

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

In the Matter of the Application of)	No. PP 15-07/PLN-2015-04017
)	
JMS Construction, Inc.)	FINDINGS, CONCLUSIONS,
for Preliminary Plat Approval)	and DECISION
)	
<u>Cedar Village</u>)	

SUMMARY OF DECISION

A requested Preliminary Plat for the subdivision of 4.49 acres into 43 lots at 302 E 10th Avenue, Kennewick, Washington is approved with conditions as stated herein.

SUMMARY OF RECORD

Request

JMS Construction, Inc. (Applicant) requested approval of a preliminary plat for development of a subdivision on 4.49 acres into 43 lots. The lots will range in size from 2,604 square feet to 5,600 square feet. The proposed project is generally located at 302 E 10th Avenue, Parcel No. 1-0780-200-0004-000.¹

Hearing Date:

The Hearing Examiner of the City of Kennewick held an open record hearing on the application on March 14, 2016.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

Mr. Steve Donovan	---	City of Kennewick
Mr. Greg McCormick	---	City of Kennewick
Mr. John Deskins	---	City of Kennewick
Mr. James Sexton	---	Applicant
Mr. Kevin Barney	---	Applicant's representative

Exhibits admitted for the public record:

At the open record hearing the following exhibits were admitted:

1. Staff Report
2. Application
3. Notice of Public Hearing, 300-ft. mailing list and mailing affidavit
4. Vicinity Map
5. Preliminary Plat
6. SEPA Determination

¹ The West half of the Northwest quarter of the Northeast quarter of the Northwest quarter of Section 7 Township 8 North, Range 30 East of W.M., Benton County Washington, except the West 20 feet and except the South 20 feet thereof for road and also except that portion deeded to the City of Kennewick by instrument recorded on September 4, 1970 under Auditor's File No. 614494.

7. Building Department Memorandum, dated 1/05/16
8. Fire Department Memorandum, dated 1/07/16
9. Benton Clean Air Agency Letter, dated 1/08/16
10. Letter from Ken Klander, Benton PUD, Distribution Design Technician, dated 1/11/16
11. Letter from the State of Washington Department of Ecology, Gwen Clear, Environmental Review Coordinator, dated 1/14/16
12. Traffic Engineering Division Memorandum, dated 1/15/16
13. Letter from the Bonneville Power Administration, Joseph E. Cottrell II, Field Realty Specialist, dated 1/19/16
14. Engineering Division of Municipal Services Memorandum, dated 1/21/16
15. Plat map showing City of Kennewick GIS Department comments.
16. Memorandum from the Columbia Irrigation District.
17. Email from Greg Duffy, City of Kennewick Facilities & Grounds Supervisor, dated 2/04/16
18. Letter from Doug Carl, Kennewick School District Capital Projects Director, dated 2/11/16
19. Power Point hardcopy
20. Post-hearings comments from Applicant re: Engineering recommendations
21. City post hearing comments

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS

1. The Applicant requested approval of a Preliminary Plat (PP 15-07) for a subdivision on a 4.49 acre parcel at 302 E 10th Avenue, Kennewick, Washington. The proposed plat would be developed into 43 lots that would include 19 three bedroom units and 24 two bedroom units. Existing structures on site would be removed. A Determination of Completeness of the application was issued by the City on December 30, 2015. *Exhibit 1 pg. 2; Exhibit 5; Testimony of Mr. Donovan; Exhibit 1, pg. 2*
2. A portion of the subject property was annexed into the City in November 1949 (Ordinance 0568) and the other portion was annexed in June 1957 (Ordinance 0947). The property is zoned Residential Medium Density (RM) and has a Comprehensive Plan Land-Use Designation of Medium Density Residential *Exhibit 1, pg. 3; Testimony of Mr. Donovan.*
3. The properties surrounding the subject property include urban single family residential lots and manufactured home parks. The land use designations for the surrounding properties are High Density residential and Medium Density Residential. The property to the south is in the Urban Growth Area and under the jurisdiction of Benton County. Based on the testimony and evidence presented at the public hearing the proposed plat will be harmonious with the development of surrounding properties and the corresponding densities. *Testimony of Mr. Donovan; Exhibit 1, pg. 4.*

