

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

In the Matter of the Application)	FILE NO: PP 21-03 / PLN-2021-
)	02726
for Preliminary Plat Approval of)	
DDB, LLC)	<u>REVISED FINDINGS,</u>
)	<u>CONCLUSIONS and DECISION</u>

On October 25, 2021, a Decision supported by Findings of Facts and Conclusions was issued by the Hearing Examiner of the City of Kennewick. Upon further review of the Decision document by the Examiner, it is apparent that some Findings and Conclusions are either misplaced or misdated. In order to correct these deficiencies, the Examiner hereby withdraws the October 25, 2021 Decision and Findings and issues these REVISED FINDINGS, CONCLUSIONS and DECISION dated October 28, 2021. The Revised Decision is the official Decision in this matter. This action of the Examiner is made pursuant to Rules of the Kennewick Hearing Examiner, section 11.4

SUMMARY OF DECISION

Based on the administrative record developed at the public hearing, and the facts and conclusions as set forth herein, approval of the Washington Meadows preliminary plat for the subdivision of 4.2 acres into 18 lots is granted. Approval is granted subject to the conditions stated below.

SUMMARY OF RECORD

Request

DDB LLC of West Richland, Washington (Applicant) requested approval of a preliminary plat to subdivide 4.2 acres into 18 lots. The property is commonly described as 2109 S Washington Street in Kennewick, Washington¹.

Hearing Date:

The Hearing Examiner of the City of Kennewick held an open record hearing on the application on October 11, 2021. The hearing was held on-line with ZOOM communication. All parties and the public were notified of the date and time of the hearing and were given instructions on how to sign into the hearings.

Testimony:

¹ The southwest quarter of Government Lot 3, Section 7, Township 8 North, Range 30 East, W.M., Records of Benton County, Washington. Except the north 85 feet of the west 256.20 feet thereof and except the south 298.30 feet thereof, and also except the west 30 feet thereof conveyed to Benton County for road by instrument recorded under Auditor's File No. 383171.

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

- Matt Halitsky-Kennewick Planning Department
- Anthony Maui-Kennewick Planning Director
- Darrell Bussell-Applicant
- Christy Batayola, PE-Applicant's representative
- Michelle Dellinger
- Jack Barger-Adjacent property owner
- Laurie Barger-Adjacent property owner.

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. Preliminary Plat
5. Draft Grading Plan 7/27/2021
6. Harms Engineering Utility Plan and Engineering Profile 8/24/2021
7. Memorandum – Public Works Department 8/16/2021
8. Traffic Engineering Division comments 8/17/2021
9. CTUIR comments 8/12/2021
10. Columbia Irrigation District comments 8/13/2021
11. Department of Ecology comments 8/16/2021
12. Ziplly comments 8/17/2021
13. Bonneville Power Administration comments 8/19/2021
14. Benton Public Utility District comments 8/20/2021
15. Kennewick School District comments 10/1/2021
16. Revised Plat Map
17. 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 Conclusions:

FINDINGS

1. The requested preliminary plat approval is for the subdivision of 4.2 acres into 18 lots on property commonly described as 2109 S. Washington Street in Kennewick, Washington. The subject property, currently developed with a single-family home and an accessory structure, is zoned Residential Low-Density (RL) by the City. It is the intent of the Applicant to develop the property to RL standards. The existing residence and accessory structure will be removed from the site. *Exhibit 1, Pgs. 1-2; Testimony of Mr. Halitsky* A proposed preliminary plat map was submitted with the application. *Exhibit 4.*
2. The City of Kennewick annexed the site on December 1st, 2009. At the time of annexation the property was zoned Agricultural (Ordinance 5282). On November 18th, 2018, the City adopted Ordinance 5761, which established an RS area-wide rezone, and included the subject

property. On April 23rd, 2021, the City Council rezoned the property from RS to RL (Ordinance 5909), the current zoning. *Exhibit 1, Pg. 3*. The site has a Comprehensive Plan Land-Use Designation of Low Density Residential. *Exhibit 1, Pg.4*.

