

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

In the Matter of the Application of)
Tri-Cities Development, LLC (Matt Smith))
for Preliminary Plat Approval)
)
(Apple Valley Phase 5 _____)

No. **FILE NO: PP 19-03/PLN-2019-
03067**
FINDINGS, CONCLUSIONS,
and DECISION

SUMMARY OF DECISION

A preliminary plat to subdivide 24.56 acres into 52 lots and five tracts on Low Density Residential property located at 3426 S. Young, Kennewick, Washington, is granted subject to the conditions as set forth herein.

SUMMARY OF RECORD

Request

Tri-Cities Development, LLC (Matt Smith) (Applicant) requested approval of a preliminary plat to subdivide 24.56 acres into 52 lots and five tracts on Low Density Residential property located at 3426 S. Young, Kennewick, Washington.¹

Hearing Date

The Hearing Examiner of the City of Kennewick held an open record hearing on the application on December 9, 2019.

Testimony

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

Steve Donovan- City of Kennewick
Wes Romine -City of Kennewick
Matt Smith-Applicant

Exhibits admitted for the public record

1. Staff Report
2. Application
3. Notice of Public Hearing, 300-ft. mailing list and mailing affidavit
4. Preliminary Plat
- 4.(a) Revised Preliminary Map
5. Mitigated Determination of Non-Significance Adoption, dated 11/07/2019
6. Soil Sampling Report: The Parks, Planned Residential Development, Kennewick, Benton County, Washington, dated April 2016
7. Geotechnical Engineering Services – Critical Areas, Apple Valley Phase 5, dated 9/18/2019
8. Trip Generation Letter and Distribution Letter, Apple Valley Subdivision Phase 5, dated 9/27/2019
9. Memorandum – Fire Department Memorandum, dated 10/30/2019

¹ The Kennewick parcel numbers are 1-1789-200-0001-012. The lengthy legal description of the property is set forth in detail in the Staff Report, *Exhibit 1*.

10. Letter from the Bonneville Power Administration, dated 10/30/2019
11. Email from Chad Brooks, Benton PUD, dated 11/01/2019
12. Letter from Kennewick Irrigation District, dated 11/05/2019
13. Memorandum – Public Works Department, dated 11/07/2019
14. Memorandum – Traffic Engineering Division, dated 11/19/2019
15. Letter from State of Washington Department of Ecology, dated 11/20/2019
16. Letter from Kennewick School District, dated 11/25/2019
17. Power Point Hard Copy
18. Agenda Cancellation of 1/13/20 Hearing Examiner meeting
- 18(a). Email from Applicant to City dated 1/8/20
19. Memo from Traffic Engineer Joe Seet dated 1/9/20
20. Addendum Memo from Planner Steve Donovan
21. Applicant Letter Addendum from Appellant’s attorney, Kenneth Katzaroff
22. Request for Clarification issued by Hearing Examiner, dated January 21, 2020
23. Response from Applicant’s attorney to Request for Clarification, dated January 24, 2020

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 to develop property located at 3426 S Young, Kennewick, Washington. *Exhibit 1, Staff Report, pg. 1; Exhibit 2.* The development will be for the subdivision of the property into 52 lots and 5 tracts on Low Density Residential property. *Exhibit 1, Staff Report, pg.4.* The project is located west of S. Sherman and south of Bob Olson Parkway at 3180 S. Van Buren. The project will be Phase 5 of a nine-phase development of a 553 lot Apple Valley Subdivision. *Exhibit 1 pg.2*
2. The subject parcel was annexed into the City of Kennewick on April 18, 2006 and at that time was zoned with a Residential Low Density (RL) zoning designation (Ord. 5142). The property was included in the Southridge Sub-area of Kennewick. *Testimony of Mr. Donovan; Exhibit 1. Pg. 5.*
3. The adjacent properties have single-family residential development and vacant property. The land use designations for the surrounding properties are Medium Density Residential and Low Density Residential. The Kennewick Planning Department determined that the proposed Preliminary Plat will be harmonious with the surrounding properties. *Testimony of Mr. Donovan; Exhibit 1, pg. 5; Exhibit 4 (a), sheet 1.*
4. The current zoning of the site is RL and the Comprehensive Plan Land-Use designation is Low Density Residential. *Exhibit 1, pg. 4.* The density for the proposed development is 3 units per acre. In an RL zone, the minimum lot size allowed is 7,500 square feet². The proposed plat satisfies this standard with a lot average of 9,006 square feet. The minimum residential lot area in the proposed plat is 7,909 square feet and the maximum residential lot

