

**BEFORE THE LAND USE HEARING EXAMINER
FOR THE CITY OF LA CENTER, WASHINGTON**

Regarding a request by RK Land Development for) **FINAL ORDER**
preliminary plat approval to divide 34.4 acres into)
120 single-family lots at 1908 NE Lockwood) **File No. 2014-006-SUB**
Creek Road in the City of La Center, Washington) **(Sunrise Terrace)**

A. SUMMARY

1. RK Land Development (the “applicant”) requests approval of a preliminary plat to divide 34.4 acres into 120 lots for single-family detached homes. The development is located at 1908 NE Lockwood Creek Road. The legal description of the site is Tax Assessor Parcel No. 209488-000; also known as Assessor No. 209047-000, 209062-000, 986027-188 and 986027-189; NE ¼ of Section 2, T4N, R1E, WM (the “site”). The site and surrounding properties are zoned LDR-7.5 (Urban Residential). The site is currently developed with a single-family residence and associated accessory structures. The applicant proposed to remove all of the existing structures and construct a new single-family detached dwelling on each of the proposed lots. The applicant proposed to develop the site in four phases.

a. The applicant proposed to dedicate rights-of-way and construct public streets within the site. The applicant will stub the proposed streets to the boundaries of the site to allow for further extension when abutting properties redevelop. The applicant will also dedicate right-of-way and construct half-width improvements on the site’s NE Lockwood Creek Road, NE 24th Avenue and NE 339th Street frontages. All of the proposed lots will have direct access onto the proposed interior streets. No lots will access the streets abutting the boundaries of the site.

b. The applicant proposes to collect stormwater from impervious areas on the site and direct it to one of two proposed stormwater facilities on the site for treatment and detention: proposed Tract “A” in the southern portion of the site and proposed Tract B on the western boundary of the site. The applicant proposed to discharge treated stormwater to the existing public storm sewer system south of the site.

c. Clark Public Utilities will provide domestic water and the City of La Center will provide sanitary sewer service to each proposed lot.

2. The City of La Center issued a Determination of Nonsignificance (“DNS”) for the subdivision pursuant to the State Environmental Policy Act (“SEPA”). Hearing Examiner Joe Turner (the “examiner”) conducted a public hearing to receive testimony and evidence about the application. City staff and consultants recommended that the examiner approve the application and preliminary plat subject to conditions. See the Revised Staff Report to the Hearing Examiner dated October 12, 2015 (the “Staff

Report").¹ The applicant accepted those findings and conditions, as amended at the hearing and during the open record period, with certain exceptions. Three persons testified orally with questions and concerns about the proposed development. Disputed issues or concerns in the case include the following:

- a. Whether the proposed development makes appropriate provisions for students who walk to the school, RCW 58.17.110(2).
- b. Whether, and to what extent, the proposed stormwater wetpond requires separation from seasonal high groundwater;
- c. Whether the applicant is required to provide gravity flow sanitary sewer service to this site; and
- d. Whether the applicant is required to mitigate vehicular traffic impacts to the intersection of NE Highland Avenue and E 4th Street.

3. Based on the findings provided or incorporated herein, the examiner approves the subdivision subject to the conditions at the conclusion of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. Hearing Examiner Joe Turner (the "examiner") received testimony at the public hearing about this application on October 12, 2015. That testimony and evidence, including a recording of the public hearing and the casefile maintained by the City, are included herein as exhibits, and they are filed at City Hall. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. La Center Consulting City Planner Eric Eisemann summarized the Staff Report.

- a. He noted that the applicant proposed to develop the site in four phases.
- b. The Clark County GIS maps indicate a potential wetland near the center of the site. However the applicant's wetland consultant reviewed the site and determined that there are no jurisdictional wetlands or riparian areas on the site. The mapped wetland is actually a man-made ditch.
- c. The proposed development will make adequate provisions for parks by paying Park Impact Fees.
- d. He argued that high school students living on the site will use NE 339th Avenue to walk to the high school. NE 339th Avenue provides the most direct route between the north end of the site and the La Center High School west of the site. In addition, the site slopes downhill from north to west, so students living in the north

¹ The City issued an initial Staff Report on October 5, 2015. The October 12, 2015 Revised Staff Report replaced the October 5, 2015 Staff Report.

portion of the site would need to walk downhill, then back uphill, to reach the high school via Lockwood Creek Road.

