

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BREMERTON**

In the Matter of the Application of)	NO. BP04-00404
)	
Jerry Clark)	
The Brandywine Co.)	Brandywine PUD
)	
<u>For Approval of a Subdivision and</u>)	FINDINGS, CONCLUSIONS
<u>Planned Unit Development</u>)	AND RECOMMENDATION

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to the Bremerton City Council that the request for approval of a Preliminary Plat and Planned Unit Development (PUD) to subdivide 9.45 acres of land into 70 individual lots for detached single-family residential development, three open space tracts, a tot lot, a covered sports court, and guest parking, to be located on the east side of Pine Road, approximately 200 feet south of Roswell Road, be **GRANTED**, with conditions.

SUMMARY OF RECORD

Request

Jerry Clark of The Brandywine Co. (Applicant) requests approval of a Preliminary Plat and a PUD to subdivide 9.45 acres of land into 70 individual lots for detached single-family residential development, three open space tracts, a tot lot, a covered sports court, and guest parking. The development would be located on the east side of Pine Road, approximately 200 feet south of Roswell Road.

Hearing Date

The Hearing Examiner for the City of Bremerton held an open record hearing on the matter on June 13, 2005.

Testimony

The following individuals presented testimony under oath at the open record hearing:

1. Mr. Robert Grumbach, City of Bremerton Planner
2. William Palmer, Applicant Representative
3. Paul Wandling, City of Bremerton Public Works
4. Robert Farmer
5. Deborah Marangi
6. Sandra Dominguez

Exhibits

The following exhibits were admitted into the record at the open record hearing:

1. Department of Community Development Staff Report, with the following attachments:

- a. Application
 - b. SEPA Determination of Non-Significance
 - c. Comprehensive Plan Map
 - d. Ordinance 4922 Annexation
 - e. History of Application Correspondence
 - f. Residential Structure Drawings
 - g. Neighborhood Meeting
 - h. Bald Eagle Nest Determination
 - i. Traffic Study
 - j. Water and Sewer availability letter
 - k. Preliminary storm drainage report
 - l. City Comments
 - m. State and local agency comments
 - n. Public Comments
 - o. Legal Notices
2. PUD Site Plan and Landscaping Plan
 3. Preliminary Roadway and Drainage Plan
 4. The City's PowerPoint Presentation Slides

Upon consideration of the testimony and exhibits admitted at the open record hearing, the Hearing Examiner enters the following Findings, Conclusions and Recommendation:

FINDINGS

1. The Applicant requests approval of a Preliminary Plat and a PUD to subdivide 9.45 acres of land into 70 individual lots for detached single-family residential development, three open space tracts, a tot lot, a covered sports court, and guest parking. The subject property consists of three parcels located on the east side of Pine Road, approximately 200 feet south of Roswell Road.¹ *Exhibit 1, Staff Report, page 1; Exhibit 1, Attachment a, Application.*
2. The vacant subject property is relatively flat and densely vegetated with trees, including several significant trees at least two feet in diameter, shrubs, and grasses. There are no critical areas identified on site. *Exhibit 4, Slide 3; Exhibit 1, pages 1-2.* Most of the perimeter of the site is fenced. The site is surrounded with single-family residential uses. To the south, the residential development includes a manufactured home park. Between the site and the manufactured home park is a 30-foot wide City utility easement. *Exhibit 1, page 2; Exhibit 4, Slides 4 – 7; Exhibit 1, Attachment a, Application; Testimony of Mr. Palmer.*
3. The City of Bremerton updated its Comprehensive Plan in December 2004 by Ordinance 4917. The Comprehensive Plan goals and policies applicable to the proposal include the following:

¹ The subject property is known as tax parcel numbers 3962-000-018-0000, 3962-000-019-0009, and 3962-000-020-0006. *Exhibit 1, page 1.* The full legal description of the site is found on page 2 of the City's Staff Report.

Land Use Element

- Goal LU1: “Identify and enhance distinctive neighborhoods, communities, and Centers throughout the City.”

Policy LU1K: *“Promote neighborhoods which foster interaction among residents, contribute to well-being of citizenry, and create and sustain a sense of community and personal safety.”*

- Goal LU3: “Create an environment that will promote growth.”

Policy LU3E: *“Provide development incentives and flexibility within the Zoning Code to encourage desirable design elements with flexibilities within the Zoning Code provisions for all new development and redevelopment.”*

Housing Element

- Goal: H3: “Provide a variety of housing types and densities to meet changing needs of Bremerton residents.”

Policy H3C: *“Stimulate the production of new housing for all incomes, ages, and family types.”*

- Goal: H6: “Build strong, cohesive neighborhoods with a majority of Bremerton households owning their own homes.”

Policy H6A: *“Increase the opportunities for home ownership within the City of Bremerton.”*

- Goal: H7: “Promote safe, attractive, livable neighborhoods that will attract homeowners.”
- Goal: H8: “Promote social interaction as well as neighborhood identity and initiatives.”