² Residential, Low Density (RL) zoning districts have no maximum density requirement.

area of 11,172 square feet. *Exhibit 1, pg. 5; Exhibit 4(a)*. Initially, the plat did not include lot 52 at the western third of the entire parcel, but the revised plat included it even though it will not be developed at this time. The lot is projected to be the location of a future phase of Apple Valley development. *Testimony of Mr. Smith*

5. Tract A will be a 15-foot-wide connection to the property to the west of the site; Tract B will be used for utility purposes; Tract C will be right-of-way dedication; Tracts D and E will be waterline and pedestrian tracts in the center of the site. *Exhibit 4, sheet 1*.
6. After reviewing the submittals of the Applicant and the Residential Development Standards as set forth in KMC 18.12.010(A.2), the Kennewick Planning Department concluded that the proposal is consistent and satisfies said development standards. *Testimony of Mr. Donovan; Exhibit 1, pg. 5*.
7. 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 March 14, 2016 the City issued a mitigated determination of Nonsignificance (MDNS) for a Planned Residential Development for 563 lot subdivision. The instant project is part of the PRD and was considered during the SEPA review. *Testimony of Mr. Donovan; Exhibit 5*. No appeal of the MDNS was filed. *Testimony of Mr. Donovan*
8. Trip generation and distribution analysis was prepared for the development of the site by PBS Engineering. The Applicant and the City are in agreement that the requirements of the analysis address traffic impacts and must be included in conditions of approval. In a memo dated November 19, 2019, the Assistant Traffic Engineer of the City presented comments and requirements for development of streets in the plat and the surrounding streets and roads. According to the City at the December 9th, 2019 hearing, the requirements were consistent with City standards. *Testimony of Mr. Donovan; Exhibit 8; Exhibit 14* Included in the requirements are provisions for traffic impact fees of \$1,311 per unit of development. *Exhibit 8, pg. 2*
9. The preliminary plan map, submitted as part of the staff report, includes access points to the subdivision that were described as being the existing roadways that were developed in Phases 1 and 2 of Apple Valley subdivisions. The access points are controlled with traffic circles on S. Wilson and S. Van Buren and a yield sign on S Taft. *Exhibit 4; Exhibit 8, pg.1*
10. The proposed plat must include construction of public roads, sidewalks, streetlights, storm drainage, and designate sidewalk and utility easements that are in conformance with the latest City of Kennewick (COK) Standard Specifications and details. *Exhibit 14*
11. Full improvements for residential development within the subdivision are required per *KMC 5.56.270*. The improvements must be constructed per Kennewick Standard Detail 2-1, sheet 2 of 4. While residential design standards allow curb tight sidewalks as an option to separated sidewalks, the sidewalk at driveway curb cuts must satisfy ADA standards. A separate permit for driveways, sidewalks, wheelchair ramps and utility extensions for water, sewer,

storm drainage, lights, fire hydrants etc. is required from the Department of Public Works prior to construction. *Testimony of Mr. Donovan*

