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BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Vernon Avenue Plat)	
)	
Preliminary Plat)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND FINAL DECISION
LU18- 1800047/48)	
)	
)	
)	

Summary

The Applicant has applied for preliminary plat approval to subdivide 3.66 acres located at Terry Lake Road SW & 11910 Vernon Avenue SW into twenty lots. The application is approved subject to conditions.

Testimony

Note: This summary of testimony is solely provided for the convenience of the reader, for an overview of testimony. Nothing in this summary should be construed as a Finding of Fact or Conclusion of Law, or signifying any priority or importance to the comments of any individual. No representations are made as to accuracy. For an accurate rendition of the testimony, the reader is referred to the recording of the hearing.

Staff Presentation

Ramon Rodriguez, City of Lakewood Assistant Planner, summarized the staff report. In response to examiner questions Mr. Rodriguez responded that Pierce County will be providing sewer service. Public Works staff responded that the trip generation report did not include an intersection analysis because trip generation did not meet the threshold for that level of analysis. You need 200 average daily trips and 20 peak hour trips to trigger an intersection analysis.

1 Tres Kirkebo, Applicant representative, thanked staff for its expeditious and thorough review. The
2 applicant concurs with the staff analysis. He noted the project site is flat and not a lot of grading is
3 anticipated. All stormwater will be treated and disposed of within private right of way. Stormwater
4 for the homes and driveways will be managed through individual infiltration systems collected from
5 downspouts and rooftop drainage. Ex. 15, a comment letter from Pierce County Public Works and
6 Utilities, addresses sewer capacity. Sanitary sewer will be extended into the site via a sanitary public
7 sewer main. From the public main the Applicant will be extending an 8 inch main into the
8 subdivision where a gravity connection will be provided to each of the twenty lots. An eight inch
9 Lakewood Water District main also exists on Mt. Vernon Avenue that will service the development.
10 The Applicant will extend an eight inch water line into the development to provide water connections
11 to each lot. No capacity constraints have been identified by the Lakewood Water District at this time.
12 Typically, water districts try to avoid dead end water service so the Applicant will be connecting its
13 water system to the adjacent water line on Terry Lake Road SW. From a water system perspective, a
14 connected water system helps equalize water pressure, provides water sources from two different
15 locations and improves water quality by reducing standing water. Power and dry utilities will be
16 extended from Vernon Avenue.

17 Herbert Stumpf, neighbor, noted he submitted a comment letter. Mr. Rodriguez addressed many of
18 the issues in his letter. Mr. Stumpf wanted to know how stormwater could all be infiltrated given all
19 the impervious surfaces and easements of the project site. He also wanted to know how the lots can
20 have adequate developable space given the access easements that cross them. Another development
21 within a mile of the project, Harwood Glenn, will be adding 19 houses on property that is twice the
22 size of the Vernon project. He would like to see the wooden privacy fence be a wood block fence,
23 which would last longer than a wooden fence. In the long term a block wall fence would be a cost
24 savings because it lasts longer.

25 In rebuttal, Mr. Rodriguez noted that minimum lot standards authorize easement area to be included
26 in required minimum lot size area.

27 In rebuttal, Mr. Kirkebo noted that stormwater manual regulations put a priority on on-site
28 infiltration. The project site has adequately permeable soils to handle infiltration so the Applicant is
29 required to provide for on-site infiltration. Test pits are provided to the City demonstrating
30 infiltration rates needed to support the proposed engineered design. A similar process is followed for
31 the individual house stormwater systems. It's math. The City's stormwater manual is a 2016 manual
32 and is very current on the latest design standards. The proposed fencing is designed to prevent
33 vehicle access from the project site to the adjacent private Terry Lake road; it isn't a compatibility
34 fence.

35 Dorothy Finch, neighbor, stated that neighbors don't want pedestrian traffic on Terry Lake Road
36 either. She wanted to know if the CC&R's would prohibit access onto Terry Lake road.

37 Mr. Kirkebo responded that Terry Lake Road is a private road and no access is intended except for
38 utility construction. He did not know if the CC&R's would address Terry Lake Road access, but any

1 such access would be trespass.

2 Mr. Rodriguez noted that Harwood Glenn is zoned R2, which requires a minimum lot size of 17,000
3 square feet but as a Planned Development District it can be as low as 10,000 square feet, which is
4 Harwood Glenn has less lots than the proposal.

5 **Exhibits**

6 The 21 exhibits identified at page 14 of the staff report were admitted into the record during the May
7 30, 2018 hearing.

