

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

In the Matter of the Application of)	No. BP09 00029
)	
Kurt Wiest, on behalf of the)	BAY VISTA PRELIMINARY PLAT
Bremerton Housing Authority)	
)	FINDINGS, CONCLUSIONS,
<u>For a Preliminary Plat</u>)	AND DECISION

SUMMARY OF DECISION

The request for a preliminary plat to subdivide 82 acres into 1,007 lots on property located between Oyster Bay Avenue, Kitsap Way and State Route 3, in Bremerton, Washington is **APPROVED**. Conditions of approval are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD

Request:

Kurt Wiest, on behalf of The Bremerton Housing Authority, requests a preliminary plat to subdivide 82 acres into 1,007 lots. The property subject to the request is bounded by Oyster Bay Avenue, Kitsap Way, and State Route 3, in Bremerton, Washington.

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 22, 2009. The record was held open until June 30, 2009, to allow the parties to submit recommended stipulated conditions of approval on issues raised during the hearing.

Testimony:

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

Allison Daniels, Associate Planner, for the City
Richard Weinman, for the Applicant
Justin Gorocho, P.E., for the Applicant
Nancy Austin, for the Applicant
Jill Clarridge

Attorney Michael Schechter represented the Applicant at the open record hearing.

Exhibits:

The following exhibits were admitted into the record:

1. Bay Vista Sub-Area Plan, dated February 11, 2009

*Findings, Conclusions, and Decision
City of Bremerton Hearing Examiner
Bay Vista Preliminary Plat, No. BP09-00029*

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2. Introduction: Background & Consistency Analysis, dated April 1, 2009
3. Preliminary Subdivision Application, dated April 7, 2009
4. Master Plan Map, received by the City on April 22, 2009
5. City Zoning Map, received by the City on April 22, 2009
6. EIS Addendum, dated April, 2009
- 6.a. Westpark Environmental Impact Statement, dated May, 2007
7. Geotechnical Report Update prepared GeoDesign Inc., dated March 19, 2009
8. Landfill Memorandum prepared by GeoDesign Inc., dated March 12, 2009
9. Noise Wall Memorandum prepared by ENVIRON, dated November 14, 2008
10. Traffic Report Technical Memorandum prepared by Parametrix, dated March 10, 2009
11. Resource Management Plan Outline, received by City on April 22, 2009
12. Preliminary Technical Information, dated April 17, 2009
13. Preliminary Site Plans, dated April 16, 2009
14. Determination of Completeness, dated May 14, 2009
15. Notice of Application with Affidavit of Mailing, Posting, and Publication, dated May 18, 2009
16. Comment email from Mary Lynn Jensen, dated May 26, 2009
17. Comment email from WSDOT, dated May 28, 2009
18. Comment letter from Bremerton School District, dated May 29, 2009
19. Applicants response to comments, dated June 8, 2009
20. Notice of Public Hearing with Affidavit of Mailing and Posting, dated June 10, 2009
21. Staff Report, received by City on June 10, 2009
22. Example of Hold Harmless Agreement, received by City on June 10, 2009
23. Applicant's pre-hearing brief, dated June 18, 2009
- 23-2. Bay Vista Conceptual Site Plan, dated June 11, 2009
24. Sub-Area Plan Addendum, Undated

The Hearing Examiner enters the following Findings and Conclusions based upon the exhibits admitted at the open record hearing:

FINDINGS

1. Kurt Wiest, on behalf of the Bremerton Housing Authority (BHA), requests approval of a preliminary plat to subdivide 82 acres into 1,007 lots, including open space tracts, a mixture of detached single-family residential lots and attached single-family residential lots, mixed use lots, and commercial lots. The development would be located within the Bay Vista Sub-Area and would be bound by Oyster Bay Avenue, Kitsap Way, and State Route 3, in Bremerton, Washington.¹ The request is governed by the Bay Vista Sub-Area Plan, pursuant to Bremerton Municipal Code (BMC) 20.80.040. *BMC 20.80.040; Exhibit 2; Exhibit 3; Exhibit 21, Staff Report, page 1.*