12. The City's traffic engineer determined that the proposed project meets concurrency for transportation. Based on information contained in a traffic generation report and the records of the City of Kennewick, there will be some traffic impacts to streets in the area. As part of the mitigation of these impacts Bob Olson Parkway is projected to be completed by the City and there will be a development contribution from the Applicant for said improvements. The contribution will be a traffic impact fee of approximately \$938 per dwelling unit consistent with the City's traffic mitigation ordinance (*Ord. 5596*). The \$938 per dwelling unit traffic impact fee may be subject to a cost of living increase adjustment in 2018.³ *Exhibit 9; Exhibit 1, pgs. 3 and 5; Testimony of Mr. Romine; Testimony of Mr. Mattox; Testimony of Mr. Seet*
13. A road at the southern boundary of the plat, identified as Ridgeline Drive, was depicted on the preliminary plat map as extending from the west to the east boundaries of the plat and providing a connection to the Ridgeline Improvement Area. As a condition of the City's recommendation, Ridgeline Drive was required to be constructed and extended with the development of the Plat. *Exhibit 4; Testimony of Mr. Donovan*
14. At the public hearing, the City presented a revised preliminary plat map that was prepared and submitted by the Applicant. The revised plat map depicted the Applicant's intent to develop the subdivision without the construction and extension of Ridgeline Drive. *Exhibit 4a*. The Applicant testified that the construction of the street cannot be done because a residence owned by a third party is located at the eastern end of the proposed Drive and would have to be acquired by the City for a roundabout that would be required at that point. Either option would require acquisition of property to develop the road. The existing residence at the east end of the proposed extension is not part of the property of the proposed plat. *Testimony of Mr. Smith*.
15. At the December 9th, 2020 hearing, the City requested additional time to review the new plat proposal. At that hearing, it was agreed by the Hearing Examiner, the City and the Applicant that the hearing would be continued until January 13th, 2020, and the only issue of the continued hearing would be Ridgeline Drive. However, subsequent to the December 9th 2019 hearing, the parties and the Hearing Examiner agreed that the parties would not have to appear on January 13th, 2020, but could provide written exhibits setting forth each position. *Exhibit 8(a)*. Exhibits were prepared and have been made part of the record. *Exhibits 18-21*.
16. In a November 19th, 2019 City of Kennewick Traffic Engineering Division memo, the City required that the Applicant "{R}eserve a right-of-way along the parcel's southerly parcel line abutting Ridgeline Drive to be dedicated for future dedication to the City as right-of-way. The right-of-way tract shall be 41 feet wide, beginning from most easterly parcel limit line and end ending at most westerly parcel limit line. The north half street of Ridgeline Drive

³ Traffic mitigation fees can be paid at the time of building permit issuance or deferred until occupancy with a recorded covenant of payment obligation form

shall be designed and constructed to road subgrade along the entire frontage of Apple Valley Phase 5. All of the half-street improvements along Ridgeline Drive, including pavement, curb, gutter, sidewalk and street lighting, per City of Kennewick Standard Drawing No. 2-4, shall be bonded per KMC 17.10.260.” *Exhibit 14, pg. 3.*

17. At the December 9th, 2019 public hearing, the Applicant submitted a revised plat map that depicted changes to the plat that did not include provisions of an extension of Ridgeline Drive on the southern border of the plat. The Applicant argued that the proposed extended street would not be a benefit to the Applicant and would require the purchase of a third party’s property to construct some of the street improvements, include a roundabout. *Exhibit 4a; Testimony of Mr. Smith.* Upon the submittal of this evidence it was agreed that the issue relating to the extension of Ridgeline Drive would be discussed at a continued hearing scheduled for January 13, 2020, which was not held because of a different procedure adopted for this case. (see: Finding 15)
18. Subsequent to the December 9th, 2019, hearing, the City submitted a January 9th, 2020, memo that modified the original recommended Ridgeline right-of-way extension condition of the November 19th, 2019 memo. In the January 9th, 2020, memo, the City recommended a reduction of the required amount of right-of-way reservation from 41 feet to “...26 feet wide with an additional adjacent 15-foot wide sidewalk and utilities easement, beginning from the most easterly parcel limit line and ending at the most westerly parcel limit line”. *Exhibit 19, pg., 3.* The memo also included a sentence that “This Traffic Engineering Comment letter dated January 9, 2020 supersedes all prior Traffic Engineering Comment letters” *Exhibit, 19, pg. 1*
19. The amended memo also includes language that “All of the half-street improvements along Ridgeline Drive, including pavement, curb, gutter, sidewalk, storm drain, water, and street lighting, per City of Kennewick Standard Drawing No. 2-4, shall be bonded per KMC 17.10.260. The Developer may choose to construct portions of these improvements, such as grading, storm drain and water, and bond the remaining improvements. Ridgeline Drive, west of Sherman Street, is to be constructed as a two-lane road, except at approaches to all intersections, where it is to be constructed as a three-lane road”. *Exhibit 19, pg.3.* It was also stated in the amended memo that “The City will accept a bond for the entire construction of Ridgeline Drive roadway and utilities, or for that portion Ridgeline Drive roadway and utilities not completed by the Developer. All proposed internal streets of the development must be constructed as required, and may not be bonded. Required sidewalks and landscaping along internal streets may still be bonded for.” *Exhibit 19*
20. In a letter of opposition to the City’s recommendation on improvements and extension to Ridgeview Drive, the Applicant’s attorney stated that the City has made no reasonable effort or plan to connect the proposed Ridgeline Drive to the Ridgeline Improvement Area to the east of the site nor to any other portion of the City’s transportation system. *Exhibit 21, pg. 1.* It was further stated that there is no connection (by way of Ridgeline) to the east without condemnation of the residence immediately to the east of the eastern point of the proposed