8 **FINDINGS OF FACT**

9 **Procedural:**

- 10
- 11 1. Applicant. Apex Engineering, PLLC / 11910 Vernon Avenue.
 - 12 2. Hearing. A hearing was held on the subject application on May 18, 2018 in the Lakewood
13 City Hall Council Chambers.

14 **Substantive:**

15 3. Project Description. The Applicant has applied for preliminary plat approval to
16 subdivide 3.66 acres located at Terry Lake Road SW & 11910 Vernon Avenue SW into twenty lots.
17 The project also includes the creation of a new private road per city standards and three (3) private
18 access easements to access each lot and associated utilities. The new access road is proposed to be a
19 private local access road with a cul-de-sac that extends Moreland Avenue SW and connects to
20 Vernon Avenue SW. The project site is relatively flat with the steepest part of the site according to
the SEPA checklist sloped at 8%. The site is currently occupied by an existing single-family
residence, four sheds and a stable, all of which will be demolished. The subdivision will require
preliminary and final plat approval, issuance of a site development permit, a right-of-way permit, and
building permits.

21 4. Surrounding Area. The traffic report, Ex. 11, identifies surrounding use as residential.

22 5. Adverse Impacts. There are no significant adverse impacts associated with the project. A
23 SEPA Determination of Nonsignificance was issued for the proposal on April 19, 2018 and was not
24 appealed. Pertinent impacts are addressed as follows:

- 25 A. Critical Areas. There are no critical areas on the project site as identified in Section B(8) of the
26 SEPA checklist. Priority habitat due to the presence of White Oak is addressed in Finding of
Fact No. 5(C) below.

1
2 B. Compatibility. There is very little information in the record regarding adjoining uses.
3 Reference has to be made to the traffic report to ascertain that adjoining uses are residential.
4 The depiction of adjoining lots on the plat map, Ex. 3, shows adjoining residential development
5 at varying densities that are not significantly lower than that proposed. Given that all
6 surrounding use is residential, that densities are roughly comparable, that the proposed density
7 is consistent with applicable zoning standards and that all adverse impacts are sufficiently
8 mitigated, it is determined that the proposal is compatible with surrounding uses. There was a
9 suggestion from the public for the installation of a block wall along Terry Lake Road SW
10 instead of the wooden fence proposed by the Applicant to prevent trespass on to Terry Lake
11 Road SW, which is a private road. However, there is no basis to require the Applicant to
12 assume the added expense of a block wall given that a wooden fence is adequate to prevent
13 trespass. Maintenance of the fence and provisions prohibiting trespass on to Terry Lake Road
14 SW shall be addressed in CC&Rs as suggested during public testimony.

15 C. Trees. City standards do not require any tree retention for the project site. Pursuant to LMC
16 18A.50.320.B.1.a and LMC 18A.50.320.B.2.b for subdivisions where the proposed lots are less
17 than 17,000 square feet, no specific tree preservation is required for interior or perimeter trees.

18 Thirteen (13) Oregon White Oaks have been identified onsite. Under some circumstances City
19 standards do require retention of White Oaks to serve as priority habitat, but those
20 circumstances are not present for the project site. Washington Forestry Consultants, Inc. has
21 done a Biological Assessment for priority habitat. Washington Forestry concluded that the
22 characteristics of the Oregon White Oaks do not meet the standards for priority habitat due to
23 the following characteristics:

- 24 a. There are no contiguous stands of oak that are 1 acre in size or larger. The largest stands
25 are 0.08 acres, with 2 smaller stands of 0.05, and 0.03 acres.
- 26 b. The stands are highly disturbed and stocked with invasive English-laurel, blackberry,
and English ivy. The ivy is growing on most trees, but does not overtop the trees.
- c. The 4 'large' trees (> 20-inches DBH) are single-stem form tree. The trees are healthy
with no decadence or sign of wildlife nesting activity. These trees do not provide
significant habitat.

According to the biological assessment the proposed project will have "no effect" with regard to
the Oak Habitat and the species that uses the Oak Habitat.

6. Adequacy of Infrastructure/Public Services. The project will be served by adequate and
appropriate infrastructure and public services. Adequacy is more specifically addressed as outlined
below:

1 A. Water and Sewer Service. Water will be provided by the Lakewood Water District and sewer
2 will be provided by Pierce County Public Works. The Water District has issued a certificate of
3 water availability for the project, Ex. 8. Mr. Kirkebo testified that a water main is available for
4 connection to the project site. As shown in the comment letter from Pierce County Public
5 Works, Ex. 15, and the testimony of Mr. Kirkebo, there is also a Pierce County sewer main
available to connect to and serve the project site. From this information it is concluded that the
proposal will be served by adequate and appropriate sewer and water.