¹ The property is identified by parcel numbers 162401-4-085-2009, 162401-4-089-2005, 3748-001-013-0004, and 3748-001-014-0003. *Exhibit 3; Exhibit 21, Staff Report, page 1.* A legal description is provided in the preliminary plat application and in the staff report. *Exhibit 3; Exhibit 21, Staff Report, page 1.*

2. The City of Bremerton (City) received the preliminary plat application on April 22, 2009. The City determined that the preliminary plat application was complete on May 14, 2009. On May 18, 2009, the City provided notice of the application by posting notice on-site; publishing notice in *The Kitsap Sun*; and mailing notice to owners of property within the subject property and interested parties. The City provided notice of the open record hearing associated with the application by mailing notice to adjacent owners within 300 feet of the subject property on June 10, 2009 and by posting notice on site.² *Exhibit 15; Exhibit 20.*
3. BHA prepared and submitted an Environmental Impact Statement (EIS) dated May 2007, and a supplemental EIS dated April 2009. The City acted as the lead agency in reviewing the proposal for environmental impacts, pursuant to the State Environmental Policy Act (SEPA). The two EIS documents were prepared as part of the Sub-Area Plan approval process, and Allison Daniels, Associate City Planner, testified for the City that no further SEPA review is necessary for the proposed plat. She testified that the Applicant should be allowed to develop the proposed plat consistent with recommendations set forth in the initial EIS and supplemental EIS. *Exhibit 6; Exhibit 6.a; Testimony of Ms. Daniels; Exhibit 21, Staff Report, page 1.*
4. The property subject to the preliminary plat application is zoned Master Development (MD). Property to the south and west is zoned Freeway Corridor (FC). Property to the north is zoned FC, Limited Commercial (LC), Commercial Corridor (CC), Neighborhood Center Core (NCC), and Low Density Residential (R-10). Property to the east is zoned NCC, Kitsap County Low Density Residential, and Industrial Park (IP). Properties to the south and west feature various commercial businesses, including car dealerships, a mini-storage, a bowling alley, and a gas station. Properties to the east include undeveloped land, a hotel, City property, and single-family residential lots. Properties to the north are developed with single-family residences, commercial businesses, restaurants, and hotel lodging. *Exhibit 5; Exhibit 21, Staff Report, page 2.*
5. The City Comprehensive Plan designates the property as a Public Sector Redevelopment Site. Several of the City's Comprehensive Plan goals and policies are relevant to this application. The City of Bremerton adopted its Comprehensive Plan pursuant to the Growth Management Act (GMA), RCW 36.70A. *City Comprehensive Plan, Intro-4.* Land Use Element goals and policies promote neighborhood interaction and walkable communities, protect natural resources, and allow for flexible growth. Housing Element goals and policies promote the production of a variety of housing types and densities, cohesive neighborhoods, and social interaction. Transportation Element goals and policies encourage development and protect residential neighborhoods from negative

² No affidavit of published notice was provided by the City. Members of the public did provide written comments on the application and testified at the open record hearing. *Exhibit 16; Testimony of Ms. Clarridge;* The Hearing Examiner finds that reasonable notice of the hearing was given.

transportation impacts. City Services Element goals and policies encourage a sense of intensity within neighborhoods. Economic Development Element goals and policies promote a vibrant environment for economic development.³ *City Comprehensive Plan, Land Use Element, pages LU-28 – LU-30; City Comprehensive Plan, Housing Element, pages HS-11 – HS-14, HS-16 – HS-18; City Comprehensive Plan, Transportation Element, pages TR-11 and TR-13; City Comprehensive Plan, City Services Element, page CS-10; City Comprehensive Plan, Economic Development Element, page EC-5; Exhibit 1; Exhibit 21, Staff Report, pages 2 – 4.*

