



**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION

FILE NUMBER: 2012PLT0001

APPLICANT: Pacific Ridge Homes
17921 Bothell-Everett Hwy., Suite 100
Bothell, WA 98012

TYPE OF CASE: Preliminary subdivision (*Belterra Park*)

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: APPROVE subject to conditions

DATE OF DECISION: January 18, 2013

INTRODUCTION ¹

Pacific Ridge Homes seeks preliminary approval of *Belterra Park*, an eight (8) lot single family residential subdivision of a 2.00 acre site zoned RS-8.

Pacific Ridge Homes filed the preliminary subdivision application on September 5, 2012. (Exhibit 1.1 ²) The Lynnwood Community Development Department (CDD) deemed the application to be complete on October 1, 2012. (Exhibit 1.14)

The subject property is located at 17101 36th Avenue W.

The Lynnwood Hearing Examiner (Examiner) viewed the subject property on January 10, 2013.

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Recommendation is based upon all documents in the record.

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The Examiner held an open record hearing on January 10, 2013. CDD gave notice of the hearing as required by the Lynnwood Municipal Code (LMC). (Exhibits 1.16 and 1.19)

The following exhibits were entered into the hearing record during the hearing:

- Exhibit 1: Departmental Staff Report with Attachments 1.1 – 1.22
- Exhibit 2: Corrected copy of Exhibit 1.13, page 1

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

ISSUES

Does the application meet the criteria for preliminary subdivision approval as established within the LMC?

FINDINGS OF FACT

1. Pacific Ridge Homes proposes to subdivide the subject 2.00 acre site into eight residential lots, each served by a half-street extension of 171st Street SW from its present terminus to 36th Avenue W. All of the proposed lots either meet or exceed the minimum dimensional standards and lot size requirements of the RS-8 zone for lot size averaged subdivisions. The proposed density is approximately 5.08 lots per net acre; the average lot size is 8,433 square feet (SF). (Exhibits 1 and 1.2)
2. The subject property is a long, narrow parcel with 125 feet of frontage on the east side of 36th Avenue W and an east-west depth of approximately 697 feet. All but the east 160 feet of the subject property is bordered on the north by the approved but as yet undeveloped *Johnson Addition* subdivision (2008PLT0002); the east 160 feet are bordered by a short half-street section of 171st Street SW which serves two lots in the *Ridgeview Village* subdivision. The subject property is bordered on the east by another lot in *Ridgeview Village*. It is bordered on the south by four developed single-family residential lots. (Exhibits 1.2 and 1.8)
3. Pacific Ridge Homes has purchased *Johnson Addition* and intends to develop it concurrently with *Belterra Park*. (Testimony)
4. The property slopes modestly downward towards the east from its 36th Avenue W frontage. It has a mixed overstory with open, grassy patches. The site contains no critical areas. A single-family residence is located near the property's 36th Avenue W frontage. (Exhibits 1.3 and 1.8 and testimony)

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5. The site is designated Single-Family Low-Density (SF-1) under the adopted Comprehensive Plan as is the surrounding area. (Exhibit 1.9) The proposal will further the policies of the Comprehensive Plan. (Exhibit 1) The site is zoned RS-8, a single-family residential zone which allows averaging of lot sizes subject to certain limitations. *Belterra Park* complies with all lot size averaging limitations. (Exhibits 1 and 1.10)
6. If *Belterra Park* were to be developed independently of *Johnson Addition*, it would be served by a 25 foot wide (half-street improvement) public right-of-way extension of 171st Street SW between 33rd Place SW and 36th Avenue W. The half-street section would have full concrete curb, gutter, and sidewalk on the north side and a minimum of 18 feet of pavement. The half-street would be designed to meet minimum standards for vehicular, pedestrian, and fire safety standards and would be posted "No Parking" until such time as *Johnson Addition* is developed and the street is widened to a full street section. Public Works is requiring right-of-way dedication and installation of street improvements on 36th Avenue W. (Exhibits 1, 1.2, 1.4 and 2) If *Belterra Park* and *Johnson Addition* are developed concurrently, then 171st Street SW will be constructed as a standard city street.
7. 36th Avenue W is classified as an arterial street. (Exhibit 1) A project to widen 36th Avenue W is on the City's adopted Transportation Improvement Plan; design is underway, but construction timing is indeterminate. The City has not yet made a firm decision as to the street section that will be constructed. Therefore, the City does not want full urban frontage improvements (widened pavement with curb, gutter, and sidewalk) constructed when *Belterra Park* is developed. Rather, it seeks an interim (temporary) improvement consisting of widened pavement and a five foot wide asphalt walkway, separated from the travel lane by an extruded curb (which is included in the walkway width). (Exhibits 1.4 and 2)