extension.⁴ *Exhibit 21, pg. 1.* The attorney further stated that the City has provided no reasonable basis or legitimate public interest to require the Applicant to make improvements to the Ridgeline Improvement Area. *Exhibit 21, pg. 2*

21. An existing 8-inch water main has previously been stubbed to S. Wilson and S. Van Buren. In addition, a water line in S. Taft is stubbed south of W. 33rd Ave.⁵ *Exhibit 13, pg. 1; Testimony of Mr. Donovan.* The Kennewick City Department of Public Works submitted that, as required by KMC 14.10.030, the Applicant must provide a water comprehensive plan for review and approval before submitting construction drawings for review. The Department also submitted that potable water is not available for irrigation. *Exhibit 13, pgs. 1 and 2*
22. The subject property is within Kennewick Irrigation District (KID) boundaries and is classified as irrigable land with 22.30 irrigable acres. KID reviewed the proposal and in a letter to the City Planning Department dated November 5, 2019 submitted comments and proposed conditions for the proposal. Among the requirements listed by KID for the development of the site was “The Applicant is required to install an irrigation system that conforms to the most recent edition of the KID Standard Specifications...” *Exhibit 12, pg. 2 #3.* Additional KID requirements were set forth in the KID correspondence *Exhibit 12, pgs. 1-5,* and the Applicant did not voice any objection to them.
23. Using a Hydraulic Analysis dated June 15th, 2017, as its source, the City reviewed the plat’s water plan and determined it to be consistent with City codes and standards. *Testimony of Mr. Donovan; Testimony of Mr. Romine.* A significant area of the proposed plat site is in a water zone 4, which requires a system loop on nearby Sherman and Ridgeline streets. The loop was completed by the City of Kennewick (drawing number E3145. b. Zone 4), but will require an extension of a 12-inch waterline at the southern boundary of the proposed plat. Apple Valley Phase 5, which is part of the aforementioned analysis, must have an 8-inch pipe line be upsized to 12-inch pipe line at an existing stub off Sherman. All homes that are developed in water zone 5 with home finished floors at or above 805 feet are required to be served from Zone 5. *Exhibit 13, pg.1.* All water mains must be looped to avoid buildup of stagnant water. *Exhibit 13, pg. 2*
24. The Department of Pubic Works, in a November 7, 2019 memo, submitted that any waterline outside the City’s right of way must include a 15-foot waterline easement centered over the new water main and five feet beyond fire hydrant runs. The easement document must be recorded with the Benton County Auditor, and include the property owner(s) signature. Dedication of the easement is required prior to acceptance of the utility permit. *Exhibit 13, pg. 2*
25. Existing 8-inch sanitary sewer mains have been installed with the Apple Valley Phases 1 and 2 plats and they have been connected to phases Apple Valley 3 and 4. Prior to submitting construction drawings as required by KMC 14.22.040.13, the Applicant must provide a

⁴ The property could be purchased before condemnation proceedings are initiated.

⁵ Installed pursuant to Record Drawing F3011

sanitary sewer comprehensive plan for review, including sanitary sewer main sizes. The Applicant shall install sanitary sewer mains on City right of way. *Exhibit 12, pg. 2*