6. The intent of the MD zone is to provide large-scale planned development by public entities or through public-private partnerships. Sites shall employ sub-area planning efforts that address compatibility with surrounding uses and consistency with the Comprehensive Plan. Potential uses include, but are not limited to commercial, office, and various residential types. *BMC 20.80.010; BMC 20.80.050.*
7. The Bay Vista Sub-Area Plan regulates development within the subject property. *BMC 20.80.010; BMC 20.80.080.* The Plan divides the subject property into different zones for the purpose of development, including Low, Medium, and High Density Residential, Mixed-Use 1 (MU-1), Mixed-Use 2 (MU-2), Village Commercial, Commercial, and Open Space. Each zone includes specific standards for building orientation, density, and design elements. The City Council approved all zones included in the Sub-Area plan. The Plan is consistent with all other City regulations. *BMC 20.80.080(a); Exhibit 1; Exhibit 21, Staff Report, pages 4-5.*
8. Specific uses for property zoned MD shall be determined through a Sub-Area planning process. *BMC 20.80.050.* The Bay Vista Sub-Area Plan divides the subject property into eight (8) zones: Low Density Residential, Medium Density Residential, High Density Residential, Village Commercial, Commercial, Mixed-Use 1, Mixed-Use 2, and Open Space. The property zoned Low Density Residential is located in the central and southeast portions of the property and has a maximum density of 25 dwelling units per acre. The property zoned Medium Density Residential is located in the southeast portion of the property and has a maximum density of 38 dwelling units per acre. The property zoned High Density Residential is located in the northeast portion of the property and has a maximum density of 65 dwelling units per acre. The property zoned Mixed-Use 1 and Mixed-Use 2 is located in the central and northwest portions of the property and have maximum densities of 65 dwelling units per acre and 25 dwelling units per acre, respectively. The property zoned Village Commercial and Commercial is located in the northwest portion of the property and the northeast portion of the property, respectively.

³ The City identified the following Comprehensive Plan goals and policies as particularly relevant to this application: Land Use Goals LU1, LU2, LU3, and LU4; Housing Goals H1, H3, H6, H7, and H8; Transportation Goals TR1 and TR4; City Services Goal CS18; and Economic Development Goal EC1 and Policy EC1C. *Exhibit 21, Staff Report, pages 2-4.*

The properties zoned Village Commercial and Commercial do not have maximum density requirements. Permitted and non-permitted uses are outlined in the Sub-Area Plan. Richard Weinman testified for the Applicant that the gross density of the site would be 10.5 dwelling units per acre. He testified that the development would result in a net gain of 875 new units on the site, raising the total to 1,007 units. He further testified that the development would result in a net increase of 1,095 people, resulting in a total population of 2,295 people. Allison Daniels, Associate City Planner, testified for the City that the proposed plat meets the density requirements of the Washington State Growth Management Act. Jill Clarridge, member of the public, testified to her opinion that the development would result in an overly high population density for the area. *BMC 20.80.050; Exhibit 1, pages 30, 34-40. Exhibit 21, Staff Report, pages 4-5; Testimony of Mr. Weinman; Testimony of Ms. Daniels; Testimony of Ms. Clarridge.*