6 B. Fire and Police Protection West Pierce Fire and Rescue will be providing fire service to the
7 project and the City of Lakewood Police Department will be providing police protection.
8 West Pierce Fire and Rescue submitted comments regarding conditions for fire-flow, fire
9 hydrants, emergency vehicle access road and turn-around. See Ex. 17. These conditions are
imposed by this decision and assure that the proposal will have adequate infrastructure for fire
protection services.

10 C. Drainage. Lakewood has adopted the Stormwater Management Manual for Western
11 Washington, published by the Washington State Department of Ecology. See LMC
12 12A.03.020. The Manual requires detailed calculations on projected stormwater flows and
13 imposes numerous water quality standards to ensure that off-site properties are not impacted
14 by any increases in stormwater runoff and that any waters discharged from the site are cleared
15 of pollutants that could adversely affect public waters and environmental resources. A key
16 requirement is that the Applicant design a stormwater control system that prevents off-site
17 stormwater flows from exceeding pre-development, forested conditions. The Applicant has
to submit a detailed drainage report that mathematically establishes that pre-development
flow rates are not exceeded. The Applicant's drainage plans will be reviewed by City staff
for site plan approval. The requirements of the stormwater manual assure that the proposal
will include an adequate and appropriate drainage system that will prevent adverse
stormwater impacts to neighbors and the environment.

18 There was some public concern over the adequacy of on-site infiltration. As testified by Mr.
19 Kirkebo, to meet the requirements of the stormwater manual, the Applicant proposes on site
20 infiltration for both the roadway improvements and individual lot development. As noted by
21 Mr. Kirkebo, stormwater manual requirements contain detailed, mathematical requirements
22 for establishing that on-site soils are able to adequately infiltrate stormwater flows that
23 involves the collection of data from multiple test pits. There is no evidence in the record that
the engineered analysis required of the Applicant would fail to adequately address stormwater
impacts. It is determined that the proposal provide for adequate and appropriate stormwater
mitigation and control.

24 D. Parks/Open Space. City regulations do not require any parks or open space dedication for
25 subdivisions.
26

1 E. Schools. The project site will be served by adequate and appropriate school facilities and
2 walking conditions to and from school. As shown in the school district maps, Ex. 21, the
3 project site will be served by Lakes High School located approximately 1.5 miles northwest of
4 the subject property, Lake Louise Elementary School located approximately 0.9 miles
5 northwest of the subject property and Mann Middle School located approximately 0.7 miles
6 northwest of the subject property.

7 As to walking conditions, Bus Stop 636 is located just south of the proposed preliminary plat
8 on the northwest intersection of Washington Boulevard SW and Vernon Avenue SW. That
9 bus stop is utilized by students attending Lake Louise Elementary. Bus Stop 660 is located
10 0.2 miles south of the proposed development on the northwest intersection of Winona Street
11 SW and Vernon Avenue SW. That bus stop serves students attending Mann Middle School.
12 Along west side of Vernon there is uninterrupted pedestrian access to Bus Stop 660. Bus Stop
13 654 is located 0.2 east to the proposed development near the intersection of Moreland Avenue
14 SW and Alameda Avenue SW. That bus stop serves students attending Lakes High School.
15 Along the north side of Moreland Avenue SW there is uninterrupted pedestrian access to Bus
16 Stop 654.

17 F. Streets and Traffic. Initial review from the City of Lakewood Public Works Department
18 indicates that as proposed, the interior private road and proposed sidewalks appear to comply
19 with City standards for construction of streets. This includes access, road width and
20 emergency vehicle ingress/egress and turnaround. Public Works staff will review final street
21 design as part of the site development permit process to ensure compliance with any and all
22 road standards for streets and frontage construction. Details regarding how the frontage
23 improvements are to be constructed are included in the comment letter from Public Works,
24 Ex. 16.

25 Public Works staff has determined that the interior private street and the new sidewalks
26 appear suitable and adequate to carry anticipated traffic within the proposed project and
immediate project vicinity. The reasoning for this determination stems primarily from results
of the Trip Generation Letter (Exhibit 11) which indicate that the level of added traffic
resulting from the proposal is not considered significant enough to require more detailed
review that could lead to more off-site traffic improvements. Beyond frontage improvements,
no off-site traffic improvements are necessary due to the insignificant increase in traffic
created by the proposal.

Conclusions of Law

1. Authority. LMC 18A.02.502 Table 3 classifies preliminary plat applications as Process III applications subject to hearing examiner review.
2. Zoning Designations. Residential 4, R4.

