accounted for by existing facilities/amenities. Many of the listed items that are not expressly provided in the development proposed by the preliminary plat (i.e., existing facilities/amenities, such as parks, bicycle circulation, schools, and transit stops) certainly have room to be improved. That said, these facilities are adequate to allow the preliminary plat to be approved in light of the present housing shortage in Tacoma and Western Washington generally. The facilities/amenities being added through the development itself, such as street trees along the frontage of the lots to be created, the open space that will be preserved in Tract C and to a lesser extent Tract B, and the sidewalks and pedestrian path between Lots 5 and 6 will serve the future residents of Norpoint Place, but will also add to the surrounding neighborhood. Availability of utilities appears to be sufficient. Provided that subsequent development occurs in compliance with the conditions contained herein, and is otherwise compliant with applicable laws, the Examiner concludes that the requirements of TMC 13.04.100.D.1 are adequately met.

Compliance with TMC 13.04.100.D.2, Public Use and Interest, Consistency with the Comp Plan and other Adopted City Ordinances, Manuals, Design Specifications, Plans, Goals, Policies, and Guidelines:

5. The proposed preliminary plat and the intended residential development that would follow final approval are consistent with the existing R-2 Single-Family Dwelling District in which the Subject Property currently sits. The proposed preliminary plat and proposed development are consistent with the public use and interest, as that is embodied in the Comp Plan and City Ordinances, and as set forth in the Report, most especially from the standpoint of (a) “Encourag[ing] more housing choices...” (Comp Plan Policy DD—4.2), “Encourag[ing] residential infill development...” (Comp Plan Policy DD—4.3), and “Promot[ing] safe, healthy housing...” (Comp Plan Goal H—3). The Examiner concludes that the requirements of TMC 13.04.100.D.2 are met, or will be met through the development of the Subject Property in compliance with this Decision.⁹

Compliance with TMC 13.04.120 through .230.

6. As reference in FN7 above, there is a good deal of subject matter overlap in the listed items that a preliminary plat must make appropriate provisions for in TMC 13.04.100.D.1 and the requirements set forth in TMC 13.04.120 through .230. The Report addresses these issues as did testimony at the hearing. Many of the “requirements” of these sections find the majority of their

⁸ Again, in the event of any material conflict between the Report and this Decision, this document shall control.

⁹ Again, it should be noted here that some of TMC 13.04.100.D.2’s requirements are met presently, and some will be met through the Applicant’s compliance with the development conditions set forth below.