9. Approximately 15 acres of the site would be dedicated for parks and open space. The proposed open space areas would include an 8-acre nature preserve in the center of the site that will retain significant trees, a public park in the eastern portion of the site intended for multi-generational use, a community square in the southwest portion of the site intended for neighborhood gathering, and walking trails throughout the site intended for easy accessibility and trails. *Exhibit 1, pages 20 – 26; Exhibit 21, Staff Report, page 5.*
10. Parking regulations have been established through the Sub-Area plan and are required to comply with BMC 20.48. BMC 20.48 outlines the City’s parking regulations, including proper setbacks, drainage, and space requirements. The Bay Vista Sub Area Plan outlines exceptions and modifications to BMC 20.48 that are specific to the proposed plat. Compliance with BMC 20.48 would be determined at the time of building permit review. *Exhibit 1, pages 52-55.*
11. Stormwater quantity and quality mitigation is required prior to issuance of building permits. Stormwater is currently conveyed by overland flow and through open ditches and enclosed drainage pipes. Stormwater from the site combines with stormwater from off-site areas in conveyance systems outside of the project area. Currently, most of the sit discharges through two existing outfalls into Oyster Bay located to the north of the site. There is currently no on-site water quality treatment facility. The final development will treat all on-site water runoff and will mimic natural drainage conditions by utilizing a decentralized approach to stormwater management. Richard Weinman testified for the Applicant that the quantity requirements and quality requirements for stormwater will be addressed by overall design, including Low Impact Development (LID) where feasible. Justin Goroch testified for the Applicant that the final development will utilize either bio-filtration swales, vaults with cartridges, or rain gardens to treat water quality. *Exhibit 21, Staff Report, page 10; Exhibit 6, page 8; Testimony of Mr. Weinman; Testimony of Mr. Goroch.*

12. Landau Associates prepared a draft geotechnical engineering report on behalf of the Applicant, dated April 28, 2008. GeoDesign, Inc. prepared an additional report, dated March 19, 2009. The site features varied topography, with some slopes over 40%. Both Landau Associates and GeoDesign, Inc. conclude that there is low potential for soil instability on the site. To ensure slope stability, the geotechnical reports recommend that the Applicant use best management practices; route stormwater away from the slopes; limit vegetation removal; and establish a 15-foot wide vegetative buffer between the top and toe of slopes with gradients between 25 to 40 percent, and a 50-foot wide setback for slopes with gradients greater than 40 percent. GeoDesign, Inc. notes that four lots at north end of the property appear to encroach upon the recommended 15-foot wide slope setback. Based on the low potential of slope instability, GeoDesign, Inc. recommends that the Applicant provide a minimum setback of eight to ten feet from the 25 to 40 percent gradient slopes. GeoDesign, Inc. recommends not placing topsoil as a single uniform layer over exposed cut surfaces. *Exhibit 7, pages 4-5; Exhibit 21, Staff Report, pages 8-9, 11.*
13. GeoDesign, Inc. prepared a summary and assessment of the Westpark landfill that is presently on-site, dated March 12, 2009. GeoDesign, Inc. detected arsenic, chromium, lead, and nickel in the ground near the landfill. Air around the landfill had elevated gas concentrations, including methane, carbon monoxide, hydrogen sulfide, and VOC's. The Landfill Memorandum includes a list of eight mitigation measures necessary to avoid human health risks in and around the area. Justin Goroch, P.E. testified that the revised site plan increases the size of Periwinkle Park by 5 acres to account for the possibility that the landfill is larger than originally indicated. Mr. Schechter, Attorney for the Applicant, stated that the Applicant would prefer to limit the development in Sector 3 and Sector 2B until the landfill is finally delineated. He suggested as a condition of approval that no building permits be issued for Sectors 2B and 3 until a final landfill delineation is submitted and the Kitsap County Health Department issues a written determination that there would be no adverse impact to public health or the environment due to development in the two sectors. *Exhibit 8; Exhibit 13; Exhibit 21, Staff Report, page 9; Testimony of Mr. Goroch; Testimony of Mr. Schechter.*
14. ENVIRON International Corp. prepared a Noise Barrier Optimization Summary on behalf of the Applicant, dated November 14, 2008. ENVIRON recommends construction of two noise barriers to shield future residents from traffic noise associated with SR-3. Barrier A would have heights between 10 and 18 feet, and would begin at the divide between the commercial and residential areas near the northwest corner of the site. Barrier B would have heights between 10 and 14 feet and would run along the northeast corner of the site, parallel to SR-3. The barriers would reduce noise levels consistent with federal HUD requirements. *Exhibit 9; Exhibit 21, Staff Report, page 9.*
15. The City reviewed the existing water and sewer connections and determined that they are adequate for the proposed plat. Offsite sanitary sewer impacts are currently being

evaluated and additional mitigation measures may be required prior to final plat approval. *Exhibit 21, Staff Report, page 10.*

