

CITY COUNCIL MEETING  
Olympia, Washington  
November 24, 2009

Bentridge Village Master Plan

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CITY MANAGER'S  
RECOMMENDATION:

Move to conceptually approve the Bentridge Master Plan with conditions as recommended by the Hearing Examiner, except that proposed Condition F shall not be accepted. The 41<sup>st</sup> Way SE connection shall be constructed as required by the MDNS. Move the Master Plan Ordinance to first reading and direct to staff to prepare findings and conclusions consistent with Council's decision, including appropriate findings and conclusions that concurrency has been met and that the concurrency test is at the time of subdivision. Staff may have additional ministerial changes to make to the Master Plan documents prior to first reading.

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STAFF CONTACT:

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ORIGINATED BY:

Department of Community Planning and Development

PRESENTERS AND  
OTHERS NOTIFIED:

Dave Prutzman, Boston Harbor Land Company  
Corey Prutzman, Boston Harbor Land Company

ATTACHMENTS:

1. [Draft Ordinance, including Master Plan and Design Vocabulary](#)
2. [Mitigated Determination of Non-Significance dated June 16, 2009](#)
3. [Staff Report, dated July 13, 2009](#)
4. [Letter from Tim Byrne to the City of Olympia dated January 24, 2008.](#)
5. [Findings, Conclusions and Recommendation dated August 18, 2009](#)
6. [Motion for Reconsideration dated August 31, 2009](#)
7. [Order on Motion for Reconsideration, dated September 21, 2009](#)
8. [Letter from Darren Nienaber, Deputy City Attorney to Tom Bjorgen dated September 8, 2009](#)
9. [Letter from Dave Smith, City Project Engineer to Tom Bjorgen dated September 8, 2009](#)
10. [City Council Whitmore Glen Decision, August 9, 2005.](#)
11. [Letter memorandum from Darren Nienaber, Deputy City Attorney, dated November 19, 2008.](#)

Note: A copy of the complete Hearing Examiner's Record is available in the City Council Office, 900 Plum Street SE. A complete copy of the record including a digital recording of the testimony is available to Councilmembers through the City's network.

BUDGET IMPACT/  
SOURCE OF FUNDS:

None

PRIOR COUNCIL/  
COMMITTEE REVIEW:

None

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BACKGROUND:

Summary of November 24, 2009 Presentation

The Hearing Examiner recommends the City Council deny the Bentrige Master Plan (the Master Plan) on the sole basis of school concurrency as set forth in OMC 15.04.030. The Hearing Examiner's decision said, "If the City Council disagrees with this recommendation and holds that the proposal does provide for school concurrency as required by OMC 15.04.030, then it is recommended that the master plan be approved, subject to the conditions set out below."

Tonight, the City Council is asked to consider two key issues: 1) whether OMC 15.04.030 is met and 2) whether a right-of-way road connection should be required between the Bentrige site and the Newcastle subdivision at 41<sup>st</sup> Way SE. As will be discussed, this is a closed record proceeding, and this staff report summarizes and discusses the record that was created by the Hearing Examiner.

The City Council may also choose to examine other master plan issues tonight or to defer further deliberation on other issues until first reading, which is currently set for December 8, 2009. The requested motion is to "conceptually approve" the Master Plan at the November 24, 2009 meeting. The meaning of this motion is that Council is requested to address major issues that it sees. However, additional issues and more ministerial issues may be addressed at first reading.

The attached ordinance and Master Plan documents are in draft form because there are still ministerial changes to be made to the Master Plan documents prior to first reading to correct omissions and grammatical errors as well as following through with the Examiner's proposed conditions. Staff can clarify the scope of the additional changes that need to be made prior to first reading. Otherwise, the changes can be summarized in the staff report to the first reading of the ordinance.

Project Description:

Bentrige is a proposed 72-acre master planned development and subdivision located on the east side of Boulevard Road, and south of LBA park. The subject property is located in the *Neighborhood Village* zone district. The proposed project would include approximately 501 residential units on 348 lots, a village center with a 12,500 square-foot commercial building, and a 1.00 acre village green, tot lots, open space areas, tree preservation tracts and a stormwater tract. The village green is a park-like area intended to meet active and passive social and recreation needs, such as walking, jogging, playing, picnicking and holding community events. Other elements of the proposal include alley-loaded residential units, a pedestrian network, and an east-west bicycle path on the north side of Log Cabin Road. The project provides a mix of residential units including 160 single-family detached homes, 138 single-family attached homes, 28 duplex

homes, 156 multi-family units, 18 townhomes, and a single residential unit over the commercial building.

Regulatory Framework:

The *Neighborhood Village* zone district was created in the mid-1990s to require planned residential communities containing a variety of residential unit types and densities, a neighborhood commercial area, and village green. The intent of this district is to provide greater flexibility in design, promote infill, provide a variety of housing choices, and recreation facilities. Developments within this zone district are reviewed through the master plan process.

