

WHATCOM COUNTY HEARING EXAMINER

RE: Planned Unit Development)	PUD05-0002
Preliminary Long Subdivision)	LSS05-0008
Application for)	
)	FINDINGS OF FACT,
<i>Greenbriar Construction</i>)	CONCLUSIONS OF LAW,
<i>"Plat of Belmont"</i>)	AND RECOMMENDATION TO
)	WHATCOM COUNTY COUNCIL

SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting Planned Unit Development and Preliminary Long Subdivision approval to develop a 4.77- acre site in the Urban Residential (UR4) zone, with a 23-lot single-family residential subdivision.

Recommendation: The Whatcom County Hearing Examiner recommends the Whatcom County Council approve the Planned Unit Development and Preliminary Long Subdivision to be called "Plat of Belmont," subject to the attached conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: Greenbriar Construction

Property Location/Address: 2520 Yew Street Road
Bellingham, Washington

Legal Description: within a portion of the SW¼ of the SW ¼ of Section 33, T38N, R3E, W.M.
Assessor's Parcel No: 034018

Zoning: Urban Residential (UR4)

Comprehensive Plan: Urban Growth Areas

Subarea: Urban Fringe

Number of Lots: 23

Acreage: 4.77-acres

Roads: Public

Water Supply: City of Bellingham

Sewage Disposal: City of Bellingham

Fire Protection: Whatcom County Fire District No. # 10

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District No. 501

Topography: Flat (steepest slope 10%)

Vegetation: Mixture of deciduous and coniferous trees and grass

Adjacent Land Use: Single Family Residential

Utility Easements: Necessary utility easements will be established prior to recording the final plat.

Variances: None requested.

SEPA Review: Determination of Non-significance, issued May 12, 2005
Addendum, issued December 13, 2005

Authorizing Ordinances:

- 1) Revised Code of Washington Chapter 58.17
- 2) Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
- 3) Whatcom County Code Title 21, Subdivision Regulations
- 4) State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
Whatcom County Environmental Policy Administration Chapter 16.08
- 5) Whatcom County Code Chapter 12.08, Development Standards

Legal Notices: Posted – January 18, 2006
Mailed – January 12, 2006
Published – January 19, 2006

Hearing Date: February 1, 2006

Parties of Record:

Greenbriar Construction Corporation
2200 Division Street, Suite E.
Bellingham, WA 98226

David Evans and Associates, Inc.
119 Grand Avenue, Suite D
Bellingham, WA 98225

Pam Irwin
953 Bass Street
Bellingham, WA 98229

Roger McCarthy
Division of Engineering

Marilyn Bentley
Planning and Development Services

Exhibits:

- 1 Land Use Application
- 2 DNS, dated April 18, 2005
- 3 Addendum to DNS, dated December 13, 2005
- 4 Certificate of Mailing, dated January 12, 2006
- 5 Legal Notice, dated January 19, 2006
- 6 Staff Report, dated January 24, 2006
- 7 Agency Comments
- 8 Letters of Concern
- 9 Vicinity Map
- 10 Zoning Map

- 11 Aerial Map
- 12 Site Plan
- 13 Certificate of Posting, dated January 18, 2006
- 14 Letter of Support from Bruce Gustafson

II.

The Technical Committee of Whatcom County Planning and Development Services has recommended approval of the requested permits, subject to the Conditions of Approval set forth in the Staff Report. The Factual Findings made by the Technical Committee in the Staff Report, Exhibit #6, dated January 24, 2006, a copy of which is attached hereto and incorporated herein by this reference, are supported by the record as a whole. These Findings of Fact are hereby adopted by the Hearing Examiner, except in so far as any specific finding made below contradicts a finding set forth in the Staff Report.

III.

The applicant has requested Planned Unit Development Approval for a 23-lot single-family residential subdivision on a 4.77-acre site in the Urban Residential (UR4) zone. A straight subdivision would allow 19-lots on the parcel. The applicant is requesting PUD approval in order to request four additional lots of density, pursuant to WCC 20.85.108(a and c). The density increase is allowable if there is compliance with the PUD Ordinance. The applicant is proposing smaller lot sizes and the preservation of a forested open space tract in the rear of the subdivision containing 33,350-square feet. Subject to conditions recommended by Staff and by the Hearing Examiner, the applicant will be required to provide a playground area on the open space tract. The applicant should be required to submit plans for the playground area as part of the landscaping plan and should be shown on the face of the plat.

IV.

There were four letters from members of the public indicating concerns about potential impacts from this development and the appropriateness of the development in the area for which it is proposed. Staff has identified and discussed these comments in the attached Staff Report. The Hearing Examiner concludes that the concerns of the public have been adequately met. This area of Yew Street Road, just outside the city limits of Bellingham still maintains a mixture of urban residential and rural development. However, it is on the fringe of the city and has been designated for urban growth. The proposed development is consistent with the Comprehensive Plan and the Zoning Ordinance.

There was no public comment at the public hearing before the Hearing Examiner on this

proposal. The applicant indicated that the factual matters set forth in the Staff Report were accurate and that the applicant did not object to any conditions of approval except for the request from the City of Bellingham, submitted in a letter, dated November 9, 2005, and referenced on page 7 of the attached Staff Report. The applicant expressed concern about Condition #1, recommended by the City, which reads as follows:

- (1) Fences or walls on lots along Yew Street shall not exceed 4-feet in height and the Covenants shall include an obligation against each lot to maintain the landscaping in the Yew Street right-of-way.