16. Parametrix, Inc. completed a Traffic Impact Analysis (TIA) on behalf of the Applicant, dated March 10, 2009. The TIA studied the impacts on Kitsap Way / SR 310, which runs east/west along the north end of the site, SR-3, which runs east/west along the south end of the site, Oyster Bay Avenue, which runs north/south along the east end of the site, Arsenal Way, which runs east/west for one block on the southeast corner of the site, Sinclair Drive, which runs east/west for 5 block on the southeast portion of the site, and Weslon Place, which runs north/south and intersects with Kitsap Way on the north portion of the site. The TIA estimates that with development of the proposed plat, the total trips at the Kitsap Way / Weslon Place intersection would increase between 2.4 and 5.0 percent. Parametrix, Inc. recommends signal timing measures to reduce the anticipated impact of increased traffic. Nancy Austin testified for the Applicant that bus stops will be added to the site. The Applicant would pay a one-time fee of \$37,987.00 for installation of the recommended timing signals, to be paid prior to issuance of a building permit. In a email dated May 28, 2009, Dale Severson, P.E., Washington State Department of Transportation, concurred with the recommended mitigation measure. The proposed development has been reviewed by City staff and the staff has determined that no additional offsite frontage improvements are required prior to approval. *Exhibit 1, page 23; Exhibit 10; Exhibit 13; Exhibit 17; Exhibit 21, Staff Report, page 10; Testimony of Mr. Weinman.*

17. Wayne Lindberg, Bremerton School District, wrote a letter to the City dated May 29, 2009, estimating that the proposed plat would result in a net increase of approximately 500 K-12 students, 400 students more than area schools can currently manage. Richard Weinman, for the Applicant, testified that the actual increase would be 152 students, which is 52 students more than area schools can currently manage. Allison Daniels, Associate City Planner, agreed with Mr. Weinman's testimony. Ms. Daniels testified that the impact of the anticipated 52 additional students would require mitigation prior to final plat approval. The Applicant met with City staff and agreed to establish mitigation measures to address the anticipated addition of 52 students to area schools. No representatives from the Bremerton School District appeared at the hearing. *Exhibit 18; Testimony of Mr. Weinman; Testimony of Ms. Daniels.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is granted jurisdiction to hear and decide preliminary plat requests. *Bremerton Municipal Code (BMC) 20.12.090(a)(2)(i).*

Criteria for Review

Preliminary Plat

The Hearing Examiner may approve a preliminary plat if it meets the following criteria established by the City Council in BMC 20.12.100:

- (a) The subdivision is in conformance with the Comprehensive Plan, Shoreline Master Program, and any other City-adopted plans;
- (b) Provisions have been made for water, storm drainage, erosion control and sanitary sewage disposal for the subdivision that are consistent with current standards and plans as adopted in City code or ordinance;
- (c) Provisions have been made for roads, utilities, street lighting, street trees and other improvements that are consistent with the zoning code and Engineering Standards;
- (d) Provisions have been made for dedications, easements and reservations;
- (e) The design, shape and orientation of the proposed lots are appropriate to the proposed use. In addition to meeting the minimum lot size density requirement, each residential lot must provide a building envelope. Therefore, corner lots, lots with easements, or lots with environmental constraints may have to be larger than other lots in the subdivision;
- (f) The subdivision complies with the relevant requirements of the zoning code and all other relevant local regulations;
- (g) Appropriate provisions are made to address all impacts identified by any special reports that have been prepared;
- (h) Appropriate provisions for maintenance and monitoring of privately owned common facilities have been made;
- (i) Appropriate provisions, in accordance with RCW 58.17.110, are made for:
 - (1) The public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys or other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds 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
 - (2) The public use and interest will be served by the platting of such subdivision and dedication.

BMC 20.12.100.