1 3. Review Criteria. LMC 17.14.030 governs the criteria for preliminary plat approval. LMC
2 17.14.030 is quoted below in italics and applied through a corresponding conclusions of law.

3 **LMC 17.14.030:** *A proposed subdivision and dedication shall not be approved unless the Examiner
4 makes written findings that:*

5 *A. Appropriate provisions are made for the public health, safety, and general welfare, for open
6 spaces, drainage ways, streets or streets, alleys, other public ways, transit stops, potable water
7 supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all
8 other relevant facts, including sidewalks and other planning features that assure safe walking
9 conditions for students who walk to and from school; and*

*B. The public use and interest will be served by the platting of such subdivision and dedication. If the
8 Examiner finds that the proposed subdivision and dedication make such appropriate provisions and
9 that the public use and interest will be served, then the Examiner shall approve the proposed
subdivision and dedication.*

10 4. As conditioned, the proposal meets the criteria quoted above. The proposal provides for
11 appropriate infrastructure such as streets and water as determined in Finding of Fact No. 6. The
12 proposal makes appropriate provision for public health, safety and welfare because it provides for
13 adequate infrastructure as outlined in Finding of Fact No. 6 without any associated adverse impacts as
14 identified in Finding of Fact No. 5. For the same reasons and the fact that it provides for the
15 reasonable use of land and accommodates urban growth in urban growth areas as encouraged by the
16 Growth Management Act, the proposal is in the public interest.

16 **DECISION**

17 The proposed preliminary plat satisfies all review criteria as conditioned for the reasons identified in
18 the Conclusions of Law. Consequently, the preliminary plat is approved subject to the following
19 conditions:

- 20 1. Prior to final plat approval, the applicant will be required to meet all requirements of the
21 Pierce County Public Works and Utilities Department for the provision of sewer service
22 to the site, including providing new and/or protecting existing easements for sewer lines
23 and equipment.
- 24 2. Prior to City of Lakewood's approval of the final plat, the applicant shall comply with
25 each of the following agencies' requirements, as evidenced by their signatures of approval
26 on the final plat: Pierce County Assessor-Treasurer's Office, Pierce County Public
Works and Utilities Department, Pierce County Auditor, City of Lakewood Public Works
& Community Development Departments and West Pierce Fire and Rescue.

1
2 3. The following are conditions of approval, prior to the issuance of any site development
3 permits or the initiation of grading, filling, or clearing:

4 – Sample the soil and analyze for arsenic and lead following the 2012 Tacoma
5 Smelter Plume Guidance. The soil sampling results shall be sent to Ecology for
6 review. If the project includes open space areas, contact the Technical Assistance
7 Coordinator, Eva Barber, for assistance in soil sampling methodology within the
8 open space area.

9 – If lead or arsenic are found at concentration above the Model Toxics Control Act
10 (MTCA) cleanup levels (Chapter 173-340 WAC); the owners, potential buyers,
11 construction workers, and other shall be notified of their occurrence. The MTCA
12 cleanup level for arsenic is 20 parts per million (ppm) and lead is 250 ppm.

13 If lead, arsenic and/or other contaminants are found a concentration above MTCA
14 clean levels, the applicant shall:

15 a) Develop soil remediation plan and enter into the Voluntary Clean Program with
16 Ecology. For more information on the Voluntary Cleanup Program, visit
17 Ecology’s website at :<http://www.ecy.wa.gov/programs/tcp/vcp/vcpmain.htm>.

18 b) Obtain an opinion letter from Ecology stating that the proposed soil
19 remediation plan will likely result in no further action under MTCA. The
20 applicant shall provide to the local land use permitting agency the opinion letter
21 from Ecology.

22 c) Prior to finalizing site development permits, provide to the local land use
23 permitting agency “No Further Action” determination from Ecology indicating
24 that the remediation plans were successfully implemented under MTCA.
25

26 If soils are found to be contaminated with arsenic, lead, or other contaminants, extra
precautions shall be taken to avoid escaping dust, soil erosion, and water pollution
during grading and site construction. Site design shall include protective measures to
isolate or remove contaminated soils from public spaces, yards, and children’s play
areas. Contaminated soils generated during site construction shall be managed and
disposed of in accordance with state and local regulations, including the Solid Waste
Handling Standards regulation (Chapter 173-350 WAC). For information about soil
disposal contact the local health department in the jurisdiction where soils will be
placed.

4. Prior to final plat approval, the following items shall be required unless altered by the

1 Lakewood Public Works Director:

2 a. A Site Development Permit and Drainage Review are required. The permit
3 application and plans shall be reviewed and approved prior to recording of the final
4 plat. The submittal requirements can be found in LMC 12A.04.040, 12A.10.080 and
5 the ESM.