Policy H8C: *“Encourage walk-ability within neighborhoods.”*

Transportation Element

- Goal: TR5: “Recognize the importance of easily accessible, attractive and well dispersed parking as a valuable community asset.”

Policy TR5A: *“Implement parking ratios that reflect the least amount of spaces required for development approval, where transportation options other than the automobile are available to serve travel needs.”*

Policy TR5B: *“Require landscaping along the edge of parking areas to reduce visual impact and aid in filtration of runoff.”*

City Services Element

- Goal: CS6: “Ensure adequate funding for public facilities and services for existing development and new growth.”

Policy CS6D: “*Recognize responsibility of the development community in providing for the impacts of new growth.*”

- Goal: CS15: “Enhance and enforce standards for infrastructure and utilities, especially in residential areas.”

Policy CS15A: “*Emphasize conformity of design within sub-areas of the City, especially neighborhoods.*”

- *Improve sidewalks throughout the City, especially accessibility features.*

- Goal: CS16: “Promote open spaces and ‘green spaces’ for everyone’s enjoyment.”

Policy CS16A: “*Realize recreational needs in open space planning.*”

4. The City received the application, originally a subdivision only, on October 20, 2004. The City notified the Applicant that the northern two-thirds of the site would have to be annexed prior to processing of the application. The southern one-third of the subject property had a zoning designation of Medium Density Residential (MF), which allows a density of eight to 18 units per acre. The City Council annexed the northern 6.14 acres of the subject property by Ordinance 4922, effective January 10, 2005. Upon annexation, the Comprehensive Plan designation for the annexed portion of the site was Low Density Residential and the zoning designation was Residential – Low Density (SF – 3). The Applicant’s original proposal was not consistent with the zoning designation of the annexed area. The Applicant revised the proposal and submitted an application for Planned Unit Development on February 9, 2005. Both applications were processed and finally deemed complete on April 21, 2005. *Exhibit 1, page 5; Exhibit 1, Attachment c. Comprehensive Plan map; Testimony of Mr. Grumbach.*
5. The intent of the SF – 3 zoning district is to provide areas of single-family housing of up to eight units per acre in urban subdivisions. The smaller lot sizes of this zone are intended to enhance affordability. The intent of the MF zoning district is provide multiple unit dwellings at the medium density level of eight to 18 units per acre. The housing types allowed in the MF district include clustered single-family detached units, garden and larger apartments, condominiums, and associated accessory uses. *Bremerton Municipal Code (BMC) 21.02.120.*
6. PUDs allow flexibility in development standards, such as lot sizes and setbacks, to promote the efficient use of land and to allow variety and diversity in available housing and to preserve open spaces. *BMC 21.02.340.* Through the PUD process, exceptions to the lot requirements of the underlying zoning district, including modifications to lot size, setbacks, height and other similar requirements may be granted. An approved PUD creates a limitation

on the use and design of the site to only those uses, designs and standards that are specifically included in the PUD. Such limitations shall remain in effect until the PUD is constructed, or until its approval expires in which case the previous zoning automatically returns. *BMC 21.02.460.*

7. In Bremerton, a PUD may be developed with any use that is allowed in the underlying zoning district. There may be a composite of two or more zoning districts within a PUD. Allowable uses, including buildings, lots, accessory structures, off-street parking areas, and open space may be located without reference to boundaries of the underlying zoning district in accordance with an approved site plan. *BMC 21.02.470 (a) and (b).*
8. Allowed density within PUDs is determined by the amount of open space provided by the project. PUDs in the SF – 3 district that provide 15% of site area as open space are allowed a maximum density of eight units per acre. PUDs in the MF district with 15% open space are allowed a maximum density of 18 units per acre. *BMC 21.02.470(e).* The maximum permitted density within the proposed PUD would be 109 units.² The Applicant proposes 70 units, which is a density of 7.4 units per acre. The proposed density is consistent with both underlying zoning districts. *Exhibit 1, page 6; Testimony of Mr. Grumbach.*
9. Bremerton does not require specific dimensional standards for lots within a PUD. The proposed lots range from 3,120 to 4,410 square feet. Structures will cover an average of 54 to 60 percent of residential lot area. In Bremerton, lots are required to have 20 feet of frontage on a street. *BMC 21.02.070.* The majority of the proposed lots have 40 to 54 feet of frontage. Lots 44 and 45 have only ten feet of frontage, and Lots 46 and 47 have 15 and seven feet of frontage respectively. The reduced frontage is allowed under the PUDs flexible design process. Community Development staff testified that the proposed lot dimensions and street frontages are acceptable under the PUD process. *Exhibit 2, Site Plan; Exhibit 4, Slide 9; Testimony of Mr. Grumbach; Exhibit 1, page 12.*
10. The conceptual drawings submitted by the Applicant to depict anticipated building appearance show three different facades, each with varied gabled roof lines and garage presentations. The proposed designs are similar in appearance to existing single-family development in the area. *Exhibit 4, Slide 10; Testimony of Mr. Grumbach; Exhibit 1, Attachment f, Conceptual Drawings.*
11. Units within PUDs are required to maintain a setback from the exterior perimeter of the project. For buildings that are 26-35 feet tall, structures must be set back 25 feet from the front lot line, and 15 feet from the rear and side lot lines. The side and rear setbacks may be reduced to ten feet if the structure height is limited to 25 feet. *BMC 21.02.490.*