The applicant objected to the first sentence requiring fences or walls along Yew Street not to exceed four-feet in height. Staff responded with a comment that the County has by agreement agreed to use and require compliance with the City Development Standards for subdivisions within this Urban Growth Area. At the Hearing Examiner's request, Staff supplied a copy of City of Bellingham Municipal Code 20.30.110-Fences. This is a development standard in the city and should be applied to fences within this plat. However, it is not clear from reading this section of the Bellingham Municipal Code that it requires the limitations stated by the City in the letter dated November 9. The Hearing Examiner concludes that the Condition of Approval requested by the City should be modified to require lot owners within the plat to comply with BMC 20.30.110 instead of setting a specific four-foot height limit along Yew Street Road. No member of the Bellingham Planning Department appeared at the hearing to comment on the requested conditions in the November 9, 2005, letter. The County only has the authority to require conditions to ensure compliance with either Whatcom County or the City of Bellingham Development Standards. If the Development Standards of the City of Bellingham do not limit fences or walls on lots along Yew Street to a four-foot height limit, such a limit should not be required of the future property owners.

V.

Other than the issue discussed above, the applicant is agreeable to the Conditions of Approval recommended by Staff, including the conditions required by the City of Bellingham as part of the agreement to supply sewer and water to the development.

VI.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

Subject to the Conditions of Approval attached to this recommendation by the Hearing Examiner, the Hearing Examiner concludes that the proposed subdivision is consistent with the

requirements of RCW 58.17; WCC Title 20, the Official Whatcom County Zoning Ordinance; WCC Title 21, Subdivision Regulations; the requirements of the State Environmental Policy Act and the Washington Administrative Code, Chapter 197-11, the requirements of Whatcom County Environmental Policy Administration, Chapter 16.08, the Development Standards of Whatcom County Code, Chapter 12.08, applicable to this development; the criteria for Planned Residential Development Approval; and with the Goals and Policies of the Whatcom County Comprehensive Land Use Plan.

Specifically, the Hearing Examiner adopts the Conclusions of Law reached by the Technical Review Committee in the attached Staff Report by this reference. Planned Unit Development Approval and Long Subdivision Approval should be granted to the applicant, approving the proposed 23-lot single-family residential subdivision to be located on Assessor's Parcel No. 034018, and known as the "Plat of Belmont," subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

RECOMMENDATION

The Whatcom County Hearing Examiner recommends that the Whatcom County Council grant Planned Unit Development approval and Preliminary Long Subdivision approval to the proposal of Greenbriar Construction to create a 23-lot residential subdivision, on a 4.77-acre site, zoned Urban Residential (UR4), and located on Assessor's Parcel No. 034018, located at 2520 Yew Street Road, Bellingham, Washington, subject to the following conditions:

- 1) The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
- 2) The applicant shall comply with all of the conditions of the Whatcom County Division of Engineering, as presented in the memorandum, dated October 26, 2005, unless modified by the Division of Engineering or appealed to the appropriate agency.
- 3) The applicant shall comply with the requirements of the Whatcom County Health Department, as presented in the memorandum, dated November 9, 2005, unless modified by that Department or appealed to the appropriate agency.
- 4) All landscaping (street trees) detail designed in accordance with WCC 20.80.300 shall be shown on the face of the plat.
- 5) All landscaping (street trees) shall be installed per the approved plan, or bonded to 125% of the cost of labor and installation, prior to final plat approval.

- 6) A note shall be placed on the face of the plat prohibiting accessory dwelling units on the proposed lots.
- 7) The applicant shall comply with all conditions of the Whatcom County Critical Areas Administrator unless modified by the Critical Areas Administrator or appealed to the appropriate agency.
- 8) The applicant shall comply with all the conditions of Chief Plans Examiner, as outlined in the memorandum dated March 23, 2005, unless modified by the Chief Plans Examiner, or appealed to the appropriate agency.
- 9) Fences or walls on the lots within the subdivision shall meet the requirements of Bellingham Municipal Code, Section 20.30.110. The covenant shall include an obligation against each lot to maintain the landscaping in the Yew Street right-of-way.

Street trees shall be installed at a rate of one per fifty feet of street frontage with the remaining plat containing a total of 46-trees, two per lot, evenly spaced throughout the plat.

- 10) The applicant shall comply with the conditions of the City of Bellingham Ordinance #200-12-087 and Utility Service Zone #252, unless modified by the City of Bellingham, or appealed to the appropriate agency.
- 11) A disclaimer statement shall be included in the covenants stating that the existing and future property owners are aware of the existing commercial kennel at the end of Bass Street, and will not pursue complaints regarding barking dogs or traffic generated by the kennel facility.
- 12) A playground area shall be within the open space area and shall be designated on the face of the plat.

This recommendation of the Hearing Examiner will be forwarded to the Whatcom County Council for Council approval, disapproval, or other action, within twenty-one days, as set forth in WCC*20.85.340.

No land comprising any part of a proposed Planned Unit Development and subdivision to be established henceforth per this decision shall be sold, leased or offered for sale or lease until such plan or subdivision has been approved as provided by Whatcom County Code Title 21, and in the case of a subdivision, until the final plat thereof has been filed for record with the Whatcom County Auditor, except as provided in Section 21.20.130.6. Any person so selling, leasing or offering for sale any such lot, tract or portion thereof shall be guilty of a gross misdemeanor, and subject to a fine of not more than five thousand dollars (\$5,000.00) or imprisonment for not more than ninety (90) days, or both.

DATED this 9th day of February 2006.



Michael Bobbink, Hearing Examiner