3. La Center City Engineer Tony Cooper testified that there are continuous sidewalks on the south side of NE Lockwood Creek Road which, in combination with the sidewalks on and abutting the site, will provide a safe walking route between the site and the La Center Elementary and Middle Schools west of the site. Students can travel west on the sidewalk on the north side of NE Lockwood Creek Road abutting the site, then cross NE Lockwood Creek Road and continue west on the sidewalk on the south side of NE Lockwood Creek Road to the sidewalks within the neighborhood south of NE Lockwood Creek Road, which provide a safe walking route to the elementary and middle schools. High School students can use the same route and then cross back over NE Lockwood Creek Road at the existing crosswalk near the center of the park to access the La Center High School. This crosswalk is located in a designated School Zone. There are flashing beacons and signs that reduce the speed limit on the section of NE Lockwood Creek Road near the crosswalk to 20 MPH during school hours. There is adequate right-of-way on NE 339th Street to accommodate a temporary pedestrian path between the site and the high school.

a. Based on the applicant's traffic analysis, the stop-controlled intersection of NE Highland Avenue and E 4th Street is currently operating at Level Of Service ("LOS") E during the AM peak hour. This intersection will continue to operate at LOS E with the additional traffic from this development. LOS E is the minimum acceptable LOS at stop controlled intersections. However the City's Capital Facilities Plan predicts that this intersection will fall to LOS F and a traffic signal will be warranted by 2024. Therefore the applicant should be required to mitigate the impact of this development on this intersection prior to final plat approval. This is required by proposed condition of approval 15.

b. The applicant initially proposed to connect to the existing sanitary sewer line in NE Lockwood Creek Road, which drains to Pump Station #3 near the end of John Storm Road. This pump station pumps sanitary waste to a manhole located in NE Lockwood Creek Road near the park abutting the La Center Elementary and Middle Schools. As an alternative the applicant could construct a new gravity flow sewer line in NE Lockwood Creek Road that would drain directly to the manhole located in NE Lockwood Creek Road near the park, bypassing Pump Station #3. This alternative design is feasible and would avoid the need for the applicant to improve Pump Station #3.

c. He agreed with Mr. Whitten that the Washington State Department of Ecology ("DOE") stormwater regulations do not require a three-foot separation between the bottom of a wetpond and seasonal high groundwater. This requirement only applies to infiltration facilities. However groundwater should not be allowed to enter the "live storage" portion of the wetpond, because it would reduce the holding capacity of the stormwater pond. The applicant should be required to install a monitoring well to determine the seasonal high groundwater elevation in this area and design the wetpond to ensure that groundwater levels remain below the "live storage" portion of the pond.

d. The La Center Capital Facilities Plan allows non-signalized intersections like the 4th Street/Highland Avenue intersection to operate at LOS E. However the applicant should be required to review the signal warrants at this intersection. The City could convert this intersection to a four-way stop, but there may not be sufficient vehicle storage capacity to allow this change.

e. There are flashing beacons notifying drivers of the 20 mph School Zone speed limit on NE Lockwood Creek Road during certain hours of the day. The School Zone starts just east of the park abutting the La Center Elementary and Middle Schools, roughly 1,000 feet west of the site. The speed limit on NE Lockwood Creek Road changes from 35 mph to 25 at the City limits, just east of the site.