3. The minimum lot area size standard for RL zoned property is 7,500 square feet: There is no maximum lot area standard in Kennewick for RL lots. The maximum residential lot area for the proposed plat is 10,534 square feet. The average area of a lot within the plat is 7,985 square feet. The proposed preliminary plat satisfies the Residential Development Standards set forth in *KMC 18.12.010(A.2)*. The proposed plat will be subject to the Residential Design Standards, Single-Family. *Exhibit 1, Pg. 3*
4. 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. The City determined the proposed plat is exempt from a SEPA review because of the limited number of lots in the plat. *Exhibit 9, Testimony of Mr. Halitsky*
5. Properties to the north and south of the subject property are zoned Residential, Suburban. To the west of the site, across S. Washington Street is the Washington Elementary School, which is zoned Open Space (OS). The neighborhoods to the north and south of the school are zoned Residential, Medium (RM). To the east of the proposed site is Benton County property, that is subject to County jurisdiction. *Exhibit 1, Pg. 4. Testimony of Mr. Halitsky*. The Kennewick Planning Department submitted that "...the proposed Preliminary Plat is consistent with the existing mix of residential neighborhoods within the area and is congruous with the existing uses on the adjacent properties.". *Exhibit 1, pg. 4; Testimony of Mr. Halitsky*
6. City of Kennewick's Single-Family Residential Design Standards apply to the proposed project. *Residential Development Standards (KMC 18.12.010 A.2)*. These standards are required to be satisfied by the Applicant and its successors. *Testimony of Mr. Halitsky; Exhibit 1, Pg. 3*. The City's representative testified that the proposed plat appear to satisfy said Standards. *Testimony of Mr. Halitsky*
7. According to the City there are no critical areas that have been mapped on site. *Exhibit 1, Pg. 4; Testimony of Mr. Halitsky*.
8. On August 24th, 2021 the Applicant's engineer submitted responses to the City's representative about utility plans and other issues. Many of these concerns were addressed in the staff report or exhibits submitted at the hearing. The one issue that was not addressed in the staff report is whether the fire trucks can turn around at the cul-d-sac within the plat. A condition will be stated to address this issue. *Exhibit 6*
9. City storm water standards for residential subdivisions require designs 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. Detention ponds (control outlet) may be used only if it can be clearly demonstrated that infiltration, or retention, are not feasible per City of Kennewick

Standard Specifications. Prior to Final Plat approval the Applicant must submit detailed civil engineering drawings for review and approval to the City's Public Works department. The submittal must include a storm water plan that satisfies City standards. *Testimony of Mr. Halitsky*. If the Applicant intends to develop an underground infiltration, it must be demonstrated that the 100-year design storm can be retained on site. *Exhibit 7, #12*