4. According to information in the plat map (Exhibit 5) the development will be a two phased process. The first phase is projected to include the north portion of the entire parcel. Access to the lots in phase 1 will be from the east off South Cedar Street. Phase 2 is shown on the plat map as being the southern portion of the site with access off E. 15th Avenue. Phase 2 does not have an exact development date, but the Applicant indicated that it would be soon after phase 1 is complete. The internal street of phase 2 will connect to the phase 1 street and form South Cedar Place Street. *Exhibit 5; Testimony of Mr. Deskins.*
5. The proposed plat is to be developed into 43 lots that include seven buildings with 28 townhome units and five buildings with 15 townhome units. The Kennewick minimum lot size standard for row and townhomes on RM zoned property is 1,800 square feet and the maximum density for is 13 units per acre. The average lot size of the proposed plat will be 3,188 square feet; the smallest proposed lot is 2,604 square feet and the largest lot is proposed to be 5,600 square feet. The proposed preliminary plat satisfies the Residential Development Standards contained in KMC 18.12.010(A.2). *Exhibit 1, page 3; Exhibit 5.*
6. All lots will have 18 feet sidewalks and utility easements along the right-of-way. Lots that abut 10th Ave. E and S. Date Street are projected to have a 10 foot utility easement. *Exhibit 5*
7. As part of the development water main and sanitary sewer line extensions that will serve the proposed subdivision are required to be constructed at the Applicant's or successor's expense. The plat's comprehensive water and sewer plans for the entire plat are to be submitted for approval to the City prior to phase 1 construction. The comprehensive plan may be submitted with the preliminary civil plan review. *Exhibit 14; Exhibit 1, pg 4*
8. There is an existing 12-inch water main adjacent to the south property line along E. 13th Avenue and a 6-inch water main on South Cedar Street from E. 11th to E.10th. The City's Engineering Division requires the Applicant to loop all water mains to avoid buildup of stagnant water and to minimize bacteria. *Exhibit 14, pg. 1*
9. An existing 8-inch sanitary sewer is located at the intersection of S. Cedar Street and E. 10th Ave. All sewer extensions that will serve the proposed plate are to be constructed to city standards at the expense of the Applicant. Exhibit 14 pg. 1. The sewers shall be installed consistent with a comprehensive plan submitted by the Applicant.
10. The Washington State Department of Ecology (DOE) submitted comments relating to water quality. The comments included that the plat must have a storm water pollution pan prepared and implemented for all permits. The plan must include means to prevent soil from being carried into surface water by storm water runoff. *Exhibit 11*
11. A comprehensive storm water plan must be approved the City for the entire plat prior to approval of phase 1. Residential subdivisions in Kennewick are required to be designed to retain and dispose of the calculated difference between a 25-year 24

hour event for the developed state and the 24-hour event for the natural pre-developed state. According to the recommendation of the Kennewick Engineering Division detention ponds with control outlets may be used only where it can be clearly demonstrated that infiltration, or retention, is not feasible per City of Kennewick Standard Specifications Section 5-9.02, *Exhibit 14, page 2; Exhibit 15*

12. The Bonneville Power Administration reviewed the proposed plat with its records and determined that it would not “directly impact BPA facilities in the area”. The agency had no objections approval of the plat. *Exhibit 13*
13. The Benton Public Utility District (PUD) submitted its comments for the development. The proposed plat will receive electrical services from the PUD, who have identified a number of required items that must be provided by the Applicant prior to the agency’s design process can start. *Exhibit 10*
14. No critical areas that have been identified on the site. *Testimony of Mr. Donovan; Exhibit 1, pg.4.*
15. The Benton Clean Air Agency did not object to the proposal but submitted comments regarding the proper procedure in demolishing buildings in Benton County. *Exhibit 9*
16. Pursuant to the Washington State Environmental Policy Act (SEPA (RCW 43.21C)) the City was designated as the lead agency for review of environmental impacts resulting from the proposed development. On February 9, 2016, the City issued mitigated determination of Nonsignificance (MDNS) for the project. No appeals were filed. *Exhibit 6; Testimony of Mr. Donovan.*
17. The Applicant and/or its successors are responsible for construction of public roads, sidewalks, streetlights, storm drainage and designate sidewalk and utility easements. These plat features are required to be in conformance with current City of Kennewick Standard Drawing 2-1 Sheet 1 and 2. It must include the widening of sidewalk by an additional 18 inches when the sidewalk adjoins a fence, a requirement of City of Kennewick detail 2-10 sheet 1 of 8. *Exhibit 1, pg.3. Exhibit 14, pg. 2*
18. The City of Kennewick Traffic Engineering Division submitted conditions for street designs. *Exhibit 12* Included in the recommendation was proposed condition 6 which read:

The City is changing our street standard and will require a 52’ right-of-way to install the sidewalks within the right-of-way and all 2’ behind the sidewalk. A 10’ utility easement will be required behind the right-of-way.
Exhibit 12

The City has not officially adopted the right-of-way standard advocated by the Engineering Division.

19. The Applicant was allowed an opportunity to submit post-hearing written comments regarding Engineering Division's condition 6. In its post-hearing comments the Applicant's representative questioned the City's authority to impose the increased right-of-way width standard because the Kennewick City Council has yet to establish the standard. According to the Applicant the City should not be allowed to impose the increased right-of-way standard until it is officially adopted by the City. *Exhibit 20.*
20. The School District submitted that it is capable to add students from the proposed plat to the boundary schools of Washington Elementary, Park Middle School and Kennewick High School. The schools will be able to handle the increased number of students from the plat. *Exhibit 18 Testimony of Mr. Donovan; Exhibit 1, pg. 4.* The three schools are within walking distance of the proposed plat. *Exhibit 18.*
21. As part of the City's preliminary plat review process a "Park Fee Determination Process" is required. Included in the information provided in the form are land values and density of living units that are used to calculate park mitigation fees. For the instant project it was determined that the Applicant must pay City calculated park fees of \$7,981.52. These fees are required to be paid to the Park Planning Zone 23_Scott prior to signing the final plat mylar. *Exhibit 1, pg.4; Exhibit 6, pg. 2*
22. The plat will be constructed to City of Kennewick Residential Design Standards and the development requirements as set forth in the Kennewick Municipal Code. Pursuant to the review of the plat application and supporting material, the Kennewick planning staff representative submitted that appropriate provisions have been made for the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, public sidewalks, utility easements and other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation areas, playgrounds, schools and school grounds, and the proposed subdivision has considered all other relevant facts and other planning features that assure safe walking conditions for students who walk to and from school. *Testimony of Mr. Donovan; Exhibit 1*
23. The proposed plat offers housing with different residential densities. It will exceed the City's minimum density target of 3 units per acre as averaged throughout the urban area. The property's 4.49 acre will apply RM density standards. The proposal will be consistent with the City's Comprehensive RESIDENTIAL GOAL 3. *Exhibit 1, pgs. 4 and 5*
24. Townhomes are a permitted use in RM zoning districts. The subject property can be served by City utilities and services with city water and sewer utilities available in E 10th Avenue. The proposal will be consistent with the City's Comprehensive RESIDENTIAL GOAL 4. *Exhibit 1, pgs. 4 and 5.*
25. In order to satisfy Residential Goal 4 of the Comprehensive Plan, the proposed preliminary plat and future homes are subject to the Residential Design Standards *Exhibit 1, pgs. 4 and 5.*

26. The proposed plat includes required improvements for infrastructure and open space. Adequate provisions have been determined for park fees to offset the impacts for recreational impacts. Schools in the area can handle the increase in students generated by the development. Utilities, including drainage, water and sewer are available to the site. Pedestrian and aesthetic considerations in the new development are called out on the plat map submitted for approval. The proposed plat provides provisions for parks, schools, drainage, transit, water, sanitation, infrastructure, pedestrian, and aesthetic considerations in new residential development. Residential Policy 5 of the City's Comprehensive Plan is satisfied. *Exhibit 1 pg. 5*
27. Transportation impact fees in Kennewick for multi-family development are required. The City impact fee per unit of the proposed development was determined to be \$558.00 per unit. Applying this fee to each of the 43 proposed units the City calculated the transportation impact fee for the proposed development as being \$23,994.00 dollars. *Exhibit 11 pg. 2.*
28. Pursuant to RCW 58.17.310 the City provided notice to the Columbia Irrigation District. The District submitted comments setting forth its requirements for a review of the proposed plat. *Exhibit 16.* No objections or comments were submitted by the Applicant on the information included in Exhibit 16.
29. The Kennewick Fire Department submitted that a fire hydrant between proposed lots 29 and 30 is required. In addition, the Department submitted required standards for turnarounds on dead end streets over 150 feet and the need for a hammerhead or bulb with a minimum turning radius of 24 feet inside and 44 feet outside. *Exhibit 8*

CONCLUSIONS

Jurisdiction:

The Kennewick Hearing Examiner is granted jurisdiction to hear and decide preliminary plat applications pursuant to KMC 4.02.080 (1)(b) ii.