4. Planner Ed Greer and engineer Jeff Whitten testified on behalf of the applicant.

a. Mr. Greer summarized the proposed development.

b. Mr. Whitten noted that there is a continuous sidewalk on the south side of NE Lockwood Creek Road between the site and the La Center Elementary and Middle Schools which provides a direct route between the site and the La Center Elementary and Middle Schools and High School. It would be a good idea to locate a sidewalk across NE Lockwood Creek Road to provide a safe crossing between the proposed sidewalks on the site and the existing sidewalks on the south side of NE Lockwood Creek Road. The applicant is required to install streetlights along the site's NE Lockwood Creek Road frontage. The applicant could place streetlights to light a crosswalk in this area. The City could shift the 25 mph speed limit further east to enhance safety at this crossing.

i. The Staff Report assumes that this site will require improvements to the City's existing sanitary sewer pump stations. However the applicant would like the option of extending gravity flow sewer lines to the site, eliminating the need to improve Pump Station #3.

ii. The applicant proposed to treat stormwater runoff on the site in a wetpond located in proposed Tract B. The DOE stormwater regulations do not require separation between the seasonal high groundwater elevation and the bottom of a wetpond. This requirement only applies to infiltration facilities. DOE regulations actually encourage wetponds within groundwater.

iii. The applicant is not required to mitigate this development's impact on the existing LOS E at the 4th Street/Highland Avenue intersection. LOS E is acceptable under the La Center Code at this stop-controlled intersection. All development in the area contributes the existing LOS E. The applicant will pay Traffic Impact Fees ("TIFs") that the City can use to fund improvements to this and other intersections affected by traffic from this development.

5. Dr. Mark Mansell, La Center Superintendent of Schools expressed concern with school children crossing NE Lockwood Creek Road near the site. The speed limit on NE Lockwood Creek Road changes from 35 to 25 mph just east of this crossing. Vehicles

traveling at higher speeds will create a hazard for children crossing the street. The City has installed crosswalks and lights at intersections near the schools. Similar safety improvements are warranted here. In addition, streetlights are needed at this location to ensure that students using the crosswalk are visible.

a. High school students living on the site will use NE 339th Avenue to access the high school, as it provides the shortest, most direct route between the site and the high school.

b. The 4th Street/Highland Avenue intersection operates at failing conditions at the start and end of school as drivers are entering and leaving the school. Converting this intersection to a four-way stop would reduce congestion and improve safety.

6. Tom Wooldridge commended the applicant for preserving the historic residence and barn located on a portion of the site.

7. Ken Couch argued that the speed limit on NE Lockwood Creek Road changes from 35 mph to 25 mph at the site. The speed limit changes from 50 mph to 35 mph at the City limits east of the site.

8. At the end of the hearing the examiner held open the public record for one week to allow all parties to submit additional testimony and evidence regarding the issues raised at the hearing. The examiner held the record open for a second week to allow all parties to respond to the information submitted during the first open record period. The examiner held the record open for a third week to allow the applicant to submit a closing argument. The record closed at 5 PM on November 2, 2015. The following documents were submitted while the record was held open:

a. A “Supplemental Staff Report & Recommendation” dated October 16, 2015 (the “Supplemental Staff Report”); and

b. The applicant’s response to the Supplemental Staff Report dated October 22, 2015.

C. DISCUSSION

1. City staff recommended that the examiner approve the preliminary plat, based on the affirmative findings and subject to conditions of approval in the Staff Report, as modified at the hearing and during the open record period. The applicant largely accepted those findings and conditions as modified, with exceptions discussed below.

2. The examiner finds that the Staff Report accurately identifies the applicable approval criteria for the preliminary plat and contains affirmative findings that the proposed preliminary plat does or can comply with the applicable standards of the LCMC (including cited plans and codes) and the Revised Code of Washington, provided the applicant complies with recommended conditions of approval as amended herein. The

examiner adopts the affirmative findings in the Staff Report as his own, except to the extent that those findings are inconsistent with the findings in this Final Order.