City code requires a 10 foot wide buffer strip along all new residential subdivision lots which front on an arterial. [LMC 19.35.020(A)(7)] The right-of-way dedication but not the buffer strip is depicted on Exhibit 1.2. Direct driveway access to arterials is to be avoided wherever possible. [LMC 19.35.010(A)(3)]

8. The record contains evidence that appropriate provisions have been made for:
 - A. Open space. The City currently has no requirements for open space or park mitigation. (Exhibit 1) Average lot size will exceed 8,400 SF (Exhibit 1.2) and development on the lots will be required to meet the code's 35% lot coverage limitation [LMC 21.42.200, Table 21.42.02]. Thus, at least 65% of each lot will be open space.
 - B. Drainage ways. The plat proposes a storm drainage collection, detention, and water quality treatment system in conformance with City standards. The system will be designed to meet the 2005 Washington State Department of Ecology Stormwater Manual. (Exhibits 1, 1.4, and

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- 1.6) The detention facility has been sized to handle runoff from both *Belterra Park* and *Johnson Addition*. (Exhibit 1.6 and testimony)
- C. Streets and roads. The proposed half-street section will meet City standards. The interim frontage improvements will comply with Public Works' preferences. (Exhibits 1, 1.4, and 2)
 - D. Alleys. The proposed design does not necessitate alleys. (Exhibit 1.2)
 - E. Other public ways. No need for other public ways within the subdivision exists. (Exhibit 1.2)
 - F. Transit stops. The record contains no request for transit stops.
 - G. Potable water supply and sanitary wastes. The public water and the sewer system for the plat will be provided by Alderwood Water and Wastewater District (AWWD). Water service is available from 36th Avenue W and from 171st Street SW. Sewer service is available from 171st Street SW. Developer Extension Agreements must be entered into with AWWD. Backflow protection may be required for any fire sprinkler system. (Exhibits 1 and 1.13)
 - H. Parks and recreation. The proposed subdivision is within the service areas of Pioneer Park, Spruce Park, and Stadler Ridge Park. The City currently has no requirements for open space or park mitigation. (Exhibit 1)
 - I. Playgrounds. See Finding 8.H, above.
 - J. Schools and schoolgrounds. No school impact fees are required by the City. (Exhibit 1)
 - K. Safe walking conditions for students who only walk to and from school. Sidewalks will be provided on the extension of 171st Street SW and a pedestrian walkway will be constructed along the property's frontage on 36th Avenue W. Pedestrian walkways exist to the north and south along 36th Avenue W. (Exhibits 1.2, 1.4, and 1.8)
9. Lynnwood's State Environmental Policy Act (SEPA) Responsible Official issued a Determination of Nonsignificance (DNS) on November 9, 2012. (Exhibit 1.12) The DNS was not appealed. (Exhibit 1)
10. Two of the abutting property owners to the south expressed concerns about the safety of trees located along the common property line. (Exhibits 1.20 and 1.21) Chapter 17.15 LMC requires retention of significant trees on a development site, replacement of removed significant trees, payment of a tree replacement option fee, or some combination of the three.

Pacific Ridge Homes has chosen to clear all trees from the subject property, thus removing all of the trees of concern to the abutting property owners. Pacific Ridge Homes plans to plant two

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- replacement trees on each lot and pay a replacement option fee in the amount of \$29,939.00. (Exhibit 1.7)
11. CDD has evaluated the proposal and concludes that it conforms with applicable provisions of the Comprehensive Plan and the applicable zoning regulations. (Exhibit 1)
 12. CDD recommends approval of *Belterra Park* subject to two conditions. (Exhibit 1)
 13. Pacific Ridge Homes took no exception to any of the recommended conditions. (Testimony)
 14. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK³

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A preliminary subdivision is a Process I application which requires an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [LMC 1.35.100, .168, and .175 and LMC 19.15.010(A)]

Review Criteria

The review criteria for preliminary subdivisions are set forth at LMC 19.20.035:

- A. The preliminary plat shall conform to ... the following factors as they now exist or as they may be amended:
 1. The goals, policies and objectives of the Lynnwood comprehensive plan;
 2. The Lynnwood comprehensive parks and recreation plan;
 3. The Lynnwood zoning code;
 4. The standards of [Title 19 LMC] and Chapter 58.17 RCW;
 5. The Lynnwood comprehensive street and arterial plan;
 6. The standards of LMC Title 17, Environment;
 7. The Lynnwood water system comprehensive plan;
 8. The Lynnwood comprehensive flood and drainage management plan, and Chapter 13.40 LMC, Drainage Plans;
 9. The compatibility of the plat to the existing neighborhoods;
 10. Other plans and programs as the City of Lynnwood may adopt.