26. Because the site is designated as an Aquifer Recharge Area the Applicant must adhere and comply to the requirements of KMC Chapter 18.60 – Critical Areas – Critical Aquifer Recharge Areas. *Exhibit 1, pg. 5*
27. In Kennewick, residential storm drainage systems of approved subdivisions must be dedicated to the public and they must be designed in a manner that retains and disposes 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. Detention ponds (control outlet) may be used only where it can be clearly demonstrated that infiltration, or retention, are not feasible per City of Kennewick Standard Specifications Section 5-9.02, see *Exhibit 13; Exhibit 1, pg. 5*
28. No specific data was submitted regarding requirements for recreational benefits to the City, and in particular to the City's Park needs. However, the City in its staff report submitted that the park fee for the development of the site was determined as part of the review for the issuance of the Mitigated Determination of Non-Significance for PRD 15-01 and PP 15-06, of which Apple Valley Phase 5 is included. The total park fee for the entire Apple Valley Development is \$46,635.58 for 553 lots. The portion of this fee for Apple Valley Phase 5 is \$84.33 per lot multiplied by 52 lots for a total of \$4,385.26. *Exhibit 1, pg. 5*. The Applicant testified that it had no objection to this fee. *Testimony of Mr. Smith*
29. The site on which Apple Valley Phase 5 will be developed has slopes greater than 15% and erosion hazard areas. In preparing its application, the Applicant had a soil sampling report conducted on the site. *Exhibit 6*. The soils sampling was implemented after a representative of the Washington State Department of Ecology (DOE) recommended that the soils be sampled and analyzed for lead and arsenic. In addition, it was recommended that organochlorine pesticides on site be identified. *Exhibit 6 pg. 5*. According to the Applicant the DOE was concerned of the pesticides over lands that may have previously been used as orchards. *Testimony of Mr. Smith*. The soils were sampled at 13 points and the detection of lead and heptachlor epoxides was below Model Toxics Control Act (MTCA) regulatory levels established for treatment. Further, there was no indication that soils on the site contained residual concentration of pesticides, arsenic or lead that are above MTCA regulatory levels. *Exhibit 6, pg. 12*. The information was submitted to the DOE who issued no further comments. *Testimony of Mr. Smith*.
30. The soils tests referred to in the previous finding were submitted as part of the Applicant's Geotechnical Report. *Exhibit 7*. The City submitted that the Applicant must adhere to the Geotechnical Report during the development of Apple Valley, Phase 5. *Exhibit 1, page 5*.
31. On October 30, 2019 the Kennewick Fire Department submitted the following:
 - 1) Fire hydrants required to be installed at intersections, and approved locations as required by FD
 - 2) Any streets with gates installed will have minimum of 14' width for each gate swing.
 - 3) Gates will have Knox Switch installed.

Exhibit 9

32. The Kennewick School District, which will serve the residences of the developed subdivision has the capacity to add students at all levels at three schools. The Capital Projects Director of the Kennewick School district identified the schools that will serve the subdivision as the Sagecrest Elementary School, Chinook Middle School, and Southridge High School. *Exhibit 1, pg. 4; Exhibit 16*. Students living in the proposed subdivision are in a walking zone for Sagecrest Elementary School and Southridge High School; Students attending Chinook Middle School will be ride school buses. *Exhibit 16*
33. The proposal was reviewed by the Bonneville Power Administration (BPA). In an October 30, 2019, letter to the Kennewick Planning Department, the BPA stated they had researched its records and had no objection to the proposed plat. *Exhibit 10*
34. The proposed Preliminary Plat is consistent with the Kennewick Comprehensive Plan Land Use, RESIDENTIAL GOAL 1. The subject property is zoned similar to much of the surrounding property and the proposed project will comply with development standards for RL zoned properties. *Testimony of Mr. Donovan*
35. The proposed plat is required to be consistent with the City's Comprehensive Plant section RESIDENTIAL GOAL 1: The land on which Apple Valley, Phase 5 will be developed has a similar zoning designation as the surrounding properties and complies with development standards for Residential Low Density (RL) zoning designation. *Testimony of Mr. Donavan Exhibit 1*. The development will also comply with RESIDENTIAL GOAL 1 because it will provide attractive, walkable, and well-designed residential neighborhoods, with differing densities and compatibility with neighboring areas. *Exhibit 1, pg. 6*
36. The proposed plat is required to be consistent with the City's Comprehensive Plant section RESIDENTIAL 1, GOAL 1, POLICY 1 because it will maintain residential zoning regulations that offer a similar graduation in building scale and bulk. *Exhibit 1, pg. 6*.
37. The design is consistent with the City's Comprehensive Plan-RESIDENTIAL GOAL and it will promote a variety of residential densities with a minimum target of 3 units per acre as averaged throughout the urban area. *Testimony of Mr. Donovan*
38. The proposed plat is required to be consistent with the City's Comprehensive Plant section RESIDENTIAL 1, GOAL 1, because it will encourage adequate pedestrian connections with nearby neighborhood and transit facilities. *Exhibit 1, pg. 6*
39. The proposed Apple Valley, Phase 5 plat is consistent with the Comprehensive Plan Land Use and complies with development standards for Medium Density Residential zoning district. Similar housing types and lot layouts are in the in the general area of the proposed development. *Exhibit 1, pg. 6*
40. The Apple Valley Phase 5 plat must be consistent with the City's Comprehensive Plan RESIDENTIAL GOAL 1 of providing appropriate public facilities supporting residential