3. The examiner finds that it is feasible to provide safe walking conditions for students who only walk to and from the school. RCW 58.17.110(2).

a. The applicant will construct sidewalks along the site's frontage on the north side of NE Lockwood Creek Road. As discussed at the hearing, the west end of the proposed sidewalks on the north side of NE Lockwood Creek Road will overlap with the existing sidewalks on the south side of NE Lockwood Creek Road.

i. The existing sidewalks on the south side of NE Lockwood Creek Road provide a continuous pedestrian connection to the La Center Elementary and Middle Schools west of the site. Pedestrians must cross three existing intersections, at E 18th Place, NE John Storm Road and E Ivy Avenue before they reach the elementary and middle schools. However these pedestrian crossings are located at existing intersections where conflicting, northbound, traffic is required to stop. In addition, there are existing crosswalks at all three of these intersections, which enhances the safety of these pedestrian crossings.

ii. There is an existing crosswalk with pedestrian signage between the existing sidewalk on the south side of NE Lockwood Creek Road and the La Center High School on the north side of NE Lockwood Creek Road. In addition, this pedestrian crossing is located within a designated School Zone where the speed limit is reduced to 20 mph at designated times.

iii. There is no evidence that these existing pedestrian crossings are hazardous. Therefore the examiner finds that safe walking conditions are available between the existing sidewalks on the south side of NE Lockwood Creek Road and all of the schools served by this development. An engineering analysis of these existing pedestrian crossings is not warranted as a result of the proposed development.

b. However students from this site must cross NE Lockwood Creek Road to access the existing sidewalks on the south side of NE Lockwood Creek Road.

i. This crossing will occur at a mid-block location, rather than a street intersection where drivers would normally expect pedestrians to cross. As noted at the hearing, the speed limit for westbound traffic on NE Lockwood Creek Road changes from 35 mph to 25 mph just before this proposed pedestrian crossing. In addition, unlike the pedestrian crossing to the High School, this crossing is not located within a designated School Zone with a reduced speed limit.

ii. The applicant proposed to install a marked crosswalk and streetlights to enhance pedestrian safety at this location. At a minimum a condition of approval is required to that effect.

iii. In addition, the applicant should be required to conduct an engineered traffic analysis to determine whether a traffic control signal or other pedestrian safety measures are warranted at this School Crossing location, based on Section 4C.06, Warrant 5, of the Manual on Uniform Traffic Control Devices (“MUTCD”). The applicant should be required to install any pedestrian crossing improvements that are warranted at this location based on the engineered traffic analysis and MUTCD requirements. A condition of approval is warranted to that effect.

c. The applicant is not required to provide additional off-site sidewalks or pathways between the site and the High School. The existing and proposed sidewalks on NE Lockwood Creek Road, in combination with the proposed sidewalks within the site, will provide a safe walking route between the site and the High School. High school students living in the north portion of the site are likely to use NE 339th Avenue to access the La Center High School west of the site, because this street provides the shortest, most direct route between the northern portion of the site and the High School. However there are no hard surfaced pedestrian connections between the high school and NE 339th Avenue, except the driveways located west of the school building. Even if the applicant provided a hard-surfaced offsite path between the site and the high school, most students would not use the western portion of the path; they would simply cut through the high school grounds to access the school building rather than undertaking additional out of direction travel to access the driveways. The grassy shoulder abutting NE 339th Avenue is flat and wide, providing ample room for pedestrians to walk within the right-of-way but away from vehicle traffic. Since students walking to the High School on 339th Avenue are likely walk through the grass to access the high school anyway, there is no reason to require the applicant to provide a hard surfaced path between the site and the high school grounds.

4. As discussed at the hearing, DOE standards to not prohibit groundwater within the lower, treatment portion, of the proposed wetpond. However the storage portion of the wetpond must be located above seasonal high groundwater to ensure that groundwater does not reduce the storage capacity of the pond. Therefore the applicant should be required to monitor “wet weather” groundwater elevations on this site and include the monitoring data in the final stormwater design. A condition of approval is warranted to that effect.

5. The applicant initially proposed to connect sanitary sewer within this site to the existing sanitary sewer line in NE Lockwood Creek Road. The existing sewer line connects to Pump Station #3, which is currently at capacity. The applicant will need to install new pumps and conduct other modifications to the pump station to accommodate sewage flow from this development. In the alternative, it may be feasible to extend a new gravity flow sewer line within Lockwood Creek Road that would bypass Pump Station #3. As noted in the Supplemental Staff Report, Section 5.3 of the City’s 2012 General Sewer Plan directs that new growth areas should be served by gravity sewers rather than pump stations. Therefore the applicant should be required to provide gravity flow sanitary sewer service to the site if technically feasible. A condition of approval is warranted to that effect.

