

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

In the Matter of the Application of) **PVA 21-05 / PLN-2021-03638**
Southridge Village LLC) **PRD 21-01 / PLN-2021-03577**
for modification of a preliminary) Findings of Fact, Conclusions and
plat and an approved PRD) Decision
)

SUMMARY OF AMENDED DECISION

A modification to an approved Preliminary Plat with a Planned Development Permit (**PVA 21-05 / PLN-2021-03638 AND PRD 21-01/PLN-2021-03577**) is granted. The amendment allows an alteration of the October 10, 2016 approval of a preliminary plat and a planned residential development. The amendment is subject to the conditions as listed herein.

INTRODUCTION

Request

On October 10th, 2016, the City of Kennewick Hearing Examiner approved a preliminary plat commonly referred to as the “Village at Southridge”. The plat (PP 16-03), was approved to be developed in Phases 1-4. The entire site consisted of 36.2 acres that were subdivided into 152 lots with 7 tracts. Concurrently, the Hearing Examiner approved a Planned Residential Development (PRD 16-01) that included a senior living community comprised of a mix of single-family homes with independent living, assisted living, and rehabilitation facilities on the property of the approved plat. The instant modification request is for an amendment to the original approval with reconfiguration of some of the lots, designs for a mix of attached and detached single-family lots, and an addition of Tract E to the entire parcel resulting in a 37.79 acre, 166 lot five tract subdivision and planned senior living development. The specifics of the request as identified by the Applicant are described in Finding number 3 (below).¹

Hearing

The Hearing Examiner of the City of Kennewick held an open record hearing on the application on December 13, 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 participate at the hearing.

Testimony:

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

- Anthony Muai- Kennewick Planning Director
- Martin Nelson- Kennewick Public Works
- Caleb Stromstad-Applicant’s Representative

Exhibits admitted for the public record:

At the open record hearing the following exhibits were admitted:

¹ The legal descriptions of the property are set forth in the staff report of PP 16-03.

1. Staff Report
2. Application
3. Summary of Proposed Changes
4. Notice of Application/Mailing List
5. Vicinity Map
6. Preliminary Plat Alteration Plans
7. Environmental Determination
8. Original Hearing Examiner Decision (October 10, 2016)
9. Plat Map PP 16-03
10. BCAA Comment Letter
11. KID Comment Letter
12. WSDOT Comment Letter
13. SHPO Comment Letter
14. Kennewick Parks Dept Memo
15. Public Works Memorandum (December 9, 2021)
 - 15-a. Public Works Memorandum (December 14, 2021)
 - 15-b. (exhibit number was reserved for response to Exhibit 15, 2021 memo, but none was submitted)
16. Minor Preliminary Plat Amendment to the Village at Southridge Preliminary Plat (PP 16-03) and Village at Southridge Planned Residential Development (PRD 16-01 (2018)
17. Park fee memo (December 16, 2021).²
18. Power Point Hardcopy

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 10th, 2016, the City of Kennewick Hearing Examiner approved a preliminary plat commonly referred to as the “Village at Southridge”. The Preliminary Plat for the Village at Southridge, PP 16-03, was approved to be developed in Phases 1-4. The entire site was 36.2 acres that were to be subdivided into 152 lots with 7 tracts. Concurrently, the Hearing Examiner approved a Planned Residential Development (PRD 16-01) for the subdivision that included a senior living community that was comprised of a mix of single-family homes with independent living, assisted living, and rehabilitation facilities. *Testimony of Mr. Muai; Exhibit 8*
2. On November 2nd, 2018, the City of Kennewick Planning Department issued a Minor Preliminary Plat Amendment to the Village at Southridge Preliminary Plat (PP 16-03) and Village at Southridge Planned Residential Development (PRD 16-01 (2018)). The Amendment allowed altering the street layout and provided a connection to S. Nelson Street and relocating some open space was approved. *Exhibit 16*

² Requested by the Hearing Examiner at the public hearing. The Applicant was given an opportunity to respond to written exhibit but did not do so.