6 b. All onsite storm water runoff shall remain and infiltrate onsite. All onsite runoff
7 from pollution generating hard surfaces shall receive water quality and quantity
8 treatment in accordance with LMC 12A.11. Please provide soil infiltration rate
9 documentation. All stormwater designs shall be consistent with either the latest
10 Stormwater Management Manual for Western Washington, (currently the 2012 as
11 amended in 2014), or the Pierce County Stormwater Management and Site
12 Development Manual, (currently the 2015). Drainage modelling using a DOE or
13 Pierce County approved modelling software is required. Storm water infiltration
14 testing and soil analysis is required and shall be consistent with the latest approved
15 stormwater design manuals.

16 c. The proposed access road shall be built to local road standards as outlined in the
17 City of Lakewood Engineering Standards Manual Appendix 2, Table 2.

18 d. The plans for all work within the public right of way shall be prepared by a
19 professional engineer licensed to practice with the State of Washington. The plans
20 shall be submitted and approved prior to work beginning in the right of way.

21 e. Street frontage improvements are required along the entire property frontage of
22 Vernon Avenue SW. Frontage improvements shall include but not be limited to:

- 23 - Pavement widening to a minimum 12' outside travel lane as necessary.
- 24 - Patch per City standard plans and a one lane 2" grind / inlay.
- 25 - Concrete curb ramps.
- 26 - Asphalt transition ramps, asphalt pavement tapering, and channelization as necessary at
transitions to existing pavement.
- Concrete vertical curb and gutter.
- LED Street lighting as needed.
- Storm drainage as needed (staggered spacing every 75').

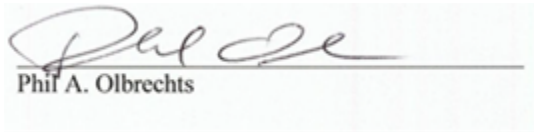
27 4. Pursuant to LMC 18A.50.135.B, a Type II landscape strip consisting of ground cover and
28 street trees planted 30 feet on center is required next to the existing sidewalk on Vernon
29 Avenue SW. Prior to issuance of the site development permit for the subdivision, the
30 applicant shall provide a landscaping and irrigation plan that complies with the City's

1 landscaping requirements outlined in LMC 18A.50.400.

- 2
- 3 5. Onsite Improvements: Frontage improvements are required along the interior roadway
- 4 area including but not limited to:
- 5 - Concrete vertical curb and gutter.
 - 6 - 5' wide concrete sidewalk.
 - 7 - City standard concrete type 1 driveways.
 - 8 - Local Access standard pavement section (3" HMA over 4" CSTC).
 - 9 - A six (6) foot privacy fence along the western portion of the subdivision abutting Terry
 - 10 Lake Road SW. Maintenance responsibility for the fence shall be assigned by recorded
 - 11 CC&R. The CC&Rs shall also prohibit vehicular and pedestrian trespass onto Terry
 - 12 Lake Road SW except as authorized by law. The CC&Rs shall further provide that all
 - 13 CC&R provisions required by City regulation or this decision may not be amended
 - 14 without permission of the City of Lakewood. The CC&R's required by this decision and
 - 15 City regulations shall be subject to City planning staff approval prior to final plat
 - 16 approval.
- 17
- 18 6. All soils exported from the site shall be taken to a licensed facility approved by the City
- 19 of Lakewood. Only clean fill shall be used at the site.
- 20
- 21 7. Final subdivision approval shall not be granted until all conditions set forth by this
- 22 preliminary approval are completed. If the plat is not completed and recorded within five
- 23 years from the date approval is granted, the preliminary plat approval shall become null
- 24 and void.

25 DATED this 13th day of June, 2018.

26



Phil A. Olbrechts

Pro Tem Hearing Examiner for Lakewood

Appeal Right and Valuation Notices

LMC 18A.02.502 Table 3 provides that the final preliminary plat decision of the Hearing Examiner is subject to appeal to superior court. LMC 18A.40.550(C) provides that PDD decisions are also final. Appeals of final land use decisions to superior court are governed by the Land Use Petition Act ("LUPA"), Chapter 36.70C RCW. LUPA imposes short appeal deadlines with strict service

1 requirements. Persons wishing to file LUPA appeals should consult with an attorney to ensure that
2 LUPA appeal requirements are correctly followed.

3 Affected property owners may request a change in valuation for property tax purposes
4 notwithstanding any program of revaluation.

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