Approval of a master plan is a multi-step process involving the following steps: 1) review of the master plan by the Site Plan Review Committee with a recommendation to the Hearing Examiner, 2) review of the design vocabulary and design guidelines by the Design Review Board, with a recommendation to the City Council, 3) issuance of a SEPA threshold determination, 4) public hearing before the Hearing Examiner, with a recommendation to the City Council, and 5) review and action by the City Council.

Pursuant to OMC 18.57.080(D), the City Council shall consider the Hearing Examiner recommendation within 30 days of the Examiner's recommendation, unless the applicant grants an extension of time. The City Council's consideration shall be based upon the record that was established by the Design Review Board and the Examiner. If the Council finds that the Board's or Examiner's recommendation is in conflict with the City's adopted plans, policies and ordinances, or insufficient evidence was presented as to the impact on surrounding area, the Council may:

- a. Deny the MPD application;
- b. Remand the matter back to the Design Review Board or Hearing Examiner for another hearing;
- c. Continue to a future date to allow for additional staff analysis desired by the Council;
- d. Modify the Design Review Board's and Examiner's recommendation based on the applicable criteria and adopt their own findings and conclusions, and deny or approve the master plan; or
- e. Schedule its own open-record public hearing.

Approval of a master plan constitutes an amendment to the official zoning map. The code provisions governing master plans contain additional requirements beyond the normal subdivision requirements designed to encourage walkability and bicycle use within neighborhood villages between residential areas, open space and recreational area, and the commercial portion of the site.

Approval of the master plan locks in the location of the residential, multifamily and commercial areas, establishes the open space and

village green tracts and fixes the design guidelines but does not create lots or establish the footprints of the multi-family or commercial buildings. Lots are created through the subdivision process and the building footprints are established through development review such as the site plan review process.

#### Project History:

In September 2005, the applicant submitted an application for the Bentrige Master Plan. In May 2007, the applicant submitted an application for a Preliminary Plat for the proposed project. The Master Plan and Preliminary Plat were combined into a single project review.

Over the course of the next several months, the Site Plan Review Committee worked with the applicant to resolve project-related issues. During this time, both the applicant and the City held public meetings to inform the surrounding neighborhoods of the proposed development.

The Design Vocabulary and Design Guidelines were reviewed by the Design Review Board on July 27, 2007. The Design Review Board recommended approval of the proposed Master Plan with conditions, some of which have been addressed through revisions to the site plan, and others, through changes in the Design Vocabulary and Design Guidelines (see Attachment 1).

A Mitigated Determination of Non-Significance (MDNS) was issued on June 16, 2009. The MDNS set forth several mitigation measures pertaining to road, pedestrian, sewer, and traffic calming improvements, as well as traffic mitigation for Thurston County (see Attachment 2). Although part of the applicant's proposal, one of the SEPA conditions included the requirement that the subdivision be connected to the Newcastle subdivision through 41st Way SE.

The public hearing before the Hearing Examiner on the Master Plan and Preliminary Plat was held on July 13, 2009. Staff members presented the staff recommendation, to approve with conditions (see Attachment 3). Citizen concerns focused on consistency with the neighborhood as well as concerns about traffic and drainage issues. At the close of the public hearing, the Examiner left the Record open to allow additional argument and evidence on a limited number of issues pertaining to vesting, wetland regulations, storm water runoff, construction within the 100-year floodplain, and traffic. The Record was left open until August 3, 2009. Additional written testimony was submitted by City staff and the applicant in response to some or all of these issues.

On August 18, 2009, the Hearing Examiner issued 'Findings, Conclusions and Recommendation' on the Master Plan (hereinafter referred to as the 'August 18 Recommendation'), with a recommendation for denial based solely on the Examiner's opinion that the Master Plan failed to meet the City's concurrency test as set forth in OMC 15.04.030 (see Attachment 4). The Examiner noted that the City Council should decide whether school concurrency should be part of the Master Plan, or part of the Preliminary Plat. The Examiner's decision also said that if the City Council was of the opinion that the requirements of OMC

15.04.030 were met, then the rest of the Master Plan should be conditionally approved.

On August 31, 2009, the Applicant submitted a Motion for Reconsideration (see Attachment 5), with the key points focusing on:

1. The applicant should be entitled to reimbursement for improvements to Log Cabin Road within the project boundaries.
2. The project conforms to open space requirements for the multi-family tracts.
3. School concurrency should be based on district-wide capacity.
4. Applicant should be able to incorporate excess right-of-way into adjoining lots (52 and 247) as a result of the Examiner's decision to limit access between Bentrige and the Newcastle development.

On September 21, 2009, the Hearing Examiner issued the 'Order on Motion for Reconsideration' (see Attachment 6). The Examiner declined to change his recommendation regarding the applicant's request for reimbursement for the construction of improvements to Log Cabin Road, but approved the applicant's request to incorporate excess right-of-way into lots 52 and 247. The Hearing Examiner denied the applicant's request to apply concurrency on a district wide basis. The Examiner reiterated that the August 18 Recommendation stands, which is to deny the Master Plan based on lack of school concurrency.

