

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

In the Matter of the Application of)		
Knutzen Engineering)		No. FILE NO: PP 21-02 / PLN-2021-01979
)		
for Preliminary Plat Approval)		ORDER OF RECONSIDERATION
<u>(Crimson Hills))</u>		

SUMMARY OF REQUEST FOR RECONSIDERATION

On November 5, 2021, the Decision on the above captioned request for Preliminary Plat Approval was issued, subject to 22 conditions. On November 10, 2021 a Request for Reconsideration (Request) was filed by the Applicant, Knutzen Engineering, seeking review and reconsideration of Conditions 18, 19 and 20. These conditions, as issued, read:

18. A Homeowner’s Association shall be formed and include all lots of the approved plat.
19. The Applicant and/or all of its successors must execute a written agreement to the satisfaction of the City Attorney, which will allow the City to establish enforceable 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.
20. The Applicant must work with the School District to identify and construct the bus stops for the children being bussed from the Crimson Hills subdivision.

The Request was supported by exhibits which are all e-mail correspondence between the Applicant’s representative and the City Planning staff. They are listed in chronological order with the latest email being Exhibit R-1. The Reconsideration exhibits become part of the official record of this Decision.

- R-1-Machiela to Muai-July 6, 2021, 4:50 pm
- R-2-Machiela to Muai-July 6, 2021, 4:51 pm
- R-3- Machiela to Muai-July 13, 2021. 3:12 pm
- R-4-Muai to Machiela-July 13, 2021; 4:50 pm
- R-5-Machiela to Muai-July 13, 2021, 4:51
- R-6-Machiela to Muai -July 13, 2021, 4:51 pm
- R-7-Machiela to Halitsky- Nov. 8, 2021, 3:27 pm
- R-8-Machiela to Muai-Nov. 8, 2021, 4:18 pm¹
- R-9-Machiela to Halitsky, Nov. 10, 2021, 9:45 am
- R-10-Halitsky to Machiela, Nov. 10, 2021, 2:35 pm
- R-11-Machiela to Halitsky, Nov. 10, 2021, 3:50 pm
- R-12-Muai to Machiela, Nov. 19, 2021, 5:29 pm

¹ Exhibit R-8 is the official Request for Reconsideration

- R-13- Nelson to Machiela, Nov. 11, 2021, 11:16 am

A review has been made of each of the above listed exhibits. These exhibits, the land use ordinances of the City and the statutes of the State of Washington are the basis of this Order on the Request for Reconsideration. Each condition raised by the Applicant in its Request will be addressed.

FINDINGS OF FACT FOR REQUEST FOR RECONSIDERATION

Condition number 18. *A Homeowner's Association shall be formed and include all lots of the approved plat.*

1. RCW 64.38.010 (12) defines "Homeowners' association" as "a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member.
2. A Homeowner's Association (HOA) has the power to regulate the use, *maintenance*, repair, replacement, and modification of common areas. *RCW 64.38.020 (6) (Emphasis added)*
3. As part of the plat approval process, the City of Kennewick is required to review and inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. The directive as set forth in *RCW 58,17,110 (1)* requires the City to "...determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, *other public ways*, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds..." *(Emphasis added)*
4. *RCW 58,17,110 (2)* requires that no subdivision be approved in the State of Washington if the factors as listed in *RCW 58,17,110 (1)* are not satisfied.
5. The Kennewick Municipal Code (KMC) 4.02.010 (1) requires the City's Hearing Examiner to issue a written Decision supported by Findings of Fact for any subdivision appeal. *KMD 4.02.010 (3)* allows conditions to be imposed as part of the Decision:
Conditions.
The Examiner's decision may be to grant or deny the application, or
The Examiner's *may require of the applicant such conditions, modifications and restrictions as the Examiner finds necessary to make the application compatible with the environment and carry out the goals and objectives of the Comprehensive Plan, this Title, the development standards and regulations, other codes and ordinances of the City of Kennewick, and the approved preliminary plat, if applicable. (Emphasis added)*
6. As cited above, the Examiner may impose conditions that make the proposed plat compatible with the environment and carry out the goals and objective of the Comprehensive Plan and the regulations and ordinances of the City. Because there was nothing in the materials submitted at the hearing that addressed the maintenance of the pedestrian walkways and safety of the pedestrian users, the Examiner used his authority to condition the plat. Condition 18 was imposed to ensure that the maintenance of the

walkways and the connecting easements and the safety of the users would be addressed by an HOA which would assume responsibility of maintenance of the pedestrian paths within the plat and the utility land on which the path connect, *See Findings Numbers 8 and 11 of November 5, Decision.*,

7. The creation of the HOA allows for appropriate provisions for maintenance of the walkways of the plat and utility easements connecting to those walkways. With a defined process of the use of an HOA for walkway and easement maintenance, the public safety and general welfare are provided for in the proposed subdivision. These provisions as required by KMC 17.10.080 (1) Provisions for Public Health, Safety, and Welfare are satisfied with use of condition 18.
8. Condition 18 remains as issued.

Condition number 19. *The Applicant and/or all of its successors must execute a written agreement to the satisfaction of the City Attorney, which will allow the City to establish enforceable 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*

9. The above Findings Numbers 1-8 are adopted and restated as part the reconsideration of Condition 19.
10. Condition 19 remains as issued.

Condition number 20. *The Applicant must work with the School District to identify and construct the bus stops for the children being bussed from the Crimson Hills subdivision.*

11. RCW 58.17.110 (1) reads:

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, *transit stops*, potable water supplies, sanitary wastes, parks and recreation, playgrounds, *schools and schoolgrounds*, and *shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school*; and (b) whether the public interest will be served by the subdivision and dedication. (*Emphasis added*)

12. Finding number 19 of the Hearing Examiner Decision stated:

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 Amon Creek Elementary School, Desert Hills Middle School, and Kamiakin High School. All students of the plat will be in a bussing zone to the respective schools. *Exhibit 1, pg. 5; Exhibit 13, pg. 17.* The Applicant must work with the School District to identify and construct the bus stops

13. While all of the students who will live in the subdivision will be bussed to schools, there is still a responsibility of the Hearing Examiner to consider safety factors for those catching and returning on the bus. One of the requirements of the plat review statute, RCW 58.17.110(1), is the review to determine “...(a) If appropriate provisions are made for, but not limited to, the public health, *safety*, and general welfare, *for* open spaces, drainage ways, streets or roads, alleys, other public ways, *transit stops...*” (*Emphasis added*).
14. In the review of the materials presented, the Hearing Examiner considered Exhibit 17 which was a letter from the Kennewick School District, dated September 28, 2021, that stated that all of the schools that will serve the subdivision are in the bussing zone and the children attending elementary, middle and high schools will be bussed from the subdivision. *Exhibit 17*. To provide a safe transit pickup and return transit spot is a factor that must be addressed in plat review. Condition 20 establishes a process for the Applicant and the District to identify a safe transit spot, and the Applicant to construct it and construct a safe transit spot.
15. Condition 20 remains as issued.

ORDER OF RECONSIDERATION

Based on the above Findings of Fact and a review of the record of this proceeding, the November 5, 2021 Decision remains as stated. There are no changes to any of the Conditions listed therein, including Conditions 18, 19 and 20.

Dated this 23rd day of November, 2021.

James M. Driscoll
Hearing Examiner