² 6.14 acres at 8 units per acre = 49.12. 3.31 acres at 18 units per acre = 59.58. Total units allowed = 108.7. The BMC allows fractions ending in .66 or greater to be rounded up. *BMC 21.02.260.*

12. Building heights are measured from the highest adjoining sidewalk or ground surface. *BMC 21.02.220*. While the residential structure height proposed on the application is 35 feet, the structures proposed on the site plan would measure 26 feet from the highest adjoining sidewalk or ground surface to the tallest point on the structure. Thus, the proposed residences are 26 feet tall for the purposes of calculating height under the zoning code. *Exhibit 1, page 7; Testimony of Mr. Grumbach; Exhibit 1, Attachment a, Application.*
13. Non-perimeter structure heights in the SF-3 district are limited to 30 feet and in the MF district are limited to 40 feet. *BMC 21.02.130*. The proposed 26-foot heights of the residential structures would be consistent with these standards. No height is specified for the proposed sports court building, a maximum height of 40-feet, consistent with the MF district, would be compatible with other uses in the vicinity, given the facility's central location within the development. *Exhibit 1, page 8; Testimony of Mr. Grumbach.*
14. Per the proposed site plan, Lots 5 through 19, 45, 46, 54, and 64 would comply with the perimeter setbacks if the height on those portions of the structures within the 15-foot setback is limited to 25 feet. *Exhibit 1, page 7; BMC 21.02.490(b)(3)*. A condition of approval is necessary to ensure that Lots 5 through 19, 45, 46, 54, and 64 comply with the perimeter setback height limitations. *Testimony of Mr. Grumbach; Exhibit 1, page 7.*
15. All streets and parking areas shall contribute to the overall aesthetic design of the PUD, while minimizing traffic congestion and the amount of impervious surface area. *BMC 21.02.490(e)(4)*. The proposed street grid would provide an orderly and attractive design and promote efficient traffic patterns. The Applicant has proposed reduced garage setbacks for the purpose of reducing driveway surface, minimizing impervious surface area. Community Development staff testified that the proposed structure design would be an attractive addition to the existing neighborhood. *Exhibit 1, pages 15, 19.*
16. PUDs must set aside a minimum of 15% of the total site area as common open space. At least two-thirds of the common open space must be suitable for active recreational purposes. The required open space may be reduced by no more than twenty-five percent (25%) if the project includes a recreational building, swimming pool, or similar facility that will better address the recreational needs of the residents without significantly detracting from the project's appearance or environmental quality. *BMC 21.02.490(d)*.
17. At 9.45 acres, the proposed PUD is required to set aside 1.41 acres of common open space. The Applicant proposes to provide a tot lot and an enclosed sports court building in Tract A. The Community Development Director determined that the proposed amenities qualify the project for a 25% reduction in common open space area. Therefore, the total required open space area would be 1.07 acres. The Applicant proposes a total of 1.36 acres of common open space, exceeding the amount required. All of the open space proposed is suitable for active recreational use. *Exhibit 1, pages 8 – 9; Exhibit 2, Site Plan; Testimony of Mr. Grumbach.*