areas. The submitted plans indicate the goal is satisfied. *Testimony of Mr. Donovan; Exhibit 1, pg. 6*

41. The Apple Valley Phase 5 plat will be consistent with the City's Comprehensive Plan Residential Goal 1 Policy to ensure provision of parks, schools, drainage, transit, water, sanitation, infrastructure and pedestrian in new residential developments. This goal will be part of the conditions of approval and will be satisfied before final plat approval is granted. *Testimony of Mr. Donovan; Exhibit 1, pg. 6*
42. The Apple Valley Phase 5 plat is required to be consistent with the City's Comprehensive Plan Residential Goal 2, Policy 2, which encourages irrigation service throughout residential areas, when available, to support and maintain healthy landscaping, *Exhibit 1, pg. 6*. The Department of Public Works submitted that potable water is not available for irrigation for the property. *Exhibit 13, pg. 2, #10*. All irrigation water must come from KID. *Exhibit 12*.
43. The Apple Valley Phase 5 plat is required to be consistent with the City's Comprehensive Plan Residential Goal 2, Policy 3, which requires that the City deny residential developments if concurrency is not met for transportation, water, and sewer, or appropriately condition. *Exhibit 1, pg. 6*. As noted throughout these findings the proposal provides appropriate public facilities supporting residential areas.
44. The Apple Valley Phase 5 plat is required to be consistent with the City's Comprehensive Plan Residential Goal 2, Policy 3. Apple Valley, Phase 5 Plat will be constructed with infrastructure improvements that will satisfy City standards as established by city codes and the comprehensive plan. *Exhibit 1, pg. 6; Testimony of Mr. Donovan and Mr. Romine*.
45. 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 and aesthetic considerations in new residential developments. *Exhibit 1; Exhibit 4a; Exhibit 12; Testimony of Mr. Donovan*

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 of a 24.56-acre parcel of land located at 3426 S Young, Kennewick, Washington. The parcel of land to be developed is located west of S. Sherman Street and south of Bob Olson Parkway at 3180 S. Van Buren. The instant project will be Phase 5 of a nine-phase development that is identified as the 553 lot Apple Valley Subdivision. Apple Valley, Phase 5, will contain 52 lots and five tracts of land. Single family residences will be developed on the lots 1-51 and the tracts will be used for other purposes. Lot 52 on the western portion of the plat will be developed at a later time. *Findings of Fact Nos 1 and 5.*
2. The subject parcel was annexed into the City of Kennewick in April of 2006 and was zoned with an RL zoning designation. RL remains the current zoning designation. *Findings of Fact Nos. 2 and 4.* The density for the proposed development area is 3 units per acre.

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. 24-34*; water requirements of the City of Kennewick, *Finding of Fact Nos. 21-24*; sanitary sewer service requirements, *Finding of Fact No. 25*; storm sewer service requirements *Findings of Fact Nos. 27*; Comprehensive Park and Recreation Plan *Finding of Fact No. 28*; and all relevant requirements to the approval of the plat.
4. 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. *Findings of Fact Nos. 5-33*
5. 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 March 6, 2017, the City issued mitigated determination of Nonsignificance (MDNS) for the project. On October 18, 2017 the City adopted the environmental document previously issued. No appeals were filed. No critical areas are located on site. *Finding of Fact No. 7*
6. Various state and local agencies submitted comments and recommendations. The recommendations addressed impacts that could be created with the development of the plat. The recommended conditions are specific to the development and would mitigate the impacts. *Findings of Fact Nos. 21-23; 31-33.*
7. The Applicant has presented, and the City has reviewed, a wetland report that includes a best available science review of the wetland the property. The Applicant complied with all State and City requirements in developing the report. *Findings Nos.29-30*
8. 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 consideration 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. *Findings of Fact No. 45*
9. The proposed conditions of the City relating to the extension of Ridgeline Drive from the west boundary to the east boundary on the southern boundary of the entire parcel does not satisfy the nexus requirements of *Dolan v. City of Tigard*, 512 [U.S. 374](#) (1994) that there be an essential nexus" between the permit conditions and legitimate state interest".