Conclusion Based on Findings

With conditions, the proposed plat would comply with BMC 20.12.100 and the Bay Vista Sub-Area Plan. The proposed plat would create a new pedestrian-friendly community with parks, open spaces, and a variety of housing designs consistent with the City Comprehensive Plan. The City reviewed the proposal for compliance with the State Environmental Policy Act (SEPA) and determined that with conditions the proposal would not result in probable significant adverse environmental impacts. The proposed plat would comply with the Bay Vista Sub-Area Plan zoning requirements for Residential-Low Density, Residential-Medium Density,

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Residential-High Density, Mixed-Use 1, Mixed-Use 2, Village Commercial, Commercial, and Open Space land uses. The development is consistent with all other local regulations. *Findings 1 – 9.*

The property contains high geologic hazard areas. Conditions of approval are necessary to ensure that development around steep slopes complies with required setbacks and that stormwater runoff is properly controlled. The proposed plat would be impacted by noise from adjacent SR-3. Conditions of approval are necessary to ensure that the Applicant construct noise barriers consistent with federal HUD requirements. The Applicant would pay \$37,987 to mitigate increased traffic in the area and coordinate signal timing at the SR-3/Weslon Place intersection. The development complies with City parking and sewage regulations. Conditions of approval are necessary to ensure that there are no negative public health or environmental impacts relating to the closed landfill on the site. *Findings 11-15, 18*

Existing water and sewer systems are adequate for the proposed plat. Conditions of approval are necessary to ensure that the mitigation of impacts related to the proposed development found in special reports; including contamination from the closed landfill on the site and the high levels of road noise on the north end of the development. Conditions of approval are necessary to ensure that the development complies with the City of Bremerton's street lighting requirements and erosion control measures; and that all utility fees and assessments are paid prior to performance of utility work. *Findings 1-9, 15.*

DECISION

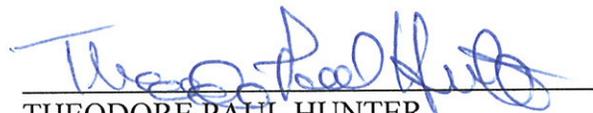
Based upon the preceding Findings and Conclusions, a preliminary plat to subdivide 82 acres into 1,007 lots on property located between Oyster Bay Avenue, Kitsap Way and State Route 3, in Bremerton, Washington is **APPROVED**, subject to the following conditions:⁴

1. Prior to the issuance of any building permit a Notice to Title & Hold Harmless Agreement shall be recorded at the Kitsap County Auditor's Office. This requirement shall be recorded on the Final Plat.
2. All clearing, grading, and setbacks shall comply with the recommendations of the Landau Associates Draft Geotechnical Report and the GeoDesign, Inc. Geotechnical Report.
3. Pursuant to U.S. Department of Housing and Urban Development requirements a Noise Barrier wall is required.

⁴ Conditions include both legal requirements applicable to all developments and conditions to mitigate the specific impacts of this development.

4. A mitigation payment of \$37,987 is required prior to building permit issuance for signal timing modification.
5. Fire sprinklers are required for all homes and mixed-use structures. This requirement shall be recorded on the Final Plat.
6. Pursuant to the record established, BHA shall be required to mitigate the impact of an increase of 52 students to the Bremerton School District. Mitigation shall be established by agreement between the Bremerton School District and BHA.
7. No building permits may be issued for structures in Sectors 2B and 3 until a final landfill delineation is submitted to the Kitsap County Health Department and it issues a written determination that there would be no adverse impact to public health or the environment due to development in those two sectors.
8. A detailed Street Lighting Design must be approved by Bremerton Planning prior to performance of utility work on site.
9. An Engineered Temporary Erosion Sedimentation Control Plan is required prior to issuance of clearing and grading permits.
10. All utility fees and assessments must be paid prior to performance of utility work on site.

Decided this 9th day of July 2009.


THEODORE PAUL HUNTER
Hearing Examiner