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**ANALYSIS:**

The key issues surrounding the Bentrige Master Plan include:

1. Whether school concurrency is met.
2. Whether school concurrency should be determined as part of the Master Plan or as part of the Preliminary Plat.
3. Road connectivity between Bentrige and Newcastle.

School Concurrency:

The Hearing Examiner recommends denial of the Master Plan because in the Examiner's view, the Master Plan fails to provide for school concurrency required by OMC 15.04.030. The Hearing Examiner made a finding that adequate capacity existed in the School District to accommodate the students from the Bentrige development. However, the Examiner wrote that the school concurrency test should be determined by assessing whether there is capacity at the level of the individual school where a development occurs rather than whether there is capacity in the entire district.

In the Hearing Examiner's August 18, 2009 Recommendation, the Examiner posed to City Council the question of whether school concurrency should be decided as part of the Master Plan or as part of the Preliminary Plat. The Examiner's opinion was that concurrency should be decided at the time of Master Plan. The Department's position is that school concurrency should be decided at the time of Preliminary Plat rather than with a Master Plan. For additional analysis on the school concurrency issues, please see the Deputy City Attorney's memorandum, Attachment 11.

#### Connectivity Between Bentrige and Newcastle:

The applicant proposed to construct roads that terminate at the project boundaries, but align with existing off-site rights-of-way at Van Epps Street SE to the north and 41<sup>st</sup> Way SE to the south. As conditions of the SEPA Mitigated Determination of Non-Significance (MDNS), the applicant was required to: 1) extend road and sidewalk improvements beyond the project boundaries to connect with Van Epps and 41st streets and 2) install traffic calming devices to minimize impacts to existing residential neighborhoods (See Attachment 2). Transportation Policy T-3.20 regarding street connectivity was cited as substantive authority for these mitigation measures. The connection may also be considered consistent with the Comprehensive Plan, because it could reduce trip distances of Newcastle residents traveling to LBA Park or to College Street.

Specific traffic calming devices were identified by the Department in the Hearing Examiner staff report. For both connections, the roadway would be reduced to a single, off-set lane, with two speed cushions on Van Epps between the project boundary and Morse-Merriman. Both traffic calming devices would be built to city standards set forth in the Engineering Design and Development Standards.

Based upon testimony from residents of the Newcastle neighborhood, the Hearing Examiner modified the Department's recommendation for traffic calming at 41<sup>st</sup> Way SE. In place of the single lane road connection, the Hearing Examiner recommends limiting the connection to pedestrians, bicycles, and emergency vehicles. The Department's position is that the testimony regarding safety issues with automobiles from connecting 41st Way SE was anecdotal in nature and the Hearing Examiner's opinion is inconsistent with the SEPA determination. In their Motion for Reconsideration, the applicant requested that they be allowed to incorporate excess right-of-way into the adjacent lots (52 and 247). In response, City staff provided documentation supporting the need to construct the full Neighborhood Collector. Among other things, the analysis looked at impacts of limiting road access to emergency access, delivery of goods and services, pedestrian safety, and traffic flows. In his Order on Reconsideration, the Hearing Examiner modified his recommendation to include the applicant's request to incorporate excess right-of-way into the adjoining lots rather than leaving the area as right-of-way for a potential future street.

The requirements to extend offsite improvements and provide traffic calming were established by the SEPA Official when the MDNS was issued. Because the MDNS was not appealed, it is the Department's view that the condition became final. However, it is unclear whether the Hearing Examiner was aware of this SEPA MDNS condition. Should Council approve the Master Plan, staff recommends that the Hearing Examiner's recommendation pertaining to the 41st Way SE connection be rejected and that the mitigation measures as established in the MDNS are followed.

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Options:

Option 1. Approve the City Manager's recommendation.

Implications. By the bringing the Master Plan ordinance back on first reading, Council will have a second opportunity to examine other issues associated with the Master Plan.

Option 2. Approve the Hearing Examiner's recommendation and deny the Master Plan due to concurrency issues. Direct staff to prepare findings and conclusions consistent with the Council's decision.

Option 3. Approve the City Manager's recommendation on concurrency but accept the Examiner's recommendation to restrict access to pedestrians and bicyclists. Direct staff to bring back an ordinance on first reading consistent with City Council's decision. Ministerial changes to the proposed ordinance may be proposed by staff prior to first reading.

Option 4. Approve the City Manager's recommendation on concurrency and remand to the Examiner to recommend findings and conclusions regarding the SEPA MDNS as it pertains to the 41st Way connection.

Option 5. Take the issues under advisement but take no action. Defer deliberation and decision making until first reading.

Implications. Council could provide general guidance as to specific issues, while reserving the opportunity for full deliberation at first reading.

Option 6. Other procedural options are set forth in OMC 18.57.080(D).

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