

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

In the Matter of the Application of) **FILE NO: PVA 21-02/PLN-2021-01055**
Nick Wright, on behalf of Bauder Young)
Properties LLC, for Modification of an) Findings of Fact, Conclusions and
approved Preliminary Plat) Decision)

SUMMARY OF AMENDED DECISION

A modification to an approved Preliminary Plat with a Planned Development Permit (PP12-01/PLN 2012-00011 and PDP 12 02-02/PLN-2012-03203 is granted. The amendment allows elimination of 8 connectors between blocks in the previously approved Southcliffe Plat. The amendment is subject to the conditions as listed herein.

INTRODUCTION

On October 27th, 2012, the City of Kennewick Hearing Examiner approved a preliminary plat commonly referred to as Southcliffe. As part of the approved plat, there was a Planned Development Permit (PDP) that allowed relief from certain development standards in the City of Kennewick. The approval allowed the property located generally at the intersection of Hildebrand Boulevard and S. Sherman Street¹ in Kennewick to be developed on three parcels of land approximately 387 acres with single family lots that were to be developed in 21 phases. The approval was subject to conditions, including conditions 1 and 18 which required:

1. The Applicant shall comply with City of Kennewick regulatory controls, policies and codes, including the Single-family Residential Design Standards with the exception of the deviations allowed pursuant to the Planned Development Permit.
18. The Applicant or its successors shall comply with the Public Works memorandum dated October 23, 2012 (Exhibit A-10).

On March 29, 2021, Mr. Nick Wright, on behalf of Bauder Young Properties LLC, (Applicant) requested a plat alteration, which would relieve conformance with KMC 17.20.010(3)(b) as part of the development of the plat. The alteration, which would eliminate mid-block pedestrian connections in certain blocks of the Southcliffe Plat, would be considered an acceptable deviation of the allowed development standards required with a Planned Development Permit. Because the approved plat included a PDP, the requested alteration was allowed to be requested and considered.

Hearing

A hearing on the application was held before the Hearing Examiner of the City of Kennewick on June 14th, 2021. The hearing was held online and all parties were given notice of the hearing and its venue. The City of Kennewick (City) also gave instructions on how to participate at the on-line hearings.

¹ An extensive legal description of the Plat is set forth in the Staff Report which is Exhibit 1 to this administrative record.

Witnesses

The following presented testimony at the public hearing:

- Mr. Steve Donovan, City of Kennewick
- Mr. Greg McCormick, City of Kennewick
- Mr. Joe Seet, City of Kennewick
- Mr. Nick Wright, Applicant's representative.

Exhibits

The following exhibits were presented and admitted into evidence at the hearing:

1. Staff Report
2. Application
3. Supporting information from Applicant.
4. Notice of Public Hearing, 300-ft. mailing list and mailing affidavit
5. Approved original PP 12-01/PDP 12-02 Preliminary Plat.
6. PP 12-01/PDP 12-02 Hearing Examiner Decision
7. Preliminary Plat showing pedestrian connection proposed for removal.
8. Determination of Non-Significance ED 21-09/PLN-2021-01076
9. Traffic Engineering Division plat comments.
10. Email from Shanna Everson, Benton PUD, dated 4/06/2021
11. Kennewick Irrigation District comments, dated 4/15/2021
12. Exhibit 10 of the administrative record of Permit No PP12/01 and PDP 12-02
13. Power Point hard copy

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

FINDINGS OF FACT

1. On October 27th, 2012, the City of Kennewick Hearing Examiner approved a preliminary plat commonly referred to as "Southcliffe". The approval allowed the property, located generally at the intersection of Hildebrand Boulevard and S. Sherman Street in Kennewick to be developed on three parcels of land approximately 387 acres with single family lots that were to be developed in 21 phases. In addition to plat approval, a PDP was approved that granted relief from certain development codes and other standards of the City of Kennewick. Approval of the plat was subject to conditions, including condition 1, which required the Applicant comply with the City's regulatory controls, policies and codes. *Testimony of Mr. Donovan; Exhibit 6, pg. 13*
2. On March 29, 2012, Mr. Nick Wright, on behalf of the Applicant, requested a plat alteration, which would relieve the Applicant of some additional plat design requirements as set forth in KMC 17.20.010(3)(b). The alteration would eliminate mid-block pedestrian connections in portion of the Southcliffe Plat.² In total there would be eight connections that would be removed. *Exhibit 9.*