6. The applicant is not required to modify the intersection of NE Highland Avenue and E 4th Street. The 2008 City of La Center Capital Facilities Plan (CFP) provides the minimum acceptable level of service for unsignalized two-way stop controlled intersections is LOS “E” with a v/c ratio of 0.95. Based on the applicant’s traffic analysis, this intersection will operate at LOS E with a volume to capacity (“v/c”) ratio of 0.53 with the additional vehicle traffic generated by the proposed development. Therefore this intersection will continue to operate at an acceptable level of service and no mitigation is required. The applicant will pay TIFs that the City can utilize to fund future improvements to this and other intersections in the City.

D. CONCLUSION

The examiner concludes that the applicant sustained the burden of proof that the proposed subdivision does or can comply with the applicable provisions of the La Center Municipal Code and Revised Code of Washington, provided it is subject to reasonable conditions of approval warranted to assure compliance in fact with those provisions.

E. DECISION

In recognition of the findings and conclusions contained herein, and incorporating the reports of affected agencies and exhibits received in this matter, the examiner hereby approves File No. 2014-006-SUB (Sunrise Terrace Subdivision) in general conformance with the applicant's preliminary plat, subject to the following conditions:

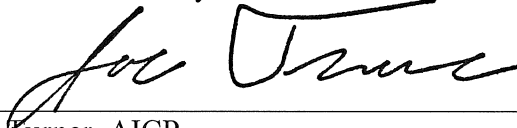
1. The applicant, at time of engineering approval, shall comply with all applicable City of La Center Engineering Standards for Construction, unless modified by the director (LCMC 12.10.040), all engineering recommendations contained in the October 12, 2015 Staff Report and applicable La Center land use regulations, goals and policies.
2. Pursuant to RCCW 27.53.060, it is unlawful to remove or alter any archaeological resource or site without having obtained a prior written permit from the Washington State Office of Archaeology and Historic Preservation. Upon any written discovery of potential or known archaeological resources at the subject site prior to or during construction, the developer, contractor, and/or any other parties involved in construction shall immediately cease all on-sit construction, shall act to protect the potential or known historical and cultural resources area from outside intrusion, and shall notify the City of La Center Community Development Department of said discovery within a maximum period of twenty-four hours from the time of discovery.
3. The applicant shall comply with all applicable SEPA mitigation measures described in the SEPA made by:
 - a. The Washington Department of Ecology, Southwest Regional Office (October 7, 2105) relating to wetlands, waste resources, water quality and water resources;

- b. The Cowlitz Indian Tribe (no date) relating to inadvertent discovery of archaeological resources; and
 - c. The Washington State Office of Archaeology and Historic Preservation (October 7, 2015) concurring that no additional archaeological work is necessary at this time and requiring notice of inadvertent discovery of archaeological resources.
4. The design and construction of storm drainage shall be in accordance with the LCMC and applicable city engineering standards for public works.
5. Site development earthwork for site grading and construction of sewer, storm drain, water, and street systems should occur during the dry weather season between May 1st and October 31st with planting and seeding erosion control measures completed by October 1st.
6. Construction shall not proceed without an approved erosion control plan. All erosion control measures shall be designed, approved, installed and maintained consistent with Chapter 18.320 LCMC and City Engineering Standards. Where these standards differ, the more stringent shall apply. All erosion control measures shall be in place prior to removal of vegetation or any construction activity and shall be maintained during all phases of construction.
7. Prior to site disturbance, the applicant shall consult with the City Public Works Director and Public Works Engineer to incorporate the design recommendations in Section 5.0 of the Geotechnical Site Investigation prepared by Columbia West Engineering dated June 26, 2015.
8. As-constructed drawing(s) will be provided in ‘*.dwg’ electronic format as well as Mylar and paper.
9. Construction plans shall identify staging areas for all equipment, contractors, deliveries, and supplies prior to construction plan approval.
10. Construction plans shall identify and show all utilities with trench and location details.
11. Prior to final plat approval, the developer shall identify the setbacks for all lots on the face of the final plat.
12. The driveways within the flagpole portion of the flag lots, lots 30 and 32, shall be improved with a 20-foot wide all-weather surface with an unobstructed vertical clearance of at least 13 feet six inches and marked and signed as a fire lane. LCMC 18.210.040(3).
13. The application for final plat approval must provide information regarding any proposed fencing, hedging, landscaping or solid waste, lighting, and noise impacts to the extent as regulated by Chapter 18.245.