18. PUDs are required to retain or install one street tree per every 25 lineal feet of property street frontage. *BMC 21.02.700(a)(1)(iii)*. The subject property has 617 feet of frontage on Pine Road, requiring a total of 25 street trees. The Applicant has proposed 14 street trees. A condition of approval is necessary to ensure that the street tree requirements are satisfied. *Exhibit 2, Landscape Plan; Exhibit 1, page 10; Testimony of Mr. Grumbach.*
19. PUDs are required to retain existing natural vegetation to “the greatest extent possible.” *BMC 21.02.340(c)*. The Applicant proposes to retain 32 significant trees at least two feet in diameter within the project, indicated on the plat map, and additional existing vegetation along the north and east boundaries. The Applicant noted that retention of significant trees presents a marketing advantage. Community Development staff testified that the proposed retained vegetation satisfies the code’s requirement. *Exhibit 1, page 10; Exhibit 2, Landscape Plan; Testimony of Mr. Grumbach; Testimony of Mr. Palmer.*
20. The project would be connected to the City’s water and sewer utilities. The City’s public water and sewer service have capacity to serve the project. Existing water and sewer mains would be extended to and through the site to each lot. *Exhibit 1, Attachment j.*
21. The Applicant proposes to collect and direct stormwater runoff from roads, houses, and driveways through curbs and gutters and underground conveyance to a detention and treatment pond located along the site’s southern boundary in Tract E. An erosion control plan conforming to City of Bremerton Drainage Manual and the Stormwater Management Manual for the Puget Sound Basin utilizing best management practices for removal of sediment and other contaminants would be required. *Exhibit 2, Site Plan; Exhibit 1, Attachment k.*
22. The site takes access by a single entrance on Pine Road, which is classified as a Collector Arterial. The three-lane access point will promote efficient circulation and traffic safety by reducing congestion. When completely built out, Pine Road will have a 75-foot right-of-way. Required frontage improvements for the project would include a five-foot sidewalk, a six-foot planter strip, curb & gutter, a five-foot wide bike lane, 12-foot wide travel lanes, and other improvements. A 7.5-foot public easement along the site’s frontage would be recorded and would contain the required sidewalk and utilities along Pine Road. *Exhibit 2, Site Plan; Exhibit 1, page 13.* The required frontage improvements must be installed or bonded prior to final plat approval. The Applicant would be required to install the sidewalk along the Pine Road frontage prior to any building permit issuance. *Testimony of Mr. Grumbach.*
23. The lots would take access from a new private internal road system, which would be maintained by the lot owners. The proposed internal road was designed to Local Access Two Way street standards, including sidewalks on both sides, an eight-foot wide on-street parking lane on one side, two travel lanes ten-feet wide each, curb & gutter on both sides, and a five-foot utility easement on both sides. The requirement for a planter strip was administratively waived. The City Engineer approved the proposed road design. *Exhibit 1, pages 14 - 15; Exhibit 1, Attachment l, May 19, 2005 letter from Public Works.*

24. Lots 44 and 45 are accessed by a Shared Driveway Access located between Lot 20 and the east plat boundary. Standards for Shared Driveway Access require two nine-foot wide lanes. The Applicant's proposed 15-foot wide road with a five-foot sidewalk does not satisfy the standards for a Shared Driveway Access. A condition of approval is necessary to ensure the site plan is revised to bring the proposed access into compliance with required standards. *Exhibit 1, page 14; Testimony of Mr. Grumbach.*
25. The portion of the internal Local Access road providing access to Lots 46, 47, and 50 – 58 has a dead end. The length of the road from the intersection to Lots 50-58 is approximately 170 feet, and the length to Lots 46-47 is approximately 285 feet. The City's Engineering standards require a hammerhead turnaround for dead ends roads that are 150 to 200 feet in length and cul-de-sacs for dead ends roads greater than 200 feet long. The City Engineer approved a deviation from these standards and approved the proposed hammerhead turnaround serving all of the lots in question. *Exhibit 1, page 14; Testimony of Mr. Grumbach.*
26. Vehicle maneuvering areas other than access driveways are not allowed to be located in the perimeter setback of PUDs that are within or abutting residential districts. *BMC 21.02.490(e)(5)*. Portions of the road end adjacent to Lot 19 and the hammerhead turnaround adjacent to Lot 54 are proposed to be located within the perimeter setback. A condition of approval is necessary to ensure that the Applicant revises the road system to comply with perimeter setback requirements. *Exhibit 1, page 14; Testimony of Mr. Grumbach.*
27. The proposed internal road system was reviewed and approved by the Fire Marshall. *Exhibit 1, page 14; Exhibit 1, Attachment 1*. The Applicant would be required to install fire hydrants consistent with the International Fire Code so that there is no portion of any structure on-site that is greater than 300-feet from a hydrant. *Exhibit 1, page 16.*
28. Street signs and street lighting must be installed consistent with City standards. The final lighting plan and street signage must be reviewed and approved by the City Engineer. *Exhibit 1, page 16.*
29. The Applicant submitted a traffic impact analysis prepared by Heath & Associates in September 2004. Currently, fairly heavy evening peak hour traffic volumes exist on Wheaton Way. Pedestrian and bicycle traffic in the vicinity is generally "mild." The study projected that the PUD would generate an average weekday volume of 749 new vehicle trips, including 78 PM peak hour trips. This increase in traffic volume is characterized by the traffic study as a "moderate" increase and is not anticipated to create major increases in delay for the key intersection approaches. The most significant impacts are expected at the intersection of Pine Road and Sylvan Avenue, which is projected to go from a Level of Service (LOS) B to LOS C. Bremerton does not have a concurrency ordinance that would require mitigation of such impacts. No off-site mitigation is proposed. *Exhibit 1, page 13; Exhibit 1, Attachment i.*