10. Storm water design, construction and post construction must meet the requirements of KMC Section 14.28.045 and COK Standard Specification 5-8. *Exhibit 7, #11*
11. The Applicant must provide water services for each proposed lot. All water lines are to be consistent with City standards and requirements. A 16-inch water line in the right-of-way of S. Washington Street is available to the site. In addition, there are three 1-inch line in the right-of-way that are available. As part of Kennewick's development standards, the Applicant must loop the water mains to avoid buildup of stagnant water and to minimize bacteria regrowth. *Exhibit 1, Pg. 3; Exhibit 7, # 3-6*
12. Each residential lot of the plat must have a sewer service line stubbed to the lot line. There is an existing 12-inch sanitary sewer main that has been installed in the Washington Street right-of-way. In addition, there are three existing 4-inch sewer service lines that from property lines. *Exhibit 7, #7 and 8.*
13. The site fronts Washington Street, from which ingress and egress is provided to the plat. An internal road will extend in a west to east direction with a cul-de-sac bulb extending in a northerly direction. All lots will have their access from the internal roads. *Exhibit 4; Testimony of Mr. Bussell* No vehicular access will be directly off Washington St. *Exhibit 8, pg. 2.*
14. There will be curbs and sidewalks on the internal streets of the plat. There will also be 9-foot public sidewalk, utility and irrigation easements along the frontages on the east side of S. Washington Street. *Exhibit 9, Pg. 1*
15. There will be an 18-foot public sidewalk and utility and irrigation easement around the proposed cul-de-sac at the bulb. Sidewalks will be constructed throughout the entire plat. *Exhibit 8, Pg. 1; Testimony of Mr. Halitsky*
16. While the west to east internal road in the plat will not carry traffic beyond the eastern border of the property, it will be extended to the borderline. Sidewalks and a utility easement will also be extended to the eastern border. Lots 10 and 11 will be served with these utilities and sidewalks. *Exhibit 8, Pg. 1; Testimony of Ms. Batayola; Exhibit 3*
17. The Kennewick Traffic Engineering Division submitted that the proposed cul-de-sac does not appear to satisfy the "operational intent of the City standard cul-de-sac". The Department requested that the Applicant provide an auto-turn analysis for the cul-de-sac layout. *Exhibit 8, Pg. 1*
18. Pursuant to the Transportation Impact Fee (TIF) established by the City, the plat is designated as being in District 3. In District 3 areas the TIF is \$1,043/ per lot. The Cited estimated TISs for 17 lots, excluding the lot on which the existing residence is located. The estimated TIF for the preliminary plat is \$16,688.00. *Exhibit 8, Pg. 1*

19. The subject property is within the Kennewick School District (KSD). KSD has the capacity to add students to the high school (Kennewick High School), middle school (Horse Heaven Hills) and elementary school (Washington) that will serve the site. Students will be bussed to Kennewick high school, and Horse Heaven Hills. Safe pedestrian sidewalks are available for the Washington students. *Exhibit 15* The Applicant has not discussed bus pickup locations for the high school and middle school students. *Testimony of Mr. Bussell*
20. The proposed development is in Service Area 2. Pursuant to KMC 3.90, the Park Impact Fee for Service Area 2 is \$760.00 per Single-Family Unit. The impact fee is due and payable prior issuing the certificate of occupancy by the City. Park impact fees will be assessed at building permit and are required to be paid prior to issuance of a certificate of occupancy. *Testimony of Mr. Halitsky*
21. Ziplly Fiber submitted in a letter to the Planning staff, that the company has an “aerial section” near the entrance on the power poles. No specific details or requests were set forth in the correspondence. *Exhibit 12*.
22. The Benton PUD will provide power to the site. In an August 20th, 2021 email to the City, the PUD stated that it will require a minimum 10-foot easement on the east side of proposed lot 11. The PUD also stated that the Applicant must provide the PUD with CAD file so the lots can be entered on the PUD’s Map. *Exhibit 14*
23. The US Department of Energy, through the Bonneville Power, submitted that the proposal will not impact BPA facilities that are 246 feet north of the subject property. The Department had no objections to the proposal. *Exhibit 13*.
24. The Washington Department of Ecology (DOE) submitted that the proposal is located on property that was used as orchards. When lead arsenate was applied as a pesticide it may have caused contamination in the form of lead an/or arsenic. The Applicant will be required to conduct soil sampling, pursuant to the Model Toxics Control Act, Chapter 173-340 MAC. *Exhibit 11*
25. In a submittal to the City, the Columbia Irrigation District submitted short plat requirements of the Columbia Irrigation District. *Exhibit 20*. The Applicant is urged to contact the District.
26. The City Planning Department and other departments of the City conducted a thorough review of the request that included reviews of the city zoning Code, the city Comprehensive Plan, and the local and state environmental laws and requirements. Based on these reviews the City determined that 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. *Testimony of Mr. Halitsky; KMC Title 17-Subdivisions; Exhibit 1, Pg..4*
27. The Kennewick Planning Department submitted that “this request is consistent with and generally conforms to the City’s Comprehensive Plan, and it will implement, goals and policies of the Comprehensive Plan” *Exhibit 1 pg. 4*, The staff identified specific sections of the Comprehensive Plan that are satisfied by the proposal. *Exhibit 1; Pgs. 4 and 5; Testimony of Mr. Halitsky*.