² The applicable language of KMC 17.10.110: - Procedure for Approved Preliminary Plat Alteration. 1) Upon receipt of a completed application requesting an alteration of an approved preliminary plat, the City will notify all owners of the property within the division as provided in KMC 17.10.050. The Planning Director shall have the

3. Included in the evidence submitted as part of the administrative plat review of PP12-01/PLN 2012-00011 and PDP 12 02-02/PLN-2012-03203 was a Kennewick Public Works memorandum dated October 23, 2012. The memo noted that certain design requirements for pedestrian connections between blocks within the plat were required for as part of the approval of the Plat and PRD. The requirements are mandatory for development of subdivisions in Kennewick. *Exhibit 12 (Exhibit 10 of the original approval hearing)*. Because the approved plat included the PDP, the instant requested alteration was allowed to be considered as an allowed deviation.
4. The block connections were not specifically identified in an October 23rd, 2012, Public Works memo relating to the approval of the plat, but they are required pursuant to KMC 17.20.010(3)(b). However, the October 27th, 2012 decision did include condition 1 which required the Applicant to satisfy and comply with *all codes* relating to subdivisions. Among the many KMC code requirements at the time, the Applicant or its successors, were required to comply with is KMC 17.20.010(3)(b) which includes design and Construction Standards for approved plats in Kennewick. The key section for the ordinance reads:
 - (3).Blocks
 - (b) Clearly defined and identifiable pedestrian connections shall be provided within blocks when the length of a block is more than 600 feet. Alternative designs that provide pedestrian connectivity within the subdivision may be permitted by the Plat Administrator.
5. The plat alteration now being requested by the Applicant would eliminate eight mid-block connections that are depicted in Exhibit 7. If approved, the City would consider the connection removals as part of a deviation allowed with a Planned Development Permit. Such alterations are allowed if the Applicant can demonstrate the alternative plan is a benefit for the community. *Testimony of Mr. Donovan; Exhibit 7; KMC 17.20.010(3)(b); Exhibit 1, pg. 4.*
6. In designing the mid-block connections, the Applicant encountered slopes with grades that exceed 15%. This significant of a grade would create prohibitive and dangerous situations for residents during use of the connection walkways. *Testimony of Mr. Donovan; Testimony of Mr. Seet; Testimony of Mr. Wright.* In emphasizing this dangerous potential, the project engineer cited connections would have a constant slope of 19.15% grade between lots 8 and 9 and a 15.15% grade between lots 12 and 13. According to the engineer these grades would be "...steep and unsafe, unfit for wheelchair access..." *Exhibit 3, pg. 1.* He submitted that the adjacent lots of these two examples would require "up to 20 feet tall retaining walls" that would create safety hazard for homeowners. He also commented that the connections might not be useable during the winter and would not be handicapped accessible. *Testimony of Mr. Wright. Exhibit 3, pgs. 1 and 3.*

authority to determine whether a proposed alteration constitutes a minor or major alteration. The Planning Director shall have the authority to approve a minor alteration. T