Criteria for Review:

The Hearing Examiner may approve an application for a preliminary plat only if the requirements of KMC Chapter 17.10 are satisfied. Included in these requirements is KMC 17.10.080: Provisions for Public Health, Safety, and Welfare which are:

- (1) The Hearing Examiner will inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. All plats will be reviewed to determine their conformance with the Comprehensive Plan, comprehensive water plan, utilities plan, and Comprehensive Park and Recreation Plan, and anything else necessary to assist in determining if the plat should be approved. Appropriate provisions must be made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, public sidewalks, utility easements and other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation areas, playgrounds, schools and school grounds, and shall consider all other relevant facts and other planning features that assure safe walking conditions for students who only walk to and from school. All relevant facts will be considered to determine whether the

public interest will be served by the subdivision and dedication. If it is determined that the proposed plat makes such appropriate provisions, then the Hearing Examiner must approve the proposed plat. Dedication of land to any public body may be required as a condition of subdivision approval. The Hearing Examiner will not, as a condition to the approval of any plat, require a release from damages to be procured from other property owners.

RCW 58.17.033

Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance.

- (1) A proposed division of land, as defined in RCW 58.17.020, 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 for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.
- (2) The requirements for a fully completed application shall be defined by local ordinance.
- (3) The limitations imposed by this section shall not restrict conditions imposed under Chapter 43.21C RCW.

Conclusions based on Findings

1. The Applicant requested approval of a Preliminary Plat (PP 15-07) for a subdivision on a 4.49 acre parcel. All existing structures will be removed from the site. The proposed plat would be developed into 43 lots that would include seven buildings with 28 units and five buildings with 3 units. The site is located at 302 E. 10th Avenue, Kennewick, Washington. The Kennewick minimum lot size standard for row and townhomes for RM zoning property is 1,800 square feet and the maximum density for is 13 units per acre. The average lot size of the proposed plat is 3,188 square feet; the smallest proposed lot is 2,604 square feet and the largest lot is proposed to be 5,600 square feet. The proposed preliminary plat satisfies the Residential Development Standards contained in KMC 18.12.010(A.2). The lots, which range in size from 2,880 square feet to 8,662 square feet, would have access from W. 10th Avenue and S. Columbia Center Boulevard. *Findings of Fact No. 1, 4-9, 11-13, 17, 18 and 20-24*
2. Appropriate provisions have been made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, public sidewalks, utility easements and other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation areas, playgrounds, schools and school grounds, and the proposed subdivision has considered all other relevant facts and other planning features that assure safe walking conditions for students who walk to and from school. . *Findings of Fact No. 1, 4-9, 11-13, 17, 18 and 20-24*
3. The proposed plat has been reviewed by the City and other agencies and has been determined to be in conformance with the City of Kennewick Comprehensive Plan

Findings of Fact Nos. 23-27; comprehensive water plan Findings of Fact Nos. 7-11 and Comprehensive Park and Recreation Plan Finding of Fact No. 21, and all relevant requirements to the approval of the plat.