28. The proposed plat is consistent with the Kennewick Comprehensive Plan RESIDENTIAL GOAL 1: “Provide for attractive, walkable, and well-designed residential neighborhoods, with differing densities and compatible with neighboring areas.” This goal is satisfied with the design of the plat, the requirements to meet single family design standards and the compatibility with other neighborhoods in the area. *Testimony of Mr. Halitsky; Exhibit 1, pgs. Exhibit 1, Pg. 4*
29. The proposed plat is consistent with the Kennewick Comprehensive RESIDENTIAL GOAL, POLICY 1: “Ensure provision of parks, schools, drainage, transit, water, sanitation, infrastructure and pedestrian in new residential developments.” These items are addressed above and will be part of the plat development. The proposed development will be constructed with the required infrastructure improvements that satisfy applicable standards. *Exhibit 1, Pg. 3 and 5; Testimony of Mr. Halitsky*
30. The proposed plat is consistent with the Kennewick Comprehensive RESIDENTIAL GOAL 2: “Provide appropriate public facilities supporting residential areas.” The development will result in street improvements and traffic impact fees and park impact fees. *Exhibit 1; Testimony of Mr. Halitsky.*
31. The proposed plat is consistent with the Kennewick Comprehensive RESIDENTIAL GOAL 2: “Provide appropriate public facilities supporting residential areas”, as well as the policies listed with this goal:
- POLICY 1: “Ensure provision of parks, schools, drainage, transit, water, sanitation, infrastructure and pedestrian in new residential developments.”
 - POLICY 2: “Encourage irrigation service throughout residential areas, when available, to support and maintain healthy landscaping.”
- The Department of Planning submitted that the proposed development will be constructed with the required infrastructure improvements that meet applicable standards. *Testimony of Mr. Halitsky; Exhibit 1, Pgs. 4 and 5*
32. The proposed plat is consistent with the Kennewick Comprehensive RESIDENTIAL GOAL 3: “Promote a variety of residential densities with a minimum density target of 3 units per acre as averaged throughout the urban areas.”, as well as the following policy:
- POLICY 2: “Residential Low Density: Place lands constrained by sensitive areas, those intended to provide transition to the rural area, or those appropriate for larger lot housing within the Residential Low Density land use designation to allow for a range of lifestyles. The Planning Department determined that “As proposed, the development meets Goal 3 and Policy 2 by providing a transition from the more dense neighborhoods to the west and the larger, rural parcels to the east. *Mr. Halitsky; Exhibit 1, Pg, 5*
33. Adjoining property owners to the east, John and Laurie Bargar, testified that they raise horses on their property. They requested that a fence be erected on the boundary between their property and the property on which the plat will be developed. They also testified that there are easements near the boundary that must be considered. *Testimony of Jack Barger and Laurie Barger.*
34. Applicant Bussell testified that a fence is proposed along the east property line. He testified to be aware of the easement on the line. He also noted in his testimony that he would cooperate with the Bargaros when the fence is constructed. *Testimony of Mr. Bussell.*

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 requested preliminary plat approval is for the subdivision of of 4.2 acres into 18 lots on property commonly described as 2109 S. Washington Street in Kennewick, Washington. The subject property, currently developed with a single-family home with an accessory structure, is zoned Residential Low-Density, (RL) by the City. The property will be