At issue is the whether the proposed conditions for Ridgeline Drive are due to the projected impact of the proposed development. From the submitted evidence and testimony there is no connection between the extension of Ridgeline Drive to the impacts caused from the development of Apple Valley Phase 5. *Finding No. 20*

10. *Burton vs. Clark County*, 91 Wn. App. 505 (1998) and other Washington appellate cases address allowed and disallowed conditions and exactions for subdivision approval in Washington. The *Burton* Court establishes there is a four-step process in Washington to review conditions and requirements for subdivision approval. They are:

First, when the government conditions a land-use permit, it must identify a public problem or problems that the condition is designed to address. If the government can identify only a private problem, or no problem at all, the government lacks a “legitimate state interest” or “legitimate public purpose[]” in regulating the project.....

Second, the government must show that the development for which a permit is sought will create or exacerbate the identified public problem. This is the same as to say that there must be a relationship (“nexus”) between the development and the identified public problem;.....

Third, the government must show that its proposed condition or exaction (which in plain terms is just the government's proposed solution to the identified public problem) tends to solve, or at least to alleviate, the identified public problem.....

Fourth, the government must show that its proposed solution to the identified public problem is “roughly proportional” to that part of the problem that is created or exacerbated by the landowner's development.

The *Burton* decision is applicable to the instant situation. From the evidence presented there is no stated public problem other than the City’s intent to establish a street connection to a parcel other that is not part of the proposed plat and thus there is no satisfaction of the first element of the *Burton* test. Even more persuasive is the fact that the City has not shown that the extension of Ridgeline Drive is roughly proportional to any problem that has been created or exacerbated by the Applicant. Element four of *Burton* is not satisfied.

11. The Washington Court of Appeals in *Luxembourg vs. Snohomish County*, 76 Wn. App 502, review denied, 127 Wn. 2d 1005 (1995) addressed a similar issue to that of the instant case. Snohomish County denied a subdivision request because the Applicant had not provided a stub road to a landlocked parcel adjacent to the Applicant’s land. The Court stated:

Since the dedication requirement would not remedy any problem caused by the Luxembourg subdivision, the County does not satisfy Nollan's "essential nexus" requirement merely by invoking the legitimate purposes of the subdivision statute. See Nollan, at 837. Requiring Luxembourg to dedicate property for a stub road extension amounts to an unconstitutional taking in this situation.

The Luxembourg case is similar to the Apple Valley, Phase 5 development in that the need for the extension of Ridgeline Drive is not the result of any development request of the Applicant.

12. All conditions relating to the extension and development of Ridgeline Drive are not supported by Washington law and can not be applied as a requirement of Apple Valley, Phase 5.

DECISION

Based on the administrative record developed at the public hearing and the Findings of Facts and Conclusions as set forth above, preliminary plat approval to subdivide 24.56 acres into 52 lots and five tracts on Low Density Residential property located at 3426 S. Young, Kennewick, Washington, is granted subject to the conditions as set below.:

1. The Applicant, or its successors, shall comply with all City of Kennewick regulatory controls, policies and codes, including the Single-family Residential Design Standards and Residential Low Density (RL) zoning designation.
2. The Applicant, or its successors, must submit a landscape plan for approval of all common areas, open spaces and rights-of-way that are not that in their natural state. The plan shall be prepared by a licensed landscape architect or licensed landscape installer drawn to a legible scale, and it must contain the number, location, and species of trees, sizes of plant material, and ground cover. The plan must be submitted prior to final plat approval. All common area landscaping and residential trees identified in the plan must be installed or bonded for prior to final plat approval.
3. The Applicant, or its successors, must pay all fees required by the City prior to the approval of the final plat.
4. All development of the plat shall be in conformance with the plat drawings submitted as Exhibit 4a at the public hearing.
5. The Applicant, or its successors, must comply with all applicable requirements of Kennewick Municipal Code Chapters 18.60 – Critical Areas – Critical Aquifer Recharge Areas and 18.62 – Critical Areas – Geologically Hazardous Areas.
6. If, during construction, there is disruption or damage to an existing water, sewer or storm drainage system the Applicant, its agents, or successors shall be responsible for repair of the damaged system.
7. The Applicant shall comply with all requirement and comments of the Kennewick Fire Department as set forth in the October 20, 2019 memo (Exhibit 9).
8. Because the City has submitted that the requirements and comments as set in the October 20, 2017- Traffic Engineering Division memorandum comment. (Exhibit 12) have been superseded by the Traffic Engineering Division addendum memorandum of January 9, 2020 addendum memorandum, the Applicant shall comply with all requirement and comments as set forth) in the January 9, addendum memorandum, subject to the exception as stated herein. Civil plans signing, striping and lighting plan sheets must be included, as well as, the lighting plan that must include details on the conduits, j-boxes meter locations etc. The Applicant shall not be required to develop an extension of Ridgeline Drive to the eastern boundary of the plat.

9. The Applicant, its agents, or successors, shall work with the City's Public Works Department in the striping of streets and any other safety issues resulting from the development of the plat.
10. In lieu of dedication of park land, park fees must be paid in the amount of **4,385.26** for impacts to Park Planning Zone 6W-Southridge. Park fees will be collected prior to signing the final plat mylar.
11. The Applicant, its agents, or successors, must provide dust control method(s), including but not limited to, hydro seeding for all areas of the site that are disturbed.
12. All on-site development shall adhere to the recommendations of the Geotechnical Engineering Report, dated September 18, 2019 and any of its amendments.
13. The Applicant, its agents, or successors, must comply with the email submitted by the Benton Public Utility District. (Exhibit 11)
14. The Applicant, its agents, or successors, shall comply with conditions of approval imposed during the review by the Kennewick Irrigation District.
15. Grading activity must be inspected by a qualified geotechnical engineer. At completion of grading, the work must be certified and include information that the cut and fill of the site has been done consistent with the recommendations of the Geotechnical Investigation/Geohazards Assessment Report prepared by PBS/HDJ Design Group (Exhibit 7).
16. If there is a substantial lapse of time between the date of the geotechnical report (October 2, 2019) and the start of work at the site, and if conditions have changed due to natural causes or construction operations at or adjacent to the site, or if the basic project scheme is significantly modified from that assumed, the geotechnical study shall be reopened to determine the applicability or recommendations of the report. If necessary, the geotechnical report may be amended, and the Applicant, its agents, or successors, shall be subject to any amendments to the report.
17. The Applicant shall comply with all requirement and comments as set forth in the October 17, 2017 (*Exhibit 12*) Public Works Department memorandum and comments.
18. The Applicant, its agents, or successors, must construct residential streets per City of Kennewick Standard Detail 2-1, sheet 2 of 4. The Single-Family Residential Design Standards allow an option for curb tight sidewalks which may be used
19. Geo-Tec reports are required for each lot at the time of building permit submittal. With prior approval a blanket geological report may be accepted if all applicable codes are met regarding soil bearing capacity.
20. The Applicant, its agents, or successors, shall consult with the Kennewick School District about the District's position to ensure pedestrian safety for students who will use the unimproved 700 feet stretch on Sherman. This may include the placement of barriers along the city right-of-way. Any changes proposed must be approved by the City of Kennewick.

21. The Applicant, its agents, or successors, shall execute a written agreement to the satisfaction of the City Attorney which will allow the City to make arrangements for maintenance of any common areas, open spaces, private roads, and common landscape areas should the Homeowner's Association fail or refuse to maintain these areas.
22. The Preliminary Plat (PP 19-03) 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.
23. Prior to final plat approval, the Applicant, its agents, or successors shall execute a maintenance agreement for the future maintenance of the proposed tracts. The maintenance agreement shall be to the satisfaction of the City Attorney.
24. The Applicant, its agents, or successors shall comply with the Memorandum – Public Works Department. (Exhibit 13)
25. The Applicant, its agents, or successors shall comply with Traffic Engineering Division comments, with the exception of extending Ridgeline Drive.

DATED THIS 28th day of January, 2020

James M. Driscoll
Kennewick Hearing Examiner