4. Pursuant to the Washington State Environmental Policy Act (SEPA) the City was designated as the lead agency for review of environmental impacts resulting from the proposed development. On February 9, 2016, the City issued mitigated determination of Nonsignificance (MDNS) for the project. No appeals were filed. No critical areas are located on site. *Findings of Fact Nos. 14 and 16*
5. Various state and local agencies submitted comments and recommendations. The recommendations address impacts that will be created with the development of the plat. The recommended conditions are specific to the development and mitigate impacts. *Findings of Fact Nos 10, 12, 13, 15, 18, 20, 21, and 28*
6. The proposed plat includes required improvements for infrastructure and open space. Adequate provisions have been determined for park fees to offset the impacts for recreational impacts. Schools in the area can handle the increase in students generated by the development. Utilities, including drainage, water and sewer are available to the site. Pedestrian and aesthetic considerations in the new development are called out on the plat map submitted for approval. The proposed plat provides provisions for parks, schools, drainage, transit, water, sanitation, infrastructure, pedestrian, and aesthetic considerations in new residential development. *Finding No. 26 and other references within the Findings of Fact.*
7. Based on the standard in effect at the time of the complete application the road right-of-way cannot be 52 feet in width. RCW 58.17.033 (1) requires that the City must impose development standards in effect at the time of the submittal of the complete application. The application was complete and accepted by the City on December 30, 2015. On that date the right-of-way standards, which were set in a land use control standard, allowed a 48 foot right-of-way. It is noted that even on the date of the hearing, March 14, 2016, an ordinance requiring a 52 foot minimum right-of-way had not been adopted by the City of Kennewick. The Traffic Engineering Division can only require width standards that have been enacted by the City Council.

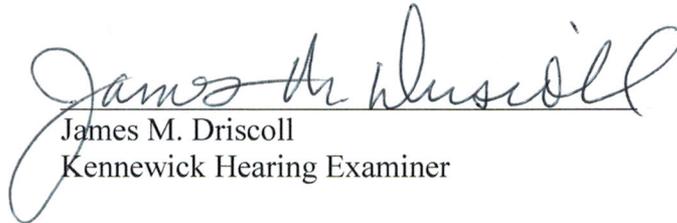
DECISION

Based on the administrative record developed at the public hearing approval is granted for a The preliminary plat is granted for the development of a subdivision on 4.49 acres into 43 lots. The lots, which will range in size from 2,604 square feet to 5,600 square feet in size are generally located at 302 E 10th Avenue, Kennewick, Washington. Approval is granted subject to The Following conditions:

1. The Applicant and/or his successors shall comply with all City of Kennewick regulatory controls, policies and codes, including all Single-family and Multi-Family Residential Design Standards.
2. All required fees imposed by the City, including those addressed in this document and all other plat review documents, shall be paid prior to the approval of the final plat.
3. With the exception of condition 6, the Applicant and/or its successors must comply with Traffic Engineer memorandum dated January 16, 2016. (Exhibit 12 of the administrative record of the plat review) The required right-of-way width shall be consistent with the standard in effect on the date of complete application, December 30, 2015.
4. The Applicant and/or its successor's development of the plat must comply with the Fire Department Memorandum, dated January 7, 2016. (Exhibit 8 of the administrative record of the plat review).
5. The Applicant and/or its successors must comply with the Engineering Division of Municipal Services Memorandum, dated January 21, 2016. (Exhibit 15 of the administrative record of the plat review)
6. Development of the plat shall be in conformance with the plat drawing, (Exhibit 5 of the administrative record of the plat review.)
7. The Preliminary Plat (PP 15-07) expires 5 years from the approval date. The City may grant an extension, but any extension application must be applied for before the approved preliminary plat expires.
8. The Applicant and/or its successors shall address the proposed lots as labeled by the City of Kennewick GIS Department. (Exhibit 15 of the administrative record of the plat review.)
9. The Applicant and/or its successors must comply with the Public Works memorandum dated June 29, 2015 (Exhibit 10 of the administrative record of the plat review).
10. The Applicant and/or its successors must comply with the Building Department Memorandum, dated January 5, 2016. (Exhibit 7 of the administrative record of the plat review).
11. The Applicant and/or its successors must provide dust control method(s) such as hydroseeding for all areas of the site that are disturbed.
12. In lieu of dedication of land for park purposes, park fees are required to be paid in the amount of **\$7,981.52** for impacts to Park Planning Zone 3E-Civic. Park fees shall be collected prior to signing the final plat mylar.

13. Any conditions issued in the February 9, 2016, MDNS shall be satisfied prior to final plat approval.
14. The Benton Clean Air Agency submitted comments regarding the proper procedure in demolishing buildings in Benton County shall be adhered to.
15. The Applicant and/or its successor must comply with Columbia Irrigation District's comments. (Exhibit 16 of the administrative record of the plat review).
16. The Applicant and/or its successor must comply with Benton PUD comments. (Exhibit 10 of the administrative record of the plat review).

DATED THIS 1 day of April, 2016


James M. Driscoll
Kennewick Hearing Examiner