7. The City agreed that the slopes of the required pedestrian connections would not only be unsafe as currently required, but would most likely not be used to a great extent by the residents. *Testimony of Mr. Donovan: Exhibit 1; Staff Report, pg. 4.*
8. To offset the loss of the pedestrian connection open space tracts, the Applicant proposed an 1800-foot meandering path and green space along W 21st Avenue. The meandering pathway could also extend beyond the east and west ends of the Applicant's property if negotiations with Kennewick Irrigation District (KID) are successful. *Exhibit 1, pg. 3.* KID submitted information to the City during the original plat review and the City presented said information in its staff report. *Exhibit 11.* The elimination of the connections will not impact KID's operations or uses and could result in benefits to the City, KID and the Applicant.
9. The alteration and amendment satisfy some of the requirements of KMC 17.10.110: - Procedure for Approved Preliminary Plat Alteration. The alteration does not decrease the aggregate area of open space within the proposed subdivision; it does not increase the number of lots within the subdivision; and no access points identified on the preliminary plat have been reduced, increased or significantly altered. In addition, the alteration will not result or cause the subdivision to be inconsistent with the Findings, Conclusions and Decision of the Hearing Examiner, October 27th, 2012. *Exhibit 1; Exhibit 6; Testimony of Mr. Donovan.* However, the alteration is contrary to the language of KMC 17.20.010(3)(b) because of the mandate for the connections. Because it would result in a change in the block connections regulations, the request is considered a major alteration. *Testimony of Mr. Donovan*
10. Included in the original approval of PP12-01/PLN 2012-00011 and PDP 12 02-02/PLN-2012-03203 were Findings of Fact that set forth the appropriate provisions and requirements for the approved development. Provisions were made for the public health, safety, and general welfare. In addition, 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 pedestrian safety of students were considered at that review. The Findings were based on the testimony and evidence submitted at the public hearing. No access points identified on the preliminary plat have been reduced, increased or significantly altered. A review of those provisions has been made by the Kennewick Planning Department and it has been determined that the appropriate provisions required by the original approval will still be provided as necessary for future phased subdivisions of the amended PRD. *Testimony of Mr. Donovan; Exhibit 1, Staff Report.*
11. In the original approval of PP12-01/PLN 2012-00011 and PDP 12 02-02/PLN-2012-03203 review was made of the proposal with the Goals and Policies of the Kennewick Comprehensive Plan. Additional Goals and Policies were considered in previous amendments and alterations reviews. The instant request does not change or diminish any of these Findings. *Exhibit 6.*

12. The request was subject to review of environmental impacts that were reviewed pursuant to SEPA. On April 20th 2012 the City issued a Determination of Non-Significance. No appeals were timely filed of this determination. *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.

KMC 17.10.100: - Application for Approved Preliminary Plat Alteration.

- (1) When any person desires the alteration of an approved preliminary plat, or portion thereof, an application must be filed with the City on a form supplied by it. The application must include the signatures of a majority of the owners of the lots, tracts, parcels, sites or divisions in the division or portion to be altered and include a list of all owners within the division.
- (2) If the division is subject to restrictive covenants, which were filed at the time of the approval of the division and the alteration would result in the violation of a covenant, the application must be signed by all parties subject to the covenants.

KMC 17.10.110: - Procedure for Approved Preliminary Plat Alteration.

(1) Upon receipt of a completed application requesting an alteration of an approved preliminary plat, the City will notify all owners of the property within the division as provided in KMC 17.10.050. The Planning Director shall have the authority to determine whether a proposed alteration constitutes a minor or major alteration. The Planning Director shall have the authority to approve a minor alteration. The Planning Director shall determine an alteration is minor if the criteria listed in (a) through (f) below are met and issue a written decision on minor amendments that contain the following findings:

- (a) Does not decrease the aggregate area of open space within the proposed subdivision; and
- (b) Does not increase the number of lots within the subdivision beyond the number approved in the preliminary plat;
and
- (c) Does not result in violation of adopted standards or regulations; and
- (d) Access points identified on the preliminary plat are not reduced, increased or significantly altered; and
- (e) Does not result or cause the subdivision to be inconsistent with the findings, conclusions or decision of
Hearing Examiner; and
- (f) May be granted if there are no proposed changes to the Hearing Examiner's conditions of approval.

The Planning Director may include conditions as part of an approval to ensure conformance with the above criteria.

(2) A proposed alteration that does not meet the above criteria shall be considered a major alteration and shall be processed as a new and separate application. The Hearing Examiner will conduct a public hearing and determine the public use and interest in the proposed major alteration and may deny or approve the application.

(3) If any land within the alteration is part of an assessment district, any outstanding assessments must be equitably divided and levied against the remaining lots, parcels or tracts, or be levied equitably on the lots resulting from the alteration.

(4) If any land within the alteration contains a dedication to the general use of persons residing within the division, such land may be altered or divided equitably between the adjacent properties.