3. On October 11th, 2021, Mr. Randy Mendenhall, on behalf of the Applicant, requested a plat alteration, which would add Tract E to preliminary plat approval.³ *Exhibit 2*. The Applicant provided the following verbatim list that included the proposed changes:
- Lots were re-numbered to become easier to follow.
 - The addition of 3.29 acres as “Proposed Tract E”.
 - Former Tracts E, F, G and H of PP 16-03/PLN-2016-01360 have been: converted to both attached and detached single family residential lots.
 - What was once designated as Tract F became two (2) detached single family residential lots.
 - What was designated as Tract E became approximately three detached single family residential lots.
 - What was once designated as Tract H became approximately three detached single family residential lots.

Exhibit 3

4. The site has a Comprehensive Plan Land Use Designation of Medium Density Residential and is zoned Residential. The City of Kennewick annexed the site and zoned it Residential, Medium (RM) in April 2006, pursuant to Ordinance 5142. This zoning designation was retained by City Council in December 2011 as part of the Southridge Sub-area Comprehensive Plan Amendment (Ord. 5385). *Exhibit 1, Staff Report, pg. 3*
5. 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 May 16, 2016, the City issued a Mitigated Determination of Nonsignificance (MDNS) for the proposed project on the subject property. *Exhibit, 8 Finding No. 8* An updated SEPA Checklist was submitted by the Applicant and determined complete on October 14, 2021. The revised checklist considered the additional lands now included in the proposed preliminary plat that were not previously evaluated in 2016. A revised Determination of Non-Significance was issued November 1, 2021. *Exhibit 1, pg. 3; Exhibit 7*
6. As established in the Kennewick Table of Residential Development Standards (*KMC 18.12.010 A.2*), development in an RM zoning district must have a minimum lot size of 4,000 square feet, with 1,800 square feet being required for a townhouse/duplex. The development, including the new lots created with the requested alteration, will have residential lots that range from a minimum size of 3,624 square feet (townhouse/duplex) to a maximum residential lot area of 18,475 square feet. The overall lot average of the entire subdivision will be 6,342 square feet. The preliminary plat as proposed meets the Residential Development Standards contained in *KMC 18.12.010(A.2)*, and is subject to the Residential Design Standards, Single-Family. *Exhibit 1, Staff Report, Pg. 4*

³ According to Mr. Mendenhall’s request the plat is Benton County Auditor File 2021-042016 (Survey #5584).

7. The Traffic Engineering Division submitted no comments relating to the proposed Preliminary Plat and Planned Residential Development alterations. A condition of approval for the instant alteration request will be that all conditions as set forth in the October 11, 2016 approval of PP 16-03 and PRD 16-01 specific to traffic remain in effect. *Exhibit 1, Staff Report, pg. 4.*
8. Proposed public roads, water services and sewer services must be constructed to applicable City of Kennewick Standard Specifications and Drawings. The Public Works Engineering Division submitted no comments on the proposed alterations. The Traffic Engineering Division also submitted no comments relating to the proposed Preliminary Plat and Planned Residential Development alterations. A condition of approval for the instant alteration request will be that all conditions as set forth in the October 11, 2016 approval of PP 16-03 and PRD 16-01 specific to streets and utilities remain in effect. *Exhibit 1, Staff Report, pg. 4.*
9. Storm water design and all of the construction and post construction must satisfy the requirements of KMC Section 14.28.045 and COK Standard Specification 5-8. Civil Plans for the amended plat were submitted for review on December 6, 2021. They depicted new and unexpected elements of the water and stormwater systems. Apparently, the unexpected elements were the result of drainage issues of other developments in the area that had impacts to the Applicant's development. During the presentation of the testimony on this issue, the Hearing Examiner requested the City and the Applicant submit a post-hearing statement relating to the water and stormwater systems that will support the amended plat.
10. In a post-hearing memo submitted by the Applicant, it was stated:

Based on the changes to the utility routing in the adjacent development to the north and the intent of the Village at Southridge development, Public Works recommends the following be added as a condition of approval for the final plat:

 1. Provide a revised water comprehensive plan for review and approval by the Public Works Department. Include the Zone 5 water system connection to the west of the site by way of a tract, consistent with the intent of the 2016 Hydraulic Analysis for the Village at Southridge.
 2. Provide a revised comprehensive storm system, calculations, and any agreements, easements and tracts for review and approval by Public Works Department. This system must be able to convey and dispose of the stormwater from Phase 4 of the Village at Southridge to and through the Apple Valley subdivision storm system.