³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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- B. A proposed subdivision and dedication shall not be approved unless the hearing examiner makes written findings that:
1. appropriate provisions are made for, but not limited to:
 - a. the public health, safety, and general welfare;
 - b. open spaces, drainage ways, streets, roads, alleys, other public ways and transit stops;
 - c. potable water supplies, and sanitary wastes;
 - d. parks and recreation, playgrounds, schools and school grounds;
 - e. all other relevant facts, including sidewalks and other planning features that assure safe walking conditions.
 2. the public use and interest will be served by the platting of such subdivision and dedication.
 3. the proposed subdivision and dedication is in conformity with the Lynnwood zoning code and land use controls.

A “consistency determination” is also required for every project application. A consistency determination follows four steps set forth at LMC 1.35.070. Consistency criteria are:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances if decision criteria are met;
2. Density of residential development (if applicable); and,
3. Availability and adequacy of public facilities (for those facilities identified in the Comprehensive Plan, if the Plan or the City’s development regulations provide for funding of these facilities).

[LMC 1.35.070(A)]

Vested Rights

Subdivision and short subdivision applications are governed by a statutory vesting rule: such applications “shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application ... has been submitted” [RCW 58.17.033]

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LMC 19.20.035(A)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

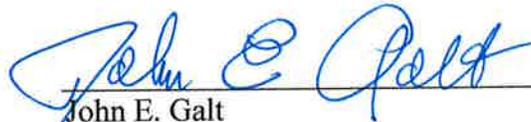
CONCLUSIONS OF LAW

1. Extensive, detailed conclusions regarding conformance with the criteria for approval are unnecessary since *Belterra Park* is essentially an uncontested case.
2. The preponderance of the evidence demonstrates compliance with all criteria in LMC 19.20.035. In fact, none of the participants in the hearing challenged criteria compliance.
3. *Belterra Park* will increase the number of single-family detached residences in Lynnwood by a net of seven units. This will help meet the housing balance goal of the Comprehensive Plan's Land Use Element for 60% single-family and 40% multi-family units. (Exhibit 1)
4. *Belterra Park* passes the consistency test: Single-family residential is a permitted use under the applicable RS-8 zone; the proposed density conforms with Comprehensive Plan policies; sufficient utilities are available to serve the five additional single-family residences.
5. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 1 cites Exhibit 1.2 as the approved preliminary plat. That citation is correct as far as it goes. However, Exhibit 1.2 is but one sheet out of four in Pacific Ridge Homes' submittal; Exhibits 1.3 – 1.5 are the other three sheets in the plan submittal. Those three sheets provide preliminary designs for grading and utilities. The Examiner will expand Recommended Condition 1 to cite Exhibits 1.2 – 1.5 as the preliminary plat and supporting plans.
 - B. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 2, 2.A, 2.C, 2.D, and 2.F will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.
6. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **APPROVES** the preliminary subdivision of *Belterra Park* **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued January 18, 2013.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁴

Ken Williams

Gloria Rivera

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Community Development Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of LMC 1.35.175. Any appeal must be filed within 21 days following the issuance of this Decision. See LMC 1.35.175 for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

⁴ The official Parties of Record register is maintained by the City's Hearing Clerk.

CONDITIONS OF APPROVAL
2012PLT0001
Belterra Park

This Preliminary Subdivision is subject to compliance with all applicable provisions, requirements, and standards of the Lynnwood Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. Exhibits 1.2 – 1.5 shall be the approved preliminary plat and supporting plans. Minor plat revisions are allowed pursuant to LMC 19.25.005(B).
2. Prior to final plat approval, the platlor shall meet all conditions and requirements and provide all improvements identified in the referral process (Exhibits 1.13 and 2) which include:
 - A. The installation of 25 foot wide half-street (171st Street SW) improvements to include sidewalk, curb, and gutter. The 25 foot half-street improvements shall include “No Parking” signage until such time as the total 50 foot wide right-of-way for 171st Street SW is completed.
 - B. A temporary five foot wide walkway and extruded curb are required on 36th Avenue W.
 - C. Fire hydrants shall be installed in accordance with Lynnwood Fire Department regulations.
 - D. No direct vehicular access to Lot 1 from 36th Avenue W shall be permitted. This shall be noted on the final plat.
 - E. Water and sewer services are to be provided in accordance with the referrals from Alderwood Water and Wastewater District, including the extensions of water and sewer facilities. Developer agreements must be entered into. Backflow protection may be required for any fire sprinkler systems.
 - F. Pursuant to the referrals, electrical services are to be provided in accordance with Public Utility District No. 1 policies, including costs of any work, new or to upgrade, required connecting the proposed development to the District electric system. A 10 foot easement and an 8 foot clearance between buildings/structures and transformers/switch cabinets for underground electrical facilities must be provided. The proposal must include in the permits any utility related work for the project.