30. Off-street parking must be provided at a rate of two spaces per lot. *BMC 21.02.670(a)*. The Applicant has proposed two off-street parking spaces per unit. *Exhibit 1, page 12*. The Applicant proposes an additional 34 on-street guest parking spaces on the internal road that are designed to slow traffic yet not interfere with pedestrian circulation. *Exhibit 2, Site Plan; Exhibit 1, page 15*.
31. No parking or maneuvering areas, other than access driveways, are allowed within a PUD perimeter setback when the development is within or abutting any residential zoning district. *BMC 21.02.490(e)(5)*. The two parking spaces located between Lots 63 and 64 and the three parking spaces located between Lots 4 and 5 must be removed from or relocated on the site plan. Community Development staff requested a condition of approval requiring the Applicant to revise the site plan to so that no guest parking spaces is provided within the perimeter setback. *Exhibit 1, page 12; Testimony of Mr. Grumbach*. The Applicant objected to this request. The Applicant argued that the proposed guest parking spaces within the perimeter setback between Lots 4 and 5 do not abut a residential district, but rather a public street and need not be removed to comply with the code. *Testimony of Mr. Palmer*. Community Development staff requested an interpretation of the code provision found at *BMC 21.02.490(e)(5)*, which is addressed in the Conclusions below.
32. A pedestrian circulation system must be designed to assure that pedestrians can move safely and conveniently both on the site and between the site and nearby properties and activities, as appropriate. *BMC 21.02.490(e)(3)*. The Applicant proposes to provide for pedestrian circulation by providing the internal road system with sidewalks that connect to public sidewalks on Pine Road. Utility easements adjacent to the site could also provide pedestrian circulation, but are not proposed for such by the Applicant. Some neighbors have expressed concerns about pedestrian use of the utility corridor, and this proposed plat does not propose that but merely makes the option available should the City Council decide to open utility corridors to pedestrian access in the future. *Exhibit 2, Site Plan; Exhibit 1, page 15; Testimony of Mr. Palmer*.
33. The PUD would be served by public transit service on Pine Road by Kitsap Transit Routes 17 and 23. There is a bus stop on Pine Road along the property frontage. *Exhibit 1, page 13*.
34. The City of Bremerton Department of Community Development submitted the proposal to other City departments, as well as appropriate state and county agencies, for review and comment. The Department of Public Works & Utilities submitted extensive comments dated May 19, 2005, addressing road improvements; stormwater plans; water and sewer availability; and street lighting. The recommendations of the Public Works staff and other City review agencies were incorporated into the recommended conditions of approval. *Exhibit 1, Attachment 1; Testimony of Mr. Grumbach*. Kitsap County Health District submitted comments concerning the types of soils the Applicant would use for fill material. The Washington State Department of Natural Resources noted that a Forest Practices Application would be required. *Exhibit 1, Attachment m*.

35. School aged children would be bussed to area schools. The entrance to the plat provides adequate space for a safe and convenient bus stop location. The City submitted the application materials to the Bremerton School District for review and comment. The District did not comment on the proposal.³ The Applicant is encouraged to contact the School District to develop an appropriate location and specifications for a school bus stop to serve the children of the plat. *Exhibit 1, page 13; Testimony of Mr. Palmer; Testimony of Mr. Grumbach.*
36. The City received two public comment letters before the hearing. The letters addressed public concerns regarding the following: possible retention of a green belt or other improvements between the project and Hanford Avenue; possible fence around the PUD; increased traffic; guest parking, noise; and runoff. *Exhibit 1, Attachment n.*
37. The City of Bremerton was designated lead agency for review of environmental impacts caused by the proposal. The City considered an environmental checklist and the requirements of City ordinances prior to issuance of its threshold determination. The City Responsible Official determined that project would not have probable significant adverse environmental impacts and issued a Determination of Non-Significance (DNS) on May 26, 2005.⁴ No appeal was filed. *Exhibit 1, Attachment b, SEPA DNS.*
38. Adequate notice of the public hearing and the SEPA DNS were mailed to neighboring land owners, posted, and published in The Sun in accordance with City of Bremerton notice requirements (BMC 21.02.895). *Exhibit 1, Attachment o, Legal Notice Affidavits.* Public comment at the public hearing expressed concern about traffic impacts on Pine Road, the need for a school bus stop location, pedestrian circulation, traffic impacts on Hanford Avenue, potential critical areas on site, the need for significant tree retention, and potential access from the project to Hanford Avenue. *Testimony of Mr. Farmer; Testimony of Ms. Marangi; Testimony of Ms. Dominguez.*

CONCLUSIONS

Jurisdiction

Pursuant to Sections 2.13.070, 2.13.080 and 21.02.855 of the Bremerton Municipal Code (BMC), the Hearing Examiner of the City of Bremerton has jurisdiction to hold open record pre-decision Hearing on Preliminary Plat and PUD applications and recommend action to the City Council. The recommendation may be to approve, approve with conditions, or deny the application. *BMC 2.13.110.*

³ Because the School District did not submit any comments on the application for 70 residential lots, it is assumed the District has no concerns about capacity of its facilities to handle the anticipated new students, nor about safe walking conditions to and from schools or bus stops.