Exhibit 15

The Applicant did not submit any comment or the Public Works Memo.
11. There have been no changes in the availability and the capacity of schools serving the site. A condition of approval for the instant alteration request will be that all conditions specific to schools, and safe access as set forth in the October 11, 2016 approval of PP 16-03 and PRD 16-0, remain in effect. *Exhibit 1, Staff Report, pg. 5.*

12. Mitigation measures were identified in a critical area report supplement letter dated October 2015 at the time of the original plat approval. As part of the modification request approval, staff recommended all conditions relative to the original plat PP 16-03 and PRD 16-01 applications specific to critical areas remain in effect. *Exhibit 1, Staff Report, pg. 5.*
13. The proposed Preliminary Plat Amendment and Planned Residential Development is consistent with the existing mix of residential neighborhoods within the area and is congruous with the existing uses on the adjacent properties. Development of the site is subject to the Residential Design Standards. *Exhibit 1, Staff Report, pg. 5.*
14. The alteration will result in an increase of buildable lots. The additional lots, and the remaining lots identified in the plat map for the original plat approval, are subject to park fees that are different from the original park fees. *Testimony of Mr. Muai.* Pursuant to Ordinance 5736, the Park Impact Fee for Service Area 1, of which the subject property is part of, is \$977 per Single-Family Unit. Exhibit.⁴ *Exhibit 1, Staff Report, pgs. 4-5; Exhibit 17*
15. The alteration and amendment satisfy 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 11, 2016. *Exhibit 8.* However, because the alteration does not satisfy all of the language of KMC 17.20.010(3)(b) request is considered a major alteration. *Testimony of Mr. Muai*
16. Included in the original approval of PP16-03 and PRD 16-01 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

⁴ In a post-hearing memo that was requested by the Hearing Examiner, the Planning Department submitted the following:

In the staff report on pages 4 & 5 it states: "Pursuant to Ordinance 5736, the Park Impact Fee for Service Area 1 is \$977 per Single-Family Unit, for a total of \$162,182." The Park Impact Fee of Service Area 1 is \$977 per single-family unit, however the total of \$162,182 is incorrect. That number was based on the total number of lots contained in the Village at Southridge subdivision, however the majority of the subdivision has already been built and Park Impact Fees have been assessed with each building permit that has been issued.

The Department stated that the total figure will be less than as quoted. The City stated that "The City will continue to assess a Park Impact Fee for homes built in the Village at Southridge subdivision when a building permit is applied for and issued consistent with applicable City of Kennewick code and Washington State law." *See Exhibit 17*

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 for that decision. 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. These same standards were reviewed and determined to be appropriate for the alterations to the approved development. *Testimony of Mr. Muai; Exhibit 1 Staff Report;*

17. In the original approval of PP16-03 and PRD 16-01 a 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. *Testimony of Mr. Muai; Exhibit 1 Staff Report;*

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 are:

KMC 17.10.080: Provisions for Public Health, Safety, and Welfare

- (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.

Conclusions based on Findings

1. On October 10, 2016, the City of Kennewick Hearing Examiner approved a preliminary plat commonly referred to as the Village at Southridge. The Preliminary Plat for the Village at Southridge, (PP 16-03), was approved to be developed in Phases 1-4. The entire site was 36.2 acres that were to be subdivided into 152 lots with 7 tracts. Concurrently, the Hearing Examiner also approved a Planned Residential Development (PRD 16-01) for the subdivision that included a senior living community that was comprised of a mix of single-family homes with independent living, assisted living, and rehabilitation facilities. *Finding of Facts No. 1.* On October 11, 2021, Mr. Randy Mendenhall, on behalf of the Applicant, requested a plat alteration, which would add Tract E to preliminary plat approval.⁵ The Applicant provided the following verbatim list that included the proposed changes:
 - Lots were re-numbered to become easier to follow.
 - The addition of 3.29 acres as “Proposed Tract E”.
 - Former Tracts E, F, G and H of PP 16-03/PLN-2016-01360 have been: converted to both attached and detached single family residential lots.
 - What was once designated as Tract F became two (2) detached single family residential lots.
 - What was designated as Tract E became approximately three detached single family residential lots.
 - What was once designated as Tract H became approximately three detached single family residential lots.