KMC 17.20.0109(3)(b)³

(3).Blocks

- :
- (b) Clearly defined and identifiable pedestrian connections shall be provided within blocks when the length of a block is more than 600 feet. Alternative designs that provide pedestrian connectivity within the subdivision may be permitted by the Plat Administrator.

Conclusions based on Findings

³. KMC17.20.010 are the design standards for plats in City of Kennewick

1. On October 27th, 2012, the City of Kennewick Hearing Examiner approved a preliminary plat commonly referred to as “Southcliffe”. The approval allowed the property, located generally at the intersection of Hildebrand Boulevard and S. Sherman Street in Kennewick to be developed on three parcels of land approximately 387 acres with single family lots that were to be developed in 21 phases. In addition to plat approval, a PDP was approved that granted relief from certain development codes and other standards of the City of Kennewick. Approval of the plat was subject to conditions, including condition 1, which required the Applicant comply with the City’s regulatory controls, policies and codes. On March 29, 2012, Mr. Nick Wright, on behalf of the Applicant, requested a plat alteration, which would relieve the Applicant of some additional plat design requirements as set forth in KMC 17.20.010(3)(b). The alteration would eliminate mid-block pedestrian connections in portion of the Southcliffe Plat.⁴ In total there would be eight connections that would be removed. As part of benefits to the public and KID, the Applicant is proposing a meandering trail throughout the plat. The new trail is a new proposal since the original plat and planned development permits were issued. *Findings of Facts Nos. 1, 2 and 8*

2. The alteration and amendment satisfy the provisions and requirements of KMC 17.10.110: - Procedure for Approved Preliminary Plat Alteration. The alteration:
 - a) Does not decrease the aggregate area of open space within the proposed subdivision. *Finding of Fact No. 9*
 - b) Does not increase the number of lots within the subdivision beyond the number approved in the preliminary plat. *Finding of Fact No.9*
 - c) No access points identified on the preliminary plat have been reduced, increased or significantly altered. *Finding of Fact No.9*
 - d) Does not result or cause the subdivision to be inconsistent with the Findings, Conclusions and Decision of the Hearing Examiner of October 27th, 2012. *Finding of Fact No. 9*

3. The proposed alteration would involve change of development standards as set forth in KMC 17.20.010(3)(b, which require pedestrian connections on blocks that exceed a threshold distance of 600 feet. However, the Applicant has shown, and the City agrees, that the eight connections identified in Exhibit 7 would not be inherently safe for pedestrian use and would not be a benefit to pedestrian traffic. The Applicant has presented a reasonable option of a meandering trail throughout the plat that will benefit the Public, City and KID.

DECISION

Based on the testimony and evidence submitted at a public hearing, a modification to an approved Preliminary Plat with a Planned Development Permit (PP12-01/PLN 2012-00011 and PDP 12 02-02/PLN-2012-03203 is granted. The amendment allows

⁴ The applicable language of KMC 17.10.110: - Procedure for Approved Preliminary Plat Alteration. 1) Upon receipt of a completed application requesting an alteration of an approved preliminary plat, the City will notify all owners of the property within the division as provided in KMC 17.10.050. The Planning Director shall have the authority to determine whether a proposed alteration constitutes a minor or major alteration. The Planning Director shall have the authority to approve a minor alteration. T

elimination of 8 connectors between blocks in the previously approved Southcliffe Plat. The amendment is subject to the conditions as listed herein. Approval is granted subject to the following conditions:

1. The Applicant, and or its successors, must complete all of the final Plat approval process for the remaining phases of the approved preliminary plat.
2. With the exception of the relief for the connections, as granted herein, the Applicant must comply with the Conditions of Approval as issued for PP 12-01 and PDP 12-02 as stated in the October 27th, 2012 Decision.
3. The Applicant, and or its successors, must provide marked mid -block crossing markings on all streets on which a connection has been removed as a requirement. This condition is specifically addressed in Exhibit 9 to this proceeding.
4. The site has erosion hazards areas and slopes that exceed 15% grades. Any development of the site remains subject to the provisions and requirements of the Critical Area Report for PP 12-01/PDP 12-02.

Dated this 29th day of June, 2021.

James M. Driscoll
City of Kennewick Hearing Examiner