⁴ The DNS contains seven conditions of approval; however, Community Development staff testified that it is not a mitigated determination of non-significance in that they are "courtesy" or "notice" conditions. They do not directly address impacts anticipated specifically from the proposed development, but rather are included to ensure the Applicant is aware of requirements that remain in effect despite a threshold determination of non-significance. *Testimony of Mr. Grumbach.*

Criteria for Review – Preliminary Plat

The criteria for approval of a Preliminary Plat are found in Chapter 58.17 of the Revised Code of Washington.⁵ Pursuant to RCW 58.17.110(2), a Preliminary Plat application may not be approved unless:

- (a) appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
- (b) the public use and interest will be served by the platting of such subdivision and dedication.

Criteria for Review – Planned Unit Development

BMC Section 21.02.480 requires a PUD to conform to the following general criteria:

- (a) The location, design, and uses of the PUD shall be consistent with the Comprehensive Plan, Bremerton Shoreline Management Program, and with other applicable plans and ordinances adopted by the City.
- (b) The PUD shall be integrated with its surroundings and designed to harmonize with existing or proposed development in the neighborhood. In the case of a departure in character from the surrounding land uses, the scale, intensity and design shall adequately reduce the impact of the development in such a way that the project will not be detrimental to the neighborhood.
- (c) The traffic generated by the PUD shall be accommodated safely and within the adopted Levels of Service for affected streets.
- (d) All development will be adequately served by existing or planned facilities and services.
- (e) The PUD will result in an attractive, healthful, efficient and stable environment for living, shopping, working, and leisure activities.
- (f) The development plan shall make adequate and appropriate provision for the preservation of the environment, both natural and man-made, and the conservation of energy.

⁵ As of the date of this application, the City had not enacted a subdivision ordinance. *Testimony of Mr. Grumbach.*

Conclusions Based on Findings

The conclusions below address: (1) the request to review the parking plan proposed by the Applicant and (2) the consistency of the plat with the criteria for approval established by the Washington Legislature in Chapter 58.17 of the Revised Code of Washington and (3) the consistency of the PUD with the criteria for approval established by the City Council in Chapter 21.02 of the Bremerton Municipal Code.

1. Response to Request for Code Interpretation

The Hearing Examiner was asked to interpret the provisions concerning parking spaces within a PUD perimeter setback found at BMC 21.02.490(e)(5), which states:

No parking or maneuvering areas, other than access driveways, shall be allowed within the PUD's perimeter setbacks when the development is within or abutting any residential zoning district.

The Applicant argues that the three parking spaces within the perimeter setback between Lots 4 and 5 need not be eliminated because the spaces do not abut a residential district.

The rules of statutory construction used by courts apply to municipal ordinances. When an ordinance is unambiguous, construction is not necessary and the plain meaning controls. When the ordinance is ambiguous, the agency's interpretation is accorded great deference in determining legislative intent. Absent ambiguity there is no need for the agency's expertise. *Faben Point Neighbors v. City of Mercer Island*, 102 Wash.App. 775, 778 (2000). The "agency" in this case is the City Community Development Department.

In the present case, the language of the ordinance is not ambiguous and does not need to be interpreted. The plain language of BMC 21.02.490(e)(5) indicates that the location of the development as a whole, rather than the location of the contested parking spaces, is examined to determine whether parking may be provided within the perimeter setback. The subject property is within a residential district and surrounded on all sides by residential zoning. The five guest parking spaces within the perimeter setback must be removed or relocated within the site plan. Because there is no guest parking requirement, the change does not otherwise impact the application. The Applicant must submit a revised site plan that shows no parking within the perimeter setback. It may be that some residents begin park in these areas, but they may not be officially designated as parking spaces.

2. Preliminary Plat

- 1. With conditions, appropriate provision will be made for the public health, safety and general welfare and for all other relevant facts.** Water and sewer service will be made available to each lot. The Applicant will preserve existing vegetation to the greatest extent possible, including the retention of at least 32 significant trees and other existing vegetation along the site's north and east boundaries. As conditioned, the proposed structures comply with all applicable zoning and PUD requirements for dimension. Conditions of approval will ensure that no portion of any structure within the perimeter setback exceeds 25-feet in height. The project will generate moderate traffic and will not significantly impact the surrounding

transportation system. The City conducted environmental review of the proposal and determined that, with conditions, it would not result in significant adverse environmental impacts. Conditions of approval will ensure that frontage improvements are installed; that the internal private road is designed and built consistent with City road standards; that the access point is designed to avoid congestion by providing one ingress and two egress lanes; and that the concerns of the public works department are addressed. The School District did not submit comments indicating the development would have adverse impacts on schools and no mitigation is required for school impacts. No mitigation beyond bringing the property's frontage on Pine Road up to City standards is required for the anticipated minimal traffic impacts. The public use and interest will be served by the creation of 70 single-family detached residences with ample open space and recreational facilities. *Findings of Fact Nos. 2, 4, 8 – 14, 16 – 18, 20 – 27, 29, 31, 32, 33 – 35, and 37.*