Finding of Facts No. 3

2. The proposed alteration would involve change of development standards as set forth in *KMC 17.20.010(3)(b)*. The alteration does not decrease the aggregate area of open space within the proposed subdivision and no access points identified on the preliminary plat have been reduced, increased or significantly altered. The alteration will not result or cause the subdivision to be inconsistent with the Findings, Conclusions and Decision of the Hearing Examiner, October 11, 2016. *Findings Nos. 8-13.* However, because the alteration does not satisfy all of the language of *KMC 17.20.010(3)(b)* the request was considered a major alteration. *Finding of Fact No. 14*
3. With adherence to conditions as identified below the alteration will not be compatible with the zoning designation of the property, the Comprehensive Plan of the City, the codes and regulations of the City and the original plat, surrounding properties. and October 11, 2016 plat approval and the conditions set forth therein. *Findings 3-16*

DECISION

Based on the testimony and evidence submitted at a public hearing, a modification to an approved Preliminary Plat with a Planned Development Permit A modification to **PVA 21-05 / PLN-2021-03638** is granted. The amendment allows an alteration of the Oct. 11, 2016 approval of a preliminary plat and a planned residential development. The amendment is subject to the conditions as listed herein.

⁵ According to Mr. Mendenhall’s request the plat is Benton County Auditor File 2021-042016 (Survey #5584).

Approval is granted subject to the following conditions:

1. The Applicant, or its successors, shall comply with City of Kennewick regulatory controls, policies and codes, including the Residential Design Standards – Single-Family Residential.
2. The Applicant, or its successors, shall comply with all conditions of the original Preliminary Plat and Planned Residential Development approvals, PP 16-03 and PRD 16-01.
3. A landscape plan must be submitted for approval of all common areas, open spaces and rights-of-way not left in a natural state, listing the number, location, and species of trees, sizes of plant material, and ground cover prior to final plat approval. Street trees shall be placed at 40-foot intervals and within five feet of the back of sidewalk for curb tight sidewalks. The landscape plan shall be prepared by a licensed landscape architect or licensed landscape installer drawn to a legible scale.
4. The Applicant, or its successors, shall provide a bond or cash deposit for incomplete sidewalks and applicable landscaping prior to final plat approval. Trees for the individual residential lots shall be planted prior to receiving certificate of occupancy for each new home.
5. All fees required by the City shall be paid prior to approval of the final plat.
6. All development of the plat shall be in conformance and consistent with the plat drawing which was admitted as Exhibit 6.
7. The Building Department requires a geo-tech report stating the bearing capacity of the soil for each structure. The study can be either a mass report for all building sites submitted with the final plat or individual reports for each lot, required prior to the approval of the footing inspection, as they are built out.
8. The Applicant, or its successors, shall comply with the Benton Clean Air Agency comments as stated in Exhibit 10 of the administrative record.
9. The Applicant, or its successors, shall comply with the Kennewick Irrigation District comments in Exhibit 11 of the administrative record.
10. The Applicant, or its successors shall comply with the requirements as set forth in the WSDOT comment letter dated October 28, 2021 admitted as Exhibit 12 of the administrative hearing.
11. The Applicant, or its successors, shall provide an Inadvertent Discovery Plan consistent with the Department of Archaeology and Historic Preservation comments of October 29, 2021 as set forth in Exhibit 13 of the administrative record.
12. The Applicant, or its successors, shall provide dust control method(s), including but not limited to, hydro seeding for all areas of the site that are disturbed.
13. 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.

14. The Applicant and/or its successors shall provide a revised water comprehensive plan for review and approval by the Public Works Department. The plan shall include the Zone 5 water system connection to the west of the site by way of a tract, consistent with the intent of the 2016 Hydraulic Analysis for the Village at Southridge.
- 15, The Applicant shall provide a revised comprehensive storm system, calculations, and any agreements, easements and tracts for review and approval by Public Works Department. This system must be able to convey and dispose of the stormwater from Phase 4 of the Village at Southridge to and through the Apple Valley subdivision storm system.
16. The Preliminary Plat (16-03) 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.

Dated this 4th day of January, 2022

James M. Driscoll
City of Kennewick Hearing Examiner