14. New residential developments shall provide street or front yard trees at a minimum of 30-foot intervals near the street frontage of each lot. If planter strips are proposed between the sidewalk and curb, the applicant shall submit a road modification request describing how the proposed sidewalk and planter strip meets the “Criteria for Modification of Standards” per the City Engineering standards. Prior to final plat approval, the Developer shall provide the Public Works Director with a scaled plan showing the type, location, and planting method of street or front yard trees. A Street Tree bond shall be provided to the City guaranteeing the performance and maintenance of planted trees for two years.
15. Each dwelling unit shall be provided with two off-street parking spaces per Table 18.280.010(12).
16. Street lighting shall be installed consistent LCMC 12.10.190 and Clark Public Utility standards in effect at the time of final plat application.
17. The preliminary plat shall expire within five years of the date of preliminary plat approval if the date of preliminary plat approval is on or after January 1, 2015. LCMC 18.210.050(1) and RCW 58.17.140(3)(a).
18. The Final Plat shall include a note stating, “The City shall assess and charge the home-builder School, Park, Sewer and Traffic impact fees in effect at the time of building permit application for each dwelling.”
19. If technically feasible the developer shall provide sanitary sewer service to Sunrise Terrace heading westerly in/or adjacent to Lockwood Creek Road making connection to existing manhole #34 per the City’s sewer basin map. The applicant’s proposed pump station alternative may be allowed in lieu of the gravity connection only if the preferred gravity solution is not technically feasible. The City, as the owner and operator of the La Center sewer system, shall make the final determination as to whether the gravity sewer solution or the pump station solution is acceptable.
20. The applicant must submit additional information for the City to determine “wet weather” ground water elevations prior to final stormwater design. The additional information must be submitted in the Final Technical Report as required by LCMC 18.320. The applicant shall install a monitoring well during the winter to determine and verify the “wet weather” conditions necessary to design the proposed “live storage” pond area.
21. Prior to plat approval the developer shall provide the City with an analysis of the safety of the proposed pedestrian crossing connecting the sidewalks along the site’s NE Lockwood Creek Road frontage with the existing sidewalks on the south side of NE Lockwood Creek Road based on MUTCD procedures and advisories.
22. Prior to final occupancy approval of any home on this site the applicant shall install:

- a. A City approved crosswalk connecting the sidewalks along the site's NE Lockwood Creek Road frontage with the existing sidewalks on the south side of NE Lockwood Creek Road;
 - b. Streetlights along the site's NE Lockwood Creek Road frontage to adequately illuminate the crosswalk; and
 - c. Any additional lighting, signage, markings and/or other improvements warranted as a result of the MUTCD pedestrian safety analysis.
23. The applicant shall be responsible for maintenance of the stormwater facility for a minimum of 2-years after completion and acceptance of the subdivision by the City. The applicant may transfer ownership and maintenance responsibilities for the stormwater facility to a Home Owners Association ("HOA") established to maintain the facility after the two year period when occupancy permits have been issued for at least 50% of the housing units. When the HOA assumes responsibility of the facility, they will establish monetary funding of a reserve fund, for maintenance of the stormwater facility. An operations manual must be submitted for City review approval for the maintenance of the facility in all cases. Adequate bonding is required to guarantee maintenance of the facility for a period of two years following final plat. The minimum bond amount shall be 10% of the construction cost of the stormwater facility. Stormwater facilities must be located in a separate tract.

DATED this 23 day of November 2015.



Joe Turner, AICP
City of La Center Hearing Examiner