3. Planned Unit Development

1. **As conditioned, the proposal is consistent with the Comprehensive Plan.** Clustered low-density residential development that preserves significant open space is consistent with several goals and policies of the Comprehensive Plan. The project will provide affordable housing opportunities. The central recreational spaces and facilities will promote a sense of community and interaction between neighbors. The proposed development appears consistent with Bremerton's desire to continue to be a "most livable city". *Findings of Facts Nos. 3 and 4.*
2. **The proposed PUD will be integrated with its surroundings and designed to harmonize with existing development in the neighborhood.** The PUD will be consistent with single-family residential development in the area. Conditions of approval will ensure the perimeter setback is provided as required by the code, specifically regarding structure height abutting adjacent residential development. The design of the open space and recreational areas in the central area of the plat will ensure that the enclosed sports court does not have negative impacts on existing development in the area. *Findings of Facts Nos. 2, 4 – 6, 11, 14 – 18, 21, 27, 31, and 32.*
3. **The traffic generated by the PUD can be accommodated safely and within the adopted Levels of Service for affected streets.** The proposed design of the plat entrance and the internal road network will provide safe travel conditions within the site. The project will generate only moderate traffic volume increases, which can be safely accommodated on the existing transportation system surrounding the project. The LOS at the most impacted intersection of Pine Road and Sylvan Avenue will not experience significant increase in delay. *Findings of Facts Nos. 22 – 27 and 29.*
4. **The proposed development will be adequately served by existing or planned facilities and services.** The subject property will connect to City of Bremerton sewer and water, which systems have the capacity to serve the project. *Finding of Fact No. 20.*
5. **The PUD will result in an attractive, healthful, efficient, and stable environment for living, shopping, working, and leisure activities.** The PUD will provide active recreational

opportunities for all ages of residents. The common open space areas will encourage interaction amongst neighbors and promote a sense of community. No adverse environmental impacts will result from the project. Two public transit routes serve the site with a convenient bus stop location along the property frontage on Pine Road. *Findings of Facts Nos. 8 – 10, 15, 17, 18, 23, 27, and 32.*

6. **The development plan will make adequate and appropriate provision for the preservation of the environment, both natural and man-made, and the conservation of energy.** Through retaining at least 32 significant trees and additional existing vegetation along the site's northern and eastern boundaries, as well as through thoughtful creation of landscaped common park areas, the project will provide adequate open space. The City determined the project would not result in probable significant adverse environmental impacts and issued a DNS. *Findings of Facts Nos. 2, 8, 17, 18, 21, 34, and 37.*

RECOMMENDATION

Based upon the preceding Findings and Conclusions, the Hearing Examiner recommends approval of a Preliminary Plat and PUD to subdivide 9.45 acres into 70 residential lots as described in the application (*Exhibit 1, Attachment a, Application, and Exhibit 2, Site Plan*), subject to the following conditions:

1. The PUD shall constitute a limitation on the use and design of the site to those uses, designs, and standards that are specifically included in the PUD. Such limitation shall remain in effect until the PUD is constructed or until the preliminary approval expires, in which case the previous zoning automatically returns.
2. Final plans for the tot lot and the covered sports court with barbequing facility shall be provided to the City and approved by the Director. The tot lot and covered sports court with barbequing facility shall be installed or bonded prior to final plat approval.
3. Lots 5 through 19, 45, 46, 54, and 64 shall be restricted to the maximum building height of 25 feet as measured by BMC Section 21.02.220. The height of structures on these lots may be increased to 30 feet for those portions of a structure that are setback 15 feet or more from the PUD perimeter setback line. This height restriction shall be recorded on the face of the final plat.
4. One street tree per twenty-five (25) lineal feet of street frontage shall be provided along Pine Road. The Applicant shall submit a revised landscaping for review and approval by the Community Development Director prior to final plat approval.
5. The Applicant shall retain existing vegetation to the greatest extent possible. No fewer than 32 significant trees at least 24 inches in diameter shall be retained. The Director may approve minor modifications to the landscape plan if found necessary to allow for suitable development.