- developed to RL standards. *Finding of Fact No. 1.*
2. 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. 3-4*
 3. Pursuant to the Washington State Environmental Policy Act (SEPA) and City Ordinances the project was not subject to environmental review pursuant to SEPA. *Finding of Fact No.5*
 4. Various state and local agencies submitted comments and recommendations. The comments identified impacts that could be created with the development of the plat. The recommended conditions are specific to mitigate the impacts. *Findings of Fact 8-25*
 5. 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. *Findings of Fact 8-26*
 6. The proposed 18 lot subdivision is consistent with the City's zoning code and standards, the City of Kennewick Comprehensive Plan and other development requirements of the City and State of Washington. *Findings of Fact 8-32*
 7. The City Planning Department and other departments of the City conducted a thorough review of the request that included reviews of the city zoning Code, the city Comprehensive Plan, and the local and state environmental laws and requirements. Based on these reviews the City determined that 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 8-26*

DECISION

Based on the administrative record developed at the public hearing, and the facts and conclusions as set forth above, approval of requested approval of Washington Meadows preliminary plat to subdivide 4.2 acres into 18 lots is granted. The property is commonly described as 2109 S. Washington Street in Kennewick, Washington. Approval is granted subject to the

following conditions. **All conditions apply to the Applicant and its successors.**

1. The Applicant must comply with all applicable City of Kennewick regulatory controls, policies and codes, including the Residential Design Standards.
2. A landscape plan, prepared by a licensed landscape architect or licensed landscape installer, must be drawn to a legible scale and submitted for approval for all common areas, open spaces and rights-of-way not left in a natural state. The plan must list the number, location, and species of trees, sizes of plant material, and ground cover. The plan must be submitted prior to final plat approval.
3. A 10-foot landscaping strip consisting of ground cover and street trees every 40 feet is required along S. Washington Street.
4. As part of the landscaping, trees shall be placed at 40-foot intervals and within five feet of the back of sidewalk for curb tight sidewalks.
5. Trees for the individual residential lots shall be planted prior to receiving certificate of occupancy for each new home.
6. The Applicant must provide a bond or cash deposit for incomplete sidewalks and applicable landscaping prior to final plat approval.
7. The Kennewick Fire Department must approve requirements for fire truck access to the residences in the cul-de-sac within the subdivision.
8. Prior to approval of the final plat, all fees required by the City shall be paid.
9. The Applicant must comply with the applicable requirements of Kennewick Municipal Code Chapters 18.60 – Critical Areas – Critical Aquifer Recharge Areas and 18.62 – Critical Areas – Geologically Hazardous Areas.
10. The Applicant must comply with any requirements of Kennewick Fire Department.
11. The Applicant must comply with the October 20th, 2020 email submitted by the Benton Public Utility District. (Exhibit 14 in the public record)
12. The Applicant must comply with the August 16th, 2021 Memorandum of the consolidated comments and conditions submitted by the Kennewick Public Works Department. (Exhibit 7 of public record).
13. The Applicant must comply with the August 17, 2021 Memorandum of the Kennewick Traffic Engineering Division comments. (Exhibit 8 of public record)
14. The City Traffic Engineering Division will provide the Applicant with a detailed memorandum of all road improvements within the plat. By this reference the Memorandum shall become an exhibit to this proceeding.
15. The Applicant shall provide dust control method(s) such as hydro seeding for all areas of the site that are disturbed.
16. Pursuant to City of Kennewick Ordinance 5736, park impact fees for Park Service Area 1 are \$920.00 per single-family dwelling. Park impact fees will be assessed at the time of building permit and are required to be paid prior to issuance of a certificate of occupancy.
17. There will be some traffic impacts to streets in the area. The Applicant shall be responsible for the traffic impact fees to be determined by the City Traffic Engineering Division. The traffic impact fees may be subject to a cost-of-living increase adjustments and agreements between the Applicant and the City.
18. The Applicant shall cooperate with the Kennewick School District and comply by developing identified school bus stops for children who live in the subdivision.

19. The Applicant shall secure all necessary permits and approvals from the Irrigation District(s) that have jurisdiction over the development.
21. The Preliminary Plat (PP 21-03) 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.
22. Prior to building a fence on the east boundary the Applicant shall contact John and Laurie Barger for input on the fence and its location.

Dated this 28th day of October, 2021.

James M. Driscoll
Hearing Examiner City of Kennewick