6. The required landscaping along Pine Road shall be installed or bonded prior to final plat approval. The remaining landscaping may be provided as the site is developed, but must be installed before building occupancy permits are issued.
7. An open space guarantee that ensures the retention of and provides for permanent maintenance of the open space is required per BMC Section 21.02.510 prior to final plat approval. The language of the open space guarantee shall be approved by the City and shown on the face of the final plat.
8. The Applicant shall submit a copy of the Washington Department of Natural Resources approval of a Forest Practice IV – General application to the Department of Community Development prior to any clearing activities on site.
9. A minimum of two off-street parking spaces per each dwelling unit shall be provided. This condition shall be indicated on the face of the final plat.
10. Addresses for the individual lots shall be obtained from the Public Works department and shall be indicated on the final plat.
11. Street frontage improvements including curb, gutter, sidewalk and street lighting are required along Pine Road prior to final plat approval. Frontage improvements shall meet City engineering requirements for a Collector Arterial, BMC Title 11 and the City Engineer's comments.
12. Frontage improvements along Pine Road shall be installed or bonded for prior to final plat approval. The sidewalk along the Pine Road frontage shall be installed prior to building permit issuance. Right-of-way Permits from the City of Bremerton and Kitsap County Public Works Departments shall be approved prior to beginning construction.
13. The Applicant shall provide a 7.5-foot wide public easement for sidewalks and utilities adjacent to Pine Road. The easement shall be recorded on the face of the final plat. Language for the easement shall be approved by the City Public Works Department.
14. Private streets within the PUD shall be developed according to City engineering standards for Local Access Streets, BMC Title 11 and the City Engineer's comments. The requirement for a planter strip along the internal plat road is waived. All street, curb, gutter, and sidewalk improvements shall be installed or bonded for prior to final plat approval.
15. The Applicant shall submit revised site plans that exclude all parking and vehicle maneuvering areas from the required perimeter setback. The three guest parking spaces located between Lots 4 and 5 and the two guest parking spaces located between Lots 63 and 64 shall be removed or relocated on the site plan outside of the perimeter setback. The portions of the road end adjacent to Lot 19 and the hammerhead turnaround adjacent to Lot 54 shall likewise be removed from the perimeter setback. The final street plan shall be revised so that the Shared Driveway Access to Lots 44 and 45 shall be at least 20 feet wide.

The City Engineer and the Community Development Director shall approve the revised street plans prior to final plat approval.

16. Streets within the PUD shall be identified by street signs, which shall be installed or bonded for prior to final plat approval. All street signs shall meet City standards as provided for in Engineer Standards 3251 through 3300.
17. Street lighting consistent with the requirements of Title 11 of the Bremerton Municipal Code shall be provided along the PUD's interior private road system. The Applicant shall submit a final street lighting plan for review and approval by the City Engineer. Street lighting shall be installed or bonded for prior to final plat approval.
18. The Applicant shall submit a final storm drainage plan for review and approval by the City Engineer. The plan shall contain temporary erosion control measures consistent with the City of Bremerton Drainage Manual and the Stormwater Management Manual for the Puget Sound Basin. All offsite storm water conveyance facilities shall be part of the public storm system and shall require a minimum 20-foot wide easement. The easement shall be shown on the face of the final plat. Storm drainage facilities shall be installed or bonded for prior to final plat approval.
19. Maintenance agreements for the street and storm drainage systems shall be recorded prior to final plat approval. Language for the agreement shall be approved by the City Engineer and recorded in a separate document or on the face of the final plat.
20. Water and sewer improvements shall be provided per the Conditional Water and Sewer Availability letter. Water and sewer mains shall be extended through the development to provide services to individual lots. All sewer and water improvements shall meet Department of Utilities Development and Construction Standards, APWA/DOT Specifications, AWWA Standards, and Title 15 of the Bremerton Municipal Code. All water and sewer improvements shall be reviewed and approved by the City Engineer and shall be installed or bonded for prior to final plat approval.
21. Fire hydrants with flows meeting International Fire Codes Appendix B & C shall be installed or bonded for prior to final plat approval. Location of the fire hydrants shall meet International Fire Code requirements and the Fire Marshall's comments. If bonding is used, the fire hydrants shall be installed prior to any construction above the foundation.
22. All conditions set forth in the May 26, 2005 Determination of Non-Significance (DNS) shall be included as conditions of final plat approval.
23. The Applicant shall pay in full all fees charged for the public hearing prior to the issuance of any permits for clearing or construction on the site and the submission of the final plat.
24. A final PUD and plat meeting RCW 58.17.160 (requirements for recording a plat), WAC 332-130 (minimum standards for recording a plat), applicable development standards and

conditions shall be submitted to the City for approval within two (2) years of the date of preliminary plat approval pursuant to BMC Section 21.02.520(a).

25. Two copies of the plat certificate shall be submitted with the application for final approval of the plat and PUD.
26. Six (6) copies of the PUD and plat (not Mylar) shall be submitted to the Department of Community Development for final compliance review.
27. The Applicant/Developer shall form a Homeowner's Association that will be responsible for maintenance of common areas such as the private roads, the park area, the covered sport court and other common items.
28. A copy of the recorded PUD and plat shall be provided to the Department of Community Development before building permits are issued.
29. The Applicant is encouraged to contact the School District to develop an appropriate location and specifications for a school bus stop.

Decided this 20th day of June 2005.



Theodore Paul Hunter
Hearing Examiner for the City of Bremerton

